

MEMORANDUM OF UNDERSTANDING dated 18 April 2005

MEMORANDUM OF UNDERSTANDING between the Paymaster General on behalf of Her Majesty's Treasury ("the Treasury"), the Attorney General ("the Attorney"), the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") and the Director of the Revenue and Customs Prosecutions Office ("the Director") concerning the relationship between Her Majesty's Revenue and Customs (HMRC) and the Revenue and Customs Prosecutions Office (RCPO) as to the conduct of criminal investigations and prosecutions by the two departments.

RESPONSIBILITIES

1. Subject to the principle that Treasury Ministers do not intervene in the affairs of individual taxpayers, including matters relating to criminal investigations, the Commissioners will be responsible for, and accountable to, Parliament via Treasury Ministers for

- anything done in the course of an investigation
- the quality of legal advice given by HMRC lawyers
- decisions as to the mix of cases necessary to secure HMRC Public Service Agreements and
- HMRC policy including the criteria to be used in deciding whether alternatives to prosecution should be applied.

2. The Director will be responsible for, and accountable to Parliament via the Attorney for

- the quality of RCPO casework decision making and its execution
 - the application of the Code for Crown Prosecutors to individual defendants in RCPO cases.
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3. The Paymaster General and the Attorney General will consult on the development and ambit of general prosecution policy, including the use of alternatives to prosecution after the commencement of criminal proceedings in relation to offences investigated by HMRC.

CONSULTATION AND RESOURCES

4. All parties to this Memorandum of Understanding recognise the importance of early and regular consultation to facilitate the efficient management of investigation and prosecution resources.

CONSULTATION

5. The Commissioners and the Director will consult with each other regularly with the intention that the policies of the Commissioners in respect of investigations and the policies of the Director in respect of prosecutions and connected legal proceedings should be developed so as to be compatible.

6. The Commissioners and the Director will consult with each other regularly to ensure that each is fully aware of the activities of the other with a view to identifying potential impact on each other's work.

RESOURCES

7. The Commissioners and the Director will consult with each other regularly and at an early stage about the impact of the proposed or anticipated number and type of criminal investigations to be undertaken by the Commissioners and the proposed or anticipated number and type of prosecutions to be undertaken by the Director on each other's resources.

8. Whenever it appears that the resources available to RCPO are likely to fall short of those required to fund the level of prosecution activity reasonably implied by the level of investigation activity contemplated by the Commissioners, the Director and the Commissioners will consult with a view to the Director making an early identification to the Attorney of the need for additional resources.

9. The exception to this will be when any shortfall clearly results from a change in policy or investigation activity by HMRC. In these circumstances and in accordance with the usual Treasury rules, the Commissioners will provide the additional resource needed.

10. When the Commissioners are considering their bid under the Spending Reviews, in accordance with HMT rules they will consider whether any proposed change in policy, practice, reprioritisation in resourcing or any other change might have an impact on RCPO resources.

- The Commissioners will consult with the Director on the resource implications for RCPO with a view to agreeing the amounts to be bid for.
- The Commissioners and the Director will then make individual bids to HMT in the usual way, but ensuring that HMT is aware of the links between the two bids.

11. To the extent that no or insufficient further resources are forthcoming, then, with a view to ensuring that the resources used do not exceed the resources available

- the Commissioners will consider the views of the Director and will adjust the scale and priority of investigation work and the criteria for applying alternatives to prosecution and
- the Director will consider the views of the Commissioners in deciding how to apply the resources available to him.

12. The details of the consultation processes mentioned in this section will be attached as Annex A – Policy and Strategy Agreement.

CASEWORK STANDARDS

13. The Commissioners and the Director will consult with each other in order to develop joint casework standards for the discharge of HMRC and RCPO functions in relation to criminal investigations and prosecutions.

14. The details of the casework standards mentioned in this section will be attached as:

Annex B(i) – Casework Standards Agreement in respect of former Customs & Excise cases;

Annex B(ii) - Framework Agreement for the Management of Former Inland Revenue Criminal Cases.

15. An agreement on the specific discharge of both departments' duties in relation to the disclosure of unused material in criminal cases will be attached as Annex C – Disclosure Agreement.

INSPECTION

16. Recognising that HMRC and RCPO will be subject to audits, inspections and investigations of complaints the Commissioners and the Director will co-operate with those processes and, to this end, will exchange copies of (or, where appropriate, extracts from) any reports that either HMRC or RCPO produces covering work done by the other and, subject to the provisions of the Commissioners for Revenue and Customs Act 2005 and the Data Protection Act 1998, any other documentation they consider relevant to the audit, inspection and investigation processes.

MISCELLANEOUS

17. This MoU may be modified by letter of amendment with the agreement of all parties to it.
