



House of Commons
Committee of Public Accounts

Revenue and Customs Prosecutions Office

Fifty-first Report of Session 2007–08

*Report, together with formal minutes, oral and
written evidence*

*Ordered by The House of Commons
to be printed 20 October 2008*

The Committee of Public Accounts

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Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pac>. A list of Reports of the Committee in the present Session is at the back of this volume.

Committee staff

The current staff of the Committee is Mark Etherton (Clerk), Emma Sawyer (Senior Committee Assistant), Pam Morris (Committee Assistant), Anna Browning (Committee Secretary) and Alex Paterson (Media Officer).

Contacts

All correspondence should be addressed to the Clerk, Committee of Public Accounts, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5708; the Committee’s email address is pubaccom@parliament.uk

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Summary

The Revenue and Customs Prosecutions Office (the Department) was set up on 1 April 2005 to prosecute offences for the former HM Customs and Excise and Inland Revenue (now HM Revenue and Customs) and from April 2006, for the Serious Organised Crime Agency. It is headed by a Director and is one of the Law Officers' Departments. This was the Director's first appointment as Accounting Officer and he had no previous public sector experience. Operationally, the Department has performed very well under his leadership.

Shortcomings in the Department's internal control system resulted in the Comptroller and Auditor General issuing a qualified audit opinion on its Resource Account for 2005–06. The Director acted decisively in response to the National Audit Office's concerns and all weaknesses have now been rectified. Yet for the first year and a half of its operations, the Department did not have a fully functional internal control system. The finance team was under-resourced and inexperienced, the human resources section was short staffed and the Department did not have basic finance, procurement and human resources policies and procedures in place. The Director lacked the necessary support, training and experience to identify or mitigate the risks.

Three of these risks were serious and draw into question the adequacy of the training and support provided to the Accounting Officer by HM Treasury and others. Firstly, the Department did not inherit adequate records of counsel fees outstanding from earlier years. By allowing the practice of negotiating counsel fees for work done on completion of the work to continue, the Department compounded the uncertainty over its expenditure and accrual for counsel fees. Secondly, a senior member of staff (a member of the Management Board) awarded consultancy contracts totalling £98,000 to his wife without due regard to proper stewardship of public funds. Cleared by an independent disciplinary tribunal of dishonesty, he was subsequently dismissed for gross misconduct. Thirdly, having decided to award the consultancy contract, the Department failed to seek HM Treasury agreement in advance to make payment.

On the basis of a Report by the Comptroller and Auditor General,¹ we examined the Revenue and Customs Prosecutions Office and HM Treasury on the events that led to the qualified audit opinion on its 2005–06 accounts, the measures taken to address the shortcomings identified and the lessons learned for other new organisations.

1 C&AG's Report, *Revenue and Customs Prosecutions Office Resource Accounts 2005–06*, HC (2006–07) 273

Conclusions and recommendations

- 1. The Accounting Officer addressed the shortcomings identified in the organisation's system of internal control, but acknowledged he should have done so sooner.** In the months following the creation of the new organisation, the Accounting Officer gave priority to operational performance at the expense of establishing a sound system of internal control, for which he is personally responsible. When appointing an Accounting Officer to a newly established body, HM Treasury should issue guidance to the Accounting Officer, the organisation's management board and its sponsoring department on the need to strike an appropriate balance between operational performance and sound financial control, as required by the Treasury guide 'Managing Public Money'.
- 2. Currently, a newly appointed Accounting Officer, with little or no experience of working for the public sector, undergoes the same basic training as one with previous public sector experience.** Support and training needs for Accounting Officers vary, depending upon their previous experience of working within the Civil Service. HM Treasury should set a date with the National School of Government for the roll out of bespoke training and support tailored to the needs and experience of newly appointed Accounting Officers.
- 3. The Accounting Officer redesigned the counsel fee regime in response to concerns raised by the National Audit Office regarding cost certainty, but some fee notes are still submitted late.** The Accounting Officer is to be congratulated for ending the longstanding practice of negotiating fee rates with counsel on completion of the work assignment. To encourage compliance with the new fee regime, the Department should explore and develop a common range of sanctions in conjunction with the other Law Officers' Departments. Ultimately, this may include a decision not to instruct named counsel on new cases.
- 4. The three Law Officers' Departments undertaking criminal prosecution work have no common processes for allocating briefs to counsel, negotiating fees or monitoring the submission of fee notes.** The Department should liaise with the Crown Prosecution Service and the Serious Fraud Office to align more closely their processes for appointing counsel and managing their fees. This should include the allocation of briefs and the establishment of agreed procedures for the submission of timely invoices, the end of year certification exercise and the fee regime.
- 5. Reliance on a few specialist suppliers may create excessive dependency and the perception of a cosy relationship.** The Accounting Officer acknowledged the Department's reliance on counsel from a few specialist chambers, selected for their expertise and experience in prosecuting major revenue and customs fraud cases. The Department should keep the level and values of work provided to these chambers under review and periodically assess whether these allocations continue to be defensible. In the medium term, the Department should seek to encourage a broader range of suppliers to gain the necessary expertise.

6. **Inadequate separation of duties, a weak control system and failure to make a full disclosure of related party transactions enabled a senior member of staff to award his wife a lucrative consultancy contract.** HM Treasury should remind Departments of the importance of demonstrating propriety in procurement, particularly where someone related to a senior manager applies for a position within the same public sector body.
7. **The Accounting Officer and his advisers did not realise the Department needed the prior written approval of HM Treasury to enter into transactions where there was a potential conflict of interests.** Retrospective HM Treasury approval should be the exception not the norm. HM Treasury guidance to public bodies on “novel and contentious” expenditure makes explicit the need for prior HM Treasury approval, but is silent on the process of obtaining approval. They should draw the attention of Accounting Officers to the need for a body to demonstrate to HM Treasury in advance that it has sufficient defensible information that the payment is value for money, conflicts of interest have been addressed and that the payment is within the bounds of regularity.
8. **The Department operated for 15 months with no code of conduct to highlight the responsibilities of staff when considering potential conflicts of interest and to set out the standards of expected behaviours.** New entities should aim to have an appropriate code of conduct in place as soon as possible after operations commence. All staff should be required to sign it to demonstrate they have read, understood and complied with it.

1 Establishing new entities—getting it right from the start

1. The Revenue and Customs Prosecutions Office (the Department) was set up on 1 April 2005 to prosecute offences for the former HM Customs and Excise and the former Inland Revenue (now HM Revenue and Customs), and from April 2006, for the Serious Organised Crime Agency. It is headed by a Director and is one of the Law Officers' Departments.

2. The Director readily accepted the National Audit Office's advice on the shortcomings in the internal control system in November 2006 and has addressed all the shortcomings identified.² This was the Director's first appointment as Accounting Officer and he was unfamiliar with the standards of the public sector.³ The Director acknowledged that as the Department's Accounting Officer, he ought to have responded more quickly to the shortcomings in its internal control system.⁴

3. The Director has brought strategic direction and operational success to the Revenue and Customs Prosecutions Office since his appointment in December 2004. From the outset, his priorities were to restore public and judicial confidence in Customs prosecutions, to rebuild low staff morale arising from a series of unsuccessful HM Customs & Excise prosecutions, to forge a new relationship with the newly created HM Revenue and Customs and to provide leadership.⁵ Under his direction, the organisation has achieved a conviction rate of 92%, has confiscated assets of some £45.5 million since April 2006, and appears to have no difficulty attracting appropriately qualified legal staff.⁶

4. The Revenue and Customs Prosecutions Office's legal teams were in place and ready to begin work in April 2005, but its finance and human resources function and internal controls were not fully developed. By his own admission, the Accounting Officer had not been "on the ball" on finance or accounts issues, and the organisation had seriously underestimated the task of producing its first set of financial statements.⁷ He acknowledged that, in retrospect, insufficient thought had been given to the selection and matching of corporate function staff to the needs of a small, new Government department. The financial controls and procedures inherited from HM Customs and Excise and the Inland Revenue may have been appropriate for a very large department, but they required modification and development to adapt them to meet the needs of a smaller one.⁸

5. Staffing levels in the finance function were inadequate from the outset. Just one of the two accounts staff in the finance department was professionally qualified.⁹ The finance

2 Qq 12–13, 54–55

3 Ev 16

4 Q 130

5 Q 2

6 Qq 87, 118, 123–124

7 Qq 13, 136

8 C&AG's Report, *Revenue and Customs Prosecutions Office Resource Accounts 2005–06*, HC (2006–07) 273, para 6

9 Q 2

team had a limited understanding of routine financial accounting procedures and a poor appreciation of how to prepare a set of resource accounts. Eight months after its first financial year end, the Department could not present a reliable set of accounts for audit.¹⁰ The Department subsequently engaged temporary staff to help resolve errors and inconsistencies in the financial statements.¹¹ It took time, however, for the organisation to put robust internal controls in place. During its first year of operation, the Department had no proper financial control system in place and no month end processes to help establish the accuracy and completeness of its financial information. The internal audit function was not in place until 1 June 2006, some 18 months after the Department was launched and the Director took up post.¹² These shortcomings impacted on the completeness of the organisation's accounting records. In January 2007, the Comptroller and Auditor General qualified his audit opinion on the organisation's financial statements for 200–06 because of significant uncertainty over the value of the Department's expenditure on, and outstanding liabilities in respect of, legal counsel fee expenditure.¹³

6. The Department's corporate governance system was in place from the outset. It was led by a Management Board, chaired by the Director as Accounting Officer, together with three Heads of Division, the Head of Finance and two non-executive directors, and, from September 2005, the Chief Operating Officer, with responsibility for oversight of finance and human resources issues. The Chief Operating Officer had almost 40 years of experience in the Civil Service. The Management Board met ten times in 2005–06, and routinely examined operational matters, risk and finance. The Accounting Officer's statement on internal control for 2005–06 indicated that the Department had a strategic risk register in place by the end of its first year, but work had not yet been completed on operational risk registers.¹⁴

7. The Director told us that, by September 2005, he was extremely concerned that the organisation's human resources policies and procedures were not fit for purpose. Of the Department's seven human resources staff at the time, one of the two professionally qualified staff was just back from long term sick leave and was not fully recovered, and the other was inexperienced. In line with the expectations of the Gershon Review, the Department had planned from the outset to buy in corporate services from HM Customs and Excise. Following the O'Donnell Report,¹⁵ however, provision of services to the Revenue and Customs Prosecutions Office in 2004–05 proved to be a lower corporate priority for HM Customs and Excise than its merger with the Inland Revenue.¹⁶

8. The Director attended the standard training course for Accounting Officers run by the National School of Government and found it useful. HM Treasury acknowledged that while most first time Accounting Officers were new to their departments, they were not usually as new to the public service as this Director. With no previous public sector

10 Qq 12–13

11 C&AG's Report, paras 29–30; Ev 13, para 15

12 Qq 81, 86, 127

13 C&AG's Report, p 21

14 C&AG's Report, pp 15–19

15 Cm 6163, Session 2003–04

16 Q 134

leadership experience, he faced a steep learning curve to gain the practical experience needed to manage the new department and discharge his duties as Accounting Officer.¹⁷ HM Treasury told us it was unusual to have a new department headed by someone unfamiliar with the standards of the public sector. It attributed the start up problems experienced by the Revenue and Customs Prosecutions Office to a lack of customised day-to-day support for the Accounting Officer, which it considered should have been the primary responsibility of the new body's sponsor department. HM Treasury is in discussion with the National School of Government to arrange bespoke training facilities for new Accounting Officers.¹⁸

17 Q 131–133

18 Ev 16

2 Establishing robust financial procedures

9. The method of agreeing counsel fees that the Revenue and Customs Prosecutions Office inherited from its predecessor had been in place for many years, but was fundamentally flawed. Instead of agreeing the hours to be worked or a fee with counsel or counsels' clerks at the outset of the case, it was usual practice for negotiations to begin after the submission of the fee notes.¹⁹ Larger or more complex prosecutions took months to complete, and delays by counsel in submitting their fee notes impacted on the Department's ability to monitor its financial position. The Comptroller and Auditor General issued a qualified audit opinion on the Department's 2005–06 Resource Accounts because the Department could not provide sufficient evidence that counsel fee expenditure for 2005–06 of £15.7 million, and related accruals at 31 March 2006 of £11.8 million, were not materially understated.²⁰

10. Late submission of fee notes also made the process of validating the individual fees claimed less objective than it should have been. Until September 2006, when the Director implemented a more robust system, establishing the accuracy of the fee charged relied on the honesty of counsel putting in the proper hours for what they had done. It also depended on the knowledge of the individual prosecuting lawyer within the former Customs and Excise Prosecutions Office, and the experience of the Department's fees and nominations team in assessing fee notes and knowing how much work any particular case would require.²¹ The potential for overcharging was illustrated when the Department negotiated down a barrister's fee note from £990,000 to £550,000. The fee related to work carried out up to three years beforehand.²²

11. Under the Department's new system, most cases involve fixed fee payments to counsel, negotiated at the start of the case. For large or complex fraud, or large-scale drug importation cases, the Department agrees the fees and the amount of work required at a case conference between the prosecuting lawyer and counsel. Counsel are paid at a standard rate of £185 an hour and bills are submitted monthly for payment. Counsel and the lawyer meet monthly to discuss progress and the need for additional work. This has made fee note validation easier and has reduced the opportunity for error or fraud. The Director estimated that around 85% of counsel complied with the new arrangements.²³ Overall, the Director considered the Department was now exercising tighter control over fees paid to counsel.²⁴

12. The Department has yet to develop a range of effective sanctions to help increase the proportion of accurate fee notes submitted on time. Currently, those who have not submitted fee notes on time are made aware of the Director's displeasure. The Director

19 Qq 7–11, 56, 64, 66, 99

20 C&AG's Report, para 9

21 Qq 60, 97

22 Qq 59, 63, 69–76, 94, 100

23 Q 89

24 Q 61

considered that persistent failure by counsel to comply might result in them not being instructed for other cases.²⁵

13. The Department's analysis of fees paid to barristers in chambers over the five year period from 2003–04 to 2007–08 (**Figure 1**) indicated that the Department relied on a few, specialist suppliers. One set of chambers earned more than £11 million, three sets earned between £5 million and £7 million, and 13 sets earned more than £1 million. The Director maintained that there were very few barristers at the criminal bar capable of prosecuting a major fraud and that this expertise was concentrated in a few specialist chambers. The Director, for example, joined the Department from the highest earning set of chambers (18 Red Lion Court). Five of his former colleagues act as standing counsel to the Department, reflecting 18 Red Lion Court's status as a centre of excellence. Of these five counsel, two were appointed as standing counsel after the Director left the chambers to take up appointment but he was not involved in their appointment or in the allocation of briefs to individual barristers.

Figure 1. Payments to barristers in chambers for the period 2003–04 to 2007–08

RANGE	NUMBER OF CHAMBERS RECEIVING PAYMENTS IN RANGE
More than £11 million	1
£9 million to £11 million,	0
£7 million to £9 million	0
£5 million to £7 million	3
£3 million to £5 million	2
£1 million to £3 million	11
£0.5 million to £1 million	11
£0.1 million to £0.5 million	30
£10,000 to £100,000	38
£1,000 to £10,000	26
Less than £1,000	29

Source: Ev 17

14. There was no commonality in the way the four Law Officers' Departments selected, engaged, negotiated with and paid counsel (**Figure 2**). Three of the Departments (Revenue and Customs Prosecutions Office, the Serious Fraud Office and the Crown Prosecution Service) engaged counsel to assist with the prosecution of cases, and one (Treasury Solicitor's Department) engaged junior counsel and barristers to help defend government bodies in civil and public law cases. All four bodies negotiated the terms of engagement in advance, including the expected duration of the work. Methods of negotiating fees varied.

25 Qq 61, 89–90, 93

Counsel working with the Serious Fraud Office and the Crown Prosecution Service's Graduated Fees Scheme negotiated a single fee for the whole case. All four Law Officers' Departments required counsel to submit monthly bills. Sanctions for late submission of bills also varied, with the Treasury Solicitor's Department requesting resubmission of fee notes that do not comply with its process.²⁶

Figure 2. Comparison of the Law Officers' Departments arrangements for engaging, instructing and paying counsel

	Revenue and Customs Prosecutions Office	Serious Fraud Office	Crown Prosecution Service (CPS)		Treasury Solicitor's Department
			Graduated Fees Scheme	Very High Cost Case scheme	
Work type	Criminal	Criminal	Criminal	Criminal	Civil/Public Law
Body's role	Prosecuting authority	Prosecuting authority	Prosecuting authority	Prosecuting authority	Defending government bodies in litigation
Method of allocating cases to counsel	Selected in rotation from Attorney General's approved list of counsel	Maintains list of eligible counsel nominated by chambers. At least three counsel are invited to tender for each case	Some handled by CPS Higher Court advocates, all others passed to self-employed Bar on a "taxi rank" basis	Barristers go through a nomination process before being appointed on the basis of skills and experience	Panel system for appointing junior counsel. Nomination from the Law Officer before appointing Queen's Counsel (QC)
Fee rate(s)	Standard rates across three case regimes ¹	Defined in ranges, according to grade	Standardised rates agreed between CPS and the Bar Council	Standardised rates	Standardised rates for Junior Counsel. QCs rates are defined in ranges.
Method and timing of fee rate negotiations	Projected hours are agreed in advance each month for hourly cases	Price agreed in advance is the price paid	Tariff of charges. Barrister receives a single fee, payable on completion	Price dependent on pre-agreed number of hours to be spent on the case	Juniors are paid a fixed rate. Hourly rates are agreed in advance for QCs
Frequency of fee note submission	Monthly	SFO contacts chambers to request monthly bills	Within three months of the main hearing date	On a staged payment basis, with stages lasting between 8 and 12 weeks	Monthly
Sanctions for late fee note submission	Counsel are informed that persistent late billing may lead to removal from the Attorney General's list	No penalties for late billing	No penalties for late billing	No penalties for late billing	Payment may be delayed where fee notes are not in compliance with process. There are no other sanctions for not billing on a timely basis.

Note: 1. The Revenue and Customs Prosecutions Office operates three case regimes: standard (trial expected to last up to two days); premarked (trial expected to last three to fifteen days); and hourly (trial expected to last over fifteen days)

Source: Ev 14

3 Proper stewardship of public funds

15. The Director expressed his regret that there had not been proper stewardship of public funds when the Chief Operating Officer's wife was engaged to prepare the Department's human resources policies.²⁷ In September 2005, the Director tasked the newly appointed Chief Operating Officer with putting in place appropriate human resources policies. His solution was to select a consultant to develop these policies.²⁸ The Chief Operating Officer completed all the steps of the recruitment process himself and recommended his wife for appointment as the successful candidate.²⁹

16. The Director acknowledged that he should have taken external advice on the appointment.³⁰ At the time, he considered that the potential conflict of interests were outweighed by the time-limited nature of the initial six months contract, the candidate's proven track record with other departments, and her availability to start work immediately. His understanding was that the process was fully documented, that some 20 CVs had been considered from potential three agencies and that there was a complete audit trail.³¹

17. The Chief Operating Officer's wife continued to work for the Department after her contract expired in April/May 2006, while the Department quantified the work necessary to complete this task and established what further work needed to be done. After discussions with the Department's non-executive directors, the Director put in place a new selection procedure. The then temporary Head of Human Resources considered CVs from four candidates and reported directly to the Director. On her recommendation, the contract with the Chief Operating Officer's wife was extended in July 2006 for three months.³²

18. Overall, the Department paid the consultant some £98,000 (**Figure 3**). The Director considered her work to be very good quality and her daily fee rate of £550 excluding VAT to be good value for money.³³ During 2006–07, the consultant ceased trading as a sole trader and formed a limited company. In October 2006, the Department's Chief Operating Officer was appointed company secretary retrospectively, with effect from February 2006.³⁴ The Chief Operating Officer failed to disclose this appointment to the Director, which led to his suspension in February 2007. An independent disciplinary review found the Chief Operating Officer had acted without due regard to propriety and the proper conduct of public business, but there was no suggestion of dishonesty. He was subsequently dismissed for gross misconduct.³⁵

27 Q 1

28 Q 2

29 Qq 2, 17

30 Q 130

31 Q 4

32 Qq 18–21

33 Qq 22, 38

34 Qq 36–38

35 Q 80

Figure 3. Payments to the former Chief Operating Officer's wife for consultancy work undertaken in 2005–06 and 2006–07

PERIOD	£ ¹
2004–05	32,636
2005–06	65,271
Total paid	97,907 ²

Notes

1. Inclusive of Value Added Tax

2. In 2005–06, payment for human resources consultancy work was made to the Chief Operating Officer's wife as a sole trader. During 2006–07, payments were made to an external consultancy company (UK People Business Ltd), incorporated in February 2006 and wholly owned by the Chief Operating Officer's wife. Her husband was the company secretary.

Source: Revenue and Customs Prosecutions Office Resource Accounts 2006–07

19. The Director was unclear as to whether the Department had carried out basic due diligence checks when the consultant's supplier status changed from sole trader to incorporated company in July 2006.³⁶ At the time of the consultant's appointment, the Department had a procurement policy in operation but it did not provide sufficient practical details about how to apply these principles in particular circumstances.³⁷ The Department revised its procurement practices and procedures during 2006–07 and issued its detailed procurement policy in April 2007.³⁸

20. HM Treasury told us it expected Accounting Officers to organise their Departments so as to have in place the procedures necessary to meet the principles set down in HM Treasury's guidance.³⁹ HM Treasury does not seek to micro-manage public organisations, but concentrates instead on strategic issues, notably Public Service Agreements and more recently on Departmental Strategic Objectives. HM Treasury considered it important that departments should be free to develop systems and policies appropriate to the delivery of their own policies and outcomes.⁴⁰

21. The process by which the Chief Operating Officer's wife was appointed was not in accordance with HM Treasury Officer of Accounts' guidance to Accounting Officers on regularity, propriety and value for money, or with the guidance on selflessness outlined in the Nolan Committee's first report.⁴¹ As part of its review and update of its human resources policies, the Department introduced a Code of Conduct in June 2007, some fifteen months after the Department was created, to which all staff must adhere. This was based on the standards of expected behaviour set out in HM Treasury guidance.⁴²

22. The awarding of employment or procurement contracts to family members of staff or Board members gives rise to risks of regularity and propriety and potential conflicts of

36 Qq 35–36

37 C&AG's Report, p 25

38 C&AG's Report, para 19

39 Qq 85–86

40 Ev 16

41 C&AG's Report, para 22

42 C&AG's Report, para 19

interests. By their nature, these can cause embarrassment to the organisation and the individuals involved. However, it was the NAO who identified that the engagement of the Chief Operating Officer's wife was novel and contentious.⁴³ Under HM Treasury guidance, departments have no delegated authority to incur such expenditure without HM Treasury approval in advance. Acknowledging that the process by which she was appointed was irregular, HM Treasury gave retrospective approval for the payments to be made to the Chief Operating Officer's wife. This was because the Department was able to demonstrate to HM Treasury's satisfaction that it had sufficient information that the payment was value for money, conflicts of interest were notified and the payment was within the bounds of regularity.⁴⁴

43 Ev 13, para 9

44 Q 6

Formal Minutes

Monday 20 October 2008

Members present:

Mr Edward Leigh, in the Chair.

Mr Richard Bacon

Angela Browning

Mr David Curry

Mr Ian Davidson

Nigel Griffiths

Keith Hill

Mr Austin Mitchell

Mr Don Touhig

Draft Report (*Revenue and Customs Prosecutions Office*), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 22 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Fifty-first Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Wednesday 22 October at 3.30 pm.]

Witnesses

Wednesday 21 May 2008

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Mr David Green QC, Director, Revenue and Customs Prosecution Office

Ev 1

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Fiftieth Report	Preparations for the London 2012 Olympic and Paralympic Games	HC 890 (Cm 7453)
Fifty-first Report	Revenue and Customs Prosecutions Office	HC 601
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Third Special Report	BBC Procurement: The BBC Trust's response	HC 1118

Oral evidence

Taken before the Committee of Public Accounts

on Wednesday 21 May 2008

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon
Mr Ian Davidson

Nigel Griffiths
Keith Hill

Mr Tim Burr, Comptroller and Auditor General, National Audit Office, gave evidence.

Ms Paula Diggle, Treasury Officer of Accounts, gave evidence.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

REVENUE AND CUSTOMS PROSECUTION OFFICE RESOURCE ACCOUNTS 2005–06 (HC 273) and 2006–07 (HC 870)

Witness: **Mr David Green QC**, Director, Revenue and Customs Prosecution Office, gave evidence.

Q1 Chairman: Good afternoon, welcome to the Committee of Public Accounts where today we are considering the Comptroller and Auditor General Reports on the Revenue and Customs Prosecution Office 2005–06 and 2006–07 and these provided the background to the C&AG's qualification of his audit opinion on the 2005 accounts recording significant internal financial control weaknesses within the Department and how the Department is improving its procedures and, in addition, it highlights potential impropriety regarding the appointment of the Chief Operating Officer's wife as a consultant to the Department. We welcome David Green QC, who is Director and Accounting Officer of the Revenue and Customs Prosecution Office since its inception on 1 April 2005. Mr Green, tell us what happened then. The Department employed the Chief Operating Officer's wife as a consultant to review and implement the Department's human resource policies and procedures. The Chief Operating Officer completed all the steps of the appointment process. The NAO did not consider that the appointment constituted the "proper" behaviour expected for the stewardship of public funds. HM Treasury gave retrospective approval for the 2005–06 payments but the Department made payments totalling £97,907 to the Chief Operating Officer's wife over the two financial years. Why did this happen and why did nobody do something about it?

Mr Green: I should make clear from the beginning this should not have happened and I deeply regret it. It did happen in a very particular context which I would be very happy to describe to you.

Q2 Chairman: Please explain to us.

Mr Green: Thank you. There are really three aspects to this context. The first is the background to the establishment of RCPO in April 2005 and what my priorities were. Just by way of detail, at the end of the 90s and the early 2000s you will know that a series of Customs and Excise prosecutions went disastrously

wrong and, as a result, Butterfield J recommended that the prosecution function be taken out of Customs and Excise and put in a separate department. I was appointed in December 2004 after 25 years at the criminal Bar in private practice to head this new organisation, and I am sure you will readily understand that my priorities at that time were restoring public and judicial confidence in Customs prosecutions, restoring battered staff morale, forging a new relationship with HMRC and providing leadership, so that is the first aspect, that was my priority. Secondly, at the time of our launch it is quite clear in retrospect that no sufficient thought had been given to selection and matching of staff on the corporate side to the needs of a small, new Government department. It was anticipated quite clearly that we would buy in services under the Gershon principles from HMRC but the fact of the matter is that at the time of our launch in April 2005 there were seven people in the HR department on the corporate side in RCPO; two of them were qualified and of those two one was just back from long term sick and was not well yet, the second was inexperienced. Our HR policies which we had adopted for our new department were essentially those we had inherited from HMRC and by September 2005 when I had been in the job for nine months and Mr Partridge started as our first fulltime Chief Operating Officer, I was extremely concerned, frankly, that on the corporate side as it were a wheel might come off because we lacked policies that were suitable and were adapted for the needs of a small department. In that context I told Mr Partridge on his arrival to, frankly, do what was necessary to get the HR policies we needed, and his solution was to get interims in. The third aspect and final aspect to the context is that as you rightly say, Chairman, Mr Partridge conducted the process and he told me as follows: firstly, that the process was fully documented and that there was a complete audit trail. I understood some 20 CVs had been considered from three agencies. She was value for money in that

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she cost us £550 plus VAT per day; the OGC framework agreement as of today quotes an HR consultant at £775 a day plus VAT.

Q3 Chairman: He was pretty upfront that she was his wife.

Mr Green: Yes.

Q4 Chairman: You decided that it was a good deal.

Mr Green: There was more to it, as I hope I will explain. In addition what was attractive to me and the reason I understood it was that it was time-limited, her first contract was six months. She was available immediately; in other words we did not have to go through a two or three months recruitment exercise. She had a proven track record from working in other government departments, the conflict had been notified to me and was always to go into the accounts. Looking back, Chairman, I readily appreciate this was not perfect but I was reassured by those matters and she did a very good job; indeed, so did Mr Partridge. It is perhaps ironic that the first person to be dealt with under the disciplinary procedure she wrote was her husband. In addition, no public money was wasted, this is not a question of public money being given to someone who did nothing, far from it. The lesson for me, obviously, is that I should have got outside advice but it is also right to say that I relied on the judgment of an experienced civil servant, in fact a civil servant of 40 years experience.

Q5 Chairman: You did not think it was odd that he was doing all the steps in the appointment process.

Mr Green: I was only told once it had been done. He told me "I have found someone to do this but you should be aware she is my wife."

Q6 Chairman: I am going to ask the Treasury, why did the Treasury say after this when they gave retrospective approval "we have no real problems with this payment"? Do you stand by that?

Ms Diggle: I do. Actually, Mr Green has very ably summarised the reasons why we were not as troubled as you might expect. We do think that the process was irregular, of course we do, but we think that the spending was perfectly reasonable, it was value-for-money, everyone knew about the relationship and it was planned to be properly notified and disclosed.

Q7 Chairman: I will pass on to different issues now. These counsel fees are dealt with in paragraph 14 of the C&AG's report and it seems that you negotiated counsel fees after work was complete. You have just told us you were working for 25 years at the Bar.

Mr Green: Yes.

Q8 Chairman: Is this normal, is this an acceptable business practice do you think?

Mr Green: Forgive me, I am not quite clear what the question is.

Q9 Chairman: You negotiated these counsel fees after the work was completed.

Mr Green: Yes.

Q10 Chairman: Is that the right way of going about things, do you not think you should have negotiated these fees before the work was done?

Mr Green: This is exactly what we inherited from Customs and Excise, Chairman. Indeed, when I was at the Bar doing this kind of work for Customs and Excise that is exactly what I did; I did the work for a case and I then put in my bill and I put in the bill at the time of my choosing, and the fact of the matter is that this system had operated for years under Customs and Excise.

Q11 Chairman: You think it is a good system, do you?

Mr Green: No, I do not, that is why I changed it, but certainly nobody complained from the National Audit Office about this previous system because it was not material, but of course materiality levels changed overnight. To Customs and Excise in the old days a fee budget of £17 million was literally lost in the roundings with an overall departmental budget of £42 billion, but overnight when we were set up that was nearly half our budget, and that is why I designed a new fee scheme in September 2006 which took some designing, I know you will understand, Chairman.

Q12 Chairman: Okay, we will put that aside. In November 2006, eight months after year end, you were still incapable of presenting proper accounts apparently to the NAO. Do you think this is normal or the right way of going about things?

Mr Green: It is a matter, you can imagine, of deep disappointment to me that we were unable to produce timely accounts. There was, again, a background to that which I am happy to tell you about if it would assist.

Q13 Chairman: Go on then.

Mr Green: First of all it is perfectly clear that in 2005-06, our first year of operation, there was no proper financial control environment in place, there were no month end processes. Indeed, what we had at the beginning was two accounts staff in the finance department, one of whom was qualified, and their job in the context of a large department from which they had come was merely reporting data to the centre. We certainly seriously under-estimated the task of producing our first set of accounts; we had inadequate staffing in finance, we were awaiting fee notes for work done, as you will have read, by counsel before April 2005, so the opening balance that we inherited from Customs and Excise was completely inaccurate and, indeed, we did not even get towards accuracy with the help of the National Audit Office until November 2006.

Q14 Chairman: What I cannot understand is here you have a body whose purpose is to prosecute fraud.

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Mr Green: Yes.

Q15 Chairman: Presumably employing highly intelligent people. How can you have a system where your own internal processes are so weak and apparently people were so negligent in controlling the whole organisation? How can we have any confidence—

Mr Green: Are you talking particularly about the counsel fees?

Q16 Chairman: About the whole office.

Mr Green: I think I have explained that the counsel fees business is something that we inherited and we merely kept that system on, and as soon as we realised that it was a problem we changed it and we now have a system which works pretty well.

Q17 Mr Bacon: May I just return to the question of Mr Partridge briefly. It says in the original 2005–06 accounts that Mr Partridge with the consent of the Director (the Accounting Officer—that is you) completed all of the steps that led to the appointment of his spouse. You have made it clear that you knew about that from the outset, that it was his wife who was doing it.

Mr Green: Yes.

Q18 Mr Bacon: That was a six-month contract so it therefore presumably expired in March or April or so 2006.

Mr Green: April/May.

Q19 Mr Bacon: There was then a hiatus because the contract was not renewed until July.

Mr Green: That is right.

Q20 Mr Bacon: Was there just no work if it was October when the contract was originally let—presumably during April, May and June 2006 there was no work, or was there?

Mr Green: Over that period she continued to work and, at that time, I was actively discussing the way forward for her with our non-executive directors and as a result of talking to them we designed a new process whereby the then temporary head of HR would take charge of the selection process. She looked at four CVs for what remained of the task and further tasks that needed to be done, and she reported to me and, having considered those CVs, she recommended to me that we further appoint Mrs Partridge for a period of three months.

Q21 Mr Bacon: So that would be the July 2006 contract extension.

Mr Green: Exactly, yes.

Q22 Mr Bacon: When it says in the accounts she was paid £27,000 excluding VAT, or it was restated in the 2006–07 accounts as £32,000, there was a further £65,271—this is in paragraph 18, page 35 of the 2006–07 accounts. When was that £65,000 earned?

Mr Green: That was earned in the financial year 2006–07.

Q23 Mr Bacon: Yes, but when?

Mr Green: That would have been—

Q24 Mr Bacon: From July 2006 onwards or what?

Mr Green: That would have been some of the first contract.

Q25 Mr Bacon: It was some of the first contract.

Mr Green: Yes.

Q26 Mr Bacon: The contract did spill over into 2006-07.

Mr Green: It did spill over, for the reason that she had not completed her task and, indeed, the policies that she was adapting—there were quite a few of them as I am sure you can appreciate—she did not finish those until at least after the start of the second contract.

Q27 Mr Bacon: And once again the contract extension was with the approval of the Accounting Officer, with your approval.

Mr Green: Yes, but obviously I would hope you would accept that a more independent process was adopted in that Mr Partridge was out of it.

Q28 Mr Bacon: It just seems a bit rum that the Chief Operating Officer should be appointed in September and almost his first act was to appoint his wife to what turned to be £100,000 worth of consultancy work.

Mr Green: Yes.

Q29 Mr Bacon: And it was done with your approval.

Mr Green: Yes.

Q30 Mr Bacon: And your knowledge.

Mr Green: Yes.

Q31 Mr Partridge: Was in the end sacked for gross misconduct, was he not?

Mr Green: Yes.

Q32 Mr Bacon: The reason for that was because you did not know that he was the company secretary of the entity to which monies were paid.

Mr Green: That is right.

Q33 Mr Bacon: The fact that he was paying his wife the money was not as it were “the problem” it was the fact that he had the company secretaryship of the corporate entity, the incorporated company to which the monies were being paid that was the problem.

Mr Green: I think you would agree, Mr Bacon, that that made the propriety aspect—

Q34 Mr Bacon: Even worse.

Mr Green: Very, very difficult indeed and it was something that he had withheld from me, which I regarded as serious, which is why I suspended him in February.

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Q35 Mr Bacon: Why did not some basic due diligence throw that up? Obviously you knew the money was being paid to an entity rather than to an individual, Mr Partridge.

Mr Green: Yes.

Q36 Mr Bacon: Would not the most basic bit of due diligence about that company, and indeed a search of Companies House, have revealed who the officers of the company were?

Mr Green: The problem was this, that when she started she was a sole trader. The company was actually incorporated, UK People Business Limited, in February, on 27 February 2006. He actually became company secretary in October 2006 but retrospective to February. He became company secretary certainly during the currency of the second contract.

Q37 Mr Bacon: Quite late on, a year after he started as Chief Operating Officer he became company secretary.

Mr Green: That is right, but it became apparent from the investigation that the possibility of him becoming company secretary had been at least mooted in January 2006; it had not been mentioned when the contract was renewed in the summer of 2006, nor had it been mentioned when he had actually taken up and signed the forms in October.

Q38 Mr Bacon: I can see that as a point of form the propriety issue is very stark, it is clear that he has become an executive, but as a point of substance there was just as big a problem beforehand, he hired his wife to do all this work.

Mr Green: For the reasons I gave I absolutely agree it should not have happened and the process was imperfect, but this was value for money, she did a good job.

Q39 Mr Bacon: Can you just remind us which set of chambers you were in before you—

Mr Green: 18 Red Lion Court.

Q40 Mr Bacon: I have a chart here showing payments in different years to different sets and 18 Red Lion Court is the top set.

Mr Green: Yes.

Q41 Mr Bacon: In the year before you joined in December 2004, that is to say in the 2003–04 financial year, 18 Red Lion Court had £1.6 million, 12.7% of the monies being spent. In the following financial year, 2004–05, the year in which you joined, it went up to nearly 22%.

Mr Green: Yes.

Q42 Mr Bacon: £3.4 million, it then went down slightly, it then went up again and the average over the period was 19.4%, some £9.7 million.

Mr Green: Yes.

Q43 Mr Bacon: 18 Red Lion Court, 2 Bedford Row and 5 St Andrew's Hill between them account for something like 35% of the payments made during those three financial years.

Mr Green: Yes.

Q44 Mr Bacon: Is that simply a reflection of the fact that the type of work is concentrated in a certain number of barristers who aggregate into a small number of sets?

Mr Green: Anyone who knows the criminal Bar will tell you that 18 Red Lion Court and its previous incarnation as 5 King's Bench Walk, has always been a centre of excellence in the prosecution of Customs work—although I say it myself, that is why I do this job. In addition, in answer to your first point, £634,000 of the £3.4 million that was received by barristers in my old chambers in 2004–05 was in respect of two very large cases which were given to those three silks in fact way before I was appointed. I can assure you—

Q45 Mr Bacon: One could put a fairly unattractive construction on this: not only was the COO giving money to his wife but you were giving money to your old friends at your old set. On the basis of the figures that is sort of what it could look like.

Mr Green: That is very amusing, Mr Bacon, but totally incorrect.

Q46 Mr Bacon: I am glad you find it funny; I will have to try a new career as a stand-up comic.

Mr Green: I can assure you that I have nothing whatever to do with the apportionment of briefs to individual barristers; I have actually said during my time as Director on two occasions that a particular barrister should be instructed and he was not in 18 Red Lion Court. It is actually true that there are five members of my old chambers who are standing counsel to Revenue and Customs Prosecution; two of those have joined since I left—birds of a feather flock together, they want to go to those chambers because they do a lot of Customs work.

Q47 Mr Bacon: Sure. Is it possible that your office could send us—this came to me via a journalist via your press office apparently—an up-to-date version going back to 2003–04.¹

Mr Green: Yes. We had enquiries from a journalist at *Private Eye* who I expect gave it to you.

Q48 Mr Bacon: I do not think it was a *Private Eye* journalist, it was the much more reputable *Sunday Telegraph*.

Mr Green: The *Sunday Telegraph*. We were delighted to give that information and you can certainly have it.

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Q49 Mr Bacon: That would be great. The one thing that does strike me about this is that obviously you were appointed because of your expertise as a criminal silk in this particular area.

Mr Green: That is very kind.

Q50 Mr Bacon: Not having been involved in your appointment but looking at your CV, this is what I surmised. Once you become a public servant and in particular once you become an Accounting Officer there are other obligations that have nothing to do with your expertise as a criminal silk which you have to take account of. Do you think you were prepared for what was involved in becoming an Accounting Officer? What training did you have to become an Accounting Officer? Did the Treasury just send you their leaflet on responsibilities?

Mr Green: No, there was a course for an Accounting Officer in January 2005.

Q51 Mr Bacon: How long was the course?

Mr Green: Half a day. It was a very good course.

Q52 Mr Bacon: I am sure it was value for money.

Mr Green: Yes, indeed.

Q53 Mr Bacon: There is a document called "Responsibilities of Accounting Officers" which doubtless you would have seen and, frankly, you could spend half a day just going through that carefully, highlighting and making notes on it. What I am really getting at is there was obviously a financial mess but we have had a lot of criticism in this Committee about organisations that do not have finance directors on the board and one of the answers is we are really quite a small organisation; by these standards you are a tiny organisation and I understand the point about materiality vis-à-vis the whole HMRC from which you were split off, but it does not sound that difficult to get hold of this kind of level of expenditure when it is all going to the same fairly small group of people. You could probably keep fairly accurate track of it with a quill pen if there were the management disciplines and the will to do so.

Mr Green: The head of finance that we inherited left in December 2005 and it was not until March 2006 that we got the next permanent head of finance, and it was between that time and September 2006 that we designed the new system for the counsel fees expenditure and got that into play.

Q54 Mr Bacon: The second set of accounts was of course unqualified.

Mr Green: They were.

Q55 Mr Bacon: And you are expecting that the next set will be unqualified as well.

Mr Green: We are very hopeful and we have no information to the contrary.

Q56 Keith Hill: I feel almost sorry for Mr Green, having been a prosecutor for so many years and now subject to the forensic cross-questioning of my colleague Mr Bacon; not for nothing is he known as

the Perry Mason of the PAC. I would like to revert to this issue of counsel fee expenditure and this extraordinary business about late submission; why so late?

Mr Green: The problem was that it continued exactly as it had always been. Because of lack of materiality counsel would get the brief, he would do the work and you could not estimate on day one how much work counsel would actually have to do from receipt of the brief until the end of the trial.

Q57 Keith Hill: Why was it in their interest to submit these things such a long time after the trials had taken place?

Mr Green: You would have to ask them, I do not know, but barristers tend to be—

Q58 Keith Hill: Is it for tax purposes?

Mr Green: No, not any more because it is on an ongoing basis now.

Q59 Keith Hill: Given that in some cases these fees are submitted up to three years after the trial, how would it have been possible in those circumstances for case managers to challenge these fee notes robustly?

Mr Green: Under the old system?

Q60 Keith Hill: Yes; I acknowledge that the system has been changed.

Mr Green: To an extent, obviously, it would rest on the honesty of counsel putting in the proper hours for what they had done; secondly, it would rest on the experience of the individual prosecuting lawyer within the Customs and Excise Prosecutions Office as was; thirdly, it would rest with the fees and nominations team who had amongst their number one of the most experienced people in terms of assessing fee notes and knowing how much sort of work, roughly, any particular case would require.

Q61 Keith Hill: They are submitting their fee notes more promptly nowadays; are they still submitting grossly inflated demands?

Mr Green: Now the system works in this way, that at the beginning of a large case—we are talking just about our biggest cases, our MTIC frauds and so forth or very large-scale drug importations—counsel would be called in for a conference with one of our prosecuting lawyers and the amount of work to be done roughly under various headings would be worked out. I designed this as a poacher turned gamekeeper, I know what work has to be done, so that would be done and then during the trial the same process would continue, there would be monthly meetings of how much work you need next month and at the end of that month a bill has to be sent in. I have told our counsel, and I keep on banging away saying it, that the day will come when those who do not comply with our new fee arrangements will not be instructed by us.

Q62 Keith Hill: Ah ha, what about those who you found to be making unreasonably inflated claims in the past, have you disposed of their services?

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Mr Green: I am not quite sure what you would be referring to.

Q63 Keith Hill: I am referring to the case reported by the NAO where you received in October 2006 a fee note for £991,000 which when you, thank heavens, challenged it was reduced to £550,000. That firm was obviously trying to pull an excessively large fast one, was it not, in terms of their services?

Mr Green: That was not a firm; that was an individual barrister.

Q64 Keith Hill: Was it?

Mr Green: In that case it is hard to say that that claim was improper or that it was inflated. His clerk would probably say that is perfectly reasonable, we say no it is not and so we, as it were, taxed it down. There was a process of negotiation then which had gone on, certainly when I was instructed by Customs and Excise.

Q65 Keith Hill: I am not going to ask the name of this barrister or indeed his educational background, though others may, but can I ask if you still use this barrister?

Mr Green: Yes, he has been used since.

Q66 Keith Hill: Even though he claimed double what you deemed was a reasonable amount of money to give him for his services.

Mr Green: That is the point, Mr Hill, that is what we deemed reasonable, his clerk doubtless deemed it not reasonable and thought his demand was perfectly reasonable. The point is that it was in those days, under that system, subject to negotiation between counsel's clerk and the fee-paying authority. The whole point of our new system is that we have removed negotiation from the system, it cannot happen any more.

Q67 Keith Hill: Well done on that. You inherited this unsatisfactory system but it still took you 18 months to put it right; why did it take you 18 months?

Mr Green: It was first brought to my attention as a problem by the National Audit Office in November 2005. You cannot design a new fee system overnight and it took us some time to put together a three category new fee structure and to get the details out to counsel and to educate counsel's clerks and so forth. It is a process we are still doing, Mr Hill, but it certainly works a lot better and you will have noticed from the overall fee figures paid to counsel over the last few years that the figures are far more in control and have actually been going down. I would like to think that that is because we are managing these costs better.

Q68 Keith Hill: Finally, what techniques do you use to satisfy yourself that the new system is working properly?

Mr Green: We dip sample; the finance department polices the process pretty carefully; we have our own quality assurance within our department and certainly it is the responsibility of each divisional

head within my organisation to police that function. It is not perfect though, Mr Hill, but we are a very long way down the road and I am confident that great improvements have been made.

Q69 Chairman: This barrister who put in a fee note for £991,000, how many days work did he do for this?

Mr Green: I do not know but it was a huge MTIC fraud—missing trader intra-Community fraud—that took a very long time—

Q70 Chairman: But it is a huge bill too,

Mr Green: Yes, indeed. There are not many people, Chairman, at the criminal Bar who are capable of doing this kind of prosecution.

Q71 Chairman: Was it a year's work, two years' work?

Mr Green: I think it was well over a year's work and of course—

Q72 Chairman: Say it was a year's work, it is still the best part of a million quid for a year's work.

Mr Green: There were then two long trials.

Q73 Chairman: Why should the taxpayer pay these people this kind of money?

Mr Green: We were not, that is the point, it was halved.

Q74 Chairman: You still paid him half a million.

Mr Green: Chairman, as I say there are not many people—our fee rates are not astronomical. We pay a silk now £185 an hour for criminal work and that compares pretty well with any other prosecuting authority. We are a specialist prosecuting authority, we do not do punch-ups in pubs, I cannot have just anybody doing these cases. We look to experts at the Bar, that is why we use certain silks, why we use our standing counsel and why we use the Attorney-General's unified list of approved prosecution counsel.

Q75 Chairman: He would not have done any other work pretty well during this entire year.

Mr Green: I have no idea. I can send you the details.

Q76 Chairman: You must have an idea; you worked in this business for 25 years.

Mr Green: I am sorry, I am reminded it is actually three years' work from when he was first briefed until the end of the trial. It was a huge project, these MTIC frauds are enormous and very complex to prosecute,

Q77 Chairman: It would be quite interesting for us if you could send us a note on this. We would like to know exactly how much work he did do to give us an idea of how much you are paying now.²

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Mr Green: Certainly, we will let you know.

Q78 Nigel Griffiths: We get reports from the National Audit Office, Mr Green, where sometimes you look at them and you think yum-yum, a dripping roast of evidence, and I have to say I am somewhat disappointed with the clarity of your responses as to some of it, and I want to pursue that in three areas: one is the Chief Operating Officer. If the Chief Operating Officer had disclosed more would he have avoided being dismissed?

Mr Green: If he had disclosed more?

Q79 Nigel Griffiths: Yes. The reason I ask you that is because what appears to anyone reading this is that it is an absolute horror story.

Mr Green: Yes.

Q80 Nigel Griffiths: You have given certain corrective statements such as the job was well done, it was cost-effective, so I am just wondering what in the scale of horrors this is and was it one of a lack of propriety and information or was it something closer to corruption?

Mr Green: Certainly there was no corruption. I can tell you we had an independent disciplinary investigation and an independent disciplinary tribunal as it were by a retired senior civil servant, as you have read, and she specifically acquitted Mr Partridge of any suggestion of dishonesty. It is very important to say that.

Q81 Nigel Griffiths: Let me move to Butterfield J's 2003 review. I am concerned that a proper internal audit was not established until three years later, perhaps two years after you discovered all this.

Mr Green: Our internal audit capability was established in June 2006. We took on HMRC as our internal auditors.

Q82 Nigel Griffiths: It says July but I am not going to quibble about that.

Mr Green: I am sorry, I think it was June.

Q83 Nigel Griffiths: Why did it require that length of time, what was happening in 2004 and 2005?

Mr Green: I did not come into office until December 2004. Perhaps I can explain, by the end of January I realised I needed some help on the corporate side and I had someone who was seconded from the Home Office. She gradually put in place rudimentary procedures.

Q84 Nigel Griffiths: Perhaps I could ask the Treasury as to why they put up with non-rudimentary procedures and then rudimentary procedures? Why did the Treasury not have a good look at this?

Ms Diggle: First of all we do not scrutinise the absolute details of every single department, we expect Accounting Officers to take a reasonable view of what needs to be done and as far as I can make out Mr Green was doing that, he was setting in place processes and it takes time to get them right.

Q85 Nigel Griffiths: I am not criticising Mr Green but I am critical of whoever was there in 2004–05 and then until June or July 2006, why the Treasury let them away with it.

Ms Diggle: We do not scrutinise in great detail precisely what every single department has by way of officers and processes, we expect Accounting Officers to organise themselves so as to deliver the principles that are set down in the guidance that we have. At that time it was called *Government Accounting* and I am sure that Mr Green was in the process of doing that; it does take time.

Q86 Nigel Griffiths: If you will excuse the vernacular that must mean that a heck of a lot of money is slipping through your and government's fingers because of that lack of scrutiny. Why does not the Treasury focus on making sure some of that money is better spent?

Ms Diggle: I do not believe that does happen in fact because Accounting Officers generally do have all the processes in place, they take all the steps necessary, but when you set up a new organisation it always takes time to get all the processes in place, especially when you do not get the staff in the right mix that you need at the very beginning. That as far as I can see is what happened here.

Mr Green: Mr Griffiths, having just checked my notes it was 1 June 2006 that HMRC were appointed our internal auditors, but just going back if I may to the point you were making to Ms Diggle just now, I really cannot emphasise enough the importance of the priority I mentioned to the Chairman right at the beginning. We started off on the floor; we had a completely demoralised staff—

Q87 Nigel Griffiths: I was impressed by that, you do not have to repeat it.

Mr Green: You are very kind. We now have an organisation which works on a 92% conviction rate.

Q88 Nigel Griffiths: You got that in.

Mr Green: There is more as well.

Q89 Nigel Griffiths: If I then turn to my third and final point, that is how you are securing compliance with your requirement now of the end of month estimates being submitted, counsel fees being submitted. The report says that this stands at 85% compliance.

Mr Green: Yes.

Q90 Nigel Griffiths: What is the penalty for non-compliance?

Mr Green: The penalty within the office is that any persistent offender will feel the edge of my wrath and certainly any barrister who is late in submitting fee notes, I personally have arranged for them to know that I am displeased.

Q91 Nigel Griffiths: What, would you do this over a drink in your club or what?

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Mr Green: Certainly not.

Q92 Nigel Griffiths: In terms of the 85% figure have you got a target?

Mr Green: The target is always going to be 100% but in any human-run system it is never going to be perfect. We are getting there and one has to keep bashing away with the same message that bills are required every month and that our prosecutors have to negotiate the hours to be done by counsel the following month.

Q93 Nigel Griffiths: I am not as sympathetic as I sound. It seems to me that in this day and age professional people should be able to comply with when they submit their fee notes even though they come from a history of that being a lot looser. If there is a requirement to do that then I am interested to know what sanctions there are if they do not. You have mentioned your displeasure and I would not like to incur your displeasure at any stage.

Mr Green: Ultimately, as I said, if someone is a serial offender on this, however good they are we will stop using them, but I have not come across that yet.

Q94 Mr Davidson: Can I start by apologising for being slightly late, I was at another select committee, but I wonder if I could just come back to this question of the fee notes coming in late which I quite frankly find astonishing. How can people manage to survive being out, as it were, £991,000 for three years or so? They must have a fair amount of money; they might almost have forgotten to put it in.

Mr Green: Presumably, Mr Davidson, after that case was completed that counsel went on and did other work and he had money coming in from cases before then. The Bar has always worked like that unfortunately; I never liked it.

Q95 Mr Davidson: You always put your bills in right away did you?

Mr Green: I did, yes, and I always asked for payment; I did not always get it on time.

Q96 Mr Davidson: At least you did your bit then. The point arising from that is the point that one of my colleagues might have mentioned but I want to pursue it a bit, the challenging. If something is several years late how can you have any meaningful challenge to it in those circumstances?

Mr Green: I absolutely agree and that is why I changed the system.

Q97 Mr Davidson: I know that, so what happened, you did not have challenges in the past then.

Mr Green: In the past what one had was a pretty effective though rather crude challenge function which was, as I say, pretty experienced members of staff looking at a fee note received from counsel and saying that seems a bit excessive.

Q98 Mr Davidson: What, hmm, hmm?

Mr Green: Frankly, yes, it was very much like that and there was toing and froing and negotiation.

Q99 Chairman: How that is going to appear in the record, I do not know, with Mr Davidson going hmm hmm.

Mr Green: This goes on throughout the Temple; clerks negotiate with instructing solicitors on private cases and they used to do so certainly with our work.

Q100 Mr Davidson: Explain to me, how many times have you managed to knock somebody down from £991,000 to £550,000? If I had a garage that did that or a plumber or anybody else, they submit that amount, even if it was £991, and you say "Hey, that is a bit much, I will give you £550." Presumably if your clerk had said "All right, we will take the money"—it is nothing short of theft, is it?

Mr Green: Mr Davidson, I disagree there. In a case of the size we have been discussing how do you value the responsibility that counsel carries, how do you value his consideration of things that come up literally overnight or a crisis in the case that needs dealing with? Do you do that simply by saying that took an hour and you get that? Counsel used to say under that system, which I completely disavow and we no longer use, and certainly did not use after September 2006, "These things need weighting in my fees, this is why I have put in this bill."

Q101 Mr Davidson: If I go along to a surgery of mine and nobody turns up, fortunately I do not have to pay money back, but on the other hand if five immigration cases come along I do not put in a claim for another £500 or so. Presumably a man takes on the job and it is a job and finish as it were, is it not?

Mr Green: I absolutely agree with you which is, as I say, why I put this new system in place. We need to know how long a job is going to take, how long a piece of a job is going to take and say you can have 20 hours for that and this is what we will pay you, and then we need to know that they have done 20 hours.

Q102 Mr Davidson: Can I ask the Treasury or the National Audit Office are there any other departments of Government that operate on this weighing-up principle, how much people get paid basis?

Ms Diggle: I would have to look into that for you, Mr Davidson.

Q103 Mr Davidson: Reading all this it never occurred to you that maybe that is something that we might be interested in?

Ms Diggle: Yes, it did.

Q104 Mr Davidson: But you did not check at all.

Ms Diggle: It is quite a complicated job to do.

Q105 Mr Davidson: Why is it a complicated job to do to check whether or not there is any other department of Government which pays fees to lawyers or anybody else on the same sort of basis? You could just phone round I would have thought.

Ms Diggle: That would take quite a long time; there are quite a lot of departments. It is something that we can start to investigate.

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Q106 Mr Davidson: How many departments of Government employ QCs to take cases to prosecution or something similar?

Ms Diggle: I do not know, that is part of what we would have to find out.

Mr Burr: Mr Davidson, we could quite easily ask our financial auditors who of course audit the accounts of all Government entities whether they have encountered anything of this nature and we will do so.

Q107 Mr Davidson: Maybe you could also give us a note back saying how many departments do employ QCs at all to fight cases and how many do it on the basis of how much does the paper weigh and so on.³

Mr Green: Mr Davidson, can I emphasise that this system was something which was around and, frankly, if one thinks through to defence legal aid, that is all gone. Defence legal aid is now much more structured, hours are planned and so forth. It used to be like that prosecuting for many prosecution authorities, it is not any more so I do not think your worries need be current.

Q108 Mr Davidson: All the people that tolerated that system are now presumably in the House of Lords or occupying higher positions in the civil service.

Mr Green: The systems have gone, Mr Davidson.

Q109 Mr Davidson: The people that approved those or accepted those are presumably promoted, which is usually the way we punish people.

Mr Green: That is how prosecution authorities and legal aid authorities used to operate but we are talking five years plus ago.

Q110 Mr Davidson: It is just as well someone did something about it then. Can I ask you then about the new fee management system of paying £185 an hour or so you said.

Mr Green: For silks, yes.

Q111 Mr Davidson: Taking account of the points that you made earlier on about the complexities of issues that arise, the unexpected and so on and so forth, has the profession been prepared to accept that?

Mr Green: I am sorry, I missed the question.

Q112 Mr Davidson: Has the profession been prepared to accept this new system; there have been no difficulties about it with people who in the past were used to milking the system more and are now on a standard hourly rate?

Mr Green: To be absolutely frank I had a delegation come to see me from the Bar Council and they wondered why I had not discussed the introduction of this new fee system before I did so, and I explained to them this was because our accounts had been qualified by the National Audit Office, things had changed and we were now a small independent specialist prosecution department and we were

going to have a new fee system. I told them that I had designed the new fee system as a poacher turned gamekeeper.

Q113 Mr Davidson: Am I right in thinking then that if the National Audit Office had not qualified the accounts this system might have gone on for some considerable time?

Mr Green: No.

Q114 Mr Davidson: Maybe you can appreciate the apparent serendipity, that quite often the National Audit Office investigate something and then lo and behold a change happens, but we are often told that one had absolutely no connection whatsoever with the other. Can you appreciate why we find that difficult to believe?

Mr Green: Mr Davidson, I entirely agree with you and I have said the reason I changed this was because the National Audit Office expressed concern and qualified our first accounts. My priority at the time and the reason I did not do anything about it before was (1) I did not know it was a problem until November 2005 and, (2) I was put in this job to set up a new independent prosecution authority which started with a great many problems and is now a success story.

Q115 Mr Davidson: Can I clarify what £185 an hour means in a sense? One of my colleagues very helpfully pointed out to me that that is the equivalent of £350,000 a year if multiplied up. Is it multiplied up in that way?

Mr Green: No. If you were a silk and say you were doing a case for RCPO that lasted perhaps 6–8 weeks, say it is a drug importation, the sort of case I used to do when I was at the Bar, you might do perhaps 250 hours preparation before and during the case, so you would be paid 250 hours.

Q116 Mr Davidson: Would you have other work ongoing at the same time?

Mr Green: No, I certainly did not. You would then finish that case and hope for more work; you might get it or you might not but you would probably then go on to another case but it is a period of intensive preparation before and during the case.

Q117 Mr Davidson: Can I then just ask about the success of your agency? One of the objectives you hoped to achieve is recovery of the proceeds of crime.

Mr Green: Yes.

Q118 Mr Davidson: How successful have you been in that and how much more successful have you been recently since the changed fee system?

Mr Green: I do not think it has got anything to do with the fee system at all, it is more to do with technical problems which I am perfectly happy to explain if that would assist, but in terms of what we have confiscated in 2006–07 we confiscated £24,186,000—that is what we actually got from criminals and paid over to the Home Office. We then get a bit back which we then plough into growing

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our asset forfeiture capability. For 2006–07 we actually smashed our target which was £22.7 million and we got £24 million; for 2007–08 we had a target of £26 million but we got in £21.5 million. There were specific reasons for that: one is a decline in very large drugs cases which traditionally have produced a lot of money for confiscation; secondly, an increasing sophistication by rich criminals who do things like, as soon as they are convicted and realise they are looking at confiscation, their wives suddenly decide to initiate divorce proceedings and they have to have the family home, that gums up the works and takes time; thirdly, we were waiting for a particular decision from the House of Lords which had led to a certain logjam which we have now got. Also, of course, we can only consider for prosecution cases that are referred to us for that decision to be made by Revenue and Customs and by the Serious Organised Crime Agency, so the flow from confiscation is naturally lumpy, it is not smooth. We have aspirations and in the longer term I think it quite possible that in a good year we could actually confiscate more than our actual budget which would make us the first self-sufficient prosecuting authority.

Q119 Mr Davidson: I was on the Bill Committee that went over the proceeds of crime legislation. You mentioned some difficulties in terms of smarter lawyers and so on and I think we always anticipated this, but in terms of recognising the difficulties you are encountering and feeding these back in and then having alterations made to the legislation, are you happy that that feedback is working adequately and providing you with the weapons that you need to counter the escalation by the defence lawyers?

Mr Green: Very definitely, Mr Davidson. There is a very active community amongst the prosecutors of asset forfeiture specialists and obviously we put concerns such as this up to ministers. I am entirely confident that those concerns are listened to and acted on. As I say, there is a regular and effective feedback loop on this, we take it very, very seriously.

Q120 Mr Davidson: I do not doubt that you take it seriously but what I want to be clear about is whether or not the Government is taking it sufficiently seriously in order to make those changes in legislation. You mentioned the question of divorce proceedings and houses and so on, have rules now been devised which would overcome that as a blocking mechanism?

Mr Green: No, not yet, that is something we have reported up as something we have started to encounter. Obviously one reacts to stimuli like that and we have reported that up, we have discussed it with our colleagues in the Crown Prosecution Service and the Serious Fraud Office and it is something that I am quite sure will be dealt with in due course. You cannot change these things overnight, I well recognise that.

Q121 Chairman: Did you have to take a big pay cut when you left the private sector to join the public sector?

Mr Green: There were other consolations, Chairman.

Q122 Chairman: What were the other consolations apart from appearing before the Committee of Public Accounts?

Mr Green: For me it is an enormous privilege to actually lead a new organisation. Obviously there are other consolations like pension arrangements and so forth which, taken into account, I am not making a fuss.

Q123 Chairman: It is perfectly proper to say that you want to work for the public sector and get consolation from that but the serious part of this question is that at the top end, given the rewards that there are at the private Bar as we were discussing, are you attracting top people to your organisation?

Mr Green: Chairman, if I can give you this example from, admittedly, the lower end of the profession, we advertised for a junior grade 7 lawyer last week and we had 97 applications, at least 22 from the Bar. This is because there is actually a cold wind blowing through the criminal Bar as you know.

Q124 Chairman: We read about that.

Mr Green: Indeed, for various reasons. I personally do not think there has been any shortage of applicants for government bodies, not in my experience.

Q125 Mr Bacon: Going back to Mr Partridge for a second, why was he the best candidate to be the Chief Operating Officer? Did you interview him?

Mr Green: I interviewed him together with two other experienced senior civil servants, both senior to him, and we interviewed three candidates. He came well-recommended from the Senior Fraud Office and I indeed had interviewed him at the Serious Fraud Office the year before with his SFO director and another person for a job that he did not actually get, but I have to say I was impressed by him. He seemed to me a can-do person and, in fairness to Mr Partridge I do emphasise that, like his wife, he did a very good job, looking back. I came to this job as I said after 25 years at the criminal Bar, he came with 40 years experience in the civil service and I would like to think that with an obvious exception he complemented what I was able to bring to the party.

Q126 Mr Bacon: You are a very articulate and impressive witness and we would I suppose expect no less from a QC.

Mr Green: You are very kind, Mr Bacon.

Q127 Mr Bacon: Kind and funny, that is two big compliments in one afternoon; I am not sure I can take much more—I can assure you that witnesses are not normally that nice about me. The thing I find difficult to grasp is this: you have painted a picture of huge differences and you have also very plausibly suggested that you did the best that you could have done in the difficult combination of circumstances that confronted you when you arrived. Nonetheless, you arrived in December 2004 and it was 1 June 2006

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when the internal audit function was set up. You knew the moment you arrived that you were the Accounting Officer and for those 18 or 19 months there was no internal audit function, you had somebody from the Home Office to help you.

Mr Green: Yes.

Q128 Mr Bacon: You may recollect that the internal audit function at the Home Office was in what could charitably be described as a train wreck and more censoriously as a meltdown; they were in complete chaos and how they could spare people to lend to you I do not know.

Mr Green: She was actually on secondment and I got her from the Cabinet Office actually. She was well experienced in the sort of processes one needed to set up a new department from almost nothing. She did basic things.

Q129 Mr Bacon: It was you as Accounting Officer who had to write in your statement of internal control "Nothing was done to prepare the organisation for the production of its first set of resource accounts." You as the Accounting Officer had to write that and sign it off.

Mr Green: Yes.

Q130 Mr Bacon: It was ultimately your responsibility to have made that happen. With the benefit of hindsight what would you have done differently or sooner?

Mr Green: I would have got external advice in to tell me what I needed, I would have put greater emphasis on getting more qualified, permanent staff in finance and I would have done the same in the HR function as well, and, in retrospect, I wish I had. I did not have that knowledge and, as I say, I was concentrating on getting the legal side right.

Q131 Chairman: We would expect you to, you are a lawyer. This, to me, makes it seem that the half day that the Treasury gave you in training was perhaps not adequate and is there not a case for saying to the Treasury that your role was inadequate? If it is a new organisation, you have got in a chap with enormous skills in his particular discipline, but not necessarily experienced in managing a reasonable-sized organisation with staff, different departments and tens of millions of pounds of budget, okay, we are not talking of HMRC here, but we are talking, for the average person in management terms, of a reasonably large undertaking to get to grips with, should the Treasury and its allied agencies not have been more focused on getting Mr Green, or indeed anybody starting something similar in a similar agency or department, up the learning curve of what was required to run it much more quickly so that, instead of having to go off and buy some HR policies off the shelf or get them tailored, there was more help available from the centre?

Ms Diggle: Reflecting on what I have heard this afternoon, I certainly agree that is what should have happened, and I was just making myself a note that we should make that happen in future.

Q132 Mr Bacon: Who? Is it the OGC who ought to have been doing that or the Treasury itself or?

Ms Diggle: I need to reflect on that, but certainly every Accounting Officer needs to be quite clear that this is something he needs to do and most Accounting Officers, as they are new, are not in fact, as Mr Green was, new to the public service.

Q133 Mr Bacon: But when particularly they are new to the public service, then it is even more relevant.

Ms Diggle: Exactly so. That is what I was thinking we should make sure happens.

Q134 Mr Bacon: When you have reflected on it, could you send in a note for the Committee's Report with your conclusions because I would be interested to know which bits of the Treasury or wherein sits the expertise in the Treasury that should be thinking about these things and offering advice and help.⁴

Ms Diggle: I will do that.

Mr Green: Mr Bacon, I think possibly, with respect, the answer might be this: that, as I think I alluded to earlier, in 2004, before I came, I know that there was discussion with the Treasury about what sort of model RCPO should follow, and it was decided, on perfectly decent Gershon principles, that RCPO should buy in its services from what was then Customs and Excise. It was not until after those decisions had been made that, following the O'Donnell Report, the decision was made to merge Customs and Revenue, so this new Department, obviously they did supply us with services, but their priorities were merging, slimming down and getting on with their new identity.

Q135 Mr Bacon: Rather than supplying outsourced services to you?

Mr Green: Well, I remember a very senior person in Revenue and Customs saying to me, "The trouble is we make vanilla and you want chocolate", and I think that actually encapsulates it.

Q136 Chairman: You see, what I cannot understand is that you put up a very convincing performance and, if one were listening to this, you would think that you took over a flawed organisation, you have turned it around and everything, and what I cannot understand is that you arrived in 2004 and in November 2006 you signed these flawed accounts and you asked that they be submitted for audit. If you were so much on the ball, why did you do that? It is not entirely clear to me.

Mr Green: I do not think I pretended to be on the ball on the finance side or on the accounts side. I realised we had a serious problem when the counsel fees problem was brought to my attention.

Q137 Chairman: But you should not have signed them off. That is why we have an Accounting Officer. You took on this job and that is your job, you are the Accounting Officer. If something is wrong, you should not sign it off, otherwise, the whole system of public accountability breaks down.

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Mr Green: As I understand it, as I recall, by that time we believed that we had got a reasonably firm opening balance, so—

recognise in the following year's accounts a further £1.7 million in counsel fee expenditure. It is deeply regrettable and, Mr Leigh—

Q138 Chairman: But the NAO does not agree with you.

Q139 Chairman: Just say sorry, it is fine.

Mr Green: Well, this was far too late, but we do think we got there, but then of course in the following year we had yet more fee notes come in and we had to

Mr Green:—no one was more disappointed than me that we could not get a decent set of accounts in.

Chairman: Okay, that is fine. Thank you, Mr Green. That concludes our hearing.

Memorandum by the Comptroller and Auditor General updating his reports HC 273 of 2005–06 and HC870 of 2006–07

INTRODUCTION

1. The Comptroller and Auditor General (C&AG) limited the scope of his opinion on the 2005–06 Resource Accounts¹ of the Revenue and Customs Prosecutions Office (the Department) because the Department was unable to provide sufficient evidence that counsel fee expenditure and the liability for that expenditure at the year end was not materially understated. The C&AG did not qualify his audit opinion for the Department's 2006–07 Resource Accounts,² but issued a further Report on the actions taken by the Department to address significant internal control weaknesses. Since this report was laid on 26 July 2007, this memorandum is to update the Committee on the Department's further progress in addressing the following internal control issues:

- management of counsel fee expenditure;
- procurement practices; and
- accounts preparation.

MANAGEMENT OF COUNSEL FEE EXPENDITURE

2. For its 2006–07 Resource Accounts, the Department addressed the uncertainty over the correct level of counsel fee expenditure which had given rise to qualification of its 2005–06 accounts. In particular, the Department required that relevant chambers certified, before the accounts were signed, that they had submitted all invoices relating to the 2006–07 and earlier to the Department. Following the certification of the 2006–07 financial statements, the NAO identified only £52,000 of invoices not captured within the counsel fee accruals, which is not material in the context of in-year spending of £38 million. The Department will be undertaking the same exercise for the 2007–08 accounts.

3. The Department has continued to liaise closely with Chambers to further improve invoicing processes by encouraging the timely submission of invoices, and checking that Chambers are more compliant with the monthly billing cycle. A fact sheet on counsel fees was sent out in early February 2008 to all counsel and their clerks reinforcing the Department's fee regimes and the new billing process. The Department invited clerks of the Chambers to a series of meetings, in February and March 2008 where the importance of timely billing, the year end process and the fee rates were discussed.

4. To develop its internal controls over counsel fee payments, the Department's Finance Team has published clear guidance on the departmental intranet on the process of nominating counsel and the payment of counsel fee notes. Compliance with these procedures is improving. Standardised fee rates apply to all cases where counsel was instructed after 1 September 2006. Whilst cases that commenced before 1 September 2006 have hours agreed in advance, there remains a difference in some cases between the hourly rates paid to counsel and the Department's new standardised rates.

5. All cases are dealt with under one of three regimes: standard (in cases where the trial is expected to last up to two days), pre-marked (where the trial is expected to last from three to 15 days) and hourly rate (the Department's largest and most complex cases where the trial is expected to exceed fifteen days). Under the hourly rate regime, hours in respect of each case are agreed for the forthcoming month by prosecutors with counsel and communicated to the Department's Finance Team. The Finance Team uses this information to calculate the month-end estimates of accrued counsel fees. Compliance with this requirement, by prosecutors, continues to improve and stands currently at around 85%.

¹ Revenue and Customs Prosecutions Office Resource Accounts 2005–06, HC 273 (Session 2006–07).

² Revenue and Customs Prosecutions Office Resource Accounts 2006–07, HC 870 (Session 2006–07).

6. From October 2007, the Department established an Operational Business Support Team to oversee the appointment of counsel and to monitor compliance of fee notes with the revised regime. This could be an important element of the Department's quality control framework, providing assurance to management on counsel fee expenditure and the authorisation process. At present, the reporting and follow up of findings is limited and should be improved for this function to be fully effective.

PROCUREMENT PRACTICES

7. The C&AG reported on the poor procurement practices within the Department, which included the lack of a procurement policy during 2005–06. The Department published its procurement policy in April 2007. The Department's Internal Audit provider is currently undertaking a review to monitor compliance with the procurement policy. A "pocket guide" to procurement has also been prepared and distributed to all staff.

8. The C&AG's Report 2005–06 highlighted the role of the Chief Operating Officer (Mr David Partridge) in the appointment of his wife as an HR consultant. The Department's Director (and Accounting Officer) appointed Mr Partridge as Chief Operating Officer, on a three year contract commencing 26 September 2005. In October 2005, the Chief Operating Officer completed all of the steps that led to the appointment (with the consent of the Director) of his wife as a Human Resources consultant.

9. When the National Audit Office became aware of the circumstances of this transaction they informed the Department that they considered it to be "novel and contentious". Under Government Accounting principles, departments have no delegated authority to incur such expenditure without prior approval from HM Treasury. The Department sought retrospective approval for these payments in November 2006 and this was granted by HM Treasury in December 2006.

10. The Department's initial contract with Mr Partridge's wife was for six months. The Department extended this contract on 31 July 2006, following a more independent tendering exercise, which reported to the Accounting Officer. This contract provided for a review on 31 October 2006, subject to two weeks notice. At that date, a review was conducted by the newly appointed permanent head of Human Resources. In the result, the contract was brought to an end by decision of the Director on 13 November 2006. Payments made to Mrs Partridge or her company during 2005–06 and 2006–07 totalled £97,907 (including VAT).

11. In February 2007 the Department's internal auditors informed the Director that Mr Partridge was listed as the Company Secretary of his wife's company (People Business UK). The date of incorporation of this company was 27 February 2006. Mr Partridge became Company Secretary in October 2006, retrospective to February 2006. Mr Partridge had not disclosed his position as Company Secretary to the Department's Accounting Officer at any stage. Once the Director was so informed by internal audit, he suspended Mr Partridge on full pay on 5 February 2007 pending an investigation.

12. The Director commissioned an independent investigation of the case from the Head of HM Crown Prosecution Service Inspectorate. Following the outcome of this investigation, Mr Partridge was charged with six allegations of gross misconduct. The Director invited a former senior civil servant (a retired solicitor to the Department for Work and Pensions) to consider these charges. Following a disciplinary hearing, she concluded that Mr Partridge was guilty of three of the six charges of gross misconduct. After the Director had considered the report of this hearing, the Department's Head of Human Resources wrote to Mr Partridge on 20 August 2007 informing him that his contract with the Department was being terminated. As this was a summary dismissal, the contract termination date was also 20 August 2007.

13. Prior to his appointment at the Department, Mr Partridge was employed at the Serious Fraud Office as the Director of Corporate Services from April 2002 until September 2005. During his time at the Serious Fraud Office Mr Partridge engaged his wife as a Human Resources consultant, with the approval of the Director of the Serious Fraud Office. Payments made to Mr Partridge's wife for work carried out between February 2004 and November 2005, totalled £66,205 (including VAT). These payments were not recorded as Related Party transactions in the accounts of the Serious Fraud Office.

ACCOUNTS PREPARATION AND FINANCIAL MANAGEMENT

14. The C&AG's reports indicated that the Department was heavily reliant on temporary staff to prepare its annual Resource Accounts. To address this issue the Department recruited an additional five staff to permanent positions within the Finance Team during 2007–08, including a senior financial accountant.

15. The Department's Finance Manual was published on 1 May 2008 and is available to all staff. The Manual, which has been reviewed by the Department's internal auditors, consolidates existing guidance in one document and further clarifies the roles and responsibilities of all staff members authorising expenditure. Further month end payroll reconciliations have been introduced to improve the robustness of the monthly reporting to the board, and are intended to facilitate faster closing of the year end accounts.

16. The Department's budget had been held centrally and monitored solely by the Finance Team but, from April 2008 onwards, responsibility for managing the budgets has been delegated to cost centre managers. The Department's objective is to promote a greater sense of ownership of and responsibility for financial management from operational areas of the business and to increase the accuracy of financial information held at cost centre level.

7 May 2008

Supplementary memorandum from the National Audit Office

Question 107 (Mr Davidson) *On Departments engaging Barristers and the system for paying them*

Most government departments secure legal advice through the Treasury Solicitor's Department. However, the following Departments engage barristers directly to undertake significant levels of case work.

<i>Department</i>	<i>System in place for all new cases</i>
Revenue and Customs Prosecutions Office (RCPO)	RCPO selects barristers from the Attorney General's approved list of counsel in rotation. It has published standard rates for all work undertaken by counsel across all its cases. These cases fall under one of three regimes: standard (in cases where the trial is expected to last up to two days), pre-marked (where the trial is expected to last from three to 15 days) and hourly rate (the Department's largest and most complex cases where the trial is expected to exceed 15 days). Under the hourly rate regime, hours in respect of each case are agreed for the forthcoming month by prosecutors with counsel. Any deviation from these projected hours must be agreed in advance.

Barristers are required to invoice monthly for all work performed in the previous month. RCPO does not withhold payment to counsel if fee notes are submitted late, but counsel are informed that persistent late billing may lead to them being removed from the Attorney General's list.

Serious Fraud Office (SFO)	The SFO maintains a list of eligible counsel who have been reviewed as suitable for fraud work and whose appointment is endorsed by their chambers. Before each case starts, at least three counsel are invited to tender for the work. The SFO's case controller chooses between these quotes. Rates for different levels of counsel are not fixed, but are defined within ranges (junior counsel etc). The cheapest option is not always chosen, but the price agreed in advance is the price paid.
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Counsel must seek prior approval from the SFO if they are going to work more than 100 hours on a case in a month.

In general, SFO contact the relevant chambers each month to request an invoice, but sometimes these are not submitted on time. The SFO does not impose any penalties on counsel for late billing. Counsel are appointed during the investigation stage of the case and are therefore engaged for several years, not just for the relatively short trial stage. This means that the SFO can negotiate very competitive day rates. Counsel also get used to submitting regular invoices and the SFO does not have a problem with late submission of invoices.

Crown Prosecution Service (CPS)*	The majority of the Crown Prosecution Service's counsel fee expenditure is paid through the CPS "Graduated Fee Scheme". Cases are allocated to CPS in-house Higher Court Advocates or self-employed barristers. The selection of individual advocate is based on skills, experience and suitability for the case. Inevitably, given the uncertainty of Court listings and the length of trials, some briefs are returned to another suitable advocate.
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The costs within this scheme reflect standardised rates agreed between the Bar Council and the Department, including a tariff of charges calculated using a range of set cost factors (for example the number of defendants, the volume of evidence, number of witnesses and number of "refreshers") and includes different tariffs to cover "guilty" and "not-guilty" pleas by defendants. Under the Graduated Fees Scheme, the barrister receives a single fee for the job, payable on completion. GFS invoices are required

<i>Department</i>	<i>System in place for all new cases</i>
Treasury Solicitor's Department (TSol)	to be submitted within three months of the last hearing date.
	Counsel fees are also paid through the Very High Cost Case scheme, implemented in 2006, using standardised rates but dependent on pre-agreed number of hours to be spent on the case. These are subject to robust internal procedures and review. Barristers appointed under this scheme are required to bill the CPS on a staged payment basis, with stages lasting between eight and 12 weeks. Again, barristers are appointed on the basis of skills, experience and suitability for the case. VHCC invoices are required to be submitted within 20 days of the end of a stage.
	The management of each VHCC is undertaken by the reviewing lawyer but CPS has introduced an added safeguard whereby a case auditor, attached to headquarters, oversees the proper administration of the scheme for each full VHCC. The case auditor provides necessary support and training to operational staff but also audits all payments. As a consequence compliance with the scheme is good.
	The CPS has agreed with the Bar set time limits for when invoices should be submitted and payment can be withheld if invoices are late without appropriate justification.
	The business of TSol differs significantly from the other Law Officer Departments. The other departments undertake criminal prosecutions whereas TSol acts on behalf of government departments in civil proceedings.
	TSol uses the Attorney General's panel system for Junior Counsel. This comprises three London panels; the A panel for Senior Juniors; the B Panel for Middle Juniors; and the C panel for Junior Juniors, together with a Regional Panel. The hourly rates for all Panel Counsel are fixed. All caseworkers in TSol are required to use Panel Counsel in every case where they need to instruct a Junior, save in exceptional circumstances when an application (using a standard proforma) must be made to the Law Officers for a nomination to instruct another Junior (who will be paid at panel rates). Counsel are chosen for particular cases on the basis of experience and availability and taking into account the views of clients. Departments are also encouraged to allocate instructions as equally as possible.
	A nomination from the Law Officers is always required before a QC is instructed with the exception of when the First Treasury Counsel, Common Law, is instructed. Hourly rates (within a particular range of Government rates) are agreed in advance prior to a nomination being approved.
	Chambers are required to send one fee note per counsel each calendar month. Where fee notes are not in compliance with this process then TSol will request that they are resubmitted, which will delay payment. There are no other sanctions for not billing on a timely basis. The Department's Finance team monitors compliance with this process; time charged by counsel is checked by caseworkers through the invoice approval process.

* Cases which preceded this new regime were in the High Cost Case scheme, which was less formalised and allowed greater flexibility between prosecutors and counsel for negotiation of rates and hours, as well as for billing frequency.

23 June 2008

Supplementary memorandum from HM Treasury

I am writing to follow up points raised at the PAC hearing on 21 May.

ACCOUNTING OFFICER RESPONSIBILITIES

1. Mr Griffiths asked about Treasury oversight on departments' expenditure and activities. The chairman returned to the issue later in the hearing.

2. As I explained to the committee, the Treasury looks to Accounting Officers to deliver the standards of resource management and accountability expected of those managing public funds. These were recently refreshed (though not changed) in *Managing Public Money*. I enclose a copy of the relevant chapter which delineates the responsibilities of Accounting Officers.³

3. With this vital safeguard in place, the Treasury does not seek to micro manage departments or other public sector organisations. It is important that departments are free to develop systems and processes appropriate to their own circumstances so that they can operate efficiently to deliver the policies and outcomes that ministers want. The Treasury concentrates on strategic issues, notably delivery of public service agreements (PSAs) and now departmental strategic objectives (DSOs).

4. As a safety net there are always systems providing for exception reporting, dialogue about major investment projects and clearance of novel and contentious transactions. These systems are agreed between the Treasury and departments, bespoke to the circumstances and may be renegotiated from time to time. In particular, it is usual for Treasury oversight to be more intensive for unfamiliar or unusual transactions or events.

5. Turning now to specific circumstances of RCPO, it was unusual to have a new department headed by someone unfamiliar with the standards of the public sector. What went wrong was that Mr Green did not get specific support to help him through the startup process.

6. The Treasury intends to:

- alert departments generally to the need for customised day to day support for new public sector organisations, especially where the Accounting Officer is new to the public service. The responsibility should normally fall primarily to the sponsor department of a new department (or new NDPB);
- arrange specific bespoke training facilities with the National School for Government for Accounting officers in these circumstances; and
- arrange to tell new Accounting Officers to new public sector organisations about the support available when they are appointed.

7. The NSG is still designing the courses for the Treasury. What they have in mind is tailored advice and support to meet the needs of individuals newly appointed as Accounting Officers in the context of the organisations they are to lead. They will offer the expertise of a number of former Accounting Officers, who already work as Associates of the NSG, including two or three former Permanent Secretaries. These additional services will be made available to those who have attended the NSG's *Introduction to Public Accountability* course from which NSG will be able to identify their backgrounds and needs.

OTHER PROSECUTING AUTHORITIES

8. As I warned at the hearing, a good number of public sector organisations employ barristers routinely. It is proving to be a substantial task to track them down and gather information about how they manage the fees they pay the barristers they use. I hope to let you have a fuller note on this shortly. In the meantime, it may be helpful to provide the committee with some information on the two leading prosecuting authorities.

9. The Crown Prosecution Service (CPS) operates agreed billing arrangements with the bar to ensure that bills are submitted in reasonable time. In most cases, the barristers they employ submit an invoice within three months of the end of each case. For high cost cases, CPS makes staged payments, subject to progress, and requires barristers to make claims within 20 days of the end of each stage. CPS keeps track of compliance by undertaking regular checks and prosecution costs audits. CPS is satisfied that these arrangements are working well though it continuously strives to improve performance.

10. The Serious Fraud Office (SFO) also aims for limited delay in finalising payments by operating a

³ Not printed here.

purchase orders system, which captures most information about barristers' expenditure at the point of delivery. Divisions within the SFO responsible for investigating and prosecuting cases are fully seized of the need to ensure that barristers' invoices are received promptly.

Paula Diggle
Treasury Officer of Accounts

11 June 2008

Supplementary memorandum from Revenue and Customs Prosecutions Office

Question 77 (Chairman) *Summary of work done on Operation EMERSED*

INTRODUCTION

The purpose of this note is to summarise for the Committee the work that Counsel did on this case.

TYPE OF CASE AND MAGNITUDE

This case was a Missing Trader Intra Community (MTIC) fraud, involving loss to the revenue of over £20 million over a three month period in 2000.

There were 14 defendants, split into two trials of seven defendants each. There were 294 witnesses, with statements running to 1,100 pages. There were 47,000 pages of exhibits. There were many 10s of 1,000s of pages of unused material.

DURATION

For technical reasons connected with the juries, there were three false starts between April and July 2005; the trial properly commenced on 26 September 2005 and verdicts were delivered on 12 June 2006. Overall, the trial period lasted for 14 months.

As well as court time, the case involved at least 22 formal conferences with Leading Counsel and 2,100 hours of separately logged work. This included: assimilating accounting evidence; advising on foreign evidence; advising on extensive disclosure; advising on a possible programme by *Panorama*; advising on trial integrity and dealing with repeated and aggressive disruptive tactics by the defence teams.

CONCLUSION

Leading Counsel commented that this case was a "war of attrition". We are satisfied that all the work done was necessary and to a very high standard, sustained over an exceptional period. The payment finally made reflects very good value for money.

The fee note therefore covered the prosecution and preparation of what was the first trial in this case. The second trial will be subject to a further payment.

2004-2007 PAYMENTS TO BARRISTERS IN CHAMBERS AS LISTED

Chambers	2003-04	2004-05	2005-06	2006-07	2007-08	Total
18 Red Lion Court *	1,664,697	3,432,394	2,957,282	3,356,292	2,004,341	13,415,006
5 St Andrews Hill	1,881,777	1,149,663	1,295,202	1,362,202	1,233,995	6,922,839
9-12 Bell Yard	472,676	1,171,721	1,398,791	1,834,730	1,261,044	6,138,962
2 Bedford Row	1,101,756	1,367,241	716,968	2,117,041	735,444	6,038,450
5 Paper Buildings	547,060	844,459	1,075,721	559,289	688,073	3,714,602
Exchange Chambers	594,904	364,273	326,258	1,146,681	928,063	3,360,179
Other #	314,628	1,416,621	1,201,550	—	—	2,932,799
3 Paper Buildings	305,653	332,910	401,490	1,031,616	657,575	2,729,244
23 Essex Street	160,068	567,286	391,704	705,773	326,305	2,151,136
187 Fleet Street	1,073,225	154,241	363,018	224,215	27,210	1,841,909
Hollis Whiteman Chambers	513,684	189,293	565,138	317,100	63,559	1,648,774
6 King's Bench Walk	124,165	355,945	325,950	153,527	544,392	1,503,979
7 Harrington Street	177,450	564,907	425,772	103,708	114,071	1,385,908
2 Pump Court	175,759	30,736	495,548	418,047	118,523	1,238,613
St Pauls Chambers	350,003	265,555	369,249	109,515	31,253	1,125,575
Furnival Chambers	234,240	154,660	243,331	212,008	235,455	1,079,694

Chambers	2003-04	2004-05	2005-06	2006-07	2007-08	Total
18 St John Street	257,518	295,352	138,952	238,593	92,433	1,022,848
Citadel Chambers	229,978	107,111	178,271	294,619	116,349	926,328
33 Bedford Row	371,842	135,925	140,890	147,624	66,585	862,866
7 Bedford Row	71,343	224,689	109,528	191,812	179,054	776,426
6 Pump Court	41,249	300,660	333,157	49,896	23,455	748,417
4 Breams Buildings	70,703	62,835	188,507	221,352	156,518	699,915
Sovereign Chambers	122,057	116,166	187,219	138,924	115,910	680,276
Outer Temple Chambers	143,832	119,598	132,246	149,633	101,648	646,957
Queen Square Chambers	275,010	90,462	137,734	58,337	19,862	581,405
2 Paper Buildings	93,188	132,069	193,823	126,726	200	546,006
2 Hare Court	90,006	60,400	120,240	180,297	67,155	518,098
4 Kings Bench Walk	164,575	3,797	44,546	121,346	182,607	516,871
9 Bedford Row	—	39,564	345,052	73,840	36,043	494,499
13 King's Bench Walk	171,968	100,170	134,208	20,263	34,583	461,192
3 Temple Gardens +	62,109	56,035	154,422	124,236	41,066	437,868
9 Gough Square	2,113	71,165	65,004	134,269	140,818	413,369
15 New Bridge Street	75,976	206,502	11,732	23,989	91,213	409,412
36 Bedford Row	24,551	29,535	6,901	180,497	152,882	394,366
12 College Place	113,713	120,238	14,003	24,237	68,265	340,456
St Philip's Chambers	82,143	158,749	27,451	33,010	30,686	332,039
3 Raymond Buildings	51,008	1,995	134,258	83,710	51,743	322,714
Guildhall Chambers	76,279	—	47,000	162,424	1,618	287,321
Park Lane Chambers	138,738	58,750	77,987	—	2,640	278,115
2 Kings Bench Walk	1,381	102,234	138,304	100	32,808	274,827
India Buildings Chambers	12,332	313	56,466	194,359	525	263,995
Farrar's Building	167,201	92,590	118	—	—	259,909
9 St John Street	29,477	44,585	88,352	56,653	30,896	249,963
Albany Chambers	44,000	23,109	149,089	13,454	10,088	239,740
2 Harcourt Buildings	1,186	3,447	78,107	43,451	106,001	232,192
5 King's Bench Walk	—	—	58,504	105,487	50,814	214,805
Deans Court Chambers	124,485	6,806	45,588	21,093	13,210	211,182
5 Fountain Court	441	82,549	23,787	91,547	12,360	210,684
Maidstone Chambers	1,199	21,954	70,804	21,728	77,651	193,336
9 Lincoln's Inn Fields	2,000	5,735	80,427	58,061	45,697	191,920
Park Court Chambers	42,607	28,907	27,090	56,452	12,591	167,647
East Anglian Chambers	—	43,555	45,867	36,864	37,431	163,717
Westgate Chambers	9,163	26,400	37,276	62,347	11,337	146,523
12 Clytha Place	—	118	39,332	92,825	—	132,275
Lincoln House Chambers	16,593	40,032	30,682	12,190	29,614	129,111
1 King's Bench Walk	—	—	4,621	35,424	86,409	126,454
2 Dr Johnson's Buildings	—	—	—	—	122,849	122,849
Broadway House Chambers	—	5,031	30,478	45,528	38,026	119,063
No 1 Serjeant's Inn	—	91,796	—	—	—	91,796
10 Kings Bench Walk	—	3,888	82,018	—	154	86,060
St Ive's Chambers	147	1,505	2,479	53,971	25,390	83,492
Oriel Chambers	68,967	2,388	697	75	2,700	74,827
2 Middle Temple Lane	—	—	57,195	—	16,996	74,191
7 Bell Yard	31,325	23,450	—	—	15,537	70,312
Beckett Chambers	6,701	15,026	12,136	11,605	24,620	70,088
25 Castle Street Chambers	—	411	3,936	507	65,164	70,018
6 Park Square	2,449	26,914	16,161	20,728	2,829	69,081
Zenith Chambers	2,303	23,937	10,407	19,317	12,104	68,068
St Johns Chambers	—	4,135	30,374	3,544	21,310	59,363
Nicholas Street Chambers	38,481	18,700	62	—	—	57,243
Byrom Street Chambers	—	—	55,618	—	—	55,618
Kenworthy's Chambers	—	13,058	5,530	—	34,525	53,113
3 Pump Court	33,341	6,585	811	1,290	6,429	48,456
New Bailey Chambers	25,126	548	16,445	1,034	3,264	46,417
New Walk Chambers	—	2,475	5,157	13,339	25,130	46,101
Clarendon Chambers	—	—	—	—	41,360	41,360
2 Dyers Buildings	—	1,469	30,740	—	6,598	38,807
Churchill Court	2,013	19,353	—	—	14,734	36,100
Hyde Park Chambers	—	—	—	—	34,475	34,475
Albion Chambers	—	—	—	32,018	2,390	34,408
5 Pump Court	—	182	27,279	2,300	3,710	33,471
St John Street Chambers	—	—	—	—	33,216	33,216

Chambers	2003-04	2004-05	2005-06	2006-07	2007-08	Total
Dukes Manor	—	88	32,830	—	—	32,918
KBW (Leeds)	—	—	793	29,289	—	30,082
1 Grays Inn Square	—	—	26,158	3,075	—	29,233
Trinity Chambers	17,105	2,084	932	2,106	5,927	28,154
Temple Chambers	—	—	—	800	26,897	27,697
New Court Chambers	—	881	1,503	5,653	16,285	24,322
9 Kings Bench Walk	75	75	—	1,405	22,220	23,775
30 Park Place	—	—	—	—	16,740	16,740
Regency Chambers	—	—	—	—	16,116	16,116
Assize Court Chambers	—	—	—	1,575	12,498	14,073
1 Paper Buildings	—	676	1,349	45	11,605	13,675
3 Stone Buildings	—	—	—	—	12,806	12,806
Guildford Chambers	—	—	—	—	12,087	12,087
Peel Court Chambers	—	470	—	600	10,698	11,768
Maitland Chambers	—	—	—	—	6,900	6,900
4-5 Gray's Inn Square	—	—	—	—	6,757	6,757
Fountain Chambers	745	250	1,644	2,647	115	5,401
12 Old Square Chambers	—	—	—	—	5,270	5,270
Young Street Chambers	—	—	—	—	4,275	4,275
Devon Chambers	—	—	—	—	4,231	4,231
Surrey Chambers	—	—	75	1,197	2,890	4,162
Wilberforce Chambers	—	—	—	—	3,912	3,912
Barristers at Bank House	—	—	—	—	3,846	3,846
Atlantic Chambers	510	664	—	457	1,920	3,551
Kent Chambers	—	—	—	—	3,498	3,498
Warwick House Chambers	—	—	—	283	3,016	3,299
3 Park Court	—	—	—	—	2,951	2,951
Stoke House	—	—	—	—	2,824	2,824
Clock Chambers	—	—	—	—	2,700	2,700
Iscoed Chambers	—	—	—	—	2,605	2,605
Broad Chare Chambers	—	382	—	47	2,040	2,469
Apex Chambers	—	—	—	—	2,400	2,400
33 Park Place	—	235	88	1,450	533	2,306
Charter Chambers	—	—	—	—	1,853	1,853
Crown Office Row Chambers	—	—	—	—	1,680	1,680
Colleton Chambers	—	—	—	60	1,510	1,570
32 Park Place	—	—	—	—	1,466	1,466
College Chambers	—	118	323	—	900	1,341
Great James Street Chambers	—	—	—	225	945	1,170
Cobden House Chambers	—	375	—	—	775	1,150
St Johns Buildings	—	—	—	—	916	916
9 Park Place	—	—	—	—	915	915
1 Inner Temple Lane	141	294	139	—	150	724
Paradise Chambers	—	—	—	—	615	615
Hollies Solicitors & Advocates	—	—	—	—	525	525
11 Old Square	—	—	323	150	—	473
Pallant Chambers	—	—	—	—	429	429
41 Upper Tollington Park	—	—	—	—	399	399
Elvin & Co. Solicitors	—	—	—	—	361	361
1 Chancery Lane	—	—	—	—	360	360
Birketts LLP	—	—	—	344	—	344
1 Stanley Place	—	—	—	—	328	328
Kings Bench Chambers	—	149	75	—	85	309
Kings Chambers	—	—	—	301	—	30
76 Station Road	—	—	—	—	300	300
Angel Chambers	—	—	—	—	300	300
Walnut House	—	—	—	164	100	264
169 Temple Chambers	—	—	—	—	250	250
Addleshaw Goddard Solicitors	—	—	—	—	200	200
21-23 Head Street	—	—	—	—	160	160
19 Castle Street	—	—	—	—	150	150
Stour Chambers	—	—	—	—	135	135
Goldsmith Chambers	—	—	—	—	125	125

Chambers	2003-04	2004-05	2005-06	2006-07	2007-08	Total
37 Park Square	—	—	—	—	104	104
1 Crown Office Row	—	—	—	—	100	100
Fenners Chambers	—	—	—	—	100	100
St Albans Chambers	—	—	—	—	100	100
1 Princes Street	—	—	—	—	80	80
York Chambers	—	—	—	—	75	75
Total	13,103,138	15,643,598	16,904,272	17,590,542	12,096,631	75,338,181

*** 18 Red Lion Court:**

1. Payments made in 2004–05 include £633,924.51 to David Cocks QC and Sir Derek Spencer for Operations Chipstick and Venison, respectively. Both of these Silks were instructed in these cases before David Green QC was appointed Director RCPO.

2. Payments made in 2005–06 include £358,183.95 to David Cocks QC, Sir Derek Spencer QC and Anthony Arlidge QC for Chipstick, Venison, and the Pakistan Controlled Deliveries appeals, respectively. All three Silks were instructed in these cases before David Green QC was appointed Director RCPO.

Other: Includes payments made to barristers who are not suppliers within the new finance system.

+ **3 Temple Gardens:** are two sets at 3 Temple Gardens—Joanna Greenberg QC and John Coffey QC. This is a combined figure.