

## **Chapter 9: Then and Now – the Changes and the Perceptions**

9.1 The events in relation to the investigation of the London City Bond cases took place between 1995 and 1998. It is obviously important to set the criticisms made about the way in which those investigations and the subsequent prosecutions were conducted against the changes that have taken place since that period. My terms of reference expressly provide that in reviewing current practices and procedures I should have regard to changes in the law, the present relevant statutory framework and current departmental provisions and practice. The impact of structural changes and changes following external reviews have been significant. Those changes have addressed a number of the reasons why the London City Bond cases went wrong. I deal with the changes below, and conclude this chapter by setting out what I have learned about the perception of HMCE, particularly among those who work in the criminal justice system.

### **A The Legal Framework**

#### **Criminal Procedure and Investigation Act 1996 (CPIA)**

9.2 The CPIA introduced a regime for managing the process of disclosure which was aimed at reducing the burden on the prosecution following the extension of the common law duty to disclose material in the hands of the prosecution to the defence. I comment on the background to the legislation and the way in which the regime operates in HMCE in Chapters 10 and 11. The obligation imposed on the prosecution by the CPIA to disclose all material which might undermine the prosecution or assist the defence played an important part in the collapse of the London City Bond cases. The Attorney General's Guidelines issued in 2000 in respect of disclosure were of great assistance to all prosecutors in applying the provisions of the CPIA, but could not save a prosecutor who simply did not have confidence that all potentially discloseable material was under his control. This issue is addressed in Chapter 11 Paras 11.59-11.63.

#### **Human Rights Act 1998 (HRA)**

9.3 The HRA did not ultimately have the impact on the criminal justice system in the United Kingdom anticipated of it. Government and those responsible for training the judiciary had anticipated the influence the new Act might have and had prepared for its introduction through an extensive training programme. It came as a pleasant surprise to find that the jurisprudence of the United Kingdom was largely Human Rights compliant. No significant change was required of HMCE in consequence of the new legislation.

#### **Regulation of Investigatory Powers Act 2000 (RIPA)**

9.4 In August 2000 the provisions of the RIPA came into force. The main purpose of the Act was to ensure that the relevant investigatory

powers were used in accordance with human rights law. Part II of the Act was particularly concerned to provide a statutory basis for the authorisation and use by, *inter alia*, law enforcement agencies of covert surveillance, agents, informants and undercover officers. It introduced statutory requirements where before only non-statutory codes of practice were in place. (See also Chapter 10 and Chapter 12.)

- 9.5 The Act was intended to regulate the use of investigatory techniques and safeguard the public from unnecessary invasions of their privacy. The consequence of not obtaining authorisation under the Act for the use of any of the designated investigatory techniques where there is an interference by a public authority with Article 8 rights and there is no other source of authority may be to render the action unlawful by virtue of section 6 of the Human Rights Act 1998.
- 9.6 RIPA provides for a system of independent supervision of all covert investigation techniques and thus an assurance to the public. The Act provides for the appointment of seven Surveillance Commissioners, including the Chief Surveillance Commissioner. They have jurisdiction throughout the United Kingdom. Five are retired Lord Justices (or the Scottish equivalent thereof), one is a retired High Court Judge and one is a Senator of the College of Justice in Scotland. The duty imposed on the Chief Surveillance Commissioner is to keep under review the exercise and performance of the powers and duties conferred or imposed by or under Part II of RIPA. To discharge those obligations the Chief Surveillance Commissioner is assisted by a Chief Surveillance Inspector and four Surveillance Inspectors. They are authorised generally to inspect on behalf of the Chief Surveillance Commissioner the covert activities conducted by the public authorities listed in Schedule 1 of RIPA, including all law enforcement agencies and in particular HMCE.

### **B Role of the Attorney General**

- 9.7 One of the most significant changes affecting HMCE over the last eight or so years has been the changing nature of the relationship with the Attorney General, particularly as it affects the prosecutions conducted by HMCE. The most recent changes arose out of the Gower/Hammond report and are dealt with later in this chapter. Prior to that, however, the relationship developed in the following way.
- 9.8 By statute the Attorney General has responsibility for the superintendence of the discharge of their functions by the heads of three prosecuting authorities. These are:
- (i) The Director of Public Prosecutions (under Section 3 of the Prosecution of Offences Act 1985).

- (ii) The Director of the Serious Fraud Office (under Section 2 of the Criminal Justice Act 1987).
- (iii) The Director of Public Prosecutions (Northern Ireland) (under the Prosecution of Offences (NI) Order 1972).

9.9 The Attorney has no similar statutory superintending role in respect of HMCE prosecution functions. On 17 June 1996, in answer to a question from Mr Mark Robinson MP about his relationship with those Government departments with prosecuting responsibilities which were not subject to his superintendence, the then Attorney General, Sir Nicholas Lyell QC said:

I do not expect to be routinely informed about prosecutions which I do not superintend merely because they are difficult or have a high, or potentially high, public profile. But it may well be appropriate to consult me in relation to cases raising, for example, particularly difficult public interest considerations, issues of propriety, or important issues of the law of general importance.

It is always open to prosecutors to seek my guidance in relation to particular problems or issues, and open to any department to draw concerns about a prosecution to my attention, whether or not it is one which I superintend....

9.10 Superintendence is not defined by statute. It has been most regularly articulated in connection with the relationship between the Attorney General and the Director of Public Prosecutions, a relationship dating back to the Prosecution of Offences Act 1879 which created the office of DPP. In 1979 the then Attorney General, Sir Michael Havers, said in a Commons Answer:

My responsibility for superintendence of the duties of a Director does not require me to exercise day to day control and specific approval of every decision he takes. The Director makes many decisions in the course of his duties which he does not refer to me, but nevertheless I am still responsible for his actions in the sense that I am answerable in the House for what he does. Superintendence means that I must have regard to the overall prosecution policy which he pursues. My relationship with him is such that I require to be told in advance of the major, difficult and, from the public interest point of view, the more important matters so that, should the need arise, I am in the position to exercise my power of direction.

9.11 In a speech in the House of Commons on 5 March 1998 the then Attorney General, Mr John Morris QC, quoted that passage from the Answer by Sir Michael Havers and added:

My primary responsibility, therefore, is to oversee the effective and efficient administration of the prosecution authorities that I superintend..... I cannot and do not hold myself out as

responsible for the day to day conduct of each and every prosecution, although these constitutional niceties explain to the House how I approach my responsibilities.

- 9.12 In a separate Parliamentary Answer on the same day the Attorney General set out the changed relationship with HMCE in terms of export control prosecutions, as a result of the recommendations of the report by Sir Richard Scott. The Attorney said:

..... the Government have accepted that in future the role of the Attorney General should include the exercise of increased supervision of HM Customs & Excise prosecutions in relation to export control matters. The arrangements to give effect to this increased supervision have now been settled and are contained in a paper which I have placed in the Libraries of both Houses.

I shall be answerable to the House for actions taken by HM Customs & Excise in relation to individual prosecutions relating to defence exports and to sanction infringements, other than those involving strict liability – that is not requiring evidence of deliberate evasion. Treasury Ministers will continue to be answerable for general enforcement and prosecution policy and will also remain responsible for the investigation of such offences.”

- 9.13 This situation continued until November 1999 when the then Solicitor General gave a Parliamentary Answer announcing new arrangements for the Law Officers to have a closer relationship with all prosecuting authorities for which the Attorney General was not formally responsible. These arrangements applied generally to HMCE prosecutions in addition to the specific role in export control cases adopted in 1996. The full text of the Solicitor General’s Answer is as follows:

The Government have decided that, with effect from the date of this Answer, the Law Officers should have a more formal role in respect of prosecutions by Government departments and agencies that are not subject to their superintendence. In future, the Law Officers will examine cases raising important matters of particular difficulty. They will have regular meetings with senior representatives in each department or agency to discuss such cases and prosecution issues more generally; and will receive regular written information on casework of particular concern.

The focus of the new arrangements will be on prosecution cases rather than the allocation of resources or determination of prosecution priorities, which must be a matter for each department and agency. In cases in which the Law Officers do express a view, the final decision will remain with the responsible Minister or office holder, but the Law Officers’ views will be taken fully into account.

I should like to make plain that this initiative is prompted by a desire to strengthen the current arrangements. It is not a response to the handling of any particular case. The new arrangements are intended to enhance decision making within the prosecution process, and should lead to worthwhile improvements in the quality of such decision making. No legislative measures will be necessary to put the arrangements into effect.

- 9.14 This arrangement continued until the Gower/Hammond report recommendations were accepted and implemented (see next section).

### **C Reports and Reviews**

- 9.15 Since the publication of the “Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions” by Sir Richard Scott in 1996, there have been four other independent reviews which have examined various aspects of the operating procedures and controls of HMCE, with particular emphasis on investigations and prosecutions. A full list of all the recommendations of each report and the action taken by HMCE is to be found in Appendices Three to Seven.

- 9.16 I deal below with the recommendations of most relevance to the issues raised by the London City Bond cases. Because some of these reviews followed closely on each other, inevitably some recommendations have been overtaken by those of later reports. However, for the purposes of this report, I have tried to deal with each, as far as possible, as a self-standing report.

- 9.17 Most of the recommendations of these reports have been accepted and implemented. Whilst for a few I am able to take a view on how successful they have been, there are many where that is simply not possible at present. Some are still relatively new and others go beyond straightforward procedural changes to major structural and cultural change.

### **The Hosker Report**

- 9.18 This was a case specific review arising from a prosecution at Bristol Crown Court in January 1998, where a successful abuse of process application resulted in a stay of the proceedings. Further details can be found at Appendix Three. The review was conducted by Sir Gerald Hosker KCB QC, a retired Treasury Solicitor. Sir Gerald made 11 recommendations, of which four related specifically to maritime issues and are therefore not of direct relevance here.

- 9.19 The first seven recommendations addressed issues relating to the management of investigations, training, record keeping, and liaison with the Solicitor’s Office. All of these issues are relevant to the

LCB cases: for example, the need to have a senior co-ordinator where investigations are being conducted by more than one team.

- 9.20 HMCE accepted all the recommendations and, where appropriate, made specific changes to their training courses. All new investigators attend what is called the BITS course, dealt with in more detail in the next chapter. The importance of record keeping is emphasised; and a new manual case handling system has been introduced which builds upon these recommendations. In 1998 strategic decision logs were introduced for each investigation (later renamed case decision logs (CDLs)). Prosecution logs have also been introduced to record meetings and the decision making process of investigators and lawyers.
- 9.21 The BITS course now gives greater emphasis to the issues which arise when giving evidence in court. There are a number of training exercises within the course which build up to a mock court case. Officers are tested in giving evidence that they have gathered during the exercises. At the end of the course, and for the remainder of the six month trial period for all investigators, there are further tests to ensure that trainees have understood what is required of them.
- 9.22 All SIOs and ACIOs attend a command and control course enabling staff of a suitably senior level to co-ordinate specific stages of investigation. The introduction of the CDLs referred to earlier also enables the case SIO to have an overview of the decision making process during an investigation.

### **The Butler Report**

- 9.23 In 1999 His Honour Gerald Butler QC was asked to conduct an inquiry into the prosecution of the case of Regina v Doran and others at the Crown Court at Bristol. A note about the report is at Appendix Four and the subsequent appeal is described in outline at Appendix Five. He was asked specifically to look at the actions of officials from HMCE and prosecution counsel in relation to:

- (i) Technical surveillance conducted at certain hotels.
- (ii) The non-disclosure of material relating to those issues and the related PII applications made in the course of the proceedings.

The second of these is of particular relevance to the London City Bond cases.

- 9.24 The report made thirty recommendations, fifteen covering the Solicitor's Office and seven covering the National Investigation Service. Of the remaining eight, two were recommendations to the Bar; one was a general recommendation about criminal procedure; two were recommendations about the judiciary; and the remaining

three, recommendations 26, 27 and 30 were more general recommendations to HMCE.

#### The Solicitor's Office

9.25 The first five recommendations concerned the need for the investigators to have legal advice available to them, from a dedicated team, at an early stage. These recommendations were all accepted. By the time the report was published, steps had been taken to establish the team; one lawyer was already in post and a further lawyer was added to the team shortly afterwards. They were based in Custom House as NIS legal advisers. The team has subsequently grown and is clearly having some impact on investigations. However, I have made recommendations in the next chapter about the size and role of the team.

9.26 Recommendations 6 to 8 concerned liaison between HMCE solicitors in particular and counsel. They were also accepted and revised instructions were issued. The issues raised by recommendations 9 and 10 concerned cover at court and were subsumed within the Gower/Hammond report (see next section). Compliance with all these recommendations is assessed by the quality assurance team which operates within the Solicitor's Office and will be tested by the CPS Inspectorate. My own discussions with members of the Bar have confirmed that the effect of the recommendation is noticeable. They perceive a significant increase in the number of occasions when they are attended by solicitors or case managers.

9.27 Three of the recommendations related to the handling of PII applications. A review took place involving lawyers, administrators and investigators which resulted in the issuing of guidance on the material on which PII may be claimed. One of the recommendations, recommendation 12, that in every PII application there should be prepared and presented to the Judge a schedule identifying the documents in respect of which PII is sought and why, was rejected. It was felt that the sensitive material scheme required by the Criminal Procedure and Investigation Act 1996 dealt with this sufficiently.

9.28 Other recommendations were accepted and three formed the basis of the Gower/Hammond review (see next section).

#### National Investigation Service

9.29 All seven recommendations about the National Investigation Service were accepted and have been implemented. The recommendations covered training, knowledge of the law, codes of practice and guidelines, note taking and record keeping, the handling of PII issues and the management and authorisation of investigators.

- 9.30 A number of changes were made to the BITS course to provide a better induction for investigators, and training is now tailored to take account of legislative changes. The Law Enforcement Professional Standards team (LEPS) make a presentation on the BITS course which emphasises the importance of maintaining standards and complying with the law. In 2002 LEPS undertook an assurance programme for notebooks and surveillance logs to ensure compliance with instructions. This identified a training need for team leaders in the use of surveillance logs which has been implemented. LEPS is currently assuring the use of case decision logs throughout investigation branches. Further improvements are likely to be made to the systems when assurance is complete.
- 9.31 Relevant PII instructions are incorporated in the investigation handbook and assurance of the disclosure process is being introduced. LEPS have also reviewed the investigation storage system and a new system is being introduced which implements their recommendations.
- 9.32 New notebook guidance was developed and incorporated in the LE investigation handbook; as were revised instructions on technical surveillance applications.

#### **The Gower/Hammond Report**

- 9.33 Recommendation 15 of the Butler Report suggested that “a new structure proposed for the Prosecution Group, and which I need not here examine in detail, seems to me to be a sound and sensible way forward. I recommend its implementation”. The Butler Report went on to make two further recommendations about organisational issues. They were:

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

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

- 9.34 These recommendations were accepted by the Government and a further review by His Honour John Gower QC, assisted by Sir Anthony Hammond KCB QC (on his retirement as Treasury Solicitor) was established to examine the relevant issues and to make recommendations.
- 9.35 The report was submitted to the Attorney General in December 2000 and published the following Spring. A note about the review is at Appendix six. The report made 15 recommendations all of

which were accepted by the Attorney General on behalf of the Government. A full list and comments on the latest position on implementation is at Appendix Six.

- 9.36 HMCE decided that a phased approach to implementation would be adopted because some of the recommendations had significant resource implications. It follows therefore that there has been insufficient time for the full impact of some of these recommendations to be felt.
- 9.37 One of the most significant changes has been a greater independence for the prosecution function within the Solicitor's Office and a changed relationship with the Attorney General. Coupled with some enhancement of resources, this has led to a step change in the relationship between the prosecuting lawyers and the investigators, which was commented on by most of those we saw. I make further more radical recommendations in this area in the next chapter; but that should not detract from the importance of the cultural and organisational changes started by the Gower/Hammond report.
- 9.38 The report also recommended that the remit of the CPS Inspectorate should be extended to cover HMCE prosecuting staff. So far only one pilot inspection has taken place, an inspection of the Manchester office. On the basis of that inspection, however, I believe this has been a constructive and important development which should be taken forward. This is dealt with in more detail in Chapter 11.
- 9.39 The Gower/Hammond report emphasised the importance of the solicitors having and demonstrating full control of their cases. They made recommendations about attending conference with counsel, and about attendance at court. Either the case lawyer, or the case manager, or both, now attend all conferences with counsel. It is important that this is maintained.
- 9.40 The prosecuting solicitors and their staff have greatly increased their attendance at court. Between April and September 2002 they have achieved around 93% attendance at appropriate Crown Court hearings. I accept the need for the prosecution unit to keep under review the types of hearings they should attend but would encourage them to maintain and if possible improve on current levels of coverage for PII hearings, plea and directions hearings and the prosecution case in trials.
- 9.41 It is disappointing that more progress has not been made on recommendations 12 and 13 about higher court advocacy rights; and recommendation 15 about advocacy in the Magistrates' Courts. I understand the resource constraints which have impacted on the implementation of these recommendations but they must not be

allowed to slip into obscurity. They are an important plank in the developing autonomy and independence of the Prosecutions Group.

### **The Roques Report**

- 9.42 John Roques, the retired Senior Partner and Chief Executive of Deloitte & Touche, was appointed on 30 June 2000 to investigate the collection of excise duties including consideration of the policy, legislation, systems and resources within HMCE relating to excise holding and movements to determine weaknesses and gaps including the efficiency of the then operating system of bonds and guarantees. Roques reported in December 2000 and made 65 recommendations. Further details on the report are at Appendix seven.
- 9.43 Of particular relevance to my Review was the attention focussed by Roques on the importance of protecting the Revenue in on-going criminal investigations. HMCE have acknowledged that this is an area where they needed to improve their performance and the controls have been significantly enhanced. There are now very specific guidelines and authority levels for the risking of Revenue in commercial fraud cases. This has not only helped focus investigation staff on the importance of protecting the revenue, but it has helped facilitate a more flexible approach to the way HMCE tackle fraud. In particular the new procedure highlights the possibilities of confiscation, compounding and forfeiture as important alternatives to the use of criminal prosecutions in disrupting fraudulent activity.

## **D Structural and Management Changes in HMCE**

### Corporate Developments

- 9.44 The Department as a whole has undergone extensive changes since the time of the London City Bond investigations. The theme of constant change was a repeated refrain in many of our interviews. Some to whom we spoke looked forward to a period of stability during which the changes already implemented would be given time to take effect. Most, however, recognised that change, however uncomfortable and unsettling it might be, was necessary. As one investigator put it to us: “stability just means you become a backward, irrelevant organisation.”
- 9.45 Changes in specific areas are dealt with later. This section deals with a number of significant corporate developments aimed at creating stronger corporate ownership of all the department’s activities at its most senior level; ensuring a clearer strategic framework for the department’s activities; improving accountability; and improving information flows and controls. Sir Richard Broadbent, the Chairman at the time of my Review, commented to us that when he took up his post in 2000 he found an organisation with marked strength and skills, but which needed greater central

direction and consistency, based on a clear strategic framework, sharpened accountability, clear ownership of its businesses and modernised business processes. These issues have been, and are being tackled. The major developments were:

- (i) In August 1999 a new Commissioner was created to head fraud and intelligence. This new command brought together the National Investigation Service (NIS) and the National Intelligence Division (NID), and was intended to bring closer oversight at Board level of the NIS, and to improve the relationship between the investigation and intelligence functions. It was also the start of a process to bring a broader approach to fraud.
- (ii) In April 2000 there was a major restructuring of the Board, of the associated corporate machinery and of all the senior management commands. The main changes were:
  - The Board became a more strategic body with strong non-executive representation: in addition to the Chairman there are six executive members and six non-executive Directors drawn from a wide range of backgrounds. The Solicitor is also a member of the Board.
  - The twenty-two existing Board committees and sub-groups were abolished and replaced with three Board committees – management, appointments and audit.
  - The management committee, comprising the Chairman and six Directors was created expressly to take responsibility for the day to day running of the organisation.
  - The roles of the senior Directors most closely involved in operations and delivery were redefined to minimise overlap.

This restructuring clarified accountability. It was accompanied by some senior management changes; and by the launching of an organisation-wide programme of change.

- (iii) In April 2001 the department was reorganised into functional commands. The main changes were as follows:
  - All the department's activities were reorganised into two core businesses – business services and

taxes and law enforcement. These businesses were supported by specialist central support services.

- Within the new law enforcement business three functional commands were created – investigation, intelligence and detection. These embraced all law enforcement activity, whether previously operated centrally or regionally.
- Within the new business services and taxes function, responsibility for the management of large businesses was separated from that for small and medium enterprises (SMEs).
- New operating committees were created to run the main functions.
- All 13 regional Collections and freestanding national units such as the National Investigation Service, were abolished and subsumed into the new functional structure.

9.46 In HMCE's own words the aim of the reorganisation was "to complete the process begun in April 2000 of creating unambiguous accountability for all the department's activity; to enable consistent professional standards and controls to be set; to drive strategic thinking about the challenges facing the department and to foster an outcome based ethos to tackle them". As a result the department has been better able to develop a strategic framework for its activities; to improve controls and professionalism; and to improve outputs.

9.47 In addition to structural changes cultural issues have been addressed. A new statement of goals has been adopted and strategies for the organisation developed. A copy of the statement of goals is at Appendix Eight.

9.48 As a result of all these changes the department has been able to draw together a fully strategic approach to its responsibilities. In November 2002 the government published "Protecting Indirect Tax Revenues" (a copy of the document can be found on the HMCE Internet site: [www.hmce.gov.uk](http://www.hmce.gov.uk)). For the first time all the major taxes for which the department is responsible were analysed; the proportions being evaded or avoided estimated; strategies for reducing evasion set out; and outcome targets set for the department to reduce evasion. The effects of this have yet to be felt fully but the overwhelming majority of HMCE staff to whom we have spoken have welcomed the new strategic approach as giving them better direction and a better appreciation of what is expected from them. One practical outcome from this is rising output. By

redeploying existing staff onto new activities, more Class A drugs have been seized over the last three years than in the previous ten years put together; VAT throughput is up 15% and criminal gangs disrupted up 29%.

### Law Enforcement

9.49 Reference has already been made to the creation in August 1999 of a new Commissioner to head fraud and intelligence. That post was filled by an HMCE Director from outside the investigation and intelligence unit. In the following month a new Chief Investigation Officer, recruited externally, was appointed to the then NIS and many of the intelligence functions in the NIS were moved to the NID. These two parts of the organisation were themselves abolished under the reorganisation of 2001 referred to above.

9.50 Within the Law Enforcement group there have been a number of more detailed changes covering case management, the handling of sensitive cases and professional standards. A number of these changes were in response to recommendations from reviews and have been dealt with in the preceding section. Others include:

### Case management

- The development of a manual management information system, available down to team level.
- The setting of monetary limits at which authority is required for all activities. The authorisation covers risks such as risked revenue, foregoing revenue, drug or other controlled delivery risks and risks to cash.
- Adoption of a system whereby cases that have been in investigation for over six months are reviewed by another team.
- Since December 2002 investigation managers are required to consider on a monthly basis the risks around cases for which they are responsible to see whether any issues should be brought to the attention of senior management.
- A systems audit has been carried out by the Internal Audit Division to examine the effectiveness of the implementation of these measures. Their conclusion was that the new case handling procedure has led to a major and immediate improvement in the accessibility of working papers and the clarity of audit trails; and that the introduction of CDLs has enhanced the transparency of the decision making process. The audit team also looked at progress on

implementing the disclosure action plan (see Chapter 11) and concluded that implementation was on target, that the profile of disclosure issues had been raised, and that the new procedures and controls should increase the effectiveness of the disclosure process.

### Professional standards

- In early 2000 a professional standards unit was created within the then investigation division. Its remit has since been extended to cover other law enforcement functions. The unit has two functions:
  - To maintain a conduit for information on suspected malpractice “involving or impacting” on law enforcement investigations.
  - To establish standard operating procedures, to disseminate these procedures and to enforce their adoption through assurance programmes and intrusive examination.
- The unit works to the LE Operating Committee. Its first tasks were to ensure the implementation of the Butler Report’s recommendations (identification evidence, recording and retention of evidence, case management and supervision). It has a large programme of ongoing work with a focus on individual standards and training. It also carries out post-mortems on failed cases. (Its role is referred to elsewhere in the report – see the sections on inspection and assurance in Chapter 10.)

### The Solicitor’s Office

9.51 The structure of the Solicitor’s Office has been significantly affected by the recommendations of the Butler Report and the Gower/Hammond Review. The preceding section of this chapter and the appendices give more detailed information. Of particular importance were:

- (i) In 2000 implementation of a recommendation of the Butler Report by appointing two Investigation Legal Advisers. In the light of the Gower/Hammond Review

this team was increased to six under a lawyer at Senior Civil Service level.

- (ii) In April 2002, as a consequence of the Gower/Hammond Review, the Solicitor's Office was split into a departmental Solicitor's Office and a Prosecutions Group. Accountability for the care and management of prosecutions was passed to the Attorney General. The Investigation Legal Advisers were placed in the Prosecutions Group, and therefore under the accountability of the Attorney General rather than the Commissioners for HMCE, in line with Gower/Hammond.
- (iii) These organisational changes were accompanied by changes to the approach of the Prosecutions Group to the way they dealt with cases, the aim of which was to increase the independence of solicitors in dealing with investigators and to make demonstrably independent the prosecution process itself. Specifically the solicitors have made efforts to regain real control of their cases which they had lost to investigators and counsel. Solicitors now more regularly attend at conferences and court. There has also been an increase in resources available to the Prosecutions Group.
- (iv) An additional change was the introduction of independent inspection by Her Majesty's Crown Prosecution Service Inspectorate (HMCPPI). So far HMCPPI have undertaken one pilot inspection of the Manchester Solicitor's Office. (See section on HMCPPI in Chapter 11.)

9.52

A further set of changes took place on 1 April 2003. The Prosecutions Group adopted the name "HM Customs & Excise Prosecutions Office" and the reporting line of that Office, with its care and management of prosecutions, has been moved to the Attorney General. A Memorandum of Understanding (MOU) has been signed by the Attorney General, the Economic Secretary to the Treasury, and the Chairman of HMCE, setting out the future arrangements within which the Prosecutions Office will operate. A copy of the MOU is at Appendix Nine. It sets out the respective ministerial responsibilities of Treasury Ministers and of the Attorney General. In summary they are:

### Treasury Ministers

9.53 Subject to the convention that Treasury Ministers do not intervene in individual HMCE department investigations and prosecutions, the Commissioners will be responsible for, and accountable to Parliament through Treasury Ministers for:

- Anything done in the course of an investigation.
- Enforcement policy.
- Prosecution policy ie the seriousness with which offences should in general be treated, following consultation with the Attorney.
- Wider issues of departmental policy.

### Attorney General

9.54 The Attorney will be responsible for and accountable to Parliament for:

- The quality of legal advice given by Prosecutions Group Investigation Legal Advisers.
- The quality of Prosecutions Group casework decision making and its execution in relation to cases referred to the Group for prosecution.
- The application of prosecution policy and public interest factors to individual defendants in cases referred to Prosecutions Group for prosecution.
- The resources to be deployed by Prosecutions Group.

9.55 The Solicitor for HMCE is answerable to the Attorney for the Prosecutions Group work for which the Attorney takes ministerial responsibility, and separately to the Chairman of the Board of HMCE for the other activities of the Solicitor's Office generally, and in relation to those areas of Accounting Officer responsibility which the Chairman discharges to the Attorney.

9.56 Within HMCE a document setting out the respective responsibilities of Law Enforcement staff and Prosecutions Office staff has been widely circulated and discussed at meetings.

### **E Perception of HMCE**

9.57 Against this background of extensive change both in legislation and structure I began by seeking to inform myself of the way in which HMCE are perceived in the wider criminal justice community, and in particular whether, as I hoped, the changes had made a positive

contribution to those perceptions. In that hope I was to be seriously disappointed.

- 9.58 A number of those to whom the Review team spoke remembered the investigators and the prosecuting department of HMCE in the 1960s and 1970s – as indeed does the author of the Review himself. In those years the investigators were proud of their Service and saw themselves as the elite of the law enforcement community. The officers were dedicated to a culture of excellence, and enjoyed a widespread and well-deserved reputation within the criminal justice system for enthusiasm, commitment and integrity. They had a real pride in what they did and how they did it. The investigators were in the main recruited from HMCE officers who had spent some years in the Service, often in detection at the ports.
- 9.59 Counsel instructed to prosecute in those years who announced that he appeared on behalf of HMCE knew that he had the best prepared brief in court, and knew that the HMCE officers he called to give evidence would be professional, meticulous in their preparation and scrupulous in their honesty. It was a privilege much sought-after at the Bar to be admitted to the list of counsel approved to appear on behalf of HMCE.
- 9.60 Gradually over the years the aura of excellence became tarnished. Things began to go wrong: not everywhere, not often, but from time to time. Some of the dilution of excellence was probably attributable to the very rapid expansion of the investigation arm of HMCE, a growth driven by the considerable increase in criminal activity surrounding drugs and flowing from the introduction of VAT. In the early 1970s there were less than 150 investigators nationwide: by the late 1990s there were more than 2,500. The corps of experienced and dedicated investigators was too small to absorb the extent and rate of the expansion required. The tradition of excellence became just that: a tradition, rather than a reality. There was a fall in standards which was palpable.
- 9.61 The description given to us of the NIS in the mid 1990s, the time of the London City Bond investigations, was disheartening and gloomy. It is always dangerous to generalise, and I have no doubt there were many excellent and committed investigators then as now. However senior management within Law Enforcement to whom we spoke described a culture of elitism leading to arrogance - isolation and power which was disconnected from reality. There was, we were told, “country club” management, with SIOs and other middle management personnel content to “rest on their laurels” and being more concerned with securing an attractive and comfortable lifestyle rather than a commitment to improve management and results. And if you were outside the club it could be quite uncomfortable. There was a lack of strategic drive and weak management information systems. Many investigators had a siege mentality, and

did not want, or think they needed, any external scrutiny. Case handling was slapdash and sloppy. Those observations found a resonance with my conclusions about what went wrong in the London City Bond investigations.

9.62 The position in relation to the prosecuting function was also unhappy. Gower/Hammond, examining the position in 2000, observed that with regard to the handling of prosecutions the majority of respondents, viewed collectively, presented a depressing and disturbing picture. In recent years the standards of HMCE prosecutions had declined and case preparation and presentation had failed to meet expectations. Many respondents, both external to and within HMCE, ascribed the fall in standards and lowering of efficiency to a lack of resources. The workload had expanded in quantity and complexity. There were inadequate numbers of staff and poor working conditions. Support staff were inadequately trained and insufficient in number. There was low morale amongst HMCE lawyers leading to a loss of experienced people and the erosion of “corporate memory.” Those findings entirely accord with the results of my detailed examination of the prosecution of the London City Bond cases.

9.63 Much has changed within HMCE since the dark days of the nineties and there have been major improvements in many areas. What has definitely not changed is the general perception of HMCE within the criminal justice system. One middle-ranking investigator, whose recollection went back many years, expressed the view that HMCE had hit an all-time low in the eyes of the judiciary; another more senior manager said “our reputation in the criminal justice system is probably as low as it is possible to get”. Certainly that seems to be confirmed by the majority of the Circuit judges and members of the Bar, to whom I spoke in the course of the Review. 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. There was a strong feeling amongst the judges that the investigators were still calling the tune and that the solicitors needed to be more independent.

9.64 On this issue it is perhaps symptomatic of the general perception of the judiciary that the CACD in the appeal of Operation Fallover (see Chapter Five), presided over by the Vice President of that court Lord Justice Rose, was prepared to make express findings that HMCE officers had lied in the course of PII hearings and on the *voir dire*, and that the lies were told by reason of a deliberate decision on the part of HMCE to conceal from the judge the true status of Alf

Allington and the real nature of the relationship between HMCE and London City Bond. Those findings were made without the court hearing any evidence, without any admission to that effect by the prosecution, and in the face of objection by counsel to the findings. That by itself speaks volumes for the reputation of HMCE and the perception of the department in the eyes of the senior judiciary.

9.65 Cases such as the London City Bond appeals obviously do great harm to the general reputation of HMCE. The inevitable adverse publicity simply reinforces existing preconceptions. In earlier times HMCE were held in considerable esteem by the judiciary and respected by defenders, both solicitors and counsel, as efficient, effective and skilful. Not any more. Perhaps the greatest task facing HMCE, and the hardest to achieve, is the restoration of its image. As one investigator put it to me: “We have a long hill to walk up. But we’re going to do it.”

9.66 These perceptions have been an important factor in my consideration of the wider issues I have addressed. Public confidence in HMCE is vital and all appropriate and reasonable steps should be taken to seek to restore that confidence.

#### The Wind of Change

9.67 The perception outlined above should not detract from the fact that in a few short years much has been accomplished. Many of the changes made in structure, management and culture identified in this chapter directly impact on some of the issues raised by the London City Bond cases. Senior management at HMCE are to be commended for the radical steps they have taken to tackle the malaise within the Department. Middle management, faced with major reconstruction, have largely responded positively to the changes and have sought to give practical effect to them. Those at the coalface have sometimes found the effect of the changes difficult to accept and the reasons for the changes have not always been effectively communicated to them. That said, the majority of those in Law Enforcement and the Solicitor’s Office have accepted the changes as sensible and necessary and have done their best to implement them within the resource constraints that inevitably apply.

9.68 I welcome the commitment to these changes at all levels within HMCE and the way in which they have been implemented. But the journey is far from over. The perception issue outlined above must be tackled and there is more to be done elsewhere. I consider the problems yet to be addressed and the possible way ahead in the following chapters.