

Independent Police Complaints Commission

**Independent Investigation into the Failure
of Her Majesty's Revenue & Customs
Operation Venison Prosecution**

EXECUTIVE SUMMARY

Senior Investigator: M.R.Niblo

IPCC Commissioner: A. Somal

IPCC Investigation into the failure of the HMRC Operation Venison Prosecution

Executive Summary

1. On 24 June 2005 Mr Justice Crane stayed the proceedings against the defendants in a H. M. Revenue & Customs (HMRC) prosecution into a Missing Trader Inter Community (MTIC) fraud, code named Operation Venison. When delivering his judgement Crane J made a number of criticisms of the officers and Customs lawyer connected with the Operation Venison investigation and prosecution. The criticisms surrounded an allegation that they deliberately failed to disclose material in their possession in relation to the honesty of witnesses and that some of the officers and lawyer may have been less than truthful when giving evidence at the hearing.
2. As a result of the criticism, the Financial Secretary to the Treasury, Mr John Healey (MP) announced in the House of Commons on 7 July 2005 that the matter would be referred to the IPCC for investigation. Due to legal difficulties it was not possible to make a formal referral until 18 December 2005.
3. On 5 January 2006 it was formally decided that the IPCC would conduct an independent investigation and Terms of Reference were set, principally requiring an investigation into the conduct of the HMRC staff and the Customs lawyer involved in Operation Venison. The Terms of Reference asked for particular focus on the concerns raised by Crane J in his judgement and to identify lessons to be learned by the organisation. It is important to note that the Terms of Reference do not extend to an investigation or review into how HMCE investigated MTIC fraud or into HMCE general compliance with the disclosure

regime in MTIC cases. The Terms of Reference focus on the particular issues that resulted in the failure of Operation Venison.

4. Between the announcement by the minister and the formal decision to conduct an independent investigation a scoping team looked into the extent of any proposed investigation and secured 480 boxes of material that they identified as being potentially relevant.
5. The officers criticised in the judgement were:

Brian James TURNER, HMRC Senior Investigation Officer (Retired)

Louise MATTHEWS, HMRC Investigator, Custom House, London

Steven Andrew FERGUSON, HMRC Investigator, Custom House, London

Anil GOGNA, HMRC Investigator, Custom House, London

Cedric William ANDREW, HMRC Senior Policy Officer, Parliament Square, London

Andrew BIKER, Revenue & Customs Prosecutions Office (RCPO), New Kings Beam House, London

6. The fraud was investigated by HM Customs & Excise (HMCE) before the Department merged with Inland Revenue to form HMRC. The essence of the fraud being investigated in Operation Venison is that when goods are imported from an EU member state the zero rate of VAT is applied. When the goods are sold on by the importing company the normal rate of VAT applies and the company should pass that VAT on to HMRC. In an MTIC fraud the fraudsters will import high value, compact goods such as mobile telephones or computer chips. Once imported, the goods are sold on quickly and the ownership of the

goods changes a number of times as they are sold to various companies, these companies are known as buffers. At the end of the day the goods will be exported, usually back to the same foreign company that supplied them. This process is usually completed within 12 hours and then repeated the next day with the same batch of goods, hence the fraud is sometimes referred to as carousel fraud. In the case of Operation Venison the commodity was mobile telephones.

7. In an MTIC fraud the importing company fails to pay the VAT to HMRC and disappears, becoming what is referred to as a missing trader. VAT is never paid by the importer but because the goods are zero rated again at the point of export the VAT is reclaimed from HMRC by the exporter. The buffer companies account for VAT in the normal way each time the goods change hands.
8. The process relies in part on the use of a freight forwarder in the UK who provides premises for storage of the goods and assists in their movement. The records kept by the freight forwarders are essential to the investigation of the fraud. Each time the goods change ownership the freight forwarders are advised and their records are updated accordingly. Therefore the records of the freight forwarder can show the investigator the complete carousel of the fraud. It will become apparent that whilst the freight forwarder in Operation Venison was central to the IPCC investigation, it was not a subject of the investigation. Therefore the report will refer to the freight forwarder as Freight Forwarder 1 (FF1). FF1 also featured as freight forwarder in a number of other HMCE MTIC cases.
9. It is fair to say that there was considerable suspicion amongst the HMCE investigators involved in MTIC investigations that FF1 and other freight forwarders were involved in some way in the frauds. A disproportionate amount of FF1's trade was with MTIC suspected fraudsters; however there was no hard evidence to support the suspicions until August 2003.

10. The Operation Venison investigation started in 2001 and despite the general suspicions mentioned earlier, FF1 were not targets of the investigation. During the course of the investigation the acquisition of material from FF1 was approached in two ways. Initially, a search warrant was executed and material in relation to the companies under investigation was uplifted and produced in evidence by Customs Investigators. However, later in the investigation the investigation team identified that more material was needed from FF1 and on 31 January 2002 witness statements were taken from two FF1 employees, producing more evidential material.

11. The Criminal Procedures and Investigations Act 1996 (CPIA) places a duty upon the prosecution to disclose prosecution material which in the prosecutor's opinion might undermine the case for the prosecution or might be reasonably expected to assist the accused's defence. There is a Code of Practice that sits alongside CPIA and the Code stipulates that any material casting doubt on the reliability /credibility of a witness should be disclosed to the prosecutor in order that the CPIA test for disclosure to the defence may be made. The witness statements from FF1 and the material that they produced were served in the normal manner with no mention of any suspicions that the investigation team may have had about the possibility that FF1 may be involved in some way in the fraud. How HMCE and the Operation Venison team dealt with this requirement goes to the heart of the IPCC investigation.

12. Whilst the Operation Venison team had general suspicions they had no evidence of dishonesty until September 2003, when FF1 became involved in Operation Toppling. Their witness statements had been served in Operation Venison long before but it was obvious at this stage that the FF1 witnesses could not be proffered as witnesses of truth, however prosecuting counsel was not informed by the team until 24 November 2003 and the defence were not advised until 19 January

2004. As a result of the disclosure, a huge amount of documents were served on the defence, chronicling HMCE's involvement with FF1. Following an abuse hearing that lasted 35 days Crane J ruled that there had been an abuse of process and stayed the proceedings. His judgement ran to 37 pages and criticised the named officers and lawyer for allegedly not advising prosecuting counsel and raised serious concerns about the veracity of some of their evidence.

13. The IPCC investigation started on 16 January 2006 and assisted by an advice written by Sir Derek Spencer QC (prosecuting counsel in the abuse hearing) identified a number of issues out of the judgement in relation to the officers. The IPCC Commissioner and Senior Investigator met with the officers on 16 January 2006 and issued each of them with a letter detailing the particular issues that would be the subject of the investigation. Details can be found at para 2.2 of the main report.

14. All of the officers were interviewed for possible criminal offences and all bar Anil Gogna and Cedric Andrew made no comment. The others all submitted detailed statements rebutting the allegations laid in the judgement.

15. Brian Turner, who was the SIO of the team, denied any intention to mislead his prosecuting counsel, the defence and the court. He was aware of and shared the general suspicions about FF1 but he firmly believed that general suspicion was not sufficient to trigger a need to make disclosure; he believed that evidence was the trigger. Whilst he was mistaken, there was evidence that he was not the only one. The other SIOs involved in the investigation of MTIC fraud took differing stances on how to deal with freight forwarders. Brian Turner at one point sought advice on whether they could be prosecuted for aiding and abetting but was advised there was insufficient evidence. Nobody actually targeted FF1 for investigation until September 2003 when Operation Toppling received evidence that they were involved. He

explains that the delay in advising counsel after September 2003 was due to the fact that the prosecution team changed and there was no real opportunity to do so.

16. Louise Matthews and Steven Ferguson were the case officers working under Mr Turner. Their responsibility was to prepare the criminal case for court and whilst they may have been aware of the general suspicions about freight forwarders, they knew that there was no evidence of involvement in their case and did not need to consider it further. When they became aware in September 2003 that FF1 were targeted by Operation Toppling, Louise Matthews told Anil Gogna, the Venison disclosure officer and left him to deal with it. They did not mention it at the conferences with counsel because they were focussed on the evidence for the forthcoming trial.

17. Anil Gogna was the disclosure officer, who was aware of the general suspicions about freight forwarders. He performed the checks on witnesses that are laid down in the HMCE handbook, which requires checks with the various databases. As FF1 was not under active investigation they did not appear on the databases and therefore he did not deem any disclosure was necessary. When he became aware of the Operation Toppling evidence he realised that the situation was now different but was advised that senior lawyers were considering a strategy to deal with the overall effect on HMCE cases (FF1 were involved in a number of cases). He was the one that advised counsel on 24 November at the first real conference since the new prosecution team took over conduct of the case.

18. Cedric Andrew was a Senior Policy Officer who was allegedly consulted over the FF1 issues and denied involvement when giving evidence. He maintains that he had no involvement in the case and there is evidence to support that. It would appear that there was a misunderstanding of Mr Andrew's role by the court.

19. Andrew Biker was the senior solicitor for the prosecution. He says that he was not aware of the Operation Toppling issues until late September 2003. There were two opportunities prior to 24 November to advise counsel and Mr Biker denies that failure to do so was deliberate or malicious. The meetings were about specific issues and he simply never thought to mention the FF1 issue. In addition he was aware that a senior group was considering a strategy to deal with the overall effect of the FF1 issue and he had not had a steer from them. Following the conference on 24 November he thought that counsel was going to advise on a form of words to use in advising the defence but he did not receive anything, so did not advise the defence. He blames a breakdown in communication for this failure.

20. An advice file was prepared by the IPCC for the Crown Prosecution Service who considered the evidence for perverting the course of justice, conspiracy, perjury and misconduct in public office. They advised that there was no evidence to prosecute any of the officers in respect of all the offences considered.

21. Mr Turner retired from HMRC during the course of the IPCC investigation and the misconduct process is no longer applicable. The IPCC has no remit to consider misconduct in respect of Mr Biker, who now works for the Revenue and Customs Prosecution Office and not HMRC. Accordingly no recommendations in respect of conduct are made on his part.

22. The investigation found no evidence of misconduct in respect of the other officers subject to investigation.

23. The investigation found that HMRC and RCPO had come a long way since the events of Operation Venison and many recommendations that would have been made have already been addressed. Much work has been done to minimise the chance of a repeat of the Operation Venison incident and it is difficult to see what more they can do.

Accordingly the investigation only makes two recommendations and one comment in relation HMRC procedures. They are:

Recommendation 1: If there is another investigation of this sort it is vital that the SI of the IPCC investigation team determines at an early stage exactly what material is required to avoid irrelevant material being included in the investigation process. If there is to be a scoping exercise, it is vital that it is undertaken by the eventual investigation team, for the same reason. Failure to do so will serve to unnecessarily increase the length of the investigation

Recommendation 2: Whilst recognising that there has been considerable improvement in the systems and procedures in relation to disclosure in MTIC cases the VAT Focus Group and all managers must ensure that all operational policies and procedures are developed and are being followed

Comment 1: It is recognised that the HMRC attitude towards the appointment of disclosure officers and their training is quite different now to the situation that prevailed at the time of Operation Venison. The Butterfield review identified failings in the HMCE attitude at all levels towards disclosure at this time and part of the recommendations of that review was the training programme. It is incredible that Mr Gogna, disclosure officer in a large and complex MTIC case, was scheduled for training and for one reason or another that training was cancelled on 7 occasions, eventually being received some 15 months later. The IPCC investigation has seen evidence of considerable activity in terms of a proper and responsible attitude towards disclosure by HMRC and the HMIC inspection will no doubt comment on the current position

