

GLOSSARY

AAD	Accompanying Administrative Document. Document for goods moving in excise duty suspension between EU Member States
ACIO	Assistant Chief Investigation Officer
ACPO	Association of Chief Police Officers
AO	Authorising Officer – in respect of CHIS status under RIPA
BITS course	Basic Investigation Techniques course
CACD	Court of Appeal Criminal Division
CDL	Case Decision Logs
CEMA	The Customs & Excise Management Act 1979
CEPO	Customs & Excise Prosecutions Office
CHIS	Covert Human Intelligence Source
Commissioners	The Commissioners of Customs & Excise
CPIA	Criminal Procedure and Investigations Act 1996
CPS	Crown Prosecution Service
DCIO	Deputy Chief Investigation Officer
DPP	Director of Public Prosecutions
EXCIRT	EXcise Customs and Intelligence Research Team
EXIRT	EXcise Intelligence and Research Team
HIS	Human Intelligence Source
HMCE	Her Majesty's Customs & Excise
HMCPSI	Her Majesty's Crown Prosecution Service Inspectorate
HRA	Human Rights Act 1998
HSI	Human Source of Intelligence

HUMINT	A generic term applicable to all individuals who supply information to Customs relating to the activity of a third party with regard to a possible criminal offence or regulatory breach
IAD	Internal Audit Division
ICC	Interception of Communications Commissioner
ID	Investigation Division
IID	Internal Investigation Division
ILA	Investigation Legal Adviser
IMPEX	IMPort/EXport verification initiative
Inward diversion	Fraud involving duty-suspended goods from the EU diverted onto the UK home market without payment of duty
Knock	Law Enforcement terminology for the raiding of premises to arrest key suspects and/or secure key evidence. A strategic point within an investigation
LEPS	Law Enforcement Professional Standards
LSC	Legal Services Commission
MTIC fraud	Missing Trader Intra-Community fraud
NAO	National Audit Office
NHC	National Humint Centre
NID	National Intelligence Division. Formerly responsible for the formulation of intelligence policy and the analysis/dissemination of intelligence
NIS	National Investigation Service. Former incarnation of H M Customs & Excise Law Enforcement Investigation Directorate
NSU	National Source Unit
OSC	Office of Surveillance Commissioners
Outward diversion	Fraud involving duty-suspended goods, ostensibly for export, which are diverted to the UK home market without payment of duty
PACE	Police And Criminal Evidence Act 1984

PII	Public Interest Immunity
PSU	Police Standards Unit
REDS	Registered Excise Dealers and Shippers. Traders who are approved and registered by HM Customs & Excise to receive and account for duty on duty-suspended excise goods received in the UK from other EU Member States
RIPA	Regulation of Investigatory Powers Act 2000
SDEA	Scottish Drugs Enforcement Agency
SFO	Serious Fraud Office
SIO	Senior Investigation Officer
SMU	Source Management Unit
VAT	Value Added Tax
Warehousekeeper	The occupier of a warehouse who is responsible for the security and payment of the duties chargeable on goods deposited in the warehouse and for the due observance of conditions applicable to the warehouse and to the goods warehoused in it

APPENDICES

Appendix 1: Terms of Reference

To consider the circumstances that led to the termination of the London City Bond (LCB) cases heard in Liverpool Crown Court and the lessons to be learnt from those circumstances.

And, having regard to changes in the law or practice as indicated below, changes in relevant procedures and guidelines and to changes in practice within HM Customs and Excise that have taken effect since 1995.

To review the practices of HM Customs and Excise in the recording, retention, revelation and disclosure of material which may be relevant to the prosecution of its criminal cases.

In respect of HM Customs and Excise criminal investigations, to review current compliance with best practice in the use of investigation techniques (e.g. the classification and handling of individuals providing information) and the management and control of cases to the extent these are relevant to the discharge of the prosecution's obligations in any subsequent criminal proceedings.

To make recommendations.

The review will be conducted by a High Court Judge.

Scope of the review

The review:

- Will have regard to the relevant statutory framework (such as the Criminal Procedure and Investigations Act 1996 and the Regulation of Investigatory Powers Act 2000), the Attorney General's Guidelines on disclosure, relevant legal precedent and best practice.
- Will focus on current departmental provisions and practice while having regard to the conduct of past cases and lessons to be learnt from them insofar as not already incorporated in current practice; and
- Will examine the parts that should be played by officers, solicitors and counsel in the preparation for and the presentation of cases for court and in the disclosure process.

The Review will report to the Economic Secretary to the Treasury, as the Minister responsible for HM Customs and Excise and to the Attorney General.

The Review will have unrestricted access to HM Customs and Excise staff, papers and facilities. It is being asked to report not later than June 2003. A summary of the Report and its recommendations will be laid before Parliament.

Appendix 2

People consulted by the Review team either in meetings or by written submission or in response to consultation papers issued

Senior staff of HM Customs & Excise

Sir Richard Broadbent KCB	-	Chairman
David Pickup	-	Solicitor
Terry Byrne CB	-	Director General, Law Enforcement
Gordon Fotherby	-	Head of Prosecutions Office
Paul Evans	-	Chief Investigation Officer
Mike Norgrove	-	Director, Intelligence
Martin Peach	-	Director, Detection
Mike Wells	-	Director, Law Enforcement Policy

Other staff of HM Customs & Excise

20	from the Solicitor's Office
4	Investigation Legal Advisers
31	from LE Investigations
12	from LE Intelligence
2	from LE Detection

Members of the judiciary

The Lord Chief Justice
Lord Justice Rose
Lord Justice Judge
Lord Justice Auld
Lord Justice Kay
Mr Justice Aikens
Mr Justice Bell
Mr Justice Grigson
Mr Justice Richards
His Honour Judge Atherton
His Honour Judge Bathurst-Norman
His Honour Judge Binning
His Honour Judge Crocker
His Honour Judge Elwen
His Honour Judge Fingret
His Honour Judge John Griffith-Williams QC
His Honour Judge Hammond
His Honour Judge Hardy
His Honour Judge Henshell
His Honour Judge Hucker
His Honour Judge Joseph
His Honour Judge Timothy King
His Honour Judge Lorraine Smith
His Honour Judge Shaun Lyons
His Honour Judge Mckinnon
His Honour Judge Maddison, Recorder of Manchester

His Honour Judge Rivlin QC
His Honour Judge John Samuels QC (individually and on behalf of the Council of Circuit Judges)
His Honour Judge Stanley
His Honour Judge Anthony Webb
District Judge (Magistrates' Courts) Kevin Gray

Counsel

Peter Birkett QC
Jeremy Carter-Manning QC
William Clegg QC
Anthony Donne QC
Anthony Glass QC
Stuart Lawson-Rogers QC
Anthony Leonard QC
Noel Lucas – Standing Counsel to HM Customs & Excise
Sir John Nutting QC
David Steer QC
Jim Sturman QC

Government departments

Sir David Calvert-Smith QC, Director of Public Prosecutions and representatives of the Crown Prosecution Service
Lord Falconer QC, then Minister of State in the Home Office and Home Office officials
Inland Revenue Solicitor's Office
Inland Revenue Special Compliance Office
Lord Chancellor's Department (now Department for Constitutional Affairs)
Representatives of the Legal Secretariat to the Law Officers
Serious Fraud Office
Department of Trade and Industry

Others

His Honour John Gower QC
Sir Anthony Hammond KCB QC
Sir Stephen Lander KCB
Dame Barbara Mills QC, The Adjudicator
Mr John Roques
David Lock, Chairman of the Service Authorities
Stephen Wooler, Chief Inspector HMCPSI
Sally-Ann Downey, Inspector HMCPSI
Katey Rushmore, Inspector HMCPSI
Director General, NCIS and colleagues
Director General, NCS and colleagues
The Rt. Hon. Sir Andrew Leggatt – Chief Surveillance Commissioner
The Rt. Hon. Sir Swinton Thomas – Interception of Communications Commissioner
Tony Williams – Chief Surveillance Inspector
Association of Chief Police Officers
Criminal Bar Association

Criminal Cases Review Commission
General Council of the Bar
The Institute of Legal Executives
The Law Society
Police Federation of England and Wales
National Audit Office

Solicitors

Matthew Frankland
Lesley Burrows

Scotland

William Gilchrist, Deputy Crown Agent
Ms Elizabeth Munro Head of Fraud and Specialist Services Unit, Crown Office

Northern Ireland

Sir Alasdair Fraser CB QC	-	Director of Public Prosecutions (Northern Ireland)
Roy Junkin	-	Deputy Director
James Scholes	-	Senior Assistant Director
Stephen Wright	-	DPP's office

Appendix 3: Report by Sir Gerald Hosker KCB QC
on Aspects of the Simon de Danser Case

1. The Simon de Danser was a vessel boarded by officers from HMCE accompanied by members of the Royal Marines Special Boat Squadron at 2 a.m. on the morning of 5th May 1997. The vessel was boarded 100 miles off the Portuguese mainland and on board was found a very large quantity of cannabis. The crew and the registered shareholders of the company, which owned the vessel, were arrested and later tried for offences relating to conspiracy fraudulently to evade the prohibition on the importation of drugs.
2. The trial took place at the Bristol Crown Court in early 1998. Counsel for the defendants submitted that the trial should be stayed as an abuse of process. One of the grounds advanced related to the circumstances in which permission had been sought for the boarding of the Simon de Danser and in particular whether the appropriate formalities had been properly followed. Staying the proceedings as an abuse the trial Judge, HHJ Foley said:

“This case has revealed a culture, a climate, of carelessness and recklessness for disregard for the rules of procedures, Convention of Maltese Law, British Law and International Law, a destruction of relative probative evidence. I have to analyse the cumulative effect of all of these matters upon the issue of destination I have to have regard to everything that has gone on here and apply the appropriate burden of proof and perhaps more importantly, however, the appropriate standard of proof and that, I hope, I do. ... It gives me no pleasure. The case of stay is overwhelming, there was *mal a fides* here. The proceedings will be stayed on both limbs of abuse.”

3. An inquiry into HM Customs and Excise aspects of the Simon de Danser case was ordered. It was conducted by Sir Gerald Hosker KCB QC, and the report of his conclusions was released in July 1999. The inquiry acquitted all Customs officers of having acted in bad faith and found no evidence or suspicion of corruption involving any Customs officials concerned with the case.
4. However, the inquiry concluded that no Customs official who was involved in the Simon de Danser case had both effective overall control and sufficient knowledge of all the key important customs aspects of the operation. There was a noticeable absence of records of HMCE activity.
5. The inquiry recommended that where separate teams of investigators are involved a co-ordinator of suitable seniority should be appointed and arrangements made for him to receive details of all the important aspects of the operation. As to the keeping of adequate records, they should be maintained to demonstrate compliance with all relevant legal procedures, following where necessary any prescribed requirements for such records. Senior management should examine the adequacy of current training and guidance given to Customs officers.

6. In the course of his judgment HHJ Foley referred to a “catalogue of flawed procedures, misleading requests, illegalities and incompetence at a number of levels.” Whilst not endorsing the language used by the learned Judge the inquiry did conclude that such was broadly the position.

Appendix 3 (ii) – The Hosker Report – Recommendations and responses by HM Customs & Excise

Recommendation 1. Where separate teams of investigators are involved, a coordinator of suitable seniority should be appointed and arrangements made for him to receive details of all the important aspects of the operation.

Response: All SIOs and ACIOs attend a command and control course enabling staff of a suitably senior level to co-ordinate specific stages of investigations. The introduction of strategic decision logs in 1998 (later renamed case decision logs or CDLs) also enables the case SIO to have an overview of the decision making process during an investigation.

Recommendation 2 (i). The keeping of a minimum level of records in written or electronic form is essential to enable those who later have to give their testimony in court to refresh their memories and to be certain of the key facts. More attention needs to be given to that aspect of case management. Although it is acknowledged that care will have to be taken to safeguard essential security, it should be possible to achieve a satisfactory balance so that there is no risk that Customs officials will appear evasive when giving evidence because they are unable to recollect precise dates or other details of important events.

(ii). In particular adequate records should be maintained about compliance with all relevant legal procedures following where necessary any prescribed requirements for such records.

Recommendation 3. Customs officers should always be aware of the precise powers under which they are acting or authorising others to act.

Response: these issues are addressed in the BITS course, which is attended by all new investigators. The new manual case handling system and CDLs also build upon the recommendations. Prosecution logs have also been introduced which record meetings and the decision making process of investigators and lawyers.

Recommendation 5. All Customs officials who are to be witnesses in proceedings should prepare for the hearing by:

- i. reminding themselves of the powers under which each particular action was taken and all the legislation directly related to it; and
- ii. fully refreshing their memories about events and other aspects of the case on which they can reasonably expect to be questioned.

The failure adequately to recollect dates of events and the time and content of conversations was a major factor in key areas of the *voire dire* in the Simon de Danser case. Furthermore lapses of memory can, even though admitted during court testimony, sometimes convey the impression that evidence is being deliberately withheld.

Recommendation 5. Senior management should examine the adequacy of current training and guidance given to Customs officers about giving evidence in court. In the *voire dire* the testimony of some witnesses did not assist the court.

Recommendation 6. Officers should draw to the attention of the Solicitor's Office any prosecution involving Customs which are to be conducted by the Crown Prosecution Service or others. The officers should refer to any special legal considerations or sensitivities including any relating to claims to public interest immunity. The Solicitor's office should discuss relevant issues with administrators as the case proceeds and can if necessary seek to be involved with the prosecuting authorities in those aspects which are of Customs concern.

Response: these are also addressed in the BITS course. Greater emphasis is now placed upon giving evidence in court. Training exercises within the course build towards a court case where officers are tested in giving evidence that they have gathered during the exercises. Officers who complete the BITS course are tested in the specialist trial period (six months from appointment) and are monitored.

Recommendation 7. Where a member of the Solicitor's Office is requested to give expert evidence in a case not being conducted by Customs the Solicitor should also be consulted so that he may consider with the proposed witness all the implications of the situation.

Response: this should always have been Customs standard practice. Reminders have been issued.

Recommendation 8 (1). Since it is of fundamental important that adequate and correct information is given, every request for a proposed interception of a vessel registered in another flag state should be prepared or approved in writing by the Solicitor's Office before it is submitted to the appropriate authority in the flag state.

(2). If there is any uncertainty about the body which has currently been notified by the flag state as authorised to approve interceptions under the relevant law, the United Nations must be consulted in order to obtain verification. Furthermore, the authority to whom the Request is then submitted should be asked to confirm that it has been and remains designated under the appropriate local law for the purpose.

(3). In every instance where a request is being submitted to an authority in a flag state, steps should also be taken to confirm that the vessel named in the Request remains registered in that state.

(4). In each case concerning a request to a flag state there should be a review not only of what information needs to be disclosed in order to comply with the application legal requirements but also what else if anything might appropriately be passed on.

Recommendation 9. Instructions should be given to all personnel concerned with matters which might lead to legal proceedings that they take steps to ensure that documents are dated. The Request was never dated and the Inquiry also found

another example of electronically generated material where the printed version was undated. There is no reason why every document should not be dated.

Recommendation 10. The Inquiry noted the complexity of the different legal provisions which apply where it is proposed to detain a vessel. Officers should be clear about the legal basis upon which the relevant action is to be taken and appropriate instructions should be given to those who will participate in the detention.

Recommendation 11. The legal requirements for the marking of vessels used in an interception in international waters should be circulated to all Customs officers who have a role in respect of such matters. The subject was alluded to in the *voire dire* and represents a future basis for challenge by defence counsel.

Response: all these recommendations were accepted and implemented following discussions between the NIS and the Solicitor's Office. No independent review was undertaken to ensure compliance; but the routine assurance programme of the Maritime Branch has not uncovered any non-compliance.

In addition the United Nations Office on drugs and crime has set up an expert Maritime Working Group to introduce a best practice guide for competent authorities under the 1988 Vienna Convention against Illicit Traffic in Narcotic Drugs. The UK, in the shape of HMC&E, plays a major role in the working group.

**Appendix 4: Report by His Honour Gerald Butler QC into the case of
Regina v Doran and others**

1. The report of the Inquiry into the prosecution of the case of Regina v Doran and Others by His Honour Gerald Butler QC was published on 14th April 2000. His terms of reference were to examine the actions of HM Customs and Excise officials and counsel who appeared on behalf of the prosecution in connection with the case of R v Doran and Others in relation to:

- 1) Technical surveillance conducted at certain hotels.
- 2) The non-disclosure of material relating to those issues and the related Public Interest Immunity applications made in the course of the proceedings.

Other issues were also to be considered by the Inquiry, which are not material for present purposes.

2. In brief the prosecution arose out of seizures by HMCE of large quantities of cocaine. On 4th February 1994 Customs officers seized 32.312 kilograms of cocaine bound for England. On 25th September 1994 19.819 kilograms of cocaine were imported through Dover and seized by HMCE. The third relevant seizure of drugs took place after a boat was intercepted on 10th January 1995. HMCE seized 309 kilograms of cocaine of high purity with a street value of the order of £34 million. It was the prosecution arising out of this last seizure, which was the subject of the Inquiry. The seizure was known as Stealer 3.
3. The first trial of Stealer 3 began in May 1996. In consequence of a development in the course of the prosecution case the judge held a *voire dire* which lasted 20 days and became ultimately an application by the defendants to stay the proceedings for abuse of the Court's process. The judge rejected that application but discharged the jury and ordered a new trial.
4. The second trial began on 18th November 1996 in the course of which counsel enquired as to whether a hotel room occupied by one of the defendants in the course of the events surrounding the importation had been bugged. The Customs officer replied that he did not think it was in the public interest that he should answer the question. The defendants were later to allege that investigators had acted improperly and unlawfully with regard to the technical surveillance at the hotels and that there was a serious misleading of the defendants with regard to that.
5. On 19th March 1997 the principal defendants were convicted. They appealed to the Court of Appeal on the grounds of alleged deficiencies in the summing-up of the trial Judge. The appeals were allowed and retrials were ordered.
6. The defence gave notice that they intended to submit that a retrial would be an abuse of the process of the Court and that the proceedings ought to be stayed on the grounds of delay and prejudice to a fair trial. That abuse hearing came before Mr Justice Turner on 28th June 1999. After hearing submissions occupying three days, but no evidence, he held that no retrial could be fairly

conducted, and further that it would be unfair that the defendants should be retried. The prosecution had, on the balance of probability, been shown to have been guilty of abusing the process of the Court. He described his own ruling as “a scandalous result”. He said:

“It is because, and only because, of the failures of the prosecution, ... to have followed necessary legal requirements in connect with their evidence gathering techniques, and the obligations to make full and proper disclosure to the Court, that has led to this debacle. These failures strike at the rule of law. They also involve probable breaches of Human Rights Law. ... In this case it can be seen that the failures were not just at the operational level, but extended into supervisory and directional positions as well. It is the consequence of these failures that has led to the public being deprived of the protection which a successful trial would have provided.

Because of the hierarchical nature of the failures which have taken place, I shall be referring this ruling to Her Majesty’s Attorney General so that he may consider what action, if any, should be taken to ensure that no repetition of these failures takes place.”

7. Mr Justice Turner articulated the paramount concern of the Courts to ensure that there should be a fair trial. The Court, he said, should not seek to connive at conduct which will either deny, or unduly restrict, the ability of the defence to pursue whatever legitimate tactics it wishes to deploy with a view to challenging the prosecution case. There had been, in his judgment, past and continuing non-disclosure. The defendants had been seriously prejudiced in the conduct of their defence and the prosecution witnesses had been accorded an unfair advantage by the protection of their credibility and integrity, which the conduct in withholding disclosure had achieved.
8. In response to the collapse of the trial the Attorney General and Her Majesty’s Paymaster General ordered an inquiry. His Honour Gerald Butler investigated in very considerable detail the circumstances surrounding the questioned evidence, which had given rise to the abuse hearing, the way in which disclosure had been handled and the circumstances pertaining to the PII applications made in the course of the second trial. The Inquiry concluded that there was no basis for finding that any Customs officer had acted dishonestly or deceitfully or with any intention deliberately to mislead. It was never the intention of the investigators deliberately to mislead the Court or counsel. They did not behave dishonestly or give evidence they knew to be false. He did, however, have a number of criticisms to make about the way in which the prosecution had been conducted. In particular he regarded it as imperative that HMCE solicitors play a greater role in the prosecution process. The practice at the time of Stealer 3 was that Customs’ solicitors were little involved in the preparation of statements or the presentation of the prosecution case and they were rarely in Court. As to the failures in disclosure the Inquiry concluded that the case demonstrated a need for a fundamental re-assessment within Customs as to their procedures and practices concerning what material ought properly to be made the subject of a PII application, and why. However, His Honour Gerald Butler QC did not agree with Mr Justice Turner

on some of his conclusions and in particular that part of the prosecution evidence amounted to a manipulation of the Court's processes.

9. His recommendations were extensive and detailed and I have considered the extent to which they have been accepted and implemented elsewhere in this Report. One of the recommendations was that consideration should be given as to whether or not prosecutions at present conducted by Customs should continue to be conducted by them or another prosecuting authority. That recommendation led in turn to the Review conducted by His Honour John Gower QC, assisted by Sir Anthony Hammond KCB QC.

Appendix 4(ii): The Butler Report – Recommendations and responses by HM Customs & Excise

The Solicitors

Recommendation 1. There should be formed a specialist team of solicitors (perhaps not more than three in number), who will provide advice on law to the NIS in a range of matters that have been seen, or can be seen, as areas in which problems or difficulties in law commonly arise, including investigations involving undercover officers or eavesdropping.

Recommendation 2. The team will provide advice on matters of law to the NIS when requested to do so.

Recommendation 3. The team will provide advice on matters of law to the management of the NIS on issues such as investigative powers, operational policy and legal assurance issues.

Recommendation 4. The team will assist in the training of NIS officers on all matters of which NIS officers need to know and understand in order properly to perform their duties.

Recommendation 5. The team will assist in ensuring that NIS officers keep abreast of changes in the law, as they occur.

Response

These recommendations were accepted. By the time the report was published, steps had been taken to establish the team; one lawyer was already in post and a further lawyer was added to the team shortly afterwards. They were based in Customs House as NIS legal Advisers.

Recommendation 6. Counsel instructed by Customs must be provided with a formal set of instructions which, at the very least, set out the essential facts of the case.

Recommendation 7. The case solicitor must work with the investigators to ensure that all cases are fully and properly prepared for presentation in court.

Recommendation 8. Sufficiently detailed notes must be made of all meetings relevant to the preparation and conduct of the case, including meetings with counsel, investigators and the defendants or their representatives.

Recommendation 9. In a limited number of cases there should be present throughout the trial a member of the Prosecutions Group with an adequate working knowledge of the case. Guidelines should be prepared for the identification of such cases. They would plainly include cases of special sensitivity or complexity, or their potential for mishap.

Recommendation 10. In all other cases, there should always be available to attend court where the circumstances so warrant, a member of the Prosecutions Group with an adequate working knowledge of the case.

Response

The recommendations were accepted and revised instructions issued. The issues raised by recommendation 10 were subsumed within the Gower/Hammond report (see paragraph x below).

Recommendation 11. The Prosecutions Group must take an active role, together with counsel and the NIS, in determining what material is properly made the subject of a PII application, whenever there are considerations of a kind which are not so well-established as to be beyond sensible argument. (I give, by way of example, as 'beyond sensible argument', the disclosure of the name or existence of an informer where, on any reasonable appraisal, such disclosure cannot be seen as relevant or potentially relevant).

Response

This was accepted in principle and considered as part of a wider review under recommendation 30 (see below). The review included lawyers, administrators and investigators and resulted in the issuing of guidance on the material on which PII may be claimed.

Recommendation 12. In every PII application there should be prepared and presented to the judge a schedule identifying the documentation in respect of which PII is sought, and why. (It is extraordinary that the procedure in the civil courts is much stricter with regard to this than in criminal proceedings).

Response

This was rejected after careful consideration. It was felt that the sensitive material scheme required by the Criminal Procedure and Investigation Acts 1996 dealt with this sufficiently. Under the codes of practice the disclosure officer is required to list the material which he believes it is not in the public interest to disclose and the reasons for that belief.

Recommendation 13. Procedures should be put in place to ensure that so soon as a case not designated as 'sensitive' at the outset becomes so, the administrators are alerted in accordance with the tripartite agreement.

Response

This recommendation was accepted with detailed instructions included in a Prosecution Circular (29/2000) issued in September 2000.

Recommendation 14. There should be an internal investigation into any case in which a judge has directed an acquittal, in order to locate possible error on the part of Customs, and to see what lessons can be learned.

Response

Recommendation accepted. Instructions to all lawyers and case holders were issued in September 2000 in Prosecutions Group circular 30/2000.

Recommendation 15. A new structure proposed for the prosecution group, and which I need not here examine in detail, seems to me to be a sound and sensible way forward. I recommend its implementation.

Response

This was subsumed within the Gower/Hammond review (see Appendix 6).

The NIS

Recommendation 16. Training must be provided to ensure that all investigators fully understand their obligations under legislation, Codes of Practice and Customs guidelines.

Response

These recommendations were accepted and have been implemented. Training is now tailored to meet legislative changes. The BITS course was restructured to provide a better induction for investigators and regular meetings are now held between the Chief Investigating Officer and the head of training to monitor the training programme.

Recommendation 17. The investigators must at all times bear in mind, and act in accordance with, their obligations under current legislation, Codes of Practice and Customs guidelines.

Recommendation 18. The investigators must make contemporaneous notes in accordance with legislation, Codes of Practice and Customs guidelines then current.

Recommendation 19. Whenever possible, the investigators should make a contemporaneous note of information of importance or potential importance given by them to solicitors or counsel both prior to and during the prosecution in which they are involved.

Recommendation 20. Pending the review I recommend at Recommendation 30 below, I recommend that the procedures set out at (i) - (iv) be followed:

- (i) PII should not be sought for material unless there has first been made at SIO level or above, a full and proper evaluation of its suitability to be the subject of such an application.
- (ii) Where it is decided that material is of a kind that can properly be made the subject of a PII application, a schedule should be prepared for the

consideration of the solicitors, listing that material, and setting out the reasons why PII is sought in respect of it.

(iii) Where the material is of a kind that may present unusual considerations, the SIO should consider whether it is appropriate to seek the guidance of the appropriate ACIO.

(iv) Material in any way concerning or relevant to a prosecution, or which may reasonably be regarded as such, should be retained safely and in an accessible manner for a period of at least 15 years.

Recommendation 21. SIOs must ensure, so far as possible, that the statements of investigators intended to be served on defendants contain the information intended to be given in evidence.

Response

Recommendations accepted. The law enforcement professional standards team (LEPS) make a presentation on the BITS course which emphasises the importance of maintaining standards and complying with the law. In 2002 LEPS undertook an assurance programme for notebooks and surveillance logs to ensure compliance with instructions. This identified a training need for team leaders in the use of surveillance logs which has been implemented. LEPS is currently assuring the use of case decision logs throughout investigation branches. Improvements are likely to be made to the systems when assurance is complete.

Relevant PII instructions are incorporated in the investigation handbook and assurance of the disclosure process is being introduced. LEPS have also reviewed the investigation storage system and a new system is being introduced which implements their recommendations.

New notebook guidance was developed and incorporated in the LE investigation handbook.

Recommendation 22. Prior to any technical surveillance being conducted in a hotel bedroom, there must first be obtained written permission from an appropriate level of management at the hotel. Where permission is given, but management are not prepared to do so in writing, then the oral consent must be recorded contemporaneously in the investigator's notebook. I approve the guideline as to this drafted within NIS and which has now been implemented.

Response

The recommendation was accepted and a best practice note issued. Instructions have been incorporated in the LE investigation handbook. Responsibility for scrutinising technical surveillance applications under Part II of the Regulation of Investigatory Powers Act 2000 has been assigned to one team. Additional assurance is being provided.

The Bar

Recommendation 23. It being the duty of prosecution counsel to ensure, so far as he possibly can, that a judge hearing a PII application is given full and accurate information, he should:

- (i) make all necessary enquiries and examine all relevant documentation to enable him to fulfil that duty properly; and
- (ii) be accompanied during the PII application by the solicitor/investigator with personal knowledge of the relevant facts.

Response

The Attorney General took this recommendation into account in preparing the guidelines on disclosure issued in November 2000.

Recommendation 24. The Professional Standards Committee of the Bar Council should consider, and if they see fit give guidance on, the duty of defence counsel who have, in appearing previously for Customs, been informed of matters which may be regarded as sensitive, or confidential, or in an area in respect of which PII has been sought, and which would not normally be communicated to a defendant.

Response

The Attorney General referred this recommendation to the Bar Council for consideration. The issue was considered by the Professional Standards Committee of the Bar Council and the Criminal Bar Association. They concluded that Parts III, VI and VII of the seventh edition of the Bar Code of Conduct; and that part of section 3 of the Code entitled “Written Standards for the Conduct of Professional Work” adequately dealt with the concerns.

Generally

Recommendation 25. Consideration should be given as to whether or not the prosecution should have a right of appeal where a prosecution is terminated consequent upon a finding there has been an abuse of process.

Response

This issue was initially referred to the Law Commission. The Government has now included a provision in the Criminal Justice Bill currently being debated in Parliament which gives the prosecution the right of appeal against certain terminating rulings.

Recommendation 26. Consideration should be given as to whether or not prosecutions at present conducted by Customs should continue to be conducted by this, or by another prosecuting authority.

Recommendation 27. If Customs are to continue as a prosecuting authority, there should be an independent Inspectorate established. This might be made an extension of the powers and duties of the current CPS Inspectorate.

Response

The recommendations were accepted. A further review by His Honour John Gower QC, assisted by Sir Anthony Hammond QC (on his retirement as Treasury Solicitor), was established to examine the relevant issues and to make recommendations.

Recommendation 28. Consideration should be given as to whether or not judges who try large and complex cases involving substantial quantities of drugs, should be drawn from a selected pool, as is at present the case with, for example, prosecutions that are brought alleging serious fraud or rape.

Recommendation 29. Consideration should be given as to whether or not the trial judge in a lengthy case involving a substantial quantity of material for which PII is claimed, should have some assistance to enable him to fulfil his monitoring duties effectively, and, if so, what form that assistance should take.

Response

These recommendations were referred to the Lord Chancellor for consideration.

Recommendation 30. There should be a review within Customs of:

- (i) the procedures to be adopted and principles to be applied, in determining the material in respect of which PII may properly be sought; and
- (ii) the period or periods for which material should be retained, and the manner in which it should be retained.

Response

This recommendation was accepted (see response to recommendation 2).

Appendix 5: The Stealer Appeal

1. After Togher and Doran had been convicted at the conclusion of their retrial they entered unequivocal pleas of guilty to an offence relating to the 33 kilos of cocaine seized in Madrid. The retrial ordered by the Court of Appeal was stayed on the order of Mr Justice Turner on the ground that the prosecution, by means which were at least arguably unlawful, had deprived the defence of its ability to mount a challenge to the integrity of the prosecution. Togher and Doran thereupon appealed against their convictions in respect of the offence to which they had pleaded guilty. They contended that the reasoning which led to the stay of the retrial of one charge applied equally to both so that they should not have been required to plead to the Madrid indictment. As a consequence their convictions founded on this irregularity were unsafe.
2. The Court of Appeal dismissed the appeals, holding that an appeal against conviction after a plea of guilty could be allowed if the proceedings constituted an abuse of process such that it would be inconsistent with the due administration of justice to allow the guilty plea to stand. On the facts, the Court held that guilty pleas were entered which were not founded upon and were independent of any irregularity at an earlier trial. The Court accordingly dismissed the appeals.
3. In the course of its judgment the Court re-visited the findings of Mr Justice Turner. In that regard the Court was in precisely the same position as the Judge at first instance. No evidence was called before Mr Justice Turner, nor before the Court of Appeal. The Court held:

“The present appeals are not appeals of the decision of Turner J and we do not suggest that he was not entitled to come to the conclusions which he did. However in order to decide the present proceedings it is necessary to form our own judgment as to what should have been the result of the application before Turner J. Having examined very carefully the reasoning of this very experienced Judge, it is the view of this Court that failures on the part of the prosecution did not amount to the category of misconduct which has to exist before it is right to stay a prosecution.

This Court does not condone what happened at the previous trial. However the Judge was being asked to stop a retrial ordered by this Court. As Turner J recognised, on the authorities which he cited it is only in very exceptional circumstances that it is right to order a stay. The matters relied upon before Turner J could, in our judgment, be dealt with by the trial Judge on the retrial by taking the action which was appropriate. It was undesirable for Turner J to seek to decide the issues on the basis of submissions of counsel and written material. Evidence from the officers who were in charge of the prosecution was required before adverse comments about the motivation of the prosecution could be made, counsel having accepted responsibility for what had happened. ... Oral evidence was essential before a proper assessment of an alleged improper motive on the part of the prosecution could be made. Without hearing that evidence on the

material before Turner J we do not consider it would be right to do more than say that there had been regrettable muddle and confusion and incompetence on the part of the prosecution and shortcomings on the part of the trial Judge.”

4. Thus the Court of Appeal, reviewing the same material that was before the trial Judge, reached essentially the same conclusion as that reached by His Honour Judge Gerald Butler QC.

**Appendix 6: Report by His Honour John Gower QC and
Sir Anthony Hammond KCB QC of a review of prosecution conducted
by HM Customs & Excise**

1. On 8th June 2000 the Government published the report of an Inquiry by His Honour Gerald Butler QC into the prosecution of the case of Regina v Doran and Others. That report recommended that consideration be given as to whether or not prosecutions at present conducted by HMCE should continue to be conducted by them or by another prosecuting authority. In response to that recommendation the Government agreed that consideration should be given to the issue and established a Review conducted by His Honour John Gower QC assisted by Sir Anthony Hammond KCB QC to examine the relevant issues and make recommendations. The Review was presented to the Attorney General on 5th December 2000 and published the following spring.
2. The Review was not concerned with and did not examine individual cases. The terms of reference limited the Review to considering the prosecution role of the Solicitor's Office.
3. The Review met with and received submissions from a broad spectrum of consultees, including members of the Judiciary, HMCE lawyers, members of Government Departments and Customs investigators.
4. As a result of those consultations the Review observed that HMCE lawyers and investigators appeared not to work harmoniously together. Some felt that investigators seemed not to trust the HMCE lawyers and that HMCE's unique powers had contributed to a culture of secrecy, which widened the gap between investigators and lawyers. It was this culture of secrecy which led on occasions to the reluctance on the part of investigating officers to disclose material even to their own lawyers, leading in turn to problems over Public Interest Immunity. There was a perception that HMCE lawyers were regarded as the "poor relations" of the service. There was a further perception that the lawyers lacked independence and felt themselves undervalued within their organisation: that in turn contributed to reduced efficiency and a lowering of morale. Some consultees considered that investigators were reluctant to accept unpalatable advice from lawyers and there were instances of lawyers being unable to attend conferences because they lacked the appropriate security clearance.
5. The Review concluded that in its prosecution function the Solicitor's Office suffered from a malaise. The authors observed: "All is far from well in the performance of the prosecution function of that office." The Review observed that in relation to criminal prosecutions the service provided by the Solicitor's Office fell far short of the standards expected of it. There were inadequate resources with not enough lawyers to cope with the much increased workload and increased responsibilities, especially in relation to disclosure. The support staff were inadequate in quantity and in some instances in quality. The working conditions and accommodation were likely to put unnecessary stress on lawyers dealing with complex high-level cases. The conditions were unsuited to professional people doing demanding work under great pressure and under time constraints. Those factors led in turn to low morale amongst

the professionally qualified staff. That low morale is contributed to by the perceived attitude towards them of investigators, the tendency of investigators to by-pass them and the investigators' culture of secrecy causing them to withhold important information from their lawyers. There was further a feeling amongst lawyers that they were little more than post boxes and they experienced frustration at their inability to attend Crown Court trials and to contribute to the conduct of cases there.

6. To address those findings the Review recommended that the HMCE Solicitor's Office should retain its prosecution function, and remain part of HMCE. However in relation to his prosecution function the Solicitor should be accountable to the Attorney General and not to the Commissioners or their Chairman. The basis for the recommendation was that the perception and reality of the Solicitor's independence was so vital that he must no longer be responsible to the Board for the exercise of his prosecution function nor should he be dependent upon the Board for resources. The Attorney General and not the Board of HMCE should be accountable for the management and conduct of the cases. My understanding of the report, augmented as it is by my meeting with both the authors, is that it was their hope and expectation that the supervisory function to be undertaken by the Attorney General would be broadly similar to that which he accepted following the recommendations contained in the Report of Sir Richard Scott's Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq.
7. The main purpose of consultation in individual cases was intended to enable the Solicitor to draw to the Attorney's attention and to seek his advice on:
 - significant features of potential interest or sensitivity and in particular;
 - matters of legal novelty and legal or factual difficulty; and
 - to seek the Attorney's opinion as to the public interest in the case.

The process of consultation, it was hoped, would enable the Attorney General to be consulted, and to give advice and guidance, on some of the difficult areas of law which HMCE encounter in individual cases, particularly those relating to disclosure and how best to provide for proper protection of intelligence sources while making available all documents and information properly necessary for a fair trial.

8. As part of my review I have considered the extent to which those objectives have been achieved and how the new arrangements, which were put in place following acceptance by the Government of the recommendations, are working in practice. The new arrangements were intended to ensure that there is proper ministerial accountability in respect of all prosecutions brought by HMCE whether by the Attorney General or a Treasury Minister. The Attorney General is answerable for all actions taken by HMCE in relation to decisions to initiate and sustain a prosecution. Treasury Ministers remain accountable to Parliament for anything done in the course of the investigation, enforcement policy and prosecution policy. However the Attorney General is responsible for the application of the prosecution policy in individual cases, which he supervises.

Appendix 6(ii): The Gower/Hammond Report: Recommendations and responses by HM Customs & Excise

Recommendation 1

The Customs and Excise Solicitor's Office should retain its prosecution function.

Recommendation 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.

Recommendation 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.

Response:

The changes in accountability and the new relationships established by Gower Hammond required a new structure for Prosecutions Group. This new structure was in place across the Group from April 2002.

The aims were to:

- Respond to the reorganisation of the Department and in particular to the needs of Law Enforcement and Business Services and Taxes; the Department had undergone re-organisation as the Solicitor's Office was addressing Gower Hammond;
- Draw a fair balance between the resources placed within Prosecutions Group, for which the Attorney General would be accountable, and the resources given to the rest of the Office, that would continue to provide legal services to the Department;
- Produce a coherent structure for Prosecutions Group, which would give clear accountability to the Attorney for the prosecution function; and
- Enable the Office to implement Gower Hammond, and in particular make the key cultural and working practices changes that would be an essential part of this, and to prepare for the inspection of the prosecution function by HM CPS Inspectorate.

Recommendation 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".

Response:

Following discussions, it was decided that a separate vote was not required. The preferred option was for the Prosecutions Group to be funded separately within the existing Customs budget. This has now been formalised within a Memorandum of

Understanding signed by the Attorney General, the Economic Secretary to the Treasury and the Chairman of Customs & Excise.

The funding position is considered further below in relation to Recommendations 7 and 8.

Recommendation 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.

Response:

A pilot inspection of the Prosecutions Group by HM CPSI took place between August 2001 and July 2002. Its subject was Casework Unit 4 in Manchester. The Inspectorate's report was submitted to senior managers in November 2002.

Recommendation 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 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.

Response:

Revised working arrangements, reflecting the changed relationship between prosecutors and administrators, were published to staff in November 2002. Caseholders are responsible for the management of tripartite meetings and in Sensitive Cases these meetings should always take place.

Recommendation 7

Adequate resources in terms of personnel, funding and accommodation must be made available to enable the Prosecutions Group of the Solicitor's Office to operate efficiently and to deliver the service expected of it. This is vital.

Recommendation 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.

Response:

Resources have been increased. In April 2003 there were 207 staff and a budget of £26.8m.

Accommodation was considered in the light of the Department's estates strategy. The Solicitor's Office is housed at two headquarters locations, New King's Beam House in London and Ralli Quays in Manchester. Proposals to reduce the occupancy levels in New King's Beam House are in hand with the likelihood that the Solicitor's Office

will remain there but with increased space. In Ralli Quays, a refurbishment process is under way, which will allow better use of the existing accommodation.

Recommendation 9

Conferences with counsel should be arranged by a Prosecutions Group lawyer or member of the support staff acting on the instructions of a lawyer and never by an investigating officer.

Response:

This recommendation has been implemented fully. The Case Lawyer, the Case Manager or both, attend all conferences with counsel

The operational arrangements are set out in the Case Management System at Chapter 47.

Recommendation 10

At hearings in the Crown Court and at conferences, prosecuting counsel should be attended by a Prosecutions Group lawyer or a suitable trained and experienced support staff member, save in very exceptional circumstances.

Response:

A trial commenced on 1 April 2002 to enable the Group to monitor court cover, assess the impact and realistically gauge the costs and benefits of implementing the recommendation in full. A formal evaluation of that trial is now taking place. Following that evaluation a formal court attendance strategy will be established.

Between April and September 2002, Prosecutions Group covered an average of 93% of hearings at the crown court. ("Hearings" mean PII hearings, plea and directions hearings and the prosecution case in trials).

Recommendation 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.

Response:

Gauged by recruitment interest and retention levels, a legal career in the Solicitor's Office is attractive to lawyers.

In 2002, 13 lawyers from a complement of 124.5 (10%) left the Office. This was at a time of major change and includes those who left on retirement and because of ill health.

An exercise to recruit Band 12 lawyers in December 2001 attracted 85 applications, 32 of which resulted in interviews for 8 posts.

Recommendation 12

Consideration should be given to Customs and Excise lawyers with higher courts advocacy rights using them to appear in the Crown Court:

1. On plea and directions hearings;
2. On interlocutory hearings not requiring the attendance of counsel briefed to appear on trial;

3. As junior counsel on trials;
4. On guilty pleas;
5. On appeals against summary trial convictions and sentences.

Recommendation 13

Customs and Excise lawyers without higher courts rights should be helped to acquire them.

Response:

The preferred option to give effect to these recommendations was to establish an Advocacy Unit that would operate like an in-house set of chambers. Those lawyers assigned to it would not carry a casework portfolio and would act solely as advocates for the Group. It was envisaged that the Unit would eventually increase to a complement of 6 lawyers, including a Band 12 lawyer who would lead the Unit, supported by a Band 5 manager. The Unit would fall within the direct management line of the Head of Prosecutions.

Accordingly, a trial was established to test the viability of these proposals, Two lawyers each worked as advocates for 20% of their time. They covered plea and directions hearings, as well as some interlocutory hearings, at Isleworth and Croydon court centres. This initiative has been well received by the courts; and Customs has been invited to extend coverage to cover all such hearings at each centre. This will require another 2 lawyers, operating to a similar working pattern.

In February 2002, 8 potential advocates, some of whom already had higher advocacy rights as members of the Bar, attended a preliminary training course. Expressions of interest have been taken from lawyers who wish to gain higher courts rights. Four solicitors have indicated that they wish to pursue this qualification. Funds are available and arrangements for a suitable course are being finalised.

Recommendation 14a

Lawyers seconded from the Customs and Excise Solicitor's Office Prosecutions Group to give legal advice to the National Investigation Service should remain or become members of that Group and responsible to its Head.

Recommendation 14b

The length of the secondment period should be kept under review and, in the light of the working of the secondment system, consideration should be given to whether the present 2 years secondment for individual lawyers should be reduced.

Response:

The National Investigation Service was subsumed into Law Enforcement Directorate when the Department was restructured and the Legal Investigation Advisers Division was established when the Solicitor's Office re-structured in April 2002.

The Legal Investigation Advisers are part of Prosecutions Group, reporting to the Head of Prosecutions, and provide investigators with early legal advice in relation to specific investigations.

Recommendation 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.

Response:

Investigators no longer appear as advocates in their own cases but Court Liaison Officers still appear routinely at some Magistrates’ Courts, notably at Dover and Uxbridge.

This recommendation has proved especially difficult to address because of the wide geographical spread of work against the 2 locations from which Prosecutions Group operates. Save for where Court Liaison Officers appear, hearings are covered by counsel or agents. The implementation options under consideration are: establishing a nationwide network of agents; putting all such work to counsel; partnership arrangements with other prosecuting authorities, particularly the CPS; and brigading the court centres at which proceedings are conducted. In-house staff, whether lawyers or qualified caseworkers, travelling from bases in London and Manchester to cover all Magistrates’ Courts hearings would probably be prohibitive in terms of the expense incurred.

**Appendix 7: Report by Mr John Roques into the collection of Excise Duties by
HM Customs & Excise**

1. John Roques, the retired senior partner and chief executive of Deloitte & Touche, was appointed by the Paymaster General and Chairman of the Board of HMCE on 30th June 2000 to investigate the collection of excise duties. He reported in December 2000 and made 65 recommendations, of which all but two were accepted by Her Majesty's Government.
2. The investigation was required to consider the policy, legislation, systems and resources within HMCE relating to excise holding and movements to determine weaknesses and gaps including the efficiency of the current system of bonds and guarantees. The investigation further was required to consider how best to establish clear internal accountability for securing and protecting departmental revenue and how best to ensure that sufficient weight is given to protection of the Revenue as a key criteria in HMCE' handling of fraud investigations.
3. The detailed and comprehensive report produced following that investigation covered each of those areas. It is wholly unnecessary for me to revisit any of them and I commend to any reader interested in those areas the Report itself. However, the investigation did touch upon areas which are of relevance to my Review.
4. Roques identified that during the course of investigations of the frauds by the NIS it was the practice of the department to secure the co-operation of warehouse-keepers by indemnifying them against duty lost while the criminal activity continued unchecked. The vast majority of such indemnities were issued on a verbal basis and more than half of the quantified losses were indemnified in this way.
5. Roques identified the options open to HMCE in tackling fraud. First, prosecution of offenders. The Department as a prosecuting authority of the Crown, has responsibility for detecting, investigating and prosecuting criminal offences relating to those matters assigned to the Commissioners.
6. HMCE further have the power to compound. It is a statutory power granted under Section 152 of CEMA and is unique to the Department. It enables the Department to accept a payment of money in an out-of-Court settlement for an offence as an alternative to criminal prosecution and saves all concerned the time and cost of legal proceedings. Offenders cannot be forced into a compounded settlement; they always have the option of going to Court. However, since it is a quick and economical way of resolving offences, compounding is often as welcome to the offender as it is to the Department. If the compound offer is not taken up by the offender, however, then the prosecution goes on in the normal way. An offence may only be compounded if there is sufficient evidence to support a prosecution and officers are not allowed to compound any case they would not be prepared to take to Court or which is out of time for prosecution.

7. There is also the facility to disrupt criminal activity. Since April 2000 there has been a disruption strategy in place for tobacco and also for drugs. Activity is focused on high-volume and frequent seizures, both at the frontier and inland and even, so far as drugs are concerned, overseas.
8. In October 1996 EXCIRT (Excise Customs and Intelligence Research Team) was formed with a complement of 11 staff. This team was a successor body to a team with similar functions formed initially in the Investigation Division and latterly the then NIS. Mr Andrew was the ACIO throughout. The responsibility of EXCIRT was to develop and evaluate intelligence received in respect of excise fraud and certain other criminal activities. The main aim of EXCIRT was to develop and evaluate intelligence. It did not carry out investigations. Once that intelligence identified suspected offences action was taken to disrupt the smuggling organisation and the more serious cases were handed over to an operational team who were then responsible for investigating the offenders. At the time of the LCB related cases, EXCIRT did not have a national intelligence responsibility for the NIS; it principally serviced London based NIS operational teams. Regional based NIS operational teams were, therefore, able to generate and develop their own intelligence to support investigations.
9. Roques found no evidence that EXCIRT had the big picture and were thus in a position to determine the priorities. In fact case officers were receiving information relating to excise fraud and investigating it themselves without always at least contacting EXCIRT to notify them of the information they had received. It was an uncoordinated way of operating and this lack of communication and coordination contributed, in Roques view, to the excise fraud problems.

Appendix 7(ii): The Roques Report – Recommendations and responses by HM Customs & Excise

Recommendation 1. That all staff responsible for warehouse authorisations are issued with clear instructions about the need to ensure that applicants meet all the approval criteria (including giving definitions of criteria e.g. a “suitable person”).

Response. Accepted.

Customs’ internal guidance specifies the checks that are to be undertaken to ensure that applicants fully meet the criteria for approval. Public Notice 197 (PN197) Excise goods: holding and movement (March 2002) details the key obligations and conditions required to be met by warehousekeepers seeking authorisation or approval.

Recommendation 2. That approvals should routinely be granted for a certain period of time before being reviewed to ensure that warehousekeepers are still fulfilling their obligations, and that conditions attached to the approval remain appropriate. Staff should revoke approvals where approval conditions are not complied with.

Response. Accepted.

All new warehouses are now only approved for an initial period of 12 months. Existing warehouse approvals and authorisations are reviewed every two years. If it is found that some approval conditions are being breached, action will be taken to rectify this. For a minor breach it may only be necessary to vary the approval conditions to ensure future compliance; for a more serious breach it may be necessary to add new, tighter conditions and keep the position of the approval under review.

Recommendation 3. That targets are abandoned for authorising applications within certain timescales. Applications should be processed as quickly as possible, compatible with ensuring that the applicant meets the criteria (usually by a visit to the warehouse when the authorisation is considered).

Response. Modified approach adopted.

Charter Standards require the Department to abide by certain time limits in its handling of some business activities, including excise approvals and authorisations. Most applications are processed within the timescales but staff are aware that they should not feel constrained by the Standards where they consider they need better information from the applicant or that they need time to do all the necessary checks and to carry out the compulsory pre-approval visit to the site. All new warehouses are visited as part of the approval and authorisation process.

Recommendation 4. That local authorisation procedures are maintained.

Response. Modified approach adopted.

The approval of excise warehouses was centralised in Glasgow from 1 June 2001. This has ensured a standard approach to all such approvals. Local staff continue to provide an expert resource to the approval process, including a compulsory pre-approval visit.

Recommendation 5. That instructions are issued to local staff that “standard” approval letters should not be used. Staff should tailor all approvals according to what they find when they visit the warehouse prior to deciding whether approval should be granted. Staff should be given advice on the nature of conditions which can be applied in particular circumstances, to improve consistency in setting conditions.

Response. Modified approach adopted.

Standard conditions applying to all warehouses are set out in a public notice. For convenience and to ensure warehousekeepers are aware of their obligations, it is the Department’s practice to repeat the standard conditions in a letter, which specifies in appendices conditions which apply only to the particular warehouse concerned. Internal guidance reflects this but supplementary reinforcing instructions were issued to staff in May 2001. Incorporated into these was advice on the nature of conditions that are to be applied in particular circumstances.

Recommendation 6. That the Department introduces urgent sanctions, such as the seizure of the vehicle or a heavy financial penalty, to deter hauliers from breaking the law.

Response. Accepted.

In July 2001 the Department toughened its approach to the seizure of heavy goods vehicles found to be involved in diversion fraud.

Recommendation 7. That, given the importance of the Accompanying Administrative Document (AAD) in the current control arrangements, and in the pursuit of equity, guidance should be sent out to all Collections as a matter of urgency setting out what, exceptionally, constitutes acceptable alternative evidence of completion of a movement.

Response. Modified approach adopted.

Comprehensive guidance was issued in May 2001. It specified the exceptional circumstances under which alternative evidence may be considered and gave three specific examples of acceptable alternative evidence. This guidance was also incorporated into PN197 in March 2002.

Recommendation 8(a). That all warehousekeepers, as a condition of their approval, be required to notify their local office of excise goods entering and leaving the warehouse 24 hours in advance of the event (or as soon as possible if less than 24 hours notice is given by the haulier).

Response. Modified approach adopted.

Some information is already available on goods entering and leaving warehouses: most warehousekeepers maintain records of consignments they know are to enter or leave the warehouse. Officers visiting the warehouse can use these records to select future consignments they may wish to check; and under the Early Warning System, EU warehousekeepers give specific prior notification of high-risk shipments of alcohol and tobacco. In the longer term the proposed EU-wide system for computerising the exchange of AADs between Member States (the Excise Movement and Control System or EMCS) will provide officers with advance warning of all legitimate intra-EU consignments entering and leaving the UK. This is the real solution to this problem, but the time delay makes it necessary to consider interim solutions.

Recommendation 8(b). Local staff should ensure that warehousekeepers understand that accompanying transit paperwork must be completed in full.

Response. Accepted.

Instructions were issued to staff in May 2001. In October 2001 warehousekeepers were issued with written confirmation of their obligations to ensure that all accompanying documentation is fully completed. This requirement has been reinforced by the introduction of the Excise Goods (Accompanying Document) Regulations 2002, which clearly set out the requirements for completion of accompanying documents and the penalties for non-compliance. Public Notice 197 issued in March 2002 confirms the requirement.

Recommendation 8(c). That the centre issues local staff with detailed instructions setting out the criteria for selecting goods to be checked. This should be augmented by local officers' knowledge of 'their' warehouses (para. 3.8.4).

Response. Accepted.

Instructions were issued in July 2001 outlining selection criteria for examination of goods. Physical controls are now an embedded element of the control and assurance activity.

Recommendation 8(d). That warehousekeepers be required to notify Customs & Excise if goods which have been booked into a warehouse are not delivered within 24 hours of the original booked time (para. 3.8.4).

Response. Modified Approach

Some consignments, those notified under the Early Warning System, are reported if they are not received. When the EU-wide EMCS is fully operational this will also provide swift notification if the consignment is not received. This work is being carried out in conjunction with Recommendation 8a.

Recommendation 9. That there should be much more routine use of invoking guarantees – for example, for recovery of duty on undischarged AADs. The Department should treat irregularities as regulatory or absolute offences which are dealt with immediately. In

addition, the current conflicts between UK and EC legislation on liability for the duty must be rectified as soon as possible. The prime objective should be to protect the Revenue and seek redress where the Department is able to, within the framework of adequate legislation.

Response. Accepted. The Excise Points (Duty Suspended Movements of Excise Goods) Regulations 2001 came into force in October 2001 and specify the circumstances under which UK duty becomes due as a result of an irregularity or offence that occurs during an intra-EU movement of duty-suspended goods. It also confirms that the prime liability to pay where an excise duty-point arises as a result of an irregularity rests with the person who arranged the guarantee. This allows Customs to raise duty assessments and if the person who arranged the guarantee does not pay, Customs can call in the guarantee as part of their work to recover the debt.

Recommendation 10. That the Department's existing proposals aimed at tightening the guarantees system, which will help prevent a new area of fraud in third country movements, are implemented.

Response. Accepted.
The Excise Goods (Accompanying Documents) regulations came into force on 1st April 2002.

Recommendation 11. That the current series of forms are abolished and replaced with a single, monthly, mandatory legal declaration by warehousekeepers which incorporates a stock return, home use duty declaration and outstanding AAD summary. A prototype Departmental form has been developed but will need to be tested further.

Response. Accepted.
A new mandatory warehouse return was introduced in May 2002.

Recommendation 12. That, as with VAT, failure to comply with the time limit for completion of the form should carry a civil penalty, as provided for in existing legislation.

Response. Accepted.
Civil penalties for late or non-submission of the warehousing return are currently being implemented.

Recommendation 13. That the Department develops a central database for processing the new returns to: - obtain management information about numbers of non-received AADs; - monitor the value of duty being paid in respect of missing AADs by trader and test the credibility of this information; and - monitor levels of stock etc. in warehouses.

Response. Accepted.
An IT solution is now in operation.

Recommendation 14. That Customs & Excise issues guidance to local staff setting out in detail the legal provisions, policies and procedures for raising assessments so as to safeguard the Revenue.

Response. Accepted.

Detailed guidance was issued to staff in May 2001. All information on assessment procedures is available on the departmental intranet and is updated regularly.

Recommendation 15. That the Department always assesses warehousekeepers for duty on undischarged AADs where they are unable to recover it from the guarantor (where this is different). This is one of the prerequisites for being an authorised warehousekeeper, and is provided for in the law. This policy needs to be applied consistently across the Department to ensure that all warehousekeepers are treated equitably.

Response. Not accepted.

This recommendation, if implemented, would run contrary to the relevant EU Directive on this point, which states that the person who provides the guarantee is the person who should be assessed for the duty. The Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001, introduced in September 2001, bring UK legislation into line with the EU position, to protect innocent warehousekeepers who do not allow their guarantees to be used for suspect movements (something Customs are keen to encourage). They provide that the person who arranged the guarantee is primarily liable for the duty in the event of an irregularity.

Recommendation 16. That the Department undertakes a full analysis of the risks involved in the Registered Excise Dealers and Shippers (REDS) system.

Response. Accepted.

A review of the REDS system was completed in September 2001.

Recommendation 17. That REDS traders are controlled more tightly by the Department to safeguard excise revenue. Visits should be arranged to all REDS traders and their systems evaluated (both accounting records and physical procedures such as their arrangements for delivery and receipt of goods). This information, together with the amount of revenue at risk should then be used to decide the level of both unannounced and routine visiting activity needed to control the Revenue.

Response. Accepted.

A year-long assurance visiting programme began in July 2001, but the review team's report concluded that the exercise would need to be extended. The programme will continue until July 2003 when a second report on the findings will be published.

Recommendation 18. That the Department undertakes a full analysis of the risks involved in the Occasional Importers system with a view to tightening the system. In particular, the Department should consider how to improve the flow of information between local advice centres (who issue the receipts) and staff at ports so that Occasional Importers can be targeted for interception. This may involve re-designing the application form/receipt so that port staff have the information they need to intercept. The Department should also consider reducing the time limit of the official receipt.

Response. Accepted.

A review of the Occasional Importers system has been completed and a new, tighter and centralized system was introduced on 2 June 2003.

Recommendation 19. That Customs & Excise undertake a review of all legislation with a view to consolidating it as much as possible.

Response. Accepted.

A fundamental review of the current regulations is being conducted as a prelude to consolidation or re-write.

Recommendation 20(a). That excise officers should be given training on how to carry out physical checks at warehouses.

Response. Accepted.

Delivery of training began in June and was completed in October 2001. It is now a standard feature of warehousing training.

Recommendation 20(b). Officers should visit all excise traders periodically to carry out unannounced checks on goods entering and leaving the warehouse (the receipt and delivery systems) accompanying paperwork (including AADs) and the security of the load.

Response. Accepted.

Visits and checks of this kind are now being undertaken. Guidance was issued in May 2001.

Recommendation 21. That a significant number of additional resources are deployed on excise work to regain control of excise goods through more visits to warehouses and physical checks on consignments and paperwork. I recommend that, as a minimum, the 100 staff years of excise effort directed onto the Tobacco Strategy in April 2000 are re-instituted (through accretion and not through further diversion of existing resources) onto excise warehousing control with clear instructions about their role and responsibilities.

Response. Accepted.

An additional 146 officers were deployed on excise warehousing controls in 2001/02 with 24 more officers on top of that deployed in 2002/03.

Recommendation 22. That Import/Export verification officer (IMPEX) and excise control teams be brought under the same local management (where this has not already been done) to promote the use of the full range of techniques to control excise warehouses, and to increase the total resource available to deal flexibly and effectively with all aspects of control of excise goods.

Response. Accepted.

The available pool of resource now tackles all aspects of the alcohol trade – warehouses, owners of goods in warehouse, guarantee providers, hauliers, REDS, Occasional Importers and wholesaler/ retailers.

Recommendation 23. That the Department seeks to obtain political support for something close to a zero-tolerance policy at ports and on Eurorail. This would require significant additional resources to put into effect the seizure of both goods and vehicles when the importer could not satisfy Customs & Excise that the goods were for personal consumption.

Response. Modified approach adopted. Customs officers will seize any goods and the vehicles used to convey them, if they are not satisfied that excise goods are intended for personal consumption. This continues to be an important part of our fight against all forms of excise fraud, and in particular tobacco smuggling.

Customs use an array of sanctions against excise fraud. Like most Member States the UK has legal provisions that permit the seizure of vehicles used in smuggling attempts. Other Member States adopt a similar approach.

Customs' vehicle seizure and restoration policies are applied in a proportionate and graduated way so that they bite hardest on the 'professional bootleggers' but provide for restoration for small-scale first time offenders

Recommendation 24. That IMPEX staff and excise control staff are brought under the same local management, but that their role remains sufficiently flexible to enable them to change tactics quickly to respond to new trends in excise fraud.

Response. Accepted – see recommendation 22.

Recommendation 25. That detailed guidance be produced as soon as possible for IMPEX staff on the benefits of the register of owners, hauliers and warehousekeepers, and how it should be used and controlled.

Response. Accepted.

Guidance was issued to all staff in May 2001.

Recommendation 26. That the Department continues to deploy sufficient resources to keep outward diversion fraud suppressed, otherwise there is a real danger that it will re-emerge as the Department tightens the screw on inward diversion.

Response. Accepted.
See recommendation 21

Recommendation 27. That the Department moves as quickly as possible to introduce tax stamps for spirits, and associated sanctions, to protect both excise revenues and the UK's whisky production industry.

Response. Not accepted.
After examination of costs and benefits, the Government announced in Budget 2002 that it would not introduce tax stamps at this time.

Recommendation 28. That the Department focuses its attention on this area, in order to avoid any further unexpected shocks if it is subsequently found that hydrocarbons smuggling and outward diversion are far greater problems than they are currently believed to be.

Response. Accepted.
Customs have significantly increased activity in analysing, quantifying and tackling the threat in the oils sector. Operationally this has resulted in increased front-line resources in Northern Ireland and the running of a number of successful operations on the UK mainland. Continual evaluation of this enhanced activity is a key part of ensuring the Department retains a strategic overview of the fraud threat in the oils sector.

Recommendation 29. That the level at which Director approval is required to put revenue at risk is reduced to the level at which director approval is required to write-off or remit debts, i.e. £1 million. This recommendation is based on my finding that the recovery levels of revenue put at risk in cases of outward diversion are minimal.

Response. Accepted.
The levels at which managers may put revenue at risk and write-off debt have been synchronised.

Recommendation 30. That:

- the legal status of indemnities should be clarified, either within the existing legal framework or through additional legislation;
- written indemnities only are used to avoid the potential for misunderstanding caused by verbal indemnities; and
- a separate, additional authorisation system to indemnify is put in place, as there is a greater risk to revenue where indemnities are granted than is otherwise the case.

Response. Accepted.

The legal status of indemnities has been clarified. Indemnities are provided only for exceptional operational reasons, but where it is necessary to provide one it will be given in writing. Amounts indemnified will be in line with the levels of authority to put revenue at risk delegated to the person providing the indemnity. The Department will maintain a central record of all indemnities granted.

Recommendation 31. That the maximum potential revenue loss of £620m is disclosed in the Trust Statement and Annual Report for 1999-2000, and that a write-off of at least £500m is made in that year.

Response. Accepted.

The Chairman's Trust Statement for 1999-2000 disclosed the losses and made appropriate block write-off provisions. The amount certified by the National Audit Office is £668m.

Recommendation 32. That clear guidance is issued concerning the authority and responsibility to remit and write-off, and the timeframe in which this should be performed: it should be re-emphasised that all losses need to be accounted for; responsibility for the action should rest with whichever party is best placed to make the decision and in cases of fraud, the presumption should be that this is the investigating officer; and losses should be remitted or written-off as soon as it is practical to make that decision and should then be reported in the financial statements in respect of the relevant year.

Response. Accepted.

Instructions have been issued to all managers involved in the write-off and remission of revenue setting out a revised management framework, including clear levels of authority. In addition, Customs have provided specific guidance to investigating officers on revenue management and the raising of assessments in investigation cases.

Recommendation 33. That it is very important that the strategies and the annual plans that evolve from the strategies are reviewed annually on a 5 year rolling basis to ensure that they remain effective.

Present position: Accepted.

Customs strategies continue to be the subject of ongoing reviews.

Recommendation 34. That consideration should be given to the interrelations between the Drugs, Tobacco, Financial and forthcoming VAT and Alcohol strategies. I do not believe that any one of these strategies will succeed in isolation.

Response. Accepted.

This is the Department's policy. Customs continuously assesses the interrelationships between and threats posed to the various regimes so that

resources can be monitored and deployed to best effect.

Recommendation 35. That each of the aforementioned strategies is communicated to all levels of staff within the NIS. It is clear from my discussions with staff at various levels, that this has not yet been done or has not been done effectively.

Response. Accepted.

The Business Plan and Investigation strategies have been communicated to all Investigation staff via regional and team events.

Recommendation 36. That a review of the participants of each of the four committees is undertaken, as at present there appears to be some duplication of effort by members of the CMG who appear to attend each of the 4 meetings. This must result in an ineffective use of management time and potential conflicts of interest in decision making between the different committees.

Response. Accepted.

A new structure has been adopted. The Corporate Management Group has been replaced by the Law Enforcement Investigation Operating Committee (LEIOC) which is chaired by the Director Investigation and includes the Regional Investigation Managers. The Investigation Operations Board is chaired by the head of National teams and reports direct to IOC.

Recommendation 37. That, as the NIS plan for 2000-2001 does not specifically refer to alcohol, a plan for alcohol is drawn up as soon as possible. Furthermore, whilst I can accept that numerical measures may be helpful I believe that at present the out-turns are so difficult to predict that the overall strategy should have a much higher priority than the achievement of numerical targets.

Response. Accepted.

The Department has developed estimates of alcohol fraud losses, published on a yearly basis.

Recommendation 38. That a review of the procedures surrounding Excise Intelligence and Research Team (EXIRT) is undertaken. It is vital that intelligence received is analysed, prioritised and developed quickly for hand-over to investigation officers where necessary; a computerised system is implemented as soon as possible to assist with the smooth flow of information through EXIRT. This system will also be able to provide analytical information on the trends developing in excise and other fraud at an early stage; and all information and intelligence is passed to EXIRT, so that a) it is collated in one place, b) more effective use of resources can be made as operational teams can concentrate on operations and c) a proper risk assessment can be made prior to each case being undertaken. EXIRT should act as the focal point for the co-ordination of intelligence for the NIS as a whole.

Response. Accepted.

EXIRT teams now form one intelligence branch. A computer system is being developed to enhance the operational intelligence capacity within the branch. Pathways are being established throughout the business to facilitate the two-way flow of intelligence.

Recommendation 39. That a real time information management system is urgently required. This system needs to be accessible by everyone and should require case officers to input relevant information on a timely basis. This should then result in management reports that contain sufficient information for all levels of management to act swiftly as and when required.

Response. Accepted.

This recommendation relates to the introduction and development of an IT system. In the absence of an IT system to support better case management, revised procedures have been put in place to improve manual case handling. See recommendation 65 and 66.

Recommendation 40. That the Chairman ensures that all members of senior management, both at Board level and below, are made aware of their duties and responsibilities to keep their superiors informed of important issues.

Response. Accepted.

Building on the management changes put in place in April 2000, the Chairman announced a restructuring of the Department into two business streams: Business Services and Taxes, and Law Enforcement. The day to day control of the two business streams rests with Operating Committees comprising the functional Directors. This has brought greater clarity to lines of responsibility and eliminated overlapping accountabilities.

Recommendation 41. That the Board should have a statement of its role and objectives which includes a significant focus on the statutory objective of collection and management of revenue through an appropriate reporting process.

Present position: Accepted.

The Board approved a statement of its role and objectives at its meeting in July 2001. A Revenue Controller has been introduced to oversee the workings of the 'revenue supply chain'.

Recommendation 42. That within the Board structure, either at Board level or at Management Committee level (subject to the supervision of the Board) there should be a body where collective discussion of business issues can take place, and collective solutions decided upon and line management be held accountable to the Board as a whole.

Response. Accepted.

The Management Committee, a sub-committee of the Board, is responsible for the day-to-day running of the Department, ensuring the coherence and pertinence of operational, financial, personnel and support services policies and initiatives.

Recommendation 43. That the benefits of a collective management ethic and collective approach to the discharge of all aspects of the responsibilities for the Commissioners needs to be emphasised by the current Chairman.

Response. Accepted.

The Chairman announced a major new initiative in December 2000 to improve the Department's approach to management. The "Active Management" initiative has been promulgated to all managers and Directorate/Divisional action plans have been developed. In addition, new generic management objectives were set for 2001/2002.

Recommendation 44. That the Chairman should review carefully the role and structure of the Policy and Operations functions in order to ensure that they communicate effectively. This review should encompass investigation of whether the split between Operational Policy and Pure Policy remains an appropriate or valid one.

Response. Accepted.

This recommendation has been implemented through the re-organisation of the Department announced on 17 January 2001. The Department no longer separates policy from operations; each of the two business streams, Business Services and Taxes and Law Enforcement, integrates policy within the operational decision-making process under the same Director-General.

Recommendation 45. That efforts be made by the Chairman to promote suitable candidates who have operational experience to senior management positions, and if possible to the Board. In this way the Board and Senior Management will be able to bring to bear valuable operational experience to the wider management of the Department.

Response. Accepted.

The Appointments Committee (the Board committee responsible for approving all senior appointments) will continue to ensure that appropriate consideration is given to operational experience within the overall objective of finding the best qualified people for posts.

Recommendation 46. That there be a Finance Director who should sit on the Board and the Management Committee. He would have overall responsibility for both analysis and accounting for revenue and for control and stewardship of costs. This Finance Director should be an experienced accountant with relevant experience for the breadth and complexity of the role. I also recommend that he be supported by a Financial Controller who would have day to day responsibility for all aspects of the financial management and accounting. He should also be an accountant, with experience of a similar role within another substantial Organisation. This I believe would address the inadequacy of the

financial support documentation which was available to the Board in the past and would assist in Board discussion on all financial and accounting matters.

Response. Modified approach adopted.

One aspect of the re-organisation announced on 17 January 2001 was the expansion of the role of the Principal Finance Officer, who is now accountable for both expenditure and revenue. A suitably qualified Accounting Adviser has been recruited from the private sector to advise the Principal Finance Officer on analysis and accounting for revenue, and on control and stewardship of costs.

Recommendation 47. That the Chairman institutes a review of the Department's approach to document retention and destruction, including board papers, with a view to creating and implementing a coherent and comprehensive policy.

Response. Accepted.

A clear departmental policy exists which is being reviewed in the light of the Department's knowledge management initiative.

Recommendation 48. That the scope and remit of the Audit Committee be reviewed, and that its Terms of Reference provide to the Audit Committee a role in reviewing internal management systems and controls at all levels right up to Board level with a view to making recommendations for improvement, and ensuring compliance with best practice.

Response. Accepted.

The Audit Committee was reconstituted in October 2000. New Terms of Reference, which take account of Treasury recommendations and private sector good practice, make it clear that the Committee has the responsibility for reviewing internal control and management systems, as well as directing the annual Audit Programme.

Recommendation 49. That the future role and resourcing of Internal Audit be reviewed with a view to identifying the current strengths and weaknesses of the function and establishing how best any weaknesses may be addressed and the function strengthened and improved.

Response. Accepted.

This has been implemented by means of a 'Better Quality Services' review of the Department's internal audit function in August 2000, where areas for further development of Internal Audit were identified.

Recommendation 50. That, as the National Audit Office do not appear to have been present at many of the Audit Committee meetings, in future the Audit Committee should liaise more closely with the National Audit Office.

Response. Accepted.

Two senior representatives from the NAO now attend each Audit Committee meeting as standing invitees.

Recommendation 51. That the Audit Committee should meet four times a year.

Response. Accepted.

The Audit Committee now meets at least four times a year.

Recommendation 52. That, in light of my conclusions concerning lack of clear lines of responsibility, and lack of a properly functioning committee structure, a new management structure should be implemented comprising a two tier structure. At the head of the structure will be the Board of Commissioners. I recommend that a substantial proportion of the members of this Board should be drawn from outside the Department, which would therefore comply with best practice in terms of good corporate governance in the private sector. I envisage that the role of the Board of Commissioners will be primarily strategic. It will deal with the relationship with Treasury Ministers and delivering the targets required of them and on the overall direction of the Department. Ultimate power and responsibility will remain with the Board on a collective basis. However, they will then delegate their more detailed management and decision making role to a Management Committee, but they will receive regular full Board papers including the minutes of the Management Committee. As recommended above the Board will operate with a revised remit which provides a more balanced set of objectives than previously.

Response. Accepted.

In April 2000 a new Management Committee was formed with responsibility for managing the Department's business, thereby clarifying accountabilities and streamlining decision making. Five non-executive Directors now sit on the Board.

Recommendation 53. That below the Board of Commissioners there should be a Management Committee. This should be led by the Chairman as Chief Executive, and should include Directors of Finance, Information Systems and Human Resources as well as heads of business lines. The Management Committee will be the executive body responsible for much of the decision making and management of the Department as a whole.

Response. Accepted.

In April 2000 a new Management Committee was established with responsibility for managing the Department's business. The Principal Finance Officer and Director of Logistics and Finance, and the Director Information and e-Services are members of the Committee. The Personnel Director reports to the PFO.

Recommendation 54. That the Management Committee should meet at least monthly. It is essential in my view that this committee acts with collective responsibility, in particular for the major issues which confront the Department, and assists the Chairman to discharge his own personal responsibilities to the Treasury, the Public Accounts

Committee and to Parliament. Individual Directors will be accountable to the Management Committee for the discharge of their line management functions.

Response. Accepted.

The Management Committee generally meets once a week. Individual Directors are accountable for their respective business functions and related targets.

Recommendation 55. That the Department should recruit a qualified accountant for the role of Finance Director, with responsibility over all financial areas.

Response. Modified approach adopted.

See recommendation 46.

Recommendation 56. That the Accounting Services Division (ASD) and Analysis Divisions should be merged with the Finance Division in order to provide a single Finance function with overall ownership of and responsibility for all aspects of financial information and policy.

Response. Accepted.

Analysis Division is now within one of the two main business streams, BST, and continues to provide the necessary analytical input to both BST and LE.

Recommendation 57. That development of an integrated revenue management accounting system should be a priority.

Response. Accepted.

The feasibility business study stage of this project is due to report in July 2003.

Recommendation 58. That the Department should aim to develop and integrate management and financial reporting systems, and the systems for revenue management and accounting should be simplified.

Response. Accepted.

The first phase of changes to the management information system is complete.

Recommendation 59. That the monthly reporting on expenditure however should be combined with monthly detailed analysis of revenue receipts to provide a complete monthly management reporting pack.

Response. Accepted.

The Government published alongside the November 2002 Pre-Budget Report an “End of Year Fiscal Report”. The report analyses the differences between forecast and fiscal outturn for the year ahead forecasts published in Budget 2000 and Budget 2001 and considers their possible causes. End of year fiscal reports will be published alongside future pre-Budget Reports.

Recommendation 60. That the Department should continue to focus on introducing procedures in respect of resource accounting with a view to producing monthly management accounting for expenditure on an accruals basis.

Response. Accepted.

Resource based information began to feature in the Management Accounts during the second half of 2001. The Department continues to develop its systems and procedures to support full implementation of resource accounting and budgeting.

From 2001-02 onwards the budgetary control totals voted to the Department by Parliament have been on an accruals basis, i.e. reflecting resources consumed rather than cash spent.

Recommendation 61. That processes are put in place which facilitate close and effective working relationships between Central Intelligence (CI) officers in the Outfield and their operational colleagues.

Response. Accepted.

The reorganisation announced on 17 January placed the 13 Collection Intelligence Divisions and Central Intelligence under a single national structure, headed by a functional Director and supported by a regional management structure. The new regional management structure was carefully designed to align with counterparts in Investigation, Detection and Business Services so as to increase cross-functional engagement.

Recommendation 62. That, in line with the Internal Audit Division (IAD) recommendation, better national co-ordination of Outfield intelligence should be a high priority objective.

Response. Accepted.

See recommendation 61.

Recommendation 63. That the teams currently within CI that are responsible for quantitative analysis should be merged with the Analysis Division, although it may be appropriate for these individuals to be included as a separate team within Analysis Division.

Response. Modified approach adopted.

The Department accepts that there should be closer co-ordination between the CI teams and Analysis Division. Analysis Division, however, provides a service for many parts of the Department and Customs have concluded that merger as proposed would not lead to a better service. Nonetheless, overlapping responsibilities and duplication of effort have been eliminated through a new agreement on roles, responsibilities and co-operation.

Recommendation 64. That an urgent review of the current IT for intelligence purposes at ports be undertaken with a view to better facilitating the work of the Customs officers.

Response. Accepted. See recommendation 65.

Recommendation 65. That as soon as it is appropriate a further study be undertaken into the benefits that could be derived from the use of expert systems.

Response. Accepted.

These recommendations are being taken forward as part of the Departmental Business Transformation work. In the absence of integrated IT systems, policy is being reviewed to simplify and improve existing manual systems.

Appendix 8 – Statement of HMCE’s Goals

Our goal is to be the best risk management organisation in the UK public sector, comparable with the best in the private sector and capable of taking on a wide range of real time risk management tasks.

To achieve this goal requires us to combine appropriate skills with the attributes of a learning organisation.

The skills we require are risk profiling and resourcing, physical and financial audit skills and practical task management. The attributes we require to make these skills relevant are responsiveness, flexibility, decisiveness and speed.

We will actively manage ourselves to achieve this balance of skills and attributes. This will require management to work as a team, to demonstrate leadership, to communicate openly and honestly, to focus on outcomes and to accept personal ownership and accountability for our strategies and outcomes.

The primary management task facing us is to achieve the business transformation required to deliver this goal without disrupting existing business. We will employ three business strategies to support this transformation: an e-business strategy, an HR strategy and a management development strategy.

We recognise that it will be essential to carry our staff with us to be successful.

We will measure success, first, by our ability to devise and meet outcome based targets for our existing activities; second, by satisfaction surveys of our customers and stakeholders; and third, by the extent to which we are seen by Government as the first choice organisation to take on new relevant tasks as and when policy developments require.

APPENDIX 9: MEMORANDUM OF UNDERSTANDING

Memorandum Of Understanding between the Economic Secretary to the Treasury on behalf of Her Majesty's Treasury ("the Treasury"), the Attorney General ("the Attorney") and the Commissioners of Customs & Excise ("the Commissioners") concerning the conduct, resourcing, and accountabilities for Customs & Excise prosecutions under the auspices of the Attorney General.

[9 January 2003]

Intensified Oversight

1. In accordance with arrangements announced to Parliament by the Attorney on 26 March 2002, the Attorney has, from 1 April 2002, exercised an intensified oversight of prosecutions undertaken by the Commissioners in England and Wales, with consequential changes to Ministerial accountabilities, as announced to Parliament. This Memorandum records in greater detail the arrangements applying in 2002/3, and subsequent years. It is subject to modification by agreement of the parties to it. An explanatory commentary is attached as Schedule 3.

Ministerial Responsibilities

2. Subject to the convention that Treasury Ministers do not intervene in individual Customs & Excise Department investigations and prosecutions, the Commissioners will be responsible for, and accountable to Parliament via Treasury Ministers for:

- anything done in the course of an investigation
- enforcement policy, including the criteria to be used in deciding whether alternatives to prosecution should be applied, eg compounding, civil evasion proceedings, or warnings linked to forfeiture of goods, and, for the year 2002/3, the resources to be deployed by Prosecutions Group
- prosecution policy, that is, the seriousness with which offences should in general be treated, following consultation with the Attorney
- wider issues of Departmental policy, such as the disclosure of informants.

3. The Attorney will be responsible for, and accountable to Parliament for

- the quality of legal advice given by Prosecutions Group Investigation Legal Advisors
- the quality of Prosecutions Group casework decision making, and its execution, in relation to cases referred to the Group for prosecution
- the application (Prosecutions Group having consulted with Customs administrators, as appropriate) of prosecution policy and public interest factors to individual defendants in cases referred to Prosecutions Group for prosecution

- from 2003/4 onwards, the resources to be deployed by Prosecutions Group.

Prosecutions Group

4. From 1 April 2002 prosecutions and related work, undertaken by the Commissioners, are conducted by a separate Prosecutions Group within the Office of the Solicitor. It has dedicated staff answerable only to the Head of Prosecutions Group, who in turn answers to the Solicitor. The Solicitor is answerable

- to the Attorney for the Prosecutions Group work for which the Attorney takes Ministerial responsibility, and
- to the Chairman of the Board of Customs & Excise for the other activities of the Solicitor's Office generally, and in relation to those areas of Accounting Officer responsibility which the Chairman discharges to the Attorney.

5. In accordance with Cabinet Office rules, the Head of Prosecutions Group and the Head of Operations will be appointed by the Attorney, and the Solicitor will continue to be appointed by the Chairman. In each instance, the appointments will be on the nomination of an appointments board including the Treasury Solicitor or her representative, and with the consent of the Treasury Solicitor, as Head of the Government Legal Service, and, in the case of the Solicitor, of the Cabinet Office Senior Appointments Selection Committee. The terms, conditions and human resources (HR) arrangements of Prosecutions Group staff will remain on all fours with comparable staff elsewhere in the Solicitor's Office, whether or not legally qualified. But the Attorney, as occasion requires, will nominate a representative with appropriate experience and training:

- to be associated with the Customs & Excise Pay Committee in its determination of the pay of the Solicitor and senior staff in Prosecutions Group
- to be a member of any panel charged with considering any allegation of gross misconduct against the Solicitor or any member of the Prosecutions Group under Departmental disciplinary procedures
- to be a member of any panel considering a grievance or appeal from the Solicitor or any member of staff in the Prosecutions Group, under Departmental Grievance and Appeal procedures.

6. The Commissioners will retain a common departmental citizenship for non-legal staff, with a view to ensuring no impairment of career opportunities, and will, subject to the overall resource constraints of the Department, use their best endeavours to improve the working conditions, including accommodation, of the Prosecutions Group, as contemplated by the Gower Hammond Report. The Prosecutions Group will actively develop its staff, and will participate fully in wider Departmental initiatives such as Active Management, Investors in People (IIP) and Promoting Diversity.

7. Without prejudice to any subsequent revision of responsibilities agreed between the parties, Schedule 1 to this Agreement sets out the agreed distribution of responsibilities for prosecution and

other linked work, and for its funding, between Prosecutions Group, other staff of the Solicitor's Office, and Customs administrators.

Funding

8. With a view to funding the Prosecutions Group independently from other activities of the Commissioners, it will be for the Attorney, beginning with the year 2003/4, to bid for funds (as part of his overall bid for funds) for prosecutions work in the Spending Reviews conducted periodically by the Treasury. These will be allocated each year to a separate Request for Resources (RfR) within the overall Customs Estimate. At the same time, Treasury Ministers will bid for funds for the balance of the Commissioners' activities, for allocation to a separate RfR.

9. Subject to Government Accounting rules restricting the transfer of resources between separate Requests for Resources, both Requests will be presented within a single Estimate for the Customs & Excise Department. The Chairman of the Board of Customs & Excise will be appointed as the single Accounting Officer for the Department's Estimate, covering the two Requests for Resources, as contemplated by S5(6) Government Resources and Accounts Act 2000.

10. The Commissioners and the Attorney agree that:

- any DEL End Year Flexibility (EYF) arising in relation to the Prosecutions Group will be made available in aid of Prosecutions Group, for spending in future years
- where capital spending is voted by Parliament aggregated at the Estimate level, any indicative amount assigned to the Prosecutions Group Request for Resources will not be expended otherwise than in aid of Prosecutions Group, and the non-cash resource consequences of any such capital spend shall be at the expense of Prosecutions Group.

11. The Commissioners and the Attorney undertake that they will consult each other from time to time (and in particular each year in advance of the making of Requests for Resources under the Estimates process for any particular year) about the impact of the proposed or foreseeable investigations to be undertaken by the Commissioners, and of the prosecutions to be undertaken by Prosecutions Group, on each other's requirements for resources

12. In relation to Prosecutions Group work, it will be for the Attorney to present any Reserve claim. The consequences of this are to be the subject of further negotiations between the parties. If the issues are not resolved by the end of November 2003, then the Departmental Expenditure Limit (DEL) implications of Prosecutions Group spending will be treated thereafter as the responsibility of the Attorney.

13. Whenever it appears that the resources available to Prosecutions Group are likely to fall short of those required to fund the level of prosecution activity reasonably implied by the level of investigation activity contemplated by the Commissioners, or are otherwise likely to be insufficient, the Solicitor and the Commissioners will consult, with a view to the Solicitor making an early identification to the Attorney of the need for additional resources.

14. To the extent that no, or insufficient further resources will be forthcoming, then, with a view to ensuring that the resources used do not exceed the resources available, and subject to ongoing consultation between them

- the Commissioners will adjust the scale and priority of investigation work, and the criteria for applying alternatives to prosecution, and
- the Solicitor will apply the resources available to Prosecutions Group by broad class of case in a manner which reflects the priorities of the Commissioners.

Accounting Officer Responsibility

15. In accordance with Government Accounting rules, as set out in his Accounting Officer letter and Memorandum, the Chairman as Accounting Officer has, under Ministers, personal responsibility for the overall organisation, management and staffing of the Department and for Department-wide procedures, where these are appropriate, in financial and other matters.

16. It is incumbent on him to combine these duties with his duty to serve the Ministers to whom he is responsible. The Chairman as Accounting Officer will also ensure that there is a high standard of financial management in the Department as a whole; that financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the Department; and that financial considerations are fully taken into account in decisions on policy proposals. He is personally responsible for the propriety and regularity of the public finances for which he is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the available resources.

17. As Accounting Officer he has a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness. The declared Ministerial responsibilities (paragraphs 2 and 3 above) will determine to which Minister (Attorney or Treasury Ministers) these responsibilities are to be discharged.

18. In fulfilment of the Accounting Officer's duty to ensure that proper financial procedures are followed and suitable accounting records are maintained, the accounts of Prosecutions Group are maintained as an identifiable entity within the Departmental accounting system. The methods for identifying the resources consumed by Prosecutions Group, and the fair attribution to it of Departmental overheads, and other costs, will be settled in advance of the financial year each year by agreement between the Solicitor and the Customs & Excise Principal Finance Officer or their representatives.

Audit

19. In fulfilment of the Accounting Officer's duty to ensure that internal audit of the Department's activities is established and organised in accordance with the Treasury's Government Internal Audit Standards (GIAS), the Customs & Excise Internal Audit Division will from time to time audit work undertaken by Prosecutions Group. The Attorney has also asked the Crown Prosecution Service

Inspectorate to undertake inspections from time to time of the work of Prosecutions Group, in regard to matters for which he has Ministerial responsibility.

20. The Commissioners and the Attorney undertake that the Division and the Inspectorate will cooperate to secure the due discharge of their respective tasks, and to this end will exchange copies of (or where appropriate, extracts from) any reports that either produces covering work done by Prosecutions Group. The Division will also from time to time audit the extent to which the Attorney's guidelines on disclosure are being observed by Departmental investigators of crime, and will make available to the Inspectorate copies of any reports covering this subject.

Service Standards

21. Service standards for the discharge of Prosecutions Group functions will be developed by agreement between the Attorney and the Commissioners. A statement of Mutual Understanding of Responsibilities between Prosecutions Group and the Directorate General of Law Enforcement of Customs & Excise is set out for information in Schedule 2 to this Memorandum. It is liable to be amended from time to time by agreement between the Solicitor and the Director General of Law Enforcement, or their representatives.

Miscellaneous

22. As from 1 April 2003, Prosecutions Group will adopt the name "Customs & Excise Prosecutions Office" (CEPO), and will share, with the Crown Prosecution Service (CPS), a common service standard for handling complaints (reply to be issued within 3 working days if possible, otherwise acknowledgement and full reply to issue within 10 working days).

23. It will produce an Annual Report of its activities, which may be included within that of the Commissioners, which will be the occasion for discussion between the Commissioners and the Attorney about matters of mutual interest, including prosecution policy and the results achieved. Prosecutions Group will also maintain an identifiable presence on the Commissioners' external website, linked as appropriate to that of the Law Officers.

SCHEDULE 1

DISTRIBUTION OF WORK AND FUNDING RESPONSIBILITIES

1. Prosecutions Group will

- Advise Departmental investigators of crime on all relevant legal aspects of specific investigations prior to the commencement of criminal proceedings, with a view to legally assuring the investigation process, and managing the transition of the more complex cases from investigation to prosecution.
- Conduct prosecutions and related extradition proceedings before Magistrates Courts, or instruct Counsel to do so, in relation to any assigned matters, in particular VAT, insurance premium tax, landfill tax, climate change levy, aggregates levy, excise and customs offences (including the smuggling of prohibited, restricted and revenue goods), money laundering, and assaults on customs officers.
- Conduct, or instruct Counsel to conduct, prosecutions in relation to any assigned matters tried on indictment in the Crown Court.
- Instruct Counsel on behalf of the prosecution in relation to such criminal cases as are appealed to the Court of Appeal or the House of Lords.
- Appear, or instruct Counsel, in relation to appeals from Magistrates' Courts to the Crown Court in connection with criminal proceedings.
- Assist the Cabinet Office, the Treasury Solicitor's Department and the Foreign and Commonwealth Office in relation to cases before the European Court of Justice arising out of Prosecutions Group prosecutions.
- From 1 April 2003, bear the cost of the preceding activities, along with
 - Any order for costs against the prosecutor in Prosecutions Group cases.
 - Any confiscation order hearing post conviction, including any subsequent review hearing.

2. Solicitor's Office staff other than Prosecutions Group will

- Advise the Commissioners on the application of alternatives to prosecution, eg as to the sufficiency of evidence to support the offer of a compounded settlement, whether arising before or after the commencement of criminal proceedings.

- Handle international mutual legal assistance requests, asset forfeiture and cash detention work, and condemnation proceedings.
- Undertake civil litigation in aid of the prosecution function eg applications for freezing orders under the Proceeds of Crime Act 2002, defence of actions for unlawful arrest, malicious prosecution, wrongful restraint of assets and compensation.

3. The activities of Solicitor's Office staff other than Prosecutions Group shall be at the expense of the Commissioners, who will also bear the cost of any damages or compensation arising in consequence of civil litigation in aid of the prosecution function.

4. The Commissioners and the Attorney agree that once a prosecution case has commenced, the right to discontinue proceedings, on grounds of evidential insufficiency or public interest, rests exclusively with Prosecutions Group. The Attorney undertakes that a case will be discontinued on public interest grounds only after consultation with the appropriate Customs administrator, and then only on the authority of the Solicitor, the Head of Prosecutions Group, or his Head of Operations. The Commissioners agree that the power to stay proceedings under Section 152(a) Customs and Excise Management Act 1979 will be delegated exclusively to the Solicitor, the Head of Prosecutions Group and his Head of Operations, who will consult the appropriate Customs administrator before any exercise of the power. Where it is necessary to stay proceedings as part of a compounded settlement arising after the commencement of criminal proceedings, the Solicitor will exercise the power personally, at the request of the appropriate Customs administrator.

Case Adoption	
<ul style="list-style-type: none"> • Begin case decision log. • Where necessary request an Investigation Legal Adviser. • Start Prosecution log in line with Butler 19 which states that a contemporaneous note should be kept of all information given by the case team to case lawyer or counsel. • Complete C&E960/Case control record. • Consider Tripartite agreement to implement sensitive case action. 	<ul style="list-style-type: none"> • Designate Investigation Legal Adviser if appropriate and open file, record sufficiently detailed notes of relevant meetings • Consider Tripartite agreement to implement sensitive case action.
Pre-Knock /Arrest	
<ul style="list-style-type: none"> • Consider reference to the Investigation Legal Advisers and as appropriate seek the appointment of a prosecution case lawyer. • Provide information for Commission Rogatoire/MLA and forward to Solicitor. • Consult LE Policy (if required) – for sensitive case or policy issues. • Consider compounding, and where it is the preferred option, obtain legal advice on the strength of evidence. • Commence financial investigation and consider all options for recovery of assets (both civil and criminal) including the Asset Forfeiture Unit (AFU). 	<ul style="list-style-type: none"> • Investigation Legal Adviser to provide pre-knock case specific advice and draft Commission Rogatoire (if required) for the appropriate authority. • Asset Forfeiture Unit to provide advice and assistance in relation to restraint of assets. • Exceptionally arrange for advice from counsel. • Consider Tripartite Agreement.
Knock/Arrest	
<ul style="list-style-type: none"> • Decision to charge or request for Information and Summons. • Bail, conditions or objections itemised. • Notify all sensitive cases to LE Policy for issue of Proceedings Order for Information and Summons – where not charged. • Fiscal offences to be notified to LE Policy to consider the issue of Administrators notification – where charged or Proceedings Order for Information and Summons. 	<ul style="list-style-type: none"> • Investigation Legal Adviser to be available to operational case manager. • Allocate case lawyer and case manager. • Manage handover to prosecution casework unit. • Provide advice to LE Policy on sufficiency of evidence.

Pre-Trial

<p>Ø Refer to appropriate LE Policy Group if any Policy/Sensitive issues arise and advise of any pleas, stays or the offering of no evidence in all sensitive cases.</p>	<p>Ø A member of the operational case team to attend court hearings. Case lawyer/ case manager or counsel briefed by Solicitor's Office will attend or arrange for attendance at all court hearings except those taken by Court Liaison Officers in Magistrates Courts (as below).</p>	<p>Ø Court Liaison Officer to conduct guilty pleas/mode of trial at plea before venue hearings in straight forward cases. Solicitor to be advised of the outcome and any new hearing dates.</p>	<p>For indictable only cases:</p> <p>Serve information pack on defence & ensure that pack is served on Crown Court for judge prior to first appearance at crown court.</p> <p>Obtain copy of Magistrates Notice sending case to Crown Court & setting date for preliminary hearing.</p> <p>Serve copy of the Notice on defence in reasonable time.</p> <p>Send copy of Notice to case team for information.</p>
<p>Ø Arrange first appearance or remands through relevant prosecution casework unit or court liaison officer.</p> <p>Liaise with Solicitor's Office representative to list bail conditions or objections and antecedents.</p> <p>For indictable only cases:</p> <p>Provide information pack containing front sheet containing details of all defendants including names, addresses and DOB. Charge sheets, case summary and previous convictions.</p>	<p>Ø Written notification to be given to operational/legal case team of all court appearances including full details of any orders and dates of next hearing.</p>	<p>• Report the case to the Solicitor's Office registry within 5 working days from arrest and bail - supply a case summary (setting out the evidence against each defendant in relation to each charge) and separate note on pink paper for any sensitive issues.</p> <p>• Arrange a case conference with case lawyer to establish time limits for further submission of case papers.</p> <p>• Complete or update C&E 960/ case control record.</p>	<p>Committal, transfer and Section 51 proceedings:</p> <p>Copy charge sheets, custody records, tapes and any other advanced information. Case officers may serve advanced information (AI) in Detection cases if the first appearance is listed before Solicitor's Office can serve AI. Case Officers should send a copy of AI to Solicitor's Office.</p>
<p>• Arrange first appearance or remands through relevant prosecution casework unit or court liaison officer.</p> <p>• Liaise with Solicitor's Office representative to list bail conditions or objections and antecedents.</p>	<p>For indictable only cases:</p> <p>Serve information pack on defence & ensure that pack is served on Crown Court for judge prior to first appearance at crown court.</p> <p>Obtain copy of Magistrates Notice sending case to Crown Court & setting date for preliminary hearing.</p> <p>Serve copy of the Notice on defence in reasonable time.</p> <p>Send copy of Notice to case team for information.</p>	<p>• Serve advanced information and copy to operational case team.</p> <p>• Case lawyer to review evidence and assess public interest in accordance with the Code for Crown Prosecutors and determine which defendants should be prosecuted for what offences.</p>	

<p>Ø All defence correspondence and calls to be via case lawyer. Case lawyer will not pass contact details of operational case team to defence unless agreed for viewing of material. Solicitor's Office will always be involved in facilitating this contact.</p>	
<p>Ø Case lawyer with help of operational case team to make initial consideration of items/issues that undermine the prosecution case prior to committal/transfer/sending to Crown court – all decisions to be recorded in the Prosecution Case Record/ Prosecution Log.</p>	
<p>Ø All correspondence and emails to be copied to prosecution casework unit quoting the solar references.</p>	<p>Ø Any defence requests received to be notified to operational case team in writing.</p> <p>For indictable only proceedings: Within 28 days of sending the case to Crown Court a bill of indictment must be lodged.</p>
<p>Ø Continuous consultation with case lawyer on the need for MIA/ Commission Rogatoire, production/Access orders, assessment of evidence and way forward.</p>	
<p>Ø No direct contact between the operational case team and chambers. Ø All conferences to be arranged by case lawyer who will draft an agenda and conference note. Ø Case lawyer/case manager to attend all conferences. Ø Record to be kept in prosecution log as per Butler 19.</p>	<ul style="list-style-type: none"> Send out standard notification letter.
<ul style="list-style-type: none"> Standard notification letter to be followed. Draft indices to be e-mailed to case manager. <p>For indictable only: Attend crown court for preliminary hearing</p> <p>One set of unpaginated papers containing prosecution case to be sent to case lawyer along with a photocopying note highlighting evidence</p> <p>For committal proceedings papers to be submitted no less than 10 working days prior to committal unless otherwise agreed in writing.</p> <p>For transfer proceedings papers to be submitted prior to transfer at time agreed in writing with case lawyer</p> <p>For indictable only papers to be submitted no later than 4 weeks from preliminary hearing at crown court unless otherwise agreed in writing</p>	<ul style="list-style-type: none"> Send out standard notification letter. <p>For indictable only: Attend crown court for preliminary hearing</p> <p>Copy papers in accordance with photocopying note. Advise operational case officer (and if appropriate LE Policy) about the sufficiency of evidence within five days of receipt.</p> <p>Papers to be served on defence no later than 5 working days before committal</p> <p>Papers to be served in a reasonable time in transfer proceedings</p> <p>For indictable only serve prosecution case including standard letter referring to witness requirements and other matters</p> <p>Serve prosecution case on the crown court</p>

Law Enforcement	Solicitor's Office
<ul style="list-style-type: none"> Disciplinary checks on official witnesses as per G3-11a Appendix J. CRO and Cedric checks on all non departmental witnesses and advise case lawyer of the results Initial primary disclosure schedules and disclosure officer's report must reach case lawyer within 7-14 days of committal, transfer or prosecution case being served unless otherwise instructed because of a local practice direction. Prepare a bundle of unpaginated disclosable material with index to be forwarded to case lawyer for copying to defence. 	<ul style="list-style-type: none"> Collate and brief counsel on any issues. Consider schedules and material where necessary with help of disclosure officer. Advise in writing which items are disclosable and need to be copied or viewed. Paginate, copy and send unused material to defence or facilitate defence access to it.
<ul style="list-style-type: none"> Preston conference to be conducted in respect of warranted material obtained under Part 1 RIPA 2000. To review all material and commence secondary disclosure, complete new disclosure schedules and disclosure officer's report and send to case lawyer. Copy bundle of unpaginated disclosable material with index to be forwarded to case lawyer for serving. 	<ul style="list-style-type: none"> Supply copy of defence statement with an explanation of legal terms and issue any instructions in writing. Case lawyer to attend Preston Conference if appropriate. Consider schedules and material where necessary with help of disclosure officer. Advise in writing which items are disclosable and need to be copied or viewed. Paginate, copy and serve unused material or facilitate defence access to it.
<p style="text-align: center;"><i>Ø Disclosure is an ongoing process, which must continue throughout the life of the case. All new material must be considered for primary and secondary disclosure whatever time it is received and placed on the schedule (sensitive and non-sensitive as appropriate).</i></p>	
	<ul style="list-style-type: none"> An electronic version of the indictment to be forwarded to the operational case officer for information purposes.
	<ul style="list-style-type: none"> Prepare production orders for prisoner attendance at court – where necessary.
	<ul style="list-style-type: none"> Arrange facilities at court for period of the trial i.e. a secure room, photocopier and stationary.

Law Enforcement	Solicitor's Office
<ul style="list-style-type: none"> • Witness availability to be collated & provided to case lawyer before plea and directions hearing. 	<ul style="list-style-type: none"> • Brief counsel on witness availability.
<ul style="list-style-type: none"> • Case Officer and Disclosure Officer to attend all PII hearings and provide 3 bundles containing copies of material for which PII is sought (One for The Judge, One for Prosecution Counsel and one for The Disclosure Officer) with index. Original material to be taken to court in case the Judge wishes to view it. 	<ul style="list-style-type: none"> • Case lawyer to attend all PII hearings to brief counsel. • Arrange for attendance of Solicitor's Office personnel for the duration of the case at all Crown Court trials with a representative familiar with case details.
<ul style="list-style-type: none"> • Inform all witnesses of requirements to attend court. • Facilitate witnesses attendance at court. • Assist case lawyer by visiting witness's when necessary. • Collate and forward all witness claims forms to LE Witness Expense Team & chase up payment, if required. 	<ul style="list-style-type: none"> • Manage all non-departmental witnesses when they are in the precincts of the court. • Confirm times of attendance for all non-departmental witness for Investigation Case Team.
<ul style="list-style-type: none"> • Review asset confiscation position towards the end of the trial or when guilty plea indicated. • Prepare draft prosecution statement and send to the case lawyer. • Liaise with case lawyer regarding any subsequent confiscation hearings. • Discuss with case lawyer about other applications to be made to the court eg. Costs, Directorships etc. 	<ul style="list-style-type: none"> • Advise generally and consider adequacy of the prosecution statement and consult with counsel if appropriate. • Serve notice of intention to proceed to confiscation in CIA cases – on the court and defence. • Serve statement on all parties.

Post-Trial

<ul style="list-style-type: none"> • Officers cannot accept the return of any material that has been provided to the jury. 	<ul style="list-style-type: none"> • Inform Investigation Professional standards of any Judge directed acquittals, stayed prosecutions and withdrawals for investigation in line with Butler 14.
<ul style="list-style-type: none"> • Inform all witnesses of the outcome of the case. 	
	<ul style="list-style-type: none"> • Order a transcript of any Judge's commendations for LE management.
	<ul style="list-style-type: none"> • When case closure meetings are applicable with counsel, they are to be arranged and managed by a representative from the Solicitor's Office.
<p>Ø Case Officer to liaise with the case lawyer/manager and arrange for the retention of prosecution material in accordance with legal practice and Departmental policy.</p>	

*Explanatory Commentary to the Memorandum of Understanding
[9 January 2003]*

Paragraph references are to those of the MoU itself.

Parties to the Memorandum

Preamble. The Treasury itself is expressed to be the party to the Memorandum, which extends beyond the responsibilities of the Economic Secretary as Departmental Minister for Customs & Excise.

Intensified Oversight

1. The Attorney General's statement is at HoL WA Col 39 and 40 of 26 March 2002.

Ministerial Responsibilities

2. and 3. The convention finds its most vivid expression in an oral reply by the then Prime Minister, Mrs Thatcher: "The day that politicians interfere with prosecutions, the rule of law will cease to be upheld." (Hansard 28 Nov 1985 Col 1014). The text follows that of the PQ of 26 March 2002, subject to:

- an amplification of what is meant by "alternatives to prosecution"
- incorporation of the transfer from 1 April 2003 of responsibility for the resources to be deployed by Prosecutions Group
- a reference to consultation with the Attorney, in relation to the Commissioners' prosecution policy, now he is responsible for executing it, and
- an amplification of the Attorney responsibility for the quality of casework decision making, to include its execution

Consultation with the Attorney under the 3rd bullet, which relates only to the Commissioners' prosecution policy, will normally be conducted via the Legal Secretariat to the Law Officers. Enforcement policy is for the Commissioners and Treasury Ministers, and almost all the issues likely to arise (such as the balance between prosecution and alternatives to prosecution) will be matters of enforcement, not prosecution policy.

Prosecutions Group

4. and 5. The appointment arrangements for the Solicitor and the Head of Prosecutions Group already embody significant independent elements, and the appointing authority for the Head of Prosecutions Group and his or her Head of Operations is now the Attorney, reflecting the Ministerial accountability for the work. The presence of a representative nominated by the Attorney is designed to reinforce the independence of the Prosecution function, in relation to the three areas (pay, disciplinary arrangements and grievances) judged most vulnerable to perceptions of improper influence. The reference to 'appropriate experience and training' reflects Trade Union Side concerns that such a representative be thoroughly familiar with the issues to be determined on each occasion.

6. The best endeavours statement reflects the "agreed in principle" Departmental response to the relevant Gower Hammond proposal (Rec 8). From 1 April 2003,

resources for Prosecution Group, and its accommodation standards, are matters for the Attorney.

7. Schedule 1 is a “who does what/who pays for what” statement internally agreed between Customs administrators and Prosecutions Group.

Funding

8. The RfR arrangements are those embodied in the supporting documents for the SR2002 Settlement.

9. Combining all RfRs for a given department into a single Estimate, and appointing a single, or principal Accounting Officer for each department, are required by Section 5 Government Resources and Accounts Act 2000. Under Government Accounting, current expenditure covered by an RfR is ring fenced from that covered by any other RfR, even if both are within the same Departmental Estimate.

10. This reflects the Commissioners’ undertaking that any End Year Flexibility accruing to Prosecutions Group will be available for it, rather than being held at Main Estimate level. Capital is normally voted by Parliament en bloc at Estimate, rather than at RfR level, and this paragraph also provides that any capital attributed to the Prosecutions Group RfR in documents supporting that Vote will be ringfenced for that purpose. At the same time, the non-cash resource cost of spending that capital (capital charge etc) will be a charge to the Prosecutions Group RfR.

11. This consultation is without prejudice to the Attorney’s responsibility, in relation to the financial year 2003/4 onwards, to bid for resources, and to determine their allocation to Prosecutions Group.

12. The making of claims on the Reserve in relation to Prosecutions Group work is the responsibility of the Attorney. Gower Hammond Recommendation 4 provides that Prosecutions Group spending should be ring fenced from other spending of the Commissioners, and the MoU contemplates further negotiation with this in mind, and in the context of wider discussions on the public expenditure framework for work for which the Attorney has Ministerial responsibility. If these issues are not resolved between the parties by the end of November 2003, the DEL implications of Prosecutions Group spending, including the implications of Reserve claims for the abatement of EYF, will be treated thereafter as the responsibility of the Attorney.

13. and 14. While the arrangements at paragraph 11 cover routine consultation about the impact of investigation and prosecution work on each other, these paragraphs deal with the more difficult and, it is hoped, rare circumstances where priorities for investigation and prosecution work have to be set in a complementary way, to prevent an overspend on prosecutions budgets, while respecting the independent decision taking of Prosecutions Group in individual cases.

15. 16. 17. and 18. These paragraphs spell out the Accounting Officer responsibilities at length, drawing closely on the Accounting Officer Memorandum. The “advice to the Minister” reference in paragraph 17 includes cases where the Accounting Officer considers that the Minister is contemplating a course of action involving infringement of propriety or regularity (including the need for any Treasury authority for expenditure), or inadequate value for money. (Issue of a “PAC Minute”).

Audit

19. and 20. Besides the mutual assistance and exchange of reports/extracts provisions, the text provides for Customs & Excise Internal Audit Division to check on the observance by Customs investigators of the Attorney's guidelines on disclosure.

Service Standards

21. Service standards are in development, but are not yet in a state suitable to be incorporated in an MoU. The Mutual Understanding of Responsibilities document is internal to Customs & Excise, and will be amended independently of the MoU.

Miscellaneous

22. and 23. The Commissioners' Annual Report is laid before Parliament each year by Command. It is already bundled, in the same physical volume, with a number of freestanding Statements and a Report from the Controller & Auditor General on the Departmental Accounts and Financial Statements. Depending on timing and other circumstances, it may be a suitable and economical vehicle for an annual report by Prosecutions Group. The text provides that the making of an Annual Report by Prosecutions Group should be the occasion for discussion between Customs and the Attorney about matters of mutual interest, including prosecution policy and the results achieved.

Distribution of work and Funding

Schedule 1 paragraph 1 Provision of training to investigators by Prosecutions Group, on repayment terms, will be part of the annual agreement about attribution of costs (paragraph 18 of the MoU).

Schedule 1 paragraph 4. The exclusive right for Prosecutions Group to discontinue proceedings, once commenced, extends to insufficiency of evidence and public interest considerations. The consultation undertaking about discontinuance extends only to public interest grounds. The Commissioners will assimilate the exercise of their statutory power to stay proceedings to this right to discontinue, by delegating the power exclusively to the Solicitor and senior Prosecutions Group staff. The coexisting power, under S152(a) Customs and Excise Management Act 1979, for the Commissioners to compound criminal proceedings, whether or not commenced, is addressed at paragraph 2 of the MoU and Schedule 1 paragraph 2 'Solicitor's Office staff', first bullet, and this paragraph.

Mutual Understanding of Responsibilities

Schedule 2 See paragraph 21 above.

Explanatory Commentary

This Schedule 3.

Appendix 10

HM CROWN PROSECUTION SERVICE INSPECTORATE INSPECTION OF THE MANCHESTER PROSECUTION UNIT OF THE SOLICITOR TO HM CUSTOMS AND EXCISE EXECUTIVE SUMMARY

Introduction

1. This is Her Majesty's Crown Prosecution Service Inspectorate's (HMCPPI) report of the first inspection of the Prosecutions Group of the Office of the Solicitor to Customs and Excise (the Department). It centered on Unit Four of the Prosecutions Group based in Manchester.

2. The Department was the subject of inquiries (in 1999 and 2000) into the handling of two prosecutions. The Butler Report, following the inquiry in 2000, made a number of recommendations. A review was set up to examine the relevant issues, and the subsequent report, the Gower Hammond Report, in direct response to the Butler Report, recommended that the Department's Solicitor's Office should retain its prosecution function, but that the Solicitor should be accountable for this function to the Attorney General. The Gower Hammond Report also recommended that inspections of the prosecution function of the Solicitor's Office (undertaken by the Prosecutions Group) be carried out by HMCPPI.

3. The inspection was undertaken as a pilot, and its findings will assist HMCPPI in determining its methodology for future inspections of the Prosecutions Group. However, its prime purpose was to review the quality of casework decision-making and casework handling (including advisory work) in the Manchester Unit, including all matters that go to support the casework process. HMCPPI also examined other aspects of the Unit's performance, and has reported on a number of management and operational issues, including in particular the extent to which the Gower Hammond Report recommendations have been implemented.

The Manchester Unit

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

5. At the time of our inspection, the Unit had the equivalent of 35.5 full time staff.

Main findings of the Inspectorate

6. Inspectors found that the quality of casework is sound. Pre charge/summons advice is detailed and well reasoned, but is not always provided promptly. Decision-making is generally good, but there is still a lack of clarity about the responsibility for decisions to drop cases on public interest grounds. The quality of both advices and

review notes would be improved if they included an analysis by specific reference to the tests under the Code for Crown Prosecutors.

7. Case preparation overall is sound, although there is some scope for improvement in committal preparation and instructions to counsel. Consideration of disclosure focused on the prosecution rather than investigation stage and, in current cases, lawyers were generally proactive in challenging unused material schedules which required amendment, although there were examples of past failures to examine schedules thoroughly.

8. Improvements in performance management need to be underpinned by the establishment of formal monitoring of casework quality by the managers to improve individual and Unit performance. There is general support throughout the Unit for the change programme, and inspectors were encouraged by the increasingly active engagement of staff in the operation of the Unit. It is clear that Unit staff provide a high level of service to stakeholders.

9. The Prosecutions Group has made considerable efforts to implement the Gower Hammond Report recommendations, in particular those relating to Crown Court cover and attendance at conferences with counsel, although there is still scope to increase the level of magistrates' courts cover. There has been significant progress in achieving a cultural change. The Prosecutions Group has also consulted with the rest of Customs and Excise, and ensured that the changes it has brought about have been effectively communicated. The Unit has played its part in ensuring that the recommendations are implemented as effectively as possible.

10. There are three matters in particular which need to be developed if the Prosecutions Group is to make independent care and conduct of its cases a complete reality. First, court appearances in cases for which it is responsible must be handled by its own staff, agents or advocates instructed by the Prosecutions Group. Secondly, there must be a clear understanding and acceptance that the final decisions in relation to both evidential and public interest tests of the Code for Crown Prosecutors rest with the Solicitor – with accountability being to the Attorney General. Thirdly, the senior lawyer responsible for the conduct of any prosecution must have access to all material where disclosure is in issue. These underpin the progress to independence which was the basis on which the Gower Hammond Report argued against the Butler Report approach that Customs and Excise should cease to be a prosecuting authority. These are all important matters which will need to be taken into account as the arrangements between the Prosecutions Group and HM Customs and Excise are finalised – especially as regards resources.

Specific findings

Advice

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

gaps in evidence, to reduce the number of notices of additional evidence being served after committal.

Review

12. Lawyers in the Manchester Unit are now generally making independent decisions, and continue to do so throughout the course of the case. There is an external impression, however, that lawyers are not making decisions, but are relying on the case officer and counsel. Maintaining the increased court coverage by lawyers and case managers who have knowledge of the case should help to dispel this impression. Clearer guidance on the responsibility for decision-making on public interest matters is also required. There must be a clear understanding and acceptance that the final decisions in relation to both evidential and public interest tests of the Code for Crown Prosecutors rest with the relevant lawyer in the Prosecutions Group rather than Customs and Excise administrators – with accountability being to the Attorney General.

13. There is a drive to learn from experience, with results being discussed in lawyers' meetings, counsel providing advice in all adverse cases and formalised arrangements with investigators and policy administrators (from within Law Enforcement) on specific issues. The work needs to be built upon, however, to ensure that all potential learning points are identified and resolved.

Case preparation

14. Committal papers are reviewed and prepared quickly, but too many notices of additional evidence are served after committal. Instructions to counsel are adequate, but need improvement in both quality and timeliness of delivery.

15. The inspection did not include examination of the unused material in the cases in our sample, other than that which was in the possession of the Unit's lawyers. HMCPSI was not therefore able to form a view about the completeness or accuracy of the unused material schedules in the files which are prepared by investigators, or to determine whether or not full and proper disclosure was being made. Based on our scrutiny of how prosecutors had handled the cases in our sample, we concluded that primary disclosure was dealt with properly in 24 out of 30 relevant cases, although generally timeliness of service was poor. Secondary disclosure was dealt with appropriately in 17 out of 22 relevant cases.

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

Performance in court

17. The quality of in house lawyers is considered by others to be mixed, with a possible advocacy training need for some. Generally, counsel are considered to be competent, but there are concerns that some counsel continue to be briefed despite

negative feedback. The service provided by some chambers could be improved, and the Unit has taken steps to address this.

18. Significant, and largely successful, strides have been made by the Unit to increase Customs and Excise representation in court, and to effect a considerable cultural change. There has been a substantial increase in court cover at the Crown Court since April 2002, with attendance by Unit staff at most plea and directions hearings, and throughout the course of the prosecution case. In addition, lawyers often attend court for the commencement of a trial, public interest immunity hearings and, if needed, thereafter.

19. Cases at Manchester City Magistrates' Court are generally handled by Unit lawyers, but magistrates' courts cases outside Manchester are nearly all handled by customs officers, and occasionally counsel. More work is required, therefore, to implement fully the recommendation that all prosecution proceedings in the magistrates' courts should be conducted by qualified lawyers, or appropriately trained Solicitor's Office staff.

Management and operational issues

20. The Unit is well managed. The setting of performance objectives and targets is being informed by an analysis of performance in key areas, although there is a need for more structured monitoring of the quality and timeliness of casework and casework processes. The Unit is playing its part in evolving a Unit-wide performance measurement and monitoring system. The challenge now is to consider how this is integrated into action planning, performance appraisal and the training needs of individual staff.

21. The organisational structure within the Unit seems to be bedding down reasonably well. Staff are positive about the changes that have been introduced, and Unit meetings have helped with the effective implementation of the organisational restructuring.

Good practice and commendations

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

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

Recommendations and suggestions

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

- lawyers including in advice notes an analysis of the evidential issues and public interest factors they have taken into account when reaching their decision;

- lawyers agreeing an appropriate timetable, in complex advice cases, for the submission of papers and the provision of advice, and the development and implementation by the Unit Head of a system to ensure timeliness of advice;
- provision of guidance to lawyers on roles and responsibilities in relation to decision-making on proceedings orders, cases to be dropped on public interest grounds and stays;
- lawyers making a full record of review decisions on the case decision record;
- the monitoring of compliance with time scales for the submission by Law Enforcement of committal, ‘sent’ case and summary trial papers, and unused material schedules;
- and timeliness of service of committal and ‘sent’ case papers and unused material schedules on the defence, and the delivery of instructions to counsel;
- the monitoring of the quality of review and disclosure decisions, committal preparation (including drafting of indictments), and instructions to counsel;
- ensuring that effective custody time limits (CTL) monitoring systems are in place;
- the monitoring of compliance with the Case Management System; and the extension of participation in the business planning process to staff at Bands 2 and 3.

24. The inspectors also suggested action be taken as a lower priority on the following:

- ensuring that case managers:
 - prepare committals in straightforward cases under the supervision of lawyers;
 - prepare all instructions to counsel, subject to input and appropriate instruction
- from lawyers;
 - attend conferences with counsel where issues solely relating to the presentation of cases at court, including jury bundles, are to be discussed;
 - take responsibility for file management; and
 - check work delegated to case support officers, including, where appropriate, for clerical errors before it leaves the Unit;
- the development and monitoring of systems to ensure work is covered in the absence of lawyers and case managers;
- liaising with Manchester City Magistrates’ Court to try and establish either:
 - a weekly dedicated court for Customs and Excise prosecution cases, or
 - a reasonable listing process;

- review and clarification of staff roles and responsibilities between lawyers, case managers and administration staff, to avoid some duplication in work and;
- the setting of formal terms of reference (including structure and purpose) for staff meetings, in order to improve effectiveness.

25. The full text of the report may be obtained from the Corporate Services Group at HMCPS Inspectorate (telephone 020 7210 1197).

HMCPS Inspectorate
November 2002