

**CRIMINAL JUSTICE & ENFORCEMENT STANDARDS
ASSURANCE BRANCH**

**Control of Investigation Documents & Processes in the
States of Jersey Customs and Immigration Service**

**Dave Nicklin, Tony Higginbotham, Cheryl Burge.
Criminal Justice & Enforcements Standards, Assurance Branch**

**Gareth Neaves
Criminal Justice & Enforcements Standards, Standards Branch**

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NOTE: Shaded sections have been obscured as they contain references to confidential operational activities and sources of intelligence and are exempt from disclosure under paragraph 3.2.1(a)(vi) of the States of Jersey Code of Practice on Public Access to Official Information.

M.J. Robinson, Head of Jersey Customs and Immigration

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DOCUMENT INFORMATION

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<i>Produced By</i>	Dave Nicklin, Tony Higginbotham, Cheryl Burge & Gareth Neaves		
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2. EXECUTIVE SUMMARY

System or Process	This report examines the investigation documentation, processes and methodologies adopted by SJCIS and tests their compliance with legislation, policy and instructions.
Findings	<p>Strengths</p> <ul style="list-style-type: none"> • SJCIS has a fully engaged senior management team who oversee all aspects of investigation activity within the organisation. • Investigation instructions are clear and SJCIS staff understand and comply with published operating procedures. • There is an effective training programme in place which offers accreditation where appropriate. • SJCIS is held in high regard by the States of Jersey prosecuting authority who have commended the quality of case papers and the diligence of the case referral process. <p>Weaknesses</p> <ul style="list-style-type: none"> • The organisation requires a high-level investigation strategy document to define and clarify the key roles, responsibilities and priorities of SJCIS. • Audit trails are fragmented due to a lack of documented decisions made in relation to case adoption and progression. • The control of sensitive surveillance equipment and non-cash valuables e.g. credit cards needs to be more robust.
Recommendations	Recommendations have been made to improve the control weaknesses identified above. These include the adoption of investigation Case Decision Logs and designation of a Property Officer. In addition, recommendations have been made to improve the recording of Management Assurance checks and review Security Vetting arrangements.
<u>Conclusion</u>	<p>No serious control weaknesses have been identified and the review team is content with the majority of processes and procedures currently in place. However, a number of gaps are evident and the implementation of the above recommendations will help to improve an already impressively run business. There is currently a low risk of exposure to the organization in relation to the control of Investigation documents and processes.</p>

3. BACKGROUND

SJCIS commissioned HMRC Criminal Justice & Enforcement Standards to conduct a review of their criminal investigations procedures in order to gain independent assurance that documentation, processes and methodology were being applied in accordance with legislation and standing instructions.

The review team visited Jersey between 10th and 14th December 2007 and interviewed staff at all levels within the organisation. We are grateful for the warm welcome we received and the open and honest views expressed by those involved. We were particularly impressed by the obvious commitment and dedication of key individuals within SJCIS and the excellent working relationship with the Law Officer's Department.

TERMS OF REFERENCE

System

The review team will carry out an independent risk based assurance of the Control of Investigation Processes in SJCIS.

Assurance Objective

To conduct an independent review of SJCIS to ensure investigation documents, processes and methodology are applied in accordance legislation and standing instructions. The review will focus upon:

- Standing instructions and standard operating procedures
- Investigation case adoption criteria and case continuance arrangements
- Case team structure and responsibilities
- Decision making processes and policy books
- Risk assessments and operational security
- Preparation of investigation case files for the Law Officers' Department
- The control and security of sensitive intelligence (CHIS and RIPA Part 1 material)
- Training and accreditation
- Internal management assurance processes

Control Objectives

The system should have controls in place to ensure achievement of the following objectives:

1. To ensure that legislation, instructions and guidance in relation to the issue and use of investigation documents, processes and methodology are available, used and enforced.
2. To ensure that accurate and complete records relating to the issue and movement of official documents are maintained; and that official documents and processes are controlled in accordance with standing instruction, and that this is consistent throughout SJCIS.
3. To ensure staff are properly trained, or in a program for training, to carry out their responsibilities in relation to the issue and control of official documents and the application of investigation processes and methodology.

Review Scope

We will be auditing against risk, specifically:

1. Legislation, instructions and guidance in respect of official documents, processes and methodology are unavailable to members of SJCIS. If available, the material is not being adhered to.
2. An ongoing risk that official documentation, processes and related methodology are not being used and controlled effectively or consistently across SJCIS.
3. Staff are inadequately trained to carry out responsibilities in relation to the use of official documents, processes and methodology. Training is not provided at the right time or when provided is incomplete or inconsistent.

5. RECOMMENDATIONS and SUGGESTIONS

Ref	Page	Recommendation
R1	8	We recommend SJCIS produce a formal investigation strategy document detailing the roles, responsibilities and priorities of the organisation
R2	9	We recommend that SJCIS adopt a Case Decision Log similar to that used by HMRC
R3	10	We recommend that sensitive equipment is stored in a secure area and access is restricted. A movement log should be adopted similar to that used by HMRC
R4	10	We recommend a designated property officer be appointed to control and monitor access to evidence
R5	10	We recommend that access to non-cash valuables such as credit cards and passports be afforded the same level of security as cash
R6	11	We recommend that SJCIS adopt a formal management assurance programme similar to the EMAF process used by HMRC
R7	12	We recommend a review of Security Vetting is undertaken and individual circumstances are monitored on a regular (annual) basis
Ref	Page	Suggestion
S1	8	We suggest SJCIS consider adopting an Operational Checklist similar to that used by HMRC
S2	9	We suggest that SJCIS consider adopting an investigation Daybook similar to that used by HMRC
S3	10	We suggest SJCIS adopt a formal certification process to confirm the completion of pre-trial checks on investigation cases
S4	11	We suggest the control of sensitive intelligence (including CHIS) is subject to independent review by CJES during 2008-09
S5	A	We suggest SJCIS adopt a new set of forms similar to those currently used by HMRC
S6	A	We suggest SJCIS adopt a system of DS authority sign-off by surveillance staff similar to that used by HMRC
S7	A	We suggest that SJCIS seek written permission from property owners in relation to requests for covert access or assistance

6. MAIN FINDINGS

The team concentrated on the 9 assurance objectives stated in the Terms of Reference as follows:

1. Standing instructions and standard operating procedures

Investigation staff have full access to a comprehensive set of instructions dealing with all key aspects of their work. The HMRC Enforcement Handbook instruction manual is also made available to provide further guidance as required. Responsibility for maintenance of SJCIS investigation instructions is currently shared within the team and an informal process exists for staff to raise issues or concerns. However, to improve controls in this area a new post has recently been created to take overall charge of this activity and ensure instructions and documents are regularly reviewed and updated.

2. Investigation case adoption criteria and case continuance arrangements

Investigation cases are selected by the team following an assessment of the seriousness of the offence under consideration and the evidence and-or intelligence available. Regular casework meetings are held between Investigation and Intelligence managers to critically evaluate progress and the prospects for a successful prosecution. However, it is difficult to provide satisfactory assurance of this process as there are no published criteria detailing SJCIS investigation priorities and decisions made on case adoption and continuance are not always fully documented.

R1: We recommend SJCIS produce a formal investigation strategy document detailing the roles, responsibilities and priorities of the organisation

Adopted cases are managed using the electronic 'CLUE' database which provides a formal record of case progress. This system is supported by an electronic schedule of events and actions maintained by the investigation team. However, SJCIS do not currently use a checklist of important tasks similar to the Operational Checklist used in HMRC. Such checklists act as a reminder to staff of key case requirements and help to assure the quality of an investigation case by providing evidence that all aspects have been fully considered.

S1: We suggest SJCIS consider adopting an Operational Checklist similar to that used by HMRC

3. Case team structure and responsibilities

The investigation arm of SJCIS is split into two teams dealing with target operations and referred casework. Each team is made up of a small number

of trained investigators who support each other as necessary. Communication both up and down the management chain is viewed as strong. It is an aim of the organisation for all staff to be capable of supporting investigation activity and this enables prompt assistance to be deployed as necessary.

4. Decision making processes and policy books

SJCIS recognise that there is an emerging need to ensure the reasons for important case decisions are fully documented. This is to ensure:

- the investigation complies with legal obligations and SJCIS internal standards
- an audit trail exists in the event that particular aspects of a case are challenged during subsequent prosecution or review
- individuals making difficult or finely balanced decisions have a contemporaneous record of the impact factors and constraints

Such a record needs to be in a robust and durable format which is able to withstand internal and external scrutiny. An extension of the electronic case schedule (section 2) could offer a solution but a separate Policy Book or Case Decision Log is the preferred practice for law enforcement agencies across the UK. The adoption of a Case Decision Log similar to that used in HMRC would greatly enhance the controls in this area.

R2: We recommend that SJCIS adopt a Case Decision Log similar to that used by HMRC

The CDL forms part of a suite of controlled documents used by HMRC which includes Notebooks and Daybooks.

S2: We suggest that SJCIS consider adopting an investigation Daybook similar to that used by HMRC

5. Risk Assessments and Operational Security

There is a high level of awareness for the need to have a risk assessment in place for each operation. Although generic templates are used, they are adapted for each case and situation. We were impressed with the quality of the assessments examined and are satisfied that they provide sufficient safeguards for staff on operational duty.

The organisation has graded levels of security for IT access and these are closely controlled and monitored by managers. Control of general equipment is adequate but the same level of access is afforded to sensitive surveillance equipment and we feel this creates an unnecessary risk to the organisation. Equipment such as Vehicle Tracking Devices (VTD) should be closely controlled and only issued with proper safeguards and records in place.

R3: We recommend that sensitive equipment is stored in a secure area and access is restricted. A movement log should be adopted similar to that used by HMRC

The control of evidence, in particular drugs and cash, is adequate but access to exhibits needs to be restricted where appropriate. We note that access to items such as credit cards and passports are not controlled in the same way as cash and we see this as a potential risk to the organisation. We are aware that KPMG have recently reviewed the storage of evidence and drugs but we have not had the opportunity to see their emerging findings. We therefore make the following recommendations for consideration after the KPMG findings are published.

R4: We recommend a designated property officer be appointed to control and monitor access to evidence

R5: We recommend that access to non-cash valuables such as credit cards and passports be afforded the same level of security as cash

6. Preparation of investigation case files for the Law Officers' Department

We interviewed two senior members of the Law Officers' Department who were full of praise for the quality, depth and presentation of prosecution files from SJCIS. In particular, they were impressed with the checks carried out by the senior manager before they were submitted. Such checks appear to be similar to the pre-trial 'Butler 21' checks applied in HMRC. However, we established that the records to authenticate the work undertaken by the manager were insufficient to robustly support his actions.

S3: We suggest SJCIS adopt a formal certification process to confirm the completion of pre-trial checks on investigation cases

Discussion also took place around the Disclosure process. Although there is currently no legal statute relating to Disclosure in Jersey, the principles of CPIA are followed. A request was received from the lawyers for further advice on Disclosure and how it may affect the legal process in Jersey in the future. This matter is being addressed separately by CJES.

7. The control and security of sensitive intelligence

Following a recent break with the States of Jersey Police Service, the former joint intelligence team with responsibility for control and security of sensitive intelligence has been disbanded. An absence of sensitive intelligence support is the main reason for a recent downturn in delivery by SJCIS. A new in-house team is in the process of development but will not be fully effective for some time.

S4: We suggest the control of sensitive intelligence (including CHIS) is

subject to independent review by CJES during 2008-09

8. Training and accreditation

We are particularly impressed with the planning and delivery of training within SJCIS. Staff felt they had received good training and in most cases it had been delivered at the correct time. Staff receive accreditation in some aspects of their work. We are satisfied that staff are properly trained to do their work and that training features highly in the organisations objectives.

9. Internal management assurance processes

All managers have responsibilities for assurance laid to them and it was evident that checks were being done. However, we established that not all managers were recording the checks carried out. The Enforcement areas of HMRC have recently established a formal management assurance framework [EMAF] in order to focus staff attention on the highest risks and structure the recording of assurance checks. EMAF is managed by CJES Standards branch and SJCIS may wish to consider adopting certain aspects of that system.

R6: We recommend that SJCIS adopt a formal management assurance programme similar to the EMAF process used by HMRC

Other issues

a) Surveillance documentation

We were asked to consider and examine documentation relating the Directed Surveillance (DS) carried out under the Regulation of Investigatory Powers Law 2005 (RIPL). To date there have been 10 cases requiring a DS authority and we examined 4 of them in detail. The authorising officer (AO) was acutely aware of a pending visit by the Office of Surveillance Commissioners (OSC) and welcomed our comments on the veracity and quality of the documentation. Full details can be found at Annex A but the suggestions made are as follows:

S5: We suggest SJCIS adopt a new set of forms similar to those currently used by HMRC

S6: We suggest SJCIS adopt a system of DS authority sign-off by surveillance staff similar to that used by HMRC

S7: We suggest that SJCIS seek written permission from property owners in relation to requests for covert access or assistance

b) Security vetting

We were assured by managers that all investigation staff had been security vetted to the equivalent of Security Cleared (SC) level. Some staff were sure they had received such vetting but were unable to give any details of when. Furthermore, we could not find any officer who remembered the last time it was checked by his or her manager. It is important to regularly check an officer's vetting status in case the work they do has changed and requires a different level of vetting or factors outside of work are relevant which could materially affect their vetting status.

R7: We recommend a review of Security Vetting is undertaken and individual circumstances are monitored on a regular (annual) basis

Summary of Control Objectives

1. To ensure that legislation, instructions and guidance in relation to the issue and use of investigation documents, processes and methodology are available, used and enforced.

We consider overall performance against this control objective to be GOOD. We have stated our concerns about the lack of documented decisions which, once corrected, will further improve the level of assurance of the investigation process.

2. To ensure that accurate and complete records relating to the issue and movement of official documents are maintained; and that official documents and processes are controlled in accordance with standing instruction and that this is consistent throughout SJCIS.

We consider overall performance against this control objective to be GOOD. Documents and processes are controlled in accordance with standing instructions although a number of gaps have been identified. The recommendations and suggestions offered will help to strengthen controls and ensure a full audit trail of investigation activity.

3. To ensure staff are properly trained, or in a programme for training, to carry out their responsibilities in relation to the issue and control of documents and the application of investigative processes and methodology.

We consider overall performance against this control objective to be EXCELLENT. Training is a high priority in the organisation and the programme of delivery is first class. Some training has already been received regarding the use of 'Policy Books' which can now be put into practice.

Control of Investigation Documents and Processes in SJCIS

ANNEX A

Comments and Suggestions in Relation to Directed Surveillance Documentation and Processes

- DS forms in use did not appear to be an up to date version. This issue became particularly noticeable when examining the authorities and reviews. In early cases the AO had not understood the guidance on the authority form and had not dealt with the proportionality issue correctly. Although this was improved in later cases, the most recent versions of the forms make it clearer what the AO is required to comment upon. The reviews did not detail the results of surveillance activity carried out to that point which made it more difficult for the AO to fully consider the future potential of a case.

S5: We suggest SJCIS adopt a new set of forms similar to those currently used by HMRC

- Applications were well written but applicants need to give more consideration to the necessity aspect, in particular what other methods of intelligence gathering had been considered or exhausted.
- Applications lacked a robust and fully supported proportionality statement. In particular, although applications made reference to the objectives of the surveillance, these were not linked to or supported by the proportionality assessment. In addition, general reference in statements to the seriousness of the potential offence i.e. serious crime had been questioned by the OSC during their recent visit to HMRC. SJCIS may wish to discuss this issue with the OSC inspectors to establish a definitive policy.
- All authorities had been 'wet ink' signed and the originals returned to the team. However, it was noted that the team appointed to carry out the surveillance had not signed the back of the form to acknowledge sight of it (see Regina v Sutherland). This would undoubtedly be good practice for the future.

S6: We suggest SJCIS adopt a system of DS authority sign-off by surveillance staff similar to that used by HMRC

- Beware of the use of jargon. Ensure abbreviations are properly described.
- Collateral Intrusion comments were particularly good. In three of the cases examined, a full assessment of intrusion and a clear statement referring to the management of it had been made. However, in the fourth case, a reference to 'small low level risk in a public place' seemed out of line with the potential for intrusion.

Control of Investigation Documents and Processes in SJCIS

- We found no evidence of cut-n-paste or rubber-stamping. Each application appeared to be considered on its own merits.
- One case examined did cause concern. Operation Radius involved the placing of a real-time remote video device in a residential communal area. Although it was suggested that there had been no intrusion or property interference, SJCIS could not provide written evidence that permission had been obtained from the property owner. In fact it was later established that only verbal approval had been sought. We believe this is inherently dangerous and written permission should be gained in the future. SJCIS staff are aware of the potential disclosure issues with this case

S7: We suggest that SJCIS seek written permission from property owners in relation to requests for covert access or assistance