

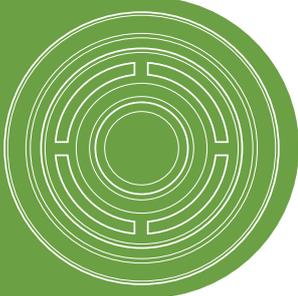
# A REVIEW OF THE NORTHERN IRELAND ENVIRONMENT AGENCY'S ENVIRONMENTAL CRIME UNIT

May 2015



Criminal Justice Inspection  
Northern Ireland  
*a better justice system for all*





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## List of abbreviations

<b>CJI</b>	Criminal Justice Inspection Northern Ireland
<b>DoE</b>	Department of the Environment
<b>ECU</b>	Environmental Crime Unit (of the Northern Ireland Environment Agency)
<b>FI(s)</b>	Financial Investigator(s)
<b>FTE</b>	Full-time equivalent
<b>HSO(s)</b>	Higher Scientific Officer(s)
<b>NCA</b>	National Crime Agency
<b>NIEA</b>	Northern Ireland Environment Agency
<b>NIM</b>	National Intelligence Model
<b>OCG(s)</b>	Organised Crime Group(s)
<b>PPS</b>	Public Prosecution Service for Northern Ireland
<b>PSNI</b>	Police Service of Northern Ireland
<b>RED</b>	Resource Efficiency Division (of the Northern Ireland Environment Agency)
<b>RIPA</b>	Regulation of Investigatory Powers Act 2000
<b>SMART</b>	Specific, Measurable, Achievable, Realistic, Time-related
<b>SO(s)</b>	Scientific Officer(s)
<b>SPOC</b>	Single Points of Contact (usually between agencies/departments/units)
<b>SSO(s)</b>	Senior Scientific Officer(s)
<b>TTCG</b>	Tactical Tasking and Co-ordination Group



# Chief Inspector's Foreword

Environmental crime impacts on all of us. It ranges from the use of unlicensed waste sites, illegal dumping of hazardous waste including the toxic by-products of fuel laundering, to providing used tyres for bonfires and fly-tipping.

The effects are often hidden and it can be years before the full extent and consequences are realised. These crimes are usually well planned and committed by individuals and gangs who have no regard for public safety, now or in the future.

This report assesses the effectiveness of the Environmental Crime Unit within the Northern Ireland Environment Agency and the wider context of regulation and enforcement.

There is a lot at stake for the criminals involved in these crimes and they are not averse to threatening and intimidating Environmental Crime Unit staff as they conduct surveillance and gather evidence to support prosecutions. It is critically important that the Unit staff are provided with the support, skills and protection to enable them to undertake their work on our behalf. Their continuing involvement in the Serious and Organised Crime Task Force will ensure that the criminal justice agencies are available to provide advice, guidance and direct assistance to them.

The report concludes that there is a need for a strategic assessment of the waste sector in Northern Ireland, and that the positioning of the Environmental Crime Unit within the Northern Ireland Environment

Agency, with direct linkages to departmental and agency strategies to protect the environment, should become a key priority for the Department of the Environment.

We cannot afford to let environmental crime slip down the priority list for public and environmental safety, nor can we afford to let unscrupulous individuals or gangs damage our collective heritage.

This review was conducted by Derek Williamson and David MacAnulty from Criminal Justice Inspection Northern Ireland.

My sincere thanks to all those who supported this work.

**Brendan McGuigan**  
**Chief Inspector of Criminal Justice**  
**in Northern Ireland**

May 2015



# Executive Summary

This report looks at the work of the Environmental Crime Unit (ECU) which is located within the Northern Ireland Environment Agency (NIEA). Criminal Justice Inspection Northern Ireland (CJI) was invited to undertake this review following concerns raised by staff regarding its functioning.

The ECU was established in late 2008 to deal with serious waste crime and has a compliment of 37.4 full-time equivalent (FTE) staff and an operating budget of £1.7m. While this inspection focussed on the operating procedures of the Unit, it also examined the wider context of regulation and the enforcement of environment law.

The main finding of the report is that the absence of a clear strategic assessment of waste crime in the NIEA could impede the overall effectiveness of the management of waste crime. While accommodating discretion, strategy and governance needs to place a stronger emphasis on upholding the law and remove any ambiguity as to the management of breaches of the law.

The ECU has delivered considerable gains with evidence of capability and capacity, as well as positive outputs in terms of convictions and financial confiscations. However, there are a range of underlying issues, which require a further professionalisation of practice. Firstly, a revised strategy for the ECU is needed which is performance focussed and aligned to wider departmental and agency strategies. Secondly, to

meet the requirements of best practice in serious crime investigations, a skills mix which seeks to achieve multi-disciplinary team working should be adopted. A range of additional areas for improvement which combine to assist in a wider drive to professionalise the practice of the ECU have been highlighted throughout this report. This includes matters which are aimed at overall performance improvement, including focussing on the core mandate and resource efficiency.

One of the most significant challenges to achieving the desired outcomes is finance. The Department of the Environment (DoE) and the NIEA, in conjunction with much of the public sector, have been facing the immediate pressures of in-year cuts, as well as a longer term contraction of budgets. This means that the NIEA will have to carefully consider how it can fulfil its mandate with decreasing resources. The view of CJI is that many of these improvements can be achieved without additional expenditure. Any failures in environmental regulation and enforcement will have more severe long term costs for the DoE and Northern Ireland as a whole, and must therefore be avoided.



# Strategic Recommendations

1

The ECU Strategy should be reviewed to reflect a balanced focus on strategic objectives which are aligned to departmental and agency strategies, and are performance focussed and SMART (*Paragraph 2.22*).

2

The NIEA should conduct a strategic assessment of the waste sector in Northern Ireland, including illegality in the regulated and non-regulated sectors. This should incorporate the risk of transfer of waste from and to Northern Ireland (*Paragraph 3.8*).



# Inspection Report



# Introduction

- 1.0 The NIEA was formed in 1996 as an executive agency of the DoE. It has a wide range of responsibilities including protecting and improving the natural environment and built heritage. An ECU operates within the NIEA as a specific business unit. The ECU was the focus of this review.
- 1.1 CJI was invited to undertake this review by the sponsor department (DoE) following a number of concerns raised about the operation of the ECU. The primary concerns related to the processes of the ECU and specifically compliance with, and use of best practice in investigation. The Terms of Reference for the review were developed taking account of the various matters raised, but without investigating the specificity of those matters.<sup>1</sup> The Terms of Reference are illustrated at Appendix 2 and the Methodology at Appendix 1.
- 1.2 This review has taken account of previous wider inspections which touched on the work of the NIEA, which were published by CJI in 2007<sup>2</sup> and 2011.<sup>3</sup> A further DoE commissioned review, which covered matters of enforcement and the wider strategies of the NIEA was published in 2014<sup>4</sup> and included a group of recommendations in this area. This review sought to build upon the findings and recommendations of these inspections and reviews, whilst focussing in particular on the operational aspects of the ECU.

## The nature of waste crime

- 1.3 Waste crime occurs in a spectrum from the individual illegal dumping of waste (fly-tipping), through poor compliance in the waste industry, to serious organised criminality. *'Waste crime takes many forms, and is committed both on a large scale by organised groups and on a small scale on the spur of the moment.'*<sup>5</sup> Similarly, within the waste industry, regulation and enforcement should be viewed as part of a continuum.

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1 CJI is precluded by S.47 (6) of the Justice (Northern Ireland) Act 2002 from carrying out any inspection or review of individual cases.

2 Enforcement in the Department of the Environment, CJI, October 2007.

3 Enforcement in the Department of the Environment Northern Ireland: A follow-up review of inspection recommendations, CJI, November 2011.

4 A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland by Christopher Mills, December 2013.

5 Waste Crime: Tackling Britain's dirty secret, a report commissioned by the Environmental Services Association Education Trust, written by Eunomia Research and Consulting, March 2014.

- 1.4 Waste disposal is currently subject to stringent regulation and often involves substantial costs in the disposal of both general and specialised waste. This creates a market for the illegal disposal at lower prices and without any regulation. The high profits which can arise have attracted Organised Crime Groups (OCGs). The nature of waste crime is adequately demonstrated by the discovery in 2012 of an estimated total of 516,000 tonnes<sup>6</sup> of macerated waste in an area adjacent to the River Faughan in the townland of Mobuoy near Derry/Londonderry. It was deposited in an area stretching to almost 1.4km. This was a sophisticated operation which had been carried out over a number of years. It continues to be the subject of a criminal investigation by the ECU. A further visible manifestation of the involvement of OCGs in waste crime in Northern Ireland concerns the by-product of fuel laundering in the form of hazardous waste; which is often dumped illegally with consequent environmental damage and clean-up costs for tax/rate payers.
- 1.5 The Europol Threat Assessment of Environmental Crime in the EU<sup>7</sup> found that:
- *'The trafficking of illegal waste is a high profit, low-risk activity, which remains under-reported and under-investigated...'*
  - *'This activity is intrinsically linked to the legal economy and benefits from a drive to reduce costs during the economic crisis.'*
  - *'Both OCGs and legitimate companies engage in trafficking of illicit waste.'*
- 1.6 In addition, the factors which lead people to commit waste crime are fundamentally concerned with the costs and benefits of criminal activity. The following themes have been identified:
- *'It is possible to make significant profits from waste crime.'*
  - *'The perceived risk of enforcement action being taken is low.'*
  - *'The perceived consequences of enforcement action being taken do not outweigh the profits to be made.'*<sup>8</sup>
- 1.7 In England and Wales the position is summed up by the Environment Agency in its annual Waste Crime Report as follows:
- *'Waste crime has an impact on people and the environment. It blights communities and causes pollution. People who handle waste illegally do not invest in appropriate safeguards and can dispose of waste more cheaply than legitimate waste contractors. They undercut legitimate business, reduce tax receipts and pose a direct threat to sustainable growth in the waste sector.'*<sup>9</sup>
- 1.8 The Nldirect website summarises the local position in Northern Ireland and states:
- *'Waste crime is the illegal management of waste and it is becoming an increasing problem in Northern Ireland. Criminals are involved in illegal waste activities – from waste collection and*

6 A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland by Christopher Mills, December 2013.

7 Europol Threat Assessment: Environmental Crime in the EU, November 2013.

8 Waste Crime: Tackling Britain's dirty secret, Environmental Services Association Education Trust, London, March 2014.

9 Cracking down on waste crime, Environment Agency (England and Wales), waste crime report 2012-13, October 2013. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/288604/LIT\\_8776\\_956402.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288604/LIT_8776_956402.pdf) accessed 29 August 2014.

*the provision of skips, to illegal land-filling and burning of the waste to get rid of it. Their motive is making money. They usually charge the legal going rate to collect and transport waste and then dispose of it illegally and pocket the profits. If it is not handled properly waste can cause serious pollution of the environment – air, land and water – and this can be harmful to our health. Criminal waste activity also has an economic impact on legitimate businesses involved in waste disposal. These companies are unable to compete effectively in the waste industry because they are undercut by criminals. It affects us all because there are huge costs involved in ‘cleaning up’ illegal waste, which means that less money is available for things like hospitals and schools.’<sup>10</sup>*

Further evidence, if it were required, supporting the view that significant and organised waste crime exists in Northern Ireland was seen by Inspectors during their review. As this concerns active cases they are not specifically referred to here but were part of our overall assessments.

- 1.9 Illustrating the issue of clean-up costs, it is currently estimated that the costs of remediating the Mobuoy site is £800k<sup>11</sup> and could rise to well over £100m.<sup>12</sup> These are costs to the Northern Ireland tax payer.

## The scale of waste crime

- 1.10 Exact measures of the scale of criminality are very difficult to pinpoint, given its often clandestine nature. There are however a range of indicators that the industry is targeted by criminals for a variety of reasons including:
- It is often cash based and therefore provides opportunities for criminals;
  - the waste industry is often not well understood by law enforcement - with the exception of specialised units; and
  - there remains the opportunity for unscrupulous operators and criminals to exploit the sums of money involved.
- 1.11 A range of publications show that organised criminality is associated with the waste sector. This and other contemporary evidence is a strong indicator of the problems. Indeed the Mills Review<sup>13</sup> stated that *‘Criminality is widespread in the waste industry in Northern Ireland with at least some involvement by organised crime.’* Other indicators available to Inspectors, all of which are mutually supporting, further strengthen the assessment that the waste industry is at the very least susceptible to infiltration by organised crime and in the very worst cases such as that seen in Mobuoy is, in fact, large scale organised criminality. Illustrating the problem further, as far back as 2004, the United Kingdom Environmental Law Association branded Northern Ireland the *‘dirty corner of the UK.’*<sup>14</sup> Despite the absence of solid impartial data on the nature and scale of serious waste crime, the need for a consistent and robust response is evident.

10 <http://www.nidirect.gov.uk/report-waste-crime>.

11 A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland by Christopher Mills, December 2013.

12 Ibid.

13 Ibid.

14 UK Environmental Law Association available at <http://www.ukela.org/rte.asp?id=10&pressid=20>.

## Broader issues

- 1.12 A broader problem concerning the acceptance of non-compliance with the laws surrounding waste is that this risks feeding a culture of contravention both for these and other laws. Indeed, it has been stated *'it is difficult to place a value on the UK's culture of legal compliance and the regard for law and order within our society'*. And further *'...an acceptance of routine criminality in waste may lead to wider flouting of environmental and other laws, ultimately undermining respect for the law more generally.'*<sup>15</sup>
- 1.13 This non-compliance culture also impacts on how strategy and policy for regulation and enforcement in this area is framed. While accepting that discretion is an important tool in regulation and enforcement, the underlying principle of full compliance and respect for the law should be clearly stated and emphasised by the DoE and the NIEA.

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<sup>15</sup> Waste Crime: Tackling Britain's dirty secret, a report commissioned by the Environmental Services Association Education Trust, written by Eunomia Research and Consulting, March 2014.



# Strategy and Governance

## Departmental

- 2.0 The DoE is organised into three business groups including the Environmental and Marine Group which includes the NIEA, as well as Environmental Policy Division and the Marine Division. The DoE vision, as highlighted in the NIEA Business Plan 2014-15, is *'a better environment, a stronger economy'*. Its mission is stated as *'To protect and improve the environment, promote well being and support a sustainable economy and strong, effective local government.'*
- 2.1 A key priority for the Department is, *'... the Regulatory Transformation Programme which aims to put in place an intelligent, outcome-focused regulatory system to make it easy for responsible businesses, but very difficult for those who try to flout the law.'*<sup>16</sup>
- 2.2 The strategic objectives and targets of the DoE are outlined in its 2014-15 Business Plan. This sets out the strategic objectives over the period, including the Department's commitments contained within the Executive's Programme for Government 2011-15. The Business Plan follows the balanced scorecard approach including targets and actions in four areas which are:
- The 'Results' quadrant contains measures and targets relating to key departmental commitments.
  - The 'Customer Service' quadrant contains measures and targets relating to the standard and effectiveness of the services provided to customers and stakeholders.
  - The 'Internal Processes' quadrant contains measures and targets relating to improving business.
  - The 'Organisational Learning and Growth' quadrant contains measures and targets relating to ensuring that people are managed and developed so that they can deliver business processes to meet agreed standards of service and business results.
- 2.3 The DoE Plan is supported by agency, directorate, and business unit level plans. These plans have also been developed in balanced scorecard format to enable effective monitoring and communication of performance. The main purpose set out in the Plan and relevant to this report is: *'Protection, conservation and promotion of the natural environment and built heritage.'* The relevant underlying objective is: *'To create prosperity and well being through environment and heritage excellence.'*

16 NIEA Business Plan 2014-15.

- 2.4 In addition, recognising the need for change, a further objective has been set as follows: *'To deliver effective organisational change.'*
- 2.5 In October 2013 the DoE published its Waste Management Strategy.<sup>17</sup> The Strategy highlights the issue of enforcement and states in its Ministerial foreword that *'Effective and powerful enforcement underpins all [these] efforts and we will ensure greater vigilance to stamp out waste crime.'* In respect of regulation it states *'Adopting a risk-based approach will enable the regulator to concentrate on serious criminality involving waste.'*
- 2.6 Specifically in a section on enforcement the Waste Management Strategy states:
- 'In adopting the principles of Better Regulation and taking a risk-based approach to how we regulate waste activities, a certain degree of responsibility is being placed upon the waste industry to do the right thing. When the regulator takes a step back from the lower risk activities, allowing businesses to "get on with job", it is essential that unscrupulous operators do not undercut legitimate businesses and that the regulator has an effective suite of penalties and sanctions to be able to take swift and appropriate action. At the other end of the spectrum, serious criminality involving waste management has far reaching implications for the environment and human health; for the health of the legitimate waste industry; the economy and on Northern Ireland's susceptibility to incurring hefty EU infraction fines. A number of specific work strands are being taken forward to ensure that the mechanisms are in place to tackle the various levels of illegal activity.'*

## Risk

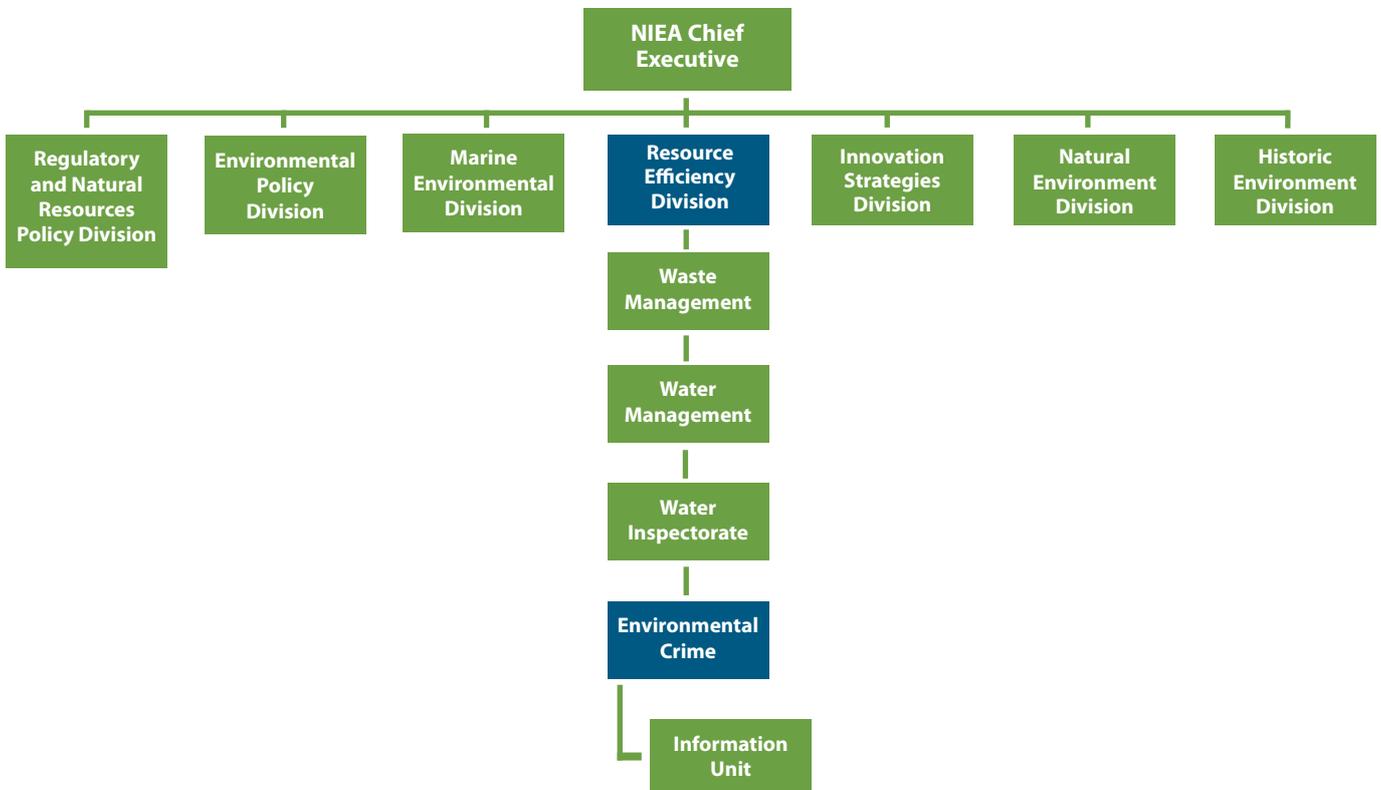
- 2.7 The DoE had recognised the risks associated with illegal waste and its Risk Register noted the following:
- 'As a result of ineffective regulation of the waste sector and/or poor working relationships with councils, there is an increased risk of the dumping of illegal waste which will result in damage to the environment and the wider economy, and additional liabilities falling to public expenditure.'*
- 2.8 The risk had a range of controls in place. One of the key actions was a strategy for combating waste crime. Another was the development of effective working relationships with councils. Significantly, both were still in development at the time of inspection. The assessment of risk, particularly in the context of serious waste crime, could be strengthened by a comprehensive strategic analysis of waste offending (see paragraph 3.8).
- 2.9 There was little recognition in the documents provided to Inspectors of an assessment of the risks surrounding closed landfill sites and other areas, for example, in the disposal of gypsum. The latter is potentially significant given that there is only one licensed recycling facility for Northern Ireland based in Downpatrick. There is a risk of unauthorised waste activity in this sector. The absence of a strategic assessment could itself be a risk which leads to a weakened assessment of threat.

17 Delivering resource efficiency Northern Ireland Waste Management Strategy, DoE, October 2013.

## Agency

- 2.10 A key strategic document for the NIEA is its Strategic Priorities for 2012-22.<sup>18</sup> The document states that *'When standards are breached or crime detected we investigate and pursue offenders vigorously.'* With this exception, there is little reference to environmental crime and none of the strategic goals explicitly refer to environmental crime. This reflects a view expressed by the ECU and some other NIEA staff that the business of enforcement was seen as a secondary function. This is despite the rhetoric of *'...effective and powerful enforcement...'* highlighted previously in the departmental Waste Management Strategy.
- 2.11 At the time of this review the structures of the NIEA were undergoing some significant change. Its Chief Executive advised a restructuring would see the ECU moved under the control of a new Resource Efficiency Division (RED) alongside Waste Management, Water Management, the Drinking Water Inspectorate and the Information Unit, and all reporting to a Deputy Director. The purpose of this change followed the Mills Review<sup>19</sup> which recommended that a new Waste Division be created. The creation of the RED implements this recommendation. Placing the various waste, water and crime teams in this new Division aims to enable increased resource efficiency and better regulation of residual waste streams.
- 2.12 The high level structural revisions are shown in Figure 1 below:

**Figure 1: NIEA structure**



<sup>18</sup> Our Passion, Our Place, NIEA Strategic Priorities 2012-22, July 2012.

<sup>19</sup> A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland by Christopher Mills, December 2013.

2.13 Within the change programme there is a need to ensure that the business of enforcement is embedded as a core and visible part of the strategy and the overall management of the NIEA. There is a risk that as part of the RED, the importance of enforcement could be diluted and this must be avoided. While the changes are recognised as moving to implement the recommendations of the Mills Review and driving forward other changes, one of the key issues of note both for CJI and indeed highlighted variously by NIEA staff, was the inconsistency in the approach to enforcement across various divisions within the NIEA. Inspectors heard evidence of continuing concerns, but expect that the approach to 'better regulation'<sup>20</sup> and the integration of regulation and enforcement as part of a wider continuum under a single new Director will deliver improvements. Inspectors were also advised that the current NIEA enforcement policy was subject to further revision. The driver for this was an outcome-based strategy which had as one of its objectives reduced waste crime.

### Enforcement business models

2.14 In the course of this review CJI considered the fundamental enforcement business model in use for environmental crime. The following paragraphs summarise our consideration of alternatives and judgments.

#### Waste crime enforcement should be the responsibility of core law enforcement agencies

2.15 This would see the transfer of all crime investigations from the NIEA to the Police Service of Northern Ireland (PSNI) and/or the National Crime Agency (NCA). The main advantage would be the application of core enforcement methodologies where investigative skills, confidence and enforcement infrastructures could be brought to bear. However, this option is not considered feasible for a number of reasons, principally:

- the importance of waste crime enforcement would inevitably become diluted in competition with other law enforcement/policing priorities and resource pressures;
- the difficulties of the transfer of cases between silos within the DoE and NIEA are already a feature of inefficiencies and would be exacerbated by the introduction of a further agency with its own different priorities; and
- waste legislation can be complex and requires specialist knowledge.

#### The DoE should create a larger department wide enforcement team

2.16 This would see the creation of a much larger law enforcement directorate across the DoE and, for example, incorporating a range of enforcement areas such as in the transport sector, with some staff specialising in bespoke areas of enforcement. The advantages would be that all criminal enforcement could be dealt with more efficiently in one division with a more consistent approach (subject to thresholds being consistently applied in the passage of cases for enforcement). Over a period of time such a unit could build the expertise required in investigation and enforcement.

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<sup>20</sup> Better regulation: a strategy for Northern Ireland, Department of Trade and Industry, March 1998.

2.17 This option is ruled out for the present given resource constraints and again the difficulties inherent in the transfer of cases between agencies/departments and business units. In addition, this model would dilute the skills of regulatory staff to escalate their work, where appropriate, to enforcement while maintaining continuity.

### Maintain the status quo of an ECU

2.18 This is seen as the optimum operating model for the present time. The ECU is already well established and while there is room for improvement, its current positioning means that it is best placed to deliver future success. With some revisions to existing processes and wider alignments within the NIEA, overall efficiency and effectiveness can be maintained and further enhanced.

## Environmental Crime Unit Strategy

2.19 The ECU was established within the NIEA in December 2008 to facilitate a more co-ordinated approach to *'...serious and multiple breaches of regulations.'*<sup>21</sup> Its establishment followed a recommendation in CJl's 2007 report.<sup>22</sup>

2.20 The strategic objectives for the ECU are outlined in its 2011-15 Strategy. Some of the most relevant overarching objectives include:

- seek to achieve sufficient resource to effectively tackle environmental crime;
- develop our intelligence led approach and focus on the most serious cases;
- help the agency to be an effective enforcement organisation; and
- bear in mind the particular field of work and the need to frequently re-prioritise and be reactive to developing situations.

The Strategy is structured by financial year into three areas of results, partnerships and outreach. This, and a range of other documents, refer to the ECU's main priority of targeted enforcement against the most serious offending.

2.21 The ECU, in common with other areas of the DoE and NIEA uses a balanced scorecard approach to performance. This is sub-divided into the four quadrants of results, customers, internal processes and learning and growth. Relevant targets in the results quadrant are:

- maintain a 24/7 crime duty officer system;
- complete at least 10 major investigations into illegal waste activities;
- carry out assessment of at least 500 intelligence reports; and
- complete at least 10 confiscation investigations.

2.22 While this is not an exhaustive list, it does give an overview of the key areas set out. Inspectors considered that many of the strategic objectives and underlying targets and measures were not SMART (Specific, Measurable, Achievable, Realistic, Time-related).

<sup>21</sup> NIEA Revise Enforcement and Prosecution Policy 2009.

<sup>22</sup> Enforcement in the Department of the Environment, CJl, October 2007.

## Strategic recommendation 1

**The ECU Strategy should be reviewed to reflect a balanced focus on strategic objectives which are aligned to departmental and agency strategies, and are performance focussed and SMART.**

Similar issues arise with other areas of the balanced scorecard where there was some linkage to the strategic mission and aims of the NIEA, but an underlying absence of key linkages and of specific measures. The underlying measures and targets are addressed in the ECU balanced scorecard which is considered further in respect of performance at paragraphs 3.53-3.54.

2.23 One of the key underpinning strategies relevant to the work of the ECU is the NIEA Enforcement and Prosecution Policy. There have been two iterations of the policy in 2009 and in 2011. The latter is a much more considered and condensed version. The general principles of enforcement are:

- proportionate;
- consistent;
- transparent;
- targeted;
- accountable; and
- polluter pays.

2.24 The application and consistency of the principles of enforcement were not always strongly supported by practice. While it is accepted that discretion and consideration of a wide range of factors need to be deliberated upon in individual cases, more could be done to set broad parameters and tolerances within which enforcement is taken forward. This could, for example, be set out in a Waste Crime Strategy (meeting the principle of transparency). Tactically, for the ECU this means operating protocols which, while remaining subject to discretion, set out the factors being considered in the approach to enforcement. This would include the scale of environmental impact, previous history, risk to public health etc. There was clearly an experiential assessment and application of the principles of enforcement, but the absence of a documented set of guiding principles left room for gaps in interpretation and inconsistency.

## Operational recommendation 1

**The ECU should develop guidelines for levels of enforcement action which should compliment the Enforcement and Prosecution Policy and support staff in decision making in this regard.**

2.25 A suggestion that the law is negotiable should be avoided as it was a concern that the existing Enforcement Policy itself provided areas of ambiguity. The Policy outlines that:

- *'We recognise that the initiation of a prosecution is a serious matter which should only be taken after appropriate consideration of the implications and consequences, one of which may be imprisonment.'*

This leaves the impression that prosecution is a last resort. For example the Policy also states, that cases will be referred to the Public Prosecution Service for Northern Ireland (PPS) where *'there are excessive or persistent breaches of regulatory requirements.'* It was also a concern that the Policy included matters that would be taken into consideration which were stated to include:

- *'the attitude of the offender;*
- *the deterrent effect of prosecution, on the offender and others; and*
- *the personal circumstances of the offender.'*

2.26 These are matters which may properly be considered by the PPS in terms of the public interest test, and by the courts in determining mitigating factors before sentence. Their inclusion in a policy on enforcement tends to underpin concerns of ambiguity and could lead to suggestions of negotiating the law.

2.27 Accepting that discretion is a valid tool in enforcement, this does not mean that the Enforcement Policy should be open to interpretation, by NIEA staff or by the regulated sector.

## Operational recommendation 2

**In its revision of the Enforcement and Prosecution Policy, the NIEA should ensure that there is clarity of approach and consistent messaging which removes ambiguity.**



# Delivery

- 3.0 The ECU is the primary delivery apparatus for tackling serious environmental offending. Its mandate is stated to focus on '*...serious offences and persistent offenders.*'<sup>23</sup> Investigations were said to be intelligence-led and results achieved by '*...carrying out criminal investigations where we believe environmental laws have been broken.*'<sup>24</sup> The Unit was stated to be structured to carry out complex investigations and, alongside its criminal investigators, had a team of Financial Investigators (FIs). In addition to depriving environmental offenders of the proceeds of criminal conduct, the confiscation approach deprives offenders of the means to further offend and discourages others from doing so. The ECU four-year Strategy<sup>25</sup> was focussed on three broad areas of results, partnership and outreach.
- 3.1 The total staffing of the NIEA was 719.4 FTE.<sup>26</sup> As currently constituted the ECU comprises 37.4 FTE staff and this represents some 5.4% of overall staffing of the NIEA. While this indicates the staffing dedicated to enforcement, it does not represent the total resources allocated to enforcement in the NIEA as many of the other arms of the Agency also conduct some enforcement activity.

## Strategy

- 3.2 An ECU Strategy was prepared following an internal audit report in early 2014. This was an interim document subject to further review in light of developments surrounding the position of the ECU. This briefly mentions focussed investigations and actions 'restricting' investigations to strategic targets, but both this strategic document and other practices and procedures did not provide assurance of any tangible prioritisation. There was also an absence of a strategic analysis.
- 3.3 A targeted approach is vital to efficiency and effectiveness, and taking forward the principles adopted elsewhere in the management of the waste sector, (for example, 'better regulation' policies). Fieldwork provided limited assurance of a strategic approach to waste crime and to self-generated proactive working on priority areas. Much of the stated proactive work arose from referrals by other law enforcement agencies. The primary methodology for the examination and investigation of the most serious and high risk waste crime was Operation Toothfish. This was the existing overarching control structure and at the time of inspection it contained almost 40 separate investigations. How these were designated as part of Operation Toothfish was unclear and the operational review of the investigations was equally limited. In essence, Operation Toothfish simply brigaded a number of investigations under one banner.

23 Environmental Crime Unit Strategy 2011-15.

24 Ibid.

25 Ibid.

26 As at 1 September 2014.

## Operational recommendation 3

**Clear guidance should be provided on the rationale for prioritisation of investigations, their inclusion and/or linking to priority operations/investigations and their subsequent management.**

- 3.4 It was also evident that proactive operational activity was limited by the partial use of the National Intelligence Model (NIM). This business process model, used across law enforcement, is predicated on a range of inputs. The ECU was not operating the model in anything other than name. The key underpinning contribution is that of a strategic assessment which was absent not only in the ECU but across the NIEA. While there was some reliance on other available information and intelligence such as the PSNI waste crime problem profile, the absence of a foundation assessment of the waste industry and areas of criminality leaves a gap. The absence of a strategic assessment creates a risk that the response and the resources applied are distorted and either misdirected or less effective. It is important however to recognise the context, which is, that for a considerable period of time the ECU was under-staffed.<sup>27</sup> Secondly, that the response to the discovery of significant waste deposits at the Mobuoy site meant that for a considerable period from 2012, the main priority of the ECU was the response to this major incident.
- 3.5 The absence of a clear strategic assessment does not mean there were no strategic responses. For example there was a departmental Used Tyres Working Group established in 2011 to identify the scale of the problem relating to used tyres in Northern Ireland and to draw up an action plan to tackle the associated problems.<sup>28</sup> The resulting action plan included the commissioning of a survey, on an all-island basis, to identify the scale of the problem. However, there was little evidence of the strategic co-ordination of efforts across parts of the Agency to link with other work and provide a coherent analysis of the range of significant waste offending streams and their individual risks.
- 3.6 Findings in this regard mirror and underpin those of the review of waste disposal at the Mobuoy site whose author commented '*...overall there is a distinct lack of strategic leadership in dealing with illegal waste crime in Northern Ireland. To date, there has not been a thorough analysis of the problem or the production of a co-ordinated set of actions which will prevent, deter and combat waste crime.*'<sup>29</sup>
- 3.7 The absence of any strategic planned approach includes the lack of any plan to examine the potential for significant waste crime on the scale of Mobuoy in other closed landfill sites. This is something which, as part of an overall strategy, CJI would wish to see included, as it also impacts on the effectiveness of the ECU and its systems.
- 3.8 The delivery of the ECU mission clearly requires a strategic assessment.

<sup>27</sup> In October 2011 the ECU had 14 vacancies.

<sup>28</sup> Waste Management Strategy 2013.

<sup>29</sup> A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland, Christopher Mills, December 2013.

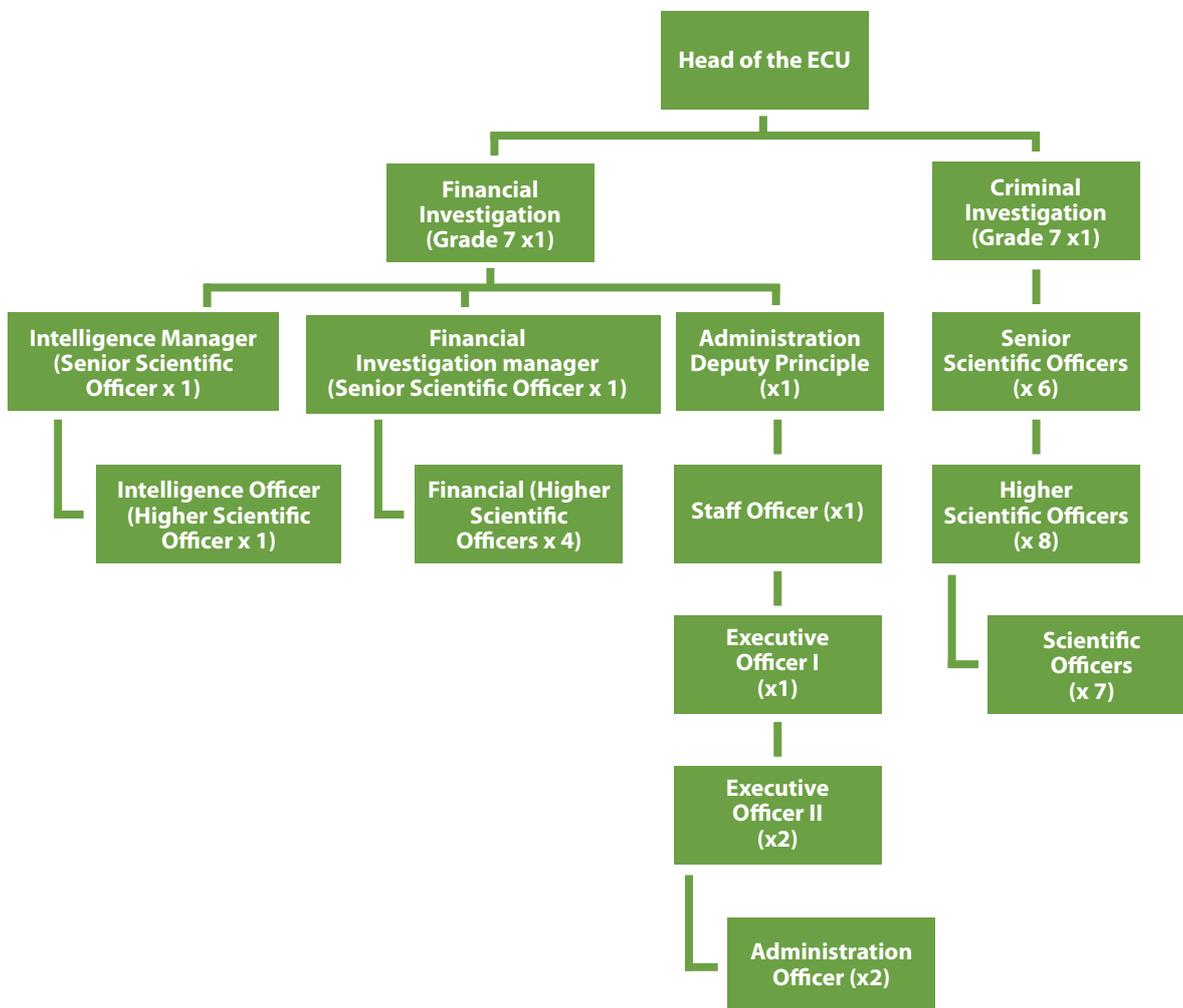
## Strategic recommendation 2

**The NIEA should conduct a strategic assessment of the waste sector in Northern Ireland, including illegality in the regulated and non-regulated sectors. This should incorporate the risk of transfer of waste from and to Northern Ireland.**

## Structures and staffing

3.9 The structure of the ECU is important to consider in helping to understand the business processes within the Unit. This is set out in Figure 2 below:

**Figure 2: High level structure of the ECU**



3.10 Inspectors were concerned that the ECU structures and operational practices resembled a hierarchical bureaucracy where linear spans of control saw almost one-to-one supervision in a range of areas. Governance structures and meetings meant that much of the knowledge and operational control was vested in the Senior Scientific Officers (SSOs). In consequence, many staff were left feeling under-valued and, for Inspectors, there were aligned concerns that communication and decision making were protracted.

- 3.11 Inspectors considered that the Unit was over populated at the higher grades. For example, there were as many SSOs in the ECU as there were Scientific Officers (SOs) (two grades below). There was an additional concern that administrative grades were heavily weighted towards higher positions. There was an equally linear and almost one-to-one structure within this discipline. In addition, there was also an overriding concern that the model followed by the Agency, as part of the Civil Service which recruits scientific staff via a generic pool, failed to deliver staff with the relevant skills base.
- 3.12 The difference in the work of Higher Scientific Officers (HSOs) and Scientific Officers (SOs) was not evident to Inspectors, except perhaps that HSOs were generally more experienced. Overall, cohesion was therefore weakened and this could itself impact on performance. Hierarchical models discourage easy, open communication and in such environments most teams do not function well. The structure and spans of control could therefore be improved to restore a healthier relationship.
- 3.13 The staffing of the ECU had been subject to a history of organic development with its compliment and grading growing from a combination of tradition, and the response to challenges in the operating environment. It was clear that the staffing model was based on the recruitment of scientific staff and the grading of all core staff as SOs reflected this. Neither the staff compliment or grading had been subject to independent review.
- 3.14 There was an equal concern for Inspectors that the current staffing model neither optimised or reflected the mission of the ECU, which is to investigate serious/organised criminality. CJI considers that the business model for this type of enforcement should involve multi-disciplinary teams with an adequate mix of both core scientific and investigative staff, each working alongside the other. The exact balance is best decided by the NIEA itself, dependant on a range of factors including the availability of skilled staff from within existing resources, the potential for staff movement and, ultimately, affordability. However, it seems logical to ensure that the balance of skills and therefore staffing is weighted more than is currently the case towards building a core of investigative skills. Indeed, this is the model adopted in the National Environmental Crime Unit in Scotland.
- 3.15 In future all posts within the ECU<sup>30</sup> should be filled by staff who have a strong investigative background and, of course, this should not of itself exclude scientific staff.

#### Operational recommendation 4

**The ECU should seek to fill vacancies from candidates with specific core investigative skills. If these skills are not available within the Northern Ireland Civil Service pool, external recruitment should be considered.**

- 3.16 An alternative structure reflecting the need for multi-disciplinary team working and addressing some of the other issues highlighted, as well as providing potential efficiencies is offered at Appendix 3. Among its advantages are:

<sup>30</sup> This does not apply to administrative staff/grades whose role does not extend to enforcement.

- team working for complex investigations;
- allows the ability to allocate geographical areas of responsibility, thus building greater understanding of local issues; and
- increased efficiency and effectiveness.

3.17 In respect of efficiency, the revised structure would bring an annual saving of circa £50k and over a five year period saving £250k. Inspectors recognise this revised structure would require a period of transition and a clear Human Resource Strategy, the core of which should be the appointment of staff with the right skills and aptitude for the role. In addition, it will take a change of emphasis from decision making at the higher levels to entrusting investigating staff (with appropriate monitoring and support) to take decisions. In other words, to push responsibility down to the lowest reasonable levels while maintaining consistency and control through a strong management tier.

### Major enquiries and the use of agency staff

3.18 At the time of this review the NIEA had just terminated an agency contract for temporary staff. This had seen a range of staff with primarily investigative skills employed to support the Unit, post the major waste crime discovery at Mobuoy. A total of £600k was allocated. While there were indicators of some benefit and an increased number of enforcement cases had been opened during this period, overall, it was clear that this resource had not been best utilised. The significant investment of agency staffing had the potential, not only to address a range of current issues, but also to leave a legacy. Neither was maximised and this stemmed, in part, from the hurried nature of the deployments and a lack of understanding as to the benefits this could have realised. For example, there was a cultural reluctance to use these staff for enforcement work in the belief that they could not later provide evidence. Should such a scenario arise in the future, better strategic planning will be necessary.

### Training and learning

3.19 While many staff were complimentary of the training received on induction to the ECU, it was also apparent that the training alone could not deliver the confidence and professionalism required. The structure of almost one-to-one supervision could be argued to offer high levels of support, but this was not the overriding emotion, albeit many of the newer staff remained complimentary of the support.

3.20 There was no systematic way of capturing good practice and the learning from challenging cases. This applied to all staff including the FIs. As an area for improvement, such **a learning and good practice system should be developed for the ECU**. This could be directed by one of the senior staff members who could have lead responsibility for training and development. It would include the development of a strategy which includes, for example:

- a readily accessible electronic system of best practice;
- regular best practice and development seminars; and
- external contacts and applied learning from across law enforcement agencies.

3.21 Inspectors recognise resource pressures, but would observe there is a need to continue to develop staff in this area through continuous professional development. The ECU should explore ways in which this can be achieved through links with other law enforcement agencies and academia.

## Workflows

3.22 The ECU work is initiated by two primary means:

- complaints/reports from the public (or on occasion other NIEA staff); and
- referrals from other areas of NIEA/other agencies (for example, the Planning Service).

3.23 At the time of this review the total number of enforcement investigations was just over 100, and this sat alongside an average of 70 incident referrals per month.<sup>31</sup> An analysis of databases and staff interviews revealed that the primary work came from public complaints. However, there was no dedicated means of public referral similar to that in use for water pollution.<sup>32</sup>

## Operational recommendation 5

**The NIEA should examine the feasibility of a single waste/pollution reporting mechanism.**

3.24 CJl considered whether the ECU's mandate of investigating serious crime was compatible with the concurrent examination of all incidents and referrals. A very high proportion are screened out early in the process<sup>33</sup> and are ultimately not progressed to enforcement investigations. Similarly, there are twin benefits in potential early intervention and intelligence opportunities. Therefore, on balance, we conclude that this should remain part of the functioning of the ECU for the present. However, there is a need in its strategy and operating systems to focus to a greater degree on serious criminality and disposing quickly of other work-streams. Ultimately, this aim could be met by the establishment of a Central Evaluation Unit whose work should include the assessment and review of referrals and their allocation to the most appropriate business unit. It should also include, where possible, dealing administratively with referrals and creating capacity elsewhere. This is further developed at paragraph 3.49.

## Policy and procedures

3.25 A range of detailed policies and procedures were in place within the ECU to address business processes, to set standards and introduce corporacy. Among the policies in place and reviewed were:

- criminal investigation training;
- site inspection drawings;

31 For the first six months of 2014.

32 There is a hotline for urgent water pollution incidents (0800 80 70 60) and members of the public can call the telephone number if they become aware of a water pollution incident.

33 Close to 70% of referrals result in a decision of no further action or onward referral to another agency, while a further 10% are noted for future review. A further 12% result in warning/advice and only 8% result in a full enforcement investigation.

- completion of site inspection log;
- evidence examination and storage;
- enforcement case file preparation;
- use and storage of digital images;
- completion of tape recorded interviews;
- court conduct;
- procedure for statutory sampling; and
- procedure for stop and seizure of vehicles.

- 3.26 It was clear that considerable effort and care had been expended in providing a suite of policies. Indeed, many staff and in particular newer staff, were complimentary regarding the guidance material available. The policy and procedural guidance available was broadly commendable and this is among the strengths of the ECU. However, the continuing challenge is consistent implementation of the policies and their regular review to meet new challenges and learning which is a constant feature of this type of dynamic work.
- 3.27 The procedures in use by the ECU were the primary reason for this review. They were assessed by way of a file review and interviews with all staff. While there was no evidence of systemic malpractice, there were some areas where best practice was not always in evidence and a lack of confidence and understanding among some staff as to the requirements of investigation and case preparation was seen. However, this was not regarded as remarkable and certainly did not have malevolent intent. The issues where best practice could be embedded concerned largely residual matters such as the identification/description of exhibits, some significant delays in investigation and some statements which contained hearsay evidence. In addition, there was some misunderstanding of the processes for the quality assurance of case preparation. Matters requiring amendment/clarification to achieve a high standard of case preparation were considered by some to be at best an unnecessary interference with their evidence. However, the latter was not seen in this review and it was the assessment of CJI that issues of concern resulted mainly from a lack of understanding. Claims that there was a criminal interference with processes were unproven in any matter seen by Inspectors. However, in order to obviate future misconstruction and as an area for improvement, **the relevant procedure (Policy on Enforcement Case File Preparation) should be revised with an addendum to specifically clarify issues concerning the preparation/drafting of statements and when/how amendments should be made.** It is important to point out that the issues highlighted are not unique to the NIEA and similar issues occasionally arise across law enforcement.

## Systems

- 3.28 The primary methodology referred to as driving the business of the ECU was the NIM. There was an overarching mantra of the application of the NIM in various documents reviewed by Inspectors. In practice, its application could be more firmly embedded as we highlight in paragraph 3.4. There was a gap in terms of the strategic assessments of the Unit and gaps in effective tasking and co-ordination functions. The effective application of the principles of the NIM was further hampered by the lack of a connected intelligence network across the Agency and indeed the lack of co-ordination of the various information and intelligence held by the NIEA. There was also continuing evidence of a lack of strategic and operational co-ordination

between the various functional areas of the NIEA. However, it is recognised that there were some efforts to change being undertaken and, for example, the ECU had appointed single points of contact (SPOC) to address these gaps.

- 3.29 Two primary governance structures controlled the operational and business processes of the ECU. Inspectors assessed their value through attendance and in staff interviews. A weekly 'intelligence' meeting decided the approach to matters coming to the attention of the ECU. The main driver of this meeting was a review of incidents/referrals from the previous week and it was primarily, but not exclusively, led by the Intelligence Manager and also attended by all SSOs. Inspectors felt that its current construct did not aid efficiency. Decisions on action were made by the collective and this was stated to ensure consistency of approach. This was not an intelligence meeting - it was a Tactical Tasking and Co-ordination Group (TTCG) meeting.

## Operational recommendation 6

**The weekly 'intelligence' meeting should be renamed to become the TTCG.**

This better reflects its purpose and is more in keeping with the NIM of business. There should continue to be a weighty intelligence input. While the attendance of all SSOs at the TTCG would be beneficial, the meeting should be led by the Grade 7 investigations. If the intelligence database was operating correctly and incident reports were updated administratively from this, the need to have all SSOs attend would be negated. This would ensure consistency of approach and streamline the process of initial tasking and co-ordination.

- 3.30 The second governance structure is the weekly management meeting which was also attended by CJI Inspectors. It had a comprehensive agenda with a useful action log and an equally useful RAG<sup>34</sup> status. This meeting was considered to be broadly appropriate to the needs of the organisation, but could benefit from a clearer focus on performance – a matter highlighted throughout this report.<sup>35</sup>

## Knowledge and management databases

- 3.31 The ECU had available to it an intelligence database known as LUGUS which operated at 'official sensitive' (impact level 4), and this system had its own standard operating procedures. There was considerable concern among most ECU staff and also for Inspectors regarding the use and long term utility of this system. There was a significant inefficiency insofar as staff were double keying information into this system and a separate database (spreadsheet). The latter was more often used for management information. In addition, the capability of the system was not being realised.
- 3.32 This costly<sup>36</sup> system was not being used to good effect - it was not delivering value. Secondly, its security classification was questionable and in itself led to restricted use. It is recognised that applying too high a marking can inhibit information sharing and lead to unnecessary and expensive protective controls. Only a small number of primarily administrative staff had access to the system

34 Red, Amber, Green status indicating whether complete, in progress or outstanding.

35 See paragraphs 2.23, 3.31, 3.53, 3.54 and 4.8.

36 The capital costs were in the region of £119k with further significant running costs of circa £29.7k per annum.

and this was only for the purpose of inputting data which these staff reported was almost never interrogated. Indeed, Inspectors also noted a concern in regard to the inputting of data which was not then made available to investigators creating a two-fold risk of the gap in investigative opportunity and secondly in meeting the obligations of disclosure. In addition, the FIs had no access to this database and the financial intelligence and investigations were not inputted. There are therefore obvious risks of a lack of a joined-up approach to enforcement work.

- 3.33 While the database did contain material which required a level of protection, staff interviews and an examination of datasets did not reveal any highly sensitive material. The ECU is not generally dealing with secret material and most of its information and data is routinely marked as 'official sensitive'.

### Operational recommendation 7

**A fundamental review of the continuing need for the LUGUS system should be undertaken. This review should examine:**

- **how the system could be retained and its value maximised by extending its use and access (subject to access level controls) across the NIEA; and**
- **whether there is continuing need to retain the system balanced against the costs and the need for the protection of data.**

### Criminal investigation processes

- 3.34 The processes and procedures for investigation were assessed across a range of areas and in keeping with best practice standards.<sup>37</sup> There were a fitting suite of procedures available and these were assessed and considered to be broadly appropriate. A greater consistency of approach and understanding of best practice standards could however be achieved.
- 3.35 In respect of the process of control, there was evidence that a significant number of cases<sup>38</sup> were unsighted to management. This was the result of the absence of a clear management database. There had been a reprieve on delayed investigations and this had occurred both historically and more recently. This was a concern on a number of levels including:
- the opportunity to link incidents/intelligence and offending could have been missed;
  - opportunities to take action within statutory time limits was obviated; and
  - confidence in the processes of control are weakened.
- 3.36 As part of the methodology for this review, a specific file assessment was conducted. This entailed a review of 32 files of varying types selected randomly from the ECU databases. The files ranged from those which had been closed without referral to the PPS to some which had been prosecuted, or direction of no prosecution issued, and to live/active cases. Key areas examined during this file review included:

<sup>37</sup> See for example Association of Chief Police Officers Core Investigative Doctrine and the Management of Priority and Volume Crime (the volume crime management model) Second Edition, 2009.

<sup>38</sup> These primarily concerned incident reports/investigations known as IRF's

- overall investigative strategy and adequacy;
  - suspect/interview strategies; and
  - file content and presentation of evidence (including report structure, preparation of statements, continuity of evidence, and consideration of matters of disclosure).
- 3.37 The findings of that review and other supporting evidence, while highlighting some areas for improvement, were generally positive. In summary, the files seen were of a satisfactory standard, albeit there were a range of issues which did not meet best practice standards. The overall view that the files were satisfactory was supported by discussion with the PPS who indicated the view that while some files are inevitably the subject of requests for further information, the general construct and standard did not give rise to any concern of systemic failure. When compared to similar case files prepared by other law enforcements agencies, it is clear that the ECU had reached acceptable standards, for the most part.
- 3.38 Both the file reviews and staff interviews led to the conclusion that there was a lack of depth to the understanding of some fundamental investigative strategies. This primarily turned on two main issues as follows:
- a lack of understanding in how/when intelligence could be converted into evidence and the processes to be followed;<sup>39</sup> and
  - an overall lack of understanding of what intelligence is and its use in investigation (including interviews).
- 3.39 There were a range of areas in which best practice had not been embedded. These matters and attendant areas for improvement are highlighted where appropriate in the table at Appendix 4.
- 3.40 As part of the file review, Inspectors also considered the standard of suspect interviews conducted in accordance with the Police and Criminal Evidence Codes.<sup>40</sup> The finding of this review was again broadly positive with interviews being of a largely satisfactory standard and adhering to best practice. The ultimate test of such interviews is their admissibility in court and no evidence was seen of any significant cases being ruled as inadmissible.
- 3.41 One case reviewed highlighted what Inspectors considered was a misunderstanding regarding the use of material, the reliability of which could be questioned. Best practice would suggest that, if used in interview, such material should be the subject of separate interview in order that other interviews may be protected from a potential inadmissibility ruling. This is a relatively minor procedural issue which of itself would not inevitably make the interview inadmissible.

## Regulation of Investigatory Powers Act 2000 (RIPA)

- 3.42 The review demonstrated that there had been appropriate attempts to regulate the processes surrounding the application of investigatory powers using the RIPA and, for example, a single manager with appropriate skills and knowledge was acting as the gatekeeper. Confidence in

<sup>39</sup> See for example comments regarding the use of RIPA at paragraph 3.49 - 3.51.

<sup>40</sup> Police and Criminal Evidence (Northern Ireland) Order 1989 (Article 65) Code Of Practice C available at [http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/policing/police-and-criminal-evidence-code-c\\_2012\\_.pdf](http://www.dojni.gov.uk/index/publications/publication-categories/pubs-policing-community-safety/policing/police-and-criminal-evidence-code-c_2012_.pdf).

the processes in use was demonstrated by the fact that the ECU have invited the Surveillance Commissioner to review its material. However, fieldwork demonstrated a schism between investigating staff and management insofar as the understanding of the requirements of the RIPA were concerned. Significant numbers of staff referred to a lack of ability to progress investigations using the RIPA. Despite efforts by the responsible manager to educate others, Inspectors considered that overall there remained a lack of awareness and understanding of the principles of use. This was ultimately linked to a wider lack of understanding regarding the process of investigation and how to convert intelligence material to evidence.

- 3.43 The number of the RIPA applications is not regarded as a meaningful measure of the effectiveness of the ECU. Therefore, Inspectors sought assurance that the use of powers were appropriately considered and used only in suitable cases in compliance with the law and best practice in this area. While individual cases were not examined, those assurances were present from an examination of systems.
- 3.44 In the last three years there were a total of three applications concerning directed surveillance. Two did not ultimately proceed. There were adequate processes to ensure the review, renewal and cancellation of authorisations in line with good practice. The availability and capability to use these powers will be critical to maintain in meeting the mission of the ECU, albeit numbers of authorisations will remain small.

## Financial investigations

- 3.45 The NIEA and ECU conduct financial investigations where significant personal financial gain has been accrued from the proceeds of unlawful activity. This is a key strategy for law enforcement and one which the NIEA have clearly been following for some time.
- 3.46 In reviewing the work of the FIs two main areas of interest arose. The work of the ECU FIs was almost exclusively focussed on confiscation post-conviction and there were aligned concerns that these investigations commenced at a late stage in the criminal enquiry leading to problems which could be summarised as:
- opportunities for intervention earlier in the investigation being missed (for example, cash seizures and restraint);
  - delay in the courts as defendants will often not offer a plea until the confiscation sums are available. Inspectors heard that there were often frustrations in the courts that financial investigations delayed proceedings. This also presents a risk, albeit slight, of an abuse of process application; and
  - some of the benefit calculations could be considered unrealistic. Thus, there needs to be careful and consistent guidance on the calculation of benefit, based on sound evidence so as to mitigate unnecessary delay in the courts.
- 3.47 The work streams of the FIs need to be well managed given that this is a relatively defined and finite resource. On occasion, that will mean strict prioritisation. But, within that framework there could be opportunities to broaden the work of the FIs. This needs to be linked to more

specific Key Performance Indicators in this area which do not simply focus on the value of assets confiscated, and are more broadly focussed on the expected areas of expertise and advice being made available across the organisation. While some investigations were complex and resource intensive, the number of investigations were not considered to be challenging and there is capacity to extend the work of FIs.

## Partnership working

3.48 The operation of the ECU is dependant on a number of stakeholder relationships. Primary among these are a range of other areas within the NIEA such as waste management and water management. This also extends to other areas of the DoE family such as the Planning Service. Perhaps the second most significant partnership is that with other law enforcement agencies. Each is discussed in turn below.

3.49 CJl fieldwork found some continuing problems around partnership. Until recently, relationships were strained and this meant that information and joint working was less than seamless. At the time of fieldwork there were plans to change the alignment of key units. Evidence of the problems were manifest in a number of ways but, for example, few referrals were made between key regulatory functions and the ECU, and there was no central database or case management/ knowledge management systems in which these key areas could share information and support what Inspectors saw as the continuum of regulation and enforcement. The latter in particular is seen as a significant impediment to both good regulation and enforcement. Co-ordination and communication was undoubtedly lacking - therefore there is a need for a central nervous system of control and regulation. The recommendation made by Inspectors in 2007 and referred to earlier is therefore repeated:

## Operational recommendation 8

**A single incident and enforcement database should be developed.**

This could take account of the utility of the LUGUS database and the need to ensure wider utility of the system across the NIEA and perhaps extending to the DoE.

## Operational recommendation 9

**In addition a Central Evaluation Unit should be established and act as the central nervous system of the RED providing one of the principle governance mechanisms.**

Its role and functions could include:

- incident recording/reception;
- management of a waste/water management 'hotline';
- strategic analysis;
- triage; and
- information recording.

Subject to the embedding of planned changes and, critically, an assessment of confidence in the ability of other areas to deliver enforcement, the Central Evaluation Unit could be extended to take on the work of all lower level enforcement. This would allow the ECU to return to its core mission of focussing on high risk crime/criminals.

3.50 In terms of the relationship with other law enforcement agencies this was managed via a range of structures, principle among which were the participation of the ECU in the Organised Crime Task Force,<sup>41</sup> and perhaps most importantly via a strategic partnership agreement with the PSNI which was implemented in 2012. This strategic partnership was subject of a full external evaluation by Queens University, Belfast in February 2013.<sup>42</sup> Inspectors concur with its conclusions which remain appropriate and can be summarised as follows:

- *'...the primary successes of the joint arrangement between PSNI and NIEA relate to the highly successful approach to joint working that has developed, rather than measurable impacts on environmental crime in the jurisdiction.'*
- *'...both organisations should be praised for the remarkable level of cooperation and collaboration that has occurred since the inception of the partnership.'*
- *'Overall, the development of the strategic partnership between the two organisations has been one of the most positive developments in environmental enforcement to occur in recent years...'<sup>43</sup>*

3.51 The challenge moving forward will be to ensure that the gains of this strategic partnership are maintained and enhanced. There is a risk that the individuals who have been its drivers move on and that resource pressures impact on the focus in this area. Equally, there is a need to extend the partnership to other law enforcement agencies to secure gains made here too. Whilst good progress has been achieved, it should not be lost.

## Performance

3.52 In essence the product of ECU work is:

- prosecution files referred to the PPS; and
- financial recovery associated with above and other sanctions (including warnings and advice).

The outcomes sought are reduced harm and environmental damage.

3.53 Performance needs to concentrate on both products and processes, and in part this is what the balanced scorecard aims to achieve. However, performance depends on proper organisation and systems which comprehensively cover all areas of business. Performance for example did not address the completion of incident files. While there are four weekly case file reviews conducted by management, this was largely perfunctory. The absence of a robust system had led to a general pardon in which staff were encouraged to declare older files in their possession (see also paragraph 3.35).

41 ECU participate in both the Cross Border Fuel Fraud and Criminal Finance Groups of the Organised Crime Task Force.

42 Evaluating the strategic partnership between the NIEA Environmental Crime Unit and the PSNI, Ciara Brennan, Queens University, Belfast, February 2013.

43 Ibid.

3.54 A range of evidence, including the comments made in respect of the strategy and balanced scorecard targets, together with the absence of any case management or review systems, lead to the conclusion that the culture of performance is less visible and strong than might be expected. There was also evidence that many of the investigations lacked immediacy and this was seen in case file reviews and in contacts with staff. The average time for all files in a sample of 23 was too long at 534 days. The table below indicates the findings broken down by file type.<sup>44</sup>

**Table 1: Average time taken (days) for investigation from referral to closure by file type (all figures rounded)**

<b>ECU closed</b>	
Average	715
<b>PPS direction no prosecution</b>	
Average	530
<b>ECU warning/advice</b>	
Average	444
<b>Conviction secured</b>	
Average	418
<b>All files averages</b>	558

## Operational recommendation 10

**The ECU should introduce improved systems in the following areas:**

- **case management which includes the call-up of incident reports and enforcement files; and**
- **a formalised system of the investigative review of all enforcement files by a competent manager at intervals to be agreed.**

A suggested schedule is set out in Appendix 4, Table 1.<sup>45</sup>

## Anti-corruption and integrity

3.55 During this review the issue of integrity of waste regulation and enforcement activity and the risk of corruption was an obvious and present feature. This was highlighted to Inspectors in a range of meetings. While there was no existing evidence of corruption, the potential risk of its occurrence is ever present. However, there was no policy within the NIEA to support and protect employees and to deal with this noticeable risk. There were wider policies relating to generic issues such as whistle blowing, but Inspectors would encourage a more bespoke policy for the NIEA which addresses the issue in a way which supports and protects staff and can act to help expose any underlying criminality.

<sup>44</sup> This excluded a number of files reviewed which were ongoing.

<sup>45</sup> The investigative review process can also be linked to and managed via a process of current situation reports linked to event and decision logs.



# Outcomes

4.0 In terms of an analysis of the work of the ECU, Table 2 below provides an overview of the numbers of cases opened by it.

**Table 2: The number of criminal investigations opened and referred to the PPS by the ECU**

Year	Number of cases opened	Cases referred to PPS	Failed <sup>46</sup> cases
2008	133	56	13
2009	119	55	19
2010	40	26	9
2011	63	47	8
2012	70	47	12
2013	56	19	3
2014 (to June)	62	5	0

4.1 In addition to the above, Table 3 below provides an overview of the number of incidents/referrals received by the ECU. This better represents the total work of the ECU and includes matters which will later become enforcement investigations and prosecution files referred to the PPS.

**Table 3: The number of incidents referred to the ECU**

Year	Incidents/referrals
2008	1,077
2009	1,106
2010	680
2011	486
2012	505
2013	481
2014 (to June)	420

<sup>46</sup> This excluded a number of files reviewed which were ongoing.

Table 3 indicates a downward trend in the number of referrals to 2014 and in the first six months of the latter almost a doubling of the numbers of incidents referred. In part this is due to additional agency staff temporarily employed, but otherwise it is difficult to accurately assess reasons. ECU management are encouraged to track and be in a position to explain fluctuations.

- 4.2 In 2011-12, the ECU secured 23 criminal convictions for environmental crimes, with fines amounting to £104,051. This represents an average fine per conviction in the range of £4,523. While the average fine per prosecution in England and Wales is in the order of £7,137<sup>47</sup>, the matter of fines is an issue outside the direct control of the NIEA or ECU. During 2012-13 the Environment Agency in England, made 171 successful prosecutions and issued 62 formal cautions for waste crime. Per capita<sup>48</sup> comparisons therefore put Northern Ireland at a higher rate of conviction while comparisons by area<sup>49</sup> put Northern Ireland on a par with England. The table below provides a longer term analysis of the numbers of convictions, fines and confiscation orders.

**Table 4: The number of convictions and average fines following investigation by the ECU**

Year	Convictions	Fines	Financial investigations opened
2013	2	£1,200	8
2012	19	£20,150	11
2011	24	£79,818	9
2010	16	£64,300	10
2009	35	£77,250	11
2008	43	£119,550	18

- 4.3 Although there remain some underlying concerns at the levels of punishment, this is a relatively positive outcome when viewed in conjunction with the amount of confiscations achieved at £1.58m from 2008 to 19 June 2014. Whilst Tables 2, 3 and 4 all show meaningful outputs, as with other areas of law enforcement, it will always be difficult to measure with any degree of certainty firm outcomes. We can measure outputs in terms of the numbers of enforcement actions, convictions and confiscation amounts. However, the outcome in terms of the impact on the levels of criminality in the waste industry are unknown. In part, this stems from the fact that the nature and scale of offending is itself unknown. Much of the criminality is clandestine. Therefore, we can only make generalised assumptions based on a range of indicators.

47 Cracking down on waste crime, Waste Crime Report 2012-13, Environment Agency, October 2013.

48 The population of Northern Ireland is 1.8m while the population of England is 53m.

49 The area of Northern Ireland is 13,843km<sup>2</sup> while the area of England is 130,395km<sup>2</sup>.

## Case disposals

4.4 In the three full years from 2011-13 the average number of incidents/referrals received by the ECU numbered 490. This averages therefore 41 per calendar month. However, during the first half of 2014, 420 incidents/referrals were made and this averages 70 per month. Table 5 shows how these matters are disposed of.

**Table 5: The disposal of referrals to the ECU during 2011-12 to 2013-14**

Enforcement directed	8.4%
Warning notice/letter or advice and warning	11.8%
Noted for future operations/review	10.1%
Forwarded to other agency/department	21.5%
No further action	47.9%

4.5 Inspectors further examined the number of incidents referred and enforcement files opened over the last three financial years (2011-12 – 2013-14) and this indicated an average of 9% which led to enforcement files being opened. While it seems initially concerning that a high number of cases were designated as ‘no further action’ Inspectors were nevertheless assured that fitting processes were in place to close cases (subject to the operational recommendation identified at paragraph 3.54). At the time of inspection the closure of cases was approved at the weekly intelligence meeting by the SSO group or signed off by an SSO for enforcement cases. The file review examined a small number of such cases and this did not present any significant concern.

## Cost outputs

- 4.6 The total annual budget for the NIEA in 2014-15 was £39.3m.<sup>50</sup> The running cost of the ECU in 2013-14 was £1.72m (or 4.3%) of the former. Of the total ECU budget, £1.52m related to staff salaries. Other significant spends are travel and subsistence at £25k and the intelligence database which had an allocation in 2013-14 of £119k. This left £55k for other expenditure. Overtime is accounted for within salaries.
- 4.7 With an annual overall budget of £1.72m this means that the average cost per incident over the three years from 2011-13 was £3,510. In the half year to July 2014, the figure was £2,047. We can therefore estimate the range of unit costs which includes all matters of enforcement at between £2 - £3.5k. While no direct comparators are available, a crude evaluative measure would be the numbers of crimes reported to police divided by budget. On such a measure the ECU costs are considerably less. Our overall assessment is that the ECU represents acceptable value, but bearing in mind that there remain some efficiencies which could be realised.

## Capability and capacity

4.8 The overall assessment arising from this review was that the ECU capability and capacity (in terms of delivery) met expected standards, including in the area of investigative process.

<sup>50</sup> Includes capital expenditure of £4.2m.

However, there is continuing room for this to be enhanced by efficiencies, coupled with the further professionalisation of investigation and a relentless focus on performance and core mission. Overall, this can be greatly assisted by a strategic assessment and a clear strategy to prevent, detect and combat waste crime in all its guises.

## Conclusions

- 4.9 It is important to put some strategic context to the work of the ECU and the NIEA as a whole. At the time of this review perhaps the most significant challenge to achieving the desired outcomes is finance. As with all Northern Ireland departments, the DoE and NIEA were having to shoulder additional in-year financial restrictions. Inevitably, this situation is unlikely to improve and is forecast to worsen. This means that the NIEA will have to carefully consider how it can fulfil its mandate with decreasing resources. The ECU must continue to focus to a greater extent on its core mission and, if necessary, strictly prioritise its work. The categorisation of cases which is discussed in Appendix 4 could, in addition to assisting in other ways, provide such a framework.
- 4.10 The ECU has delivered some significant gains in its relatively short history. The actual impact on waste criminality and compliance with the law is, for a number of reasons, inestimable. However, the linking of strategic objectives and outcomes with output measures which are SMART can achieve greater success. Secondly, without continued investment and effort in this area it seems clear that the impact and the outlay in terms of financial, social and other costs would be enormous. The outcome of deterrence and an effective overall response, while testing to measure accurately, cannot be under-estimated. While there are clearly some areas to be addressed and central to this are co-ordinated strategic analysis linked to a waste crime strategy, the ECU continues to be a valuable part of the overall response. A further significant issue concerns the need for a central database which provides information and intelligence to the whole organisation. This should include all regulation and enforcement activity. While the ECU continues to make a valuable contribution, CJI's assessment is that radical or fundamental change is not required.
- 4.11 The concerns leading to this review have not been revealed as calculated systemic issues. While there are undeniably opportunities to embed good practice, the findings of this review are clear that no issues of premeditated malpractice were seen. Ethical conduct was not questioned by anything seen during the review, even if on occasion there was a lack of understanding of some processes. However, there remains opportunity to revive, renew and reinvigorate the ECU and to reinforce its position both internally and externally. The continued existence of enforcement, as a part of the continuum of regulation and enforcement, but focussing on professionalising practice and dealing with the most high risk and most serious offending will ultimately bring benefit. The basic foundations have been laid to allow this to happen and this is to the credit of previous ECU management. This includes preceding work by ECU staff in developing its capability and the current work and restructuring which has flowed from the Mills Review. It is further refinement and efficiencies which will combine to make the work of the ECU even more effective in the future. The importance of continuing to sustain the gains and improve further should not be under-estimated.



# Appendices

# Appendix 1: Methodology

This review followed a five phase approach as follows:

- Phase I - design and planning (including development of Terms of Reference);
- Phase II - delivery (fieldwork);
- Phase III - assessment and review;
- Phase IV - factual accuracy checks; and
- Phase V - publication and closure.

Fieldwork consisted of a number of underlying strands as follows:

- staff interviews (every member of staff within the ECU was separately interviewed);
- examination of management data, strategies and policies;
- a file review;
- 'walkthrough'<sup>51</sup> meetings with randomly selected ECU staff; and
- meetings with senior staff in the ECU, NIEA and DoE.

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51 Analogous to 'stapling' exercises.



## Appendix 2: Terms of Reference

### A REVIEW OF THE NORTHERN IRELAND ENVIRONMENT AGENCY ENVIRONMENTAL CRIME UNIT

#### TERMS OF REFERENCE

##### Introduction and context

A number of concerns have been raised with regard to the investigation and evidence gathering processes within the Department of the Environment's Northern Ireland Environment Agency (NIEA) and specifically its Environmental Crime Unit.

In view of the context and at the invitation of the Department of the Environment, Criminal Justice Inspection (CJI) intends to conduct a review of the NIEA Environmental Crime Unit practice and procedures. This will be a focussed review concentrating primarily on governance, practices and procedures.

The concerns raised may transcend concomitant matters raised in the Mills review<sup>52</sup>. The Mills review will therefore be considered in the conduct of this review; so as to ensure that they are seen as complimentary and do not repeat matters already addressed or which are being addressed.

##### Review aims

The core aims of this review will be to assess the following with specific regard to the investigation, decision-making and file building processes within the ECU:

- examine and assess strategy, policy, and processes;
- examine and assess operational delivery of investigation, including decision-making;
- examine and assess structures and governance including matters surrounding commissioning and closure; and
- examine and assess staff training and skills.

This review will incorporate the CJI inspection framework, as outlined below, for each inspection that it conducts. The three main elements of the framework are:

- strategy and governance;
- delivery; and
- outcomes (or expected outcomes in this context).

CJI constants throughout each inspection are independence, equality and fairness, together with standards and best practice.

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<sup>52</sup> A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland, Christopher Mills, December 2013.

This review is intended to be directed and controlled. It will not examine individual matters of complaint.<sup>53</sup> The core focus will be on the application of accepted governance standards, systems and processes; together with best practice in the area of investigation.

## Methodology

This review will seek to engage with a range of staff in the NIEA in order to explore and assess current practice. Where appropriate, Inspectors will make recommendations for future improvement.

The following methodology is proposed.

There will be a five phase approach to the review as follows:

- Phase I - design and planning (including development of Terms of Reference);
- Phase II - delivery (fieldwork);
- Phase III - assessment and review;
- Phase IV - factual accuracy checks; and
- Phase V - publication and closure.

Fieldwork will consist of interviews with appropriate staff and an examination of appropriate documentation and management information. This will also include a focussed file review.

The fieldwork may at any time consider other issues relevant to the issue of standards and best practice and which arise as the review progresses.

In the event that evidence is found during this review which requires the matter to be escalated, normal CJJ policies will apply and any matters arising will be reported to the appropriate authorities.

### ***Assessment and review***

Following the completion of fieldwork Inspectors will take a short period to assess and review findings. Also during this phase a draft report will be developed.

### ***Factual accuracy and publication***

Once available, a draft report will be provided to the Department of the Environment for factual accuracy review prior to the report publication.

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<sup>53</sup> This is made explicit to give effect to S.47(6) of the Justice (Northern Ireland) Act 2002 which explicitly states that the Chief Inspector of Criminal Justice may not carry out inspections or reviews of individual cases.



## Appendix 4: Additional findings and areas for improvement in the investigative process

**Table 1: Areas for improvement in investigation**

Issue	Area for improvement	Additional comment
There was evidence that a similar investigative response to enforcement was taken for all matters referred.	Improvement could be made by categorising investigations. A suggested basis for development is provided at Table 2.	N/A.
Some cases which Inspectors considered to be high profile/high risk were signed off at SSO level.	Inspectors suggest that in high risk cases (category A) that the closure process is signed off by at least a Grade 7.	N/A.
There was an inconsistent approach to the completion of decision logs. In some cases the decision to close a case did not contain any rationale and this makes the decision(s) difficult to audit. However, some evidence was also apparent of detailed and well constructed decision logs.	Inspectors recommend that an electronic events/decision log be created for all enforcement files. This could purposefully be used alongside a call-up system which would assist ongoing reviews and provide management oversight and performance monitoring. A further benefit would be the ability to handover/transfer files with an up-to-date chronology.	<p>This is predicated on training and understanding of the differences between event and decision logs.</p> <p>The process should not become bureaucratic and should contain only key events/decisions.</p> <p>Some training in the completion of decision logs (especially for complex cases) would be beneficial for staff.</p>
In a small number of cases the depth of investigation was questionable and further effort to address evidential gaps and shortcomings could be made prior to closure. This should particularly be the case with high priority cases (such as those involving hazardous waste).	The embedding of staff with core investigative skills and experience within ECU is required to address existing gaps (see recommendation at paragraph 3.20).	N/A.



Issue	Area for improvement	Additional comment
<p>In a range of cases there was no apparent explanation of delays. While some cases were clearly delayed due to ongoing issues with defendants and their availability, too often there was a lack of any discernible explanation for delays.</p> <p>Investigations lacked immediacy.</p>	<p>Inspectors recommend that a case management system is put in place within the ECU which links all files (enforcement and incident) to clear timelines which should be rigorously followed up by management. This should include:</p> <ul style="list-style-type: none"><li>• Initial review (10-14 days);</li><li>• Mid term review (28 days); and</li><li>• Closing review (56 days).</li></ul> <p>Further review dates can be set, if necessary, at the closing review.</p> <p>For category A cases which are likely to proceed to the Crown Court (decided at initial review) the timeline should be:</p> <ul style="list-style-type: none"><li>• Initial review (10-14 days);</li><li>• Mid term review (56 days); and</li><li>• Closing review (112 days).</li></ul>	<p>See also paragraph 3.54.</p>
<p>Evidence in the form of photographs were not digitally dated.</p>	<p>It should be possible to provide equipment at minimal cost which would automatically date photographs making their use in evidence more resilient. Photographic equipment which is easily usable and provides automatic dating should be provided.</p>	<p>N/A.</p>
<p>Inconsistency with regard to the construct and presentation of statements (including the marking of exhibits) were apparent. This included the use of paragraphs and referring to exhibits without clear identification markings.</p>	<p>Further clarity could be provided in this area by way of detailed instruction linked to the procedures on criminal investigation and reinforced by way of training.</p>	<p>N/A.</p>

Issue	Area for improvement	Additional comment
Linkages across investigations were extremely limited.	Subject to the review of the LUGUS system a system should be agreed to ensure that investigative links are identified and advised to investigating officers.	This is linked to the operation of the LUGUS system.
The ECU do not write out to complainants/suspects post investigation decisions.	A process to advise/update complainants and those reported for prosecution of the outcomes should be put in place.	N/A.

**Table 2: Proposed case categorisations for ECU enforcement investigations**

Case category	Type of case	Allocation	Comments
<b>Category A</b>	<p>The most serious and complex waste crime cases, including those where public concern and the associated response are such that normal staffing levels are not adequate to keep pace with the investigation.</p> <p>A major investigation which is of grave public concern (for example, Mobuoy or a significant discovery of large scale hazardous waste).</p> <p>A major investigation in which there are linked series investigations or criminality (for example, Operation Toothfish).</p>	Senior Investigating Officer (Senior Scientific Officer)	<p>Significant scale and complexity.</p> <p>This should attract a team and/or unit approach based on the investigation strategy.</p>
<b>Category B</b>	An investigation where the risk is medium - low and the investigation or securing of evidence can be achieved within normal resourcing arrangements.	Deputy Senior Investigating Officer (Higher Scientific Officer)	<p>Fuel laundering.</p> <p>This could attract a team approach for certain aspects of delivery of the investigation strategy. Otherwise the Investigating Officer should be of sufficient experience and seniority to manage the investigation alone.</p>
<b>Category C</b>	An investigation where the identity of the offender(s) is likely to be apparent from the outset and the investigation or securing of evidence can be achieved easily.	Investigating Officer (Scientific Officer)	These investigations, including the management of incidents, are at the lower levels. Primarily straightforward investigations where there are not anticipated to be any testing problems.



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