

**THE INSPECTORATE'S REPORT ON
THE MANCHESTER PROSECUTION UNIT
OF THE SOLICITOR TO HM CUSTOMS AND EXCISE**

REPORT 16/02

NOVEMBER 2002

CONTENTS

INTRODUCTION	1.1
Background to the inspection	1.2
Operational structure of HM Customs and Excise	1.6
Structure of the Solicitor's Office	1.9
<i>Prosecutions Group</i>	1.11
<i>Operations Division</i>	1.13
<i>The Manchester Unit</i>	1.15
The nature and scope of the inspection	1.17
Overview	1.21
PROVIDING ADVICE	
Introduction	2.1
Quality of advice	2.3
Timeliness of advice	2.10
Appropriateness of informal requests for advice	2.15
Recording informal advice	2.17
Advice from counsel	2.18
REVIEWING CASES	
Introduction	
<i>The Code tests and implementation of recommendation 6 of the Gower Hammond Report</i>	3.1
<i>Other aspects of review</i>	3.3
<i>Quality of review</i>	3.5
Monitoring	3.9
Allocation and caseload	3.10
Continuing review	3.13
Selection of the appropriate charge	3.15
Mode of trial	3.19
Bail	3.22
Independence	3.23
Cases stayed under the Customs and Excise Management Act 1979	3.30
Review endorsements	3.31
Learning from experience	3.34
Liaison with other prosecution agencies	3.42

PREPARING CASES

General	4.1
Advance information	4.3
Disclosure of unused material	
<i>Overview</i>	4.5
<i>Primary disclosure</i>	4.7
<i>Secondary disclosure</i>	4.10
<i>Sensitive material</i>	4.12
<i>Preston material</i>	4.15
<i>File management</i>	4.18
Committal and ‘sent’ case preparation	
<i>Timeliness</i>	4.19
<i>Quality</i>	4.23
<i>Notices of additional evidence</i>	4.28
Facilities at the Crown Court	4.30
Summary trial preparation	4.31
Instructions to counsel	
<i>Quality</i>	4.32
<i>Timeliness</i>	4.35
Conferences with counsel	4.37
Indictments	4.40
Provision of information for pre-sentence reports	4.44
Custody time limits	4.47
The case management system	4.56
<i>Case management teams</i>	4.59
<i>The role of the case managers</i>	4.60
<i>The role of the case support officers</i>	4.66
File management and office systems	4.69
Workload coverage	4.74

CUSTOMS AND EXCISE IN COURT

The magistrates’ courts	
<i>Court coverage</i>	5.1
<i>Listings</i>	5.5
<i>Advocacy</i>	5.7
<i>Hearing endorsements</i>	5.10
The Crown Court	
<i>Court coverage</i>	5.12
<i>Solicitor’s Office advocates</i>	5.15
<i>Higher Court Advocates</i>	5.16
<i>Nomination of counsel</i>	5.19
<i>Returned briefs</i>	5.21
<i>Counsel’s advocacy</i>	5.25
Counsel’s fees	5.27
Monitoring of advocacy	5.33

MANAGEMENT AND OPERATIONS

Introduction	6.1
Organisational structure	6.2
Management of the Unit	6.6
Strategic and business planning	6.10
Management of human resources	6.16
<i>Equality and diversity</i>	6.19
<i>Staff in post</i>	6.24
<i>Court coverage</i>	6.25
Training	6.27
Staff sickness	6.29
Communication	6.31
Management of financial resources	6.36
Accommodation	6.38
Performance indicators	6.41
External communication	
<i>Customs and Excise</i>	6.46
<i>Criminal justice partners</i>	6.47

CONCLUSIONS, COMMENDATIONS, RECOMMENDATIONS AND SUGGESTIONS

Conclusions	7.1
Commendations	7.8
Recommendations and suggestions	7.9

ANNEX 1 The Gower Hammond Report Recommendations

ANNEX 2 Organisational Structure of the Manchester Unit

ANNEX 3 List of Representatives from Customs and Excise and Criminal Justice Agencies who Assisted our Inspection

INTRODUCTION

- 1.1 This is Her Majesty's Crown Prosecution Service Inspectorate's (HMCPSI) report of the first inspection of the Prosecutions Group of the Office of the Solicitor to Customs and Excise (the Department). It has centred only on Unit Four of the Prosecutions Group based in Manchester, and has been conducted as a pilot inspection. The findings are intended to inform the approach to further inspections of the Prosecutions Group as a whole.

Background to the inspection

- 1.2 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. Two were as follows:
- * consideration to be given as to whether the Department should continue to conduct prosecutions; and
 - * the need for an independent inspectorate (possibly HMCPSI) if the Department was to continue as a prosecuting authority.
- 1.3 A Review was set up to examine the relevant issues, and was conducted by His Honour John Gower QC, assisted by Sir Anthony Hammond KCB QC. Their report, *The Review of Prosecutions Conducted by the Solicitor's Office of HM Customs and Excise* (the Gower Hammond Report) was published in December 2000. Fifteen recommendations were made, and they are set out in full at Annex 1. The Government has accepted all the recommendations in principle, but opted for a phased approach in implementation.
- 1.4 In direct response to the Butler Report, the Gower Hammond 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, not to the Department's Commissioners or their Chairmen (recommendations 1 and 2). It also recommended that the Solicitor should have his own budget for his prosecution function, that it should, at the very least, be "ring-fenced", and that consideration should be given to his having his own Vote (recommendation 4).
- 1.5 The Gower Hammond Report also recommended that inspections of the prosecution function of the Solicitor's Office be carried out by HMCPSI (recommendation 5). This is the first such inspection to be undertaken by HMCPSI. Its findings will inform the methodology of future inspections. The Manchester Unit was selected, in order to provide a discrete unit (the other three units are all based in London).

Operational structure of HM Customs and Excise

- 1.6 Customs and Excise's relevant structure consists of two Groups – Law Enforcement and the Solicitor's Office. The Department separates responsibilities for investigations and prosecutions into a tripartite arrangement, comprising investigators and policy administrators (from within Law Enforcement), and the Solicitor's Office.

- 1.7 Investigators assess whether or not a criminal investigation should be instigated, determine the scope and nature of any investigations, carry out enquiries and present the material to the Solicitor's Office. Policy administrators determine Departmental enforcement policies, and ensure that those policies are complied with.
- 1.8 The Solicitor's Office is responsible for conducting criminal prosecutions, civil litigation and hearings before VAT tribunals on behalf of HM Customs and Excise. In addition, it advises on points of criminal, civil, European Community and international law arising out of the Department's operations, as well as being involved with amendments to primary legislation and drafting statutory instruments.

Structure of the Solicitor's Office

- 1.9 The Solicitor's Office is based in London and Manchester, and is divided into five Groups: They are:
- * Prosecutions Group, which is responsible for all prosecution functions (we discuss its function in more detail below);
 - * Departmental Legal Services, which provides business services and advice to the Department;
 - * Law Enforcement Legal Services, which provides all legal advice, other than that relating to prosecutions, to the Department;
 - * Administration Group, which provides administrative services; and
 - * Quality Assurance Group, which provides reports on performance, and guidance and advice on quality assurance measures.
- 1.10 Prior to the Gower Hammond Report, there was a solicitor/client relationship between the whole of the Solicitor's Office and the Department. With the adoption of recommendations 2 and 3, the Prosecutions Group became independent of the Department, and that relationship has ceased to exist.

Prosecutions Group

- 1.11 The Prosecutions Group is headed by the Deputy Solicitor, and structured into four distinct Divisions. The Divisions are:
- * Operations Division, which handles all work relating to criminal prosecutions;
 - * Advisory Division, which provides pre-arrest ("pre-knock") advice to investigators;
 - * Legal and Support Secretariat, which provides a knowledge management function, including advice and assistance in specific areas (such as extradition and human rights); and
 - * Business Management, which provides business services. It is also responsible for the Counsel, Nominations and Fees Team, which handles the list of approved counsel and deals with payment of fees.

- 1.12 Advice work is split between the Operations and Advisory Divisions, in order to maintain independence between investigations and prosecutions. The Advisory Division provides advice about the conduct of investigations before arrest, while the Operations Division advises on sufficiency of evidence after arrest.

Operations Division

- 1.13 The Head of the Operations Division is based in Manchester, but spends up to three days a week in London. The Division has four prosecution Units, three based in London, and the fourth in Manchester. In order to implement recommendations 12 and 13 of the Gower Hammond Report, the Division is currently scoping plans to run an Advocacy Unit, which will be undertaken initially as a pilot in London.
- 1.14 Until 1 April 2002 (when the Operations Division was established), casework was allocated to teams which either dealt with a larger volume of cases of lesser complexity, or dealt with fewer, but more complex, cases. They have all now been structured into combined Units, with staff dealing with all types of cases. Responsibility for line management of staff has been split into two parts, in order to provide developmental opportunities for Band 12 lawyers.

The Manchester Unit

- 1.15 The Unit 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. (Customs and Excise has no locus to prosecute in those jurisdictions, and proceedings are carried on by those two agencies, in consultation with Unit lawyers.) The Unit Head has strategic responsibility for VAT work, which involves liaising with policy administrators, as well as other Government departments and agencies.
- 1.16 At the time of our inspection, the Unit had 35.5 staff. The organisational structure can be found at Annex 2.

The nature and scope of the inspection

- 1.17 As stated above, the inspection was undertaken as a pilot, and its findings will assist HMCPSI in determining its methodology for future inspections of the Prosecutions Group. However, its prime purpose was to review the quality of casework and casework processes (including advisory work) in the Manchester Unit. The pilot inspection was also to include consideration of operational and human resources issues, and to assess the progress made towards the implementation of the Gower Hammond recommendations.
- 1.18 The inspection spanned several months. Preparatory work and research took place between August 2001 and May 2002. During May and June 2002, the team examined 57 cases covering a range of casework: nine advice cases; 41 charged/summonsed cases; and seven cases which were subject to custody time limits. In June 2002, questionnaires were sent to a number of representatives of criminal justice agencies. Their details can be found at Annex 3.

- 1.19 After completion of its file examination, the team spent a total of ten days in Manchester from 8 to 19 July 2002. It carried out some observations in the magistrates' courts and the Crown Court. The team interviewed HM Customs and Excise staff outside of the Prosecutions Group, representatives of criminal justice agencies and criminal practitioners. Their details are also listed at Annex 3. The team visited the Manchester office to interview managers and members of staff, and to examine registers and records. We also interviewed other members of the Prosecutions Group based in London.
- 1.20 The inspection team consisted of one Deputy Chief Inspector, three legal inspectors, one business management inspector, and one casework inspector. We were also assisted in our file examination by a former member of HMCPSI.

Overview

- 1.21 The report findings have to be set in the context of the structure of the Solicitor's Office, and the extent of the Manchester Unit's remit to manage its own operations. Some of the general comments we make are addressed to the Prosecutions Group, but our recommendations, suggestions and commendations are all within the remit of the Unit itself.
- 1.22 Generally, 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 in the public interest. The quality of both advices and review notes would be improved if they included an analysis by reference to the tests under the Code for Crown Prosecutors (the Code).
- 1.23 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 Law Enforcement on specific issues. The work needs to be built upon, however, to ensure that all potential learning points are identified and resolved.
- 1.24 Committal papers are reviewed and prepared quickly, but too many notices of additional evidence are served after committal. Instructions to counsel are generally adequate, but need improvement in both quality and timeliness of delivery. From what we could see, in current cases, lawyers were generally proactive in challenging schedules which required amendment, although there were examples of past failures to examine schedules thoroughly.
- 1.25 The Prosecutions Group has made considerable efforts to implement the Gower Hammond Report recommendations. In particular, it has consulted with the rest of the Department and ensured that the changes it has brought about have been effectively communicated. The Unit has also played its part in ensuring that the recommendations are implemented as effectively as possible.

- 1.26 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. More work is required, however, to implement fully recommendation 15. 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.
- 1.27 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, in order to ensure that the implementation of recommendation 6 is effective.
- 1.28 Difficulties have been encountered in relation to implementation of recommendation 8, which related to the standard of accommodation. The Unit is still experiencing the acute problems associated with open-plan seating arrangements. Estate matters rest with the Department, and the Solicitor's Office has been proactive in commissioning an independent architect's report on future accommodation, both in Manchester and London. Nevertheless, the problem needs to be further addressed in the context of the new funding arrangements to be made for the Prosecutions Group, in accordance with recommendation 4 of the Gower Hammond Report.
- 1.29 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. Staff are positive about the changes that have been introduced, and Unit meetings have helped with the effective implementation of the organisational restructuring.

PROVIDING ADVICE

Introduction

- 2.1 Our inspection was concerned primarily with the quality and timeliness of the advice provided. We also examined the arrangements for ensuring that advice informally given is recorded.
- 2.2 On 1 April 2002, the Solicitor's Office split the responsibility for providing advice. All advice sought in relation to pre-knock cases should now be dealt with by lawyers in the Advisory Division. Unit lawyers are responsible for advice sought post-knock. This includes those cases submitted for advice on sufficiency of evidence, so that consideration can be given to compounding proceedings.

Quality of advice

- 2.3 We examined a sample of nine cases with a view to assessing the review decision. The evidential Code test had been properly applied in eight cases. The public interest test was correctly applied in all relevant cases.
- 2.4 In the case we disagreed with, the lawyer advised that there was sufficient evidence to prove the allegation, but the advice appears to have been given without sight of material going to the crux of the case.
- 2.5 We are not satisfied that advice decisions are always made on sufficient information. In another case, although we agreed with the advice given in relation to one individual, the lawyer should have sought further information about two other people who were arrested at the same time.
- 2.6 In another case, which we examined in our prosecuted cases sample, it was inappropriate for the lawyer to have relied on a chronology provided by the case officer, and to have given advice on charges without seeing the evidence. In the event, there was insufficient evidence to proceed with the charge advised (although we were satisfied that there was sufficient evidence in relation to other incidents).
- 2.7 The advice was given in writing in eight cases, with the ninth case being dealt with in conference. The advices were typed, detailed and well reasoned. Although all of them addressed the relevant evidential issues, they did not deal with the public interest test. Whilst we acknowledge that the public interest issues are self evident in most cases the Unit deals with, it is important that advice notes include an analysis of both of the Code tests, in order to show that they have been properly considered and applied.
- 2.8 **We recommend that lawyers include in advice notes an analysis of the evidential issues and public interest factors they have taken into account when reaching their decision.**

2.9 The Unit Head allocates all advice cases, according to workload and experience, and allocation is considered to be fair. All advices are copied to the Unit Head, although she does not see them before they are sent out. She has recently started undertaking a monthly quality assurance check, looking at two advices in more detail. We think that consideration should be given to involving the Band 12 lawyer/manager in the monitoring of advices, as this would enhance the management role of the post.

Timeliness of advice

2.10 The Prosecutions Group has set a target for provision of advice within 15 working days of request in straightforward cases. In all other cases, the allocated lawyer should seek to agree a timetable with the case officer. It is important that case officers have access to timely advice in all appropriate cases, as late advice can lead to abuse of process arguments when a case eventually comes to court.

2.11 We found that advice is not always provided promptly. Four of the nine advices were subject to delay. Two cases were straightforward and, in each, the lawyer took a month to provide advice. The remaining two were more complex and, of necessity, required detailed consideration before advice was provided. In one case, the advice was provided almost six months after all the necessary papers were received. In the remaining case, papers were submitted to the Unit over a year before advice was finally provided. There was no indication on the file to suggest that further papers were submitted. We considered that the advice should have been provided more promptly in both cases.

2.12 Administrative systems in place to monitor timeliness should be improved. It is appreciated that papers are not always complete at the time of initial submission, and that some investigations are lengthy, but there appeared to be no mechanisms to chase up officers for outstanding papers. Further, lawyers did not appear to be agreeing timetables with officers for the submission of further papers, and the provision of advice, in the complex cases in our sample.

2.13 The Unit Head has recently developed her use of the allocations book, and now includes the date the request for advice was received, and the date when advice was given. However, she does not include an action date, and does not use the book in order to chase outstanding advices. We understand that, since our inspection, this information has been recorded electronically, and is available to all managers. Steps are also being taken to identify and reduce any backlog of advices. Lawyers have been instructed to close finished cases, provide advice in as many cases as possible, and renegotiate a timetable in those cases where they are still awaiting further information. In addition, each lawyer has had an objective relating to timeliness of advice in his or her Forward Job Plan.

2.14 We recommend that, 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.

Appropriateness of informal requests for advice

- 2.15 The Unit's duty lawyer scheme for dealing with telephone requests for advice has spread work around and is generally seen as effective, although a disproportionate burden sometimes falls on a small number of individuals. There was concern, however, that some requests for advice are made unnecessarily. This might indicate a need for training or guidance for case officers. It is also acknowledged that Unit lawyers may sometimes deal with cases which should be dealt with by the Advisory Division.
- 2.16 It is important to ensure that Unit lawyers are not providing advice in inappropriate cases, or in cases which are not their responsibility. The draft *Mutual understanding of responsibilities between Law Enforcement and Solicitor's Office* (the "draft MUR") goes some way towards defining the roles and responsibilities of investigators and the different Divisions of the Solicitor's office. However, we consider that it would be advisable for the Unit to monitor informal requests for advice, so that inappropriate requests can be sifted out, and pre-knock requests be diverted to Advisory lawyers. We do, however, acknowledge that the desire to provide a high level of service may militate against this. Given the concerns raised in the Butler Report, any sifting out needs to be done in a manner consistent with positive encouragement to seek advice in more difficult cases.

Recording informal advice

- 2.17 The Unit has developed a telephone advice sheet to record general advice but it is not universally used. Lawyers do, however, ask officers to make case-specific advice requests in writing (usually by e-mail), in order to provide a record. It is important that a record is kept of the advice given, as this reduces the possibility of misunderstandings, particularly if further advice is sought or a charge preferred.

Advice from counsel

- 2.18 It is rare for counsel's advice to be sought prior to proceedings being commenced. There were no such cases in our sample and we did not consider that it had been necessary in any of these cases. However, counsel told us that they are sometimes consulted, and that they expect to be consulted early in very complex cases.

REVIEWING CASES

Introduction

The Code tests and implementation of recommendation 6 of the Gower Hammond Report

- 3.1 We examined the quality and timeliness of the decision-making at various stages in the progress of cases in our file sample. Lawyers are required to take all such decisions in accordance with the principles set out in the Code for Crown Prosecutors (the Code). The most fundamental aspect of the Code is the twin criteria for the institution or continuation of proceedings: first, there must be sufficient evidence to afford a realistic prospect of conviction; secondly, the circumstances must be such that a prosecution would be in the public interest.
- 3.2 Prior to 1 April 2002, whilst lawyers were responsible for making the final decision in relation to the evidential test, it was administrators who were responsible for determining the public interest test. The Gower Hammond Report recommended (recommendation 6) that this should change and that the lawyers in the Solicitor's Office should make decisions on whether or not to prosecute and whether to continue prosecutions, after seeking the views, where appropriate, of an administrator on matters of policy and the public interest. It was recommended that lawyers should always consult an administrator before making a decision in relation to cases with a revenue aspect. The Department has adopted the recommendation in full.

Other aspects of review

- 3.3 In the inspection process, we examine not only the substantive decision whether to prosecute but a number of ancillary decisions, such as whether to oppose bail. Other issues considered are the extent to which the correct charge is identified; how effective the Unit is in ensuring that lessons from cases are shared with all lawyers; and the soundness of its systems for recording decisions and reasons on files.
- 3.4 Assessing the quality of legal decision-making can be difficult. Decisions frequently turn on legal or evidential issues that are essentially matters of professional judgement. It frequently occurs that different lawyers do, for perfectly proper reasons, take different views in relation to the same case. Our assessment in relation to the quality of decision-making, therefore, considers whether the decision taken was one that was properly open to a reasonable prosecutor having regard to the principles set out in the Code and other relevant guidance. A statement that we disagree with a decision means that we consider it was wrong in principle; we do not "disagree" merely because inspectors might have come to a different conclusion. Against this background, we set out our findings.

Quality of review

- 3.5 We examined a sample of 41 cases covering proceedings in the magistrates' courts and the Crown Court (including two judge ordered acquittals (JOAs) and four judge directed acquittals (JDAs)). We considered that the Code evidential test was properly applied in 40 cases. The Code public interest test was properly applied in all relevant cases. This is a good finding.

- 3.6 We disagreed with the application of the evidential test in one case, a JDA. Ineffective review led to one defendant being unnecessarily committed for trial, when there was insufficient evidence against him. There was no review endorsement setting out clearly the issues in the case, or detailing the nature of the allegation against each defendant.
- 3.7 Although we were satisfied with the quality of decision-making (save for the one case we discussed above), there was generally no indication on the file that the reviewing lawyer had considered the Code tests in reaching his or her decision. In particular, it was not clear if the public interest test was always being applied (although, as we have already acknowledged, in most cases the public interest considerations are self-evident).
- 3.8 In order to show that both of the Code tests have been properly considered and applied, lawyers should include their analysis of both the evidential issues and public interest factors they have taken into account in their review endorsements. We discuss review endorsements further below.

Monitoring

- 3.9 The band 12 lawyer/manager (a senior lawyer who line manages a number of staff) undertakes some ad hoc monitoring when she handles cases for her lawyers when they are away from the office. The Unit Head considers all cases that have resulted in an acquittal, but does not routinely monitor cases being handled by lawyers directly under her command. As a result, failed cases are considered in the context of establishing why they were not successful, but current cases are not monitored with a view to providing an assurance about the quality of decision-making. There needs to be a formalised system of quality assurance, and we include the quality of review in the recommendation on performance management in chapter 4.

Allocation and casework

- 3.10 The Unit Head allocates all cases to lawyers according to their workload and experience, taking into account the need to provide development opportunities for the less experienced lawyers. The creation of a combined Unit has meant that all lawyers will have some opportunity to deal with the more serious cases. Mentoring arrangements have also been introduced, whereby some cases are allocated to two people, so that the more experienced lawyer can supervise a more junior colleague. This has enabled the Unit Head to allocate more serious cases to inexperienced lawyers, and has been welcomed by members of staff.
- 3.11 Many of the Unit's cases are part of large-scale nationwide investigations, which can result in a number of separate cases with linked defendants or disclosure issues. Because of the numbers involved, cases can be handled by a number of different lawyers, often in different Units and across the two offices. We have concerns about the allocation of these cases, and the potential for inconsistency of decision-making (especially in relation to disclosure issues).

3.12 The Solicitor's Office needs to ensure that these linked cases are allocated in a way that maximises consistency of decision-making, particularly with regard to the disclosure of unused material. With smaller cases it may be possible for there to be one reviewing lawyer. Larger cases may need to be handled by special teams of reviewing lawyers, sometimes cutting across the usual organisational lines. We appreciate that linked cases may have to be handled by different lawyers in different offices. The key is to ensure that someone has responsibility for overall supervision and co-ordination, that decisions are agreed and communicated, and that all those handling the cases have a sense of ownership. This applies equally to linked cases being handled within one Unit.

Continuing review

3.13 The Unit provides a high level of service to case officers and other internal stakeholders. We noted numerous examples of good advice being provided to case officers throughout the course of a case. This demonstrates on-going, continuous, review of cases, which deserves to be commended.

3.14 On the other hand, although we were satisfied that the Code tests had been correctly applied, we noted some instances of a failure to identify gaps in evidence in committal papers. This can lead to unnecessary notices of additional evidence having to be served, which an earlier grip on the case might have avoided. Lawyers need to consider potential gaps in evidence, to reduce the risk of cases resulting in an acquittal, and to reduce the number of notices of additional evidence being served. This is not the only reason for the service of notices of additional evidence, and we discuss this further in the next chapter.

Selection of the appropriate charge

3.15 Generally, the appropriate charge is being selected. We considered that the case had proceeded on the correct charge in all but two cases in our sample. In the first case, there were evidential difficulties in proving individual offences against each of six defendants, and the most appropriate way to have proceeded was for one conspiracy to have been charged. This appears not to have been considered by the reviewing lawyer, and it was only when counsel advised after committal that the conspiracy charge was decided upon.

3.16 The second case proceeded to trial on a charge of being concerned in the importation of drugs (an offence under the Customs and Excise Management Act 1979 (CEMA)), when it would have been more appropriate for the defendant to have been charged with possession of drugs with intent to supply. The defendant was acquitted on the direction of the judge, when a proper review of the case, both by the lawyer and prosecuting counsel, would have ensured that the correct charge was put at an earlier stage.

3.17 In another case, although we were of the opinion that the evidence supported a charge of importation of drugs under the provisions of CEMA, we would have expected the reviewing lawyer to have considered the possibility of adding an alternative charge of possession of drugs with intent to supply.

- 3.18 It is important that reviewing lawyers consider all possible charges at an early stage, and not just those under CEMA, to ensure that cases proceed on the most appropriate charges.

Mode of trial

- 3.19 We considered that the Lord Chief Justice's guidelines regarding whether the case should be tried in the magistrates' courts or the Crown Court were correctly applied in all relevant cases we examined.
- 3.20 In many cases, we found that case officers dealt with mode of trial before lawyers became involved. In a number of cases, inappropriate representations were made on mode of trial by case officers. It is important that lawyers consider officers' decisions on mode of trial when they review the file, in order to ensure that the case is dealt with at the appropriate venue.
- 3.21 Generally, assessments about mode of trial were not being recorded. We examined one case, however, where the lawyer had made a detailed note for the mode of trial hearing, including sentencing guidelines. We acknowledge that many cases dealt with by the Unit are so serious that they are clearly not suitable for summary trial, but some cases are borderline. These would benefit from a note setting out the lawyer's assessment, to assist the advocate in court, and to provide an audit trail of the decision-making process. We comment further on review endorsements later in this chapter.

Bail

- 3.22 Prosecutors made correct decisions about whether it was appropriate to apply for a remand in custody in all the 25 cases we examined where we had sufficient information to form a judgement. However, there was limited information about defendants' bail status on the files and, in some instances, as the case officer had dealt with remand hearings, the Unit appeared not to have been informed of the position. We discuss our concerns about the advocacy in relation to bail in chapter 5.

Independence

- 3.23 The Gower Hammond Report highlighted the need for Customs and Excise prosecutions to be prepared and conducted in a fair, accountable and efficient manner. The report concluded that the prosecution function of the Solicitor's Office should be truly independent of Customs and Excise investigators, and seen to be so. Its recommendations are intended to ensure independent decision-making by lawyers. The draft MUR reinforces this message by making it clear to investigators that all contact with the defence or prosecuting counsel must be made through the Solicitor's Office.
- 3.24 It was clear from examination of the files that lawyers are generally making independent decisions, and continue to do so throughout the course of the case. However, there remains a contrary external perception. This has led to some defence solicitors apparently bypassing the Unit, and approaching either counsel or the investigator direct. This view may be coloured by experience over a long period of time of having to deal with the case officer or counsel, in the absence of the lawyer or case manager at court.

- 3.25 We appreciate that there is likely to be a time lag between the new initiatives being introduced and the change being noticed by others. However, this perception by others of a lack of independent decision-making needs to be acknowledged and addressed. Maintaining the increased Crown Court and conference coverage by lawyers and case managers with knowledge of the case should help to dispel this perception. Increasing cover by in-house lawyers at the magistrates' courts would also assist in enhancing the reputation of Unit lawyers as independent decision makers, and enable them to be in control of their cases.
- 3.26 We have outlined in the introduction the role of the policy administrators in determining Customs and Excise policy, and ensuring that it is complied with. We accept the need for consultation on policy matters, and acknowledge that current procedures mean that administrators have the final say over what can be disclosed, but the perception of lack of independence is in some ways exacerbated by the need to consult administrators on disclosure issues arising during the course of trial (and the manner in which it is done). However, the ultimate decision about whether or not a prosecution can proceed is a decision to be made by the Solicitor's Office, taking into account the effect that non-disclosure may have on the prospects of a conviction. The Solicitor's Office needs to consider ways to ensure that it is clear, from the way decisions are communicated, where the ultimate responsibility lies.
- 3.27 As stated above, it is the responsibility of a Prosecutions Group lawyer to make decisions on whether or not to prosecute and whether to continue prosecutions, in consultation with an administrator where appropriate. This is particularly relevant in relation to public interest decisions, which previously were made by policy administrators. Although the shift in responsibility has been communicated to other stakeholders within the Department, there is a lack of clarity on the part of lawyers, with some still believing that administrators are the final arbiters on matters relating to the public interest.
- 3.28 There is also a lack of clarity about roles and responsibilities in relation to other decisions, including those relating to the issuing of proceedings orders and stays under the provisions of section 152 of CEMA. A proceedings order is a written authority to proceed in cases commenced by a summons, as opposed to a charge. A stay is the statutory power of the Commissioners of Customs and Excise to stop proceedings, and can be exercised outwith the jurisdiction of the court. It is the responsibility of the Prosecutions Group to determine whether the issuing of a proceedings order or a stay is in accordance with the tests under the Code. However, the responsibility for signing a proceedings order or agreeing to a stay is currently one for policy administrators, rather than the Prosecutions Group. We understand that the decision as to who should have the final responsibility for proceedings orders and stays is under consideration by the Department. In the interim, guidance should be given. The final position, once agreed, should be included in supplemental guidance.
- 3.29 We recommend that guidance be provided to lawyers on roles and responsibilities in relation to decision-making on proceedings orders, cases to be dropped on public interest grounds and stays.**

Cases stayed under the Customs and Excise Management Act 1979

3.30 We examined one case which was stayed under the provisions of section 152, CEMA (see above). We considered that the decision to stay the case was made in accordance with the Code. The decision was made in full consultation with both the investigator and an administrator. However, there was a delay of almost four months, and the stay was issued only the week before the date of trial. Although we were satisfied that the delay was not caused by the Unit, we think that this delay is unacceptable. One result of the adoption of the recommendation made above would be to speed up decision-making in cases such as this.

Review endorsements

3.31 It was apparent from our file examination that lawyers were considering the evidence properly in cases, and were making informed and independent decisions. However, there was no clear audit trail for decision-making. The Case Management System (CMS), which we comment upon at the beginning of the next chapter, introduced a case decision record, on which lawyers are required to record their review decisions. Its use was patchy and inconsistent, with lawyers still recording review notes onto the SOLAR computer system, and some in emails.

3.32 It is important that all review endorsements are recorded adequately, and are easily locatable, so that colleagues dealing with files will have sufficient information concerning the issues in the case, as well as the reasons for the decisions taken. We therefore welcome the introduction of the case decision record. The Unit Head should check its use as part of the monitoring of the CMS we recommend in the next chapter.

3.33 We recommend that lawyers make a full record of all review decisions on the case decision record.

Learning from experience

3.34 The findings in cases which result in an acquittal need to be carefully analysed, in conjunction with other stakeholders where appropriate, to see if there are any valuable lessons to be learned. It is important that these lessons are communicated to staff to ensure similar problems are avoided in the future and to improve the quality of decision-making and case handling.

3.35 A sound process for learning from experience had already begun before the Gower Hammond review. Instructions to counsel have, for some time, included a request for written reasons for any unexpected acquittal, including any novel points of law arising, or any identifiable improvements to investigative procedures or case preparation.

3.36 The Butler Report recommended an internal investigation into JDAs, in order to locate possible error, and to see what lessons could be learned. As a result, guidance was given in September 2000 about the procedure to be followed in all acquittals. The Unit Head was to be informed about any acquittal so that he or she could consider whether any lessons might be learnt. Where necessary, the Head of Prosecutions and other Unit Heads would then be notified. The Unit Head was also to consult the Head of Prosecutions and the Head of the Criminal Advisory Division on the question of whether guidance needed to be issued to address apparent failings of more general application.

- 3.37 This learning process has been further refined in light of the Gower Hammond Report. The Unit Head is now required to consider the merits of holding a case conference with counsel and the investigator after each acquittal. If a case conference is to be held, Professional Standards (a Unit within the Investigations Division of Law Enforcement) are now provided with a copy of counsel's note, and a representative invited to attend the meeting. Adverse results are also included in Unit Heads' monthly performance reports to the Head of Prosecutions Group (see chapter 6).
- 3.38 Counsel had provided notes in each of the six failed cases we examined. An internal case report had also been prepared in each instance. However, there was limited evidence of an analysis of the reasons for the acquittals, or of learning points being identified. Counsel's notes and reports would be improved if consideration were given to any possible weaknesses in review, or failings in the system (both internal or within the wider Department). Similarly, the Unit Head's performance reports would benefit from the inclusion of more analysis.
- 3.39 Despite the reservations expressed above, recently there has been a clear drive to learn from experience. All results, good and bad, are discussed in lawyers' meetings. We welcome this development and think that efforts to learn from experience should be extended to case managers.
- 3.40 We were impressed with some of the follow up work undertaken in relation to one of the JDAs in our sample, which had been linked to another similar JDA, and a case conference had been held. The case involved wider Departmental considerations. Although Professional Standards were not present at the meeting, they were notified and kept fully informed of progress. The learning points identified at the meeting were subsequently circulated to all lawyers on the Unit, with a request that they consider them in relation to other, similar, cases. We noted, however, that the learning point in relation to selection of charges had not been carried forward.
- 3.41 We **commend** the efforts that have been made. However, the work that has been started needs to be developed further, in order to ensure that all potential learning points are identified and resolved, and are disseminated both within the Unit and the Prosecutions Group as a whole, and to other Departmental stakeholders.

Liaison with other prosecution agencies

- 3.42 There were two cases in our sample which required Customs lawyers to liaise with other prosecution agencies. There was good liaison with the Army Legal Service in a case against a serving soldier. Another case was linked to one involving terrorist charges, which was being handled by the Crown Prosecution Service (CPS). There was clear evidence of proactive liaison with the CPS, particularly in relation to disclosure issues. Both cases provide evidence of an awareness of the need for liaison, and a determination to undertake all appropriate actions.

PREPARING CASES

General

- 4.1 Good quality decision-making is of limited value if the subsequent handling of cases is not thorough and efficient. In this section, we consider the performance of the Unit in relation to specific stages in the progress of cases, from the institution of proceedings through to their conclusion.
- 4.2 On 1 April 2002, the Prosecutions Group introduced a case management system (CMS) to provide a comprehensive framework for dealing with case preparation across the full spectrum of their work. The CMS contains instructions on case preparation and assurance checks, and sets out areas of responsibility across the Unit. We discuss the extent to which the CMS has been implemented, and areas where it could be developed, further below.

Advance information

- 4.3 It is a legal requirement that advance information is provided in either way offences. Advance information usually consists of a brief report on the case, prepared by the case officer. The case reports we saw generally contained sufficient information to enable mode of trial decisions to be made. The CMS requires a record to be kept of what is served and when. However, we could not tell from the files what had been served in 18 out of 32 cases examined. The service of advance information was timely in 11 of the 32 cases, but we could not tell when service had taken place in 15 cases.
- 4.4 It is important that a proper record is kept of when advance information is served, and what is included, to provide assurance that the prosecution has complied with its statutory duties. The prosecution is also likely to be disadvantaged in dealing with subsequent queries if it has no record of what material has been served on the defence.

Disclosure of unused material

Overview

- 4.5 The disclosure schedules are key to the whole disclosure process. Because we did not look at the unused material in the cases we examined, other than that which was in the possession of the Unit's lawyers, we are not able to form a view about their completeness or accuracy, and therefore could not determine whether or not full and proper disclosure is being made. From what we could see, in current cases lawyers were generally proactive in examining schedules and unused material, and liaising with disclosure officers about their content and accuracy. There were, however, examples of past failures to examine schedules thoroughly.
- 4.6 The Unit regards the proper handling of unused material as a key priority. Other court users generally consider that the Unit deals well with disclosure of unused material.

Primary disclosure

- 4.7 In our file sample we found that primary disclosure was dealt with properly in 24 out of 30 relevant cases. In one case we could not form a view. The other five cases included schedules which were not considered and were merely sent on to the defence. Items had also been incorrectly marked for disclosure and disclosure officers' certificates were missing. The quality of decision-making in relation to disclosure should be included in the performance management measures we recommend later in this chapter.
- 4.8 There have been no targets for the provision of unused material schedules by Law Enforcement to the Solicitor's Office, or for the service of unused material on the defence. The draft MUR now sets deadlines for the submission by Law Enforcement of primary disclosure schedules to the Solicitor's Office, but it does not set a target for the service by the Solicitor's Office of primary disclosure on the defence.
- 4.9 Generally, timeliness of service was poor. In some cases, it did not take place until after the plea and directions hearing (PDH), when court orders for disclosure had been made. In other cases, disclosure did not take place within the time-scale set by the court. We saw cases where disclosure was not made until several weeks or months after committal or the service of "sent" case papers (see below). The draft MUR requires schedules to be submitted to the Solicitor's Office after committal, but the CMS requires them to be submitted in good time so that they can be considered with the committal papers. Following the CMS timescales should enable lawyers to make disclosure well before the PDH but, whatever the Solicitor's Office and Law Enforcement consider to be appropriate in terms of guidance, the MUR and CMS need to be consistent. Monitoring compliance with the agreed time scales, and the timeliness of provision of primary disclosure, should form part of the developing performance management arrangements.

Secondary disclosure

- 4.10 We found that secondary disclosure was dealt with appropriately in 17 out of 22 relevant cases. The other five cases included instances where there was no evidence of secondary disclosure being considered after receipt of a defence statement or where the disclosure process had been started, but not completed.
- 4.11 The draft MUR does not set deadlines for the submission by Law Enforcement of secondary disclosure schedules to the Solicitor's Office. Nor does it set a target for the service by the Solicitor's Office of secondary disclosure on the defence. We think the Prosecutions Group needs to consider agreeing deadlines with Law Enforcement, and setting targets for service of both primary and secondary disclosure by the Units.

Sensitive material

- 4.12 In some cases, there is material which would normally fall to be disclosed but is particularly sensitive. This may result in an application to the courts for non-disclosure on the grounds of public interest immunity (PII). This type of material has to be handled with particular care. We were pleased to find that most sensitive material schedules we examined were thoroughly considered by the case lawyers. We saw evidence of lawyers displaying a clear understanding of the statutory tests, and ensuring that PII applications to the court were made only where it was necessary to seek the agreement of the trial judge to withholding what would otherwise be disclosable

material. Where applications were made, they were lawyer-driven, and well prepared and presented. Lawyers routinely attend sensitive material conferences with counsel, and PII applications.

- 4.13 Sensitive material in a case can come from, or be held by, several different internal and external sources. In particular, some sensitive material is considered too sensitive for the case lawyer to handle, or even to know about. In those circumstances, it is dealt with by the Head of the Advisory Division, even though the Unit Head is security cleared to the required level. Consequently, the Unit's lawyers cannot be confident that they, or the Unit Head, are aware of all sensitive unused material in a case. This means that no one person within the Unit has an overview of the case, to ensure that disclosure obligations are properly complied with. We do not regard this situation as satisfactory. Even if the Head of Advisory Division considers the prosecution case papers in sufficient depth to make an initial informed decision, he or she cannot properly discharge any duty of ongoing review. This arrangement cannot be said to meet the requirements of the Gower Hammond approach. Responsibility must rest with those who have the conduct of the case. The on-going security clearance of new lawyers will assist in this respect, as it will enable all Unit lawyers to deal with the some sensitive material in a case.
- 4.14 We were concerned about the handling and storage of sensitive material. The CMS requires the sensitive material schedules to be in a distinctive format and kept in separate envelopes. Any truly sensitive schedules should be kept in a safe. In practice, many schedules are not in the distinctive format, but they are generally kept in envelopes. They are routinely kept on the case file, occasionally with confidential reports and copies of the material. One file we saw contained a copy of an application for covert surveillance identifying the operatives involved. On another, an informant could be identified. Consideration needs to be given to establishing a universal system which requires all sensitive schedules and material to be kept securely.

Preston material

- 4.15 The regime under the interception of communications legislation is such that the material can only be retained for so long as it is needed for the authorised purpose/s and, therefore, should be destroyed at an early stage when the investigation is in progress. This means that generally any material generated as a result of an interception is no longer in existence at the time of any prosecution. The law prohibits the introduction in evidence, or the disclosure to the defence, of any material that might exist. Occasionally, not all material is destroyed, and, in such circumstances, prosecutors have to decide whether proceedings can fairly continue without disclosure of the material, at least to the trial judge. Such material is referred to as "Preston material". Statutory provision (section 18, Regulation of Investigatory Powers Act 2000) now permits a judge to order disclosure to him or her alone. That procedure is likely to be invoked where a prosecutor feels that a judicial view should be sought as to what may be necessary to secure the fairness of the proceedings.
- 4.16 We found that there is confusion within the Solicitor's Office over who could make decisions in relation to Preston material, although we understand that responsibility has recently been extended. The policy needs clarifying and guidance needs to be prepared and circulated to lawyers.

4.17 We noted that, on some files, there was direct reference to Preston material and conferences. There was, however, some confusion over whether this was acceptable practice. Instructions on how this material should be handled need to be included in the guidance we mention in the previous paragraph, taking into account the universal system for storage of other sensitive material we refer to in the preceding section.

File management

4.18 The way unused material, and related documentation, is kept made it difficult to follow the disclosure trail. As stated above, sensitive material schedules should be kept in a separate envelope within the file. The CMS does not, however, contain instructions for the storage of other schedules and material. It would assist anyone looking at a file to establish compliance with the disclosure provisions if all documentation relating to disclosure (other than any sensitive information, as described above), including related correspondence, was kept in a separate folder within the file. The Prosecutions Group needs to consider this, and revise the CMS as appropriate. The good practice set out in HMCPSI's Report on the Review of the Disclosure of Unused Material (Thematic Report 2/00) may assist in this regard.

Committal and 'sent' case preparation

Timeliness

- 4.19 Committals are usually prepared speedily by the Unit, and papers served before the date set down for committal. We considered service to be timely in 23 out of 28 cases examined. Service was late in one case because the photocopying was overlooked, although the papers had been reviewed in a timely fashion. We could not tell when papers were served in the remaining four cases. However, we found examples of committal papers being submitted to the Unit very close to the committal date. Late submission of committal papers by Law Enforcement can put unnecessary pressure on lawyers and caseworkers, particularly in large cases.
- 4.20 Indictable-only cases sent for trial to the Crown Court under section 51, Crime and Disorder Act 1998 are comparatively rare, and are usually cases where conspiracies are alleged. The papers in six cases in this category we examined were all served within the period provided by the Crown Court Rules.
- 4.21 In the past, there have been no targets for the provision of committal or 'sent' case papers by Law Enforcement to the Solicitor's Office, or for the service of papers on the defence. However, the draft MUR sets deadlines for the submission by Law Enforcement of committal and 'sent' case papers to the Solicitor's Office. It also sets a deadline for the service by the Solicitor's Office of papers on the defence. The achievement of the latter deadline depends on timely submission by Law Enforcement.
- 4.22 We welcome the efforts being made to establish timescales to govern committal and 'sent' case preparation. Monitoring compliance with the timescales should form part of the performance management system being developed by the Solicitor's Office, with performance targets being set. The Unit Head may also wish to consider the need to acquire a colour copier to speed up case preparation.

Quality

- 4.23 Lawyers review committal files, and are required to certify compliance with the Code tests. Papers were correctly prepared in 26 out of 27 committal cases, and in the six ‘sent’ cases we examined.
- 4.24 The CMS contains satisfactory instructions on the preparation of committals and ‘sent’ cases. Lawyers are required to endorse the case decision record with their committal reviews. Steps should be taken to ensure that they are being fully recorded in every case.
- 4.25 It is the practice for a member of staff at Band 5 level, other than the reviewing lawyer, to be designated as the case manager for each case. There is scope for the greater involvement of case managers in committal preparation. Historically, they prepared the more straightforward committals, under the supervision of a lawyer. However, increased court coverage being undertaken by case managers, following the Gower Hammond Report, has meant that lawyers are undertaking more work of this nature. We develop this theme further below.
- 4.26 Regular monitoring of the quality of committal preparation should be included in the Unit Head’s performance management programme. The Unit is beginning to develop systems to monitor committal papers for clerical errors, in accordance with the CMS.
- 4.27 The more complex Customs cases lend themselves to the use of information technology in their preparation and presentation. Considerable hearing time and costs can be saved in this way. Fortuitously, one of the courtrooms at Manchester Crown Court has recently been refitted to enable cases to be conducted electronically rather than with innumerable volumes of written material. The use of information technology in case presentation needs to be considered by the Prosecutions Group, in conjunction with Law Enforcement.

Notices of additional evidence

- 4.28 Investigators aim to establish a prima facie case at committal, that is, they aim to provide sufficient evidence to enable a jury, properly directed, to convict. Few cases are trial ready at committal. This means that, generally, additional evidence is required before a case is ready for trial. It is not uncommon for investigations to continue up to, and during, trial. The service of numerous, and on occasion late, notices of additional evidence is a cause for concern. In addition to increasing the administrative burden on the Solicitor’s Office, it can delay defence case preparation and waste court time.
- 4.29 The service of late notices of additional evidence is understandable in the more complex cases involving, for example, overseas evidence, but there is less justification for the more straightforward cases not being trial ready at committal.

Facilities at the Crown Court

4.30 Many Customs cases are complex and involve substantial amounts of documentary evidence, often requiring amendment and photocopying at short notice. The facilities available to the Solicitor's Office in Manchester Crown Court are inadequate. Unit staff have to use the facilities provided for other court users, which can mean cases are adjourned for lengthy periods, to enable the work to be undertaken. The Unit Head needs to liaise with the court manager to ensure that adequate facilities are made available. The increased use of information technology we refer to above could also assist in reducing delays.

Summary trial preparation

4.31 There are not many summary trials, because of the nature of most of the cases prosecuted by the Department, and we did not see any files where there had been a summary trial. Nevertheless, we looked at the instructions for summary trial preparation contained within the CMS, and found them to be satisfactory. However, time scales for the submission of summary trial papers are not currently contained in the draft MUR and we think they should be agreed with Law Enforcement.

Instructions to counsel

Quality

4.32 The Prosecutions Group uses templates for instructions to counsel, containing a lengthy set of standard paragraphs relating to the conduct of the case. The use of standard paragraphs, coupled with failure to properly address issues in a case, can result in counsel bypassing the instructions altogether. We understand that consideration is currently being given to streamlining the current instructions by limiting them to case-specific information, with standard paragraphs collated separately. We welcome this initiative.

4.33 The inspection team found scope for considerable improvement in the quality of instructions to counsel. We examined 35 instructions to counsel. We found 15 to be satisfactory, but ten were less than satisfactory, and a further ten were poor. Few contained an assessment of the issues in the case, with most consisting of a recitation of the facts, or a reference to the case officer's summary. There was little evidence of Unit lawyers adding value to the case, in spite of the work clearly undertaken.

4.34 The Unit Head has recently started a monthly quality assurance check of trial briefs. We think these checks should be widened to include briefs to appear on bail applications, summary trials, appeals and committals for sentence. Consideration should be given to involving the Band 12 lawyer/manager and the senior case managers in this monitoring exercise, as this would enhance the management role of these posts.

Timeliness

- 4.35 Briefs are generally delivered in sufficient time for counsel to consider the evidence and issues in the case, but late delivery is not uncommon. Six out of 30 briefs were either delivered more than four weeks after committal, or too late for counsel to properly consider the papers before the hearing. We were unable to tell when the brief had been delivered in another six cases. The timeliness of delivery of briefs to counsel should be measured, and consideration given to setting a performance target. Delay in the nomination of counsel was responsible for the late delivery of briefs in three cases examined. We comment further on nomination of counsel in the following chapter.
- 4.36 In order to enable the Unit Head to measure performance, and improve the timeliness of case preparation, we recommend that there be 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.**

Conferences with counsel

- 4.37 The Gower Hammond Report recommended that conferences with counsel should only be arranged by a member of the Solicitor’s Office (recommendation 9). It also recommended that all conferences should be attended by a lawyer or a suitably trained and experienced support staff member, save in very exceptional circumstances (recommendation 10).
- 4.38 The Unit has implemented these recommendations. Case officers and counsel have been given clear instructions that the responsibility for arranging conferences rests with the Solicitor’s Office, and that a Solicitor’s Office representative should always be present. In order to build on this work, the Unit should continue to ensure that only lawyers or case managers familiar with the case attend conferences. Lawyers had attended conferences in 16 of the cases we examined, case managers in another two. We discuss an enhanced role for case managers below.
- 4.39 The CMS requires that the main points of the conference, and any decisions taken, be recorded on a conference record form. We found that conference attendance notes are not always as full as they could be, nor are they easy to locate within the file. This makes it difficult for anyone picking up the file to ascertain what conferences have taken place, or what was discussed or decided.

Indictments

- 4.40 Depending on the complexity of the case, indictments are settled by lawyers, case managers or counsel. Six out of 33 indictments examined had been amended. Three amendments were made to reflect counsel’s approach to the presentation of the case, and we did not, therefore, consider that the indictments had been incorrectly drafted by Unit lawyers in the first instance. However, the remaining three indictments required

amendment to correct clerical errors. Lawyers need to check all indictments before they are lodged at the Crown Court, in order to prevent such errors. Managers need to monitor amendments made to indictments, as part of the developing performance system.

- 4.41 The substance of this aspect of performance compares favourably with what we have found in other inspections. The existence of an 11% clerical error rate should be addressed quickly. In our experience, persistent, but small, errors of this nature can do disproportionate damage to the reputation of a prosecuting authority in the eyes of the legal professions and the judiciary.
- 4.42 In order to enable the Unit Head to measure performance, and improve the standard of review and case preparation, we recommend that the quality of review and disclosure decisions, committal preparation (including drafting of indictments), and instructions to counsel are monitored.**
- 4.43 Generally speaking, it appeared to us from the files that indictments were being lodged in a timely fashion. This was confirmed by others.

Provision of information for pre-sentence reports

- 4.44 Prompt provision to the Probation Service of details of the prosecution case, and the criminal record of the defendant, assists in the preparation of a timely and balanced report for the court's use when sentencing the defendant.
- 4.45 The CMS does not give guidance on the provision of pre-sentence information but, in practice, it is sometimes served after the Probation Service makes a written request. In other cases, the Probation Service in Manchester obtains the information direct from the court. We are concerned that the current arrangements could lead to delay in the preparation of reports. Pre-sentence information was provided late in five out of 17 cases where requests had been received. The arrangements could also mean that pre-sentence information is not always provided where appropriate. This can result in either delay in the provision of reports, or reports being written without the necessary information.
- 4.46 We think the Prosecutions Group needs to ensure that pre-sentence information is provided automatically in appropriate cases. There is clearly scope for closer inter-agency working between the Solicitor's Office and the Probation Service, on both a national and a local level. National liaison falls within the province of the Head of the Prosecutions Group. In the meantime, however, the Unit Head may wish to liaise with her Probation Service counter-parts, to arrange for automatic provision of pre-sentence information, with a view to improving the level of service provided locally.

Custody time limits

- 4.47 Custody time limit (CTL) provisions regulate the length of time during which an accused person may be remanded in custody in the preliminary stages of a case. Failure to monitor the time limits, and, where appropriate, to make an application to extend them, may result in a defendant being released on bail who should otherwise remain in custody.

- 4.48 We examined seven files, which were subject to CTLs: two magistrates' courts cases, and five Crown Court cases. We also considered the Unit's CTL system.
- 4.49 Cases subject to CTLs are identified from hearing reports or file endorsements, made when the defendant is remanded in custody. Expiry dates are calculated manually, or by using a ready reckoner, and then endorsed on the file. In addition, the CTL is entered onto the SOLAR computer system, with an alert set up to remind the lawyer and case manager when the expiry date is due. Individual case managers also record CTL expiry dates in their computer diaries.
- 4.50 However, review dates are not used, and there is limited monitoring. There is also no manual back-up system to guard against human error, or to use in the event of computer system failure. A failure to make a timely application for an extension of the CTL in March 2002 could have been averted had a back-up system been in place.
- 4.51 The CTL expiry dates had been calculated correctly and endorsed on the seven files we examined. However, we observed a number of deficiencies in file-keeping which could lead to CTL failure. In one case, an alert had not been set up on the SOLAR computer system. CTL endorsements were generally poor, especially in cases with more than one defendant. Prosecution file jackets do not make specific provision for CTLs. This was not the only deficiency we identified with the file jackets, and we took the view that they were in urgent need of re-design. The Solicitor's Office File Jacket Working Group will wish to consider the need to record CTLs. The introduction of a separate magistrates' courts file jacket could assist in the management of CTLs, as it would make it easier to determine when the defendant was first remanded in custody, and therefore when the CTL began.
- 4.52 By contrast, chronologies prepared in support of applications to extend CTLs were well prepared. To ensure consistency across the Unit, the chronology should always be located in one place on the file.
- 4.53 Unit managers and staff are clearly aware of their responsibilities. However, deficiencies in file-keeping and the lack of a manual back-up system or monitoring mean that existing arrangements cannot provide the Solicitor with the necessary assurances on the effectiveness of the Unit's CTL system.
- 4.54 The Prosecutions Group needs to consider introducing consistent monitoring systems across the Units, and needs to update the CTL desk instructions. In the interim, the Unit Head should introduce an effective monitoring system. The good practice set out in HMCPSI's Report on Custody Time Limit Procedures within the CPS (published in September 2002) may assist the Unit Head and the Prosecutions Group in their review of CTL systems.
- 4.55 We recommend that the Unit Head ensures that effective CTL monitoring systems are in place.**

The case management system

- 4.56 The case management system (CMS) has been well received by staff and we welcome its development and introduction. Whilst we appreciate that the CMS is still in its infancy, some procedures had yet to be implemented by the time of our inspection. The operation of the CMS needs to be carefully monitored, to ensure compliance and to address the early indications of slippage we highlight elsewhere in the report.
- 4.57 The CMS sets out the respective roles and responsibilities of staff members within the Units in considerable detail. There is, however, some overlap in places, which carries with it the risk of confusion or duplication of effort. Examples include the arrangements for organising public interest immunity hearings, and the preparation of jury bundles. Staff feedback on the operation of the CMS has been encouraged. We think the Unit Head should consider convening a meeting for the purpose of receiving such feedback, as well as ensuring that staff are clear about their roles and responsibilities.
- 4.58 We recommend that compliance with the case management system is monitored.**

Case management teams

- 4.59 The Unit has begun to establish case management teams for some of its larger cases. The purpose of these teams is to ensure that large cases are given the legal and administrative support they need. We welcome the development of these teams but there is a need to clarify team members' roles and responsibilities at an early stage, and to allocate tasks, so that all members are aware of the work they need to undertake. Roles and responsibilities should also be communicated to parties connected to the case.

The role of the case managers

- 4.60 Case managers are well regarded and enthusiastic, and many have considerable experience of Customs cases. The CMS recognises that they are capable of undertaking a wider range of duties than in the past, and has sought to develop their role.
- 4.61 The proper use of case managers would relieve lawyers of administrative burdens, and allow them to concentrate on more complex aspects of casework. Case managers should be the first point of contact for case officers, counsel and the defence. We think case managers should be capable of dealing with the majority of case management queries. This would leave responsibility for file management with case managers, where it should properly lie. We think that consideration should be given to them having physical control of files.
- 4.62 We referred to the role of case managers in the section dealing with committal preparation. The CMS does not currently make provision for case managers to prepare committals, although it envisages them drafting indictments. Case managers should be responsible for the preparation of all briefs, subject to input and appropriate instruction from lawyers. They should attend conferences with counsel where issues solely relating to the presentation of cases at court, including jury bundles, are to be discussed.

- 4.63 The CMS puts the onus on case managers to check case papers for clerical errors before they leave the Unit. This is an important task, which can sometimes be over-looked because of time pressures. These checks might need to extend to correspondence.
- 4.64 We have concerns that the increased court coverage in response to the Gower Hammond Report, and the consequential assumption by lawyers of more of their tasks, has, if anything, reduced the responsibilities of case managers in the office. The development of the case manager role will inevitably require some cultural change within the Solicitor's Office, and also amongst investigators. Careful monitoring of the CMS should ensure that the case manager role is developing as intended. We discuss in more detail below the impact the Gower Hammond Report has had on staffing levels.
- 4.65 In order to continue to develop case managers and free lawyers to concentrate on complex casework, we suggest that the Unit Head ensures 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 role of the case support officers

- 4.66 The Unit's complement of case managers is currently insufficient to achieve the level of court coverage envisaged by the Gower Hammond Report (recommendation 10). As a result, case support officers (Band 3 members of staff) are increasingly being deployed to cover Unit trials at Manchester Crown Court, up to the close of the prosecution case. The Unit aims to cover trials in their entirety by April 2003. Case support officers will be expected to contribute to the achievement of this aim.
- 4.67 There is now a clear overlap between the role of case support officers and that of the case managers. The job description for both grades needs to be re-visited to take account of the changing role for case support officers, with a preference exercise being held for those case support officer posts which may involve travel or overnight stays.
- 4.68 The use of case support officers to cover court could help facilitate the expanded case management role for case managers that we suggest above.

File management and office systems

- 4.69 Although files are neat and comprehensive, it can be difficult to follow the progress of a case in key areas such as review, court hearings, custody status and conferences. Key documents are filed with correspondence and e-mails, making it difficult to respond to queries quickly. Review and conference notes, hearing reports and counsel's advice should be separately filed and easily locatable. The CMS instructions on file keeping go some way towards improving file management but need further development, particularly in relation to larger cases.
- 4.70 We commented in the preceding chapter upon the e-mail exchanges with case officers which provide evidence of continuing review. The audit trails can be considerable, however, and lawyers and case managers should be more willing to use their discretion when deciding what to print off and file.
- 4.71 The use of SOLAR as a case management tool varies and its use needs to be monitored for consistency.
- 4.72 We have already discussed the need for increased quality checks to reduce errors in case preparation and correspondence. Our suggested development of the role of case managers should improve the quality of case preparation.
- 4.73 In addition to considering the need to record CTLs and introduction of a magistrates' courts file (see the section on CTLs above), the need to cater for the difficulties in providing an audit trail in larger cases should be considered by the Solicitor's Office File Jacket Working Group.

Workload coverage

- 4.74 Current arrangements to cover workload in the absence of colleagues are unsatisfactory. They can result in Law Enforcement, counsel or defence solicitors having to wait for some time before queries are dealt with. The duty lawyer scheme only partially assists. The need to ensure that casework is adequately covered should inform the development of the role of the Band 12 lawyer/manager and provide an enhanced role for the case manager.
- 4.75 We suggest that systems be developed to ensure work is covered in the absence of lawyers and case managers, and their operation monitored.**

CUSTOMS AND EXCISE IN COURT

The magistrates' courts

Court coverage

- 5.1 The Gower Hammond Report recommended that all prosecution proceedings in the magistrates' courts should be conducted by qualified lawyers, or appropriately trained Solicitor's Office staff, rather than Customs Officers (recommendation 15). Significant strides have been made to meet this recommendation. However, the Unit's caseload covers a very large geographical area and available resources do not allow for lawyers from the Unit routinely to prosecute cases beyond Manchester.
- 5.2 Since 1 April 2002, Unit lawyers have prosecuted most cases in the Manchester City Magistrates' Court. The exceptions tend to be overnight remands from Manchester Airport. Applications are usually made in these cases for remands in custody. As these applications require legal decision-making about the merits of the application, and can be robustly resisted by defence lawyers, we consider that lawyers should be involved at the first hearing. There is a need for greater liaison between the Unit Head and her counterpart at Law Enforcement to resolve this situation. We recognise that this will inevitably have resource implications for the Unit.
- 5.3 Cases in courts outside central Manchester are prosecuted by Customs Officers, or occasionally by counsel. Unit lawyers make risk assessments as to the appropriate level of representation, weighing up the nature of the hearing, and any likely legal or bail issues, against the time and cost involved. Whilst this situation is not ideal, we accept that without a significant increase in lawyers, or a drive to train unqualified staff, it is largely unavoidable. However, Unit lawyers need to have proper control over the cases for which they are responsible, and we think there is scope for ensuring that they are more regularly deployed in other accessible magistrates' courts. The establishment of agency arrangements would also offer a more acceptable alternative in some circumstances.
- 5.4 Not all Unit lawyers attend court at present. The Unit Head needs to re-consider the current arrangements, having regard to the need to increase court coverage and maintain and develop advocacy skills.

Listings

- 5.5 There is currently a weekly Customs' court at Manchester City Magistrates' Court, which includes a mix of prosecution cases and cases handled by other parts of the Solicitor's Office. Prosecution cases are regularly transferred from this court to other courts within the building, often at short notice. This can result in the prosecuting lawyer being required to be in several courts at the same time, as well as reducing the opportunity for discussions to take place between defence and prosecution advocates. There is a clear need for liaison between Unit managers and the court to try to improve the listing arrangements and avoid this serious disruption for the prosecuting lawyer.

5.6 We suggest that the Unit Head liaises 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.**

Advocacy

5.7 Currently, the Department's prosecution work provides little opportunity for advocacy experience and lawyers in the Unit only appear in court approximately once every six weeks. As a result, the opportunity for advocacy observations was too limited for us to form any view on the overall standard of performance in the Unit.

5.8 However, we received evidence that the general quality of lawyer advocacy was mixed, with some lawyers being unsure of court procedures, especially in contested bail applications. One person to whom we spoke felt that sometimes concessions were made to avoid contested hearings. Overall, the evidence from other court users suggests to us that some lawyers might benefit from some advocacy training. We think that the Unit Head, either on her own or with the help of experienced advocates, needs to satisfy herself about the quality of advocacy, with a view to providing advocacy training. We discuss this in more detail in the section on monitoring of advocacy below.

5.9 Although rare, section 6(1), Magistrates' Courts Act 1980 committals do occur, but counsel is invariably instructed to prosecute them. These cases are well prepared, with good skeleton arguments, and are presented well by counsel. Unit lawyers should be encouraged to prosecute these hearings as a means of maintaining and developing advocacy skills.

Hearing endorsements

5.10 It was difficult to follow the progress and outcome of court hearings on the majority of files we examined. Prosecution files do not currently make provision for the recording of court hearings. Lawyers' notes of hearings, or hearing reports prepared by case officers, are invariably filed with correspondence and other case information, making it difficult to retrieve information quickly. The Solicitor's Office File Jacket Working Group will wish to consider the need to record hearings when they re-design prosecution files.

5.11 In the meantime, we would like to see all hearing notes separately filed, and a note made on the existing file jacket of each hearing including the date, court, the nature of any applications, details of outcomes, and a full record of the bail position.

The Crown Court

Court coverage

- 5.12 The Gower Hammond Report recommended that, on hearings in the Crown Court, prosecuting counsel should be attended by a Prosecutions Group lawyer, or a suitably trained and experienced support staff member, save in very exceptional circumstances (recommendation 10).
- 5.13 Since 1 April 2002, Unit case managers (or case support officers) have covered the majority of cases in the Crown Court until the close of the prosecution case, and sometimes beyond. Likewise, lawyers attend the first day of major trials, and, if required, to make legal decisions thereafter. This has required considerable re-alignment of resources and a change of culture in the Unit. It is an achievement that we **commend**.
- 5.14 However, there is concern that some case managers (and case support officers) attending court have little or no knowledge of the trial they are covering. The presence of lawyers in court often goes unnoticed. This has fuelled the continuing, but in our view erroneous, perception that cases in court are being controlled by Customs officers, which we referred to in the section dealing with independence in chapter 3. It is important for the standing of the Unit to overcome this perception by ensuring that all caseworkers are familiar with the case and by affording lawyers a higher profile.

Solicitor's Office advocates

- 5.15 Bail applications in the Crown Court and preliminary hearings in 'sent' cases present lawyers with important opportunities for Crown Court advocacy experience, but they are routinely dealt with by counsel. The use of in-house lawyers provides an opportunity to raise the profile of the Unit and increase its standing within the local criminal justice community. Unit lawyers are free to choose to appear at these hearings, but the Unit Head should consider the possibility of deploying them to cover all of these hearings at Manchester Crown Court, in the first instance.

Higher Court Advocates

- 5.16 The Gower Hammond Report recommended that consideration be given to lawyers with higher court advocacy rights (HCAs) being used to appear in the Crown Court (recommendation 12). It also recommended that lawyers without higher court rights be helped to acquire them (recommendation 13).
- 5.17 The Prosecutions Group has taken some steps towards creating a pilot Advocacy Unit in London, to be staffed by HCAs. The pilot is currently being scoped.
- 5.18 At this stage, there are no plans to extend the pilot to include the Manchester Unit, although there is undoubted enthusiasm for the advocacy unit amongst the lawyers there. There are real career and representational benefits to be gained from deploying in-house HCAs in Manchester. The Prosecutions Group will wish to bear these issues in mind when considering how to implement and develop the Advocacy Unit.

Nomination of counsel

- 5.19 Counsel in Customs cases are chosen from a list approved by the Attorney General. There is a general consensus that the list is out-of-date and needs to be reviewed. There is particular concern that less than competent counsel remain on the list despite adverse feedback. Work on updating the list has already started.
- 5.20 Counsel are currently selected by the Counsel, Nominations and Fees Team (CNFT), which is part of the Business Management Division based in London. The decision to centralise responsibility for the selection of counsel was intended to ensure a fair spread of work across a number of Government departments. There is, however, concern within the Manchester Unit that insufficient attention is paid to matching counsel's competences to the type of case, especially in fiscal prosecutions. The current system also builds in a risk of delay. We discussed delays in nomination leading to late delivery of briefs to counsel in the preceding chapter. Consideration needs to be given to monitoring the timeliness of nomination, and to delegating authority to nominate counsel to the Unit.

Returned briefs

- 5.21 Counsel originally instructed is unable to conduct a case, different counsel has to be instructed. This is known as a returned brief.
- 5.22 The Unit is concerned about the number and timeliness of returned briefs. It has been agreed that chambers can seek a replacement themselves when necessary. However, they should select counsel only from the approved list and notify the Unit before the hearing. This is not happening. Chambers frequently choose a replacement who is not on the list, and then provide late notification.
- 5.23 Provided returns are timely and to counsel of equal experience and expertise (and on the approved list), there would not necessarily be a significant problem. However, change of counsel can mean a lack of continuity in case management, and differing opinions about how the prosecution is to be conducted. If briefs are returned late, there can also be a question mark over whether counsel has had sufficient time to prepare the case. The Unit Head needs to ensure that returned briefs are monitored.
- 5.24 In an attempt to address the poor service provided by some chambers, the Unit Head has tasked the Band 12 lawyer/manager with liaising with chambers. We welcome this initiative.

Counsel's advocacy

- 5.25 Counsel instructed in weighty and complex cases are generally considered to be at least as competent as those defending. Some are considered to be good. There are concerns, however, that the advocacy of a significant number of counsel, particularly in less serious cases, falls below an acceptable standard. The recent recruitment exercise and the comprehensive review of the Attorney General's list, which is being currently being undertaken, should rectify this situation.

5.26 The Prosecutions Group recognises that some counsel's lack of knowledge of Customs and Excise law and policy, particularly in relation to sensitive material, is a real issue. In one file we examined, it was necessary for the lawyer to rebuke counsel for disclosing information to the defence regarding an ex parte public interest immunity hearing that had seriously prejudiced the case. We were also informed that counsel, on occasions, had made inappropriate reference to Preston material in open court.

Counsel's fees

5.27 The London-based CNFT pays all counsel's fees. There was general concern about delays in payment of counsel fees from all the chambers we consulted during the inspection, with some fees said to be outstanding over a year after the case had concluded.

5.28 We understand that there has been a problem with late payment of fees in the past, but that current estimates are that 85% of Prosecutions Group fees are paid on time. This figure is based, however, on a target for payment within 30 days of fees being agreed. It does not take account of any delays that may occur within the National Payment Centre (where agreed fees are sent for payment). Nor does it take account of delays in agreeing fees in the first place.

5.29 The late agreement of fees affects the ability of the Prosecutions Group to accurately forecast its budget. Late payment affects the standing of the Solicitor's Office and may make it difficult to secure the services of suitably experienced counsel.

5.30 The Unit, in common with the rest of the Prosecutions Group, had, until recently, delivered a significant number of briefs with fees to be assessed ex post facto (that is, after the conclusion of the case) rather than on a pre-marked basis. This was particularly the case in complex and lengthy cases. This has resulted in the Costs and Fees Unit being over-burdened, and has undoubtedly contributed to the late payment of fees we have referred to above.

5.31 In the last two years, there has been a reduction in the number of briefs marked for delivery ex post facto. However, the Manchester Unit has not been providing the CNFT with any information to assist it in negotiating fees. At the very least, the Unit needs to provide details of the nature of the case, and an estimate of the number of hours counsel is likely to spend on preparation. The Unit could also make proposals on the brief fee. There is clearly a significant training need for staff in fee assessment. This could also form part of the development of the role of the case managers we suggested earlier.

5.32 We are aware that the Prosecutions Group has made a considered decision to allocate the work of nomination and fee payment to London, and has recognised that the CNFT requires additional resources. However, there are problems associated with this decision, as outlined above. We think that the system could be improved if the responsibility for negotiation and payment of counsel's fees was delegated initially to Unit staff, within agreed parameters, and subject to central approval where fees exceed a prescribed amount.

Monitoring of advocacy

- 5.33 Regular and effective monitoring of in-house prosecutors reinforces good performance, and identifies training and development needs in areas where performance can be improved. Monitoring of counsel will enable the Prosecutions Group to be satisfied that it is instructing suitably capable representatives.
- 5.34 The Band 12 lawyer/manager has undertaken some advocacy monitoring of Unit lawyers in the magistrates' courts. However, there is a need to introduce a structured monitoring programme, linked into the performance appraisal process, to be undertaken both by the Unit Head and the Band 12 lawyer/manager. This monitoring could be used to assess the possible need for advocacy training referred to above.
- 5.35 The current system for payment of counsel's fees requires a monitoring form to be submitted to the CFNT with each fee note. Initially, the forms were not always completed, but the return rate is increasing. However, there may need to be a more structured programme of monitoring and feedback in relation to poor performers.

MANAGEMENT AND OPERATIONS

Introduction

6.1 As we stated in chapter 1, the Unit in Manchester is one of four prosecution Units, the other three being based in London. The prosecution Units, and the pilot Advocacy Unit, are within Operations Division, which, together with the three other Divisions, make up the Prosecutions Group. Although the Prosecutions Group is being separated out for many, but not all, purposes, it comes under the direction of the Solicitor's Office. This report therefore focuses on those things that Manchester manage for themselves, and also, in some instances, how the Unit contributes to other matters (such as delivery of policy and its development) which are handled at a different level, for example, on a Divisional or Group basis.

Organisational structure

6.2 The organisational structure, which is replicated within all four prosecution Units (see Annex 2), is bedding down reasonably well in the Manchester Unit. In particular, staff consider the establishment of the new Unit structure as generally positive. The systems for allocating cases to lawyers and case managers, together with the holding of regular meetings, has brought about greater team working across the Unit and has helped to reduce the 'them and us' culture that may have existed previously.

6.3 The improvements in performance management are beginning to take shape, and systems for gathering basic data, analysing and reporting have started to be implemented in a systematic way. The Unit is working on establishing formal monitoring of casework quality by managers, to underpin individual and Unit performance.

6.4 Managers will need to ensure that an excessive separation between the Unit's teams does not develop in terms of experience, caseload and case complexity to the detriment of team working and staff development and morale.

6.5 The setting of performance objectives and targets for the Unit is now being informed from an analysis of performance in key areas.

Management of the Unit

6.6 There is general support throughout the Unit for the change programme and we **commend** the increasingly active engagement of staff in the operation of the Unit.

6.7 The Unit has been restructured, with the aim of providing clearer reporting lines, reducing the division between teams of lawyers and administration staff, and providing developmental line management opportunity for one Band 12 lawyer/manager. It is too early to assess the success of this structure, but Operations Division might want to consider extending line management development to the remaining Band 12 lawyers, to promote a more unified approach to developing the management experience of all Band 11/12 lawyers. Although this role is developing, we are of the opinion that the Unit may wish to ensure that the Band 12 lawyer/manager is given sufficient management responsibilities to develop his/her management skills.

- 6.8 It was noted that staff were sometimes likely to work outside their grade, for example to provide cover for colleagues on court duty. Lawyers also sometimes undertake administrative duties outside their responsibility. Notwithstanding the need on occasions to work flexibly in a small office environment, there may be a need to define more closely the roles and responsibilities of staff, to avoid duplication of work and to ensure that staff are working within grade. We think this will help to maximise the effectiveness of the current structure. This could be done, for example, by tailoring or amalgamating the current generic job descriptions to individual staff responsibilities and/or CMS roles and responsibilities.
- 6.9 We suggest that the Unit reviews and clarifies staff roles and responsibilities between lawyers, case managers and administration staff, to avoid some duplication in work.**

Strategic and business planning

- 6.10 We were informed that formal business planning was introduced recently and that the business planning process within the Prosecutions Group was evolving. The current Prosecutions Group Business Plan is an accumulation of plans from the five Divisions, including Operations Division.
- 6.11 The Operations Division Business Plan contains generic objectives, activities and success measures applicable to all four prosecution Units, but lacks detail. It is particularly important that the plan also addresses objectives specific to the Units, as there are clearly operational differences and constraints between the Units in Manchester and London. A separate risk register for the Prosecutions Group has recently been produced, which does not align readily with the objectives in the Business Plan. It was noted that a review of the Business Plan is being planned for October 2002.
- 6.12 The Prosecutions Group Business Plan (which includes the Operations Division Plan) would, therefore, benefit from including:
- * longer time horizons (beyond year 2002-03);
 - * consideration and review of staffing structures and numbers against workload;
 - * how financial resources will be managed to achieve objectives specific to the Units;
 - * review dates, and how reviews will be communicated to staff; and
 - * alignment with the risk register.
- 6.13 The Unit would benefit from having its own Action Plan which, for instance, addresses the Operations Division's objectives, and sets out objectives specific to the Unit in more detail, with timescales and responsibilities for completion.
- 6.14 We were pleased to note that Manchester staff from Band 5 upwards have participated in the business planning process, by attending some brainstorming workshops in February. However, there was little evidence of involvement of staff below Band 5.

6.15 We recommend that the Unit extends participation in the business planning process to staff at Bands 2 and 3, in order to achieve better cross-grade representation.

Management of human resources

6.16 Staffing levels within the Unit are considered by managers and staff to be generally satisfactory. Resources across the Prosecutions Group increased significantly following the Gower Hammond Report. The Unit Head is aware of the potential problems associated with court coverage. She will need to consider whether more Band 5 case managers might be required if the Unit is to continue to work towards its 100% court coverage commitment, and the role of the casework managers is to be enhanced. We have discussed the role of casework managers and court coverage in more detail in the preceding chapters.

6.17 There is a good mix of experienced and new staff within the Unit, and the new structure had led to several developmental and promotion opportunities for existing staff. Where possible, staff are encouraged to take on line management responsibility, and we were particularly impressed with the knowledge and awareness of some managers within the Unit.

6.18 The Unit needs to remind managers and staff about the innovation and rewards scheme, as not all managers and staff seemed to be fully aware of it.

Equality and diversity

6.19 A Departmental Race Equality Scheme has recently been introduced, with a rolling implementation programme. The Unit needs to consider how this is reflected in its own operations, and already sets an equality objective for individuals in their performance appraisals. At the time of our inspection, the Unit had one member of staff from a minority ethnic group. Management believe that the Department as a whole meets its organisational equality and diversity commitments, and it must be borne in mind that statistics for a small Unit such as this could be misleading.

6.20 We understand that the new case management system adopted by the Unit will be able to provide ethnicity data of defendants.

6.21 The Unit has been active in providing a successful mentoring/job experience scheme for three legal trainees from minority ethnic groups, as part of an initiative with Chester College. We **commend** this initiative.

6.22 The Unit offers flexible working arrangements to its staff, including flexi-time, part-time working, job shares and compressed hours.

6.23 We noted that the recruitment of caseworkers and administration staff is handled centrally from Liverpool, with little or no input from managers. Recruitment of legal and paralegal staff is undertaken by the Administration Group. They will need to bear in mind the ethnic mix for the Manchester area when recruiting staff for the Unit.

Staff in post

- 6.24 At the time of our inspection, the Unit's complement was 36.5. Most of these posts were filled, except for one Band 12 lawyer post. Unit managers feel that, as the new Unit structure is evolving, it is too early to gauge whether the balance of staff numbers against workload is correct. However, they consider that to achieve greater court coverage more staff will be required, and decisions about magistrates' courts coverage could also impact on resources.

Court coverage

- 6.25 We detected concerns amongst staff about the use of case support officers for court coverage across a wide geographical area, with its implications for overnight stays. Similarly, court coverage by casework managers, and the need for them to return after court in order to complete their office duties could put them under severe pressure. The alternative is for lawyers to absorb some of this work, but this may well be inappropriate for their grade and risks deflecting them from their own casework responsibilities. This could have serious consequences for the work of the Unit as a whole. Managers are aware of these potential problems, and have indicated that one way to alleviate this problem would be to recruit more casework managers, as discussed earlier.
- 6.26 We were pleased to find that the Unit was beginning to keep a record of the number of court sessions covered by individual lawyers. This will help the Unit with its future assessment of lawyer needs and deployment.

Training

- 6.27 We were generally satisfied with the training support available to staff. The approach taken by the Solicitor's Office to promote training through a high level 'contract' with staff is good. The Training Plan for the Unit last year was excellent, and set detailed training for individuals, linked to their performance appraisal and Personal Development Plans. The Training and Development Plan for the current year is developing in a similar fashion.
- 6.28 There was a concern that not all staff are given sufficient training on VAT law and procedures, particularly on joining, and the Unit may want to give this some attention.

Staff sickness

- 6.29 We were informed that sickness levels are satisfactory in the Unit, with one or two staff on long-term sick leave. The Solicitor's Office achieved an average of 6.7 days, compared to 8 to 9 days for the Department as a whole, for the 12 months to 31 December 2001. The Administration Group is the custodian of the systems and procedures for sickness, and is responsible for monitoring and referring individual problems to line managers for follow up.
- 6.30 The Unit Head has taken a proactive approach to managing stress related problems amongst some staff and has provided external counselling where appropriate. We **commend** this.

Communication

- 6.31 The Unit Head has sought to improve communication with staff, and there have been two away-days and a working breakfast in the last 12 months. Another away-day is planned in October 2002. The Unit Head holds separate meetings with lawyers and senior casework managers on a regular basis, but the Unit will need to consider extending formal team meetings to Band 2 to 5 staff.
- 6.32 There is a good level of daily face-to-face communication between staff and managers, helped by the open-plan seating arrangements. There are a number of forms of communication in operation, including the Prosecutions Bulletins, Management Notes and the Solicitor's Office intranet.
- 6.33 Staff meetings are taking place regularly and are valued, but could be more effective if they were more structured, and focused on the issues such as operational matters, performance information, and management guidance.
- 6.34 We suggest that formal terms of reference (including structure and purpose) for staff meetings are set, in order to improve effectiveness.**
- 6.35 There is no formal Communication Plan for the Prosecutions Group, although we were told that a Plan had been developed by the Department, but had not been adopted. The development of a new Plan is currently being considered.

Management of financial resources

- 6.36 The current Prosecutions Group Business Plan gives a breakdown of the financial allocations, based on the Strategic Review 2002 bid by the Unit. By far the biggest expenditure allocation is for counsel fees at £15.9 million (64% of budget). Salaries account for £7.2 million (29%). The Unit is given a budget comprising £1.7 million for counsel fees, £73,000 for travel and subsistence, and £49,200 for other legal expenditure. The salaries budget is not broken down to Unit level.
- 6.37 The remit for financial reporting within the Unit is limited. The Department generates monthly expenditure profiles against the three items the Unit has responsibility for. The Unit Head and the Band 7 senior casework manager responsible for financial matters consider these reports on a regular basis. It was noted that the other legal expenditure was already running at 56% of the budget in the first quarter of the current financial year. Managers will need to address this in order to avoid a large overspend of the budget.

Accommodation

- 6.38 The Department, with whom Estate matters rest, was experiencing real difficulty in implementing fully recommendation 8 of the Gower Hammond Report. This relates to accommodation, and was directed at overcrowding, and the need to reduce noise and provide a proper working environment for those engaged in complex and demanding casework. The recommendation was aimed at both the Manchester and London prosecution Units, who were facing similar accommodation problems.

- 6.39 The Solicitor's Office in Manchester occupies two floors of an office block, the rest being occupied by other Groups of the Department. The Unit is situated on one of the two floors. There is inadequate space for storage of files, preparation of documents and bundles, and for holding conferences about sensitive cases. Staff are subjected to high noise levels from photocopiers, and background noise from the open plan seating arrangements.
- 6.40 There is a groundswell of frustration amongst many staff at the inability of the Department to address these issues, despite representations by managers, and the recommendations for a significant increase in space made by the independent consultants commissioned by the Solicitor's Office. At the time of our inspection, the Unit was awaiting resolution of the problem, but had been told that there would be little progress due to Departmental budget constraints. The problem will need to be addressed on a proper strategic basis in the context of the new funding arrangements to be made for the Prosecutions Group, in accordance with recommendation 4 of the Gower Hammond Report.

Performance indicators

- 6.41 There had, until recently, been little progress on developing and measuring performance of the prosecution function within the Solicitor's Office. We were informed that, historically, poor reliability, and inadequate functional specification of the IT systems to support case management, had not helped with the collation of performance indicators (PIs) or case outcomes. What PIs existed were collated manually, with little or no analysis, and could not be readily used as a performance monitoring and improvement tool by managers to underpin performance.
- 6.42 The Unit is undergoing a transitional period in relation to performance management, from a situation where there was little formal monitoring of PIs to the introduction in April 2002 of new templates for reporting PIs, improved IT to support performance management, and timetables for reporting. It was encouraging to note that managers had also started to quality check files, although we have recommended that this be developed further.
- 6.43 The Unit is playing its part in developing a Prosecutions Group-wide performance measurement and monitoring system. The challenge now is to consider how this is integrated into action planning, performance appraisal and training needs of individual staff. This has been the subject of the first Management Notes bulletin to staff. A key consideration will be how performance results of the Unit are communicated to staff in a user-friendly way, to raise awareness of performance.
- 6.44 The Unit Head has developed a useful matrix for allocating and monitoring cases for the Unit, and was producing situation reports for the Head of Operations Division.
- 6.45 The Business Management Division produces monthly Unit performance reports for the four Unit Heads, which give a summary of results against some key PIs. The Manchester Unit Head analyses these, and produces regular and detailed reports, commenting on the Unit's performance. It is envisaged by the Unit Head that, in time, the reliability and accuracy of the PIs will improve, and trends will be established to benchmark performance. Currently, the sharing of best practice across the Units is

embryonic, both in relation to the performance data available, and in the cultural attitudes between the Units to learn from one another. This will present a challenge to the Prosecutions Group in the short to medium term.

External communication

Customs and Excise

6.46 There is close liaison with local investigators. The Unit Head meets the investigator in charge of the Manchester Law Enforcement office twice a week, to discuss on-going cases. New lawyers take part in Law Enforcement exercises at Manchester Airport, so that they can understand the role of investigators. Unit staff assist in investigators' training courses regularly, and will devise specific training help where issues requiring attention are identified.

Criminal justice partners

6.47 The Unit has been relatively isolated from local criminal justice partners, but steps are being taken to address this.

6.48 Links are beginning to develop between the Unit and Manchester Crown Court. The Unit Head and Court Manager recently held discussions aimed at addressing a listing bottleneck. Unit staff have visited the list office to facilitate closer working, and a reciprocal visit has been planned. The Unit Head should build on this liaison by seeking representation on the Crown Court User Group.

6.49 The Unit Head sits on the Manchester City Magistrates' Court User Group, and also has informal meetings to discuss issues peculiar to the Unit. Improved liaison could result in improvements in the listing arrangements, as suggested in the preceding chapter. The Unit Head is also a member of the recently formed Nottingham Magistrates' Court Miscellaneous Court User Group. We welcome this development.

6.50 The Band 12 lawyer/manager has been tasked to liaise with the local Bar. The Unit Head should consider ways to raise the Unit's profile amongst local solicitors, perhaps through the local Law Society.

CONCLUSIONS, COMMENDATIONS, RECOMMENDATIONS AND SUGGESTIONS

Conclusions

- 7.1 Concerted efforts have been made by the Unit 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.
- 7.2 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 an 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.
- 7.3 There is general support throughout the Unit for the change programme, and we 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.
- 7.4 The organisational structure within the Unit seems to be bedding down reasonably well, and the setting of performance objectives and targets can now be informed from an analysis of performance in key areas. 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 training needs of individual staff.
- 7.5 The quality of advice and review decisions is generally high. 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 had been applied. In particular, it was not clear if the public interest test was always being applied. Post-charge advice shows 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.
- 7.6 Case preparation overall is sound, although there is some scope for improvement in committal preparation and instructions to counsel. The 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.

7.7 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.

Commendations

7.8 We commend the Unit on the following aspects of their performance:

- * the on-going, continuous review of cases (paragraph 3.13);
- * the efforts that have been made to learn from experience (paragraph 3.41);
- * the increase in Crown Court cover (paragraph 5.13);
- * the general support for the change programme (paragraph 6.6);
- * the mentoring/job experience scheme for minority ethnic trainees (paragraph 6.21); and
- * the Unit Head's proactive approach to the management of stress (paragraph 6.30).

Recommendations and suggestions

7.9. As we indicated earlier, some of our general comments would naturally be taken forward on a wider basis than just the Manchester Unit, and we have not made recommendations or suggestions in relation to these wider issues.

7.10 The distinction between recommendations and suggestions lies in the degree of priority the Inspectorate considers should attach to its proposals. Those meriting highest priority form the basis of recommendations.

7.11 We recommend that:

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 (paragraph 2.8);
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 (paragraph 2.14);
3. guidance be provided to lawyers on roles and responsibilities in relation to decision-making on proceedings orders, cases to be dropped on public interest grounds and stays (paragraph 3.29);
4. lawyers make a full record of all review decisions on the case decision record (paragraph 3.33);

5. in order to enable the Unit Head to measure performance, and improve the timeliness of case preparation, there be 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 (paragraph 4.36);
6. 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 (paragraph 4.42);
7. the Unit Head ensures that effective custody time limit (CTL) monitoring systems are in place (paragraph 4.55);
8. compliance with the case management system is monitored (paragraph 4.58); and
9. the Unit extends participation in the business planning process to staff at Bands 2 and 3, in order to achieve better cross-grade representation (paragraph 6.15).

7.12 We suggest that:

1. in order to continue to develop case managers and free lawyers to concentrate on complex casework, the Unit Head ensures 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 (paragraph 4.65);
2. systems be developed to ensure work is covered in the absence of lawyers and case managers, and their operation monitored (paragraph 4.75);
3. the Unit Head liaises 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 (paragraph 5.6);

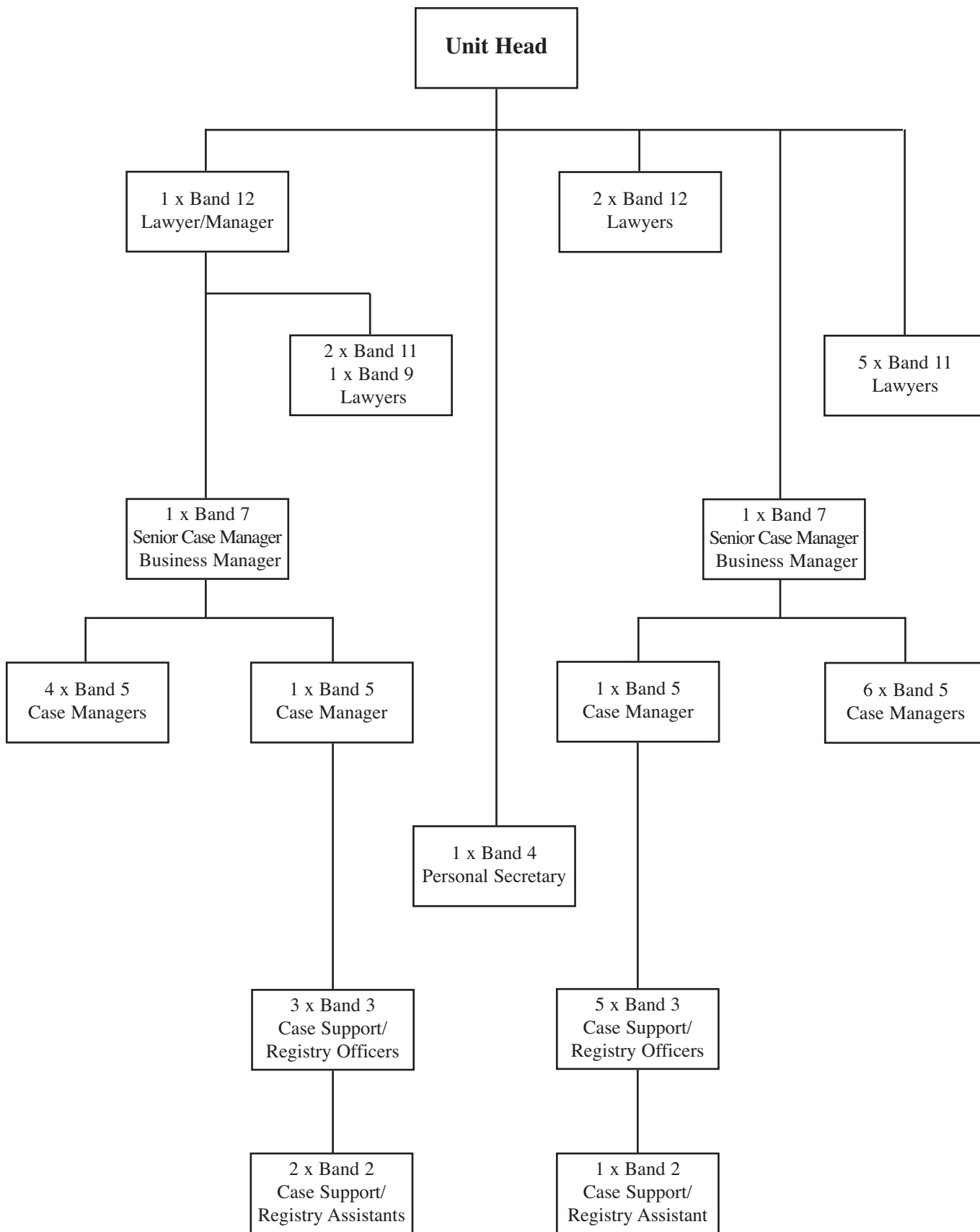
4. the Unit reviews and clarifies staff roles and responsibilities between lawyers, case managers and administration staff, to avoid some duplication in work (paragraph 6.9) and;
5. formal terms of reference (including structure and purpose) for staff meetings are set, in order to improve effectiveness (paragraph 6.34).

THE GOWER HAMMOND REPORT RECOMMENDATIONS

- (1) The Customs and Excise Solicitor's Office should retain its prosecution function.
- (2) Whilst the Solicitor's Office should remain part of Customs and Excise, in relation to his prosecution function the Solicitor should be accountable to the Attorney General and not to the Commissioners or their Chairman.
- (3) The solicitor/client relationship between the Solicitor and the Commissioners of Customs and Excise should cease in relation to the Solicitor's prosecution function.
- (4) In relation to his prosecution function the Solicitor should not be funded by the Commissioners. He should have his own budget and be accountable for his own expenditure. Thought should be given to his having his own Vote. In any event his funding should be "ring-fenced".
- (5) In the interests of promoting quality assurance, best practice and consistency in applying the Code for Crown Prosecutors we recommend that inspections of the prosecution function of the Solicitor's Office be carried out by the CPS Inspectorate.
- (6) Where cases are referred to the Solicitor's Office with a view to prosecution, decisions on whether or not to prosecute and whether to continue prosecutions should be made by a Customs and Excise lawyer after seeking the views of an administrator when appropriate on matters of policy and the public interest. The administrator's role will be particularly important in relation to cases with a revenue aspect. In such cases the lawyer should always consult an administrator before making the decision.
- (7) Adequate resources in terms of personnel, funding and accommodation must be made available to enable the Prosecution Group of the Solicitor's Office to operate efficiently and to deliver the service expected of it. This is vital.
- (8) Urgent consideration should be given to improving the working conditions, including accommodation, of staff in the Prosecutions Group with a view to eliminating overcrowding, reducing noise level, and affording reasonable privacy to lawyers – especially those in the Special Casework Division in London and Manchester engaged in heavy, complex and demanding casework.
- (9) Conferences with counsel should be arranged by a Prosecutions Group lawyer or a member of the support staff acting on the instructions of a lawyer and never by an investigating officer.
- (10) On hearings in the Crown Court and at conferences prosecuting counsel should be attended by a Prosecutions Group lawyer or a suitably trained and experienced support staff member, save in very exceptional circumstances.

- (11) The Solicitor's Office should be able to hold out good career prospects with a view to attracting and retaining lawyers of high calibre and potential.
- (12) Consideration should be given to Customs and Excise lawyers with higher court advocacy rights using them to appear in the Crown Court:
 - (a) on plea and directions hearings;
 - (b) on interlocutory hearings not requiring the attendance of Counsel briefed to appear on trial;
 - (c) as junior counsel on trials;
 - (d) on guilty pleas;
 - (e) on appeals against summary trial convictions and sentences.
- (13) Customs and Excise lawyers without higher court rights should be helped to acquire them.
- (14a) Lawyers seconded from the Customs and Excise Solicitor's Office Prosecution Group to give legal advice to the National Investigation Service should remain or become members of that group and responsible to its Head.
- (14b) The length of the secondment period should be kept under review and, in the light of experience of the working of the secondment system, consideration should be given to whether the present two years secondment for individual lawyers should be reduced.
- (15) In accordance with the "Philips principle" and in line with CPS practice, Customs and Excise investigating officers and local staff should no longer have audience rights in Magistrates' Courts. All court proceedings relating to prosecutions or potential prosecutions should be conducted by qualified lawyers or appropriately trained Solicitor's Office staff.

ORGANISATIONAL STRUCTURE OF THE MANCHESTER UNIT



LIST OF REPRESENTATIVES FROM CUSTOMS AND EXCISE AND CRIMINAL JUSTICE AGENCIES WHO ASSISTED OUR INSPECTION

Customs and Excise

Mr P Acda
Mr D Butler
Mr J Butler
Mr T Byrne
Mr S Curry
Mr P Evans
Mr M Fletcher
Mr C Griffith
Mr D Gilchrist
Mr M Khan
Mr K King
Ms C Piper
Ms C Rose
Mr D Toon

Judges

HH Judge Atherton, Manchester Crown Court
HH Judge Hammond, Manchester Crown Court
HH Judge Henshell, Manchester Crown Court
HH Judge Wolstenholme, Leeds Crown Court

District Judge

Mrs M Shelvey, Manchester City Magistrates' Court

Magistrates' Court Staff

Mrs J Todd, Manchester City Magistrates' Court

Crown Court Staff

Mrs P Bergin, Manchester Crown Court
Mrs V Bevan, Manchester Crown Court
Miss A Bradley, Manchester Crown Court
Mrs S Bretherton, Manchester Crown Court
Mrs J Calland, Manchester Crown Court
Ms S Lerums, Leeds Crown Court
Mr S Wright, Manchester Crown Court

Counsel

Mr B Birkett, QC
Mr T Holroyde, QC
Mr R Wigglesworth, QC
Mr P Atherton
Mr J Cowan
Mr S Denney
Mr R Dudley
Mr D Geey
Mr E Lamb
Mr P O'Brien
Mr J Rae
Mr M Savill

Chambers' Practice Managers and Senior Clerks

Mr T Handley
Mr W Sheldon
Mr R Witcomb

Defence Solicitors

Mr S Fox
Mr A Murphy
Mr F Sinclair
Mr A Watkins