

## **Chapter 8 - What went wrong**

### **The Problems arising in the London City Bond cases**

8.1 My terms of reference require me to consider the circumstances that led to the termination of the London City Bond cases heard by Mr Justice Grigson in the Liverpool Crown Court and the lessons to be learnt from those circumstances. In this section I set out the failures, both systemic and individual, which in my view led to the problems that beset the London City Bond prosecutions outlined in this Review and which ultimately compelled the prosecution to offer no evidence. As will be apparent, many of the failures are historic and have been, or are being, addressed either by legislation or by changes in practice and procedures within HMCE. It will also be appreciated that my strictures and criticisms are made with the luxury of perfect 20:20 hindsight.

#### **Systemic Failures**

##### **The Policy of the Investigations**

8.2 The role of the NIS in relation to diversion frauds was clearly identified and articulated by Cedric Andrew in his letter of 26<sup>th</sup> July 1996, to which reference has already been made, and by others in senior management positions in the NIS. The objective of identifying the principal fraudsters was understandable and legitimate. Problems arose because the policy was adopted without a full appreciation of the consequences and no system was put in place to deal with those consequences when they arose.

- Little consideration was given to the relative importance to the public interest of the balance between successful prosecution and protection of the revenue. Despite the protests of those in IMPEX and Romford Excise there was no debate on the relative merits of investigation with a view to disruption of criminal activity rather than prosecution. The structure of HMCE failed to provide the means or the system to enable the identification, discussion and resolution of the problem at senior management level.
- There was little effective communication between the NIS and other parts of HMCE. There was no system in place to ensure that in each case a judgment was made at an appropriate senior management level whether the importance of the investigation justified the extent of the revenue losses the continued operation would entail.
- The practice of granting indemnities to co-operating warehouses was illustrative of the lack of planning and co-ordinated policy-making at an appropriate level of seniority in relation to diversion fraud investigations. Mr Roques describes the lack of proper authority, approval and accounting procedures in relation to indemnities as a serious failure of administration (see Chapter Nine and Appendix Seven). I entirely agree.

- There was muddle, confusion and uncertainty about the granting of indemnities, as the correspondence between Alf Allington and HMCE in the autumn of 1996 amply demonstrates. It was plainly accepted by the NIS that London City Bond were to be indemnified. But the NIS were reluctant to say so: perhaps concerned that an open acceptance of the position might lead to criticism of their tactics from elsewhere within the department. Indemnities should have been granted expressly, in writing and on a load-by-load basis. Had such a system been in place:
  - i. the role of London City Bond and Alf Allington as a co-operating warehouse and warehousekeeper would have been thrown into sharp focus;
  - ii. the degree and nature of the facilitating of the frauds would have been apparent;
  - iii. the status of Alf Allington and his position as a participating informant would have been obvious;
  - iv. the extent of revenue loss would have been ascertained and monitored, thus enabling an informed judgment to be made both on the policy of letting loads run and on the extent of acceptable loss before arresting offenders.

8.3 Those failures have been identified and analysed in the Roques Report and the recommendations made to address them have been accepted and implemented. The effect of the single-minded pursuit of the identified policy was in the result the loss of many millions of pounds in revenue, which in hindsight might be said to be too high a price to pay for the conviction even of major fraudsters. In the context of this Review, the policy created within London City Bond a situation in which the warehousekeeper became a participating informant thus providing an environment in which there was the possibility of entrapment.

### **Failures in the Investigation Systems**

8.4 The failures of management extended further. Although the threat was identified there was a failure to put in place a departmental strategy for dealing with excise diversion fraud. The investigations were characterised by the absence of any co-ordination. The massive volume of diversion fraud and the threat to the revenue the fraud posed was abundantly clear to senior management within HMCE by at the latest the middle of 1996. Despite this understanding of the scale and gravity of the threat, the investigative approach continued on a case-by-case basis. There was no strategy, no over-arching plan, to seek to deal with this major peril. No one was appointed to oversee the investigations, to ensure that the deployment of resources was appropriate, to consider the big picture.

- 8.5 Leaving aside cases investigated in Northern Ireland or Scotland, there were about 28 investigations commenced between April 1995 and April 1998 in which London City Bond featured. There was no central register of London City Bond cases, or even of diversion fraud cases. There was no system enabling an officer investigating one fraud to communicate with officers investigating other frauds or to draw upon the fruits of their enquiries. Each fraud was investigated in isolation. A fresh Case officer was appointed for each investigation. Communication between the Case officers assigned to separate investigations was at best haphazard, but more usually non-existent.
- 8.6 There were other difficulties. The investigations often lasted several months. Frequently the Case officer assigned to an investigation would be moved from that enquiry part-way through the prosecution process, so that another officer with an imperfect knowledge of the case had to take over responsibility for it. According to the data provided to the Review team, out of the 28 investigations referred to above the Case officer was changed in 13 of them, including Operations Paleface and Techo. Within that total of 13, on five investigations, including Operations Fallover, Fajita and Chamfer, there were three successive Case officers.
- 8.7 Nor was there any continuity guaranteed at the level of Case SIO or even Case ACIO. In Operation Paleface, for example, there were three successive Case SIOs and four Case ACIOs; in Operation Chamfer there were successively four Case SIOs and four Case ACIOs. I recognise that some movement of personnel within a department is inevitable. However, such movements must be managed to ensure effective communication of information from one Case officer to his successor. No case handling system or decision logs were in place to deal with this problem.
- 8.8 There was a failure on the part of the investigators to recognise and identify links between London City Bond cases and bring such links to the attention of solicitors and counsel. There should have been deployment of officers to the task of liaison between operations and maintaining a detailed overview.

### **Failures in the Investigation Process**

#### **The Allingtons**

- 8.9 The handling of Alf Allington by EXCIRT and the NIS was disastrous. In summary
- no overview was taken at SIO or ACIO level of the position of Alf Allington;
  - no clear strategy was identified or employed;
  - neither the Home Office guidelines nor HMCE's own guidelines were followed;

- the documentation as to the contacts with and utilisation of Alf Allington were incomplete;
- officers from EXCIRT and the NIS failed to identify the problems, in consequence of which prosecuting solicitors and counsel were misled about the true status of Alf Allington.

8.10 The failure to identify the gradual drift and change in status of Alf Allington from registered warehousekeeper to participating informant was a key factor in what went wrong. That in turn led to a failure to register Alf Allington as a participating informant, a failure to manage him in compliance with informant guidelines and a failure to maintain reliable records of his activities and the nature and extent of the information given by him. Similar observations apply to the change in status of Ed Allington from confidential informant to participating informant.

8.11 At the very least in the course of his business at London City Bond in the years 1996 – 98 Alf Allington

- a. Accepted business, including new accounts, from customers involved in outward diversion fraud in the knowledge or belief that he would be facilitating the commission of fraud;
- b. Provided detailed information about new customers;
- c. Provided detailed information about the movement of goods into and out of London City Bond;
- d. Caused or permitted his staff to prepare consignments for removal from the Bond, and assist in the removal, when he knew or believed that such consignments would be fraudulently diverted onto the home market without payment of excise duty;
- e. In that knowledge or belief caused or permitted his staff to prepare false documentation stating that the goods were destined for export, duty suspended;
- f. Held meetings and telephone discussions with persons he knew or believed to be involved in excise diversion fraud with a view to facilitating their business through London City Bond.
- g. Accepted bribes from customers and potential customers – though I recognise that he always reported receipt of them to HMCE, accounted for them and in due course paid over the bribes he received.

8.12 All that activity was known to the NIS through Bernie Small and others. Together it clearly identified Alf Allington as a participating informant. He should have been managed as such from the moment it became clear that he was likely to play a role in the commission of the fraudulent diversions from London City Bond. In fact his role

was not identified, he was never registered and in consequence there was a total failure by the NIS to comply with any of their guidelines. In particular, the failure to follow a supervised system for ensuring full and accurate records of meetings and contacts between Alf Allington and the fraudsters and between Alf Allington and the NIS gave rise to a self evident risk that such records as there were did not amount to a full and accurate record of critical discussions. Bernie Small himself confirmed in the Liverpool hearings that the records were wholly inadequate in that regard.

- 8.13 A part of the failure to identify the true status of Alf Allington was attributable to the failure of the SIOs responsible for monitoring and supervising the activities of Bernie Small. Proper supervision would have revealed what was actually going on at London City Bond, the absence of adequate records and in turn the fact that such records as did exist demonstrated a palpable shift in the status of Alf Allington and a need to re-evaluate his status.
- 8.14 In turn the failures of the SIOs should have been apparent to the ACIO of the EXIRT intelligence team, who was responsible for monitoring and supervising them. The system of reporting through Weekly Notes was not properly or effectively operated.
- 8.15 Successive judges should have been informed of the activities of Alf Allington and Ed Allington and the knowledge in which those activities were carried out. The NIS failed to draw the matters relating to Ed Allington and Alf Allington set out above to the attention of the lawyers, both solicitors and counsel, once the prosecutions had commenced in consequence of which prosecuting solicitors and counsel were not aware of the true status of Alf Allington. That in turn led to the dissemination of misinformation to judges in which the NIS acquiesced.
- 8.16 Further, in consequence of Bernie Small's failure to keep proper records, something which he had never before mentioned until he gave evidence at Liverpool, courts were misled in PII applications when asked to consider the informant logs. Judges were not told by counsel, who themselves had been misled, that there were other undocumented contacts with the informant. If the nature and extent of the missing contacts had been known to counsel and disclosed to the judges concerned it is at least possible and in some cases likely that a different conclusion would have been reached in relation to the PII application itself and with it the question of whether to proceed in respect of certain of the prosecutions.
- 8.17 In any case where Alf Allington had engaged with defendants as a participating informant it is difficult to see how the information could properly be concealed from the defence if he was to be called to give evidence. In those few cases where neither Alf Allington nor his brother had provided any information of any kind referable to the defendants charged with fraud, then it could be argued that it

was proper not to reveal the wider picture to those defendants, though even there the judge should have been provided with all the facts to enable him properly to exercise his discretion. But that proposition is somewhat artificial, since it would only require Alf Allington's true role to be revealed in a single trial for it to become common knowledge to all defendants in all London City Bond cases.

## **Disclosure**

- 8.18 The prosecution, through failures and inadequacies within the NIS, failed to comply with their obligation under the CPIA to make proper disclosure to the defence. The system of recording documents seized or created in the course of an investigation was slipshod and casual. There was no effective document handling system in place. The absence of an effective system resulted in an inadequate record of what documents actually existed. Instead of presenting the defence with a definitive list of all relevant unused material the prosecution in successive cases habitually discovered shortly before trial relevant documents in their possession which ought to have been disclosed.
- 8.19 This phenomenon was described as “creeping disclosure” and it was a major problem besetting all London City Bond cases. Often the fresh documents themselves revealed the existence of further documents, which the defence would demand; those documents in turn would demonstrate the existence of yet more undisclosed documents. And so the wheel would keep turning. Even where there had not been such failure by the prosecution, as arguments developed new material became relevant and disclosable for the first time. Judges understandably had misgivings about what they were being told. The prosecution's position became increasingly difficult and complex each time a London City Bond case was tried. The only method of ascertaining whether any investigator had any relevant documents was to send an email to every SIO involved in investigating excise fraud: there was no list of who had been involved in which investigation, still less any definitive list or schedule of the documentation relating to each investigation.
- 8.20 A discrete difficulty concerned proof of the documents required to prove a particular fraud. Officers charged with the duty of obtaining such evidence would often simply present Alf Allington, Ed Allington, Mr Pearson or Mr Buckledee with a bundle of consignment notes, AADs and instructions which they had themselves received from other officers and invite them to make a statement in which they produced the bundle as a single exhibit. The method of retrieving that documentation and producing it in evidence was such that the integrity of many of the documents could be called into question. There was no consideration given as to whether in fact those documents had ever formed part of the business records of London City Bond. In consequence officers caused and permitted Alf Allington and others to make witness

statements producing AADs when they could not legitimately produce those documents since they had already been removed from or had never reached London City Bond.

## **Generally**

8.21

The failures identified above stemmed from systemic weaknesses within the NIS, in particular:

- a culture of excessive secrecy with information closely guarded and only disseminated on a “need-to-know” basis;
- the use of inexperienced and insufficiently trained investigators and intelligence officers;
- the lack of informant-handling training;
- a culture where the need to fulfil the requirements of the criminal justice system was not accepted as an essential part of the investigation process;
- a lack of bureaucratic tidiness;
- a lack of proper systems of assurance.

## **Failures in the Prosecution process**

8.22

There was a failure by senior management to appreciate and address the inadequate resources available to the Prosecutions Group in both London and Manchester to deal with the number, size and complexity of the prosecutions of excise diversion frauds. From 1996 to 2000 the Solicitor’s Office had insufficient resources in terms of personnel, funding and accommodation to operate efficiently in dealing with the ever-increasing workload and the pressures created not only by an expansion in the number of cases but also the additional responsibilities placed on HMCE lawyers resulting from disclosure requirements. As a result of there being insufficient resources the senior lawyers in the Prosecutions Group Specialist Casework Division in both the London and Manchester offices, who dealt with heavy, complex and demanding casework, had not been able to deliver the legal input as they should have. Senior management in HMCE should have recognised this major administrative problem and taken appropriate steps to deal with it.

8.23

The lawyers in the Solicitor’s Office were insufficiently pro-active in asserting and exercising control over the conduct of the prosecution. They did not challenge or question the account they received of the status of Alf Allington despite clear signs that they were not being provided with a full picture of his involvement.

8.24

One of the causes of the problem which beset the prosecution was the way in which the activities of the Allingtons were put into compartments and given labels. Ed Allington was labelled as a confidential informant in April 1995. In 1995 Alf Allington was a trade source. When the two men came to be categorised in 1998, the time when their status first fell to be considered for the purpose of

the prosecutions, that was how they were designated by the NIS. The lawyers accepted those designations without any effective inquiry into the situation and it was accepted that the descriptions accurately described their respective positions. What should have been considered was not the label tied to the Allingtons by the investigators but the reality of their activities.

8.25 Until the Allingtons made their statements to the solicitors acting for Mr Villiers in October 2000 it was received wisdom that Alf Allington was a reliable and credible witness who had given HMCE invaluable and unqualified assistance in their fight against diversion fraud. Any allegations made against him were without any substance. He was a warehousekeeper providing trade information under a statutory duty who had, on occasion, voluntarily provided more intelligence than his position strictly required: thus he became a confidential informant. But even in circumstances where he had become a confidential informant he was at all times non-participating, and as such he was an informant whose status could and should be rigorously protected. That was in effect the designation applied to him by the NIS before the trial of Operation Fallover, accepted as such by solicitors and counsel and consistently applied in applications for PII at all subsequent trials.

8.26 The prosecution in each succeeding case remained wedded to that received wisdom. Any indication that the received wisdom was inappropriate was dealt with not by a re-evaluation of Alf Allington's position but by attempts to accommodate the new factors within the original structure. There was a failure by the lawyers to re-examine the position of Alf Allington critically, notwithstanding the repeated attacks by the defence in succeeding trials on the stance adopted by the prosecution. That failure continued despite Alf Allington's false evidence in the trials of Operation Fallover, Operation Fusion and Operation Techo and the extent of his participation in the fraud passing through London City Bond, which became apparent from a critical examination of Bernie Small's daybook, the informant logs and the evidence of bribes. The prosecution was in the event and with the exception of Operation Fajita unable or unwilling to shake itself free from the constraints of the past.

8.27 The lack of cohesion identified in the investigations carried over into the prosecutions, where equally there was no sufficient co-ordination between each prosecution, and even between the prosecution lawyers in London and Manchester. In general, different counsel were instructed for each prosecution: that was a perfectly understandable and proper decision. The mountain of detail involved in each operation was formidable and it would have been impossible for counsel to master more than a single case adequately. The problem was that there was no one who had an overview of the situation until in April 2000 Noel Lucas was instructed to take a role in disclosure generally in the London City Bond cases. In February

2002 Sir John Nutting was instructed to take on a strategic role for the London City Bond cases generally. Prior to that counsel were left to conduct their cases in isolation and usually in ignorance of what had happened elsewhere. As emphasised below, there were no written instructions to assist them. It was extremely unusual for their instructing solicitor to be present at court. The Case officer, himself only concerned in that particular operation, would have little if any appreciation of other proceedings. There are examples in the London City Bond cases of Case officers innocently giving misleading evidence on matters outside their own knowledge.

8.28 Again and again when speaking to prosecuting counsel I was told of incidents in the course of trials in which defending counsel produced to prosecution witnesses HMCE documentation which had been disclosed in other trials of which prosecuting counsel in the instant case was wholly unaware. The absence of any cohesive and co-ordinated strategy was a considerable handicap to prosecutors. They were conducting their cases in blinkers, unaware of developments in cases at other Crown Court centres and ignorant of documents which were highly relevant to the very issues under consideration in their own trials.

8.29 It is a striking feature of the trials that the defence lawyers were much more alive to the developing situation than the prosecution teams. The defence appear to have had no difficulty in communicating new material and fault lines within the prosecution arising in one trial to those representing defendants in the next trial. The defence, despite the involvement of a number of different firms of solicitors in separate cases, were thus able to spot and exploit weaknesses in the prosecution case of which the prosecutors themselves were unaware.

8.30 The failure to provide counsel with written instructions was a central feature of the prosecutions. The only written instructions relating to the status of Alf Allington and Ed Allington to be found anywhere in the documentation made available to me are the statements made by Bernie Small, Bob Snuggs and Ian Donald in January 1999, in anticipation of the trial of Operation Fallover, together with Maureen Dunn's Note to Junior Counsel of 26<sup>th</sup> January 1999 (See Chapter Four). Even those inadequate documents were made available in only three of the prosecutions, and certainly not to prosecuting counsel in the trials of Operations Paleface, Escapade, and Manpower. However, the documents were disclosed both to prosecuting counsel and to defendants in pending trials and appeals in July 2001, and Maureen Dunn's Note to Counsel was disclosed in December 2001.

8.31 The absence of written instructions to counsel in any of the prosecutions save that identified above was an important and significant failure on the part of the solicitors. The very preparation of such instructions might well have brought to light the

inconsistencies in the status of Alf Allington which with the benefit of hindsight are so glaringly obvious. In any event counsel are entitled to expect proper written instructions on matters of such central importance, particularly when they are instructed to seek to apply to the court to protect material from disclosure.

8.32 No consideration appears to have been given until 1999 to the issue of whether it was appropriate to call Alf Allington as a witness in any of the London City Bond cases at all. In all cases he was used simply to describe the bonded warehouse system and produce as exhibits documents that, it was said, formed part of the business records of the warehouse. He was not a vital witness: any competent employee working in the office could have given the same evidence. Of course, if he was not an informant then no problem arises. But he was, and known to be such by counsel and solicitors, even though the extent of his involvement was not then appreciated. The possibility that his informant status might be revealed in the course of the prosecution process was never identified as a matter for consideration. It was assumed that somehow he could be protected if necessary, though how that could hope to be achieved is difficult to see without an acceptance that he could lie.

8.33 The lack of co-ordination and absence of written instructions inevitably lead to the *ad hoc* presentation of PII applications, with a difference of emphasis each time such an application was made. Equally, the absence of co-ordination led to problems over disclosure: much of the material to be considered for disclosure was case-specific but some of it plainly was not, and it was the failure in relation to wider areas of disclosure that caused such problems.

### **The Price of Failure**

8.34 The consequences of the failures identified in this chapter have been dramatic. Thirteen separate prosecutions have been affected, all of which have been considered in Chapters Four and Seven. In those prosecutions a total of 109 defendants faced charges relating to diversion fraud. Of those defendants 16 were acquitted either by verdicts of juries or on the direction of the trial judge at the conclusion of the prosecution case. The prosecution offered no evidence in respect of a further five defendants following the ruling of the trial judge on disclosure in Operation Fajita.

8.35 Of the remaining 88 defendants 32 pleaded guilty and 20 were convicted by juries after lengthy trials. The convictions of all those who pleaded guilty or were convicted after trial have been quashed by the CACD where appeals have been brought. As a result of the abuse of process hearing in Liverpool the prosecution have offered no evidence against the 40 defendants who were yet to stand trial or in respect of whom retrials had been ordered.

8.36 The total revenue alleged to have been evaded by those charged in the 13 prosecutions amounted to approximately £302million, much

of that loss accumulated in consequence of the operational decision to “let loads run”. However, that total is only the amount of loss reflected in the charges, lower than the actual loss for pragmatic reasons of case management. The true revenue loss will never be known, but the National Audit Office figures suggest a total of £668million for the costs of the frauds.

- 8.37 Quite apart from the loss of revenue from the diversion of duty-suspended goods there have been other substantial financial losses. First, there is the cost of the investigations themselves. HMCE have been unable to provide the Review with any estimate of the total costs incurred in the investigations arising out of diversion frauds involving London City Bond as their management information systems are not designed to produce information of this kind. On any view those costs must have been colossal.
- 8.38 These are the words of Mr Gibson Grenfell QC at the Crown Court at Kingston opening the case for the prosecution against the defendants charged with being involved in an outward diversion fraud arising out of Operation Techo:
- To detect such a fraud and to collect the evidence sufficient to mount a prosecution ... in a case of this sort requires a phenomenal amount of investigation. No doubt these defendants and others gambled that it would be an insurmountable task for those appointed to safeguard the public revenue, in this case the Customs, to assemble a case against them. They lost, because we've got that case, but it has taken thousands of man-hours and vast effort to achieve. ... In the course of the investigation tens of thousands of pages of records had to be sifted: weeks and weeks of observation undertaken: financial records examined in the greatest detail: enquiries undertaken abroad, in Switzerland, the Middle East, and France: hundreds of witness statements taken, some of them very detailed indeed.
- 8.39 That thumbnail sketch, a description no doubt equally applicable to the other operations, is quite enough to illustrate the extent of the resources deployed in the investigations and the huge cost implications. In that case seven of the 13 defendants pleaded guilty. After a hearing lasting more than seven months all the remaining defendants were convicted by the jury. Total sentences of 73 years imprisonment were imposed. The convictions of all the defendants, including those who had pleaded guilty, were quashed by the CACD in February 2002. In most instances no retrial was ordered. In the instances where retrials were ordered the prosecution has now offered no evidence.
- 8.40 The cost of the prosecutions themselves to the public purse in the form of legal fees payable to counsel for the prosecution, and legal aid fees payable to solicitors and counsel for the defendants was also very substantial. All but one of the defendants who appeared before Mr Justice Grigson at Liverpool were legally aided. The total legal

aid cost of the previous trials involving those defendants, and the Liverpool hearing, amounted to £14.3million. The Review has been informed that prosecuting counsel's fees in Operations Manpower, Chamfer, Techo, Fajita, Fusion, Paleface and Fallover totalled almost £3.5million, with estimated staff costs in the Prosecutions Group of around £850,000.

- 8.41 There will be yet further public monies paid out to those defendants who successfully apply for compensation for having been wrongly convicted or charged under the provisions of Section 133 of the Criminal Justice Act 1988.
- 8.42 But beyond all that there is the human cost involved – the effect on the investigators who devoted months and sometimes years of their lives working on the operations only to find all their efforts set at nought through the failures identified above, failures for which they may well bear no personal responsibility. The investigators are professionals and recognise that they must accept what has happened, but inevitably these events have had a significant impact on their morale and left a legacy of bitter disappointment which takes time to heal.
- 8.43 When the cost of the recommendations I make are considered by those who have to decide on their implementation I express the hope that the true cost of the London City Bond cases will not be forgotten.