

BRIEFING PAPER:

Court Service and Public Prosecution Models in England and Wales and Northern Ireland

1 November 2007

INTRODUCTION

This briefing is prepared for Members of the Assembly and Executive Review Committee, to facilitate their understanding of both the Court Service and Crown Prosecution Service (CPS) in England and Wales and to compare these with proposals for change to the Northern Ireland (NI) Court Service and the Public Prosecution Service in NI (PPSNI), in view of possible devolution of Policing and Justice to NI.

Section 1.0 of this briefing provides information on the Court Service in England and Wales, outlining the basic information, for example, the role and organisational structure of the Court Service.

Section 2.0 outlines background information on the CPS in England and Wales, and as in the previous section, outlines basic information such as the role and organisational structure of the service.

Section 3.0 concerns the NI Court Service and the PPSNI. This section sets out background information such as the role and organisational structure of both services and sets out some of the proposals for future governance arrangements in relation to both.

Section 4.0 identifies potential issues arising from the previous sections which the Committee may wish to consider.

Section 1.0 -The Court Service in England and Wales

This section outlines the following:

- 1.1 Legislative basis of the Court Service in England and Wales;
- 1.2 Role of the Court Service;
- 1.3 Accountability of the Court Service;
- 1.4 Organisational Structure and governance arrangements of the Court Service.

1.1 Legislative Basis of the Court Service in England and Wales

The Legislative basis of the Court Service in England and Wales can be found in the *Courts Act 2003*. This legislation states that:

The Lord Chancellor may appoint such officers and other staff as appear to him appropriate for the purpose of discharging his general duty in relation to the courts.¹

¹ The Courts Act 2003, S.2 (1), http://www.opsi.gov.uk/acts/acts2003/ukpga_20030039_en_3

The Court Service became an executive agency of the Department of Constitutional Affairs in 2005, which became the Ministry of Justice in May 2007.²

1.2 Role of the Court Service of England and Wales

The Court Service is responsible for managing Magistrates' Courts, the Crown Court and County Courts in England and Wales. The Court Service is also responsible for managing the Royal Courts of Justice, in which the majority of High Court and Court of Appeal cases are heard.³

1.3 Accountability

The Lord Chancellor (who is also the Minister for Justice) is accountable to Parliament for the Court Service.⁴ The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the Supreme Courts, the County Courts and Magistrates' Courts and provision of appropriate services.⁵ The Lord Chancellor must prepare and lay before both Houses of Parliament an annual report as to the way in which he has discharged his general duty in relation to the courts.⁶ There are formal meetings on an annual basis between Ministers and the Court Service to discuss the agency's performance and plans.⁷

The Chief Executive of the Court Service is responsible to the Lord Chancellor through the Permanent Secretary for the "effective, efficient and economic day to day management of the agency".⁸ The Chief Executive may be summoned to appear before the Committee for Public Accounts concerning their accounting officer responsibilities.⁹ The Chief Executive's other responsibilities include:¹⁰

- Advise on the implications of strategic performance information;
- Advise on the funding and resources required by HMCS, to meet their agreed outcomes;
- Support HMCS to ensure the agency effectively supports the delivery of Ministry of Justice's (formerly DCA) objectives and PSAs;
- Ensure that HMCS has the delegations and authorities necessary for effective delivery and continuous improvement;

² HMCS, "Working together; Annual Report and Accounts, 2006-2007", Pg 1
<http://www.hmcourts-service.gov.uk/cms/files/HMCSAnnualReportAndAccounts-2006-07.pdf>

³ Ibid, Pg 25.

⁴ HMCS, "Her Majesty's Court Service Framework Document", Pg 13. http://www.hmcourts-service.gov.uk/cms/files/framework_document_final.pdf

⁵ Courts Act 2003, S.1(1).

⁶ Ibid, S. 1(4)

⁷ HMCS, "Her Majesty's Court Service Framework Document, Pg 13.

⁸ Ibid, Pg 14.

⁹ Ibid, Pg 15.

¹⁰ The following information on the Chief Executives responsibilities is taken from "Her Majesty's Court Service Framework Document", Pg 14. http://www.hmcourts-service.gov.uk/cms/files/framework_document_final.pdf

- *Establish the agency's national policies and business strategy;*
- *Set and monitor a challenging performance framework;*
- *Be a member of the Corporate Board;*
- *Establish the framework for allocation of resources to local areas and then allocate resources within the agency's overall spending framework;*
- *Ensure that strong partnerships are established with the judiciary and magistracy at all levels and that their judicial independence is respected by the agency;*
- *Ensure that appropriate relationships are established with the Courts Boards to take account of their views;*
- *Ensure regularity and propriety in the handling of public funds by the agency;*
- *Establish sound risk management and corporate governance practices;*
- *Ensure that audited accounts are prepared and then sign them;*
- *Ensure the quality of services provided and operate an effective complaints procedure; and,*
- *Ensure that the recommendations of the Constitutional Affairs Select Committee, the Committee for Public Accounts and other parliamentary committees accepted by Government and notified to the Chief Executive are put into effect and provide regular reports to the Permanent Secretary on progress on compliance.*

1.4 Organisational Structure and governance arrangements of the Court Service

The Court Service is structured around 25 areas, operating within seven regions.¹¹ Each area has a director who reports to one of the seven regional directors and a courts board.¹² This courts board is designed to be a regional forum, in which local people can be consulted on local courts operational matters.¹³

The Court Service consists of directors who have responsibility for policy and service delivery.¹⁴ These directors form a Management Board, which also includes the Chief Executive, regional directors and non executive members.¹⁵ For further details on the management structure and Board composition of the Court Service, see Annexes A and B. Other governance structures of the Court Service, alongside the Board include the Corporate Governance Branch, an Internal Audit Branch and an Audit Committee.¹⁶

¹¹ Her Majesty's Court Service "Working Together: Annual Report and Accounts 2006-2007", pg 25.

¹² <http://www.hmcourts-service.gov.uk/cms/files/HMCSAnnualReportSection2.pdf>

¹³ Id.

¹⁴ Id.

¹⁵ Id.

¹⁶ HMCS, "Working together; Annual Report and Accounts, 2006-2007", Pg 26.

Section 2.0- The Crown Prosecution Service (CPS) in England and Wales

This section outlines the following:

- 2.1 Legislative basis of the CPS;
- 2.2 Role of the CPS;
- 2.3 Accountability of CPS;
- 2.4 Organisational Structure and governance arrangements of the CPS.

2.1 Legislative Basis

The CPS is the principal prosecuting authority for England and Wales.¹⁷ The legislative basis of the CPS is the *Prosecution of Offences Act 1985*.¹⁸ The legislation sets out the constitution and functions of the CPS.

2.2 Role

The CPS is an independent prosecuting authority and its role includes:¹⁹

- *Advising the police during the early stages of investigations;*
- *Determining the appropriate charges in all but minor cases;*
- *Keeping all cases under continuous review and decides which cases should be prosecuted;*
- *Preparing cases for prosecution in court and prosecutes the cases with in-house advocates or instructs agents and counsel to present cases; and*
- *Providing information and assistance to victims and prosecution witnesses.*

2.3 Accountability

The Attorney-General is accountable to the UK Parliament for the CPS.²⁰ The Attorney General has a statutory duty to superintend the discharge of the duties of the Director of Public Prosecutions (DPP, head of the CPS), the Director of the Serious Fraud Office and the Director of the Revenue Customs Prosecutions Office. The Attorney General also oversees the functions of the Director Public Prosecutions (DPP) for Northern Ireland.²¹

The idea of superintendence by the Attorney General of the Director of Public Prosecutions is explained as:

¹⁷ Crown Prosecution Service: Annual Report and Resource Accounts 2006-2007, Pg 90.

¹⁸ Prosecution of Offences Act 1985, S.1(1).

¹⁹ Crown Prosecution Service: Annual Report and Resource Accounts 2006-2007, Pg 3.

²⁰ Id.

²¹ http://www.attorneygeneral.gov.uk/sub_our_role_work.htmhttp://www.attorneygeneral.gov.uk/sub_our_role_work.htm

“setting the strategy of the organisation; responsibility for the overall policies of the prosecuting authorities, including prosecuting policy in general; responsibility for the overall effective administration of those authorities; the right for the Attorney General to be consulted and informed about difficult, sensitive and high profile cases; but not, in practice, responsibility for every individual prosecution decision, or for the day to day running of the organisation.”²²

The Director of the CPS is accountable to the Attorney-General and is under a statutory duty to make an annual report to the Attorney General on the discharge of his functions.²³

2.4 Organisational Structure and governance arrangements

The CPS is headed by the Director of Public Prosecutions (DPP) whose responsibilities include prosecution, legal issues and criminal justice policy.²⁴ The organisations structure also includes a Chief Executive who is responsible for running the CPS on a day to day basis, human resources, finance, business information systems and business development. The CPS consists of 42 areas, each of which is headed by a Chief Crown Prosecutor. For further details on organisational structure and governance arrangements, see Annex C.

3.0- The Court Service and Public Prosecution Service in NI

This section outlines the following:

- 3.1 Existing structure in NI Court Service;
- 3.2 Proposed Changes to the NI Court Service;
- 3.3 Existing Structure in PPSNI;
- 3.4 Proposed Changes to the PPSNI.

3.1 Existing organisational and governance structure in NI Court Service

As highlighted in a previous briefing paper on the NI Court Service, the organisational structure consists of a Director, management board, finance directorate, policy and legislation, public funded legal services, courts operations and tribunal reform. The composition of the management board includes the head of operations, the head of policy and legislation, the finance director, the head of public funded services, the head of tribunal reform and a non-executive member.²⁵ For further detail on organisational structure, see Annex D. Also as highlighted in the previous paper, the NI Court Service is an independent body, separate from the NI Civil Service, and is accountable to the UK Parliament through the Lord Chancellor.

²² Memorandum from the Attorney General to the Constitutional Affairs Committee on its Inquiry into the Constitutional Role of the Attorney General, 6th February 2007, Pg 2.

<http://www.attorneygeneral.gov.uk/attachments/Constitutional%20Affairs%20Committee%20-%20Inquiry%20into%20the%20Role%20of%20the%20Attorney%20General%20-%20Memorandum.pdf>

²³ Prosecution of Offences Act 1985, S. 9.

²⁴ Crown Prosecution Service: Annual Report and Resource Accounts 2006-2007, Pg 3.

²⁵ http://www.courtsni.gov.uk/NR/rdonlyres/6B3484D3-CDA2-41E9-B03F-14C6B0760340/0/p_tp_Business_Plan20072008.pdf , Pg 10

3.2 Proposed Changes to the NI Court Service

As discussed in a previous briefing paper on the NI Court Service, the UK Government states that it supports the view of the Review of The Criminal Justice Review that the NI Court Service should become an executive agency of a Department of Justice, headed by a Chief Executive.²⁶ The UK Government have proposed that the agency will provide administrative support for the Courts in NI, but further consideration needs to be given as to whether it should continue to deliver policy and legislative support, or whether these functions would transfer to the core Department of Justice.²⁷

3.3 Existing structure of the PPSNI

3.3.1 Legislative basis of PPSNI

The PPSNI was established on 13 June 2005 and its legislative basis is the Justice (Northern Ireland) Act 2002.²⁸ The legislation defines the PPSNI and sets out its statutory duties and commitments.²⁹

3.3.2 Role of the PPSNI

The PPSNI is the principal prosecuting authority in Northern Ireland, taking decisions as to prosecution in cases investigated by the police. It also considers cases initiated and investigated by statutory authorities such as HM Revenue and Customs.³⁰

3.3.3 Accountability of PPSNI

The Director of the PPSNI discharges his functions under the superintendence and directions of the Attorney-General.³¹ The current position is that the Attorney-General holds two posts, the Attorney General for England and Wales and the Attorney General for NI.³²

3.3.4 Current Organisational and Governance Structure of PPSNI

The PPSNI is headed by the Director of Public Prosecutions for NI and there is a Deputy Director who has the same functions but exercises them under the direction of the Director. Both posts are statutory appointments and are appointed by the Attorney General of NI.³³ The staff of the PPSNI is composed of civil servants who are recruited by the Department of Finance and Personnel.³⁴ They are also attached to the Northern Ireland Office (NIO).³⁵ Funding for the service is provided by the Secretary of State for

²⁶ See NIO (2006) Devolving Policing and Justice in Northern Ireland: A Discussion Paper” Pg 34

²⁷ Id.

²⁸ Public Prosecution Service Annual Report, 2006-2007 <http://www.ppsni.gov.uk/site/default.asp>

²⁹ Justice (NI) Act 2002 http://www.legislation.gov.uk/acts/acts2002/ukpga_20020026_en_4#pt2-pb3-l1g29 and <http://www.ppsni.gov.uk/site/default.asp>

³⁰ Public Prosecution Service Annual Report, 2006-2007.

³¹ Id.

³² See NIO (2006) Devolving Policing and Justice in Northern Ireland: A Discussion Paper” Pg 12.

³³ Id.

³⁴ CJNI “An Inspection of the Public Prosecution Service for Northern Ireland”, July 2007, Pg 4.

³⁵ Id.

NI.³⁶ The organisational structure includes the PPS Management Board, chaired by the Director and consists of the deputy director, two senior assistant directors and two non-executive members. The Management Board supports the Director in the leadership of PPSNI and in reaching decisions regarding the development and implementation of strategy and governance of the service.³⁷ For further details on organisational structure of the PPSNI, see Annex E.

3.4 Proposed Changes to the PPSNI

The UK Government has proposed that, after the devolution of justice matters, a new Attorney General for NI will be created. The new Attorney General of NI will be appointed by the First and Deputy First Minister, subsequent to consultations with the Advocate General.³⁸

Other proposed changes by the UK Government in relation to the PPSNI after devolution includes:³⁹

- *The Director's relationship with the Attorney-General for NI will be one of consultation;*
- *The Attorney General for NI will have no power of direction or superintendence over PPSNI, whether in individual cases or matters of policy;*
- *The Attorney General for NI will appoint the Director and Deputy Director of Public Prosecutions;*
- *The Director will be required by the Attorney General for NI to prepare an annual report on the exercise of his functions, which will be published and laid before the Assembly;*
- *The Director will be required to answer to the Assembly only in relation to finance and administration matters;*
- *The UK Government will put forward a concordat on the core principles of the independence and impartiality of the PPSNI, which would be agreed with the Northern Ireland Executive before devolution.*

The UK Government has also proposed to create a post of Advocate General for NI, to take on some the Attorney-General's or Director of Public Prosecutions' responsibilities which are excepted and will not be devolved.⁴⁰ These are matters relating to national security such as certification of scheduled offences.⁴¹ It is proposed that the same person who serves as the Attorney General for England Wales will fulfil this role.⁴²

³⁶ Public Prosecution Service Annual Report, 2006-2007 <http://www.ppsni.gov.uk/site/default.asp>

³⁷ Id.

³⁸ Id.

³⁹ The following information is taken from NIO (2006) Devolving Policing and Justice in Northern Ireland: A Discussion Paper" Pgs 12-13.

⁴⁰ Id.

⁴¹ Id.

⁴² Id.

The Director of the PPSNI, Sir Alistair Frazer, suggested in his evidence to the Assembly and Executive Review Committee that the legal status of the PPSNI might best be served as a non ministerial department, which would protect the independence and accountability of the service.⁴³ However in relation to the funding of PPSNI, the Director of the Service suggests that the PPSNI should be placed with the Office of the First and Deputy First Minister (OFMDFM), as OFMDFM will appoint the Attorney General for NI, publish his report, and provide his funding, office and staff.⁴⁴

4.0 Potential Issues for Consideration

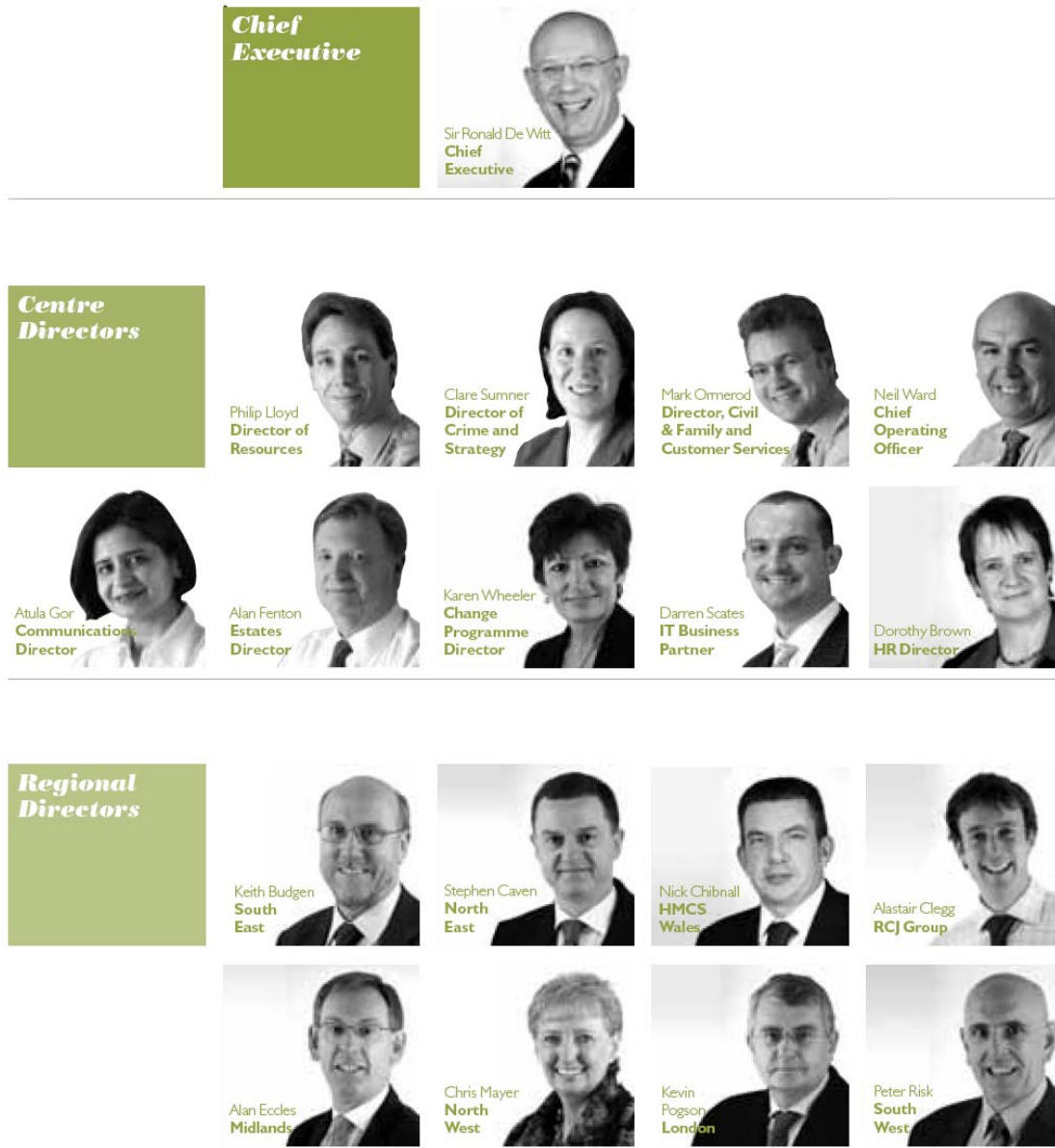
Arising from these sections, the Assembly and Executive Review Committee may want to consider the following:

- 1 How to secure a Court Service and a Public Prosecution Service for NI that best serve the values of independence, accountability and efficiency?
- 2 What should be the relationship of the Court Service to any devolved Minister for Justice? Should the Court Service be accountable to the Minister or to an independent Board?
- 3 If there is to be an independent Board for the Court Service, how is the accountability of the Court Service to the Assembly to be provided for?
- 4 What should be the relationship of Public Prosecution Service to the Attorney General for NI? The UK Government proposes that the relationship be one of consultation only, and not include superintendence by the Attorney General for NI.
- 5 If the PPSNI is not accountable to the Attorney General for NI, what shall be its relationship to the Assembly? The UK Government proposes that an annual report would be laid before the Assembly, and the Director of the PPSNI would answer questions in the Assembly but only on finance and administration matters.
- 6 What will be the relationship of the PPSNI to the proposed Advocate General for NI?
- 7 Which Department should have responsibility for providing funding to the Court Service and the PPSNI?
- 8 Are there lessons that can be reflected in future consultations on the NI Court Service and PPSNI from England and Wales, Scotland and the Republic of Ireland (ROI)? (See previous briefing paper on court service models in Scotland and ROI.)

⁴³ Official Report of the Assembly and Executive Review Committee on Devolution of Policing and Justice, 16th October 2007.

⁴⁴ *Id.*

Annex A - Organisational Management Structure of the Court Service In England and Wales⁴⁵



⁴⁵ HMCS “Working Together: Annual Report and Accounts 2006/2007”. Pg 29
Providing research and information to the Northern Ireland Assembly

Annex B- Court Service Board Composition in England and Wales⁴⁶

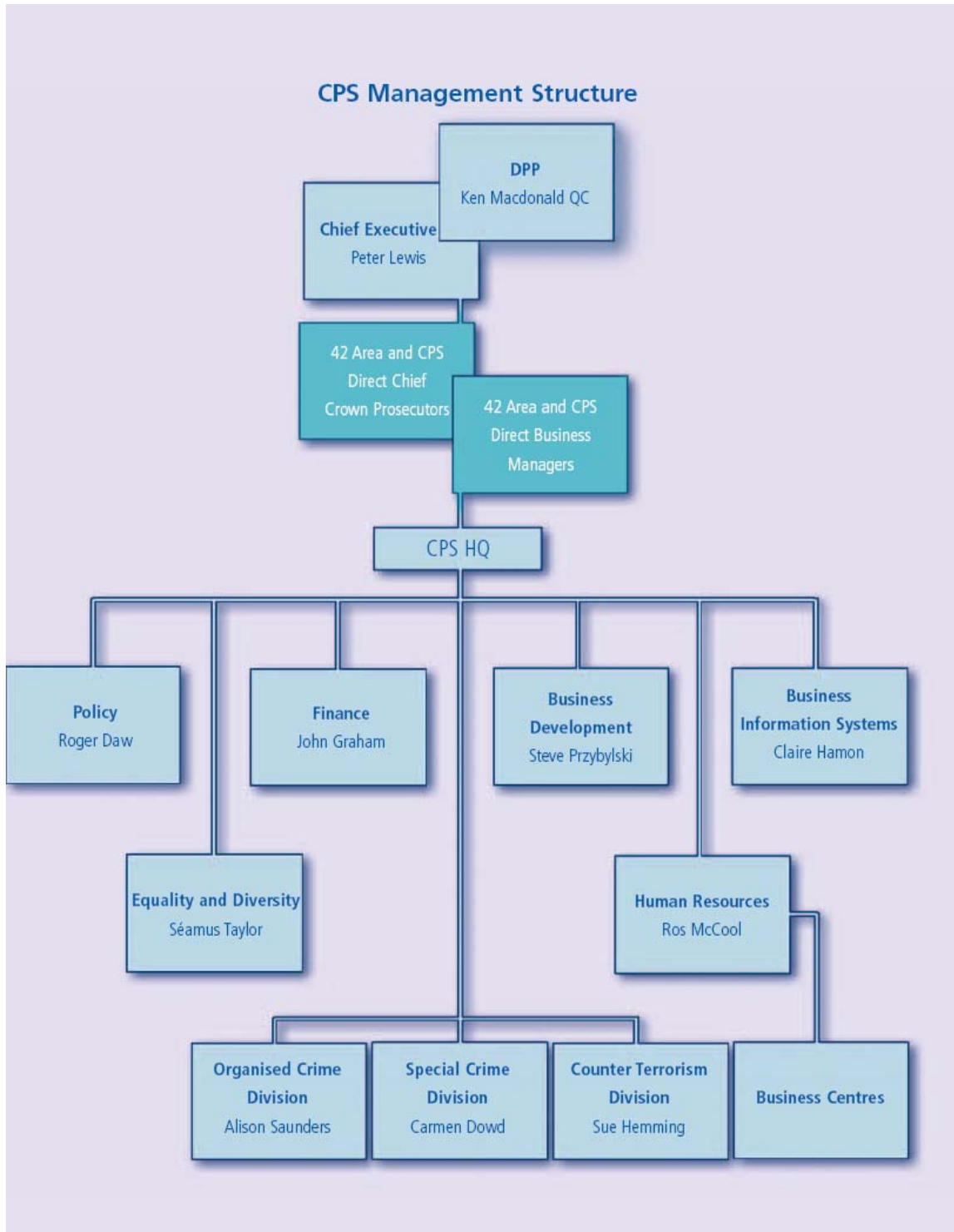
HMCS Board

The HMCS Board is responsible for determining strategy and for ensuring its achievement through effective planning. The members of the Board are as follows:

Sir Ronald De Witt	Chief Executive and Chairman
Dorothy Brown (from 18 September 2006)	HR Director for HMCS
Philip Lloyd	Resources Director
Mark Ormerod CB	Director, Civil, Family and Customer Services
Clare Sumner CBE	Director of Crime and Strategy
Neil Ward	Chief Operating Officer
Faith Boardman (from 1 April 2007)	Non Executive Board Member
Kevin King (from 1 April 2007)	Non Executive Board Member
Lord Justice Leveson (from 1 January 2007)	Non Executive Board Member
Kenneth Ludlam (from 1 April 2007)	Non Executive Board Member
Mee Ling Ng OBE	Non Executive Board Member
Maggie Semple OBE (from 1 April 2007)	Non Executive Board Member

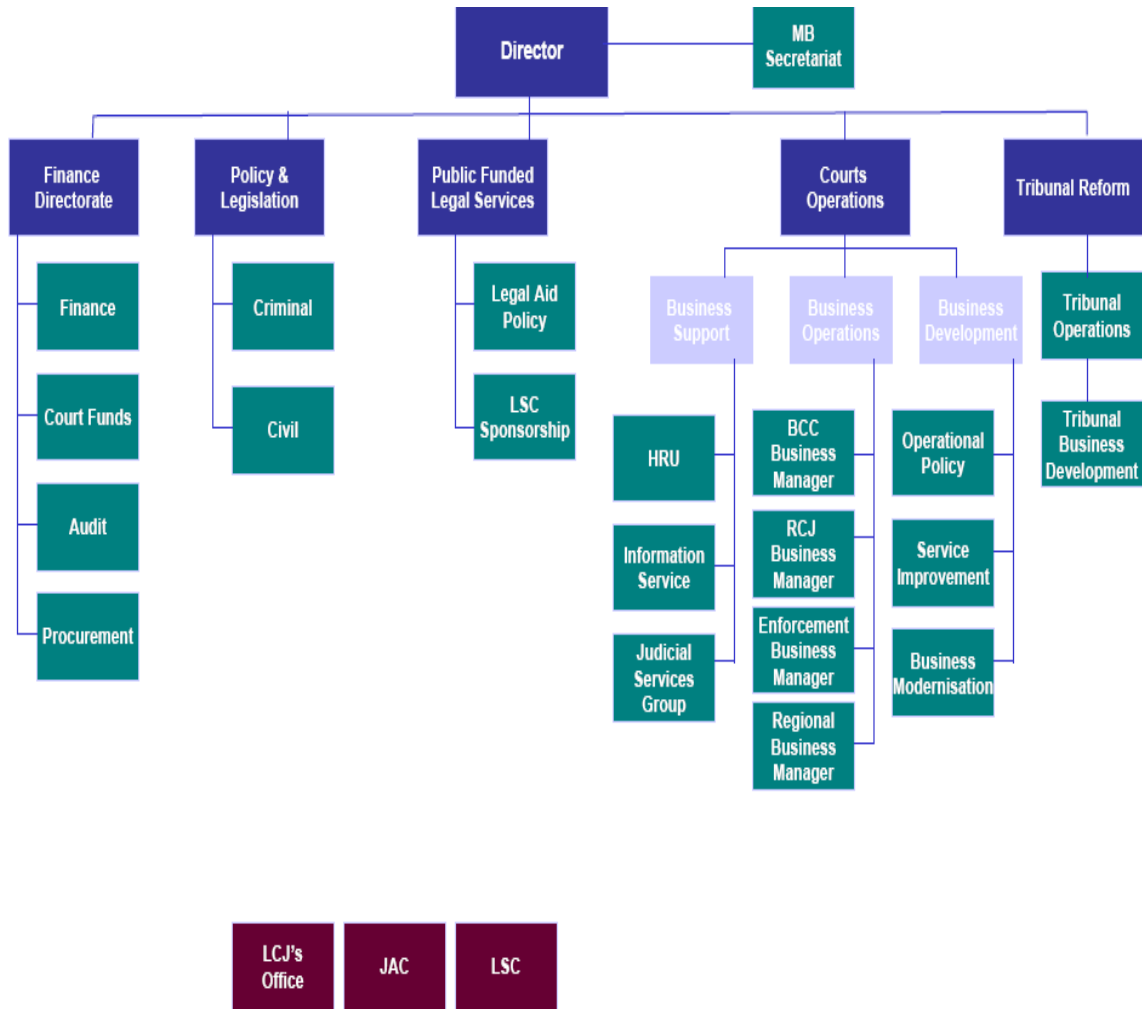
⁴⁶ Ibid at Pg 30

Annex C- Organisational Structure of CPS in England and Wales⁴⁷



⁴⁷ CPS Annual Report and Resource Accounts 2006-2007, Pg 4
<http://www.cps.gov.uk/publications/docs/annualreport07.pdf> .

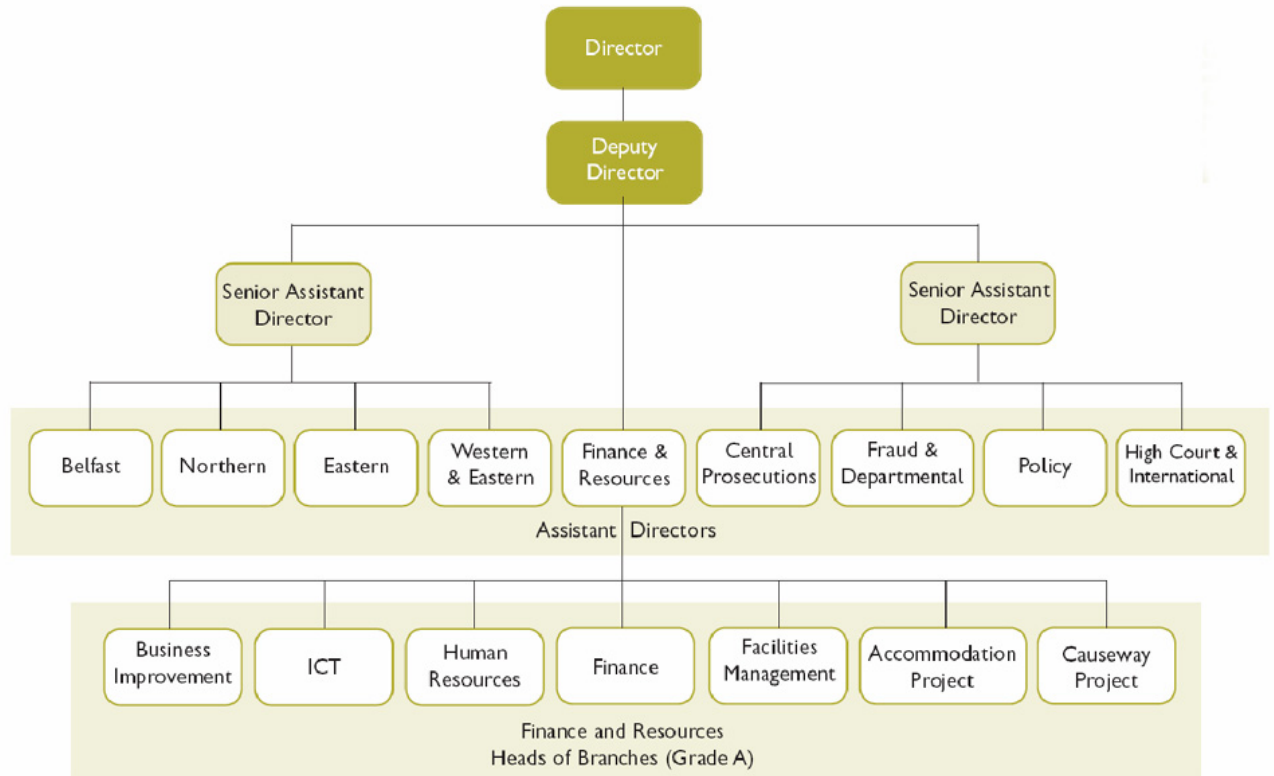
Annex D-Current Organisational Structure of NI Court Service⁴⁸



⁴⁸ Diagram taken from http://www.courtsni.gov.uk/NR/rdonlyres/8E2F9559-D96D-4D2F-B64E-7AE639EE4550/0/organisational_chart.pdf

Annex E- Current Organisational Structure of PPSNI ⁴⁹

PPS ORGANISATIONAL CHART



⁴⁹ Criminal Justice Inspection Northern Ireland, "An Inspection of the Public Prosecution Service in Northern Ireland", July 2007. Pg122.

<http://www.cjini.org/Publications/documents/PPSReportWeb.pdf>