



Genesis to Revelations:
A Study in Disclosure
REVISITED

*THE REVISIT INSPECTION OF HM REVENUE
AND CUSTOMS' PREPAREDNESS TO MEET
ITS DISCLOSURE OBLIGATIONS UNDER THE
CRIMINAL PROCEDURES AND INVESTIGATIONS
ACT 1996 AS AMENDED BY CRIMINAL
JUSTICE ACT 2003*



Inspecting policing
in the **public interest**



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

Mr Vic Towell

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18 May 2009

Dear Mr Towell,

RE-VISIT INSPECTION OF DISCLOSURE IN HMRC

Thank you for your letter of 2 April 2009, enclosing the HMIC's findings of the re-examination of disclosure capability in HM Revenue and Customs

It was pleasing to note that good progress has been made in response to the recommendations contained in your original report. Clearly there is more to do, and I will look to Lesley Strathie and other senior leaders in HMRC to ensure that the necessary development work continues.

Yours sincerely,
Stephen Timms

Rt Hon Stephen Timms MP



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Rt Hon Stephen Timms MP
Financial Secretary to the Treasury
HM Treasury
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2 April 2009

Dear Sir

THE REVISIT INSPECTION OF HM REVENUE & CUSTOMS PREPAREDNESS TO MEET ITS DISCLOSURE OBLIGATIONS UNDER THE CRIMINAL PROCEDURES AND INVESTIGATION ACT 1996, AS AMENDED BY THE CRIMINAL JUSTICE ACT 2003.

Please find attached a copy of my inspection report relating to the revisit inspection that sought to assess and evaluate HMRC's progress in implementing the recommendations and considerations contained in HMIC's inspection report "From Genesis to Revelations: A Study in Disclosure", published in August 2007. HMRC have made good progress with positive groundwork being laid against most of the recommendations, and through appropriate actions have discharged the majority of the considerations.

Disclosure within the context of the criminal justice system is capable of having a relevance to all HMRC employees in the discharge of their duties. It is therefore of the utmost importance that they are provided with a level of training commensurate with their responsibilities. A new training package in the advance stages of development by HMRC's Criminal Investigation Directorate, has drawn upon both internal and external best practice and will commendably be capable of being tailored to fit all individual directorates' business needs. It is now important for HMRC's Executive Committee to make this training mandatory for all staff and ensure its rollout without undue delay. One note of concern however, is the lack of disclosure refresher training provided to criminal investigation staff, with no current plans to deliver any such training. As a result of this revisit HMRC will look to positively address this issue.

HMRC fully co-operated with the inspection team and it was evident that staff at all levels demonstrated a desire to ensure that they competently fulfilled their disclosure responsibilities. The progress made by HMRC has to be seen in the context of the major structural changes that were ongoing as a result of the merger of the former Inland Revenue and HM Customs & Excise into the new Department. These legacy issues allied to the data security incidents dominated the agenda at all levels within the organisation. The merger has brought about the need for HMRC to rationalise its estate in order that it serves its business needs. A perennial issue that has not been adequately resolved and effected by this rationalisation, is the provision of suitable accommodation to examine and store material gathered during the course of investigations in all locations of the Criminal

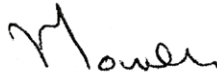


INVESTOR IN PEOPLE

Investigation Directorate. It is essential that a solution is achieved that will reduce the potential for compromise of the integrity of HMRC's criminal investigations.

I am forwarding a copy of the final report to Lesley Strathie HMRC Permanent Secretary and Chief Executive and to Mike Eland, HMRC Director General Enforcement & Compliance.

Yours Sincerely



Vic Towell
Assistant Inspector of Constabulary



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Summary

Chapter 1

Summary

Since the HMIC inspection report “From Genesis to Revelations: A Study in Disclosure” was published in August 2007, HMRC has continued to be faced with constant workforce change created by the merger between the Inland Revenue (IR) and HM Customs and Excise (HMCE). Significant re-engineering of merged embryonic structures combined with an enforced necessity of operating within a constrained and reduced financial environment has resulted in the need for creating real resource savings, including a substantial workforce reduction. Additionally, data security issues brought about through incidences of data losses have dominated the agenda at every level within the Department during this time, necessitating prioritised remedial action. This has overshadowed other Departmental issues such as the HMIC report and recommendations which have suffered as a consequence. However, good progress has been made against the considerations in the report with the majority now being discharged through the implementation of appropriate actions. Positive groundwork has been laid against most of the recommendations which now need to be built upon on a prioritised basis to bring to fruition.

Work within the Criminal Investigation Directorate (CI) is well advanced in terms of producing new disclosure training designed to address the needs of the whole Department. It has encompassed best practice from internal and external sources and is commendably capable of tailoring delivery to meet individual directorates’ business needs. It will be important for HMRC’s Executive Committee (ExCom) in championing disclosure to make this training mandatory for all staff and ensure that it is rolled out without undue delay. However, of some concern is that there has been no refresher training provided to staff within CI, no training package developed for this specific purpose, and no planned future delivery of refresher training. The Butterfield Review into the failed Excise prosecutions reported in 2003 and recommended as a minimum regular refresher training for all investigators every five years. As a legal process, disclosure is of the upmost importance to the criminal justice system. It is essential that HMRC in reclaiming their reputation in this area ensure that Disclosure Officers (DOs) are best placed to fulfil their obligations within all investigations. Appropriate and up to date training provides an essential foundation for this. It is recognised that CI have had to make hard decisions brought about by training budgetary constraints and that this has impacted upon their ability to deliver against the recommendations and considerations in HMIC’s report. Due priority was given to the up-skilling of investigators from the former IR and all have now had the current disclosure training. With the recruitment of 160 new investigators this has created a new training priority; however this should not overshadow the needs of existing investigators to be updated and refreshed.

The e-mail letter sent by the Director General Enforcement and Compliance (DG E&C) to HMRC Directors for dissemination to all staff to raise their awareness and underline the importance of disclosure in a criminal justice context has had limited impact. There is little appreciable change in disclosure knowledge levels in HMRC outside of CI. With the exception of Enforcement and Compliance (E&C), other Departmental Directors have not incorporated disclosure into their business plans and the opportunity to focus staff on the full discharge of their responsibilities has been missed. Within E&C this process has started and is currently ongoing.

A perennial issue for CI that will continue to undermine their ability to develop an effective property control system is the lack of sufficient accommodation for the examination and storage of material. This issue is largely outside CI control, and is also dominated by a Departmental agenda to significantly reduce its estate. ExCom engagement in this issue is now necessary to ensure a solution is achieved that will prevent the potential for compromise of the integrity of CI's investigations.

To address the recommendations and considerations within the original report an action plan was drafted by CI. This needs to be refreshed and refocused to achieve outcomes on a prioritised basis. In order to achieve this, targets, deadlines and lines of accountability should be clearly set for the implementation of the outstanding recommendations and considerations, which should be incorporated into the action plan. It will also be important for Central Compliance to undertake governance on behalf of ExCom for the action plan to ensure the effectiveness and timeliness of outcomes, and ensure the disclosure risks recognised in the E&C risk register are fully mitigated.

Background

Chapter 2

Background

- 2.1 The regulations introducing external inspection of HMRC by HMIC came into force at the end of April 2005. In discussions between senior management in HMRC Law Enforcement and the HMI shortly thereafter, HMRC requested that one of the first three inspections should be around the subject of disclosure. This was of significant concern to HMRC since it was a prime reason behind the Excise prosecution failures which lead to considerable harm to the organisational reputation. In 2006 HMIC undertook an inspection into HMRC's preparedness to meet its disclosure obligations under the Criminal Procedures and Investigations Act 1996 (CPIA), as amended by the Criminal Justice Act 2003 (CJA). The report of the inspection, *From Genesis to Revelations: A Study in Disclosure* was agreed with HMRC in March 2007 and published in August 2007. It contained a number of recommendations and considerations for improving HMRC's existing processes and compliance with its disclosure obligations.
- 2.2 This revisit has sought to assess and evaluate HMRC's progress both in implementing the recommendations and considerations, and in addressing other concerns highlighted within the report. It also looked to establish and examine if any subsequent case failures have occurred due to shortcomings in meeting its disclosure obligations. It is clear that the term disclosure has several different definitions within the Department, but this report addresses disclosure solely in the context of prosecutions in the criminal justice system.

Progress against Inspection Recommendations

Chapter 3

Progress against Inspection Recommendations

Red/Amber/Green (RAG) indicators are often used as a quick and efficient visual business tool to portray the status of a project. A RAG status assessment has been applied to each recommendation and consideration together with an arrow denoting the current trend. An arrow pointing upwards denotes progress leading to an improvement in the position, whilst a downward pointing arrow denotes a worsening position. An arrow that points sideways denotes a static position with no improvement or deterioration.

3.1 Recommendation 1

RAG STATUS: **RED** ↑

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.

3.1.1 Action Taken

The DG E&C sent an e-mail letter to HMRC directors to raise their awareness, confirm their responsibilities and underline the importance of disclosure in a criminal justice context. The directors were invited to take account of their CPIA disclosure obligations whilst considering record management policies, business plans, assurance programmes, risk registers, and provide an assurance to the Disclosure Co-ordination Unit (DCU) that this has been undertaken. There is no minuted evidence that disclosure has been discussed by ExCom since 2005. There has been no assurance activity by Central Compliance on behalf of ExCom on the implementation of the recommendations and considerations within the HMIC report or on the wider topic of disclosure, since the HMIC report. Progress has been largely achieved by CI who have driven activity through the Disclosure Steering Group (DSG) which they chair.

3.1.2 Impact

Within CI there is a high level of knowledge of disclosure, and within Risk and Intelligence Service – Criminal Intelligence Group (RIS-CIG) knowledge levels are generally satisfactory. However knowledge levels deteriorate significantly outside of these business streams, ranging from patchy within Detection to virtually nil in Local Compliance and the wider Department. Across all business streams the overwhelming response was a perceived lack of importance attached to disclosure by the business when compared to data security. Across the Department there has been little appreciable change in the level of knowledge of disclosure and attendant responsibilities when compared to those witnessed at the original inspection. For directorates outside of E&C there have been no responses to the DG letter, sent to the DCU. Some E&C directorates have drafted disclosure action plans whilst the remainder are now in the process of doing so, this activity being driven through their attendance at the DSG. The level of knowledge of the Department's record retention policy was also tested and assessed as poor. At best, staff were aware of the existence of the policy and the need to keep material for a number of years, but beyond that they did not know the details. Of concern was the number of locally held electronic and hard copy information systems controlled by staff, who did not understand their responsibilities in relation to disclosure. In many instances

Progress against Inspection Recommendations

there was no obvious route for a DO to be aware of such systems, or being able to access the material they contain in order to consider the material for relevance. This has the potential, albeit limited, to undermine the ability of DOs to fully fulfil their responsibilities under CPIA.

3.1.3 Areas for Improvement

Action against this recommendation needs to be reinvigorated by ExCom, who must provide clarity to all Departmental Directors as to their responsibilities and accountabilities in relation to disclosure. The roll out of the new disclosure training to staff, (which should be mandatory), will help significantly address the current knowledge gaps. This training at Level 1 will be a computer based 20 to 30 minute Guided Learning Unit (GLU) and for Level 2 a two hour GLU, which HMIC understands is unlikely to have an unduly impactful resource implication. Following the original HMIC report CI promptly drew up an action plan to address the implementation of the recommendations and considerations. The action plan should now be refreshed and populated with achievable time deadlines, performance targets and clear lines of accountability which will focus action and delivery. Central Compliance (on behalf of ExCom) should take on an overarching governance and assurance role to ensure focused delivery without undue delay against the recommendations and considerations. This should ensure a corporate approach to delivery.

3.2 Recommendation 2

RAG STATUS: **RED** ↔

HM Inspector recommends Criminal Investigation and RCPO¹ 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.

3.2.1 Action Taken

Whilst some initial scoping and planning was undertaken to create a bi-annual forum, this has noticeably stalled with a lack of recent progress and little discernable impetus to drive it forward.

3.2.2 Impact

Practitioners are largely in favour of having a forum in which to share and discuss ideas and developments; and learn and disseminate best practice and increase knowledge. Such an arena could provide a necessary confidence support to DOs when faced with making objective decisions on relevance in the absence of clear guidance. The forum could also provide a vehicle to discuss and contribute to issues highlighted at internal RCPO disclosure clinics. Further, at present there is no recognised national mechanism for sharing best practice or influencing disclosure policies which such a forum could provide the opportunity for.

3.2.3 Areas for Improvement

CI should reinvigorate their efforts to progress this recommendation. If such a forum is deemed insufficient as a twice yearly event, consideration could also be given to the creation of a secure shared workspace for disclosure practitioners. This would provide similar benefits to the forums on a continuous basis and could be administered by the DCU, who could disseminate best practice through this medium. Additionally it will afford the DCU the opportunity to monitor concerns and issues which could then be referred to the DSG for action.

¹ Revenue and Customs Prosecution Office

3.3 **Recommendation 3**

RAG STATUS: **AMBER** ↑

HM Inspector recommends HMRC 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.

3.3.1 Action Taken

A working group was not formed to take forward this recommendation due to a poor response from operational staff to a request for input. The DCU therefore have taken forward this recommendation on behalf of CI, working closely with RCPO and with limited input from HMRC's Solicitors (ILAs). A skeletal outline was produced first, which has since been populated with greater detail. A finalised usable manual has still to be produced. Progress has been somewhat erratic being hindered by a lack of available resource within CI and RCPO. The current intranet guidance is viewed by HMRC as still being fit for purpose, with accessibility and clarity having improved over the past 18 months.

3.3.2 Impact

A key stakeholder raised the concern that the creation of the new joint instructions should guard against inconsistency between the new instructions and the Crown Prosecution Service (CPS) Prosecution Team Disclosure Manual (PTDM), ensuring synergy of practice. There was also a lack of understanding amongst some stakeholders of the rationale for creating different joint instructions as opposed to adopting the PTDM. Amongst practitioners there was recognition that the electronic handbook had improved over the past 18 months, but there were still issues around clarity of information, too many links some of which were not working and the difficulty of searching the guidance using the revised A to Z tool.

3.3.3 Areas for Improvement

There is a pressing need to progress this work so that unambiguous and up to date guidance is available to both investigators and prosecutors, who will then be able to work consistently to the same guidance. Whilst there have been some improvements to the intranet guidance, there is scope for further improvements to aid functionality and usability. It is of some concern, as reported at the DSG meeting in July 2008, that parts of the Departmental guidance is currently not up to date.

3.4 **Recommendation 4**

RAG STATUS: **AMBER/GREEN** ↑

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.

3.4.1 Action Taken

A skills audit has been undertaken within CI and has helped inform the training requirement and future training programme; however, such an audit has not been conducted universally across the Department for disclosure purposes. Whilst the knowledge within CI of disclosure is of a high level and reasonable within RIS-CIG (subject to a skills review to be conducted shortly), knowledge levels are significantly lower outside of these business streams.

Progress against Inspection Recommendations

3.4.2 Impact

It was anticipated that the implementation of Recommendation 1 of the original HMIC report, would act as a driver for directorates across the whole Department to assess their business requirement for disclosure training. Unfortunately the lack of progress against Recommendation One has left most of the Department untested and unclear of their business needs.

3.4.3 Areas for Improvement

There is a clear business need for a level of disclosure training for all staff in directorates outside of E&C, based on the findings during the original inspection and confirmed by this re-inspection. This can be addressed by the level one of the disclosure training package under development. For Local Compliance and Detection, level two of this training would be appropriate and given the knowledge levels witnessed it should be rolled out to all staff. The extent of the rollout of this level of training within RIS will be confirmed shortly following a review of disclosure knowledge and awareness that is to be conducted in the near future.

3.5 Recommendation 5

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 RAG STATUS: **AMBER/GREEN** ↑
- ▶ Induction – for all new members; RAG STATUS: **AMBER/GREEN** ↑
- ▶ Advanced – for DOs and Senior Officers: RAG STATUS: **AMBER/GREEN** ↑
- ▶ Refresher – for regular practitioners. RAG STATUS: **RED** ↓

3.5.1 Action Taken

Following the creation of the DCU, the unit took on the responsibility for producing a new disclosure training package. This has largely been drafted by investigators using previous course material, current guidance, best practice and experienced contributors. There is minimal involvement from either ILAs or RCPO who are reactively vetting the product given to them rather than proactively determining content. Commendably the DCU have looked at how disclosure training is provided in the wider law enforcement community, and have purchased a product developed by Centrex for the Greater Manchester Police. This has been incorporated into the new package under development and will address the needs of the first three categories above. The new package is based on three levels, designed to meet the needs of the whole Department and should be available for rollout in the new financial year (2009/10). Until this is introduced the current disclosure training is based on the 2½ day course that has been in existence for some time, although refreshed shortly after the original HMIC inspection. Over the last 18 months the priority has been to upskill the investigators from the former Inland Revenue with convergence training. These officers have now all undertaken disclosure training based on the existing course. No disclosure refresher training has been delivered since the last inspection, no package has been developed for this purpose, and there are currently no plans to deliver refresher training.

3.5.2 Impact

In developing a training package to be delivered on three levels ensures the training will be delivered to fit the business needs in each directorate. This will greatly increase trainee assimilation as the product is tailored to their needs and will not burden them with superfluous material. It is to be commended that the DCU have approached the issue in this manner taking on the responsibility for developing suitable training for the whole Department. Input from legal advisers (both ILA and RCPO) has been reactive to material put to them from the investigators. Ideally a more proactive contribution from those bodies would have benefitted the process.

The overwhelming view of the interviewees seen has been the desire for refresher training. For practitioners likely to undertake the DO role, this is seen as an important requirement, particularly as a significant number received their training many years ago shortly after the Butterfield Review. For a process that has and continues to develop, the investigators see it is vital to have up to date knowledge supplemented by the appropriate training in order to be able to effectively fulfil their legal obligations under CPIA. Within CI the constraints of a limited training budget for a workforce that has 35 to 40% under training at any one time has forced some very hard decisions. Understandably priority has been given to the upskilling of the investigators from the former IR through convergence and disclosure training. With the recent recruitment of 160 new investigators a further training priority has been created that has overtaken any prospect of the provision of refresher training.

3.5.3 Areas for Improvement

It is now time that HMRC at board level make the step change to drive forward the understanding of disclosure in the criminal justice context within the whole of its workforce. A vital early step should be the provision of appropriate training, and it will be essential for ExCom to champion and provide sufficient resource for the rollout of the newly developed training to all staff, with consideration given to making such training mandatory. The vast majority of staff within HMRC would receive either level 1 of the training which is a computer based 20 to 30 minute GLU, or level 2 which is a two hour GLU. The Butterfield Review (published in 2003), which examined the failed Excise prosecutions concluded that *“once lost, reputations such as that once enjoyed by HMCE are hard to retrieve”*². A key indicator of the serious intent of the organisation to learn the lessons from past experience and re build organisational reputation, is the implementation of the findings from that review. Therefore it is of some concern that one of the important recommendations stating *“as a minimum..... regular refresher training for investigators every five years”*³, has not been implemented in relation to disclosure with no plans at present to provide any such refresher training.

² Honourable Mr. Justice Butterfield (July 2003) Review of criminal investigations and prosecutions conducted by HM Customs and Excise: Page 188

³ *ibid.* Page 211

Progress against Inspection Recommendations

3.6 Recommendation 6

RAG STATUS: **AMBER/RED** ↔

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.

3.6.1 Action Taken

In January 2007 the Change Programme Team (Barber/Millroy) reported on its review of property management within Criminal Investigation. It made a number of proposals and recommendations but recognised that due to a number of constraints including deficiencies in the electronic case management system and the lack of space for property examination and storage, their findings would not be implemented for a considerable period of time.

3.6.2 Impact

At search briefings officers are given focused parameters for the material to be searched for and uplifted. Bulk uplift of material without sifting on site is largely discouraged. Other than this disclosure does not overtly feature in or influence the search briefings given. Some sites visited deploy a property control officer during searches whilst others allocate the task to one of the searching officers. All property is listed on property sheets in accordance with the stated guidance. Problems with the electronic case handling system (Chiron) has meant that the bulk scanning of material onto the system cannot be done, and in some cases it will not facilitate the recording of all the uplifted material. DOs in some cases have had to resort to standalone excel spreadsheets to create unused material schedules. Currently a revised rollout by the end of the financial year (2008/09) promises to deliver the functionality that has been lacking in the case management system; however this is an extremely ambitious deadline.

The lack of property examination and storage facilities has not noticeably improved since the inspection in 2006, with boxes of material still found lining corridors, within the general office environment and on occasions where space was allocated for documentation examination, these have become de facto store rooms. Due to a lack of available storage space the property for a large complex case has had to be stored at a remote site. This has caused difficulties in accessing the material with the attendant loss of time travelling to and from the remote site. Whilst CI have striven to deal with this recurring problem it is largely outside their control. In a wider environment which is focusing on a reduction of the Departmental estate an early resolution to this issue is unlikely.

3.6.3 Areas for Improvement

Until ExCom resolves the pressing estates position CI will not be in a position to introduce a fully effective property control system. In the absence of this, HMIC cannot be confident that CI's property control systems are suitably robust to prevent cross contamination or loss of material. Whilst local managers in a number of CI offices have attempted to implement more robust property control systems, in some cases modelled on the former IR system, these have largely been undermined by the lack of sufficient space and have allowed the development of inconsistent local practises. In the worst examples the integrity of the control system was so undermined as to negate the purpose of having a property control system.

3.7 Recommendation 7

RAG STATUS: AMBER/GREEN ↑

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

3.7.1 Action Taken

The DCU was eventually established in Manchester in May 2008, the proposal first being approved in March 2006. Despite the positive support from key stakeholders and the stated CI Senior Management intention to create the unit immediately, this excellent ground breaking initiative was delayed in part by workforce change and other departmental re-engineering programmes. Hence the DCU is now still in the process of embedding itself and establishing its profile. The central disclosure team based in London that dealt with disclosure on Missing Trader Intra-Community (MTIC) Fraud investigations only, has been subsumed into the DCU.

3.7.2 Impact

The DCU has taken the lead on drafting the new disclosure training package and have commendably made good use of internal and external best practice, designing a product that should address the training needs of the whole Department, not just CI. In an attempt to address the harmonisation of disclosure processes the DCU is seeking to identify all nationally and locally held electronic information systems in the Department, so as to be able to assist DOs accessing the relevant ones. Whilst working from a provided list of 1008 databases it is clear that this list needs to be assured. There is a strong likelihood of there being considerably more locally held databases in existence, often in the control of staff who do not appreciate disclosure in the criminal justice context. Whilst the DCU has created its own intranet page, staff awareness of the DCU and its functions is limited. There was good general knowledge within CI, patchy knowledge in RIS-CIG, with the unit being largely unheard of in the rest of the directorates visited.

3.7.3 Areas for Improvement

To fulfil its objectives and provide the level of consistent service necessary to effectively underpin the role of DOs, it is critically important that an appropriate level of staffing within the DCU is recognised, established and maintained. Clearly there will be some benefit to proactively raising the visibility of the DCU so that they can ensure through engagement that a consistent approach is taken towards disclosure. Currently between MTIC and the other regimes, the DCU is providing inconsistent services. Whilst the peculiarities of MTIC justify this in relation to some databases maintained, there would be merit in considering the value of extending some of the databases to all regimes. The approach to be taken would then need to be clearly advertised to allay misunderstanding by practitioners, so as not to give rise to any undermining of confidence in the DCU. In order for DOs to be able to confidently state they have considered all relevant departmental held information, the DCU must as a priority continue its work to identify the electronic and hard copy information systems within HMRC that hold potentially relevant data. The DCU do not propose to provide the list of databases to DOs until they have assured it. As this will take some time it would be better to provide a caveated list to DOs so that they can at least consider those databases that may hold relevant material.

Progress against Inspection Recommendations

3.8 Recommendation 8

RAG STATUS: **AMBER/RED** ↔

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.

3.8.1 Action Taken

Whilst positive action was taken to address the backlog of 5x5x5s that were previously identified by HMIC as having not been input to Centaur⁴, a new backlog has appeared. In October 2008 the DCU issued a bulletin to alert DOs to the fact that a high proportion of 5x5x5s issued by Source Management Units had not been entered onto Centaur. HMRC's overseas fiscal liaison officers do not currently have access to Centaur at post, and there is a backlog of material awaiting input to Centaur. Termination of the successful Scottish HumInt pilot prior to national rollout has created yet another growing backlog. It was found that generally most practitioners were aware of their responsibilities to input data to Centaur. However this has not been translated into action and stakeholders regard compliance to be significantly inconsistent.

3.8.2 Impact

The credibility of Centaur as an intelligence tool is undermined by the continuing inability of HMRC to ensure that staff are compliant with guidance on entering data onto the system. This has ramifications not only for DOs being able to effectively discharge their duties, but also for investigations.

3.8.3 Areas for Improvement

Within the action plan drafted to address the findings from HMIC'S inspection report, it is envisaged that each directorate should complete a review and risk assessment, and develop a programme of work to address the issue. This should now be undertaken with some urgency in order to rectify the position.

⁴ Centaur is HMRC'S intelligence database

3.9 **Recommendation 9**

RAG STATUS: **DISCHARGED**

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

3.9.1 Action Taken

Through discussion HMRC and RCPO agreed that there was no problem identified by this HMIC recommendation, and therefore discharged it.

3.9.2 Impact

CI have determined that they will continue to consider the level of security clearance required by counsel on a case-by-case basis, bringing any particular sensitivity to the attention of the RCPO prosecutor at the earliest opportunity. However there was no evidence provided of any assurance having been conducted on the matter. Practitioners within CI and RCPO appear to work on the assumption that each are fulfilling their responsibilities in this regard, but do not check to see that they are.

3.9.3 Areas for Improvement

This should be an area subject to operational manager oversight through their assurance programs, and examined for systemic weaknesses by the Branch Assurance Managers to assess the level of risk.

Progress against Inspection Considerations

Chapter 4

Progress against Inspection Considerations

4.1 **Consideration 1**

RAG STATUS: **AMBER/GREEN** ↑

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

4.1.1 Action Taken

A Management and Information Support Team (MIST) has been set up within CI Strategy and Planning (CI S&P) to collate and produce management information for CI operational activity. Operational managers complete and render a standard template return each month.

4.1.2 Impact

It is possible to identify the number of investigations that have failed or have been “NFA’D”⁵ from this collected data; however there is no rationale given in these circumstances thus necessitating referral back to case teams to establish the circumstances. MIST was unable to provide a list of cases since the original inspection that had been terminated or failed due to disclosure reasons. Similarly the DCU did not hold such data and after research provided material for one major case. There has been no assured response provided to date, just an expressed belief that there has been only the one case.

4.1.3 Areas for Improvement

The DCU intend to record this information in future based on their monitoring of the MIST data to identify cases, and thereafter through the monitoring of consolidation reports.

4.2 **Consideration 2**

RAG STATUS: **DISCHARGED**

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.

4.2.1 Action Taken

The print function was not disabled after consideration due to limited utility and cost. Instead a time stamping process of the pages when printed has been introduced. There was no evidence found of assurance undertaken on the use of printed out of date instructions.

4.2.2 Impact

Examples were encountered where prints from the instructions were being made and used as either a reference tool or as evidence underpinning decision making. Generally the officers concerned were aware of the date stamping process and the need to refer to the intranet for up to date guidance. However where use as a reference tool was observed, there is no evidence of regular refreshing of the printed material.

⁵ No Further Action

4.2.3 Areas for Improvement

Effective assurance of this activity needs to be undertaken by operational managers supplemented by periodic assessment by branch assurance managers to ascertain the level of the risk.

4.3 **Consideration 3**

RAG STATUS: **RED** ↔

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.

4.3.1 Action Taken

No specific disclosure modules or GLUs have been produced or delivered for officers undertaking disclosure duties on complex and high risk investigations. There are currently no plans to produce or deliver such modules.

4.3.2 Impact

There was an overwhelming recognition amongst practitioners of the need for such modules. It is recognised that the current disclosure training is basic and does not equip officers to immediately undertake the DO role on large complex investigations. Whilst DOs should only be appointed to cases commensurate with their experience, in reality due to resource pressures inexperienced officers were being appointed to complex cases.

4.3.3 Areas for Improvement

This consideration should be implemented as soon as possible so that DOs on complex cases are fully supported in their role. Such modules would also be a useful reference tool for experienced DOs.

4.4 **Consideration 4**

RAG STATUS: **DISCHARGED**

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.

4.4.1 Action Taken

Within CI S&P business stream a resource has been given the specific responsibility to identify the impact of future legislative changes on CI, and to recommend the appropriate business solutions, which would include amendments to guidance and training.

4.4.2 Impact

A notable example of where this resource has proactively organised delivery of appropriate training was in relation to the Powers Review following the merger of the IR and HMCE. Instructions were updated, existing training amended and road-shows delivered to advise officers of impending changes. Aides memoire and various communications through line management chains were also issued which highlighted the impact of the changes. This was all conducted prior to the powers coming into effect.

Progress against Inspection Considerations

4.4.3 Areas for Improvement

There is scope for earlier engagement with training on legal changes to provide sufficient time to amend existing training and the consideration of what new training if any is required.

4.5 **Consideration 5**

RAG STATUS: **DISCHARGED**

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 Disclosure Officer (DO).

4.5.1 Action Taken

The current disclosure GLU is available online and can be used as a reference tool. It is intended that the GLUs that underpin the training currently being developed will also be made available online.

4.5.2 Impact

Practitioners did not always appreciate that the disclosure GLU was accessible as a reference tool to assist them.

4.5.3 Areas for Improvement

A periodic reminder to officers undertaking disclosure work that this facility is available would be a benefit.

4.6 **Consideration 6**

RAG STATUS: **DISCHARGED**

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

4.6.1 Action Taken

There is a structured training plan in place for all newly recruited criminal investigators, supplemented with practical experience opportunities whilst working along side and under the guidance of experienced colleagues. The investigators will have line manager oversight as well as a practical training officer looking after their initial development through their probation period.

4.6.2 Impact

There is now only one team that remains outside of the Criminal Investigation Directorate, who investigate the “absolute” offence of failure to render European Community sales listings. The team leader has undergone disclosure training and fulfils this role for the teams’ casework.

4.6.3 Areas for Improvement

None

4.7 **Consideration 7**

RAG STATUS: **DISCHARGED**

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.

4.7.1 Action Taken

All investigators within CI from the former IR have now received disclosure training.

4.7.2 Impact

With the provision of this training it has helped to close the knowledge gap between the officers from the two former Departments. It is recognised that the course itself only provides officers with the basic grounding in the topic and until they have gained practical experience there will remain a noticeable gap in their disclosure skills, this being confirmed by a key external stakeholder.

4.7.3 Areas for Improvement

Where possible the opportunities for practical experience should be afforded to investigators from the former IR.

4.8 **Consideration 8**

RAG STATUS: **AMBER** ↑

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

4.8.1 Action Taken

No specific training course has been developed for SCI officers.

4.8.2 Impact

Disclosure challenges and tactics in civil proceedings in some regimes are beginning to mimic those within the criminal arena⁶. When this is allied to the rise of cases involving the potential for both civil and criminal actions, and the opportunity to cause generic detrimental impact upon criminal casework, it is essential that SCI (now SI⁷) officers have an understanding of disclosure within the criminal justice context.

4.8.3 Areas for Improvement

The new disclosure training package under development will address the needs of SI officers and will be tailored to their needs.

⁶ MTIC cases being an example

⁷ Special Investigations

Progress against Inspection Considerations

4.9 **Consideration 9**

RAG STATUS: **AMBER** ↑

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.

4.9.1 Action Taken

Currently 2 out of a complement of 28 trainers are from a direct tax background.

4.9.2 Impact

The current level of direct tax investigators embedded in the training team limits the ability of the team to widen its knowledge base, and reflect to customers and stakeholders a fully integrated HMRC training team.

4.9.3 Areas for Improvement

Progressive increase in the number of trainers from a direct tax background covering all regimes that were administered by the former IR would be beneficial.

4.10 **Consideration 10**

RAG STATUS: **DISCHARGED**

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

4.10.1 Action Taken

An agreed protocol has been drawn up to ensure consistency and quality of handover procedures, which has been incorporated into departmental guidance.

4.10.2 Impact

There was a marked improvement in the quality of case handovers. The protocol was being worked to, and used as an assurance mechanism by managers.

4.10.3 Areas for Improvement

None.

4.11 **Consideration 11**

RAG STATUS: **AMBER** ↑

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

4.11.1 Action Taken

Access to EF⁸ has not been rolled out to assurance officers within Excise and International trade. A small percentage of officers have read only access for information purposes. Whilst a value for money case was submitted supporting rollout, this was not accepted because EF is now regarded as being “not a strategic IT solution” due to its age and therefore there would be no value extending it to other business areas.

⁸ Electronic Folder – Electronic Storage of VAT Records

4.11.2 Impact

An internal audit had found that there was a duplication issue regarding hard copy records being kept at an office level by visiting officers, a separate but slightly different set by a central registry and a third set potentially by policy, all within the same business group. Information within these records were not ordinarily shared with EF records.

4.11.3 Areas for Improvement

A replacement system for EF called Caseflow (which is considered to be a strategic IT solution) has been developed and successfully tested in a pilot site within another business area. A full roll out programme has now commenced, however there is some uncertainty if this system will be rolled out to all directorates. The expectation currently is that Excise and International Trade will receive the rollout later this year.

4.12 **Consideration 12**

RAG STATUS: **DISCHARGED**

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

4.12.1 Action Taken

Prompted by this re-inspection a review was conducted in the latter part of 2008 which confirmed that DOs were being appointed in accordance with stated policy.

4.12.2 Impact

Practitioner and stakeholder evidence reveals that this policy is not being uniformly applied, and that principally due to resource pressures, inappropriately experienced officers were being appointed as DOs for complex cases.

4.12.3 Areas for Improvement

Branch Assurance Managers when undertaking their Enforcement Management Assurance Framework (EMAF) assurance duties should continuously review the position.

4.13 **Consideration 13**

RAG STATUS: **DISCHARGED**

HMRC should consider making DO experience a mandatory requirement for applicants for Officer In Charge (OIC) positions.

4.13.1 Action Taken

The word 'disclosure' does not feature as a pre-requisite in the criminal investigation operational Senior Investigation Officer (SIO) jobholder template, the grade which most commonly undertakes the role of disclosure OIC. The template does call for recent experience of conducting criminal investigations and knowledge and experience in procedures relating to the Regulation of Investigatory Powers Act 2000 (RIPA), Police Act, CPIA and the Police and Criminal Evidence Act 1984 (PACE). HMRC believe this is sufficiently encompassing to address this point.

Progress against Inspection Considerations

4.13.2 Impact

The views of a key stakeholder that “There is no doubt that a case with a strong SIO with a sound background in criminal investigations results in a far better approach to disclosure”, reinforces the importance of this experience.

4.13.3 Areas for Improvement

None.

4.14 **Consideration 14**

RAG STATUS: **DISCHARGED**

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

4.14.1 Action Taken

The current module for disclosure training has been amended to include completion of consolidation reports and will feature in the new training packages being developed. Clear policy has been incorporated in the handbook directing that disclosure consolidation reports must be completed by the DO, signed by the officer in charge (OIC) and forwarded to the DCU at the end of each investigation. This is mandatory for all but the most straight forward “volume-type” cases unless the OIC deems that there are disclosure related learning points which may benefit colleagues. The DCU have circulated current DOs within Category A⁹ and Category B cases reminding staff of the importance of consolidation reports and of their use to disseminate good practice and learning points.

4.14.2 Impact

There were varying degrees of compliance with this clearly stated policy, despite practitioners being well aware of the requirement. It is largely seen as only being applicable in failed cases for “lessons learnt”. There was little practitioner recognition of the benefits of sharing best practice nationally from successful outcomes. There was no identifiable national process or system to disseminate best practice in use, although this is to be addressed by the DCU through this mechanism for the future.

4.14.3 Areas for Improvement

The DCU will proactively police the submission of reports to increase compliance. Operational team leaders could assure this activity through the EMAF programme.

⁹ CI categorise casework into:- Category A – Organised Criminal Attacks, Category B – Fraud within the tax/duty systems and Category C – Frontier referred investigations

4.15 **Consideration 15**

RAG STATUS: **AMBER** ↑

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

4.15.1 Action Taken

A new project manager was appointed in July 2008, who restructured the project team and delivery plan, that will now deliver Chiron 3 and Centaur update, including a bulk scanning facility, by the end of the financial year (2008/09). Training will be provided to DOs on how to use and interrogate the system. To gain buy in from users they have been consulted on their issues with Chiron¹⁰ and these where possible have been factored into the revisions.

4.15.2 Impact

There is a corporate realisation of the difficult task to turn around the perceptions of what the systems will deliver for staff who have suffered its past failings and lack confidence in it. There is also a clear strategic recognition of the importance of an effective case management system as a corner stone of an effective property control system. There is a level of confusion that persists as to whether material should be scanned onto Chiron, there being evidence that different practises were employed at the same geographical site.

4.15.3 Areas for Improvement

Due to the extreme pressures to deliver within this financial year some components of Chiron will not be delivered. The most concerning one being that there will not be an audit footprint of those that access the system. Whilst the intention would be to incorporate this in 2009/10 it is far from certain that there will be a budget allocated for it.

¹⁰ Chiron is the electronic case management system

Chapter 5

Other Issues

There were a number of concerns that were either highlighted in the original inspection report or surfaced in the re-inspection visits that although not specifically subject of a recommendation or consideration, require attention by HMRC in order to address the issues identified.

5.1 **Relevance Test**

RAG STATUS: **AMBER** ↑

Whilst there has been a noticeable improvement in the application of the relevance “test” when considering material, there is still cause for concern. Most stakeholders recognise that DOs’ considerations are applied very conservatively, with the default position being “if in doubt place it on the unused schedule.” This stance has led to the regular inclusion of irrelevant material on unused schedules. DOs commented that they find this is the most difficult aspect of their role, and most were very mindful of the potential ramifications of error. This “fear factor” was still very much in evidence and coloured the DOs’ objectivity. Currently decisions are based on subjective assessments that are unsurprisingly inconsistent. This is not assisted by the absence of clear, unequivocal guidance in relation to the categorisation of material. Similarly there are often differing views expressed by legal advisers, which again can erode confidence in decision making among DOs. Peer discussion and guidance are clearly an important forum that is used by most DOs when making decisions, and underlines the need for action in respect of recommendation 2 above.

5.2 **Reasonable Lines of Enquiry**

RAG STATUS: **AMBER** ↔

It is clear save for a few exceptions that in Category A and Category B casework, reasonable lines of enquiry are followed and any disclosure implications are considered and dealt with. However for Category C casework there are developing trends that give rise for concern. HMRC, based upon their agreement with the UK Border Agency (UKBA), has no control over the level of referred frontier intervention cases they must accept and progress, provided they satisfy nationally agreed take on criteria. Until the position is finally concluded on the demerger of frontier activity to the UKBA this situation will remain unchanged. This work causes resource pressures for CI, which vary quite considerably from region to region. In some areas this severe tension together with a tendency to not progress investigations beyond the seizure and individual(s) detained at the frontier, has led to DOs not pursuing or considering any disclosure ramifications for the case in potential further lines of enquiry. This is becoming a significant concern both for practitioners, and key stakeholders who consider they that must continually fight to overcome resistance to undertaking the necessary work in this area. The potential dangers this holds generically (and thus reputationally) for all Category C casework treated in this manner is obscured to an extent by the fact that 80% of defendants plead guilty in these types of cases. When taken in consideration with the comments below under the appointment of DOs, practitioners create the impression of reducing disclosure to a formulaic process of scheduling available material at the last moment and no more. In the extreme, for some cases no disclosure reports were compiled for cases where early guilty pleas were confidently expected.

5.3 Disclosure Schedules

RAG STATUS: **AMBER** ↔

It is a serious concern that amongst legal practitioners there is a significant level of doubt as to whether all relevant material has been scheduled and revealed to them by DOs. Poor quality descriptions on the unused material schedules, is an enduring problem necessitating the revision of schedules in the majority of cases. These issues were found to be more common in Category C cases. There is a wide variance in the level and frequency of OIC oversight of DOs' work. Whilst for the Category A and B cases they would review schedules periodically, for Category C cases there is a one off review prior to delivery to the case lawyer. The quality of the oversight is variable from a spot checking of a few items against the schedules, to no verification at all except for reading the DO's report. The prevalence of irrelevant material on the schedules reflects the level and effectiveness of the quality assurance conducted by the OICs. For large complex cases involving huge volumes of material, in some teams it is commonplace for the DO to rely upon administrative support to prepare schedules. Whilst this would be undertaken under the supervision of the DO, the sheer volume of material would prevent the DO from effectively checking the content of every entry.

5.4 Appointment of DOs and Deputies

RAG STATUS: **AMBER** ↑

The guidance within the handbook on the appointment of DOs is clear. This was reinforced by a disclosure bulletin on the 23 July 2007 which reminded investigation team leaders that the selection criteria must be followed in every case. Importantly it highlighted that no officer should be appointed without successfully completing the disclosure training, and in all cases the DO must have the appropriate skills and authority to fulfil the duties. There is also a clear expectation that DOs will be appointed at the outset of cases. For Category A and B cases, in the main the DO was appointed at the beginning of the case although there were a few instances where this did not happen. The position on Category C cases was not satisfactory. Examples were cited where DOs were appointed late in the day often with little more than a few weeks notice prior to a court date to undertake the task. This greatly curtailed the ability to discharge their duties fully. Such late appointments prevent the DO revealing material to the defence at a very early stage prior to full disclosure, where it may have a bearing on bail, an abuse of process or affect the nature of charges to be preferred. A consistent theme from practitioners, especially those on Category C work, was that they had a number of other case responsibilities which impacted on their ability to undertake disclosure responsibilities. On occasions in large complex cases whilst sufficient resource was provided to assist the DO at the outset, the resource was removed at short notice to address priorities on other case work. This leads to delays and potential inefficiencies. When key deadlines approach resources would be re-allocated to assist the DO in order to meet the deadlines. This is regarded by practitioners as ineffective because often the staff so allocated did not have enough case knowledge to be of sufficient use within the time deadlines that existed. A further observation by practitioners and legal stakeholders is that in reality the selection criteria was not being robustly applied in that there were occasions when inexperienced officers who had only recently successfully completed their disclosure training, were being appointed to large complex cases. They were clearly insufficiently experienced to undertake this challenge.

All of the issues referred to in this section are caused by ineffective resource allocation and management. Indeed in the one major complex case that has been stayed due to failings in disclosure since the HMIC inspection, an issue that drew criticism from the judge, was the lack of resource put into the disclosure process. To address this, a disclosure bulletin was issued making

Other Issues

the appointment of a Deputy Disclosure Officer for Category A and B cases mandatory. If there are exceptional reasons to justify not appointing a deputy then it has to be articulated in the case control papers. Despite investigation team leaders being fully aware of this instruction, there are in fact incidences where no such appointments were made, or have been made in name only, giving the appearance of compliance.

The report is available in alternative languages
and formats on request.

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