


# **From Genesis to Revelations: A Study on Disclosure**

The background of the page features a large, semi-transparent watermark of the HMIC logo. The logo is circular with a crown at the top, surrounded by a sunburst pattern. The text 'HMIC' is prominently displayed in the center, with 'HM INSPECTORATE' and 'CUSTOMS AND EXCISE' visible around the perimeter.

An Inspection into HM Revenue & Customs' Preparedness to meet its Disclosure Obligations under the Criminal Procedures and Investigation Act 1996, as amended by Criminal Justice Act 2003

HMI Denis O'Connor



**Denis O'Connor CBE QPM**  
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The Paymaster General  
HM Treasury  
1 Horse Guards Road  
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26 April 2007

From Genesis to Revelations: A Study on Disclosure

Please find attached a copy of my report of the inspection into HM Revenue and Customs' preparedness to meet its disclosure obligations under the Criminal Procedures and Investigation Act 1996, as amended by Criminal Justice Act 2003. The report raises issues, which may require the drafting of a redacted version for publication. I believe these matters are in the hands of HMRC legal advisers.

Since April 2005, no new cases have been stayed due to problems concerning the disclosure of unused material. My inspection revealed an eagerness by investigators at all levels to rid themselves of their negative image and a willingness to be open in revealing material to prosecutors. However, despite considerable efforts to provide basic training to all investigators, advanced disclosure training has not yet been introduced and insufficient awareness training has been provided across the rest of the Department. Despite efforts to bring the two distinct precursor Departments together, the different approaches to disclosure responsibilities still raise issues of consistency. I was particularly concerned about the control of potentially disclosable and evidential property in the indirect tax side of Criminal Investigation.

On the other hand, HMRC and Revenue and Customs Prosecutions Office have made considerable progress, in developing a co-ordinated approach to disclosure. They have established structures and processes to ensure all potentially relevant unused material is revealed to the prosecutor. However, I believe the introduction of bespoke joint RCPO/HMRC disclosure guidance, based on the model produced by the Crown Prosecution Service and the Association of Chief Police Officers would reinforce these joint working practices.

I am pleased to note that HMRC has already taken a number of positive steps following submission of the draft report to the Director General, Enforcement and Compliance in November 2006. I recently met the Director General who has agreed to introduce a process to ensure quicker responses to my future draft reports. I have forwarded a copy of the final report to Paul Gray.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Denis O'Connor'.

Denis O'Connor  
HM Inspector of Constabulary



HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ

**Denis O'Connor CBE QPM**  
**HM Inspector of Constabulary**  
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20 June 2007

Dear Denis

Thank you for your letter to the Paymaster General of 26 April together with a copy of your report *Inspection of HMRC's Disclosure Preparedness to Meet CPIA Obligations*. I am replying in the Paymaster General's absence following a recent operation.

I am pleased to see the progress HMRC have made on disclosure issues and the high success rate of HMRC/RCPO prosecutions with 94% of 1,754 cases resulting in guilty verdicts. The comments you record from the judiciary are also encouraging signs that HMRC's efforts to improve disclosure action are being recognised.

HMRC accept they still have more to do and I agree that the key is to keep up momentum. I have been assured that the recommendations you have made and the helpful comments in your report with regard to operating procedures will be acted upon. An action plan has been prepared and is being progressed. HMRC will keep you updated on implementation.

Yours sincerely  
John Healey

**JOHN HEALEY MP**

## Executive Summary

- i) This report examines HM Revenue and Customs' (HMRC) preparedness to meet its obligations under the Criminal Procedures and Investigations Act (CPIA) 1996, as amended by the Criminal Justice Act 2003. HMRC was formed in April 2005 by the merger of HM Inland Revenue and HM Customs and Excise (HMCE). HMCE's difficulties in a number of high profile cases attracted adverse judicial criticism and led to Mr Justice Butterfield's 2003 *Review of Criminal Investigations and Prosecutions Conducted by HMCE*. Shortly after the merger, two major Missing Trader Intra Community (MTIC) fraud prosecutions, Operations Venison and Vitric, were stayed due to disclosure problems. However, the issues which caused them to be halted were revealed during hearings that were commenced many months earlier. Since April 2005, HMRC has brought 1,754 cases to trial and obtained guilty verdicts in 94% of them, none of the remainder being lost due to disclosure problems. Furthermore, thirteen MTIC fraud prosecutions have been successfully finalised during this period resulting in 39 persons being convicted and sentenced to a total of 168 years. This has been achieved, in part, by HMRC's improving performance in respect of its disclosure obligations and also through a more robust approach to the control and management of cases inspired by the current Attorney General's Guidelines and judicial protocols. Members of the Judiciary and some defence counsel have spoken of recent improvements in the way HMRC has managed disclosure in its cases. However, many defence practitioners remain highly critical of what they perceive as an institutional secrecy that pervades HMRC. Improvement has occurred, but the issues highlighted in this report could lead to disclosure problems in the future and momentum needs to be maintained.
- ii) Whilst HMRC has not lost any new cases due to disclosure, the general lack of awareness of individual responsibilities regarding disclosure, particularly amongst direct tax staff, presents a potential risk for future criminal prosecutions initiated by the Department. If staff are unaware of their duty to retain material in a durable and retrievable form, or consider themselves somehow exempt from this, then there is a real prospect of Disclosure Officers (DOs) failing to identify and reveal potentially relevant material. The extent of this lack of awareness amongst the workforce can only be provided through a skills audit which should be undertaken. Not only would this greatly assist in identifying the levels of skills and knowledge relating to disclosure but could also provide valuable information for all areas of business skills requirements.
- iii) Across the Criminal Investigation (CI) Directorate, DOs are failing to carry out an adequate relevance test on material or, in the case of the majority of direct tax investigations, no relevance test at all. The scheduling of irrelevant material and its subsequent revelation to prosecutors does not comply with the CPIA Code of Practice but it is unlikely to stimulate abuse of process applications by the defence. It can, however, greatly increase the costs incurred by the criminal

justice system and therefore must be tackled. The lack of disclosure knowledge displayed by many direct tax investigators, caused by inadequate training and basic instruction, is also a cause for concern. This undermines the Department's compliance with the Attorney General's guidance to appoint only officers with requisite experience, skills and competence. HMCE's provision of training and instructions to the indirect tax investigators, post 2003, were positive steps forward, but this should be extended across HMRC.

- iv) Initiatives by CI management to extend the mandatory Disclosure Awareness Training and updated instructions in the Handbook for direct tax investigators, should also result in an improved compliance with legislation across the Department and must be addressed as a priority. Utilising the results of the skills audit, HMRC should introduce a tiered training regime that would enable all directorates to comply with the requirements of CPIA. This should range from a mandatory basic awareness module for all staff; to advanced training for all DOs and Senior Officers (SOs) involved in criminal investigations, with a particular emphasis for them on determining the relevance and sensitivity of material. Regular refresher training should also be introduced to ensure practitioners, in particular, keep abreast of any changes in legislation, instruction and good practice.
- v) The need for advanced disclosure training for some staff was identified some time ago and DOs, in particular, would welcome a regular forum whereby experience could be shared and tested especially through the participation of Revenue and Customs Prosecutions Office (RCPO) lawyers. The merger and de-merger challenge has undoubtedly complicated strategic planning but HMRC can now move on.
- vi) The merger of the two organisations presented a significant challenge, particularly as their respective operating practices, procedures and business focus were somewhat diverse. Additionally the transfer of over 1,200 Investigation and Intelligence staff to the Serious Organised Crime Agency (SOCA) has further complicated the task of rationalising resources and synergising corporate effort.
- vii) HMRC built upon initiatives introduced by HMCE to bring together senior representatives from Enforcement and Compliance Directorates, Policy and the RCPO to form an Action Lab, which produced the CPIA Compliance Plan in August 2005. The Disclosure Steering Group (DSG) and Disclosure Working Group (DWG), born out of the Action Lab, have proved to be valuable forums for managers at senior and middle management level of HMRC and RCPO to raise issues of concern and try to learn lessons from their successes and failures. These initiatives are unrivalled elsewhere in the UK criminal justice environment.
- viii) These new initiatives have been championed by the Regional Manager in the Criminal Investigation Directorate with responsibility for disclosure. Through his chairmanship of the DSG and DWG, he has driven forward a number of the Compliance Plan recommendations. This is an excellent example of

strong leadership particularly as he has a wide range of responsibilities. It is important to note the support he has received through the commitment of other senior managers up to, and including, the Director General Enforcement and Compliance. It is disappointing, therefore, that one of the Action Lab's significant recommendations - for the HMRC Chairman to emphasise the importance of compliance with CPIA through a personal message to all staff - has not been actioned.

- ix) The close contacts between CI and RCPO at Directorate level ensure they have a successful working partnership, however the organisations have not extended this team-working approach to the practitioners' level. Unlike other parts of UK Law Enforcement, HMRC and RCPO have decided not to adopt the joint Crown Prosecution Service and Association of Chief Police Officers Prosecution Team Disclosure Manual (PTDM). It is a matter of concern that RCPO and HMRC have not developed bespoke joint disclosure instructions. Without this, practitioners from both organisations are unable to follow a common template throughout the disclosure process. DOs would welcome greater support from their prosecutors concerning relevance and sensitivity of unused material. The lack of a prosecution team approach by HMRC/RCPO may contribute to the continuing divergent approaches to disclosure responsibilities by direct and indirect tax investigators. Unless a closer relationship at the practitioners' level can be achieved, the likelihood of excessively long cases with associated resource and cost implications will continue. There are clear risks inherent in appointing DOs without sufficient experience, training and appropriate support from RCPO, both to HMRC's ability to prosecute cases and to its reputation.
- x) Direct tax investigators benefit from a robust property management system that includes secure storage areas which are strictly supervised by designated property officers. This contributes to an enhanced integrity for property management and significantly reduces the risk of allegations of impropriety, contamination or loss of evidence and the potential for cases being lost at court. It also represents a professional and methodical approach to property management and enhances the reputation of the Department. It was surprising, during this inspection, to witness a far less robust approach in five indirect tax investigation offices, where evidential property bags or boxes were left unattended in unsecured rooms with almost unrestricted access. This could lead to cases being lost and therefore HMRC should prepare an urgent action plan to tackle this shortcoming.
- xi) Historically, the cause of many of HMRC's disclosure problems has revolved around the failure of officers in the investigative process to reveal all relevant material to the case DO, who in turn was unable to reveal it to the prosecution. New systems and improved practices, such as those brought about by the introduction of Investigation Prosecuting Units' adoption of criminal cases from the point of detection ('Model A' structure), have largely overcome these problems. However, HMRC will remain vulnerable to disclosure failings if it cannot ensure that all potentially relevant material generated or obtained by

its employees working outside of the investigation has also been considered for disclosure purposes. The Department, which now numbers over 90,000 staff engaged in a dispersed, diverse business environment, consequently generate huge quantities of material. This is held on a plethora of non-integrated legacy IT information systems which reside on two distinct networks and in multitudinous paper files and records. Having identified these vulnerabilities, HMRC, in late 2005, proposed the formation of a Disclosure Coordination Unit (DCU) to advise DOs on departmental systems and act as the first port of call for DOs' enquiries, but as of September 2006, the DCU still had not been established. After identifying both the problem and a potential solution, the Department's ongoing delay in establishing the DCU is disappointing. Although it is commendable the Department has initiated a long-term project to consolidate all databases into a single holistic IT records management system, it is imperative that, in the interim, the DCU is established to provide accurate timely advice to DOs on which datasets and files may hold information relevant to specific cases.

- xii) In addition to ensuring that DOs are aware of all the systems which contain potentially relevant information, HMRC also faces the challenge of assuring its databases are fit for purpose and contain all appropriate material. The Department's failure to update the MTIC Information Handling Project (MIHP) database increases the workload of DOs on these complex fraud investigations and contributes to delays in the progress of cases from arrest to trial. In one current case, it was estimated that it would take two officers an additional three months to examine material as a consequence of the non-availability of MIHP.
- xiii) The potential consequences of the continued failure to maintain the departmental intelligence database, Centaur, are also serious. In its current state, devoid of much of the intelligence the Department receives, Centaur cannot be relied upon to identify all potentially relevant intelligence held by the Department<sup>1</sup>. In addition to the significant risk this poses to HMRC's ability to satisfy its disclosure obligations, it also severely undermines the Department's ability to act as an intelligence-led law enforcement organisation.
- xiv) The lack of a quality assurance regime for post-charge investigation cases, the general absence of case debriefs and the failure of HMRC to instigate the DWG CI sub-group, inhibits the Department's ability to learn from experience. These problems are compounded by the shortcomings of the Department's performance management regime. HMRC were asked to provide figures for the number of cases undertaken and reasons for those which were unsuccessful. Although the Department was able to meet this request, this was only achievable through a lengthy process, whereby each investigation branch was required to provide this information individually. The routine collection and analysis of such key performance indicators should underpin a robust performance management system, which is central to any organisation's resource planning and policy development. HMRC's lack of adequate centrally held performance management

information, however, raises serious questions about the Department's ability to adapt their strategies, policies, training, resourcing and guidance to respond to emerging threats.

xv) The report recommends that:

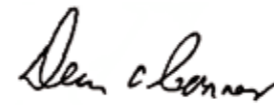
- 1 HMRC's Executive Committee actively promotes the importance of CPIA across the whole of the Department and champions the necessity for awareness of the risks associated with failure; and ensures that directorates and their business plans enable all staff to discharge their obligations;
- 2 Criminal Investigation and Revenue and Customs Prosecutions Office (RCPO) create a forum whereby Disclosure Officers, Senior Officers and lawyers can meet at least bi-annually to discuss emerging trends, concerns, good practice and promote corporate learning and experience;

and recommends that HMRC should:

- 3 form a working group of disclosure practitioners, including RCPO and Investigation Legal Advisers, to produce new detailed joint instructions, to incorporate material from the Prosecution Team Disclosure Manual and exemplars reflecting the work of the Department and take steps to improve the index and search functions on the intranet;
- 4 conduct a skills audit across the Department, specifically including disclosure awareness, understanding and training in order to create a clear business requirement;
- 5 in conjunction with RCPO, develop a training regime that will adequately enable the workforce to meet its obligations under CPIA including:
  - Basic/mandatory Guided Learning Unit for all;
  - Induction – for all new members;
  - Advanced – for Disclosure Officers and Senior Officers; and
  - Refresher – for regular practitioners;
- 6 review the procedures for property management and introduce robust systems for the identification, seizure, recording, retention and storage of material obtained during the course of investigations;
- 7 establish the Disclosure Co-ordination Unit, which should undertake rationalisation of systems and harmonisation of disclosure processes;
- 8 ensure staff are cognisant of, and are compliant with, their responsibility to input all actionable intelligence on Centaur in accordance with their instructions; and all outstanding intelligence logs are entered on the system as a matter of urgency;

<sup>1</sup> See table, Paragraph 5.24

- 9 in conjunction with RCPO, include security clearance in the brief to counsel.
- xvi) In addition, the following suggestions are made to enhance HMRC's methodology and approach to the disclosure of unused material. HMRC should consider:
- 1 introducing a performance management system to record comprehensive case and resource data, to include reasons for cases failing;
  - 2 exploring the technical feasibility of inhibiting the print function on relevant parts of the Handbook. In the interim, HMRC should consider reinforcing the message to staff that they should not print the instructions and management assurance should include checks to make sure that outdated instructions are not being used;
  - 3 devising a series of mandatory disclosure modules and comprehensive Guided Learning Units tailored to the specific needs of officers engaged in the complex and high risk areas of departmental business (such as Missing Trader Intra-Community and Organised Tax Credit Fraud) to supplement the existing introductory DA course;
  - 4 in anticipation of future legislative changes, providing staff with relevant, timely training designed in association with Revenue and Customs Prosecutions Office and delivered by experienced trainers;
  - 5 making the new Guided Learning Units designed to accompany the recommended specific disclosure available on the departmental intranet, to act as a substantial reference tool for those newly appointed as a DO;
  - 6 ensuring that all investigators are trained in investigative techniques, including disclosure, prior to being asked to undertake investigation duties;
  - 7 providing direct tax staff with at least a basic level of awareness of CPIA disclosure;
  - 8 developing a training course for all Serious Civil Investigation officers to provide them with sufficient knowledge of CPIA disclosure and how their work may impact upon this;
  - 9 embedding direct tax investigators into the CI Training Branch, in order to ensure that CI Training Branch is representative of both investigation streams within the Department and widen its knowledge base;
  - 10 developing clear Standard Operating Procedures to ensure the consistency of the IPU Handover process;
  - 11 the feasibility of making the use of EF mandatory for assurance officers in Excise or International Trade;
  - 12 undertaking a review of rank, experience and training of officers currently acting as DOs by Branch Assurance SOs;
  - 13 making DO experience a mandatory requirement for applicants for OIC positions;
  - 14 including training on the completion of disclosure reports in the DA course and revising the Handbook accordingly;
  - 15 rectifying the communication breakdown between the CHIRON Project Team and practitioners, regarding the unnecessary and time-consuming scanning of all case material and should clarify the current policy.



**Denis O'Connor**

November 2006

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**References in the report to HMCE and IR are pre 18 April 2005, HMRC post this date.**

## Chapter 1

## Introduction and Origins of this Inspection

- 1.1 This report will look at the processes and procedures HM Revenue and Customs (HMRC) has introduced in order to meet its obligations in respect of the disclosure of unused material under the Criminal Procedures and Investigation Act 1996 (CPIA), as amended by the Criminal Justice Act 2003 (CJA). 'Unused material' is material obtained in the course of a criminal investigation which is not presented as evidence and does not form part of the case for the prosecution. Details of law enforcement organisations' obligations under the disclosure regime and recent legislative and judicial developments are detailed in Appendix B.
- 1.2 HMRC was formed on 18 April 2005 as a result of the merger of HM Inland Revenue (IR) and HM Customs and Excise (HMCE). The investigative capabilities of both IR and HMCE developed in a similar manner throughout the late 19th and early 20th Centuries. However, in the 1920s, at the time customs officers were dealing with illicit distillation, illicit entertainment, duty frauds and large smuggling investigations, the IR investigators were dealing with fraud and evasion. The IR adopted a policy of granting immunity from prosecution in return for full co-operation in the majority of its potential fraud cases and this became known as the Civil Investigation of Fraud, or 'Hansard,' procedure. This policy led to significant differences between the Departments' respective approaches to criminal investigation. HMCE developed a more proactive and aggressive law enforcement capability whilst IR reserved prosecution for only the most 'heinous' and 'exemplary' cases.
- 1.3 Consequently, the proportion of staff dedicated to the investigation and prosecution of criminal cases differed enormously. By the time of the merger there were just under 1,500 serving Specialist Investigators employed on criminal investigations in the Law Enforcement Investigation (LEI) Directorate of HMCE, from a total HMCE workforce of approximately 22,790 full-time equivalent<sup>2</sup> staff. At the same time there were around 360 serving Investigators employed on criminal investigations in the Special Compliance Office and Boards Investigation Office of IR, from a total workforce of approximately 75,030<sup>3</sup>.
- 1.4 HMCE had a chequered history in relation to its disclosure obligations. Prior to the introduction of CPIA, some other law enforcement agencies lost cases due to disclosure failures. HMCE had not, at that time, experienced similar problems.

<sup>2</sup> CABINET OFFICE (2005) Civil Service quarterly public sector employment statistics (PSES) as at 31 March 2005 Available at: [http://www.civilservice.gov.uk/management/statistics/publications/xls/pses\\_q1\\_2005\\_revised\\_jan06.xls](http://www.civilservice.gov.uk/management/statistics/publications/xls/pses_q1_2005_revised_jan06.xls)

<sup>3</sup> *ibid*:

By the late 1990s, a police investigation unearthed criminal conduct by three customs investigators and also highlighted failures to disclose relevant material to the police investigation<sup>4</sup>.

- 1.5 In November 2002, a prosecution being conducted by HMCE against 15 defendants being tried on indictments alleging conspiracy to cheat the public revenue of duty chargeable on spirits and beer was stayed. Mr Justice Grigson said:

*"I think it is inevitable that there will be some sort of inquiry into what has happened... I would hope that such an inquiry would deal with the problems... [...]... experienced over disclosure. It is closing one's eyes to the obvious that there has been material nondisclosure in this case."*<sup>5</sup>

The following day, the Economic Secretary to the Treasury and the Attorney General agreed to set up an independent review into current practices and procedures relating to disclosure, associated investigation techniques and case management in HMCE criminal cases and they appointed Mr Justice Butterfield to lead it.

- 1.6 Mr Justice Butterfield published his *Review of Criminal Investigations and Prosecutions Conducted by HMCE* in July 2003. In this, he outlined the cost of HMCE's failure to comply with their disclosure obligations in cases related to the London City Bond in 2002. In total, 13 separate prosecutions were affected. Out of a total of 109 defendants, 52 had guilty pleas or convictions quashed and no evidence was offered against a further 40. HMCE had estimated that £302 million revenue had been evaded, whereas the National Audit Office estimated that the total revenue loss was in excess of £660 million.
- 1.7 In his report, Mr Justice Butterfield made a number of recommendations for HMCE, which at the time included the Solicitor's Office. His first recommendation in respect of the Solicitor's Office was that all prosecuting functions should be removed from HMCE Solicitor's Office and prosecutions conducted by a separate prosecuting authority. The process of achieving this was commenced by the establishment of an independent Customs and Excise Prosecutions Office (CEPO) in 2004. Subsequently the Revenue and Customs Prosecutions Office, headed by a Director, was created by merging CEPO and Inland Revenue Solicitors Office (Crime) when HMRC was established.
- 1.8 None of the recommendations in the report for HMCE LEI make specific reference to disclosure. However, it is clear from Mr Justice Butterfield's considerations that implementation of procedures which HMCE proposed for handling and managing human intelligence sources and further development of a document case handling system would improve HMCE's performance in relation to its disclosure obligations. Specifically in respect of training (covered in more detail in Chapter 4 of this report) he stated:

<sup>4</sup> West Midlands Police: Operation Brandfield

<sup>5</sup> Honourable Mr. Justice Butterfield (July 2003) Review of criminal investigations and prosecutions conducted by HM Customs and Excise: Introduction: Paragraph 3



"As a minimum I recommend HMCE give consideration to the following:

- regular refresher training for investigators every five years;
- specific training geared to particular key jobs within investigation [for example, as a Disclosure officer, or as a Senior Investigation Officer<sup>6</sup>], to include a written test before an officer is allowed to take up the new post;
- training to reflect changes in the criminal justice system."<sup>7</sup>

1.9 Despite many concerns expressed in his report, Mr Justice Butterfield saw some grounds for optimism in the developments in respect of disclosure. He said:

"I am entirely satisfied that Customs investigators have learned much from their experience of the London City Bond cases.<sup>8</sup>" ... HMCE now take their responsibilities under the CPIA very seriously."<sup>9</sup>

1.10 After the creation of HMRC and the subsequent transfer of 1,264 posts to the Serious Organised Crime Agency, the current complement of the Criminal Investigation Directorate is some 1,600 criminal investigators. The Department has a total workforce of approximately 91,000 staff. Therefore, only a small percentage of the Department is concerned with the preparation of cases for court and will be directly involved in the management of unused material as part of a prosecution case. The vast majority of HMRC's staff work towards the Department's priorities of collecting the bulk of the UK tax revenue, paying Tax Credits and Child Benefits. HMRC's first two objectives on its Public Service Agreement are to:

"improve the extent to which individuals and businesses pay the right amount of tax due and receive the credits and payments to which they are entitled..." and "improve the customer experience, support business and reduce the compliance burden..."<sup>10</sup>

The majority of personnel in the Department create and maintain a vast quantity of information for administrative and regulatory purposes, any piece of which, at some time, may become relevant to a criminal investigation as it unfolds. As will be explained in more detail in chapter 6, because of this administrative process, the Department has a significant disclosure responsibility, unparalleled elsewhere in the UK criminal justice system.

## Chapter 2

# Leadership and Strategy

2.1 After the failures of the London City Bond cases, Investigation Branch and Regional Managers met in October 2002 to identify ways by which their performance could be radically improved. Emanating from this meeting was the first Investigation Disclosure Action Plan. The Plan's key actions were in respect of:

- the training of all staff in Law Enforcement (LE) with a priority given to Disclosure Officers (DOs) and their managers;
- the assessment of suitability of DOs;
- the provision of updated accessible instructions for practitioners, including the creation of a disclosure website; and
- appropriate security vetting for practitioners.

2.2 The Action Plan also included the requirement for the instructions and disclosure responsibilities to be reinforced immediately by the Chief Investigation Officer (CIO), Head of Intelligence (HoI), regional managers and branch heads. Although the CIO did reinforce the message when he wrote to all Investigation staff:

"It is clear that the importance of the Disclosure Officer's role has not always been given sufficient recognition in the past. **This must be changed.** They are at least of equal importance to the Case Officer."

no strategic lead for disclosure in LE was appointed at that time. HMRC was unable to find any record of a letter from the HoI to his staff.

2.3 Initially, after the production of the Action Plan, LE was heavily engaged in developing systems and processes to address the issues. Amongst these, disclosure awareness training was introduced, the disclosure instructions in the LE Handbook were updated and the roles and responsibilities of Disclosure Officers (DOs) were clearly defined. All of the actions set out in the Disclosure Action Plan had short-term target dates. In the absence of any senior manager being appointed as a disclosure strategy policy lead, once the initial Action Plan targets had been discharged, no later or emerging disclosure issues were similarly considered. Furthermore, there was no focal point to which practitioners could address issues of concern or exchange best practice.

2.4 With the production of the 2002 Action Plan, HM Customs and Excise (HMCE) had started to address the shortcomings in its disclosure policies and practices, however, problems continued. In March 2005, West Midlands Police alleged that HMCE's policies led to 'creeping revelation' of material in their investigation of certain HMCE operations and, in early summer 2005, disclosure problems resulted in the collapse of the trial of Operation Venison and adverse rulings in

<sup>6</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 10.113

<sup>7</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 10.115

<sup>8</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 10.35

<sup>9</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 10.36

<sup>10</sup> HM REVENUE & CUSTOMS (2006) Spring Departmental Report 2006, Introduction

the Court of Appeal in relation to the cases of Operation Hellvellyn and others. These events acted as a catalyst for change within the new Department. They highlighted that the initiatives introduced by HMCE following the creation of the Action Plan in 2002 had not been sufficiently far-reaching to ensure that the new Department's disclosure practices were totally fit for purpose.

- 2.5 In June 2005, the Regional Manager for the South Region, who had lead responsibility for the upkeep of the disclosure section of the Law Enforcement Handbook said:

*"It has to be accepted that due to the 'conflicting' activities in respect of compliance and enforcement, the impact of CPIA is almost unique to HMRC, as a law enforcement agency. It is now vital that we review our position and develop a strategic approach to ensuring that HMRC can meet its judicial obligations."*

He recommended that a disclosure business plan should incorporate a number of elements including: a designated owner of the policy; partnership with Revenue and Customs Prosecution Office (RCPO) in a high level joint steering group (later to become the Disclosure Steering Group (DSG)<sup>11</sup>) and reviews of current activity, practices, training and guidance. He concluded that the Enforcement and Compliance Management Committee (ECMC) should sponsor the creation of an Action Lab to take this work forward. The ECMC's endorsement of this proposal could be regarded as an acknowledgment that HMCE's previous initiatives did not amount to a fully co-ordinated departmental disclosure strategy.

- 2.6 The Action Lab met in August 2005 with senior representatives from HMRC Enforcement and Compliance (E&C) directorates, from former HMCE and Inland Revenue (IR) business areas, HMRC Policy, Investigation Legal Advisers and RCPO. Subsequently the CPIA Compliance Plan, which expanded upon the June 2005 recommendations, was produced.

- 2.7 Unlike the 2002 Action Plan, the 2005 CPIA Compliance Plan demonstrates that its authors felt it was essential for the Executive Committee (ExCom) and the Chairman to champion the disclosure strategy and drive it forward across the Department. It is encouraging that the Director General E&C recognises the development of robust disclosure procedures as a priority for Enforcement and Compliance. However, this appears to be the limit to ExCom's involvement. The Compliance Plan's recommendation that the HMRC Chairman should

*"issue a message to all staff"<sup>12</sup> [in relation to] their roles and responsibilities in support of HMRC's compliance with CPIA"<sup>13</sup>*

has, as at September 2006, not been actioned. Furthermore, disclosure does not feature on any of the minutes of the weekly ExCom meetings since the creation of the CPIA Compliance Plan.

<sup>11</sup> See below, Para 2.10

<sup>12</sup> CPIA Compliance Plan Action Sheet Point 6

<sup>13</sup> Ibid.

**Recommendation One:**

**HM Inspector recommends HMRC's Executive Committee actively promotes the importance of CPIA across the whole of the Department and champions the necessity for awareness of the risks associated with failure; and ensures that directorates and their business plans enable all staff to discharge their obligations.**

- 2.8 Neither the December 2005 or February 2006 HMRC Risk Registers mention CPIA or the reputation and cost implications of trials collapsing due to disclosure failings. The responsibility for developing the Department's risk strategy on disclosure has, instead, been passed to the ECMC. Disappointingly, the Enforcement and Compliance (E&C) Risk Register only includes criminal justice issues at item 14:

*"We fail to adhere to criminal justice requirements e.g. HUMINT, RIPA, CHIS and/or other standards in the Enforcement Handbook."<sup>14</sup>*

It does not make any explicit mention of CPIA disclosure and it is surprising that an issue that has had such an impact on the Department's reputation and with significant cost implications, does not warrant inclusion in either the departmental or E&C's risk assessment process. Despite the impact of HMCE's failures to fulfil their disclosure obligations, the lack of a visible lead on disclosure at the highest level of the new organisation is surprising.

- 2.9 In June 2005 the Regional Manager highlighted a fragmented approach to disclosure policy across LE and a need for a senior manager to be responsible for the strategic oversight of activity and direction. By the time the CPIA Compliance Plan was finalised in August 2005, he had taken on the role of strategic policy lead for the Department. It is encouraging that, unlike the efforts to implement the 2002 Action Plan, there is now a senior civil servant charged with driving the disclosure strategy across the Department.

- 2.10 To ensure departmental oversight and management of all aspects of disclosure, the 2005 Action Lab decided to

*"establish an Experts Forum across HMRC and including RCPO which will inform the steering group"<sup>15</sup>*

later to become the Disclosure Working Group (DWG). The 'appointment' of a strategic policy lead for disclosure, combined with the establishment of a DSG and the DWG have, theoretically, provided E&C with a clear strategic framework to develop disclosure initiatives, which was not in place at the time of the 2002 Action Plan.

- 2.11 The DSG, with the exception of the Chair, is comprised of non-operational senior and middle management representatives from HMRC and RCPO Policy, Governance and Strategy Units. Although Criminal Investigation (CI) operational

<sup>14</sup> HMRC Risk Register

<sup>15</sup> CPIA Compliance Plan Action Sheet, Point 5

business streams, along with Training, Governance, HMRC and RCPO Strategy and Policy Units are represented on the DWG, practicing DOs are not invited as a matter of course. A practitioners' sub-group, designed to feed issues affecting DOs into the more strategic forums has not been established<sup>16</sup>. The lack of practitioners on the DWG and the failure to establish the practitioners CI sub-group raises the question of how cognisant those charged with devising and driving the departmental disclosure strategy are with the day to day problems faced by those at the coal face. This was raised by many investigators, who had concerns that their senior managers had no practical experience of, or training in CPIA/ CJA 2003 disclosure issues. Furthermore, there is a widespread perception amongst investigators and some defence practitioners that HMRC's senior management's obsessive focus on target setting, the quick turnaround of cases and lack of understanding about the resource implications of disclosure undermine the Department's ability to fulfil its criminal justice obligations.

- 2.12 During the year since the creation of the first CPIA Compliance Plan, in addition to establishing the DSG and DWG, various projects have been instigated which seek to address the principal inhibitors to HMRC's preparedness to meet its disclosure obligations. Amongst other initiatives, an audit of the Department's multitudinous data recording systems has been conducted<sup>17</sup>; aspects of the departmental instructions have been revised<sup>18</sup>; the huge task of collating all material held by officers who left HMRC to join the Serious Organised Crime Agency (SOCA) has been completed; and systems initiated to manage this legacy material. Furthermore, the disclosure policy lead, DSG and DWG have ensured that the CPIA Compliance Plan, unlike its 2002 antecedent, is a developing document.
- 2.13 Although the aspirations underpinning the creation of the CPIA Compliance Plan, the DWG and the DSG, are commendable, and despite the progress made by the projects detailed above, there has been a lack of development in other fundamental areas. In particular, the development of bespoke advanced disclosure training for DOs, which was first identified by CI as a priority in 2004, has been especially laboured. Training, both of DOs and other staff, is addressed further in Chapter 4 of this report.
- 2.14 The minutes of the 17 January 2006 meeting demonstrate the DWG had identified it was essential for the developing disclosure strategy to take account of the issues affecting practitioners. These minutes stated the DWG intended:
- "... to set up [a DWG CI] sub-group to feed in issues/developments to DWG from the whole of CI (ex [Customs and Excise] and ex IR) and also to address any work arising from issues identified."*<sup>19</sup>

<sup>16</sup> See below, Paragraph 2.15

<sup>17</sup> See below, Chapter 5

<sup>18</sup> See below, Chapter 3

<sup>19</sup> Disclosure Working Group Minutes 17 January 2006

It was also intended that the sub-group would fulfil the requirement of the DWG's terms of reference

*"to establish a forum to bring good practice to the fore and ensure that it was disseminated across the Department."*<sup>20</sup>

It is commendable the representatives on the Action Lab recognised the importance of having a mechanism to provide 360° feedback. It is disappointing, therefore, that the development of the CI sub-group has also been faltering. The minutes of the DWG's 16 March 2006 meeting stated the creation of the sub-group would be delayed until the conclusion of the SOCA de-merger. It is of concern that during the four months since de-merger, the issue has not featured in the minutes of any subsequent DWG meetings and has fallen from the Group's agenda. As at September 2006, the sub-group has still not been formed.

- 2.15 There is a lack of awareness of the existence of the DWG amongst disclosure practitioners and the failure to establish the sub-group has left HMRC without a forum for those very practitioners to influence the Department's disclosure strategy, or to highlight good practice to management. The de-merger of parts of the former HMCE to the SOCA in April 2006 militated against the Department's ability to determine the composition of a CI sub-group at that time.

**Recommendation Two:**

**HM Inspector recommends Criminal Investigation and RCPO create a forum whereby Disclosure Officers, Senior Officers and lawyers can meet at least bi-annually to discuss emerging trends, concerns, good practice and promote corporate learning and experience.**

- 2.16 The creation of a pan-departmental Disclosure Co-ordination Unit (DCU) is another example of a commendable initiative which has not been given sufficient prioritisation. The DWG first recommended the creation of a DCU in November 2005, but it did not gain impetus until four months later. Following pressure from RCPO, the issue was raised again at the DWG's March meeting. Subsequently, the DWG Chair wrote an issue paper, in which he envisaged the DCU to be a mechanism to co-ordinate activity relating to CPIA. Clearly, a unit of this type could be instrumental in supporting the work of the strategic policy lead on disclosure, the DWG and DSG, by ensuring projects and initiatives are driven forward. Although a costed business case for the DCU has been submitted and the initiative has received support from RCPO, the DCU remains no more than a theoretical aspiration ten months after it was first mooted.
- 2.17 Shortly after the CPIA Compliance Plan was created, a new Director of CI was appointed from outside the Department. He subsequently established the Change Programme Team with the remit of expediting the amalgamation of the criminal investigation services of the former HMCE and the former IR and restructuring the Directorate to improve efficiency. The creation of the DCU, in particular, has been deferred until the change management programme

<sup>20</sup> Disclosure Working Group, Terms of Reference

has been completed. Although the Change Programme Team are required to evaluate resourcing across CI as a whole, given the importance of the DCU and its relatively small resourcing requirements (six staff) it is disappointing that the requisite resources have not been ring-fenced.

- 2.18 As a Regional Manager in CI, the disclosure policy lead has full-time operational management responsibility for almost 300 staff and has a real-time operational role in authorising property interference and intrusive surveillance. He is also HMRC policy lead for all frontier activity, Investigation Prosecution Units, the interface with the SOCA and chair of a business user assurance group overseeing HMRC's case management software, CHIRON<sup>21</sup>. Notwithstanding this, through his chairmanship of the DSG and DWG, he has progressed a number of the Compliance Plan's recommendations. However, his wide range of responsibilities has limited his capability to devote sufficient time to the complexities of disclosure. It is, therefore, encouraging that plans are being formulated to create a new Policy Unit which will take responsibility for policy issues and remove these duties from operational staff.
- 2.19 The DWG and DSG provide HMRC and RCPO managers with forums at which CPIA disclosure policy issues can be addressed. There is evidence that these forums generate considerable constructive dialogue at middle and senior management levels and this is clearly commendable. However, it is surprising that HMRC and RCPO have not used the aforementioned bi-partite forums to develop joint guidance and training for investigators and lawyers<sup>22</sup>. Moreover, this partnership approach is not replicated to the same degree at the practitioners' level and there is a consensus amongst investigators that more operational advice and support from RCPO lawyers would be welcomed<sup>23</sup>.
- 2.20 Only about 2% of HMRC's workforce is directly concerned with pursuing criminal investigations, but the requirement to record and retain material to satisfy its disclosure obligations, applies across the Department. It is, therefore, imperative that the Department ensures senior managers in all its business streams recognise the impact which disclosure may have on their work. Where material is being collected and there is potential for it to be relevant to an investigation, HMRC senior managers must ensure their units' practices, policies and procedures are CPIA compliant and stress the implications of failure:
- stayed prosecutions;
  - reputational damage;
  - financial costs; and
  - "crooks walking out of court without a verdict".

This is not occurring in some former Inland Revenue directorates. Although Serious Civil Investigation and Direct Tax Intelligence are represented on the

<sup>21</sup> See below, Chapter 7

<sup>22</sup> See below, Chapter 3

<sup>23</sup> See below, Chapter 3 and Chapter 7

DWG, their senior management have opined that HMRC's push to be CPIA compliant in everything they do is a disproportionate burden for a department with resources weighted towards civil investigations.

- 2.21 One of the key drivers of the Department's disclosure strategy was the need to repair the damage to its reputation caused by the failed cases of 2002. In 2003, Mr. Justice Butterfield wrote:

*"Judges are distrustful of HMCE, think that the investigators tend to take shortcuts and are too concerned with the prosecution case and getting a conviction. More than one member of the Bar told me of the perception that a culture of disclosure was not present in HMCE and one went so far as to refer to a "deep seated mistrust" of HMCE by many members of the Bar. Judges also referred to secretiveness, a "need to know" culture and too defensive an attitude towards disclosure."*<sup>24</sup>

There were further adverse judicial comments in 2005 by Mr. Justice Crane and HHJ Pontius, in two more stayed prosecutions: *R v Uddin and Others* and *R v Lewis and Others*. Despite these failures, three years on from the Butterfield Review, there are now indications that HMRC's reputation is recovering from the damage of 2002/3. Significantly, since the merger, no new HMRC prosecutions have been stayed due to successful abuse of process arguments relating to disclosure. This improvement in performance was echoed in the comments made by two circuit judges interviewed, who felt that HMRC is no longer

*"living from crisis to crisis"*

and that

*"significant improvements have begun."*

These views are shared by a number of defence practitioners interviewed who felt that HMRC is improving, due to a real effort from HMRC's senior management. These sentiments, however, remain far from universal. In addition to claims made by some defence practitioners that HMRC officers feel that they are above the law and maintain a culture of secrecy – a view not voiced by any of the judiciary interviewed – there was a widespread view that further improvements need to take place, particularly in relation to case management and resourcing. It is notable that the majority of the criminal justice practitioners interviewed, however, were unaware of the steps that the Department have taken since the Butterfield Review. HMRC should explore with RCPO ways to inform the judiciary and other criminal justice practitioners of the disclosure initiatives and policies that have been developed in recent times.

- 2.22 Learning from experience is a critical success criterion for any organisation and an important component for corporate development, is the ability to understand and manage performance. HMRC does not routinely de-brief cases and therefore opportunities to identify problems, concerns and indeed, good practice, are

<sup>24</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 9.63

being lost. The lack of comprehensive performance information is disappointing and, when so much attention has been focussed on failed prosecutions, it was surprising that neither HMRC nor RCPO were able to provide comprehensive data on how many had been unsuccessful or the reasons why. Without a strong performance management regime it is difficult for HMRC to justify the strategies, policies and resource allocations intended to support departmental aims and objectives.

Consideration One:  
HMRC should consider introducing a performance management system to record comprehensive case and resource data, to include reasons for cases failing.

2.23 The development of the Criminal Appeals Bureau (CAB) will enhance corporate learning. Established in February 2006, CAB is charged with critically examining and reviewing legacy investigations and addressing cross-cutting issues. Identified disclosure shortcomings and good practice are shared with DSG and DWG. The Bureau is also a dedicated point of contact for internal and external stakeholders, including police and the Criminal Cases Review Commission, for disclosure in cases subject to appeal.

2.24 Since April 2005, senior management in HMRC CI have been addressing the inhibitors to the Department's compliance with its disclosure obligations. The momentum generated by the 2005 Action Lab has waned in the aforementioned important areas<sup>25</sup> and this needs to be addressed. The Department must ensure that the importance of the disclosure message is seized by ExCom and senior management across all business streams in the Department. It is acknowledged, that the DWG and DSG structure, when strengthened by a dedicated strategic disclosure lead, the CI sub-group and the DCU should provide the Department with a mechanism for meeting its statutory disclosure obligations that is unparalleled in UK law enforcement. In order for the Department to build upon these foundations, it is essential that practitioners are fully aware of their disclosure obligations and integrated procedures are followed for the gathering, storage, recording, retention and revelation of material. These issues will be examined in the following chapters of this report.

<sup>25</sup> Paragraphs 2.7, 2.15, 2.16

## Chapter 3

# Instruction and Guidance on CPIA/ CJA Disclosure

3.1 It is imperative that law enforcement agencies provide their staff with clear instructions or guidance to enable them to comply with their disclosure obligations. Prior to the merger, the precursor Departments' approaches to this issue differed. The following table illustrates the principal differences between the Inland Revenue Special Compliance Office (SCO) Manual and the HM Customs and Excise (HMCE) Law Enforcement (LE) Handbook:

	SCO Manual	HMCE LE Handbook
Guidance or Instruction	Guidance, with derogations permitted	Mandatory instruction
Scope	Brief	Fairly comprehensive
Includes requirement for a Disclosure Officer (DO) to be appointed to every investigation	√	√
Includes descriptions of other roles and responsibilities of legislated posts	x	√
Details legislative requirement to consider material held outwith the investigation	x	√
Required DO certification	"I certify that to the best of my knowledge and belief, all material which has been retained and made available to me has been revealed to the prosecutor in accordance with the Criminal Procedure and Investigations Act 1996 Code of Practice." <sup>26</sup>	"I certify that to the best of my knowledge and belief, all material which has been retained and made available to me <b>has been inspected, viewed or listened to, and all relevant<sup>27</sup> material</b> has been revealed to the prosecutor in accordance with the Criminal Procedure and Investigations Act 1996 Code of Practice and the Attorney General's Guidelines 2000." <sup>28</sup>

3.2 In April 2005, the creation of HMRC merged criminal investigators from two very different departments with contrasting instructions on, and approaches to,

<sup>26</sup> SCO Manual 7.8.19: Disclosure Officers Report

<sup>27</sup> Author's underlining

<sup>28</sup> LE Handbook V. 32, Appendix C3, Disclosure Officer's Report

disclosure. In July 2005 an e-mail from Criminal Justice Enforcement Standards was sent to SCO Senior Management Group, subsequently disseminated to SCO staff, informing them that the disclosure instructions had been updated in the newly badged Enforcement Handbook and were to supersede any previous instructions on this matter. Subsequently, in December 2005, the Director General Enforcement and Compliance published an article on the departmental intranet stating that Handbook was to be the definitive manual for enforcement activities. The SCO Manual has subsequently been withdrawn.

### Evaluation of the Enforcement Handbook version 47

3.3 The Handbook is an intranet based set of instructions available to all officers across HMRC. As the Handbook is frequently updated officers are actively discouraged from printing it, to ensure they follow the most up to date version.

3.4 Mr Justice Butterfield described the disclosure section of the LE Handbook he viewed prior to the publication of his Review of July 2003, as *"a full, comprehensible explanation of the obligations imposed by the CPIA and how those obligations must be fulfilled"*<sup>29</sup>

and commended HMCE for its introduction. Since 2003, the Handbook has undergone many iterations, the disclosure section has been remodelled as an interactive process map and its content has been updated to reflect the Attorney General's Guidelines and *'the protocol for the Control and Management of Unused Material in the Crown Court'*<sup>30</sup>. However, outside of HMRC, another, far more comprehensive, set of disclosure instructions has been produced for UK disclosure practitioners: the Prosecution Team Disclosure Manual (PTDM).

3.5 The July 2002 Government White Paper *Justice for All* recognised the importance of the work being undertaken jointly by the Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS) to improve prosecution disclosure by developing revised joint operational guidance, later published as the PTDM. It acknowledged that

*"This will ensure consistent and efficient delivery of prosecution disclosure duties."*<sup>31</sup>

Revenue and Customs Prosecutions Office (RCPO) were involved in the process; RCPO representatives sat on all the workstreams and two groups were chaired by them, but HMRC was not invited to participate and was not involved. Both RCPO and HMRC decided not to adopt the PTDM. HMRC took the view that

*"it did not fit [its] business needs ...[as] ... the CPS disclosure manual is aimed at volume crime"*

and continues to rely solely on the Handbook. Furthermore, RCPO follow their own instructions contained in their Prosecution Manual. Despite RCPO's

<sup>29</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 10.40

<sup>30</sup> Later referred to as the Judge's protocol

<sup>31</sup> Justice for All (Cmnd. 5563, 2002) Paragraph 3.51

involvement in creating the PTDM, it is disappointing that HMRC and RCPO did not take the opportunity to develop joint instructions to build on the good work with ACPO/CPS and demonstrate to practitioners in HMRC and RCPO the need for a co-operative approach to disclosure. This failure to present a united front has led many DOs to feel that they are often left to their own devices until after they have already submitted unused material schedules. The first communication they receive from their prosecutor in respect of disclosure is when the schedules are sent back for correction.

3.6 Although many investigators and DOs in indirect tax investigation teams are of the opinion that the disclosure section of the Handbook has improved in recent years, a significant number feel that it does not provide sufficient information regarding disclosure principles and procedures. Notwithstanding the new process map format, the Handbook is generally regarded as an overview of disclosure rather than a comprehensive set of instructions. DOs and investigators in indirect tax investigation teams voiced their concerns that it was too broad-brush, lacked case precedent and did not get to the heart of issues such as relevance, sensitivity and third party information.

3.7 It is concerning that the instructions in the Handbook on certain aspects of disclosure are inadequate. The Handbook's section entitled *'Disclosure to Defence'* states:

*"Once the schedules of Unused Material are finalised the Prosecutor will endorse them and send [the] Non-Sensitive Schedule and any disclosable material with a covering letter to Defence."*<sup>32</sup>

3.8 This falls far short of what is required under the Attorney General's Guidelines<sup>33</sup>. It could be interpreted that the prosecutor will simply endorse the schedules rather than reviewing and challenging them.

3.9 Some aspects of disclosure are not covered at all in the Disclosure sections of the Handbook or Prosecution Manual, such as the requirement for investigators to make early disclosure of material to the defence. In contrast, the PTDM states:

*"The investigator must inform the prosecutor as early as possible whether any material weakens the case against the accused"*<sup>34</sup>

and

*"From the start of any prosecution, the prosecutor should consider what (if any) immediate disclosure should be made in the interests of justice and fairness in the particular circumstances of the case. [For example] ... information [that] could reasonably be expected to assist the accused when applying for bail; material which might enable an accused to make a pre-committal application to stay the proceedings as an abuse of process."*<sup>35</sup>

<sup>32</sup> Enforcement Handbook>Disclosure>Disclosure to the defence

<sup>33</sup> Attorney General's Guidelines on Disclosure, April 2005: Paragraph 33

<sup>34</sup> Chapter 2 of PTDM General duties of disclosure outside the Act: Paragraph 2

<sup>35</sup> Chapter 2 of PTDM General duties of disclosure outside the Act: Paragraph 7

Conversely, the Handbook does not instruct investigators to address material of this nature, but leaves this responsibility to the DO at a later stage of the process. In the 'Consider Material' section of the Handbook, a table is produced in which the steps required by the DO are detailed. Under 'Consider content', the DO (not the investigator) is given an instruction:

*"If you find any items that should be disclosed immediately notify the Officer in Charge of the Investigation (OIC) with a view to reveal (sic) it to the Prosecutor immediately."*

This could be weeks or months later. This was an issue raised by defence practitioners who complained that, in most cases, HMRC DOs do not disclose material at the earliest opportunity but wait, sometimes for many months, until they have finalised their disclosure schedules.

3.10 Furthermore, the special role of the OIC in the disclosure process, as clearly set out in the PTDM, is not reflected in the Handbook, for example, in relation to consultation prior to Public Interest Immunity hearings. The PTDM instructs the OIC to be involved in ensuring that the prosecutor is provided with the information necessary to make a proper decision on how any application is to be made and to attend the hearing. The Handbook makes no mention of the OIC's role in the PII process<sup>36</sup>, except where the PII request is rejected, when the DO is instructed to inform the OIC, who will in turn inform the Assistant Chief Investigation Officer.

3.11 The introduction to the disclosure section of the Handbook states that *"it is desirable that investigators and prosecutors adopt consistent practices across England and Wales."*

Throughout these instructions no reference is made to Northern Ireland. Although the Criminal Procedure and Investigations Act 1996 Code of Practice for Northern Ireland July 2005 is fundamentally the same as the Code that applies to England and Wales, the lack of reference to it in the Handbook has resulted in investigators in Belfast being unaware of it and working to the England and Wales code. It is imperative that HMRC provides departmental instructions on CPIA disclosure, which apply to officers in Northern Ireland as well as England and Wales, and that links are provided to Northern Ireland statutory guidance.

3.12 Two representatives from direct tax investigation and one indirect tax investigator formed a sub group of the Disclosure Working Group to capture all relevant former Inland Revenue instructions in the Handbook and update it to reflect the broad spectrum of investigative work conducted by the new Department. Although this work has been completed and the action point discharged, investigators in direct tax investigation teams were unaware of this and expressed concerns that the Handbook does not fully meet their requirements. There was a broad consensus that the Handbook was imposed on them and was not relevant to their work. Although the majority of these

<sup>36</sup> Enforcement Handbook>Support prosecution>How to support a PII hearing

investigators had seen the disclosure section of the Handbook, they were not using it as a resource. Some direct tax investigators considered the Handbook to be a Customs production and therefore didn't look at it. Amongst those who had read it, detrimental comments were commonplace:

*"it is so Customs centric it's hardly worth reading"*

and

*"a lot is totally irrelevant to our work, practices and procedures."*

3.13 As a consequence of the perceived lack of sufficiently detailed, relevant instructions, investigators across the Department said that they tended to seek disclosure guidance from their colleagues rather than from the Handbook. Although HM Inspector recognises the value of the sharing of knowledge within teams, there are clear dangers that an over-reliance on this, to the exclusion of comprehensive instruction, raises the spectre of the promulgation of bad practice<sup>37</sup>.

3.14 It is acknowledged that the disclosure issues surrounding some of the complex cases prosecuted by HMRC/RCPO are unique and it is understandable that a decision has been made to provide specific instructions for DOs on these subjects.

3.15 The Handbook is regularly updated by Criminal Justice and Enforcement Standards and details of significant updates are announced on the Enforcement homepage of the intranet. There is a consensus across the Department that the culture has changed from management informing investigators of updates to instructions, to a requirement for officers to regularly check the intranet pages to see if there have been any amendments. There was little evidence of managers using team meetings to impart information about important changes to the instructions.

3.16 The Handbook is an electronic manual, which is not produced in paper copy in order that its content is up to date at the point when staff access it. Clearly, therefore, if staff print any pages from the Handbook this may result in them following instructions that no longer follow current policies or procedures. A prime example of this was uncovered during the inspection whereby in one office, DOs were relying on a 'What material is sensitive' list. This was produced from an old iteration of the Handbook, which included two categories of sensitive material that had already been removed by the new Code of Practice<sup>38</sup>.

Consideration Two:

HMRC should consider exploring the technical feasibility of inhibiting the print function on relevant parts of the Handbook. In the interim, HMRC should consider reinforcing the message to staff that they should not print the instructions and management assurance should include checks to make sure that outdated instructions are not being used.

<sup>37</sup> See below, Chapter 3 and Chapter 7

<sup>38</sup> See below, Chapter 7

- 3.17 The Disclosure section of the Handbook is the only instruction setting out the Department's disclosure obligations under CPIA and is available to all HMRC staff who have access to the intranet. Officers in Intelligence and Detection were generally aware of the CPIA disclosure instructions in the Handbook and the majority felt it fulfilled their needs, albeit one senior intelligence manager would instruct staff to consult the SCO Manual. The majority of officers in Serious Civil Investigations were of the opinion that CPIA disclosure was irrelevant to their work as they did not undertake criminal prosecutions. Some were aware that there were intranet pages which referred to CPIA disclosure, but others would refer to Criminal Investigation colleagues if they required further information.
- 3.18 Other staff from Local and National Compliance had very little, if any, knowledge of CPIA disclosure. They experienced problems navigating the HMRC intranet as it was difficult to find relevant intranet pages unless they knew they were contained in the Handbook. Staff across various directorates complained of the poor quality of the search facility on the intranet. This was confirmed by a number of test searches<sup>39</sup>. A search for 'disclosure' revealed ten hits on the first page, none of which related to the disclosure of material in accordance with CPIA. Instead, they all related to the disclosure of HMRC material outside the Department. A further search of 'disclosure of unused material' produced a first page of ten hits, six of which related to references on the RCPO intranet pages. Interestingly, some of these gave details of the RCPO Prosecution Manual and, although the Manual itself was not accessible, anyone making the search may have been confused by the linked page which read:
- "Changes have been made to the Prosecution Manual to reflect developments relating to disclosure. All staff dealing with disclosure must ensure the revised guidance is applied in relevant cases."*
- The remaining four hits were links to pages contained in the Disclosure section of the Handbook. Unfortunately, none of these clearly displayed the result as being pages from the Disclosure section of the Handbook.
- 3.19 An alternative route for staff to attempt to locate the instructions could be via the *Library A-Z (publications)* intranet link. Unfortunately, CPIA disclosure does not feature anywhere. The 'disclosure' entry takes the searcher to pages concerning the rules governing the exchange of departmental information with other agencies. There is no explanation that this does not relate to CPIA disclosure and there is no link to the Handbook pages.

### **Recommendation Three:**

**HM Inspector recommends HMRC form a working group of disclosure practitioners, including RCPO and Investigation Legal Advisers, to produce new detailed joint instructions, to incorporate material from the Prosecution Team Disclosure Manual and exemplars reflecting the work of the Department and take steps to improve the index and search functions on the intranet.**

## Chapter 4 Training

- 4.1 To ensure that officers have the best possible preparation for fulfilling their disclosure obligations, it is essential that comprehensive guidance is coupled with thorough training programmes. The importance of training was espoused in the Court of Appeal's February 2006 publication entitled: *Disclosure: A protocol for the Control and Management of Unused Material in the Crown Court*<sup>40</sup>, which stated:

*"It is crucial that the police (and indeed all investigative bodies) implement appropriate training regimes [for disclosure]"*<sup>41</sup>

and by Mr. Justice Butterfield in his *Review of criminal investigations and prosecutions conducted by HM Customs and Excise* who said:

*"It is of considerable importance that investigators are both well trained, and regularly trained."*<sup>42</sup>

<sup>40</sup> The Judge's Protocol

<sup>41</sup> HM COURTS SERVICE. Disclosure: A protocol for the control and management of unused material in the Crown Court. Available at: [http://www.hmcourts-service.gov.uk/cms/files/disclosure\\_protocol.pdf](http://www.hmcourts-service.gov.uk/cms/files/disclosure_protocol.pdf)

<sup>42</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 12iii

<sup>39</sup> Conducted by HMRC in mid September 2006



**Chronology of disclosure training**

Date	Inland Revenue/ Direct Tax		HMCE/ Indirect Tax			
	Serious Compliance Office (SCO)	Serious Civil Investigation (SCI), Direct Tax National and Local Compliance	Criminal Investigation	Intelligence	Detection	Other
Pre-2002	<b>1 Day Disclosure Seminar</b> (one-off in 1999)  <b>Professionalism in Security (PinS)</b> included 1 session on disclosure		<b>Basic Investigation Techniques (BITs)</b>  <i>Included 1 session on disclosure</i>		<b>Anti-Smuggling Programme and Core Skills Training</b>	
Post October 2002			<b>Disclosure Awareness:</b> Guided Learning Unit and 2 day + pass fail course	<b>Disclosure Awareness:</b> Guided Learning Unit and 2 day + pass fail course	<b>Disclosure Awareness:</b> Guided Learning Unit and 2 day + pass fail course  Suspended after adoption of Model A <sup>43</sup>	
Post Merger	<b>Enforcement and Compliance Awareness (EACS)</b>  <i>included 1 session on disclosure</i>  for new entrants in Enforcement and Compliance (E&C)	<b>EACS</b>  <i>included 1 session on disclosure</i>  for new entrants in E&C	<b>New Guided Learning Unit (GLU) – computer based training package</b>  <b>EACS</b>  <i>Included 1 session on disclosure</i>  for new entrants in E&C	<b>New GLU</b>  <b>EACS</b>  <i>included 1 session on disclosure</i>  for new entrants in E&C	<b>New GLU</b>  <b>EACS</b>  <i>included 1 session on disclosure</i>  for new entrants in E&C	<b>New GLU</b>
Summer 2006	Some DOs have not received any disclosure training and none have received Advanced Disclosure Training	Many DOs have not received any disclosure training and none have received Advanced Disclosure Training	All DOs have received some disclosure training but have not received Advanced Disclosure Training			

**Disclosure training pre-merger**

4.2 Prior to the merger, both Inland Revenue (IR) and HM Customs and Excise (HMCE) investigators received bespoke disclosure training designed by the

<sup>43</sup> See paragraph 5.2

precursor departments. As with disclosure guidance, strategy and application, there was little commonality between IR and HMCE on the structure, content and delivery of their disclosure training.

- 4.3 Prior to October 2002, HMCE investigators were required to attend a five week Basic Investigation Training (BITs) course during their initial Specialist Trial Period’s six month continual assessment. The BITs course included a session on CPIA Disclosure that consisted of an overview of the disclosure process followed by syndicate exercises with student participation.
- 4.4 As a result of the failed cases, in late 2002, HMCE reviewed its disclosure training needs and, during Mr Justice Butterfield’s review, introduced a new bespoke two day Disclosure Awareness (DA) course. This course was designed in just six weeks and during the winter of 2002 was delivered to approximately 4,200 investigation and intelligence officers, of Officer (O), Higher Officer (HO) and Senior Officer (SO) grades.
- 4.5 The course was designed with input from operational and technical experts. To ensure that officers have a base level of knowledge in preparation for attending the course, they were issued with an electronic Guided Learning Unit (GLU) in advance of the course start date. The GLU instructions stated that between one and two days of a student’s time would be spent on its completion. This time was designated as protected learning time, during which the student could work at their own pace reading the reference material and answering a series of questions. The GLU was to be read in conjunction with the Disclosure section of the Enforcement Handbook, legislation, the CPIA Codes of Practice and the Attorney General’s Guidelines. GLUs were completed by the students, either in manuscript or electronic format, and hard copies were provided to the trainers for marking. Students were required to attain a pass mark in order to continue on the course.
- 4.6 The two day course had a wide ranging curriculum and included:
  - Sifting of material;
  - Separation into sensitive and non-sensitive and non relevant material;
  - Completion of Disclosure Officer’s (DO’s) report;
  - Consideration of defence case statements and further reviews of material arising from the defence case statements;
  - Consideration of Public Interest Immunity (PII) issues;
  - Compilation of PII bundles; and
  - A role-play scenario with a member of Customs and Excise Prosecution Office (CEPO) or a barrister acting as Judge in Chambers. The objective of this role-play exercise was for the students to convince the Judge to grant a Certificate of Public Interest Immunity in respect of certain material.
- 4.7 The course concluded with a formal examination, in which the students were required to achieve a minimum of 70% in order to pass. The students who failed

the examination were required to either re-sit it or to attend the course again in its entirety, depending on how far short of the 70% pass mark they fell. Mr Justice Butterfield received positive feedback from officers who had attended the course and he was fulsome in his praise of the course he attended in 2002:

*"I was impressed by what I saw. It brought home to me the complexity of the tasks facing investigators imposed by the CPIA, the difficult judgments that must be made by them and the care required when considering documents. It was a salutary experience, and one from which judges could learn much."*<sup>44</sup>

- 4.8 In 1999, all former IR Special Compliance Office (SCO) criminal investigators were required to attend a disclosure seminar delivered in conjunction with the Inland Revenue Solicitors Office and Standing Counsel. There was no assurance that this event was attended by all SCO investigators and, since then, no similar event has taken place. However, from 1999, all new SCO criminal investigators received mandatory Professionalism in Security (PinS) Counter Fraud Specialist Training, provided by the Department for Work and Pensions (DWP). This course included a half day session on law and legislation, which included aspects on disclosure and CPIA. The PinS programme, including the module on disclosure, was accredited by the University of Portsmouth and students attaining the requisite 60% pass mark were awarded a Counter Fraud Specialist BTEC level 3 qualification. Whereas HMCE had developed bespoke disclosure training in response to problems that it had encountered, IR did not identify a similar business need as its method of 'blanket disclosure' had not attracted defence or judicial criticism. There was a broad consensus amongst the investigators interviewed as part of this inspection that the PinS training they had received pre-merger was totally inadequate, and wholly insufficient for such a high profile and complex issue as disclosure.

### HMRC disclosure training for criminal investigators

- 4.9 Following the merger, the former-HMCE disclosure awareness training course has remained the mainstay of disclosure training for indirect tax investigators. Since April 2005, the course has been delivered to new recruits in the Investigation Prosecution Units (IPUs) and at the time of inspection, virtually all indirect tax Os, HOs and SOs in Criminal Investigation (CI) had received this training. Although the course has been expanded to two and a half days and reflects the new Codes of Practice, the Attorney General's Guidelines 2005 and the Judges' Protocol it retains the same case study, role plays and learning techniques as the original 2002 model. An overwhelming majority of investigators who have undertaken this training felt that it was a sound introduction to the principles of disclosure and the roles and responsibilities detailed within CPIA.
- 4.10 Notwithstanding these positive comments, the majority of investigators and Disclosure Officers (DOs) involved in proactive investigations felt that it was too brief and insufficiently detailed to give them confidence to deal with the

<sup>44</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 10.39

complex disclosure issues they were encountering on a daily basis. Many felt that in addition to this introduction, they would have benefited from a more advanced disclosure course. In 2004, the Butterfield Implementation Team held meetings with the Metropolitan Police Service (MPS), CPS and CEPO to discuss the development of such a course and, following a meeting with the MPS Crime Academy, agreement was reached for the development of this training. However, this agreement was never followed through. Despite the issue being championed by HMRC senior managers and RCPO and also being raised as an action point on several iterations of the CPIA Compliance Plan, it has now been abandoned in favour of the development of a DO forum, including representatives from RCPO. This decision does not appear to be in line with the widely held views espoused by the practitioners and again highlights the need for their views to be taken into consideration by those charged with devising the departmental disclosure strategy. As details of the structure or agenda of this forum have not been communicated, HM Inspector is unable to assess its suitability or value.

#### Consideration Three:

HMRC should consider devising a series of mandatory disclosure modules and comprehensive Guided Learning Units tailored to the specific needs of officers engaged in the complex and high risk areas of departmental business (such as Missing Trader Intra-Community and Organised Tax Credit Fraud) to supplement the existing introductory DA course.

- 4.11 A majority of DOs also voiced specific concerns over the lack of training and guidance<sup>45</sup> provided by the Department on key aspects of disclosure: primarily relevance and sensitivity. This raises the fundamental question of whether CI Training Branch are fully aware of practitioners' training needs and how the curriculum of the DA and other HMRC courses are devised and amended to reflect the ever-changing needs of the Department.

#### Recommendation Four:

**HM Inspector recommends HMRC conduct a skills audit across the Department, specifically including disclosure awareness, understanding and training in order to create a clear business requirement.**

- 4.12 In his 2002 Review, Mr Justice Butterfield expressed concerns regarding the regularity of training provided. He said:
- "subsequent training is somewhat ad hoc and not systematic"*<sup>46</sup> and recommended HMCE introduce a programme of *"regular refresher training for investigators every five years"*<sup>47</sup> and that *"training ... reflect[s] changes in the criminal justice system"*.<sup>48</sup>

<sup>45</sup> See above, Chapter 3

<sup>46</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 12iii

<sup>47</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 12iii

<sup>48</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 12iii

The former HMCE had a period of sixteen months between the Criminal Justice Act 2003 (CJA) gaining Royal Assent in November 2003 and it coming into effect in April 2005 to design refresher training to reflect the changes in the criminal justice system introduced by CJA, however, no such refresher training was provided. Apart from those IPU officers who have received the new two and a half day course, investigators have not received structured training on the new statutory and legislative guidelines but have relied on the relevant email and intranet announcements<sup>49</sup>.

Consideration Four:

In anticipation of future legislative changes, HMRC should consider providing staff with relevant, timely training designed in association with Revenue and Customs Prosecutions Office and delivered by experienced trainers.

- 4.13 HMRC has expressed its intention to deliver refresher training on disclosure to all CI officers who had previously completed the DA course, however, this product has not been finalised. HM Inspector urges HMRC to ensure that the delivery of disclosure refresher training commences within five years of the DA training, provided in 2002/3.
- 4.14 Many indirect tax DOs and investigators, who had been appointed as a DO for the first time, many years after receiving their DO training, were concerned about their lack of up to date knowledge and felt they would have greatly benefited from some type of disclosure upskilling prior to taking on this responsibility. A five-yearly programme of disclosure refresher training, although welcomed, would not fully mitigate their concerns. The aforementioned disclosure forum may provide DOs with an opportunity to regularly meet to discuss and debate issues.

Consideration Five:

HMRC should consider making the new Guided Learning Units designed to accompany the recommended specific disclosure available on the Departmental intranet, to act as a substantial reference tool for those newly appointed as a DO.

- 4.15 Since the merger there has been a paucity of training available to direct tax investigators. These investigators were merged with their indirect tax counterparts in the new CI Directorate and responsibility for the delivery of technical training has been taken on by CI's training branch. This branch recently carried out a review of the PinS programme and the training was put on hold during this time. The review determined that PinS is suitable as foundation training for direct tax investigators. However, since February 2006, the DWP have not provided any training courses, due to a re-evaluation of CI training by HMRC. Consequently, direct tax investigators who have joined HMRC CI from local tax offices or other Government departments since the merger have received no

training on investigation practices, including disclosure. These investigators fulfil the description of

*"inexperienced and insufficiently trained investigators"*<sup>50</sup>

the use of which Mr Justice Butterfield concluded were partly responsible for the failures of the London City Bond cases. It is wholly unacceptable for new direct tax investigators to be expected to fulfil their disclosure and investigation officer responsibilities without being provided with any training on how to do this.

Consideration Six:

HMRC should consider ensuring that all investigators are trained in investigative techniques, including disclosure, prior to being asked to undertake investigation duties.

- 4.16 As former IR and former HMCE staff still use legacy non-integrated IT systems, direct tax staff do not have access to the indirect tax Learning Management System (LMS), which would enable them to nominate themselves for disclosure training. Moreover, direct tax officers cannot directly access the disclosure GLU and indeed, were largely unaware of its existence. In the absence of any specific direct tax DA course, one team of direct tax investigators, managing a series of linked tax fraud cases, exceptionally has attended and passed the indirect tax DA course. Contemporaneously with the inspection, four direct tax investigators were attending an indirect tax DA course to assess its suitability for their needs. Subsequently a decision has been made that the DA training will be rolled out to all direct tax investigators by the end of the 2006/7 financial year. On 7 July 2006, the Director CI issued a letter stating:

*"All investigators in Criminal Investigation are required to attend and pass, the 2½ day training course prior to taking any new responsibilities as a Disclosure Officer."*

HM Inspector commends CI for taking this approach, however, the Department has been unable to fully adhere to this policy decision. Direct Tax investigators are not due to receive DA training until November 2006. Consequently, in the interim four months, officers who have not received the training are having to take on new DO responsibilities.

- 4.17 Training courses across CI, Intelligence and Detection are categorised as being either Gold – 'must have' – or Silver – 'may have'. The decision for disclosure training to be Gold, alongside legally mandated courses such as health and safety and diversity, ensures that an officer's request for disclosure training will take priority over requests for all Silver courses and is to be applauded. HM Inspector believes this commitment should now be matched by the quality of the training products delivered.

<sup>45</sup> See above, Chapter 3

<sup>50</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 8.21

### HMRC disclosure training for other staff

- 4.18 Since April 2005, all new entrants to the HMRC Enforcement and Compliance Directorates<sup>51</sup>, should have received the Enforcement and Compliance Awareness course, which includes a half-day session on CPIA disclosure. This is a mandatory induction course that should provide new staff working outside of CI with sufficient knowledge to ensure that they are equipped to comply with obligations under CPIA. The following paragraphs will examine other disclosure training provided across these directorates.
- 4.19 The Investigation and Intelligence senior managers who created the 2002 HMCE Disclosure Action Plan decided the DA course was to be delivered across both Directorates and subsequently all HMCE Intelligence staff should have received it. There is a consensus amongst indirect tax intelligence officers that the course does not meet their requirements. They opined that the case studies and role play exercises were too investigation oriented, with little relevance to their roles. Furthermore, they felt that rather than being trained on how to act as a DO, a role which none of them will undertake, they should receive training on issues such as the creation and maintenance of systems to allow the timely retrieval and revelation of potentially disclosable material to the DO. The abstraction of officers for two days to receive training that is not relevant to them does not represent best use of time and resources. In contrast to their indirect tax colleagues, direct tax intelligence officers receive no dedicated disclosure training.
- 4.20 Since 1997, all new entrants within Detection have undergone mandatory core skills training, in which disclosure is covered in a half-day session<sup>52</sup>. From 2002, 219 Detection Officers responsible for the investigation and preparation of a case for trial received the DA training. However, since the recent introduction of the IPU Model A structure<sup>53</sup>, the responsibility for case progression has been removed from Detection officers. Therefore, they do not require a full knowledge of the duties of a DO and subsequently no longer receive the DA training. The half day module is sufficient to provide staff with a basic knowledge of CPIA's requirements to record and retain information in a retrievable format. However, no CPIA refresher training has been provided to Detection officers and no officers who joined Detection prior to 1997 have received any formal structured CPIA training. In May 2005, concerns were raised by Enforcement Standards and Assurance Division that some officers were making errors in the completion of their notebooks and witness statements that could undermine the prosecution case and lead to the loss of evidence. During the course of this inspection, other examples of poor detection practice were highlighted both by investigators and Detection Officers. Incidents were cited of evidence from different locations

<sup>51</sup> The six E&C directorates are Criminal Investigation, Intelligence, Detection, Special Civil Investigation, National Compliance and Local Compliance.

<sup>52</sup> From 1997 to April 2005 this was covered in National Anti-Smuggling Programme or Core Skills Training. Since April 2005 it falls within EACS

<sup>53</sup> See below, Chapter 5

being bagged together, thereby losing the evidential and forensic value. These poor operating practices should be identified by, or brought to the attention of, the DO and in the normal course of events would be revealed to the prosecutor for onward disclosure to the defence. Although these unprofessional practices may not lead to the case being lost through a failure to disclose relevant material, the prosecution could be fatally undermined due to insufficient or contaminated evidence. Other examples of bad practice may not come to the attention of DOs. Detection and Training management must ensure their staff are provided with sufficient training on their responsibilities under CPIA disclosure.

- 4.21 There are inconsistencies in the levels of CPIA disclosure training provided across, and in some cases within, other teams in Local and National Compliance. No CPIA disclosure training is available to direct tax officers working in these directorates. In contrast, basic CPIA disclosure awareness GLUs, which differ in content from the pre-DA GLU, have been created and made available electronically via the LMS for officers working in all parts of former HMCE. Some officers are compelled to complete them, some said they would refer to it if and when I need to and others were not aware of it. In at least one location, locally created training sessions had been provided. The training void between direct and indirect tax officers was most apparent within Joint Shadow Economy Teams (JoSET). These teams are made up of officers from both sides of the Department, working in the same location and were formed some years prior to merger. In one JoSET, the manager had ensured that all his indirect tax staff had completed the GLU on the intranet. He could not do the same for his direct tax staff. They cannot access the LMS directly to gain access to the GLU and, as he does not have responsibility for their training, he cannot officially provide the disclosure GLU (with the HMCE logo) to the direct tax staff. This reflects, in microcosm, the inherent inabilities of the two precursor Departments to merge their systems.

#### Consideration Seven:

Although direct tax staff are generally aware of their obligations to record and retain material under the Freedom of Information Act 2000 and the Data Protection Act 1998, HMRC should consider providing them with at least a basic level of awareness of CPIA disclosure.

- 4.22 The Special Civil Investigation (SCI) Directorate was created post-merger and is tasked with conducting investigations to the civil standard of proof. No CPIA disclosure training is provided to SCI officers. The persons investigated by SCI operate on the cusp of criminality and due to the size and complexity of their investigations, there is a potential for their work to lead to, or at least impact upon, a criminal prosecution.

#### Consideration Eight:

HMRC should consider developing a training course for all SCI officers to provide them with sufficient knowledge of CPIA disclosure and how their work may impact upon this.

### Other relevant training

4.23 Every investigator in indirect tax will have received the BITs course and disclosure training, but those officers promoted to SO are not provided with any training on how to fulfil their responsibilities as Officer in Charge (OIC) of an investigation as specified within CPIA and the Codes of Practice. As a result of the Butterfield Review, HMCE introduced a number of upskilling courses for SOs including the highly regarded Operational Management and Gold Command course developed in association with the National Centre for Applied Learning Technologies. These continuing courses provide essential training on how to manage a live operation, however HMRC is urged to incorporate a CPIA disclosure element into these courses, or provide separate OIC training on this.

### Training delivery

4.24 All CI training courses which were originally developed by HMCE are provided by instructors who have passed a *Train the Trainers* course, to ensure they can effectively deliver learning. There is some evidence of continuous professional development for trainers, which is beneficial to the Department and the individual. Training Branch provides opportunities for trainers to achieve Business and Technical Education Council Level 3 accreditation and have the longer term aspiration of providing Level 4 National Vocational Qualification.

4.25 Training Branch management acknowledge that they do not do enough trainer monitoring. With their limited resources, London-based management cannot oversee all training courses being delivered across various locations throughout the United Kingdom. It would also be logistically and financially impractical to host all training in London as it is cheaper, for instance, to send three London based trainers to Inverness rather than to bring fourteen students from Inverness to London.

4.26 HMRC have ensured that the GLUs are written by experienced investigators seconded to CI Training Branch and are signed off by RCPO lawyers.

4.27 There are no representatives from direct tax in CI Training Branch.

#### Consideration Nine:

In order to ensure that CI Training Branch is representative of both investigation streams within the Department and widen its knowledge base, HMRC should consider embedding direct tax investigators into the CI Training Branch.

4.28 Although training is a crucial element to ensuring the Department's preparedness to meet its disclosure obligations under CPIA, as amended by CJA 2003, departmental systems and procedures around the identification, retrieval and storage of material are also critical.

4.29 The general lack of awareness of individual responsibilities regarding disclosure, particularly amongst direct tax staff, presents a potential risk for future criminal prosecutions initiated by HMRC. If staff are unaware of their duty to retain

material in a durable and retrievable form, or consider themselves somehow exempt from this, then there is a real prospect of DOs failing to identify and reveal potentially relevant material. The true extent of the lack of awareness amongst the workforce can only be provided through a skills audit which should be undertaken immediately. Not only would this greatly assist in identifying the levels of skills and knowledge relating to disclosure but could also provide valuable information for all areas of business skills requirements.

#### Recommendation Five:

**HM Inspector recommends HMRC, in conjunction with RCPO, develop a training regime that will adequately enable the workforce to meet its obligations under CPIA including:**

- **Basic/mandatory Guided Learning Unit for all;**
- **Induction – for all new members;**
- **Advanced – for Disclosure Officers and Senior Officers; and**
- **Refresher – for regular practitioners.**

Chapter 5

# Identification, Retrieval and Storage of Material

*"there are **known knowns**; there are things we know we know. We also know there are **known unknowns**; that is to say we know there are some things we do not know. But there are also **unknown unknowns** – the ones we don't know we don't know"*<sup>54</sup>

## Information obtained during the course of an investigation

5.1 The Criminal Procedure and Investigations Act 1996 (CPIA) legislates for the creation of a Code of Practice to ensure material obtained during a criminal investigation is properly recorded and retained. HMRC is required to maintain robust systems and processes to ensure that officers involved in every stage of criminal investigations comply with the Code of Practice. Although the vast majority of HMRC staff are not criminal investigators, anyone in the Department who generates or obtains material that leads or relates to an investigation fall under this legislative requirement. Many of the Department's investigations result from the interface between its officers and members of the public. These contacts between the Department and the public are diverse and range from officers processing Tax Credit claims to those seizing prohibited goods at UK ports and airports.

5.2 Historically, in those cases which did not meet the criteria for adoption by Criminal Investigation (CI), frontline Detection officers at ports and airports were responsible for the management and progression of cases from arrest to trial. Since the merger, HMRC has introduced a system – Model A – under which all cases are handed over by Detection officers to dedicated investigators in Investigation Prosecution Units (IPUs) at the point of arrest. The adoption of this system has ensured that all such cases are progressed by fully trained investigators who have regular experience of dealing with disclosure issues. In the majority of cases, all material produced and seized by Detection Officers is correctly passed to investigators. However, the procedures introduced in different regions to facilitate the handover of material from Detection to IPUs were inconsistent. In some offices, Detection Officers were required to complete a detailed handover sheet, whilst in others investigators only received an informal briefing relating to handover material.

Consideration Ten:  
HMRC should consider developing clear Standard Operating Procedures to ensure the consistency of the IPU Handover process.

5.3 Intelligence officers based in HMRC's National Intelligence Units (NIUs) are aware that any intelligence package they pass to CI must contain all the material they hold that relates to it. Currently, the packages intelligence officers produce are paper-based documents. The introduction of an electronic case handling system, CHIRON<sup>55</sup>, to all Intelligence branches, planned for Spring 2007, will provide CI with direct access to all the material that forms the intelligence package in an electronic format and should streamline the process. HMRC has robust procedures in place for dealing with intelligence received from sensitive sources, such as the Security and Intelligence Services.

5.4 In 2003, HM Customs and Excise (HMCE)'s Law Enforcement Efficiency and Assurance Unit (LE EAU) produced a report<sup>56</sup> into searching premises, vehicles and the storage of seized items. The report highlighted a number of issues:

- officers felt obliged, due to perceived time constraints, to seize everything;
- erring on the side of caution, too much irrelevant material was being seized;
- officers were not always properly briefed before deployment;
- the greater volume of irrelevant material necessitated staff spending more time sifting, scheduling and dealing with defence requests; and
- the volume of material seized exacerbated storage problems.

It is disappointing that three years after the production of LE EAU's report, these problems have not been resolved. Investigators and members of the judiciary raised concerns that search officers continue to 'sweep' premises and seize huge swathes of irrelevant material. An investigator echoed the LE EAU's concerns over the resource implications for case officers of unfocused seizures, stating he *".. would prefer to spend an extra five hours in the premises than five weeks scheduling [the seized material]."*

A Disclosure Officer (DO) on a very large Missing Trader Intra Community (MTIC) fraud investigation echoed these sentiments. He estimated that half of the c. 500,000 documents seized in the case should have been identified as irrelevant during the searches. These included documents pre-dating the indictment period of the offence and music CDs. The DO estimated that a more thorough, focussed sift of material at the point of seizure could have saved almost two officer-years. The Serious Fraud Office (SFO) has identified the benefit to be gained from ensuring that its searches are appropriately focussed. The standard business process which underlies its property control system requires that material is sifted thoroughly on the premises, to ensure that only potentially relevant material is seized and, unless circumstances militate against it, that all material is described accurately at the point of seizure. To assist this process, a member of the case team, with in-depth knowledge of the investigation, is deployed at

<sup>55</sup> See below, Chapter 7

<sup>56</sup> HMCE LE Efficiency & Assurance Unit (2003) The Search of Premises and Vehicles and the Control and Storage of Property as Operated in Law Enforcement Investigation, HMCE LE Efficiency & Assurance Unit: Unpublished, P. 6

<sup>54</sup> D. Rumsfeld: US Defense Department Briefing 12 February 2002

every search to advise on relevance. Consequently, less material is seized and although searches take longer, SFO management believe this time is recouped throughout the life of the investigation.

- 5.5 Serious concerns have been raised by a significant number of investigators across former Law Enforcement Investigation (LEI) about the lack of suitable facilities to store evidential and unused material. In one office, where boxes of case papers are stored in the communal kitchen, an investigator highlighted the problems that the lack of secure storage poses, stating:

*"I couldn't put anything here overnight, safe in the knowledge that it would be secure and that nobody could jumble it up."*

Similar sentiments were echoed by investigators in other locations, where the storage of case papers, exhibits and unused material on cupboards and in boxes across offices, is common practice. In one such office, the acute lack of secure property storage resulted in an officer being called to court to explain why an exhibit, which had been misplaced in the office, had gone missing. Even in the few former LEI offices with a property store, these stores are accessible to all investigators, there are no dedicated officers charged with their maintenance and there is no robust procedure for booking material in and out. An Assurance Manager in one of these offices stated:

*"there is a possibility of cross contamination of cases as several are stored in the same property room."*

Furthermore, experienced DOs in one office stated that the lax management of property resulted in boxes of property being destroyed in error, although it was not suggested these contained relevant disclosable material. The Inland Revenue (IR) historically took a more robust approach to property storage. These practices have been retained by former Serious Compliance Office (SCO) offices since the merger with HMCE and they ensure that:

- each office has a designated store room to keep evidence; and
- dedicated property officers and deputies are appointed, who are independent of investigations and are the only personnel permitted access to the storeroom.

Whilst HMCE recognised the benefits of this approach to property management in 2003, at the time of merger this had still not been introduced across the whole Department<sup>57</sup>.

**Recommendation Six:**

**HM Inspector recommends HMRC review the procedures for property management and introduce robust systems for the identification, seizure, recording, retention and storage of material obtained during the course of investigations.**

<sup>57</sup> See HMCE LE Efficiency & Assurance Unit (2003)

- 5.6 HM Inspector is satisfied that HMRC already has systems in some parts of the Department which, if universally applied correctly, should ensure all material created and obtained during the course of an investigation is available for DOs. The recommendations relating to seizures and storage of material and the interface between Detection and IPU made above, if implemented, should enhance these procedures.

**Information obtained outside the course of an investigation**

- 5.7 The collapse of a number of HMCE's prosecutions in recent years stemmed, not solely from the Department's failure to disclose material generated during the course of the investigation, but also in part from its inability to identify disclosable material generated or held elsewhere within the Department.
- 5.8 Although legislation does not specify how far DOs should search for unused material, statutory and judicial guidance clearly state that disclosable material is not limited to that gathered as part of an initial criminal investigation. The CPIA Codes of Practice and Attorney General's Guidelines 2000 advise the pursuit of reasonable lines of enquiry if the investigator believes other persons or departments may be in possession of relevant material.
- 5.9 From the end of the 1990s there was a dramatic increase in the number of MTIC fraud prosecutions brought by HMCE. During this period, it became evident that some witnesses, suppliers and customers featured in many of these cases. In order to provide case teams with a mechanism for identifying these links between MTIC investigations, LE Investigation set up the Central Disclosure Team (CDT)<sup>58</sup>. Although the CDT initiative standardised procedures for the identification of material held by MTIC investigators, there continued to be a divergence of approach by DOs on MTIC cases towards the disclosure of material held elsewhere. These inconsistencies were targeted in a number of subsequent trials and prompted legal advice from a number of eminent prosecution counsel.
- 5.10 HMCE LE and the Customs and Excise Prosecutions Office (CEPO) recognised the need to co-ordinate their approach to MTIC investigations and prosecutions. They created the VAT Focus Group, a forum for strategic planning in VAT cases, and the MTIC Case Handling Group (CHG), a forum for strategic MTIC case management. Both HMCE LE and RCPO were represented at a senior level. The Groups met regularly to consider lessons learnt, the resourcing of cases and the development of systems to support MTIC investigations. They accepted the aforementioned advice from Counsel and commissioned work on a protocol to provide a methodology for the disclosure of unused material in all current and future MTIC prosecutions. The resulting protocol was a far-reaching document which set out clearly and unambiguously the process for Case Officers and DOs to follow to ensure all material potentially relevant to their investigation was considered and, where necessary, made available for the Prosecutor and Counsel to examine.

<sup>58</sup> Formerly called Disclosure Review Team (DRT).

5.11 As a consequence, the MTIC CHG initiated the MTIC Information Handling Project (MIHP). LE gathered all material held by HMCE as at 1 July 2004, which related to all the 2,764 traders that featured in pending MTIC prosecutions and related money laundering cases. Over a period of six months over 100 officers were deployed to locate and collate this material from across all HMCE's business streams. In total, over 1.3 million items were scanned and stored on a searchable database. In tandem with this, Central Co-ordination Team (CCT) were provided with a standalone computer on which the same MIHP software had been installed to enable them to scan all new material received by them and VAT NIU. The MIHP database finally provided MTIC DOs with a means of identifying all potentially disclosable material held across the Department. This was unprecedented. Prior to MIHP, this material was held on the Electronic Folder (EF) system with limited search functionality and on a multitude of standalone databases and paper files in offices throughout the UK.

5.12 MIHP was only ever intended to be a short term solution to satisfy those cases where the indictment period ended prior to 1 July 2004. Clearly, as no material generated since then is held on MIHP, it does not provide DOs in more recent MTIC cases with a system to identify all potentially disclosable material held in the Department. Since the completion of MIHP, investigators and RCPO have called for the system to be updated. As early as October 2005 RCPO raised concerns with the Director General Enforcement and Compliance (E&C)<sup>59</sup> that MIHP only captured material up to 2004 and the MTIC Case Handling Group concluded in December 2005 that

*"if the MIHP is not updated it will not be sufficient to serve the needs of new cases".<sup>60</sup>*

Given this, it is surprising that the updating of MIHP has never featured as an issue in the minutes of DSG or DWG meetings and, as of September 2006, a process to update it has only recently started.

5.13 MIHP was designed specifically to aid disclosure in MTIC cases and there is no comparable system for other HMRC investigations. Like their MTIC counterparts, DOs on other former HMCE criminal investigations displayed an awareness of their duty to identify all relevant material held across the Department. However, the sheer number of different spreadsheets, databases, paper files, notebooks and folders held by officers across HMRC, coupled with the lack of corporate knowledge of these, make the task of identifying all of this material practically impossible. During the Inspection, DOs in the former HMCE raised concerns that, in addition to the systems they checked (such as Centaur, and EF), they knew of others that they do not have access to and also realised that there must be other databases that they were not aware of. Some DOs' approach to identifying material was based on luck and word of mouth and some admitted there can be no certainty that something has not been missed. The merger of

<sup>59</sup> Minutes of MTIC Case Handling Group meeting 7/10/05

<sup>60</sup> Minutes of MTIC Case Handling Group meeting 1/12/05

the two Departments has clearly exacerbated these problems: the amount of material has risen exponentially and there is a widespread lack of knowledge of what systems are in use and what material is held in the former IR. One senior manager was stark in his assessment of the situation:

*"There will be a high profile case where it will be revealed that the left hand and right hand don't know what they're doing and there will be hell to pay".*

5.14 IR had not developed processes to identify relevant material held across the Department or by other agencies. Many former IR investigators' lack of knowledge about CPIA/ CJA 2003 disclosure<sup>61</sup>, has resulted in many of them seeing their disclosure obligations as simply scheduling the material they hold. Although Complex Fraud investigators can check other former IR databases to identify material to support their investigation or reveal other suspicious activity, this is not systematically carried out for disclosure purposes.

5.15 Case teams need to know what systems are in existence in order to make an informed judgement of where material may be held. As a result of the MIHP, CDT have identified the databases and file stores across the former HMCE estate holding material which could be relevant to MTIC cases. CDT have received numerous requests for assistance by non-MTIC DOs. This highlights the clear need for a cross-discipline team, based on the CDT, to be established to support all DOs within CI. As recognised within the Department, the Disclosure Coordination Unit (DCU) could act in this capacity, and be the first and regular port of call once the DO has been appointed and the DCU personnel should be aware of, and where possible have access to, all departmental systems.

**Recommendation Seven:**

**HM Inspector recommends HMRC establish the Disclosure Co-ordination Unit, which should undertake rationalisation of systems and harmonisation of disclosure processes.**

5.16 The ultimate solutions to the problems caused by the multitude of data systems are either the creation of an all encompassing database, or of a powerful IT solution that provides a facility for officers to search across all the existing sub systems. For any large organisation this would be an unenviable task. In a government department of 90,000 staff, with two distinct secure infrastructures that do not talk to each other, it is impossible to turn on IT solutions overnight. HMRC has recently started to develop a system which will draw together all departmental information in one place. However, it is estimated that this will not be introduced across E&C until 2011 and there are currently no timescales for its adoption by the whole Department.

**Third party material**

5.17 Since the de-merger, the number of joint operations undertaken by HMRC and other UK law enforcement agencies has reduced dramatically, particularly as

<sup>61</sup> See above, Chapter 3



a consequence of proactive drugs investigations moving to the SOCA. In such cases, HMRC DOs are aware of a need for close liaison between all agencies to ensure disclosure obligations are satisfied. Joint operations with foreign law enforcement agencies are inherently more difficult. The use and dissemination of material in the possession of HMRC Fiscal Liaison Officers based in foreign jurisdictions is often restricted by local judicial systems.

- 5.18 Some National Tax Credit investigators were totally unaware of the requirement to make enquiries with other organisations they believed were in possession of potentially relevant material.

**Departmental systems**

- 5.19 In order for HMRC investigators and DOs to be confident they have located all potentially relevant material held by the Department, it is imperative that the systems in use are fit for purpose. These systems must be kept up to date and the material held on them must be accessible to all authorised officers.
- 5.20 The precursor departments took a different approach to the storage of information for the administration of the tax systems and these were still operating largely in the same way at the time of the inspection. The former IR offices maintain separate paper files in the tax office with responsibility for the geographical area in which the companies or individuals are located. National index systems are maintained to record where files are stored, such as COTAX (Corporation Tax), and these are accessible nationwide. Direct tax staff generally displayed a good understanding of the need to record and retain all material they receive or generate in the course of their duties which should ensure the material is readily available for officers to consider for disclosure purposes. However, there is a proliferation of locally held systems, which are not accessible remotely and make it difficult for the Department to keep track of all the locations where potentially relevant material may be held.
- 5.21 In contrast, the former HMCE developed the EF system for VAT assurance purposes, on which reports of visits to, and communication with, VAT registered traders are recorded electronically, and is accessible nationwide. However, this system is not used by officers who assure that traders comply with their Excise or International Trade responsibilities. These officers maintain hard copy folders and there is no nationally searchable index of this material. This could potentially lead to a situation where a DO would be unaware of an excise team's visit to a freight forwarder suspected of being involved in MTIC fraud.

Consideration Eleven:  
 HMRC should consider the feasibility of making the use of EF mandatory for assurance officers in Excise or International Trade.

- 5.22 Inconsistencies in the way different parts of the Department record and retain records of visits to traders, meetings and interviews were identified. These ranged from indirect tax investigators in CI who make contemporaneous notes in numbered notebooks issued under an audited control system, to officers in

direct tax network offices making notes on a scrap of paper which is shredded after a record of the action is recorded in the file. The system employed by CI is of a standard required to comply with the Police and Criminal Evidence Act 1984 and is now sensibly being introduced to the direct tax investigation offices. It is imperative that whatever system is used, officers are cognisant of their responsibility to accurately compile and retain their records. Furthermore, management must maintain robust systems to ensure that records are retrievable, even after officers leave the Department.

- 5.23 Centaur is HMRC's intelligence database for recording any event which is, or maybe, of interest to the Department, and is the central repository for the storage of all suspect Nominal (persons/addresses) or Event (activities) data. The system went live in May 2004, replacing the old HMCE Customs and Excise Departmental Reference and Information Computer (CEDRIC) system. There was no equivalent system in operation in the former IR.
- 5.24 In November 2005 a Centaur Verification Review was undertaken by Criminal Justice and Enforcement Standards (CJES). They reported:  
*"The review team do not consider that Centaur can be relied upon to support the disclosure process required under CPIA ...There is a **serious risk** to this process being reliant upon the information held on Centaur which is currently incomplete and inaccurate."*
- 5.25 Subsequently, all Investigation and Intelligence staff were instructed to ensure all intelligence was entered on to Centaur. Branch Assurance managers were required to assure this process. During August 2006, HMIC conducted a dip-sampling exercise to check compliance with the Centaur Instructions since the CJES report. The results were disappointing and are detailed below:

% of selected nominal reports returning "No trace" on Centaur		
Location	HMRC Report 11/05	HMIC Audit 08/06
Intelligence NIUs	50%	27.7%
Investigation <sup>62</sup>	45%	7.9%

- 5.26 Although there have been increases in the percentage of Intelligence NIU and Investigation nominal reports being entered onto Centaur, further improvement is still required. It is of concern that over one-quarter of actionable Intelligence NIU nominal reports are not entered on the Department's intelligence database.
- 5.27 Furthermore, HMIC's audit also revealed that 82.6% of actionable nominal reports emanating from the National HumInt Centre (NHC) produced no trace on Centaur. This is broadly in line with an internal review undertaken in late 2005 by NHC management which showed, at that time, 87% of NHC nominal reports were not being entered onto Centaur. There is anecdotal evidence that the overwhelming majority of intelligence emanating from the Customs Confidential Hotline is also missing from Centaur.

<sup>62</sup> The HMIC Audit includes IPU nominal reports, whereas at the time of the HMRC Centaur Review, these may have been captured in Detection figures.

5.28 Although a report of Review of Centaur, conducted by HMRC Internal Audit Unit in February 2006, stated:

*"Whilst Centaur may assist the disclosure process it is not a disclosure database"*

the failure to ensure that all actionable intelligence is entered on the system has significant disclosure consequences. Furthermore, the lack of a comprehensive, up to date intelligence database has severe intelligence management implications for the Department and significantly inhibits its ability to act as an intelligence led organisation. Although, focussed on different aspects of law enforcement to HMRC's remit, both the Bichard Inquiry following the Soham murders and the 9/11 Commission Report following the terrorist attacks in the USA, highlight the momentous risks that failures of intelligence management engender.

**Recommendation Eight:**

**HM Inspector recommends HMRC ensures that: staff are cognisant of, and are compliant with, their responsibility to input all actionable intelligence on Centaur in accordance with their instructions; and all outstanding intelligence logs are entered on the system as a matter of urgency.**

5.29 The provision of a standalone computer to CCT to support MIHP in 2004 was a long-overdue step by HMCE to enable the management of the large quantity of material received by them and VAT NIU concerning MTIC trade. Unfortunately, as this is a standalone system, it is not supported by the departmental IT supplier. Despite funding being obtained for additional hardware post-merger, poor management of the system by CCT has led to the hard-drive becoming full and, during the four months up to September 2006, no new material was scanned. As a consequence, DOs have been forced to revert to manual searches of large quantities of material to satisfy their disclosure obligations, which has been an avoidable waste of resources. An additional example of HMRC's poor management of the resources was identified at Redhill, the office given national responsibility for verification of MTIC trades. Early identification of potential fraudulent transactions is crucial in the Department's efforts to stop MTIC fraud and Redhill's role in bringing these to the attention of CCT and VAT NIU cannot be underestimated. However, as a consequence of an adverse ruling in the European Court of Justice, the number of traders submitting faxed requests for verification of impending transactions increased significantly from around 3,500 to 16,000 per month. The officers responsible for clearing the requests were unable to cope with this massive increase. As a local management request for additional staff was not supported, a decision was taken in July 2006 to turn off the fax out of office hours. Furthermore, about 16,000 requests, built up prior to the decision to turn off the fax, were stored without being actioned at the time and the intelligence opportunities were lost. Although HMRC has put considerable effort into reducing the losses due to MTIC fraud, the inability to manage these two important aspects does not reflect well on the Department's ability to deploy its resources flexibly in a fast-moving area of organised crime. The poor management highlighted in these examples need to be addressed.

Chapter 6

Selection, Roles and Responsibilities

Disclosure Officers

- 6.1 The rank or grade of Disclosure Officer (DO) is not defined in law. However, HMRC has taken the decision that new DOs should be experienced Higher Officers (HOs) or, where this is not possible, experienced Officers (Os)<sup>63</sup>.
- 6.2 Prior to the merger, in the majority of proactive and intelligence-led investigations, HM Customs and Excise (HMCE) appointed an officer as DO who is an investigator but not from the same case (subsequently referred to as a dedicated DO), whilst Inland Revenue rarely appointed dedicated DOs. Since April 2005, former HMCE have continued to appoint dedicated DOs in proactive investigations and there is evidence that dedicated DOs are being appointed in more direct tax investigations. As Investigation Processing Unit (IPU) and direct taxes volume fraud investigators are principally involved in the processing of larger numbers of straightforward investigations, in most of these units officers act as joint Case Officers and DOs.

	Inland Revenue/ Direct Tax		HMCE/ Indirect Tax	
	Grabiner and Tax Credit	Direct Tax Complex	Detection or Investigation Processing Units	Complex or proactive investigations
Pre-merger	Joint Case/ Disclosure Officers	Joint Case/ Disclosure Officers	Joint Case/ Disclosure Officers	Dedicated Disclosure Officers
Post-merger	Joint Case/ Disclosure Officers	Majority joint Case/ Disclosure Officers but some Dedicated Disclosure Officers	Majority joint Case/ Disclosure Officers but some Dedicated Disclosure Officers	Dedicated Disclosure Officers

6.3 There is a widespread view, shared by former HMCE investigators and DOs, Revenue and Customs Prosecutions Office (RCPO) and Criminal Justice and Enforcement Standards that, although the role of the DO is an onerous one, the appointment of dedicated DOs in complex and sensitive cases represents good practice as it ensures that there is a physical separation between investigative and disclosure functions. In late July 2006, HMRC updated the Enforcement Handbook which now lists three types of straightforward investigations which would not require the appointment of a dedicated DO. HM Inspector supports the use of dedicated DOs in complex investigations, but this may not prove to be the best use of resources in IPU and volume fraud cases.

<sup>63</sup> Handbook>Disclosure>Prepare for disclosure>Selection Criteria

6.4 All senior managers and Senior Officers (SOs) in indirect tax investigation teams were of the view that they would now only appoint DOs if they had the requisite experience and training. However, the same approach was not evident for direct tax investigators, the majority of whom had not received similar specific training to their colleagues in indirect taxes<sup>64</sup>. The Director Criminal Investigation (CI) recently issued instructions that all DOs in CI must complete and pass the Disclosure Awareness training course prior to taking on any new disclosure responsibilities<sup>65</sup>. The most inexperienced officer used to be appointed as DO, but a 'sea-change' has occurred and it is now common practice for the most experienced officer to be appointed. Because of the arduous nature of the role as DO, there is a tendency to rotate it around the team. However, due to the small size of most teams and their case-loads:

- Officers rather than Higher Officers are appointed; and
- DOs are appointed with no recent training or experience.

6.5 One IPU was experimenting with using one HO to act as DO for all prosecutions. However, the majority of staff in CI did not support the idea of making the DO a permanent standalone role or having separate disclosure teams because:

- disclosure is an integral part of the whole investigative process and should not be compartmentalised;
- the DO would be de-skilled in other investigative techniques; and
- it would be difficult to find volunteers or foster career development.

Appointing a DO at the commencement of the investigation provides an early independent assessment of the case and enables the DO to identify any disclosure issues that may need further investigation. Whilst examples were given of cases where DOs were not appointed at the start of indirect tax investigations, the majority of teams were complying with this instruction. HM Inspector supports the policy of appointing DOs at the earliest opportunity and, as the instructions are contained in the Enforcement Handbook, this policy should be adhered to in all cases.

6.6 The most complex HMRC investigations regularly take a minimum of three years from commencement to verdict at trial, due, amongst other reasons, to the time taken to prepare large quantities of documentary evidence and the availability of court time. It is therefore inevitable that many DOs appointed at the commencement of the investigation do not see the case through to completion. The appointment of disclosure-trained investigators as deputy DOs is common practice in the more complex indirect tax investigations. This provides SOs with continuity for long-running investigations and goes some way to overcoming these difficulties.

<sup>64</sup> See above, Chapter 4

<sup>65</sup> Paragraph 5.17

6.7 Prior to the merger, some casework suffered due to management pressure to begin new investigations and achieve centrally dictated statistical targets. Post-merger, due to the huge losses from Missing Trader Intra-Community fraud these pressures remain but, encouragingly, Investigation Branch Managers are increasingly robust in refusing to take on new work at the expense of post-arrest casework. This view was epitomised by one Branch Head who said:

*"There is no greater priority than cases in or about to go into the criminal justice system".*

However, this attitude is still not universal and investigators in certain offices spoke of management responding to an Officer in Charge (OIC)'s refusal to take on further work, due to workload pressures, by saying:

*"no is not an appropriate answer".*

6.8 The haemorrhage of officers to the Serious Organised Crime Agency (SOCA) posed particular challenges to SOs in Criminal Investigation. At one extreme some officers were held back until their cases were finalised. At the other extreme, DOs spoke of cases being given to them without a proper handover. Investigators also said that, immediately following de-merger, the lack of investigators remaining in certain offices meant that DO duties were just spread amongst the rest of the branch that was left. No cognisance was taken of experience.

6.9 The shortage of investigators, coupled with management pressure to take on more operations has resulted in many DOs complaining that they are becoming overstretched. Furthermore, DOs were often called upon to support other investigations, for example on surveillance, arrest and search operations, reducing the amount of time they can dedicate to disclosure. DOs felt this often led to them having to work extremely long hours in order to satisfy court deadlines. There was a consensus amongst the vast majority of Os, HOs and SOs in indirect tax investigations that, although they were able to satisfy their disclosure obligations, the resources available for disclosure were insufficient. As a consequence, some SOs, particularly in regional branches, have had to appoint Os when they felt HOs would be more appropriate and SOs are unable to appoint multiple or deputy DOs. It is recognised that de-merger was a unique event, as were the challenges posed by it.

Consideration Twelve:

HMRC should consider undertaking a review of rank, experience and training of officers currently acting as DOs by Branch Assurance SOs.

### Officer in Charge

6.10 The Handbook does not set out the management role of the OIC<sup>66</sup> and it is of no surprise that there are inconsistencies across CI in this regard. Some indirect tax DOs felt that their SOs provide invaluable support. However, a

<sup>66</sup> See above, Chapter 3

substantial proportion of officers across indirect tax and direct tax volume fraud investigation felt that there was no intrusive management from their SOs and examples were given in a number of Branches of SOs not having regular meetings with DOs, telling DOs they were responsible and leaving them alone to get on with it. There were also inconsistencies in how OICs across both sides of CI checked schedules of unused material prior to their submission to RCPO<sup>67</sup>.

6.11 Although in his review of HMCE, Mr. Justice Butterfield said:

*"Only investigators who have successfully completed the course and have actually acted as a Disclosure officer in a subsequent investigation are qualified to apply for promotion to Band 9 – SIO",<sup>68</sup>*

this is not reflected in the Handbook and many SOs, even from the former HMCE Law Enforcement Investigation do not have this experience. Furthermore, recent departmental exercises for promotion to SO have not included a requirement for applicants to have completed the training course or have experience as a DO.

Consideration Thirteen:  
HMRC should consider making DO experience a mandatory requirement for applicants for OIC positions.

### Prosecutors and Counsel

6.12 The lack of joint instructions enshrining the prosecution team approach in the disclosure process has led to inconsistencies in the relationship between investigators and prosecutors<sup>69</sup>. Investigators across CI stated that even though they were keen to engage with RCPO, they had been frustrated at being unable to obtain timely advice from prosecutors, as they felt RCPO had been understaffed and lawyers had had very high and potentially unmanageable workloads. There had also been a concern that some RCPO lawyers had deferred responsibility for disclosure issues to counsel. However, a majority of indirect tax investigators felt that the support provided by RCPO had improved and there is regular communication between DOs and lawyers in some larger indirect tax investigations. Since its formation, RCPO has made a concerted effort to recruit more lawyers and has increased the number by over 30%. RCPO now employs 279 staff, of which 80 are lawyers<sup>70</sup>.

6.13 In a number of large complex cases, RCPO have recognised the need to brief disclosure counsel. HMRC investigators support the use of disclosure counsel as they provide invaluable legal advice to DOs in the determination of relevance and sensitivity of unused material. Defence practitioners recognised the improvements which the use of disclosure counsel engender. The lack of a

team-working approach was even more acute in Northern Ireland where officers expressed serious concern about the paucity of legal support provided by Public Prosecution Service for Northern Ireland (PPS). Officers stated the PPS will not take on a case or even advise on it, without seeing a full file with completed evidential bundle and disclosure schedules. Examples were given of investigators being turned away by PPS when they tried to obtain advice or a legal steer on the direction of an investigation. It was felt that PPS and counsel in Northern Ireland were at arms length and were too remote to be considered part of a prosecution team. HM Inspector is aware that high level meetings between HMRC Regional Management, HMRC Investigation Legal Advisors and PPS have been held to discuss these issues and encourages these parties to develop a memorandum of understanding, such as the one between HMRC and RCPO, to aid the development of closer working relationships.

<sup>67</sup> See below, chapter 7

<sup>68</sup> Honourable Mr. Justice Butterfield (July 2003): Paragraph 10.34

<sup>69</sup> See above, chapter 3

<sup>70</sup> The significant achievements concerning recruitment and the independence of decision making were recognised in the HM Crown Prosecution Inspectorate report: *Overview Inspection of the Revenue and Customs Prosecutions Office (RCPO) Manchester and London offices (November 2006)*

## Chapter 7

## Scheduling and the Revelation Process

- 7.1 The quality of unused material schedules provide an insight into how HMRC's strategies, instructions, training, systems and procedures are assisting the Department in meeting its disclosure obligations under the Criminal Procedures and Investigation Act 1996, as amended by Criminal Justice Act 2003.
- 7.2 The importance of the quality of unused material schedules cannot be underestimated. Although the production of the schedules is universally recognised as being an onerous task; in the words of one defence counsel:
- "the grunt and grind of scheduling has to be done. It needs to be correct from the start. If not, it will lead to problems down the line."*

### File content

- 7.3 An audit of HMRC files<sup>71</sup> revealed that there were differences in the way files were prepared between investigation teams in direct tax and indirect tax and also on a geographic basis within the two former-departmental business streams. This is exemplified by the lack of uniformity in the arrangement of folders within the files and the location of the disclosure schedules.
- 7.4 The Handbook stipulates that in all but the most straightforward cases, Disclosure Officers (DOs) have to prepare a written action plan, have it agreed by the Officer in Charge (OIC) of the investigation and record its creation in the Case Decision Log<sup>72</sup>. There are no further instructions, however, on the plan's format or on how it should be completed. Although the audit revealed good practice in one case, where a list of disclosure objectives and actions had been compiled, the lack of guidance on the issue has led most DOs to ignore the stipulation.
- 7.5 The Handbook is also unclear on the requisite format and content of the reports DOs are required to complete after the conclusion of a case. It implies that three separate reports are to be completed: a Lessons-Learned Report, a Disclosure Consolidation Report and a DO's Closure Report. However, it does not contain any instruction on what the first two would include and only minimal instruction on the third. This lack of instruction is compounded by the omission of this subject from HMRC's Disclosure Awareness Training. The audit revealed only one case where a DO had produced a succinct Closure Report. This stated:
- "[I] am aware of further material in the form of .....has been generated since sentencing, however, these are not considered relevant for disclosure purposes and the unused material schedules therefore do not require updating..."*

<sup>71</sup> See Methodology

<sup>72</sup> Handbook, Disclosure – Prepare for Disclosure – How to make ready for disclosure.

Such a report represents good practice as it demonstrates the DO continued to review disclosure requirements after the conclusion of the case.

#### Consideration Fourteen:

HMRC should consider including training on the completion of disclosure reports in the DA course and revising the Handbook accordingly.

- 7.6 A common complaint expressed by DOs was that, after submitting a schedule to Revenue and Customs Prosecution Office (RCPO), annotated and signed copies were not always returned to them as a matter of course. This is reflected in the very low number of HMRC case files that contain annotated schedules. The failure of prosecutors to provide DOs with these has led, in a number of cases, to defence solicitors unexpectedly approaching DOs for access to material.
- 7.7 Although some files state that case conferences have occurred, details of the content of the conferences are largely absent. It is imperative that all relevant communications between the investigating team, prosecutors and counsel, especially regarding action points on disclosure, are fully documented in the case file.

### Unused material schedule - descriptions of unused material

- 7.8 The Code of Practice stipulates:

*"The description of each item should make clear the nature of the item and should contain sufficient detail to enable the prosecutor to decide whether he needs to inspect the material before deciding whether or not it should be disclosed."*<sup>73</sup>

RCPO lawyers raised concerns about the quality of descriptions of material on HMRC unused material schedules, stating:

*"a common problem in tax credit and Grabiner cases is ...[that]... descriptions are so vague [and] there is insufficient detail"*.

In many of the files examined as part of HMIC's audit, descriptions were insufficiently detailed to enable an assessment of relevance. In others, it was impossible to tell what type of document certain entries were describing.

### Unused material schedule –relevance

- 7.9 Only relevant material, as defined in the Code, is to be included on unused material schedules<sup>74</sup>. Of all the issues raised in the Inspection, the inconsistencies between DOs' and lawyers' determinations of relevance, have stimulated the most conjecture. Both RCPO and HMRC have identified the application of the relevance test as a problem and, in May 2006, all investigation staff in Criminal Investigation were informed:

<sup>73</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 6.9

<sup>74</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 2.1

"RCPO have themselves considered their position and have issued new guidelines to their lawyers. RCPO have asked, and we have agreed that the same guidelines should be shared with all concerned with the process – disclosure officer, case officer and officer in charge."<sup>75</sup>

and that the Handbook would be quickly amended to reflect RCPO guidance. Unfortunately, this did not happen and even in the latest version of the Handbook there is no reference to the following important point, contained in RCPO's guidance:

"The disclosure officer ought not to speculate as to what material might become relevant in the future – the test is whether material **is or may** be relevant at the time of the Disclosure Officer's assessment. If material, not initially thought to be relevant later becomes relevant, a revised schedule should be submitted to the prosecutor."<sup>76</sup>

- 7.10 At the time of the Inspection, the majority of direct tax investigators viewed their disclosure responsibilities as being an administrative role. Accordingly, they scheduled all material, irrespective of its relevance and continued to use the former Inland Revenue (IR) unused non-sensitive material schedule template, which required them to reveal all material to the prosecutor<sup>77</sup>. In many offices, the responsibility for compilation of the schedules is often delegated to junior administrative staff. Although this is not intrinsically problematic, in order to comply with disclosure legislation it is imperative that DOs and OICs ensure that any delegated work has been completed to the required standard.
- 7.11 The vast majority of direct tax investigators continue to schedule all material. RCPO lawyers from the former IR Solicitor's Office are not challenging this bad practice consistently.
- 7.12 Unlike direct tax investigators, most indirect investigators were aware they were required to determine the relevance of material, but across the estate there were inconsistencies in how this was applied. The audit revealed instances where the following examples of irrelevant material had been scheduled:
- draft versions of transcripts of tape-recorded interviews;
  - notes made by an HMRC officer who attended a court hearing; and
  - irrelevant legal privilege material routinely being included on sensitive schedules.
- There was a consensus amongst investigators that neither the training they receive nor the guidance in the Handbook equip them to determine relevance confidently and, therefore, they tend to err on the side of caution. Many also felt the inconsistent advice they received from prosecutors exacerbated the problem, as they were having to second-guess prosecutors' interpretations of how wide the relevance test should be.

<sup>75</sup> Memo from Strategic Disclosure Policy Lead to all investigation staff in CI, 12 May 2006

<sup>76</sup> Memo from Strategic Disclosure Policy Lead to all investigation staff in CI, 12 May 2006

<sup>77</sup> See above, chapter 4

- 7.13 The Public Prosecution Service for Northern Ireland (PPS) requires all material, irrespective of relevance to be included on the schedule. This leaves officers in an extremely difficult situation as they cannot comply with the legislation and PPS's contradictory requirements.

### Unused material schedule –sensitivity

"Material is sensitive if its disclosure would give a real risk of prejudice to an important public interest."<sup>78</sup>

- 7.14 Many DOs and investigators are unclear about what material should be included on the sensitive schedule. In a significant number of cases, DOs schedule all items that fall within one of the example sensitive material categories given in the Code, rather than evaluating the items individually.
- 7.15 The 2005 Code removed two broad categories of material that had previously been deemed sensitive. These were:
- "Material which relates to the use of the telephone system and which is supplied to a DO for intelligence purposes only."
- and:
- "internal police communications such as management minutes."
- Despite this, DOs in one office were still inappropriately using the old definitions of sensitivity on post April 2005 cases. They had numbered the list of example categories and simply wrote one of these numbers as the reason for sensitivity on the schedule.
- 7.16 This basic lack of knowledge supports the concerns voiced by a number of RCPO prosecutors that
- "[DOs'] idea of sensitivity does not accord with ours ... this is due to inexperienced officers and lack of guidance."
- RCPO takes the view that each case will require separate consideration and disclosure decisions will vary from case to case. However, most indirect tax investigators felt that sensitivity problems stemmed from a lack of consistency in prosecutors' advice. One officer summed up these problems stating:
- "... having sent three not guilty cases to RCPO in the 10 months I have been doing this work, I have found that each lawyer has a different idea of what constitutes sensitive/non-sensitive [material], which always leads to rewriting of schedules."
- Furthermore, friction is caused by what investigators view as RCPO prosecutors' and counsel's eagerness to place material, which officers believe may reveal their operational tactics, on the non-sensitive schedule.
- 7.17 The increased level of security clearance afforded to indirect tax DOs has partially mitigated problems around their access to sensitive material, in

<sup>78</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 2.1

particular that held by other agencies. However, some officers have experienced problems arranging access for prosecution counsel to review material as only a few counsel have sufficient security clearance.

**Recommendation Nine:**

**HM Inspector recommends HMRC and RCPO should include security clearance in the brief to counsel.**

### Unused material schedule - grouping of items

7.18 Although the Code of Practice states:

*"The disclosure officer should ensure that each item of material is listed separately on the schedule, and is numbered consecutively"*<sup>79</sup>,

it goes on to say:

*"In some enquiries ... there may be many items of a similar or repetitive nature. These may be listed in a block and described by quantity and generic title."*<sup>80</sup>

DOs take a 'safety first' approach to scheduling material and routinely list all items separately on their schedules, where it would have been more appropriate to have grouped some of them together<sup>81</sup>. Consequently many unused non-sensitive and sensitive schedules are unnecessarily lengthy. The Handbook, unfortunately, does not provide officers with any guidance on this issue and, in its absence, it is understandable why officers have adopted this bad practice. The revised HMRC/RCPO instructions, recommended above<sup>82</sup>, should take account of this.

### Quality control and assurance

7.19 The problems highlighted above should be identified through robust quality control procedures and assurance programmes. The Handbook's instructions on the Case Handling System state that it is mandatory for OICs to complete a pre-trial checklist prior to the submission of the file to the prosecutor. These checklists ask OICs:

*"Have Sensitive and Non-Sensitive disclosure schedules been completed accurately and do they adequately describe the material?"*

The Handbook contains no further guidance on how the OIC is expected to carry out this duty and, consequently, differing approaches have been developed and applied across HMRC. These practices range from OICs examining the descriptions of all items on the schedules, to those few who simply sign off the schedules without checking them. One case was highlighted in which, due to the absence of the case OIC, another manager signed off the schedules without reading them, looking at the material or knowing the case. Despite the mandatory nature of pre-trial checklists, these are not routinely used.

<sup>79</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 6.9

<sup>80</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 6.10

<sup>81</sup> Audit – in one such example, 25 consecutive bank statements had been itemised as 25 entries, when they should have been grouped together as one entry.

<sup>82</sup> See recommendation 3, above

7.20 Central Region conducted an assurance review of disclosure that involved interviewing DOs, case officers and Senior Officers and staff from Detection, Intelligence, Training, and the Central Disclosure Team. The review made recommendations to improve the existing disclosure training and instructions and was submitted to the Strategic Disclosure Policy Lead and Criminal Justice and Enforcement Standards. HM Inspector recognises that self-assessment plays a crucial role in improving organisational performance, through the highlighting of areas of concern and the promulgation of good practice and applauds this review as an example of this.

### Public Interest Immunity

7.21 Historically, some prosecutors took the view that all sensitive material had to be considered by a judge at a Public Interest Immunity (PII) hearing. Officers stated that this situation had improved and prosecutors have now become more robust in determining when to make an application for PII. RCPO take the view that its lawyers are aware of their obligations under CPIA and would only bring sensitive material to the attention of the trial judge outside the PII process in relation to RIPA<sup>83</sup> Part 1 material at exceptional trial management information hearings.

7.22 None of the files reviewed in the audit revealed any significant PII problems. In one case, a DO had prepared a matrix, which detailed the item number, description, sensitivity and risk if disclosed. This was a useful tool providing details and reasons in support of any potential PII application.

### Case handling systems

7.23 At the time, the audit was conducted, investigators were still using their precursor departments' case handling/ management systems. Direct tax investigators used and continue to use the Special Compliance Office Legal Services (SCOLS) application and most were satisfied it fulfilled their requirements. Indirect tax investigators were using several iterations of their case handling system. The latest electronic version, CHIRON, is being introduced across the indirect tax Criminal Investigation estate and soon will include an enhanced intelligence management component to link it with the Intelligence directorate. HMRC anticipate CHIRON will be provided to RCPO by the end of 2007, which will enable prosecutors to access directly material held by investigation teams. HMRC has also decided CHIRON will replace SCOLS for direct tax investigators, but technical and procedural impediments have delayed this until January 2007 at the earliest.

7.24 CHIRON should provide investigators, DOs, OICs and prosecutors with immediate access to all case material in an electronic format. A number of teething problems have been identified, primarily around the scanning of case material. Scanners had been installed in most of the offices visited and, in all but one, officers were scanning large quantities of evidence and unused material on to

<sup>83</sup> Regulation of Investigatory Powers Act 2000

CHIRON. This process requires the operator to type in a linked index of each scanned image and due to the importance placed on this, most scanning and indexing was being conducted by investigators or DOs. Due to the volume of material seized in complex cases and the slow scanning capability of the hardware installed, DOs complained they were spending most of their time scanning to the detriment of more important disclosure responsibilities and that, without additional resources, they would struggle to fulfil their disclosure obligations. However, during the inspection, the CHIRON Project management stated categorically that the present system was only designed to hold electronic material produced by investigators and scanned versions of the small number of documents produced during the course of an investigation, such as surveillance authorisations. Furthermore, they said no seized material should be scanned, as the server capacity would be quickly exceeded. Though CHIRON managers were confident that this practice was not occurring, HM Inspector's findings suggest this confidence is misplaced.

Consideration Fifteen:

HMRC should consider rectifying the communication breakdown between the CHIRON Project Team and practitioners, regarding the scanning of material and clarify the current policy.

## Chapter 8

# Conclusions and Recommendations

- 8.1 The reputational legacy associated with failed or stayed court cases following HM Customs and Excise (HMCE) prosecutions during the late 1990s must not be forgotten. The loss of revenue, public criticism and damage to professional integrity attracted the attention of the legal profession, the Government and the public. Importantly, the response to the actions arising from Mr. Justice Butterfield's *Review of Criminal Investigations and Prosecutions Conducted by HMCE* and the need to regain the confidence of the judiciary, counsel and solicitors are central to HMRC's future reputation.
- 8.2 It is a truism that a reputation lost cannot easily be regained. Sixteen months after the last HMRC case failed due to disclosure, many defence practitioners remain highly critical both of what they perceive as an institutional secrecy that pervades HMRC and of investigators who, they feel, see themselves as above the law or deliberately distance themselves from lawyers. These perceptions, however, are not shared universally across the UK criminal justice system. Members of the Judiciary and some defence counsel have spoken of recent improvements in the manner in which disclosure is managed in HMRC prosecution cases and of the Department's real effort to improve in this regard. Reassuringly, this reputational improvement, coupled with a tangible increase in Judicial confidence over the application of the Criminal Procedures and Investigations Act 1996 (CPIA), is manifested in the fact that HMRC investigations are no longer routinely subject to abuse hearings based on allegations of disclosure failings.
- 8.3 The perception that HMRC investigators are actively disregarding their obligations under CPIA and are acting in a secretive and obtrusive manner to defence is also not shared by HMIC. Furthermore, although it would be inaccurate to say that HMRC is fully compliant with the legislation, nothing was found during the limited audit that would lead to cases being stayed due to disclosure failures. The investigators interviewed were keen to comply with their legislative and statutory requirements. Inhibitors, primarily around the development and implementation of an integrated disclosure strategy; the development of a holistic prosecution team; the location and retrieval of material; property management; and performance management, currently militate against Disclosure Officers' (DOs') and investigators' ability to achieve this end. Recent court successes and increased external confidence in the Department's compliance with its obligations must not breed complacency. Further progress in these key areas is urgently required to ensure that recent court successes are maintained and the nadir of the mid-1990s is not revisited.
- 8.4 HMRC built upon initiatives begun by HMCE by bringing together senior



representatives from Enforcement and Compliance directorates, Policy and RCPO to form an Action Lab, which produced the CPIA compliance plan. It is disappointing therefore, that one significant recommendation - for the Chairman of HMRC to emphasise the importance of the Department's compliance with CPIA through a personal message to all staff - has never taken place. Where reputation is so important it is unfortunate that this opportunity to champion an important cause was not seized upon. Therefore, with a visible and overt lead from the Chairman and the Board, HMRC needs to further develop and drive its disclosure strategy. In particular, HM Inspector recommends that:

- 1 HMRC's Executive Committee actively promotes the importance of CPIA across the whole of the Department and champions the necessity for awareness of the risks associated with failure; and ensures that directorates and their business plans enable all staff to discharge their obligations;
- 2 Criminal Investigation and RCPO create a forum whereby Disclosure Officers, Senior Officers and lawyers can meet at least bi-annually to discuss emerging trends, concerns, good practice and promote corporate learning and experience;

and recommends that HMRC should:

- 3 form a working group of disclosure practitioners, including RCPO and Investigation Legal Advisers, to produce new detailed instructions, based on the Prosecution Team Disclosure Manual but with exemplars reflecting the work of the Department and take steps to overhaul the intranet;
- 4 conduct a skills audit across the Department, specifically including disclosure awareness, understanding and training, in order to create a clear business requirement;
- 5 in conjunction with RCPO, develop a training regime that will adequately enable the workforce to meet its obligations under CPIA including:
  - Basic/mandatory Guided Learning Unit for all;
  - Induction – for all new members;
  - Advanced – for Disclosure Officers and Senior Officers; and
  - Refresher – for regular practitioners;
- 6 review the procedures for property management and introduce robust systems for the identification, seizure, recording, retention and storage of material obtained during the course of investigations;
- 7 establish the Disclosure Co-ordination Unit, which should undertake rationalisation of systems and harmonisation of disclosure processes;
- 8 ensure staff are cognisant of, and are compliant with, their responsibility to input all actionable intelligence on Centaur in accordance with their

instructions; and all outstanding intelligence logs are entered on the system as a matter of urgency;

- 9 in conjunction with RCPO, include security clearance in the brief to counsel.
- 8.5 In addition, HM Inspector makes suggestions for enhancing HMRC's methodology and approach to the disclosure of unused material. HMRC should consider:
- 1 introducing a performance management system to record comprehensive case and resource data, to include reasons for cases failing;
  - 2 exploring the technical feasibility of inhibiting the print function on relevant parts of the Handbook. In the interim, HMRC should consider reinforcing the message to staff that they should not print the instructions and management assurance should include checks to make sure that outdated instructions are not being used;
  - 3 devising a series of mandatory disclosure modules and comprehensive Guided Learning Units tailored to the specific needs of officers engaged in the complex and high risk areas of departmental business (such as Missing Trader Intra-Community and Organised Tax Credit Fraud) to supplement the existing introductory DA course;
  - 4 in anticipation of future legislative changes, providing staff with relevant, timely training designed in association with Revenue and Customs Prosecutions Office and delivered by experienced trainers;
  - 5 making the new Guided Learning Units designed to accompany the recommended specific disclosure available on the departmental intranet, to act as a substantial reference tool for those newly appointed as a DO;
  - 6 ensuring that all investigators are trained in investigative techniques, including disclosure, prior to being asked to undertake investigation duties;
  - 7 providing direct tax staff with at least a basic level of awareness of CPIA disclosure;
  - 8 developing a training course for all SCI officers to provide them with sufficient knowledge of CPIA disclosure and how their work may impact upon this;
  - 9 embedding direct tax investigators into the CI Training Branch, in order to ensure that CI Training Branch is representative of both investigation streams within the Department and widen its knowledge base;
  - 10 developing clear Standard Operating Procedures to ensure the consistency of the IPU Handover process;
  - 11 the feasibility of making the use of EF mandatory for assurance officers in Excise or International Trade;

- 12** undertaking a review of rank, experience and training of officers currently acting as DOs by Branch Assurance SOs;
- 13** making DO experience a mandatory requirement for applicants for OIC positions;
- 14** including training on the completion of disclosure reports in the DA course and revising the Handbook accordingly;
- 15** rectifying the communication breakdown between the CHIRON Project Team and practitioners, regarding the unnecessary and time-consuming scanning of all case material and should clarify the current policy.

## Glossary

ACPO	Association of Chief Police Officers
BITs	Basic Investigation Training
CCT	Central Co-ordination Team
CDL	Case Decision Log
CDT	Central Disclosure Team (MTIC Investigation)
Centaur	HMRC Intelligence Database
CEPO	Customs and Excise Prosecutions Office
CHIRON	HMRC case management system
CI	Criminal Investigation
CIO	Chief Investigation Officer
CJA	Criminal Justice Act 2003
CJES	Criminal Justice and Enforcement Standards
COTAX	Corporation Tax
CPIA	Criminal Procedure and Investigations Act 1996
CPS	Crown Prosecution Service
DA	Disclosure Awareness Training
DCU	Disclosure Coordination Unit
Direct Tax	Former IR
DO	Disclosure Officer
DSG	Disclosure Steering Group
DWG	Disclosure Working Group
DWP	Department for Work and Pensions
EACS	Enforcement and Compliance Awareness Course
ECMC	Enforcement and Compliance Management Committee
EF	Electronic Folder
E&C	Enforcement and Compliance Directorate
GLU	Guided Learning Unit
HHJ	His/Her Honour Judge
HMCE	HM Customs and Excise
HMCPSTI	HM Crown Prosecution Service Inspectorate

HMRC	HM Revenue and Customs
HoI	Head of Intelligence
HUMINT	Human Intelligence [source]
Indirect Tax	Former HMCE
IPU	Investigation Prosecution Unit
IR	Inland Revenue
JoSET	Joint Shadow Economy Team
LE	Law Enforcement
LE EAU	Law Enforcement Efficiency and Assurance Unit
LEI	Law Enforcement Investigation
LMS	Learning Management System
MIHP	MTIC Information Handling Project
MPS	Metropolitan Police Service
MTIC	Missing Trader Intra-Community Fraud
MTIC CHG	MTIC Case Handling Group
NHC	National HumInt Centre
NIU	National Intelligence Unit
OIC	Officer In Charge of an investigation
PII	Public Interest Immunity
PinS	Professionalism in Security Counter Fraud Specialist Training
PTDM	Prosecution Team Disclosure Manual
RCPO	Revenue and Customs Prosecutions Office
RIPA	Regulation of Investigatory Powers Act 2000
SCI	Special Civil Investigation
SCO	Serious Compliance Office
SIO	Senior Investigation Officer
SOCA	Serious Organised Crime Agency
VAT	Value Added Tax

## Legal Framework and Developments

- B.1. The Criminal Procedure and Investigations Act 1996 (CPIA) introduced a legislative regime for disclosure in criminal proceedings by both the prosecution and the defence and provided the first statutory requirement for the disclosure of unused material to the defence. The CPIA and its accompanying Code of Practice (Code), issued under Section 23 of CPIA, took effect from 1 April 1997 and have direct relevance to any investigation commenced on or after that date. Prior to this, the prosecution's duty to disclose such material had been developed through a combination of case law and guidance.
- B.2. CPIA set out the responsibilities of the police (and other investigative authorities, such as HM Customs & Excise (HMCE) and Inland Revenue (IR)) with regard to material for the purpose of prosecution disclosure. The CPIA and the 1997 Code introduced a formal system for law enforcement agencies to record, retain and reveal to their prosecutor all material which has some bearing on any offence under investigation or any person being investigated or on the surrounding circumstances - relevant material - unless it is incapable of having any impact on the case. The CPIA introduced the role of Disclosure Officer (DO) as an officer with specific responsibility for examining material retained during an investigation; revealing it to the prosecutor during the investigation and any criminal proceedings resulting from it (known as 'Revelation') and personally certifying that this has been complied with. All DOs are required to provide the prosecutor with a schedule of relevant unused material which they do not believe to be sensitive (the non-sensitive schedule), and another listing material which is believed to be sensitive (the sensitive schedule). The 1997 Code defined sensitive material as
- "material which the DO believes, after consulting the officer in charge of the investigation, it is not in the public interest to disclose."*<sup>84</sup>
- In exceptional circumstances, there are procedures for sensitive material to be revealed to the prosecutor separately. In considering the material revealed, the prosecutor will examine the schedules to confirm they contain all relevant material and, in conjunction with the DO, decide what material must be provided to the defence. The subsequent process of providing the material is known as 'Disclosure'.
- B.3. The prosecutor serves on the accused a copy of the indictment (or copy of the notice of transfer) and a copy of the set of documents containing the evidence forming the basis of the charge. The CPIA then imposes a requirement on the accused to provide a written defence statement setting out in general terms the nature of the defence, indicating the matters on which he or she takes issue with the prosecution, and setting out, in the case of each such matter, the reason why he or she takes issue with the prosecution.

<sup>84</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2000, Paragraph 2.1

B.4. The CJA amended sections of CPIA concerned with the disclosure of unused material and the amendments came into force on 4 April 2005 accompanied by a new Code. Where the 1997 and 2005 Codes are identical (some paragraph numbers may have changed), references in this report will be made to the Code; where they differ, the relevant year will be given. The amended CPIA and 2005 Code apply only to new cases starting on or after this date. Cases starting before this date are still subject to the provisions of the original CPIA and 1997 Code. The CPIA contained provisions for 'primary' disclosure whereby the prosecutor was initially obliged to disclose material to the accused which may undermine the prosecution case and, following consideration of the defence statement, 'secondary' disclosure of any prosecution material which has not previously been disclosed to the accused and which might be reasonably expected to assist the accused's defence. The CJA introduced a simpler, amalgamated test for disclosure of material (hereafter called the disclosure test) that

*"might reasonably be considered capable of undermining the prosecution case or assisting the case for accused"*

for all cases starting on or after 4 April 2005. The Code requires DOs to draw the attention of the prosecutor to any material retained by an investigator which may undermine the prosecution case or assist the case for the defence and should explain why that view has been reached. The CJA introduced a new definition of sensitive material as:

*"material the disclosure of which, the disclosure officer believes, would give rise to a real risk of serious prejudice to an important public interest"*<sup>85</sup>.

B.5. The CJA also imposed much stricter requirements upon the defence, necessitating the accused to provide a more detailed defence statement than previously required. From April 2005, the defence are required to set out the nature of the defence case, including any particular defences on which the accused intends to rely and indicate any points of law to be taken, including any points as to the admissibility of evidence or abuse of process.

B.6. In November 2000, the Attorney General issued guidelines in support of the CPIA and 1997 Code. The Guidelines were applicable to all investigations and prosecutions undertaken by the Crown and were binding on all public prosecutors. In light of the amendments to CPIA and 2005 Code, the Attorney General issued amended Guidelines. Both the 2000 and 2005 Guidelines addressed the roles and responsibilities of the participants in the disclosure process and in some areas addressed aspects not covered by the CPIA. In particular and in contrast to the CPIA and Code, they set out the responsibilities of the prosecutor and prosecution advocate in the disclosure process. Where the 2000 and 2005 Guidelines are identical (some paragraph numbers may have changed), references in this report will be made to the 'Guidelines'. Where they differ, the relevant year will be given.

<sup>85</sup> Drawn from the case of R v H & C

B.7. The Guidelines specify that the prosecutor must review the schedules and any material revealed to them by the DO. The prosecutor must always inspect, view or listen to any material the prosecutor or DO believes might undermine the prosecution case or assist the defence case and satisfy themselves that the prosecution can properly be continued. The prosecutor must then decide if any material should be disclosed to the accused, either by the prosecutor or DO, and keep a record of all actions and decisions made in discharging their disclosure responsibilities. The amendments by CJA also impose a continuing duty on the prosecutor to disclose material which satisfies the test for disclosure, for the duration of criminal proceedings<sup>86</sup>.

B.8. The overriding principle of the prosecutor's role is stated at paragraph 41 of the 2005 Guidelines:

*"If prosecutors are satisfied that a fair trial cannot take place where material which satisfies the disclosure test cannot be disclosed, and that this cannot or will not be remedied including by, for example, making formal admissions, amending the charges or presenting the case in a different way so as to ensure fairness or in other ways, they must not continue with the case."*<sup>87</sup>

B.9. If prosecutors are in possession of material that satisfies the disclosure test, but wish to withhold the material on the basis that to disclose would give rise to a real risk of serious prejudice to an important public interest and are satisfied a fair trial can take place, they must make an application to the court. The 2005 Guidelines state that:

*"prosecutors should aim to disclose as much of the material as they properly can (for example, by giving the defence redacted or edited copies or summaries)".*

B.10. When defence practitioners feel they are entitled to disclosure of further material by the prosecution, they can make applications to the court under Section 8 of the Act and in accordance with the procedures set out in the Criminal Procedure Rules 2005.

### Recent developments

B.11. The amendments to the CPIA, Code of Practice and Guidelines were intended to strengthen the disclosure process and followed the 2002 Government White Paper *Justice for All*. This paper, which drew on the work of Sir Robin Auld's 2001 *Review of the Criminal Courts of England and Wales*, was presented to Parliament jointly by the Home Secretary, the Lord Chancellor and the Attorney General. One of the stated aims of the paper was to

*"work towards radically improving compliance by the prosecution and the defence with the whole process of disclosure to ensure the trial addresses the real issues."*<sup>88</sup>

<sup>86</sup> Parliament (1996) Criminal Procedure and Investigations Act 1996. London: The Stationery Office, Section 7A as amended by Parliament (2003) Criminal Justice Act 2003

<sup>87</sup> Attorney General's Guidelines on Disclosure, April 2005: Paragraph 41

<sup>88</sup> Justice for All (Cmnd. 5563, 2002) Paragraph 3.46

The paper summarised the main perceived problems as follows:

*"... late and inadequate disclosure by the prosecution leading too often to adjournments and sometimes dismissal of cases; and late and cursory or inadequate defence statements, which neither the prosecution nor the court challenge sufficiently. There is also some concern that some defence practitioners may be using disclosure as a procedural tactic to delay the process and cloud the issues."*<sup>89</sup>

- B.12. In March 2005, the Lord Chief Justice issued a 'Practice Direction' in his *Protocol on the Control and Management of Heavy Fraud and Other Complex Criminal Cases*. It included specific directions on how to deal with disclosure issues in order to control the amount of time spent on them at court. In it he said:

*"It is almost always undesirable to give the "warehouse key" to the defence for two reasons: This amounts to an abrogation of the responsibility of the prosecution; The defence solicitors may spend a disproportionate amount of time and incur disproportionate costs trawling through a morass of documents."*

- B.13. In an attempt to reinforce one of the underlying principles of the legislation and to curtail the process of 'blanket disclosure'<sup>90</sup> (also known as open disclosure) adopted by some Criminal Justice practitioners, the Attorney General had spelt out the limit of the material to be disclosed in the 2005 Guidelines:

*"If the material does not fulfil the disclosure test there is no requirement to disclose it. For this purpose, the parties' respective cases should not be restrictively analysed but must be carefully analysed to ascertain the specific facts the prosecution seek to establish and the specific grounds on which the charges are resisted. Neutral material or material damaging to the defendant need not be disclosed and must not be brought to the attention of the court. Only in truly borderline cases should the prosecution seek a judicial ruling on the disclosability of material in its hands."*<sup>91</sup>

- B.14. Despite the amendments to the legislation and improved guidance, there was still a feeling of dissatisfaction amongst some prosecution practitioners. In a speech at the Whitehall Prosecutors Conference in October 2005, whilst recognising past failings by the prosecution, the Attorney General highlighted their concerns:

*"... proper disclosure of unused material is a critical feature of a fair justice system. We have seen in the past too many examples of cases where miscarriages of justice occurred because the prosecution held something material back [...]. But, as report after report has shown, the process of disclosure has not been working as it should: it has been misapplied, misused and in some cases abused. It leads to huge sums of public money being spent on fishing expeditions where the defence are searching for some 'get out of jail free card'."*<sup>92</sup>

- B.15. The White Paper *Justice for All* referred to the report of the Audit Commission, *Route to Justice*, published in June 2002, which recognised the work being undertaken to improve and modernise the Criminal Justice System (CJS). The report made proposals to:

*"... tackle delay through better case preparation and ... introduce a range of measures so all criminal justice agencies are focused on timely and prompt case management through the CJS. ... Preparatory hearings and adequate disclosure before the trial, will ensure that the trial is efficient and focused on the issues rather than procedures and technicalities."*<sup>93</sup>

- B.16. In February 2006, the judiciary drew up a protocol on the disclosure of unused material in Crown Court criminal trials in England and Wales<sup>94</sup>. The protocol was designed to establish firm principles for the management of disclosure, whether by the prosecution or the defence, in order to improve the efficient delivery of justice and thereby enhance public confidence in the criminal justice system. The overarching principle of this protocol is that material will only be disclosed if it meets the statutory test for disclosure, thus ensuring that blanket disclosure orders are no longer made. It also provides advice on Public Interest Immunity (PII) hearings, applications for third-party disclosure and supports the Attorney General's Guidelines regarding the treatment of Government and Crown material.

- B.17. In May 2006, HM Courts Service issued a *Protocol for the Provision of Advance Information, Prosecution Evidence and Disclosure of Unused Material in the Magistrates Courts*. It is concerned with the management of advance information, evidence and disclosure in the Magistrates' Court. It was introduced across four pilot sites and it is anticipated that practitioners nationwide will use the document as guidance.

<sup>89</sup> *ibid.* Paragraph 3.46

<sup>90</sup> The process of providing defence with unrestricted access to all the prosecution non-sensitive unused material

<sup>91</sup> Attorney General's Guidelines on Disclosure, April 2005: Paragraph 40

<sup>92</sup> Attorney General's Speech To Whitehall Prosecutors Conference 4 October 2005

<sup>93</sup> *Justice for All* (Cmnd. 5563, 2002) page 34

<sup>94</sup> HM COURTS SERVICE. Disclosure: A protocol for the control and management of unused material in the Crown Court. Available at: [http://www.hmcourts-service.gov.uk/cms/files/disclosure\\_protocol.pdf](http://www.hmcourts-service.gov.uk/cms/files/disclosure_protocol.pdf)

## Methodology

- C.1** HM Inspector extends sincere thanks to the Board, directors and all HMRC staff who took part in the inspection. As was the case with our previous inspection, the inspection team were warmly welcomed at every venue. He also extends thanks to Criminal Justice and Enforcement Standards for their assistance in arranging the extensive programme of inspection visits across the breadth of the Department's estate.
- C.2** HM Inspector also extends warm thanks to HM Chief Inspector of the Crown Prosecution Service for seconding three Inspectors to HMIC in support of the inspection process. The HM Crown Prosecution Service Inspectorate Inspectors were seconded specifically to look at HMRC's application of the disclosure legislation, from an independent lawyer's perspective, and the Department's relationship with RCPO in this regard. They were extremely professional and their knowledge of the application of CPIA disclosure legislation was invaluable.
- C.3** Sincere thanks are also extended to two police forces and the Serious Fraud Office for supporting this inspection and enabling field visits and interviews with key personnel. The open and honestly expressed opinions were particularly beneficial in helping to identify issues, concerns and indeed good practice that can be found in this arena.
- C.4** The valuable contributions of a number of eminent judges, defence and prosecution solicitors and counsel, academics and representatives from the Department of Trade and Industry, the Department for Work and Pensions and officers from the Serious Organised Crime Agency were also greatly appreciated.
- C.5** HM Inspector was supported by an inspection team comprising an analyst and Specialist Staff Officers with a wide breadth of experience of conducting and managing criminal investigations. The team also included officers with recent and extensive experience of conducting disclosure in large investigations. HM Inspector extends thanks to the City of London Police for generously providing an experienced officer to the inspection team for four months.
- C.6** The first phase of the inspection involved the collection of documents, from the Crown Prosecution Service Criminal Justice Issues Group, the forces, Serious Fraud Office, HMRC and open sources. In addition to the related Acts of Parliament, this included pertinent reports and those documents relating to policy, strategy, advice and guidance. This material was then reviewed and used to identify key areas of activity that would be subject of inspection.
- C.7** In order to obtain a broad opinion of disclosure practices and procedures across HMRC, officers from a number of Enforcement directorates were asked to complete a questionnaire. Whilst the response rate was relatively low, the comments were extremely helpful in focusing the subsequent field visits.
- C.8** Phase three involved interviews with eminent judges, defence and prosecution solicitors and counsel, academics and representatives from the Department of Trade and Industry, the Department for Work and Pensions and officers from the Serious Organised Crime Agency. These were followed by field visits to two police forces and the Serious Fraud Office. A variety of site visits were undertaken which involved examination of files, documents, systems and procedures. Interviews were conducted with key personnel providing them with the opportunity to share their knowledge, understanding and experience. Over 40 interviews were conducted during this phase.
- C.9** The inspection team then conducted field visits across HMRC during May to August 2006. This process took 10 weeks at numerous locations throughout England, Wales, Scotland and Northern Ireland, with the international arm of the Department being engaged through visits to posts in Brussels and The Hague. 178 individual and focus group interviews, were conducted across HMRC. Due to the size and nature of the complex cases investigated by HMRC it was impractical, in the time available, to select a number of cases and undertake a thorough audit to give a clean bill of health. For example, in the Missing Trader Intra-Community or complex construction fraud cases, Disclosure Officers had been retrieving and scheduling material over many months and, in some cases, years. A limited file audit was conducted on a selection of HMRC files in both direct and indirect tax investigation teams. HMRC was requested to produce a number of specified files selected in advance by HMIC and to self-select an equivalent number of other files for examination. All the files were to contain: Sensitive & Non-sensitive disclosure schedules; Case Decision Log (CDL); Prosecution Log; Prosecution Case Statement; Defence Case Statement; any correspondence with Case Solicitor and/or Defence regarding disclosure; Public Interest Immunity (PII) Bundles or PII Schedules; and Case Management/ Administration Records. In some locations, especially direct tax investigation offices, the file examination proved difficult as all the categories of documents requested either did not exist, for example CDLs and Prosecution logs, or were not provided. Due to the size and nature of many of the complex investigations undertaken by HMRC, it was not possible to conduct a full in-depth examination of the revelation and disclosure process undertaken in these cases. However, when sufficient documents were made available, it was possible to make an assessment of the DOs' understanding of their responsibilities and come to conclusions on their performance.

## Legislative Framework for Statutory Posts

D.1 The rank, grade or competencies of an officer acting as DO is not prescribed in legislation. However, the revised CPIA Code of Practice, which came into force in April 2005, included a new requirement for Chief Officers of Police (and those of an equivalent rank in law enforcement agencies who are charged with the duty of conducting an investigation) to

*"ensure that disclosure officers and deputy disclosure officers have sufficient skills and authority, commensurate with the complexity of the investigation, to discharge their functions effectively."*<sup>96</sup>

Furthermore, in his revised 2005 Guidelines the Attorney General reinforced the message:

*"Officers appointed as disclosure officers must have the requisite experience, skills, competence and resources to undertake their vital role."*<sup>97</sup>

D.2 There is also no legislative requirement for law enforcement agencies in England, Wales and Northern Ireland to appoint an officer to act as a dedicated DO in criminal investigations. Both the 2000 and 2005 Code state that while the functions of the investigator, the Officer in Charge (OIC) and the Disclosure Officer are separate, the decision:

*"Whether they are undertaken by one, two or more persons will depend on the complexity of the case and the administrative arrangements within each police force."*<sup>98</sup>

D3. The Code defines the OIC of an investigation as the

*"... officer responsible for directing a criminal investigation. He is also responsible for ensuring that proper procedures are in place for recording information, and retaining records of information and other material, in the investigation."*<sup>99</sup>

and outlines the crucial statutory role of the OIC in the disclosure process:

*"The officer in charge of an investigation may delegate tasks ..., but he remains responsible for ensuring that these have been carried out and for accounting for any general policies followed in the investigation."*<sup>100</sup>

D4. The Code also outlines additional responsibilities for the OIC, but it is the independent management role which is key in supporting DOs and the disclosure process. This has been recognised by the Association of Chief Police Officers and

Crown Prosecution Service in the Prosecution Team Disclosure Manual which states:

*"the officer in charge of the investigation has special responsibility to ensure that the duties under the Code are carried out by all those involved in the investigation, and for ensuring that all reasonable lines of enquiry are pursued, irrespective of whether the resultant evidence is more likely to assist the prosecution or the accused"*<sup>101</sup>

and highlights continuously the important management role of the OIC.

<sup>96</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 3.3

<sup>97</sup> Attorney General's Guidelines on Disclosure, April 2005: Paragraph 24

<sup>98</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 3.1

<sup>99</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 2.1

<sup>100</sup> Criminal Procedure and Investigations Act 1996 (s.23(1)) Code of Practice 2005: Paragraph 3.4

<sup>101</sup> Crown Prosecution Service: The CPS: Disclosure Manual Available at [http://www.cps.gov.uk/legal/section20/chapter\\_a.html#016](http://www.cps.gov.uk/legal/section20/chapter_a.html#016) Chapter 3 Para 1





