HM CROWN PROSECUTION SERVICE INSPECTORATE

REVIEW OF THE INVESTIGATION AND CRIMINAL PROCEEDINGS RELATING TO THE JUBILEE LINE CASE

(Pursuant to a reference by the Attorney General
under section 2 (1)(b) of
the Crown Prosecution Service Inspectorate Act 2000)

HM CHIEF INSPECTOR

Mr Stephen Wooler CB

June 2006

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CORRIGENDA

"Since this report was published on 27 June 2006, the Review Note which could not be found by inspectors (paragraph 4.24) and which they concluded (paragraph 11.52) had not been prepared, has been located. It was not in the place where it might have been expected to be found but amongst papers whose nature had made it unnecessary to scrutinise them. The finding of the Review Note renders the conclusion at 11.52 erroneous and HMCPSI has acknowledged that position to Mr Raymond Wildsmith."

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PREFACE

The collapse of the Jubilee Line case in March 2005, without the jury having been asked to consider their verdicts, was generally regarded as an expensive disaster that reflected no credit on the criminal justice system. Serious allegations had been made that personnel of London Underground had been corrupted, and that as a result the main defendants had dishonestly enriched themselves out of the public financing for that project. In the process of investigating and trying these allegations further large sums of public money were expended, but to no useful purpose, because the trial produced no adjudication on the merits of those allegations. Intolerable burdens had been placed on the jury trying the case, whose time – amounting in this case to a substantial portion of their lives, some 21 months – had in effect been wasted.

Immediately following the collapse of the case, the Attorney General referred the matter to me with a view to ascertaining how this state of affairs had come about and to make recommendations designed to prevent a recurrence. In doing so he made it clear that the emphasis should be on identifying what had gone wrong and learning lessons, rather than seeking to apportion blame and criticism. I have been pleased to undertake this review and its purpose has been precisely that.

I believe it is the first time that there has been a review focusing so specifically on the reasons for the outcome of a criminal trial. It was therefore appropriate to approach the matter on a broad basis. The primary focus of the review has been the prosecution team but, in recognition of the extent to which its effectiveness is influenced by many other factors, the review has also looked at matters such as the conduct of the investigation and the relationships and interaction between the prosecution team and other key players, together with the administrative and other arrangements for the management of the case through the court. All such matters affect the operation of the prosecution.

It is in this context that I highlight three specific matters relating to the scope of the review. First, it soon became clear that certain strategic decisions taken during the investigation had greatly influenced the manner in which the prosecution had presented its case and the manner in which the trial progressed. I therefore invited HM Inspectorate of Constabulary (HMIC) to join the exercise, and two members of HMIC (one on loan from the City of London Police Economic Crime Department to provide special expertise) effected a review of the investigation which has fed into and informed the main review.

Secondly, the fact that the trial concluded without the jurors having commenced their deliberations made it possible lawfully to approach and interview them. As anticipated, they provided a hugely valuable insight into the presentation of the case and the difficulties on which the proceedings finally foundered. Long trials present special difficulties for those empanelled to serve as jurors and, with the support of the Department for Constitutional Affairs, the review sought to identify those problems, and where there might be scope for administrative action to improve the experience for jurors in future long cases. Where those findings are relevant to the issues covered by this review, they have been incorporated into the report. Otherwise, they have been passed on to the Department for Constitutional Affairs.

Thirdly, I was alert to the risk that a fully comprehensive review of the case might lead the team to trespass on those matters which are properly regarded as judicial. The firmly established principle that the judiciary do not discuss or comment in any extra-judicial forum upon cases which they have tried also meant that the review lacked that particular perspective on the case. Since such limitations would have applied irrespective of which organisation had been asked to undertake a review, I am confident that this report covers all issues to the maximum extent possible.

Having said that, it is important when things have gone so seriously wrong, as they clearly did in this case, that no opportunity to learn lessons should be lost. I therefore suggest that the Attorney General and the senior judiciary may wish to discuss the possibility of developing a truly comprehensive review mechanism, which might be invoked in appropriate circumstances but remain compatible with upholding judicial independence. One possibility might be for it to incorporate some form of peer review. That is a practice which is found within many professions. I do not underestimate the sensitivity of this suggestion. Equally, there is an important public interest that where things have clearly gone wrong with such serious resource implications (by no means the least being the tying up of court and judicial capacity) any review and learning of lessons should be as comprehensive as possible.

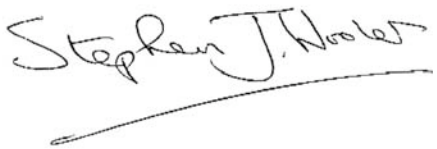
I have been conscious throughout the review that the outcome of the Jubilee Line case is regarded in many quarters as relevant to the current debate about the suitability of juries to try charges of fraud, and in particular the proposal to implement section 43 of the Criminal Justice Act 2003. In reality, the circumstances of the Jubilee Line case were so unusual that it cannot be relied on directly to support the case either for dispensing with, or retaining, juries. The case was not intrinsically of such seriousness or complexity that it would necessarily have been accepted by the Serious Fraud Office as falling within its criteria for taking on cases. Nor is it a forgone conclusion that it would have met the conditions set out in section 43 of the Criminal Justice Act 2003 enabling a judge, with the approval of the Lord Chief Justice, to have directed trial without jury. Although the termination of the case was the direct result of its length, that in turn was attributable to a number of factors, some of which were clearly avoidable. In addition, the case was formulated in a manner which added greatly to its length and complexity.

In my view, the significance of the Jubilee Line case to the debate about the use of juries to try charges of fraud arises in a different way. There is a substantial tranche of cases (of which the Jubilee Line case is probably one of the best examples) which are neither sufficiently complex to be beyond the comprehension of juries nor necessarily lengthy. They are therefore manageable within existing arrangements, provided they are appropriately handled by all the key players. Cases which are intrinsically manageable can easily become unmanageable because of the way they are handled. The risk of this happening is always present to a degree and is difficult to predict. However, the balancing of that risk against the value of jury trial is essentially a matter for the political process and Parliament rather than this review.

Whatever conclusions may be reached about the role of juries, it remains the case that effective prosecution of alleged fraud is dependent on there having been thorough and careful investigation, guided by clear advice from the prosecution team who will ultimately be responsible for the presentation of the case. This must be accompanied by structured case management which ensures that issues are properly clarified before the trial proper begins (with disclosure obligations having been fully discharged having regard to the issues in the case) and a disciplined approach by all parties to all stages of the proceedings. I believe that the lessons we draw from the Jubilee Line case review (and our recommendations) will help to achieve that in future cases. To the extent that some of the key mistakes we identify in the handling of the case occurred as long ago as the mid-to-late 1990's, there have already been developments which lessen the likelihood of a recurrence. Some of them have come to fruition only recently or are still in train, so that this report has been written against a changing background. It therefore acknowledges where there have been developments relevant to an issue of concern and comments where appropriate.

One of our important conclusions is the need for the CPS to develop a clear strategy for the handling of heavy fraud work. Whereas it did at one stage in its history adopt in part the multi-disciplinary approach to investigation and prosecution advocated by the Fraud Trials Committee (the Roskill Review), by the time the Jubilee Line case was referred to the CPS in 1997 this had lapsed. That in part is attributable to the CPS having been founded on the Philips Royal Commission principle of separating investigation and prosecution. But the problem goes deeper. Successive reviews have brought changes of structure and approach but none have survived for even the length of a typical fraud case. The common theme, at least until after the events of the Jubilee Line case, has been a move by the CPS away from viewing fraud as a specialism requiring dedicated resources and expertise. The other notable feature of the period spanned by the case is the persistent lack of clarity in relation to where responsibility for decision-making lay and, consequently, accountability. The Director of Public Prosecutions has taken or set in train steps to address these issues.

I have referred in this preface to the review team whose contributions I acknowledge later. I make it clear, however, that the opinions and conclusions expressed in the review are mine and that its contents are my responsibility.



S. J. Wooler CB
HM Chief Inspector of the Crown Prosecution Service
19 May 2006

ACKNOWLEDGMENTS

This review is the result of a reference by the Attorney General under Section 2(1)(b) of the Crown Prosecution Service Inspectorate Act 2000 to me in my capacity as HM Chief Inspector. The responsibility for the report is therefore mine. However, the volume of material generated by the Jubilee Line case was such that the review could not have been undertaken without the assistance of a skilled and professional team. It comprised Katey Rushmore (HM Inspector (Legal)), who acted also as Project Manager, Roderick James (HM Inspector (Legal)) and Stephen Myers, an experienced fraud lawyer on loan from the Serious Fraud Office. That core team was ably supported by Tony Frankson (also Serious Fraud Office) who has managed the administrative arrangements. Lizzie Kearney demonstrated huge patience in proof reading and formatting seemingly endless drafts of the report. I owe them all a debt of gratitude for their invaluable services and their attention to detail, particularly when trawling through lengthy transcripts of proceedings.

My thanks go first to the Director of Public Prosecutions and the staff of the Crown Prosecution Service (past and present) for the help which they have given to the review team at all stages. An exercise such as this, even when the primary purpose is to learn lessons, necessarily examines critically the working practices of the organisation concerned, and may therefore be an uncomfortable experience for those involved. Nonetheless, we have received the fullest co-operation and assistance. Special thanks go to the caseworker responsible for the Jubilee Line case (Julia Armitage) who has throughout responded promptly and efficiently to our innumerable requests for information and documentation.

The review also found it necessary to look at the investigation which preceded the criminal proceedings. We received full co-operation from the British Transport Police and the senior investigating officer. Their assistance was important and I thank them too.

That appreciation extends also to the many other individuals outside the Crown Prosecution Service and the British Transport Police who were involved in the Jubilee Line case and who have given generously of their time to assist. In particular, my thanks go to counsel who were instructed (both prosecution and defence) and to the representatives of firms of defence solicitors. I am grateful to Mr Geoffrey Cox QC and to Mr Christopher Harding for permission to use the Schedule of Court Sittings which appears, slightly adapted, in this report.

I place on record my appreciation to the Director of the Serious Fraud Office for the loan of Stephen Myers and Tony Frankson. The review benefited from the participation of two representatives of HM Inspectorate of Constabulary, Huw Jones who is an HM Assistant Inspector and Detective Chief Inspector Oliver Shaw (City of London Police Economic Crime Unit) who was attached to HMIC to provide expert support.

The work of the review was drawn together under the auspices of a Co-ordinating Group. Its membership included Ros Wright (latterly the Director of the Serious Fraud Office) who acted as an expert and critical consultant.

The review was greatly assisted by the expertise of Professor Sally Lloyd-Bostock and Dr Cheryl Thomas of the Institute of Judicial Administration at the University of Birmingham. They scoped and led the work with the jurors in the Jubilee Line case, drawing on their previous experience of jury research. Their contribution was invaluable and also provided an appropriate measure of distance between the jurors and an organisation which might be regarded as part of the Executive.

EXECUTIVE SUMMARY

1. On 22 March 2005 the case of *Regina v. Rayment* and others[1] (generally referred to as the Jubilee Line case), which had been running at the Central Criminal Court since 25 June 2003, was terminated when the prosecution announced its decision not to oppose a defence application to discharge the jury. Following the discharge, the prosecution indicated that it would not be seeking a re-trial of the six defendants and formally offered no evidence, both against them and against four other defendants in a related case that had been scheduled to follow. They were acquitted.

2. The collapse of a case that had been running for so long and at such public expense (over £25 million), without a jury reaching any verdicts on the merits, was the occasion of much public disquiet and widespread media comment. Immediately afterwards the Attorney General, Lord Goldsmith QC, announced in a written Parliamentary Statement that he was referring the matter to HM Chief Inspector of the Crown Prosecution Service (CPS) under section 2(1)(b) of the CPS Inspectorate Act 2000. The terms of the reference were:

   - to review the circumstances surrounding the prosecution commonly known as the Jubilee Line case;
   - to ascertain the factors leading to the decision to terminate;
   - to consider what steps the prosecution could have taken to avoid that outcome; and
   - to make recommendations aimed at preventing this happening again.

The nature of the case

3. In brief outline, the case concerned alleged fraud and corruption arising out of contracts for the construction of the Jubilee Line extension undertaken by London Underground Limited (LUL) in the 1990's. The two main defendants ran a quantity surveying firm and were said by the Crown to have corrupted certain LUL personnel in order to obtain financial information confidential to LUL, which they had then fraudulently used on behalf of a client contractor in relation to the original tendering process, and later on behalf of several client contractors in relation to claims against LUL arising out of contractual variations. With the exception of one defendant, who pleaded guilty on a limited basis to the charge alleging fraud in the tendering process, all defendants denied any wrongdoing. A fuller statement of their defences to these allegations is contained in the main report.

Summary of main findings

4. The decision to end the case was inevitable and was correct in the light of the authorities. Their application to the circumstances prevailing in March 2005 indicated that, as a matter of law, the point had well been reached when no jury could be regarded as having their own sufficient independent recollection,

[1] The defendants were: Stephen Rayment, Mark Woodward-Smith, Paul Maw, Paul Fisher, Mark Skinner, Graham Scard and Anthony Wootton.

so as to be able fairly to assess contentious evidence that had been given as long ago as a year before, or in some cases 18 months before. Whether this particular jury did, in fact, have sufficient independent recollection to perform its task is a separate question which is addressed in the full report.

5. The size and nature of the case was not such as to make it intrinsically unmanageable before a jury. The fundamental reason the trial had to be terminated was because it had gone on too long.

6. The length of the trial was due to a number of factors, some avoidable, others not. The three most significant factors were:

   - the decision by the prosecution to include as count 2 in the indictment the alleged "variation of claims" conspiracy comprising all defendants except Paul Maw and Paul Fisher;

   - the slow and disjointed nature of the court proceedings, which meant that it took much longer to get through the evidence with the jury than is either usual or desirable; and

   - the illness of the defendant Mark Skinner, and the failure to resolve at an early date its effect on the progress of the trial.

7. One or even two of these factors might not have been sufficient to cause the collapse of the trial: it was the combination of them that was fatal. This outcome was not a systemic failure of the criminal justice system or the nature of jury trial. What happened was the cumulative effect of mistakes and shortcomings by agencies and individuals within the system. These mistakes and shortcomings tested the adversarial system, as well as the jury system, beyond breaking point. In relation to the slow and disjointed nature of the proceedings and the illness of Mr Skinner there were many matters that were outside the control of the Crown. Trial management may have played a part. However, following constitutional convention, the trial judge did not participate in the review, and it would therefore be inappropriate for the report to comment on that aspect.

8. It may be that there were aspects of individual defence cases that could have been handled differently and perhaps more expeditiously. But our terms of reference did not make it appropriate to examine matters which did not appear to have contributed significantly to the outcome. Moreover, we are conscious that the duties of the defence are different to those of the prosecution.

The findings in more detail

The decision to include count 2. (Conspiracy to defraud London Underground Limited)

(i) The essence of the Crown's case was that the defendants had conspired together to obtain confidential claims assessments and other commercially sensitive information from LUL and use it to advance the commercial interests of their client contractors and/or those of the claims consultancy, RWS Project Services Limited, at the expense of the commercial interests of LUL.

(ii) From an early stage in the investigation, the British Transport Police (BTP) took an important strategic decision: their investigation of this part of the case would not seek to establish whether false and dishonest claims had actually been made and paid, and thus whether LUL had in fact suffered loss. Instead, they sought evidence to establish that wrongful possession by the defendants of the confidential claims assessments created a risk that the economic interests of LUL would be damaged. This strategy was justified by their wish to avoid getting "bogged down" in examining a very large volume of claims documentation. At the same time, and for similar reasons, the BTP was reluctant, despite initial advice from the CPS, to engage the services of an independent quantity surveyor who could assist them with expertise relating to the claims process.

(iii) There were different views within the CPS as to the viability of the proposed conspiracy to defraud. Counsel, although somewhat ambivalent in his first advice, included it. The judge ruled before the start of the case that the count was good in law, and at the close of the prosecution case, that there was a case to answer. But count 2 lacked precision as to what was alleged and, as the case progressed, there were a number of changes in the way the Crown stated its position, in particular on what they accepted that they had to prove. At no point did they attempt to prove that any particular confidential document had been actually used by the defendants in any particular way. Their case, as finally formulated, was that the dishonest possession of these documents, and all the surrounding circumstances, raised an inference that the defendants intended to use them to the economic prejudice of LUL. However, it should have been foreseeable that the defence would seek to refute that inference by exploring both actual usage, and the extent to which the documents were capable of being used, having regard to the provenance of the information contained in them and the systems which operated for assessing and validating claims. It was inevitable that this would involve much detailed and repetitive examination of routine financial documents with witnesses.

(iv) The lack of particularisation, especially the decision not to attempt to identify any documents actually used or any claims actually affected, was one of a number of mistakes by agencies or individuals within the system, and it was a major factor both in delaying the trial (through the disclosure process and through argument about it); in lengthening the trial; and in increasing costs. The defence felt constrained, after gaining access to a large body of material relating to the contracts still in the possession of LUL, to embark on the inevitably protracted exercise at trial of seeking to prove a negative - namely, that the documents had not been used – and, moreover, that in many cases they were incapable of the kind of use suggested. Thus it was that this part of the trial came to resemble more the investigation of a case conducted in an adversarial forum than the prosecution and defence of a criminal allegation - with the slow rate of progress and frequent interruption that such a process implies.

(v) The result was that the evidence dealing with count 2 was spread over some ten months. Had it not been included the prosecution case would have been completed during October 2003 rather than August 2004, and in those circumstances the scope for other factors to have affected the trial would have been significantly less. Moreover, it did not add materially to the totality of the alleged criminality, particularly when account is taken of the concessions the prosecution were forced to make in the course of the evidence. There was no direct evidence to prove this count and it relied entirely on inference where the inferences which the prosecution wished the jury to draw were not the only ones that could have been drawn. It is difficult to invite the drawing of an inference in circumstances where the actual position could have been ascertained from the evidence but has not been investigated. Whether the jury could or would have convicted is not a matter appropriate for comment, but in the event of convictions this count would not have been a decisive factor in any confiscation orders that the judge might have made.

(vi) Throughout the relevant period (1997 to 2003), the CPS lacked a clear strategy for the handling of heavy fraud work. There was also a deterioration in clarity about responsibility for decision-making and therefore accountability. The CPS prosecutors responsible for the Jubilee Line case were being managed by others who were not expected to have specialised expertise, for example in fraud. Since the prevailing culture was to devolve exclusively to the case lawyer the responsibility for decision-making in all but a tiny handful of especially sensitive cases, the result was the breakdown in the supervision of, and accountability for, decision-making in major cases like this one. This flowed in part from the manner in which certain recommendations of the Butler Report, which had been accepted by Ministers, were interpreted. These factors produced a situation whereby the more senior lawyers up to level of the Chief Crown Prosecutor of Central Casework (latterly, the Director of Casework), and the Director of Public Prosecutions (DPP) himself, had little involvement with, or control over, individual casework. In the result there was no real awareness about this case until well after it had started to go badly wrong.

The slow and disjointed nature of the proceedings.

(i) The transcript of the trial shows a rate of progress through evidence which is strikingly slow even by the standard of other fraud trials. In part this was the result of the prolonged examination of repetitive documents, and a consequence of witnesses having to be given the documents in advance of their evidence to examine them outside court; but in part also it was because the case from a quite early stage simply lost momentum and itself became “bogged down”.

(ii) These and other factors meant that the time spent sitting with the jury was greatly reduced. Thus, for example, in one month of sitting (January 2004) the jury sat for 15 of the available 18 days, but only for an average of less than one hour and 55 minutes out of the available (and normal) four and a half hours. There were also frequent interruptions: some caused by legal argument arising out of the nature of the evidence; some by illness of jurors and others, including members of jurors' families; holidays; paternity leave; and numerous other reasons. These events conspired so that in some months, such as December 2003 and April and July 2004, very little evidence was heard at all. Between 30 September 2003 and 16 August 2004 there were 80 days when the court did not sit for various reasons; and there were further holiday breaks totalling 28 days. These interruptions exceeded the number of days when evidence was called.

(iii) Some of these delays and interruptions were unforeseeable, or at least unavoidable, but there was a cumulative effect and the overall result was a steady increase in inertia and the inexorable lengthening of the trial. One of the lessons to be learnt from the case is that keeping the momentum of the proceedings going is sometimes difficult but always essential. The jurors themselves were subsequently to comment on the need for a more disciplined approach towards prompt and regular attendance - including by some of their own number.

The illness of a defendant.

(i) Very soon after Mark Skinner, the first defendant who had chosen to give evidence, had entered the witness box, he began to complain of symptoms associated with high blood pressure and was unable to continue. He was subsequently diagnosed as suffering from essential hypertension brought on by the stress of court proceedings and having to give evidence. After Mr Skinner's medical problems had persisted for some seven weeks, the prosecution - with good intention - funded a consultant to examine and treat him, providing periodic updates to the court. No criticism can be made of that consultant. However, the relationship between doctor and patient is not the same as that between a doctor and an individual whom he or she is examining on the instructions of a third party for the purpose of thoroughly testing fitness for a particular purpose. The judge accepted from the outset that Mr Skinner's illness was perfectly genuine and entirely unexaggerated. Nevertheless, both the prosecution itself and the court would have been better served if the normal procedures had been followed whereby the defence had produced a medical report and, following that, a medical practitioner had been appointed by the prosecution to test the position. Mr Skinner's illness was one which was capable of being controlled by medication sufficiently for him to give evidence, but this could and should have been established sooner than it was.

(ii) The review has identified a need for a clarification of the procedures for dealing with the illness of defendants in criminal trials.

(iii) The illness of Mr Skinner, and the way it was dealt with, meant that in this case he gave only five days of evidence (in aggregate) over five months, while the proceedings remained otherwise in suspense. Illness of jury members and counsel, along with other problems during this period, produced further interruptions. Thus a case which, because of the foregoing two reasons, had already gone on far too long, was further stretched out beyond breaking point.

The jury

9. No responsibility for the inconclusive outcome of the case can properly be attributed to the capabilities or conduct of the jury. Overall, they discharged their duties in a thorough and conscientious manner, and the fact that the trial became unmanageable was not their responsibility. The case was not intrinsically of such seriousness or complexity that it would necessarily have been accepted by the Serious Fraud Office (SFO) as falling within its criteria for taking on cases. Nor is it a forgone conclusion that it would have met the conditions set out in section 43 of the Criminal Justice Act 2003 which (subject to implementation) enable a judge, with the approval of the Lord Chief Justice, to direct trial without jury. Although the termination of the case was the direct result of its length, that in turn was attributable to a number of factors, some of which were clearly avoidable. In addition, the case was formulated in a manner which added greatly to its length and complexity. Accordingly, although the collapse of the Jubilee Line case was regarded in many quarters as relevant to the debate about the suitability of juries to try charges of fraud, and in particular the proposal to implement Section 43 of the Criminal Justice Act 2003, its circumstances were in reality so unusual that it cannot be relied on to support either position in that debate. It was one of those cases which was intrinsically manageable but became unmanageable through a combination of the manner in which it was handled and other factors – some largely beyond the control of those involved; and the longer a case goes on the greater the risks become.

10. Seen from the perspective of the jury, the trial was a quite intolerable burden. Despite the determination of the senior judiciary and the Government that the length of trials should in future be contained, there will undoubtedly be, from time-to-time, some trials of substantial length. There is a need in such cases for more structured support for jurors, to enable them to plan more effectively and minimise disruption to their personal and family lives; and to provide authoritative assistance in resolving difficulties directly attributable to the length of jury service. Without that, the problems which may flow from long periods of jury service are greater than those which a citizen can properly be expected to bear simply as part of civic duty. The Department for Constitutional Affairs (DCA) has recognised the special problems associated with lengthy jury service, and is considering the scope for enhanced support arrangements. The experience of this case suggests that support may need to continue after the conclusion of proceedings, to take account of the possibility of repercussions in relation to employment and careers which only emerge after, or extend beyond, the proceedings.

The way forward

11. The two primary purposes of a review of this nature are firstly to ascertain what went wrong and secondly to make recommendations aimed at preventing a recurrence. Chapter 11 of the report sets out the conclusion that the collapse of the Jubilee Line case was not the fault of the system, but the cumulative effect of mistakes and shortcomings by agencies and individuals within the system. Consequently, many of the "lessons" of this case are far from new, and in many instances the solution is better adherence to existing good practice. Moreover, the investigation and subsequent proceedings were spread over a long period from 1997 to 2005, with some of the key mistakes occurring at an early stage. Chapters 3 and 11 describe some of the steps already taken to strengthen the handling of serious casework in the CPS (including replacing Casework Directorate with three new Divisions) and the proposal to create a new specialist fraud unit.

12. However, there have been some other important developments since the conclusion of the Jubilee Line trial which could do much to reduce the risk of recurrence:

(i) The Lord Chief Justice issued (on the same day the trial collapsed) a Protocol intended to supplement the Criminal Procedure Rules 2005 by summarising the pre-existing good practice and providing guidance on aspects of case management which can assist in reducing the length of trials of fraud and other charges resulting in complex trials. Had this good practice been followed more closely in the Jubilee Line trial the case would in all probability not have ended in the way that it did.

(ii) Following on from the Protocol, the DPP announced arrangements to bring CPS practice into line with it. These changes were already in hand as part of the re-structuring of the work undertaken by the former Casework Directorate. He was also planning a restructuring of arrangements for dealing with much of the casework submitted to Headquarters in anticipation of the implementation of the Serious and Organised Crime Act. In essence - and where relevant to the review - the new arrangements introduce mechanisms whereby senior managers, up to the level of the DPP himself, must be periodically apprised of all potentially long and complex cases and of the issues in them. The review considers that these new arrangements must be complementary to, and not a substitute for, effective day-to-day supervision of large fraud cases.

(iii) The CPS has indicated its intention to transfer the handling of heavy fraud cases - previously referred to the Casework Directorate of Headquarters - to a new Fraud Prosecution Service, which will be part of CPS London. During the finalisation stage of this report evidence was received that the initial transfer of staff had occurred, albeit they were housed in temporary and unsatisfactory accommodation. In addition there is a firm commitment to additional funding, although the level of extra funding has not yet been determined. It will be a

specialist unit structured to prosecute all fraud cases that are accepted in accordance with an established set of criteria and the initial estimate is for an annual caseload in excess of 205 cases. Plainly, it is too early for the review to comment on the effectiveness of the new arrangements, although subject to the caveat below these developments are welcomed. It is recommended that the successor body to HMCPSI (the Inspectorate for Justice, Community Safety and Custody) provided for by the Police and Justice Bill should make early arrangements to inspect the progress of the new CPS Headquarters Divisions, the Fraud Prosecution Service of CPS London and the functioning of Case Management Panels.

Other relevant issues

13. Fraud has undoubtedly been treated as the Cinderella of the CPS, particularly since 1997 when it ceased to be regarded as a specialism. If the CPS's stated determination to improve the handling of fraud cases is to be seen through a significant investment will be required, and there is a need to ensure that other forms of investment in the CPS, in particular that in relation to other serious crime, are not put at risk. A careful assessment of the requirements will be needed. Although a positive start has been made, there is more work to be done to determine the full scope and structure of the unit. This will involve the development of assumptions in terms of numbers of lawyers and accountants required and the number of cases involved.

14. Although the return to a specialised unit for prosecution of fraud allegations is a step in the right direction, the review has some reservations about whether a unit located within CPS London, but with a national remit, is the right solution. In particular a three-tier system (SFO, Fraud Prosecution Service, and CPS Areas) may be difficult to operate satisfactorily. An alternative approach might be to enhance the capacity of the SFO so that it can handle a wider range of cases than at present. The Fraud Review announced on the 27 October 2005 should therefore explore the feasibility of vesting in one organisation all those fraud cases investigated by the police which cannot be dealt with appropriately by the CPS Areas.

Recommendations

15. Taking account of those developments the review makes the following recommendations:

R1. Police forces should ensure that there are in place structured arrangements for the regular review of investigative strategy during major enquiries, such review being undertaken by a senior officer with relevant expertise (paragraph 11.30).

R2. There should be effective compliance with the requirement in serious and complex cases for the creation of a structured review note analysing the evidence and public interest considerations which underpin the prosecutorial decision (paragraph 11.52).

R3. Where it is proposed to charge conspiracy to defraud the CPS case lawyer must consider and set out in writing in the review note how much such a charge will add to the amount of evidence likely to be called both by the prosecution and the defence, the justification for using it, and the reasons why specific statutory offences are inadequate or otherwise inappropriate. Thereafter and before charge the use of the charge should be specifically approved by a supervising lawyer experienced in fraud cases. Equivalent procedures should apply in other prosecuting authorities (paragraph 11.88).

R4. A protocol should be developed establishing clear and well defined procedures for ensuring that full medical evidence is obtained at an early stage in relation to the illness of any defendant; this should include consideration by the prosecution of the appointment of a medical practitioner for the specific purpose of testing the position fully and in a forensic context (paragraph 11.67).

R5. In considering the enhanced support needed for jurors in long trials the Department for Constitutional Affairs should take into account the importance of:

- continuity in the individuals allocated to support the jury;
- forms of support which might not normally be within anyone's remit, such as minimising unnecessary trips to court;
- support from someone with the time and resources to deal with problems;
- keeping the jury informed;
- clear information about what they can expect as jurors and what will be expected of them; and
- the possibility of repercussions in relation to employment and careers continuing beyond the end of the proceedings (paragraph 11.14).

R6. Any dedicated fraud unit within the CPS should handle its casework within a framework which has, as a minimum, the following characteristics:

- fraud should be recognised as a specialism;
- there should be a multi-disciplinary approach with investigators, prosecutors (including counsel), accountants and other experts where appropriate working together as a team from a very early stage in the investigation;
- regular review of progress by the team internally;

- a senior prosecutor, in addition to the case lawyer, assigned to each case from the beginning of the investigation and remaining in overall charge of the case team throughout its life;

- senior prosecutors fulfilling this role have relevant experience and expertise and are able to provide effective day-to-day supervision and quality assurance through a "check and challenge" process; and

- the unit has an appropriate level of resourcing – both human and financial (paragraph 11.21).

R7. The establishment of the unit within CPS London to be known as the Fraud Prosecution Service should be preceded by a 'bottom up' review of the anticipated caseload and the resources needed for the effective discharge of its responsibilities (paragraph 11.26).

R8. The Fraud Review should explore the feasibility of vesting in one organisation the prosecution of all those fraud cases investigated by the police which cannot be dealt with appropriately by CPS Areas (paragraph 11.28).

R9. The establishment of Case Management Panels within the CPS must be treated as complementary to and not a substitute for effective day-to-day supervision and oversight of large fraud cases by suitably experienced managers with relevant expertise (paragraph 12.21).

R10. The Attorney General should consider with the senior judiciary the development of a procedure which would enable a truly comprehensive review of any case where things have gone so badly wrong as to render the trial unmanageable (paragraph 11.97).

R11. The new Chief Inspector for Justice, Community Safety and Custody should make early arrangements to inspect the progress and performance of the new CPS Headquarters Divisions, of the Fraud Prosecution Service of CPS London, and the functioning of Case Management Panels (paragraph 3.17).

CHAPTER 1: INTRODUCTION AND MAIN FINDINGS

1.1 By 22 March 2005 the long-running fraud trial that had become known as the Jubilee Line case had been in progress at the Central Criminal Court for some 271 days, having started on 25 June 2003 when the defendants were put in the charge of the jury. Six men were accused of offences of conspiracy to defraud and corruption; one had pleaded guilty at the start of the case (for the indictment see Annex 1). The case had reached the stage of defence evidence and, although it was many days since he had last been in the witness box, the defendant Mark Skinner was in the middle of giving his evidence. The court had last sat on 17 March 2005. During the intervening period, the prosecution had taken the opportunity to consider its position.

1.2 The trial concerned alleged fraud and corruption over contracts for the construction of London's Jubilee Line extension. The Crown alleged that the defendants had conspired to defraud London Underground Limited (LUL) by gaining access to confidential LUL financial information, which they then used against LUL's interests during its dealings with tenderers and contractors for whom the main defendants had acted as quantity surveyors and claims consultants. That information, said the Crown, was relevant to the award of contracts worth tens of millions of pounds and also to substantial claims for variations in the specifications of the contracts. There were also allegations that personnel entrusted with safeguarding LUL's interests had been corrupted.

1.3 The resulting trial had originally been expected to last for some six to eight months, although the jury were warned that it could last up to 18 months. By 22 March it already lasted for 21 months and there was still no immediate prospect of a conclusion. The police investigation had begun more than eight years before, and the defendants had been charged, as long ago as February 2000, with offences which dated back in part to the early 1990's. In April 2000 their case was transferred to the Crown Court and, before the case proper began with the swearing of the jury, there had been numerous and lengthy preliminary hearings occupied with legal argument. These included arguments about the disclosure of unused material; about whether parts of the prosecution case were correctly founded in law, or admissible in evidence; about whether the charges were sufficiently particularised; whether the forthcoming trial would be unmanageable, and whether the whole prosecution had become an abuse of process.

1.4 Each of the defendants was represented in court by two counsel, instructed by a firm of solicitors whose representative was also in attendance. The two main defendants had instructed the same solicitors, and were paying for their own defence. The other four were legally aided, and were each represented by a different firm. By then the Legal Services Commission had spent about 13 million pounds of public funds on defence lawyers' fees in this case and, as it turned out, the two main defendants' costs would also in the end be paid out of public funds, so bringing the cost to the taxpayer of defending those accused to some 22 million pounds. In addition the taxpayer would have to pay for the costs of the police investigation and the prosecution, who were

represented in court by three barristers; the costs of the Crown Prosecution Service (CPS); the salaries of the judge, court officials and shorthand writers; and jurors' and witnesses' expenses. The final total would be in excess of 25 million pounds. The Jubilee Line case had thus become one of the costliest as well as one of the longest criminal trials. A list of key players is set out at Annex 2.

1.5 On that day leading prosecution counsel, Patrick Upward QC, made a prepared statement to the court which reflected the further consideration that the prosecution team had given to the case. Technically, he was responding to a submission made several weeks before by the defence that the judge should discharge the jury on the ground that the trial had become unmanageable. It was not the first time that such a submission had been made: the defence had been arguing that the trial was unmanageable even before it began. On all previous occasions Mr Upward had successfully resisted the defence arguments. He said that the situation was now different. There were only ten jurors left in the case, the two others having been discharged at an earlier stage of the trial for reasons personal to them. A third juror was now reluctant to attend court unless a problem he had with his employer over pensions payments was resolved by the Department for Constitutional Affairs (DCA). The DCA had no power to do this and if, as seemed inevitable, he too would have to be discharged, they would be down to nine, the minimum number required by law. And the trial still had a number of months to go. Long before, when it was thought that the trial would have been well over by now, the judge had given a commitment to one juror who was getting married in the early summer that, in the remote event that the trial was still continuing, she could have six weeks for a honeymoon. Because of interruptions caused by the continued illness of Mr Skinner, the defendant who was currently giving evidence, the jury had only heard five days of evidence in the last five months. The trial had lost all momentum. It was no longer, as Mr Upward put it, "a living story" - and the jury, assuming that they would retire to consider their verdicts some time in the late summer of 2005, could not reasonably be expected to remember the evidence that had been given. By then some of it would be two years old. After consultation with the Director of Public Prosecutions (DPP), and with the Attorney General, the prosecution had concluded that they were unable to resist the defence application. Mr Upward invited the judge to discharge the jury. (We set out Mr. Upward's statement in full at Annex 3.)

1.6 A judge is not bound to accede to an application of this kind just because the prosecution and the defence agree it, and Her Honour Judge Goddard QC took time to consider. Not surprisingly, however, she agreed that the jury would have to be discharged. The court then turned to consider other matters, including the course to be taken in relation to the proceedings. It would have been open to the prosecution as a matter of law to seek a further trial before another jury. There were other indictments outstanding against some defendants. The prosecution was not in a position to deal immediately with those matters and the jurors, who had no prior warning of what was about to happen, were brought into court in the early afternoon and formally discharged from returning any verdicts in the case they had spent so long hearing. A brief

explanation, containing none of the details in Mr Upward's earlier statement, was given them by the judge. After the jurors had left, and following more to-ing and fro-ing, the prosecution formally offered no evidence against the defendants in this case. More than five years after their arrests, they were free to go. After some delay to seek instructions, as at that point counsel had not received instructions about what the DPP wished to happen in two other trials involving Stephen Rayment and four other men (Thomas Butler, Andrew Axelson, Martin Williams and Clifford Mills), which had been scheduled to follow, Mr Upward offered no evidence on these indictments also. The case was over.

Public reaction to the termination of the case

1.7 Until that day very little information about the progress of the trial had emerged into the world outside the Central Criminal Court and the legal profession. Orders under the Contempt of Court Act 1981 had been made at the outset which prevented reporting of the case, the purpose of these being to avoid any prejudice to the linked trials scheduled to follow. Recently, a question had been asked in Parliament. But for several days after the case ended there was a storm of coverage in all the national newspapers. Editorials raised concerns about the conduct of a case where so much public money had been spent to so little purpose. Attention also focused on the role of the jury, rekindling the debate about the appropriateness of juries to try long fraud cases. Some papers featured interviews with various members of the jury themselves, bringing out the financial and other hardships they had suffered, and reflecting their outrage not only at the sacrifices that were demanded of them, and their frustration at the way the case had ended, but also at the implied slur that they had been unable to understand the evidence in the case. The sequence of events described above meant that they had never heard the prosecution's full reasons for the course it adopted; their knowledge was largely confined to what they had learned from the media.

1.8 Views differed about whether juries were appropriate in long fraud trials, but all commentators agreed that something must have gone seriously wrong for the case to have lasted for 21 months and still failed to have arrived at any decision on the merits.

The present review

1.9 Immediately the case was terminated Lord Goldsmith QC, the Attorney General, made a Parliamentary Written Statement. He said:

> *"The public are entitled to an efficient and effective criminal justice system and cases such as the present one must never be allowed to happen again. This decision will cause great public disquiet as it causes me considerable disquiet. Most serious allegations have not in the end been brought to a final conclusion. Very considerable public money has been expended. Much time for a jury and for judge and defendants has been expended. It is important to learn what lessons we can."*

1.10 He referred the matter to HM Chief Inspector of the CPS under section 2(1)(b) of the CPS Inspectorate Act 2000. The terms of the reference were:

- To review the circumstances surrounding the prosecution commonly known as the Jubilee Line case;
- To ascertain the factors leading to the decision to terminate;
- To consider what steps the prosecution could have taken to avoid that outcome;
- To make recommendations aimed at preventing this happening again.

1.11 At an early stage of the review, Her Majesty's Inspectorate of Constabulary agreed to participate, as it had become clear that it was impossible to consider the role of the CPS as responsible for the prosecution in isolation from the scope and nature of the police investigation that underpinned it. It was also apparent that the range of factors which contributed to the unsatisfactory outcome was very wide. This reflects the complex nature of the adversarial trial process. Each participant has his or her own distinct role which has to be discharged with appropriate independence. On the other hand, the process is unlikely to function effectively without substantial co-operation between the parties, or if one or more players fails to discharge his or her role(s) satisfactorily. Insofar as anything in this report might reflect on the role of others, it is no more than is necessary to put the prosecution's position into context.

Methodology

1.12 At an early stage members of the review team met informally with defence counsel and solicitors to gain their view of the case, and with prosecution counsel. The team would have very much liked to hear the views of the trial judge, but she considered that it would not be appropriate to comment on a case she had heard once it had been concluded, and otherwise than in open court. From these meetings, the team were able to identify what appeared to be the key issues in the case and focus their work upon them.

1.13 The next step was to read the papers in the case comprising the full CPS file, the witness statements and exhibits and other case documents, the various Statements of Evidence and Case Statements, together with the full transcript of the trial which had been recorded by Livenote.

1.14 Formal interviews were conducted with the officer in the case, DCI Ashley Croft, with the four different CPS lawyers who had conduct of it between 1997 and 2005, and with staff who supported them.

1.15 The team also formally interviewed the senior lawyers responsible for the case, up to the level of the DPP, and the three counsel who appeared on behalf of the prosecution. In addition we received evidence and assistance from lawyers within CPS Central Confiscation Unit, and from Kennedy Talbot, counsel who was instructed in relation to restraint and confiscation.

1.16 The team conducted individual interviews with 11 jurors in the case and a group interview with eight of them. We were assisted in this task by Professor Sally Lloyd-Bostock and Dr Cheryl Thomas of Birmingham University, who have conducted previous research into juries. By proceeding in this way, we were able to obtain the benefit of their expertise, and at the same time ensure a proper element of distance between the jurors and the Inspectorate which, despite its independent status, some might view as closely linked to the prosecuting authority. The jury provided a very important perspective on both the presentation of the prosecution case and the trial process as a whole. We were able to assess the extent to which they had successfully assimilated the evidence and identified the key issues. The accounts of their experiences confirm the extent of the burdens placed upon them, and will inform work being undertaken by the DCA in considering what additional support can be given to jurors in long cases.

1.17 The interviews with senior lawyers in the CPS focused not only on the handling of the Jubilee Line case but also on arrangements for handling cases of alleged fraud generally, and their supervision. The Chief Crown Prosecutor for CPS London outlined the proposals for the creation of a Fraud Prosecution Service within CPS London, to assume responsibility for fraud work previously handled within the Casework Directorate (as well as CPS London's fraud work). This was updated as work progressed.

1.18 Finally, we have supplemented these sources of evidence by drawing on material contained in previous reviews, in particular the Review of the Crown Prosecution Service by the Rt. Hon. Sir Iain Glidewell which was published in June 1998 and the 1999 report by His Honour Gerald Butler QC *Inquiry into the Crown Prosecution Service Decision-Making in relation to Deaths in Custody and Related Matters*.

1.19 A list of those who assisted the review is at Annex 4.

Summary of main findings

1.20 The size and nature of the case was not such as to make it intrinsically unmanageable before a jury. The fundamental reason the trial had to be terminated was because it had gone on too long. The decision to end the case was inevitable and was correct in the light of the authorities. Their application to the circumstances prevailing in March 2005 suggested that the point had well been reached when no jury could be regarded as having their own sufficient independent recollection, so as to be able fairly to assess contentious evidence that had been given as long ago as a year before, or in some cases 18 months before. (Whether this particular jury could have performed those tasks is a different question which we address in the body of the report.) Our task in the light of this conclusion was to identify the most important factors that had contributed to the length of the trial.

1.21 The length of the trial was due to a number of factors, some avoidable, others not. The three most significant factors were:

- the decision by the prosecution to include as count 2 in the indictment the alleged "variation of claims" conspiracy comprising all defendants except Paul Maw and Paul Fisher;

- the slow and disjointed nature of the court proceedings, which meant that it took much longer to get through the evidence with the jury than is either usual or desirable; and

- the illness of the defendant Mr Skinner, and the failure to resolve at an early date its effect on the progress of the trial.

1.22 One or even two of these factors might not have been sufficient to cause the collapse of the trial: it was the combination of them that was fatal. Hence it should certainly *not* be concluded that the police and the prosecution were solely responsible for the collapse of the case.

1.23 Factors which had contributed to the slow and disjointed nature of the proceedings included lengthy breaks for holidays, illness, the grant of paternity leave, late disclosure of documents and legal arguments. The lack of clarity as to what the prosecution had to prove in order to substantiate count 2 contributed to the last two of these.

1.24 The position was exacerbated by the apparent lack of effective oversight or supervision of the case by senior managers within the CPS. They appear to me to have had no significant role in determining the strategic approach to the case. There were no effective systems in place to alert them to the increasing length of the case and developing difficulties. There was little real awareness on the part of senior managers until the decision had to be made to end the case. This stemmed substantially from the culture which prevailed within Casework Directorate at the time and which flowed in part from the manner in which certain recommendations of the Butler Report, which had been accepted by Ministers, were being interpreted at the time it was published in 1999. The disadvantages of the approach which had prevailed and to some extent been re-inforced post-Butler became increasingly apparent and were the subject of discussions between the Attorney General and the then DPP in 2002 and early 2003. This reflected the view of the former that the experience of senior lawyers should be brought to bear more effectively on the more difficult and complex cases the Service handled.

1.25 Much of the pre-existing good practice identified in the Lord Chief Justice's Protocol of 22 March 2005 was not observed. In particular, the trial developed in relation to count 2 in such a manner that the prosecution and defence were effectively fighting two different battles on two different battlefields. The way that the case was investigated and the way the case was presented were matters for the police and the prosecution respectively, and these, in turn, strongly influenced the way it was defended. In addition to reading the full transcript of the trial, the review team interviewed the police,

the prosecution and the defence, and also the jurors. I have consequently felt no inhibitions in commenting on the role or lack of it of all such parties in relation to the collapse of the case, and in coming to the conclusions that I have. But the way that the trial was managed, both in the preparatory phase, and after the jury was sworn, was not the responsibility of the prosecution. Trial management may have played a part in what happened to this case, but it was outside the remit of the review. Convention compelled the trial judge to decline to be interviewed or to participate and, accordingly, we do not know her views on the matter. In such circumstances it would be entirely inappropriate for me to comment on aspects of judicial trial management, even though I accept their relevance. The report's silence on these matters is therefore entirely neutral.

1.26 At many stages of the case the presentation of evidence was interrupted for legal argument about admissibility, substantive law and procedural matters, at the behest of the defence. We did consider carefully the way in which we should explore these matters but were mindful that our task was limited to establishing why the proceedings were terminated inconclusively, and what steps might be necessary to prevent a recurrence. It is apparent from our findings set out above that the most significant factors flowed from the way in which the case was investigated and prosecuted. That of itself left the defence little choice as to its strategy in defending count 2 other than to adopt the approach they in fact adopted. It may be that there were aspects of individual defence cases that could have been handled differently and perhaps more expeditiously. But our terms of reference did not make it appropriate to examine matters which did not appear to have contributed significantly to the outcome. Moreover, we are conscious that the duties of the defence are different to those of the prosecution. We comment further on the role of the defence at 11.90.

1.27 In order to assist readers, I summarise more fully our conclusions in relation to the three most significant factors identified above as follows:

1.28 **The decision to include count 2.** (Conspiracy to defraud LUL.) The essence of the Crown's case was that the defendants had conspired together to obtain confidential claims assessments and other commercially sensitive information from LUL and use it to advance the commercial interests of their client contractors and/or those of the claims consultancy, RWS Project Services Limited (RWS), at the expense of the commercial interests of LUL.

1.29 From an early stage in the investigation, the British Transport Police (BTP) took an important strategic decision: their investigation of this part of the case would not seek to establish whether false and dishonest claims had actually been made and paid, and thus whether LUL had in fact suffered loss. Instead, they sought evidence to establish that wrongful possession by the defendants of the confidential claims assessments created a risk that the economic interests of LUL would be damaged. For this approach they relied on their understanding of cases such as *R v. Allsop*[2] and *Welham v. DPP*[3]. This strategy was justified by their wish to avoid getting "bogged down" in

[2] *R v Allsop* 64 Cr. App. R. 29

[3] *Welham v DPP* (sub nom Welham (Robert John)) [1961] A.C. 103

examining a very large volume of claims documentation. At the same time, and for similar reasons, the BTP was reluctant, despite early advice from the CPS, to engage the services of any independent quantity surveyor who could assist them with expertise relating to the claims process. They wished to await the advice of counsel, who in the event was to agree with them that the prosecution were already calling as witnesses employees of LUL who they considered to have sufficient expertise to deal with the risk of loss posed by the defendants' possession of the LUL documentation. At trial, however, the shortcomings of this approach were revealed.

1.30 There were different views within the CPS as to the viability of the proposed conspiracy to defraud. Counsel, although somewhat ambivalent, included it. But count 2 lacked precision as to what was alleged and, as the case progressed, there were a number of changes in the way the Crown stated its position, in particular on what they accepted that they had to prove. At some stages the formulation adopted seemed to go beyond the ambit of the existing authorities on the scope of conspiracy to defraud, particularly when it was suggested that the identification by means of a confidential document of a legitimate claim previously overlooked could amount to the offence. Most importantly, at no point did the Crown attempt to prove that any particular confidential document had been actually used by the defendants in any particular way: their case was that the possession of these documents, and all the surrounding circumstances, raised an inference that the defendants intended to use them to the prejudice of LUL. However, it should have been foreseeable that the defence would seek to refute that inference; and that this was likely to involve exploring both actual usage for the particular purpose, and the extent to which the documents were capable of being so used, having regard to the provenance of the information contained in them and the systems which operated for assessing and validating claims.

1.31 The lack of particularisation, especially the decision not to identify any documents actually used or any claims actually affected, was a major factor in lengthening the trial. The defence felt constrained, after gaining access to a large body of material relating to the contracts still in the possession of LUL, to embark on the inevitably protracted and repetitive exercise at trial of seeking to prove a negative, in other words, that the documents had not been used, and moreover that in many cases they were incapable of the kind of use suggested.

1.32 The result was that the evidence dealing with count 2 was spread over some ten months. Had it not been included, the prosecution case would have been completed during October 2003 rather than August 2004, and in those circumstances the scope for other factors to have affected the trial would have been significantly less. Moreover, it did not add materially to the overall criminality, particularly when one takes account of the concessions the prosecution were forced to make in the course of the evidence.

1.33 Whatever view is taken of the police understanding of what had to be proved, the Crown did arrive at a formulation of their case that was a conspiracy to defraud known to the law, within the principles of risk of economic loss laid down in the case of *Allsop*, and upon which the trial judge ruled that there was a case to answer. That case was heavily reliant on inference. The real difficulty, however, was that the prosecution of count 2 had been embarked upon in ignorance of the surrounding documentation that might or might not have demonstrated that the LUL documents in possession of RWS had actually been used in identifying or enhancing any particular claim. When this documentation was examined in detail with witnesses during the trial itself no such evidence emerged. On the contrary: in many instances it could be shown that the LUL documents could not have been of any assistance in the identification or enhancement of claims. Thus, at the end of their case, the prosecution had to rely entirely on a chain of inference in relation to a number of allegedly suspect claims that had themselves been considerably reduced in number during the course of the evidence. Whether or not the jury should or would have drawn the inferences contended for is not something on which it would be appropriate to express any view.

1.34 **The slow and disjointed nature of the proceedings.** The transcript of the trial shows a rate of progress through evidence which is strikingly slow even by the standard of other fraud trials. In part this was the result of the prolonged examination of repetitive documents, and the consequence that witnesses had to be given the documents, in advance of their evidence[4], to examine them outside court; but in part also it was because the case from a quite early stage lost momentum and itself became "bogged down".

1.35 These and other factors meant that the time spent sitting with the jury was greatly reduced. Thus, for example, in one month of sitting (January 2004) the jury sat for 15 of the available 18 days, but only for an average of less than one hour and 55 minutes out of an available four and a half hours. There were also frequent interruptions: some caused by legal argument arising out of the nature of the evidence; some by illness of jurors and others, including members of jurors' families; holidays; paternity leave; and numerous other reasons. These events conspired so that in some months, for example, December 2003 and April and July 2004, very little evidence was heard at all. Between 30 September 2003 and 16 August 2004 there were 80 days when the court did not sit for various reasons; and there were further holiday breaks totalling 28 days. These interruptions exceeded the number of days when evidence was called.

1.36 Some of these delays and interruptions were unforeseeable or at least unavoidable, but there was a cumulative effect and the overall result was a steady increase in inertia - and of course the inexorable lengthening of the trial. One of the lessons to be learnt from the case is that keeping the momentum of the proceedings going is sometimes difficult but always

[4] These were documents which were eventually accepted as relevant, but which had not been examined as part of the investigation and only emerged as part of the material made available by LUL. Consequently, prosecution witnesses who were to be asked to comment on them were unsighted.

essential. The jurors themselves were subsequently to comment on the need for a more disciplined approach towards prompt and regular attendance - including by some of their own number.

1.37 **The illness of a defendant**. This is something that occasionally happens in a criminal trial and requires sensitive but firm handling, particularly where it is of a chronic kind and not such as to preclude completely that defendant's continued presence in the trial. The problem which arises from time to time in lengthy trials (including several instances in high profile fraud cases) relates to the defendant who exhibits symptoms of a serious condition (whether physiological or mental) which, whilst being genuine, are directly attributable to the defendant's circumstances and therefore likely to subside once that individual is no longer subject to proceedings. In a society where justice is tempered with mercy, the courts and prosecution will (rightly) be reluctant to expose the defendant to a potentially life threatening episode. However, the courts and prosecution will equally be mindful of the corrosive effects on public confidence of any handling which creates the perception that a wrongdoer may have avoided the consequences of his or her action, simply because of a transient condition which flowed directly from the fact of criminal proceedings.

1.38 It is inevitable that such dilemmas will continue to arise. There is a need to establish clear and well defined procedures for ensuring that full medical evidence is obtained at an early stage so that it can be carefully scrutinised by the court and all parties with a view to determining how to proceed. In this case, the roles became confused. Seven weeks after Mr Skinner's symptoms first appeared, the prosecution, with good intention, funded a consultant to examine and treat him (these arrangements are apparent from the transcript of the court hearing on 10 February 2005 and CPS documentation), and to provide periodic updates to the court. No criticism can be made of that consultant. However, the relationship between doctor and patient is not the same as that between a doctor and an individual whom he or she is examining on the instructions of a third party for the purpose of thoroughly testing fitness for a particular purpose. Both the prosecution itself and the court would have been better served if a medical practitioner had been appointed by the prosecution to test the position adversarially. There was no clear and recognised procedure for achieving this, and in any event we do not think this was a matter for the prosecution alone.

1.39 The illness of Mr Skinner, and the way it was dealt with, meant that in this case he gave only five days of evidence (in aggregate) over five months, while the proceedings remained otherwise in suspense. Jury illness, illness of counsel and other problems during this period produced further interruptions. The report deals in some detail with how this came about, and developed during the course of the trial, because there are important lessons to be learnt here too (or perhaps re-learnt).

The jury

1.40 No responsibility for the inconclusive outcome of the case can properly be attributed to the capabilities or conduct of the jury. Overall, they discharged their duties in a thorough and conscientious manner. Collectively, they appeared even at the time of our interview with them to have a good grip of the evidence and the issues, particularly allowing for the fact that many months had passed since they had last heard any evidence.

1.41 Seen from their perspective, it was a quite intolerable burden. They had accepted empanelment to try a case expected to last between six and 12 months, although the possibility of longer had been recognised. But they found themselves trapped in a case twice the length originally estimated and with little prospect of an end in sight. Because it is not permissible for jurors to know most of what occurs in the court room in their absence, the imposition on them was compounded by feelings of uncertainty and lack of control. Periods in court were interspersed with long periods when they were either not required at all, or, having attended, were confined to a jury room without knowing from one moment to the next how things might develop. They effectively lost the ability to plan their own lives and, as the trial progressed, its impact on their lives grew through the effect it began to have on their relationships with their employers and other aspects of life. For much of the trial, these difficulties were mitigated by some quite effective (if unconventional) liaison and assistance arrangements through the judicial assistant to the trial judge. There came a point when the judicial assistant was no longer involved and the relationship between the jury and the court authorities became more distant. Despite these factors, there remained a real commitment on the part of the jurors to see through their period of public service. To the extent that some of them may have become a little lax towards some aspects of their duties (for example, timekeeping and avoiding other commitments), that is probably explicable by reference to the pattern of the trial itself, where those who were punctilious in timely attendance so often found themselves simply kicking their heels.

1.42 In his prepared statement at the conclusion of the case, prosecution counsel referred to the possibility that a juror would have to be discharged, because of a dispute that had arisen relating to the responsibility for his pension arrangements in the context of such a lengthy absence, and that this had caused the juror to feel unable to continue. The legislative framework did not enable the DCA to intervene. Again, this was a consequence of the length of the proceedings, rather than a shortcoming on the part of the juror. His concern at the prospect of a substantial liability was understandable.

1.43 Despite the determination of the senior judiciary and the Government that the length of trials should in future be contained, there will undoubtedly be from time to time some trials of substantial length. There is a need in such cases for more structured support for jurors, to enable them to plan more effectively and minimise disruption to their personal and family lives; and to provide authoritative assistance in resolving difficulties directly attributable to the length of jury service. Without that, the problems which may flow from long

periods of jury service are greater than those which a citizen can properly be expected to bear simply as part of civic duty. The DCA has recognised the special problems associated with lengthy jury service, and is considering the scope for enhanced support arrangements. This review has collaborated with the DCA, by utilising the interviews with jurors to identify the scale and nature of the problems which they faced, the manner in which they impacted on them, and the sort of assistance they would have found helpful.

Changes to arrangements for handling fraud cases within the CPS

1.44 Throughout the relevant period, the CPS lacked a clear strategy for the handling of heavy fraud work. Its initial structure included a Fraud Investigation Group (FIG) which worked closely with the police, accountants and other experts to integrate more closely the investigation and prosecution of fraud allegations along the lines advocated in the Roskill Report. However, after the establishment of the Serious Fraud Office and a review in 1993 (after which the term Fraud Investigation Group ceased to be used), the unit had only a nominal existence. The multi-disciplinary approach lapsed and the handling of fraud cases was assimilated by 1997 into the rest of the Department's work, in what was by then known as Central Casework. All case lawyers were expected to be generalists. Inevitably, this reduced the amount of detailed consideration they could devote to complex fraud cases which, because of the large volume of papers they generate, are particularly time consuming. It would not be appropriate for this report to explore extensively the secondary factors underlying these causes. Suffice it to say, they seemed to flow in part from the philosophy of the Service at that time; and in part from a combination of resource constraints and focus on other priorities which were more at the front of the CPS programme.

1.45 Another consequence of these developments was a deterioration in clarity about responsibility for decision-making and therefore accountability. The prosecutors responsible for the Jubilee Line case were being managed by others who were not expected to have specialised expertise, for example in fraud. Since the prevailing culture was to devolve exclusively to the case lawyer the responsibility for decision-making in all but a tiny handful of especially sensitive cases, the result was the breakdown in the supervision of and accountability for decision-making in cases like this one. For example, in the days of FIG and for some time thereafter the notices under the Criminal Justice Act 1987 by which cases were transferred from the magistrates' courts to the Crown Court could only be signed by the Fraud Division Heads, who could be expected to satisfy themselves about the strength of the case and the appropriateness of the charges, and who would thereby be able to review the quality of the case lawyer's decision. After 1997 the authority to sign transfers was devolved to Grade 6 lawyers, some of whom would themselves be the case lawyer. These factors produced a situation whereby the more senior lawyers up to level of the Chief Crown Prosecutor Central Casework (latterly, the Director of Casework), and the DPP himself, had little involvement with or control over individual casework, to the point that there was no real awareness about this case until well after it had started to go badly wrong. Paragraph 1.24 records the origins of the approach to decision-making which flowed from acceptance of the recommendations of the Butler Report, and the subsequent revision of the approach in 2003.

1.46 This is not intended as a criticism of the case lawyers for their day-to-day handling of the numerous legal issues that arose in the run up to the trial and during the trial itself. Their work within the parameters that had already been established was competent and efficient, albeit for the most part re-active. However, the devolution of strategic responsibility to counsel at the outset of the case and the subsequent lack of engagement with, and responsibility for, this prosecution within the CPS at levels above that of case lawyer, are matters of real concern. The current DPP and Chief Executive share these concerns, which applied to all serious and complex casework. They are and have been working (since well before the collapse of the Jubilee Line trial) to reverse this culture, and to change fundamentally the way that the CPS prosecutes serious cases, with increased emphasis on both personal and corporate responsibility and accountability. The most tangible signs of this are:

(1) the replacement of Casework Directorate with three separate divisions: Counter-Terrorism; Organised Crime; and Special Crime; and

(2) the establishment throughout the CPS of a system of Case Management Panels to oversee all serious cases expected to last more than eight weeks.

1.47 Fraud cases previously handled in Casework Directorate will not be the responsibility of any of the three new Headquarters Divisions. Instead, a new unit (the Fraud Prosecution Service) is being established within CPS London but with a national remit. The DPP is committed to the unit being a strong specialist body which is properly resourced for its role and operates on a multi-disciplinary basis. However its planning, development and the transitional arrangements have not matched those of the three new Headquarters Divisions which were established by September 2005. Much work remains to be done and the Fraud Prosecution Service is unlikely in our view to be fully operational before the latter part of 2006.

1.48 Again, we welcome the development in principle. The transition will be an important one during which the CPS will need to recognise and carefully manage the risk to cases which previously were - or would - have been the responsibility of Casework Directorate, until the new unit is fully established and operational. Re-establishing the CPS capacity to handle substantial fraud cases will require significant investment and the case for that should be considered in the context of the wider Review of Fraud which is proceeding under the auspices of the Chief Secretary to the Treasury.

1.49 Understandably, at the time of its collapse, attention was mainly focused on the length and the unsatisfactory outcome of the trial itself. It should however be recognised that, for the most part, the decisions that determined the investigation and legal handling of the case were taken in the late 1990's and in 2000; to that extent, what went wrong was the working through of the consequences of earlier errors. By the start of the trial in 2003 the way that the prosecution would go was already determined.

Structure of the report

1.50 The trial in the Jubilee Line case was lengthy and complex, but it was only the culmination of an even lengthier process of investigation and preparation for trial that to a large extent determined the nature of the eventual proceedings in court. It was therefore vital to examine this earlier stage of the process, recognising always that the review's primary task was to identify and concentrate on the factors responsible for the eventual collapse of the trial. The resulting report takes an essentially narrative and chronological approach: this was the only way to bring out the important factors whilst doing justice to the context in which the decisions that shaped the trial came to be made. We set out in Chapter 2 the factual background, together with details of the key players, their roles, and the charges the defendants faced, together with their response to them. Chapter 3 provides some context about the problems associated with the handling of fraud cases, and the CPS approach to fraud. The remainder of the report is divided into the following chapters, each with a similar format which provides:

- a short overview;
- a narrative account of the relevant circumstances and events;
- a commentary; and
- our conclusions on the issues raised in that chapter.

Readers will be assisted by a Schedule of Key Events covering the whole of the investigation and prosecution including the trial and a Schedule of Court Sitting Days which can to be found at Annexes 5 and 6.

Chapter 4: From initial complaint to the launch of proceedings. It has long been recognised that in fraud cases the police investigation has a particularly determinative effect on the shape and length of the trial. In this chapter we examine the strategic direction of that investigation, and the advice which the police were given by the CPS and prosecuting counsel up to the point of charging.

Chapter 5: Disclosure and the evolution of the Crown's case. The pre-trial disclosure phase substantially delayed the trial and added greatly to its costs. During this phase, the Crown's case on its most serious allegation (count 2 of the indictment) underwent a number of significant changes.

Chapter 6: The lead up to the trial. From an early stage, the defence argued that the case would be unmanageable; and that count 2 as framed did not disclose an offence in law, was in any event insufficiently particular, rendered the trial unmanageable, and was an abuse of process. In this chapter we examine those arguments, the Crown's responses, and the judge's rulings.

Chapter 7: The trial part one: **the Crown's case**. Concentrating on count 2, this chapter examines and analyses the way that the case unfolded, the nature of cross-examination, the extent to which the prosecution witnesses supported the allegations, and the further changes that the formulation of the case underwent up until the close of the prosecution case in August 2004. We demonstrate in this chapter why it was that this part of the case took so long.

Chapter 8: The jury at this point in the trial. The case was eventually terminated because by the time the jurors would be retiring to consider their verdict, the point would have been reached where jurors in general are no longer deemed to be capable of the degree of personal recollection of the evidence required for them to return a verdict which will not only be just and fair, but be seen to be so. This chapter demonstrates the slow and disjointed pace of the proceedings in court, examines the burden placed on the jury by this very long trial, and assesses the case from their point of view.

Chapter 9: The trial part two: the defence case. This chapter describes how the case lost all momentum mainly as a result of the illness of a defendant giving evidence.

Chapter 10: The decision to end the case. We explain the process by which this decision was arrived at and examine the reasons for it.

Chapter 11: Drawing the threads together. We consider separately the roles of the police, the CPS, and prosecution counsel; and we draw out the lessons, by reference to our conclusions in relation to the different stages of the proceedings, that need to be learnt to prevent a repetition of this case.

Chapter 12: Recommendations. We comment on the action that has already been taken by the Lord Chief Justice and the DPP to address the special problems of heavy and complex cases and, in relation to the CPS, to strengthen the responsibility of senior lawyers and managers for them. We make our own specific recommendations, designed to implement in a practical and effective way the lessons that have been learned as a result of this trial. It should be acknowledged at the outset that many of the "lessons" of this case are far from new, and in many instances the solution is better adherence to existing good practice.

CHAPTER 2: FACTUAL BACKGROUND

2.1 In 1989 London Underground Limited (LUL) took the decision to extend the Jubilee Line from Central London to Waterloo, east along the south bank of the Thames to Greenwich, and then north to Canary Wharf, Canning Town and Stratford. The project became known as the Jubilee Line Extension Project (JLEP). It was a very large civil engineering project which involved upgrading and modernising the existing line, adding ten miles of new track and constructing 11 new stations.

2.2 The many contracts for work on the project were put out to tender. There were a number of stages to this process, the object of which was to ensure that, on the one hand, each potential contractor knew the exact detail of the task it was being invited to undertake and, on the other, that LUL could be satisfied that the chosen contractor was up to the task technically and financially - and would complete it at a competitive price that represented the best available value for money. In addition to the civil engineering and building work there were 12 electrical and mechanical (E & M) contracts. These covered both the design and construction of everything from ventilation and flood gates, platform edge doors, escalators and lifts, to signalling and ticketing systems. It was with these E & M contracts that the criminal proceedings were to be mainly concerned.

2.3 The contracts were based on the Institute of Chartered Engineers (ICE) standard terms and conditions, a lengthy and detailed document familiar to all who work in civil engineering, but less familiar to those engaged in electrical and mechanical work. The contract defined the work to be undertaken, the agreed price and the time in which it was to be completed. It also contained provisions under which the contractor might claim payment for work undertaken at the request of the employer that was additional to the contract; or for an extension of the time limits when, through no fault of their own, the contractor could not complete the work according to the agreed timetable. As with the tendering, very large sums of money were involved in the success or failure of such claims, and the preparation and negotiation of the claims themselves, together with the marshalling of the evidence to support them, were complex tasks.

2.4 Tenders for work on the project were submitted during 1992 and contracts were awarded in November of that year. Work on the project began in October 1993.

Defendants, key players and companies

2.5 Much of the management of the contracts - on behalf both of the contractors and their client, LUL - was carried out by specialist advisers, principally quantity surveyors: in some cases individuals employed on short-term contracts, others self-employed and working through specialist agencies. Two such agencies were to feature prominently in the criminal case, RWS Project Services Limited (RWS), and George Skinner and Associates (GS&A). RWS was owned by the defendants Stephen Rayment and Mark Woodward-Smith;

it supplied agency staff to, and undertook claims work for, a number of contractors engaged on the JLEP. GS&A supplied specialist staff to LUL and at the relevant time Mark Skinner, who was a partner in the firm, was also working for LUL through GS&A as Claims Manager.

2.6 Of the other defendants, Paul Maw worked as a Costs and Estimates Manager at LUL until May 1992. Shortly thereafter he went to work for RWS, and was employed by them for a period of four months until September 1992. This coincided with the period in which the contracts were being negotiated through the tendering process referred to above.

2.7 Paul Fisher, another defendant, was working for LUL on a short-term contract as a Costs Assessor. His particular area of responsibility was in tracking and reporting the fluctuations in tenderers' prices that emerged during the "question and answer" stage of the tendering process.

2.8 Graham Scard was working as Costs Control Manager for the JLEP, and also as secretary to the Project Executive Group ("PEG") committee; Anthony Wootton was working on a self-employed basis through GS&A as a Commercial Manager for LUL.

2.9 All of the defendants, save for Mr Skinner, were professionally qualified either as Associates or Fellows of the Royal Institution of Chartered Surveyors. Most of the prosecution witnesses were also surveyors or civil engineers.

2.10 A number of well-known companies featured in the case by reason of their association with RWS, although there was no suggestion from either prosecution or defence that they or any of their employees had acted dishonestly or improperly. Drake and Scull Plc (D&S) were advised by RWS during the tendering process and were awarded contracts 205 (station and tunnel ventilation) and 206 (station and tunnel services); WES Electrical Services Limited (WES) submitted a tender for contract 205 but were unsuccessful. RWS acted as claims consultants to a number of contractors, notably, Mowlem Civil Engineering Plc (Mowlem) which undertook the construction of the line between Canning Town and Stratford; and Westinghouse Signals Limited (WSL) who undertook the design and construction of the signalling system employed on the line.

The indictment, the defence position and the outcomes

2.11 At the start of the trial the indictment contained the following counts:

2.12 **Count 1** alleged conspiracy to defraud against Messrs Rayment, Woodward-Smith, Maw and Fisher.

2.13 Mr Maw pleaded guilty to the offence on a limited basis accepted by the Crown. He had been employed by RWS for a short period and had received no reward for his involvement in the conspiracy. He was sentenced in September 2005 to six months imprisonment suspended for one year. Mr Woodward-Smith was acquitted at the judge's direction at the close of the

Crown's case. He had been in Zambia for most of the period in which the tendering process was alleged to have been corrupted and there was no direct evidence that he was involved.

2.14 In essence the Crown alleged that Messrs Rayment and Woodward-Smith gained access, via Messrs Maw and Fisher, to inside information relating to the tenders submitted in respect of contracts 205 (station and tunnel ventilation) and 206 (station and tunnel services); and that they used this information to the advantage of their clients, WSL, in respect of contract 205; and D&S in respect of contracts 205 and 206.

2.15 In relation to contract 206 the prosecution alleged that the information enabled D&S to increase their bid at what was known as the "question and answer" stage of the tendering process, whilst remaining below the other tenders and within the expectations of the JLEP. As a result, the company was successful in winning contract 206 at a price, the Crown alleged, that did not represent the lowest bid that the tendering process might otherwise have procured.

2.16 The prosecution also suggested that this information was used to assist WES in their bid for contract 205. In the event, that contract was first awarded to M & F Kent Limited but as a result of that company's financial difficulties, it was, in late 1993, awarded to D&S.

2.17 **Count 2** also alleged a conspiracy to defraud. The prosecution alleged here that Messrs Rayment and Woodward-Smith conspired to gain access, through Mr Scard on the one hand, and through Mr Wootton via Mr Skinner on the other, to inside LUL information, with the intention of using it to identify, formulate and negotiate claims for those contractors on the JLEP who engaged the services of RWS. The information alleged to have been obtained through Mr Scard comprised management accounting records known as Financial and Contractual (F&C) reports, in which provisions for claims were recorded; that alleged to have been obtained from Messrs Wootton and Skinner concerned a claim on behalf of WSL arising from contract 202. It was the prosecution case that the information obtained had actually been used by RWS to its advantage, and to LUL's detriment. The prosecution was however unable to identify which, if any, of the F&Cs had actually been used by the alleged conspirators and could not identify which, if any, claims had been influenced.

2.18 **Counts 3 to 6** of the indictment alleged conspiracy to corrupt. Count 3 alleged a single conspiracy involving Mr Rayment and Mr Woodward-Smith to corrupt Messrs Skinner, Scard and Wootton. Counts 4, 5 and 6 alleged an offence against Mr Skinner, Mr Scard and Mr Wootton respectively, each count containing an allegation that they conspired with Messrs Rayment and Woodward-Smith.

2.19 Essentially, it was alleged against Mr Scard that he had received cash payments and hospitality in return for disclosing F&C reports to RWS; Messrs Skinner and Wootton were alleged to have received corrupt payments in respect of assistance given to RWS in obtaining help and information relating to WSL.

2.20 The indictment had originally included two additional counts. The first of these was an allegation of conspiracy to defraud against Messrs Rayment, Woodward-Smith and one Thomas Butler, which alleged that RWS had inflated bills submitted to its own clients; the second, against Messrs Rayment and Woodward-Smith, was a charge of fraudulent trading based on the matters relied upon in support of all the other charges. These counts, and the case against Mr Butler, were severed at an early stage in the proceedings. There was also a separate indictment alleging money-laundering offences against Mr Rayment and three other individuals, Messrs Axelson, Williams and Mills.

2.21 At the close of the case the prosecution offered no evidence on all the charges remaining against the defendants, including that against Mr Butler and those against Messrs Axelson, Williams and Mills.

2.22 It must be emphasised that with the exception of Mr Maw's limited plea (as explained in paragraph 2.13), each of the defendants denied and challenged every part of these charges, including all of those charges which were severed or which formed part of the separate indictment as described in paragraph 2.20.

2.23 Mr Rayment denied any involvement in any conspiracy to defraud LUL. He challenged the prosecution assertion that the tendering process was capable of being manipulated and that any confidential information regarding it had been passed to or received by him. He challenged also the prosecution assertion that information alleged to have been released to RWS in order to assist the making of claims was confidential or capable of causing LUL harm, and that the only inference to be drawn from the possession of this information was that it had been obtained to assist in the formulation of claims. He said that RWS possession of the LUL documents was neither dishonest nor improper. Indeed, an alternative use was apparent from the prosecution evidence, namely to assist in the marketing of RWS's services to prospective clients. Mr Rayment also denied the corruption allegations, particularly the suggestion that he had given improper inducement or payment to anyone as alleged by the witness Peter Elliott-Hughes. He left to work in Hong Kong in 1994 and was unaware of any such alleged payments.

2.24 Mr Woodward-Smith denied there was a conspiracy as alleged in count 1 and further denied that he had received any information as alleged (indeed he was acquitted of this allegation at the close of the prosecution case there being, in the opinion of the judge, insufficient evidence to leave the charge to be decided by the jury). Mr Woodward-Smith denied that there was any conspiracy as alleged in count 2. Furthermore he challenged the assertion that the only possible motive for the possession of F&C reports was to assist

with claims. He was not involved in the preparation of claims made by clients of RWS and he also maintained that the information in these documents could not have been used to enhance such claims, the presentation of which relied upon the preparation of detailed evidence. He denied being party to any conspiracy to corrupt LUL staff, or to the making of any corrupt or improper payments or inducements to LUL staff, or that he received any documents that were capable of prejudicing LUL in any way at all. On the contrary, a case was advanced on his behalf that it was not his intention to weaken LUL's negotiating position vis a vis RWS or any contractor represented by RWS. He also said that RWS possession of the LUL documents was neither dishonest nor improper.

2.25 Mr Fisher also denied the allegation in count 1, which was the only charge which related to him. He denied passing any information improperly. He further denied intending any economic detriment to LUL or that such detriment could have occurred on the facts alleged by the prosecution.

2.26 Mr Scard denied any involvement in count 1; he denied supplying any intelligence to RWS or indeed to anyone and he challenged whether any of the F&Cs relied on by the prosecution were in fact confidential or sensitive, or useful to RWS to advance any of their, or their clients', interests. He denied receiving any bribe.

2.27 Mr Skinner denied being a party to any conspiracy to defraud; he denied passing any confidential information to RWS, let alone dishonestly or improperly, and he denied accepting any unlawful payment from RWS. He maintained these denials in the course of the evidence that he gave but was unable to complete.

2.28 Mr Wootton denied any part in any conspiracy to defraud LUL and denied knowledge that there was such a conspiracy. He further denied supplying confidential information to RWS, let alone dishonestly or improperly, or receiving any unlawful payment whatsoever.

2.29 None of the other contractors who featured in the trial and whose names appear in this report were alleged to have had any involvement in any dishonest or fraudulent practice. Indeed the prosecution effectively accepted that they had not had any such involvement, by relying in many instances on evidence of staff who had been employed by such contractors.

The length of the case

2.30 The major part of the case was devoted to count 2 – the variation of claims allegation - and entailed a prolonged and minute examination of the costs control processes employed by LUL, the paperwork that it generated, and the status of the information contained in that paperwork. Although a number of prominent companies on whose behalf RWS had acted featured in the evidence, the Crown did not suggest that these contractors themselves were involved in the fraud and corruption alleged, or in any dishonest conduct. This was the case even though the contractors would necessarily have been

the major beneficiaries of any success which, using the confidential information they were said to have obtained corruptly, the defendants were said to have achieved in negotiating claims with LUL. The way the Crown put its case was not, as one might think, that LUL had lost money to which they were entitled, or that the contractors had gained money to which they were not entitled. What the Crown alleged was that, armed with the information corruptly supplied to them, RWS had secured a dishonest advantage and been generally enabled to excel as claims consultants. Thus they had increased their turnover during the period of the JLEP from a modest level to that of a multi-million pound concern. The dishonest advantage allegedly given to RWS by access to inside information had, the Crown asserted, created a *risk* of economic loss to LUL; and that, according to the prosecution, was all they needed to demonstrate to prove the defendants guilty of a conspiracy to defraud.

2.31 We draw attention to count 2 at the outset for the following reason. The eventual decision to abandon the trial was closely related to the length of time it had by then taken; and what had taken most time was the evidence on count 2. The prosecution began to call its evidence on 2 July 2003, and it called first the witnesses who dealt with count 1. Despite the loss of 18 days sitting for various reasons, various interruptions, and a further holiday period of 15 days, the evidence on this count was largely finished by the end of September. In round terms this was within 27 days (60 less 33), or five and a half weeks of jury time, and notwithstanding a degree of repetitiveness in the prosecution evidence. Nevertheless, by the standard of long fraud trials it was completed relatively speedily. The evidence on the corruption counts was mostly agreed (though not of course the inferences to be drawn from it), and the witnesses who had to be called added only a handful of days.

2.32 The witnesses who dealt exclusively with count 2 began to be called on 30 September 2003, and the prosecution did not close its case until 16 August 2004. During this time there were 80 days on which the court did not sit for various reasons, and there were further holiday breaks at Christmas, at Easter and in the summer, totalling 28 days. The calling of the evidence itself took 90 days, or 18 weeks.

2.33 But in addition there were numerous days of non-sitting caused by the nature of the evidence itself, for example because a witness needed time to read documents which the defence wanted to ask him questions about; or because the existence of further relevant documents had unexpectedly come to light and they needed to be searched for - or, once found, to be examined by all parties, and further disclosure considered; or for legal argument of one kind or another. There were occasional such interruptions on count 1 but to nothing like the same extent – a mere four days. On count 2 they added another 33 days or nearly seven weeks to the total, not including the numerous part days on which some evidence was heard but when the jury was also out of court the rest of the day for one of the reasons referred to.

2.34 In short, it was count 2 that caused the problems in this case. Had it not been included, and the prosecution case had therefore been completed in October 2003 instead of August 2004, then whatever dilemmas the court might have subsequently been faced with due to the illness of Mr Skinner, it is most unlikely that the whole trial would have had to be abandoned.

The costs of the case

2.35 Naturally, a trial of such length, particularly as large numbers of documents were involved, was extremely expensive. Five of the defendants were legally aided, and therefore their representation by two counsel, each instructed by a different firm of solicitors, was publicly funded throughout. Although the two principal defendants were paying privately for their representation, because of the eventual outcome their costs too will be met in full from public funds. Defence costs make up the largest share of the total bill, amounting to some 22 million pounds; a more precise figure cannot be given as some costs have not been finally taxed and agreed.

2.36 There were of course substantial other costs, all funded ultimately by the taxpayer. Police work investigating the case, and then supporting the prosecution, cost some £1,455,000. Fees paid to the three prosecution counsel added about £1,635,000. In addition, there were the salary costs and other expenses incurred by the CPS, although this figure is not precisely quantifiable. Likewise, whilst some elements of the costs incurred by the Court Service are known (such as payments to jurors of £327,000, and defendants' travelling expenses of £39,535), it is impossible to give a precise figure for the costs involved in running a court at the Central Criminal Court for 21 months (which would include the salary of judge and court staff). Suffice it to say, the total bill to the taxpayer for the investigation and the prosecution of the Jubilee Line case will be in excess of 25 million pounds.

2.37 It will be apparent from the above that some imbalance existed between the resources available to the defence and those available to the Crown, and this may have impaired the effectiveness of the Crown at two important stages, firstly during the disclosure stage and secondly in the few months immediately preceding the trial. During disclosure the Crown did not have available manpower equivalent to that of defence solicitors and were thus constrained in their examination of the very large quantity of third party material which was available at LUL. Secondly, there was a change of case lawyer at the CPS some three months before the trial began, and his pre-existing caseload was such as to make it difficult if not impossible for him to discharge the full range of his responsibilities in relation to this case.

CHAPTER 3: FRAUD: THE WIDER CONTEXT

Overview: the circumstances of the Jubilee Line case must be viewed in the context of the extensive consideration that the handling of fraud cases has already received over the last two decades, together with the approach that the CPS has adopted to allegations of serious and complex fraud.

3.1 Ever since the financial scandals of the 1970's and 1980's it has been recognised that charges of heavy and complex fraud present a particular problem for the criminal courts. Such cases are tried, as are all other offences for which lengthy prison sentences may be imposed on conviction, by a judge and jury in the Crown Court. The fraud alleged may be elaborate, extend over a long period and over a multiplicity of transactions, involve many witnesses, and generate a large body of documents of varying degrees of significance. Though it has often been said that the overall issue for the jury is frequently, if not always, the question of dishonesty, the resolution of that question may not be possible without examination of a large number of subsidiary factual issues. A three way tension exists between the prosecution's legitimate wish to demonstrate the full criminality alleged in the case, the equally legitimate duty of the defence to test the prosecution evidence, and the manageability of the resulting trial. Upon the trial judge devolves the sometimes difficult task of ensuring that justice is done to both sides, while at the same time the case is kept within such limits as will enable the jury to follow, to assimilate, and eventually to deliver verdicts which reflect the evidence they have heard.

3.2 The problem was extensively considered by the Fraud Trials Committee chaired by Lord Roskill whose report was published in 1986. Following that report, it was recognised that fraud cases demanded a special approach by the court. Such cases are now subject to a regime of preparatory hearings, designed to focus them on the real issues that exist between prosecution and defence, and secure the greatest degree of agreement possible as to the evidence that needs to be called and which is truly determinative of those issues. A series of high profile fraud cases, which came before the courts in the 1990's, showed that, although proper use of the preparatory hearing regime and firm case management can substantially improve the position, the sheer size and complexity of cases produced by the modern economic and commercial environment continues to test, often to breaking point, the criminal justice system. Even where prosecutions are brought to a satisfactory conclusion, the cost to the public purse is often very high and proceedings very lengthy. Recently, and in fact on the very same day as the collapse of the Jubilee Line case, the Lord Chief Justice issued a protocol which aims to keep heavy fraud and other complex criminal cases more strictly within bounds, and highlights the existing good practice that has evolved to do so.

3.3 The Roskill Report made a number of recommendations including the setting up of what became the Serious Fraud Office (SFO), established in 1987. It advocated a multi-disciplinary approach to fraud, where police investigators worked together with accountants, and other experts as necessary, under the guidance of the legal team who would eventually present any case, so that the investigation was from the outset focused on developing a manageable case. Frequently, this involves stripping a case down to its elements, and concentrating on the core of the fraudulent activity, recognising that prosecuting every aspect of, and all participants in, an alleged fraud could render the subsequent proceedings too lengthy and unwieldy. The SFO has thus evolved its own approach to fraud cases, the most distinctive elements being the integration of the investigation with the prosecution, and the working together of the police, lawyers and accountants. Counsel is usually instructed close to the outset of the investigation.

3.4 But because the SFO chooses the cases that it takes on, this distinctive approach is not applied to all fraud cases which might be called serious and/or complex. Those cases they do not take on are still prosecuted by the CPS. The Jubilee Line case was one of those cases. There are two routes by which a case can come to be dealt with by the SFO, either by a direct approach from a police force, or by a referral from the CPS in accordance with joint arrangements between the CPS and SFO. The case was not formally offered to the SFO by the British Transport Police; (though we deal with its inclusion on a list of CPS cases considered at a committee meeting in 1997 at paragraph 4.7). This case was handled throughout by the Central Casework unit of the CPS, which subsequently became Casework Directorate based at CPS Headquarters in London.

The handling of fraud cases within the CPS

3.5 When the CPS was set up in 1986 the DPP's office had recently created a new unit called the Fraud Investigation Group (FIG). FIG was developing a multi-disciplinary approach, working more closely with the police and employing accountants as well as lawyers: the idea was to integrate more closely the investigation and prosecution of fraud. On its formation, the CPS took FIG over as part of its Headquarters Casework Division. However, within two years, with the setting up of the SFO in 1988, much of its work including the biggest and most serious cases, and some of its staff, was transferred to the new Department.

3.6 It is impossible to avoid the conclusion that thereafter the CPS was without any clear strategy for the handling of heavy fraud work. Successive internal reviews brought changes of structure but none survived for even the length of a typical fraud case. A number of experienced fraud lawyers transferred to the SFO on its inception. During the 1990's more left, some to the SFO and other Government Departments, others to private practice. There was a dedicated Fraud Division within Central Casework until 1997 (although the use of the name FIG had ceased in 1993), but expertise in fraud at the level of senior management became rare, and after 1997 was not required. There followed from that a certain vacuum of interest and enthusiasm for such cases.

Furthermore, though FIG remained nominally in existence until then, its guiding principle of integration between investigation and prosecution was thought in some quarters to be at odds with one of the founding principles of the CPS – the separation of responsibility for investigation and prosecution. Consequently, insofar as it had survived the setting up of the CPS, the multi-disciplinary approach lapsed in 1993, and the handling of fraud cases was assimilated to the handling of all other cases in 1997.

3.7 Two important consequences of this were on the one hand a steady withdrawal from viewing fraud as a specialism requiring dedicated resources and expertise, and on the other a deterioration in the supervision of decision-making and, therefore, accountability. Both of these consequences were clearly demonstrated in the way that the CPS handled the Jubilee Line case and, as they are also matters of importance for the way that fraud is handled by the CPS in the future, we need to explain how this situation came about in a little more detail.

3.8 In January 1997, shortly before the British Transport Police approached the CPS for advice on the Jubilee Line case, there was a significant re-organisation of Central Casework. As part of a policy of aligning their structure to that of the CPS's Areas, specialist teams, with the exception of Central Confiscation Branch, ceased to exist. This included the Fraud Division, which until that time had been headed by an Assistant Chief Crown Prosecutor. They all became generalist teams, albeit each team included some lawyers with extensive fraud experience. Such lawyers were required to handle considerable general work in addition to the fraud work that was, naturally, for the main part assigned to them. The Glidewell Review found in February 1998 that Central Casework had 2,145 active cases of which 12% were fraud cases. However, as fraud work is complex and time-consuming it would have certainly accounted, if conscientiously carried out, for a larger proportion of staff working time. A tension therefore arose between the time that a lawyer was able to devote to an ongoing complex fraud case and the demands of other work. Signs of that tension were apparent throughout the handling of the Jubilee Line case.

3.9 The restructuring of Central Casework was accompanied by a flattening of the management structures. Although this change did not affect the seniority or experience of the case lawyers allocated to this particular case (three of whom had worked at FIG), it resulted in convoluted line management and reporting arrangements. In effect, neither the relevant Team Leaders nor the Branch Crown Prosecutors (BCPs) were responsible for supervising the two lawyers who handled the case for most of its duration (between 1999 and 2005), or reviewing the quality of their decisions. This was because these lawyers were senior to, or of the same grade as the Team Leaders and BCPs themselves, and were therefore being line managed not by them but at a Senior Civil Service (SCS) level.

3.10 Although the case lawyer was required to submit monthly case reports to the Team Leader/BCP, these varied in length and detail and were in any case not intended as a means of assessing the quality of decision-making. In order to compile an annual appraisal report the SCS line manager would theoretically need to see a case lawyer's review notes, but again this was not for the purpose of supervising the decision to prosecute in any particular case. In any event, the culture prevailed within Central Casework at this time that only the reviewing lawyer could take a decision to prosecute, as only the reviewing lawyer, it was reasoned, had read all the evidence. (We comment at Annex 7 on the origin of this approach which was to persist at least until the Attorney General's Written Answer to Parliament in 2003 referred to in paragraph 3.14.) Naturally this culture operated with particular force in relation to fraud cases, firstly because the papers would in most cases be very extensive, and secondly for the reason we have already touched on, that managers including senior managers would probably not have any specialised knowledge of or experience of fraud – as we found was the case here. We have commented elsewhere on the ending of the practice by which a lawyer senior to the case lawyer would sign transfer notices, and how after 1997 it was devolved to Grade 6 lawyers. The effect of all these factors was to devolve entirely on the case lawyer all responsibility for the case, and absolve senior management of any oversight of case handling or decision-making. The only evidence we saw that a managing lawyer had been involved in a decision about this case (before, that is, it began to collapse in 2004) was an endorsement on an early memo that a certain case lawyer's decision was "noted"; this was in relation to an early decision not to prosecute two individuals. In this case no review note was produced explaining and justifying the decision to prosecute those who were prosecuted, or not to prosecute others. From what we have said above, it is not surprising that the lack of such note was never noticed at a more senior level.

3.11 It is right to comment that, in addition to having substantial case loads and considerable other calls on their time and attention, case lawyers handling fraud had also to work within a distracting office environment that was not conducive to the calm assimilation of the complexity and detail typical of an average fraud case handled by Central Casework. (For the current position see Chapter 11.)

3.12 The overall effect of the trends we have identified was to reduce the quality of CPS scrutiny of fraud cases, and of their control of the strategic direction of them, including this one. The effect was aggravated by a lack of continuity when a number of different case lawyers were assigned to the case in the course of its life. Inevitably in these circumstances CPS control of the case was weakened and *de facto* it passed to counsel. Furthermore, among the consequences of the CPS retreat from the multi-disciplinary approach which was the inspiration of FIG, counsel was not involved in this case until the investigation was effectively complete. In a reversal of what should have been the situation, prosecuting counsel was thus faced with having to make the best of the way that the investigation had proceeded. As Roskill said:

"Unless advice of high quality is available from the outset of investigations of this type, the inquiries will be slowed up and valuable time may be wasted pursuing the wrong lines of enquiry. It is undesirable that the investigation should take one course and for that course to be found not to be the right one by counsel who is brought in to prosecute only at a much later stage, perhaps after the case is committed."

3.13 We develop this aspect of the contextual background more fully at Annex 7. It is apparent that the factors underlying the change of approach to fraud cases during the early and mid 1990's comprised a combination of the CPS philosophy towards its casework, which at that time sought as much standardisation of processes and structures as possible (leaving little room for specialist handling) and the resource constraints which then prevailed. Available resources were focussed on other priorities.

Recent developments

3.14 The cultural issues that we have identified around responsibility for decision-making were prevalent throughout Central Casework/Casework Directorate. The disadvantages of the approach which had prevailed and to some extent been re-inforced post-Butler became increasingly apparent and were the subject of discussions between the Attorney General and the then DPP in 2002 and early 2003. This reflected the view of the former that the experience of senior lawyers should be brought to bear more effectively on the more difficult and complex cases the Service handled.

The need for a new approach was signalled by the Attorney General in a Written Parliamentary Answer on 27 February 2003 when he said:

"With effect from today there will be a new approach to decision-making to assist the most senior and experienced lawyers in the CPS to make decisions in the most complex and serious cases. In future, where the case papers are particularly voluminous, the decision-maker may be assisted by another experienced lawyer who will provide the decision-maker with a detailed analysis of the case, drawing attention to the key issues on which the decision must depend. The decision-maker may rely on this analysis, together with the essential evidence in the case papers and supplemented by other such evidence as the decision-maker chooses to consider, in applying the tests set out in the code for crown prosecutors and making his decision.

This approach marks a change from the procedures put in place following the publication August 1999 of the report of His Honour Gerald Butler QC into CPS decision-making in relation to deaths in custody and related matters. The recommendations in that report referred for the need for the decision-maker to read "the whole of the

relevant documentation". The effect has been that the most senior lawyers in the CPS have been precluded by their other commitments from taking decisions in some of the service's most serious and important casework. The new approach will allow a more effective use of their time and will thus enable greater input by senior lawyers into the most critical casework decisions that the service faces."

3.15 The DPP has told us - and we accept – that, following his appointment in November 2003, he too had appreciated the continuing need to address these problems and he pointed to steps which were being worked up or in train well before the collapse of the Jubilee Line case. With the introduction of the Serious and Organised Crime Act the opportunity has been taken to re-organise. Casework Directorate has ceased to exist, and measures introduced to involve senior and supervisory lawyers more closely in decision-making in those cases handled by the new Headquarters specialist departments that have replaced Casework Directorate, but which do not include major fraud. (We discuss the separate arrangements for fraud at Chapter 11 paragraphs 20-24.) He sees this as part of a wholesale cultural change in accountability and responsibility for the most serious cases handled by the CPS. His office assisted the review by providing a summary of the steps taken within the three new divisions since they were formed in September 2005 to put in place systems and assurances in relation to case management and the quality of decision making, which we set out on the opposite page:

Case Management in the three Casework Divisions

The Organised Crime Division, Counter-Terrorism Division and Special Crime Division were formed in September 2005. One of the main preoccupations for the Divisional Heads has been to put in place systems and assurances in relation to case management and the quality of case decision-making.

Although monthly case reports had been previously used in Casework Directorate the use of this management tool had fallen into abeyance. The requirement for lawyers to complete monthly case reports on all their cases was quickly re-instituted and the case reports are much fuller and more detailed. It is now clear exactly what is happening in cases, the decisions/actions to be taken and what has been undertaken over the past month. These are regularly vetted both by the Divisional Heads and by the Unit Heads.

There was no equivalent to the Case Management Panels either at Director or Divisional Head level. These were implemented shortly after September 2005. The Divisional Panels are now held on a monthly basis with cases from all three Divisions coming before a panel comprising the three Heads of Division, the Business Manager and a representative from Business Development Directorate. The Case Management Panel does not wait for cases to be 'volunteered' but has a systematic approach to selecting which cases are to come before it.

Both Unit Heads and Divisional Heads are taking a more pro-active role in relation to cases within the Divisions. Divisional Heads have regular casework meetings and are frequently consulted in relation to complex and sensitive casework. They are involved in decision-making in appropriate cases.

The Divisional Heads are currently involved in developing a case management system. This has involved going to see external legal providers to compare how their case management systems work. Work is on-going in relation to a computerised case management system. In addition work has been commissioned across the three Divisions to look at a case quality assurance system which can be adopted by all three (although there may be some variances depending on the specialist nature of the cases concerned eg extradition).

3.16 In addition, and across the CPS, new mechanisms have been introduced whereby Chief Crown Prosecutors in local Areas must be consulted and become involved in all significant strategic decisions in serious and complex cases, especially those cases likely to result in trials lasting more than eight weeks. This was with the encouragement and full support of the Attorney General. The DPP himself will be personally involved in considering strategy for the lengthiest and most serious trials. In all these cases a stringent process of check and challenge will be applied to strategic decisions (for example the nature and number of charges), whether these decisions have been made by case lawyers or by case lawyers and counsel together; and both of whom can expect to have to explain and justify their decisions in detail. Were the CPS to be handling the Jubilee Line case today he is confident, and we accept that, the prosecution strategy would have been closely examined at a senior level.

3.17 These welcome developments are part of a rapid and fundamental change and modernisation programme, which since 2003 has seen the CPS simultaneously implementing three major reform programmes involving charging, advocacy, and victim and witness handling. All of these, taken together, have been designed to transform the nature of the CPS as a public prosecution service.

Conclusions:

- From the inception of the CPS there was a move away from viewing fraud as a specialism requiring dedicated resources and expertise. Later, and as part of the restructuring of Central Casework, there was a deterioration in clarity about responsibility for decision-making and therefore accountability. Both of these factors weakened CPS handling of the Jubilee Line case, and will need to be addressed in the future if a repetition is to be avoided.

- The DPP and Chief Executive of the CPS are confident that recent and ongoing structural change, together with a determination to create a culture of ownership and accountability for casework, backed by strong and pro-active management, will address these issues effectively in all cases including fraud. Implementation was ongoing at the time of this report, especially in relation to fraud, and any attempt to assess their impact and effect would be premature.

- We consider it desirable that the progress of implementation of these changes be subject to independent inspection at an appropriate time, perhaps within 12 to 18 months after the publication of this report in the case of the new Headquarters Divisions, and within 12 to 18 months of the operational start of the new Fraud Prosecution Service that we describe in Chapter 11. As, following the passage of the Police and Justice Bill, this Inspectorate will by those dates have been merged within a new Inspectorate for Justice, Community Safety and Custody, we accordingly recommend:

RECOMMENDATION:

the new Chief Inspector for Justice, Community Safety and Custody should make early arrangements to inspect the progress and performance of the new CPS Headquarters Divisions, of the Fraud Prosecution Service of CPS London, and the functioning of Case Management Panels.

CHAPTER 4: FROM INITIAL COMPLAINT TO THE LAUNCH OF PROCEEDINGS

Overview: İt has long been recognised that in cases of alleged fraud particularly, the police investigation has a determinative effect on the shape and length of the trial. In this chapter we examine the strategic direction of that investigation and the advice which the police were given by the CPS and prosecuting counsel up to the point of charging.

Mr Peter Elliott-Hughes

4.1 The investigation in this case was not launched because of any complaint to the police by London Underground Limited (LUL), who were the alleged victims, but by a former employee of RWS Project Services Limited (RWS), a chartered surveyor called Mr Peter Elliott-Hughes. He said that he had initially contacted the Metropolitan Police in 1995, but did not get any response, leaving the matter in abeyance for a while before writing them a letter dated 5 December 1996. This was forwarded to the British Transport Police (BTP), as the police force responsible for investigating crime on the public transport system. BTP assigned Detective Inspector (now Detective Chief Inspector) Ashley Croft to investigate it. He was the head of the BTP Commercial Fraud Squad. On 28 January 1997 he took a witness statement from Mr Elliott-Hughes.

4.2 Mr Elliott-Hughes had worked as a claims consultant for RWS between the middle of 1993 until October 1994, having been recruited by Mr Rayment. His main job, using his previous record in the industry and his contacts, was to market the services of RWS to potential clients and so gain business. Amongst other wrongdoing he alleged, he became aware in 1994 that RWS were in possession of confidential internal LUL documents, some of which included details of their financial provisions for claims against them by contractors. On the strength of these, he said, RWS were able to familiarise themselves with all the problems connected with a particular section of the project, then target the various contracting companies and sell them their claims consultancy services. Through the confidential documents, he asserted, RWS had the advantage of knowing which claims, and by which contractors, had been accepted in principle by LUL, and would therefore be successful. He also alleged that on one occasion Mr Rayment revealed to him that these documents were being given to RWS by a member of LUL staff who was close to the financial decision-making process at LUL. He also said that he later saw this member of staff visiting LUL offices, and on one occasion collecting an envelope containing cash. Messrs Rayment and Woodward-Smith, he said, entertained this man at clubs and nightclubs. Mr Elliott-Hughes made copies of some of the confidential documents and took them with him when he left RWS. He said that at the time he had an outstanding wages claim against RWS and the documents represented a form of insurance.

4.3 Two further statements were taken from Mr Elliott-Hughes in December 1997 and in May 1998, to deal with points that had arisen and to explain documents in greater detail. It is important to note that in relation to the claims process he did not at any point suggest that the possession of the internal LUL documents had enabled false or inflated claims to be made, or allowed RWS to obtain from LUL on behalf of a contractor client any more money than they were entitled to. On the contrary, the figures in the internal documents represented what LUL itself, after investigation, deemed the claims to be worth, and in many cases were derived from the figures already claimed by the contractors. Sometimes they were lower than the figures claimed, and when they were higher they would obviously not have been so without good reason: LUL were not likely to come to figures higher than they considered, on good evidence, they were liable to pay.

> **Commentary**: the value of the documents according to Mr Elliott-Hughes was that they allowed RWS to focus their activities only on the contractors with good claims, and on those claims themselves. This was not, on the face of it, a detriment to LUL, but to rival claims consultancies who did not have the advantage of access to such documents. Insofar as the prosecution would later allege that claims on behalf of contractors had been inflated, this was not supported by Mr Elliott-Hughes.

4.4 As it happened, at the time he made his approach to the police, and when he gave his witness statements, Mr Elliott-Hughes was working for a company called NBA Quantum Limited, which he had joined shortly after leaving RWS. They also were a quantity surveying claims consultancy and therefore in the same line of work as RWS.

The British Transport Police investigation

4.5 As a result of Mr Elliott-Hughes's complaint and of other enquiries, BTP made a policy decision to obtain and execute search warrants and obtain production orders. On 18 June 1997 nine search warrants were executed at premises including RWS London offices. The defendant Mr Scard was also arrested and interviewed under caution that day and the next; he was suspected of being the man who had visited the RWS offices and supplied some of the confidential documents. A number of internal LUL financial documents were indeed found on the RWS search, including a number similar to an example Mr Elliott-Hughes had retained when he left RWS, and which he had produced in his first witness statement. These were Financial and Contractual Reports (F&Cs), a standard form document containing financial information about contractors' claims under particular contracts. There were 71 of these F&Cs at RWS premises and Mr Scard was to admit when interviewed under caution that he had supplied a small number of them to Messrs Rayment and Woodward-Smith.

4.6 A large volume of paperwork had been seized during the various searches and DCI Croft and his team now examined these and started to take witness statements. This process continued during 1997 and 1998. On 15 December 1997 the offices of George Skinner and Associates (GS&A) were searched under warrant and Mr Skinner arrested. Interviewed under caution, he declined to make any comment. On 19 December 1997 Messrs Rayment and Woodward-Smith were interviewed under caution, they too declining to make any comment.

Bringing in the prosecutor

4.7 By this time the police were considering a number of different offences and a large number of potential defendants, not only those eventually featuring in the Central Criminal Court trial. They had first contacted the CPS at Central Casework (as it was then known) in London in early July 1997 for advice. In theory, given the nature of the allegations they were investigating, they might at that stage have approached the Serious Fraud Office (SFO) rather than the CPS. We were told however that BTP had not had any earlier dealings with the SFO, whilst they had well established working relationships with lawyers at Casework Directorate, and previously with the Fraud Investigation Group at Central Casework, to whom it was the practice to send their larger and more complex fraud cases. Furthermore, we were told, though it grew during the course of the investigation, this case was at the outset a fraud and corruption case of a type and size with which they were familiar, and not so large or complex as to suggest that the SFO should be involved; it certainly met the BTP Commercial Fraud Squad case acceptance criteria at the time when the initial report from Mr Elliott-Hughes was received. This case did appear on a list of CPS cases considered at a meeting in 1997 of the Joint Vetting Committee which was responsible for allocating cases between the two prosecuting authorities, but there is no record of any substantive discussion. Thereafter, and understandably, the possibility of SFO involvement was not revisited.

> **Commentary**: It must remain a matter of speculation as to whether the SFO would in fact have taken this case had it been approached by the BTP at the outset. On the one hand the nature of the alleged fraud was not especially technical or conceptually difficult; on the other it involved allegations of corruption against officials acting in a quasi-public capacity and responsible for very large amounts of public funding, and in due course the High Court would be told that the benefit of the alleged criminality ran into millions of pounds. The point is not academic as the SFO practice for dealing with such cases differed in some significant respects from that of Central Casework: in particular in the approach to evidence gathering including the use of experts; the role of the Case Controller; the close involvement in decision-making of supervising lawyers up to the level of Director; and the early involvement of counsel. What is clear is that the case would have benefited from the multi-disciplinary approach – whether with the CPS or the SFO.

The legal handling of the case by the CPS

4.8 The lawyer to whom this case was initially assigned at Central Casework was Mr Michael Spong, a CPS lawyer with considerable experience. He was however to be only the first of four case lawyers who dealt successively with this case between 1997 and 2003, when the trial began. All were of sufficient experience and it was unavoidable that for a variety of reasons the case was not handled by the same case lawyer throughout. However, at the managerial or supervisory level immediately above the case lawyer, and as a result of the 1997 re-structuring of Central Casework (see paragraph 3.6 *et seq* above and Annex 7), there was no particular expertise in fraud cases to match that of the successive case lawyers, and in any event these managers, in accordance with the then prevailing policy, did not involve themselves in the decision-making in the case.

> **Commentary**: Thus any element of continuity or management oversight in CPS scrutiny and case handling was lacking. This was particularly unfortunate as there were differences of opinion between case lawyers as to the viability of important aspects of the case.

4.9 The first recorded contact between the police and the CPS was a meeting between DCI Croft and Mr Spong which took place on 9 July 1997. The police anticipated that it might take up to a year before they were in a position to submit a full report; it was agreed they would report to the CPS at six weekly intervals. At that stage "*their intention was to concentrate on two of the claims in relation to the Jubilee extension where RWS had acted for the relevant contractors on the basis of leaked information from a source within JLE*". At this meeting also it is of significance that "*it was agreed that expert quantity surveyor evidence would be required regarding the manner in which RWS had dealt with claims on behalf of contractors…*". DCI Croft also indicated that, although BTP had initially approached the complaint of Mr Elliott-Hughes with some caution - as a disgruntled former employee of RWS now working for one of their rivals - the police discovery of confidential LUL claims information in the offices of RWS, and of the kind to which he had referred in his statement, as well as some other enquiries which tended to support the allegations of corruption, had satisfied them "*that he was in fact telling the truth".* DCI Croft himself told us that when his searching team found the first F&C document at RWS he experienced a great feeling of relief.

Commentary: We highlight the issue of independent expert evidence at this stage because, had it in fact been obtained, it is possible that the prosecution case would have been differently put in relation in particular to count 2. Revolving as it did around the variation of claims in the construction industry, there were plainly a number of technical issues in this part of the case: even the contractors themselves, when making these claims, found it necessary to employ the services of specialist quantity surveyors such as the staff of RWS. The note quoted above shows that at this early stage of their investigation the police were intending to go in detail, assisted by an expert, into two at least of the actual claims that RWS had assisted in. One of the things they would no doubt have wanted assistance with is whether it could be shown that the confidential information on the F&C documents had in fact been used in formulating a claim, or had made any difference to it. If it had, it would undoubtedly have strengthened the allegation of fraud; if it could not be so demonstrated, it would surely have led to a careful evaluation of whether this part of the case should be pursued.

4.10 If the services of an expert had been engaged, however, he would have had to look not just at the documents that had been recovered from RWS, but also at the rest of the contractual documentation in the hands of the relevant contractors, as well as that in the possession of LUL, and this would undoubtedly have been a difficult, protracted and quite expensive undertaking. Nevertheless, the police indicated at the next meeting with Mr Spong, in September 1997, that they were in a position to instruct an expert quantity surveyor, but did not want to do so before their enquiries were complete "*as it was clearly a situation where within a relatively small number of quantity surveyors information was likely to be spread easily*". Accordingly, the question of expert evidence was not raised at the next two meetings between the CPS and police, in November 1997 and March 1998. In July 1998, however, the police indicated that they were "*proposing to seek expert advice from a firm of CQS in Norwich with particular reference to how useful was the information from the other side in negotiating for JLE contractors*".

4.11 The next meeting between police and CPS was to be the last attended by Mr Spong, as shortly thereafter he moved to another post. At that stage a police report and full file had still not been submitted, although DCI Croft indicated that they would be forthcoming within a few weeks. As for the expert evidence:

> "*reference was made to expert* [quantity surveyor] *advice and DI Croft indicated that he had a short statement from a quantity surveyor who had been employed on a consultancy basis by JLE and who was able to indicate the confidential nature of the information in the possession of RWS and the ... advantage it gave contracting firms like Mowlems in making claims against London Underground. It was agreed that the question of further expert QS evidence should be postponed until counsel was able to advise as to the specific aspects on which it was essential to obtain such testimony*."

A new case lawyer: Mr Jeans and his advice to the police

4.12 The lawyer who replaced Mr Spong was Mr Lloyd Jeans. Mr Jeans had substantial experience of fraud cases. A long meeting took place between himself and DCI Croft on 27 October 1998, and the whole case was discussed. As we have already mentioned, the police were then considering possible defendants and charges that went beyond the scope of the eventual trial, including money laundering, false accounting and fraudulent trading. Mr Jeans at this meeting was somewhat sceptical about what would become the claims fraud, count 2:

> "*There was a discussion about who exactly was defrauded and by how much. It was accepted that the suspects, if charged, would argue that the LU* [London Underground] *had not lost anything. LU had accepted a potential and contingent liability to pay out all the sums they eventually did pay out*."

4.13 Mr Jeans had had the opportunity to read the papers currently on file more fully by the time of the next meeting which took place on 6 November 1998. Amongst other things he told the police:

> "*As far as the main fraud is concerned, LJ* [Lloyd Jeans] *and GT* [George Towse, an accountant employed by the CPS to assist not in investigation but with case presentation] *pointed out that much would depend on the precise significance of the confidential contingent liabilities listed on the F&C reports. Are they for example estimates of worst case liabilities, or of the value of the additional works actually carried out by the contractors in question? We must establish at least a risk of loss to LU which the potential defendants knew about when they nonetheless agreed to pursue the course of conduct which is essential to establish a conspiracy charge. We will need to analyse the negotiations between RWS and JLEP in respect of at least one contract claim in order to illustrate the dishonest advantage exploited by the main players."*

4.14 In the event, the question posed was not to be answered during the investigation of the case, nor was any attempt made "*to analyse the negotiations between RWS and JLEP in respect of at least one contract claim*".

4.15 DCI Croft could not be present at the 6 November meeting through illness and a further meeting took place on 10 November 1998 at which Mr Jeans asked his immediate superior or Team Leader, Mr Richard Atkins, to be present. We were told that he did this as he anticipated that some of the advice he was going to have to give the police might be unwelcome and there could be argument for which he wanted the support of Mr Atkins.

4.16 We set out in full the note of the advice he gave in relation to what was being called "the main fraud", that is, the alleged claims conspiracy which became count 2:

> "*It would appear that we may have corruption involving Rayment, Woodward-Smith and Scard but not a conspiracy to defraud London Underground……LJ foresaw difficulties in getting such a case off the ground. For conspiracy to defraud it is necessary to establish an agreement to carry out a course of action which if pursued would necessarily involve the knowing and dishonest prejudicing of another's right or interest, or the risk thereof. Whereas that is the strict position in law, in practical terms the case was likely to look somewhat threadbare in the eyes of a jury because of the problems inherent in dealing with the likely defence case. It will no doubt be argued* inter alia *that far from risking loss to LU, the actions of RWS could well have saved public funds; that there is no loss if LU decided to pay out sums that they have already accepted are due and payable; that the confidential documents were in practice freely available; and that the RWS business plan did not "necessarily" involve any loss to LU. On the other hand the prosecution would only have to show a risk of loss and, given the way in which the documents were obtained, it should not be too hard to demonstrate (by necessary inference) that the agreement between Rayment and Woodward-Smith was founded in dishonesty.* ***In summary, LJ advised that these fundamental issues be addressed as soon as possible, and he invited DI Croft's considered response. The central point is whether there is a fraud when the risk of loss relates to a contingent liability accepted by the victim"*** [*our emphasis*].

Mr Jeans went on to confirm his preliminary view *"that the prospects appeared brighter for a charge of fraudulent trading than for any conspiracy"*.

DCI Croft's response

4.17 DCI Croft gave his considered response to Mr Jeans's views by a letter dated 4 December 1998. Again it is necessary to quote in some detail. He started by saying:

> "*I agree that fraudulent trading is a good area to explore and as such our investigation is now focused with this in mind. I do however feel that conspiracy to defraud should not be discounted at this stage and should be considered an additional charge with the fraudulent trading should this case go to trial*."

He continued by mentioning that:

> "*there are a number of decided cases which I feel are relevant and which have influenced strategy during the course of this investigation."*

He then went on to quote from the cases of *Welham*, *R v. Allsop* and *R v. Sinclair* before arguing:

> "*From the outset of the investigation it was apparent that proving an actual loss to the JLEP from the activities of RWS and their co-conspirators would be difficult. I have deliberately (with the agreement of Michael Spong) steered clear of looking into specific contractual claims for fear of bogging down the investigation. Following this route would also have required the use of expert witnesses at high cost and probable inconclusive outcome. You have spoken about your own concerns in respect of expert witnesses that mirror what I say here. We have therefore pursued a strategy of evidencing the dishonesty and deceitfulness of the relationship between the parties concerned, which included the corruption element of the investigation. We have also sought to evidence that the actions of the parties concerned knowingly and dishonestly prejudiced the rights and interests of the JLEP and in so doing exposed the project to substantial <u>risk</u> of financial loss. If we consider the possession by RWS of confidential JLEP commercial information and the circumstances surrounding such possession, then I believe that the criteria in Welham v. DPP and R v. Allsop is fulfilled. RWS clearly were not entitled to have the JLEP information and their possession of this <u>was</u> to the prejudice of the JLEP's rights and the project's economic interests <u>were</u> imperilled. Additionally we can show that the prime objective of Rayment and Woodward-Smith was to advantage themselves through the rapid expansion of*

their business and the detriment to the JLEP was a major consequence of this…..if we take the F&C reports, sections 3 to 6 contain confidential information that in the hands of the contractors could severely weaken the JLEP negotiation position which in itself is a prejudicing of their rights and interests. Possession by RWS of these reports does however go beyond this and provides a significant risk of financial loss to the JLEP [DI Croft's emphasis]".

Commentary: DCI Croft is here equating mere possession of the confidential documents with a risk to LUL, and thus with a conspiracy to defraud; we discuss later whether this is an accurate reflection of the law, or whether this case really was similar to the cases of *Welham* and *Allsop*. But leaving aside the strict legal position, he does not deal here or elsewhere in the letter with Mr Jeans's point about the likely "threadbare" appearance of the case to a jury when no actual loss was being alleged.

A second change of CPS lawyer

4.18 Mr Jeans responded by thanking DCI Croft for his observations and indicating that he would take them fully into account when reviewing the matter – which he would do when he was in possession of the final police report. Mr Jeans however fell ill in April 1999 before he had had the opportunity to carry out a full review of the case and, although he was initially expected to return to work, the case had to be handed over to a third lawyer, Mr Raymond Wildsmith. Mr Wildsmith understood at first that he was taking on the matter only until Mr Jeans returned from his illness. In the event he did not return, and Mr Wildsmith was the lawyer responsible for it during the next three and a half years. He was the most senior case lawyer so far to handle the case, being an experienced Grade 6 and a specialist in fraud.

4.19 At the time, Mr Wildsmith had his own full case load (including non-fraud cases) and only took on this extra case on the basis that it would revert to Mr Jeans. The immediate reason for his becoming involved was that the Branch Office Manager, Mr David Honeyman, had been alerted by the computerised case management system to the fact that the full file had been received but that no CPS review of the case had been carried out. Mr Jeans's return date was uncertain, and the police were keen to progress the matter. Accordingly, on 19 May 1999 Miss Karen Wiseman, Mr Jeans's Prosecution Team Leader, in a memo asked Mr Wildsmith if "*you would review the police file and prepare a written note of your views. Sue Taylor* [the Branch Crown Prosecutor*] has authorised the use of counsel to advise in this case. If, on your first reading, you consider that this is more suitable for counsel, please let me or Paul Plummer* [Mr Wildsmith's Prosecution Team Leader] *know*..". She attached to that memo a copy of a short case report prepared by Mr Jeans in which amongst other things he said, "*The main issue currently is whether the main suspects can be said to have defrauded LU*". He indicated the likelihood that accountancy and quantity surveyor experts would be required and he also suggested that the prosecution papers, when served, "*will be huge*".

4.20 On 9 June 1999 Mr Wildsmith minuted Paul Plummer: "*I have not yet been able to conduct a proper review of this file. That task is likely to take some considerable time*". He had formed the view however "*that at least some prosecutable offences will emerge*" and sought approval to instruct counsel. It was agreed that leading counsel would be required and the clerks of a number of different candidates were contacted to ascertain their availability: the CPS were looking for leading counsel who would be available to read the papers immediately and advise by 11 August 1999, a time scale comparatively short given the volume of papers. A further incentive to a rapid decision may have been that Judge Laurie at Southwark Crown Court, who was dealing with the applications for Production Orders, had remarked shortly before on the protracted investigation and delays in charging. In the event Mr Patrick Upward QC, an experienced fraud practitioner, was available and he was selected.

Instructions to counsel

4.21 Mr Wildsmith sent the papers to counsel on 28 June, together with instructions to advise. The instructions named 17 potential defendants including all those who eventually faced trial. After an introduction Mr Wildsmith summarised the police investigation under four headings:

(1) Corruption of the tendering process
(2) Corruption of the contractual claims process
(3) The Reeve Partnership and
(4) False accounting.

Under (1) he referred in a positive manner to a possible offence of conspiracy to defraud, that is, in relation to the tendering process which became count 1 of the eventual indictment. Under (2) he referred to the relevant section of the police report "*which supports a prosecution for conspiracy to defraud/trading for a fraudulent purpose,*" and referred counsel to the observations the investigating officer had made there. He said:

> *"Counsel may* feel that [conspiracy to defraud] *can be approached either on the basis that the alleged activity caused losses to London Underground…or that it induced officers of London Underground to act contrary to their public duty."*

Commentary: The offence of conspiracy to defraud can be committed if someone by deception induces another to act in breach of a public duty. In these circumstances it is not necessary to prove that any financial loss or risk of loss has been occasioned by the deception.

4.22 However he expressed no view of his own on the as yet unresolved disagreement between Mr Jeans, the previous case lawyer, and the case officer, nor on the legal propositions and authorities concerning "risk of loss" that DCI Croft had set out in his letter of 4 December 1998 and from which we have already quoted. Counsel was sent a copy of that letter, but not of the case notes compiled by Mr Jeans and from which we have also quoted. Counsel was instructed:

> *"To advise in accordance with the evidential test in the Code for Crown Prosecutors on whether there is a realistic prospect of conviction against any of the persons listed above*; [and] *If so, to settle appropriate charges, bearing in mind how the matter can be best presented at trial."*

CPS review of the case

4.23 The reference to the *Code for Crown Prosecutors* (the Code) requires a word of explanation. The CPS prosecutes cases brought by the police. A crown prosecutor such as Mr Jeans or Mr Wildsmith must have regard to the Code and before authorising proceedings be satisfied that (a) there is sufficient evidence to provide a realistic prospect of conviction and (b) that a prosecution is in the public interest. When Mr Jeans or Mr Wildsmith speak of their review of the case, it is to these "Code decisions" that they are referring. These decisions are for them and are not to be exercised by counsel, even though, in a complex and difficult case, it is perfectly permissible to seek counsel's advice, and for the review to be postponed until it is available. On the receipt of that advice, which is not binding on a crown prosecutor, it remains for him to make up his own mind that the Code tests are satisfied in the case of each defendant and on each charge. Though it is not strictly a legal requirement, the accepted practice is for the review of the case, whenever it takes place, to be recorded in a written "review note" setting out the decision and the reasons for it.

4.24 In this case we found no such review note amongst the case papers and Mr Wildsmith did not recall having completed one. It may be that this oversight occurred because he initially thought that he was taking the case over only on a temporary basis, pending Mr Jeans's return. Mr Jeans had of course not reviewed the case before he left through illness but it appears from the papers – and so he told us in interview - that he would not have been satisfied that there was a realistic prospect of conviction in respect of the claims conspiracy, the eventual count 2.

> **Commentary**: Mr Wildsmith's mildly positive view of this possible offence appears to have been based not on proving mere risk of loss but on proving actual losses, or alternatively on the basis that officials of LUL were public officers conducting public duties. As we shall see, this possible basis for the count was not pursued at trial and as we have already mentioned no attempt was ever made to prove actual losses.

Counsel's advice

4.25 Counsel's advice was received on 18 August 1999. After setting out the factual background to the case and sketching the roles of the various defendants he proceeded to an analysis of the various potential offences. He expressed some scepticism about the alleged fraud in the tendering process:

> *"It is always very difficult in cases like this to draw and then secure the line between sharp practice and downright dishonesty. Even if we can overcome that obstacle, the question arises: who was defrauded? It could be argued that with the contract price forced down, LUL got a better deal than they might otherwise have achieved. How could LUL be heard to complain about the winning contractor when all the contractors came from a preferred list that was established before RWS came on the scene?"*

4.26 He professed himself even more dubious about the alleged claims conspiracy:

> *"There can be little doubt that those who conducted the negotiations for RWS had a distinct advantage from being privy* to that [confidential LUL] *information. At the moment there appears to be no evidence to suggest that as a result of those negotiations LUL ever paid out more than was owed or that any contractor even received more than that company was entitled to. Once again, I ignore the strict legal stance for the moment to assume a pragmatic posture. It is not difficult to imagine the bald comment being made before a jury:* "[the defendants were seeking on behalf of their clients to secure from LUL no more than their clients were entitled to under the contract]*." It would even be possible to approach the evidence from a another direction and say, "Well, London Underground were doing their best to get out of paying for all this extra work and this is no more than they deserved…" Either way, I can see a London jury having more sympathy for the* [defendants] *than for LUL, especially when we are not in a position to establish an actual loss."*

4.27 Then in a reference to the 4 December 1998 letter from DCI Croft, counsel says:

> *"I am grateful to Detective Inspector Croft for his diligent researches. I do not disagree with his conclusions with regard to the authorities that he quotes……As regards LUL, the complaint is that agents and employees of the company were suborned into providing confidential*

documents and information. Then, with the knowledge and assistance of the same servants and agents of LUL, the documents and information were used to advance the ambitions of RWS, potentially to the detriment of LUL. It is significant with regard to the fraud allegation that LUL is a "public body" and therefore it may be arguable that in performing their duties, senior figures such as David Sharpe and Hugh Docherty were performing public duties."

Counsel demonstrates the significance of this by reference to two quotations: the first from the judgement of Lord Diplock in the case of *Scott v. Metropolitan Police Commissioner*[5] as follows:

"Where the intended victim of a "conspiracy to defraud" is a person performing public duties as distinct from a private individual, it is sufficient if the purpose is to cause him to act contrary to his public duty, and the intended means of achieving this purpose is dishonest. The purpose need not involve causing economic loss to anyone."

The second was from the judgment of Lord Radcliffe in *R v. Welham* on similar lines:

"…in that special line of cases where the person deceived is a public authority or person holding public office, deceit may secure an advantage for the deceiver without causing anything that can fairly be called either pecuniary or economic injury to the person deceived."

Counsel continues:

"If my analysis is correct, I find myself largely in agreement with Detective Inspector Croft. It seems to me that a single conspiracy in relation to LUL could accommodate properly with both the corruption of the tendering process and the undermining of the C4[6] *decisions* [the claims conspiracy]. *With regard to both the gravamen is the "theft" of information and the dishonest use of that information to the advantage of the conspirators. It will be important not to allow ourselves to be sidetracked into analyses of the C4 system, the nice distinctions between "civils" contracts and E&M contracts or the myriad mysteries that seem to be involved in digging a hole in the ground. We must concentrate on establishing that as a result of the activities of the conspirators, LUL was put at risk….That is a concept that a jury will appreciate and should condemn."*

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5 *Scott v. Metropolitan Police Commissioner* (1974) 60 Cr App R. 124 at 131

6 C4s are documents from which F&Cs are compiled.

4.28 He goes on to provide a draft of a “wrapped up” count of conspiracy to defraud comprising both the tendering and the claims process. He also approves of, and drafts, a charge for fraudulent trading, before considering other aspects of the case including the alleged corruption. He ends by considering the evidence generally and advising which defendants should be prosecuted.

Commentary: In the first part of the advice, having said that he was ignoring “*the strict legal stance for the moment*”, counsel appears to be saying that there was in his view no realistic prospect of conviction in respect of the alleged claims conspiracy. However he then goes on to consider the law and thereafter to state that he is in agreement with DCI Croft. Given that his view of the prospects of conviction was stated to be irrespective of strict law, and no new facts are referred to, it is not clear why further considerations of law should have invalidated it.

The law that he considers is not however the “risk of economic loss” cases such as *R v. Allsop*, cited by DCI Croft, but cases involving the inducement of a breach of a public duty. It appears to be his view that these provide an alternative way of putting the fraud. As we have noted already, those authorities did not in fact form any part of the Crown’s case at trial, which relied entirely on the *Allsop* “risk of loss” line. He professes himself in his advice to be in agreement with DCI Croft on that line, but it will be remembered that DCI Croft was equating simple possession of the confidential documents with risk of loss, or economic detriment, to LUL; indeed, as he said in his 4 December 1998 letter, it was on that basis that he had gathered the evidence and taken the statements.

It is fair to say that the great majority of the evidence DCI Croft had gathered was of a high-level kind, that is, from managers and senior executives rather than from those lower down in the hierarchy who had actually dealt with the nuts and bolts of the claims. In so doing he had avoided getting “bogged down” in specific contractual claims. On the view of the law set out in his letter he did not need to demonstrate that any specific claim had in fact been influenced by sight of the confidential documents. Taking this view to its logical conclusion, in fact, even if it were to be conclusively demonstrated that not one of the confidential documents had actually been used in formulating any specific claim, *there was a risk that they might have been* - and therefore, if the defendants had intentionally run such a risk, they would still be guilty.

4.29 Mr Upward in interview told us that he had not appreciated at the time that this was indeed DCI Croft's reading of the cases, and he did not suggest that he regarded it as a correct view of the law as it stood. He subsequently reiterated that he did not recommend the institution of proceedings based on the conclusion that the simple possession of the documentation recovered from the suspects by the police was sufficient. The police view however remained uncorrected, since it was DCI Croft's understanding of the law at the time that we interviewed him in July 2005. On this somewhat uncertain basis the claims conspiracy charge proceeded; and it is an early manifestation of some confusion as to how the Crown saw its case. Counsel was advising proceeding on a basis which was (a) different from the one on which the case had been investigated and (b) not in any event the basis on which the case was finally put. Ultimately the Crown would be forced back onto a case based on inference but not before there had been several shifts of position.

The charges

4.30 A copy of counsel's advice was sent to DCI Croft who acknowledged receipt stating "*it reflects my views in a number of areas*". A conference was arranged with counsel which took place on 21 September 1999. Unfortunately there was no note of this conference, but the result of it was the abandonment of the single all-encompassing charge of conspiracy to defraud suggested by Mr Upward and its replacement with a scheme of charges similar to that originally proposed by DCI Croft, but rejected by Mr Jeans in November 1998. Counsel advised further in writing on 21 October 1999 and enclosed draft charges against Messrs Rayment, Woodward-Smith, Skinner, Maw, Scard, Wootton and Butler. These were the same as those with which they were eventually charged. At that stage counsel had advised that Mr Fisher not be charged; this advice was subsequently changed as a result of a further police report dated 17 January 2000.

4.31 We have already mentioned the lack of a review note setting out in respect of each individual to be charged or not charged the nature of the evidence against them, together with an assessment of the prospects of a conviction and a judgement as to whether it was in the public interest to prosecute them. It would not appear that counsel's written advices or the discussions on conference made up for this lack with the sort of detailed evidential analysis that could be expected of a proper review note.

4.32 One of the primary reasons for having the Code tests is to ensure that the case against each defendant on each potential charge is analysed. Although we are assured that minds were so directed, it is difficult to see that this can be done effectively without some form of written analysis.

4.33 At an early stage of counsel's involvement the question of expert independent evidence was revisited. DCI Croft told us that had counsel advised that it was necessary, he would have been content to try and obtain it. However the consensus emerged that in the event of the case proceeding to trial the prosecution would be calling those individuals, employed by LUL in various

capacities at the time of the alleged conspiracy, who had themselves created the F&C/C4 system during the Hong Kong, Singapore and Channel Tunnel projects. It was thought they were best placed to assess and describe the risk to LUL that could arise from the possession and use of the documentation recovered by the police. We examine how their evidence in fact emerged in the chapter dealing with the trial (Chapter 7 and particularly the conclusions thereto).

The Statement of Evidence

4.34 The charges of conspiracy to corrupt (though not to defraud) required the consent of the Attorney General and on 8 February 2000 Mr Wildsmith submitted the application. The papers he submitted comprised a Statement of Evidence, drafted by Mr Upward, the witness statements, exhibits and a covering letter. He did not however include counsel's written advice dated 16 August 1999. In describing charge 2, the claims conspiracy, the Statement of Evidence said:

> *"No attempt has been made, nor is it proposed to seek to identify the effect of the conspirators' activities on any one aspect of the individual contracts. The case relies on the plethora of evidence that demonstrates that RWS and the conspirators were in possession of confidential information* ***that was used*** *in the course of negotiations with LUL* [our emphasis]*. The only conclusion that can be drawn from the evidence is that those who were parties to the securing* ***and use*** [our emphasis] *of the information must have intended to weaken LUL's negotiating position vis a vis RWS and whatever contractor RWS was currently representing."*

4.35 Consent was granted on 24 February 2000 and on 29 February the defendants were charged. The first court hearing took place on 1 March 2000 at Bow Street Magistrates' Court and was adjourned to 26 April 2000 for service of the papers.

Commentary: In circumstances where a decision that they wished to prosecute has been made by the CPS it would be regarded as good practice to forward to the Attorney General's office any written advice supporting that decision. Indeed, the requirement to do so is set out in the current Casework Directorate Manual.

The Restraint Orders

4.36 In the meantime, Restraint Orders were obtained in the High Court against Messrs Rayment, Woodward-Smith and Skinner. The application was supported by a statement from DC Down, drafted by Mr Talbot. The benefit figure from the offences was said to be £13,219,792 for Messrs Rayment and Woodward-Smith, this being derived from the entire turnover for RWS between 8 July 1991 and 18 June 1997. The benefit figure for Mr Skinner was said to be £1,770,771.85 – the totality of the fees paid by the contractor Westinghouse Signals Limited to RWS together with a sum equal to the corrupt payments allegedly made.

The case in court

4.37 On 12 April 2000 Notice of Transfer under section 4 of the Criminal Justice Act 1987, signed by Mr Wildsmith, was served, the effect of which was to transfer the case to Southwark Crown Court. It was later re-allocated to the Central Criminal Court where the first hearing took place on 8 September 2000 before Her Honour Judge Ann Goddard QC. Counsel for Messrs Wootton and Fisher indicated at this hearing that they intended to apply to dismiss the charges on the papers; the other defendants did not. On 11 December there was a further hearing at which the trial was fixed for 9 January 2002 with an agreed estimate of four to six months.

Conclusions:

- We have considered the early history of the case in some detail because of the light it throws on the formulation of the Crown's case on count 2. The police investigation had justified a prosecution, but on count 2, though the use to which the confidential documents might have been put had been canvassed with high level witnesses, it had not been explored in detail with those who actually had to operate the system. Prosecution counsel felt certain inferences could be drawn, namely that some use would have been made of the documents, and that this use must have been to the detriment of LUL. Nevertheless, it was in our view fraught with risk to put the case before the court in circumstances where the key issues surrounding this had not been investigated. At the very least, the danger was now present that as these issues had not been examined during the investigation they would be examined instead during the trial.

CHAPTER 5: DISCLOSURE AND THE EVOLUTION OF THE CROWN'S CASE

Overview: the pre-trial disclosure phase substantially delayed the trial while adding greatly to its costs. In this chapter we see that the time occupied at this stage dealing with third party disclosure flowed from the way the Crown was putting its case, particularly on count 2. During this phase, and partly in response to the disclosure process, the Crown's position on what it said was its most serious allegation underwent significant changes. There was no consensus between prosecution and defence as to what even the issues were, and therefore as to what evidence was relevant: from this the potential for unmanageability should have been apparent. The lack of clear direction on these issues also had implications for the trial itself, giving rise to a number of adjournments to produce or scrutinise material which should have been considered sooner.

Disclosure

5.1 The first preparatory hearing in the case took place on 8 May 2001 at which all defendants pleaded not guilty and directions were given. The issue of the prosecution disclosure of unused material was for the first time raised in court, though it had been brought to the attention of the prosecution in April by the solicitors acting for Messrs Rayment and Woodward-Smith, indicating that they were proposing to apply for a witness summons against London Underground Limited (LUL) in respect of the Jubilee Line Extension Project (JLEP) material held by them.

5.2 Disclosure quickly became a vexed issue in the case, delaying the trial and adding very substantially to the costs of it. Currently the law on disclosure is governed by the Criminal Procedure and Investigations Act 1996 (CPIA), as amended. There is also a detailed code for the police and guidance for the CPS which gives assistance on the discharge of their obligations. However the investigation in this case commenced before the coming into force of the CPIA and, accordingly, disclosure fell to be dealt with under common law rules, in particular the materiality test as set out in *R v. Keane* [1994] 1 W.L.R. 746. Essentially, the prosecution was under a duty to disclose to the defence all relevant material in its possession. In practice that meant all unused material that the prosecution had gathered during the course of the investigation that was not clearly irrelevant; and which was not "sensitive" (that is, potentially immune from disclosure for public interest reasons).

The third party material

5.3 In this case the disclosure of material in possession of the prosecution did not present any particular problems. What presented a major problem, however, was the existence of a very large body of potentially relevant documentation (in excess of 70 million pages of documents) which related to the JLEP and was still in the hands of LUL. Although LUL were of course said to be the victims of this alleged fraud, this was strictly speaking "third party material" as not only did the police not have it, they had at no point examined it. It was this material in which some of the defence solicitors were interested and which they had written about in the April letter referred to above. The procedure for

obtaining such material, or otherwise examining it where the third party does not consent, is to take out a summons for a responsible officer of the third party to attend court. On the hearing of the summons it is for the party applying to satisfy the judge that the third party is in possession of material relevant to the case, in which case the judge may make orders for the inspection of such material.

5.4 During the next few months of 2001 defence solicitors made approaches to LUL regarding this material, and on 22 August 2001 LUL instructed solicitors to deal with their access to the material and with disclosure generally. It rapidly became apparent to the defence that there was a large body of arguably relevant material. On 17 September solicitors acting for Messrs Rayment and Woodward-Smith gave notice to the CPS of an application to break the January 2002 fixture. The document in support settled by counsel argued that the failure to get access to documents held by LUL had made preparation for trial by that date impossible; and that access to all the documents relevant to the tendering process was necessary to demonstrate that that process was not as asserted by the Crown; that access to the claims documentation was necessary in order to challenge the Crown's assertion that the Financial and Contractual (F&C) documents in the possession of RWS Project Services Limited (RWS) were for the purpose of threatening the economic interests of LUL; that the possession of those documents could have weakened LUL's negotiating position; and that the documents were capable of having that effect. It was said that some material already disclosed by the prosecution already demonstrated that the F&Cs had limited potential and

> "*further documents are sought to fill in numerous gaps in the procedures adopted by JLEP and provide a proper context to the claims system and demonstrate that the theory of the project administration as put forward by the Crown witnesses was miles away from the day-to-day realities*."

5.5 The application was heard on 19 September 2001. Counsel for LUL was present in addition to defence counsel; neither Mr Upward nor his junior Mr James Mulholland were, however, available and different counsel were temporarily representing the prosecution. For that reason the application was adjourned to 4 October. Counsel for Mr Woodward-Smith indicated however that their application would be to put back the trial for a substantial period as it was estimated that there were over 100,000 relevant lever-arch files held by LUL. Significantly – and, as we were later told, to the considerable surprise and disquiet of the prosecution - counsel for LUL indicated to the court that they recognised the potential relevance of the large majority of the documents, were therefore not proposing to insist that the defence prove that relevance using the summons procedure, and were effectively offering an open door to the defence to view them. Counsel indicated that LUL themselves did not want to be responsible for sifting the documents for relevance as they did not know the details of the defence cases.

5.6 At the adjourned hearing of the application defence counsel gave further details of the importance to the defence of the LUL documents. They explained in particular that they wished to look for documents from which the F&Cs had been compiled (these were known as C4s). The judge said she assumed that the prosecution might also wish to look at some of these. In the result the fixture for 14 January 2002 was broken, although that date was retained for a further preparatory hearing, and the time for service of the defence statements was extended until 15 November 2001.

5.7 This was however not the end of the matter. We pick up this part of the story again at paragraph 5.18. In the meantime we must examine how the Crown's case shifted in the light of the disclosure process.

The Case Statement

5.8 The Case Statement was served on 26 July 2001. In this document the Crown were required to state the facts alleged against each defendant on each charge, the inferences they said should be drawn from those facts, and any propositions of law on which they relied. The Case Statement largely followed the earlier Statement of Evidence but there was a significant new paragraph in the part that described the claims conspiracy, now count 2. This began:

> *"The real substance of this case lies in count 2. The period of time it covers is lengthy and the sums of money involved at this time were enormous, allowing RWS to charge substantial fees. In order to do this, Rayment and Woodward-Smith required a continuous flow of information to keep them ahead of the field…"*

5.9 The Case Statement also contained an extract from the witness statements of Mr Joseph Sutton, a senior manager at LUL, which was said to put the position succinctly:

> *"In possession of the F&C reports RWS would be able to highlight areas where the JLEP have made internal estimates of its potential liability and may identify areas they have not even considered. Such liabilities recorded on the F&C reports could be in excess of that which a contractor may have anticipated or indeed be entitled to. By targeting such a contractor RWS could then assist them to obtain greater sums than their entitlement and to the detriment of LUL. This could be achieved by massaging their claims up to the contingency amount contained within the F&Cs*."

5.10 It also quoted the evidence of Mr Roy Smith who put the matter in this way:

> *"Having possession of this information RWS knew for each of the contracts concerned how much money the JLEP had put aside for variations and where applicable claims, at the date of the F&C report. The effect of this was that RWS could prepare claims and variations on behalf of the contractors they were representing based on JLEP's own figures, maximising the contractors' financial gain. This totally corrupts the contractual process and clearly places London Underground/JLEP at risk of financial loss. RWS and their clients being aware of what was on the table could hold out for the full amount known to them through possession of what amounts in my view to stolen documents."*

Commentary: It is important to note that neither Mr Sutton nor Mr Smith were saying that this had actually happened but that it *could* have happened. This then was the foundation for the Crown's allegations concerning risk of loss or economic detriment. We see later in this report (Chapter 7) how the evidence actually emerged from the Crown's own witnesses.

The defence statements

5.11 Some indication of the contents of the defence statements is relevant here as putting the Crown on notice to what was in issue in the case. Mr Rayment's case statement was a 22 page document commenting paragraph by paragraph on the Crown's Case Statement and amongst other things saying:

> *"The Crown are put to strict proof of their allegation in paragraph 50 that by securing access to the F&C reports, a contractor could be alerted to potential areas in which to make additional claims and discover the amounts being set aside as a contingency by LUL. The allegation is denied*."

5.12 Under the paragraphs which dealt with "Fraud during the construction of the JLE" it stated:

> *"The Crown are challenged on their assertion in paragraph 115 that they do not intend to seek to identify the effect of the alleged conspirators' activities on any one aspect of the individual contracts. It is submitted that* ***such particularisation is a necessary duty of the Crown in order to seek to prove an intention to use the information to the detriment of the commercial interest of LUL as alleged in count 2*** [our emphasis].

It is denied that the securing and use of the information was intended to weaken LUL's negotiating position vis a vis RWS and whichever contractor RWS was currently representing. The information was obtained for the purpose of marketing RWS to potential contractors with a view to providing contract management services and or the purpose of monitoring the progress of claims… Stephen Rayment was personally involved in the use of information for background marketing purposes only.

It was Stephen Rayment's intention that RWS take legitimate advantage of the opportunities he knew would be created by the biggest construction project in Europe at the time…."

5.13 The defence statement of Mr Woodward-Smith was on similar lines. Amongst other things it said:

"The F&C reports provided background information on the type of issues that had arisen between the contractor and JLEP. At issue in the trial will be the information provided by the F&Cs, in particular their accuracy, reliability and currency."

"Woodward-Smith did not and does not believe that the F&C reports could have been used to weaken LUL's negotiating position vis a vis RWS and their contractor clients."

"It is denied that any information contained in any of the F&Cs was used by Woodward-Smith for any improper purpose, as alleged in the prosecution case statements at paragraph 115. ***Furthermore it is believed that full analysis of the material sought from LUL will demonstrate that the F&Cs were incapable of being so used***" [our emphasis].

"An analysis of the F&Cs and the limited supporting documents available to date suggests that the F&Cs were not capable of the use alleged by the prosecution. However, in the absence of the prosecution having attempted to identify the effect of the possession and use by Woodward-Smith of the F&Cs on any contract, it is necessary, in order to demonstrate that assertion, to consider all of the material documentation supporting the F&Cs."

> *"The prosecution's allegation is further undermined by the fact that neither a claim nor variation could be paid unless entitlement had been proven and accepted and the quantum had been fully substantiated and approved by the PEG committee of the JLEP. In addition such entitlements and payments made by JLEP were subject to independent external audit."*

5.14 In October 2002 both these defendants served amended Defence Statements. At that time examination of the LUL material was continuing but the amended statement of Mr Woodward-Smith, for example, said:

> ***"An analysis of the material supplied thus far demonstrates that the F&Cs were not in fact used for any improper purpose."*** [our emphasis].

The Crown amends its case

5.15 In response to these amendments the Crown amended its own Case Statement. In the amended Case Statement a new sentence was added after the sentence that began "No attempt has been made…" (and which we have quoted in full at paragraph 4.34 above): It stated "*This case is not based on an attempt to prove actual loss*". To the phrase "…*evidence that demonstrates that RWS and the conspirators were unlawfully in possession of confidential information*" was added the words "*and dishonestly*". (As we have already pointed out, all defendants denied that such possession was dishonest.) Finally, the subordinate clause following "confidential information" and which had read "*that was used in the course of negotiations with LUL*", was deleted, as was the whole of the following sentence which had read *"The only conclusion that can be drawn from the evidence is that those who were parties to the securing and use of the information must have intended to weaken LUL's negotiating position vis a vis RWS and whatever contractor RWS was currently representing".* A new sentence was added which read:

> **"*The consequence was to put at risk the economic and commercial interests of London Underground Limited and the promotion of those same interests for and by RWS* (*sic*)"** [our emphasis].

The effect of deleting the passages above was that the case statement now said:

> *"…RWS and the conspirators were unlawfully and dishonestly in possession of confidential information. The consequence was to put at risk the economic and commercial interests of London Underground Limited …"*

Commentary: The real amendment here is not the assertion that the case did not involve an attempt to prove actual loss; that was already implicit. What *had* changed however was that the Crown now seemed to be stepping back from any commitment to demonstrating that the confidential information on the F&Cs had in fact been used at all, whether or not such use had resulted in loss or risk of loss.

On the face of it this new formulation of the prosecution's case is indistinguishable from the police view that RWS's mere possession of the information amounted to a risk of loss to LUL, and it was irrelevant whether the documents had been used or not.

5.16 It was only a few months before this, however, on 14 January 2002 at a hearing concerned with disclosure, that Mr Mulholland had told the court:

> *"This is quite a simple and straightforward case. It is about a large number of contracts or documentation* [sic] *found at the offices of RWS. It is about how they came to be there,* ***what they had been*** **used for** [our emphasis], *from whom they had come and the links between the defendants as to those issues…the simple point…is why a group of men got together for their own interests deliberately to dupe JLEP into taking certain financial decisions which, had the JLEP appreciated the circumstances behind them, it would simply not have taken*."

Commentary: Thus it will be seen that, at various times and on various different occasions, the prosecution adopted different stances as to the question of whether the prosecution needed to show that the F&C documents had actually been used. The position at trial seems to have been that it was not necessary, subject always to the proviso that the prosecution, who alleged conspiracy, had to show that it was the intention of the conspirators that they would be used. As an irreducible minimum, therefore, on the prosecution view, it was at least necessary to show that the documents were *capable* of being used in a way that would imperil the economic interests of LUL, and this too was challenged by the defence. Though necessary, that would not have been sufficient, and it was also incumbent upon the Crown to demonstrate that a dishonest purpose necessarily involving risk to LUL, and not some other purpose, was the reason that RWS had them.

5.17 The amended Case Statement also added two new concluding paragraphs. They stated:

> *"The Crown has sought to make it clear that it has never set out, nor has it ever been the intention to prove, that London Underground Limited suffered actual financial loss. If they did, it is in the nature of this type of fraud that the extent of any loss would be unquantifiable. It is possible to go further: there is little doubt that it would be possible to justify every claim for payment submitted to London Underground Limited in connection with the construction of the Jubilee Line. Equally, it is likely that in connection with any contract, each pound thereby expended by London Underground could be justified as expenditure commensurate with the amount and level of goods and services supplied under that contract. That is the real mischief of this type of fraud and why it is so unacceptable. These conspirators set out dishonestly to gain an advantage for RWS knowing that by doing so they could imperil or put at risk the economic or commercial position of LUL. Whether LUL in fact lost out is immaterial….the witnesses from LUL are unanimous… in saying that information in the documentation* ***could be used*** *to threaten the interests of London Underground* [our emphasis]. *This view is acknowledged and echoed by witnesses from RWS who were not a party to the conspiracy."*

Commentary: The phrase "could be used" is significant, as it suggests that this possible use was the risk in question. It was not a matter, in other words, of the Crown intending to show that the information had been used, and thereby a risk was occasioned. What they claimed was that the fact *that the information might be used was itself the risk.* This formulation seemed to be saying not that a crime had been committed, but that there was a risk that it might have been. The Crown had to go a great deal further than this, demonstrating by evidence that the alleged conspirators had agreed to take certain steps upon which that risk would be contingent, and knowing that this was so. In any event, and whichever view of the law is correct, this particular formulation of the Crown's case represented an extension of the principles in *Allsop*, and Mr Upward agreed with us in interview that this was so.

Arguments about disclosure

5.18 We revert now to the developments concerning disclosure that took place after the judge's ruling on 4 October 2001. The whole of 2002 was taken up with activity around, and hearings devoted to, the disclosure of the LUL material, these taking place on:

- 14 January 2002
- 8 March
- 12 April
- 10 May
- 21 June
- 29 July
- 16 August
- 4 November and
- 13 December.

5.19 At the **8 March** hearing counsel for Mr Rayment raised concerns about the manageability of any future trial of count 2, pointing out that the Crown's case was so non-specific as to make many thousands of documents potentially relevant. At the **12 April** hearing the prosecution, without conceding that they were under any obligation to do so, indicated that they were prepared to look at the LUL material themselves as if the duty existed, either by reference to any criteria that the defence might supply or in accordance with *R v. Keane* [the materiality test].

5.20 The prosecution clearly could not have afforded to ignore the whole exercise, as the LUL documents might have contained items that strengthened their case equally with items that might weaken it: it would have been as unfortunate for them never to know of the existence of the former, as it would be to learn of the existence of the latter for the first time at trial.

5.21 On **10 May** the fixture for September was broken and the case was put back to Easter 2003. At that hearing counsel for LUL indicated that they were unhappy about having to make decisions on the relevance of the material and also the substantial continuing costs to them of providing the material at their premises; he suggested a possible application for the judge to rule that the prosecution should take over this role, and be required to operate the Attorney General's Guidelines in relation to them. [The Guidelines provide prosecutors with guidance on how to make decisions on what material needed to be disclosed to the defence under the CPIA.] That application was in fact made on **29 July**, the judge reserved her ruling, and on **16 August** she ruled that since the Crown had voluntarily become involved in the third party disclosure exercise the Attorney General's Guidelines did apply, though it remained for the Crown to decide questions of materiality. The Crown's involvement was now therefore not a limited voluntary exercise confined to a selection of the documents but a compulsory one which extended to the whole.

5.22 In assisting the prosecution to comply with its duty of disclosure, the British Transport Police were obliged to devote considerable resources and manpower in transporting, housing and managing an enormous quantity of documentation, and then in supervising its inspection over a lengthy period. They are to be commended for their commitment, and for the efficiency with which they shouldered this onerous task.

Two different battlegrounds

5.23 After the defendants had served their amended defence statements, together with some documents from the unused material which they were intending to rely upon, the judge requested a hearing of the case on **4 November** to discover the current position on disclosure and work out a new timetable for the case. In response to the defence documents that had been served on the prosecution from the unused material Mr Upward told the court:

> *"It appears to us that we are prosecuting one case and a misapprehension has allowed my learned friends to defend another."*

Having referred to his Case Statement and to the documents he continued:

> *"We are not seeking to prove, I hoped I had made that plain, that in relation to the conspiracies to defraud, LU have suffered actual loss. What we are saying, and what I hoped I had made clear, is that London Underground was put at risk, both in relation to the tendering procedure and in relation to the subsequent negotiations as the contract proceeded."*

Shortly thereafter followed the amended Case Statement to which we have already referred (at paragraph 5.15).

Commentary: Mr Upward's comment about the two different cases was well founded, but it did not bode well for the future management of this case. It is a pre-requisite for the proper management of any criminal trial that the prosecution and defence are at least in agreement as to the evidence which is relevant to the issues in the case and therefore on which battle is to be joined. In most cases this is easily achieved in practice. In this case it was not. The prosecution stance remained up to and during trial that the documents from the unused material, in particular the large volume of C4 documents that went to support the F&Cs, were if not technically irrelevant (which would have rendered them inadmissible) then effectively so, as the case was about general risk and not about specific contracts. The defence stance was that these documents were essential, as the only way of meeting the prosecution assertion about general risk was to demonstrate that any particular case risk could not have, or had not in fact, materialised.

Continues…….

…. cont: In the result, the major part of the ensuing trial consisted of two different battles taking place on two widely separated battlegrounds, with each side asserting that theirs was the only battle that mattered, and with the jury at the end of the case having to decide, subject to the judge's assistance, not just who had won the battle, but which battle had been the real one. As we were to discover when interviewing the jurors, they were waiting for the summing up to find out what the prosecution had to prove in relation to count 2.

The list of issues

5.24 In due course the very large number of documents held by LUL was reduced in compass to some 1,500 boxes of documents relating to claims made by RWS contractor clients. It will be noted that at no stage did the prosecution seek a ruling from the judge that none of this material was relevant, and that therefore there was no need for its disclosure.

5.25 It seems that prosecution counsel, at least by this stage, were well aware that assertions about general risk might not as a matter of law be sufficient. In January and February 2003 discussions took place between Mr Upward and counsel for Messrs Rayment and Woodward-Smith during which they agreed the list of issues on count 2. This included, as issue (7):

> *Did the defendants dishonestly use the* [documentary and other information which was confidential to LUL]*?*

If actual, as opposed to merely potential, use was one of the agreed issues in the case, then material held by LUL relating to claims by contractors for whom RWS had worked was beyond argument relevant - it being always relevant on a charge of conspiracy to look at what the alleged conspirators actually did, in order to throw light on the nature of what they agreed to do.

5.26 When the team interviewed DCI Croft in July 2005 he told us that he had not been consulted about the issues on the list and that in his view the agreement by counsel of issue 7 was a mistake, as in effect it opened up the floodgates for the large volume of documents which were produced by the defence at trial. In his view, this was taking a step too far, and the prosecution should have confined the issue to potential use. This was, of course, consistent with his view that the risk of a commercial detriment to LUL followed from the simple possession of the confidential documents.

Conclusions:

- The events of this chapter show that the Crown's case underwent a number of revisions and re-statements as disclosure took place. In part these reformulations seem designed to avoid the Crown having to become involved in the examination of third party material, by showing that this material was not relevant to their case. The problem remained, however, that it could not be argued (and therefore it never was argued) that it was not relevant to the defence case. The root of their dilemma was that the case had been investigated to prove that mere possession of the confidential documents created a risk of loss. Prosecution counsel was, or became aware, that this was insufficient, and that he would need to show that there was an irresistible inference that the defendants had acquired them in order to use them to the detriment of LUL. For the reason we have given, the investigation had however not supplied him with the evidence that might have demonstrated this. Accordingly, and unless some further evidence could be obtained, he would have to make bricks without straw.

CHAPTER 6: THE LEAD UP TO TRIAL

Overview: from an early stage the defence argued that the case would be unmanageable, and that count 2 as framed did not disclose an offence in law, was in any event insufficiently particular, and was an abuse of process. In this chapter we examine those arguments, the Crown's responses, and the judge's rulings. The stage was now set for a much longer trial than had been originally contemplated, mainly because there was going to be a protracted examination of a large volume of documents.

Preparations for trial

6.1 In the remainder of January, February and March 2003 preparations for trial continued, still largely focused on the disclosure exercise. During this period a new CPS lawyer, Mr David Williams, took over the case, as Mr Wildsmith had retired. There seems to have been no adequate succession planning for dealing with Mr Wildsmith's substantial and complex case load in advance of his retirement date. Mr Williams, like him, was a Grade 6 lawyer experienced in fraud cases. By the time Mr Williams took over the case it had been with the CPS for almost six years, and so he was put in the difficult if not impossible position of assimilating and handling the case in the last two months before the date originally set for trial, as well as already having his own caseload. He had simultaneously inherited from Mr Wildsmith two other substantial cases. In such circumstances, it is difficult to see how he could realistically be expected to get a grip on a case of this size without being relieved of some of his other burden. To bring himself up to speed and do justice to it in the time available, in addition to dealing with the day-to-day handling of correspondence, would in itself have been a full-time job. The difficult working conditions we have already referred to in paragraph 3.11 cannot have assisted. We have considerable sympathy for his position.

6.2 By this time British Transport Police had procured office space at Paddington and latterly at Victoria to facilitate the disclosure exercise. Junior prosecuting counsel Mr Mulholland and a second junior Mr Peter Roberts were engaged in examining the 1,500 boxes, together with a further 6,000 boxes from London Underground Limited (LUL) of which the descriptions were not sufficiently clear, in order to ascertain their contents and, in response to specific defence requests, to assess their relevance. The defence were also preparing applications to stay the trial on account of alleged abuse of process, and counsel for Mr Wootton was preparing to apply to quash count 2 of the indictment as bad in law. These applications were all to be heard on or after 28 April 2003 when the trial would formally begin with the first preparatory hearing.

The statement of Mr Ibson

6.3 In the meanwhile the Crown served on 23 April a significant Notice of Additional Evidence containing among other documents the first statement and exhibits of Mr Grahame Ibson. Mr Ibson was to make a further three statements after the trial began and spend lengthy periods in the witness box, having by then become a mainstay of the Crown's case on count 2.

6.4 At the time of his evidence Mr Ibson was working as a Senior Projects Manager for Tubelines. During the events complained of in the indictment he had been working for the Jubilee Line Extension Project (JLEP), joining in 1995 as Contracts Administration Manager for the Electrical and Mechanical design section, and subsequently becoming Financial Control and Co-ordinations Manager. In 1997 he also assumed responsibilities which included acting as secretary to the Project Executive Committee, a task formerly carried out by the defendant Graham Scard. He was of course very familiar with the costs control system within the JLEP including the Financial and Contractual reports (F&Cs) and the C4s (the documents from which the F&Cs had been compiled). Examples of an F&C report found at the premises of RWS and of the supporting C4 for one of the entries can be found at Annex 8.

6.5 In this first statement Mr Ibson went through and explained the different sections of an F&C and then said this:

> *"The risk that I believe would have existed **by this document being in the possession** of the contractor or his agent is in respect of items in sections 2, 3, 4 and 5…This is where either claims issues have been accepted as a valid item and this would strengthen the contractor's hand in negotiations, or for all other items where values were shown where in the vast majority of cases these had not necessarily been discussed with the contractor, and were only the Engineer's valuation. With this information a contractor **would have the opportunity** for pricing in items where his estimate was below that [of] the Engineer's representative and in negotiations where the value shown in the report **would clearly become** the contractor's starting point. I would liken it to playing poker and showing your opponent your hand*" [our emphases].

Commentary: This expressed the prosecution's position as regards count 2 generally: the risk to LUL was the possibility that by having access to confidential information, a contractor's negotiator could secure a more favourable settlement than could be achieved without having that information; that is, more than the contractor was entitled to secure through "honest negotiation".

6.6 Mr Ibson also commented on various other documents, including the documents which the Crown said demonstrated that Messrs Wootton and Skinner had subverted LUL's negotiating position in relation to the application for extension of time by Westinghouse Signals Limited (WSL) on the signalling contract.

The motion to quash and the applications to dismiss

6.7 On various days between 30 April and 29 May 2003 the court was occupied with hearing argument in relation to Mr Wootton's motion to quash count 2 of the indictment, supported by other defendants, and applications by all defence counsel for the case to be dismissed as an abuse of process on the ground that it would be unmanageable.

6.8 Mr Wootton's counsel, Mr Geoffrey Cox QC, relied on a number of points in support of his application to quash. Amongst them he argued that count 2 did not disclose an offence known to the law, and neither did the relevant parts of the amended Case Statement. The nub of his argument on this point emerges in the following extracts, after he had reviewed the authorities:

> *"In the instant case before your ladyship no proprietary right or interest is subjected to risk in consequence of the agreed actions of the defendants. All that is even said by the prosecution is that it may have had an effect, but they do not seek to prove that it did. It may have had an effect on the negotiations, which may in turn have produced a favourable settlement, or a more favourable settlement, to WSL* [the only contractor with which his client was said to be involved]*. But that is streets away, it is a country mile away, we submit, from what is meant by the authorities in* Allsop*, in* Sinclair *and in* Scott *by the expression to put an economic interest in jeopardy. The indictment, through its vagueness, disguises the incapacity of the Crown to particularise the proprietary right or interest which has been jeopardised in the sense of those cases. But when one looks at the case statement, served by way of amplification, one sees that the allegation here amounts to no more than the prejudicing of negotiations which….could have imperilled the interests of LUL."*
>
> *"…it is by no means apparent from the Crown's indictment or…the Case Statement, that this agreement had as a necessary consequence the loss of an entitlement which LUL rightfully possessed. If it is to plead a criminal offence known to the law, it must plead that the objective of the conspiracy…was to achieve something to which WSL was not entitled*. [The Crown]*…cannot show that any illegitimate entitlement was actually obtained by WSL as a consequence. So you can neither have actual loss – nor can you show exposure to loss, or risk of loss, within the meaning of the authorities…It is only possible to speak of prejudice to LUL…if the defendants' agreement was that LUL should be fraudulently induced or obliged to make payments that would exceed what it was lawfully obliged under the contract to pay. The indictment makes no mention of that, neither does the particulars."*

6.9 Mr Purnell QC on behalf or Mr Rayment supported Mr Wootton's application. During argument the Crown was pressed by Mr Bevan QC on behalf of Mr Woodward-Smith, as to whether, in the light of the passage in the amended Case Statement to the effect that it would be possible to justify each and every claim, they were still maintaining that any of the claims were false. The answer was that they made no concession about it and indeed alleged that the intention was to make false claims.

The judge's ruling

6.10 On 12 May the judge ruled against Mr Wootton's application to quash in the following terms:

> *"I have to apply the principle in* Allsop*….The question is whether the facts alleged…, the activities of the conspirators were capable of putting LUL's economic interests at risk. In order to answer yes, I do not have to extend the ambit of conspiracy to defraud. It may be that the actual loss i.e. a payment over and above that which would be paid out on a claim not inspired by inside information would not be incurred immediately but the essence of this charge is risk and it is a conspiracy to defraud. It is not just a question of how much money there is in the bank. LUL have to consider their overall financial arrangements in the view of what they perceived to be their liability. Whether the agreement did put LUL's economic interests at risk or is mere speculation is a question of evidence and for the jury."*

Abuse of process submissions

6.11 There then followed Mr Purnell's argument on behalf of Mr Rayment that count 2 as formulated was an abuse of process and unmanageable. Essentially he was saying that this situation had come about because of the way that the case had been investigated and the way that the prosecution was putting its case in declining to demonstrate in relation to any particular claim how the confidential information had been dishonestly used. Therefore, in order to defend themselves, the defence would have no choice, he said, but:

> *"to go into the detail of how the information in the defendant's possession can be demonstrated not to have been used for the purpose which the prosecution sets out and alleges. We say that is looking through the wrong end of the telescope, that in every other conspiracy to defraud…the prosecution can be expected to set out that there were examples in which that use had been made of the material in order, through the particular, to justify the general."*

6.12 Because the prosecution were refusing to do that it had become necessary, he said, for the defence to do it, and thereby to prove the negative. This was inevitably going to be a very lengthy task as there were 71 F&Cs and a considerable mass of documentation, principally the C4s supporting the F&Cs and amounting to some 280 documents which each told its own story and would have to be gone into in depth:

> *"We submit that the volume and complexity of the material the witnesses are to be invited to consider is not a matter for the defence; it is a position to which the defence have been driven by the adoption of this stance by the prosecution and not because we have not pointed it out to them, not because we have not invited the court to address the issue; it is because of the determined stubbornness – I cannot find a more polite word – an obdurate determination of the prosecution…"*

6.13 He went on to point out that after the issues were agreed in February (including the issue of use, as we have discussed above) it could not be argued by the prosecution that this was some frolic of the defence:

> *"It is the essential combat area. It is where the adversaries meet. The resolution of that in evidential terms will resolve the issue your Ladyship identified in the ruling this morning, namely the extent to which, if at all, the question of risk may be resolved by the evidence which is placed before the jury."*

6.14 Leaving aside the question of whether it could ever be a conspiracy to defraud if what was obtained, and sought to be obtained, was no more than what the contractor was entitled to:

> *"it is critical to the defence to be able to show on the issue of intention and dishonesty that there was no instance of a financial entry on an F&C which was used to identify a claim or massage an amount…we have no choice but to enter into the particulars of each F&C."*

He also made the point that since at no stage had the prosecution shown any of the supporting C4s to its witnesses, relying exclusively on the F&Cs, then they were going to be asked to look at and give evidence about them for the first time in excess of six years after the claims to which they related had been made.

6.15 Mr Purnell then took the judge through a sample bundle of F&Cs and C4s to demonstrate the nature of the task which the defence would have, he said, to conduct.

6.16 Mr Bevan supported the argument with similar points. The examination of the C4s would be *"an exceedingly laborious and complex task"* and beyond the digestive capabilities of the jury. It would also be extremely challenging for the witnesses as they would have to deal in the witness box with material they had not seen for years and years, and some of it entirely new. This was not, he said, a case of the defence trying to make the case more complicated than it is.

> *"This case has been made unmanageably complex … by the Crown's failure to identify with particularity to the allegation they make in relation to false claims. …It has been a blunderbuss approach. General allegations without precise evidence to support the allegations is, in my submission, a very dangerous course and is a recipe for chaos if not unmanageability."*

Other defence counsel addressed similar arguments to the court according to the point of view of their particular client.

The Crown's response

6.17 The Crown's response followed their skeleton argument served on 29 April 2003. This contained the remark:

> *"Setting the jury to bark up the wrong tree might not be sophistry but, if left unchecked, could create the problem of manageability that would otherwise be avoided."*

This seemed to suggest that the well-signalled defence intentions to scrutinise closely paperwork such as the F&Cs and the C4s was a misguided exercise, though it left unanswered the question of how it was going to be checked, and who by. Later in the skeleton the case of *Kellard* [1995] 2 Cr App R 134 was cited:

> *"in a potentially long criminal case a heavy responsibility lies on the trial judge and counsel, particularly prosecuting counsel, to ensure that it remains manageable and of a dimension that enables it to be presented clearly to a jury."*

6.18 It went on to point out that in *Kellard* convictions had been upheld by the Court of Appeal despite the fact that the case was a complex one and had lasted for 17 months. *"It should not be too readily assumed,"* the Court of Appeal had then said, *"that a jury cannot properly understand a case merely because of its length".*

The potential for unmanageability

Commentary: We have set out the pre-trial arguments at some length to show that, by this time, neither prosecution counsel nor the trial judge could reasonably have been unaware that count 2 was going to involve a protracted examination of a large number of documents with a succession of witnesses who might be, or who had become, unfamiliar with their contents. The potential for unmanageability was readily apparent: the defence point was that the only way they could prove the negative they were required to prove was to go through *all* the documents they had referred to, most of which had been extracted from the LUL third party material. The prosecution do not appear to have fully grasped this point, or its implications, as the skeleton argument stated: *"the volume and complexity of the material the witnesses are to be invited to consider is a matter for the defence"*.

An important question

6.19 In the course of the pre-trial arguments Mr Bevan for Mr Woodward-Smith had insisted that the prosecution answer the question:

> *"Is it alleged that any claims were made for moneys to which the contractors were not entitled?"*

The prosecution took time to answer and replied in writing. They said:

> *"This does not permit a simple answer of yes or no.*
> *The Prosecution does not challenge the technical or financial merit of claims that were justified* ***in writing*** *by the contractors and accepted by LUL* [their emphasis].
> *Potential Claims*
> *LUL was entitled to adopt a position with regard to a potential claim that the work concerned fell within the* [original] *contract. If the contractor did the work and failed to give notice of an intention to claim for additional payment, that would result in no additional liability to LUL and no additional entitlement to the contractor.*
> *If, as a result of securing access to LUL's internal documentation, a contractor became aware of the possibility of a claim and decided to pursue it on the basis that there was a chance that a claim might result in an additional payment, LUL's economic interest was damaged. This would be so even if as a result payment was made on the basis of an agreed entitlement.*
> *Claims*
> *LUL was entitled to approach claims on the basis that the negotiations would be honestly pursued by both sides.*

Contractors were entitled to payment in respect of claims honestly pursued and justified to LUL.
Contractors were not entitled to pursue claims and to justify those claims on the basis of dishonestly acquired information.
LUL's economic interest was damaged when a claim was based or pursued on the basis of dishonestly acquired inside information. Once again, this would be so even if as a result payment was made on the basis of an agreed entitlement."

Commentary: This document clearly asserts that the obtaining of moneys to which a party is entitled can nevertheless amount to a fraud, if that obtaining is made possible by the dishonest acquisition of confidential information (an assertion which was itself denied by all the defendants and not alleged against any contractor). Moreover, the prosecution stance has shifted away from that adopted in the amended Case Statement (see paragraph 5.15) where emphasis was placed on the *possibility of use* of documents to threaten the interests of LUL. Now once again it was implicitly the Crown's case that use *had been made* of the documents.

6.20 The document went on in fact to say:

"In relation to the documents, use can reasonably be inferred once the conspirators had acquired them dishonestly and read them. Armed with that knowledge the conspirators were in a position of advantage in identifying potential claims and conducting negotiations on behalf of contractors."

6.21 In relation to manageability it said:

"In the light of the concessions that the Crown is prepared to make [i.e. that each and every claim could be justified] *it is inconceivable that it will be necessary to burden the jury to the extent proposed."*

And later:

"Any case can be made unmanageable. There is no reason why this should be one of them."

6.22 Although both these observations may have been correct no suggestions were offered as to why, or how, the defence could or should be prevented from going through the totality of the documentation. It was now very clearly the Crown's case that the alleged conspirators had obtained the F&Cs in order to use them to identify or enhance claims, that they had been used,

and that the LUL might thereby have paid more to a contractor than it would otherwise have done. The fact that each and every claim could have been justified was not a sufficient concession when the Crown continued to maintain that even in these circumstances a fraud could still be committed if LUL had paid out more than they would otherwise have done. The prosecution could not show which claims had been enhanced and therefore which F&Cs had been used. No first hand evidence had been collected to demonstrate how the entries in the F&Cs had been compiled or how the claims themselves had been constructed. No evidence was served to demonstrate the contractual mechanism by which claims could be made. None of the contracts were exhibited to any prosecution witness statement, and no one was to give evidence as to how a claim would be formulated or presented. The police had steered clear of all these areas for fear of getting "bogged down". Instead, the prosecution intended to invite the jury to *infer* use of the F&Cs from the fact of possession of the documents, the means by which they had been obtained, and from a suggestion that at the time they were handed over it was likely that other information would have been disclosed. Finally, LUL staff had been asked to venture their opinions as to whether the documents were capable of use in the hands of a dishonest contractor or agent.

6.23 On 28 May 2003 the judge rejected the defence applications for a stay and held that the trial that was to follow could be a manageable one.

6.24 We note that in the draft of the prosecution opening speech there was the following passage:

> *"There is one final factor for you to consider. It is agreed that LUL is a public body. In such circumstances, if you are sure that the defendants by their action caused employees of LUL to act in a way that they would not have done if they had been aware of the true position that is sufficient to constitute fraud".*

This did not appear in what Mr Upward actually told the jury at the end of his opening on 1 July 2003. Thus all reliance on the "public duty" type of conspiracy to defraud, which dated right back to his first advice in 1999, and to which Mr Wildsmith had referred in his instructions as one possible basis for the Crown's case, had now vanished. Only that line of authority about which Mr Upward had been sceptical in his initial advice, namely the risk of economic detriment cases, now remained to support count 2. This was the basis about which Mr Jeans had expressed serious reservations and upon which Mr Wildsmith had expressed no opinion in writing. Mr Williams told us that he did not know and was not consulted about the abandonment of the "public duty" limb of the prosecution case on count 2. However there is no suggestion that the omission was intentional.

Conclusions:

- It is difficult to see how the defence could rebut the inferences the prosecution contended for other than by showing in relation to each F&C that it had not been used. They wished also to demonstrate that in many if not all cases, according to them, the information on the F&Cs was not capable of the use alleged.

- The Crown was not in a position to admit either of these points as a general matter. But - more strikingly - nor was it able to do so in relation to any particular F&C, as it did not itself know, not having investigated the C4s, what the defence questioning of prosecution witnesses would reveal.

- The only way of pre-empting or limiting the threatened exercise therefore, was for the Crown to step over into the defence's "combat area" and identify some smaller selection of F&Cs which it relied on. This was eventually done, though not at this stage. Unless and until it was done the Crown would be in the unusual and undesirable position on count 2, of waiting to see what their witnesses said in the witness box under cross-examination, in order to find out for the first time what their own case was.

- At this stage, therefore, and even though it had been much delayed by the disclosure exercise, the case was not really ready to be tried before a jury, because the preparatory phase including the preparatory hearings had not succeeded in narrowing it down to a manageable compass.

- In future cases of this nature the court will be assisted by the Lord Chief Justice's identification of good practice as set out in his Protocol for the management of heavy fraud and other cases and which we refer to in more detail at paragraphs 12.1 – 12.12. In particular, there is useful guidance about the need for a real dialogue between the judge and all the advocates about the focus of the prosecution case, the common ground, and the real issues; and the judge's power to challenge the prosecution as to why they have rejected a shorter way of proceeding and/or to persuade the prosecution that it is not worthwhile to pursue certain charges or individuals. Also set out at paragraph 12.9 is the guidance that abuse of process submissions should be confined to a maximum of one day only and be preceded by full written submissions. In this case, arguments about abuse of process consumed so many weeks of court time and attention in the lead-up to trial that they left little room for the important dialogue we have referred to above.

CHAPTER 7: THE TRIAL PART ONE: THE CROWN'S CASE

Overview: this chapter examines how it was that this part of the case took so long. In general terms, this was because that part of the proceedings devoted to count 2 more resembled the investigation of the case than the prosecution of it. As the case proceeded the Crown were forced onto the defence "battleground" and to specify which particular documents they relied on as being capable of the use for which they contended: eventually this was reduced to a much smaller number than at the outset. Right to the end, they were unable to specify which particular documents had been used, and declined to do so. At the same time, this part of the trial demonstrated that the investigation had not explored in any detail what had actually happened during the Jubilee Line Extension Project (JLEP).

There were two distinct elements to count 2. The first concerned the disclosure and use, or intended use, of some 71 London Underground Limited (LUL) Financial and Contractual Reports (F&Cs) which, the Crown alleged, Messrs Rayment and Woodward–Smith had obtained from Mr Scard in return for unspecified cash payments and entertainment at clubs and hostess bars: the payments were disputed by Mr Scard, and he also disputed that any entertainment he had received was corrupt.

The second element concerned a handful of documents relating to Westinghouse Signals Limited (WSL), the company which had undertaken the design and construction of the signalling system on the Jubilee Line extension. These documents were alleged to have been passed to RWS Project Services Limited (RWS) by Messrs Wootton and Skinner, in return for corrupt payments. The prosecution allegation here was in a nutshell that Mr Skinner and Mr Wootton, who had both been working at the time for the JLEP, had corruptly assisted WSL, at the instance of RWS and the main defendants, by helping them to formulate their extension of time claim against the JLEP in stronger and more persuasive terms. The payments were not disputed, but it was disputed that they had been made for confidential information intended to defraud LUL.

Messrs Wootton and Skinner were not said to be involved in the F&C element of the conspiracy alleged in count 2, nor Mr Scard in the WSL element.

The evidence on count 1

7.1 The prosecution called first the witnesses relevant to count 1, the alleged tendering fraud centring on the revised tender of Drake and Scull. As we have already said, despite non-sitting days caused for a variety of reasons, and a three week holiday period in August and September, this part of the prosecution case did not involve the protracted examination of documents and was dealt with relatively speedily. It was concluded on 30 September 2003, and the prosecution then started to call evidence on count 2.

Count 2 - the case on F&Cs

7.2 From then until the end of February 2004 the evidence was concerned with the allegation that RWS had obtained F&C reports in order to defraud LUL. The prosecution said that these had been used to identify and enhance claims. They could not point to any particular information in an F&C report and demonstrate that it had been used because, they said, the nature of the fraud precluded that; use could be inferred, however, from the fact that the documents had been obtained and that there was evidence, in the form of markings on them, that showed that they had at least been studied. As this was an allegation of conspiracy the prosecution did not have to demonstrate that the information had been used, but they *did* have to demonstrate that the defendants had at least intended to use the information in a manner that created a risk that LUL might pay more to a contractor than it would otherwise have done.

7.3 The F&C reports had been compiled from more detailed and voluminous documents known as C4 reports, submitted by engineers and quantity surveyors employed by LUL. No witness statements had been taken from them, and their working papers did not form part of the evidence served by the prosecution before the trial began. As we have demonstrated the defence had taken steps to obtain access to this material, and a great deal of time had been devoted to the study of it with the result that the start of the trial had been delayed.

7.4 Thus at the beginning of the trial the prosecution were at a distinct disadvantage; the defence had examined this material, the prosecution had not. The defence were aware, for example, that not all the information was capable of the use alleged by the prosecution. Some of it would have been out-of-date, some of it related to contracts with which RWS were not concerned, other parts related to claims that had been accepted in full. The defence position had been clearly put in defence statements and during the pre-trial hearings: they did not accept that the information was capable of being used in a way that damaged LUL.

An attempt to limit the parameters of the case

7.5 On 14 July 2003, when the trial was already underway, Mr Upward wrote regarding the F&Cs and the C4s to counsel for Messrs Rayment and Woodward-Smith, and to the judge. This letter was the first of a number of attempts to restate the prosecution case on F&Cs during the trial:

> *"If the Crown fails to establish its case in relation to the companies with whom RWS was associated, namely contracts 103, 108, 111, 202, 204, 205, 206 and 213 (the 'core contracts') it would be unrealistic and unfair to seek a conviction of the defendants based on evidence concerning companies with which RWS was not associated. ……It is the Crown's case that all the F&Cs found in the possession of the defendants were capable of being used to the economic detriment of London Underground. The Crown seeks to prove that allegation by reference to the evidence surrounding the 'core contracts' listed above."*

7.6 At about the same time further witness statements, notably from Mr Ibson, were being taken in order to address the need to identify at least some information within the F&Cs that could be used to LUL's detriment.

The evidence of Mr Ibson

7.7 The effect of the way the Crown put their case regarding the use of F&Cs can be clearly illustrated by reference to the evidence of Mr Ibson. It will be recalled that he had first made a witness statement in March 2003, whose contents we summarised at paragraph 6.5. He had now made a further statement dated 25 July 2003; in it he was shown 15 C4s (referred to during his evidence as the "H" bundle) relating to entries in corresponding F&Cs. He was the first prosecution witness who had been asked to comment on C4s, and to that extent this new evidence represented a stepping into the "combat area" referred to by Mr Purnell in his submissions back in May. It appears that these particular 15 had been selected, presumably by him, because the figures they contained had not come from the contractors themselves, and had not been discussed with them, but were internal estimates of the Engineer or his representative, and therefore the information in the relevant F&C would have been outside the contractor's knowledge. Mr Ibson said that in each case the possession of this information by the relevant contractor or its agents *"could have endangered the JLEP financial position"* or *"exposed the project to the risk of financial loss*". He went further:

> "*The risk to the JLEP of this information being disclosed is the contractor would know the internal budgetary allocation that has been made against the particular item, while in the majority of cases no detailed scoping of works (work breakdown) has been done. This would give a contractor the opportunity when doing the detailed scoping of the work and estimating their own cost to inflate prices to the financial detriment of the JLEP. This would also compromise the negotiating position of the JLEP particularly in the closing out stage of the valuation of variations…A simple example of how the negotiating position of the JLEP could be compromised with the disclosure of the F&C reports can be put into the context of an everyday life situation. Assume some remedial works need doing to the house so you get a builder around to discuss the works and give you a price quotation and that the builder was your only source of supply for this work. During his look around the house the builder observes a note on the table showing that you have £5,000 available to spend on the job. When he gets back to his office the builder calculates the price of the job and say it comes to £3,500. What do you think he would quote when he knows there is £5,000 available to spend? More likely nearer to £5,000 than his £3,500*."

7.8 Clearly this was argument rather than evidence of fact. When the court was considering the evidence on count 1, a similar point had arisen, in particular in relation to the evidence of Mr Roy Smith. The prosecution wished him to describe how confidential tendering documents would assist a contractor, and Mr Purnell had objected to the admissibility of him so doing. The judge however ruled against the defence, other witnesses such as Mr Hugh Doherty then gave similar evidence about certain documents being *"incredibly useful"* and *"of enormous value".*

> **Commentary**: The prosecution's case on count 2 depended to a large extent on this kind of evidence, and upon what a contractor and/or his claims consultant might do if in possession of the confidential information. There was no direct evidence of what they had actually done, because the prosecution had not sought evidence from the contractors themselves, to demonstrate for example that the formulation of a claim had been changed as a result of sight of an F&C. Furthermore, as already pointed out in paragraph 2.29, none of the contractors were alleged to have had any involvement in any dishonest or fraudulent practice; nor was anyone from any of those contractors prosecuted or named as a party to the conspiracy. Yet the scenario being outlined by Mr Ibson implied that the contractor would not only have to have been involved, but dishonestly involved, in the inflation of claims.

Cross-examination of Mr Ibson

7.9 Mr Ibson was cross examined for 13 days. He was questioned in considerable detail by Mr Bevan for Mr Woodward-Smith about the role of the Engineer in the claims negotiation process. This was an important topic, as the Engineer, although employed by LUL, was under the ICE (Institute of Chartered Engineers) contract a person who was meant to exercise impartial judgement. Claims had to be approved by him and certified for payment; the decision was therefore his on any particular claim, not that of LUL. Once he had decided a variation of claim was necessary, the Project Executive Group committee had to accept it. The point was made that unlike the householder with his building works, as referred to by Mr Ibson in his statement, the Engineer was an *expert* customer, one who could be expected to know, or be able to find out, the exact real value of any claim before certifying it for payment; and moreover he was monitoring the progress of the works as they went along. Most importantly, as was emphasised by the Engineer himself, Mr Sharpe, and later by his delegate Mr Waboso, claims would not be accepted without the submission of detailed evidence in support. This obviously limited the scope for any dishonest contractor successfully to have made a false claim.

7.10 During cross-examination, the question arose again as to how long his evidence was going to take. The defence indicated that they had some 60 files that they wished to take him through. It was agreed that during his evidence the court would indeed sit "Maxwell hours", that is, from 9.30am to 1.20pm without a break, then giving him the afternoon to read the next batch of files which the defence wanted to ask him about. As the questioning was so lengthy, counsel for the two main defendants took it in turns simply to provide "a change of voice". The question at the end of the examination of each file was always the same, that is, whether there was any evidence on that file that the F&C had been used to the disadvantage of LUL? Mr Ibson's answer was usually that you could not tell because he had not seen the contractor's documents containing the revised rates (if indeed they had been revised). Occasionally he said it was *"a possibility"*; on other occasions he agreed that it was not possible.

7.11 On 17 October there was a discussion initiated by the judge as to whether the prosecution had seen and checked the files which the defence were putting, and were in a position to say which they were relying on. It had become clear at this point that there were some in respect of which all the figures could be shown to have come from the contractors themselves,
in which case of course the F&C could have been of no possible use to them. When directly asked by the judge whether there were any that he was definitely *not* relying on, Mr Upward replied that he could not be sure "*at the moment*". The judge appeared to be concerned to exclude them from consideration, if the prosecution were not relying on them, whereupon Mr Purnell explained why the defence were doing what they were – that even if the prosecution did not rely on them, the defence did. The judge's response was to indicate that if a file was not relied on by the prosecution the defence should deal with it only in summary form; she was minded to set time limits on what was by now becoming a very lengthy, and to some perhaps tedious, cross-examination. Mr Purnell then went through another file and obtained a similar answer from Mr Ibson – that no commercial disadvantage to LUL could have arisen from seeing it.

A note from the jury

7.12 At this point Mr Bevan was about to resume the questioning when the jury sent a note to the judge. As this jury note provoked something of a crisis in the handling of the evidence on count 2 or, as Mr Purnell was to put it *"a critical point in the management of the trial"*, and *"a crossroads on manageability"*, the note and the events that followed need to be considered in some detail.

7.13 The jury had sent notes before; they contained pertinent questions and indicated that they were paying attention to the evidence. This note read:

> *"With due respect to the court and particularly to Mr Bevan and Mr Purnell, don't they think they've made their point? Having given us any number of examples, too numerous to mention, at the end of each example the same questions are asked with the same answer given by Mr Ibson. Is there any need to continue with yet more examples leading to the same conclusion?"*

7.14 After reading the note out to the court and ascertaining that it was the view of all of the jury and not just the note's author, the judge said that she echoed the thoughts expressed in it: thought needed to be given to dealing with this part of the evidence *"more expeditiously"*. Mr Bevan responded by quoting from the prosecution opening the words:

> *"They used that information to enhance the claims they were making for the companies they represented and they did it knowing that by doing so they were putting London Underground's interests at risk."*

7.15 He pointed out that in view of that allegation the defence considered they had no alternative but to go through and analyse the C4 figures to demonstrate that they had not been so used. They had to go through *all* of them, he said, or the Crown might be able later to say that the inference they wished to be drawn could still be drawn from those that had not been dealt with. In response, Mr Upward indicated that the Crown was happy for Mr Ibson then and there to be given all the files and for him to choose those where he considered that RWS and/or the contractors could have gained some advantage. The judge then adjourned for counsel to discuss the matter and come up with a way forward. In the upshot the note precipitated a week's hiatus in the proceedings, taken up with counsel's discussions and then legal arguments. This is a prime example of the kind of delay referred to in paragraph 1.31 above, associated with the evidence on this count.

7.16 In the course of the various days of argument the defence objected to the prosecution suggestion that Mr Ibson should be invited to consider, out of the witness box, which if any entries on the F&Cs might in the light of the C4 bundles have been useful; they objected also to the proposition that the Crown would be bound by his answers and the defence could cross-examine him on them. They said it was inappropriate that the Crown should delegate to a witness who was in the middle of cross-examination the task of deciding what their case was. Instead they wished the judge to compel the prosecution to specify which entries in the C4 files they relied on to indicate use, or concede that the documents had not been used.

A concession by the Crown

7.17 The prosecution countered by offering the concession that in the light of Mr Ibson's evidence they would not allege that the documents themselves could demonstrate that they had been used. Because of this the judge declined to compel them to specify the entries relied on and the defence then accepted the concession. The jury when they returned were told by the judge:

> *"The Crown concede that an examination of the C4 documents will not reveal evidence to prove that the information they contain and that was reflected in the F&C was used to the disadvantage of LUL. The defence do not consider it necessary to conduct an examination of each C4 file in respect of each entry on contract 204*

> *F&C reports. The defence will deal with the material referred to by Mr Ibson when he gave his evidence in chief in relation to the documents in bundle H* [the 15 documents he produced in his second statement]*."*

The evidence of Mr Elliott-Hughes

7.18 The evidence of Mr Elliott-Hughes was also important. He, it will be remembered, had worked for RWS as a marketing consultant before he was sacked by Mr Rayment: he was the man whose complaint had initiated the police investigation. Shown the F&Cs in chief he said *"these people have allowed X thousand for a particular variation – and all you have to do is – it doesn't matter what it costs, but it comes up to something approaching the figure. I think this is open to a lot of abuse personally"*. Although as an employee of RWS he might have been expected to have some relevant knowledge, he did not say (as we have already mentioned when summarising his witness statement) that the F&Cs had actually been used to falsify or inflate claims. Interestingly, he did however say that they had been produced by Mr Rayment in various meetings with potential clients, as if to demonstrate his level of knowledge and so assist him in gaining the clients (this was challenged by Mr Rayment). He also gave evidence about the attendance of an employee of LUL at the RWS offices and the handing over of envelopes, including an envelope containing cash: the prosecution case was that this man was Mr Scard, although he denied it. Additionally there was a conversation with Mr Woodward-Smith which he claimed to have had when Mr Woodward-Smith allegedly told him *"£60,000 buys us a lot of information"*. (This was challenged by Mr Woodward-Smith.)

7.19 His evidence was interrupted by illness and given over several days. At one point when he was being cross-examined by Mr Purnell he agreed that the disadvantage that arose in this case from the possession of the confidential documents was if anything to other claims contractors and not to LUL, who would only pay what could be proved was due to be paid. Whatever was the position about the use of F&Cs to show to potential clients, which was challenged, and furthermore was not to be supported by the evidence of any potential contractors themselves, Mr Elliott-Hughes's evidence was more consistent with the use of the F&Cs as a marketing tool or prop rather than as a means of inflating claims. At one point he said:

> "*I think they saw it as putting them at an advantage over any other competitors, inasmuch that they could persuade their clients, those contractors that were on the JLE, that they were able to track the claims as they went through the JLE system."*

He did however give evidence to the effect that a corrupt relationship existed between Messrs Rayment and Woodward-Smith on the one hand and Mr Scard on the other; and on this (which, as we have already said, was denied by all three) he was cross-examined very closely. Discrepancies were pointed out to him by counsel for Mr Scard between what he had said in

evidence about the dealings with the envelopes, and the somewhat different account in his witness statement. It was put to him that in other matters he had not been entirely truthful, including the circumstances in which he had come to leave RWS, which it was suggested were due to his secretly passing information about a contract in Hong Kong to a rival claims consultancy, for which he now worked. Doubt was sought to be cast on his motivation for going to the police in the first place, and the timing of it. It was put to him that his evidence could not be relied on.

Further evidence about potential use of the confidential documents

7.20 After Mr Elliott-Hughes, the prosecution returned in earnest to investigating the potential usefulness of the confidential information. Perhaps the high point was reached when Mr Peter Hall, a claims consultant acting at the time for the JLEP, and who dealt in particular with the Mowlem Civil Engineering PLC (Mowlems) claims, said:

> *"If a client* [sic] *preparing claims for a contractor had those and those claims ended up in negotiation the client would without doubt end up paying far more for a claims settlement than would otherwise have been the case."*

7.21 A lot of claims were, he said, made on behalf of Mowlems, who were however very slow in proving them. In the case of one claim he had written a rebuttal letter saying that he did not believe that the contractors had a claim but the F&C would nonetheless have a figure for the claim because there was a doubt in the matter and LUL *"internally acknowledged"* there was a potential liability; even when a claim was rejected it would still appear on a C4 as "TBA". Mr Hall, however, did not want to talk in terms of dishonest contractors and deceiving. He preferred the word *"persuade"*.

> **Commentary**: Although strongly put this evidence was all speculative, and at no point amounted to saying that the documents had actually been used. That could only have been done on the documents or from other direct evidence.

7.22 A witness from the contractors was called, Mr Brian Melling from GPT (Strategic Communications Systems) Plc. He had had close involvement with the RWS staff working at his firm's offices on their claims against LUL. He said he would not have allowed claims to be made on their behalf that were not fully justified and he was never made privy to any confidential information from LUL; at no point was he made aware of any figure which LUL had estimated for a variation. As he had not known what the internal pricing was no question arose of any *"minimum aspiration"*. He was surprised now to learn about RWS access to confidential information.

7.23 The jury asked another question at this point. They had already asked one during his evidence, and they were understandably taking a keen interest in the question of contractor involvement. After all, much of the evidence from Messrs Ibson, Hall and others turned on what a contractor (whether or not dishonest) might do with the information on the F&Cs – and here for the first time *was* a client contractor giving evidence. Now he was asked by the jury how thorough the firm was at checking prices and substantiating documents on their claims. Also how difficult was it, the jury wanted to know, to extract payment from LUL. Very difficult was the answer to that one – and GPT at least were thorough in substantiating their claims.

7.24 Mr Doherty was a more senior figure than Mr Ibson. He was the Project Director for the whole JLEP at the time and had made several statements to police; he had also given evidence already on count 1. Now he gave similar evidence about the confidentiality, commercial sensitivity and the use that might be made of the F&Cs. He also gave important evidence about that part of the case that concerned Westinghouse and the defendants Mr Skinner and Mr Wootton.

7.25 Mr Doherty's evidence was interrupted by the Christmas break, extended in this case because one of the jurors had an operation booked for mid-December, which with her convalescence meant that the court did not sit for an extra two weeks. Interposed with his evidence were a number of potential RWS clients whom Mr Elliott-Hughes alleged Mr Rayment had shown, or given to understand that there existed, confidential LUL material. None of them in fact supported that assertion.

The Crown's case on the F&C element in count 2 at this point in the trial

7.26 So the case proceeded, as ever on count 2, save for a brief interlude for the evidence of an outstanding witness on count 1, Mr Stephen Kornfeld, who was not prepared to come from the United States and who in the end gave evidence by a video link. A number of important witnesses remained to be called, including the Project Chief Engineer, Mr David Sharpe, and Mr Roy Smith, the Contracts Manager.

7.27 At one point Mr Smith agreed that the F&Cs would have been a useful marketing tool for RWS and that the rest of it, that is, the risk of economic detriment, was *"pure speculation"*. There was at another point much discussion of the value of a contractor/claims consultant seeing the description "TBA" against a claim on an F&C, when they had been officially told by LUL that they did not have any claim. No instances were however relied on where the contractor had actually taken advantage of this.

7.28 Mr Sharpe made reference in his evidence to two "civils" contracts which he had been concerned about: he feared that they were being embellished. It was made clear however that RWS had worked on neither of these contracts. On another occasion Mr Smith started to discuss "global settlements" – occasions when LUL and a contractor might come to an overall agreement that was not simply the aggregate of what could be proved to be owing for a

number of pieces of work but was a negotiated settlement. The defence objected that this was moving the goalposts, because it was to go outside the core contracts which the prosecution had said some time before that they were exclusively relying on. After argument and adjournment for discussion between counsel it was agreed that the Crown's case would only be proved "if the dishonest enhancement or identification [of claims] is shown". Mr Upward then stated for the benefit of the jury:

> *"Central to the offence charged in count 2 is the allegation that claims were enhanced or identified so that the economic interests of LUL were put at risk…the Crown relies on contracts 68, 111, 202, 204…focus on these contracts and the claims to which they gave rise."*

Commentary: These witnesses did not advance the case beyond the high-water mark it had already reached. Put in various ways, what had been asserted was that there was a risk that the confidential information might be dishonestly used, to identify and/or enhance claims. On the other hand, there was no specific evidence that it actually had been. What the prosecution witnesses therefore seemed to be describing was a risk of "psychological encouragement" or some sort of psychological comfort to pursue a claim; it was clear from the evidence that these would only be claims to which they were entitled. The risk here was some distance removed from the kind of risk envisaged in *Allsop;* and there was the paradox of the prosecution asserting that LUL, even if as a result they paid out more money than they might otherwise have done, could really be "defrauded" by a contractor pursuing any claim to which they were entitled, and which they could demonstrate that they were entitled to. It is certainly the case that no evidence emerged of the payment of, or indeed the making of, any claim which was, in the commonly accepted sense of the word, false.

Mr Ibson and the Westinghouse Signals Limited (WSL) F&C

7.29 Mr Ibson was recalled to the witness box to give evidence for a second time, this time relating to a single F&C report recovered by the police from the offices of RWS in June 1997 relating to WSL. As a result of this evidence the prosecution were yet again forced to restate their case on F&Cs. Although it related to WSL, this was part of the F&C element of the alleged conspiracy involving Mr Scard, and nothing to do with Messrs Wootton and Skinner.

7.30 Mr Ibson had been asked in December 2003 to examine the underlying C4 material relating to this F&C and to comment on whether, given that supporting material, the information it contained would have been of use to RWS and to WSL. To this end, he had made two further witness statements dated 9 January 2004 and 4 February 2004 respectively. The purpose of this exercise was to reinforce the hypothesis on which count 2 was based, namely, that disclosure of confidential information in the F&Cs put LUL at risk of financial loss. In his evidence he identified five entries which might have been of use to a contractor, if unscrupulous, or to its agents.

7.31 During legal submissions which arose during his cross-examination, and in response to a question from the judge, the prosecution on 1 June 2004 produced a document entitled "Submissions F&Cs and C4s". In this, and relying exclusively on the evidence of Mr Ibson, they identified precisely those F&Cs and C4s in the "core contracts" that they alleged were capable of use by the conspirators. However, they expressly declined to identify which from amongst those had actually been used. This, they said, was a separate question, *"the answer to which lies on the inferences to be drawn from the surrounding information and evidence overall*".

> **Commentary**: This document represented a substantial narrowing in the focus of the prosecution case. This could have been obtained before the case started, rather than at the end of cross-examination. In any event, it remained at the end of the case a matter purely of inference whether *any* of the F&Cs, that is whether pointed to by Mr Ibson or not, had in fact been used for one of the purposes alleged by the Crown.

Count 2: Mr Wootton, Mr Skinner and WSL

7.32 The second element of the Crown's case was concerned with documents alleged to have been disclosed by Mr Wootton to RWS through the agency of Mr Skinner. The inclusion of both Mr Wootton and Mr Skinner in the count 2 conspiracy was dependant on this evidence; they had had nothing to do with the F&Cs. This evidence also demonstrates that this aspect of the investigation had been conducted without detailed exploration of what had actually happened during the course of the JLEP, and in particular how claims were formulated and the legal process by which they might be put forward under the ICE Conditions of Contract.

7.33 As with the F&Cs, the prosecution alleged that the information disclosed was confidential and that it had been obtained in order that it might be used to the advantage of RWS and its client WSL, and to the disadvantage of LUL. All of the documents alleged to have been disclosed pursuant to the conspiracy related to a claim for an extension of time on contract 202, on which RWS were employed from June 1996. In the prosecution opening, they had alleged that Mr Wootton had persuaded his superior, Mr David Waboso, to grant the extension of time application by WSL. This was not substantiated (see paragraph 7.42).

7.34 In respect of WSL two documents in particular were identified as being important. The first of these was entitled "*Westinghouse Signals Limited Railway Signalling System for the Jubilee Extension Project for London Underground Ltd: Interim Claim Submission in respect of Additional Payment and Extension of Time*" [the "interim claim submission"]. It was said to have been prepared by Mr Wootton in July 1996. The prosecution case was that Mr Woodward-Smith had sent a copy of it to Mr Martin Kennedy who had been placed in charge of the RWS team at WSL's offices in Chippenham, to assist them in the preparation of their claim for an extension of time. The prosecution said that the purpose of sending the document was to influence the formulation of the claim.

7.35 It was alleged that Mr Wootton had also disclosed a second and more significant document entitled "*Contract 202 – Signalling Systems Strategic Review – Commercial & Contractual Aspects*" [the "strategic review"]. This comprised a broadly-based but frank analysis of where blame lay for delays and other difficulties that had arisen in respect of contract 202. The Crown's case was that it had been prepared by Mr Wootton for use within LUL. Part of this document, found separately [the "strategic review extract"], was said to have been given by Mr Woodward-Smith to Mr Kennedy in August 1996. Interestingly, the document given to Mr Kennedy did not contain some of the information identified as having the most potential for damage to LUL.

7.36 The police had identified Mr Wootton as the source of the first document by means of fingerprints, handwriting and computer forensics and he himself had acknowledged that he was the author of the second. The prosecution were not able to say whether he had written a further document, sent by Mr Skinner to Mr Woodward-Smith in January 1997, which commented on the draft extension of time claim that had been prepared by RWS.

7.37 The evidence from WSL ran predictably enough. The prosecution did not suggest that anyone within WSL had engaged in anything less than honest conduct. WSL had a great deal of experience in railway signalling and in electrical and mechanical contracts but was unused to the particular form of contract employed on the JLEP and to the adversarial approach that it demanded. The company had difficulty presenting claims in such a way as to satisfy LUL. They had appointed RWS to act as claims consultants and Mr Skinner had been instrumental in persuading them to do so, a fact that was not disputed in cross-examination. Cross-examination of Mr Kennedy, however, a witness from RWS who had worked on the WSL claim, undermined the prosecution case. He was led, without much difficulty, to remark of the interim claim submission that it was *"a very general document …. inappropriate for a WSL claim".* He said that he had not used it but had put it to one side. Nor did he consider that the strategic review extract revealed anything of which he and his colleague, Mr Sean Ostrowski, were not already aware.

7.38 When examined in chief Mr Kennedy had been shown the F&C upon which Mr Ibson had been invited to comment and had suggested that it would have been possible, in the light of the information it contained, to have tailored claims made in respect of variations in line with the provisions recorded in the F&C. Under cross-examination, however, in answer to questions from Mr Bevan, he explained that he could not have used the information in that way without *"fiddling the data"* - and he would not have been prepared to do that. He said that he had relied upon WSL correspondence to identify the various heads of claim and WSL employees to provide the data in support, and that it would have been necessary under the contract to substantiate, with evidence, every claim made.

7.39 The original witness statements from Mr Ostrowski dealt with allegations that did not feature in this trial. A further witness statement was, however, taken from him in March 2004. In this he gave a brief account of a meeting that had taken place with Mr Wootton in July 1996 in which he had given Mr Wootton information about the WSL claim. He also purported to identify the interim claim submission as a document which had been sent by Mr Woodward-Smith.

7.40 The prosecution had not asked Mr Ostrowski to confirm that the interim claim submission was the document that had been sent to Chippenham by Mr Woodward-Smith and when it was raised in cross-examination it came as a surprise to all (including Mr Bevan who was questioning him at the time) when he asserted that it was not in fact the document he had been referring to. All assumed that Mr Ostrowski was mistaken and his evidence was interrupted to allow him to gather his thoughts, indeed leave was given for the prosecution to help him with this process. He did not yield, however, and suggested that access to the files and records he had maintained at WSL could resolve the issue.

> **Commentary**: These documents were of importance because they might have shown whether Mr Ostrowski's work had been influenced by information from LUL. If the police investigation had focussed on the actual use of documents, as opposed to their potential for use, such documents would have been gathered at an early stage of the inquiry. As it was, the progress of the trial was delayed whilst Mr Ostrowski searched for the documents, and in so doing found others that were relevant. As a result of the gathering of the documents and the copying to, and assimilation by, the various teams and a further delay, occasioned by the birth of a child to the wife of a jury member, the case was interrupted for almost five weeks.

7.41 Mr Ostrowski did not find any documents to help him resolve the issue about the interim claim submission, but in the meantime he had remembered that he had sent it to the RWS offices for typing and that the finished article had been returned to Cheltenham by fax. He was able to further explain that an earlier document *had* been provided by Mr Woodward-Smith but he had not used it and indeed discarded it.

> **Commentary**: If he was correct, the prosecution had no means of demonstrating that the contents of the document supplied by Mr Wootton to Mr Skinner and thereafter to Mr Woodward-Smith were confidential or capable of any use, damaging or otherwise.

7.42 The prosecution case was not substantially advanced by the calling of Mr Waboso and Mr Nigel Williams, both of whom had been employed by LUL. Mr Waboso was the Engineer's delegate. He was cross-examined first by Mr Bevan, whose questioning established that the Engineer acted in a quasi-judicial role as to the administration of the contract, and made it clear that the Engineer's team could not have authorised payment of any claim that was not substantiated with evidence. Mr Cox's questioning sought to demonstrate the superficial nature of the evidence called by the prosecution and of the police investigations upon which the prosecution case was based. He succeeded in establishing that the process for obtaining payment was not a matter of negotiation but of proof, or lack of proof, of entitlement. Mr Waboso also accepted that there had been considerable pressure during 1996 to resolve disputes with WSL in order to ensure that the opening of the line was not delayed.

7.43 Mr Cox also dealt with the particular areas of the strategic review about which Mr Waboso had expressed concern. He elicited from Mr Waboso the view that the risk of harm posed by the information it contained was negligible. Mr Waboso also conceded that it would have been a legitimate negotiating tactic for Mr Wootton to have disclosed a certain budget figure. Mr Upward attempted to recapture some ground in re-examination, and under further cross-examination from Mr Cox, Mr Waboso made the comment *"if the contractors' team knew what was in the employers' bank I would feel uncomfortable"*.

> **Commentary**: Although Her Honour Judge Goddard in her ruling on submissions accepted that there was a case to answer against Mr Wootton, it was, after Mr Waboso's and Mr Williams's evidence, a severely weakened one. In particular, the suggestions made in Mr Upward's opening that Mr Wootton had persuaded Mr Waboso to grant an extension of time; and that he had sought to persuade Mr Waboso to allow him to negotiate a settlement had not been established.

Conclusions:

- So far as the F&C element of the count 2 case is concerned, and whatever may have been the position in law, it was inevitable that the defence would seek to demonstrate through a prolonged examination of the documents with the Crown's own witnesses that either the F&Cs were not capable of the use alleged or, even if they were, that there was no evidence that they had been so used. The nature of the evidence gathered during the investigation was equivocal, and relied too much on inferences that were not the only inferences that could be drawn. The prosecution, rather than instructing an independent expert, had chosen to rely on evidence as to the extent and nature of any risk from senior employees, or recent senior employees, of LUL, the allegedly defrauded party. By the time the case came to trial these witnesses had mostly moved on to other jobs and contracts and in several cases were no longer so positive in their evidence. In any event, they were not in a position to assist, as an independent expert might have assisted, with how realistic it was in practice that the documents could have been or had been used in the way the Crown suggested.

- In relation to the WSL element, and whether or not there was a prima facie case on the count 2 conspiracy against Messrs Wootton and Skinner, the same point applies, if anything more strongly. Through reliance on the “risk of loss” approach, the Crown did not investigate the realities of what had actually taken place between WSL and LUL.

- Overall, the Crown were in a position to establish a case to answer against the respective defendants not only on count 1 but also in respect of the allegations of corruption. On those counts, it would not have been necessary for the Crown to prove the particular use to which the defendants intended to put the documents said to have been supplied by Mr Scard on the one hand, and Messrs Wootton and Skinner on the other. Adding a count of conspiracy to defraud based on those documents increased enormously the complexity of the issues and, therefore, the length of the case and the burden on the jury, and should only have been done if the evidence gathered during the investigation was clear and unequivocal as to the use to which those documents were to be put.

CHAPTER 8: THE JURY AT THIS POINT IN THE TRIAL

Overview: the case was eventually terminated because of Court of Appeal authority that no jury could be expected to remember the evidence at the time this jury would be retiring to consider their verdicts. This chapter demonstrates the slow and disjointed pace of the proceedings in court, examines the burden placed on them by this very long trial, and assesses the case from their point of view. The numerous interruptions to sitting and days away from court caused by a plethora of different factors inevitably gave rise to a culture of poor expectations on their part which was itself the cause of more interruption. Although the way the prosecution put their case was a substantial contributing factor, many others were outside their control and were questions of general trial management.

The burden on the jury

8.1 We have already mentioned two interventions by the jury in the course of the evidence. We turn now to consider as a whole the various developments that took place in relation to the jury up to the close of the prosecution case in mid-August 2004.

8.2 They had by now been sitting for more than 13 months. This was still well within the time estimate they had been given before they were sworn, as they had been told then that the case was expected to last until July 2004 and might continue until December 2004. Although they had all, having been selected for jury service, agreed to serve as jurors on a trial of this length, as they later said “we accepted this without fully understanding the consequences this would have on our lives”. Nevertheless, they were all making considerable sacrifices of their time to do so. In some cases, because the jury for the Central Criminal Court is drawn from the entire Greater London Area, they were having to make long journeys to get to court. For the costs of these journeys they were re-imbursed and they received a further modest sum for subsistence and expenses. Several of them, being either retired or unemployed, were receiving no further payments such as compensation for loss of earnings. Even for those in receipt of these payments they were, at this stage of the trial, limited to a modest level which was often less than actual loss of earnings. With the exception of the defendants all others in court were being remunerated for their attendance, some of them very well remunerated; and the defendants themselves, most of whom were attempting to carry on with their professional lives, had been given leave by the judge to be absent from court unless their counsel required them to be present.

8.3 Such a situation, unless sensitively and considerately handled, obviously creates the potential for the build up of a degree of resentment and disaffection in a jury which is not conducive to justice. The situation is made even more difficult when large parts of the evidence are dry and even repetitive, and there is much protracted examination of technical and financial documents consisting largely of sets of figures. As we have seen, this case was not free of such problems, and the jury’s frustration at the slow pace of proceedings had already boiled over on more than one occasion.

8.4 The judge went to considerable trouble to alleviate the burdens on them in this case. Frequent breaks were taken during court hours. The court did not, except for a short period when Mr Ibson was giving evidence for the first time and had to be given an opportunity to read new files, sit "Maxwell hours", but the jury told us that this would not have been in any event of any assistance to them: most of them had to travel too far to and from court to make afternoons off of any use to them. This problem reflects the particularly large catchment area for jurors at the Central Criminal Court. Here and at other Crown Court centres with similarly large catchment areas it might be possible to select only jurors who would be able to sit Maxwell hours. In the early part of the trial the court did not sit alternate Fridays, so that they would have time to deal with other commitments, although this had to cease (on 31 October 2003) when the pace of evidence slowed. Until the end of July 2004 the judge had the services of a judicial assistant, who amongst her other duties became the unofficial liaison officer and conduit of communication between the jurors and the court, ensuring as far as possible that on days when legal argument was taking place or evidence was for other reasons suspended, they did not have to attend court unnecessarily early, or at all. Throughout, considerable efforts were made to minimise the amount of time they had to wait around in their jury room. Even so, the amount of such time was considerable.

Holidays, illnesses and other interruptions

8.5 By the time that the court abandoned the practice of not sitting alternate Fridays, however, the proceedings were already being interrupted with sufficient frequency, and for sufficient duration, to give at least most of the jurors ample if irregular days out of court. We have already mentioned the holiday period of three weeks in August and September of 2003. There was another holiday of two weeks at Christmas, though in the case of most jurors this was extended by a further two weeks as one of their number was having an operation: thus they had been away from the case altogether between 5 December 2003 and 5 January 2004. There was a further week's holiday at Easter 2004 but the time away from court was added to, for the jurors at least, by four days before that when no evidence was heard as documents were having to be searched for; and by a further 14 days afterwards due to a combination of factors. Thus they heard no evidence at all from 1 April to 5 May 2004. There was then a further two weeks' holiday in June (between 3 and 18 June) but shortly preceded by three days (28 May to 1 June) on which the court did not sit.

8.6 The absence of any one juror, of course, means that no evidence can be heard. No arrangements exist in a criminal trial, or can be envisaged, for an absent juror to be informed of evidential developments by his or her colleagues. In an ordinary trial of modest duration this rule presents no particular problems, but the longer the trial goes on the more likely on purely statistical grounds it is that illness – it may be of counsel, witnesses or defendants in addition to jurors – will halt the proceedings. It may be even that the illness of a family member may mean the juror cannot attend. Furthermore, in very long trials another rule assumes significance, namely that a quorum of at least nine jurors must remain by the end of the trial to give

a lawful verdict. Thus, even if the illness of say a juror necessitates the sort of comparatively lengthy absence that in a shorter trial might lead to their individually being discharged and the trial continuing without them, this is a risky step to take in a long trial. As it was, by the end of this case, two jurors had been discharged, one because of pregnancy and one because of circumstances equally unconnected with the case.

8.7 Juror illness added considerably not only to the length but to the disjointedness of the proceedings. We have already mentioned the operation on one juror in December 2003 and the consequent loss of ten days. In addition, and discounting odd single days:

- a whole week was lost in September 2003 (8 to 12) through illness, and a further two days (22 and 23) because of a juror family crisis;
- two days were lost on 3 and 4 November;
- three days (14 to 16) in January 2004;
- three days in February (25 to 27);
- six days in March (4, 9 to 11, 22 and 23);
- two days in June (23 and 24);
- six in July for illness (5, 6, 8, 9, 12, 13) and three more for domestic commitments (21 to 23).

Three members of the jury were expectant fathers, and the judge had ruled that each of them should have a week's paternity leave; for this reason a further four days were lost in April/May 2004 (28 to 30 April, 4 May) and a further five days in July (14 to 16, 19 and 20). Thus July, like the previous December and April, was one of those months when very little evidence was heard at all.

Jury sitting times

8.8 Merely counting the days sat does not give the full picture, however. The length of a court day, making allowances for the short morning and afternoon breaks customary in long trials, is some four to four and a half hours. But for a whole variety of reasons it was rare that the court sat with the jury for a full day. Thus, for example, in January 2004 the jury heard evidence on 15 days for periods ranging from 45 minutes to three and a quarter hours *but with an average duration of less than one hour and 55 minutes*. Another feature of the case was that the evidence of witnesses was frequently fragmented, leaving aside those witnesses such as Mr Doherty who gave evidence twice, once in relation to count 1, and a second time in relation to count 2. Thus, for example, Mr Waboso, an important witness in relation to that part of the case that dealt with Westinghouse Signals Limited, started to give his evidence on 10 May 2004. He then did not give evidence again until 22 June. He was back on 25 June, 1 and 2 July, 7 July and then 29 July to 3 August. His evidence, in other words, was given in fits and starts over nearly three months. Another example was Mr Doherty, who started to give his evidence on 27 November 2003, for an hour and a quarter, did not give any again until 3 December, and thereafter with breaks was not finally concluded until 19 January 2004.

Commentary: Proceedings in this case were particularly slow and disjointed, and they seemed to become inexorably slower and more disjointed as time went on. This was caused by a number of different factors, but they combined together here in an unusually unfortunate way, not typical of the average long fraud trial. Some of the factors were unavoidable, others were clearly avoidable, others still might have been avoided if there had been closer co-operation among the players and if, for example, more attention had been devoted during the preparatory stage of the trial to teasing out the real issues in the case and, most importantly, focusing on the evidence *that really was determinative of those issues.*

We have not yet mentioned one of the significant causes of delay and interruption during the trial, which was that some key witnesses had to be shown bundles of documents put together by the defence and given a chance out of court to read them before they could be asked questions about them in cross-examination. Such had to be done for Messrs Ibson, Hall, Doherty, and Smith. In the case of Mr Ostrowski, it became apparent during cross-examination that there were further relevant documents which he wished to consult; time was then lost while he searched for them, and more time when further disclosure had to be considered. Again, if Mr Ibson had to comment on documents adduced by the defence (albeit in most cases obtained from London Underground Limited), it would have been much more desirable if rather than have to give evidence (for a lengthy period) once, then make a further statement and return to the witness box, all he could relevantly say had been ascertained before the trial began.

The consequence of the failure to focus pre-trial on the key issues and evidence

8.9 It frequently must have seemed to the jury that significant aspects of the case were not so much being presented to them as investigated in front of them. In the end, the prosecution case on count 2 came down to a relatively small number of documents and confidential pieces of information, and it would have been very greatly preferable if the whittling down process had taken place not actually in court but before the trial began. During the group interview conducted with jurors as part of the review it was clear that they were uncertain as to what the prosecution needed to prove in relation to count 2. They were waiting for the judge to clarify this for them at the end of the case. This echoes the comment made earlier about the two different battlegrounds. It is obviously desirable that a jury understand the elements of the offence, or at least understand clearly the prosecution case, at the time that the evidence is presented to them, or they may not appreciate the significance of it.

Commentary: This may not matter so much in a short and simple trial but, in a trial that has gone on so long and involved a multiplicity of counts and defendants, to have to wait for a summing up before learning what parts of the evidence were important and what not, and how to approach them, is hardly a recipe for producing a set of safe and true verdicts.

A jury letter

8.10 On 14 July 2004 the judge was sent a letter marked Private and Confidential that had been signed by nine of the jurors. This was when the court was not sitting it, being the first day of the first paternity leave. The letter read:

> *Dear Judge,*
>
> *It has become increasingly apparent that this case Crown v Rayment and Others, is going to continue for some time yet and 2005 seems to be looming ever larger as the case continues. This estimate is not idle speculation but has been determined from our experience over the last 13 months or so. (We are not attending court that often these days and since 1st April 2004 we have only attended on 15 days, of which, at least on 2 occasions, we did not sit in court other than to be told to go home.) This comment is not meant to be a criticism, just an observation.*
>
> *Sickness, marriage, births and even death have all managed to affect the course of this trial, none of which could have been foreseen before the trial began. We, as the jury, have become increasingly despondent, not just with the length of time this is taking but more with the effect it is having on our lives, that life we have outside the Old Bailey. We acknowledge the fact that we were told, at the very beginning, this could take between 14-18 months. We all accepted this without fully understanding the consequences this would have on our lives. Some of us have suffered financially; all of us are now suffering with our jobs and careers in one way or another.*
>
> *Yes we are doing our civic duty and we will remain doing so until this trial concludes. We are all happy to do so. However we are setting a precedent here, being the longest serving jury in the history of the Old Bailey and possibly the whole of the UK. We all feel that the Lord Chancellor's office should consider an ex gratia payment to each member of the jury at the end of this trial. We are aware that we are receiving loss of earnings and expenses but this payment would be nothing to do with "getting paid for the job" but more with compensation for the effect it is having on our working lives, on our lives in general.*
>
> *We trust you will pass this request onto the appropriate authority."*

8.11 Although this letter was dated 14 July it was apparently not received by the judge until 11 August and a copy handed to counsel shortly thereafter; the contents were, however, not discussed until after the close of the Crown's case. In the meantime, another development had occurred, namely the departure of the judicial assistant; predictably by this time it was to trigger another application to discharge the jury.

8.12 The episode seemed to cause disquiet to the jury as they believed that it had been connected in some way with the nature of the assistance she had rendered to them. In any event, while for several days the issue was being discussed in their absence, it was a further major distraction. The judge ruled that the episode had no impact on the trial. The defence, however, argued at length that the episode had been handled unsatisfactorily by the court, in that there was said to be a reasonable suspicion of prejudice to the defendants, and that the court had not adequately investigated with the jurors the possible prejudice, including the possibility of bias, and that in the result the defendants could not continue to receive a fair trial. These and other submissions were made to the judge, and they were coupled with further argument about the overall length and the interrupted nature of the proceedings which the defence said demonstrated that the case had become, as they had predicted, unmanageable. One comment that might be made is that by this stage of the trial applications to discharge the jury had themselves become a significant contributor to interruptions in the evidence and to the overall length of the trial.

8.13 When the judge rejected these submissions an application to the Attorney General for a *nolle prosequi,* a procedure by which the Attorney General may terminate proceedings, was made by counsel representing Messrs Rayment and Woodward-Smith. It was said because of these two factors, prejudice and potential bias on the one hand, unmanageability on the other, the case had now become one in which, if convictions were returned, those convictions could not be upheld in the Court of Appeal. The continuation of the trial was accordingly said to be an abuse of process. On well-settled principles applicable to this type of situation this application stood no chance of success and was subsequently rejected by the Attorney General.

The Crown closes its case

8.14 On 16 August the Crown closed its case. It was the 196th day of the trial, during which time the court had heard 290 hours of evidence, approximately 200 hours of which had been directed at count 2. However, if the trial had not been interrupted and if the court had managed to hear four hours of evidence each day, then, notwithstanding the problems caused by count 2, the prosecution case might well have been concluded within 15 weeks or, allowing for a three week holiday in the middle, by mid-November 2003. The prosecution had made mistakes and these contributed to the length of the case, but it was only as a result of a most unusual combination of factors that the prosecution case took so long.

CHAPTER 9: THE TRIAL PART TWO: THE DEFENCE CASE

Overview: this chapter deals with the manner in which the case lost all momentum as a result of the illness of a defendant who had started to give evidence. It presented a very difficult problem for the court, and it was complicated by the fact that this period was dogged with jury illnesses and the illness of counsel, as well as the emergence of another jury problem. Nevertheless, it was not inevitable at this point that the trial should have collapsed and we try to identify lessons that might be learned for the future in approaching this kind of issue.

9.1 For a period following the rejection of the defence submissions of no case to answer, and their further submissions on manageability, it appeared that the trial would be concluded early in the New Year. Indeed, on 14 October an appraisal of the situation was occasioned by the receipt of a note from the jury inquiring as to when the trial was likely to end. Following a discussion with counsel the judge advised the jury that the last court day before Christmas would be 23 December 2004 and that she would commence her summing up immediately after the Christmas and New Year break when the court first sat after the break on 4 January 2005. That did not happen, and the purpose of this section is to see if any lessons can be learnt from what took place.

9.2 Messrs Purnell and Bevan both indicated to the Judge on 12 October that they would not be calling evidence in support of their clients' case and Mr Sallon did so on behalf of Fisher on 13 October. Next on the indictment was Mr Skinner. His team were not ready to proceed on 14 October and asked for more time to prepare documents for the jury. The case was therefore adjourned with no evidence being heard until Tuesday 19 October, when Mr Skinner entered the witness box and began his evidence. Interruptions were threatened almost immediately when, after lunch, Mr Cox told the court that Mr Wootton's wife was in hospital and that he might need to apply for an adjournment to allow Mr Wootton to look after their only child. The following day Mr Cox told the court that although Mrs Wootton had been released from hospital Mr Wootton was needed to look after her. Mr Wootton was permitted to leave the court at 2pm and the case was adjourned until Monday 25 October.

9.3 On Monday 25 October, Mr Skinner was late in arriving at court and did not begin his evidence until almost 12.30pm. At 2pm he was feeling unwell, and was sent to see the resident nurse at the Central Criminal Court who took his blood pressure and, observing that it gave cause for concern, called an ambulance. The news given to the court the following day was that Mr Skinner had been discharged from hospital the night before, his blood pressure having fallen, and that he had been prescribed medication. After discussion the judge adjourned the case until Friday 29 October although, in the event, the court did not sit until Monday 1 November. On that day Mr Skinner's evidence continued but not without interruption, one and a half hours being lost as a result of a faulty microphone and an early finish to allow a juror to attend a medical appointment.

9.4 Mr Skinner's evidence continued in a fragmented way. The table below sets out the overall position:

Tuesday 19 October	Mr Skinner went into the witness box and gave nearly a full day of evidence.
Wednesday 20 October	Mr Skinner gave evidence between 10.20am and 3.10pm with breaks. Mr Skinner had a very bad cold and the judge therefore broke his evidence off at this time. Mr Wootton had been permitted to leave the court at 2pm, as he had to look after his wife, who had been released from hospital. The case was adjourned until Monday 25 October.
Monday 25 October	Mr Skinner was late arriving at court and did not start giving evidence until almost 12.30pm. At 2pm he was feeling unwell, and taken to hospital. High blood pressure was diagnosed, and he was referred to the care of his GP.
Tuesday 26 October	The court sat briefly to hear that Mr Skinner had been discharged from hospital, but had been prescribed medicine. The case was adjourned to Friday 29 October, although the court did not in fact sit again until 1 November.
Monday 1 November	Mr Skinner continued giving evidence, although one and a half hours was lost due to a faulty microphone, and there was an early finish to allow a juror to attend a medical appointment.
Tuesday 2 November	The court sat only briefly in order to hear the news that both a member of the jury and Mr Skinner were ill. After some discussion the jury were advised to return on Thursday 4 November.
Wednesday 3 November	The court sat but only for the purpose of receiving an update regarding Mr Skinner's health.
Thursday 4 November	Miss Dakyns reported that Mr Skinner had seen a doctor and that he was vomiting, coughing, and that he was suffering from diarrhoea and a chest infection. After a brief discussion the case was adjourned to 8 November.
Friday 5 November	No sitting.
Monday 8 November	Mr Skinner gave evidence between 3pm and 4.10pm, the rest of the day being devoted to legal argument regarding the jury letter of July and a further application to discharge the jury.

Tuesday 9 November	No evidence was heard the court being advised that a member of the jury had had "a very unpleasant night".
Wednesday 10 November	That juror had recovered and did attend but a fellow juror was now not well and the day was therefore lost.
Thursday 11 November	No sitting.
Friday 12 November	No sitting.
Monday 15 November	No evidence could be heard because Miss Dakyns was ill, suffering from flu, a stomach bug and a chest infection.
Tuesday 16 November - Friday 26 November	No sitting.
Monday 29 November	Three jurors were absent and no evidence could be heard.
	No sitting.
Wednesday 1 December	Jurors were also missing; no sitting.
Thursday 2 December	Mr Skinner was able to resume his evidence. During the afternoon break, however, Mr Skinner went to see the nurse who took his blood pressure and advised that he should see a doctor immediately. As a result the proceedings were adjourned at 3.20pm, the jury being advised to attend the following day.
Friday 3 December	Mr Skinner's solicitors had been able to warn the court that it was necessary for Mr Skinner to undergo medical tests and the jury were contacted and told not to attend court, which sat, but only for the purposes of discussing how to proceed. Whilst sitting, the court received a fax from Mr Skinner's doctor advising that Mr Skinner would not be fit to attend court until Tuesday of the following week (7 December) and the case was adjourned until that date.

The handling of Mr Skinner's illness

9.5 By now some seven weeks had elapsed since Mr Skinner first went into the witness box. At this stage the prosecution, on behalf of the court, made arrangements for Mr Skinner to be seen by the senior consultant cardiologist at Guys Hospital, a Dr Coltart. It is important to be clear that Dr Coltart was not being asked to give an adversarial forensic opinion but only to treat Mr Skinner therapeutically with a view to his returning to the witness box and resuming his evidence. The reason the prosecution were making these arrangements rather than the defence, or the court, was that they volunteered to do so in order to progress the trial, it being said on Mr Skinner's behalf that he could not afford to pay for a consultant himself. It was nonetheless the court, rather than the prosecution, that devised the questions that it wished to be addressed, and this remained so throughout Dr Coltart's involvement. For example, on 2 February 2005 Dr Coltart was told by the prosecution: "The court now need to know whether his blood pressure can be controlled by medication in a way that will allow him to continue his evidence uninterrupted. Can any other steps be taken, for example regular short breaks, to ameliorate the stress consequent upon questioning – particularly cross-examination".

9.6 Dr Coltart had diagnosed Mr Skinner to be suffering from essential hypertension brought on by the stress of the court proceedings and having to give evidence. Whilst we emphasise that the judge accepted Mr Skinner's illness as genuine, Dr Coltart himself at one point raised the caveat: "Of course if Mr Skinner does not take his medication at these time intervals then his blood pressure will surge and, although it is difficult for a consultant to detect that he has taken his medication, this would be a mechanism whereby the proceedings could be interrupted."

9.7 Mr Skinner's evidence continued as follows:

Monday 7 December	The court was informed that Mr Skinner would not be fit to give evidence that week and so the earliest date upon which evidence could next be given was 13 December. Medication had been prescribed but it was anticipated that this would not take effect for a few days. Dr Coltart also suggested that as Mr Skinner's blood pressure appeared to rise in the afternoon the court might consider restricting his evidence to mornings only.
Tuesday 8 December	No sitting.
Wednesday 9 December	A brief mention of the case when the court was informed that an appointment had been arranged for Mr Skinner to see Dr Coltart on 13 December at 9.30am and was also informed that Mr Wootton, who had also in the meantime fallen ill, had left hospital but would not be fit until 19 December at the earliest.

Thursday 10 December	No sitting.
Friday 11 December	No sitting.
Monday 14 December	The court sat for an hour, without the jury.
Tuesday 15 December	No sitting.
Wednesday 16 December	The court considered the latest report from Dr Coltart and information regarding the state of Mr Wootton's health. As a result it was decided that the jury would not be required until 10 January 2005.

9.8 The court had been advised on 3 December that Mr Wootton had also fallen ill on 2 December and that a blocked artery was suspected. Mr Wootton attended his doctor on 6 December and was in hospital on 7 and 8 December in order to receive treatment and there was doubt he would be able to attend court. Had Mr Skinner been able to continue his evidence that might have placed Mr Cox in some difficulty as he preferred his client to be present during his cross-examination of Mr Skinner. In the event, although Mr Wootton's health remained in doubt until the conclusion of the proceedings it did not cause further interruption.

9.9 On 16 December Miss Dakyns told the court that she intended to apply for the discharge of the jury. The hearing of her application was scheduled for, and heard on, 5 January 2005 and rejected in a ruling given by the judge on the following day. There were no further court sittings until 10 January.

9.10 In the New Year Mr Skinner's evidence continued as follows:

Tuesday 10 January	Proceedings began with an application from Miss Dakyns that in the exceptional circumstances she should be allowed to have a conference with her client. This was rejected. The timetable for the case was discussed and Miss Dakyns indicated that, with the court sitting between 10am and 1pm Mr Skinner's evidence would last for a further two months. The jury were brought into the court at 10.45am and Mr Skinner's evidence continued until the morning break at 11.20am. His evidence resumed at 11.54am and continued until 1pm.
Wednesday 11 January	The jury heard no further evidence until 19 January, as on this morning it was evident to all that Miss Dakyns was unwell and in no fit condition to continue. She was later diagnosed as having contracted scarlet fever.
12 -18 January	No sitting – counsel's sickness.
Thursday 19 January	The court heard evidence from Mr Skinner between 10.20am and 12.55pm, with a short break.
Friday 20 January	No sitting as one of the jury had called in sick.
Monday 23 January	No sitting.
Tuesday 24 January	The court heard some evidence though time was lost.
Wednesday 25 January	A member of the jury became unwell whilst waiting to enter court. As a result of this juror's condition Mr Skinner did not give evidence again until 1 February.
Thursday 26 – Tuesday 31 January	No sitting.
Wednesday 1 February	Mr Skinner gave evidence for 2 hours. This was to be his last visit to the witness box.

Thursday 2 February	Proceedings were delayed for 45 minutes as jurors were late in arriving at court, and began with a legal argument as to whether or not Mr Skinner should be allowed to comment on documents that were not his own, and which he had not seen before they were brought to his attention during the investigation or subsequent proceedings. The jury having arrived by 11.50 am, Mr Skinner complained of being unwell and asked to see the nurse, who once again observed that he had high blood pressure. Mr Skinner was therefore allowed home.
Friday 3 February	Following a consultation with Mr Skinner, Dr Coltart advised that Mr Skinner would be fit to give evidence from Tuesday 7 February. He suggested that for the first week the evidence be taken between 10am until 1pm and that thereafter the hours should revert to 10am until 4pm.
4 - 6 February	No sitting.
Tuesday 7 February	Mr Skinner reported that he had been unable to obtain the medication prescribed to him by Dr Coltart and once again the nurse at the Central Criminal Court observed that his blood pressure was raised. Again, Mr Skinner was sent home.
Wednesday 8 February	No sitting.
Thursday 9 February	Advice from Dr Coltart suggested that Mr Skinner would be fit to give evidence from the following day. This view was challenged by counsel for Mr Skinner who advised the court that a second consultant cardiologist, Professor Hall, had been instructed a few days before and that his opinion differed from that given by Dr Coltart.
10 -15 February	No sitting.

9.11 It was not until 16 February that the judge received a report in which Professor Hall endorsed the view expressed by Dr Coltart that Mr Skinner's blood pressure could be controlled if he split his medication, taking half of it when he rose in the morning (at 5am) and half of it at 10am There was a suggestion, however, that the acclimatisation to his new drug regime might take two or three weeks. After some discussion therefore the judge asked for a further report to be prepared for 25 February, with a view to Mr Skinner resuming his evidence on 28 February.

9.12 In the light of the suggestion that Mr Skinner's recovery might take some weeks, an application to discharge the jury was made on behalf of all the defendants. The judge did not rule on this application immediately, preferring to wait until she had received the further report on 25 February. On that day she was advised that Mr Skinner's condition was improving and a hope was expressed that the trial might resume on 7 March.

9.13 When proceedings resumed on 7 March one of the jurors was unable to attend. In the event, however, although Mr Skinner was at court, Miss Dakyns, on his behalf, maintained that he was continuing to experience debilitating symptoms and that he was unfit to give evidence. Dr Coltart in a report dated 4 March 2005 had expressed the view that Mr Skinner was fit to give evidence, however, and in order to resolve the issue, arrangements were made for Dr Coltart to attend on 11 March so that evidence regarding Mr Skinner's fitness to continue could be heard.

9.14 The court heard evidence from Dr Coltart on 11 March and then a further submission from Miss Dakyns that the jury should be discharged. The case was adjourned until Monday 14 March so that the judge could consider Miss Dakyns's submissions and also to see whether any solution was available to a juror's financial concerns. These concerns related to a dispute about the payment of a juror's pension contributions during his long spell of jury service, leading him to say that he could not concentrate on the issues in the case unless and until the Department for Constitutional Affairs (DCA) stepped in and settled the matter. The DCA considered it had no power to do so, though it offered to pay for a solicitor to advise him on his position.

9.15 On 14 March the judge ruled, in short, that Mr Skinner was fit to and should resume his evidence on 21 March, but there was no resolution of the juror's financial difficulties that had been brought to the attention of the court.

CHAPTER 10: THE DECISION TO END THE CASE

Overview: in this chapter we explain the process by which this decision was arrived at and examine the reasons for it.

10.1 On 16 February 2005 all defence counsel had made a further submission to the judge that, in view of the unprecedented delays and interruptions of Mr Skinner's evidence, the case was unmanageable and that the jury ought to be discharged. The judge reserved her ruling on this matter pending further information about Mr Skinner's state of health, and on the following day counsel on behalf of Messrs Rayment and Woodward-Smith renewed their application to the Attorney General for a *nolle prosequi*.

The renewed *nolle prosequi*

10.2 The renewed application, signed by all counsel, submitted that the history of the case *"discloses a lack of progress which is unprecedented in criminal proceedings in this country".* Events since October 2004 had been marked by "*unparalleled delay and interruption*". Accordingly, they said, "*the interests of justice to the parties in this case, and the wider public interest in the maintenance of public confidence in the administration of justice within the criminal justice system, are so adversely affected in these proceedings that the intervention of the Attorney General is required*". Counsel asserted that, although the jury would receive a summary reminder of the evidence in the judge's summing up, they would not be able to remember independently evidence that had been dealt with a year and more before they were considering their verdicts, and they suggested that the Court of Appeal would be unlikely to regard any conviction as safe. They appended a trial log to their application which showed the days and hours sat since the trial began, together with a copy of the skeleton argument that the defence had served in August 2004 on one of the applications to discharge the jury on the grounds of unmanageability, the prosecution response, and some relevant transcripts of court proceedings.

The Crown's response

10.3 Mr Upward briefly responded to the application in writing, saying that the application was in effect an appeal from the judge's anticipated refusal to stay the case and suggesting that any interference by the Attorney General would be an unwarrantable circumvention of the due process of the court: "*Public trust perforce is placed in the judges who preside over trials. Public interest requires that such trust should not be undermined lightly. It seems to me that for the Law Officers to intervene in the manner now suggested would be the quickest way to subvert that confidence. It is not for me to consider the comment that might flow from such an intervention"*.

10.4 He ended by saying that he "*did not think it proper for there to be any private consultation between counsel in the case and the Attorney General and, unless specifically instructed to attend, would respectfully decline to take part should such be considered"*.

The defence update

10.5 The Attorney General did not wish to make a decision on the renewed application before the judge had ruled on the latest unmanageability submission, which decision had been postponed until Mr Skinner's medical position had become clearer. In the meantime the defence responded to the prosecution response, updating the Attorney General with the latest developments, including the latest jury problems. They pointed out that this jury had last heard evidence on 1 February and would not now be returning to court until 14 March at the earliest. They also made the point that the problems and delays in the case were "*not the result of some "curse" but a direct consequence of the mismanagement of the trial and the failure of the prosecution to present a case against these defendants of appropriate proportions*". Mr Upward, they said, had not dealt at all in his response with their central point, which was that the defendants could not now have a fair trial and that any verdicts would be unsafe.

The Crown reconsiders its position

10.6 Mr Upward had opposed the application to discharge the jury made by all defendants. By now, however, it seems that all three counsel on the prosecution team were beginning to have serious doubts about the continuing viability of the case. Looming large was the consideration that the trial, in part because of the commitment to one juror's honeymoon in the summer, would probably not now be concluded until September or October 2005. The trial to them had now ceased to be a living process, had lost all momentum, and become irretrievably bogged down.

CPS consultations

10.7 Meetings were held with more senior lawyers and managers at CPS Headquarters, in particular Mr Rob Drybrough-Smith, Mr Williams's line manager, and Mr Chris Newell, the head of Casework Directorate, when these issues were discussed. These supervisory tiers of management, it will be remembered, had had nothing to do with the institution and continuation of the proceedings, or the way they were framed. They had, much more recently, been copied into developments in the case, but now however they needed to be consulted as prosecution counsel were coming to the view that the case would have to be dropped.

10.8 The decision however could not be for them, it being now so serious that the DPP needed to be a party to it. He had first learnt of the case the previous summer when the first application for a *nolle prosequi* was made, the one that relied chiefly on the circumstances of the judicial assistant's departure. He in turn considered that the matter was one where the Attorney General needed to be consulted, particularly since the second *nolle prosequi* application was still outstanding.

Meeting with the Attorney General

10.9 A meeting was therefore held at the Attorney General's chambers on 16 March at which counsel explained why they had reached the view that they had. According to the note of that meeting Mr Upward:

> *"indicated that it was a case involving the disclosure of highly confidential information. The prosecution case is that this influenced the claims made by the defendants. The only purpose in having information is to use it for their business. The prosecution expert says the material is so sensitive nobody should have it, and it is impossible for the information not to have affected the defendants' claims. This was never going to be an easy case, as the prosecution cannot show any actual loss."*

10.10 The DPP questioned why at the beginning the prosecution had not proceeded solely on the corruption charges, which he pointed out would still have been likely to result in the defendants going to prison if they had been convicted. Mr Upward responded that:

> *"to proceed on the corruption alone would have been significantly to diminish the criminality alleged. The decision to proceed on conspiracy to defraud was only taken after a careful review of the case*."

10.11 Some discussion ensued as to whether the fraud charges could be dropped and the corruption charges pursued. Prosecution counsel did not think this would be possible. There also arose the question of a retrial with a new jury. Counsel were asked to consider these points further and advise in writing. In the meantime Mr Upward said:

> *"he had been happy to fight through but since August* [the first nolle prosequi application] *things had got worse. The defendants were genuinely ill. One defendant, Skinner, had restarted his evidence twice. The trial had reached the point where he thought it would be unfair to carry on."*

10.12 The main reason was the same as that advanced by the defence in their *nolle prosequi* application, namely that the jury could not be expected to remember the impact of, and evaluate properly, the evidence that had been given such a long time ago – in the case of Mr Fisher, for example, they would probably be considering a verdict in his case more than two years after hearing the last piece of evidence about him.

Counsel's advice on subsequent trials

10.13 Counsel subsequently produced a note about a possible re-trial and the other trials which for the two main defendants, and three others, were still to come. With respect to possible re-trials it indicated that "c*ount 2 is the one that has created the problems because of the manner the defendants have chosen to pursue their defence, faced by a prosecution based on inference*." The only viable option in counsel's view was to abandon counts 1 and 2 and proceed only on the corruption. They thought this *"could be concluded within an acceptable time-scale, something in the region of two months. We would seek to do this by concentrating not on the value of the documents, but the fact that the Westinghouse contract was secured for RWS and thereafter documents and information were passed on to contractors, all of which was marked by the payment of money. This should remove the argument about economic value"*. They were not, however, confident that an application to retry would survive a consequent application to stay on the grounds of abuse of process. So far as other trials were concerned they did not consider the allegations of overcharging that involved a further defendant, Mr Butler, now worth pursuing, though they remained undecided in relation to the further trial involving Messrs Williams, Axelson and Mills, in addition to Mr Rayment.

The termination

10.14 In the event, no application to retry was made because it was decided that the judge was unlikely to permit it. Instead, on 22 March, Mr Upward read to the court a fairly lengthy prepared statement that had the approval of both the DPP and the Attorney General, which is referred to in the introduction to this report and is at Annex 3. Copies had been made available for the press. In essence, it set out the reasons for bringing the prosecution in the first place, before explaining the decision not to resist the defence application to discharge the jury:

> *"The accumulation of delays to date, the further delays that it is known we face and the disruption of the evidence, most particularly that of the accused, leads us to conclude that the time has been reached when no jury, no matter how diligent and how clearly directed, can be expected to determine the guilt or innocence of the accused in a way that would be regarded as fair by the objective bystander."*

10.15 A somewhat shorter explanation was given by the judge to the jury when they were brought into court. Having reviewed the circumstances of the delays and lost time, and the interruptions to Mr Skinner's evidence in particular, she said:

> "*In those circumstances in my view this trial should not continue*."

Without setting out the reasons for coming to this decision but after thanking the jurors and exempting them for jury service for life, as is customary for jurors who have served in a long trial, they were excused. Mr Upward then formally offered no evidence against the defendants. After a delay to seek instructions, he indicated that the Crown would not be seeking any re-trial, and he offered no evidence on the other indictments. The case was over.

10.16 All the jurors were very shocked by the sudden ending of the trial and by the manner in which they were discharged. It is difficult to overstate the strength of feeling expressed about this.

10.17 On the day the case ended the jury were waiting out of the courtroom from 10am to 3pm. When they were eventually brought into court, the courtroom was full of press and relatives of defendants. This immediately struck them as very unusual, and made them feel that everyone except them knew what was happening. Then in a short space of time they were discharged, with very little explanation or information provided. One juror stated at the group interview that her purpose in coming that day was to get an explanation. It transpired that by the date of the group interview the jurors had still (approximately five months later) had no explanation or information about the reasons for the ending of the trial. They discovered from the television news that evening that the defendants had been acquitted.

10.18 Once discharged, the jurors quickly found themselves out on the street feeling dazed. Two jurors described it as feeling like being made redundant, but without any redundancy payment, and one as like suddenly being given the sack. Another said:

> *"From time to time through the case people said the case would be thrown out, but I did not realise it would end like that – Bye Bye, have a nice life".*

CHAPTER 11: DRAWING THE THREADS TOGETHER

Overview: it is obvious that a trial lasting for 21 months and costing many millions of pounds of public money without ever reaching the stage of a jury deliberating on their verdicts must have gone badly wrong. In this chapter we consider first whether this outcome was in some way attributable to the conduct or competence of the particular jury or the jury system. It was not. What happened was the cumulative effect of mistakes and shortcomings by agencies and individuals within the system. The result was that the trial was simply too long to remain viable. We therefore assess separately the impact of the infrastructure within which the allegations were investigated and prosecuted; the roles of the police, those responsible for the conduct of the case (CPS managers and staff and together with counsel) and other key players.

The role of the jury in the termination of proceedings

11.1 Prominent in the media coverage which followed the collapse of the case was the assertion that the criminal justice system as presently organised is incapable of handling a trial such as this one. It was suggested that the termination of the proceedings was brought about in some way by the inadequacy of the jury or the jury system. Some argued forcefully that it was time to abolish the role of the jury in long fraud cases.

11.2 The notion that the collapse of the case had something to do with the jury was lent some plausibility by the knowledge that one juror had felt unable to continue and by the prosecution's explanation of why they were abandoning the case – namely, that the jury would not now be able to remember the evidence that had been called in the earlier part of the trial, and therefore that the trial was no longer fair.

11.3 We should make the point that the reluctance of one juror to continue in the face of mounting personal difficulty was *not* one of the reasons why the trial was abandoned. In the meeting with the Attorney General on 16 March:

> *"It was clearly agreed that the case was not being stopped because of a jury issue but because no one could expect the jury to fairly evaluate the evidence."*

11.4 Nor was this latter and decisive point one that the prosecution had thought up for themselves. It was derived from a line of decisions in the Court of Appeal, cited by the defence in their still outstanding application for a *nolle prosequi*, in which the Court had held it to be a vital ingredient of any fair trial that the jury should have their own independent recollection of the evidence. As was stated earlier in the meeting:

> "*This* [case] *was different to previous cases considered by the Court of Appeal where in the longest case of 252 days, the convictions were upheld primarily because the jury had been there for all but one day*."

11.5 As we have said, the defence had made the same point. The judge, faced by this agreement between the defence and the prosecution, as well as the Court of Appeal authorities, had no effective alternative but to accede to it.

11.6 Whether this jury did in fact have a sufficient independent recollection of the evidence so as to be able to give the defendants a fair trial and reach just verdicts is an entirely separate question, and of course they were not asked it before they were discharged. Indeed, they were not even told, when they were being discharged, that such was the reason for it. The first opportunity that they had to discover this was when later that day and the next the media reported what Mr Upward had told the judge in open court while they were waiting in their room. Some of them at least strongly refuted the idea. One wrote to the judge and copied his letter to the Attorney General saying amongst other things:

> "*I, along with the majority of the jurors, had a good understanding of what was going on in the courtroom and I have taken exception to comments made by yourself and Mr Upward in tonight's news coverage. It is being stated that you and other members of the court thought that we were unable to remember evidence from the early stages of the trial and thus a fair trial would prove impossible. Nobody asked for our comments and what we felt. Why were the majority of us making notes? So that when we came to deliberate we could refer back to them and make informed decisions. I personally referred to my notes regularly during the trial and was thus able to compare evidence and make informed judgements as the case proceeded. To now be labelled an incompetent is not acceptable…*"

11.7 We interviewed 11 of the jurors and our findings broadly confirmed these claims. Taken as a whole they did not appear to have had difficulty understanding the evidence or the essentials of the case presented to them. Most of them insisted they had a good or very good grasp of what the case was about from the prosecution opening onwards; that they understood very well the charges and the different combinations of defendants and counts; and that when the case collapsed they had a clear understanding of the evidence. During a group interview in early August 2005 they showed quite impressive familiarity with the charges, issues and evidence, despite the length of time that had elapsed, and the fact that they did not have their notes or access to documents nor an opportunity to think back and refresh their memories. They recalled particular parts of the evidence, particular witnesses and the substance of their evidence. They recalled the different counts. Some at least indicated that they understood why the defence was going laboriously through the Financial and Contractual reports (F&Cs) and C4 evidence. Occasionally, there were individual failures of recollection, but one advantage of the jury system is that not all jurors are likely to have forgotten the same piece of evidence, if it is of any importance. On the other hand there was the uncertainty that we have already referred to (at paragraph 8.9) as to what the prosecution had to prove on count 2. Given the history of the matter as we have set it out, and of the different ways that the case had been expressed, this was scarcely surprising but it was certainly not the jurors' fault.

Support arrangements for jurors in long trials

11.8 The interviews with the jurors revealed the extent of the stresses and difficulties they faced during the course of the trial. Although they found the court staff for the most part considerate, nonetheless they felt that the priority of the court staff, not surprisingly, was to ensure that the jury were available when required, rather than to help them with individual problems. Yet they felt they needed support from someone who could deal with some of the problems and personal consequences of such long service, including advising on claims and perhaps liaising with their employers. It is likely that any such person would have to be independent of the particular court proceedings.

11.9 Uncertainty over how long the trial would continue, as well as the day-to-day uncertainty about whether they would be required in court, became a source of considerable stress to the jurors. Their comments included the following:

> *"You are living by a phone call."*
>
> *"The worst part was not knowing what you were doing on the next day. You were getting up in the morning waiting for a phone call."*

Although realising that there are limitations to the amount of information and explanations about the progress of the trial and scheduling that they could be given, they would have appreciated more information.

11.10 The jurors were given information about jury service at the start of the trial, but they considered that more information and guidance is needed at the beginning of, and during, long trials. They also stressed the need for information/support after the trial, particularly in relation to difficulties with pay and employment – for example, some jurors lost income because they could not return to work on full pay the day after the trial had ended, yet their allowances were terminated immediately. Others had felt vulnerable when trying to deal with employers who were becoming increasingly frustrated by the position.

11.11 The extent of the damage to employment and careers continued to emerge several months later, and it appears that substantial financial losses have not been covered by court payments.

11.12 Return to work for seven of the 11 interviewed presented continuing problems nearly five months on. These include one who has been made redundant, one in a dispute with her employer involving ACAS, one required to undertake extensive re-training who has missed a definite and much desired promotion, and one signed off by his doctor as suffering from stress as a result of his work situation. A further three are back with their employers, but report experiencing serious set backs in their positions because of their prolonged absence. These three are young people with few formal qualifications who had worked at the same company for some years and had progressed through experience. They find their responsibilities reduced, they have missed promotion opportunities, and their prospects and status within their organisations are harmed.

11.13 Of the remaining jurors, one is retired; one self-employed and running his own business; one works on a succession of contracts and may have missed out on pay increases but is otherwise happy; and one is a warehouseman who is happy with his new job.

11.14 Overall, the findings suggest that a long term jury needs support and management in ways that do not arise for short trials, and that there is a need for the Department for Constitutional Affairs to provide enhanced support. There may also be a need for that support to continue after the conclusion of the proceedings in very long cases.

RECOMMENDATION:

in considering the enhanced support needed for jurors in long trials the Department for Constitutional Affairs should take into account the importance of:

- **continuity in the individuals allocated to support the jury;**
- **forms of support which might not normally be within anyone's remit, such as minimising unnecessary trips to court;**
- **support from someone with the time and resources to deal with problems;**
- **keeping the jury informed;**
- **clear information about what they can expect as jurors and what will be expected of them; and**
- **the possibility of repercussions in relation to employment and careers continuing beyond the end of the proceedings.**

Systemic failings or individual ones?

11.15 No one knowing the history of this case could reasonably say that the criminal justice system as presently organised, that is to say with the special regime that applies in long and complex fraud cases, and also with a jury, is incapable of handling a trial of *this* sort. This does not, of course, mean that there are not some cases which are so large and complex that they cannot be managed in front of a jury. Plainly, the risk of unmanageability grows with the length of the case. It is simply not possible to keep gathered together for an indefinite period day after day and month after month, the large group of people necessary to the functioning of a multi-defendant criminal trial when the unavoidable absence of any one person will bring proceedings to a standstill. It is largely a question of luck whether such absences occur or are avoided, though firm discipline by all parties can do much to mitigate this

hazard. But so far as this case is concerned, a careful examination of it from beginning to end demonstrates clearly that it was not the system itself that was at fault here. What happened rather was that there were mistakes and shortcomings by agencies and individuals within the system, in the way set out below. The aim of the report however is not to apportion blame, but rather to identify those areas where lessons can be learnt so that, in the words of the Attorney General, such a case is not allowed to happen again.

11.16 There are two further preliminary points that we would wish to make. Firstly, there should be no question of making a scapegoat of any particular individual or agency. Though the errors that we describe all contributed to, and were all necessary to, produce the unfortunate outcome of this case, no single one was on its own sufficient. Secondly, within the criminal justice system a single failing by one agency can be, and usually is, corrected or at least neutralised by the actions of one or more of the others. By contrast, what one observes in this case is successive failures to identify and resolve those impediments to the presentation of a clear and coherent case which were a direct consequence of the investigative strategy. The result was that the proceedings themselves frequently resembled an adversarial investigation rather than a trial.

The infrastructure within which the investigation and prosecution were conducted

11.17 We have described earlier in this report (Chapter 3 and Annex 7) the CPS move away from the multi-disciplinary approach to the handling of fraud allegations advocated by the Fraud Trials Committee (the Roskill Report) and also from recognising fraud as a specialism. That process was being completed at about the same time the British Transport Police were commencing their investigation and looking to the CPS for advice in this case. It meant that, although the case was initially allocated to an experienced lawyer with some fraud experience, it did not benefit from handling within a specialist unit and necessarily competed with other types of casework for the time and attention of the prosecutors who were handling it at different times.

11.18 We have also referred to the structural issues and ethos within Central Casework (latterly Casework Directorate) which resulted in a lack of clear accountability and an absence of effective arrangements for the supervision of serious cases by senior managers. We understand that the current DPP and Chief Executive agree with this, and that this perception was indeed at the root of their determination to re-organise the service in the way that they have. Others have suggested that, even if there had been closer supervision of this case, it would probably not have resulted in any different approach to count 2. We do not accept that view. The early stages of the case took from January 2000 (when charges were preferred) to June 2003 when the prosecution opened its case to the jury. During that period, there had been many manifestations of the problems likely to follow.

11.19 The successful investigation and prosecution of allegations of fraud does require a properly structured multi-disciplinary approach involving the appropriate use of specialists. However, we accept that there is a limit to the number of cases which could be afforded the "Rolls Royce" handling applicable to those cases accepted by the Serious Fraud Office (SFO). But that does not mean that serious or complex fraud cases not accepted by the SFO should not benefit from arrangements commensurate to their own requirements. One of the longer term effects of the creation of the SFO was to fragment the handling of fraud allegations which thereafter could be dealt with in one of three ways: by the SFO itself; by CPS Central Casework or by the CPS Areas – with some having a greater capacity than others to absorb such heavy cases. However, there is a risk that, in the absence of an adequate and dedicated specialist fraud unit at the centre, matters could evolve to a point where cases had to be handled either by the SFO or by CPS Areas. By no means all would have the necessary capacity.

11.20 We learned during our discussions with the DPP (and subsequently the Chief Crown Prosecutor for London) that the CPS has recognised that the present arrangements for fraud are not satisfactory and need to be strengthened. This is part of the wider process of restructuring the work of the former Casework Directorate. However, fraud work will not be undertaken within any of the three new Headquarters Divisions. Instead, the CPS is proposing to establish a unit to be located within CPS London, but with a national remit. The rationale for this approach is connected with changes within the police service likely to result in the City of London police having a national lead responsibility on fraud. At the time of the review, planning for the new unit was at a relatively early stage. It was planned to transfer a small number of staff with fraud experience from Casework Directorate to CPS London. The unit would be known as the Fraud Prosecution Service.

11.21 Drawing on the experience of fraud cases generally and the lessons to be learned from this case as set out in this and the preceding chapters, it seems clear that, whatever the organisational structure, the framework within which serious and complex frauds should be handled requires at least the following (we understand that the DPP and Chief Executive agree with these requirements and that the structure that they are creating for fraud prosecution will incorporate them):

- fraud should be recognised as a specialism;
- there should be a multi-disciplinary approach with investigators, prosecutors (including counsel), accountants and other experts where appropriate working together as a team from a very early stage in the investigation;
- regular review of progress by the team internally;
- a senior prosecutor, in addition to the case lawyer, assigned to each case from the beginning of the investigation and remaining in overall charge of the case team throughout its life;

- senior prosecutors fulfilling this role have relevant experience and expertise and are able to provide effective day-to-day supervision and quality assurance through a "check and challenge" process; and

- the unit has an appropriate level of resourcing – both human and financial.

RECOMMENDATION:

any dedicated fraud unit within the CPS should handle its casework within a framework which has, as a minimum, the characteristics set out above.

11.22 During the preparation of the report we were informed that the initial transfer of staff had occurred, albeit they were housed in temporary and unsatisfactory accommodation. In addition there is a firm commitment to additional funding although the level of extra funding has not yet been determined. We also understand that it will be a specialist unit structured to prosecute all fraud cases that are accepted in accordance with an established set of criteria. The initial estimate is for an annual caseload in excess of 205 cases. This relects a commitment that now exists to improve the handling of major fraud cases, with the new unit aspiring to recognition throughout the CPS and the wider criminal justice system as being a centre of excellence for the preparation of serious fraud cases.

11.23 At the time this report was being finalised, the Chief Crown Prosecutor for London was proposing an interim structure and was also in the process of engaging consultants to assist in the development of the most suitable working practices. This would inform further development. The proposals include dedicated accommodation with full IT and other support.

11.24 The transitional arrangements may well be difficult. The planning for this specialist unit has not matched that which preceded the establishment of the three new Headquarters Divisions which were established by September 2005. Much work remains to be done and the Fraud Prosecution Service is unlikely in our view to be fully operational before the latter part of 2006. The CPS will need to recognise and carefully manage the risk to cases which previously were, or would, have been the responsibility of Casework Directorate until the new unit is fully established and operational. Plainly it is too early for the review to comment on the effectiveness of the new arrangements although, subject to the caveat below, we welcome these developments.

11.25 Fraud has undoubtedly been treated as the Cinderella of the CPS, particularly since 1997 when it ceased to be regarded as a specialism. If the CPS's stated determination to improve the handling of fraud cases is to be seen through it is going to require a significant investment, and there is a need to ensure that other forms of investment in the CPS, in particular that in relation to other serious crime, are not put at risk. A careful assessment of the

requirements will be needed. Although a positive start has been made, there is more work to be done to determine the full scope and structure of the unit. This will involve the development of assumptions in terms of numbers of lawyers and accountants required, and the numbers of cases involved.

11.26 It does not appear that the planning for the dedicated fraud unit sufficiently addresses these issues, particularly so far as determining the need for resources is concerned.

RECOMMENDATION:

the establishment of the unit within CPS London to be known as the Fraud Prosecution Service should be preceded by a 'bottom up' review of the anticipated caseload and the resources needed for the effective discharge of its responsibilities.

11.27 The return to a specialised unit for prosecution of fraud allegations is certainly a step in the right direction. However, a three tier system (SFO, Fraud Prosecution Service and CPS Areas) may be difficult to operate satisfactorily. It is also for consideration whether spreading fraud work across three different structures is likely to lead to optimum use of resources overall, particularly in the light of our assessment that it is likely to require an overall increase in resources. An alternative approach might be to enhance the capacity of the SFO so that it can handle a wider range of cases than at present. Even if it required a two-tier approach within the SFO, that would be no more anomalous than the previous arrangements which split the work between two separate organisations. It should be possible for one organisation to provide a range of responses which could be tailored to the requirements of particular cases with the common feature being the multi-disciplinary approach, including the early instruction of counsel, which would ensure that the strategic direction of investigation supported the building of a well focused and manageable case.

11.28 The Chief Secretary to the Treasury and the Attorney General on 27 October 2005 announced the establishment of a Fraud Review to consider all aspects of the prevention, detection, investigation and prosecution/punishment of fraud. We consider that that review should explore the feasibility of vesting in one organisation all those fraud cases investigated by the police which cannot be dealt with appropriately by the CPS Areas.

RECOMMENDATION:

the Fraud Review should explore the feasibility of vesting in one organisation the prosecution of all those fraud cases investigated by the police which cannot be dealt with appropriately by CPS Areas.

11.29 The DPP in March 2005 required all CPS Areas to establish a Case Management Panel to oversee and review on a periodical basis cases expected to last more than eight weeks. We deal in more detail with Case Management Panels in Chapter 12. They are designed to be supplementary to and not a substitute for on-going managerial oversight.

The role of the police

11.30 Any criminal prosecution is founded on an investigation by the police, and the way that the police have investigated the case and gathered the evidence often circumscribes the way in which the case can later be put. Evidence is gathered to prove certain points rather than others. In this case the responsibility fell on DCI Croft, as the officer in the case as well as the head of the British Transport Police (BTP) Commercial Fraud Squad. Whilst it is clear that periodic reviews of the police operation were completed, there must be reservations about the quality of senior decision-making within this operation. The BTP Commercial Fraud Squad at the time was a stand-alone entity, with DCI Croft having sole command for the direction of the unit. Although there were mechanisms in place for reviewing cases within the force's crime command, this system was primarily used to assess resource issues; it did not lend itself to the strategic review of individual cases. Had this been the case, a senior officer might have taken a more pragmatic stance on the merits of focusing efforts on the direction in *Allsop.* In that respect, the case officer's situation mirrored that of the CPS reviewing lawyers in this case. Whilst we have great admiration for the industrious and determined manner in which he approached the case, its subsequent history leaves us in no doubt that it was unrealistic to approach a possible conspiracy to defraud London Underground Limited through the misuse of confidential material without investigating the use to which that material was put, or how it was capable of being used within the context of the particular project.

RECOMMENDATION:

police forces should ensure that there are in place structured arrangements for the regular review of investigative strategy during major enquiries, such review being undertaken by a senior officer with relevant expertise.

11.31 Nobody suggested during the course of the review that the complaint of Mr Elliott-Hughes did not demand a thorough investigation. As a result the police found the 71 confidential F&C documents at the premises of RWS Project Services Limited. This discovery was the central fact at the heart of the case. Nobody suggested that, with the rest of the evidence assiduously gathered by DCI Croft and his team, there was not a case to answer – as some put it, "a prosecutable case". Coupled with the evidence of payments or payments in kind to those working for London Underground Limited (LUL), it was perfectly reasonable to assert that in the absence of explanation there was prima facie evidence of corruption. There was, moreover, in our view, a "prosecutable" case on count 1 of this indictment, the alleged conspiracy to defraud in relation to the awarding of a contract to Drake and Scull Plc. The guilty plea of Mr Maw strongly fortifies that view.

The police approach to count 2

11.32 The difficulties revolved around what became count 2, the alleged variation of claims conspiracy that was said to be "the main fraud". The finding of the F&Cs should have been only the start of the examination of documents so far as this part of the case was concerned. No doubt it would have been difficult, time-consuming and expensive to follow through the information on the F&Cs to see whether any of it could be shown to have been used. A prolonged and systematic examination would have been needed not only of the LUL material, but also of material at the relevant contractors, access to which might have been difficult to obtain. An independent expert would have undoubtedly been required to assess whether the information had been used. However, the inevitable consequence of not doing any of these things was that the prosecution had to proceed to a large extent "blind". It chose to rely on inference when effective investigation was capable of demonstrating whether or not the desired inference could properly be drawn. Whatever the difficulties and the expense we believe it would have been preferable for the exercise to have been conducted then, as part of an investigation, rather than later, in the adversarial situation of a trial - which is what inevitably happened.

11.33 The search might have demonstrated that use had actually been made of the material; or it might have proved fruitless. In either case the prosecution would have been better off. If documents proving use of some information had been found, then the prosecution would have been able to focus their case on that information and those documents. The rest would then indeed have been irrelevant because the fact that other information was incapable of use, or had not actually been used, would have availed the defence nothing, and no court time need have been spent on it. If on the other hand it could not be shown that the information had been used at all, then the prosecution would surely have reconsidered this side of the case.

11.34 The approach taken by the police was based on an understanding of the law to the effect that the possession of the confidential and commercially sensitive documents was conclusive. The investigating officer, DCI Croft, believed that because the documents *might* be used to defraud LUL by the making of claims that would not otherwise have been made, or been made in lower amounts, the mere possession of these documents created the risk of commercial detriment to LUL; that was sufficient "risk" to bring the facts of this case within the line of authorities culminating in *Allsop*.

11.35 This belief was reflected in the way in which the statements were taken. In the first statement of Mr Ibson dated 26 March 2003 he says:

> *"The risk that I believe would have existed by this document* ***being in the possession of*** *the contractor or his agent is in respect of items in section 2, 3, 4 and 5 on the F&C report…"*

11.36 In his third statement dated 4 February 2004 he says:

> *"I have been asked to identify from the F&C report LUN/76(2) those entries which, in my view, provide greatest risk of financial detriment to the JLEP* ***if the information was in the possession of*** *Westinghouse Signals Limited or their claims consultants….in considering the risk to the JLEP I have reviewed the C4 documents in the context of the F&C report* ***being in the possession of*** *the outside party at the date the report was printed…"*

11.37 It is a point of importance that these statements were taken long after counsel became involved in the case – the last statement was taken several months into the trial. As one would expect, however, the approach goes right back to the beginning of the investigation, and it applies to the statements taken from Mr Doherty and Mr Smith back in 1997 and 1998.

11.38 These statements are unlikely to have been the spontaneous comments of the witnesses asked to explain matters in their own words. They appear rather to represent their responses to questions by an investigating officer reflecting a police view of what needed to be proved to establish a conspiracy to defraud LUL. He would have embodied their responses into the form of statements. The extent to which the formulation of the statements was influenced by the police understanding of the legal position is suggested by their wording, that is, from such phrases as "*serious risk of economic loss*," "*risk of financial detriment*", and "*to the detriment of*". These are all derived from the phrases used in *Allsop* and the other cases. The continuing degree of focus in the prosecution camp on possession of the information (as opposed to the use or potential use) is confirmed by some of the statements taken during trial, for example from Mr Joe Sutton, the Project Contracts Manager.

11.39 DCI Croft was consistent in adhering to this view throughout. He told us in interview that he did not think that Mr Upward should have agreed that use of the documents was one of the issues in the case, that mere possession was in his view all that needed to be shown. It will be recalled that this view was also plainly set out in his letter to the CPS dated 4 December 1998 where he said:

> "*RWS clearly were not entitled to have the JLEP information and their possession of this was to the prejudice of the JLEP's rights and the project's economic interests were imperilled* [his emphasis]*… Possession by RWS of these reports does however go beyond this and provides a significant risk of financial loss to the JLEP".*

11.40 Merely *possessing* information can of itself have no effect at all. A person may be in possession of information without even being aware of it, in ignorance of its usefulness, and without any intention of using it in a particular way. Nor would the position be altered if that person had come by the information dishonestly or corruptly (which was in any case strongly challenged by all the defendants in the case), for the information might still have been of value to the person for some other reason and not because they intended to make any dishonest or fraudulent use of it. What had to be shown in this case was that the parties to the alleged conspiracy intended that the information should be used to defraud LUL, because *that intended use (whether or not it actually came about) was such as to risk economic loss to LUL.*

The role of the CPS

11.41 DCI Croft was perfectly entitled to form his view of the law and to put it forward for the consideration of the prosecutors in the case. However, the responsibility for ensuring that the case eventually presented was soundly based, properly focused, and manageable, rested with the CPS, acting where appropriate on the advice of counsel. The following sections set out how the proposed basis of the prosecution was initially challenged, but eventually a decision was taken to proceed with a conspiracy to defraud LUL on the basis of the claims. That charge was in fact preferred in 1999. By that stage the prosecution were effectively constrained by the fact that neither the actual use nor potential use of the documents had been investigated. This made it difficult for them to present their case clearly and, as the defence opened up the issues previously eschewed by the investigators, so the prosecution found itself in retreat.

Initial CPS advice

11.42 Initially DCI Croft did get the right advice from the CPS, through Mr Spong, and particularly through Mr Jeans. It will be recalled that at an early meeting with the police, in July 1997, they were told "*that expert quantity surveyor evidence would be required regarding the manner in which RWS had dealt with claims on behalf of contractors…"*. DCI Croft, although agreeing in principle at the time, became reluctant to implement that advice immediately.

Nevertheless in July 1998 the police indicated that they were "*proposing to seek expert advice from a firm of CQS* [chartered quantity surveyors] *in Norwich with particular reference to how useful was the information from the other side in negotiating for JLE contractors*". Later on, however, it was decided that the question of expert evidence should be postponed until after counsel had advised. By this stage DCI Croft had formed the view that, on his reading of the law, it might not be necessary, and if counsel agreed with that it would not need to be pursued.

11.43 When Mr Jeans took over the case the question of the extent to which the information had actually been used in claims was raised again, as he clearly thought it would be necessary to demonstrate this. At the meeting on 6 November 1998 he said:

> "*We will need to analyse the negotiations between RWS and JLEP in respect of at least one contract claim in order to illustrate the … advantage exploited by the main players."*

11.44 DCI Croft was not present at that meeting but it is clear that his deputy must have conveyed to Mr Jeans the fact that this advice would not be welcome to him, because at the next meeting fixed for 10 November Mr Jeans took the unusual step of asking for his line manager to be present to lend him support. At that meeting, dealt with more fully at paragraph 4.16 above, considerable doubt was expressed by Mr Jeans about the alleged claims conspiracy to defraud, he telling the officer that a charge of fraudulent trading stood a better chance than any conspiracy. He invited a considered response, which came in DCI Croft's 4 December letter, which was also quoted fully earlier in this report (at paragraph 4.17).

11.45 Mr Jeans told the review team that he was not persuaded by that letter and that if he had been in a position to review the case fully he would not have pursued the conspiracy to defraud. He however became ill and eventually left the CPS before that review could be conducted.

11.46 The case was then passed to Mr Wildsmith. It will be recalled that he forwarded DCI Croft's letter to counsel as one of the enclosures with his instructions to advise. It was unfortunate, however, that counsel was not also sent those documents which recorded Mr Jeans's dissenting view about the alleged conspiracy to defraud, and this is especially the case since Mr Jeans had more familiarity with the case than Mr Wildsmith did. In his instructions Mr Wildsmith offered no view of his own beyond saying that the case could be put either on the basis of proving losses or on the basis "*that it induced officers of London Underground to act contrary to their public duty"*. It will be recalled that counsel, although initially relying on the public duty cases, was in fact to drop that line of argument by the time he came to open the case to the jury. Since no attempt had been made to demonstrate actual loss, he was left relying on the "risk of loss" authorities.

11.47 What had in effect happened was that the case had proceeded on the basis of the charges proposed by the police at the outset, but without there being a clear position within the prosecution team as to how the case was to be put.

The lack of supervisory involvement and support

11.48 There must be sympathy for Mr Wildsmith who already had a heavy case load of his own and was only taking this one on, as he understood it at first, temporarily, and in any event with a view to asking counsel to advise. What is of more concern is the role, or rather the lack of a role, of those more senior lawyers who had a supervisory and managerial responsibility in Central Casework. It became quite clear that they had had no meaningful involvement with the case until the time came, years later, when it was collapsing and the decision had to be taken to stop it - though in reality that decision was taken by the DPP in consultation with the Attorney General. The contribution of senior lawyers, by which we mean those in the Senior Civil Service, that is, of Grade 5 and above, would have been a much more useful one if it had come earlier rather than later, at the stage of starting the case rather than stopping it. We were surprised to learn that the then Director of Casework only became involved in the case some months (that is, on 31 December 2004) after the DPP had himself been consulted about the case on more than one occasion.

11.49 The lack of awareness on the part of senior managers and the lack of intervention is not so much of an individual failure by them as a cultural failing, arising in part out of the nature of the CPS (as compared particularly with the SFO); in part out of the nature of Casework Directorate as it existed at the time of this case; and in part out of the approach of Casework Directorate to fraud cases.

The role of the case lawyer

11.50 In this case, advice was sought and given at an early stage, before arrests and charges. At that time the culture prevailed, particularly within Casework Directorate, that review decisions were matters entirely for case lawyers – or “reviewing lawyers”, as they were known. It was said that only they would have read all the papers, and therefore only they could safely make these decisions. Whilst in a case of difficulty there was no formal impediment to their consulting another more senior lawyer they were not encouraged to do so, save in limited circumstances; we have already referred to the Attorney General’s Written Answer which signalled a new approach.

11.51 A case lawyer was required to keep his line manager informed of the progress of his cases by means of monthly reports, but this was not intended as a means of assessing the quality of decision-making. Nor was there a system requiring consideration of a case lawyer’s review note.

11.52 As we have seen there was no review note in this case. It was a formal requirement that review notes be written and therefore Mr Wildsmith should have produced one. He assured us that although he did not write a review note he had in fact conducted a review, and he agreed with the advice of counsel. We accept that, although there must be serious doubt whether any review which is not committed to writing could do justice to a case of this magnitude, with its multiplicity of defendants and possible charges.

RECOMMENDATION:

there should be effective compliance with the requirement in serious and complex cases for the creation of a structured review note analysing the evidence and public interest considerations which underpin the prosecutorial decision.

11.53 Cases deemed especially sensitive because of the special public interest or notoriety attaching to them had to be placed on a "sensitive list", regularly updated, and which would be seen by the DPP and the Attorney General. Surprisingly this was not one of those cases.

11.54 This case cost millions of pounds to prosecute. One of the clearest lessons to emerge from it is the need for effective supervision and accountability. There was a difference of approach between Mr Jeans and Mr Wildsmith as to the viability of count 2. No supervisor or manager seems to have been aware of this. It is at this stage that some intervention would have been beneficial in bringing a focus on the key issue – how the prosecution would put its case on count 2 and whether the evidence would sustain it. This might have involved Mr Wildsmith being challenged to explain why Mr Jeans had been wrong. No doubt he would have pointed to counsel's positive advice. But as we have already seen and return to again below, that advice was somewhat ambivalent.

11.55 In the nature of things it can be put no higher than that effective supervision might have led to serious doubts about the wisdom and necessity of count 2. It must at least have produced a debate, and that might have promoted greater awareness about what was being embarked upon, particularly during the protracted preliminary stages. Had a mechanism been in existence such as the Case Management Panel (which we have mentioned in Chapter 3 and which we describe in more detail in the next chapter) this debate would certainly have taken place at a high level and it may well have been that count 2 would not have been proceeded with.

The relevance of a prospective confiscation order

11.56 At the 16 March meeting, when the DPP asked prosecution counsel to explain why corruption charges alone would not have sufficed his answer was that they would not have dealt adequately with the criminality. When the

current CPS Lawyer Mr Williams - who of course did not become involved until several years after the restraint order was obtained and the particular charges selected - was asked by his management, after the collapse of the case, to explain his understanding of why the particular charges had been selected he argued that corruption charges alone would not have allowed the potential to deprive the main defendants of the vast majority of the proceeds of the alleged crime, since the proceeds of the alleged corruption in terms of monies allegedly paid over and above other benefits allegedly provided would probably have been around £50,000. He continued:

> *"The fraud charges however allowed the CPS to restrain about £12,000,000 in identifiable assets (properties and bank accounts) and it is believed that the whole value of RWS as developed and expanded could have been confiscated had Rayment and Woodward-Smith been convicted."*

11.57 Since, at the review team's first and informal meeting with prosecution counsel, Mr Upward also mentioned that he had understood the prospect of a substantial confiscation order was relevant to the pursuit of count 2, the team examined this aspect of the case with some care.

11.58 The evidence on which restraint orders in the High Court against Messrs Rayment, Woodward-Smith and Skinner were sought and granted in early 2000 was the witness statement of DC Stephen Down dated 29 February 2000, which was drafted by Mr Talbot. This identified as the "benefit" from the fraud the sum of £13,219,792, this sum being the total turnover of RWS between 8 July 1991 and 18 June 1997. In the body of the statement the details of the various charges were set out, including the allegation of fraudulent trading, which was later severed from the indictment on which the defendants stood trial. It will be recalled that this was the charge which Mr Jeans had thought stood the best chance of success, and it was intended to encompass the whole range of the alleged fraud. Having been severed, however, it is unlikely that it would have been pursued, whether the two main defendants had been acquitted or convicted in the main trial. Paragraphs 37 and 38 of the statement made it clear that fraudulent trading was the only charge with which the very large figure of £13,219,792 was associated. When explaining the alleged claims conspiracy the figures relied on, by contrast, were the totals of fees paid to RWS by those contractors whom they were said dishonestly to have assisted by the use of confidential LUL information, this figure totalling £1,731,247.37.

11.59 It seems, therefore, that in stating "*the fraud charges however allowed the CPS to restrain about £12,000,000 in identifiable assets"* Mr Williams was either overlooking the fraudulent trading charge, or he must have been intending to include that allegation in the expression "*the fraud charges*". However, in neither case would either of the fraud charges *pursued in the trial indictment, and in particular count 2,* have been crucial to securing either the original restraint order or, in the event of convictions, have been decisive in securing confiscation orders remotely in the region of 13 million pounds.

11.60 The team examined all the papers in this case, in addition to the separate files kept at the Central Confiscation Unit (CCU) at Casework Directorate. Mr Soumya Majumdar and Miss Jane Hart of the CCU also assisted (they had worked on the case at the time of the obtaining of the restraint orders and thereafter, when there were applications to vary), and by Mr Talbot. DCI Croft was also asked about this matter, and prosecution counsel again during a formal interview. At these formal meetings it was not suggested that, at the time decisions were being taken about which counts to pursue against these defendants at trial, their relative suitability to found substantial confiscation orders was a conscious consideration. On reflection also, Mr Upward did not think that confiscation had been a decisive consideration.

11.61 Moreover we think Mr Williams must be wrong when he argued *"Corruption charges alone would not have allowed the potential to deprive the main defendants of the vast majority of their proceeds ……".* He refers to the alleged corrupt payments to Messrs Scard, Skinner and Wootton, and no doubt he is right that their benefit, and therefore the sum which could have been confiscated from them, would have been confined to the total of any payment to them found to be corrupt. But he is ignoring the benefit which, if the jury had convicted, could have been said with some force to have been achieved by Messrs Rayment and Woodward-Smith as a result of making those alleged payments. In that event, the meaning of the word "benefit" in the statute is sufficiently wide for it to have been successfully argued that *their* benefit had been the monies generated for RWS by the use of the inside information - a figure of the same order, in fact, as any which might have been derived from the charge of fraudulent trading, had it been pursued to conviction. Whatever may have been said at the conclusion of the case, it is unlikely that the prospect of a larger confiscation order was a significant factor in influencing the decision. In the result, we do not accept that the prospect of a substantial confiscation order offers any support by way of public interest considerations for the decision to pursue count 2 as formulated, rather than the alternative charges which were available. We take the view that in the event of convictions those charges would have given the court ample powers to make any order that realistically was likely to be made.

The illness of Mr Skinner

11.62 It will be recalled that Mr Skinner's evidence began in October 2004 but that after a short while he became unable to continue, having been diagnosed with high blood pressure. It was not until 14 March 2005 that, subject to medication, the judge ruled that he was fit to continue; by the time the trial ended just over a week later he had given only an aggregate of five days evidence, in fragments widely separated in time.

The Crown's role

11.63 The failure to resolve this issue earlier caused the trial great difficulties, and eventually became the final disabling factor. The essential point here is that once Mr Skinner had been found to have the symptoms of high blood pressure, the Crown were drawn into assisting him in effect therapeutically,

by arranging for him to see a consultant, and by paying for that. Although it was done with the best of intentions, to assist and to progress the trial, this was not the Crown's duty and it should not have been the Crown's role.

11.64 We have considerable sympathy for the Crown's position. In the first place they were taking their lead from the judge, who from the beginning expressly accepted that Mr Skinner's illness was perfectly genuine and entirely unexaggerated. Secondly, when his symptoms first appeared, no one was to know how the situation would develop. Not only would complicated issues arise concerning the right drug or drugs with which to treat him, the correct dosages, the times of those dosages, the timings of his daily journeys to court, and the question of side-effects; the illnesses of other parties, including his own counsel, and jurors, were to make the situation more complex and recalcitrant still. Nevertheless, the effect of instructing Dr Coltart in the capacity that they did was to inhibit their subsequent approach to the developing problems caused by Mr Skinner's illness and to bind them to the view of Dr Coltart. Dr Coltart was however being asked to treat Mr Skinner: he was not being asked to investigate the complaint from an adversarial starting point.

11.65 These observations are not intended as a criticism of Dr Coltart, but his role was not to test fully Mr Skinner's condition; that is very different. The normal and desirable practice in this situation would have been to instruct a doctor used to providing forensic reports dealing with these sorts of question, for the assistance of the court. Such a doctor would not have owed the duty of confidentiality to Mr Skinner inherent in the doctor and patient relationship. Had this practice been followed at an early stage, much time, and even the trial itself, might have been saved. For a period after Mr Skinner first complained of high blood pressure, that is to say from 25 October, through to the first week in December, the court was not in possession of a consultant's opinion and was reliant on the views of Mr Skinner's GP, relayed through his solicitors and counsel. An authoritative opinion on the correct prognosis and combination of medication was needed as soon as possible to head off what was a clear threat to the trial.

11.66 The medical evidence showed that although Mr Skinner was predisposed to high blood pressure, this had only developed because of the stress of facing trial on a serious charge. Medication was capable, according to the views of all the doctors who examined him, of keeping his blood pressure under control, sufficiently for him to give his evidence. Once he had given his evidence it was very likely that his symptoms would have abated, if not resolved completely. We are very conscious of the risks of applying hindsight to the difficult situation with which the Crown and the court were faced. Nevertheless, a greater degree of pro-activity on the part of the CPS to explore the feasibility of an earlier resolution might at this stage have been decisive. It should have been clear by that stage that any further significant delay would be fatal to their case as indeed it ultimately was.

11.67 This episode stemmed also in large measure from the lack of any clear guidance on how the court and the prosecution should approach the question of a defendant who becomes ill mainly or exclusively because of the stress of court proceedings. As it may recur we have thought it necessary to make a recommendation.

RECOMMENDATION:

a protocol should be developed establishing clear and well defined procedures for ensuring that full medical evidence is obtained at an early stage in relation to the illness of any defendant; this should include consideration by the prosecution of the appointment of a medical practitioner for the specific purpose of testing the position fully and in a forensic context.

Overall role of the CPS

11.68 It is appropriate also at this stage to look briefly at, and comment on, the overall role of the CPS in this case. At the early stages an attempt was made by the then case lawyer to get to grips with, and take control of, the case. The subsequent changes in case lawyer at crucial times in the progress of the case resulted in an essentially re-active involvement of the CPS: something that could have been avoided if there had been involvement by senior lawyers, who would have been able to provide continuity. The last two case lawyers dealt competently with day-to-day legal issues: a time consuming task as these issues were numerous. However, the day-to-day decision-making, and changes of direction in the way the prosecution was putting its case, was undertaken by counsel without referral to the CPS. Of course counsel should normally have been consulting and liaising with the case lawyers as these changes took place, but strategic as well as tactical responsibility had been devolved to him by this stage in the case. And by the time the last lawyer took over the handling of the case it was too late for that lawyer to be in a position to influence the direction of the case. For example, we were told that Mr Williams had not been aware that the 'public official' limb of the Crown's case on which Mr Wildsmith had placed reliance, and on which counsel had advised favourably at the outset, had in fact been abandoned by the time of the prosecution opening to the jury.

11.69 An experienced caseworker was allocated to the case in 1999, and remained involved up to and during the trial. She was present in court during the trial, and did what lay within her remit, or anything else which she was asked to do, efficiently and unstintingly. Indeed, she dealt competently with a great deal of correspondence and other tasks that one might have expected a case lawyer to have handled rather than the caseworker. She was the only person in the CPS to have been involved with the case virtually from day one, but the

impression was given that total control of the case rested with counsel, since although the courtroom was only a stone's throw from the CPS offices, the case lawyer seldom attended court, and no more senior lawyer appeared until the case was already a cause célèbre.

11.70 The case lawyers are not to be blamed personally for this. They had other work to do, and were not expected to do any more than they actually did. Any failing is a cultural and organisational one linked to the low priority which the CPS afforded to fraud work at the relevant time. This situation had developed in the early to mid 1990's as a result of a combination of a standardisation of structures and processes, and resource constraints. We deal with the proposals for the future at paragraphs 11.20-11.24.

11.71 What these failings can mean was shown to particularly unfortunate effect in this case. What the public has a right to expect, and what it is paying for, is an independent and dispassionate scrutiny of cases by the CPS; and the bigger and more expensive the case the more, not less, this is required. Otherwise, there is a risk that substantial cases may be effectively decided by police and counsel, with the CPS role being largely one of liaison and logistics. Apart from the initial advice, the specifically legal input to this case from the CPS contributed little to the shaping of the strategic direction of the case. As we have commented elsewhere, the current DPP and Chief Executive are determined to reverse the culture which brought this situation about, and have taken steps designed to do so.

The role of counsel

11.72 The prosecution of major fraud cases is heavy and complex work and as such is relatively well rewarded, given that it is paid out of public funds. Inevitably it also carries an equally heavy responsibility.

11.73 Although there was throughout close co-operation between the police and counsel in this case, there was never any real meeting of minds on the vital question of what had to be proved in relation to count 2. DCI Croft took the view that simple possession of the commercially sensitive papers carried sufficient risk to bring the case within the ambit of *Allsop:* use was irrelevant.

11.74 Mr Upward and his team did not actually share that view, at least not by the time the trial began. For them the risk arose in an entirely different way, indeed it could not arise until and unless the information *was* actually used to identify, formulate, reformulate or advance some claim. As it was put in the prosecution's written response to Mr Bevan's question *("Is it alleged that any claims were made for monies to which the contractors were not entitled?"*) the prosecution had said under the heading "potential claims":

> *"if, as a result of securing access to LUL's internal documentation, a contractor became aware of the possibility of a claim and decided to pursue it on the basis that there was a chance that a claim might result in an additional payment, LUL's economic interests was damaged."*

11.75 And under the heading “claims” the prosecution had said:

> *“contractors were entitled to payment in respect of claims honestly pursued and justified to LUL. Contractors were not entitled to pursue claims and to justify those claims on the basis of dishonestly acquired information”*.

11.76 It was a necessary implication of this position that the documents not only had been acquired dishonestly (which was of course denied by all the defendants) but *had* been used. The inescapable problem was that, because the investigation had never explored that issue, there was no direct evidence to prove it.

11.77 Counsel’s view was that, despite the lack of direct evidence, an irresistible inference could be drawn that the information was acquired in order to be used fraudulently, within the extended meaning of that word referred to in *Allsop*. The point of the evidence of Mr Ibson and others as to what could be done with the information by the contractors or their claims consultants was to show that it was *so* useful in, for example, identifying claims that could be made, or maximising those claims, that it must obviously have been their intention to use it for that purpose. When interviewed the main defendants (Messrs Rayment and Woodward-Smith) had given no explanation for their possession of these documents, which clearly they had no right to have. Much store was set on this point throughout the proceedings since silence, it could be argued, strengthened the inference.

11.78 This approach had to overcome two hurdles. Firstly, the inference contended for by the prosecution was not the only one which could be drawn on the evidence available; secondly, it is difficult to invite the drawing of an inference in circumstances where the actual position could be ascertained from the evidence but has not been investigated. Whether the jury would have been minded nonetheless to draw this inference is something that can never be known.

Other inferences

11.79 Though it was undoubtedly a reasonable inference that the information in the F&Cs was of some use to the defendants, or they would not have bothered to acquire it, the further inference that dishonest use was to be made of it in massaging claims was *not* irresistible. It was not the only use to which the information could be put. Another possible use was referred to in the defence statements by the anodyne term “marketing”. What seems to have been meant was that the F&Cs enabled RWS to concentrate their efforts on acquiring and securing as clients those contractors with viable variations of claims against LUL. Plainly, as compared with their business rivals, this gave RWS a strong competitive edge, as it enabled them to concentrate their efforts only on potentially fruitful areas. Plainly again, it might have been the subject matter of complaint by those business rivals. *But it did not, or at least did not unequivocally, involve fraud on LUL*.

11.80 There were in fact in the evidence, including even the evidence of the key witness Mr Elliott-Hughes, scattered indications that this might be the case. As we know, statements were only sparingly taken from contractors, but those that were did not suggest that they had ever been privy to the information in the F&Cs. Where this was not spelt out it emerged clearly during the course of the trial: for example, the evidence of Mr Threlfall in relation to the Westinghouse Signals Limited F&C and Mr Melling from GPT (Strategic Communications Systems) Plc. Nor was there evidence from RWS staff working for the contractors that the information had been shared by the defendants with them either.

11.81 This was all perfectly consistent with the "marketing" explanation but it sat very uneasily with the "massaging claims" inference which the prosecution contended for. The prosecution consistently and severely underestimated, from start to finish, the difficulties that in practice would have attended the falsification or massaging of claims, not only because numerous people including contractors' staff and RWS staff would have to have been knowingly – and dishonestly - involved, but also because each and every claim had to be justified with evidence or the Engineer would not have certified it for payment. Additionally, the benefit would have accrued not to RWS or the defendants but to the contractors themselves. This point applies with just as much force to the WSL saga and Mr Wootton's alleged assistance as to the other limb of count 2, though in relation to this matter there was the added difficulty of proving confidentiality. The police and the prosecution seem to have misinterpreted the commercial reality of transactions involved, and thought there was more scope for negotiation between the parties than in reality there was.

11.82 These practical difficulties would have soon become apparent to the prosecution if they had attempted to demonstrate during the investigation that any of the claims were false. That in our view was the second flaw: the investigation in count 2 was incomplete.

Investigating the validity of the inference

11.83 It was an inevitable consequence of seeking to rely on inference without having investigated the matters in issue that that task would be carried out by the defence in court. Towards the very end of the case, in his note for the Attorney General, Mr Upward said:

> "*Count 2 is the one that has created the problems because of the manner the defendants have chosen to pursue their defence, faced by a prosecution based on inference."*

11.84 The defendants, or to be more accurate their legal representatives, did not we think have very much choice in the matter. There was simply no other way of defending the case than by demonstrating either that the information was incapable of being used in the way the prosecution contended or, as a second line of defence, that it had not in fact been used. Furthermore, this should have been apparent to the prosecution team at least by the stage of

disclosure, and it should have occasioned a careful re-evaluation of the way that the case was going. Instead, the defence accessing of the third party material, with all that it entailed, was too readily dismissed as the opening manoeuvres in a “war of attrition”.

11.85 There must be some sympathy for the prosecution team, because count 2 was only one amongst several charges, the rest of which were prosecutable. There was bound to be a trial in any event. It cannot be known what would have happened if the defendants had, for the sake of argument, offered pleas to all counts save this one; whether in such circumstances the prosecution would have still insisted on a trial of count 2. The question is anyway academic.

The alleged criminality

11.86 What is not academic is whether count 2 was necessary or justified in the trial that actually took place. Leaving aside the confiscation argument it is said that the criminality of the defendants’ alleged activities was not adequately reflected without it. This was a retrospective conclusion, however, and the review team found no document which explained, at the time these decisions were being taken, why this particular count had the importance that was, in hindsight, contended for it.

11.87 It is difficult to see what the conspiracy to defraud charge added in terms of overall criminality in any event. The effect of it was to overcomplicate the trial. The severed fraudulent trading count would have been a viable option, particularly if linked to the conspiracy to corrupt charges. The great advantage of either of them would have been that the prosecution would not have had to establish the precise use to which the confidential information was intended to be put - that being the main issue which prolonged the trial before it finally foundered. The prosecution contentions about use were also the reason why the great bulk of the unused material at LUL became relevant in a way that it would not have been on corruption or fraudulent trading charges; the defence examination of this material was a very significant factor, not only in delaying the trial in this case, but in the costs of it.

Conspiracy to defraud

11.88 Conspiracy to defraud at common law is an extremely useful weapon for a fraud prosecutor and frequently a course of offending cannot be adequately reflected in an indictment without recourse to it. For example, such a charge avoids the difficulties associated with “specimen” counts of substantive offences. Not surprisingly, it is frequently used and is the main charge in most SFO prosecutions. However, it can sometimes be resorted to in an attempt to sidestep significant difficulties in the proof of any substantive offence and bridge the gaps in an investigation which has failed to prove more specific offences of dishonesty. Furthermore, as happened in this case, the use of the charge, because of its great breadth, can make potentially relevant a very large body of documentary and other evidence which would not be relevant or admissible in relation to specific statutory offences. The charging of

conspiracy to defraud needs therefore to be carefully considered in each case, not only to ensure that it is good in law, but also so as to anticipate the consequences of its use for the length and manageability of any ensuing trial. Conspiracy to defraud should only be used in preference to substantive offences when it can clearly be shown that the available substantive offences are significantly inadequate to reflect the real and demonstrable criminality of the case, as revealed unequivocally by the evidence gathered.

RECOMMENDATION:

where it is proposed to charge conspiracy to defraud the CPS case lawyer must consider and set out in writing in the review note how much such a charge will add to the amount of evidence likely to be called both by the prosecution and the defence, the justification for using it, and the reasons why specific statutory offences are inadequate or otherwise inappropriate. Thereafter and before charge the use of the charge should be specifically approved by a supervising lawyer experienced in fraud cases. Equivalent procedures should apply in other prosecuting authorities.

The relationship between counsel and the police

11.89 In the face of an able, tenacious and well-resourced opposition, the prosecution team rightly sought to advance the case they had been given vigorously and to the best of their abilities. That needed to be complemented by more robust arrangements for periodic stocktake and review of the case. The strong and clear police position contrasts sharply with that of the CPS which changed with three successive case lawyers even before charges were preferred. Nor did the CPS have the resources available for the effective management of some of the key issues: its role in relation to disclosure was quite limited and counsel worked directly with the police. Too much weight was allowed to attach to the police position. In the event a particular view of the case became established and the destination of the journey became pre-set, with the task of counsel consisting of mapping a course and trying to surmount any obstacles that arose on the way.

The role of the defence

11.90 Defence practitioners are frequently referred to collectively as one of the criminal justice agencies and it is certainly true that their co-operation is essential for the smooth running of the criminal justice system. The review would not have been deterred from criticising the defence if that was justified. The defence however are not fully integrated into the criminal justice system, and their role is very different to the prosecution[7]. Their primary duty is not to

[7] For example, they owe no duty of disclosure of facts which might assist the prosecution or which might undermine their defence. However they are certainly expected to co-operate in the management of the trial, and they have a duty not to waste court time.

ensure that justice is done but, subject to their duty not knowingly to mislead the court, to their client. Some of the moves made by some of those defending may have seemed to the prosecution at times to be self-fulfilling prophesies. There were pre-trial submissions in April 2003 on the questions of manageability and that issue was raised frequently on subsequent legal arguments about matters such as disclosure. There were five separate applications to discharge the jury – the final one succeeding. But these were over a lengthy period and time occupied was in the context of the case overall quite modest. At many stages of the case the presentation of evidence was interrupted for legal argument about admissibility, substantive law and procedural matters, at the behest of the defence. We did consider whether to explore these matters in greater depth but were mindful that our task was limited to establishing why the proceedings were terminated inconclusively, and what steps might be necessary to prevent a recurrence. It is apparent from our findings set out above that the most significant factors flowed from the way in which the case was investigated and prosecuted. That of itself left the defence little choice as to its strategy in defending count 2 other than to adopt the approach they in fact adopted.

11.91 There were also signs of impatience on occasion in notes sent by the jury and they made it clear in their meetings with us that there were some aspects of the defence cases which they thought could have been handled more crisply and succinctly.

11.92 When speaking to some of those responsible for the prosecution in this case it seemed on occasion that it was the defence who were being seen as to blame for the collapse of the trial: that having said before the case started that it would be unmanageable, they proceeded to make it so. This emerges also from both the content and the tone of internal CPS reports about the case as it progressed. For example, in a report dated July 2003 (just before the trial started):

> *"Prosecution position is that the vast majority of LUL material is irrelevant and to date defence have yet to show us or produce a document from their inspections which undermines the prosecution case materially."*

11.93 Such comment is based on a misapprehension, the defence having no obligation to alert the prosecution in advance to documents they have discovered in unused third party material. Nor could it be properly said that the LUL material was irrelevant: if that was really the case – and the trial would demonstrate that it was not – then the prosecution should have been formally objecting to the defence viewing the material at all. They did not. Later in October 2004 the same lawyer wrote:

> "*The case has been a war of attrition by the defence throughout the prosecution case*."

11.94 These and other comments, including some comments from prosecution counsel, seem to exemplify an almost reflex reaction to what the defence were doing throughout, which prevented the prosecution from seeing that it was the inevitable consequence of the way they were putting their case. There was at times a real reluctance to look objectively at the merits of whatever the defence might say. There was no deliberate time wasting, prolixity or unjustifiable obstructiveness as is hinted at in the phrase "war of attrition". If they were enquiring about irrelevant matters, then the prosecution would no doubt have formally objected. It can certainly be said that they did not make the prosecution's task on count 2 any easier for them but, within an adversarial system and bearing in mind their duties, it would not be appropriate to criticise them for that.

11.95 It should also be borne in mind that count 1 was dealt with relatively expeditiously by both sides, and the evidence on the conspiracy to corrupt charges counts 3-6 was largely agreed by the defence making the admissions sought from them by the Crown. None of our interviewees made any specific accusations in this respect against the defence, save in one very limited respect concerning the degree of notice given by them of documents they were intending to introduce into evidence. As the procedural rules did not require them to do so, in the general circumstances of this case and in the absence of any ruling from the judge, we did not think this could be the subject of any legitimate criticism.

The result

11.96 These tensions were obvious in court. Those who were in court considered that the relationships between prosecution and defence were unusually strained, and that the atmosphere was "dire". One side alone was not to blame for this, but the entrenched positions that went with this atmosphere can hardly have helped in reaching agreement as to the really important issues and evidence and dealing expeditiously with this case – or in other words agreeing at least to meet on the same battleground. A long and complex fraud trial demands above all others that what is really at issue is identified and agreed and that time is spent on only those matters which really need to be disputed. There is no question that the adversarial system, never mind the jury system, was tested to the limits in this case and, having failed conspicuously to deliver a manageable trial, or any real resolution of the important questions that the investigation had raised, it does not emerge with any great credit.

11.97 The extent to which its deficiencies could or should have been compensated for by judicial intervention is not a matter upon which it would be considered appropriate for the review to comment. For the reasons indicated in the Preface to this report, there would be merit in considering the creation of a procedure whereby any future case such as this might be subject to a more comprehensive review.

RECOMMENDATION:

the Attorney General should consider with the senior judiciary the development of a procedure which would enable a truly comprehensive review of any case where things have gone so badly wrong as to render the trial unmanageable.

CHAPTER 12: RECOMMENDATIONS

Overview: the two primary purposes of a review of this nature are firstly to ascertain what went wrong and secondly to make recommendations aimed at preventing a recurrence. Chapter 11 sets out the conclusion that the collapse of the Jubilee Line case was not the fault of the system but the cumulative effect of mistakes and shortcomings by agencies and individuals within the system. Consequently, many of the "lessons" of this case are far from new, and in many instances the solution is better adherence to existing good practice. Moreover, the investigation and subsequent proceedings were spread over a long period from 1997 to 2005 with some of the key mistakes occurring at an early stage. Chapters 3 and 11 describe some of the steps already taken to strengthen the handling of serious casework in the CPS (including replacing Casework Directorate with three new divisions) and the proposal to create a new specialist fraud unit.

However, there have been two important developments since the conclusion of the Jubilee Line trial which could do much to reduce the risk of recurrence. They are the issue by the Lord Chief Justice of a Protocol for the control and management of heavy fraud and other complex criminal cases; and the establishment within the CPS of structured arrangements for the oversight by Case Management Panels of all cases expected to last more than eight weeks. These arrangements were announced by the DPP on the day following the Protocol in order to bring CPS practice into line with it. This was the culmination of a process which had started before the circumstances of the Jubilee Line trial had emerged.

This chapter describes these initiatives and considers their implications before setting out the recommendations of this review.

The Lord Chief Justice's Protocol

12.1 This had been under development for some time but was announced on 22 March 2005, that is, the same day that the Jubilee Line case ended. The Protocol was intended to supplement the Criminal Procedure Rules 2005 (which *inter alia* require the court to take a more active part in case management), and to summarise the good practice which experience has shown may assist in bringing about some reduction in the length of trials of fraud and other charges resulting in complex trials. It is directed primarily towards trials expected to last more than eight weeks, but states that it should be followed in all cases expected to last four weeks or longer.

12.2 There is, according to the Protocol, a broad consensus that (1) the current length of trials must be "*brought back to an acceptable and proper duration*" and controlled in order to enable the jury to retain and assess the evidence which they have heard, and to make proper use of limited public resources; and (2) that some upper limit needs to be set on the length of such trials.

12.3 Contrary to some press reports at the time the Protocol itself sets no strict upper limit, though it says: "*generally a trial of three months should be the target, but there will be cases where a duration of six months or, in exceptional circumstances, even longer may be inevitable*".

12.4 The Protocol gives detailed guidance for all practitioners and to judges on all aspects of the management of complex cases, but there are some passages of particular relevance to the future handling of serious fraud allegations by the CPS. Thus the Protocol says, under the heading "The Investigation":

> *"Experience has shown that a prosecution lawyer (who must be of sufficient experience and who will be a member of the team at trial) and the prosecution advocate, if different, should be involved in the investigation as soon as it appears that a heavy fraud trial or other complex criminal trial is likely to ensue."*

12.5 It continues:

> *"If the prosecutor in charge of the case from the prosecuting authority or the lead advocate for the prosecution consider that the case as formulated is likely to last more than eight weeks, the case should be referred in accordance with arrangements made by the prosecuting authority to a more senior prosecutor. The senior prosecutor will consider whether it is desirable for the case to be prosecuted in that way or whether some steps might be taken to reduce its likely length, whilst at the same time ensuring that the public interest is served. Any case likely to last six months or more must be referred to the director of the prosecuting authority so that similar considerations can take place."*

12.6 Under the heading "Case Management" and when dealing with case management hearings, it is stated:

> *"There should … be a real dialogue between the judge and all the advocates for the purpose of identifying: (i) the focus of the prosecution case, (ii) the common ground, (iii) the real issues in the case….the expeditious conduct of the trial and a focussing on the real issues must be in the interests of all parties. It cannot be in the interests of any defendant for his good points to become lost in a welter of uncontroversial and irrelevant evidence."*

12.7 The protocol envisages the judge requiring the prosecution to justify the length of the trial, if it does not appear to be of manageable length:

> *"If the trial is not estimated to be within a manageable length, it will be necessary for the judge to consider what steps should be taken to reduce the length of the trial, whilst still ensuring that the prosecution has the opportunity of placing the full criminality before the court…the lead advocate for the prosecution should be asked to explain why the prosecution have rejected a shorter way of proceeding; they may also be asked to divide the case into sections of evidence and explain the scope of each section and the need for each section*."

12.8 It is also recognised that one course open to the judge, subject to being fair to all the parties, is "*persuading the prosecution that it is not worthwhile pursuing certain charges and/or certain defendants*".

12.9 There is a section on Disclosure which has some resonance in the context of this case. Amongst other things it says:

> *"It is almost always undesirable to "give the warehouse key" to the defence for two reasons: (a) this amounts to an abrogation of the responsibility of the prosecution; (b) the defence solicitors may spend a disproportionate amount of time and incur disproportionate costs trawling through a mass of documents. The judge should therefore try and ensure that disclosure is limited to what is likely to assist the defence or undermine the prosecution*."

Interestingly, the protocol also lays down "*an absolute maximum limit of one day*" for abuse of process applications, the procedure to be shortened by the use of full written submissions (not skeleton arguments), and the hearing itself to be an occasion only for the parties to "*highlight concisely their arguments and answer any questions the court may have of them; applications will not be allowed to drag on..".*

12.10 Under the heading "The Trial" are a number of useful observations and directions:

> *"A heavy fraud or other complex trial has the potential to lose direction and focus. This is a disaster for three reasons:*
> *- The jury will lose track of the evidence, thereby prejudicing both prosecution and defence.*
> *- The burden on the defendants, the judge and indeed all involved will become intolerable.*
> *- Scarce public resources are wasted. Other prosecutions are delayed or – worse – may never happen. Fraud which is detected but not prosecuted (for resource reasons) undermines confidence."*

12.11 Having observed that "*It is necessary for the judge to exercise firm control over the conduct of the trial at all stages*," the Protocol outlines a number of ways in which that can be achieved, that is, by controlling prolix cross-examination, periodic case management sessions during the trial, and other stock-taking exercises including querying the continued relevance of witnesses.

12.12 Overall, we have little doubt that, had there been better adherence to the pre-existing good practices outlined in the 22 March 2005 Protocol during the trial that immediately preceded it, much time and expense would have been saved and it is unlikely that the case would have ended in the way that it did.

The new CPS arrangements for oversight of long and complex cases

12.13 On 23 March 2005, the day after the end of the Jubilee Line case and the announcement by the Lord Chief Justice of his Protocol, the DPP announced arrangements to bring CPS practice into line with it. These were contained in a letter to all Chief Crown Prosecutors, Sector Directors (London), and Heads of Casework Divisions at Casework Directorate. Despite the timing of the announcement, these moves had been planned for several months and had been devised in consultation with the Lord Chief Justice, who in turn had consulted the DPP on the Protocol.

12.14 Two passages in the letter are directly relevant to shortcomings identified in relation to this case:

> (i) *"Day to day handling of, and responsibility for, the running of the case will remain with the reviewing lawyer. The new arrangements will ensure that senior management are assured of, and where necessary can intervene in, the strategic management of the case to ensure that all serious cases are handled consistently and are being prosecuted promptly, effectively and robustly."*

Under the heading "Robust Prosecution Strategies" the letter says:

> (ii) *"The success of significant prosecutions is built on well-constructed strategies that are developed at the outset of our involvement. It is important that reviewing lawyers entrusted with the prosecution of these cases are fully supported from the outset of the case, and can take soundings on their developing prosecution strategies from senior members of the Service. It is also important that senior management can be assured that the prosecutor has a sound plan for managing the case and has fully considered the options for running the prosecution before critical decisions are made, both before and after counsel are instructed*."

12.15 The letter goes on to outline two new schemes for focusing greater scrutiny by senior management on these cases. One covers cases expected to last more than six months; the other applies to any case expected to last more than eight weeks but less than six months.

12.16 There is to be established a Case Management Panel for cases expected to last more than six months, to be chaired by the DPP himself:

> *"The Panel will enable me to provide assurance to the Attorney, and the wider CJS community, that appropriate consideration has been given to all pertinent issues surrounding the launch of any substantial case and that*

> *the continuing strategic management of the case is kept under regular review. The panel will also provide a sounding board for the reviewing lawyer to confirm that their considered prosecution strategy is sound."*

12.17 The scheme for cases lasting more than eight weeks but less than six months requires Chief Crown Prosecutors, Sector Directors (in London) or the Head of Casework Division "*to involve themselves in more active strategic oversight*" and "*to remain closely involved in the development of the case; ensuring that they are comfortable with the tactical decisions being made, providing guidance as required, and seeking advice where necessary*".

12.18 This is to be achieved with the establishment of local models of the national Case Management Panel (see above) at Area level. The aim of the local panels is to ensure that:

> *"decisions taken to launch substantial prosecutions with a significant impact on the resources of the CPS, the court, and the Legal Service Commission, are strategically sound and justified."*

12.19 These arrangements were intended initially to apply only to new cases, but as few eight week plus cases were being identified they were extended on 27 September 2005 to all existing cases. Several six months plus cases had been identified however, and as of that date the DPP had chaired three Case Management Panels; two more were in the pipeline. The DPP is confident that they add value to the process, "*both in adjusting the shape of the case to focus on the important issues, and also to ensure that we are tightly in control of the case in both case management, and financial management terms*".

12.20 The DPP, when interviewed for the purpose of this review confirmed that these arrangements were already under consideration before the collapse of the Jubilee Line case. There was a culture, he said, that had prevailed for some years, and which had flourished particularly within Casework Directorate, whereby senior managers did not involve themselves in important decisions in individual cases, devolving all these onto the reviewing lawyer. The reason, it was said, why decisions had to be exclusively taken by the reviewing lawyer was that only he or she would have read all the papers. This largely mirrored the findings by the review team. Like the review, the DPP did not follow that logic. He commented with some force that it seemed to rest on the assumption that the reviewing lawyer is unable to summarise adequately the evidence and the issues in the case. If lawyers could not be relied on to do this, it might indeed be thought they could hardly be relied on to make the decisions either. He wished to reverse that culture, and the arrangements summarised above represent an important step in that direction.

12.21 Although this new approach and the associated arrangements apply to all categories of case, they have special relevance to fraud cases where the volume of the papers is always substantial, and sometimes enormous. In addition, under the present arrangements in the CPS, supervising lawyers may have little or no experience of fraud cases. The result was that, as shown in the body of the report, senior managers in this case knew little or nothing about it until it was too late to do anything other than bring it to an end. It is therefore vital that periodic review of cases by a Case Management Panel should not be seen as a substitute for effective day-to-day supervision of large fraud cases by suitably experienced managers.

RECOMMENDATION:

the establishment of Case Management Panels within the CPS must be treated as complementary to and not a substitute for effective day-to-day supervision and oversight of large fraud cases by suitably experienced managers with relevant expertise.

12.22 As we have said in relation to the Lord Chief Justice's protocol, the implementation of these new arrangements will certainly help to make sure that there is not another Jubilee Line case. If they had not already been in place we would have been making more extensive recommendations similar to them.

Summary of recommendations

12.23 Taking account of the contents of the previous chapter and the two recent developments described above, we make the following recommendations:

1. Police forces should ensure that there are in place structured arrangements for the regular review of investigative strategy during major enquiries, such review being undertaken by a senior officer with relevant expertise (paragraph 11.30).

2. There should be effective compliance with the requirement in serious and complex cases for the creation of a structured review note analysing the evidence and public interest considerations which underpin the prosecutorial decision (paragraph 11.52).

3. Where it is proposed to charge conspiracy to defraud the CPS case lawyer must consider and set out in writing in the review note how much such a charge will add to the amount of evidence likely to be called both by the prosecution and the defence, the justification for using it, and the reasons why specific statutory offences are inadequate or otherwise inappropriate. Thereafter and before charge the use of the charge should be specifically approved by a supervising lawyer experienced in fraud cases. Equivalent procedures should apply in other prosecuting authorities (paragraph 11.88).

4. A protocol should be developed establishing clear and well defined procedures for ensuring that full medical evidence is obtained at an early stage in relation to the illness of any defendant; this should include consideration by the prosecution of the appointment of a medical practitioner for the specific purpose of testing the position fully and in a forensic context (paragraph 11.67).

5. In considering the enhanced support needed for jurors in long trials the Department for Constitutional Affairs should take into account the importance of:

   - continuity in the individuals allocated to support the jury;
   - forms of support which might not normally be within anyone's remit, such as minimising unnecessary trips to court;
   - support from someone with the time and resources to deal with problems;
   - keeping the jury informed;
   - clear information about what they can expect as jurors and what will be expected of them; and
   - the possibility of repercussions in relation to employment and careers continuing beyond the end of the proceedings (paragraph 11.14).

6. Any dedicated fraud unit within the CPS should handle its casework within a framework which has, as a minimum, the following characteristics:

   - fraud should be recognised as a specialism;
   - there should be a multi-disciplinary approach with investigators, prosecutors (including counsel), accountants and other experts where appropriate working together as a team from a very early stage in the investigation;
   - regular review of progress by the team internally;
   - a senior prosecutor, in addition to the case lawyer, assigned to each case from the beginning of the investigation and remaining in overall charge of the case team throughout its life;
   - senior prosecutors fulfilling this role have relevant experience and expertise and are able to provide effective day-to-day supervision and quality assurance through a "check and challenge" process; and
   - the unit has an appropriate level of resourcing – both human and financial (paragraph 11.21).

7. The establishment of the unit within CPS London to be known as the Fraud Prosecution Service should be preceded by a 'bottom up' review of the anticipated caseload and the resources needed for the effective discharge of its responsibilities (paragraph 11.26).

8. The Fraud Review should explore the feasibility of vesting in one organisation the prosecution of all those fraud cases investigated by the police which cannot be dealt with appropriately by CPS Areas (paragraph 11.28).

9. The establishment of Case Management Panels within the CPS must be treated as complementary to and not a substitute for effective day-to-day supervision and oversight of large fraud cases by suitably experienced managers with relevant expertise (paragraph 12.21).

10. The Attorney General should consider with the senior judiciary the development of a procedure which would enable a truly comprehensive review of any case where things have gone so badly wrong as to render the trial unmanageable (paragraph 11.97).

11. The new Chief Inspector for Justice, Community Safety and Custody should make early arrangements to inspect the progress and performance of the new CPS Headquarters Divisions, of the Fraud Prosecution Service of CPS London, and the functioning of Case Management Panels (paragraph 3.17).

ANNEX 1

THE INDICTMENT

IN THE CROWN COURT AT THE CENTRAL CRIMINAL COURT

THE QUEEN
V
Stephen Peter Rayment
Mark Woodward-Smith
Paul Graham Maw
Paul Fisher
Mark Andrew Skinner
Graham Maurice Scard
and
Anthony William Wootton

Stephen Peter Rayment, Mark Woodward-Smith, Paul Graham Maw, Paul Fisher, Mark Andrew Skinner, Graham Maurice Scard and Anthony William Wootton are charged as follows:

Count 1

STATEMENT OF OFFENCE

Conspiracy to Defraud

PARTICULARS OF OFFENCE

Stephen Peter Rayment, Mark Woodward-Smith, Paul Graham Maw and Paul Fisher, on a day or days unknown between the 8th day of July 1991 and the 31st day of December 1993, conspired together and with others to defraud London Underground Limited in relation to Tenders to Contract submitted to London Underground Limited by or on behalf of Drake and Scull plc and others, by dishonestly acquiring documentary and other information to which they knew or believed they were not entitled and which they knew or believed was confidential to London Underground Limited, its servants or agents, intending dishonestly to use that information to the commercial detriment of London Underground Limited and to promote the commercial interests of Drake and Scull plc and others and RWS Project Services Limited.

Count 2

STATEMENT OF OFFENCE

Conspiracy to defraud.

PARTICULARS OF OFFENCE

Stephen Peter Rayment, Mark Woodward-Smith, Mark Andrew Skinner, Graham Maurice Scard and Anthony William Wootton, on a day or days unknown between the 8th day of July 1991 and the 18th day of June 1997 conspired together and with others to defraud London Underground Limited, by dishonestly acquiring documentary and other information to which they knew or believed they were not

entitled and which they knew or believed was confidential to London Underground Limited, its servants or agents, intending dishonestly to use that information to the detriment of the commercial interests of London Underground Limited in order:

(i) unfairly to promote the commercial interests of such corporations, companies, partnerships and firms as were or might be involved in negotiations with London Underground Limited under the terms of contract agreed pursuant to the project known as the Jubilee Line Extension Projects, and

(ii) unfairly to advance the commercial interests and profitability of RWS Project Services Limited.

Count 3

STATEMENT OF OFFENCE

Conspiracy corruptly to give any gift or consideration, contrary to section 1 of the Criminal Law Act 1977.

PARTICULARS OF OFFENCE

Stephen Peter Rayment, Mark Woodward-Smith, on a day or days unknown between the 8th day of July 1991 and the 18th day of June 1997, conspired together and with Mark Andrew Skinner, Graham Maurice Scard, Anthony William Wootton and others, corruptly to give gifts or consideration to servants or agents of London Underground Limited as an inducement or reward for doing or forbearing to do acts in relation to their principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to their principal's affairs or business.

Count 4

STATEMENT OF OFFENCE

Conspiracy corruptly to accept any gift or consideration, contrary to section 1 of the Criminal Law Act 1977.

PARTICULARS OF OFFENCE

Mark Andrew Skinner, being a servant or agent of London Underground Limited, on a day or days unknown between the 8th day of July 1991 and the 18th day of June 1997, conspired with Stephen Peter Rayment, Mark Woodward-Smith and others, corruptly to accept gifts or consideration to servants or agents of London Underground Limited as an inducement or reward for doing or forbearing to do acts in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

Count 5

STATEMENT OF OFFENCE

Conspiracy corruptly to accept any gift or consideration, contrary to section 1 of the Criminal Law Act 1977.

PARTICULARS OF OFFENCE

Graham Maurice Scard, being a servant or agent of London Underground Limited, on a day or days unknown between the 8th day of July 1991 and the 18th day of June

1997, conspired with Stephen Peter Rayment, Mark Woodward-Smith and others, corruptly to accept gifts or consideration to servants or agents of London Underground Limited as an inducement or reward for doing or forbearing to do acts in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

Count 6

STATEMENT OF OFFENCE

Conspiracy corruptly to accept any gift or consideration, contrary to section 1 of the Criminal Law Act 1977.

PARTICULARS OF OFFENCE

Anthony William Wootton, being a servant or agent of London Underground Limited, on a day or days unknown between the 8th day of July 1991 and the 18th day of June 1997, conspired with Stephen Peter Rayment, Mark Woodward-Smith and others, corruptly to accept gifts or consideration to servants or agents of London Underground Limited as an inducement or reward for doing or forbearing to do acts in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

ANNEX 2

KEY PLAYERS

Her Honour Judge Goddard QC	Trial Judge
Samantha Jenkins	Assistant to Judge Goddard QC
DEFENDANTS	
Paul Fisher RICS	Defendant. Employed by London Underground Limited on a short-term contract as a Costs Assessor in 1992-03
Paul Maw RICS	Defendant. Costs and Estimates Manager at London Underground Limited. Employed by RWS Project Services Limited between May and October 1992
Graham Scard RICS	Defendant. Costs Control Manager for the Jubilee Line Extension Project, and also secretary to the Project Executive Group committee
Mark Skinner	Partner in the firm George Skinner and Associates
Stephen Rayment RICS	Defendant. Joint principal of RWS Project Services Limited
Mark Woodward-Smith RICS	Defendant. Joint principal of RWS Project Services Limited
Anthony Wootton RICS	Defendant. Commercial Manager for London Underground Limited employed through George Skinner and Associates
COUNSEL	
Miles Bennett*	Counsel for London Underground Limited
Anthony Berry QC*	Leading counsel for Mr Scard
Julian Bevan QC	Leading counsel for Mr Woodward-Smith
Paul Bogan*	Junior counsel for Mr Fisher
Peter Carter QC*	Leading counsel for Mr Maw
Mukul Chawla QC*	Second counsel for Mr Woodward-Smith
Geoffrey Cox QC	Leading counsel for Mr Wootton
Isabel Dakyns	Junior counsel for Mr Skinner
Christopher Harding*	Junior counsel for Mr Wootton

Dorian Lovell-Pank QC*	Leading counsel for Mr Skinner
James Mulholland	Junior counsel for the prosecution
Alison Pople*	Junior counsel for Mr Rayment
Nicholas Purnell QC	Leading counsel for Mr Rayment
Gareth Rees*	Junior counsel instructed on behalf of Mr Maw
Peter Roberts*	Junior counsel for the prosecution
Christopher Sallon QC	Leading counsel for Mr Fisher
Kennedy Talbot	Counsel instructed by the CPS in relation to matters relating to restraint and confiscation
Patrick Upward QC	Leading counsel for the prosecution
CPS	
Julia Armitage	Caseworker, Central Casework
Richard Atkins	Team Leader, Central Casework
Robert Drybrough-Smith*	Senior lawyer, Casework Directorate
David Honeyman	Branch Office Manager, Central Casework
Lloyd Jeans	Case lawyer, Central Casework
Ken Macdonald QC	Director of Public Prosecutions
Chris Newell	Director, Central Casework/Casework Directorate
Paul Plummer	Team Leader, Central Casework
Dru Sharpling*	Chief Crown Prosecutor (CPS Central Casework and CPS London)
Michael Spong	Case lawyer, Central Casework
Sue Taylor	Branch Crown Prosecutor, Central Casework
George Towse	Accountant
Raymond Wildsmith	Case lawyer
David Williams	Case lawyer
Karen Wiseman	Team Leader, Central Casework

WITNESSES REFERRED TO IN THE REPORT	
Hugh Doherty	Project Director for the Jubilee Line Extension Project
Peter Elliott-Hughes	Claims Consultant for RWS Project Services Limited between the middle of 1993 until October 1994
Peter Hall	Claims Consultant employed by London Underground Limited on the Jubilee Line Extension Project
Grahame Ibson	Contracts Administration Manager for the electrical and mechanical design section of the Jubilee Line Extension Project; subsequently Financial Control and Co-ordinations Manager; in 1997 secretary to the Project Executive Group committee
Martin Kennedy	RWS Project Services Limited employee. Worked on claims for Mowlem, Aoki Solentache and Westinghouse Signals Limited
Stephen Kornfeld	Director of JWP and Chairman, Drake and Scull Plc.
Brian Melling	GPT (Strategic Communications Systems) Plc Project Director
Sean Ostrowski	RWS Project Services Limited employee who worked on claims for Westinghouse Signals Limited
David Sharpe	Employed by London Underground Limited as Chief Engineer to the Project and “Engineer” under the Institute of Chartered Engineers Standard Terms and Conditions of Contract
Roy Smith	Contracts Manager employed on the Jubilee Line Extension Project
Joseph Sutton	Senior Manager at London Underground Limited
David Waboso	Employed as Engineer’s delegate on the Jubilee Line Extension Project
POLICE OFFICERS	
Detective Chief Inspector Ashley Croft	British Transport Police
Detective Constable Stephen Down	British Transport Police

OTHERS REFERRED TO IN THE REPORT	
Andrew Axelson	Defendant. Severed from main indictment
Thomas Butler	Defendant. Severed from main indictment
Clifford Mills	Defendant. Severed from main indictment
Martin Williams	Defendant. Severed from main indictment

* Included to give a full picture but not mentioned by name in the report.

ANNEX 3

PATRICK UPWARD QC'S TERMINATION STATEMENT

Tuesday, 22 March 2005
10.55am
(In the absence of the jury)

MR UPWARD: My Lady, I am sorry to have delayed you this morning. My Lady, thank you for the time and the additional time that you granted us to consider the position that confronts us. When we adjourned we were asked to make clear our position in relation to one of the jurors. Insofar as the individual juror is concerned, bearing in mind his understandable concerns that he feels unable to continue his duties in accordance with his oath and the likely time required to resolve them, it seems to us that it would be quite wrong to resist any application to discharge that juror.

Following that request, I asked for additional time because it seemed to me that this was an appropriate moment to consider the wider issues that confront the trial, and I am very grateful to your Ladyship for giving us that opportunity. Over the last few days, this case in all its aspects has been carefully reviewed by the prosecuting authority at its highest level.

Your Ladyship has invited further submissions pursuant to those advanced on 16th February this year. Before the defence add to their submissions, it may assist your Ladyship in reaching a decision if we make clear the Crown's present position. In doing so, it is necessary to set out in some detail the background to the conclusions we have reached.

During the 1990's, London Underground Limited embarked on a project to upgrade the existing Jubilee Line and extend it through South London to Stratford. At the time it was the largest civil engineering project in Europe, paid for largely out of public funds. As such any impropriety on the part of those involved was a matter of considerable public interest.

In 1997 the British Transport Police received information that raised questions concerning RWS Project Services Limited, a company that specialised in providing quantity surveying and claims consultancy services to contractors, including contractors employed on the Jubilee Line Extension. The allegations suggested that the tendering process in relation to some of the contracts had been corrupted by the use of inside information. It was also alleged that inside information continued to be used to identify and enhance subsequent claims made on behalf of contractors represented by RWS.

In June 1997, the police executed search warrants at the offices of RWS and other premises. In the searches that followed a large amount of documentary material was seized. Much of that documentation had originated from London Underground. Subsequent enquiries with senior management figures from London Underground confirmed that this documentation was highly confidential, contained commercially

sensitive information and should never have left London Underground's offices. They also confirmed that the information, if it fell into the hands of agents acting on behalf of the contractors, represented a grave risk to the economic interests of London Underground.

The allegations also suggested that RWS, in order to secure access to inside information, had made payments of cash in brown envelopes to one individual employed by London Underground and that he had enjoyed extravagant entertainments at the expense of the directors of RWS. Later examination of bank documents revealed that RWS had also paid large sums of money to individuals engaged by London Underground to guard its interests.

We now know that RWS and its directors made many millions of pounds as a result of their involvement in the JLEP, the Jubilee Line.

A report and file were prepared by the investigating team and submitted for consideration by the Crown Prosecution Service. That report identified a large number of individuals allegedly involved in criminal activity. A lengthy review followed, applying the standards demanded by the Code for Crown Prosecutors. As a result seven men were charged in connection with the offences now before the jury.

In relation to the tendering process, count 1 was based on documents found in possession of RWS and of a company represented by RWS in the tender process. These documents contained the tender figures of competing tenderers and calculations based on those figures. As described by the witnesses, the risk this created for London Underground lay in the opportunity it created for the company to adjust its tender figures upwards while still submitting the most competitive tender.

In pre-trial hearings this charge was not the subject of any application to dismiss. At the beginning of the trial one defendant confirmed the existence of conspiracy by pleading guilty. At the conclusion of the Crown's case, while allowing a submission of no case to answer by one defendant, your Ladyship ruled that there was a case to answer for the remaining defendants.

Count 2 concerned the possession by the defendants of inside information and its use to formulate a claims strategy and to identify and enhance claims made by the contractors against London Underground. The witnesses have pointed to this price-sensitive information and the risk this represented to London Underground's economic interests if it fell into the wrong hands. There was also evidence that the defendants who worked for London Underground dishonestly provided direct assistance to RWS in relation to the preparation of a claim to be made by a contractor to London Underground. Before the trial an application was made on behalf of Anthony Wootton to dismiss this count. That application was refused. At the conclusion of the Crown's case all submissions of no case to answer were also rejected.

The corruption charges formed counts 3-6 on the indictment before the jury. These were based on the challenged evidence of one eye witness and unchallenged documentary evidence that payments were made by RWS to three individuals engaged by London Underground. There was supporting evidence to link those payments to the activities of RWS alleged in count 2.

No defendant applied to dismiss these charges pre-trial. At the conclusion of the case for the Crown a submission of no case to answer on behalf of Mr Wootton was rejected. No submission was made on behalf of the remaining defendants.

It has always been recognised that this case falls within the description of 'serious and complex' fraud. In order to ensure that the trial would not place too great a burden on the jury, the Crown limited its case to specific contracts and, with the consent of the defence, reduced the documentary exhibits in the jury bundles to about 1,500 pages. Agreement was also reached in identifying the issues that the jury had to consider in assessing the evidence. The number of witnesses called was reduced and the trial was shortened when agreement was reached with the defence in relation to over 80 admissions. There was no application to sever counts in the indictment and the Crown's view was that the case was manageable and that the jury could reach verdicts within a reasonable time.

Care was taken in the selection of the jury in an attempt to ensure that they felt comfortable in handling a case of this length and complexity and that there were no impediments in their ability to do so. By the date of the trial, the general view was that it would last six-eight months. It was decided that could mean 12 months but, out of an abundance of caution, the jury was told to allow for the possibility that the case might last 18 months. The Crown began to call its evidence in relation to count 1 on 2nd July 2003 and, with the exception of one day's evidence called later in the proceedings, concluded its case in respect of that count on 29th September 2003. This period included three weeks' holiday and almost two weeks of illness; the 17 witnesses who gave evidence on count 1 out of the 50 witnesses called live during the entirety of the Crown's case were heard over 27 days. The initial momentum of the trial then deteriorated, such that the presentation of the Crown's case occupied 127 days of court time, normally the equivalent of seven months, based on a nine-day fortnight. In terms of the number of court hours taken up, if sat in full court days, this would have totalled 15 weeks. In fact it took 14 months to present the case for the Crown. Of that time, nine weeks were lost to illness, eight weeks for scheduled holidays including a juror's honeymoon, three weeks for paternity leave, and a further two weeks were lost because of witness difficulties. Three more weeks were lost following the revelation by one witness that he had personal files that had not been located. By and large the remaining time was spent in legal argument and witnesses' preparation.

The Crown's case ended on 16th August 2004 and was followed by the summer holiday and legal submissions which concluded on 11th October 2004. The impact on the defendants caused by the length of the proceedings was considerably lessened by your Ladyship's decision to allow them to be absent from court at their and their counsel's discretion. All defendants have availed themselves of this consideration.

Mr Skinner gave evidence on 19th and 20th October 2004. He continued his evidence on 25th October, 1st November, 8th November and 2nd December, by which time it had become apparent that his blood pressure was unacceptably high. As a consequence, and on behalf of the court, the Crown arranged for him to see an independent specialist, Dr Coltart, a senior consultant in cardiology at Guy's and St Thomas's Hospitals. Dr Coltart diagnosed essential hypertension and recommended treatment. His diagnosis was confirmed by Professor Hall of Imperial College Medical School instructed on behalf of the defence.

In the meantime, whilst making his way to court, Mr Wootton was taken from the train by the medical authorities after he complained of severe chest pain. Following his admission to hospital he was found to be suffering from a blocked artery. These events were compounded by illness amongst the jury and sickness of counsel. In the result the court heard no more evidence in 2004.

After Christmas 2004, with Mr Skinner and Mr Wootton returned to apparent good health, your Ladyship rejected further submissions for the discharge of the jury and Mr Skinner restarted his evidence on 10th January 2005. Both Mr Skinner's counsel then contracted scarlet fever and were unable to continue. Once they had recovered he returned to the witness box on 19th January but was interrupted again because of sickness amongst the jury. The same happened when he recommenced on 24th January only to break off again until 1st February. On 2nd February his blood pressure again became a cause for concern and on the advice of his doctors he has not given evidence since; although the court has now concluded that he is fit to do so.

Following the recommendations of his doctors, when Mr Skinner has given evidence, he has done so in the mornings only. In total over a period of five months Mr Skinner has restarted his evidence twice and the jury has heard 22-and-a-half hours of evidence from him, the equivalent of five working court days.

If your Ladyship accedes to an application to discharge the juror who has expressed his concerns in writing to this court, this jury will be reduced to nine in number, the minimum number permitted by law. Quite understandably believing along with the rest of us that this case would now be finished, your Ladyship gave assurances to another member of the jury concerning her personal arrangements. Those arrangements cannot be changed and it follows that we are faced with a six-week break from mid-June to the end of July.

Mr Skinner's evidence still has a long way to go. Given that his health permits him to give his evidence only in the mornings, it is inevitable that the presentation of his defence will continue until late April. Mr Wootton has indicated his intention to give evidence. The estimate given for his evidence is three weeks. We know that there will be a period before closing speeches when your Ladyship will invite submissions. These cannot be dealt with until the conclusion of the evidence. It is expected that thereafter speeches will be lengthy. In those circumstances it is thought that any retirement by the jury to consider its verdicts before 15th June would be impossible. Guidance from the Court of Appeal has made it clear that counsel's speeches should not be separated from the summing-up by a lengthy interlude. It follows that speeches cannot start before the beginning of August, assuming it is possible for the

court to sit in August. If your Ladyship agrees with this analysis of the future progress of the trial, it is clear that by the time the jury retires it will be two years since the evidence in relation to count 1 was concluded. This evidence included that of 18 of the live witnesses called by the Crown or 36 per cent of the witnesses. Some important aspects of their evidence were contentious and gave rise to dispute. This will require the jury not just to recall the evidence but to have regard to the way it emerged and thereby assess its reliability. Their ability to do so will be obliterated by the passage of time.

Consideration has been given to the possibility of discharging the jury in relation to count 1 and limiting the trial to the remaining counts. Our conclusion is that to do so would require the jury to disregard the evidence on count 1. This case was opened on the basis that RWS was a corrupt enterprise from its inception. It follows that the prejudicial effect to Mr Rayment of the evidence in relation to that count would have enormous significance such that no jury could be expected to ignore it.

It should not be forgotten that the evidence of the 32 witnesses concerning count 2 and the corruption counts began in September 2003. It will be more recent in the jury's recollection only in the sense that the final evidence concluded over a year before their anticipated retirement. While the defence have accepted many of the basic facts alleged by the Crown, they have subjected the evidence to analysis in order to dispute the inferences and conclusions that the Crown invites the jury to draw. Some of that analysis was detailed and took place over several days. The jury will be required to assess that evidence in order to decide whether the Crown has properly proved its case.

The Court of Appeal has made it clear that the fact that a trial may be of excessive length is not of itself a factor that would make the resulting conviction unsafe. What needs to be considered is whether length of trial creates a situation at any point whereby a fair trial is not possible, in particular whether the case reveals any feature which tends to establish that any of those taking part in the trial are, by reason of its length, unable to discharge their function.

Since September 2003 this case has suffered disruption. Following the opening of the case for the defence it began to lose its continuity. It has now lost all momentum. For considerable periods the jury has been absent no doubt carrying on with their normal lives. It must follow that these essential participants in the trial process have become separated from it. The evidence is no longer a living story and has lost its immediacy and its impact. This must import the grave risk that the jury will be forced to rely on the summing-up rather than any independent recollection of the evidence. It is because of this that the jury's ability to fulfil its role must necessarily have been impaired.

For reasons beyond the Crown's control, we have now reached a point at which minimal progress has been made since the beginning of the year; impetus has now ceased. We are now at a stage when this can only lead to unfairness. Furthermore, we are faced with the prospect of continuing delay and disruption. The statistics speak for themselves; an analysis of the progress of the case in terms of hours reveals that, of the time available, 17.1 per cent was spent sitting with the jury; 13.9 per cent was spent sitting without the jury; 10 per cent was taken up by holiday time, and 59 per cent of the available time the court has not sat.

The Crown has a duty to the public to ensure that every trial is fair and is seen to be fair. We have now concluded that the continuation of this trial would undermine that fundamental principle.

We are satisfied that the prosecution was properly brought, based on reliable evidence of substantial criminality. We believe that the counts in the indictment reflect the risk occasioned to the economic interests of London Underground and as such properly mirror the extent of that criminality. We also believe that there is a high public interest in ensuring that criminality of such magnitude is brought fully to justice. For these reasons we have pursued the prosecution over many months with determination. However, the accumulation of delays to date, the further delays that it is known that we face and the disruption of the evidence, most particularly that of the accused, leads us to conclude that the time has been reached when no jury, no matter how diligent and no matter how clearly directed, can be expected to determine the guilt or innocence of the accused in a way that would be regarded as fair by the objective bystander.

I should add that the Director of Public Prosecutions has been closely involved with this review and the Attorney General has considered and approved this submission.

JUDGE GODDARD: Thank you, Mr Upward. What is the course therefore that you propose in practical terms?

MR UPWARD: In practical terms, my Lady, the application that remains for your Ladyship to resolve is that made by my learned friends on behalf of the defendants.

JUDGE GODDARD: One which you do not oppose?

MR UPWARD: My Lady, that is the position.

JUDGE GODDARD: So, if I support the defence application -- indeed which would be in accordance with your stance -- what is the practical effect so far as the jury are concerned, leaving aside the one juror and the question of his discharge? Are you, depending on what I say, asking for the jury to be discharged? Are you asking them to return verdicts of not guilty? Are you asking in due turn me to enter verdicts of not guilty?

MR UPWARD: At the moment, my Lady, I am stating the Crown's position faced with the application that I understand the defence are making that the jury should be discharged.

JUDGE GODDARD: Could you help me: do you have a written copy of your submissions?

MR UPWARD: My Lady, yes.

JUDGE GODDARD: May I have one.

MR UPWARD: Of course, my Lady. (Handed)

JUDGE GODDARD: Thank you, Mr Upward. Mr Purnell, could I address you, simply as a representative of the defence at this stage.

MR PURNELL: My Lady, of course.

JUDGE GODDARD: I am of course very familiar with the arguments that I anticipate the defence would put forward at this stage, having heard them and read them in the past. It appears to me that at the moment the course that I should follow is to adjourn, not for a lengthy period, to consider the position as Mr Upward has explained it. I myself, because I am familiar with the arguments, do not see that it is necessary for the defence to repeat them at this stage.

MR PURNELL: My Lady, no. I made an application to your Ladyship setting out the basis upon which we on behalf of Mr Rayment, supported by other counsel for the defence, submitted to your Ladyship that the trial was unmanageable and that, as a consequence, the jury should be discharged, on 16th February and events since then have intervened before your Ladyship ruled on that --

JUDGE GODDARD: I have not ruled on that submission. If all are content, I propose to adjourn without further argument. If I wish to hear further argument obviously I will say so.

MR PURNELL: Yes. My Lady, the one aspect that concerns me is that your Ladyship asked for assistance from the Bar, prosecution and defence, as to the continued sustainability of the trial. My Lady has at my Lady's fingertips all the factual difficulties which my learned friend has outlined. The outline therefore that has been contained in a prepared script for your Ladyship is principally designed for those outside the court, and it contains a number of assertions and accusations against these defendants and indeed a series of circumstantial explanations about the case which we say only tell a part of the story.

Whilst I do not resist at all and I am not seeking to address your Ladyship upon it now, my Lady, in due course something has to be said on behalf of those whom we represent. I certainly do not seek to detain your Ladyship at the moment.

JUDGE GODDARD: Does anybody?

MR BEVAN: No.

JUDGE GODDARD: Thank you.

11.25am
(Adjournment)

12.05 pm
JUDGE GODDARD: Mr Upward, what is the position?

MR UPWARD: My Lady, the position is this. Your Ladyship will appreciate that, as a result of what I have submitted to your Ladyship this morning, a number of questions arise to be answered which at the moment remain unanswered. I will be in a position by 2.15 to give your Ladyship those answers.

JUDGE GODDARD: Were those to the questions I posed?

MR UPWARD: My Lady, yes. It would make the handling of everything more convenient if your Ladyship would give any ruling -- if your Ladyship were minded to do it -- at 2.15.

JUDGE GODDARD: You do not want me to make any ruling on the manageability arguments of the defence until you are in a position to answer the question I posed as to, in effect, the steps that the court should take; is that it?

MR UPWARD: In effect my Lady, yes.

JUDGE GODDARD: The consideration that I have to give is not only to the defendants but to the jury.

MR UPWARD: Yes.

JUDGE GODDARD: One is not here, as I understand it, but I believe the nine are. They were as you know asked to come for 10.30. I then gave instructions that they were to be told that they would not be required until 11.30. I appreciate -- I think I appreciate -- that the answers to the questions I posed might affect what is said to the jury and what happens to them, in the sense of what explanation is given.

You would be aware that, on the basis that I have come to the conclusion that the trial should not continue, there are, as you are well aware, a number of ways in which the jury can act. They can be discharged; they can be asked for verdicts. Is it that on which you seek extra time?

MR UPWARD: No, my Lady. The application is to discharge the jury and we do not resist that. The other questions that remain unanswered are the matters that I wish to resolve so that we can deal with everything, as it were, in one go.

JUDGE GODDARD: It is not that I am necessarily against you, Mr Upward, because I can see that there is sense in dealing with it in one go. One of the matters that I was going to ask you is, on the assumption, please, for the present discussion, I wanted to know in advance what explanation you proposed to give to the jury. When I have heard from counsel, I of course reserve the right to address the jury at an appropriate moment.

MR PURNELL: My Lady, can I intervene in that sense. The first issue from your Ladyship is a ruling of your Ladyship's. So it will only be your Ladyship that addresses the jury if your Ladyship were to rule on the unopposed application of the defence accepted by the Crown that the trial had become unmanageable. At that stage it would be inappropriate for the prosecution to be saying anything to the jury because your Ladyship would be making a ruling of law, and my Lady will then be telling the jury the ruling that your Ladyship has made.

I understand my learned friend's dilemma. He seeks to have answers to consequential questions which your Ladyship has in mind and he has in mind, and he is not because he is consulting outside authority in a position to deal with that until 2.15.

JUDGE GODDARD: I follow all that.

MR PURNELL: I would be opposing that if my learned friend were saying tomorrow or the jury having the inconvenience from 10.00 until 12.15 were to be materially inconvenienced further. But in the circumstances it seems unlikely that they are going to be much more inconvenienced by asking them to remain to 2.15 from 12.15.

JUDGE GODDARD: Would anyone be against 2.15?

MR COX: No.

JUDGE GODDARD: I do not propose to have them in to say anything; I shall rely on the court staff to tell them.

The position I think is not quite so straightforward as Mr Purnell has indicated. The prosecution may wish to seek an opportunity to explain it to the jury; I know not. If they do, that is what I want to know in advance. It seems to me the best thing in those circumstances is for me to rise.

MR UPWARD: If your Ladyship would, please.

JUDGE GODDARD: I should say I have received a note from the Guardian Newspaper which I am only going to answer in this way. Until I say further, the reporting restrictions remain. When the appropriate time comes, if it is necessary for The Guardian to be heard on these matters, of course I will hear them. But for the moment the position remains that the reporting restrictions are in force. That is all I propose to say. 2.15.

12.15 pm
(The Short Adjournment)

2.15 pm
MR UPWARD: Thank you, my Lady, for the time. I think when the time comes I will be in a position to deal with any matters that arise. As far as saying anything to the jury, if I proceed on the assumption, as we did this morning, that your Ladyship acceded to my learned friends' submission, I would not think it right for me to venture to say anything to the jury, just as much as I would not think it right for any of my learned friends to do so. It is a matter for your Ladyship's ruling, but I think all of us would ask your Ladyship to express generally our thanks for the care that they have given to the case.

MR PURNELL: I do not wish to address your Ladyship further in support of my submission or in relation to the comments I made to your Ladyship just before the adjournment for the moment, but I am bound to add this. If it were the prosecution's intention so far as this indictment is concerned not to offer evidence in the future -- perhaps shortly after the jury were, as it were, discharged from giving a verdict -- it would in my respectful and very modest opinion be preferable that it would be the jury that returned that verdict, on the basis that the prosecution offer no further evidence.

I say that because -- not that it has any material difference to my client's point of view at all; I am simply thinking of the jury. This is a jury who were asked to do jury service under exceptional circumstances for an exceptional period of time.

For reasons which have emerged in chambers -- and, therefore, I do not refer to them in any detail at all -- it would be unfortunate if the jury were to leave this courtroom in the belief that they had had no formal part, no effective part to play in the process that had been taking place. It may appear to them – quite wrongly but it may appear to them -- that their time has been utterly wasted.

So, if the prosecution were able to indicate at this stage, rather than wait until your Ladyship's ruling on what is after all, if I may respectfully say so, an unopposed and unanimous application to your Ladyship at present, if it were the prosecution's intention then, if my learned friend were to indicate that, it would enable your Ladyship to give the jury the final say in the matter in a way which would give them some sense of satisfaction that they had seen the case through to verdict.

Therefore I simply invite my learned friend to reconsider his position. As I say, that is the end result; it matters not to my client how it is reached. But, from your Ladyship's position having to explain something to the jury and from the jury's point of view having to leave after 21 months of quite extreme sacrifice to many of them; I would respectfully submit it is a more appropriate way for the case to come to an end.

JUDGE GODDARD: I can tell you, Mr Purnell, it must be quite obvious that with an application to stop the case – and I am not necessarily using that as a technical phrase -- by the defence that is unopposed by the prosecution, it would not come as any surprise if I say in those circumstances the trial should not continue.

MR PURNELL: My Lady, I am grateful.

JUDGE GODDARD: That means that the trial is going to come to an end either by discharge or by verdict.

MR PURNELL: My Lady, yes.

JUDGE GODDARD: You will be aware as I am that, if I simply discharge the jury, the prosecution whatever decision they come to have to consider whether they are going to apply to --

MR PURNELL: Revive the trial.

JUDGE GODDARD: Well, to start again.

MR PURNELL: Yes.

JUDGE GODDARD: There would not be anything to revive.

MR PURNELL: No.

JUDGE GODDARD: On that score, I am unaware at the moment whether any decision has been made by the prosecution, and that seems to me to be at the heart of the matter.

MR PURNELL: My Lady, yes. I am simply --

JUDGE GODDARD: It is also not quite as straightforward, if I may say so, as when there is, I say, an occurrence during the prosecution case which means that they are no longer going forward with the prosecution case, whereas this has been reached at the moment in the case that everybody knows.

MR PURNELL: My Lady, yes.

JUDGE GODDARD: So it seems to me that my function at the moment is to say that I agree this trial should not continue. I hesitate to use the word “technically” but it is technically --

MR PURNELL: Yes, it is.

JUDGE GODDARD: -- how that is arrived at is, it seems to me, in the first instance a matter for the prosecution.

MR PURNELL: That must be so. It may be that I misunderstood my learned friend’s position because it may be that he simply wanted to hear that from your Ladyship, as it were, to receive the ruling in order then to assist your Ladyship further. But I have understood again simply by reading the runes, not by anything any more formal than that, when my learned friend has asked for your Ladyship to adjourn that position from 12.15 this morning to 2.15 this afternoon, it was because the prosecution wanted an opportunity to consider the further steps.

I say that not suggesting for a moment that they have limited their consideration of that to a period of two hours on 22nd March. My Lady asked for assistance on Monday, 14th March. What has taken place since then can only have been -- and my learned friend has indicated it has been -- an extensive and comprehensive review which has been considered not only by the Director of Public Prosecutions but also the Attorney.

JUDGE GODDARD: Mr Purnell, I appreciate what you say and I am listening to you, but the answer lies not in my hands but in those of the prosecution.

MR PURNELL: But I am inviting your Ladyship to invite my learned friend to respond to what I have said and see whether he may...

JUDGE GODDARD: I want to know what the position is one way or the other.

MR PURNELL: My Lady, thank you.

MR UPWARD: I hoped I had made my position clear this morning. My learned friends have made their application and I have indicated the response we make to it, and your Ladyship is to rule on that application to discharge the jury.

JUDGE GODDARD: That I have now made clear. Just pause. There is more than one way in which it can be resolved. I advisedly phrased my words just now that the trial should not continue. The position is that I can either discharge the jury -- I may say in neutral terms; I think that is the appropriate stance for me to take. Have you considered -- because in this may lay the answer to Mr Purnell's questions -- what you are going to do about this trial in the future?

MR UPWARD: My Lady, yes.

JUDGE GODDARD: And?

MR UPWARD: My Lady, with respect, I would like to deal with that when the jury has been discharged. I am not in a position to offer no evidence and invite the jury to acquit these defendants; I am not going to do that.

JUDGE GODDARD: Then in those circumstances I shall, it seems to me, discharge the jury.

MR SALLON: My Lady, I would like your Ladyship to hear from other counsel who may have an interest in the matter.

JUDGE GODDARD: Of course, Mr Sallon.

MR SALLON: I am not first to go but I do have something to say.

JUDGE GODDARD: Would you like to say it?

MR SALLON: It is simply that in the case of Mr Fisher who was, as your Ladyship knows, arrested many years ago in March 1999 and who was interviewed and gave answers in interview and has at all times protested his innocence in relation to these charges, who has faced huge disruption to his work life and to his personal life over the years that this trial has continued, he is entitled, we respectfully submit, to know his fate at a time when it might be possible for the jury to return a verdict against him of not guilty. He and perhaps other defendants whose reputations have been put at risk as a result of these proceedings are entitled to have their names cleared.

If it be the case that the Crown are seeking to persuade your Ladyship that these proceedings should continue in the shape of another trial, the argument, in our submission, should be advanced now to enable us to deal with the matter. If his position is that in any event no trial of Mr Fisher will take place in the future and that in effect no evidence is being offered against him now, he is entitled to know that and, in our submission, the jury are entitled and should be invited to return a verdict

against him. It is right and just that, if possible, a jury should return a verdict in order to give finality to a matter which is of huge concern to him and has had such a huge and devastating impact on his life. That is what I would ask you to do. I would ask you to require the Crown to state what their position is and, if they do not wish to continue with this case in the light of assurances about the future of any other case, then your Ladyship should take the matter into her own hands, in fairness and in justice.

JUDGE GODDARD: Mr Bevan?

MR BEVAN: I hear what Mr Purnell says. I have not actually spoken to Mr Upward directly, so I do not know directly from Mr Upward what his position is as regards the future. Plainly, if the Crown do not intend to proceed in the future, it would be more satisfactory insofar as Mark Woodward-Smith is concerned to have a verdict of not guilty from this jury. But I personally directly do not know what Mr Upward's position is.

JUDGE GODDARD: Miss Dakyns?

MS DAKYNS: We simply ask Mr Upward to answer your Ladyship's question: have the Crown decided whether or not they wish to apply for a retrial or not? The defendants are entitled to know the answer to that now.

MR BERRY: My Lady, whether your Ladyship has the strict power to insist that the prosecution answer the questions which the court has posed and to which apparently there are answers, I am confident that the court has the authority to urge the prosecution – which I am sure they would accept -- to lay their cards on the table and let us know precisely what the position is.

So far we have been told absolutely nothing.

MR COX: I have nothing further to add.

JUDGE GODDARD: Mr Upward, have you anything further to say in the light of the submissions made by the defence?

MR UPWARD: No, my Lady, I have not changed my position at all.

MR PURNELL: In those circumstances I do need to say a word about the position of the statement my learned friend the groundwork for an application by the Crown to join with an application from the defence that this trial should no longer continue, he has made sweeping assertions about what the evidence does or does not show in the case of these defendants. To the surprise of all those who represent the defence, notwithstanding your Ladyship's ruling about contempt of court, the press officer for the Crown Prosecution Service distributed to the press -- although not to the defence -- the text of what was said by my learned friend to your Ladyship before your Ladyship's ruling.

When we sought to approach the prosecution to enquire why that was done, we were not able to get access to the prosecution.

At the time, some 40 minutes later, we were informed that that had been undertaken contrary to the instructions given to the press officer for the Crown Prosecution Service who had been instructed in terms not to provide that material to the press until your Ladyship had ruled on the matter and the matter was determined. My Lady, my concern is that that document, as I indicated, was prepared not to inform your Ladyship; it was not done in order to assist your Ladyship to come to answers to any of the questions; it was an apologia for the prosecution of the state the trial has now reached and an effort to discharge itself of any responsibility.

What it did not say was throughout the trial those whom I represent -- Mr Rayment -- has denied the offence from first to last, in a detailed Defence Case Statement which was submitted to the court in 2001, he set out the reasons why the inferences the prosecution sought to draw were wrong.

Before your Ladyship swore in a jury, we submitted to your Ladyship that the trial was unmanageable, and that submission we repeated in August 2004 and we repeated it in January 2005, and it is for the first time in March 2005 that the prosecution has accepted what we submit was an inevitability from the outset.

My Lady, my learned friend failed to point out in his summary of the history of the case that the prosecution have never alleged a loss to London Underground or to the Jubilee Line Project and have failed to identify any material which led to any loss at all.

My Lady, in those circumstances, we submit that it is inappropriate for me to have to -- and I restrict myself to what I have said -- wholly inappropriate for the prosecution to be laying the groundwork for a protection of itself from criticism in the press hereafter under the guise of an answer to your Ladyship's question, "Is this trial now manageable?" The sheer fact of the matter is that the prosecution accept that it is not, and we say the proper place for post mortems and explanation is not before your Ladyship but elsewhere.

MR BEVAN: I wholly endorse what Mr Purnell says. I endorse the loss point that he made that your Ladyship will remember. The unmanageability submissions were made, as has rightly been pointed out, and your Ladyship has been reminded on the various dates.

There was a detailed Defence Case Statement from Mark Woodward-Smith denying these facts and I find it, shall we say, sad that the press officer should see fit to distribute Mr Upward's words to your Ladyship justifying this prosecution, and I say no more.

JUDGE GODDARD: Mr Bevan, I am not entering into the rights and wrongs of what has been distributed to the press in this matter, in this sense and for this reason, that the matter that I have to decide at the moment is how to address the jury and how to ask them to discharge their function.

MR BEVAN: My Lady, I understand that.

JUDGE GODDARD: That is the sole question with which I have to deal. If you, as you clearly do, wish to say matters, as Mr Purnell has done, you will note that I have not stopped you, although I was minded to do so since it did not appear to me to be relevant to the matter that I presently have to decide.

MR BEVAN: I thank your Ladyship for not stopping me. I have made the observations. I will not say any more.

MR SALLON: My Lady, I am sorry; may I just add something in the light of what you have been told by Mr Purnell. I had no idea at all that a statement had been released to the press prior to your ruling or your decision. The relevance of that is that it sheds light on what now transpires to be an entirely cosmetic operation by the prosecution.

It must be right, in our submission, that in deciding how to invite the jury to discharge their function you should know and take account of the fact that the Crown have made a decision about whether or not this trial continues, whether proceedings continue in another trial, and their reluctance to tell you at this stage is simply because they want to avoid the consequences to them of a verdict of not guilty.

That cannot, in our submission, be the proper functioning of the Crown and it cannot, in our submission, be a responsible position for any officer of the Crown to adopt, and you in your capacity as a judge have the supervisory function, and I would ask you to enter into that question in order to resolve it in favour of the defence, particularly -- and I obviously speak for Mr Fisher alone -- a defendant who has never been charged with corruption and who as I have already reminded you always denied his involvement in this case. His reputation depends upon a verdict, and the realistic verdict in this case is one of not guilty.

MS DAKYNS: My Lady, we considered Mr Upward's statement to the court this morning as partial and misleading and essentially inaccurate. We are dismayed that he gave it. He gave it without any consultation with the defence or any prior warning, and we are also dismayed that he still refuses to answer your Ladyship's question as to what the Crown intend to do hereafter.

MR BERRY: I have nothing further to add.

MR COX: Nor I.

JUDGE GODDARD: I still take the view that my role at the moment is to decide in what form the jury finish their service in this case, and I am going to rise to consider that which I have been told.

2.45 pm
(Adjournment)

3.00 pm
JUDGE GODDARD: I propose to ask the jury to come in and I shall discharge them from giving verdicts in this case. Can we have the jury, please?

3.05 pm
(In the presence of the jury)

JUDGE GODDARD: Members of the jury, I am as I always have been rather fated that I have to start with apologies for keeping you waiting. I am going to explain a little to you but I am going to start by telling you the end result which is that I am going to discharge you from giving verdicts in this case, which means that your jury service has come to an end.

I want to say this about the trial. It always was going to be a long one because, back in June 2003, I told you that it could last until December 2004 just past. But, as you know and I know, the course of the trial has not been smooth and we have summarised the matter.

In a trial of that length it is obvious that consideration has to be given to the needs and commitments of everybody involved, which includes holidays, and it did include paternity leave and some public duties. There also have been other factors.

During the trial counsel, witnesses, defendants and jurors have all been unwell and, for these reasons, in fact up to the end of the prosecution case, the case for the Crown, on 16th August last year, we had lost some 52 days because of sickness; I can say that where possible the time was used in dealing with legal submissions which also in that period occupied some 36 days, and 12 days were spent while the Crown looked for, copied and the parties then considered many extra documents.

Between 19th October when Mr Skinner started to give his evidence and today, his illness, coupled with some other problems have meant that Mr Skinner has in summary only given evidence over five days between 19th October and today, and he has not finished giving his evidence. In those circumstances in my view this trial should not continue. That is why I am going to discharge you from giving a verdict and that discharge includes the member of your number who is not present.

But that is not the end of what I have to say but, because the trial is ending, that is the end of your service and I want first and foremost to thank you simply for being the jury. I am grateful to you for your patience and your attendance.

I understand that it has not been easy when you do not know whether you will be required or not, and I have always tried to respond to your needs and requests. So I want to repeat my thanks which is to you simply for being the jury.

I am proposing to say that, if you are ever summoned to jury service again, you can claim exemption, as I shall say that you are going to be exempt until you reach the age when you are no longer liable for serving on juries. You do not have to take up the exemption but it has been given to you. So, as I say, thank you very much for being the jury.

I do not think that that is possibly the end of my activities today but it is the end of yours, with my thanks. So I am just going to rise shortly and then come back to see what else I have to deal with. Thank you.

3.10 pm

ANNEX 4

LIST OF PERSONS WHO ASSISTED THE REVIEW

Prosecution counsel

Mr Patrick Upward QC
Mr James Mulholland
Mr Peter Roberts
Mr Kennedy Talbot

Defence counsel

Mr Anthony Berry QC
Mr Julian Bevan QC
Mr Mukul Chawla QC
Mr Dorian Lovell-Pank QC
Mr Nicholas Purnell QC
Mr Christopher Sallon QC
Mr Paul Bogan
Miss Isabel Dakyns
Mr Christopher Harding
Miss Alison Pople

Defence solicitors

Mr Angus McBride
Mr Darryl Ingram
Mr Neil O'May
Mr Brian Spiro

Police

DCI Ashley Croft

Crown Prosecution Service

Mr Ken Macdonald QC, Director of Public Prosecutions
Ms Julia Armitage
Mr Richard Atkins
Mr Rene Barclay
Mr Bill Budge
Mr Robert Drybrough-Smith
Ms Jane Hart
Mr David Honeyman
Mr Lloyd Jeans
Mr Soumya Majumdar
Mr Chris Newell
Mr Paul Plummer
Ms Dru Sharpling

Mr Michael Spong
Ms Sue Taylor
Mr Bill Wheeldon
Mr Raymond Wildsmith
Mr David Williams

Jury

11 members of the jury assisted the review

ANNEX 5

SCHEDULE OF KEY EVENTS

1989	
	East London Rail study recommends extension of Jubilee Line.
1991	
May/June	Advertisements posted inviting contractors to register an interest in tendering for contracts *[Report para. 2.2]* .
8 July	RWS Project Services Limited (RWS) incorporated.
1993	
1 July	London Underground (Jubilee) Act 1993 receives Royal Assent.
October	Government formally approves the project.
November	First contracts awarded.
8 December	Work begins. Opening ceremony attended by Prime Minister John Major.
1996	
5 December	**Mr Elliot-Hughes's letter to the Met Police** forwarded to British Transport Police (BTP) and received on 24 December 1996 *[Report para. 4.1 et seq.]* .
1997	
28 January	Investigation by BTP begins with taking of witness statement from Mr Elliot-Hughes *[Report para. 4.2]*.
18 June	**Search warrants (9) executed**. Premises searched include RWS London offices. Mr Scard is arrested and interviewed under caution during this day and the next *[Report para. 4.5]*.
9 July	**Case referred to CPS**. First meeting between case lawyer, Michael Spong and Detective Chief Inspector Ashley Croft. Advice given that expert evidence should be obtained *[Report para. 4.7-4.10]*.
15 December	**Search warrants executed at offices of George Skinner and Associates (GS&A)**. Mark Skinner arrested.
19 December	**Stephen Rayment and Mark Woodward-Smith interviewed** by police. No comment made.

1998

3 March	**Case meeting**. A case report is to be submitted by June 1998.
10 July	**Case meeting**. Police inform CPS that arrests have been made in relation to suspected laundering of the proceeds of the alleged offences. An expert witness has been located. File now to be submitted by September 1998.
8 October	**Case meeting**. Matters discussed include the alleged inflation of bills by RWS and the results of the interview under caution of Mr Wootton. It is agreed that the instruction of an expert may be postponed until advice from counsel is received.
12 October	Mr Spong leaves CPS Casework Directorate. Lloyd Jeans assigned to case *[Report 4.12].*
27 October	**Case meeting.**
6 November	**Case meeting**. Mr Jeans expresses reservations about the viability of the conspiracy to defraud allegation *[Report para. 4.13-4.16].*
10 November	**Case meeting** attended by Richard Atkins (CPS Team Leader), Mr Jeans, DCI Croft, and Detective Constable Stephen Down. Mr Jeans expresses substantial reservations regarding the viability of the conspiracy to defraud allegation *[Report para. 4.15].*
4 December	Following discussion on 10 November 1998, at Mr Jeans's invitation **DCI Croft** sets out his thoughts regarding the merits of conspiracy to defraud *[Report para. 4.17].*

1999

10 May	Papers in support of the corruption allegations formally submitted to CPS.
9 June	Papers in support of the false accounting allegations formally submitted to CPS (*these eventually formed the substance of a second indictment, the investigation being known as Operation Charm*). In absence of Mr Jeans who is on sick leave **another case lawyer**, Raymond Wildsmith is asked to look after the file, formal review of which is now due *[Report 4.18-4.20].*

15 June	DCI Croft writes to Mr Wildsmith stating that Judge Laurie has remarked on the **delay in charging** (*Judge Laurie sitting at Southwark Crown Court was dealing with applications for Production Orders during the investigation*). Caseworker David Honeyman enquires as to the availability of leading counsel with a view to obtaining early advice. His enquiries include Mr Patrick Upward QC who was able to take the case *[Report para. 4.20].*
28 June	Mr Wildsmith completes **instructions to counsel**, encloses police reports, witness statements and exhibits in respect of the corruption, fraud and false accounting allegations. Presents separate areas as (1) corruption of the tendering process – an alleged conspiracy to defraud on basis that the activity caused losses to LUL, alternatively, fraudulent trading (no evidence of corruption re the tendering process); (2) corruption of the contractual claims process. Suggests an alternative for each might be "misconduct in public office"); (3) The Reeve partnership; (4) false accounting *[Report para. 4.21-22].*
16 August	**Written advice** from Mr Upward *[Report para. 4.25-4.29].*
3 September	Further evidence including transcripts of interviews under caution sent to Mr Upward.
Sept/Oct	All suspects due to answer police bail. Police advised to renew/extend and do so until dates in November.
21 September	**Conference with counsel** at which DCI Croft, Mr Wildsmith present. CPS caseworker Julia Armitage now assigned to case and in attendance. Various issues discussed. The Reeve Partnership allegation (which concerned Mark Skinner and Westinghouse and which was separate to the RWS allegation) to be sidelined in order to concentrate on RWS. Likely charges are: conspiracy to defraud in relation to the tendering process; conspiracy to defraud in respect of the claims process; conspiracy to corrupt; conspiracy to defraud by false invoicing; fraudulent trading [*Report para. 4.30*].
30 September	Police submit further evidence and reports regarding the case against Mr Scard (regarding whom fingerprint evidence is now available, having been found on an F&C report recovered from RWS). Also a police report concerning Wootton. These are forwarded to counsel.
21 October	**Written advice** from Mr Upward following meeting on 21 September given in the light of additional evidence submitted. Advice records that it was agreed in conference that Mr Rayment, Mr Woodward-Smith and Mr Skinner should be charged with a combination of offences covering the tendering process, the claims process, alleged overbilling clients of RWS

	and corruption offences. Paul Maw now to be charged and, in the light of additional evidence, advises Messrs Scard, Butler and Wootton also now be charged. Draft charges are settled and enclosed with advice.
25 October	Counsel instructed to provide written advice for the Law Officers and to settle a **Statement of Facts** for submission to Law Officers in relation to the corruption offences.
26 October	Police report received and immediately sent to counsel.

2000

4 January	Counsel sent police reports dated 25/11 and 22/12/99. "**Confiscation** is an area I have discussed with CCU (Central Confiscation Unit) and KT (Kennedy Talbot of counsel) has been appointed to advise on this side of the prosecution. The assets that are potentially realisable are in the region of £4-5 million." It is noted that there has been a meeting between DCI Croft and Kennedy Talbot in November 1999 *[Report para. 4.36].*
11 January	**Conference with counsel** - Matters discussed include the suggestion that Fisher should be considered as a defendant. Also, decisions to take no further action against some suspects. Final decisions regarding others are yet to be made. DCI Croft asked to prepare a report concerning this. Papers to be prepared for application for Attorney General's consent.
21 February	**Conference with counsel** including now junior counsel James Mulholland. It is decided that Fisher is to be charged with conspiracy to defraud in relation to the tendering process.
24 February	Attorney General grants consent to prosecution of conspiracy to corrupt charges.
29 February	Bail return date for all potential defendants. Defendants charged.
12 April	By **Notice of Transfer** under section 4 Criminal Justice Act 1987 case sent to Southwark Crown Court of Messrs Rayment, Woodward-Smith, Maw, Fisher, Skinner, Scard, Wootton and Butler to Crown Court on eight charges (three x conspiracy to defraud, one x fraudulent trading, four x conspiracy to corrupt). Raymond Wildsmith signs notice *[Report para. 4.37].*
25 April	Prosecution give notice of application under section 7(1) Criminal Justice Act 1987 for preparatory hearing.
26 April	Hearing at Bow St in absence of defendants. Witness Orders, bail and legal aid dealt with.

4 May	Police submit advice file on Reeve Partnership "this enquiry now complete".
14 July	Mr Wildsmith writes to DCI Croft concerning the Reeve Partnership allegation. Counsel has advised insufficient evidence to proceed with this and Mr Wildsmith accepts that advice.
8 September	**Hearing at Central Criminal Court**. Application has been made on behalf of Mr Wootton to dismiss charges. HHJ Goddard QC orders prosecution to prepare a synopsis of the case against Mr Wootton. Skeleton argument to be served within six weeks with prosecution response four weeks thereafter. Adjourned to 10 Dec. Fisher also intends to apply to dismiss charges. Court advised that final decisions re: charges yet to be made.
1 December	**Hearing at Central Criminal Court**. Mr Upward advises the court that decision has been made to take no further action in respect of remaining suspects.
11 December	**Hearing at Central Criminal Court**. Mr Wootton serves skeleton argument. Defence estimate for dismissal hearing four days. Severance to be discussed between counsel and will probably be dealt with by agreement. Formalities to be dealt with on 2 March 2001 following application to dismiss. Prosecution suggest that count 3 (the alleged overbilling conspiracy with Mr Butler) should be tried first; defence disagree. Trial fixed for 9 January 2002. Time estimate for trial four – six months.

2001

26 – 28 February	**Hearing at Central Criminal Court**. Application on behalf of Mr Wootton for dismissal of charge of conspiracy to defraud.
4 April	**Ruling on Wootton's application to dismiss**. Judge rules there is a case to answer. "The Crown's case is that Mr Wootton provided Mark Skinner with information which was to be used to try and set up Reeve's consultancy and thereafter to RWS in order that RWS could best deal with Westinghouse claims…. There is evidence from which a jury could conclude that the documents to which I have referred were commercially sensitive and detrimental to the interests of LUL in the wrong hands.".
8 May	**Preparatory Hearing CCC.** All defendants plead not guilty. Directions given: Case Statement and Admissions to be served by 31 July 2001; Defence Statements and response to admissions by 31 October 2001. For purposes of disclosure Messrs Rayment, Woodward-Smith, Maw, Scard and Wootton to give brief details of defence to prosecution by 8 June. Prosecution to respond by 21 June. Messrs Skinner and Fisher

	to give details by 31 Oct, prosecution to respond by 15 November 2001. It is decided that court will sit nine days out of ten. Preparatory hearing adjourned to 7 December 2001, jury questionnaire to be prepared. Prosecution indicate their view that documents in possession of LUL are not "unused" but third party material. Solicitors for Messrs Rayment and Woodward-Smith circulate list of documents in which they are interested that has been sent to LUL.
30 July	**Case Statement** and draft admissions served *[Report para. 5.8-9].*
17 September	Solicitors for Messrs Rayment and Woodward-Smith give notice of application to break fixture on grounds that they have had insufficient disclosure.
4 October	**Application to break fixture** of 14 Jan 2002. Application granted. Preparatory hearing adjourned to 14 January 2002 *[Report para. 5.5-6].*

2002

14 January	**Hearing at Central Criminal Court**. All defendants are represented save for Mr Butler. LUL appear by counsel. Prosecution express view that no advantage in collecting LUL documents in course of investigation. Prosecution remain of that view. Prosecution estimate case three or four months, defence six months, judge eight months. Judge against sitting Maxwell hours. Skinner working abroad and therefore asks for more time to serve defence statement – granted. Trial remains fixed for 9 September. Adjourned to 8 March 2002 *[Report para. 5.16].*
8 March	**Hearing at Central Criminal Court**. All defendants and LUL are represented. Nicholas Purnell QC on behalf of Mr Rayment raises **question of manageability** in the context of count 2. He refers to para. 115 of Case Statement and describes it as a "non-specific allegation". Complains that prosecution does not identify contracts relied upon and these documents are not in the prosecution material or in the "unused" material. Prosecution rely on possession of F&C reports and challenge the defence to indicate that the documents could not be used for the purposes alleged. The LUL material is relevant and it will take 3,000 man days to look at it *[Report para. 5.19].*
12 April	**Hearing at Central Criminal Court**. All defendants and LUL represented. Prosecution do not accept duty to examine material held by LUL but will do so as if the duty existed, either by reference to any criteria that the defence may supply or in accordance with *R v Keane.* Police will allocate ten police officers, junior counsel Peter Roberts and Mr Mulholland will assist. There are 3,800 archived boxes and 1,500 non-archived boxes to examine. Premises have been found at which can be done. Office space has been provided by LUL and that will continue (Coppergate) for the time being *[Report para. 5.19].*

10 May	**Hearing Central Criminal Court**. All defendants and LUL are represented. Court hears that the process of moving the third party material to new premises is to begin on Monday, 13 May – criteria to be agreed by 17 May and target for completion of inspection is 12 July 2002. The likely date of the trial is discussed – not before Easter 2003 *[Report para. 5.21].*
29 July	**Hearing at Central Criminal Court**. All defendants and LUL are represented. Disclosure far from complete. Now LUL apply for ruling that the prosecution are bound by the Attorney General's Guidelines 2001. Ruling to be given on 16 August 2002.
16 August	**Hearing at Central Criminal Court.** Ruling on LUL application re: **Attorney General's Guidelines**. Guidelines held to apply (by virtue of and to the extent that prosecution had taken on voluntary exercise). Judge's ruling does not go to materiality. Now emerges that prosecution do not accept materiality of all requests. Plan to resolve by end October [*Report para. 5.21*].
4 November	**Hearing at Central Criminal Court**. Case listed at judge's request in order to discuss how issue of "admissibility" of documents sought by the defence affects relevance criteria in the light of skeletons served by the defence and to work out progress of case in more detail *[Report para 5.23].*

2003

28 January	Mr Upward prepares **list of issues** as follows: (1) Did the defendants dishonestly acquire documentary and other information (material) that was confidential to LUL? (2) Did the defendants have access to that information or have it in their possession dishonestly/in breach of confidence? (3) Was the material such that the defendants knew or believed that they were not entitled to it, i.e. that it was confidential to LU? (4) Was the material commercially sensitive? (5) Did the defendants intend dishonestly to use the material to promote the commercial interests of RWS and its clients? (6) Did the defendants contemplate that such use could imperil the economic interests of LUL? (7) Did the defendants dishonestly use the material as set out in 5 and 6 above? (8) Was the material capable of such use? *[Report para. 5.24-26].*
3/4 February	**Hearing at Central Criminal Court**. Agreement reached between Mr Upward and counsel for Messrs Rayment and Woodward-Smith as to the "issues" in counts 1 and 2, as list. Length of trial estimated to be six months.
21 March	**Preparatory Hearing Central Criminal Court**. Prosecution indicates that it does not intend to call any witnesses in support of old severed count 3 including Ostrowski and Pauffley.

23 April	Crown serves first **statement of Grahame Ibson** *[Report para. 6.3-6.6].*
30 April-29 May	**Application to quash** count 2 on behalf of Wootton and applications for case to be dismissed as an **abuse of process** by other defendants *[Report para. 6.7-6.24].*
12 June	**Mr Maw pleads guilty**. Written basis of plea: his participation in conspiracy in count 1 limited to period between 20/5/92 and 4/9/92; he acted on instructions, was not an instigator of the conspiracy; and received no more reward than the salary he was due.
25 June	**Prosecution open case to jury**.
1 July	First witness, Sir Wilfred Newton, Chairman of London Transport between March 1989 and September 1994.
14 July	Letter from Mr Upward to counsel for Mr Rayment and Mr Woodward-Smith restricting the case on the F&Cs to the "core contracts" *[Report para. 7.5].*
18 August	Break for summer holiday. Testimony in respect of count 1 complete save two witnesses.
5 September	End of summer break though evidence does not resume until 15 September due to illness of juror.
30 September	**Mr Ibson's evidence on F&Cs opens evidence on count 2** *[Report para. 7.7-7.11].*
17 October	**Jury note** about repetitiveness of cross-examination *[Report para. 7.12 et seq].*
30 October	**Mr Ibson's evidence concludes**. He is to be recalled later to give evidence regarding Westinghouse Signals Limited. **Mr Elliot-Hughes** begins his evidence.
13 November	**Mr Elliot-Hughes** completes his evidence. (It was interrupted on 7/11 and 10/11 when the court did not sit and on 11/11 and 12/11 when Mr Elliot-Hughes was unwell) *[Report para. 7.18-19].*
5 December	Last day of 2003 on which evidence is heard. The trial is then interrupted as a juror undergoes surgery and by the Christmas break.

2004

5 January	Case resumes.
20 February	**Mr Ibson recalled**. Gives evidence relating to an F&C concerning contract 202 Westinghouse Signals Limited (WSL) *[Report para. 7.29-31].*
2 March	First witness called in relation to the part of the case involving Messrs Skinner and Wootton.
1 April	**Proceedings interrupted** during evidence of Ostrowski by the disclosure that there are relevant documents to which all parties should have access *[Report para. 7.40].*
5 May	Following break for Easter and paternity leave for juror case resumes.
1 June	Prosecution counsel serves final formulation of case on F&Cs and C4s *[Report para. 7.31].*
14 July	Letter from the jury suggesting *ex gratia* payment for unprecedented service *[Report para. 8.10-11].*
21 July	Departure of **judicial assistant**, questioning of jury by judge regarding their understanding of the reasons for it, and ensuing legal argument *[Report para. 8.12].*
16 August	**Close of prosecution case** *[Report para. 8.14].*
20 August	Messrs Scard and others submit application for *nolle prosequi* to Attorney General.
3 September	CPS respond to application for *nolle prosequi* “the applications ...amount to a disguised appeal for a stay of proceedings against the exercise of the judge’s discretion and hence seek to by-pass the court’s proper process, and also that of review, upon appeal, by the Court of Appeal, if the defendants are convicted.”
13 September	David Williams sends briefing note to DPP and Attorney General regarding issues raised in *nolle prosequi* applications.
15 September	**Submissions of no case to answer** begin and continue for four days followed by further submissions (eight days) regarding the manageability of the trial.
29 September	*Nolle prosequi* refused.

11 October	**Rulings** on submissions. Mr Woodward-Smith discharged re: count 1. Judge rules case to answer in all other respects.
14 October	**Defence evidence scheduled to begin**. Messrs Rayment, Woodward-Smith, Scard and Fisher elect to call no evidence. Mr Skinner's team ask for time to prepare documents for jury. After discussion Court forecasts that judge's summing up will commence on 4 January 2005.
19 October	**Examination-in-chief of Mr Skinner begins** [*Report para. 9.2 – for a detailed narrative of the events following the beginning of Mr Skinner's evidence, see Chapter 9].*
3 December	**Prosecution instruct Dr John Coltart** to examine and advise Mr Skinner *[Report para. 9.5].*
17 December	Julia Armitage (caseworker) informs DPP of progress with case.

2005

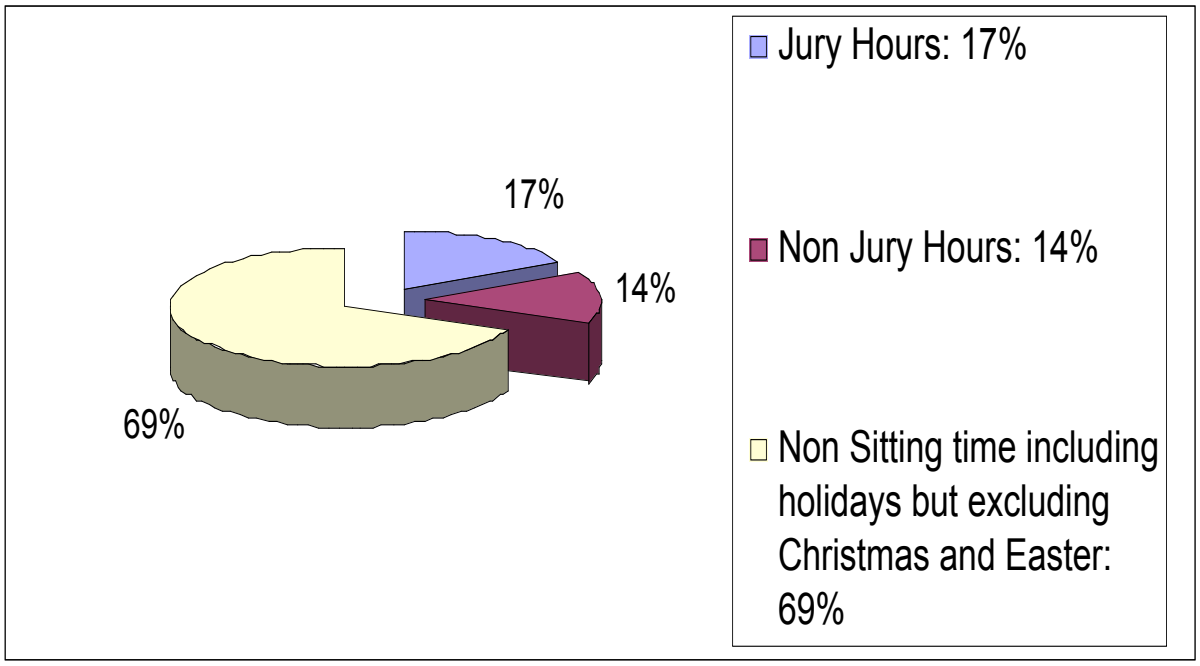
5 January	Application on behalf of Mr Skinner to discharge jury – rejected in ruling on 6 January.
1 February	**Mr Skinner gives evidence for the last time.**
2 February	Mr Skinner complains of being unwell again. No evidence heard.
16 February	**Defence application for discharge of jury**. Judge does not rule but adjourns to 25 Feb to see how new combination of medicines works out. Evidence to recommence on 28 Feb 2005 *[Report para. 9.11].*
17 February	**Renewed application for *nolle prosequi*** submitted to Attorney General on behalf of Messrs Rayment and Woodward-Smith. Prosecuting counsel's response advises that application should not be allowed to usurp the functions of the Court *[Report para. 10.2-5].*
9 March	**Conference held with DPP** and prosecution team. **Decision to end case made in principle**. Meeting arranged with Attorney General *[Report 10.6-10.8].*
11-14 March	Court hears evidence from Dr Coltart regarding Mr Skinner's health. Judge rules that he is fit to give evidence and directs that he recommence on 21 March 2005 *[Report para. 9.14].*
15 March	**Meeting with Attorney General. Decision to end case confirmed** *[Report para. 10.9-10.12].*
21 March	Crown still considering its position.

22 March	**Prosecution offer no evidence in case against all defendants**. Prosecution also offers no evidence against Mr Butler and other defendants in Operation Charm case scheduled to follow the conclusion of the main proceedings. CPS release press statement regarding case *[Report para.10.14].*

ANNEX 6

SCHEDULE SHOWING DETAILS OF SITTING TIMES IN THE JUBILEE LINE TRIAL

(*reproduced by kind permission of Geoffrey Cox QC and Christopher Harding, counsel for Anthony Wootton*)



Timings have been taken from the Livenote official transcript, rounded to 5 minute units where necessary.

Non-sitting owing to jury sickness /commitments is highlighted *Holidays are shown as*

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
25/06/03	1	T	10.40-12.00, 12.30-1.00, 2.10-2.55, 3.10-4.10	3.5			1			
26/06/03	2	T	10.25-11.45, 12.05-1.00	2.25	3.00-3.45	.75	1.5		Paul Maw - mention	
27/06/03	3	T	10.50-11.40, 12.05-1.00, 2.00-3.00, 3.15-4.00	3.5	4.00-4.15	.25	0.75		Housekeeping	
30/06/03	4	T	10.30-11.35, 12.00-1.00, 2.05-2.55, 3.10-3.55	3.75			0.75			
01/07/03	5	T	10.35-11.40, 12.00-1.00, 2.10-2.55	2.75	2.55-3.25	.5	1.25		Housekeeping	
02/07/03	6	T	10.25-11.35, 12.00-12.55, 2.05-3.00, 3.10-4.00	3.75			0.75	Newton		
03/07/03	7	T	10.25-11.45, 12.00-12.40, 12.50-12.55, 2.10-3.05, 3.50-3.55	3	12.40-12.50, 3.05-3.35, 3.55-4.05	1	0.5	Newton Mellitt	Legal Argument	
04/07/03	8				10.00-12.30, 12.50-1.05, 2.05-2.55	3.5	1		Legal Argument - LPP, Ruling on Maw	
07/07/03	9	T	10.20-11.45, 12.05-1.00, 2.25-3.10, 3.20-4.00	3.75	2.05-2.25	.25	0.5	Mellitt	Legal Argument	
08/07/03	10	T	10.30-11.20, 3.10-4.10	1.75	11.20-11.50, 12.10-12.30, 2.10-2.45, 2.55-3.10, 4.10-4.20	1.75	1	Mellitt	Legal Argument including voire dire	
09/07/03	11	T	10.30-11.45, 12.15-1.00, 2.10-3.10, 3.20-3.55	3.75	10.15-10.30, 3.55-4.10	.5	0.25	Mellitt	Timetable	
10/07/03	12	T	11.35-12.30, 2.15-2.35	1.25	10.20-11.10, 12.30-1.00, 2.05-2.15	1.5	1.75	Black	Argument re Black	Jury told to come at 11.00
11/07/03	13	T	10.00-11.15, 11.35-12.15, 12.20-1.05	2.75			1.75	Mellitt		Judge has meeting PM
14/07/03	14	T	9.30-10.20, 10.35-11.00, 11.15-12.05	2	10.20-10.35	.25	2.25	Mellitt		Juror required to attend funeral PM
15/07/03	15	T	10.40-11.30, 11.50-1.00, 2.10-3.00, 3.15-4.05	3.75	10.15-10.40, 4.05-4.30	1	-0.25	Mellitt Black	Legal Arg	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
16/07/03	16	T	10.30-11.40, 12.15-12.50	1.75	10.20-10.30, 12.50-1.00, 2.15-2.30, 2.55-3.15	1	1.75	Sutton	Legal Arg re Sutton NAE and reading for F&Cs	Jury told to return on Mon 18th July, so arg can be sorted on Fri
17/07/03			NOT SITTING				4.5		Not sitting to allow reading to be completed	
18/07/03	17				10.15-10.35, 12.45-1.00, 2.30-2.50	1.25	3.25		Argument and discussions re evidence of Sutton	
21/07/03	18	T	10.45-12.00, 12.20-1.00, 2.10-2.55, 3.25-4.00	3.25	2.55-3.25	.5	0.75	Sutton	Discussion of pre-reading for Sutton	
22/07/03	19	T	10.35-11.45	1.25			3.25	Sutton	Juror taken ill at morning break	
~~23/07/03~~	~~20~~				~~10.15-10.30~~	~~.25~~	~~4.25~~		~~Juror still sick~~	
~~24/07/03~~			~~NOT SITTING~~				~~4.5~~			~~Juror still sick~~
25/07/03	21	T	10.15-11.45, 12.05-1.00, 2.10-3.10	3.25	3.10-3.45	.5	0.75	Sutton	Discussion about Sutton and F&Cs	
28/07/03	22	T	10.55-11.50, 12.10-12.50, 1.00-1.20	2	10.15-10.30, 12.50-1.00, 2.20-2.45	.75	1.75	Sutton		
29/07/03	23				2.00-4.10	2.25	2.25		LPP argument	Court did not sit am
30/07/03	24	T	2.20-3.10, 3.35-4.05	1.25	10.00-11.30, 11.50-12.05, 12.25-12.40, 12.55-1.15, 4.05-4.15	2.5	0.75	MacGregor	AM - LPP argument	
31/07/03	25	T	10.20-11.45, 12.10-1.00, 2.15-3.10, 3.25-4.25	4.25			0.25	MacGregor		
01/08/03			MOVING DAY				4.5		MOVING DAY	Move to PRFD
04/08/03	26	T	11.00-11.40, 12.10-12.50, 2.00-3.10, 3.25-3.35, 3.45-4.25	3.25	10.30-10.45, 11.55-12.10, 12.50-1.00	.75	0.5	MacGregor Salmon	Legal argument	
05/08/03	27	T	10.25-11.05, 1.00-1.10, 2.00-3.30	2.25	11.05-11.15, 11.20-12.15, 12.35-1.00	1.5	0.75	Salmon Goldsmith Hughes	legal arg & voire dire	
06/08/03	28	T	10.15-10.35, 11.55-12.30, 1.40-2.40, 3.15-3.30.	2.75	11.30-11.45, 11.50-11.55, 12.30-12.50, 3.05-3.15, 3.30-3.45	1	0.75	Mutch Hadaway	Argument and discussions re taking of further statements and method	
07/08/03	29	T	11.55-12.05	0.25	10.40-10.50, 11.30-11.55	.5	3.75		Further statement taken from Roy Smith	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
08/08/03			NON SITTING DAY				4.5			Planned non-sitting day
11/08/03	30				9.35-9.45, 10.10-10.20, 11.20-11.30	.5	4		Jury due to come at 12.00 but cancelled because witness Smith could not remain due to family illness	
12/08/03	31	T	10.45-10.55, 11.10-11.15, 11.40-11.45, 12.05-12.15, 12.35-1.00, 2.35-3.15, 4.10-4.15, 4.40-4.45	1.75	10.15-10.45, 10.55-11.10, 11.15-11.40, 12.15-12.35, 2.05-2.35, 3.45-4.10	2.5	0.25	Butcher	Legal argument/ objections to evidence	
13/08/03			NOT SITTING				4.5		Crown unable to fill these last three days before the arranged summer break with witnesses - most of those considered were abroad and unavailable	
14/08/03			NOT SITTING				4.5			
15/08/03			NOT SITTING				4.5			
18/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
19/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
20/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
21/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
22/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
25/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
26/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
27/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
28/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
29/08/03			SUMMER BREAK				4.5		SUMMER BREAK	
01/09/03			SUMMER BREAK				4.5		SUMMER BREAK	
02/09/03			SUMMER BREAK				4.5		SUMMER BREAK	
03/09/03			SUMMER BREAK				4.5		SUMMER BREAK	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
04/09/03			SUMMER BREAK				4.5		SUMMER BREAK	
05/09/03			SUMMER BREAK				4.5		SUMMER BREAK	
08/09/03	32				10.15-10.35, 10.45-12.45, 2.20-2.25	1.5	3		One sick juror. Argument on Maw's notebooks	
09/09/03			NOT SITTING				4.5		Juror still unwell	
10/09/03			NOT SITTING				4.5		Juror remaining unwell	
11/09/03			NOT SITTING				4.5		Juror remaining unwell	
12/09/03			NOT SITTING				4.5		Juror remaining unwell	
15/09/03	33	T	10.35-10.45. 12.00-1.00, 2.10-3.10, 3.20-4.15	3	10.15-10.35, 11.50-12.00	.5	1	Sims		
16/09/03	34	T	11.20-11.45, 12.30-1.00, 1.45-2.30, 2.55-4.00	2.75	11.00-11.20, 2.30-2.40, 4.00-4.20	.75	1	Smith	Jury medical appointment first thing	Faulty amplifying equipment at PRFD delayed evidence
17/09/03			MOVING DAY				4.5		MOVING DAY	
18/09/03			NON SITTING DAY				4.5		Electrical problems and difficulties in Court 12 CCC	
19/09/03	35	T	10.25-11.40, 12.00-12.45, 2.00-3.00, 3.30-4.00	3.5	10.15-10.25, 11.55-12.00, 3.15-3.30, 4.00-4.25	1	0	Smith		
22/09/03	36				10.15-10.45	.5	4		Juror missing due to family illness / crisis.	
23/09/03			NOT SITTING				4.5		Juror still absent.	
24/09/03	37	T	10.25-11.25, 11.40-12.25, 12.35-1.00, 2.05-3.05, 3.15-3.25, 3.45-4.15	3.75	10.15-10.25, 12.25-12.35, 3.40-3.45	.5	0.25	Smith		
25/09/03	38	T	10.35-11.40, 12.10-12.55, 2.40-3.40	2.75	10.30-10.35, 11.55-12.10, 2.05-2.40	.75	1	Cassidy Doherty		Start delayed by late juror
26/09/03			NOT SITTING				4.5		Defendant Fisher medical appointment and Crown unable to call other witnesses concerning count 1	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
29/09/03	39	T	10.30-11.25, 11.45-12.55, 2.15-2.50, 3.15-3.35	3	11.25-11.30, 2.05-2.15, 3.05-3.15, 3.35-3.40	.5	1	Stone Simmonds		
30/09/03	40	T	10.30-10.50, 11.30-12.15, 12.30-1.00, 2.20-3.05, 3.10-4.05	3			1.5	Down Ibson		PM delayed by witness returning late
01/10/03	41	T	10.35-11.45, 12.10-1.00, 2.05-3.05, 3.15-4.15	4			0.5	Ibson		
02/10/03	42	T	11.00- 11.55, 12.15-1.00, 2.05-2.35	2.25	10.45-11.00	.25	2	Ibson	Late start due to official opening by Mayor. Rose early prior to cross-examination for witness Ibson to read documents	
03/10/03	43	T	10.30-11.50, 12.10-1.00, 2.05-3.15, 3.25-3.45	3.75	10.15-10.30	.25	0.5	Ibson		
06/10/03	44	T	10.15-11.15, 11.20-12.00	1.75			2.75	Ibson	Juror medical appointment	
07/10/03	45	T	11.30-1.00, 3.20-4.20	2.5	10.15-11.30, 2.00-2.45, 2.45-3.05	1.75	0.25	Ibson	Discussion of Juror 6 medical problems which will require an operation	
08/10/03	46				10.15-11.45, 3.15-4.15	2.5	2		Legal Argument re witness Kornfeld. Juror also had a medical appointment	
09/10/03	47	T	10.45-11.40, 12.00-1.05, 2.40-3.15, 3.25-4.15	3.5	9.30-9.45, 10.30-10.45, 11.40-11.50, 2.30-2.40	.75	0.25	Ibson	Argument and reading time for the witness Ibson	
10/10/03			NON-SITTING DAY				4.5		NON-SITTING DAY	Fortnightly Friday
13/10/03	48	T	10.oo-11.10, 12.00-12.40, 12.45-1.30	2.5			2	Ibson	Juror needed to see matron mid-morning	Due to sit 9.30-1.30, to suit witness
14/10/03	49	T	10.00-11.25, 11.40-12.45, 12.55-1.30	3			1.5	Ibson		Due to sit 9.30-1.30
15/10/03	50	T	9.55-11.05, 11.10-12.00	2			2.5	Ibson		Due to sit 9.30-12.00
16/10/03			NON-SITTING DAY				4.5		NON-SITTING DAY	Juror commitment
17/10/03	51	T	10.50-11.30, 12.30-12.40	.75	9.30-10.10, 10.40-10.50, 12.20-12.30, 2.30-2.50, 3.25-4.00	2	1.75	Ibson	Jury question re F&C exercise. Discussion and submissions followed	Due to sit with jury from 9.30-1.30.
20/10/03	52				10.45-11.00, 12.00-1.00, 2.00-3.00	2.25	2.25		Legal Argument on F&Cs and Crown's case	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
21/10/03	53				10.30-11.30, 2.00-2.30, 3.05-3.20, 3.40-3.45	1.75	2.75		Continuing legal argument.	
22/10/03			Court not sitting but available				4.5		Court not sitting but available	
23/10/03	54				10.30-10.40, 11.30-11.55, 2.30-2.50, 3.30-3.35, 3.50-4.10	1.25	3.25		Legal argument and discussions	
24/10/03	55	T	10.00-11.40, 12.00-1.05, 1.10-1.35	3.25	9.30-9.40, 1.35-1.45	.25	1	Ibson		Court due to sit 9.30-1.30
27/10/03	56	T	3.00-4.30	1.5			3	Ibson		Court due to sit pm only
28/10/03	57	T	10.00-11.40, 12.00-1.00, 2.20-3.00, 3.15-4.00	4	2.05-2.20, 4.00-4.05	.25	0.25	Ibson		
29/10/03			NON-SITTING DAY				4.5		Juror commitment required whole day	
30/10/03	58	T	11.15-12.20, 12.45-1.00, 2.10-3.00, 3.10-4.00	3.5	10.10-10.40, 2.05-2.10	.5	0.5	Ibson Elliot-Hughes		
31/10/03			NON-SITTING DAY				4.5		NON-SITTING DAY	Last of “regular” fortnightly Friday non-sitting days
~~03/11/03~~	~~59~~						~~4.5~~		~~Juror sick~~	
~~04/11/03~~	~~60~~				~~10.50-11.35~~	~~.75~~	~~3.75~~		~~Juror still unwell~~	
05/11/03	61	T	10.15-10.30, 11.10-1.05, 2.05-3.05, 3.20-4.20	4	4.20-4.30	.25	0.25	Elliot-Hughes		
06/11/03	62	T	10.35-11.45, 12.10-12.55, 2.10-3.15, 3.40-4.00		9.45-10.35, 2.05-2.10, 3.30-3.40		4.5	Elliot-Hughes	Legal argument and ruling	
07/11/03			NON-SITTING DAY				4.5		NON-SITTING DAY	
~~10/11/03~~			~~NON-SITTING DAY~~				~~4.5~~		~~NON-SITTING DAY~~	~~Juror commitment~~
11/11/03	63	T	10.30-10.35, 1.05-1.10	.75	10.10-10.30, 12.45-1.05, 2.35-2.50	1	2.75		Elliott Hughes unwell. Crown unable to arrange other witnesses	No evidence heard
12/11/03	64	T	10.50-11.10, 11.15-11.40	.75	12.40-12.45	.25	3.5	Logan	Late start owing to travel difficulties for jury. Only witness Logan available	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
13/11/03	65	T	10.10-11.20, 11.45-12.50, 2.05-2.30, 3.25-4.15	3.5	10.05-10.10, 2.30-3.10, 3.20-3.25	.75	0.25	Elliot-Hughes Cross		Elliot Hughes
14/11/03	66	T	10.15-11.00, 11.30-1.00, 2.05-2.30	2.75			1.75	Cross Brown		No other witnesses available after 2.30
17/11/03	67	T	10.10-11.30, 11.55-12.30, 2.40-4.10	3.5	12.55-1.05	.25	0.75	Abbott Hall		
18/11/03			NON-SITTING DAY				4.5		NON-SITTING DAY	
19/11/03	68	T	10.20-11.40, 12.20-1.05, 2.05-3.00, 3.15-4.05	3.75	10.15-10.20	.25	0.5	Hall		
~~20/11/03~~			~~NON-SITTING DAY~~				~~4.5~~		~~Sick Juror~~	
21/11/03	69	T	12.00-1.05, 2.05-2.50, 3.05-3.20	2	10.10-10.20	.25	2.25	Hall	Reading time required by the witness Hall	At 3.20 Crown had no other witnesses available
24/11/03	70	T	10.25-10.45, 11.25-12.40, 12.50-1.05, 2.05-3.10, 3.20-4.05	3.75	12.45-12.50, 4.05-4.15	.25	0.5	Melling		
~~25/11/03~~	~~71~~				~~10.15-10.45~~	~~.5~~	~~4~~		~~Two sick jurors~~	
26/11/03	72	T	12.10-1.10	1	11.50-12.10	.25	3.25	Kaufman J Smith	Late start owing to ring-in arrangements, and short day in any event - lack of crown witnesses	
27/11/03	73	T	11.55-1.15	1.25	10.15-10.25, 1.15-1.30, 2.00-2.20	.75	2.5	Doherty	Delayed start - sick juror. Doherty in chief but then pre-reading required before cross-examination	
28/11/03			NON-SITTING DAY				4.5		NON-SITTING DAY	Reading
01/12/03			NON-SITTING DAY				4.5		NON-SITTING DAY	
02/12/03	74				10.00-10.10, 10.40-11.00, 11.30-1.05, 2.05-3.00, 3.30-3.40	3.25	1.25		Jury all attended but did not sit, except to be sent away, due to legal argument on Doherty's evidence	
03/12/03	75	T	10.10-11.20, 11.55-1.00, 2.25-2.30, 3.05-3.50	3	11.50-11.55, 2.10-2.25, 2.30-2.40,	.5	1	Doherty	Problem with jury bundles mid-morning	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
04/12/03	76	T	10.30-11.25, 11.40-12.50, 2.15-3.00, 3.10-3.40	3.25	12.50-1.00, 2.05-2.15, 3.40-4.05	.75	0.5	Doherty	Legal arguments	
05/12/03	77	T	10.35-11.45, 12.00-12.30, 12.45-1.00, 2.10-2.55	2.75	2.55-3.55	1	0.75	Doherty Melling	Final jury sitting day before Christmas. Cross-examination of Doherty could not continue	
08/12/03			NOT SITTING				4.5		JUROR OPERATION	
09/12/03			NOT SITTING				4.5		JUROR OPERATION	
10/12/03			NOT SITTING				4.5		JUROR OPERATION	
11/12/03			NOT SITTING				4.5		JUROR OPERATION	
12/12/03	78		NOT SITTING		12.00-1.05	1	3.5		JUROR OPERATION	Mention re timetable
15/12/03			NOT SITTING				4.5		JUROR OPERATION	
16/12/03	79		NOT SITTING		10.00-11.30, 12.00-1.10	2.75	1.75		JUROR OPERATION	LPP argument
17/12/03			NOT SITTING				4.5		JUROR OPERATION	
18/12/03			NOT SITTING				4.5		JUROR OPERATION	
19/12/03			NOT SITTING				4.5		JUROR OPERATION	
22/12/03	80		NOT SITTING		10.00-10.20	.25	4.25		JUROR OPERATION	LPP Judgment
23/12/03			NOT SITTING						CHRISTMAS BREAK	
24/12/03			NOT SITTING						CHRISTMAS BREAK	
25/12/03			NOT SITTING						CHRISTMAS BREAK	
26/12/03			NOT SITTING						CHRISTMAS BREAK	
29/12/03			NOT SITTING						CHRISTMAS BREAK	
30/12/03			NOT SITTING						CHRISTMAS BREAK	
31/12/03			NOT SITTING						CHRISTMAS BREAK	
01/01/04			NOT SITTING						CHRISTMAS BREAK	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
02/01/04			NOT SITTING						CHRISTMAS BREAK	
05/01/04	81	T	10.55-11.20, 12.00-12.10, 12.30-12.55, 2.15-3.10, 3.40-4.25	2.75	10.05-10.10, 10.50-10.55, 11.20-11.25, 11.50-12.00, 3.35-3.40	.5	1.25	Doherty		
06/01/04	82	T	10.40-11.30, 12.10-12.15	1	12.00-12.10, 3.00-4.00	1.25	2.25	Doherty	Juror taken ill at 11.30	Jury note re relevance of defence cross-examinations
07/01/04	83				10.00-10.10, 10.15-11.30, 11.55-1.05, 2.05-2.50, 3.20-25, 4.00-4.15	3.75	0.75		Discussions and argument re jury note. Applications to discharge the jury and to stay the case. Judgment	
08/01/04	84	T	2.50-4.05	1.25	10.00-10.10, 11.25-11.55, 2.10-2.30, 4.05-4.15	1.25	2	Doherty	Argument and discussions re Judge's direction to the jury about note	
09/01/04	85	T	2.05-3.05, 3.15-4.15	2			2.5	Doherty	Non-sitting am owing to juror commitment	
12/01/04	86	T	11.15-12.05, 12.20-1.05, 2.15-2.40, 3.00-3.35, 3.50-4.10	3	11.10-11.15	.25	1.25	Doherty	Late start owing to juror delays and one juror with back pain	
13/01/04	87	T	12.00-1.05, 2.30-3.05, 3.25-3.55	2.25	11.00-11.15, 11.40-12.00, 2.15-2.30, 3.05-3.10, 3.55-4.10	1.25	1	Doherty	Late start - Mayor opening	
14/01/04	88				10.10-10.40, 11.45-12.00, 2.10-2.35, 3.15-4.00	1.25	3.25		Sick Juror. Discussions re Kornfeld and timetable	
15/01/04	89				11.20-11.40, 12.15-12.55, 2.05-2.50, 4.00-4.25	2.25	2.25		Argument re Kornfeld	
16/01/04	90				10.10-11.05, 11.50-12.35, 12.55-1.00, 2.15-2.40, 3.25-4.05, 4.40-4.45	3	1.5		Argument and arrangements re Kornfeld	
19/01/04	91	T	1.35-2.25, 2.45-3.35	1.75	10.00-10.15, 11.05-11.45, 12.00-12.40, 3.50-4.30	2.25	0.5	Doherty	Delayed start owing to juror injury	
20/01/04	92	T	1.35-2.15, 2.40-3.20	1.25	10.00-11.30, 12.00-12.20, 1.25-1.30	2	1.25	Kornfeld	Video link to USA evidence	
21/01/04	93	T	12.50-1.00, 2.10-2.50	1	12.40-12.50, 2.05-2.10, 2.50-3.25, 3.40-4.25	1.5	2	Sharpe	12.00 start to allow Sharpe time to recover from flight. Juror delayed then in travel	Legal argument on objections to Sharpe's evidence

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
22/01/04	94	T	10.30-11.30, 12.00-1.00, 2.10-3.00, 3.30-3.55	3.25	10.20-10.30	.25	1	Sharpe		Longer breaks for juror with bad back
23/01/04	95	T	2.00-2.45, 3.20-3.50	1.25			3.25	Sharpe	HHJ commitment in am	
26/01/04	96	T	10.20-11.30, 12.05-1.05	2.25	10.05-10.20	.25	2	Sharpe	Juror medical appointment p	
27/01/04	97	T	10.50-11.45, 12.25-1.05, 2.10-2.20, 3.25-3.35	2.5	10.45-10.50, 11.45-11.55, 2.20-2.45, 3.00-3.25, 3.35-4.05	1.5	0.5	Sharpe	Juror late	Legal arguments
28/01/04	98	T	11.10-12.00, 12.30-1.10	1.5	10.30-11.10, 12.15-12.30, 2.05-2.10	1	2	Sharpe		
29/01/04	99	T	11.10-11.50	.75	11.05-11.10, 11.50-12.00, 12.50-1.05, 2.10-2.30, 3.30-3.45	1	2.75	Smith	Late Jurors	Legal argument re scope of Crown's case
30/01/04	100				10.10-10.20, 12.15-12.50, 3.30-4.00	1.25	3.25		Argument re juror texting	
02/02/04	101	T	3.30-4.15	.75	10.05-10.20, 12.30-12.40, 2.30-2.35	.5	3.25	Smith	Jury due to sit at 2pm. One juror misunderstood and had to be brought in	
03/02/04	102	T	10.55-11.50, 12.00-12.50	1.75			2.75	Smith	Jury arrive late. Evidence stops at 12.50 because witness Smith needs to read C4 files before cross-examination	
04/02/04	103	T	12.45-1.00	.25	11.00-11.55, 12.30-12.45	1.25	3		Jury arrive late. Witness also has travel problems. C4 files not yet read	
05/02/04			NOT SITTING				4.5		Due to sit but did not. Smith still reading files	
06/02/04	104	T	11.05-12.05, 12.30-1.05, 2.05-4.00	3.5	12.05-12.10	.25	0.75	Smith		
09/02/04	105	T	10.45-11.55, 12.20-12.45, 3.10-3.15	1.75	2.45-2.55, 3.05-3.10	.25	2.5	Smith	Juror late	Smith F&C exercise required - more reading to be done by witness after 12.45
10/02/04	106	T	10.15-11.30, 12.00-1.00, 2.05-2.50	3	11.50-12.00, 3.25-3.45	.5	1	Smith	Reading of skinner files	
11/02/04			NOT SITTING				4.5		"Emergency Juror Dental appointment"	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
12/02/04	107						4.5		Not due to sit between 12/02 and 17/02 - Juror long valentine weekend.	Court sitting in chambers - not transcribed - re Kornfeld
13/02/04			NOT SITTING				4.5		NOT SITTING	
16/02/04	108				2.05-2.30	.5	4		Problems re Juror receiving benefit	Court sat in chambers to inform counsel
17/02/04	109				10.35-10.40, 11.10-11.35, 12.25-12.35, 2.25-2.30, 3.00-3.25, 3.40-3.55	1.5	3		Argument and ruling on discharge of juror	
18/02/04	110	T	10.20-11.30, 12.00-12.55, 2.10-3.05, 3.25-4.10	3.75	9.50-10.20	.5	0.25	Smith		
19/02/04	111	T	10.35-11.30, 12.05-1.00, 2.15-2.25, 2.40-3.00	2.25	11.55-12.05, 2.25-2.40	.5	1.75	Smith	Late jurors	
20/02/04	112	T	10.40-11.20, 12.10-12.20	.75	11.20-11.25, 11.55-12.10, 12.20-12.35, 2.10-2.15	.75	3	Ibson	Late jurors	Juror taken ill in afternoon
23/02/04	113	T	10.25-11.55, 12.15-1.00, 2.05-3.10, 3.40-4.00	3.25	3.35-3.40	.25	1	Ibson		
24/02/04	114	T	10.50-11.10, 12.00-1.00, 2.05-3.05, 3.20-3.35, 3.45-4.00	2.75	11.10-11.35, 3.35-3.45	.5	1.25	Ibson	Late jurors	
25/02/04	115				10.20-10.45	.5	4		Sick juror	
26/02/04	116				10.15-10.45	.5	4		Different sick jurors	
27/02/04			NOT SITTING				4.5		Still sick jurors	
01/03/04	117	T	10.35-11.35, 12.00-1.05, 2.25-3.05, 3.25-4.20	3.75	10.05-10.15, 2.15-2.25	.25	0.5	Lord Harding		
02/03/04	118	T	10.10-11.15, 11.50-1.05	2.25	2.35-3.20	.75	1.5	Harding Tunnicliffe	Afternoon used to deal with various legal matters	
03/03/04	119	T	11.20-11.45, 11.50-1.05, 2.05-2.45, 3.00-3.25, 3.35-4.05	3.25	11.15-11.20.	.25	1	Mills		
04/03/04	120				10.00-10.25	.5	4		Sick juror. Discussion in chambers	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
05/03/04	121	T	10.25-11.25, 12.05-12.30	1.5	10.00-10.25	.5	2.5	Threlfall	No sitting after 12.30 owing to witness arrangements. Mills not available until 8th	
08/03/04	122	T	2.25-3.20, 3.50-4.15	1.25	12.50-1.00, 2.20-2.25, 3.40-3.50	.5	2.75	Mills	Late jurors / sickness	
09/03/04	123		NOT SITTING				4.5		Sick Juror	
10/03/04	124				1.45-2.10, 2.50-3.30	1	3.5		Still sick juror	Afternoon hearings in chamber
11/03/04	125				11.00-11.35	.5	4		Still sick juror	
12/03/04			NOT SITTING				4.5		NOT SITTING	
15/03/04	126	T	10.25-10.30, 2.15-3.10, 3.30-3.45	1.25	10.15-10.25, 2.10-2.15, 3.20-3.30	.5	2.75	Hughes	Considerations as to whether Hughes should give evidence for the crown	
16/03/04	127	T	12.50-1.00	.25	10.10-11.35, 12.15-12.25, 12.45-12.50 , 2.05-2.20	2	2.25	Hughes	Argument on re-examination of Hughes	Juror taken sick before lunch and could not continue.
17/03/04	128				10.45-11.00, 12.05-12.20, 2.10-3.00	1.25	3.25		Discussions in chambers re pregnant juror experiencing morning sickness	
18/03/04	129	T	2.10-2.55, 3.15-4.05	1.5	11.00-11.30	.5	2.5	Threlfall	Jury not due till 2.00	
19/03/04	130	T	11.20-12.35, 12.45-1.00, 2.10-2.50, 3.55-4.05	2.75	11.15-11.20, 2.50-3.05, 3.30-3.55	.75	1	Threlfall	Late jurors	Legal Argument on NAE
22/03/04	131				10.05-10.15	.25	4.25		Sick Juror	
23/03/04			NOT SITTING				4.5		Still sick Juror	
24/03/04	132	T	10.40-11.45, 12.05-1.05, 2.15-3.10, 3.25-4.15	3.75	2.10-2.15, 4.15-4.20	.25	0.5	Mills Kennedy		
25/03/04			NON SITTING DAY				4.5		NON SITTING DAY	
26/03/04			NON SITTING DAY				4.5		NON SITTING DAY	
29/03/04	133	T	10.30-11.30, 11.50-12.55, 2.25-2.40	2.25	10.05-10.30, 2.10-2.25	.75	1.5	Kenneday	Legal Argument	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
30/03/04	134				12.00-1.00, 2.00-2.45, 3.30-3.45	2	2.5		Legal Argument on Ostrowski statement	
31/03/04	135	T	10.05-11.20, 12.00-12.55	2.25	11.50-12.00, 2.05-2.50	1	1.25	Ostrowski	Legal Argument in pm on scope of re-examination of Ostrowski	
01/04/04	136	T	2.30-2.45, 3.40	.25	10.30-11.35, 12.35-1.05, 2.10-2.30, 2.45-2.50, 3.20-3.40	2.25	2	Ostrowski	Jury due at 12.00. Argument occupied morning	Ostrowski identified files which he had kept which had not been disclosed
02/04/04	137				11.30-12.10	.75	3.75		Files sought	
05/04/04	138				12.30-1.00, 3.05-3.45	1.25	3.25		Searches	
06/04/04	139				12.00-12.45	.75	3.75		Searches	
07/04/04	140				10.00-11.05, 11.50-12.15, 2.20-3.00	2.25	2.25		LPP Argument	
08/04/04			NOT SITTING							Easter Court closed
09/04/04			NOT SITTING							Easter Court closed
12/04/04			NOT SITTING							Easter Court closed
13/04/04			NOT SITTING							Easter Court closed
14/04/04			NOT SITTING				4.5		NON SITTING DAY	
15/04/04	141				12.00-1.05	1	3.5			
16/04/04			NOT SITTING				4.5			
19/04/04	142				10.00-10.50, 12.10-12.30	1.25	3.25			
20/04/04	143				12.00-12.30	.5	4			
21/04/04	144				12.30-1.05	.5	4			
22/04/04	145				10.00-1.00, 2.10-3.35, 3.55-4.05	2.5	2			
23/04/04	146				12.45-1.30	.75	3.75			

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
26/04/04	147				12.00-12.40	.75	3.75			
27/04/04			NOT SITTING				4.5			
28/04/04	148				12.00-12.20, 12.55-12.30	1	3.5		Paternity Leave - Baby 1 starts today	
29/04/04			NOT SITTING				4.5		Paternity Leave	
30/04/04							4.5		Paternity Leave	
03/05/04									Paternity Leave	Bank holiday
04/05/04							4.5		Paternity Leave	
05/05/04	149	T	10.20-11.20, 11.45-1.00, 2.10-3.10	3.25	10.15-10.20, 3.15-3.25, 4.00-4.25	.75	0.5	Ostrowski		
06/05/04	150	T	10.10-11.00, 12.10-12.45	1.5	11.55-12.10, 12.45-1.10	.75	2.25	Ostrowski	No further witnesses available after Ostrowski	
07/05/04			NON SITTING DAY				4.5		Waboso first available on Monday 10th	
10/05/04	151	T	10.10-11.30, 12.05-12.35	1.75	11.55-12.05, 12.35-12.55, 2.50-3.15	1	1.75	Waboso	Waboso evidence in chief only.	
11/05/04	152				11.10-12.25, 2.35-3.45	2.5	2		LPP Argument	
12/05/04	153				11.20-12.10, 2.10-2.30, 3.30-3.45	1.5	3		LPP Argument	
13/05/04	154				11.00-11.30	.5	4		Sick Juror	
14/05/04			NON SITTING DAY				4.5		NON SITTING DAY	
17/05/04	155	T	10.35-11.25, 11.50-1.00	2	10.10-10.20, 1.00-1.05	.25	2.25	Kaye Croft	Late juror	
18/05/04	156	T	10.15-11.35, 12.05-1.00, 2.10-3.10, 3.35-4.00	3.75	2.00-2.10, 3.30-3.35, 4.00-4.15	.5	0.25	Croft McNulty		
19/05/04	157	T	10.40-11.35, 12.10-12.40, 12.45-1.00, 2.15-3.05, 3.50-4.10	2.75	10.25-10.40, 12.05-12.10, 12.40-12.45, 2.10-2.15, 3.40-3.50, 4.10-4.20	.75	1	Croft		
20/05/04	158	T	10.30-11.45, 12.15-12.50, 2.15-3.10	2.75	10.15-10.30, 2.10-2.15, 3.10-3.35	.75	1	Down	Late Juror	
21/05/04			NON SITTING DAY				4.5		NON SITTING DAY	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
24/05/04	159	T	10.15-10.30, 10.55-11.10, 12.00-12.05, 12.20-12.50, 2.20-2.40	1.5	10.10-10.15, 10.45-10.55, 11.10-11.35, 12.05-12.20, 12.50-1.00, 2.10-2.20, 2.40-3.20, 3.30-3.45	2.25	0.75	Alsop Low Rode		
25/05/04	160				11.10-11.20, 12.10-1.00	1	3.5		Legal Argument	
26/05/04	161	T	10.15-11.25, 12.15-12.55, 2.15-2.45	2.25	10.10-10.15, 11.50-12.15, 12.55-1.05, 3.10-4.05	1	1.25			
27/05/04	162				10.10-10.15	.25	4.25			Mention re Maw
28/05/04			NON SITTING DAY				4.5		NON SITTING DAY	
31/05/04			NON SITTING DAY						NON SITTING DAY	Bank holiday
01/06/04			NON SITTING DAY						NON SITTING DAY	Court closed
02/06/04	163				11.00-11.45	.75	3.75			
03/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
04/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
07/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
08/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
09/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
10/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
11/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
14/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
15/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
16/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
17/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
18/06/04			JUNE HOLIDAY				4.5		HONEYMOON	
21/06/04	164				11.00-11.55, 12.05-12.25, 2.05-2.30, 2.45-3.00	2	2.5			

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
22/06/04	165	T	2.20-3.25, 3.35-4.20	1.75	11.40-12.00, 2.05-2.20	.5	2.25	Waboso		
23/06/04	166				11.00-11.35, 12.35-1.00	1	3.5		Sick Juror	
24/06/04	167				12.35-1.05, 2.35-3.45	1.75	2.75		Still sick juror	
25/06/04	168	T	10.10-11.10, 11.25-12.05, 12.25-1.00, 2.20-2.55, 3.30-4.05	3.5	10.00-10.10, 2.10-2.20, 2.55-3.10, 3.25-3.30	.75	.25	Waboso		
28/06/04	169				9.30-10.15, 11.00-11.10, 3.10-3.25, 3.50-4.30	1.75	2.75		Jury due 9.30-1.30. Legal argument and delay re Skinner bundles	Jury attended but were sent away at 11.10
29/06/04	170				10.00-10.10, 10.50-11.50, 12.20-12.40, 2.50-2.55	1.5	3		Legal Argument re Skinner bundles	
30/06/04	171				11.00-11.25, 12.30-1.00, 2.05-2.45	1.5	3		Legal Argument re Skinner bundles	
01/07/04	172	T	10.10-11.20, 1.15-1.45	1.75	11.20-11.35, 12.00-12.30	.75	2	Waboso	Further discussions and argument about bundles	Jury due 10.00-2.00
02/07/04	173	T	10.20-11.20, 12.00-12.45, 1.00-1.30	2.25	10.05-10.20, 11.50-12.00	.5	1.75	Waboso		Jury due 10.00-1.30
05/07/04	174				11.00-11.30	.5	4		Two sick jurors	
06/07/04							4.5		Still sick jurors	
07/07/04	175	T	10.15-11.20, 12.00-12.45, 1.10-2.05	2	1.05-1.10, 2.05-2.20	.25	2.25	Waboso		
08/07/04	176				11.00-11.40, 12.35-1.00, 2.35-3.20, 3.40-3.50	2	2.5		Sick juror. Argument / discussion	
09/07/04							4.5		Still sick juror	
12/07/04	177				10.40-10.55, 11.30-12.00	.75	3.75		New sick juror	
13/07/04	178				12.00-12.50, 2.20-2.40	1.25	3.25		Still sick juror. Discussion re questions to witnesses on disclosure	
14/07/04							4.5		Paternity Leave baby 3	
15/07/04							4.5		Paternity Leave baby 3	
16/07/04							4.5		Paternity Leave baby 3	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
19/07/04							4.5		Paternity Leave baby 3	
20/07/04							4.5		Paternity Leave baby 3	
21/07/04	179				12.00-12.20, 2.15-2.25, 2.35-2.40, 3.00-3.30	1	3.5		Juror still required at home	Discussions re departure of judicial assistant
22/07/04	180				12.00-12.15	.25	4.25		Juror still required at home	Further discussion about potential direction to jury
23/07/04							4.5		Juror still required at home	
26/07/04	181				11.15-11.30, 12.10-12.35, 2.05-2.55	1.5	3		Jury problems, one juror refusing to attend. Sitting in chambers to discuss	
27/07/04	182				11.05-11.20, 12.05-12.30, 2.10-2.15, 2.30-3.00, 3.15-3.30, 3.40-4.10	2	2.5			
28/07/04	183	T	11.10-11.15, 1.05-1.15, 3.35-3.40, 4.40-4.45	.5	10.05-10.15, 10.55-11.10, 1.00-1.05, 2.05-2.10, 2.25-2.45, 2.55-3.35, 3.40-3.45, 4.20-4.40, 4.45-4.50	2	2		Enquiry into jury concerns / knowledge re departure of judicial assistant	
29/07/04	184	T	10.20-11.30, 11.45-12.35, 1.10-2.10	3	10.05-10.20	.25	1.25	Waboso		Sitting 10.00-2.00
30/07/04	185	T	10.15-11.15, 11.35-1.05, 2.40-3.30, 3.40-4.00	3.75	10.10-10.15, 11.15-11.20	.25	0.5	Waboso		
02/08/04	186	T	10.15-10.30, 11.35-1.00, 2.10-3.05, 3.30-4.10	3.25	10.05-10.15, 11.25-11.35, 3.05-3.15	.5	0.75	Waboso		
03/08/04	187				10.10-11.15, 11.35-12.55, 2.10-3.05, 3.25-4.20	4.25	0.25		Application to discharge jury	
04/08/04	188	T	2.20-3.10, 3.20-4.10	1.75	11.30-12.05, 12.35-1.10	1.25	1.5	Williams	Judgment on discharge and legal argument on Williams	Jury due from 2.00
05/08/04	189	T	11.20-12.30, 1.05-2.00	2	10.30-10.40, 2.00-2.25	.5	2	Officers	Interview transcripts not ready	Jury due 10.00-2.00
06/08/04	190	T	10.15-11.40, 12.05-1.30	2.75	10.05-10.15, 11.55-12.05, 2.05-2.10	.5	1.25	Officers		
09/08/04	191	T	10.30-11.45, 12.00-12.50, 1.35-2.00	2.5	10.25-10.30, 1.30-1.35, 2.00-2.05	.25	1.75	Officers		
10/08/04	192	T	10.35-11.10, 11.30-12.20, 12.50-2.00	2.5	10.05-10.15, 10.30-10.35	.25	1.75	Officers		

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
11/08/04	193	T	10.55-11.35, 11.50-12.40, 1.35-2.05	2	10.00-10.15, 10.30-10.55, 12.40-1.00, 1.30-1.35, 2.05-2.20	1.25	1.25	Officers		
12/08/04	194				10.05-10.15, 11.05-11.55, 12.35-1.25, 2.05-2.20	2	2.5		Legal Argument, including application to recall Doherty	
13/08/04	195	T	10.25-11.45, 12.15-12.40, 12.50-1.05, 1.35-3.00	3.5	10.20-10.25, 12.40-12.50, 3.05-3.30	.75	0.25	Officers		
16/08/04	196	T	10.15-11.05, 12.45-12.50	1	10.10-10.15, 11.05-11.30, 12.15-12.45	.75	2.75	Officers	Close of Crown's Case	
17/08/04	197				10.00-10.40, 11.00-11.10	.75	3.75		Legal argument on question of ex-gratia payments to jury	
18/08/04			Non Sitting Day				4.5		Non sitting Day – Legal submissions being prepared	
19/08/04			Non Sitting Day				4.5		Non sitting Day – Legal submissions being prepared	
20/08/04			Non Sitting Day				4.5		Non sitting Day – Legal submissions being prepared	
23/08/04			NOT SITTING				4.5		Summer Holiday	
24/08/04			NOT SITTING				4.5		Summer Holiday	
25/08/04			NOT SITTING				4.5		Summer Holiday	
26/08/04			NOT SITTING				4.5		Summer Holiday	
27/08/04			NOT SITTING				4.5		Summer Holiday	
30/08/04			NOT SITTING				4.5		Summer Holiday	
31/08/04			NOT SITTING				4.5		Summer Holiday	
01/09/04			NOT SITTING				4.5		Summer Holiday	
02/09/04			NOT SITTING				4.5		Summer Holiday	
03/09/04			NOT SITTING				4.5		Summer Holiday	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
06/09/04			NOT SITTING				4.5		Summer Holiday	
07/09/04			NOT SITTING				4.5		Summer Holiday	
08/09/04			NOT SITTING				4.5		Summer Holiday	
09/09/04			NOT SITTING				4.5		Summer Holiday	
10/09/04			NOT SITTING				4.5		Summer Holiday	
13/09/04							4.5		Judge's Reading Day	
14/09/04							4.5		Judge's Reading Day	
15/09/04	198				10.30-12.00, 12.20-12.55, 2.10-3.10, 3.20-4.15	4	.5		Submissions of no case and abuse based on manageability	
16/09/04	199				10.00-11.20, 11.55-12.55, 2.05-2.40, 3.00-3.45	3.75	.75		Submissions of no case and abuse based on manageability	
17/09/04	200				10.00-11.15, 11.50-1.00, 2.10-3.05, 3.15-4.00	4	.5		Submissions of no case and abuse based on manageability	
20/09/04	201				10.00-11.05, 11.50-12.55, 2.10-3.05, 3.20-4.20	4	.5		Submissions of no case and abuse based on manageability	
21/09/04	202				10.00-10.20, 11.00-11.30	.75	3.75		Counsel for Skinner absent through illness	
22/09/04			Non sitting Day				4.5		Counsel for Skinner absent through illness	
23/09/04	203				10.00-11.25, 11.50-1.00, 2.05-2.45, 2.55-3.45	4	.5		Submissions of no case and abuse based on manageability	
24/09/04	204				10.30-11.40, 12.15-12.25, 12.45-1.05, 2.05-2.45, 3.00-3.50	3.5	1		Submissions of no case and abuse based on manageability	
27/09/04	205				10.00-11.10, 11.30-11.40	1.25	3.25		Adjourned for defence to provide skeletons	
28/09/04	206				10.00-10.10	.25	4.25		Adjourned to permit Crown to supply skeleton argument	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
29/09/04	207				10.00-11.15, 11.30-1.00, 2.05-2.55, 3.05-4.05	4.5	0		Submissions of no case and abuse based on manageability	
30/09/04	208				10.00-11.30, 11.50-1.00, 2.05-3.15, 3.20-4.00	4.5	0		Submissions of no case and abuse based on manageability	
01/10/04	209				10.00-11.25, 11.50-1.00, 2.05-3.15, 3.25-3.35	4	.5		Submissions of no case and abuse based on manageability	
04/10/04			Non sitting Day				4.5		Judge's Reading Day	
05/10/04	210				10.30-11.40, 12.00-1.00, 2.05-3.10, 3.20-3.45	3.75	.75		Submissions	
06/10/04	211				10.00-11.15, 11.30-1.00, 2.15-3.15, 3.25-3.50	4.25	.25		Submissions	
07/10/04	212				10.30-11.50, 12.20-12.35	1.5	3		Submissions	
08/10/04			Non Sitting Day				4.5		Judge's consideration of submissions	
11/10/04	213				2.00-3.05	1	3.5		Judgment on the submissions	
12/10/04	214				12.00-12.15, 3.30-3.50, 4.05-4.15	.75	3.75		Further discussion before the return of the jury. Fisher indicating he required time to consider whether to give evidence	
13/10/04	215	T	11.20-11.35	.25	10.00-10.45, 11.15-11.20, 11.35-11.55	1.25	3		Fisher not giving evidence. Time required by Skinner. Jury acquit Woodward Smith of Count 1 on Judge's direction	
14/10/04	216	T	10.30-10.40	.25	10.05-10.30, 10.40-10.50	.5	3.75		Skinner not yet ready to give evidence	
15/10/04	217				10.30-11.00, 12.00-12.40	1.25	3.25		Argument re the content of the proposed additional jury bundles for Skinner	
18/10/04	218				10.30-11.20	.75	3.75		Argument re the content of the proposed additional jury bundles for Skinner	
19/10/04	219	T	10.15-11.00, 11.30-12.10, 12.30-1.00, 2.10-2.55, 3.10-4.05	3.5	10.05-10.15, 11.25-11.30, 2.05-2.10	.25	.75	Mark Skinner		Skinner defence case commences

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
20/10/04	220	T	10.30-11.05, 11.45-12.45, 12.50-1.00, 2.15-3.10, 3.30-3.35	2.75	10.15-10.30, 11.35-11.45, 3.35-4.00	.75	1	Mark Skinner		Skinner continued
21/10/04							4.5		Skinner unwell - cold	
22/10/04							4.5		HHJ – JSB commitment	
25/10/04	221	T	12.15-1.00	.75	10.00-10.40, 2.10-2.15, 3.00-3.20	1	2.75	Mark Skinner	Skinner continued. Skinner taken unwell and admitted to hospital	
26/10/04	222				2.00-2.35	.5	4		Mention re Skinner's health.	
27/10/04							4.5		Skinner unwell	
28/10/04							4.5		Skinner unwell	
29/10/04							4.5		Skinner unwell	
01/11/04	223	T	10.45-10.55, 11.55-12.40, 2.05-3.00	1.75			2.75	Mark Skinner	Skinner continued – short day	Problems with microphones for counsel and witness
02/11/04	224				10.10-10.20, 12.00-12.10	.25	4.25		Skinner and a juror unwell	
03/11/04	225				12.00-12.20, 2.35-3.05, 3.50-4.00	1	3.5		Mention re Skinner health	
04/11/04	226				10.30-11.00	.5	4		Mention re Skinner health	
08/11/04	227	T	1.05-1.15, 3.00-4.10	1.25	10.10-10.30, 10.45-10.55, 12.00-1.05	1.5	1.75	Mark Skinner	Argument re payments to jurors now authorized by DCA.	Correspondence from jury
09/11/04	228				10.10-10.15	.25	4.25		Sick juror	
10/11/04	229				10.05-10.20	.25	4.25		Different Sick Juror	
11/11/04							4.5			
12/11/04							4.5			
15/11/04	230				10.10-10.20, 2.00-2.30	.75	3.75		Isabel Dakyns sick. Will not be fit before Juror's long weekend	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
16/11/04							4.5			
17/11/04							4.5			
18/11/04							4.5		Not sitting due to Jury holiday request	
19/11/04							4.5		Not sitting due to Jury holiday request	
22/11/04	231				10.00-10.15	.25	4.25		Not sitting due to Jury holiday request	Short hearing re Paul Maw
23/11/04							4.5		Not sitting due to Juror holiday request and HHJ commitment	
24/11/04							4.5		Informed by phone that Juror has bad viral illness –signed off by Dr until Monday 29th Nov	
25/11/04							4.5			
26/11/04							4.5			
29/11/04	232				10.15-10.30	.25	4.25		Due to sit – most jurors attended but three jurors unavailable. One with travel problems, one with short-term personal problems and one still sick	
30/11/04							4.5		Juror still unwell	
01/12/04	233				10.00-10.30, 2.00-2.40	1	3.5		Application by Skinner for a substantive conference with legal team, to discuss all matters. Jury asked to attend at 2pm but one failed to arrive – he had not got the message	
02/12/04	234	T	10.25-11.25, 12.00-1.05, 2.05-3.05	3	11.25-11.40, 3.25-3.40	.5	1	Mark Skinner	Evidence in chief resumed with recap exercise. At 3pm Skinner unwell due to blood pressure	
03/12/04	235				10.10-10.25, 11.05-11.15, 2.05-2.15	.5	4		Mention re health of Skinner and Wootton	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
06/12/04							4.5			
07/12/04	236				10.05-10.25	.25	4.25		Mention re health of Skinner and Wootton	
08/12/04							4.5			
09/12/04	237				10.00-10.35	.5	4		Mention re health of Wootton	
10/12/04							4.5			
13/12/04	238				10.00-10.30, 12.00-12.35	1	3.5		Skinner has application to be discharged	
14/12/04	239				12.00-12.30	.5	4		Mention re health of Wootton	
15/12/04							4.5			
16/12/04	240				2.00-2.40, 2.50-3.05	1	3.5		Mention re health of Wootton and arrangement of examination by English Doctor. This cannot take place before 4th January 2005. Therefore no further sitting until New Year	
17/12/04							4.5			
20/12/04							4.5			
21/12/04							4.5			
22/12/04	241				11.00-11.30	.5	4		Mention re argument on Fisher's skeleton.	
23/12/04							4.5			
24/12/04			NOT SITTING						CHRISTMAS BREAK	
27/12/04			NOT SITTING						CHRISTMAS BREAK	
28/12/04			NOT SITTING						CHRISTMAS BREAK	
29/12/04			NOT SITTING						CHRISTMAS BREAK	
30/12/04			NOT SITTING						CHRISTMAS BREAK	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
31/12/04			NOT SITTING						CHRISTMAS BREAK	
03/01/05			NOT SITTING						CHRISTMAS BREAK	
04/01/05							4.5			
05/01/05	242				10.00-11.15, 12.15-12.55	2	2.5		Submissions on discharge of Skinner and consequential applications by other defendants	
06/01/05	243				12.00-12.50	.75	3.75		Judgment on the submissions	
07/01/05			Non-sitting day				4.5		Day set aside for submissions and not required. Jury had been told Monday 10th January	
10/01/05	244	T	10.45-11.30, 11.50-1.05	2	10.00-10.10, 10.20-10.45, 2.05-2.10	.75	1.75	Mark Skinner	Argument and ruling on application for a conference by Skinner Jury told that it is "highly unlikely" they will be sent out to deliberate before Easter	
11/01/05	245				10.45-11.15	.5	4		Counsel sick	
12/01/05							4.5		ditto	
13/01/05	246				12.00-12.30	.5	4		Counsel now confirmed as having contracted Scarlet Fever	
14/01/05							4.5			
17/01/05							4.5			
18/01/05	247				12.00-12.25	.5	4		Counsel now well. Renewed application for discharge of jury by Skinner	
19/01/05	248	T	10.20-11.30, 11.50-12.55	2.25			2.25	Mark Skinner		

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
20/01/05	249				10.05-10.15	.25	4.25		Juror is sick. Suffering from 'flu	
21/01/05							4.5			
24/01/05	250	T	10.10-11.15, 11.45-1.00	2.25	11.30-11.45, 1.00-1.10	.5	1.75	Mark Skinner		
25/01/05	251				10.05-10.25, 11.20-11.35, 12.25-12.35	.75	3.75		Juror is suffering from the effects of stress. Report from her doctor arranged	
26/01/05							4.5			
27/01/05	252				9.45-10.15, 11.25-11.30, 12.30-12.45, 3.20-3.30, 3.40-3.55	1.25	3.25		Receiving information and discussion of medical situation of juror	
28/01/05	253				2.50-3.15	.5	4		Awaiting medical evidence on Juror	
31/01/05	254				10.00-10.10, 12.20-12.50, 2.05-3.00, 3.50-4.20	2	2.5		Submissions to discharge Juror with stress by all defendants. Submission to discharge entire jury from Skinner	
01/02/05	255	T	10.15-11.35, 11.55-1.00	2.5			2	Mark Skinner		
02/02/05	256				10.45-11.30, 11.50-12.00, 12.15-12.40, 2.05-2.25	1.75	2.75		Until 10.45 waiting for jury. Then legal argument on documents in Skinner's bundles. Skinner taken unwell and sees Matron – blood pressure too high to give evidence today	
03/02/05	257				3.35-3.45	.25	4.25		Discussion of Skinner's health and arrangements for report from Dr Coltart.	
04/02/05	258				12.00-12.25	.5	4		Reports available. Believed that Skinner could continue his evidence on Mon 7th	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
07/02/05	259				10.10-10.30, 10.35-10.45, 11.25-12.00, 12.25-1.00, 2.00-2.40	2.25	2.25		Skinner feels unwell and on examination his blood pressure is too high. Submissions on proposed directions re yacht and Maws Notebooks.	
08/02/05							4.5		Arrangements for Skinner to see Dr	
09/02/05	260				10.05-10.20, 11.10-11.15, 11.35-11.45, 3.35-3.55, 4.15-4.45	1.25	3.25		Only 7 jurors attend. 2 are late and a third has a stomach bug and is unwell. Skinner still unwell. Skinner has his own expert, Prof Hall	
10/02/05	261				12.00-12.15, 12.25-12.40, 2.30-2.50	.75	3.75		Arrangements discussed for reports from both experts on Skinner's health	
11/02/05							4.5			
14/02/05							4.5			
15/02/05	262				12.00-12.30	.5	4		Still awaiting a discussion between Drs on their joint view	
16/02/05	263				12.00-12.05, 2.05-3.10, 3.50-3.55, 4.154.20	1.25	3.25		Joint report now available suggesting up to two weeks required for Skinners medication to bring his BP under control. Submissions from Skinner and all defendants for discharge of the jury. Position to be assessed on 25th February – target to commence evidence on 28th February	
17/02/05							4.5			
18/02/05							4.5			
21/02/05							4.5			

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
22/02/05							4.5			
23/02/05							4.5			
24/02/05							4.5			
25/02/05	264				10.00-10.50	.75	3.75		Doctor reports that Skinner is making progress, but is not ready to give evidence next week. Therefore court will not sit at all next week, and jury will be asked to attend on 7th March 2005	
28/02/05							4.5			
01/03/05							4.5			
02/03/05			Non Sitting Day				4.5		Court could not sit on these days in order to accommodate the commitments of the bench and bar to CJA training course. However, no sitting possible in any event due to Skinner's condition	
03/03/05			Non Sitting Day				4.5			
04/03/05			Non Sitting Day				4.5			
07/03/05			Non Sitting Day				4.5		Skinner illness	
08/03/05	265				10-10.25; 11.10-11.15; 12.00-12.10; 2.10-2.15	.75	3.75		Juror pension problem/Skinner illness	
09/03/05	266				10.30-11.00	.5	4		Juror pension problem/Skinner illness	
10/3/05	267				10.05-11.30;11.55-1.00; 2.05-3.10 3.30-4.10	4.25	.25		Legal argument about Contempt of Court reporting restrictions	
11/3/05	268				12.20-1.15; 2.15-2.40; 2.41-3.20	2	2.5	Dr Coltart	Dr Coltart gives evidence that Skinner is now fit to give evidence	
14/3/05			Non Sitting Day				4.5		Juror pension problem unresolved	

Date:	Trial Day:	Jury ?	Jury Times:	Jury Hours:	Non-Jury Times:	Non-Jury Hours:	Non-sitting Time:	Live Witnesses:	Reason for sitting without the Jury:	Other comments:
15/3/05			Non Sitting Day				4.5		Crown considering its position on discharge of juror and in relation to the trial generally	
16/3/05			Non Sitting Day				4.5		Crown considering its position	
17/03/05			Non Sitting Day				4.5		Crown considering its position	
18/03/05			Non Sitting Day				4.5		Crown considering its position	
21/03/05			Non Sitting Day				4.5		Crown considering its position	
22/03/05	269		3.05-3.10	.25	10.55-11.25; 12.05-12.15; 2.15-2.45; 3.00-3.05; 3.20-3.40; 4.10-5.05	2.5	2			
TOTALS				**326.25**		**272.5**	**1339**			

ANNEX 7

CASEWORK DIRECTORATE

1. This annex expands on the brief description in Chapter 3 of the context for the CPS decision-making in this case. It explains the chain of developments which produced the situation where the CPS no longer had a clear strategy for the handling of heavy fraud work; where the CPS had withdrawn from viewing fraud as a specialism requiring dedicated resources and expertise; and where there was a lack of clarity about the responsibility for decision-making and, therefore, accountability.

CPS Central Casework

2. When the CPS was first set up in 1986, the majority of the work of the old Director of Public Prosecutions Department was retained in London, and the unit was known as CPS Headquarters Casework. Following a Senior Management Review in October 1995, the unit was established as the fourteenth (non-geographical) Area and was renamed CPS Central Casework, with its Head becoming a Chief Crown Prosecutor. Its work was divided into three Divisions, each headed by an Assistant Chief Crown Prosecutor (ACCP) - Grade 5, now Senior Civil Service (SCS) - and there were 11 Branches.

3. In 1996 the number of Divisions was reduced from three to two (and consequently the number of ACCPs), and the number of Branches was also reduced. At the same time, a policy was adopted of re-deploying as many as possible of the Grade 6 case lawyers out of Central Casework. The intention was that this would henceforth be a management grade – reflecting the position elsewhere in the CPS. The consequences of this are dealt with at paragraphs 7 and 8.

4. In June 1997, Central Casework was restructured as four Branches: three in London (one handling confiscation work), and one in York. Each was led by a Branch Crown Prosecutor (Grade 6, now level E), supported by two Prosecution Team Leaders (Grade 7, now level D), with one for the Confiscation Branch. The number of ACCPs remained as two. Although there were 14 areas of specialist work, this did not include fraud, which was treated as part of the general work of Central Casework. (We comment further about the handling of fraud cases later in this annex.) This was the position at the time the British Transport Police first approached the CPS in relation to the Jubilee Line case.

CPS Casework Directorate

5. In April 1999, Central Casework changed its structure again, as part of major restructuring of the CPS as a whole following the review of the CPS by the Rt Hon Sir Iain Glidewell. It was no longer an “Area”, and was renamed Casework Directorate. It was headed by the Director, Casework, and had five Branches (four were the same as previously, and the fifth, which was already in existence but not within Central Casework, was a unit handling serious

allegations against the police). There were now four senior managers at SCS level; all were newly in post and, significantly for present purposes, none of them had ever worked in any of the fraud units. The same applied to the Branch Crown Prosecutors (BCPs).

6. In June 2000, there was yet another structural change, when the layer of management at Team Leader level was removed. This was followed by a period of six months during which an interim management structure was in place due to delays in the recruitment process for BCPs.

Line management structure

7. An important background factor to the handling of this case was the line management structure. Both the lawyers who handled the case from the crucial point when the decision was made to charge the defendants, and with what charges, to its ultimate disposal in the Central Criminal Court were at Grade 6 (level E). They worked in a structure which involved the allocation of work to them (and the management of the unit/Branch) by lawyers at the same grade, or one lower (level D). Those lawyers were not responsible for managing the reviewing lawyers, nor did they report on them. In short, neither was responsible for supervising the two reviewing lawyers' handling of cases, or the quality of their decisions. Nor were managers at a higher level: they were responsible for the lawyers' performance appraisal reports, but they appear not to have been actively involved in ensuring that cases were properly handled. Although there was a requirement to provide monthly case reports to the Team Leader/BCP, these varied in quality and content, and were not the generally the subject of detailed discussion/supervision.

8. The result was a muddled structure with lack of clarity about referrals upwards. When HMCPSI inspected Casework Directorate in 2002, the inspectors found a lack of clarity with regard to the SCS managers' responsibilities – something that this review also found when trying to establish how the line management structure worked. It was surprising to see that the then Director of Casework only became involved in the case on 31 December 2004. By this stage, the DPP had already been involved in a number of conferences about the case, and its progress was already in terminal decline.

Decision-making in Casework Directorate

9. The lack of structural clarity was exacerbated by the approach which then prevailed in Central Casework (and subsequently Casework Directorate) about where responsibility lay in relation to individual decisions.

10. In July 1997, His Honour Gerald Butler QC was invited to inquire into the handling of three cases relating to alleged assault or deaths which had occurred in police custody, following successful challenges by way of judicial review to the decisions (in each case not to prosecute) taken by Central Casework. He was also asked to consider the process and quality of decision-making in death in custody cases handled by Central Casework. The subsequent report, the *Inquiry into the Crown Prosecution Service Decision-Making in Relation to Deaths in Custody and Related Matters* (the Butler Report) was delivered to the then DPP in February 1998, although it was not published until August 1999.

11. The Inquiry found that one of the three cases had been referred up through the line management chain, thereby passing through such a tortuous chain of decision-making that not even those within the CPS could ultimately agree as to who had taken the decision. It therefore concluded that there was a need for clarity in relation to decision-making, stating that "*The decision-maker must be clearly identifiable and be of appropriate seniority",* and made a recommendation that in every death in custody case the decision-maker: "..*will read and consider the whole of the relevant documentation and prepare a note in a standardised and structured form…..That is the person who has made the decision...".*

12. *The Review of the Crown Prosecution Service* under the chairmanship of the Rt Hon Sir Iain Glidewell (the Glidewell Review), which was presented to Parliament in June 1998, also concluded that the review process in Central Casework was inadequate and cumbersome. Although acknowledging the need to refer important decisions upwards for decision at a high level, the report's authors had the impression that some lawyers did not take decisions even when they were competent to make them. They concluded that, on occasions, reference upwards resulted in the decision-making chain becoming too long to be effective.

13. The recommendations of the Butler Report were accepted by Ministers. Central Casework then issued guidance to staff about the types of case which must be referred to senior lawyers. When HMCPSI conducted an inspection of Central Casework in 1999, it concluded that the guidance given had not simplified the decision-making process; and found that, in the light of the Butler Report, the practice had developed of the senior lawyer endorsing the file or review note that they agreed with the reviewing lawyer's decision. The inspectors considered that the effect was to distance senior staff from the decision-making process, and that the procedure being adopted was susceptible to being viewed as a manifestation of "blame culture". This had arisen from the view that it is not possible for an individual to take a casework decision without having read and personally considered the totality of the relevant documentation. As this will ordinarily be the reviewing lawyer, he or she alone was regarded as being the decision-maker.

14. The effect of this approach seemed to be to preclude the DPP or other senior staff from taking decisions in all but a handful of cases. The DPP at the time was Sir David Calvert-Smith QC (now the Hon Mr Justice Calvert-Smith). He made it clear to us that he would have preferred a different system which would have allowed senior lawyers or the DPP to review cases (and change decisions if necessary) on the basis of a conference and review note. His practice was to encourage decision-makers to discuss cases with him, particularly when difficult legal, evidential or disclosure issues arose. Whilst he could see the reasoning of the Butler Report, it was too rigid. This constraint would apply particularly where there was a large volume of material – which will apply in most fraud cases. This is not a practice that HMCPSI endorsed then, or does now. The report concluded that there was no reason why a decision could not be properly taken on the basis of a briefing note which reviewed the evidence and analysed it, and provided balanced argument on the key issues which the decision-maker must determine.

Indeed, the Butler Report itself had recognised that this situation might arise. Central Casework implemented HMCPSI's recommendation that clear guidance be promulgated, and the Manual still in use at the time the changes in structure referred to in paragraph 32 were made set out levels of decision-making. It also acknowledged that the decision-maker may not have read all of the papers, but rather that what was required was that all the *"relevant evidence"* must be considered. The disadvantages of the approach which had prevailed and to some extent been re-inforced post-Butler became increasingly apparent and were the subject of discussions between the Attorney General and the then DPP in 2002 and early 2003. This reflected the view of the former that the experience of senior lawyers should be brought to bear more effectively on the more difficult and complex cases the Service handled. This practice continued at least until the Attorney General's Written Answer to Parliament in 2003 which we refer to in paragraph 3.14.

15. The decision to prosecute was made in this case at a time when senior lawyers were still simply endorsing the file or review note to the effect they agreed with the reviewing lawyer's decision. Although the final decision to prosecute was not referred upwards to a senior lawyer, an earlier decision in this case had been referred upwards: the team leader had followed the usual practice and endorsed the review note to the effect that he *"noted"* the reviewer's decision.

16. This practice produced a culture where it was thought inappropriate to question or examine a reviewing lawyer's decision. When taken in conjunction with the lack of structural clarity, the inevitable result was an absence of effective oversight of case handling and decision-making. When we interviewed the current DPP in connection with this review, he made it plain that he disagreed with this approach to major cases. This is one of the reasons why he has taken the opportunity provided by the establishment of the Serious and Organised Crime Agency (which itself required a rethink of the CPS approach) to restructure the arrangements in CPS Headquarters, and also introduce the case management panels described in Chapter 12.

Review notes

17. Paragraph 11 above records that the Butler Report recommendation for the introduction of a structured review note in a standard format. Central Casework implemented this recommendation and the reviewing lawyer has since been required to analyse the evidence, review the possible charges, and apply the evidential sufficiency and public interest tests to the facts of the case. This requirement was in existence at the time Mr Wildsmith made the decision to prosecute in this case, but he did not prepare a review note. If he had, it should have helped to ensure that all relevant factors were taken into account, and might have resulted in the selection of different charges.

18. The Casework Directorate Manual (dated June 2001) envisaged that it would be normal practice to pass the review note to the reviewing lawyer's immediate line manager. However, it concluded that ultimately it was a matter for the BCP (and by analogy the SCS manager) as to whether all review notes were seen.

At the time of the inspection of Casework Directorate in 2002, it was found that the majority of review notes were being examined at BCP or SCS level, and suggested that managers might wish to consider if there was room for a more selective, targeted, approach. Whilst this may be the correct approach to follow in the more straightforward cases, the decision to prosecute in a case as significant as this is in our view one that necessitates the involvement of a more senior lawyer. However, the absence of a system requiring consideration of the review note meant that the failure to produce one was not picked up.

Advice from counsel

19. The Casework Directorate Manual made it quite clear that the reviewing lawyer should consider the case and set out his or her preliminary views before counsel was instructed; and that those preliminary views should be sent to counsel. The HMCPSI report on Central Casework in 1999 accepted the principle that, in exceptional circumstances (in order to avoid delay), cases can be sent to counsel for advice without first being considered by a prosecutor. However, it stressed the need, where this occurred, for the prosecutor to consider the evidence in the light of the advice given. We have noted that, in this case, circumstances did necessitate counsel being instructed to advise before Mr Wildsmith had been in a position to consider the case. However, we would have expected counsel's advice to be followed up with structured review notes, setting out the reasons for the decision to charge and on what charges.

The Fraud Investigation Group and the Serious Fraud Office

20. The Fraud Investigation Group (FIG) was set up shortly prior to the establishment of the CPS. It formed part of CPS Headquarters Casework and was based in London. It dealt with large and complicated fraud cases, and employed accountants as well as lawyers.

21. The Serious Fraud Office (SFO) was established by the Criminal Justice Act 1987 and came into being in 1988. It has the powers/duty to both investigate and prosecute serious or complex fraud. The criteria for a case being taken on by the SFO are set out in Annex 9 (these are the current criteria and were in existence in 1997-98).

A Management Review of Fraud Work

22. A Review Team was established in 1993 to look at the handling of fraud cases in the CPS, following concern expressed by the then Attorney General. The resulting report, *A Management Review of Fraud Work,* was published in March 1993. The team found that many cases which should be dealt with by FIG were being handled by the CPS Areas, a theme which recurs in a number of subsequent reviews. The report also noted that the original FIG concept was of a lawyer working as an integral part of a team with the police (and accountants) at the early stages of a major investigation, and the possible conflict that this gave rise to in relation to the Philips principle of separation of investigation and prosecution, with the CPS standing independent of the

police and bringing to bear an objective review of the evidence. As a result, it recommended that the use of the term FIG cease. The Review did not recommend that the specialist handling of fraud work cease, although it did recommend that some work be devolved to the Areas, to be dealt with by Special Casework Lawyer Units, with Headquarters Casework being developed as a centre of excellence.

23. The review also found that Grade 6 lawyers were managing teams of three lawyers and had high personal caseloads, which meant they had comparatively little time to devote to supervision or to the holding of formal team meetings, technical meetings or case wash-ups. The review recommended reduced caseloads for Grade 6 lawyers, regular team meetings to assess the progress of cases being dealt with by the team, followed by further regular meetings of the Grade 6s with the Heads of Division. The recommendation also envisaged that there should be regular meetings with the Director (Casework) to *"ensure effective management of cases which include some of the Service's highest profile cases".*

24. In early 1994 consideration was given to merging the Fraud Division of Headquarters Casework with the SFO, which led to a *Review of the Handling of Serious Fraud*. The merger did not take place but a further study in November 1994 set out revised criteria for the referral of fraud cases to Headquarters Casework.

The Glidewell Review

25. The Glidewell Review recommended the re-establishment of small groups of special casework lawyers, based in five or six places across the country but being directly accountable to Headquarters, under a Head of Special Casework. It also recommended that all the fraud work which was then split between Central Casework and Special Casework Lawyers in the Areas should be merged and handled by one or other unit, that is, either Central Casework or Special Casework.

26. This recommendation was not adopted and no groups of Special Casework Lawyers were established. Instead, the situation remained one where some cases fitting the criteria for referral were dealt with by Central Casework, and others were dealt with in the Areas. To exacerbate the situation, as explained earlier, Central Casework was re-structured in 1997 in a way that removed any fraud specialism. This was a move away from the recommendation of the 1993 Review Team, which envisaged regular meetings at a high level to ensure effective management of such cases.

27. Although fraud was not handled as a specialism in Casework Directorate during the handling of the Jubilee Line case, three of the four reviewing lawyers had significant fraud experience. Indeed, they had all worked in FIG, and were working there when the 1993 *Management Review of Fraud Work* was being undertaken.

HMCPSI's inspection of Casework Directorate in 2002

28. When HMCPSI inspected Casework Directorate in 2002 they found that CPS London was regularly retaining cases that should have been referred to Casework Directorate, and that the Fraud Squad of the Metropolitan Police was sending virtually all of its cases there. This was a similar situation to the one an internal CPS group had found in 1999, and for the same reasons: namely, a perception by the police that Casework Directorate did not possess a broad enough skills base or sufficient resources to deal adequately with large scale and complex fraud. The inspection also found examples of cases which would have benefited from debriefings or conferences, to extract lessons to be learned.

29. The inspectors' conclusions were that they doubted that Casework Directorate as it was then resourced and staffed would be able to handle a new fraud to the standard they had once attained routinely. It noted that fraud cases required a distinctive approach and a greater degree of lawyer and caseworker input. It therefore recommended that it should consider its role in fraud cases to determine whether its involvement should continue and, if so, review the existing criteria for referral.

30. The inspectors also found that the role of the in-house accountant had been changed from that of an investigator to that of an assistant in the prosecution and presentation of cases. This was still the situation when the Jubilee Line case was being dealt with, although limited use was made of any accountancy skills in the later stages of its handling. Shortly after the start of this review, the last accountant retired.

The Fraud Working Group

31. The CPS set up a Fraud Working Group to consider the role of Casework Directorate in the handling of fraud cases in direct response to the Inspectorate's recommendation. Like many of the earlier reviews, the Group confirmed the existence of a tranche of fraud cases that do not qualify for acceptance by SFO, but nonetheless require specialist skills and a particular discipline which make them difficult to deal with when set against other casework priorities. Such cases also need a different approach to that which could be given by the standard CPS unit. The Group concluded that the criteria for handling fraud cases should be applied without exception throughout the CPS, so that all cases captured by the criteria would be referred to Casework Directorate. They were not concluding that all such cases should be handled by Casework Directorate; rather, that referral would be the trigger for consideration where the case would best be handled, thus providing flexibility for some Areas to retain large fraud cases.

The Review of Serious, Sensitive and Complex Cases

32. In the event, the Group's work was overtaken by other events, and its report was never formally published. As it was being finalised, Casework Directorate was considering its future direction in terms of the types of work it should be handling. The *Review of Serious, Sensitive and Complex Cases* was finalised

in February 2005. Its conclusion was that there should be three new Central Casework Divisions, to be known as Organised Crime Division, Counter-Terrorism Division and Special Crime Division. As part of the re-organisation, it was decided that serious fraud should go exclusively to CPS London, together with the "appropriate resources". We understand and accept that the changes in structure, were made as part of the determination of the current DPP and Chief Executive to re-organise the service to ensure clear accountability and supervision of serious cases by senior managers.

The Fraud Prosecution Service

33. CPS London is in the process of setting up a unit which will deal with all fraud work that should currently be handled by Casework Directorate (regardless of its geographical origin) and all of London's fraud work. The current criteria for the referral of fraud to Casework Directorate is at Annex 10. At the time of the review this process was at its early stages and a formal date for its inception had not been set. During the preparation of the report, the initial transfer of staff from Casework Directorate took place and there is now a firm commitment to additional funding for the unit, although the level has not yet been determined. Much work has still to be done in terms of planning, and consultants were being engaged to assist in the unit's development. A careful assessment of the requirements of the unit is required, including the numbers of lawyers and accountants required, and the numbers of cases involved.

34. As the unit is still at its early stages in terms of planning, it has not yet determined exactly how mangers will supervise the handling of cases in order to ensure quality of decision-making and proper progress of cases through the courts. However, most of the work handled by the unit will be captured by the Case Management Panels recently set up by the DPP, either at national level or under the local scheme (how these will operate is described in Chapter 12). In addition, we understand that the intention is that the new unit will be structured in a way that incorporates the systems and assurances in relation to case management and the quality of decision-making that the three new Central Casework Divisions have put in place.

EXAMPLE F&C REPORT AND SUPPORTING C4

EXHIBIT No. 59 LUL/76(2) 346

Financial and Contractual Report No 89 Period 10, 1996/97

Contract No:	204 Communications	GPT - JLE		
Contractor:	GPT Ltd			
Type:			CCT	£59,799,487
Divisional Manager:	I Jones			
Section Manager:	A Harwood			
Contract Support:	P Brady			
Date of commencement:	05 Dec 93	Original completion date	04 Oct 97	
Time for completion:	4 years 4 weeks	Revised completion date	27 Dec 97	
E.O.T granted to date:	12 Weeks			

1. C4's Endorsed

				£
29 Mar 94	M1094	Ommission of Provision of Progress Photographs from Major Civil and E&M Works	VO/0002	-81,000.00
Mar 94	M1102	Option 21 : Non adoption : CCTV 16		NIL
May 94	M1153	Option 64: Non adoption - Fault tolerant simulator		NIL
29 Apr 94	M1154	Option 63: Deletion of surfacing & drainage SMD	VO/0003	-9,000.00
14 Jun 94	M1188	Non-adoption Option 62		NIL
10 Jan 95	M1214	Non-adoption of CCTV Options		NIL
22 Feb 95	M1218	Adoption of SIMS Options at Stratford Options 51 & 54	VO/0027	443,726.00
12 Jan 95	M1226	Exercise Radio Option 4	VO/0028	9,584.00
07 Apr 95	M1237	Non-adoption of VID Options 1,2 & 3		NIL
22 May 95	M1251	Adoption of Option 33: TT at St. John's Wood	VO/0026	359,580.00
05 Sep 95	M1260	To Lapse Telephone Option 13		NIL
03 Oct 95	M1264	Lapse Option 25		NIL
24 Sep 96	S1320	3rd escalator interface equipment - BER (ECP 0024)	VO/0053	NIL
22 Sep 93	S1325	Second simulator console at the SCC (ECP 0001)	VO/0004	43,300.92
10 Feb 94	S1537	Perimeter security arrangement (ECP 0013)	VO/0012	9,056.44
19 Sep 95	S1540	Signal post telephone (ECP 0012)	VO/0014	-3,905.09
Mar 94	S1573	Additional stairs between D&C & 94m level (ECP 0027)	VO/0061	9,310.87
Apr 95	S1626	Change of cab CCTV monitor	VO/0009	NIL
Mar 95	S1681	CCTV Camera Lenses - Change of requirement	VO/0008	NIL
27 Jan 95	S1693	Provisional Sum: $/£ exchange rate adjustment	VO/0001	262,529.00
01 Jun 94	S1755	WEH Ticket Hall Mezzanine fan room(ECP 0067)	VO/0065	4,605.06
15 Oct 96	S1845	Westbound Smoke Hood Suspended Screen (ECP 0059)	VO/0063	13,503.67
13 Jul 94	S1851	Provision of 5th escape staircase BER (ECP 0056)	VO/0062	7,187.98
07 Nov 95	S1886	Provision of line reporting centre (ECP 0075)	VO/0023	-2,092.00
25 Aug 94	S1990	Combined clocks and vids. (ECP 0032)	VO/0005	22,191.76
18 Oct 96	S2015	Reallocation of space for extra ESRII to house UPS units	VO/0064	10,363.88
21 Jul 95	S2026	Control of certain ATO functions fm SIMS (ECP 0047)	VO/0007	13,756.01
10 Oct 95	S2043	Provision of an Administration Workstation at the SCC (ECP 0044)	VO/0006	16,982.42
07 Nov 95	S2061	BTPIR CCTV Control System (ECP 0052)	VO/0024	18,812.30
26 Oct 95	S2106	WAT: Revised location of SOR (ECP 0091)	VO/0017	275,309.99
24 Nov 94	S2206	Provision of alternative line control function (ECP 0154)	VO/0015	4,195.96
Jul 95	S2211	ATO information files via SIMS to SIMS (ECP 0018)	VO/0010	11,572.13

C4's Endorsed (Cont'd)				£
05 Aug 96	S2320	Expenditure of P. Sum: SCADA SPARCS Substitute (ECP 0015)	VO/0030	300,111.38
13 Feb 95	S2403	Implementation of an Ergonomic Study for Stratford Market Depot Control Tower	VO/0016	577.50
09 Mar 95	S2501	Additional stair to Waterloo East Link (ECP 0021)	VO/0018	8,961.40
24 Sep 96	S2502	Additional Communications Equipment LOB (ECP 0022)	VO/0052	NIL
21 Mar 95	S2540	Monitoring of Staff Protection Switches from SIMS (ECP 0046/76)	VO/0011	6,476.41
06 Feb 96	S2620	Reallocation of VID's on the JLE Stations (ECP0173)	VO/0020	NIL
15 Aug 95	S2621	Layout Modifications resulting from Civil/Arch revisions at WEH & BER Stations (ECP0038/39/53/54)	VO/0013	1,155.00
24 Sep 96	S2660	Additional escalator at WAT (ECP0026)	VO/0054	NIL
02 May 95	S2661	Intermediate level & concourse ticketing area co-ordination	VO/0058	3,684.60
06 Sep 96	S2668	Escalator arrangement at SOU (ECP0023)	VO/0057	12,472.50
Sep 96	S2669	Escalator quantities at CRW (ECP0066)	VO/0055	NIL
May 95	S2693	PABX: Redesign at SMD (ECP0109)	VO/0022	3,075.00
Feb 96	S2733	Bi-directional RF amps for upgrade (ECP0011)	VO/0029	10,708.72
30 Sep 96	S2761	Installation of fixings for platforms to train CCTV system(ECP0164)	VO/0059	78,000.00
30 May 95	S2768	Revised platform length at WEH (ECP0025)	VO/0060	2,292.30
20 Aug 96	S2812	Wardens Grove Shafts - Provision of additional space for C203 equipment.	VO/0051	NIL
20 Aug 96	S2861	Traction Station Opening at NOG	VO/0050	NIL
10 Oct 95	S2916	Changes to PHP Locations	VO/0021	1,443.75
17 Jul 95	S2938	Delaying GMT/BST Change (ECP 0043)	VO/0019	6,435.00
26 Jul 95	S2971	Provide facility to transfer all Radio calls at the SCC	VO/0037	9,099.50
23 Oct 95	S3235	Provision of Clock Housing Ref. Design	VO/0034	35,672.00
17 Nov 95	S3243	Deletion of Gazetteer Function	VO/0025	-5,987.25
08 Nov 95	S3283	VID Housing modifications.	VO/0042	28,264.35
24 Sep 96	S3433	Provision of 3rd VDU for Longacre Console	VO/0031	10,373.56
Apr 96	S3751	Floor Fixtures and Fittings at the NSCC	VO/0036	8,233.00
un 96	S4035	Provision of MCB for distribution boards on upgrade stations.	VO/0048	5,906.64
				£1,966,526.66

2. C4's Principle Accepted				£
09 Jan 96	L1654	Claim :Late information from JLE (£337k). (ECP 0080)		198,000
23 Aug 96	L1881	SIMS/CIMS/SCADA/Software Interfaces		1,900,000
05 Jul 96	L2175	Line Upgrade Works Delays		18,900
28 Jan 94	M1101	Option 65 : VID 9		NIL
07 Jun 94	S1725	Provision additional UTS requirement (ECP 0029)	EI/0007	26,270
06 Sep 94	S1779	GRP - E&M Services to Arlington escape shaft and passenger interchange	EI/0010	293,000
08 Nov 94	S2035	Blue Ball Yard: Provision of security system (ECP 0097)	EI/0022	18,000
25 Oct 94	S2068	Provision of a serial interface between C207 & C204 (ECP 0007)	EI/0017	-9,391

. C4's Principle Accepted (Cont'd)				£
13 Jan 95	S2069	DLR Canning Town C204 Interfaces (ECP 0074)	EI/0015	112,800
09 Feb 95	S2307	Audio link between POMS and SIMS (ECP 0159)	EI/0028	35,000
15 Mar 95	S2396	Increase scope of control system for tunnel ventilation		270,553
27 Apr 95	S2618	Campus Radio at Stratford Market Depot (ECP 0107)	EI/0033	50,700
04 May 95	S2672	Power Supply to CCTV Cameras at SMD (ECP0180)	EI/0046	21,000
22 Jan 96	S2809	Cabling between C213 & C204 (ECP 0006)	VO/0035	50,000
15 Aug 95	S2822	LOB Station: Revised Gateline - Main Ticket Hall	EI/0062	12,490
27 Jul 95	S2913	Provision of a Contractor's Interface SCADA Monitoring and PA Announcements for the PED's	EI/0057	68,000
17 Jul 95	S2937	Provision of Interface Between C204/212	EI/0058	25,000
18 Aug 95	S2956	Stratford Station/Stratford Western.Concourse Interface	EI/0065	10,000
25 Aug 95	S2972	Provision of cabling between OFB and the C213 remote terminals	EI/0066	50,000
4 Jul 95	S2994	Provision of Hardwired Control Inhibit Circuit for Power System RTU's	EI/0053	43,242
01 Sep 95	S2996	Platform to Train CCTV Signals	VO/0069	NIL
22 Jan 96	S3062	Control of Switchable Signage from SIMS	EI/0060	575,500
18 Aug 95	S3068	NSCC CCTV Interface to New Security System	EI/0068	6,000
10 Oct 95	S3140	Removal of Anouncement from PHP	EI/0070	NIL
26 Sep 95	S3143	Change to control provisions for upgrade new 11kv equipment		20,000
27 Sep 95	S3155	Creation of ESR II Room - CRW		20,000
04 Oct 95	S3174	VID Power supply voltage.	EI/0075	5,000
21 Nov 95	S3331	Three Castles House Vent Shaft ECP 196	VO/0032	25,900
02 Sep 96	S3334	Deferred transfer of control from Baker Street to Neasden		93,142
30 Nov 95	S3361	Additional Upgrade Minor Works		20,000
13 May 96	S3391	Addnl work & changes to C204 required by Railtrack.	EI/0072	544,000
15 Apr 96	S3450	Programme reduction of SIMS/CIMS/SCADA		2,320,373
04 Jan 96	S3465	Mounting brackets for single sided station entrance VID	VO/0040	21,100
5 Feb 96	S3466	Drop down brackets for platform to train CCTV cameras	VO/0033	NIL
5 Jan 96	S3488	Changes arising from HMRI/LFCDA Requirements		27,000
Jan 96	S3525	CCTV Campus System at NSCC	VO/0038	24,000
13 Feb 96	S3583	Provision of RT equipment interface rooms.		6,000
13 May 96	S3585	Tertiary route provision for C204 equipment.	VO/0039	231,000
10 Jun 96	S3626	E&M Services for the Bus Station at CAT.		66,800
12 Mar 96	S3678	OPO System for WES & CDW	VO/0041	27,000
23 Apr 96	S3801	Out of tolerance tunnel telephone brackets.		26,000
23 Apr 96	S3802	Relocation of E&M Plant - Arches 282 & 283 at WAT		5,000
30 Sep 96	S3878	Provision of a 240V Mains Supply for Clocks and Cameras on Upgrade		85,000
25 Jun 96	S3881	Temp. telephones at the SCC.		11,000
14 May 96	S3882	BHS Ticket Hall: Changes to E&M provisions.		5,216
28 Aug 96	S4217	Additional Telephones required at the NSCC		4,600
18 Oct 96	S4273	Rasti Recalculations		-74,000
14 Oct 96	S4406	POM Audio Interface with SOR		56,500
9 Nov 96	S4461	Omission of Provisional Sum for RASTI Performance		NIL

C4's Principle Accepted (Cont'd)			£
11 Nov 96	S4533	Additional Telephones in Ticket Offices	22.000
			£7.367.695

Estimated Current Contract Price £69.133.709

3. C4's Under Review			£
02 May 95	L1993 *	Re-sequencing of production of installation drawings resulting from failure to issue CSD's to the EPP timescale	TBA
10 Jul 95	L2105 *	SSDS development and changes	TBA
10 Jul 95	L2106 *	Tunnel telephone delays	TBA
10 Jul 95	L2107 *	MBP Additional Interface	TBA
10 Jul 95	L2110 *	PA Fire Zoning	TBA
Aug 95	L2176 *	Seperation of SIMS & CIMS TX W/STAT.	TBA
Aug 95	L2177 *	SOR/SCC Touchscreen Telephones	TBA
Oct 95	L2230 *	RTU Wetting current.	TBA
15 Jun 95	S2814	Modifications to Entrance Structures for LBG planning	15,000
15 Jun 95	S2818	To provide single track access at CTP.	5,000
15 Aug 95	S3044	Jubilee Line Station reduced risk replanning	7,500
02 Oct 95	S3166	Additional works arising from 10' Cable Route Design	8,000
23 Jan 96	S3515	Platform to Train CCTV Testing	101,000
14 Feb 96	S3584	Provision of a self contained Intercom system.	-3,829
29 Feb 96	S3646	SSDS for CRW	55,000
03 May 96	S3866	Provision of UPS room for RT area.	20,000
12 Jun 96	S3973	Revised Cable Adit/Shaft Layout from Redcross Way Traction Power Sub-Station	22,000
12 Jun 96	S3976	Security of Doors in the TSS and DSS	20,000
03 Jul 96	S4034	Track Power Relay Design Change	15,000
08 Jul 96	S4070	Formation of ESR II Switchroom at CAT.	25,000
Jul 96	S4081	Modifications at the base of PRS (ECP 192)	2,600
Jul 96	S4082	Relocation of CER II at St Johns' Wood (SJW) (ECP 193)	3,800
Jul 96	S4083	Provision of BTP & LFCDA at CAT (ECP 245)	25,000
04 Sep 96	S4274	Communications System Reference System	1,900,000
03 Oct 96	S4373	SCADA Revisions	158,000
10 Oct 96	S4398	High level PAV Duct/Ceiling Coordination at NOG	5,000
18 Oct 96	S4423	Reloc essential E&M rms - Blueball Yard	50,000
18 Oct 96	S4424	East Vent Adit: Revised design	15,000
18 Oct 96	S4425	Amendment to Project programme	466,000
18 Oct 96	S4426	Relocation of fan control room from Ticket Hall to platform level. LOB	11,000
15 Nov 96	S4538	NOG: Interface with Transport Interchange	25,000
19 Nov 96	S4568	Additional Traction Gaps and RGI's on existing JL	30,000

C4's Under Review (Cont'd)			£
19 Nov 96	S4569	Supply of Additional VID Brackets at STR & WEH	21,000
19 Nov 96	S4570	Additional Requirements to Camera Poles @ STR	5,000
21 Nov 96	S4586	Public Area Speakers - Redistribution & Platform Level	12,000
05 Dec 96	S4661	Lighting at CAT	20,000
19 Dec 96	S4700	Additional Access Control to Staff Accommodation	20,000
			£3,059,071

4. PRP's Raised			£
07 Dec 94	11629	STR : Platform canopy extension.	60,000
10 Jul 95	11840	Secondary & Tertiary cable trunking/tray in non-public areas	50,000
25 Jul 95	11862	Alaska St. traction sub-station and vent shaft - changes resulting from design development.	14,350
' Sep 95	11897	STR Western Concourse E&M Services	60,000
' Nov 95	11969	* Client changes to reflect LUL Concourse ownership	110,000
02 Feb 96	12025	Additional Ticket Machines at Stratford Western Concourse	25,000
05 Feb 96	12031	Tracklaying from CDW to CRW	20,000
13 Feb 96	12044	Deletion of underpass fitting out at NOG.	-8,000
16 Feb 96	12049	Illuminated Exit Signs	57,500
04 Mar 96	12056	* Design changes resulting from Railtrack lease agreement	35,050
11 Apr 96	12102	Proposed Design Changes to Existing Line Control Provisions	36,000
18 Jun 96	12147	Pump Installation within Railtrack Lift Shaft No.1 at LOB	5,000
26 Jun 96	12154	* Provide Early Access to Test Track	105,000
04 Jul 96	12160	Track related installation programme	20,000
09 Jul 96	12163	PED and Public Address Interface	20,000
01 Aug 96	12175	System wide out of tolerance roll tunnel brackets	130,000
05 Aug 96	12180	Revision to Communication System Design at SOU	20,000
27 Aug 96	12199	* Installation of Cable Brackets and Fixings	22,540
19 Sep 96	12213	Sewage Disposal Equipment for Cable Basement Toilet @ CDW	15,000
25 Sep 96	12218	Provision of Sanitary facililities for Designated Contractors	NIL
Sep 96	12222	Revised Lighting Design in the Area of Passenger Interchange	2,500
03 Oct 96	12226	JLEP Spares Provision	3,550,000
10 Oct 96	12233	Delays on completion of Ring 15 to Period Ending 25 May 1996	NIL
17 Oct 96	12238	Provision of Additional Passenger Help Points	32,737
22 Oct 96	12241	Modification to facilitate installation of comfort cooling units for CER2	2,000
28 Oct 96	12242	Option 3: Prioritisation of the Extension of Works	1,000,000
01 Nov 96	12246	Contingency Design & Planning at Westminster	TBA
04 Nov 96	12248	New SER dimensions - extension	NIL
04 Nov 96	12249	* Proposal for enhance security of defined areas	NIL
06 Nov 96	12251	MTH Gateline Accommodation at LOB	4,000
22 Nov 96	12263	NOG Retail Facilities	5,000
29 Nov 96	12271	Wall termination racks.	NIL
11 Dec 96	12278	Proposal to change present description of "Track Power Relay" to "Current On-Line Relay"	NIL
			£5,393,677

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Potential Changes			£
02 Jul 93	MKR0089	Provisional Sum - Exchange Rate	0
02 Jul 93	MKR0091	Provisional Sum - SCADA	0
11 Jul 96	PJB0043	Secondary Comms Link UTS ECP 29.	95,605
11 Jul 96	PJB0045	CCTV Housing ECP 160	100,000
11 Jul 96	PJB0046	PED Interface (210) ECP 36	96,000
11 Jul 96	PJB0047	Floodgate Interface (C213) ECP 37	5,000
11 Jul 96	PJB0048	Depot Radio Equipment ECP 107	45,000
11 Jul 96	PJB0049	Audio Links for POMS to SIMS	45,000
11 Jul 96	PJB0050	Software mods for local control inhibit ECP 171	71,758
11 Jul 96	PJB0051	Additional costs for Railtrack ECP 73	56,000
11 Jul 96	PJB0052	London Bridge - Spatial Redesign	30,000
11 Jul 96	PJB0053	Additional costs for DLR ECP 74	37,000
09 Aug 96	PJB0056	Site Based Instructions.	117,000
Aug 96	PJB0057	Reference Design for Column Loudspeakers	126,071
Aug 96	PJB0060	Earthing of CER Equipment	2,000
Aug 96	PJB0061	Cutting back brick piers	1,500
09 Aug 96	PJB0062	additional clock at NOG Ticket Office	NIL
02 Oct 96	PJB0063	Integration of existing equipment at WAT.	200,000
04 Oct 96	PJB0064	Additional Site Surveys ECP 210	25,000
04 Oct 96	PJB0065	SSDS ECP 123 & 158	45,000
04 Oct 96	PJB0067	Flush mounted Conduits at CAT	10,000
04 Oct 96	PJB0068	Delays to POMS to SIMS ECP 159	58,000
31 Oct 96	PJB0069	Amendments to HWU/TWU	48,000
27 Nov 96	PJB0070	Review in Flood Protection.	75,600
18 Dec 96	PJB0071	DLR Fit Out	30,000
18 Dec 96	PJB0072	NOG Station SVS Cable Basement	10,000
			£1,329,534

Estimated Final Contract Price	£78,915,991

Certified Payments	£
Gross Total Certified to Report Date	48,021,703
Retention	3,731,744
Total Net Certified to Report Date	44,289,959
Previous Total Net Certified	43,437,518
Net Amount Certified this Period	852,441

7. Remarks

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London Underground Limited
Jubilee Line Extension Project

CONTRACT COST
CHANGE CONTROL (C4)

CONSTRUCTION S 12/1016
PRP 11510. 18/10 1994

Contract No.: 204 Contractor: GPT

Contract Title: COMMUNICATIONS Estimated Cost £ 310,000 250,000 1/11

Proposal: REVISED LOCATION OF STATION OPERATIONS ROOM AT WATERLOO STATION.

Recoverable Costs: Yes / No

Raised by:	Endorsed by:			Principle Accepted:
TIM ONEILL 27/10/94 C.M.	budget check 28/10 P.M.C.	1/11/94 P.C.M.	1/11/94 P.F.M.	PP #0 1/11/94 16/11/94 P.D./P.C.C.

ENGINEER'S INSTRUCTION AGREED THAT SLE TO PAY 1/11/94

E.I. Ref.: EI/204-0018 Issued C.M. T. C. CHEW PROJECT E & M MANAGER 25/11/94

VALUATION OF VARIATION

Pricing information attached comprising: Contract Change Approval Certificate, Cost Assesment and Valuation

Cost £ 275,309.99

Indicate any ~~significant~~ programme or other contractual effects:

None

Recommended: C.M. 4/9/95

Commercial Aspects Checked: P.C.M. 18/9/95

Recommended by:			Endorsed:
DP P.M.C.	20/9/95 P.C.M.	26/9/95 P.F.M.	24/9/95 26/9/95 P.D./P.C.C.

Issued Variation Ref.: VO/204-0017 C.M. ../.. 19..

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ANNEX 9

SERIOUS FRAUD OFFICE - CRITERIA FOR ACCEPTANCE OF CASES

The key criterion for the SFO to take on a case is that the suspected fraud was such that the direction of the investigation should be in the hands of those who will be responsible for the prosecution.

The factors that would need to be taken into account include:

a. The sum at risk is estimated to be at least £1million. (This is simply an objective and recognisable mark of seriousness and likely public concern, rather than the main indicator of suitability.)

b. The case is likely to give rise to national publicity and widespread public concern. Such cases include those involving government departments, public bodies, the governments of other countries and commercial cases of public interest.

c. The investigation requires a highly specialist knowledge of, for example, financial markets and their practices.

d. The case has a significant international dimension.

e. There is a need for legal, accountancy and investigative skills to be brought together as a combined operation.

f. The suspected fraud appears to be complex and one in which the use of section two powers (Criminal Justice Act 1987) might be appropriate.

ANNEX 10

CASEWORK DIRECTORATE - CRITERIA FOR REFERRAL OF FRAUD CASES

i. AMOUNT LOST OR AT RISK

While the amount lost or at risk is not itself sufficient to determine that the Casework Directorate should assume responsibility for the case, it is an objective and recognisable signpost of the seriousness and likely public concern attaching to the case.

Any fraud involving over £750,000 should be referred to the Casework Directorate so as to provide an opportunity of considering whether a more detailed referral is required. It will be necessary to consider whether the need arises to provide resources which may not be available to the Area.

ii. NATIONAL PUBLICITY AND WIDESPREAD PUBLIC CONCERN

Cases in this category include:

a) difficult corruption cases, especially those concerning public bodies;

b) any case where submission to the Casework Directorate is necessary to maintain public confidence in the impartiality of the reviewer;

c) substantial and significant frauds on government departments;

d) frauds on the governments of other countries;

e) cases in which, because of widespread public concern, the Casework Directorate may be expected to perform a co-ordinating or standard setting role.

iii. LIQUIDATORS AND ADMINISTRATIVE RECEIVERS

Cases arising from reports by:

a) liquidators relating to delinquent officers and members of a company pursuant to section 128 (4) Insolvency Act 1986; and

b) administrative receivers.

iv. HIGHLY SPECIALISED KNOWLEDGE

Difficult cases requiring highly specialised knowledge. For example, cases involving knowledge of:

a) Stock Exchange practices;

b) regulatory bodies (DTI, Financial Services Authority, Security Investment Board and its subsidiary bodies);

c) currency offences;

d) shipping law;

e) fine art;

f) offences under the Computer Misuse Act 1990;

g) onshore and offshore trusts.

This is a list of examples and is not exhaustive. Areas should be aware that other fields of experience within the Casework Directorate may be of assistance. In particular, the need for consultation with the Casework Directorate's accountants (to assist either with decision-making or with presentation) is a strong indicator that referral to the Casework Directorate may be appropriate.

v. INTERNATIONAL ENQUIRIES

Cases should be referred to the Casework Directorate where:

a) the requirement of international enquiries involves difficult points of protocol or jurisdiction; or

b) the involvement of several countries requires a degree of authoritative co-ordination; or

c) there is a need for liaison with a foreign state and/or involvement with the Foreign and Commonwealth Office.

HM Crown Prosecution Service Inspectorate
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