



Prosecuting Immigration Enforcement cases within the CPS:
Referral Criteria. 2015

1. Aim

This Referral Criteria aims to set out which Divisions, Units or Teams within the CPS will be responsible for the prosecution of Immigration Enforcement work.

2. Levels of Work

There is broad agreement that there are 3 levels of work:

Level 1 work is the most straightforward work which should be handled by the relevant local Area CPS team.

This is work without significant evidential complexity or complexity in relation to sensitive disclosure issues, the criminal organisation of such offending or the requirement to undertake multiple international enquiries.

Examples:

- Identity card offences when dealt with by Immigration Enforcement.
- Facilitation of illegal entrants often by private motor vehicle or by lorry with no attendant complex issues such as sensitive disclosure, organised crime, gang involvement or multiple international enquiries. The number of illegal entrants may be an important factor but it is not the determining factor.

Level 2 work is work with evidential complexity which should be handled by the Complex Casework Unit of the local CPS Area. It will contain one or more of the following characteristics as set out in the CCU Blueprint criteria:

- Large scale human facilitation / trafficking bearing the hallmarks of organised crime, including the employment of illegal workers.
- Modern slavery offences, contrary to section 1 of the Modern Slavery Act 2015.
- Organised manufacture or sale of forged or stolen documents for use in immigration crime. Depending on scale, this may include bogus colleges and sham marriage arrangements.

And where they are linked to IE cases:

- Serious and complex money laundering offences.
- Complex restraint and confiscation issues.
- Cases requiring multiple foreign enquiries and overseas liaison.
- Extensive or complex and sensitive disclosure issues.

Level 3 work is the most complex work which should be handled by the Organised Crime Division (OCD) or the Specialist Fraud Division (SFD) depending on the nature of the offence(s) under investigation.

OCD or SFD will assume responsibility for cases if the complexity, sensitivity and national scope of the operation mean that they are best placed to deal with it. Such investigations will usually have one of the following characteristics:

- National co-ordination is required
- OCD/SFD lawyers' specialist knowledge is required

Such work will include:

- Complex level 2 cases utilising sensitive intelligence or certain covert operational support of such a nature that it requires to be dealt with by a CPS Specialist Prosecutor
- Complex level 2 cases involving a JIT with overseas sensitive intelligence
- Complex level 2 cases involving internal corruption

3. The referral process

Investigators should refer work in accordance with the appropriate level as set out above.

In relation to **Level 3 work**, such a referral should take place as early as possible into the investigation.

In the event that the Head of the relevant Casework Division is satisfied that the case meets the criteria, the case will be allocated to the appropriate office for its geographical area.

In relation to **Level 2 work**, referral should be to the Head of the Area CCU.

It will be for the Head of the Area CCU to determine whether the investigation comes within the Level 2 criteria or whether it should be referred to the Deputy/Head of the relevant Casework Division if it is considered to be Level 3 work.

In assessing whether an investigation meets the OCD/SFD referral criteria, the decision of the respective Deputy/Head of Division (whether following a referral by the investigator or by the Head of the CCU) will be final.

Further, it will be for the Head of the Area CCU to determine whether, despite a Level 2 referral, it is considered that the investigation does not come within the Level 2 and that it should be referred to the local Area CPS team as Level 1 work

In relation to **Level 1 work**, referral should be to the Head of the relevant local Area CPS team which deals with such referrals.

There exists a mechanism between the local Area CPS team and the Area CCU to determine whether a case, originally referred as Level 1 work should be referred to the Area CCU as Level 2 work.

In assessing whether such investigation does meet the CCU criteria, the decision of the respective Head of the Area CCU (whether following a referral by the investigator or by the local Area CPS team) will be subject to the decision of the local Deputy or Chief Crown Prosecutor on appeal.