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Session 2007/2008

First Report

Assembly and Executive review committee

**Report on the Inquiry
into the Devolution of
Policing and Justice Matters**

Volume 2

Written Submissions, Other Correspondence ,
Party Position Papers, Research Papers, Other Papers

Ordered by the Assembly and Executive Review Committee to be printed 26 February 2008
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**REPORT
EMBARGOED UNTIL
Commencement of the debate in Plenary on Tuesday, 11 March 2008**

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Powers and Membership

Powers

The Assembly and Executive Review Committee is a Standing Committee established in accordance with Section 29A and 29B of the Northern Ireland Act 1998 and Standing Order 54 which provide for the Committee to:

- consider the operation of Sections 16A to 16C of the Northern Ireland Act 1998 and, in particular, whether to recommend that the Secretary of State should make an order amending that Act and any other enactment so far as may be necessary to secure that they have effect, as from the date of the election of the 2011 Assembly, as if the executive selection amendments had not been made;
- make a report to the Secretary of State, the Assembly and the Executive Committee, by no later than 1 May 2015, on the operation of Parts III and IV of the Northern Ireland Act 1998; and
- consider such other matters relating to the functioning of the Assembly or the Executive as may be referred to it by the Assembly.

Membership

The Committee has eleven members including a Chairperson and Deputy Chairperson with a quorum of five. The membership of the Committee since its establishment in May 2007 has been as follows:

| | |
|---|----------------------|
| Rt Hon Jeffrey Donaldson (Chairperson) | Mr Danny Kennedy |
| Mr Raymond McCartney (Deputy Chairperson) | Mr Nelson McCausland |
| Mr Alex Attwood | Mr Ian McCrea |
| Ms Carmel Hanna | Mr Alan McFarland |
| Ms Carál Ní Chuilín | Mr John O'Dowd |
| Mr George Robinson | |

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Written Submissions



Mr Stephen Graham
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Executive Review Committee
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BT4 3XX

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9 July 2007

Dear Sir/Madam

Inquiry into the devolution of policing and justice matters

The Northern Ireland Assembly has requested that the Assembly and Executive Review Committee should report on the work which needs to be undertaken in accordance with Section 18 of the Northern Ireland (St Andrews Agreement) Act 2006 in relation to the transfer of policing and justice matters. The Committee determined that it would proceed with this work by conducting a formal inquiry. The terms of reference for the inquiry are:

Terms of Reference

1. To identify those policing and justice matters which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998 (the 1998 Act);
2. To consider which of these matters should be devolved and the extent to which they should be devolved;
3. To identify the preferred ministerial model and procedures for filling the ministerial post/posts for the new policing and justice department;
4. To identify what preparations need to be made by the Northern Ireland Assembly to facilitate the devolution of policing and justice matters and what preparations have been made;
5. To assess whether the Assembly is likely to make a request under section 4 (2A) of the 1998 Act before 1 May 2008, as to which policing and justice matters should cease to be reserved matters; and
6. To report to the Assembly by 29 February 2008.

The Committee agreed as well as inviting submissions from organisations with a specific interest in policing and justice matters, your organisation might be interested in making a written submission which addresses the terms of reference outlined above. Should you wish to do so, please submit your response by e-mail to: committee.assembly&executivereview@niassembly.gov.uk.

Alternatively, as specified in the guidance enclosed 15 hard copies of your submission should be sent to The Committee Clerk, Mr Stephen Graham, Room 428, Parliament Buildings, Stormont, BT4 3XX.

The deadline for receipt of written submissions has been extended to 26 September 2007. Please note that any submissions received may be included in the Committee's final report.

Please note that following receipt of any written submission you might make, you may be invited to present your submission at an oral evidence session with the Committee sometime during September/October/November 2007. Further information on the work of the Committee can be accessed on the following webpage:

http://www.niassembly.gov.uk/assem_exec/2007mandate/assem_exec.htm

If you have any queries, please get in touch with me on 028 9052 1784 or Roisin Donnelly on 028 9052 1845.

Yours faithfully



Stephen J Graham

Committee Clerk

List of Written Submissions

Committee on the Administration of Justice
Compensation Agency
Criminal Justice Inspection Northern Ireland
Disability Action
Down District Policing Partnership

Garda Síochána
HM Revenue and Customs
Include Youth
Legal Service Commission
Lord Chief Justice, Northern Ireland
Methodist Church in Ireland
Northern Ireland Affairs Committee
Northern Ireland Court Service
Northern Ireland Human Rights Commission
Northern Ireland Law Commission
Northern Ireland Office (Mr Paul Goggins MP)
Northern Ireland Policing Board
Northern Ireland Women's European Platform
Presbyterian Church in Ireland
Probation Board for Northern Ireland
Police Service of Northern Ireland
Public Prosecution Service, Northern Ireland
Robert McCartney Justice Campaign
Serious Organised Crime Agency
The Equality Commission for Northern Ireland
The Irish Congress of Trade Unions
The Law Society of Northern Ireland
The Minister for Justice, Equality and Law Reform
The Scottish Government

Committee on the Administration of Justice

Stephen J Graham
Clerk to the Assembly and Executive Review Committee
Room 428 Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

3rd August 2007

Dear Mr Graham

Thank you for inviting the Committee on the Administration of Justice (CAJ) to make a written submission to the inquiry into the devolution of policing and justice matters. The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ works on a broad

range of human rights issues and its membership is drawn from across the community. CAJ's activities include publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

As part of its work around policing and criminal justice, CAJ produced last year a major report on the devolution of criminal justice and policing powers to Northern Ireland. The report looks at models on offer from other jurisdictions and evaluates the advantages and disadvantages associated with each. Moreover, the report looks at other accountability mechanisms that need to be built into any system to ensure that power is administered fairly, effectively and in a human rights compliant manner. In addition, the report looks at the recent changes that have been taking place in criminal justice system in Northern Ireland as regards the impact they could have on devolution of power to the local level. Finally, it examines the issue of the delineation of powers to be devolved or retained at Westminster and the consequences this may have.

As such, we are very well placed to engage in this debate and we believe the content of our report will be extremely pertinent. In particular, chapter 2 on "governmental models for administering justice and policing functions" will be relevant for the discussions under point 3 of the inquiry's terms of reference.

In relation to points 1 and 2 of the terms of reference concerning identification of matters which are currently reserved under Schedule 3 of the Northern Ireland Act and which of these should be devolved, this is a matter which CAJ believes is of crucial importance. We understand that some work was undertaken in relation to this by the sub-group on policing and justice matters of the Preparation for Government Committee last year. However, we believe that what is needed is a detailed examination of all the legislation that relates to criminal justice and policing matters in Northern Ireland in order to ascertain what power lies where and what exactly would be devolved. The Criminal Justice Review and Patten reports, and the various pieces of enacting legislation arising there from, contain various recommendations and sections imposing obligations and bestowing powers on the local administration, on Westminster and on the local administration post-devolution. The result is a distinct lack of clarity on who does what and when.

To take a concrete example, at the time of the passage of the legislation arising from the Patten report, much parliamentary concern was expressed about the appropriate relationship between the Secretary of State and the Policing Board. The conclusion at that time was that the Secretary of State should be given clear authority to override the decision of the Board in a number of respects.^[1] Such primacy for the executive minister in Westminster was seen by many as problematic, but it might appear just as problematic, or even more so, if the "trump card" is in future held in the hands of a single locally elected minister. It is therefore essential that these powers should be re-examined in the context of future legislation to provide for the transfer of justice and policing powers to Northern Ireland.

The need for clarity is an issue that was also raised by the then Justice Oversight Commissioner who commented in his second report that:

"It would be useful for a study to be undertaken in advance of any devolution to identify the precise powers which would be transferred to the Northern Ireland Executive and what arrangements would be needed for their transfer."

We therefore feel that a useful starting point for the Committee as it embarks on this inquiry would be to request such a detailed breakdown of powers from the Northern Ireland Office.

We enclose for circulation to the Committee copies of this covering letter and of the Executive Summary of this report, as well as a copy of the full report for you. Copies of the full report can be made available to all members of the Committee should you find this helpful. We would also be very keen to testify to the Committee should it decide to receive oral evidence, and we look forward to hearing from you in this regard.

Yours sincerely

Aideen Gilmore

Research & Policy Officer

[1] The Secretary of State can, for example, override a decision by the Board to hold an inquiry if s/he agrees with the Chief Constable that the Board's request would: (a) interfere with national security interests; (b) relate to an individual and be of a sensitive personal nature; (c) likely to prejudice ongoing judicial proceedings; or (d) prejudice the detection of crime or apprehension/prosecution of offenders. See s. 59(3) and s.60(5) of Police (NI) Act 2000. Elsewhere, in s. 25(1)(a), the Secretary of State has a wide-ranging but relatively undefined power to issue "codes of practice relating to the discharge by the Board of any of its functions."

Change and Devolution of Criminal Justice and Policing in Northern Ireland: International Lessons

Committee on the Administration of Justice (CAJ)

January 2006

Summary of Recommendations

1. CAJ takes no position on the constitutional status of Northern Ireland and this report therefore takes no formal position on devolution within the UK context, nor does it address a series of issues around an all-Ireland relationship. These questions can and presumably will be addressed in the course of detailed negotiations between the various political parties and the British and Irish governments, in the context of discussions to date in the 1998 Agreement and the subsequent Joint Declaration (2003). At the same time, it is fair to say that the starting premise of this work was that in principle devolution of criminal justice and policing to more localised democratic control was to be welcomed, because it brings crucial decision making closer to those directly affected by those decisions. That said, our primary concern is that any eventual models of devolution be measured against clear human rights criteria, and that assessments of their relative merits and demerits be made on the basis of such criteria.

Any proposed devolution model needs to be assessed for its ability to:

- be open and transparent, so as to secure widespread public confidence;
- ensure an efficient and effective justice system;
- provide legal, democratic and financial accountability;
- represent the diversity that is Northern Ireland, and thereby ensure trust in its ability to work impartially and fairly for all; and
- deliver the administration of justice to the highest standards, as laid down in international and national human rights law.

2. CAJ recommends that the discussion about the appropriate devolution model to adopt should itself be an open and transparent debate, and should not be, or be seen to be, held behind closed doors and the subject to horse trading between different political parties. CAJ believes that the timetable for debate and for decision making is also a matter of public interest, rather than merely party political interest. It is particularly problematic that many changes recommended in the Criminal Justice Review are being treated (unjustifiably in our view) as contingent on devolution. Further foot-dragging of this kind can only fuel speculation that some of the Review recommendations are being held back so as to be treated as “bargaining chips” in the eventual political negotiations around devolution.

3. Regarding the appropriate governmental structures in any devolved criminal justice arrangements, CAJ concludes on the basis of its research that:

- a single department/minister may meet concerns about efficiency and effectiveness but may pose concerns around credibility and legitimacy in a politically polarised society like Northern Ireland. If it is determined to pursue a single ministry model, the emphasis will need to be on safeguards (such as those outlined in recommendation 4) that will ensure that the party ‘holding’ the single ministry is behaving in an impartial and non partisan way.
- a two or more departmental model would potentially offer Northern Ireland greater security against charges of ministerial partisanship since the departments can be headed up by members of different political traditions, who could be expected to act as a safeguard upon each other. This model risks being or appearing less efficient, and if pursued, the emphasis would need to be on mechanisms aimed at ensuring coordination, and collaboration across the criminal justice agencies will need to be the primary consideration.
- Northern Ireland already has the experience of the Office of the First and Deputy First Minister, which seeks to bring together cross-community ministerial responsibility within the operation of a single department, and some consideration was given to whether a similar model could be applied to a future Ministry of Justice. In reality, no other country studied had a model of this kind, so comparisons with elsewhere cannot be easily drawn upon. When learning from experience to date in Northern Ireland, it would appear that if this joint-leadership cross-community model were to be applied to criminal justice, it would be important to (i) have a clear delineation of responsibilities between the Minister and Deputy Minister (ii) establish clear protocols governing when joint agreement is needed and/or when a veto arrangement might operate and (iii) introduce a fall back mechanism to resolve any stalemates.

4. No executive governmental model (one, multiple, shared) is going to be self-sufficient in providing safeguards in such a highly contentious and politically problematic area. Northern Ireland should give active consideration to all of the following additional safeguards:

- Constitutional safeguards and Bills of Rights: a strong Bill of Rights for Northern Ireland will be an extremely important element of developing a criminal justice system that is both human rights compliant and sympathetic, and as such has a central role to play as an engine for transformation and change within criminal justice institutions.
- Parliamentary safeguards: tried and tested traditional methods of parliamentary scrutiny such as committees, questions and reporting obligations are extremely effective methods of holding minister(s) to account.
- Inspectorates/oversight mechanisms: such mechanism have already proved essential in monitoring the implementation of change in policing and criminal justice, and more permanent mechanisms should be considered.
- Complaints systems: while these are traditionally more common in relation to policing, the Criminal Justice Review recognised the importance of criminal justice institutions adopting procedures for complaints. Clearly the more independent these mechanisms are the better.
- Effective and independent judiciary: the judiciary must be in a position to rule objectively on the standards and human rights to which a member of the executive must adhere in the exercise of his or her ministerial responsibilities. Its established presence as an impartial and distinct organ of government should be a powerful deterrent to any justice minister who is tempted to act in a way which would be inconsistent with his or her office.
- Scrutiny at the local administrative level: the Criminal Justice Review envisaged a single local entity – building upon the Patten idea of District Policing Partnerships (DPPs) – which would deliver a holistic participatory approach to local policing and community safety. Government's decision to run two local entities in tandem (DPPs and Community Safety Partnerships (CSPs)), with little coordination, seriously risks undermining the impact either body can hope to have.
- International scrutiny mechanisms: Government policy, the judiciary, the police, and all the criminal justice agencies, are obliged to comply with the international human rights standards that the authorities have freely signed up to.
- Civilian oversight and statutory commissions: bodies such as the NI Policing Board, Judicial Appointments Commission, Police Ombudsman and Criminal Justice Inspectorate will all be extremely important in monitoring the police and criminal justice institutions.

5. CAJ recommends that any major institutional change in criminal justice and policing be built upon a detailed programme of work which ensures that the new arrangements embrace change and commit to the principles such as openness, transparency, accountability and human rights as set out in recommendation 1 of the Criminal Justice Review.

In particular, CAJ notes that a number of the key recommendations from the Criminal Justice Review that are instrumental in bringing about such change have made the least progress in implementation. Institutional resistance to change, and the failure to fully embrace cultural transformation leads to serious questions about the ability of the criminal justice system to transform itself into one which commands the confidence of the community it serves. In particular, this report highlights how recommendations relating to securing a representative workforce, a more reflective judiciary, equity monitoring of those who pass through the criminal justice system, the policy around the giving of reasons for no prosecution, the implementation of complaints mechanisms, codes of ethics and discipline, and the provision of adequate and relevant human rights training have been most protracted in their implementation. CAJ notes that institutional and political resistance to deeper cultural change is evident in relation to these

recommendations.

Without pressure for deeper institutional change, rebuilding confidence in the criminal justice system faces a tough challenge. At present it is difficult to see where such pressure exists. Arguably, the devolution of criminal justice and policing powers, and the local scrutiny and accountability that this will entail, could increase such pressure. Equally, however, failure to embrace the real and meaningful cultural change envisaged by the Criminal Justice Review could mean that other recommendations and reforms run the risk of becoming redundant, and indeed the devolution of criminal justice and policing powers would be of limited affect.

6. CAJ recommends that criminal justice only be devolved once there is a clear delineation of the exact powers that are to be 'devolved' and those that are to remain 'excepted'. It is particularly important that there is clarity in the area of emergency powers and national security. There will be arguments as to whether to devolve more or less authority to locally elected bodies in these particularly contentious areas, but this must be determined in advance of the transfer of powers. It is extremely worrying that, despite several requests, the Northern Ireland Office has not complied with requests from CAJ and others to provide a factual list of the various powers, who holds them currently, and which of these powers might or might not be devolved in future. It is CAJ's view that if there is ambiguity surrounding the nature and extent of authority and powers being transferred from Westminster to Northern Ireland, this would be very destabilising for the peace process, and could seriously undermine the efficiency and legitimacy of the eventual arrangements. Decisions underway currently, for example, regarding the transfer of key intelligence functions from the Police Service for Northern Ireland to MI5 will determine to a great extent the nature of criminal justice and policing powers to be devolved. In the past, problems of communication between internal branches of the police service – Special Branch and the regular units of either the RUC or PSNI – has led to grave errors (see, for example, the Ombudsman's inquiry into the Omagh bombing). The transfer of some of these functions to an agency outside of the Police Service of Northern Ireland makes the likelihood of such errors more not less likely in future. Very importantly, it removes some key functions – ones which traditionally lend themselves most easily to abuses of human rights – from effective local oversight. A devolution of powers that is seen by people in Northern Ireland to be devolution in name only will only be counter-productive.

For further details or a copy of the report contact: CAJ, 45-47 Donegall St, Belfast, BT1 2BR; tel: 02890 961122; e-mail: info@caj.org.uk

Compensation Agency

17 July 2007

Inquiry into the devolution of policing and justice matters

Thank you for your letter of 9 July asking the Agency to give evidence to the Assembly and Executive Review Committee about the devolution of justice and policing functions. As an Executive Agency, we are part of the Northern Ireland Office and are accountable to Ministers there. As such, any response to your request would issue from NIO Ministers covering all of the Department.

I can, however, confirm that the discussion paper issued by the Government in February 2006 envisaged the transfer to the

Northern Ireland Executive of all the functions falling in the reserve field currently undertaken by the Compensation Agency, and that remains our working assumption pending the outcome of the Assembly's consideration.

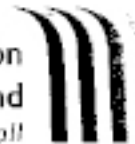
I should mention that the Agency currently ministers, amongst its compensation schemes, one covering actions taken under the Terrorism Act. While the Act itself is not to be a devolved matter, I should envisage that the Agency will be asked to continue to administer the applications – which are now at a fairly low level – on the basis of a service level agreement.

Gareth Johnston

Chief Executive

Criminal Justice Inspection Northern Ireland

Criminal Justice Inspection
Northern Ireland
a better justice system for all



10 August 2007

Stephen J Graham
Clerk to the Assembly
Room 428 Parliament Buildings
Stormont
Belfast

Dear Stephen,

Inquiry into the devolution of policing and justice matters

Thank you for your letter of 9 July inviting CJI to submit a note in relation to the above inquiry.

Criminal Justice Inspection (CJI) is an executive NDPB reporting to the

Secretary of State for Northern Ireland. When policing and justice are devolved sponsorship of CJI will transfer to the Justice Department and the Minister of Justice will take over all the relevant functions which are currently exercised by the Secretary of State.

CJI was established as an independent Inspectorate under the Justice (Northern Ireland) Act 2002. It has a remit to inspect most parts of the criminal justice system, including relevant functions of non-criminal justice organisations, such as the Benefit Fraud investigations of the Social Security Agency. Excluded from its remit are functions which are held by Westminster Departments and which will not be devolved ('excepted functions'), such as the Security Service (MI5), HM Revenue and Customs, the Assets Recovery Agency and immigration and nationality enforcement. However, CJI is ready to work with such agencies when necessary on a voluntary basis insofar as their work contributes to the criminal justice system. Most of CJI's work is criminal justice related, but there are

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exceptions: CJI inspects non crime-related police work, such as public order and roads policing, and when inspecting the Court Service it may review the administration of the civil as well as the criminal courts.

I think that is all the Committee needs to know for the purposes of its present inquiry, but I would be very glad to expand on any point of interest to the Committee.

There are a number of issues which CJI will want to raise with the Executive and with the Assembly in due course, which I have set out in a note attached, but these are, I would suggest, just for your own information at this stage. If you would like to have a word about any of them I would be glad to call on you.

Yours sincerely



Kit Chivers
Chief Inspector of Criminal Justice in Northern Ireland

Enc

CRIMINAL JUSTICE INSPECTION

Annex: Points to be raised with the Executive and the Assembly in due course

Although the remit of CJI is broadly satisfactory we propose that the Executive should call

for an independent quinquennial review of CJI's functions and performance to be conducted. This would enable the Assembly to take a fresh view of what it wanted from the Inspectorate in the new dispensation and how the Inspectorate should be resourced to meet those requirements. Two slight modifications of the remit might be considered at that stage:

(1) Inspection of the PSNI

Under the Act, CJI has a remit to inspect the PSNI, but it is constrained by the following provision (Schedule 8.8):

- 1. Before an inspection of the Police Service of Northern Ireland ... is carried out under s.46, the Chief Inspector must inform ... Her Majesty's Inspectors of Constabulary.*
- 2. If those Inspectors notify the Chief Inspector that they wish to carry out the inspection, the Chief Inspector must delegate its carrying out to them*
- 3. If those Inspectors do not notify the Chief Inspector that they wish to carry out the inspection, the Chief Inspector must, before the inspection or review is carried out, consult the Secretary of State with a view to obtaining his approval of the inspection which it is proposed to carry out.*

Once responsibility for the PSNI transfers to the Assembly it would seem right that the relationship between CJI and HM Inspectorate of Constabulary should be the same as that between CJI and other England and Wales Inspectorates, namely that they inspect in Northern Ireland as agents for CJI, which will be the Assembly's own designated Inspectorate in the area of policing and criminal justice. CJI has always worked closely in partnership with HMIC on policing issues, and it would continue to depend on HMIC for its expertise and its ability to provide benchmarking with police forces in England and Wales. HMIC also conducts 'Best Value' reviews of Policing Authorities in England and Wales, and it would be useful if CJI could be authorised to inspect the work of the Policing Board and District Policing Partnerships similarly.

(2) Reviews of individual cases

Under the Act, CJI is not allowed to review individual cases, and that is a useful protection for CJI, as it prevents inspectors being drawn into dealing with complaints from members of the public. However, in the nature of CJI's work it has to review individual cases on file when it is inspecting an agency. It is accepted that that does not infringe the Act, and that

the important point is that CJI collates and anonymises the information and does not refer to individual cases in its reports.

Very occasionally it would be useful for CJI to be able to report on a specific case. HM Crown Prosecution Service Inspectorate has been asked by the Attorney General to review the handling of certain cases which gave rise to grave public concern (e.g. the aborted Jubilee Line Extension trial) and HM Inspectorate of Probation in England and Wales has several times reported on the circumstances of serious further offences committed by offenders released under licence. CJI recommended in relation to the case of Trevor Hamilton that in the most serious cases in Northern Ireland the Serious Case Review should be conducted independently by CJI rather than by the agencies concerned. That would require a permissive power for CJI to conduct such reviews at the request of the Minister.

The planning process

CJI prepares a programme of work each year which it submits to the Secretary of State in the form of a Business Plan for his formal approval. Every three years it also submits a Corporate Plan looking three years ahead on a more provisional basis. The Minister of Justice will take over responsibility for approving those plans. There is extensive consultation in the preparation of the programme, culminating in the annual CJI Stakeholder Conference, which is attended by the agencies and voluntary organisations, politicians, academics and other interested parties. The Minister, through the agencies of the criminal justice system, will have several opportunities to make an input to the plans before they reach the Stakeholder Conference. The relevant Committee of the Assembly may wish to consider how it would like to make an input to the process too.

Resourcing of CJI

Under the Act, the Chief Inspector is appointed by the Secretary of State, and CJI receives an annual grant from the NIO out of which its salaries and expenses are paid. Staff of CJI are employees of the Chief Inspector and are not civil servants, though they are on comparable terms and their pay is controlled by the NIO. CJI's budget in the current year is £1.4 million. In addition to the Chief Inspector and Deputy Chief Inspector there are six Inspectors and another seven supporting staff. Part of the budget is used to repay other Inspectorates, such as HM Inspectorate of Prisons, who come over to Northern Ireland to inspect as agents for CJI. It will fall to the Minister, if he is in place by then, to appoint a new Chief Inspector when the present incumbent's contract expires on 3 August 2008.

CJI has recently been invited to take on new responsibilities as part of the UK's National Preventive Mechanism under the Optional Protocol to the International Convention against Torture. This, together with the new demands which we expect will be placed on the Inspectorate by the Assembly, may have implications for the future resourcing of CJI. However CJI is committed to operating in the most cost-effective possible way, and it will do everything it can to absorb costs and mitigate the burden placed on the agencies by co-

operating with other inspection and audit bodies, such as the Human Rights Commission, the Commissioner for Children and Young People, the Regulation and Quality Improvement Authority and the Northern Ireland Audit Office.

Publication of reports

CJI is required by the Act to submit its reports in draft to the Secretary of State, who presents them to Parliament before they are published. Under devolution we would suggest that reports should in principle be presented by the Chief Inspector direct to the Assembly, though normal courtesy would require that the Chief Inspector should give the Minister advance sight of them in confidence before presenting them. The provisions of the Act were designed to ensure that the Secretary of State could control publication and could withhold reports to protect the safety of individuals or in the public interest. CJI would submit that those safeguards are no longer necessary or appropriate. There is no danger to individual safety arising from CJI's reports, which never refer to individuals, and there is no imaginable public interest in suppressing any of them. This change would strengthen the perceived independence of the Inspectorate.

The requirement for presentation to Parliament prior to publication has meant that CJI is unable to publish during the long Parliamentary summer recess, which can lead to reports being unhelpfully delayed. CJI would propose that, if the Assembly agrees, it should be allowed to submit reports and publish them at any time, whether or not the Assembly is in session.

Management of the criminal justice system

CJI believes strongly that policing and criminal justice should be brought together in a

CJI believes strongly that policing and criminal justice should be brought together in a single Ministry, with joint Ministers or junior and senior Ministers as necessary. For reasons which are set out in the inspection report on the PPS which CJI issued on 8 August 2007 the Public Prosecution Service should be funded by and should report to that Ministry, and its professional independence should be safeguarded by emphasising the statutory position of the Director of Public Prosecutions and making the PPS a stand-alone non-ministerial Government Department, not by any separation of funding and accountability.

A unified Ministry would make for a strong, unified Criminal Justice Board, with responsibility for the planning and management of the criminal justice system. At present the Northern Ireland Criminal Justice Board is consultative, not executive, and in the view of the Inspectorate the doctrine of the independence of the respective criminal justice agencies is allowed to militate against effective planning and management. At present CJI has no access to the papers of the CJB, nor does it inspect the Northern Ireland Office itself, though it inspects its Executive Agencies. Although it would not be appropriate for CJI to comment on or second-guess the policy advice which officials provide to the Minister, we would suggest that executive operations of the Ministry (such as its management of Community Safety Partnerships and its sponsorship of the voluntary sector) should be open to scrutiny.

Other organisational matters

The Criminal Justice Review of 2000 envisaged that the Probation Board might become an Executive Agency following devolution. We would support such a move, but it would be important that some of the expertise of the current Board should be retained in the form of non-executive appointments to the Agency Management Board.

CJI has reported on the relationship between Community Safety Partnerships and District Policing Partnerships. We believe that there will be scope for the Assembly to take a fresh look at the appropriate structure in the context of the Review of Public Administration.

CJI reported recently (July 2007) on the management of complaints in the criminal justice system. We propose that following devolution there should be a rationalisation of the

arrangements (except, at this stage, for complaints against the police) whereby the first level of complaint handling should be internal and the second level should be independent investigation by the Assembly Ombudsman.

Criminal Justice Inspection Northern Ireland
14 Great Victoria Street
Belfast
BT2 7BA

028 9025 8000
www.cjini.org

August 2008

Disability Action



Inquiry into the Devolution of Policing and Justice Matters

Disability Action's Response

August 2007

Any enquiry concerning this document should be made to the

Office of the Chief Executive
Disability Action
189 Airport Road West
Belfast BT3 9ED

Tel: 028 90 297880
Fax: 028 90 297881
Textphone: 028 90 297882

Introduction

1 Disability Action is a pioneering Northern Ireland charity, working with and for people with disabilities. We work with our members to provide information, training, transport, awareness programmes and representation for people regardless of their disability; whether that is a physical, mental, sensory, hidden or learning disability.

2 More than one in five (300,000) people in Northern Ireland has a disability and the incidence is higher here than in the rest of the United Kingdom. Over one quarter of all families here are affected.

3 As a campaigning body, we work to bring about positive change to the social, economic and cultural life of people with disabilities and consequently our entire community.

4 Our range of services is provided from a Head Office based in Belfast and three local offices, with 85 staff and 250 volunteers.

5 Disability Action welcomes the opportunity to respond to this draft and to aid our response has put the relevant page/paragraph of the draft in brackets at the end of our comments.

General Commentary

2.1 Disability Action has recently established a Centre on Human Rights for Disabled People. The aim of the Centre is to secure the human rights of people with disabilities in Northern Ireland. Details of the Centre are enclosed for your perusal.

2.2 Disability Action welcomes the opportunity to make a written submission to the Northern Ireland Assembly Inquiry into the devolution of policing and justice matters. Disability Action is concerned with the interests of people with disabilities who whether they are victims of crime or perpetrators of crime.

3.0 The Rights of People with Disabilities

3.1 Disability has, until fairly recently, been an overlooked or 'forgotten' dimension of human rights^[1]. Despite the existence of various human rights instruments at regional, European and international levels, people with disabilities continue to experience marginalisation, exclusion, disadvantage, and discriminatory assumptions about their quality of life. That is, people with disabilities are often subject to extensive human right violations.

3.2 The International Convention on the Rights of Persons with Disabilities (hereafter referred to as the Convention), and its optional protocol, was adopted by the United Nations (UN) General Assembly in New York on 13 December 2006. This Convention was signed by both the United Kingdom and Ireland at UN Headquarters on 30 March 2007, and is currently awaiting ratification by both States.

3.3 The international convention provides a major boost for disabled people's human rights. The Convention obliges signatory States, which now include the UK and Ireland, to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."

3.4 Disability Action wishes to direct the attention of the Executive to a number of articles contained within the Convention on the Rights of Disabled Persons which we feel are of particular significance to the present Inquiry:

- Article 5 requires States Parties to promote equality and prohibit all discrimination on the basis of disability
- Article 8 requires States Parties to foster respect for the rights and dignity of persons with disabilities and combat

stereotypes, prejudices and harmful practices

- Article 10 requires States Parties to guarantee that persons with disabilities enjoy their inherent right to life on an equal basis with others
- Article 12 requires States Parties to ensure that persons with disabilities: have the right to recognition as persons before the law; that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life; and that State Parties take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
- Article 13 requires States Parties to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, as witnesses, and in all legal proceedings, including at investigative and other preliminary stages. Article 13 further requires State Parties to promote appropriate training for those working in the field of the administration of justice, including police and prison staff.
- Article 15 requires States Parties to guarantee freedom from torture or cruel, inhuman or degrading treatment or punishment
- Article 21 requires States Parties to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice

3.5 Disability Action urges the Executive to consider the forthcoming Convention as part of its Inquiry to ensure that, when ratified, Government's obligations under the new Convention will be fully met.

4.0 Specific Commentary

4.1 There are currently no national statistics which can be drawn upon in relation to this issue. However, evidence, which we have outlined below, suggests that people with disabilities are more likely to be victims of certain crimes and anti-social behaviour compared to non-disabled people. Disability Action encourages the Executive Review Committee to actively address these issues when considering matters relating to the transfer of policing and justice.

4.2 The PSNI Statistical report shows that there were 70 incidents with a disability motivation reported to the PSNI, with 38 of these incidents recorded as crimes during the period 1 April 2005 – 31 March 2006. Twenty of the crimes recorded against disabled people during this period involved woundings or assaults. Criminal damage to property accounted for 9, theft 5, intimidation or harassment 3, and one recorded as 'other violent crime'. There was little difference between urban and rural areas in terms of the types of crimes perpetrated apart from theft where there were 4 incidents recorded in urban areas compared with 1 in a rural area.

4.3 A study of 904 people with learning disabilities in England, Wales and Northern Ireland, 'Living in Fear' (Mencap 1999) found that nine out of ten respondents reported being bullied, harassed or intimidated and of these, almost a quarter reported physical attack. There have been incidents of attacks on people with disabilities that have attracted media publicity, but it is widely estimated that there is serious under-reporting of such crimes as disabled people believe their complaint will not be taken seriously by the authorities or by society in general.

4.4 A more recent survey of disabled people in Scotland found that 47% of respondents had experienced hate crime because of their disability and 31% of these people experience incidents regularly; at least once a month.^[2] Where disabled people may have become accustomed to enduring verbal abuse on a regular basis, they may not be aware that they can, or should, report the incident to the PSNI. They may be so accustomed to such behaviour that they have almost 'normalised' it as part of their day to day experience and would not expect the PSNI to take the incident seriously.

4.5 In addition, disabled people, particularly those with learning disabilities or visual impairments, may also have difficulty identifying and giving evidence against their attacker. In some cases, disabled people see these attacks as extensions of society's view of them as second-class citizens.

4.6 Research by Mencap in 2002 shows that disabled people are four times more likely to experience sexual abuse than non-disabled people, and people with learning disabilities are particularly likely to experience this type of abuse.^[3]

4.7 Children and young people with disabilities can experience bullying, intimidation and verbal abuse.

4.8 Under-reporting has repercussions. When incidents go unreported, the perception in society is that they are not taking place. To believe this is more 'comfortable' than the realisation that 'this does happen here' and that it needs to be addressed. Also, there is the danger that the perpetrators of hate crimes will believe their actions are acceptable if they are not being highlighted or condemned.

4.9 People with disabilities may also interact with the Criminal Justice System as prisoners, people who are on probation, on bail, or attending court or police stations. That someone has a disability does not mean they should not have the same rights and entitlements as people without disabilities.

4.10 A study by the Prison Reform Trust (2006) found that 70% of prison staff felt that they were not adequately trained to handle prisoners with disabilities, nor did they have enough time or staff.^[4] The report also identified grave concerns about many prisoners' lack of understanding of court proceedings and the prison system.

4.11 In Northern Ireland, the Bamford Report (2006) highlights the inadequacy of the existing criminal justice system in relation to treatment for people with a mental health disability.^[5]

4.12 It is vital that people with disabilities who are in contact with the criminal justice system have access to accessible legal advice and representation. Disability Action is concerned that some people with disabilities experience extensive marginalisation and isolation in detention facilities due to a lack of accessible facilities, activities, and education programmes.

4.13 Lack of awareness of disabled people's needs, and ineffective and unskilled communication with disabled people, further combine to exacerbate the social isolation and mental health issues that people with disabilities in the criminal justice system can experience.

4.14 Disability Action strongly recommends that the Executive acknowledge and address the following:

Limited knowledge of what constitutes a hate crime;

- Lack of accessible information;
- Lack of specialist support for victims;
- Lack of specialist support for perpetrators;
- Mistrust of the Criminal Justice System;
- Fear of intimidation;
- Fear of not being seen as a credible witness; and
- Lack of understanding of disability.

5.0 Conclusion

5.1 Disability Action has welcomed the opportunity to make a submission. Disability Action looks forward to continued dialogue on this and other issues of major significance to people with disabilities throughout Northern Ireland.

[1] R. Daw (2005) Human Rights and Disability: The Impact of the Human Rights Act on Disabled People, DRC/RNID

[2] Hate Crime Against Disabled People in Scotland – a survey report (2004) Capability Scotland and Disability Rights Commission.

[3] Behind Closed Doors (2002) Mencap: London

[4] Talbot, J. (2007) No one Knows: Identifying and supporting prisoners with learning difficulties and learning disabilities, Prison Reform Trust.

[5] Forensic Services (2006), The Bamford review of Mental Health and Learning Disability (Northern Ireland)

Down District Policing Partnership

In response to your letter regarding this issue please see the following response from Down District Policing Partnership;

- From a pragmatic point of view Down District Policing Partnership believes that all Justice and Policing Matters should be

transferred to the Local Assembly

- The Ministerial Post involved should rotate between the Parties and should ensure the inclusive view-point of all opinion in Northern Ireland
- The Powers of the Minister should relate only to Long Term Strategic Decisions based on Patten and the follow-up to Patten
- The Devolution of the Ministerial Post should not in any manner interfere with the operational efficiency of Policing and Justice

If you should require any further clarification of DDPP Members views please do not hesitate to contact me at 028 44 610857 or by email at alan.mccay@downdc.gov.uk

With Regards

Alan McCay

Policing Partnership Manager

Garda Síochána

An Garda Síochána

Oifig an Choimisinéara,
An Garda Síochána,
Páirc an Fhionnaisce,
Baile Átha Cliath 8,
Éire.

Tel/Teileafón: (01) 666 2015 / 2026

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Please quote the following ref. number:



Office of the Commissioner,
Garda Headquarters,
Phoenix Park,
Dublin 8,
Ireland.

Web site: www.garda.ie

E-mail: comstaff@icli.ie

Date:

CONFIDENTIAL

P.A. 6.1.6.14

Mr Stephen J Graham
Clerk to the Assembly and Executive Review Committee

Room 428
Parliament Buildings
Stormont Estate
Belfast

RE: INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS

Dear Mr Graham

I am to reply to your letter of the 9 July 2007, in the above.

At the outset it should be stated that there exists an excellent working relationship between An Garda Síochána and the Police Service of Northern Ireland (P.S.N.I.).

Close working relationships have been developed between specialist units in both organisations. An example of which would be the Criminal Assets Bureau and the Asset Recovery Agency, and also the Camden Assets Recovery Interagency Network (CAR.I.N.). There are regular meetings between the various units, and several joint operations have had successful outcomes.

In the context of the Committees work, the following two issues are worthy of consideration:-

Mission Statement

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security

(1) Formalisation of Procedures for direct enquires between An Garda Síochána and the P.S.N.I.

At present the official contact point for all police enquires from Northern Ireland is through the Interpol Office in London. It is then transmitted to Interpol Dublin and on completion the reply is routed through the same channel.

(2) Mutual Assistance Procedures between both jurisdictions

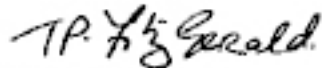
This issue relates to Incoming Mutual Assistance Requests from the United Kingdom. At present, request from the UK to this jurisdiction are forwarded by The Home Office or the Northern Ireland Office in London to the Central

THE IRISH OFFICE OF THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
Authority for Mutual Assistance at the Department of Justice, Equality and Law Reform.

Perhaps the Review Committee could liaise directly with the Department of Justice, Equality and Law Reform in this regard. This is in view of the fact that our domestic legislation sets down from whom a Letter of Request can be received.

An Garda Síochána and the Police Service of Northern Ireland are responsible for policing a relatively small area within the Common Travel Area and free movement of persons and goods across a shared border. While the current arrangements in the two areas highlighted above do not prevent co-operation, there may be scope for enhanced co-operation, at an operational policing level, between both organisations if the procedures allowed for more direct formal contact.

Yours sincerely



T P FITZGERALD
DEPUTY COMMISSIONER
ACTING COMMISSIONER OF
AN GARDA SÍOCHÁNA

10 August 2007

Mission Statement:

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security

HM Revenue and Customs



*Received after 17th Aug
deadline*

ROY CLARK
Director
Criminal Investigation Directorate
Custom House
Lower Thames Street
London EC3R 6EE

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Date 21st August 2007
Our Ref
Your Ref

Dear Mr Graham

1. Thank you for giving us the opportunity to provide written evidence to the Assembly and Executive Review Committee on the devolution of policing and justice matters.
2. HM Revenue & Customs (HMRC) is responding as a national organisation which has criminal investigation powers in relation to HMRC assigned matters across the United Kingdom. Our evidence focuses in particular on paragraphs 1 and 4 of the terms of reference although some of what we say is relevant to paragraph 2. Our evidence primarily concerns the potential impact on HMRC of operating under a criminal justice regime in Northern Ireland which is moving at a different pace to that in Great Britain.
3. Schedule 3 of the Northern Ireland Act sets out matters which were reserved at the time of the act, paragraphs 9 (a-d) and 25 of that schedule are of particular relevance to HMRC.

"9. The following matters-

- (a) the criminal law;*
- (b) the creation of offences and penalties;*
- (c) the prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings;*

(d) prosecutions;

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- (e) the treatment of offenders (including children and young persons, and mental health patients, involved in crime);
- (f) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;
- (g) compensation out of public funds for victims of crime.*

**25. The subject-matter of the Money Laundering Regulations 1993, but in relation to any type of business"*

4. HMRC was formed in 2005 by merging the former HM Customs and Excise with the former Inland Revenue. We are a statutory department operating nationally and have responsibility for the administration of the direct and indirect tax and duties systems, the administration of tax credits, the National Minimum Wage and Border controls in relation to the import and export of prohibited and restricted goods. We seek to ensure that individuals and businesses comply with their obligations under these various regimes and do so in a compliance spectrum which ranges from the provision of assistance and guidance at one end through the use of civil penalties and the recovery of unpaid tax to the investigation of criminal cases at the other.
5. Our Criminal Investigation Directorate is responsible for the investigation of offences against HMRC regimes in accordance with a published criminal investigation policy (attached for reference). The full breadth of our criminal investigation work is as follows
 - Drugs
 - Tobacco
 - Alcohol
 - Oils
 - Indirect and direct tax fraud
 - Tax credits fraud
 - Customs and other excise duty frauds
 - Other prohibitions and restrictions
 - Money laundering, particularly in relation to frauds against HMRC assigned matters

6. Additionally HMRC are able to act to recover the proceeds of crime using the powers available within the Proceeds of Crime Act and in relation to...

available within the Proceeds of Crime Act and we seek to make full, effective use of these powers.

7. HMRC have close relationships with the Law Enforcement community in Northern Ireland as members of the Organised Crime Task Force (OCTF). We have been part of the OCTF since its inception and it has facilitated both close operational cooperation between the enforcement agencies and the develop of improved regulatory and legislative responses to fraud.
8. HMRC also enjoy a strong working relationship with the main enforcement authorities in the Republic of Ireland (RoI), including the Revenue Commissioners, An Garda Síochána and the Criminal Assets Bureau. The RoI shares many of the fraud problems which HMRC is facing, notably in relation to Tobacco trafficking, Oils fraud and some forms of direct tax fraud. We have recently legislated to enable HMRC to provide information to Criminal Assets Bureau to support those cases where they are taking action through the civil courts to recover the proceeds of crime.
9. Joint activity, both under that aegis of the OCTF and bilaterally with the RoI authorities, has been important to the success of efforts to tackle Oils fraud in NI. We have run major joint operations to disrupt and dismantle oils launderers/smugglers and to recover the proceeds of their frauds. This has included major parallel operations on both sides of the border, involving law enforcement agencies along with the Criminal Appeals Bureau and Assets Recovery Agency.
10. During the passage of the legislation which created HMRC, Treasury Ministers announced that a long term review of HMRC's powers would be undertaken. Although this review continues, its work on criminal investigation powers culminated in the passage of legislation in the Finance Bill 2007 and the inclusion of specific clauses in the Serious Crime Bill currently progressing through Parliament. The review has consolidated existing powers available to the two former C&E and IR Departments into the framework of the powers available under the Police and Criminal Evidence Act 1985 (The PACE Northern Ireland Order in NI) as variously amended. As a consequence certain criminal investigation powers available to the formers departments within other legislation (for example the former Inland Revenue search power under S20C of the Taxes Management Act) are to be repealed and replaced with the PACE powers bringing HMRC investigators more in line with the Police. The same legislation also introduced a framework of similar powers for HMRC in Scotland, providing consistency with the PACE and Scottish Police powers.
11. Clauses have also been included to provide cross border powers between Scotland and the rest of the UK in order to address specific problems HMRC has experienced in relation to national investigations which run within two different legal frameworks. Following the expected passage of some further legislation in the autumn HMRC expect to commence operating under the new powers late this year.
12. We think it is important for the Committee to recognise that there will be a need to

ensure broad consistency between the criminal investigation powers available in NI and in Great Britain. Any significant divergence between the two runs the risk of severely hampering the co-operative working relationship not only between HMRC and the LE Community in NI but also between PSNI and Police Forces in Great Britain.

13. We would also suggest that the Committee notes the occasions where the split between GB and NI legislation already creates difficulties. For example, recent amendments to PACE and to the PACE(NI) Order made provision for the use of multi-premises search warrants in certain cases. The nature of these warrants enables Police Officers to search both primary and connected premises without the need to go back to the judicial authorities to seek subsidiary warrants. This effect is hampered by the different jurisdictions of the authorities in NI and GB which means that a multi-premises warrant issued in Northern Ireland cannot be executed in Great Britain. There are similar difficulties with the differences between the available powers in England & Wales and those available in Scotland.
14. In common with the Police, HMRC cases are prosecuted by an independent prosecutor. In England and Wales the Revenue & Customs Prosecution Office prosecutes all HMRC cases. It is also responsible for the issue of Disclosure Notices under S60 and following of the Serious and Organised Crime & Police Act 2005. In Scotland prosecution are conducted by the Crown Office & Procurator Fiscal Service. In NI the Public Prosecution Service conducts prosecutions on our behalf.
15. The legislative differences together with the separate prosecution authorities means that HMRC must manage a complex set of relationships when investigation cases cross jurisdictional boundaries. The scale of organised tax/duty fraud means that we must deal with these relationship issues in a significant proportion of our casework. We would welcome the Committee's views on the potential for devolution to impact on these relationships.
16. HMRC recognise that the devolution of policing and justice is a key next step in the normalisation of the political process in NI. Our ambition is to continue to work constructively with our colleagues in the NI Law Enforcement community and with the Executive, and to continue our contribution to the fight against organised crime in NI. In this we recognise the special circumstances of NI and the need to focus on aspects of criminality which are unique to or which have particular impact in NI. Our contribution in NI has to be seen in the context of our UK-wide remit and the

objectives set under our Public Service Agreement (PSA). Our criminal investigation priorities are driven by the PSA targets and the UK organised crime Threat Assessment (produced annually by the Serious and Organised Crime Agency).

17. Our comments therefore are subject to the caveat that there can be no absolute guarantee that HMRC will be able to maintain the criminal investigation resource currently in NI. Nor would that resource be directed by the priorities of the Executive.

Yours sincerely

ROY CLARK

cc Paul Gray
Mike Eland
Mike Norgrove
Kristin Jones RCPO
Andrew Lawrence CCP

Include Youth



Written Submission to the Northern Ireland Assembly and Executive Review Committee Inquiry into the Devolution of Policing and Justice Matters

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Written Submission to the Northern Ireland Assembly and Executive Review Committee Inquiry into the Devolution of Policing and Justice Matters

August 2007

Introduction

1. Include Youth promotes best practice with young people in need or at risk. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities aimed at influencing public policy and public awareness - locally and nationally.
2. Include Youth promotes the development of positive choices and opportunities for vulnerable and challenging young people in the community, residential care or custody. Include Youth promotes the use of community alternatives to care and custody for children and young people.

3. Amongst the young people at risk with whom, and on whose behalf, Include Youth works are young people from socially disadvantaged areas, those who have been truanting, suspended or expelled from school, those from a care background, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

4. Include Youth runs the Young Voices project, which is a participation project for young people who have had experience of the criminal justice system, with the aim of supporting these young people to become involved in decision-making processes which impact upon their lives. Currently the Young Voices project supports young people in two groups – one drawing its members from the Greater Belfast area, and the second based in the Juvenile Justice Centre, Bangor.

5. In addition, Include Youth runs the YOYO Practitioners Forum, which draws together professionals from a range of statutory, voluntary and community organisations working directly with young people in need or at risk, and meets on a quarterly basis.

General Comments

6. Include Youth very much welcomes the opportunity to make written submissions to the Inquiry into the Devolution of Policing and Justice Matters. Include Youth has a considerable track record of over 28 years working closely with all the relevant systems which engage with children at risk and in need. We have a sound understanding of child welfare, education and youth justice law, policy, practice and service delivery in Northern Ireland. We have a dedicated policy / advocacy role where we work to address all relevant issues concerning children and young people in conflict with the law. This work is informed by our work with young people, with practitioners as well as relevant human rights instruments and best practice evidence. As an organisation working to make children's rights a reality in the most challenging of circumstances Include Youth is committed to working in partnership with all stakeholders in all settings.

7. Include Youth wishes to outline a number of general points in relation to the terms of reference. However, our submission focuses mainly on policing and justice matters and their impact on children and young people. We believe this Inquiry provides the Committee members with the opportunity to engage with the debate concerning children and young people at risk, particularly those in conflict with the law, in a positive and progressive way. This engagement should have significant positive impact on the lives of children, their families, the communities within which they live, together with the wider society.

Include Youth's Vision for Youth Justice

8. Include Youth is currently working on producing a Vision for Youth Justice in Northern Ireland. Our intention is to provide a Framework for the development of a system for dealing with children in conflict with the law that is practical, realistic, achievable and children's rights compliant. This Framework will focus on both 'early intervention' and the 'formal youth justice system'. We intend to finalise this document early in the autumn and are keen to share it with members of the Committee. We believe it will be of significant assistance to members in their important deliberations regarding the devolution of policing and justice, especially where these issues relate to children and young people. However, we include below some initial findings from our work.

Terms of Reference

1. To identify those policing and justice matters which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998 (the 1998 Act);

9. We recognise that this is a broad and complex area which is demonstrated by the wide-ranging findings of previous reviews (e.g. Criminal Justice Review and the Patten Commission) and resulting legislation and reforms.

10. For the purposes of this submission, Include Youth will primarily address the reserved matters listed at Section 9, Schedule 3 of the Northern Ireland Act 1998 in respect of how these impact upon children and young people.

11. One practical issue requiring clarification concerns where responsibility lies for the treatment in the community of children who offend (i.e. supervision of court ordered community sentences). At present there exists duplication of the roles of the Youth Justice Agency and Probation Board for Northern Ireland. As a matter of urgency Include Youth recommends the Committee seeks to resolve confusion over role of Youth Justice Agency and Probation Board for Northern Ireland regarding treatment in the community of children who offend.

2. To consider which of these matters should be devolved and the extent to which they should be devolved

12. Include Youth appreciates that devolving powers in respect of justice and policing matters is controversial and divisive. It will be essential to ensure that agreed measures will secure confidence of all sections of society. We welcome the Inquiry as an important step towards devolution of powers, as we believe that local democratic control brings crucial decision making closer to those directly affected by policy decisions and interventions. Within this context of democracy and devolution, it is imperative that proposed models of devolution are measured against unambiguous human rights criteria, and comply with international human rights and children's rights standards.

13. Include Youth believes that youth justice should be devolved as soon as possible. Should the decision be taken to phase-in devolution of particular justice and policing powers, Include Youth strongly recommends that youth justice is processed in the first phase. In particular, we refer to the Youth Justice Agency of Northern Ireland (YJA) and its' supporting NIO functions. Include Youth works closely with the YJA and in our view, there is nothing within its organisational structure to prevent early devolution. In our opinion the agency is professionally and ethically closer to (devolved) childcare systems than to any part of the criminal justice system. We believe that current administrative partnership arrangements with such bodies as the Public Prosecution Service or Northern Ireland Court Service could be maintained effectively should youth justice be devolved before other justice functions.

14. The majority of YJA staff are qualified as social workers, youth workers or teachers, and work from a child-centred value base. Moreover, the YJA is represented on a range of regional and sub-regional multi-agency forums that address issues relating to children at risk or in need. This recognises that children in conflict with the law are often also at risk in other contexts. As recent debates have highlighted^[1], responses to young people in conflict with the law cannot be considered without recognising the broader circumstances of their lives; in particular, their social and economic situation, educational experiences and attainments, family life and alternative care, physical and mental health. Internationally it is recognised that children and young people at risk of committing crime or participating in anti-social behaviour are often those who leave school early, have a disability or special needs, live in poverty, have truanted or been excluded from school, have spent time in residential care or have experienced poor parenting.^[2]

15. We recommend that the Committee requests access to as yet unpublished research into these issues. The research was commissioned by DHSSPS and NIO in 2005, entitled Pathways into Secure Care and was conducted by Independent Research Solutions.

16. Include Youth considers a holistic approach must be adopted in respect of all children, including those in conflict with the law, to ensure that the numerous and diverse problems they experience in everyday life can be identified, responded to and resolved in the best interests of the child. Central to this will be proper integration of policy, legislation, planning and delivery of services for all children and young people, and an integrated, multi-service approach by government which does not fragment and compartmentalize the lives of children into pre-ordained 'silos'. Include Youth recommends that the early devolution of youth justice, along with other devolved children's issues, should be set within the framework of the United Nations Convention on the Rights of the Child, and other international standards (including the Beijing Rules[3], Riyadh Guidelines[4], Tokyo Rules,[5] and the UN Rules for the Protection of Juveniles Deprived of their Liberty). It should also take into consideration all relevant recommendations of the United Nations Committee on the Rights of the Child.

3. To identify the preferred ministerial model and procedures for filling the ministerial post/posts for the new policing and justice department;

17. Include Youth is not convinced that placing youth justice within a new department of criminal justice and / or policing is appropriate or in the best interests of children, their families or the communities within which they live. Include Youth recommends that all issues relating to children in conflict with the law would be best located and progressed within an over-arching Department for Children and Young People, with its own Minister/Ministers and developed along a children's rights - based model. Such a department should adopt an integrated, coherent multi-agency approach dealing with all aspects of children's lives, including education, mental health, conflict with the law, public health, children requiring alternative care arrangements, anti-social behaviour, age appropriate play space etc. It is our strong view that placing youth justice within the criminal justice framework is ill-advised. It would continue to criminalise and further marginalise children already at risk who experience a range of complex issues and unmet needs as discussed above.

18. Additionally we strongly contend that a shift in emphasis away from criminal justice diminishes public protection. This has not happened in European States where the age of criminal responsibility is higher and the evidence suggests that a social justice emphasis enhances the safety of all citizens. Proper integration of children's services means that early intervention, family support and preventative services will be better co-ordinated, as will provisions for those children who are deemed in need or at risk in the contexts of education, mental health or care. The Northern Ireland Children's Strategy: Our Children and Young People – Our Pledge[6] outlines how services will be developed to meet six intended outcomes for all children and young people. These are:

- being healthy
- enjoying, learning and achieving
- living in safety and with stability
- experiencing economic and environmental well-being

- contributing positively to community and society
- living in a society which respects their rights

19. Include Youth asserts that, as these outcomes apply to all children and young people, including those in conflict with the law, they should provide the framework within which mainstream service provision can fulfil these functions.

20. We recommend that current powers within the Office of First Minister and Deputy First Minister should be extended in respect of their oversight function vis-à-vis other government departments obligations and duty of care to children and young people who fall within their jurisdiction, particularly in relation to the Outcomes identified in the Children's Strategy.

21. With regards to the ministerial model, our preference is to locate all matters pertaining to children and young people within one department. We accept that this may be a long-term objective achieved incrementally. Nevertheless Include Youth believes that the speedy devolution of youth justice will be an important step towards a discrete department better serving the children and young people in NI and their communities. Include Youth would welcome the opportunity to provide further information and evidence to the Committee.

22. In the absence of a discrete Department for Children and Young People, how do we deal with current practicalities? Include Youth believes that structures for the devolution of youth justice - of the Youth Justice Agency - should emphasise the best practice approaches to children in conflict with the law outlined above, including redress to criminal justice systems as a matter of last resort. Include Youth respectfully suggests that the Committee recommends to the NI Assembly that youth justice be decoupled from the adult criminal justice process and located within a Ministry more geared towards the rights, care and welfare of children and young people.

23. In order to determine exactly where to place this brief, for example, within Department of Education, Department of Health Social Services and Public Safety, or OFMDFM – each of which currently has a clear brief in respect of certain aspect of children's lives – Include Youth recommends that the Committee examines international best practice, including societies emerging from conflict. We believe it is imperative that to inform decisions regarding the devolution of youth justice, members of the Committee and the NI Assembly should have an understanding of the complex and often emotive nature of the key issues in the area of youth justice, alongside evidence of what works.

24. In the broader context of determining a ministerial model for the devolution of justice and policing more generally, we endorse research conducted by colleagues in the Committee on the Administration of Justice (CAJ) in 2006 entitled: 'Change and Devolution of Criminal Justice and Policing in Northern Ireland: International Lessons'. This work examines the (i) single department/minister model, (ii) two or more departmental model or (iii) shared ministry within a single department.

25. As stated above, whichever model is agreed it must ensure compliance with international human rights and children's rights standards. Crucial to this will be a range of safeguards, many of which have been outlined in some detail in the CAJ research.

4. To identify what preparations need to be made by the Northern Ireland Assembly to facilitate the devolution of policing and

justice matters and what preparations have been made

26. Include Youth recommends that in preparation for the devolution of matters pertaining to youth justice, the NI Assembly should engage in a programme of information gathering, outreach and engagement with children and young people, families and communities. It is imperative that a thorough understanding is reached as to why children and young people become involved in offending behaviour which can often have devastating consequences on victims of crime, families, wider communities, not to mention the individual child or young person involved.

27. Whilst we appreciate that elected members spend considerable time speaking to and advocating on behalf of their constituents, we are also aware that many children and young people in conflict with law have had little or no direct experience of their elected representatives.

28. Include Youth's Young Voices participation project recently underwent a very successful independent Evaluation^[7], a copy of which is enclosed for your information, together with a Summary and Recommendations Document. The Evaluation demonstrates that it is possible to engage and enable the active participation of young people at risk, particularly those with experience of the criminal justice system, in public consultation initiatives, with very positive results.

29. Our experience of managing this process is that young people in conflict with the law have considerable, pertinent experience which they are eager to share when they feel listened to, valued and treated with respect. As one Young Voices participant stated: 'People never listen to me – that's what makes this different is that people in here listened to me and take on my views and asked me about why I did the things I did' (page 24).

30. We believe that elected members would benefit significantly through direct engagement with young people in conflict with the law, as very often the prevalent media images of young people in securing eye-catching headlines. Media representation of the lives of children and young people serves to undermine them and their communities. Include Youth would be very keen to work with Committee members, and indeed more widely with colleagues in the Assembly, to help facilitate such a process of engagement through our Young Voices project.

31. 'Before contact with the likes of Young Voices, we tapped into some groups in schools, community based groups etc. and the make up of these groups would vary – the Young Voices model gives us the opportunity to engage with the most hard to reach young people.' Agency Representative, page 26

32. Additionally as mentioned above we believe that the Assembly will be assisted in their deliberations by accessing the international and local evidence concerning effective ways of preventing offending by children and young people and structuring services.

5. To assess whether the Assembly is likely to make a request under section 4 (2A) of the 1998 Act before 1 May 2008, as to which policing and justice matters should cease to be reserved matters

33. As stated, Include Youth identifies no barriers to the speedy devolution of youth justice once and appropriate and effective

ministerial structure is agreed to ensure the best outcomes for children and young people, their families and communities.

Conclusion

34. Include Youth intends the above as a constructive submission, and we are keen to testify to the Committee should an oral submission be deemed helpful. Include Youth is committed to working in partnership with our colleagues in the NI Assembly. We request that we are kept fully informed of progress in relation to the Inquiry into the devolution of policing and justice matters, and look forward to the issues raised and recommendations made in this response being addressed and progressed.

Written Submission to the Northern Ireland Assembly and Executive Review Committee Inquiry into the Devolution of Policing and Justice Matters

Recommendations

1. Include Youth recommends that proposed models of devolution are measured against unambiguous human rights criteria, and comply with international human rights and children's rights standards.
2. Include Youth believes that youth justice should be devolved as soon as possible.
3. Include Youth recommends that all issues relating to children in conflict with the law would be best located and progressed within an over-arching Department for Children and Young People, with its own Minister/Ministers and developed along a children's rights - based model.
4. In the absence of the immediate establishment of a Department for Children and Young People, Include Youth respectfully suggests that the Committee recommends to the NI Assembly that youth justice be decoupled from the adult criminal justice process and located within a Ministry more geared towards the rights, care and welfare of children and young people.
5. Include Youth considers a holistic approach must be adopted in respect of all children, including those in conflict with the law, to ensure that the numerous and diverse problems they experience in everyday life can be identified, responded to and resolved in the best interests of the child. Central to this will be proper integration of policy, legislation, planning and delivery of services for all children and young people, and an integrated, multi-service approach by government which does not fragment and compartmentalize the lives of children into pre-ordained 'silos'.
6. We recommend that current powers within the Office of First Minister and Deputy First Minister should be extended in respect of their oversight function vis-à-vis other government departments obligations and duty of care to children and young people who fall within their jurisdiction, particularly in relation to the Outcomes identified in the Children's Strategy.
7. Include Youth recommends that in preparation for the devolution of matters pertaining to youth justice, the NI Assembly should

engage in a programme of information gathering, outreach and engagement with children and young people, families and communities.

8. As a matter of urgency Include Youth recommends the Committee seeks to resolve confusion over role of Youth Justice Agency and Probation Board for Northern Ireland regarding treatment in the community of children who offend.

9. We recommend that the Committee requests access to as yet unpublished research into youth justice issues. The research was commissioned by DHSSPS and NIO in 2005, entitled Pathways into Secure Care and was conducted by Independent Research Solutions.

[1] Davies, Z. and Mc Mahon, W. (Eds) (2007) Debating Youth Justice: from punishment to problem solving? Centre for Crime and Justice Studies

[2] Farrington, D.P. (2001) Risk-focused Prevention and Integrated Approaches in Pease, K. (Ed.) Reducing Offending. London: Home Office; and Youth Justice Board (2001) Risk and Protective Factors Associated with Youth Crime and Effective Interventions to Prevent It. Research Note No. 5, Chapter 4. Reducing Levels of Risk – What Works. London: Youth Justice Board

[3] United Nations Standard Minimum Rules for the Administration of Juvenile Justice

[4] United Nations Guidelines for the Prevention of Juvenile Delinquency

[5] United Nations Standard Minimum Rules for Non-Custodial Measures 1990

[6] OFMDFM (2006) Our Children and Young People – Our Pledge. A ten year strategy for children and young people in Northern Ireland 2006-2016, OFMDFM

[7] Green, R. (2007) Evaluation of Young Voices Project July 2004 – March 2007: 'A Genuine and Authentic Voice for Children and Young People at Risk' , Include Youth

Legal Services Commission

S.J. Graham Esq
Clerk to the Assembly and Executive Review Committee
Room 428
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BT4 3XX

9 August 2007

Dear

Inquiry into the Devolution of Policing and Justice Matters

Introduction

I am replying to your letter of 9 July to Sir Anthony Holland in his capacity as Chairman of the Northern Ireland Legal Services Commission (the Commission). Sir Anthony's term of office came to an end on 31 July 2007 and I have been appointed by the Lord Chancellor as the Interim Chairman until the substantive appointment of Chairman is made.

The Commission

The Commission was created on 1 November 2003 through the commencement of the Access to Justice (Northern Ireland) Order 2003. It has assumed responsibility for the provision of Legal Aid in Northern Ireland from the Legal Aid Department of the Law Society of Northern Ireland.

The Commission is a non departmental public body sponsored by the Northern Ireland Court Service (NICtS) which is answerable to the Lord Chancellor. The Northern Ireland Court Service funds-

1. the running costs of the Commission through a grant in aid, and
2. the expenditure of the Commission on criminal and civil legal aid through a grant.

Under the present arrangements-

1. the responsibility for policy development for criminal legal aid rests with the Northern Ireland Court Service, although the NICtS works closely with the Commission in developing proposals and administrative arrangements for criminal legal aid; and
2. the Commission has responsibility for administration and reform of civil legal aid and works closely with the NICtS as the sponsoring department in developing civil legal aid policy.

Devolution

The Commission would support the devolution of responsibility for policing and justice issues on a basis that can command respect and support across the community.

It believes that it is important that Northern Ireland has the discretion to develop the approaches to these policing and justice matters that are appropriate to its needs, drawing as is relevant on what happens in other jurisdictions.

If devolution of policing and justice issues is agreed, decisions in respect of legal aid will have to be made about-

1. whether the policy roles currently carried out by the NI Court Service in relation to legal aid should remain with the Court Service or whether these roles should pass to the new Department of Justice;
2. whether responsibility for all aspects of civil and criminal legal aid should be carried by one body, either the Commission or the Department, rather than being split between them; and
3. whether the NI Legal Services Commission should remain as a public body and be accountable to the new Department of Justice, or whether it should cease to be a public body with its responsibilities being taken over by the Department.

The Commission has, of course, a strong vested interest in the outcome and its preferences have to be viewed in that context. However, it offers the following points for consideration-

1. the devolution of responsibility for the core policing and justice responsibilities will be a very testing process for all involved and it might be sensible to minimise the changes on other related fronts;
2. it has been deemed appropriate to keep legal aid at arms length from government in both England and Wales and in Scotland and it would seem prudent to maintain that position in Northern Ireland;
3. the Commission has faced, and continues to face, serious difficulties in taking over responsibilities from the Law Society, improving the delivery of present services, and planning the reform of legal aid; ideally, it should be given the space to continue this work without fundamental disruption; and
4. at some point in time, responsibility for policy and execution in respect of civil and criminal legal aid must be brought together- at present the Commission has responsibility for paying out large sums of money for criminal legal aid without any control over who gets aid and how much; it might be sensible to resolve this at devolution rather than later.

Conclusion

The Commission recognises that, in the overall context of what your committee is considering, legal aid issues may not be a high priority.

However, we think that getting the legal aid arrangements right under devolution is important since-

1. legal aid consumes a lot of resources - the allocated running costs for the Commission in 2007/8 are approximately £7m while £65m is allocated to legal aid;
2. Ministers in a devolved executive will want to be confident that, on the devolution of responsibility,
 - a. appropriate funding is made available to meet existing and anticipated commitments;
 - b. legal aid merits this level of funding against all the other competing demands for resources, and
 - c. the arrangements in place are delivering value for money; and
3. the availability of legal aid is crucial to ensuring that people in need receive the help they need to secure access to justice. .

The Commission would be happy to provide the Committee with any further information in relation to criminal and civil legal aid that it might require to assist with its deliberations.

I hope that this submission is of assistance to the Committee.

Yours sincerely,

R B Spence
Interim Chairman

Legal Service Commission

S J Graham Esq
Clerk to the Assembly and Executive Review Committee
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18 January 2008

Inquiry into the Devolution of Policing and Justice Matters

I am writing further to Ronnie Spence's letter to you of 9 August 2007 about the implications for the Northern Ireland Legal Services Commission (the Commission) of the proposed devolution of policing and justice matters.

The Commission's views remain as set out in the letter of 9 August. However, following a meeting with the Chair of the Assembly and Executive Review Committee on 10 January 2008, I thought that it might be helpful to draw the Committee's attention to an additional point.

We understand that consideration is being given to the position of the Northern Ireland Court Service after devolution and, in particular, to whether it might be an agency of a Ministry of Justice or assume more of an arm's length relationship with the Executive. This is not an issue on which the Commission wishes to express a view. However, it does have implications for the Commission, itself an "arm's length" NDPB with the Northern Ireland Court Service as its sponsor department.

In a post devolution scenario we believe that consideration should be given to the Commission having a direct relationship with a Ministry of Justice as its sponsor department rather than with another arm's length body. There are a number of factors that might support such a view:

- Short and clear lines of accountability.
- Easier to ensure that account is taken of the impact on legal aid (including its cost) when legislative and policy proposals are considered in the justice and other spheres.
- The major funding issues associated with legal aid will be more efficiently addressed if the Commission has a direct link with the responsible department.
- Better scope for developing shared back office services with other "justice" bodies.

On the other hand, the Northern Ireland Court Service has built up considerable expertise on legal aid matters which it would be detrimental to lose. If a decision were taken to shift sponsorship of the Commission from the Northern Ireland Court Service to a Ministry of Justice, then there would be a case for transferring the part of the Northern Ireland Court Service that sponsors the Commission into the Ministry.

I hope that the Committee finds these points helpful in its deliberations.

Yours sincerely

Jim Daniell

Chairman

Lord Chief Justice, Northern Ireland

Sent by e-mail

30 July 2007

Inquiry into the Devolution of Policing and Justice Matters

1. Thank you for your letter of 9 July 2007 to the Lord Chief Justice, Sir Brian Kerr. He has asked me to reply on his behalf. The Lord Chief Justice is grateful for the opportunity to comment on the devolution of those justice matters which impact on the judiciary. In providing his views he has asked me to emphasise that he recognises that, ordinarily, policy decisions are a matter for Government, however, in this case there will be aspects of change which will have such an effect on the judiciary that it is important for his views to feature large in the Committee and Assembly's thinking. He will, of course, make himself available to meet the Committee if that would be helpful.

2. I should perhaps say at the outset that the Lord Chief Justice does not regard a number of the issues covered by the Committee's terms of reference to be matters on which he should comment. There are others on which he has little to contribute. For instance on timing he thinks that all parties involved would welcome reasonable notice to enable preparation so that change is made as smoothly and efficiently as possible.

3. The Lord Chief Justice would like to comment on three main areas; safeguarding independence, judicial appointments and certain other matters which will be devolved and, related to the first point, the model for the Northern Ireland Court Service.

Safeguarding independence

4. The Lord Chief Justice became Head of the Judiciary in Northern Ireland, as well as President of the Courts, in April 2006 under Section 12(1) of the Justice (NI) Act 2002 as amended by Section 11 of the Constitutional Reform Act 2005. The Lord Chief Justice wants to emphasise the importance of judicial independence as a constitutional principle and the need for judges to be outside political influence. The United Nations Basic Principles on the Independence of the Judiciary^[1] state:

"1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary ...

4. There shall not be any inappropriate or unwarranted interference with the judicial process ..."

5. This principle was recognised in the Justice (Northern Ireland) Act 2002 and the Constitutional Reform Act 2005 so that:

"3. Guarantee of continued judicial independence

(1) The Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.

(3) A person is not subject to the duty imposed by subsection (1) if he is subject to the duty imposed by section 1(1) of the Justice (Northern Ireland) Act 2002 (c. 26).

(4) The following particular duties are imposed for the purpose of upholding that independence.

(5) The Lord Chancellor and other Ministers of the Crown must not seek to influence particular judicial decisions through any special access to the judiciary.

(6) The Lord Chancellor must have regard to-

(a) the need to defend that independence;

(b) the need for the judiciary to have the support necessary to enable them to exercise their functions;

(c) the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.

4. Guarantee of continued judicial independence: Northern Ireland

"...1 Guarantee of continued judicial independence

(1) The following persons must uphold the continued independence of the judiciary –

(a) the First Minister,

(b) the deputy First Minister,

(c) Northern Ireland Ministers, and

(d) all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, where that responsibility is to be discharged only in or as regards Northern Ireland.

(2) The following particular duty is imposed for the purpose of upholding that independence.

(3) The First Minister, the deputy First Minister and Northern Ireland Ministers must not seek to influence particular judicial decisions through any special access to the judiciary."

6. Section 6 of the Constitutional Reform Act 2005 also provides that the Lord Chief Justice may make representations to Parliament and the Northern Ireland Assembly. The provision in respect of the Assembly is as follows:

"(1) The Lord Chief Justice of Northern Ireland may lay before the Northern Ireland Assembly written representations on matters within subsection (2) that appear to him to be matters of importance relating to the judiciary, or otherwise to the administration of justice, in Northern Ireland.

(2) The matters are-

(a) excepted or reserved matters to which a Bill for an Act of the Northern Ireland Assembly relates;

(b) transferred matters within the legislative competence of the Northern Ireland Assembly, unless they are matters to which a Bill for an Act of Parliament relates.

(3) In subsection (2) references to excepted, reserved and transferred matters have the meaning given by section 4(1) of the Northern Ireland Act 1998."

7. This provision will enable the Lord Chief Justice to make written representations on certain matters that relate to the judiciary or the administration of justice in Northern Ireland. The Lord Chief Justice sees this as an important provision given his role as Head of the Judiciary in Northern Ireland.

8. He regards it as essential that Government Departments^[2] generally, but especially the new Ministry of Justice (whatever its title), should consult the judiciary (through the Lord Chief Justice's Office) on any proposals which will have an impact, either directly or indirectly, on the judiciary. The Lord Chief Justice thinks it essential for this message to be emphasised at the outset for the new Ministry.

9. The Lord Chief Justice also anticipates that he and the new Minister(s) for Justice will need to have an effective working relationship which would be supported by periodic meetings. The different roles and responsibilities need to be recognised, and clearly he cannot engage on individual cases, but he is willing to develop such a relationship.

Appointments and other significant issues being transferred

10. Under the Justice (Northern Ireland) Act 2002, as amended, the Lord Chancellor remains responsible for certain issues impacting on the judiciary in Northern Ireland (and England and Wales). These include the determination of judges' remuneration and other matters concerning terms and conditions of service. Some of his other responsibilities, however, will transfer to the First

Minister and deputy First Minister or the Minister of Justice. The principal ones of these which the Lord Chief Justice would like to highlight are judicial appointments, the duty to ensure that there is an efficient and effective system to support the carrying on of the business of the courts in Northern Ireland and that appropriate services are provided for those courts (Section 68A of the Judicature (NI) Act 1978)[3].

11. At present, in most cases, the Northern Ireland Judicial Appointments Commission makes recommendations for appointments to judicial offices listed at Schedule 1 to the Justice (Northern Ireland) Act 2002, as amended, to the Lord Chancellor. On devolution of justice these recommendations will be made to the First Minister and deputy First Minister (with some variation of more senior appointments). They must act jointly in considering them. The Commission is also required to give the First Minister and deputy First Minister advice on the procedure to be adopted for appointments of the Lord Chief Justice or a Lord Justice.

12. The Chairman of the Judicial Appointments Commission is the Lord Chief Justice. The Commission itself comprises five independent members, two from the legal professions and five members of the judiciary in addition to the Chairman. It has a statutory duty to make appointments on merit alone, but these should, so far as is reasonably practical, be such that those holding listed judicial offices are reflective of the community in Northern Ireland. The Commission is also required to engage in a programme of action designed to secure, so far as is reasonably practical to do so, that appointments are listed to judicial officers as such that those holding such offices are reflective of the community.

13. The Lord Chief Justice thinks that it would be important for there to be a protocol between the Commission and the Office of the First Minister and deputy First Minister about judicial appointments. This will include means of communication, indicative timescales for schemes etc. The Commission has enjoyed a very constructive working relationship with the Lord Chancellor to date and the Lord Chief Justice sees no reason to doubt that this will be the case with the First Minister and deputy First Minister as well.

Structural arrangements for the Court Service on devolution

14. The Court Service staff, under Section 69 of the Judicature (NI) Act 1978, are a separate Civil Service coming under the Lord Chancellor and Secretary of State for Justice.

15. The Lord Chief Justice thinks that it is important to consider the future of the Northern Ireland Court Service staff in the context of the role which they provide to the judiciary. In other words, he thinks that the arrangements for the Court Service should reflect the fact that they are providing support to an independent judiciary in the administration of justice by the judiciary. Indeed, the importance of this relationship is illustrated by the fact that the Court Service was set up as a separate Service in the first place under the Lord Chancellor who was then head of the judiciary. The Lord Chief Justice appreciates that there are different models that could be adopted for the Court Service in the future. He believes, having considered the different models that exist elsewhere, that the appropriate approach here to preserve the independence of the judiciary from the Executive is to establish a body at arms length from Government under a Board chaired by the Lord Chief Justice. The Board would also have representation from the Ministry of Justice, as well as judicial, legal and independent input. This arrangement is often referred to as a non-ministerial department. While there is a relationship, therefore, with the ministry (and there would need to be clear accountability mechanisms) the purpose of such a structure is to ensure appropriate distance from direct ministerial control so as to preserve the appropriate constitutional position vis a vis the judiciary.

16. One of the strengths of such a regime is that there is a clear mechanism for ensuring that the necessary resources are provided for the courts in line with the statutory responsibility on the Minister of Justice to secure an efficient and effective system to support the carrying on of the business. A concern is that if the funding is not provided by this means then, if the budget is part of the justice budget as a whole, it would be subject to pressures elsewhere which might impact adversely on the operation of the courts and independence.

17. It has also been argued that a Board structure reinforces the independence of the judiciary as well as improving the relationship between the courts staff and the Board and, therefore, assists in the improvement of the delivery of civil and criminal justice.

18. The non-ministerial department model is currently in place in the Republic of Ireland and is proposed for Scotland (as well as being evident elsewhere in Europe). Further details on these models can be provided if required. It is common to both that legislation is, or will be, required to establish this arrangement as well as the governing Board.

19. Thought will clearly need to be given to the precise approach taken to the Court Service under devolution but the Lord Chief Justice thinks that it is essential to take into account the need for the judiciary to be independent of the Executive, for there to be an efficient and effective system in place for administering the courts, and for there to be recognition of the approaches being taken in other jurisdictions.

Conclusion

20. The Lord Chief Justice wants to emphasise the importance of preserving the independence of the judiciary; his hope of a constructive working relationship with the Minister(s) for Justice; the need for consultation on issues impacting on the judiciary; the need for a protocol between the JAC and the FM/dFM; and his view that the Court Service should become a non-ministerial department under a Board to safeguard independence.

21. The Lord Chief Justice will make himself available to give evidence to the Committee if it would find that helpful.

Simon Rogers

Principal Private Secretary to the Lord Chief Justice
Stephen Graham Esq
Clerk to the Assembly and
Executive Review Committee
Room 428, Parliament Buildings
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[1] General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

[2] And Government sponsored bodies as appropriate.

[3] The UN Basic Principles state: "7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions."



Methodist Church in Ireland

Council on Social Responsibility

Northern Executive
Rev. Dr. Frederick L. Munce MBE

Stephen J. Graham (Committee Clerk)
Northern Ireland Assembly and Executive Review Committee
Room 428, Parliament Buildings,
Belfast
BT4 3XX

17 August 2007

Dear Mr. Graham,

Inquiry into the devolution of policing and justice matters

General Introduction

1. The Council on Social Responsibility (CSR) is a department of the Methodist Church in Ireland that seeks on behalf of the Church to undertake informed study and analysis of a range of social, political, economic and constitutional issues. It attempts to consider these issues with insight, and to provide realistic and practical recommendations for action.
2. We welcome the opportunity to submit an initial response to the Northern Ireland Assembly and Executive Review Committee in relation to the transfer of policing and justice matters.
3. We request the Committee note that this initial submission is due to the short period of response time available from receipt of your letter (16 July 2007) until the final submission date (17 August 2007), and this during the summer season when many of

those whom we normally consult are on holiday. It would also have been helpful to have sufficient time to consult fully the Northern Ireland (St. Andrew's Agreement) Act 2006 and policing and justice matters under Schedule 3 of the Northern Ireland Act 1998. We will respond more fully when we have had the opportunity to consult with our members and interested parties.

4. We recognise and acknowledge the necessity for the devolving of police and justice matters to the Northern Ireland Assembly in the interests of democracy, transparency and accountability and that it should be as soon as possible, consistent with good governance, human rights compliance and be a workable, robust institution.

5. Clearly there are a number of reserved matters upon which the Church does not have a strong view or opinion. There are, however, reserved matters to which we now refer.

Political

6. The real political questions over transfer of responsibility of policing and justice powers surround time-scale and control mechanisms, i.e. what is the composition, power and nature of the Ministerial Department? Furthermore, should the present political situation in the Assembly for Northern Ireland break-down, how quickly does the Northern Ireland Office take over and to what extent should the Northern Ireland Office retain a watching brief?

One potential model could be that two separate ministers are appointed. One minister for policing and one for justice. They should probably head two departments, but it may be possible to integrate them. Clearly if this were the scenario, they would have to work together to a large degree.

Legal

7. The area of the workings of the legal profession and all matters relating to the Supreme Court are of interest. The Bain Report (page 112) on the Review of Legal Services in Northern Ireland presents a good overview on how legal services operate. Specifically however, we do have strong views on ensuring the independency of the judiciary and the maintaining of fairness and integrity in the legal processes. There could legitimately be a range of opinion as to how this may be achieved. We believe the legal profession through the Law Society and other bodies are well placed to submit their views directly to the Committee and we look forward to receiving details of their submission in due course.

Justice

8. The CSR is interested in exploring and investigating ways and means of instilling confidence in the whole community and thus supports the establishment of a Ministry of Justice. One obvious Doomsday scenario for most people is the possibility of a Minister for Justice who is partial, or who may not discharge properly the function of the office because of a party political slant. There must be safeguards and a constant watching brief to ensure integrity and fairness in this vital area. A question needs to be asked: what sanctions could be taken in a situation where republican (or loyalist) paramilitary racketeering, crime and gangsterism takes place and continues where there is say, a Sinn Fein (or Unionist with links to loyalist paramilitaries) Minister(s) for Justice? The CSR hope this situation would not occur and urges that confidence-building sanctions for such a scenario is put in place.

It is also important to state that we believe any Minister of Justice must not have the power to override the decisions of the Chief Constable of the day. This is imperative particularly as it is the role of the Northern Ireland Policing Board to provide the checks and balances for the PSNI.

Policing

9. We are intensely interested in encouraging good policing and practice. We believe the Northern Ireland Policing Board has been (and continues to prove) effective. Substantial progress has been made and this is to be welcomed. It is our fervent hope that such progress continues. If this is to happen there needs to be a development of trust. There is also the need for sensitivity as to whom the PSNI advise and report. Those to whom they may potentially report may have been former terrorists. We believe the proposed triple lock of government, assembly and executive is essential. Reassurances regarding the control, role, authority and responsibility of the PSNI and the Chief Constable should be clearly outlined, and any legislation affecting the PSNI should be in line with policing in the rest of the United Kingdom.

Victims

10. The Methodist Church through the CSR has a particular and caring pastoral commitment to victims and has been prominent in dealing with deep-rooted hurts experienced by many. Our publications, 'Healing the Hurts of the Past' and 'Towards a Theology of Suffering and Pastoral Healing' are worship liturgies and bible studies and are widely used by all Christian churches. A submission was made to the N.I. Affairs Committee on 'Reconciliation – Ways of Dealing with Northern Ireland's Past' and pastoral concern in action has been suggested through 'Methodist Memories': memories, emotions, tales and healing. These documents may be accessed through www.irishmethodist.org and following the links. The N.I. Human Rights Commission, the Northern Ireland Office, the Christian Churches in Ireland, the political parties and other agencies have acknowledged the efforts of the CSR in relation to victims. Victim's issues will continue to be central in the formulation of a strategy for the future.

Prosecution

11. Prosecutions, particularly for those offences carried out prior to the Good Friday Agreement may lead into a discussion on the need for a Truth Commission or some other body to be established to consider unsolved murders and crime. It is important that the questions be raised: Do we need this type of Commission or are further enquiries simply a drain on the Exchequer? What would be the likely outcomes of such a Commission?

On The Runs

If legislation such as that earlier proposed for 'On The Runs' is received and adopted, then the moral position is repugnant. The view would be that the offenders could be seen to be getting away with murder and crime without paying their due to society. Especially for victims, whose loved ones are dead, this would be very hard to take and to accept.

While it may be understood that this is not amnesty, it may be mere words. There would be a judicial process to go through but as

the outcome would be decided in advance, it becomes increasingly difficult for the ordinary person on the street to see the difference, hence 'violence and paramilitaries with all the perceived attendant crime wins again'. Will part of any renewed legislation also allow freedom from prosecution for members/former members of the security forces? None of this would be helpful or act as an incentive for truth recovery processes.

The matter of 'OTR's' will need to be dealt with as in other conflict resolution situations. Theoretically and academically it may make good sense to bring closure in this way, but it would be very hard to take for so many, a high price to pay and this in itself will bring a corrosive element to any such resolution.

Clearly, the 'OTR' issue is very raw and an open wound for many victims. The appointment of a Victim's Commissioner will be pivotal and a genuine process of engagement, persuasion, and listening to the hurts will be vital to the success of the Ministry of Justice.

Further issues arise: once free, do these people still operate on 'license' as with the early prisoner release scheme? If not, then we recommend they should be. Perhaps some form of probation process could be established. Could the International Monitoring Commission or some other agency have a role in monitoring the activities of former 'OTR'S'?

We could reasonably expect the N.I. Human Rights Commission to have a major involvement in these processes.

Other unfinished, yet related, business; The Disappeared and the Exiles

The fate of those who are still missing – 'The Disappeared' - is very poignant. Will closure be possible and has every legal, financial, and political stone been turned? What can be said about the fate of those who have fled Northern Ireland – 'The Exiles' – because of paramilitary intimidation and their form of 'justice'? Even though some of these people may be law-breakers or at least anti-social in their behaviour, where is their justice now?

It could be that the simpler and better option is that the whole difficult matter of 'OTR's', The Disappeared, and The Exiles needs to be re-visited and for all party discussions to take place.

We look forward to hearing from you in due course.

Yours sincerely

Rev. Frederick L. Munce MBE DUniv

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Northern Ireland Affairs Committee

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Chairman of the Assembly and Executive Review Committee
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18 July 2007

Thank you for the courtesy of including the Northern Ireland Affairs Committee in your consultation. It would be useful for my Committee to meet yours during one of our future visits to Northern Ireland.

The Northern Ireland Affairs Committee is of the view that this is a matter in which your Committee should take the initiative. If it is your unanimous wish in accordance with the terms of the legislation, that policing and justice matters be devolved in May next year, I do not think it is conceivable that we would wish to raise objections.

Sir Patrick Cormack MP
Chairman

Copy to the Assembly

Northern Ireland Court Service

039/15



Stephen J Graham Esq
Clerk to the Assembly and
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NORTHERN IRELAND
**COURT
SERVICE**

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31 August 2007

Dear Stephen.

INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS

Thank you for your letter of 9 July.

I welcome the Committee's invitation to comment and I am pleased to enclose a response on behalf of the Northern Ireland Court Service. The enclosed response has been approved by our Minister, David Hanson MP.

The Summer recess made it impossible for us to meet your target of 17 August. I trust this will not present too much of a difficulty for the Committee.

I very much hope that the Committee will find the enclosed response helpful. My colleagues and I will be pleased to make ourselves available if the Committee requires any further evidence.

Yours Sincerely
David A. Lavery

D.A. LAVERY



The Northern Ireland Court Service is a Department of the Lord Chancellor

**PAPER FOR ASSEMBLY AND EXECUTIVE REVIEW
COMMITTEE**

NORTHERN IRELAND COURT SERVICE

BACKGROUND

1. The Northern Ireland Court Service was established in April 1979 under section 69 of the Judicature (Northern Ireland) Act 1978 as a separate and distinct Civil Service of the Crown. It is independent therefore from the Northern Ireland Civil Service and the Northern Ireland Office. The Lord Chancellor is the Minister responsible for

the Court Service. In anticipation of the future devolution of justice, he has power under section 78 of the Justice (Northern Ireland) Act 2002 to abolish the Court Service and transfer its functions.

2. The primary function of the Court Service is to provide administrative support for the courts, certain tribunals and the Enforcement of Judgments Office as well as to support the Lord Chancellor in the discharge of his responsibilities in Northern Ireland including those in relation to judicial appointments and the legal aid system. Most of the functions which the Court Service discharges in Northern Ireland are statutorily those of the Lord Chancellor rather than the Court Service itself. The Court Service also advises the Lord Chancellor on all policy and legislation affecting the above matters.
3. The Court Service has approximately 750 members of staff. Its estate comprises 21 courthouses and additional office accommodation in other locations, primarily in Belfast City Centre. A map of the court venues is at **Annex A**.
4. A summary of the Court Service financial settlement for the Comprehensive Spending Review period 2008-2011 (including provision for legal aid) is at **Annex B**.

MAIN FUNCTIONS

5. The functions carried out by the Court Service fall into the following main areas and are reserved or excepted under the Northern Ireland Act 1998 (apart from tribunals which are already transferred). The only Court Service matters not open to transfer are judicial pay,

pensions and other terms and conditions. A copy of the relevant provisions of Schedules 2 and 3 to and section 82 of the Northern Ireland Act 1998 is attached at **Annex C**.

Court Administration

- (i) The Lord Chancellor is under a statutory duty (section 68A of the Judicature (Northern Ireland) Act 1978 as inserted by the Constitutional Reform Act 2005) to ensure that there is an efficient and effective system to support the carrying on of the business of the courts in Northern Ireland and that appropriate services are provided for those courts. He is also under a duty to maintain the Enforcement of Judgments Office (the office responsible for enforcing civil court judgments) within the Court Service.
- (ii) The statutory functions of the Court Service (under section 69 of the Judicature (Northern Ireland) Act 1978) are to facilitate the conduct of the business of the courts and to give effect to judgments to which the Judgments Enforcement (Northern Ireland) Order 1981 applies. In practice this involves ensuring the availability of court venues and court staff, supporting the judiciary and facilitating court users.
- (iii) The Lord Chancellor has many other specific functions associated with the administration of the courts including, for example, the arrangements for jurors.

Judicial Appointments

- (iv) The Lord Chancellor is the Minister responsible for all judicial appointments in Northern Ireland. The Lord Chancellor is responsible for appointing, or recommending to Her Majesty the appointment of, all Judges, Magistrates and Chairs of Tribunals. He does so, in the case of appointments up to the level of High Court Judge, on the recommendation of the Judicial Appointments Commission (JAC) which was created under the Justice (Northern Ireland) Act 2002. The Lord Chancellor is responsible for the appointment of members of the JAC and provides its funding. The Lord Chancellor is also responsible for the appointment and remuneration of the Judicial Appointments Ombudsman (under section 9A of the Justice (Northern

Ireland) Act 2002 as inserted by section 124 of the Constitutional Reform Act 2005) who is responsible for the investigation of complaints connected with judicial appointments.

- (v) Provision was made in the Justice (Northern Ireland) Act 2002 for the functions in relation to judicial appointments and the JAC to be conferred on the First Minister and Deputy First Minister on devolution of justice and policing powers. In order to establish the JAC in 2005 however the functions in relation to it were transferred to the Lord Chancellor under the Justice (Northern Ireland) Act 2004.

Tribunals

- (vi) The Lord Chancellor through the Court Service is responsible for the administration of several Northern Ireland tribunals (**Annex D** which also lists the tribunals sponsored by NI Departments). In March 2006 the then Secretary of State announced that operational responsibility for the tribunals currently sponsored by the Northern Ireland Departments would transfer to the Court Service under an agency agreement. Statutory responsibility for each tribunal would remain with the sponsoring Department. The Court Service and the Departments have been considering the administrative and financial procedures necessary to support such an arrangement which will now be subject to the agreement of the NI Executive. The expectation would be that the Court Service will become a unified courts and tribunal administration and will be restyled the Courts and Tribunals Service as foreshadowed in the Devolving Policing and Justice Discussion paper.

Legal Aid

- (viii) The Lord Chancellor has a range of responsibilities in relation to publicly funded legal services, as provided for in the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 and the Access to Justice (Northern Ireland) Order 2003. This includes sponsorship of the Northern Ireland Legal Services Commission (LSC) which administers the legal aid system. The allocated running costs for the LSC for the current year (07/08) are

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approximately £7m per annum while £65m is allocated to legal aid.

RELATIONSHIP WITH JUDICIARY

6. It is an established constitutional principle that the judiciary are independent of government. Section 1 of the Justice (Northern Ireland) Act 2002 (as substituted by section 4 of the Constitutional Reform Act 2005) expressly confirms the continued independence of the judiciary. The intention is that this will be further underpinned by a concordat between the NI Executive and the Secretary of State and Lord Chancellor. A draft Concordat was provided to the Policing and Justice sub-group of the Programme for Government Committee last December.
7. The Lord Chief Justice of Northern Ireland, Sir Brian Kerr, is President of the courts of Northern Ireland and Head of the Northern Ireland judiciary. The Lord Chief Justice is therefore responsible for matters such as court sittings, assignment of judges and handling of complaints against the judiciary. He is also responsible for representing the views of the judiciary to Parliament, the Northern

Ireland Assembly and to Ministers.

DEVOLUTION ISSUES

8. As indicated in the government's discussion paper 'Devolving Policing and Justice in Northern Ireland' ("the discussion paper"), it is envisaged that court and tribunal administration would under devolution be discharged by a Courts and Tribunals Agency of the Department of Justice.
9. When it was established in April 1979, the Court Service was deliberately positioned apart from the Northern Ireland Office and the Northern Ireland Civil Service as an acknowledgment of the particular sensitivities associated with the courts and judicial independence. The Lord Chancellor was made the Minister for the Court Service in recognition of his then unique constitutional status as head of the judiciary.
10. Consideration is being given to how the Court Service should relate to a future Department of Justice. In England and Wales and in Scotland the arrangements for court administration are also being discussed. We are aware also of the different model for courts

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administration in place in the Republic of Ireland. H.M. Government will consult with the First Minister and deputy First Minister in due course.

11. Finally the Committee will wish to note that the Court Service is participating in the programme of work which is being led by the NIO (from whom the Committee has already taken evidence), with a view to being in a position to devolve the matters for which it is responsible, if the Assembly should so request.

[7/8/07]

ANNEX B**NORTHERN IRELAND COURT SERVICE**
CSR SETTLEMENT

The terms of the CSR 07 settlement were based on the 2007/08 baseline (agreed under SR2004).

It set out the departmental expenditure limits as in the following table.

| Northern Ireland Court Service CSR 07 Settlement | 2008/09 £m | 2009/10 £m | 2010/11 £m |
|---|-----------------------|-----------------------|-----------------------|
| DEL: Court Service | 62.9 | 62.1 | 61.6 |
| DEL: NI Legal Services Commission | 68.0 | 68.0 | 68.0 |
| DEL: NI Judicial Appointments Commission | 1.4 | 1.4 | 1.4 |
| Total Departmental Expenditure Limit (Resource) | 132.3 | 131.5 | 131.0 |
| <i>Of which: near cash</i> | <i>115.0</i> | <i>114.0</i> | <i>113.0</i> |
| <i>Of which: Non cash</i> | <i>17.3</i> | <i>17.5</i> | <i>18.0</i> |
| Departmental Expenditure Limit (Capital) | 7.0 | 7.4 | 7.4 |

DEL: Departmental Expenditure Limit

ANNEX C

NORTHERN IRELAND ACT 1998

SCHEDULE 2

EXCEPTED MATTERS

Section 4(1)

.....

11

The appointment and removal of judges of the Supreme Court of Judicature of Northern Ireland, holders of offices listed in column 1 of Schedule 3 to the Judicature (Northern Ireland) Act 1978, county court judges, recorders, resident magistrates, lay magistrates, justices of the peace, members of juvenile court panels, coroners, the Chief and other

Social Security Commissioners for Northern Ireland, the Chief and other Child Support Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland.

.....

SCHEDULE 3

RESERVED MATTERS

Section 4(1)

.....

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All matters, other than those specified in paragraph 11 of Schedule 2, relating to the *Supreme Court of Judicature* [Court of Judicature] of Northern Ireland, county courts, courts of summary jurisdiction (including magistrates' courts and juvenile courts) and coroners, including procedure, evidence, appeals, juries, costs, legal aid and the registration, execution and enforcement of judgments and orders but not—

(a) bankruptcy, insolvency, the winding up of corporate and unincorporated bodies or the making of arrangements or compositions with creditors;

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(b) the regulation of the profession of solicitors.

.....

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All matters (including procedure and appeals) relating to—

- (a) the Chief and other Social Security Commissioners for Northern Ireland; or
- (b) the Chief and other Child Support Commissioners for Northern Ireland,

but not any matter within paragraph 11 of Schedule 2.

JUSTICE (NORTHERN IRELAND) ACT 2002

82 Excepted matters: judicial office-holders

In Schedule 2 to the Northern Ireland Act 1998 (c 47) (excepted matters), in paragraph 11 (appointment and removal of holders of certain judicial offices)—

- (a) for “appointment and removal” substitute “determination of the remuneration, superannuation and other terms and conditions of service (other than those relating to removal from office)”, and
- (b) for “, the Chief and other Child Support Commissioners for Northern Ireland and the President and other members of the Lands Tribunal for Northern Ireland” substitute “and the Chief and other Child Support Commissioners for Northern Ireland”.

ANNEX D

COURT SERVICE & OTHER DEPARTMENTAL
TRIBUNALS

| Tribunal | Department responsible |
|---|--|
| Office of the Chief and other Social Security and Child Support Commissioners, Pension Appeals Commission and Pension Appeals Tribunal Traffic Penalties Tribunal NI Valuation Tribunal | Northern Ireland Court Service |
| Special Education Needs and Disability Tribunal | Department of Education |
| Office of the Industrial and Fair Employment Tribunal Reserve Forces Reinstatement Committee | Department for Employment and Learning |
| Lands Tribunal | Department of Finance and Personnel |
| Care Tribunal Mental Health Review Tribunal Tribunal under Schedule 11 of the HSS(NI) Order 1972 | Department of Health and Social Services and Public Safety |
| The Appeals Service Rent Assessment Panel | Department for Social Development |
| Planning Appeals Commission/Water Appeals Commission | OFMDFM |

| | |
|--|-------------------------|
| Criminal Injuries Compensation Appeals Panel Medical Appeals Tribunal (Police) | Northern Ireland Office |
|--|-------------------------|

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Northern Ireland Human Rights Commission



Assembly and Executive Review Committee Inquiry into the devolution of policing and justice matters: Evidence of the Northern Ireland Human Rights Commission

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness of Northern Ireland law and practice relating to the protection of human rights, [\[1\]](#) advising on legislative and other measures which ought to be taken to protect human rights, [\[2\]](#) advising on whether a Bill is compatible with human rights [\[3\]](#) and promoting understanding and awareness of the importance of human rights in Northern Ireland. [\[4\]](#) In all of that work the Commission bases its positions on the full range of internationally

accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding 'soft law' standards developed by the human rights bodies.

2. The Commission welcomes the opportunity to respond to the Committee's inquiry. There is no overwhelming human rights principle favouring decentralisation of policing and justice, and it should be noted that the central government retains ultimate responsibility for ensuring compliance with the state's international human rights obligations. The Commission nonetheless broadly welcomes the proposed devolution of these matters, to the extent that it provides opportunities to bring a rights-sensitive area under more localised democratic control and accountability, which has the potential to enhance cross-community confidence in the wide range of organisations involved in delivering policing and justice. That enhanced confidence ought, in turn, to bring about enhanced representativity and effectiveness, and thereby should improve the capacity of the policing and justice systems to protect human rights and provide appropriate responses to violations, in terms of investigation and redress.

3. In making its response, the Commission draws, in particular, on the following human rights standards relevant to justice and policing:

i. The European Convention on Human Rights, in particular, Article 2 (everyone's right to life shall be protected by law); Article 3 (no one shall be subjected to torture or to inhuman or degrading treatment); Article 5 (right to liberty and security of person); and Article 6 (right to fair and public hearing within a reasonable time by an independent and impartial tribunal established by law);

ii. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which undertakes "...to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law";

iii. The Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, [\[5\]](#) which "calls upon States to provide effective access to administrative and legal procedures and other remedial action to victims of racism, racial discrimination, xenophobia and related intolerance in the workplace";

iv. General Recommendation No. 12 of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women, relating to "legislation in force to protect women against the incidence of all kinds of violence in everyday life";

v. UN Security Council Resolution 1325 (women's direct role in conflict resolution and reconstruction processes) and Article 7 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (women's equality in political and public life/ taking part in forming government policy), and

vi. the UN Convention on the Rights of the Child, in particular Article 3 (best interests); and Article 12 (right to express opinion).

Scope of devolution

4. The Terms of Reference seek "To identify those policing and justice matters which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998 (the 1998 Act); and to consider which of these matters should be devolved and the extent to which they should be devolved".

5. It is apparent that, whatever the extent of devolution, some matters will remain within the competence of the central UK authorities, and in a range of matters there will need to be effective co-operation with the Republic. It will be important to ensure that there is clarity of ministerial functions and administrative arrangements across the jurisdictions (i.e. Northern Ireland, Republic of Ireland and the UK) in relation to responsibilities for excepted and devolved matters that may cross boundaries.

6. This may include, for example, inter-relationships between PSNI; Metropolitan Police; Garda Síochána; the Security Service; Serious Organised Crime Agency (SOCA); and the Border and Immigration Agency. In particular, attention should be given to ensuring clear arrangements are in place in relation to information sharing and accountability mechanisms of the above organisations.

7. Clear protocols are required governing the handling of covert human intelligence sources (CHIS) managed within PSNI and the Security Service, alongside robust accountability mechanisms in relation to oversight of covert policing operations. It is important to ensure that the Office of the Police Ombudsman should have the necessary powers to fulfil this important function in relation to policing, and that the same or similar oversight should extend to CHIS management and covert operations of the Security Service. There is a clear risk that different levels of accountability could provide a disincentive for CHIS to co-operate with the police.

Departmental model

8. The Inquiry additionally seeks "To identify the preferred ministerial model and procedures for filling the ministerial post/posts for the new policing and justice department". We are not clear from the call for evidence as to whether the Committee intends to limit discussion to the departmental model as specified in Schedule 5 of the Justice and Security Act (2007), or whether there is scope to explore the range of models outlined in the discussion paper produced by the NIO, *Devolving Policing and Justice in Northern Ireland* (2006).

9. Whatever departmental model is proposed, ministerial appointment procedures need to ensure that the interests of the diverse population of Northern Ireland are fully represented. While it may be considered more urgent or more necessary to address this issue in terms of "the two main communities", given the history of sensitivities around policing and justice, we should not lose sight of the fact that Northern Ireland society is becoming ever more diverse. The Commission would not venture to intrude on the discretion of democratically elected MLAs to determine whether representativity at this level requires a dual ministry or deputy minister, or may be secured by robust oversight mechanisms. It would, however, point out that if opting for a dual model that at least in the short term will de facto represent only the two main traditions, there is some risk that this would serve to entrench difference and could marginalise the attention given to other interests.

10. There should therefore be scope to review the ministerial model and procedures for fulfilling the ministerial posts as we progress towards a more stabilised society and increased confidence within communities of policing and criminal justice functions. This might involve reviewing any requirement that restricts ministerial candidates to membership of the larger political designations. It may also involve reviewing the efficiency of a dual ministry, giving consideration to the desirability of moving towards a more 'normal' model of a single ministry. It is surely to be hoped that, over time, we may move towards a situation where the policing and justice ministry is no more contentious than any other major department.

11. Whatever model is preferred, there should be a clear delineation of ministerial responsibilities in relation to decision making processes across the criminal justice agencies, particularly if the model is headed up by two ministers.

12. Robust scrutiny and oversight and accountability mechanisms governing devolved matters must be in place so as to build public confidence in the criminal justice system. If at some future date those mechanisms are themselves to be devolved, they must remain independent of the ministry.

Preparations: not merely institutional issues

13. The inquiry is asked "To identify what preparations need to be made by the Northern Ireland Assembly to facilitate the devolution of policing and justice matters and what preparations have been made".

14. It is important that the Inquiry considers the necessary steps needed to establish structural arrangements, but conceptual issues around policing and criminal justice should also figure in the discussion. While the focus to date has been on constitutional/ministerial arrangements for the devolution of criminal justice functions, opportunities present themselves in which to consider issues relating to the vision and values that underpin a future devolved criminal justice system in Northern Ireland. This might include, for example, ensuring that alternatives to prison are thoroughly investigated for low-level, low-risk offenders (this category would include women prosecuted for non payment of fines); and that community-based restorative justice schemes are fully utilised wherever appropriate.

15. It might also include re-visiting definitions of security within a post-conflict society. For example, recent research^[6] has demonstrated that many women characterise security as a "holistic concept which encompassed a range of 'securities', and within which personal and economic security is central". This concept has a direct bearing upon values and targeting of resources that underpin initiatives to deliver and sustain safe environments in the public and private domain.

16. This research also refers to the need for a "more robust analysis of how policy makers analyse and think about the impact of different policies". This highlights the importance of UN Security Council Resolution 1325 (women's direct role in conflict resolution and reconstruction processes) and Article 7 of CEDAW (women's equality in political and public life/taking part in forming government policy).

17. Other relevant research that may be of interest to the Committee is the international comparative research carried out by the Committee on the Administration of Justice (CAJ), Change and Devolution of Criminal Justice and Policing in Northern Ireland: International Lessons (2006). This report examines possible institutional models that a devolved criminal justice system might adopt and seeks to identify institutional models that maximise human rights protection, promoted accountability and afford protection to minorities.

Assessing cross-community confidence

18. Although not expressly addressed in the Terms of Reference, the Committee may wish to explore what steps need to be taken to assess the level of confidence within communities prior to the Assembly requesting devolution of policing and justice matters.

This is particularly relevant to Northern Ireland where there is a long legacy of mistrust and lack of confidence in the criminal justice system amongst some communities, making achievement of meaningful consultation with communities difficult and complex.

19. To the extent that cross-community confidence in any proposed model for devolution is a pre-requisite, this might be a timely opportunity for the relevant oversight and consultative bodies (for example, the Policing Board, District Policing Partnerships, Community Safety Partnerships) to assess their respective and collective roles in terms of an ability to provide space for diverse interest groups wishing to contribute to discussions relating to the future shape of policing and justice functions. Groups that may not to date have engaged with the issues include, the traveller community; the children's sector; minority ethnic groups including migrant workers and the lesbian, gay, bisexual and transgender population.

20. We hope that this response will help inform the work of the Committee. At this time, the Commission is not requesting an opportunity to present oral evidence; we will of course be pleased to provide clarification of any matters arising from this response.

August 2007

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[1] Northern Ireland Act 1998, s.69(1).

[2] Ibid., s.69(3).

[3] Ibid., s.69(4).

[4] Ibid., s.69(6).

[5] Durban, South Africa, 31 August – 8 September 2001; paragraph 108.

[6] Re-Imagining Women's Security and Participation in Post-Conflict Societies: Key Findings, October 2006.

Northern Ireland Law Commission

Inquiry into the devolution of policing and justice matters

1. The Northern Ireland Law Commission was established by the Justice (Northern Ireland) Act 2002 and the relevant sections were brought into force on 16 April 2007. I was appointed chair of the Commission on that date. A chief executive has now been appointed and it is hoped that the 4 commissioners provided for in the legislation will be appointed in October. The Commission will then embark on a process of consultation leading to the establishment of its work programme in accordance with the legislation.
2. The establishment of the Commission was a recommendation of the Criminal Justice Review Group and its remit covers civil and criminal law including practice and procedure and revision and repeal of statute law.
3. At present matters relating to the criminal law are the responsibility of the NIO and matters relating to practice and procedure within the courts are the responsibility of the Northern Ireland Court Service. The remaining matters are mainly the responsibility of Northern Ireland Departments.
4. The Commission will have to establish robust consultation procedures in respect of the development of its work programme. That will include consultation with the responsible departments. If policing and justice matters are devolved it will be necessary to put in place arrangements to ensure that the Commission has the opportunity to consult appropriately with the Assembly on any proposals relating to those issues.
5. The Commission's work programme must be approved by the Secretary of State who is obliged by s 51(3) to consult the First Minister and deputy First Minister on that issue.

Declan Morgan

Chair
Northern Ireland Law Commission

**Northern Ireland Office
(Mr Paul Goggins MP)**

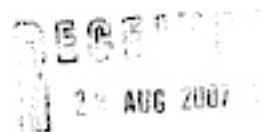
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Northern
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Minister of State



Rt Hon Jeffrey Donaldson MP
Chairperson of the Assembly & Executive Review Committee
c/o Room 42B
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Belfast BT4 3XX

21 August 2007

Dear Jeffrey

**INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE
MATTERS**

Thank you for your letters dated 9 July to the Secretary of State and to myself, requesting our views in relation to the terms of reference of the Assembly and Executive Review Committee's Inquiry into the devolution of policing and justice matters.

As you will be aware, the Secretary of State has agreed give oral evidence to the Committee in October. I trust that this will help to inform the Committee's deliberations and will present opportunities for discussion of the issues surrounding the devolution of policing and justice. In the meantime, I am content that the Government's position has been adequately set out by officials at the earlier evidence session, by the July summary paper offering the Secretary of State's assessment and by the 2006 discussion document, "Devolving Policing and Justice".

With particular reference to the Committee's first two terms of reference, the July summary paper indicated that it is the Government's firm view that in order for the devolution of policing and justice matters to work effectively, these matters (as set out in paragraphs 9 to 12, 14A to 15A and 7 of Schedule 3 to the 1998 Act) should devolve in bulk and at the same time. However, as



Northern
Ireland
Office

The 2006 discussion document explained, there is some scope for flexibility in certain discrete areas which would (if this were the wish of the Assembly or Parliament) allow them to remain reserved without affecting the operability of the justice and policing system as a whole. These areas are clearly identified in the 2006 discussion document.

This remains the Government's position and the Secretary of State will be happy to discuss these and other issues in greater detail during the evidence session. With that in mind, we do not have anything substantive to add to this material at this stage but we are grateful for the opportunity to offer our views.

Yours
Paul

PAUL GOGGINS MP
Minister of State for Northern Ireland

Northern Ireland Policing Board

Professor Sir Desmond Rea
Chairman



Date: 20 July 2007

Mr Stephen J Graham
Committee Clerk
Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast

Dear Mr Graham

INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS

I refer to your letter dated 9 July 2007 inviting submissions to the Assembly and Executive Review Committee in respect of its Inquiry into the Devolution of Policing and Justice Matters. The invitation was considered by the Board's Corporate Policy, Planning and Performance Committee at its meeting held on 19 July 2007 and the following submission was agreed.

The Policing Board supports the concept of devolution of policing as set out in Recommendation 20 of the Independent Commission on Policing (Patten Report) which

states:

"Responsibility for policing should be devolved to the Northern Ireland Executive as soon as possible, except for matters of national security."

In this context the Policing Board recognises that the major decisions around the devolution of policing and justice matters, as set out in the Terms of Reference for the Committee's Inquiry, are primarily matters for the Political Parties to consider. However, there are two points of principle which the Board would wish to submit at this stage.

Firstly, that the role and powers of the Board should not be diminished under the devolution of policing and justice, including that the Chief Constable should remain accountable solely to the Board for the delivery of a policing service in Northern Ireland.

This principle is consistent with Recommendation 21 of the Independent Commission on Policing (Patten Report); is consistent with paragraph 13.7 of the Government's Discussion Paper on Devolving Policing and Justice in Northern Ireland (February 2006); and was also a conclusion unanimously agreed by the Assembly's Committee on the Preparation for Government when it reported on law and order issues in September 2006.

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Secondly, that the Chief Constable's operational responsibility should not be undermined when policing and justice powers are devolved.

The Board will be happy to attend an oral evidence session of the Committee to amplify these principles should this be of assistance. The Board would welcome the opportunity to brief the Committee on its experience of the current tripartite arrangements, including the relationship between the Board and the relevant Minister and Government Department (NIO) and to discuss the operation of the tripartite arrangements under devolution.

Yours sincerely

A handwritten signature in black ink that reads "Desmond Reay".

HA/No 12076

Recommendations from the Dutton report mentioned in

**Recommendations from the ratten report mentioned in
the NI Policing Board Submission.**

20 Responsibility for policing should be devolved to the Northern Ireland Executive as soon as possible, except for matters of national security. [para. 6.15]

21 The powers of the Policing Board proposed in this report, in relation to both government (as now represented by the Secretary of State) and the Chief Constable should in no way be diminished when the government role in the tripartite arrangement passes to the Northern Ireland Executive. [para. 6.15]

Northern Ireland Women's European Platform



Mr. Stephen J Graham
Clerk to the Assembly Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
Belfast BT4 3XX

20 August 2007

Dear Mr. Graham

Re: Policing and Justice Matters

Northern Ireland Women's European Platform (NIWEP) would like to thank you for the opportunity to respond to the consultation on devolution of policing and justice matters.

NIWEP is enclosing a two page response which stresses the need for gender balance in all aspects of policing and justice matters with specific reference to:

- Commitment to Gender Equality in Policing and Justice Matters – Implementing International Commitment
- Women and Prison in Northern Ireland; and
- Facts on Women Prisoners

I am also attaching information on NIWEP. If you want to contact this organisation please can you either write or e-mail.

Yours sincerely



JEANETTE THORNTON
NIWEP Vice Chairperson

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CHARITY REGISTERED WITH CHARITY NO. 101 290268
COMPANY LIMITED BY GUARANTEE 041075

NIWEP is a special consultative body with the Economic and Social Council of the United Nations

Introduction

1. On behalf of Northern Ireland Women's European welcomes the opportunity to submit an interest in policing and justice matters.
2. The Terms of Reference set out seem to be specific to the Committee in reviewing and reporting on the issues of policing and justice.

Commitment to Gender Equality in Policing and Justice Matters – Implementing International Commitment

3. Northern Ireland Women's European Platform would like to take this opportunity to ensure the commitment by the UK government to United Nations Security Council Resolution 1325 on Women, Peace and Security is fully implemented and calls for in peace building communities:
 - Participation of women at all levels
 - Gender training
 - Protection of women and girls
4. Northern Ireland Women's European Platform calls on the Inquiry to

ensure:

- All bodies will be gender-proofed to increase women's participation at decision-making levels including the Committee inquiring into the devolution of policing and justice matters
- Appoint more women at senior level and involve more women in policing and judicial posts (no high court judges no Chief Constable or Head of Prison have been female)
- Investigate reasons why women are applying for the police service for Northern Ireland but the numbers actually being accepted are relatively low and retaining women is a problem.
- To ensure that gender is given the same priority as religion in monitoring
- Fund and provide support for gender sensitive training
- Fund local women's groups working for peace
- Strengthen laws and support for measures to protect women and girls from gender based violence

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Women and Prison in Northern Ireland

5. To ensure the recommendations made in the report 'The Prison Within' – The Improvement of Women at Hydebank Wood 2004-2006 are fully implemented (Professor Phil Scraton & Dr. Linda Moore – NIHRC)
6. 'Measuring Misery, detention of asylum seekers in Northern Ireland: a statistical analysis 2002-2004', by the Refugee Action Group reported there has been a five-fold increase in the number of female asylum seekers being detained in prison. What resources are required?

Women Prisoners - Facts

- There are over 4,000 women in prison in the UK – most should never have been sent there
- Approximately two thirds are on remand awaiting trial or sentence – under half receive a prison sentence, while one in five is acquitted altogether
- The punitive environment can be damaging to women's mental health and compound experiences of victimisation, while often doing little to support them or stop them re-offending
- It costs £77,000 a year to keep a woman in prison, yet in 2003, 63% of women released from prison were reconvicted within two years
- Prison is inappropriate, unnecessary and harmful for most women offenders – as well as expensive and usually ineffective
- only 16% have committed violent offences – most are imprisoned for theft or handling of stolen goods
- more than 60% are mothers
- 70% suffer from two or more mental health problems
- 37% have attempted suicide; nearly a quarter have experienced self harm
- over 50% have experienced domestic violence – though other estimates put this figure much higher

Presbyterian Church in Ireland



Church and Society Committee

Devolution of policing & justice

1. The Presbyterian Church in Ireland includes members who have served as police officers and, particularly over the years of the 'Troubles', has been very conscious of the level of threat which many have lived with and also the suffering that has resulted from death and injury. We, therefore, make our comments from the context of having been supportive of policing.
2. We are also very much aware of the changes that have taken place in policing and are conscious of the challenges of adapting a policing service to the new situation. We have been broadly supportive of the changes while having reservations about, for example, with the 50/50 rule. At the same time, we believe that a police service should be more representative of the whole community thus increasing its broad accountability.
3. With regard to the devolution of policing & justice we would express some caution. While our society continues to evolve in a peaceful setting we would want to resist any changes which simply devalue the efforts that were made in policing and justice to serve the whole community and the price that many paid in doing so.
4. While we believe it is a sign of a healthy society that it takes responsibility for maintaining its own rule of law, we also believe that the time when this responsibility is taken on will have to reflect a maturity and integrity within that community and among its leadership.
5. We would like to take the time to consult more widely before finally expressing a view and discussing it with you.

Rev. Dr. Lesley Carroll

Co-convenor Church & Society Committee
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16th August 2007

Probation Board for Northern Ireland



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Ronnie Spence, Chairman

S.J. Graham Esq
Clerk to the Assembly and Executive Review Committee
Room 428
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BELFAST

16 August 2007

Dear *Stephen*

INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS INTRODUCTION

The Probation Board for Northern Ireland welcomes the opportunity to provide written evidence to the inquiry.

THE PROBATION BOARD FOR NORTHERN IRELAND (PBNI)

The PBNI is a non-departmental public body created in 1982 through the Probation Board (Northern Ireland) Order. Under the Order, the Board has the following functions:

1. The Board shall –
 - (a) secure the maintenance of an adequate and efficient probation service;
 - (b) secure that arrangements are made for persons to perform work under Community Service Orders;
 - (c) provide such probation officers and other staff as the Secretary of State considers necessary to perform social welfare duties in prisons and young offenders centres; and
 - (d) undertake such other duties as may be prescribed.
2. The Board may, with the approval of the Secretary of State, –
 - (a) provide and maintain probation hostels and other establishments for

- use in connection with the supervision and assistance of offenders;
- (b) provide and maintain bail hostels;
- (c) make and give effect to schemes for the supervision and assistance of offenders and the prevention of crime;
- (d) enter into arrangements with voluntary organisations or any other persons (including government departments and public bodies) whereby those organisations or persons undertake, on such terms (including terms as to payment by the Board to those organisations or persons) as may be specified in the arrangements, -

- (i) the provision and maintenance of such hostels and other establishments as are mentioned in sub paragraphs (a) and (b);
- (ii) to give effect to such schemes as are mentioned in sub paragraph (c).

The Board is appointed by, and responsible to, the Northern Ireland Office which funds its work. The Board has close working relationships with other members of the criminal justice system and works in partnership with the voluntary and community sectors. The Chief Probation Officer is a member of the Criminal Justice Board which is chaired by a senior official of the NIO.

The PBNI assesses and supervises serious offenders in Northern Ireland with its purpose being to protect the public by working with courts, other criminal justice agencies and partners to reduce re-offending and to integrate offenders successfully back into the community.

The Board seeks to apply the highest standards of governance. It produces a 3 year Corporate Plan which establishes the overall strategy direction. The Plan sets out the Board's aim to help reduce crime and the harm it does and its vision to achieve excellence in the assessment and management of offenders.

The Board has started the process of preparing the corporate plan that will cover the next three years. In that plan, the Board will be outlining a greatly increased role for probation in the management of offenders. The Board also produces each year a Business Plan that identifies the objectives, outcomes and key performance measures for the year. The Board reports its performance to the Minister on an annual basis.

In 2006/07, the PBNI supplied 6,200 pre-sentence reports to the courts and, at the end of March 2007, it was supervising 3,682 offenders. The Board employs 380 staff, deployed across Northern Ireland in 36 offices/report centres. Its budget is

£17m.

The PBNI uses the NIO Statistics & Research Agency figures for reconviction rates as a measure of performance. The available evidence suggests that probation is an effective way of managing many offenders and can be more effective than short prison sentences. The most recent figures published in January 2007 show that 51% of offenders sent to prison re-offend within two years, whereas 36% of offenders who are subject to supervision in the community re-offend within two years. The comparable figures for England and Wales are 67% and 53%.

DEVOLUTION

The PBNI would support the devolution of responsibility for policing and justice matters on a basis that can command respect and support across the community.

The Board believes that it is important that Northern Ireland has discretion to develop its own approach to policing and justice that is appropriate to its needs, drawing, as necessary, on experience from Great Britain and other jurisdictions.

To this end, and in the hope that it might be useful to a devolved administration, PBNI organised four seminars in 2006/7 to broaden the debate about how to reduce offending and re-offending. The participants included policy makers, practitioners, academics and representatives of the local political parties. The attached paper which reports on the outcome of the seminars has recently been approved for release by the Board. It advocates-

- 1.the development of a Northern Ireland offender management strategy and the establishment of an offender management forum that would influence policy and action across government;
- 2 the introduction of a seamless offender management process with a probation officer being responsible for the supervision of an offender and the co-ordination of services from sentence, through community supervision, entry into prison and post custody supervision; and
- 3 a sharper focus on areas that have a significant concentration of ex-offenders and potential offenders with the development of pilot schemes in partnership with the

probation arrangements with the development of pilot schemes in partnership with the community and the other parts of the criminal justice system.

FUTURE STATUS OF PBNI

The Criminal Justice Review suggested that probation should cease to be the responsibility of a public body and should instead become an agency within NIO like the Prison Service and the Youth Justice Agency. This recommendation was not implemented and NIO Ministers decided to leave the question of any change in the status of PBNI to be decided by a future devolved Assembly. We understand that the original recommendation arose in large part from some difficulties that had arisen in the working relationships between NIO and PBNI. These difficulties no longer exist.

Nevertheless, the devolution of responsibility for policing and justice issues provides an appropriate time to consider whether the institutional arrangements for the management of offenders should be changed. There are various options. They range from a single body (either inside or outside the Department of Justice) encompassing the functions of the prison service, the youth justice agency and probation, to continuation of the current arrangements.

Although some may see theoretical merits in a single large body, PBNI favours the continuation of the present arrangements. It believes that Northern Ireland has wisely not followed the changes made in probation in England and Wales which are generally regarded as being highly disruptive without bringing many significant benefits; and it feels that the public body model used in Northern Ireland has demonstrated its worth and is likely to continue to be more effective than handling probation through an agency within a government department.

Whilst there is, inevitably, an element of self-interest in that view, the Board genuinely believes that it has a good track record and that there continues to be value in a widely based board overseeing the work of probation officers operating across the community. It feels also that launching into significant institutional change would be very disruptive and

would divert the energies of each existing organisation from addressing its current demanding responsibilities. Moreover, the transfer of the responsibility for policing and justice

matters to the Executive will be a very significant step and its implementation will pose many challenges; it would seem unwise to add to the difficulties by embarking on major structural changes unless there is a clear case for such changes and we do not believe that such a case has been made.

The Board believes that a more important issue in the short term is to ensure that the resources are transferred at devolution to enable all the organisations dealing with offenders to carry out properly their current and planned responsibilities. It could prove very damaging to the devolved institutions if the responsibilities are transferred and local Ministers are faced with the task of explaining major failings that are due to under-resourced bodies being unable to do all that the public expects them to do.

CONCLUSION

The PBNi hopes that this response is helpful and would be happy to provide whatever further information the Committee requires.

Yours sincerely,

Ronnie Spence

R.B.Spence
Chairman



Securing the Future

PBNI Report on the Outcome of Four Blue Skies Seminars

1. INTRODUCTION

This document follows up four seminars held in March, June and September 2006 and January 2007. The seminars were funded by the Probation Board for Northern Ireland and facilitated by Democratic Dialogue.

PBNI launched this initiative as it wanted to explore how its contribution to the criminal justice effort in Northern Ireland might be increased. We wanted to try to broaden the debate about how we could reduce offending and re-offending beyond the high media interest in particularly bad offences and about when and how responsibility for policing, justice and law and order issues might be devolved.

Our aim was to try to establish the facts about offending and re-offending, to examine the effectiveness of current measures to reduce their incidence, to explore what we might learn from the latest research and from other jurisdictions, and to see whether we might be able to shape a possible agenda that would be appropriate to Northern Ireland's needs. In addition, we envisaged the exercise assisting PBNI in shaping its next corporate plan for the period 2008 to 2012.

The participants in the seminars included policy makers, practitioners and academic experts from Northern Ireland and beyond. We invited the political parties to participate. The final seminar included valuable contributions from David Hanson, the then Northern Ireland Minister whose responsibilities included probation and Cathy Jamieson, the then Minister for Justice in the Scottish Executive.

The proceedings were conducted under the Chatham House Rule. While some participants were happy for their contributions to be placed on the web, or for their views to be quoted, others welcomed the opportunity to debate the issues on a confidential basis. Some of the contributions, including the views of Robin Wilson who helped to organise the seminars, can be found on the PBNI website.

PBNI is a non-departmental public body that is appointed by, and responsible to, the NIO. Its purpose is to protect the public by working with the courts, other criminal justice

agencies and partners to reduce re-offending and to integrate offenders successfully back into the community. Its aim is to help reduce crime and the harm it does. PBNI's vision is to achieve excellence in the assessment and management of offenders. In 2006/7, it supplied 6200 pre-sentence reports to the courts and at the end of March 2007 it was supervising 3,682 people. PBNI employs 380 staff and its annual budget is around £16m.

2. KEY FACTORS AND ISSUES

"The way we deal with those who break the law is fundamental to the health of our society" said the then Home Secretary, Charles Clarke, in his foreword to his Government strategy for protecting the public and reducing re-offending in England and Wales which was

Blue Skies Seminars
Draft final report/June 07

Page 1 of 4

published in 2005. In his forward to a paper published in May 2007 on Penal policy, the then Lord Chancellor, Lord Falconer, wrote – "There can be no greater duty for any Government than protecting the public"

The Cabinet Office has estimated that, in purely financial terms, re-offending costs in the UK amount to £11 billion per year.

So how can we reduce the levels of offending and improve the management of offenders in Northern Ireland? Here are some points to help the debate:

- The crime rate is falling, yet the prison population is rising;
- The most certain way of protecting society against the most violent and dangerous offenders is to keep them in prison until they can be shown to be no longer a serious risk or threat;
- Just under half of people sentenced to prison will re-offend within two years;
- The annual cost of keeping a prisoner in prison in Northern Ireland is over £85,000;
- A very high percentage of those in prison have significant mental health, literacy, skill and substance abuse problems and around two-thirds of prisoners have the literacy/numeracy level expected of an 11 year old or less;

- Recent research suggests that those at most risk of becoming tomorrow's criminals can be identified by the age of 5 because of the environment in which they are living with high risk factors being poor parenting, poverty and criminality in the family;
- Most offenders start a life of crime and anti-social behaviour at an early stage and have long criminal records;
- The right early intervention in the life of an offender can be successful;
- Working with offenders in the community has a better chance of success for many offenders than short prison sentences;
- There will always be an element of risk in managing offenders in the community;
- There is a significant place for community action in reducing the levels of crime, both through specific services provided by the community and voluntary sectors and in well run community restorative justice approaches.
- Victims gain positive outcomes from restorative approaches.

There is no single magic answer to reducing offending. It is a complex problem but we do know that:

- stable accommodation can reduce re-offending by more than 20%;

- education and training is vital;
- employment can reduce the risk of re-offending by between one-third and a half;
- health, particularly mental health, is a key determinate in offending;
- drugs and alcohol play a significant role in offending and well planned programmes to tackle substance misuse can have excellent success rates;

- low income and debt are significant factors in offending;
- stable families and contact with families provides a stabilising influence;
- programmes targeting attitudes, thinking and behaviour, can reduce re-offending.

3. THE WAY FORWARD

PBNI believes there are three broad lines of action that should be taken.

Action 1- A NORTHERN IRELAND OFFENDER MANAGEMENT FORUM AND STRATEGY

There should be a more effective joined up approach across all the public agencies to attack the factors that lead people into crime. It is crucial to develop, and co-ordinate, action across the public sector. That action should focus on prevention, diversion, reducing re-offending and the resettlement/reintegration of offenders from custody. PBNI favours the development of a Northern Ireland offender management strategy and the establishment of an offender management forum that would influence policy across the Government. We were, therefore, very pleased to hear the announcement on 26th February by the NIO of the creation of a ministerial task force to achieve more co-ordinated action across the public sector to help bring down levels of offending, and that an offending strategy would be published later this year.

Action 2- END TO END MANAGEMENT OF OFFENDERS

There should, as soon as resources allow, be a seamless offender management process. Each offender coming into the system would be managed by a Probation Officer from assessment (pre-sentence) through to the completion of sentence. Throughout the offender's involvement with the criminal justice system, there would be a named Probation Officer who would be responsible for the co-ordination of services and the supervision of the offender from sentence, through community supervision, entry into prison, and post custody supervision, to the point when the risk of re-offending has been reduced significantly. This would, for example, potentially reduce the number of non-violent, but persistent, offenders being sent to prison for short periods (less than 6 months, reconviction rates 50%) as they would be on robust community sentences (1 year or more, reconviction rates 34%).

Action 3- FOCUS ON THE OFFENDER HOT SPOTS

There is evidence from other countries that significant progress can be achieved through a sharper focus on areas that have a significant concentration of ex-offenders and potential offenders. This approach could involve local probation officers working in close partnership with other parts of the criminal justice system, relevant public sector bodies, elected representatives, the voluntary and community sector and local people in managing ex-offenders and potential offenders. As a first step, a couple of pilot schemes should be prepared to identify locations where there is a concentration of ex-offenders and to develop a partnership to design and deliver the appropriate measures to help reduce re-offending. It would be essential in this process to win the confidence and commitment of local people, not least because the people who live and work in these communities and neighbourhoods have a personal and collective stake in breaking the cycle of crime and re-offending.

4. CONCLUSION

There is room for debate about the levels of actual or reported crime in Northern Ireland – whether they are increasing or decreasing – and whether public attitudes to reporting crime are changing. However, to those who are victims of crime, that is a rather academic exercise. To the victim, the crime they have experienced is one crime too many.

The debate about what to do with offenders, how to limit the levels of re-offending tends to become distorted by the raw passions that can be aroused, particularly where violent and sexual crime is involved, or where the victims are the young or elderly.

There are high costs involved of pursuing and prosecuting offenders, keeping them in prison and managing them in society. Public confidence in the criminal justice system will be improved if we can prevent offending in the first instance, reduce the likelihood of re-offending in the second, and protect the public from the most violent and serious offenders.

In Northern Ireland, we must strive to develop more effective and imaginative ways of managing offenders that are based on evidence about the success or otherwise of present approaches, that learn the lessons from what has worked better in other jurisdictions throughout the world and that are properly tailored to the circumstances here.

The four Blue Skies Seminars provided useful information to move the debate forward and PBNI would welcome reactions to this paper as we start preparation of our next corporate plan.

Comments should be sent to the Secretary, Probation Board for Northern Ireland, 89, 90

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R. B. Spence Chairman

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BELFAST

31 January 2008

Dear Stephen

INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS

I refer to the response to the Committee that PBNI sent on 16th August.

We understand that there has been some discussion in the Committee about whether probation should remain the responsibility of a public body or become an agency within the new Department of Justice. Whilst we appreciate that this is not one of the most important or pressing issues that the Committee has to address, we would urge caution in reaching any firm view at this stage about the future of the probation service. We think that the issues are more complicated than they may appear at initial appraisal.

Probation services were moved out of the Ministry of Home Affairs 25 years ago when PBNI was created. It seems to be generally acknowledged that PBNI has been doing a good job under the control of a public body with people from a wide range of backgrounds across the community. It has been constantly striving to improve its performance and its record is widely considered to compare very well with probation bodies in GB. The new criminal justice legislation will mean a significant increase in its responsibilities and will see investment in probation services rise to historic levels. Responding to this increased role will present major challenges and embarking at the same time on changes in the status and management of probation services could have a serious destabilising effect. A salutary lesson can be learnt from looking at the recent experience in England and Wales where constant change in the arrangements for probation services has proved to be very costly in terms of money, morale and performance. In Northern Ireland, we should be seeking to build upon our successes in relation to the management of offenders by probation within the new context created by devolution.

The aim of PBNI is to help reduce crime and the harm it does

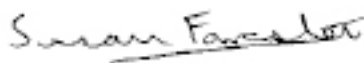


INVESTOR IN PEOPLE

In arguing the case for continuing with the current arrangements, we recognise fully the need for proper accountability to elected representatives and the public for PBNI's activities and are very happy to explore how greater accountability might be achieved.

We remain ready to provide whatever further information the Committee may require.

Yours sincerely


R.B. Spence
Chairman

Police Service of Northern Ireland

022/PJ



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

**PAUL LEIGHTON QPM LLB
DEPUTY CHIEF CONSTABLE**

Com Sec: 0712527

/L August 2007

Paul Leighton
RE: INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS

Thank you for your letter dated 9 July 2007 regarding the inquiry into the devolution of policing and justice matters.

Having viewed the draft terms of reference, I would propose an additional term after point 3 as follows:-

"To define the role and responsibilities of the Policing and Justice Department having regard to the current responsibilities of the Northern Ireland Policing Board, the operational responsibility of the Chief Constable and the current roles of the various Oversight bodies.

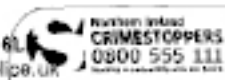
I trust this is of assistance to you.

Yours sincerely

Paul Leighton
PAUL LEIGHTON

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Calls within the Police Service of Northern Ireland telephone system may be monitored or recorded

Public Prosecution Service, Northern Ireland

Stephen J Graham Esq PPS Ref: ED 246/6 Vol 3
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14 August 2007

Dear Mr Graham

Thank you for your letter and enclosure dated 9 July.

I have now had an opportunity of discussing these matters with the Director on his return to the office. He has asked me to reply.

I have considered the terms of reference of the Assembly and Executive Review Committee. You seek to identify those policing and justice matters which are currently reserved matters under Schedule 3 to the Northern Ireland Act 1998 and to consider which of these matters should be devolved and the extent to which they should be devolved.

Paragraph 9 of Schedule 3 lists the following matters:-

“(a) the criminal law;

(b) the creation of offences and penalties;

(c) the prevention and detection of crime and power of arrest and detention in connection with crime or criminal proceedings;

(d) prosecutions;

- (e) the Treatment of Offenders (including children and young persons, and mental health patients, involved in crime);
- (f) the surrender of fugitive offenders between Northern Ireland and the Republic of Ireland;
- (g) compensation out of public funds for victims of crime

Upon devolution, it will be necessary to devolve some or all of the matters set out above.

You also seek to identify the preferred ministerial model and procedures for filling the ministerial post/posts for the new policing and justice department.

While the matters set out at paragraph 9(a), (b), (c), (e), (f) and (g) are most likely to fall within the remit of a Department of Justice, the Director does not consider it appropriate for the prosecution of offences to be placed in that Department which has operational responsibilities for other areas of criminal justice. The Director agrees with the view of the Criminal Justice Review (2000) that public confidence in the criminal justice system is enhanced by the independence and clear separation of the functions of the key components of the criminal justice process, namely investigation, prosecution and adjudication. This provides an assurance of objective, dispassionate decision making and of checks and balances.

It is vital that the independence of the Director and the prosecuting authority is maintained and protected. This was clearly envisaged by the Criminal Justice Review and is established and exemplified in the Justice (Northern Ireland) Act 2002. Section 42 (1) of the 2002 Act provides that the functions of the Director will be exercised by him independently of any other person. The Director is the head of the Public Prosecution Service and the Deputy Director, public prosecutors and other members of staff are subject to his direction by virtue of section 29(6) of the 2002 Act. While the Director and Deputy Director will be appointed by the Attorney General for Northern Ireland in accordance with section 30 of the 2002 Act, the relationship between the Director of Public Prosecutions and the Attorney General for Northern Ireland is to be consultative only as set out in section 42(2) – (3) of the 2002 Act. Again, this is in accordance with the recommendations of the Criminal Justice Review.

It is, as I have indicated, an essential and fundamental principle that the Public Prosecution Service for Northern Ireland is independent in the discharge of its functions and is perceived so to be. It is the duty of the Director of Public Prosecutions to take decisions as to prosecution in accordance with law and practice. He exercises this quasi judicial function in a wholly independent manner and is not subject to interference, question or pressure. For example, section 29(11) of the 2002 Act provides that:-

“The Director (and the Deputy Director and members of staff of the Service) may not be required in any proceedings of the Assembly to answer any question or produce any document relating to a matter other than the finances and administration of the Service”.

Given this statutory scheme, the Public Prosecution Service should be funded in a manner which not only ensures it can carry out its duties and responsibilities in an efficient manner but also will maintain and protect the independence of the prosecuting authority. In the Director's view this is best obtained by establishing appropriate arrangements with the Office of First and Deputy First Minister. In addition, the arrangements with OFMDFM would allow the Director to express his views on, for example, matters

of law reform which impact upon prosecutorial functions without impinging upon the operational responsibilities of the Department of Justice. While responsibility for law reform rests with ministers in the Assembly, the Director considers that they are entitled to his views on the implications of change and such an arrangement would provide an effective channel of communication for such matters.

In advance of devolution of justice consideration should be given to a concordat on the independence of the prosecution. The concordat should aim to set out arrangements to be agreed between Her Majesty's Government and the Northern Ireland Executive that safeguard the independence of the Public Prosecution Service for Northern Ireland following the devolution of responsibility for criminal justice matters to the Northern Ireland Assembly and Executive.

If the Public Prosecution Service is to operate as independently as possible as a distinct institution following devolution, the requirements for a new financial and personnel management system will need to be met through administrative change. Such arrangements ought to begin well in advance of devolution.

Finally, you may wish to give consideration to the provisions of section 25 of the 2002 Act in the context of the extension of standing orders to the Attorney General's functions.

I hope you will find these observations of assistance.

I will forward a hard copy of this letter to you in the post.

Yours sincerely

W R JUNKIN

Deputy Director

Robert McCartney Justice Campaign

McCartney family's submission to the Inquiry into the devolution of policing and justice.

Our submission to the committee concerns the lack of cooperation of Sinn Fein members into the murder investigation of our brother Robert. Building the community's confidence in the sincerity and fundamental belief in the principle of policing of all parties in the Northern Ireland Executive and Assembly has been cited as a prerequisite for the devolution of policing and justice. The fact that no Sinn Fein member has cooperated directly with the police regarding the investigation into the murder of our brother Robert can only serve to undermine this confidence and thus delay the transfer of these powers.

Background.

Robert was murdered 'allegedly' by Sinn Fein and IRA members on 30th January 2005 and despite numerous Sinn Fein members presence in the vicinity of the bar at the time (Sinn Fein's own estimate was 12 but the number is believed to have been higher) none of its members did or have spoken directly with the PSNI.

The investigation into Robert's murder was hampered by the IRA's successful efforts to destroy forensic and physical evidence (including the destruction of the knife and the cleaning down of the bar), silencing of witnesses and the refusal of its and Sinn Fein's members to cooperate with the police.

Since 2005 we have campaigned strenuously to bring Robert's killers to justice and in spite of rather than because of 'republican' cooperation a man currently stands charged with Robert's murder.

In 2005 Sinn Fein claimed to have suspended its members whom refused to comply with party policy at the time, which was to supply information through a solicitor or via the ombudsman. Accepting Sinn Fein's assertion that political sensitivities surrounding cooperation with the police from within the nationalist community was the main cause for the lack of direct cooperation with the PSNI, the Ombudsman opened her office to facilitate this process (a third way, it was called). Despite this unprecedented step (a step some of the officers of the Ombudsman's office were deeply unhappy with) only one Sinn Fein member agreed to the speak to the Ombudsman's investigating officers and was so unnerved by the probing questions that no other members came forward instead supplying written statement, some unsigned to the Ombudsman via a solicitor. The Ombudsman Nuala O'Loan concluded that the whole exercise had been 'fruitless'.

Current position.

Over the past few months the PSNI has been in contact with Sinn Fein regarding the lack of cooperation of its members. The police entered into talks with Sinn Fein because the investigating officer believes that the party can help if it chooses to. The detective in charge is a professional and interested only in policing and spoke with Sinn Fein because he knew that they could deliver, only the will would prevent them from doing so. The police have confirmed to our family this week that Sinn Fein are not cooperating with the investigation.

Conclusion.

The effective and transparent cooperation of Sinn Fein members with the investigation into Robert's murder and clarification on the party's policy regarding those members whom refuse to do so is in our view essential if the community's confidence is to grow strong enough to allow for the devolution of policing and justice powers to the executive.

In the light of the brutal murder of Harry Holland in West Belfast over a week and the strong response from Sinn Fein it is our position that the 'nationalist communities' sensitivity to working with the police is no longer an acceptable or valid excuse and the continued refusal of Sinn Fein to cooperate with the PSNI in relation to Robert's murder signals an 'a la carte' approach to policing.

It is our view that the lack of cooperation by Sinn Fein into Robert's murder should be considered by the committee when fulfilling

its remit to prepare a report to the Secretary of State into the timeline for devolving policing and justice powers.

If necessary we can provide the committee with further details of the Sinn Fein members who have yet to cooperate with the PSNI.

RobertMcCartney Justice Campaign.

104 Glendale Park,
Belfast, BT8 6HS.

Serious Organised Crime Agency



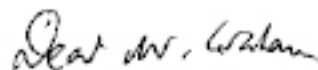
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18 October 2007



Inquiry into the devolution of policing and justice matters

I am grateful for the opportunity to set out SOCA's position in Northern Ireland as it stands and to provide some context around how we plan to develop our presence in that part of the United Kingdom in the future. The specific area I (as SOCA's Director General) was asked to comment on is as follows:

'The role of the Serious Organised Crime Agency in a devolved structure, including an outline of how it might work with a future Policing and Justice Department in Northern Ireland and the relationships, and lines of communication, there might be between the Agency, the new Department and other policing and justice organisations in Northern Ireland.'

SOCA was established under the Serious and Organised Crime and Police Act 2005 ('The Act') with functions to prevent and detect serious organised crime, to contribute to the reduction of such crime in other ways and to the mitigation of its consequences, and to gather, store, analyse and disseminate relevant information. It has a remit, under the Act, to operate throughout the UK and overseas and can institute criminal proceedings in England and Wales or Northern Ireland. In Scotland, SOCA has the same obligation as the police and other law enforcement agencies there in that, *"if it suspects that an offence has been committed (or is being committed) in Scotland it must report the matter to the Procurator Fiscal as soon as is practicable."*

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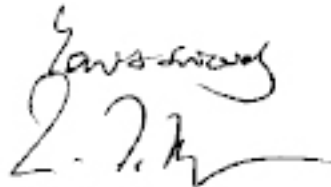
SOCA is not part of the Police Service but is a unique organisation created by Parliament. Its strategic priorities are set by the Home Secretary. In setting these, she has a duty to consult SOCA, the Scottish Ministers and such other persons as she considers appropriate. Section 6 of The Act requires SOCA to prepare an annual plan before the start of each financial year, setting out how it intends to exercise its functions during that year. The annual plan must (in particular) set out how SOCA intends to exercise its functions in Scotland and in Northern Ireland. Before it issues the Annual Plan, the act places a further responsibility on SOCA to consult the Scottish Ministers and agree with them what provision the plan is to make for Scotland. By extension it would be appropriate for similar consultation to be undertaken with the Northern Ireland Policing and Justice Department. It is worth noting also that our legislation amended the Police (Northern Ireland) Act 1988 to include SOCA within the remit of the Police Ombudsman for Northern Ireland.

Experience has shown that organised crime reaches into every community, ruining lives, driving other crime and instilling fear. In passing the Act, Parliament gave SOCA the ability to work with appropriate partners to mitigate the effects of organised criminal activity, and SOCA has, accordingly, been working regularly with the PSNI. The role performed to date has principally been concerned with offering a number of services to the law enforcement community in Northern Ireland. These have included the provision of reports of suspicious financial activity, access to SOCA assets overseas, maintenance of a number of national law enforcement indices, assessments in relation to the scope and nature of emerging trends across a wide spectrum of criminality and support to partners' operational activity both in the domestic and international environments. Going forward, it is my intention, subject to the necessary funding being available, to increase SOCA's presence in Northern Ireland with a view to greater involvement in concert with the PSNI in operations against organised criminal groups. I should

greater involvement, in concert with the PSNI, in operations against organised criminal gangs. I should point out, however, that while such gangs certainly impinge on the citizens of Northern Ireland, most are based or operate principally from elsewhere, both within the United Kingdom and further afield, and our efforts need to reflect that wider imperative.

Last year, Ministers announced that, subject to Parliamentary approval, SOCA would merge with the Assets Recovery Agency (ARA) and that merger will have a direct impact on our presence and role in Northern Ireland. I agree with the findings of the recently published Asset recovery Plan for Northern Ireland when it explains that *"Bringing together experts in the investigation of serious organised crime alongside those who have skills in recovering assets from criminals will create one organisation that can really focus on ensuring that criminal gangs are tackled as effectively as possible, using the full range of available powers."* The former Home Secretary gave assurances in correspondence with Lady Sylvia Hermon about the way SOCA would in future discharge the functions previously performed in Northern Ireland by ARA. I attach a copy of that letter for ease of reference.

So far as future arrangements for SOCA in any devolved structure are concerned, I would see no particular difficulty with a system that corresponded to that which currently operates in Scotland in relation to SOCA. Decisions on such future arrangements, however, are for Ministers and, ultimately, for Parliament.



William F Hughes
Director General

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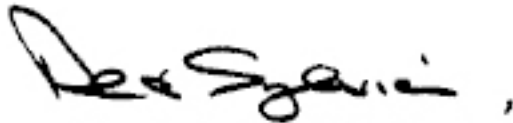


HOME SECRETARY

2 Marsham Street, London SW1P 4DF
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Lady Hermon MP
House of Commons
London SW1A 0AA

03 MAR 2007



We met yesterday with Sir Stephen Lander of SOCA to discuss asset recovery action in Northern Ireland after the merger of the Assets Recovery Agency and SOCA.

The merger and the other changes to our asset recovery powers in the current Serious Crime Bill reflect our determination to drive up our performance on asset recovery. We are on track to secure five times more assets in England, Wales and Northern Ireland this year than we did five years ago. We are now looking to put in place a plan to double this performance again by 2009-10.

This increasing emphasis on asset recovery reflects the harm major criminals are causing, and we agreed that the effective and visible asset recovery effort had been particularly important to Northern Ireland, contributing significantly to public confidence. I can assure you therefore that there will be no reduction in effort when ARA and SOCA are merged. Indeed, we are looking to build on this progress, and we are confident the merger will help do that.

My letter to Peter Hain stressed that the current level of effort dedicated to asset recovery in Northern Ireland would be at least maintained when ARA merges into SOCA. SOCA are happy to confirm that the current asset recovery team in Northern Ireland will retain its distinct identity, and SOCA will ensure asset recovery retains an appropriately high public profile, reflecting the important contribution it has been making to crime reduction and community confidence.

The merger will also preserve current accountability arrangements in Northern Ireland. Currently the Secretary of State for Northern Ireland is consulted on SOCA strategic priorities and SOCA's annual report will include its activities in

Northern Ireland. SOCA will also be engaging fully in the successful Organised Crime Task Force.

As you know there is already close co-operation with the South on these issues but I want us to go further. I will be meeting my counterpart Michael McDowell, in Dublin on Friday and will be speaking to him about how we can strengthen our links with the Dublin Criminal Assets Bureau (CAB), which, as you know is a world leader in asset recovery. Specifically, I want to learn from their highly successful exploitation of tax powers to target criminals. I will also be announcing that we will be legislating to enable better exchange of information on civil recovery matters between HMRC and the Criminal Assets Bureau.

I am copying this to Peter Hain and Bill Hughes at SOCA.

Kevin Whelan

John Reid
JOHN REID

643/05

Equality Commission

FOR NORTHERN IRELAND

Stephen Graham
Assembly and Executive Review Committee Clerk
Room 428
Parliament Buildings
Stormont
Belfast
BT4 3XX

25 September 2007

Dear Stephen

**Re: Inquiry into Devolution of Policing and Justice Matters -
Terms of reference**

Many thanks for your recent correspondence regarding the Committee's Inquiry into the Devolution of Policing and Justice Matters. As you know, the Equality Commission has responsibility for overseeing implementation of Section 75 of the Northern Ireland Act 2006, the statutory equality duty for public authorities in Northern

1998, the statutory equality duty for public authorities in Northern Ireland. Options for the devolution of policing and justice should be considered within the context of Section 75. Therefore the Commission would ask that the Committee include consideration of the potential implications of Section 75 and Schedule 9 of the Northern Ireland Act 1998 during its inquiry.

The Secretary of State has a number of powers under Section 75 including:

- designating a public authority for the purposes of Section 75 set out in Section 75(3)(d),
- requesting a public authority to make a revised equality scheme or making a scheme for the public authority set out in Schedule 9 (7)(1)(b) and (c), and
- giving directions to public authorities following an investigation by the Equality Commission into a failure of a public authority to

Equality House 7-9 Shaftesbury Square Belfast BT2 7DP tel. 028 90 500 600

comply with an approved scheme set out in Schedule 9 (11)(3)(b)

It is pertinent, therefore, that options for the devolution of policing and justice consider the potential role of the Secretary of State in exercising these powers under the legislation.

The Commission is happy to provide further advice to the Committee on the matter.

Yours sincerely

Grainia Long

Grainia Long

Director of Policy

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ENG/PTJ



STRONGER TOGETHER

CONGRESS

Our ref: PB/nm

Stephen J Graham
Clerk to the Assembly & Executive Review Committee
Room 428
Parliament Buildings
Stormont Castle
Belfast

25th September 2007

Dear Stephen

INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS

The NIC, ICTU is pleased to make comment on the above inquiry. Congress (ICTU) represents some 230,000 workers in Northern Ireland and we have long made contributions on a wide range of policing and justice matters. These have included various consultations on the structure of policing, including Patten and the Criminal Justice Review.

Turning to the terms of reference of the review we believe that what is necessary is a clear identification of those issues which are currently reserved matters under Schedule 3 of the Northern Ireland Act 1998. This is essential before any consideration can be given to those areas which should be devolved. To assist this process we support the view that a detailed examination of all legislation relating to policing and criminal justice is required to determine where power rests currently and to assist in deciding what should be devolved. Clearly this process is necessary if we are to ensure that all interested parties are clear on the issues to be pursued.

Therefore we would suggest that there is a clear need for the Northern Ireland Office to provide to the Committee, where precise power rests and which would be devolved to the Executive.

Congress would be pleased to cooperate with the Committee in its future deliberations.

Yours sincerely



Peter Bunting
Assistant General Secretary

LSNI Response to the Assembly and Executive Review Committee of the Northern Ireland Assembly, in Relation to its Enquiry into the Devolution of Policing and Justice

LSNI welcomes the opportunity to comment on those Justice and Policing issues which will fall to the devolved Northern Ireland Assembly and on which it considers it appropriate for it to comment, in the context of its role as the representative body for the solicitors' profession in Northern Ireland.

As such, it is our intention to comment only, on those devolvable issues which have the capacity, to impact upon solicitors in their day to day business on behalf of clients and in particular on the interface between those clients/members of the public and, the Courts, the Judiciary and general administration of justice in Northern Ireland and also on those issues, which have the potential to adversely impact upon the independence of the solicitors' profession in Northern Ireland.[\[1\]](#)

Taking the issues scheduled in the Summary of Justice and Policing issues contained in Appendix 1 of the Report on the Devolution of Policing and Justice produced by the Committee on the Programme for Government on 22nd January 2007, seriatim we would therefore comment or remark as follows - Issues 9 (a) (b) & (c)

9 (a) The criminal law and the creation of offences and penalties; the prevention and detection of crime and powers of arrest and detention in connection with crime or criminal proceedings.

The Society as a matter of course and as one of its primary functions, acting in the public interest, comments on an on going basis

on developments within Criminal law & Practice, as they affect its members and the manner, in which they represent their clients.

We will continue to do so and look forward to interface with the Assembly's Ministry of Justice (or as otherwise denominated on this basis).

We believe, that our role is confined to commenting on legislative as it evolves from the legislature.

9(d) Prosecutions

We understand that the appointment of the Attorney General for Northern Ireland will fall to the FMdFM. The Attorney General for Northern Ireland will subsequently appoint the Director of Public Prosecutions for Northern Ireland. The independence of the prosecution service from Government is a prerequisite of a democratic Society. Once the appointment is in place any relationship between the Attorney General for Northern Ireland and the DPP as to the latter's operational functions should be consultative only, given that the former is a political appointment or is capable of being perceived as such. We will comment later on the structure of any Ministry of Justice to satisfy this need for independence.

We support the proposal that the devolution of the statutory rules applying to the prosecution system, including the role of the PPS and the Attorney General for Northern Ireland will be subject to the agreement of Concordats between the UK Government and the NI Administration on the independence of the prosecution system.

Any departure from the principle of independence can only result in undue pressure on the Criminal Courts system as cases are defended and appealed, with ultimate recourse to the European Courts.

We note only at this stage the creation of an Advocate General for NI, as a role of the Attorney General of England & Wales, to deal with excepted matters.

9 (e) Treatment of offenders (including children and young persons, and mental health patients, involved in crime).

Our general comments in relation to Issue 9(a) etc., as set out above apply.

9(g) Compensation

We consider that it is essential to establish and maintain a properly funded and administered system for the compensation of the victims of crime. Given the unsatisfactory experience of our members as to the operation of the existing scheme, we would recommend its independent review as soon as possible.

9(h) Community Safety Partnerships

Our general comments in relation to Issue 9(a) etc., as set out above apply.

9 A Chief Inspector of Criminal Justice for Northern Ireland.

The Society looks forward to developing its interface and relationship with the Chief Inspector of Criminal Justice for Northern Ireland. We would stress the absolute necessity for the position to be independent of Government.

10 Parades

Our general comments in relation to Issue 9(a) etc., as set out above apply.

11 The Police and the policing accountability framework.

11(a) Co-operation between the PSNI and the Garda Siochana in relation to a specific series of matters

These are issues for Government policy and as such we do not consider it appropriate to comment, as they do not in principle impact on our representation of clients nor the operation of the criminal law. We reserve the right to comment in future, should this prove otherwise.

12 Firearms & Explosives

Our general comments in relation to Issue 9(a) etc., as set out above apply.

15 The Courts

Solicitors are "Officers of the Court" and as such susceptible to regulation thereby; the Lord Chief Justice has statutory responsibility under the Solicitors (Northern Ireland) Order 1976 for approving our Regulations for the control of the profession. It is central therefore to the independence of the solicitors' profession in Northern Ireland that the Courts and Judicial system, of which it is part, is not only independent, but also seen to be so. We do commend the creation and maintenance of necessary appropriate levels of transparency and oversight. Where these are in existence they should continue. There should also be a continuous process of review to identify new areas for oversight.

The areas to be devolved under this general heading fall into five categories: -

- The Northern Ireland Court Service (including the Lord Chancellor's functions in respect of Court administration).
- Legal Aid.

- Judicial appointment arrangements (subject to the agreement of a Concordat between UK Government and the NI Administration governing the independent Judiciary) become the responsibility of the FMdFM.
- Appointment of arbitrators, referees and advisory bodies other than those falling within the remit of the NI Judicial Appointments Commissioner.
- Making of recommendations to the Crown in the appointment of Queen's Counsel.

In relation to these five issues we consider it a sine qua non that the efficient and effective administration of such matters is in the interests of the public within a framework of democratic and financial accountability, based on recognised international standards for the independence of the Judiciary – we would refer the Committee to the recognised United Nations and Council of Europe's Standards (annexed hereto).

(1) The NI Courts Service

We believe that the current status of the Northern Ireland Court Service as separate and independent of both the Northern Ireland Civil Service and the Northern Ireland Office should be maintained. The Northern Ireland Court Service's primary function is to provide administrative support for the Courts and in particular the Lord Chief Justice.

In recognition of the over-riding principle of continuing the independence of the Judiciary, we would support the concept of a non-ministerial department chaired by the Lord Chief Justice for Northern Ireland. The Law Society of Northern Ireland would be pleased to nominate members to its Board.

Implicit, in devolution issues across the board, is the absolute necessity, for adequate funding and financial arrangements to follow devolved powers.

The Northern Ireland Assembly, in the absence of any fiscal raising powers of its own must be adequately resourced to deal with areas of responsibility with which it is charged.

Legal Aid is an area, in which, the interests of the public are paramount. Despite controversy and mis-guided publicity, the fact remains that Legal Aid exists to provide legal services to that section of the community, which is economically least able to provide for itself. Lawyers are entitled to be paid a fair and reasonable fee for such work.

It is unlikely public funding could replicate the capital investment and infrastructure reflected in the 550 solicitors' practices throughout seventy four cities, towns and villages in Northern Ireland, providing readily accessible legally aided services to the often economically deprived population here. For that reason, we must take this opportunity to remind the Committee that Central Government must put it in the position to properly fund Legal Aid on an ongoing basis with proper future budgeting and contingency planning. Inadequate past funding has - (and we do not consider this the appropriate venue to ventilate all the arguments) - led to a pattern of under funding reflected in slow payments and administrative delays. We urge the Committee, to ensure that it starts with a clean slate so that future Legal Aid budgets are clearly separate, from the budgets for other issues of justice and policing.

3 Judicial Appointment Arrangements

The Lord Chancellor's power to accept recommendations from the Northern Ireland Judicial Appointments Commission as to the appointment of Judges will be transferred back to FMdFM, subject to an agreed Concordat between the UK Government and the NI Assembly. We have already referred to the need for systemic independence in this regard and in support of recognised international standards, under-pinning the principle of the independence of the Judiciary. The independence of the Judiciary is a pre-requisite of a free and democratic society. Any perception of bias can only undermine public respect for and confidence in the operation of the Courts and the Rule of Law. Similar comments apply in relation to the removal of Judges.

In this process of devolution to the FMdFM There must be a transparent published concordant Involving the Lord Chief Justice for Northern Ireland, the Judicial Appointments Commission for Northern Ireland and the OFMdFM, which commands the confidence of the legal profession and all other stakeholders, not least the general public.

4 Appointment of Arbitrators

Similar comments apply as at.

5 Making Recommendations re QC appointments

Similar comments apply. We reserve our position to comment more fully in due course, if necessary, on the appointment of solicitor QC's.

15 The Northern Ireland Law Commission

We commend the establishment of the Commission and look forward to a positive relationship and involvement with it to reflect that hitherto enjoyed with the Office of Law Reform for Northern Ireland.

Departmental Models

It has been suggested to the Law Society of Northern Ireland that we should express a view on the appropriate "Departmental model " for a devolved Ministry of Justice. We understand that the Review Committee did not reach a consensus from amongst three potential models it considered.

There are an infinite number of models in existence internationally. We have not considered these in any detail, but consider that the models operating in Scotland and the Republic of Ireland may be worthy of consideration for this jurisdiction.

Broadly, however the Law Society of Northern Ireland would commend the formation of a distinct Ministry of Justice with a single

responsible Minister supported by a Junior Minister, each representing opposite views and traditions. Such an arrangement must be structured to make provision for the independence of the prosecution process (see our comments above in relation to the role of Attorney General for Northern Ireland vis a vis the DPP (NI)); and ensure public confidence and credibility.

Conclusion

The Law Society of Northern Ireland looks forward to a positive and constructive relationship with the Ministry of Justice.

Our President and the Senior Office Bearers of the Society will make themselves available to give evidence to the Committee if it would find that helpful.

[1] The Law Society of Northern Ireland is established by Royal Charter, which provides its representative functions but it also has statutory powers and obligations pursuant to the Solicitors (Northern Ireland) Order 1976, for the discipline, education and control of the Solicitors' profession in Northern Ireland).

Independence, efficiency
and role of judges

Recommendation No. R (94) 12
and explanatory memorandum

Legal Issues

-1-

Independence, efficiency
and role of judges

Recommendation No. R (94) 12
adopted by the Committee of Ministers
of the Council of Europe
on 13 October 1994
and explanatory memorandum

Council of Europe Press, 1994

-2-

Recommendation No. R (94) 12
of the Committee of Ministers to member states
on independence, efficiency
and role of judges

(Adopted by the Committee of Ministers on 13 October 1994
at the 516th meeting of the Ministers' Deputies)

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") which provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law";

Having regard to the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Noting the essential role of judges and other persons exercising judicial functions in ensuring the protection of human rights and fundamental freedoms;

Desiring to promote the independence of judges in order to strengthen the Rule of Law in democratic states;

Aware of the need to reinforce the position and powers of judges in order to achieve an efficient and fair legal system;

Conscious of the desirability of ensuring the proper exercise of judicial responsibilities which are a collection of judicial duties and powers aimed at protecting the interests of all persons,

Recommends that governments of member states adopt or reinforce all measures necessary to promote the role of individual judges and the judiciary as a whole and strengthen their independence and efficiency. In implementing its resolution, it considers the following principles:

independence and efficiency, by implementing, in particular, the following principles:

Scope of the recommendation

1. This recommendation is applicable to all persons exercising judicial functions, including those dealing with constitutional, criminal, civil, commercial and administrative law matters.

- 3 -

2. With respect to lay judges and other persons exercising judicial functions, the principles laid down in this recommendation apply except where it is clear from the context that they only apply to professional judges, such as regarding the principles concerning the remuneration and career of judges.

Principle 1 - General principles on the independence of judges

1. All necessary measures should be taken to respect, protect and promote the independence of judges.

2. In particular, the following measures should be taken:

a. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles, for example by inserting specific provisions in the constitutions or other legislation or incorporating the provisions of this recommendation in internal law. Subject to the legal traditions of each state, such rules may provide, for instance, the following:

- i. decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law;
- ii. the terms of office of judges and their remuneration should be guaranteed by law;
- iii. no organ other than the courts themselves should decide on its own competence, as defined by law;
- iv. with the exception of decisions on amnesty, pardon or similar, the government or the administration should not be able to take any decisions

government or the administration should not be able to take any decision which invalidates judicial decisions retroactively.

- b.* The executive and legislative powers should ensure that judges are independent and that steps are not taken which could endanger the independence of judges.
- c.* All decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. The authority taking the decision on the selection and career of judges should be independent of the government and the administration. In order to safeguard its independence, rules should ensure that, for instance, its members are selected by the judiciary and that the authority decides itself on its procedural rules.

However, where the constitutional or legal provisions and traditions allow judges to be appointed by the government, there should be guarantees to ensure that the procedures to appoint judges are transparent and independent in practice and that the decisions will not be influenced by any reasons other than those related to the

- 4 -

objective criteria mentioned above. These guarantees could be, for example, one or more of the following:

- i.* a special independent and competent body to give the government advice which it follows in practice; or
 - ii.* the right for an individual to appeal against a decision to an independent authority; or
 - iii.* the authority which makes the decision safeguards against undue or improper influences.
- d.* In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The law should provide for sanctions against persons seeking to influence judges in any such manner. Judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in

pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.

- e.* The distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetic order or some similar system.
- f.* A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.

- 3. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

Principle II - The authority of judges

- 1. All persons connected with a case, including state bodies or their representatives, should be subject to the authority of the judge.
- 2. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court.

Principle III - Proper working conditions

- 5 -

- 1. Proper conditions should be provided to enable judges to work efficiently and, in particular, by:
 - a.* recruiting a sufficient number of judges and providing for appropriate training such as practical training in the courts and, where possible, with other

authorities and bodies, before appointment and during their career. Such training should be free of charge to the judge and should in particular concern recent legislation and case-law. Where appropriate, the training should include study visits to European and foreign authorities as well as courts;

- b.* ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities;
- c.* providing a clear career structure in order to recruit and retain able judges;
- d.* providing adequate support staff and equipment, in particular office automation and data processing facilities, to ensure that judges can act efficiently and without undue delay;
- e.* taking appropriate measures to assign non-judicial tasks to other persons, in conformity with Recommendation No. R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts.

2. All necessary measures should be taken to ensure the safety of judges, such as ensuring the presence of security guards on court premises or providing police protection for judges who may become or are victims of serious threats.

Principle IV - Associations

Judges should be free to form associations which, either alone or with another body, have the task of safeguarding their independence and protect their interests.

Principle V - Judicial responsibilities

1. In proceedings, judges have the duty to protect the rights and freedoms of all persons.
2. Judges have the duty and should be given the power to exercise their judicial responsibilities to ensure that the law is properly applied and cases are dealt with fairly, efficiently and speedily.
3. Judges should in particular have the following responsibilities:
 - a.* to act independently in all cases and free from any outside influence;
 - b.* to conduct cases in an impartial manner in accordance with their assessment of the

Explanatory memorandum

Introduction

1. Within the framework of the activities undertaken to promote and guarantee the efficiency and fairness of civil and criminal justice, it was decided to prepare a Recommendation on the independence, efficiency and role of judges.

2. Indeed, the Council of Europe includes among its aims the institution and protection of a democratic and political system characterised by the rule of law and the establishment of a constitutionally governed State, as well as the promotion and protection of human rights and fundamental freedoms.

3. The Recommendation on the independence, efficiency and role of judges recognises and emphasises the pre-eminent and significant role played by judges in the implementation of these aims. The independence of judges is one of the central pillars of the Rule of Law. The need to promote the independence of judges is not confined to individual judges only but may have consequences for the judicial system as a whole. States should therefore bear in mind that, although a specific measure does not concern any individual judge directly, it might have consequences for the independence of judges.

4. The texts of the draft Recommendation and its explanatory memorandum were prepared by the Project Group on efficiency and fairness of civil justice (CJ-JU). After examination by the European Committee on legal co-operation (CDCJ), the draft Recommendation and its explanatory memorandum were submitted to the Committee of Ministers of the Council of Europe. The Committee of Ministers adopted the text of the draft Recommendation and authorised the publication of the explanatory memorandum to the Recommendation.

5. In addition to representatives of the member States of the Council of Europe and the Commission of the European Community, the following observers attended the meetings of the Project Group which prepared these texts: Albania, Holy See, Latvia, Russia, the European Association of judges sitting in commercial courts and the International Association of Judges.

6. In order to establish an efficient and fair legal system, it is necessary to strengthen the

position and powers of judges and to ensure the proper exercise of judicial responsibilities. When preparing this Recommendation, account was taken of the United Nations Basic Principles on the independence of the judiciary (1985) and the Procedures for the effective implementation of these Principles adopted in 1989. The Basic Principles of the United Nations are, in relation to the draft Recommendation, to be seen as a basic text expressing minimum standards which are fully compatible with the Recommendation. This implies, on the one hand, that it was not always considered necessary to deal with all subjects covered

by the Basic Principles which would therefore apply. On the other hand, where further protection of the independence of judges within the framework of the like-minded member States of the Council of Europe was considered possible, this has been reflected in the Recommendation.

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Because of its importance, the Committee felt however that it was appropriate to insert the text of Basic Principle No 12 in the text of the Recommendation, without making any amendments to it (see principle I, paragraph 3).

7. The starting-point for the Recommendation is the idea that the powers conferred on judges are counterbalanced by their duties. The Recommendation fits into the framework of measures to be taken to make the judicial system fairer and more efficient. One of the cornerstones of a fair system of justice is the independence of judges. It is necessary to give judges appropriate powers guaranteeing their independence. However, such powers do not authorise them to act in an arbitrary manner. Judges are also subject to certain duties. Judicial responsibilities are accordingly determined by the relationship between the powers and the duties of judges.

8. Consequently, with the same aim of preserving the independence of judges, it is essential to make judges liable to a system of supervision which makes sure that their rights and duties are respected.

9. The Recommendation calls upon the member States to adopt or reinforce, as the case may be, all measures necessary to promote the role of judges and strengthen their efficiency and independence.

10. It contains six principles which should be applied by the governments of member States. These principles relate to the independence of judges, the authority of judges, proper working conditions, the right to form associations, judicial responsibilities and the consequences of failure to carry out responsibilities and disciplinary offences. Although the Recommendation enumerates principles, it was felt necessary to give details concerning these principles, so as to provide

guidance to the States implementing the Recommendation. In view of the different legal traditions of the member States relating to the protection of judges, the Recommendation does not seek a complete harmonisation of the law on this matter but provides examples or general rules which show the direction in which steps need to be taken.

Scope of the Recommendation

11. The scope of the Recommendation is not confined to specific fields of law and also covers both professional judges and lay judges, except, in the case of lay judges, with regard to the question of remuneration and certain other matters such as the requirement to have proper legal training. It covers the resolution of civil and criminal cases but also administrative law and constitutional law. The Recommendation, when defining the scope, refers to persons exercising judicial functions rather than to judges as some persons exercising judicial functions in certain States do not have the title of judges although they enjoy the same independence as judges in the exercise of their functions. For instance, some countries have a system whereby specialists perform the function of judges in cases which need highly specialised knowledge, such as auditors or experts in land surveying. Such experts exercising judicial functions cannot be compared with "lay judges" since they are often appointed because of their specialist knowledge. A number of these recommendations would also be appropriate for such persons. For reasons of convenience, it was however felt appropriate to use the term "judge" for any person exercising judicial functions. In any case, it is a matter for the internal law, and in particular the constitutions, to decide who are considered judges for the purposes of this

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Recommendation.

The Recommendation does not interfere with systems designated to discharge the courts of minor cases in, for instance, criminal or administrative matters (for example the so-called "ordonnance pénale" in France or the "Ordnungswidrigkeiten" in Germany). On the contrary, the Council of Europe has previously encouraged the adoption of such measures .

Commentary on the principles

Principle I (General principles on the independence of judges)

12. Support for the independence of the judges is expressed in the first principle which calls for all necessary measures to be taken to respect, protect and promote the independence of judges. The scope of the concept of "independence of judges" is not confined to judges themselves but covers

the judicial system as a whole.

13. The independence of judges should be guaranteed pursuant to the provisions of the Convention and constitutional principles (cf. paragraph 2 a. of this principle). This requirement implies that the independence of judges must be guaranteed in one way or another under domestic law. Depending on the legal system of each country, this guarantee may take the form of a written or unwritten constitution, a treaty or convention incorporated in the national legal system, or even written or unwritten principles of superior status, such as general legal principles.

14. With regard to the measures for implementing this principle, several aspects should be considered, taking into account the legal traditions of each State. The law should lay down rules on how and when appeals may be made against judges' decisions to courts enjoying judicial independence. A revision of decisions outside that legal framework, by the government or the administration would clearly not be admissible. Similarly, the term of office of judges and their remuneration should be guaranteed by law. As to the term of office, the Recommendation provides specific rules on when it would be admissible to suspend judges or permanently remove them (cf Principle VI). Moreover, a specific recommendation (cf Principle III, I, c) is made in respect of the remuneration of judges. Courts should also be able to decide on their own competence, as defined by the law and the administration or government should not be able to take decisions which render the judges' decisions obsolete, with the exception of very special cases of amnesty, pardon, clemency or similar situations. Such exceptions are known in every democracy and find their justification in humanitarian principles of superior value.

15. The independence of judges is first and foremost linked to the maintenance of the separation of powers (cf. paragraph 2 b. of this principle). The organs of the executive and the legislature have a duty to ensure that judges are independent. Some of the measures taken by these organs may directly or indirectly interfere with or modify the exercise of judicial power. Consequently, the organs of the executive and legislative branches must refrain from adopting any measure which could undermine the independence of judges. In addition pressure groups and other interest groups should not be allowed to undermine this independence.

¹ See Recommendation No R (87) 18 on the simplification of criminal justice.

16. It is essential that the independence of judges should be guaranteed when they are selected and throughout their professional career (cf. paragraph 2 a. of this principle) and that there should

and throughout their professional career (cf. paragraph 2 c. of this principle) and that there should be no discrimination'. All decisions concerning the professional life of judges should be based on objective criteria and even though each member State has its own method of recruitment, election or appointment, the selection of candidates for the judiciary and the career of judges must be based on merit. In particular where the decision to appoint judges is taken by organs which are not independent of the government or the administration or, for instance, by the Parliament or the President of the State, it is important that such decisions are taken only on the basis of objective criteria.

All decisions affecting the professional career of judges should be based on objective criteria. It is not only at the time of appointment as judge that judicial independence needs to be preserved but throughout the entire professional career as judge. For instance, a decision to promote a judge to another position could in practice be a disguised sanction for an "inconvenient judge". Such a decision would of course not be compatible with the terms of the Recommendation. In order to deal with such situations, some States, such as Italy, have adopted a system of separation of judicial careers and judicial functions.

The Recommendation seeks (paragraph 2 c. sub-paragraph 1) to propose standards which should be upheld in all member States, ensuring that decisions are taken without any undue influence from the executive branch or the administration.

Although the Recommendation proposes an ideal system for judicial appointments, it was recognised (cf sub-paragraph 2) that a number of the member States of the Council of Europe have adopted other systems, often involving the government, Parliament or the Head of State. The Recommendation does not propose to change these systems which have been in operation for decades or centuries and which in practice work well. But also in States where the judges are formally appointed by the government, there should be some kind of system whereby the appointment procedures of judges are transparent and independent in practice. In some States, this is ensured by special independent and competent bodies which give advice to the government, the Parliament or the Head of State which in practice is followed or by providing a possibility of appeal by the person concerned. Other States have opted for systems involving wide consultations with the judiciary, although the formal decision is taken by a member of government.

It was not felt appropriate to deal explicitly in the text of the Recommendation with systems where appointments are made by the President or the Parliament, although the Committee was of the opinion that the general principles on appointments would apply also for such systems.

An important aspect of ensuring that the most suitable persons are appointed as judges is the training of lawyers. Professional judges must have proper legal training. In addition, training

² The United Nations Basic Principles on the judiciary provides in paragraph 10:
"Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on

the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory."

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contributes to judicial independence. If judges have adequate theoretical and practical knowledge as well as skills, it would mean that they could act more independently against the administration and, if they so wish, could change legal profession without necessarily having to continue to be judges.

17. In the decision-making process, judges should be able to act independently (cf. paragraph 2 d. of this principle). The judge should have unfettered freedom to decide a case impartially, in accordance with his conscience and his interpretation of the facts, and in pursuance of the prevailing rules of law. The purpose of this provision is to ensure that no pressure of any kind and from any quarter obliges the judge to deliver judgment along the lines desired by a party, the administration, the government or any other person. Attempts to corrupt judges should be punished under criminal law. In some States, judges are obliged to report, for instance, on backlog of cases to the President of the court or to official authorities. Such reporting obligations, which are necessary for an efficient management of scarce resources in courts and for planning purposes are of course compatible with the concept of judicial independence. However, as it could be used as a means of exerting influence on judges, they should not be obliged to report on the merits of the cases with a view to justifying their decisions.

18. There are various possible systems for the distribution of cases, such as the drawing of lots, distribution in accordance with the alphabetical order of the names of the judges or by giving cases to the divisions of the court in an order specified beforehand (so-called "automatic distribution") or the sharing out of cases among judges by decision of the President of the court (cf. paragraph 2 e. of this principle). What matters is not so much the system of distribution, but the fact that the actual distribution should not be tainted by outside influence and should not benefit one of the parties. In some States, a decision by the President of the court is considered acceptable. Appropriate rules for substituting judges could be provided for within the framework of the rules governing the distribution of cases. This would ensure that where, as may occur relatively frequently (e.g. illness, vacation), a judge is unable to hear a case it is dealt with properly. In that way extraordinary decisions (cf. paragraph 2 f. of this principle) would be necessary only in a limited number of cases. Rules for the substitution of judges should take account of the period of absence of the judge.

19. Nevertheless, it might on some occasions be necessary to withdraw a particular case from a judge. Therefore, and out of the same concern to preserve the independence of the judicial system,

the law should provide that a case should not be withdrawn from a judge by the appropriate body without valid reasons (cf. paragraph 2 f. of this principle). The aim is to prevent a case from being withdrawn from a judge by the executive because the likely decision would not correspond to the expectations of, say, the government or the administration.

20. A case may not be withdrawn from a judge unless there are valid reasons and the decision is taken by the competent body. The concept of "valid reasons" covers all grounds of withdrawal which do not affect the independence of judges. Reasons of efficiency may also constitute valid grounds. For example, when a judge faces a backlog in his caseload due to illness, it is possible for cases to be withdrawn from him and assigned to other judges. Similarly, it may prove necessary to withdraw cases from judges who have been assigned a time-consuming case which may prevent them from dealing with other cases already assigned to them. It may prove necessary for the list of valid reasons to be determined by statute. In no event does this provision affect the right of parties to withdraw a case.

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21. With regard to the question of the possibility for a judge to withdraw from a case, see Principle V (paragraph 3 c).

Principle II (The authority of the judges)

22. In order to ensure that the judge enjoys the respect due to him as a judge and that the proceedings are conducted efficiently and smoothly, all persons connected with a case (eg. parties, witnesses, experts) must be subject to the authority of the judge in accordance with domestic law. State bodies or their representatives must also submit to the authority of the judge.

23. Judges should have available to them the necessary practical measures and appropriate powers to maintain order in their courts. Once such powers are allocated to judges, they have a responsibility to prevent the occurrence of situations which call in question their independence.

24. By way of example, reference may be made to the contempt of court procedures which exist in certain member States. In addition, the presence of security guards at hearings could be useful for the purpose of ejecting persons who disturb public order.

Principle III (Proper working conditions)

25. Proper working conditions for judges are a particularly noteworthy aspect of the

25. Proper working conditions for judges are a particularly noteworthy aspect of the arrangements for improving the efficiency and fairness of justice. Such working conditions, to which judges are entitled, derive in fact from the powers bestowed on them and the independence they are required to exercise.

26. The following measures will contribute to the provision of proper conditions enabling judges to work efficiently.

27. It is necessary to recruit judges in sufficient numbers to avert an excessive workload and enable the proceedings already started, regardless of their volume, to be finalised within a reasonable time (cf. paragraph 1 a). States may wish to give consideration to the possibility of allowing single judges to deal with cases of first instance.³

28. With a view to ensuring that the law is properly applied, it is not enough merely to require, at the selection stage, that judges possess suitable qualifications; they must also be given appropriate training before their appointment and during their career. It lies with member States to determine the content of such training although the Recommendation proposes some fields where training is of importance. In some cases, training prior to appointment may be very limited, for example when the national system provides for the appointment of former practising lawyers as judges. In the course of their career, judges must receive training which keeps them abreast of important new developments, such as recent trends in legislation and case law, social trends and relevant studies on topical issues or problems.

³ Paragraph V of Recommendation No R (86) 12 concerning measures to prevent and reduce the excessive workload in the courts provides "Generalising, if not yet so, trial by a single judge at first instance in all appropriate matters."

29. Status and remuneration are important factors determining appropriate working conditions (cf. paragraph 1 b). The status accorded to judges should be commensurate with the dignity of their profession and their remuneration should represent sufficient compensation for their burden of responsibilities. These factors are essential to the independence of judges, especially the recognition of the importance of their role as judges, expressed in terms of due respect and adequate financial remuneration.

30. Paragraph 1 b is closely bound up with the reference in Principle 1 to all decisions

concerning the professional life of judges, which obviously includes their status and their remuneration.

31. The quality of judicial decisions depends primarily on the quality and competence of judges. Some member States have great difficulty in attracting the best lawyers to the judge's profession and retaining their services. There is intense competition with the private sector because the latter offers more attractive career prospects. Paragraph 1 c is therefore aimed at encouraging member States to make efforts to ensure that such lawyers can expect a successful career as judges. To this end, they must improve career structures, provide for genuine opportunities for promotion and increase remuneration.

32. Judges will also be able to work more efficiently and deliver their judgments promptly if they are assisted by adequate back-up staff and equipment (cf. paragraph 1 d). In order to ensure improved management of courts and of case files, it is necessary to make all office automation and data processing facilities available to judges.

33. Finally, in order to ease the burden on judges and enable them to concentrate on their work of hearing and determining cases, it is important to relieve them of all non-judicial tasks which can be assigned to other persons (cf. paragraph 1 f). Judges are not normally themselves empowered to delegate certain tasks to other persons, but it is the law in the broad sense of the term which would authorise the transfer of such non-judicial tasks³.

34. However, delegation cannot be done in such a manner that it will endanger the judicial independence of judges. Judicial tasks should, of course, remain within the exclusive purview of the judge.

35. A final aspect in relation to working conditions concerns the safety and physical protection of judges (cf. paragraph 2). Member States should provide adequate facilities to ensure the protection of judges when this is necessary. While protection is needed more especially for judges dealing with criminal cases, it may also be needed for judges handling civil or commercial cases. The presence of security guards on court premises and police protection for judges who are the victims of serious threats are measures which could be envisaged.

³ See also Recommendation No. R (86) 12 of the Committee of Ministers concerning measures to prevent and reduce the excessive workload in the courts, and in particular the Appendix thereto (examples of non-judicial tasks of which judges in some States could be relieved according to the particular circumstances of each country).

Principle IV (Associations)

36. Under this principle, judges are given the right to take collective action to safeguard their professional independence and protect their interests. To this end, judges are free to form associations whose activities are confined to defending the independence and the interests of the profession. Such associations may, for example, take part in salary negotiations with the Ministry of Justice or contribute to the training of judges. The associations act either alone or with another body.

37. In some member States, judicial bodies or the Ministry of Justice have a hand in the administration of the courts and tribunals. Once again, such intervention must always be based on respect for the independence of judges.

Principle V (Judicial responsibilities)

38. The independent allotted task of judges is that of safeguarding the rights and freedoms of all persons within the scope of their duty to administer justice (cf. paragraph 1). The judge is responsible for protecting the rights and freedoms granted to individuals. This obligation should not only be seen as a duty to protect the minimum rights as expressed in the European Convention of Human Rights. The obligation goes further but it is difficult to define in precise terms its scope. Ultimately, the obligation has to do with the defence of Democracy and the Rule of Law, safeguarding against oppression and the totalitarian State as expressed in the Statute of the Council of Europe.

39. This principle, which deals with the responsibilities of the judge, covers the relationship between the judge's duties and powers. Judges should be given appropriate powers to assure them of total independence in the fulfilment of their tasks. Judges have a duty to exercise the powers bestowed on them (cf. paragraph 2).

40. Judges should be given proper working conditions to ensure that they are able to carry out their responsibilities (cf Principle III). A balance is struck between the right of judges to adequate working conditions and their responsibility for the use of the resources placed at their disposal, but a lack of adequate working conditions is no excuse for failing to carry out the judicial responsibilities referred to in paragraph 3.

41. Paragraph 3 specifies several responsibilities entrusted to judges.

a. First of all, it is incumbent on judges to act independently in all cases, unaffected by any outside influences. This does not apply to cases where a lower court is bound by a higher court in

outside influence. This does not apply to cases where a lower court is bound by a higher court in respect of points of law.

b. Independent judges should give impartial decisions based solely on an assessment of the facts and their understanding of the law. Sub-paragraph 3 b refers expressly to the principle of fairness and the rights of the parties as enshrined in the Convention, more particularly in Article 6.1 of that Convention, which stipulates that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by

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law".

c. Judges have an obligation to give judgment in the cases assigned to them. This responsibility counterbalances Principle I, paragraph 2 f. If a case cannot be withdrawn from a judge by the appropriate body without valid reasons, judges are also not entitled themselves to withdraw from a case without valid reasons. On the other hand, where such reasons exist, judges should have an obligation to withdraw from the case. This twofold requirement contributes to guaranteeing the independence of judges. This responsibility is more particularly applicable to situations where judges withdraw from cases solely because the judgments to be delivered would be unpopular though justified. However, judges can disqualify themselves if there is a conflict of interest or any other valid reason. A "valid reason" can be defined by legislation or case law. Other examples of valid reasons are serious health problems or the interests of justice. This latter concept is difficult to define but relates to some extent to the principle that "justice must not only be done, but must also be seen to be done". For instance, if a case concerns a neighbour of a judge and the judge does not know this neighbour, there is no conflict of interest. However, the judge may consider it necessary to withdraw from the case in the interests of justice so as not to cast any shadow of a doubt over the impartiality of the court.

d. It is also the duty of the judge in the interests of justice, to give an impartial explanation of certain procedural matters in appropriate cases to the parties. In particular parties who are not represented by lawyers need often explanations concerning the procedure and judges must ensure that such parties are sufficiently informed to enable them to understand the proceedings.

e. The responsibility of encouraging the parties, where appropriate, to reach a friendly settlement underscores the importance of the conciliatory role played by the judge for the sake of efficiency of justice. In addition, it is the natural function of the judge to secure the reconciliation of the parties: discussion is better than litigation. Judges must however carry out this task with tact and sense and in such a manner that their impartiality cannot be questioned.

f. Again in the interests of guaranteeing the efficiency and fairness of justice, judges must give clear and complete reasons for their judgments, which as far as possible should be comprehensible to the parties. They should try to avoid using complex words when there are more common synonyms, or quotations in a foreign language when an equivalent exists in the language of the country. The obligation to give reasons is, however, not absolute. In some States, it is not necessary to give reasons in specific types of cases, for instance judgments by default or which are based on the defendants approval (Germany), where a jury has tried the case or in matters concerning provisional measures (Malta) or where a Court of Appeal does not change the decision of the District Court (Sweden). Usually, such situations dispensing from the main principle are defined by law or, at least, established in long standing practice of the courts.

g. In order to counterbalance the obligation placed on States to provide for appropriate training for judges before their appointment and during their career (Principle III.1.a), judges should participate in any training needed for the efficient and proper performance of their duties. Indeed, if member States make training facilities available, judges should use them. This responsibility is more particularly concerned with the obligation to keep abreast of recent changes in legislation or case law.

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Principle VI (Failure to carry out responsibilities and disciplinary offences)

42. This final principle places an obligation on judges to exercise their powers and assume their responsibilities. Like any other representative of one of the branches of State authority, judges are subject to monitoring of their compliance with this obligation.

43. When judges fail to carry out their duties in an efficient and proper manner, appropriate measures must be taken. Such measures may, for instance, include, depending on the legal traditions of the State, withdrawal of cases from the judge, moving the judge to other judicial tasks within the court, economic sanctions such as a reduction of salary for a temporary period or suspension (cf. paragraph 1 of this principle). It goes without saying that taking such measures must remain exceptional in order to preserve judicial independence. It lies with the member States to decide which is the appropriate body for monitoring judges' activities which is why the Recommendation in paragraph 3 only requests the member States to "consider" setting up a special competent body. It should be possible to appeal against decisions of this body to a court. It could be a judicial body but other bodies, such as the Ministry of Justice, fulfil this task in some member

States. Any measure taken by the supervisory body must be based on respect for the independence of judges. For example a ministry should not, under the pretext of exercising its supervisory authority, be allowed to withdraw a case from a judge whose decision does not appear likely to be consistent with the wishes of the administration. However, if a judge faces a substantial backlog in his case-load, the President of the Court, a higher judicial authority or the Ministry of Justice may decide to undertake an investigation into the reasons for this state of affairs. In such cases, the requirement of efficiency of justice does not impair the independence of the judge.

44. Where, according to domestic law, judges are alleged to have committed disciplinary offences, it is essential that any proceedings brought against them should safeguard their independence and that any competent tribunal or body should be independent and impartial. In some member States, a judge suspected of having committed a disciplinary offence is brought before a tribunal composed of judges or composed of judges and other persons not belonging to the judiciary. Other member States have no real disciplinary courts or tribunals. The only disciplinary sanction in such countries is dismissal. In certain countries only the national parliament is entitled to dismiss judges of higher courts from their posts. In conclusion: the fact that the tribunal conducting the disciplinary proceedings does not fall under the jurisdiction of judges or is not subject to a degree of influence by judges is not a source of difficulty provided that the independence of the tribunal or body and the impartiality of the proceedings are respected.

45. Paragraph 2 takes account of the different circumstances in which judges may be removed from office before the age of retirement.

46. The principle of absolute security of tenure for judges given permanent appointments is aimed at guaranteeing their independence and ensures that a permanently appointed judge cannot be removed from office without valid reasons before he reaches the mandatory retirement age. However, some member States do not guarantee security of tenure for judges up to the age for retirement. This applies to cases where either judges have to be re-elected after a certain period or some judges undergo a period of "probation" when they first take up their duties, during which they can be dismissed.

47. The concept of "valid reasons" covers cases involving disciplinary offences or incapacity. It goes without saying that, in dismissal proceedings, judges enjoy the same rights and procedural guarantees as any other party to litigation. Reference should also be made to the United Nations

⁴ Paragraph 19 of the United Nations Basic Principles on the judiciary provides: "All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct."

Parting from the principle that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in accordance with the European Convention on Human Rights, this Recommendation deals with some basic principles to safeguard judicial independence. For instance, decisions of judges should not be the subject of any revision outside any appeals procedures as provided for by law; the terms of office of judges and their remuneration should be guaranteed by law; all decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency. In the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason. The Recommendation also deals with judges' working conditions and with judicial responsibilities.

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Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.
12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

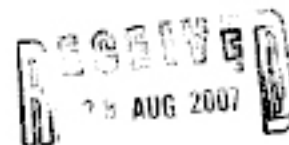
17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

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Geneva, Switzerland



OFFICE OF THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM
OIFIG AN Aire dlé AGUS CIRT. COMHIONANNAIS AGUS AITICHIÓIRÍ

01 August 2007

Rt Hon Jeffrey Donaldson MP MLA
Chairperson of the Assembly and Executive Review Committee
c/o Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

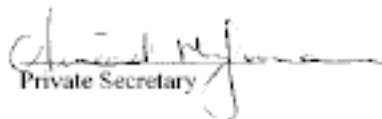
Dear Mr Donaldson,

In the absence of the Minister for Justice, Equality and Law Reform, Mr Brian Lenihan T.D., I am writing in reply to your letter of 9 July 2007 regarding the Assembly and Executive Review Committee's inquiry into the devolution of policing and justice matters.

Unfortunately, because of the unavailability of key people at this time of year, it is unlikely that it will be possible to meet the deadline of 17 August for the transmission of a response to your request for a written submission. However, the Minister has asked me to say that he is grateful for the opportunity to contribute to the Committee's deliberations and that work is proceeding on his submission, which will be conveyed to you in due course and as a matter of priority.

With kind regards,

Yours sincerely,


Private Secretary



OFFICE OF THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM
OIFIG AN AIRÉ DĒI AGUS CÉIR, COMHIONANNAIS AGUS ATHCIÓIRI THE DĒI

30 September 2007

Mr Stephen J. Graham
Committee Clerk
Assembly and Executive Review Committee
c/o Room 428
Parliament Buildings
Stormont Estate
Belfast
BT4 3XX

Dear Mr Graham,

I am directed by the Minister for Justice, Equality and Law Reform, Mr Brian Lenihan TD, to reply to your letter of 12 September 2007 regarding the Assembly and Executive Review Committee's inquiry into the devolution of policing and justice matters.

I enclose herewith the views of the Minister in relation to cross-border co-operation in policing and justice, as requested. An electronic copy of this submission was transmitted on 26 September 2007.

Yours sincerely,


Private Secretary

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Northern Ireland Assembly and Executive Review Committee – Inquiry into the Devolution of Policing and Justice Matters

Submission by the Department of Justice, Equality and Law Reform

1. By letter dated 9 July 2007 from the Chairman of the Northern Ireland Assembly and Executive Review Committee, the Minister for Justice, Equality and Law Reform, Mr. Brian Lenihan TD, was requested to submit his views in relation to cross-border co-operation in policing and justice matters and what arrangements might be necessary should such matters be devolved.

General Observations

2. In the first instance the Minister would like to express his appreciation for the opportunity to make a submission to the Committee on this very important issue. The Minister welcomes the opportunity to discuss current arrangements and the implications of devolution for further cross-border co-operation in tackling crime and the delivery of justice.
3. In his submission, the Minister proposes to outline a framework for co-operation in the period following devolution of policing and justice matters, which continues the good co-operation enjoyed under the current Agreements. It is expected that the experience gained in the immediate

ingredients. It is expected that the experience gained in the immediate post-devolution period will allow the identification of new areas and forms of co-operation, and that that co-operation will evolve over time in response to experience and needs on the ground.

4. Naturally, this new avenue of co-operation will complement the already excellent co-operation which takes place between the various police and justice agencies in these islands, which reflects our historical, social and geographical ties and arrangements.
5. The Minister is greatly appreciative of the hard work undertaken by all sides to facilitate the restoration of the Northern Ireland Assembly following the discussions in St Andrews. The energy with which the power-sharing Assembly and Executive has tackled their responsibilities is to be greatly welcomed. It also reflects the expressed will of the people of Northern Ireland to see their elected representatives taking the important day-to-day decisions about how Northern Ireland is governed.
6. In line with the St Andrews Agreement, power over matters relating to policing and justice remain reserved at this time. Paragraph 7 of the St Andrews Agreement states:

"Discussions on the devolution of policing and justice have progressed well in the Preparation for Government Committee. The Governments have requested the parties to continue these discussions so as to agree the necessary administrative

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arrangements to create a new policing and justice department. It is our view that implementation of the agreement published today should be sufficient to build the community confidence necessary for the Assembly to request the devolution of criminal justice and policing from the British Government by May 2008."

7. The Minister believes that the necessary community confidence will exist to enable the political parties in Northern Ireland to work towards bringing the political process to completion, by putting the necessary arrangements in place to achieve the devolution of policing and justice by May 2008. The Patten reform process, including the accountability mechanisms of Policing Board and Ombudsman, continues to be central to the building of community engagement with and confidence in the policing and justice

community engagement, and, and commencing the policing and justice systems.

8. The transfer of policing and justice powers from the Northern Ireland Office to the Executive presents a unique opportunity to develop and enhance co-operation between our criminal justice systems. Across the EU, and indeed further afield, criminal justice co-operation is now seen as an imperative in tackling the scourges of trans-national crime, including organised crime and terrorism. It is obviously incumbent on the authorities North and South to ensure the maximum level of co-operation on criminal justice matters. The Minister is convinced that this is very much in the interests of all communities on the island.
9. The Minister holds the view that the timetable laid down in the St Andrews Agreement represents the best option for progress. He would be concerned that any prolonged uncertainty over the timing of devolution might impact negatively on taking forward desirable developments in the criminal justice system and on North / South co-operation, as well as on other areas such as economic development.

Cross-border Co-operation in Policing and Justice

10. Cross-border co-operation exists and is working well in a number of areas, both through *ad hoc* arrangements which have been built up at an operational level, and through structures laid down in the Intergovernmental Agreement on Police Co-operation and the Intergovernmental Agreement on Co-operation on Criminal Justice Matters. Meetings of the British-Irish Intergovernmental Conference have also provided an opportunity for the two Governments to address matters relating to policing and justice.
11. Co-operation also already takes place in the context of EU and other international agreements, including in the exercise of European Arrest Warrants and requests for Mutual Legal Assistance. It has become increasingly important in recent years that these instruments and other measures of international legal co-operation operate efficiently and effectively. Good relationships and close communication, on an individual and an institutional level, are crucial to this process. Devolution of policing

and justice to the Executive may present an opportunity to ensure more efficient lines of communication.

12. The Minister therefore attaches great importance to the successful interaction of the institutions of policing and criminal justice at all levels in the North/South relationship, be it individual officers on the ground, policy co-ordination at official level, inter-institutional co-operation best practice Ministerial contacts and oversight.

Police Co-operation

13. The Intergovernmental Agreement on Police Co-operation, done at Belfast on 29 April 2002, has the twin goals of progressing the implementation of the Patten reforms insofar as they relate to the Garda Síochána, and of enhancing co-operation between the Garda Síochána and the Police Service of Northern Ireland. This agreement builds on the existing co-operation between the police services North and South and gives a legal basis and framework for more structured co-operation between the two police services. The provisions of this Agreement would not be affected by devolution of policing and justice and, in those circumstances, would continue in force.
14. The Agreement's provisions include measures relating to personnel exchanges (which have commenced), secondments and lateral entry between the two police forces, and measures designed to enhance co-operation in the areas of training, liaison, disaster planning and joint investigations. The Minister believes that there is scope for exploring how such practical co-operation can be enhanced, to our mutual benefit.
15. Aside from the specific provisions laid out in the Agreement, practical co-operation exists between the Garda Síochána and the Police Service of Northern Ireland across a wide range of policing areas. Both police forces have demonstrated their dedication to preventing criminals using the border to commit crime or to evade detection. Similarly, officials maintain close contacts to facilitate both police forces in carrying out this work. The Minister is confident that devolving responsibility for policing and justice matters to the Executive will only improve our ability to jointly identify areas in which the two police forces can be supported in tackling criminality.
16. There is also excellent co-operation between the Criminal Assets Bureau and the Assets Recovery Agency. Officers from each of the organisations meet regularly to ensure very close co-operation between the parties on operational matters and on areas of common interest. The Minister would of course be anxious that the existing level of contact and co-operation between CAB and ARA, and between other agencies, is maintained and where appropriate built upon. He does not see any prospect of this co-operation being diluted by the devolution of policing and justice powers. As an aside, the Chief Bureau Officer of CAB has been briefed about the

As an aside, the Chief Bureau Officer of CAB has been briefed about the merger between ARA and SOCA and is happy that the current levels of co-operation will remain undiminished.

17. In a wider law enforcement context, the annual cross-border seminar on organised crime provides an opportunity to further enhance the relationships between the law enforcement agencies from both sides of the border. This event is attended by representatives from Revenue and Customs, CAB, ARA, PSNI, the Garda Síochána and staff of the Northern Ireland Office and the Department of Justice, Equality and Law Reform. The Minister would hope and anticipate that a Department of the Executive, in dealing with policing issues, would wish to assume a central organisational and participatory role in future seminars.

Criminal Justice Co-operation

18. The Intergovernmental Agreement on Co-operation on Criminal Justice Matters, done at Belfast on 26 July 2005, sets out formal structures for the enhancement of North/South co-operation in criminal justice. It established a working group of senior officials from both jurisdictions to advance co-operation in a range of areas and to consider further areas in which co-operation might be initiated or enhanced. This group is overseen by the Minister for Justice, Equality and Law Reform and the Northern Ireland Criminal Justice Minister, who meet at least annually to review progress and approve new areas in which co-operation might be taken forward.
19. Project groups have been set up to examine and promote co-operation in relation to a range of areas, including probation and the rehabilitation of prisoners, forensic science, the management of sex offenders, support for victims of crime and youth justice. Representatives of the two police forces and of the relevant agencies meet regularly to discuss arrangements for dealing with cases which contain a cross-border element. Examples of co-operation in this regard would include probation arrangements where a prisoner is released in one jurisdiction but resides in another, and the development of notification systems should a registered sex offender move from one jurisdiction to the other. The

registered sex offender move from one jurisdiction to the other. The Minister believes that, following devolution, this work should continue and other areas of mutual interest can be explored, so that the border does not obstruct the effective and efficient operation and development of our criminal justice systems.

20. Members of the project groups should continue to explore best practice, and, where appropriate, adopt practices and procedures which have proven to be effective in the other jurisdiction. Temporary personnel exchanges between equivalent criminal justice bodies are also promoted by these groups.
21. Article 5 of the Agreement states that it shall have effect in respect of criminal justice matters to the extent that they are not devolved to the Northern Ireland Assembly, and that when the criminal justice matters to which this Agreement relates are devolved, the operation of the Agreement will be reviewed by the Ministers.

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22. Given the success of the structures established by this Agreement and the practical improvements they are making for the effective delivery of criminal justice both North and South, it would be the Minister's strong hope that the North / South arrangements laid out would continue following the devolution of policing and justice. In this regard the Minister would envisage that the Minister with responsibility for justice matters will take on the oversight role played currently by the Northern Ireland Office Criminal Justice Minister, and that both Ministers would meet regularly to discuss criminal justice matters of mutual interest and concern. He also anticipates that the secretarial and joint chairpersons of the working group of officials would be drawn from the Department of Justice, Equality and Law Reform and the new Department within the Executive.

Conclusion

23. The Minister hopes that the above submission is useful in informing the committee of current co-operation in policing and justice as well as the potential for successful and productive co-operation upon the transfer of policing and justice powers to the Executive.

24. Policing and justice co-operation between our two jurisdictions is characterised by goodwill and a determination that the border should not prove a barrier to the prevention and investigation of crime, nor to the effective delivery of justice to the people of this island. The Minister believes that such co-operation should continue to be developed in pursuit of these goals, and he and his Department look forward to working with their Northern Ireland equivalents in this regard.

25. The Minister would again like to express his thanks to the Committee for the opportunity to make this submission and wishes it well in its important work.

Department of Justice, Equality and Law Reform
26 September 2007

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B4B/PJ

Cabinet Secretary for Justice
Kenny MacAskill MSP

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Rt Hon Jeffrey Donaldson MP
Chairperson of the Assembly and Executive Review Committee
of Room 428
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22nd October 2007

Dear Solly

Inquiry into the devolution of policing and justice matters

Thank you for your letter of 9 July seeking input to your inquiry on the devolution of policing and justice matters. I am grateful for the additional time allowed to submit this response, as your original request seems to have gone astray.

My comments are particularly directed to the first two items in your terms of reference. They are based on experience in Scotland, in the hope that it may be of assistance to you.

The Scottish Government and Parliament are of course creatures of the Scotland Act 1998, and were not therefore involved in the development of the devolution settlement. That settlement was a matter for the UK Government and Parliament. However it followed the work of the Scottish Constitutional Convention, which set out a blueprint for devolution. As a broad generalisation, the Scottish devolution settlement closely aligned to the areas that were already within the control of the Secretary of State for Scotland and were administered by the Scottish Office. In areas such as justice, where we have a distinct Scottish legal system and, in the main, separate institutions, the boundary was already fairly clear. In effect the devolution settlement drew a line round what the Secretary of State for Scotland and the Scottish Office already did and set out a scheme which devolved that.

On the whole, the justice aspects of the devolution settlement have been made to work well over the last 8 years. Clearly your background and experience is different from that in Scotland, but we can offer a possible model as you build cross-community confidence in the justice and policing systems and the ability of devolved institutions to manage them and hold them to account.

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.scotland.gov.uk



Many criminal justice matters are already devolved to the Scottish Parliament and Scottish Government, but those that are reserved include anti-terrorism legislation and legislation on firearms and misuse of drugs. Inevitably, the setting of boundaries in a system of devolution creates tensions, for example between the fixing of the criminal law on these matters and the enforcement of that law. Further devolution in these areas would enable Scotland to adopt anti-terrorism legislation appropriate to meet the threat faced by the country, balancing the rights of individuals with the needs of national security, in a way consistent with Scotland's own criminal justice system. Scotland could continue to play a full role in United Kingdom and wider European efforts for combating terrorism, including sharing intelligence and cooperation between police forces, as in recent events.

The Scottish Parliament could also be given full responsibility for firearms legislation, which would allow particular Scottish concerns around airguns to be addressed. Similarly, the Scottish Parliament and Scottish Government could take direct responsibility for a particularly Scottish approach to the law on drug abuse, to provide greater protection to Scotland's communities.

I believe you are interested in our relationship with the UK Serious Organised Crime Agency (SOCA). As you know, the creation of SOCA brought together a number of organisations dealing with a mixture of reserved and devolved areas. We already had the Scottish Crime and Drug Enforcement Agency (SCDEA), created specifically to prevent and detect serious organised crime in Scotland. Work done during the passage of the Serious Organised Crime and Police Act 2005 ensured that provisions were included in the legislation which safeguard the role of the SCDEA and the Lord Advocate in Scotland. This involved lodging a Legislative Consent Motion in the Scottish Parliament to seek the agreement of the Scottish Parliament to those particular provisions. As a result, and by virtue of an agreement between SOCA and the Scottish Ministers, SOCA operations in Scotland are principally carried out by or alongside the SCDEA or a Scottish Police Force.

The Scottish Government believes that an independent, sovereign Scotland is the best option for the country's future and that the people should be invited to support that option through a referendum.

We also recognise that there is a range of views on Scotland's constitutional future other than independence and that these are represented in the Scottish Parliament. For this reason, we have initiated a wide-ranging National Conversation that will allow the people of Scotland to make an informed decision on their future. Our White Paper 'Choosing Scotland's Future: A National Conversation: Independence and Responsibility in the Modern World' is available at <http://www.scotland.gov.uk/Topics/a-national-conversation/White-Paper>

Paper

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That document explores the scope for further devolution, including in the areas set out above, to provide greater coherence in decision-making and democratic accountability for delivery of policy. The devolution settlement explicitly recognised that the powers of the Scottish Parliament and Government could change and evolve.

The Scottish Government stands ready to provide further assistance to your inquiry if that would be helpful.

A handwritten signature in black ink, which appears to read 'Kenny MacAskill'. The signature is written in a cursive style.

KENNY MACASKILL

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Appendix 5

Party Position Papers

Alliance Party of Northern Ireland

Assembly and Executive Review Committee Response to Inquiry on Devolution of Policing and Justice

August 2007

Introduction

Alliance believes that the recommendations of the Patten Commission represented a set of fair and realistic proposals for the creation of a single, professional police service for all of the people of Northern Ireland. These proposals have largely been implemented.

Furthermore, the Policing Board for Northern Ireland has been one of the institutional success stories for the Agreement. In fact, it is a good illustration of how bodies that are established on integrative principles can make a successful contribution to positive change within a deeply divided society.

Alliance takes the firm view that the Patten Commission report should be the conclusion of major reform of policing. Accordingly, there are not grounds for re-opening the wider debate on policing. However, Alliance does recognise that while the Patten Report was written in 1999, significant changes in the best practice of policing have occurred since then, and it is appropriate for these to be taken on board for Northern Ireland.

Devolution of Policing and Criminal Justice Powers

The devolution of policing and criminal justice powers to the Northern Ireland Assembly needs to be handled with great sensitivity. The nature of policing goes straight to the heart of people's sense of security. More than any other aspect of current or potential devolved responsibilities, the conduct and control of policing has been at the heart of the political disputes and conflicts that have afflicted Northern Ireland.

Notwithstanding such problems, Alliance sees great potential in giving a sense of cross-community ownership of policing and criminal justice, through the devolution of such powers to the Assembly. Alliance has been a consistent advocate for devolution in this area.

Timing

The timing of the devolution of policing and criminal justice powers should be primarily determined by the correct conditions existing within society, not by an arbitrary timetable.

Alliance has been encouraged by signs that all parties in government are showing respect for the rule of law and exclusively peaceful and democratic means for achieving political objectives.

From the perspective of the Alliance Party, the necessary conditions will largely be determined by the ability of the Executive to operate in a cohesive, coherent and collective manner on all issues.

However, there is not yet sufficient evidence that ministers individually and the executive as a whole is operating in such a manner.

To date, there has been an absence of delivery on the critical issues facing Northern Ireland, including areas such as building a shared future, dealing with the past, victims, equality, education reform and decisions on public expenditure. The Executive has

yet to formulate a Programme for Government and its own Budget. Furthermore, there is not yet any evidence of how effectively the Executive can respond to a major crisis that goes to the heart of the political differences of the parties in government.

Nevertheless, Alliance is prepared to consider a target of May 2008 for the devolution of these powers, provided that the appropriate conditions can be established.

Ideally, we would prefer a longer timeframe of two years, which was presumed in the 2004 'Comprehensive Agreement'.

However, in practice, before powers are devolved, a quadruple lock has to be addressed:

- a proposal to the Assembly by the First Minister and Deputy First Minister
- a cross-community vote in the Assembly;
- a certification by Secretary of State that the conditions are appropriate; and
- an affirmative vote in Parliament.

Alliance was active in the formulation of these steps and we support them.

Powers

Alliance is generally receptive to the proposed transfer of policing and criminal justice powers to a Northern Ireland Administration, as set out in the NIO's Discussion Paper, "Devolving Policing and Justice in Northern Ireland".

However, Alliance believes that there is a need for additional checks and balances to prevent a Minister trying, through either direct or indirect pressure, to influence the operational decisions taken by either the police or the prosecution service. This could be addressed through the Ministerial Code of Conduct and/or Pledge of Office.

Alliance recognises the need for some powers to be retained and exercised at a national level, and regards the list of those to be transferred as fairly expansive. While the UK is not a formal federal state, it is useful to note that in other federal or quasi-federal states, it is normal to see a split in powers between the national and regional level.

There is some concern at the lack of accountability of the UK-wide structures with respect to how they relate to Northern Ireland. Part of the solution rests with a more general reform of the UK structures for tackling terrorism, defending national security, dealing with organized crime and addressing other general policing issues.

Another related problem is the perception of different approaches and responsibility for continued Republican and Loyalist terrorism, with the former being addressed at the UK level and the latter at the NI level, based on the rationale that only the former is a threat to national security. Alliance would have major concerns at such a difference in approach. Part of the problem

lies with a traditional view of terrorism. In practice the organizations involved have diversified into a wider range of paramilitary and organised criminal activity. The definition and parameters of the concept of terrorism need to be restored. In addition, there needs to be a greater understanding of the wider threat that paramilitary and organised crime poses to democracy and the rule of law.

Structures

The devolution of these powers to a Department that is part of a power-sharing Executive must be accompanied by significant changes in the mechanisms for accountability and collective responsibility within that Executive.

Alliance believes that there is great potential in giving a sense of cross-community ownership of policing and criminal justice, through the devolution of such powers to the Assembly.

In recent years, there have been many cases where certain parties, both unionist and nationalist, have failed to demonstrate an unambiguous commitment to the rule of law.

There is considerable sensitivity over power being placed in the perceived 'wrong hands'. This perception for different people relates to some or all political parties across the spectrum.

In the worst-case scenario, a politicised Minister of Justice/Policing could seek to influence the operational decisions of the police with respect to parades or other contentious public order situations.

These fears can only be ameliorated within the appropriate institutional structures.

At present, the Executive structures are inadequate. There are few incentives for moderation and accommodation. Instead, once posts are allocated, Ministers have considerable discretion to take decisions within their own area of responsibility with little or no reference to Ministerial colleagues or the Assembly overall. While this situation is problematic with most policy portfolios, it would be disastrous with respect to policing and criminal justice.

This approach amounts to power division, not power-sharing. Ministerial posts are distributed according to the lottery of the d'Hondt procedure leading to ministers from certain parties having a large degree of say over particular departments. However, with respect to each portfolio, people right across the spectrum have a deep interest in the decisions taken. Unionists do not lose all interest in, for example, education issues if that department happens to be headed by a nationalist. Similarly, nationalists do not lose all interest in, for example, economic development issues if that department happens to be headed by a unionist.

Structures must be put in place that both recognise and facilitate the genuine interest and concern that exist right across the community.

It is likely that the eventual structures for handling policing and criminal justice will come under serious strain in the event of

major civil strife or public disorder, possibly linked to the matter of contentious parades. For this reason, the structures need to be sufficiently robust. Furthermore, there is a strong case for the Executive demonstrating its ability to govern successfully, and also react to politically sensitive issues on the ground, before such powers are formally transferred.

Alliance does not believe that any of the structures offered in the Joint Declaration, the subsequent NIO Consultation Paper, or the 'St. Andrews Agreement' legislation provides an ideal way forward.

We welcome the Preparation for Government Committee's support for a single Department of Justice, but the problems of a lack of accountability and collective decision-making remain to be addressed.

These dangers would be substantially mitigated if that Department was part of an Executive working on the basis of collective responsibility. The Minister in question would be allocated his or her portfolio as part of inter-party negotiations, serve with the confidence of the Assembly, operate to collective responsibility, and could be removed from office (either with or without the collapse of the entire Executive) in the event of a major breach of faith.

Even if there is not full collective responsibility in the Executive, there has to be collective decision making on Justice issues, if there is to be community confidence.

Alliance would also express its alarm that the British Government have legislated to ensure that only an MLA coming from either of the two largest designations in the Assembly, in effect only a unionist or a nationalist can take the policing and justice portfolio. While there are only parties from two designations who are eligible for ministerial appointment at this stage based on the current workings of the d'Hondt formula, it is conceivable that a party from a different designation could qualify for a place in government. If so, they would be eligible to be nominated to any portfolio except for policing and justice. This is a form of institutionalised discrimination and represents a breach of human rights.

Finance

To date, there has been little or no discussion of the financial implications of the devolution of policing and justice to the Assembly.

The cost of funding the PSNI each year is over £800m, and the cost of prisons is at least another £100m. These costs are considerable, and would mark a significant addition to the resource responsibility passed to the Assembly. It must be borne in mind that policing and security costs in Northern Ireland are running well ahead of the UK average. Undoubtedly, there is a clear need and political desire to maintain much of the current level of service given the particular circumstances of Northern Ireland. However, this may prove increasingly difficult to do so in the context of rising costs, financial pressure from the Treasury, and the competing demands within Northern Ireland. Therefore, Alliance believes that financial arrangements need to become one of the key issues for discussions between the Executive and the British Government, as a matter of urgency.

Democratic Unionist Party

038111

INQUIRY INTO DEVOLUTION OF POLICING AND JUSTICE MATTERS BY
ASSEMBLY AND EXECUTIVE REVIEW COMMITTEE

SUBMISSION BY THE DEMOCRATIC UNIONIST PARTY

August 2007

As a Party which has consistently been a strong advocate of devolution, the Democratic Unionist Party wants the maximum powers to be transferred to local control in Northern Ireland. Consequently, we support in principle the devolution of policing and justice powers but recognise their transfer can only occur when the necessary support exists within the community.

- It is essential to achieve the right modality, at the right time and in the right circumstances. Clearly the appropriate conditions have not yet been reached, but we will continue to work to create the circumstances where the extension of these powers can happen. The major task remains for republicans, who have most to do to bring about the right conditions for the transfer of functions. Rather than merely demanding the immediate transfer of powers, Sinn Fein must get on with the job of ensuring full practical support on the ground for policing, the courts and the rule of law. They must give the lead in their communities in encouraging young people to join the Police Service of Northern Ireland.

Given the events of the last four decades in the province, the potential for Sinn Fein representatives to have some role in Policing and Justice makes the transfer of functions all the more difficult for a large section of the community to accept.

Republicans cannot expect their decades of hostility to the forces of law and order, and the murderous attacks they directed at the police to be ignored. It is essential that any residual IRA structures disappear. Even up until recently, Sinn Fein spokesmen refused to accept that some of the most brutal episodes of the terrorist campaign were even crimes.

Those close to the leadership of the republican movement have profited massively from criminality. Paramilitary organisations in Northern Ireland brought ruthlessness and disciplined structures that permitted senior figures to develop multi-million pound criminal empires.

The security and confidentiality issues involved within a Policing and Justice Department demand a high level of confidence. In the Policing and Justice sub-group of the Preparation for Government Committee last year, we advocated that any

Minister should command weighted majority support of 70% within the Northern Ireland Assembly. Furthermore in the event that the powers are extended to the Assembly, we believe they should be incorporated within a single Government Department with a single Minister.

The Democratic Unionist Party considers the mechanism contained in the Northern Ireland (Miscellaneous Provisions) Act 2006 as a sensible course to pursue, which can

provide reassurance to the community. Westminster could only formally seek to transfer powers after cross-community support had been demonstrated in the Northern Ireland Assembly. The First Minister and Deputy First Minister should bring the original proposal to the Assembly that these additional powers be sought at the appropriate time.

The Democratic Unionist Party's position that this process could only commence when the community confidence exists has found broad support electorally. This was reinforced by an Ipsos MORI poll reported in the Belfast Telegraph on 10th August 2007 which concluded that the Northern Ireland public believes the new Executive should only be given powers over policing and justice when there is sufficient public confidence.

Less than one person in five supports the transfer of powers to the Northern Ireland Assembly by the Government's original target date of May next year. This artificial deadline has the support of just 17% of Protestants and 21% of Roman Catholics. Indeed, despite the incessant demands from Sinn Fein for the early devolution of powers, only 29% of their Party's supporters wanted to see the May 2008 deadline met. A small number of respondents felt policing and justice should never be devolved to Stormont.

There is little difference between the Protestant and Roman Catholic communities on the timeframe for the devolution of powers. A total of 43% overall said criminal justice and policing should be devolved to a local Assembly when there is sufficient confidence in local communities. This comprised 46% of Protestants and 39% of Roman Catholics questioned on the issue.

39% of Sinn Fein supporters and 35% of SDLP supporters say responsibility should be devolved when there is enough public confidence. This demonstrates that the number of Sinn Fein supporters who agree with the DUP position is 10% higher than the 29% who back their own Party's view.

We support most of the currently reserved policing matters, subject to UK-wide considerations, being extended to the Northern Ireland Assembly in the appropriate circumstances. The Northern Ireland Assembly and Executive would benefit from a period of consolidation before seeking the introduction of such sensitive functions.

Progressive Unionist Party



THE *Progressive* UNIONIST PARTY

EAST BELFAST CONSTITUENCY

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17th August 2007

Dear Mr Donaldson

Further to your letters of 9th and 31st of July 2007 regarding your committee's enquiry into the devolution of policing and justice matters, it is the belief of the Progressive Unionist Party that all policing and justice matters except those linked to or concerning matters of national security should be devolved fully to the Northern Ireland Assembly.

Although we would like devolution to occur as quickly and as smoothly as possible we believe that sufficient confidence needs to be built within the community and therefore the conditions for devolution are more important than the date.

A single department headed by two ministers (one Unionist and one Nationalist) with decisions requiring the agreement of both would help build public confidence in the cross community accountability of the department.

The new Department for Policing and Justice should be allocated under the D'Hondt system with the ministerial position being deemed filled once it has been selected by one Unionist and one Nationalist.

I hope this clarifies my party's position on the matter.

Yours sincerely

Dawn Purvis MLA

DEDICATED TO AN ANTI-SECTARIAN, PLURALIST AND EQUITABLE SOCIETY

Sinn Féin



SINN FÉIN

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Rt Hon Jeffrey Donaldson MP MLA

Please find enclosed a copy of Sinn Féin's paper setting out our views on a departmental model for Policing and Justice.

This paper was submitted to the Preparation for Government Committee earlier in the

year. The paper addresses many of the issues referred to in the terms of reference for the enquiry into the devolution of Policing and Justice matters.

Our party would be pleased to present our submission at an oral level session later in the year.

Yours sincerely



Alex Maskey
Sinn Fein
Policing and Justice Spokesperson

Sinn Fein paper

Policing and Justice - A Departmental Model

1. There is already agreement among the political parties that policing and justice should be brought together in a single department and that the maximum amount of powers should be transferred.

2. The two major issues which are outstanding are the related issues of timeframe for transfer and the departmental model.
3. Agreement on both issues is required to secure support from the community as a whole in whatever new departmental arrangements are put in place for policing and justice.

Safeguards

4. The Good Friday Agreement envisaged a new political dispensation which recognises the full and equal legitimacy and worth of the identities, senses of allegiance and ethos of all sections of the community.
5. It established a review of policing to bring about a new beginning to policing in the Six Counties with a police service which is free from partisan political control, and capable of attracting and sustaining support from the community as a whole.
6. It also established a review of the Criminal Justice System to put in place arrangements to deliver a fair and impartial system of justice to the community;
7. The Good Friday Agreement provides for safeguards to be in place to ensure that all sections of the community can participate and work together successfully in the operation of the institutions and that all sections of the community are protected.
8. Arrangements to determine ministerial oversight of policing and justice must be consistent with all of the above.

Sharing Ministerial oversight

9. Sinn Fein believes that the way to maximise support for these ministerial arrangements is to share that ministerial responsibility between nationalist and unionist representatives for the duration of the next Assembly. Thereafter the positions of Ministers for Justice would be allocated according to d'Hondt, in line with the other Ministerial positions.
10. Sharing ministerial oversight would be achieved by either:
 - The establishment of a Justice department headed by two Ministers (one nationalist, one unionist).
 - A new Department headed by the First Minister and the Deputy First Minister
 - Locating responsibilities in, but as a separate and distinct section of, the OFMDFM, with ministerial oversight responsibilities falling either directly to the First Minister and Deputy First Minister, or to two junior ministers, who may or may not be members of the same parties as the First Minister and Deputy First Minister

A Joint Ministry

11. Justice Ministers designate should be appointed at the same sitting that other Executive positions are allocated by d'Hondt.
12. As the transfer of powers will not actually take place until a number of months after the establishment of the Executive, the arrangements to determine ministerial oversight must be in the form that builds confidence that powers will be transferred on an agreed date and also maximises community support for the appointments.
13. The d'Hondt mechanism, on its own, at this time may not attract the necessary broad support for ministerial oversight arrangements for policing and justice powers.

Appointment of Ministers

14. Following the Assembly election on 26th March 2007 at the first sitting of the Assembly the FM and DFM would be appointed.
15. The Justice Ministers designate would be appointed within 7 days of the first sitting. Then the remaining positions on the Executive would be allocated according to the d'Hondt mechanism.
16. Any party entitled to a position on the Executive may put forward nominations for the posts of Justice Ministers designate.
17. Agreement on the nominations will require cross-community support as set out in the Good Friday Agreement.
18. At the point of transfer of powers on policing and Justice, no later than May 2008, d'Hondt would be re-run, the Justice Ministers designate would take up office at the appropriate point in the running of d'Hondt.
19. In the event that ministerial oversight is by Junior Ministers within OFMDFM then the two Junior Ministers, one nationalist and one unionist, will be appointed by the First Minister and the Deputy First Minister.
20. Junior Ministers with responsibility for overseeing Justice within OFMDFM may or may not be from the same parties as the First Minister and Deputy First Minister.

21. The outworking of the RPA will add to the case for a reduction of the number of departments. In any event the creation of a new department as an addition to the existing ten departments requires legislation.
22. Sinn Féin will propose that the First Minister and Deputy First Minister will reduce the number of departments to take effect at the time of transfer of powers on policing and justice.

SDLP

31 August 2007

Mr. Jeffrey Donaldson, MP, MLA.,
Chair,
Institutional Review Committee,
Room 428,
Parliament Buildings,
Stormont,
Dundonald,
Belfast.

Dear Chair,

Re: Inquiry into Devolution of Justice and Policing.

I enclose SDLP Preliminary Submission to the above Inquiry.

Yours faithfully,

Alex Attwood,

The Devolution of Justice

SDLP Paper

1) Devolution – As Quickly as Possible

- The SDLP believes the devolution of justice should occur as quickly as possible. It means the Assembly being able to pass its own laws on justice matters and the justice minister(s) taking control of the justice budget to ensure that it is well spent.
- The SDLP recommends all parties recognise that very substantive powers once in the hands of the NIO have now in reality been devolved – to the Policing Board and new policing arrangements. Also, parties should be clear that a Minister(s) for Justice should not be able to direct the police – there is a potential for certain parties to seek such powers. This would be a deeply serious development and run grave risks.
- The SDLP believes that there is a residual risk that some in the republican community may hold back on policing and not establish proper and reasonable relationships with the police pending the devolution of justice, both to have political leverage and for tactical reasons. This should not be tolerated.
- Equally, the DUP should be honest about the devolution of justice, not use it as a bargaining chip and create false timeframes. As Peter Robinson wrote in the Irish Times in 2004, the devolution of justice is “no big move for unionists.” There is therefore no justification for delaying its implementation.

2) A Better Approach

- The SDLP argued that a devolved minister(s) for justice should have been appointed upon restoration. He or she would immediately have had the following devolved functions:
 - Office of Law Reform.
 - Office of the Legislative Counsel.
 - Legal services, pending creation of Attorney General for Northern Ireland.
 - Appointments to tribunals.
 - Freedom of Information.
 - Assembly Ombudsman/Commissioner for Complaints.
 - Negotiation of protocols for devolution, including with MI5.
 - Nolan standards.

In addition, he or she would have been charged with making preparations for the devolution of justice, bringing forward proposals to the Executive and also working with a Justice Committee of the Assembly. He or she would also, of course, receive currently reserved justice powers when devolved. This option, which would have given more rigour to the devolved institutions, was not agreed.

3) Selection of Ministers

- The SDLP is open to discussing all the models for the selection of ministers. Given the need for economy and the fact that the majority of the functions of the justice minister will be uncontroversial, on balance, our preference is for the ministerial office to be allocated out under d'Hondt.
- There is also a need for clarification on the 'Hain devolution proposal' including the following:
- What the British Government intends to do in the event that devolution is not agreed in or around May '07. (In any case, there is the likelihood that Sinn Fein and DUP will have a sweetheart moment and divide justice and policing between themselves in the Office of FM/DFM or some shared ministry model).
- The status of the Hain 'nomination proposal'
- The danger of new devolution legislation being piggy backed by others for narrow reasons
- Issues around the running of d'Hondt, what qualifies as a d'Hondt pick etc.

4) Dup Veto

- The SDLP is concerned at the veto acquired by the DUP over the devolution of justice as a result of the failed SF/DUP Comprehensive Agreement and as provided for in section 4(2A) of the Northern Ireland Act 1998, inserted by the Northern Ireland (Miscellaneous Provisions) Act 2006.

The SDLP believes that this veto should be removed so that all that is required to devolve justice powers is cross-community support – as was originally the case under the Northern Ireland Act, 1998.

5) Number of Departments

- As before, the SDLP believes that there should be one Department of Justice and Law Reform only – as opposed to separate departments of justice/law reform and policing.

6) Timing of Devolution

- With the appointment of a minister(s) for justice in advance of devolution, the SDLP believed that it would have been possible to achieve the devolution of justice earlier than would otherwise be the case. In the circumstances that now

prevail the SDLP submits that a date for the next May is essential. The SDLP believes the political and community confidence exists for this to happen and delay would put both in some degree of jeopardy.

7) Cross-Community Protections

- Cross-community protections must be agreed for a limited number of statutory functions. These include the power to override the Parades Commission, the power to veto Policing Board reports and inquiries and the power to veto 50/50 recruitment. The SDLP believes that it is desirable that these sensitive matters should be devolved and look forward to probing how this can be best achieved.

8) Equality

We do not believe that equality should be included among the functions of the Department of Justice and Law Reform. Equality should be mainstreamed by keeping it in the same Department as the Executive Secretariat. That ensures more leverage over all departments to ensure that they follow the equality agenda.

9) North South Justice and Policing

- Transfer of justice must have a strong North/South dimension agreed upfront. The fact that the current British/Irish Intergovernmental Agreement on Justice co-operation “falls” with the devolution of justice is of concern. The SDLP submits that in the period up to next May, agreement must be sought on the following matters:

(i) the current elements of the Inter-Governmental Agreement retained;

(ii) the further areas of development and co-operation that may be emerging under the Inter-Governmental Agreement incorporated into the Agreement; and

(iii) the other areas of justice co-operation outlined below should be worked up and incorporated into a new Justice Co-operation Agreement between the Northern Ireland Assembly and the Dail going “live” on the day of devolution.

- We also call for the creation of a new Justice sector of the NSMC, including co-operation and implementation issues and regular intersectoral meetings involving policing issues on matters such as child protection and drugs.
- In particular, there should be further initiatives on current North/South cooperation on criminal justice and policing through, for example:
- An All-Ireland Criminal Assets Bureau, modelled on the Criminal Assets Bureau in the South, to deprive criminals of their wrongful gains across the island. This issue has become more acute with the end of the ARA as an independent agency and the primacy of SOCA
- An all-Ireland Law Commission to research and promote harmonisation of laws.

- All-Ireland police training at the new police training college.
- North/South police personnel exchanges in the agreed areas.
- An all-Ireland Sex Offenders register or appropriate variation of this model.
- Building on current arrangements for criminal justice and policing cooperation.
- An all-Ireland Intelligence Agency serviced by a joint PSNI and Garda unit to combat crime and terrorism North/South. This could be a very important development in terms of all-Ireland policing.

10) Protection for Patten Institutions

- The SDLP strongly believes that following devolution, there should be no reduction in the role and authority of Policing Board, Police Ombudsman and DPPs respectively. The policing institutions have been the best achievement of the Good Friday Agreement. They have been the cornerstone of stability and progress in the uncertain times of recent years. That is why the agreement of the parties at the Justice sub-group of the Preparation for Government Committee last year that there should not be encroachment on the authority of the policing institutions was welcome and important.

However, the SDLP has concerns that there is or shall be a tendency for certain parties to centralise power in the Executive in OFM/DFM or Justice Ministry. The SDLP warns against any such outcome which is prejudicial to good policing and proper government.

11) Continued Implementation of Patten and Cjr Changes

- Patten and Criminal Justice Review to continue to be implemented pending and post transfer.

The Inquiry may also wish to consider if there are criminal justice matters which need consideration such as:

- Giving of reasons for failure to prosecute or dropping of charges
- The leadership of the PPS office
- Delays in the prosecution service
- Relationships between the PPS and PSNI

12) Co-Operation by British Government

- British Government needs to facilitate work by parties in preparation for devolution by sharing all relevant information – including on proposals for MI5's expansion. For this reason, the recent attendance at the sub-committee of NIO officials was welcome.

This issue is further addressed in paragraph 15.

13) Transfer of National Security to Mi5

It is anticipated that the transfer of national security to MI5 shall occur in the Autumn of 2007. The SDLP opposed this development for a range of reasons including:

- The absence of proper oversight, accountability and complaints mechanisms
- The likelihood of "mission creep" by MI5
- The deepening of MI5 power
- The risk to the authority of the devolved institutions

Some claim that a Tony Blair commitment that there shall be "separation" of MI5 from civic policing addresses their concerns. This was a political fix and a grave folly for a number of reasons including:

- Issues of oversight, accountability and complaint remain unresolved
- It ignored the issue that some ex RUC Special Branch around whom there are concerns may be recruited full time or as consultants into MI5
- It created the political space for the British Government to do what it wants without being checked
- The commitment is all about words without real substance and is contradictory on a range of grounds, including the fact that PSNI officers will work out of the new MI5 headquarters at Holywood, sharing space and offices with MI5

The Inquiry of the sub-committee might address the issue of transfer of primacy for national security in the following way:

- Seek political agreement about new and demanding accountability, complaints and oversight mechanisms in respect of MI5
- Ensure that the Assembly structures have a real and meaningful role and standing in relation to MI5 activity in the North
- Work up in detail the communication relationship between the British Government and MI5 with the Assembly, a Policing and Justice Committee, Justice Minister(s) and Executive
- Guarantee that the Police Ombudsman has full access, without conditions, to all information held by the security services and full access to all MI5 staff in order to fulfil her statutory functions
- Work with the Policing Board to create mechanisms of "real-time" monitoring and oversight of the interface and working relationship between MI5 and PSNI, with guarantee of full access to intelligence
- Ensure that any protocols, memorandum or other material has been independently reviewed and verified against human rights requirements

This issue has the potential to de-stabilise the political institutions and diminish political and policing confidence.

14) Serious Organised Crime Agency (Soca)

To a significant degree, the issues around the Security Service extend to the future role of SOCA generally and the merger of the ARA with SOCA in particular.

There is a strategic risk that in future the security service will deal with international/domestic terror threat, SOCA will deal with organised crime and the serious end of the criminal spectrum generally and the PSNI deal with other serious crime and volume crime only. This is an unbalanced relationship, disregards the fact that the PSNI are best placed to deal with all aspects of crime and can have political and community fallout.

The Inquiry may therefore consider:

- (i) Ensuring the Police Ombudsman has full powers in relation to SOCA complaints
- (ii) As SOCA accounts through the Home Secretary, there is an imperative for the Assembly structures enjoy a proper and robust accountability role
- (iii) Determine if the end of the ARA means that lower and mid level criminals and gangs are less vulnerable to detection and prosecution.

15) Ni (St. Andrews Agreement) Act 2006

Clearly, immediate work is required to fulfil the requirements of the 2006 Act. The SDLP refers to the paper on 'Devolution of Justice and Policing for Assembly and Executive Review Committees' which outlines NIO consideration on this issue. There are a number of particular matters, logistical, political and policy in nature that should be highlighted including:

- does the Committee require additional staff capacity to fulfil the requirement of the 2006 Act
- how does the Committee plan to work through relevant matters with NIO officials and British Government Ministers, in what format and to what detail
- shall the Committee have sight of all protocols, memorandum and relevant correspondence to reassure itself that the Assembly interest is properly protected
- the ongoing issues of timing of devolution, structure, number of overall ministerial offices etc.
- the crucial issue of funding and budget guarantees, including any proposals to cut police numbers/budget, mindful, for example, of the emerging concerns about resources and priority around addressing organised crime further to the end of the ARA

- sight of draft legislation required for devolution to occur
- how the devolved and non devolved interface shall work generally and crucially around national security
- transfer of staff and other corporate issues
- determination of what shall actually occur at the time of devolution and if there are plans to defer, delay, slow down or otherwise create doubt about the range and nature of what is devolved.

Ulster Unionist Party



16th August 2007

Rt Hon Jeffrey Donaldson MP MLA
Chairperson
Assembly and Executive Review Committee
Room 428
Parliament Buildings
Stormont Estate
BELFAST
BT4 3XX

Dear Jeffrey,

Inquiry into Devolution of Policing and Justice Matters

Thank you for your letter of 9th July 2007 with regard to the inquiry into the devolution of policing and justice matters to the Northern Ireland Assembly.

You will be well aware that over the last thirty-eight years there have been few issues in our community as contentious as those of policing and justice and related and consequential matters.

The Ulster Unionist Party has been considering the devolution of policing and justice for some time and we have revisited the matter in light of current circumstances. The context in which it must be considered is very important also, as maintaining the confidence of the public for what happens at Stormont remains one of our top priorities.

It is appropriate to stress that irrespective of devolution, the operational independence of the Chief Constable is of paramount importance. The present arrangements whereby the Policing

Board exercises its function of holding the Chief Constable and PSNI to account have worked well, but as Sinn Féin has only recently joined a Board that was established in 2001, it is too early to say how the new Board will perform and how Sinn Féin will respond to its new responsibilities.

As this is the context in which devolution of policing and justice has to be considered, we have concluded that May 2008 will be far too early a date to consider a transfer of responsibility to Stormont.

Public confidence in such a transfer has yet to be established, and recent estimates of public opinion confirm our views.

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- 2 -

Rt Hon Jeffrey Donaldson MP MLA

Inquiry into Devolution of Policing and Justice Matters

Other matters need to be considered at this stage as well, as some will have a direct influence on the confidence of the public, and should be settled before devolution takes place.

These include:

- a) Victims matters. Has adequate provision been made to deal with some of the most traumatised groups in our society? Victims will be particularly affected, given that some of those who perpetrated acts of terrorism could end up exercising significant influence over policing and justice policy;
- b) How the past is treated. You will be aware that Sinn Féin has launched a campaign calling for 'truth'. We are all interested in the truth, but this is a matter that could be very divisive and should be resolved before constitutional devolution.

divisive and should be resolved before contemplating further devolution;

c) The Eames / Bradley review on how to treat the past will also figure in our consideration.

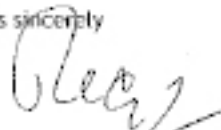
With regard to the structures to be put in place when sufficient confidence exists to permit devolution of policing and justice, my party is of the view that a single department looking after both matters is the best option, with the Minister being identified in the usual way using the d'Hondt procedure.

Any imposition of structures or Ministers by the Secretary of State would be anti-democratic and dramatically undermine public confidence in the Assembly.

In summary, therefore, the Ulster Unionist Party will wish to wait until such times as confidence is established in the community that Sinn Fein has dealt adequately with a range of issues relating to its past, and when it is clear that devolution as currently established will be stable and settled.

We do not want to see devolution of policing and justice injecting an element of divisiveness into the present arrangements with the negative consequences that could flow there from. The conditions must be right before we will support any proposal to devolve policing and justice powers to the Assembly.

Yours sincerely



Cltir Sir Reg Empey OBE MLA
Leader, Ulster Unionist Party

DUP

DEMOCRATIC UNIONIST PARTY

**SUBMISSION TO THE ASSEMBLY AND EXECUTIVE REVIEW
COMMITTEE**

Arrangements for Devolution of Policing and Justice to Northern Ireland

Introduction:

In our paper submitted to the Committee in August 2007, the DUP made clear that whilst *we support in principle the devolution of policing and justice powers, we recognize their transfer can only occur when the necessary support exists within the community.* That remains firmly our position and it is clear, based on all available evidence, that support is not sufficient to enable devolution to take place. In addition, there remain important issues pertaining to the devolution of policing and justice powers that can only be determined at a higher political level and the committee will be unable to reach agreement on these issues in the absence of such political direction. Consequently, the views expressed in this paper are without prejudice to further political negotiations between the political parties.

COURTS SERVICE MODEL

- 1 (a) We support the need to ensure the independence of the Judiciary in Northern Ireland. Whilst we recognize that there is considerable merit in the model proposed by the Lord Chief Justice (LCJ), it would be premature at this stage to determine whether it is the best model or the only model as an alternative to the status quo. In the event of devolution being agreed, there will need to be proper consultation within the Assembly and in the wider community on the best way forward.

Should this kind of change be agreed, the accountability mechanisms to ensure a high degree of answerability by the Courts Service to the Assembly are very important. At the very least the Chief Executive of the Courts Service should present an annual report to the Assembly and be available to respond to questions by the relevant scrutiny committee on that report.

In addition, it is our view that responsibility for developing policy advice and legislative support should transfer to the Department to ensure maximum accountability.

- 1 (b) In the context of the devolution of policing and justice powers, the Courts Service should be funded through the Department of Justice.

LEGAL AID

2 (a) Responsibility for policy making on Legal Aid should transfer from the Courts Service to The Department of Justice. Consideration will need to be given to the practical implications of this for the Departments relationship with the Courts Service.

2 (b) If the Department takes on responsibility for policy making the Minister is fully accountable to the Assembly and its scrutiny Committee.

If policy making were taken on by the Courts Service, then accountability would be much more difficult to achieve.

2 (c) Whether there are lessons to be learnt from the Scottish or the Irish Court Service's would be a matter for the Assembly and the Department to consider in the context of its future consultations.

OTHER JUDICIAL INSTITUTIONS

3 (a) The PPS should continue as a non-ministerial department with a significant degree of independence from Government. Funding responsibilities for the PPS should sit with the OFMDFM.

The Attorney General should be a full-time post and have a superintendence role in relation to the PPS and provide through his Office a degree of accountability to the Assembly, where he might be available to answer questions.

3 (b) In addition to the Attorney General answering questions, the Director of the PPS should also be available to answer questions on financial and administrative matters.

3 (c) We propose that the Advocate General for Northern Ireland should consult regularly with the Director of the PPS in Northern Ireland and the Attorney General on matters which are excepted.

GENERAL MATTERS

Police Ombudsman

The advice on the appointments to the Office of the Police Ombudsman should be

The advisory role in appointments to the Office of the Police Ombudsman should be devolved to the Department of Justice.

Northern Ireland Policing Board

It is our view that MLAs should continue to be appointed by their respective parties to the Policing Board. We believe that it is important that there continues to be political input at such a high level and the current arrangements enhance accountability.

If an MLA is a member of the Policing Board he/she should not be a member of the relevant Departmental Scrutiny Committee

North – South Arrangements:

The Department of Justice will need to agree new arrangements to replace the existing North – South agreements on relevant policing and justice matters.

SOCA and Security Services:

Arrangements currently exist within the Northern Ireland Policing Board for liaison with the Security Services and SOCA on matters relating to their operations in Northern Ireland. The DUP does not propose any additional mechanisms in relation to the Assembly.

Sinn Féin

Sinn Féin paper to Assembly & Executive Review Committee

Police Ombudsman

Whether the advisory role in appointment of Police Ombudsman is to be devolved?

Sinn Féin believes the appointment procedure should be transferred.

Whether the Assembly, the new Minister or OFMDFM carry out the appointment procedure?

Sinn Féin wishes to reserve its decision on this matter until issues around the new

model for the department are resolved.

Policing Board

Whether MLAs should sit on Policing Board and also are members of the Scrutiny Committee?

There should be no dual membership of the Policing Board and the Scrutiny Committee in the new Department.

Political Appointees to replace MLAs

This matter requires further investigation and perhaps a future separate report from the Committee.

Memorandum of Understanding

Sinn Féin believes that there should be a Memorandum of Understanding to clarify relationships which exist between the PSNI, the Board and the Assembly Committee

Court Service

Independence: Sinn Féin believes in the independence of the Court Service. Whether this is an *agency* (as outlined by the NIO), or an *independent body* (such as the Irish/Scottish model), will be best determined once the model for the department is agreed

Note: Sinn Féin believes that transfer of Policing and Justice Powers could proceed with the agency approach outlined by the NIO, it will then be a matter in relation to the future of the agency/independent body for the Assembly/new Department to decide.

Accountability: Sinn Féin believes that appropriate accountability mechanisms need to be in place.

Division of Responsibilities: the division of responsibilities between any court

DIVISION OF RESPONSIBILITIES: the division of responsibilities between any court service agency/independent body and a new Ministry of Justice can only be determined when the model for the Department has been agreed.

Policy, Advice and Legislative Support: In relation to whether the agency should continue to deliver policy advice and legislative support will also be determined by an agreed model.

Degree of Independence of the PPS

Sinn Féin firmly believes in the independence of the PPS and appropriate mechanisms to ensure public accountability.

Relationship of the PPS to Attorney General: Sinn Féin would like to explore this further. In particular the relationship between the Lord Advocate of Scotland, the Scottish Parliament, the equivalent to the PPS and the Justice Minister.

Attorney General

Sinn Féin will return to these matters: whether the post of AG is full-time or part-time and what costs are associated with this office.

All Ireland Agreements: Sinn Féin believes in the maximum cooperation on an all-Ireland basis in relation to policing and justice matters. It will be a matter for the Minister(s) to decide on the future agreements.

SDLP

The Devolution of Justice/SSLP Paper to the Assembly and Executive Review Committee

1) Introduction

The SDLP believes the devolution of justice should occur as quickly as possible. This would mean the Assembly being able to pass its own laws on justice matters and the Justice Minister(s) and Assembly taking control of the justice budget to ensure that it is well administered. This is graphically highlighted by the fact that the Assembly has forwarded a response to a wide ranging Justice Bill to the NIO, when the NIO can potentially disregard the views of the Assembly on critical issues.

The SDLP recommends that all parties recognise that very substantive powers, once in the hands of the NIO, have already been devolved – to the Policing Board and new policing arrangements. In this regard, parties should be clear that a Minister(s) for Justice should not be able to direct the police – there is a potential for certain parties to seek such powers. This would be a deeply serious development and run grave risks.

The SDLP believes that there is a residual risk that some in the “republican community” may hold back on policing and not establish proper and reasonable relationships with the police pending the devolution of justice, both to have political leverage and to maintain their influence. This should not be tolerated.

Equally, the DUP should be forthcoming about the devolution of justice, not use it as a bargaining chip and create false timeframes. As Peter Robinson wrote in the Irish Times in 2004, the devolution of justice is “no big move for unionists.” There should, therefore, be no undue impediment to the devolution of justice powers.

2) A Better Way

For the record, the SDLP argued that a devolved Minister(s) for Justice should have been appointed upon restoration in May 2007. He or she (they) would have had the following devolved functions at that time.

- Office of Law Reform.
- Office of the Legislative Counsel.
- Legal services, pending creation of Attorney General for Northern Ireland.

- Appointments to tribunals.
- Freedom of Information.
- Assembly Ombudsman/Commissioner for Complaints.
- Negotiation of protocols for devolution, including with MI5.
- Nolan standards.

In addition, he or she (they) would have been charged with assisting preparations for the devolution of justice, bringing forward relevant proposals to the Executive and also working with a Justice Committee of the Assembly. He or she (they) would also, of course, receive currently reserved justice powers when devolved. This option, which would have given more rigour to the devolved institutions, was not agreed.

3) DUP Veto

The SDLP is concerned at the veto acquired by the DUP over the devolution of justice as a result of the failed SF/DUP Comprehensive Agreement and as provided for in section 4(2A) of the Northern Ireland Act 1998, inserted by the Northern Ireland (Miscellaneous Provisions) Act 2006.

The SDLP believes that this veto should be removed so that what is required to devolve justice powers is cross-community support – as was originally the case under the Northern Ireland Act, 1998.

4) Selection of Ministers

The SDLP remains open to discussing all the models for the selection of ministers. Given the need for economy, the fact that substantial policing functions already fall to the policing arrangements etc., on balance, the SDLP preference has been for the ministerial office to be allocated out under d'Hondt. However, the SDLP notes the arguments for a shared Ministry, in order to establish confidence etc. and remains prepared to consider further this option.

There is also a need for clarification on the 'Hain devolution proposal' including the following:

- What the British Government intends to do in the event that devolution is not agreed in or around May '07.
- The status of the Hain 'nomination proposal'.
- Issues around the running of d'Hondt under the Hain model, what qualifies as a d'Hondt pick etc.

The SDLP hope that whatever model emerges, the model is agreed between the parties given that the model will impact on the shape of and participation in the Executive and on Executive parties in particular.

5) Number of Departments

The SDLP believes that there should be one Department of Justice and Law Reform only – as opposed to separate departments of justice/law reform and policing respectively.

In particular, the SDLP notes the evidence of a number of organisations to the Assembly & Executive Review Committee that it would be unwieldy and burdensome for justice and policing functions to be undertaken by OFM/DFM, rather than co-located in a single, freestanding ministry.

6) Timing of Devolution

With the appointment of a minister(s) for justice in advance of devolution of justice powers, the SDLP believed that it would have been possible to achieve the devolution of justice earlier than would otherwise be the case.

In the circumstances that now prevail the SDLP submits that a date of May 2008 is essential. The SDLP considers that the sharing of responsibility at the Executive table, in the Assembly, at the Policing Board and on DPP's etc. means that a threshold of confidence has been attained and devolution should follow. On this basis, a May 2008 date is appropriate.

However, one enduring issue is the nature and quality of justice that should be anticipated and required, be it pre or post-devolution. Against this measure, given the Robert McCartney and Paul Quinn murder investigations and other matters, the standard of justice that should be in place on all cases and for all citizens is not. This needs to be addressed fully and without doubt.

7) Cross-Community Protections

Cross-community protections must be agreed for a limited number of statutory functions that are currently 'reserved' but which may be transferred. These include the power to override decisions of the Parades Commission, the power to veto Policing Board requests for reports and inquiries and the power to veto 50/50 recruitment. The SDLP believes that it is desirable that these matters should be devolved and will continue to work to achieve the devolution of these matters with community safeguards.

A particular issue arose in respect of an "advisory" role for OFM/DFM/Minister(s) in relation to public appointment such as a future Police Ombudsman. The SDLP believes that in relation to defined, profile public appointments where they may be heightened public interest, the Executive may be involved to advise or approve the public appointments.

8) North South Justice

Transfer of justice should have a strong North/South dimension and this should be agreed upfront. The fact, therefore, that the current British/Irish Intergovernmental Agreement on Justice Co-operation "falls" with the devolution of justice is of concern. The SDLP submits that in the period up to May 2008, the following matters should be considered:

- (i) the retention of the current elements of the Inter-Governmental Agreement and having some in place immediately following devolution;
- (ii) any further areas of development and co-operation that are emerging under the working of the Inter-Governmental Agreement should be incorporated in a new Agreement, in place immediately following devolution;
- (iii) In particular, the areas of justice co-operation outlined below should be worked up and incorporated into a new Justice Co-operation Agreement between the Northern Ireland Assembly and the Dail going "live" immediately following devolution.

We also call for the creation of a new Justice sector of the NSMC, including co-operation and implementation issues and regular intersectoral meetings involving policing issues on matters such as child protection and drugs.

In particular, there should be further initiatives on North/South cooperation on criminal justice and policing through, for example:

- An All-Ireland Criminal Assets Bureau, modelled on the Criminal Assets Bureau in the South, to deprive criminals of their wrongful gains across the island. This issue has become more acute with the end of the ARA as an independent agency and the primacy of SOCA (see paragraph 13 below)
- An all-Ireland Law Commission to research and promote harmonisation of laws and, in the interim, a joint programme of work between the two Law Reform Commissions, North and South.
- An all-Ireland Sex Offenders register or appropriate variation of this model.
- Building on current arrangements for criminal justice co-operation.
- An all-Ireland Intelligence Agency serviced by a joint PSNI and Garda unit to combat crime and terrorism North/South.

9) North-South Policing

The SDLP anticipates that the current arrangements governing policing co-operation between the PSNI and the Garda should continue without interruption following devolution of policing powers.

The SDLP submits that this work requires "a gear shift" as, on certain matters, little progress has been forthcoming following the Patten recommendations. In particular, the continued failure to finalise lateral entry provisions between the two police services is a matter of frustration. In addition to the matters identified in the Patten Report, the SDLP would emphasise:

- Garda training at the proposed new Police College near Cookstown
- Joint training at the Police College for emergency situations etc.
- An all Ireland Intelligence Agency, serviced by a joint PSNI/Garda Unit to combat crime and terror in North and South

- Measures to address organised crime (see section 13)

10) Protection for Patten Institutions

The SDLP strongly believes that, following devolution, there should be no reduction in the role and authority of the Policing Board, Police Ombudsman and District Policing Partnerships respectively. The policing institutions have, arguably, been the most significant achievement of the Good Friday Agreement. They have been the cornerstone of stability and progress in the uncertain times of recent years. That is why the agreement of the parties at the Justice sub-group of the Preparation for Government Committee last year that there should not be encroachment on the authority of the policing institutions was welcome and important.

However, the SDLP has concerns that there is or shall be a tendency for certain parties to gather and centralise power in a future Justice Ministry. The SDLP warns against any such outcome which is prejudicial to good policing and proper government. That is why the protocols that are in development around the relationships between the devolved arrangements and the policing structures should be made available as soon as possible for consideration by the Committee and parties.

The SDLP believes that MLA's should continue to be appointed to the Policing Board, as recommended by Patten. Patten correctly identified that sharing political responsibility for the conduct and oversight of policing was important in creating community confidence. This argument endures, particularly as this is still on early phase in the operation of the policing arrangements. Moreover, sharing responsibility at a local Council level (DPP's) and at a Board level (MLA's) have proven the legitimacy of the Patten argument.

In order to avoid a conflict of interest between the Policing Board and the Assembly, MLA's should not sit on an Assembly Policing Scrutiny Committee. In addition, MLA's who are District Councillors should not sit on DPP's, or if they do, should not sit on an Assembly Scrutiny Committee.

11) Continued Implementation of Patten and Cjr Changes

It is necessary to confirm that, pre and post devolution: The conclusion of the Patten Review and Criminal Justice Review need ongoing implementation.

The Inquiry in its final report may also wish to consider or, at a minimum, "flag up" if there are criminal justice matters which need further consideration such as giving of reasons for failure to prosecute or where charges are dropped, mindful of the agreement between the parties at the Preparation for Government Committee in 2006 in relation to the matter.

12) Transfer of National Security to Mi5

Transfer of responsibility for national security in Northern Ireland was transferred to MI5 from the PSNI in the Autumn of 2007. The SDLP opposed this development for a range of reasons including:

- The absence of proper oversight, accountability and complaints mechanisms
- The likelihood of “mission creep” by MI5
- The deepening of MI5 power generally
- The risk to the authority of the devolved institutions, including the policing arrangements.

It is claimed that a Tony Blair commitment that there shall be “separation” of MI5 from civic policing addresses their concerns. This was a political fix and a grave folly for a number of reasons including:

- Issues of oversight, accountability and complaint remain unresolved
- It ignored the issue that some ex-RUC Special Branch around whom there may be concerns could be recruited full time or as consultants into MI5
- It created the political space for a British Government Agency to do what it wishes without being subject to proper check, balance and accountability
- The commitment by the then Prime Minister is all about words without real substance and is contradictory on a range of grounds, including the fact that PSNI officers will work out of the new MI5 headquarters at Holywood, sharing space and offices with MI5

The Inquiry of the Committee should attempt to address the issue of transfer of primacy for national security in the following way:

- Seek political agreement about new and demanding accountability, complaints and oversight mechanisms in respect of MI5
- Ensure that the Assembly structures have a real and meaningful role and standing in relation to MI5 activity in the North. That is why the documents that have and are being prepared in relation to what type of information shall be shared on issues with a national security dimension in the policing and justice field need to be shared with the Committee and parties as quickly as possible
- Work up in detail the communication relationship between the British Government and MI5 with the Assembly, a Policing and Justice Committee, Justice Minister(s) and Executive
- Guarantee that the Police Ombudsman has full access, without conditions, to all information held by the security services and full access to all MI5 staff in order to fulfil his statutory functions
- Ensure that any protocols, memorandum or other material has been independently reviewed and verified against human rights requirements
- The content of any protocols, memorandum or other material is available for consideration by the Committee and the parties, including how the process will work about what the Chief Constable will or will not be able to share with the Minister(s) where issues arise which are of interest to the devolved institutions

This issue has the potential to de-stabilise the political institutions and diminish political and policing confidence. The Committee

should actively address the matter.

13) Serious Organised Crime Agency (“Soca”)

In April 2008, the Assets Recovery Agency (“the ARA”) in the North will merge with the Serious & Organised Crime Agency (“SOCA”). The ARA in Northern Ireland is generally regarded as the most successful sector of the ARA organization. Whatever about the record of SOCA in Britain, the “end” of the ARA in the North has raised concerns, which endure. In essence, the concern is that the levels of organized crime in Northern Ireland, while big in regional terms, may not register high in the hierarchy of organized crime and which may attract the interest of SOCA.

More specifically, the concerns are four-fold:

A) While the statutory mandate of SOCA post -April 2008 requires the organization to address organized crime generally, there is a view that it will, for self-evident reasons, address terror financing and higher level domestic and international organized crime.

B) The consequence of (A) above will see energy and money “drift” or be directed towards the higher range of the organized crime threat

C) The background of the senior management of SOCA – believed to come from security service retirees – compounds the risk outlined in (A), whereby senior management may concentrate on higher level of organized crime, particularly international terror links and money.

D) The PSNI have developed their economic crime capacity. However, with demands at a community level, the potential for downsizing post 2010-11, questions around the capacity of the PSNI Crime Unit etc., it may be a hard ask for the PSNI to fill the gap left by the end of a dedicated ARA organization.

The SDLP submits that the Review should acknowledge the concerns and the threefold risks:

i) There have been reassurances at the time of the announcement of an enlarged SOCA and since that the regime change would not witness any decline in efforts against organized crime in Northern Ireland. However, with the process of time and the future sources of terror/international threat, there may be a decline in resources and strategy to address regional organized crime

ii) The ARA in Northern Ireland and Criminal Assets Bureau (“the CAB”) in the Republic of Ireland have a significant and successful relationship. As organized crime does not respect borders, any decline in resources and strategy in the North is likely to impact on the continued requirement to address organized crime on an all island basis

iii) In particular, any reduced effort to recover the criminal assets of the paramilitary organizations, will be hostile to dealing with our past in the most positive way possible, could see the assets of organized crime be deployed in a way that compromises national democracy, and, in any case, it is an intolerable outcome that assets gained by criminal enterprise should be retained.

The SDLP therefore recommends the Committee to:

- A) Acknowledge the concerns outlined and the present and future risks that arise;
- B) Recommend that the government of the Republic of Ireland and the Executive in the North seek guarantees that resources, staffing, strategy and priority will not be diminished in the arrangements that emerges post 1 April 2008;
- C) Recommend that the Northern Ireland Assembly and Executive consider at an early date to creation of a dedicated, new model Assets Agency in the North or, as the SDLP would particularly urge, the creation of an all island Assets Agency;
- D) Recommend to the Republic of Ireland Government the Northern Ireland Government, the PSNI, Gardai Siochona and the CAB further identifies any strategic gaps that may arise post 1 April 2008 with the primacy of SOCA;
- E) Ensure the Police Ombudsman for Northern Ireland has full powers in relation to SOCA complaints;
- F) Determine what information will be shared by SOCA with the Assembly, Minister(s), Scrutiny Committee and work to ensure the full exchange of appropriate information.

14) The Court Service

The future arrangements for the Northern Ireland Court Service is a matter that has invited very different view points. The SDLP has an appreciation for the argument that an “arms length model” is appropriate, inter alia, to guard against the risk of encroachment on the independence of justice and policing structures, including the independence of the Judiciary.

Conversely, there is substance in the argument that the Agency model outlined by the NIO would, inter alia, assist a culture change to enable heightened communication and cohesion between those responsible for the administration of justice. In addition, a third option – a hybrid approach – was outlined by the Chief Executive of the Northern Ireland Civil Service.

The SDLP continues to consider which model is most appropriate but would submit at this stage:

- Policy and legislative support functions should transfer to the Department
- Whatever model is eventually adopted, a management Board would be required to include representatives of the judiciary, legal profession, trade unions, victims and business representatives

15) Ni (St. Andrews Agreement) Act 2006

The SDLP refers to the paper on 'Devolution of Justice and Policing for Assembly and Executive Review Committee' which outlines the NIO consideration on this issue. There are a number of particular matters, logistical, political and policy in nature that should be highlighted (confirmed by the evidence of the Head of the Northern Ireland Civil Service to the Committee) including:

- shall the Committee have sight of all protocols, memorandum and relevant correspondence referred to in the NIO Paper to reassure itself that the Assembly interest is properly protected
- Is the Committee able to say in its report that the managerial and administrative matters necessary for, say, a May devolution date are in place
- the crucial issue of funding and budget guarantees, including any proposals to cut police numbers/budget, mindful, for example, of the emerging concerns about resources and priority around addressing organised crime further to the end of the ARA. The NIO should be asked to provide details of future baselines by business area further to the 2008-2011 CSR.
- sight of draft legislation required for devolution to occur, which the NIO has stated it is prepared to share.
- how the devolved and non devolved interface shall work generally and crucially around national security.
- transfer of staff and other corporate issues
- determination of what shall actually occur at the time of devolution and if there are plans to defer, delay, slow down or otherwise create doubt about the range and nature of what is devolved.

16) The Role of the Advocate General

In the event of devolution of justice, it will fall to the Advocate General to offer advice to the Director of the Public Prosecution Service in relation to "excepted matters". This will include national security and other serious issues.

It is important that the Minister(s) for Justice is sighted, as appropriate, on relevant matters, particularly those of public interest and concern where the Attorney General gives advice. For example, in the summer of 2006, the parties at the Programme for Government Committee unanimously agreed that there was a requirement for the Public Prosecution Service to give reasons. This was an indication of the need for more public transparency in the conduct of the Public Prosecution Service. However, as the Advocate General will advise on excepted matters, the Justice Minister(s), Assembly etc. has no authority or standing, even on profile cases, in the excepted field.

Accordingly, protocols will be required to enable relevant information to be shared with the devolved side where the Advocate General gives advice to the Public Prosecution Services on an excepted matter, particularly on profile matters. It is acknowledged that there are issues where the Attorney General and Advocate General are required to consult by statute. Moreover, the NIO have added that "there are sure to be issues which arise in the course of normal business. However, the Committee and parties need to be sighted on how the future arrangements will work and how information to the necessary standard will be shared.

17) Public Prosecution Service

Issues of confidence in the Public Prosecution Service have historically been acute and can best be addressed in a major reshaping

of the structures in and around the office.

The SDLP considers that a discussion is required around the future shape of the Public Prosecution Service, including the creation either of Policing Board models of accountability and oversight or an enhanced role for the Assembly Scrutiny Committee, for example, in areas of policy and practice. This would be a more meaningful oversight than being answerable to a Committee in relation to financial and administration matters only.

The SDLP looks forward to devolution of justice to enable this discussion to arise. In the interim, the SDLP considers that, consistent with the current legal framework, there should be a maximalist approach to “oversight” of the Public Prosecution Service. Under the current law, the Public Prosecution Service answers to the Assembly in relation to finance and administration. As outlined above, the SDLP considers this is insufficient. Models of higher oversight – be it through an Assembly Committee or Policing Board models – shall be necessary. Clearly, this would not compromise the operational responsibility of the Public Prosecution Service, but would create deeper oversight of policy and practice in the Public Prosecution Service.

In particular, the SDLP believes that funding for the Public Prosecution Service shall be from within the budget of the Justice Ministry rather than OFM/DFM is preferable. This option was favoured by the Criminal Justice Inspectorate. A dedicated Justice Ministry is more likely to enjoy understanding and insight into the Public Prosecution Service and ensure that issues of efficiency, effectiveness and value for money are addressed.

18) Attorney General

The SDLP believes that the position of Attorney General is both important and uncertain. The role needs careful assessment.

The SDLP believes the post should be full time, in order to reflect the level of responsibility, the seniority and the authority of the position holder. However, a number of other critical issues need to be addressed and, if possible, resolved by the Committee.

Given that the Attorney General (NI) will not enjoy the power of superintendence and direction over the Public Prosecution Service, currently enjoyed by the Attorney General, the requirements of oversight outlined above in section 17 are more pertinent.

In addition, there is a potential for conflict between “excepted” and “transferred” matters and the authority of the Attorney General and the Advocate General. This is why the issues identified in Section 16 are so important.

Ulster Unionist Party

OUTSTANDING ISSUES: ULSTER UNIONIST PARTY RESPONSE

1. **Office of the Police Ombudsman**. *Should the advisory role in appointment of the Police Ombudsman be devolved and, if so, whether it should rest with OFM/DFM or the new Department?*

We believe that the advisory role should be devolved, and should rest with OFM/DFM.

2. **Northern Ireland Policing Board**. *How many MLAs should be involved with policing post-devolution and what should be the relationship between the Board and the Assembly?*

The Northern Ireland Policing Board has been an outstanding success since its establishment in 2001. It has managed to deal with a number of controversial issues, from symbols for the new police service to the aftermath of the Omagh bombing. Throughout, a key element in its ability to deal with such issues has been the presence of the four main political parties on the Board. Therefore, **we believe that political input is key to the continuing effectiveness of the Northern Ireland Policing Board.**

However, as the Assembly settles, it has become apparent that there is increasing pressure on MLA's time in servicing the committee system at Stormont. Although rationalisation of the dual and triple mandates issue may relieve a degree of pressure, the proposed examination of the long-term sustainability of 108 MLAs may see a reduction in their number. Following the devolution of policing and justice, it is difficult to see how the Assembly could justify the involvement in policing of 23 MLAs (possibly 2 x Ministers, 11 x P&J Committee and 10 x NIPB Members).

The PFG Committee concluded that it was not possible for a Board Member to be a member of the P&J scrutiny committee. That committee will have a role in scrutinising the Department, while the Board is responsible for the policing budget. The latter also owns the police estate and has a role in devising policy in a number of policing areas. Thus these roles are in direct conflict with each other and **it would be in appropriate for the same MLA to be involved with both the P&J Scrutiny Committee and the NIPB.**

The question then arises as to how political input can be maintained, while easing the increasing time commitment on MLAs. We believe that, **post devolution, political parties should replace their MLA with experienced, respected appointees to represent their interests.** Clearly it would need to be impressed upon parties that the status of such appointees would need to be similar to that accorded to MLAs. Such a change would allow the Board to benefit from continuing political advice and input, along with access to Government through the political representatives. It would also free up MLAs to carry out their primary function, that of scrutinising departments.

The devolution of policing and justice will bring about complex relationships. The Minister/s, the Department, the Scrutiny Committee and the Policing Board and the Police Service of Northern Ireland and the Northern Ireland Office will each be involved with policing to some degree. We believe that **there need to be Memoranda of Understanding between the various organisations so that relationships between them, and the responsibilities of each, are clear.**

3. **Northern Ireland Court Service.** *What should be the relationship between the Assembly, the Court Service and the Judiciary, and how will accountability operate?*

The Government proposes that the Court Service will be devolved as a newly formed Executive Agency, within the new Department. The Lord Chief Justice proposed to the Committee that there should be an arms length board running the Court Service as an independent agency. There are complex issues in play here, and it is worth setting out some of the factors involved:

- a. The Judiciary is, and must remain, independent in its role.
- b. The Court system must be free from political interference.
- c. The Assembly, through the new Department, finances the Court system and passes legislation. The effective and efficient use of such finance, and the effective and efficient operation of the Court system, will be of direct interest to the Assembly and the P&J Scrutiny Committee.

The relationships involved in this issue are complex and need further discussion.

Since primary Westminster legislation would be required before the Court Service

since primary Westminster legislation would be required before the Court Service could devolve as a fully independent agency, we believe the debate on the final model for the Court service, and how it could be accountable to the Assembly, should be a matter for discussion with the new Minister/s and Department - post devolution.

4. **Public Prosecution Service.** *What should be the relationships between the PPS and other organisations?*

There are major changes in the relationship between the PPS and Attorney General, with a particular emphasis in the complete independence of the PPS and its Director. In the same way that judges are independent in judging their cases, it is vital that the DPP is free from influence in deciding whether a prosecution should take place. However, there is a legitimate political interest in how the PPS is spending its allocated finance, and in whether it is operating effectively and efficiently as a department.

It would be unhealthy if the Minister and the P&J Department were able to influence the operation of the PPS through interference with funding. Thus, the NIO proposal that the PPS should be administered by OFM/DFM has merit. It would allow checks and balances to be in place so that independence of the PPS can be maintained.

However, there needs to be some oversight mechanism for the Assembly to judge how well its money is being spent. Evidence to the Committee would suggest that, while the PPS would have operational independence from the Attorney General, there needs to be a mechanism through which the PPS can be answerable for its effectiveness and efficiency as an organisation. Thus, there is probably a role for the Attorney General to be answerable for the PPS in the Assembly.

The Advocate General for Northern Ireland (AG) retains responsibility for excepted matters and will continue to have a relationship with the PPS in relation to national security issues. There may need to be Memoranda of Understanding between the AG, the PPS, the Attorney General and the new Department in relation to how national security matters will be dealt with.

We believe that the PPS must be independent. The PPS should be administered through OFM/DFM. The Attorney General should answer to the Assembly for the effective administration of the PPS. There should be Memoranda of Understanding between the AG, the PPS, the Attorney General and the new Department in relation to national security matters.

5. **Attorney General:** *Should the post of Attorney General be full time or part time?*

The scale of the role of Attorney General of Northern Ireland (AG) is not fully apparent at this stage. The different facets of the role are set out in a number of reports and orders, but the eventual task may depend on how easily the devolution of policing and justice proceeds, once the decision is taken. It is possible that relationships may initially be more complex than expected and, therefore, the task of the AG may be extensive in smoothing

out relationships. It may be prudent to initially have a full time AG, with the proviso that the role may reduce as devolution settles.

We believe that the Attorney General should initially be full time with the expectation that a part time role will evolve as the devolution of policing and justice settles down.

6. **Excepted Matters:**

- a. **SOCA and the Security Service.** It is clear that the operation of the Security Service in Northern Ireland is an excepted matter. There are protocols already in

Service in Northern Ireland is an excepted matter. There are protocols already in place to deal with relationships between MI5 and the PSNI. However, there is an issue over how the Minister/s, the Department and the Scrutiny Committee exercise their real interest in oversight of organised crime. Organised Crime may be related to terrorist groupings or international gangs and in such cases the lead clearly lies with cross-cutting agencies. However, in relation to non terrorist organised crime, **there should be further examination of whether additional Memoranda of Understanding need to be developed to allow the Policing Board and the Assembly a degree of oversight in relation to the involvement of the SOCA in Northern Ireland.**

b. **North South Agreements.** Over recent years, the Governments in London and Dublin have been developing increased cross-border co-operation in the field of criminal justice, and a team of civil servants was specifically set up to progress the issue. It is not clear how far their discussions have developed, nor in detail what effect the devolution of policing and justice will have on the area of cross border justice issues. **It would be helpful if a detailed audit of cross border agreements and future proposals were available to the Committee.**

Appendix 6

Other Correspondence

OFMdFM letter of 26 September 2007



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Rt Hon Jeffrey Donaldson MP MLA
Chairperson of the Assembly and Executive
Review Committee
c/o Room 428
Parliament Buildings
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Our Ref: *Corf347/2007*

26 September 2007

Dear Mr Donaldson

INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS


You wrote to us on 9 July informing us of the terms of reference of the Assembly and Executive Review Committee's inquiry into the devolution of policing and justice matters, and inviting our written views.

We have carefully considered the terms of reference to the inquiry and believe these to be primarily and substantially matters for discussion between the political parties rather than ones on which either we, from our positions as First Minister and deputy First Minister, or our departmental officials, should appropriately offer views.

We wish to advise you, therefore, that we do not propose to provide any statement of views to the Committee in respect of its inquiry.

Yours sincerely


THE RT HON DR I R K PAISLEY MP MLA
First Minister


MARTIN McGUINNESS MP MLA
deputy First Minister

Approved by the Ministers
but signed in their absence



Correspondence of 26 September 2007 from Mr Stephen Graham



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Gail McKibbin
DALO
OFMDFM
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BELFAST

26 September 2007

Dear Gail

Assembly and Executive Review Committee

Further to our conversation earlier today, I am writing to confirm that I was asked to communicate with officials from OFMdFM to say that the Committee would find it helpful if any submission from the First Minister and deputy First Minister on the devolution of policing and justice matters, dealt, at least, with any discussions that OFMdFM has had with the NIO, or arrangements which that Department might be making regarding the following matters:

- Appointing the Attorney General
- Making Judicial and Tribunal appointments
- Sponsorship of the Judicial Appointments Commission and the Judicial Appointments Ombudsman

Obviously, I now have a letter from the First Minister and deputy First Minister which the Committee has not yet seen, but indicates that it was not their intention to make a submission. However, in light of the request in this letter, the First Minister and deputy First Minister may wish to re-consider the matter.

Yours sincerely

Stephen J Graham
Committee Clerk

Correspondence of 1 October 2007 from Gail McKibbin



Stephen J Graham
Committee Clerk

1 October 2007

Dear Stephen

Assembly and Executive Review Committee

I refer to your letter of 26 September in which you suggested that the decision conveyed in the First Minister's and deputy First Minister's letter, also of 26 September, might be reconsidered in the light of the Committee's earlier request that certain specified matters might be addressed in any submission.

I wish to advise you that, following consultation, the decision conveyed in the First Minister's and deputy First Minister's letter remains unchanged.

Yours Sincerely

Gail McKibbin

Gail McKibbin
Departmental Assembly Liaison Officer

Chairperson's letter of 23 October 2007



Rt Hon Jeffrey Donaldson MP
Chairperson Assembly and

Executive Review Committee
Room 428
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23 October 2007

Rt Hon Dr Paisley MP and Mr McGuinness MP
OFMdFM
Stormont Castle
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Dear First Minister and deputy First Minister

Inquiry into the devolution of policing and justice matters

As you know, section 18 of the Northern Ireland (St Andrews Agreement) Act 2006 requires the Assembly, inter alia,

“to report to the Secretary of State before 27 March 2008 ...as to the preparations that the Assembly has made, and intends to make, having regard to paragraph 7 of the St Andrews Agreement, for or in connection with policing and justice matters ceasing to be reserved matters ...”

This matter was referred to the Assembly and Executive Review Committee, by the Assembly, on 4 June 2007.

As you will know, the Assembly and Executive Review Committee determined to take the matter forward by way of an Inquiry. Indeed, at the launch of the Inquiry, I wrote to invite you to make a submission and thereafter to ask you to re-consider your decision not to do so. At its meeting today, the Committee asked that I write to you, again.

The Committee considers that your Department could usefully inform the Inquiry by addressing three particular issues which could be regarded as central to the preparations which the Assembly needs to make.

Attorney General

Firstly, in relation to the devolution of policing and criminal justice matters, the appointment of an Attorney General will fall to your office. The Assembly and Executive Review Committee is concerned to ensure that any arrangements for such an appointment would not hinder any request there might be from the Assembly for the transfer of a range of policing and justice matters. A response from you, explaining what arrangements you are making, would enable the Committee to outline, in its report, “the

preparations that the Assembly has made, and intends to make ..." in relation to the appointment of an Attorney General.

Number of Ministers/Departments

Secondly, the Committee considers that the work which the proposed Efficiency Review Panel is expected to undertake in relation to the number of Departments impacts, directly, on any request there might be for the transfer of a range of policing and justice matters. You will of course recall that this is a matter which I and the Deputy Chairperson raised with you initially, when we met you both in May 2007. Since then, we have tried to impress on officials, and special advisers, in OFMdFM, the significance of this issue in the context of the potential devolution of policing and justice matters.

As you know, any new Ministerial office would have to be accommodated under existing arrangements, unless there was a request for an amendment to section 17 of the Northern Ireland Act 1998 to increase the number of Ministerial offices. Therefore it will be especially important for the Committee to have a sense of the timeframe for the work of the Efficiency Review Panel, given the Assembly's deadline for reporting to the Secretary of State (before 27 March 2008) about the devolution of policing and justice matters. Thus, a response from you would enable the Committee to outline, in its report, "the preparations that the Assembly has made, and intends to make ..." in relation to how any new department would fit into the current departmental structure in the context of recommendations on the appointment of a Minister, or Ministers, who might assume responsibility for policing and justice matters.

Of course, you will also recall that the Assembly and Executive Review Committee has a wider interest in the proposed Efficiency Review Panel. We have already made representations to you about the need to consult the Committee about the terms of reference proposed for the Panel, its membership and remit. The Committee asked me to remind you of that interest and to request that you would agree to meet a delegation from the Committee, comprising representatives of the four main parties, so that you can update us on developments.

Public Prosecution Service

As you may know, the Committee heard oral evidence from the Secretary of State on 3 October. As a result of that oral evidence session, the Committee wrote to the NIO to seek clarification on a range of issues. In a subsequent response, the NIO states that, in circumstances where policing and justice matters might be transferred, it would be a matter for the Executive to consider which department would assume responsibility for the Public Prosecution Service – on the basis that it would not fall to any new Department of Policing and Justice. Again, the Committee would welcome a response from you which would describe the preparations the Executive has undertaken, or intends to make, in this regard.

Of course, it remains the case that the Committee would welcome any other views you might wish to express in relation to the devolution of policing and justice matters.

I look forward to hearing from you soon.

Rt Hon Jeffrey Donaldson MP

Chairperson
Assembly and Executive Review Committee

Chairperson's letter of 20 November 2007



Rt Hon Jeffrey Donaldson MP
Chairperson Assembly and
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20 November 2007

Rt Hon Dr Paisley MP and Mr McGuinness MP
OFMdFM
Stormont Castle
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Dear First Minister and deputy First Minister

Inquiry into the devolution of policing and justice matters

At the last meeting of the Committee on 20 November, I was directed to write to you to express the Committee's disappointment at the fact that there has not been a reply to the letter that it sent to you on 23 October. (I have attached a copy of that letter).

As stated previously, the Committee has identified three issues which it considers you could usefully provide information on as follows:

(1) The Attorney General

(2) The number of Ministers/Departments

(3) The Public Prosecution Service

The Committee agreed that for it to continue its discussions into the devolution of policing and justice matters, it needs a response from your Office on the above issues.

With this in mind, and the tight deadline for the Committee to report to the Assembly, the Committee would appreciate at least an initial response with information on where OFMdFM is on each of these issues, in time for consideration at its next meeting on 27 November.

Of course, it remains the case that the Committee would welcome any other views you might wish to express in relation to the devolution of policing and justice matters.

I look forward to hearing from you soon.

Rt Hon Jeffrey Donaldson MP
Chairperson, Assembly and Executive Review Committee

OFMdFM letter of 14 December 2007



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Our Ref: COR/534/2007

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14 December 2007

Dear Mr. Donnelly

INQUIRY INTO THE DEVOLUTION OF POLICING AND JUSTICE MATTERS


Your letters of 23 October and 20 November refer.

We are appreciative of the invitation from the Committee for us to provide input to its inquiry into devolution of policing and justice. However, the subject of the inquiry remains essentially a matter for party political engagement and, in our view, is not one on which we, as holders of Ministerial office, should appropriately offer views at this stage in the Committee's work. No doubt, in our party political capacity we will be happy to put forward our respective party's positions.

We are familiar with the various legislative provisions, set out mainly in the Justice (Northern Ireland) Act 2002, and how they potentially relate to OFMDFM, particularly in relation to responsibility for making judicial appointments and the establishment of the office of Attorney General of Northern Ireland.

In addition, we are aware of suggestions that OFMDFM could have a future role in funding the Public Prosecution Service, but we have not come to a view on this matter.

We look forward to the publication of the Committee's report and the Assembly's consideration of it in due course.

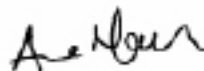


Members will be aware that 'Building a Better Future', the draft Programme for Government 2008-2011, contains a longer-term commitment to review the overall number of government departments by 2011. We are currently considering the potential mechanisms for taking forward such a review and we will be happy to meet with representatives of the Committee to discuss these proposals at an appropriate stage.

Yours sincerely



THE RT HON DR I R K PAISLEY MP MLA
First Minister



MARTIN McGUINNESS MP MLA
deputy First Minister

APPROVED BY THE MINISTERS
AND SIGNED IN THEIR ABSENCE

Correspondence of 19 December 2007 from Mr Stephen Graham



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Gail McKibbin
OFMDFM
Stormont Castle
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BELFAST

19 December 2007

Dear Gail

Inquiry into the devolution of policing and justice matters

As I explained to you in conversation yesterday, the Assembly and Executive Review Committee considered the letter of 14

December 2007 from the First Minister and the deputy First Minister. As a result of those deliberations, I was directed to invite OFMDFM officials to attend the Committee meeting scheduled for 8 January 2008 so that a number of issues might be discussed.

I should explain that the Chief Constable is due to appear before the Committee at 11.15 on 8 January, in the Senate Chamber, and it would be helpful if officials from OFMDFM were to make themselves available from 12 midday. Officials from the NIO are also scheduled to appear before the Committee immediately after the proposed session with OFMDFM officials. The proceedings will be conducted in public.

Please contact me if you have any queries.

Yours sincerely

Stephen J Graham
Committee Clerk

Correspondence of 7 January 2008 from Gail McKibbin



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7 January 2008

Dear Stephen

Inquiry into the Devolution of Policing and Justice Matters

Your letter of 19 December refers.

We have now had an opportunity to consider, in conjunction with our Ministers, the invitation to attend the Committee meeting scheduled for tomorrow to discuss issues in relation to the Committee's inquiry into devolution of policing and justice.

The Ministers remain of the view that this is a matter for party political engagement and agreement, and, as you know, they consider it would be inappropriate for them, as holders of Ministerial office, to offer views to the inquiry at this stage. On this basis, the Ministers are agreed that it would also be inappropriate for officials to attend the Committee to discuss what are undetermined policy matters. Therefore, we must decline the Committee's invitation to appear at this time.

We can advise that, at this stage, we see nothing in the legislative provisions relating to our Department which could hinder the implementation of an agreed outcome on the devolution of justice and policing responsibilities.

Further details on the possible implications for OFMDFM of devolution of justice and policing and the work currently under way to identify what preparations might appropriately be made to prepare for such devolution are set out in the attached submission. This work is being taken forward at official level.

We hope the Committee finds this submission helpful to its inquiry, and officials would be happy to respond in writing to any queries arising in relation to it.

Yours Sincerely

Gail McKibbin

Gail McKibbin
Departmental Assembly Liaison Officer

The Devolution of Justice and Policing

Ministerial Position

1. The First Minister and deputy First Minister consider that the issues raised by the inquiry of Assembly and Executive Review Committee (AERC) into devolution of policing and justice powers are matters for political engagement within the AERC and subsequently the Assembly and not ones on which they, as holders of Ministerial Office, can or should appropriately offer views.

2. They recognise that any agreement on the devolution of justice and policing will have a number of significant implications for the role and responsibilities of the Office of the First Minister and deputy First Minister. Therefore, in the light of the timescale for

the submission of the Assembly's report to the Secretary of State, it is prudent that consideration should be given to the scope and nature of these implications.

3. This paper, which is presented by OFMDFM as evidence to the Assembly and Executive Review Committee, therefore describes the possible implications for the Office of the First Minister and Deputy First Minister of the devolution of justice and policing and the work currently under way to identify what preparations can appropriately be made in anticipation of such devolution. This work, is being taken forward at official level.

4. In its discussion paper on Devolving Policing and Justice in Northern Ireland of February 2006, the Northern Ireland Office sets out a number of proposals for additional changes in responsibilities and organisation consequent on devolution. These, as they may affect OFMDFM, are recorded in the following paragraphs. It is emphasised that while these proposals provide a useful basis for identifying planning issues and appropriate preparatory work, they have yet to be considered by Ministers and agreed by the Executive.

Implications for OFMDFM of Devolution of Policing and Justice

5. The devolution of justice and policing will place a number of new statutory responsibilities on OFMDFM in relation to appointments to certain legal and judicial offices. In most cases this will involve taking on roles currently filled by the Northern Ireland Court Service. OFMDFM will also have responsibility for bringing forward legislation for the creation of a Department with justice and policing responsibilities and for any other agreed machinery of government changes.

6. The main features of the potential range of post-devolution responsibilities, and how they affect OFMDFM, are set out below.

Attorney General (AGNI)

7. With the devolution of justice responsibilities, certain provisions of the Justice (Northern Ireland) Act 2002 would be activated, and these include sections 22-26 relating to the new post of Attorney General for Northern Ireland (AGNI). Section 22 of the Act states that the First Minister and Deputy First Minister must appoint a person to be AGNI and stipulates certain legal qualifications required for the post. It places funding and support responsibilities on OFMDFM and makes clear that the functions of the AGNI shall be exercised independently of any other person. Other sections of the Act prescribe terms of appointment, reporting arrangements and the procedures to be followed for removal from office. Section 25 allows for the AGNI to participate in proceedings of the NI Assembly to the extent permitted by its Standing Orders but does not provide for voting rights.

8. The Attorney General for England and Wales (AGEW) will retain her powers, including those in respect of the Public Prosecution Service, until such time as section 22.1 of the Act is activated. OFMDFM would assume responsibility for funding the office of AGNI as well as any staff he or she may appoint with the approval of the First Minister and deputy First Minister as to numbers, salaries and conditions of service.

Public Prosecution Service (PPS)

9. The Public Prosecution Service was created in 2005 and, while funded by NIO, is staffed by Northern Ireland Civil Servants on secondment. It is headed by:

- the Director of Public Prosecutions for Northern Ireland; and
- the Deputy Director of Public Prosecutions for Northern Ireland,

10. After devolution of justice responsibilities, it would be for AGNI to appoint a new Director or Deputy Director when a post falls vacant. The current relationship between the AGNI and the Director (superintendence and direction) would change significantly under devolution and the Director would exercise his functions largely independently of AGNI.

11. The relevant section of the Justice Act 2002 places responsibility on the Secretary of State for funding the Public Prosecution Service, approving salaries, terms and conditions and staffing etc. NIO has indicated its wish to agree a concordat with the NI Executive setting out the core principles of PPS independence and impartiality. NIO has also proposed that in the interests of securing that independence, its current responsibilities for PPS should transfer to OFMDFM by an Order under Section 86 of the Northern Ireland Act at the time of devolution.

Northern Ireland Judicial Appointments Commission

12. It was originally intended that the Northern Ireland Judicial Appointments Commission (NIJAC) would come into being on the devolution of justice and the relevant legislation (Justice (NI) Act 2002) was therefore drafted to place responsibilities on the First Minister and deputy First Minister in respect of the Commission. This was revised by the Justice (NI) Act 2004 which transferred these responsibilities to the Lord Chancellor on the actual establishment of the Commission. It is proposed in the NIO Discussion Paper of February 2006 that these would be transferred back to the First Minister and deputy First Minister on the devolution of justice.

13. These responsibilities are:

- appointment of members of NIJAC, other than the Lord Chief Justice (LCJ), who will be the Chair ex officio. Most of the members are to be nominated by the LCJ (judicial members) or the Bar Council or Law Society (legal profession members);
- approval of allowances and salaries for “non-judicial” members;
- approval of NIJAC staff complement, salaries and terms of employment; and,
- determining financial accountability arrangements for NIJAC.

Judicial Appointments Ombudsman

14. A Northern Ireland Judicial Appointments Ombudsman was appointed in 2006 by HM The Queen, on the recommendation of the Lord Chancellor, consequent on provisions in the Constitutional Reform Act 2005, amending the Justice(NI) Act 2002. The Lord Chancellor pays the Ombudsman’s remuneration, fees and expenses. The role of the Ombudsman is to investigate complaints of

maladministration or unfairness during the judicial appointments process. The NIO discussion paper of 2006 proposes that on devolution of justice the Lord Chancellor's functions in relation to the Ombudsman would devolve to the First Minister and deputy First Minister. However, it is now recognised that the independent position of the Ombudsman would be enhanced if appointment and sponsor responsibility of the office was separated from the OFMDFM's potential responsibilities in relation to the Northern Ireland Judicial Appointments Commission. The current planning assumption, therefore, is that support responsibilities in relation to the Ombudsman should be discharged by the Department of Justice.

Appointment of the Lord Chief Justice and Lords Justices of Appeal

15. The First Minister and deputy First Minister would have a role in the process for appointing the Lord Chief Justice and Lords Justices of Appeal.

16. The First Minister and deputy First Minister would be consulted by the Prime Minister on appointments to these offices. The Prime Minister must consider their response before in turn making a recommendation to the HM The Queen. Advice on the procedure to be adopted in formulating a response will be provided to the First Minister and deputy First Minister by NIJAC.

Other Judicial Appointments

17. The First Minister and deputy First Minister and deputy First Minister, acting jointly, would also have a role in the process of appointment to a very wide range of other judicial offices. The most important of these will be judges of the High Court, where they will make a recommendation to HM The Queen to fill a vacancy. However, they can only recommend a person selected by NIJAC. For other listed judicial offices (including temporary High Court judges, County Court judges, Resident Magistrates, Coroners, Social Security Commissioners, Presidents of Tribunals and Lay Magistrates) the current responsibilities of the Lord Chancellor would transfer to the First Minister and deputy First Minister. Only persons selected by NIJAC may be appointed, but there is a limited power for the First Minister and deputy First Minister to delay or decline a selection or recommendation from the Commission.

Other Implications for OFMDFM

18. It is also likely that a Department of Justice would assume statutory responsibility for the various Tribunals which are currently sponsored individually by NI Departments. In the absence of devolution it had been envisaged that operational responsibility would transfer to the existing NI Courts Service. The implications for OFMDFM are that, subject to the agreement of the Executive:

- omnibus cross-departmental legislation will need to be prepared to transfer statutory responsibility for all tribunals to a Department with justice responsibilities;
- responsibility for the Planning and Water Appeals Commissions, currently held by OFMDFM, would therefore transfer to that Department;
- any other responsibilities in relation to the Parking Adjudication, Rates and Charities Tribunals conferred on OFMDFM by the Justice Acts 2002 and 2004 would also transfer; and

- responsibility for any judicial appointments related to tribunals would remain with FM/dFM.

Planning

19. As described above the implications for OFMDFM are significant: the burden of preparation within the devolved administration will, in practical terms, fall largely on OFMDFM and DFP, working in co-operation with NIO. There are two main areas in which OFMDFM will continue to be involved over the coming months in creating an administrative and legal basis for the potential devolution of justice and policing in May 2008 or thereafter. These are:-

- Co-operation with NIO, NI Court Service, DFP and others on Programme and Project Boards overseeing practical preparations for the devolution of justice and policing.
- Planning for the acquisition by OFMDFM of additional responsibilities for funding and appointments in the legal and judicial spheres.

20. A Devolved Administration Board for the Devolution of Policing and Justice has been established, under the Chairmanship of the Head of the Northern Ireland Civil Service, to bring together relevant NI Departmental interests to identify and take forward all matters necessary to ensure full administrative preparedness within the NICS for the devolution of policing and justice. Within OFMDFM, a Project Board has been established specifically to examine the implications of devolution for OFMDFM and to plan for the acquisition and exercise of the responsibilities described earlier in this paper.

21. NIO has established machinery, in the form of an overarching Sponsoring Group with a supporting Programme Board and Stakeholder Group, to take forward a wide variety of workstreams and projects, the overall aim of which is to ensure that a fully operational Department with justice and policing responsibilities can be brought into being to coincide with the devolution of those functions. OFMDFM is represented appropriately in this machinery.

OFMDFM
January 2008

Correspondence of 9 January 2008 from Mr Stephen Graham



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Gail McKibbin
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BELFAST

9 January 2008

Dear Gail

Inquiry into the devolution of policing and justice matters

We spoke on the telephone yesterday and I am writing to confirm that, at its meeting on 8 January 2008, the Assembly and Executive Review Committee considered your letter of 7 January 2008 and decided that I should seek to arrange an urgent meeting between the Chairperson and Deputy Chairperson of the Committee, and the Special Advisers to the First Minister and the deputy First Minister.

It was suggested that a meeting on Monday, next, 14 January, in Parliament Buildings, would allow the Chairperson and Deputy Chairperson to report outcomes to the Committee at its meeting scheduled for Tuesday, 15 January. You have indicated that 11.30 on Monday might be possible (presuming the respective Assembly Group meetings have concluded by then). I can confirm that this would suit Jeffrey Donaldson and Raymond McCartney. I am content for you to identify a suitable venue but, if you need assistance on that front, please let me know.

As I explained, the purpose of the discussion is to obtain clarity on matters relating to the appointment of an Attorney General (and other related judicial appointments), the location of the Public Prosecution Service in any particular Northern Ireland Government Department and how a Minister, or Ministers, for Policing and Justice might be accommodated in the Northern Ireland Executive. In particular, the Committee has asked that the discussions explore the extent to which any, and all, of these matters are matters to be resolved, partly, or wholly, by the First Minister and deputy First Minister, and/or the Northern Ireland Executive, and/or, by political negotiation amongst the political parties and/or within the Assembly and Executive Review Committee. The

Committee considers it is essential to secure this clarity as a matter of urgency in order to allow it to fulfil its obligation to report to the Assembly by 29 February 2008.

Please contact me if you have any queries.

Yours sincerely

Stephen J Graham
Committee Clerk

Correspondence of 15 January 2008 from Mr Stephen Graham



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15 January 2008

Dear Gail

Inquiry into the devolution of policing and justice matters

Further to the recent exchange of letters which resulted in the meeting between the Chairperson and deputy Chairperson of the Committee and the Special Advisers to the First Minister and the deputy First Minister on Monday 14 January, and following on from the verbal progress report provided by NIO officials at the Committee's evidence session on 8 January, I am writing to extend an invitation to the Chairperson of the Devolved Administration Board to appear before the Committee to report on the administrative progress that the NI Departments are making in anticipation of the devolution of policing and justice matters. The Committee is interested to hear from the Chairperson - as referred to at paragraph 20 of the paper attached to your letter of 7 January 2008 - about the degree to which the NICS is prepared for the devolution of policing and justice.

The Committee also wishes to explore with the Chairperson what consideration has been given to the post of Attorney General for Northern Ireland, including whether it would be a full, or part-time position, and what the duties and responsibilities of the post would be.

As you know, the Committee is coming towards the end of its Inquiry and is required to report to the Assembly by 29 February. Therefore, it would be extremely helpful if the Chairperson were able to appear before the Committee next Tuesday morning, 22 January. The Committee meeting is due to begin at 11.00 hrs in Room 144 and, so, if this does prove convenient, perhaps you would call me on 90521784 so that we can arrange a precise time and discuss any other related arrangements.

Yours sincerely

Stephen J Graham
Committee Clerk

Appendix 7

Research Papers

Briefing Note:

The Role of the Serious Organised Crime Agency (SOCA) and its Relationship with the Northern Ireland Office

Northern Ireland Assembly – Research and Library Services

Equality, Culture and Justice Team

20 September 2007

Introduction

This paper was prepared for the Assembly and Executive Review Committee with the aim of providing information on the role of the Serious Organised Crime Agency (SOCA). It includes information on the background to SOCA, the legislative basis and its functions, including how they pertain to Northern Ireland.

1.0 Background

SOCA was launched by the Prime Minister on Monday 3 April 2006. The Number 10 press release announced SOCA as^[1]:

A new crime-fighting agency will target the biggest criminals using a “sophisticated 21st century approach”, Tony Blair said today.

Soca - the Serious Organised Crime Agency - will focus on the so-called “Mr Bigs” who make fortunes from drugs, human trafficking, major fraud and counterfeiting.

SOCA was formed by amalgamating a number of existing organisations. The organisations that became SOCA were; the National Crime Squad (NCS), the National Criminal Intelligence Service (NCIS), that part of Her Majesty's Revenue and Customs (HMRC) dealing with drug trafficking and associated criminal finance, and a part of UK Immigration dealing with organised immigration crime (UKIS)^[2].

SOCA is led by a Board, the chair of which is appointed by the Home Office. The chair manages SOCA's relationship with Government and Ministers. SOCA was established with a budget of more than £400 million a year and with a complement of 4000^[3].

In January 2007, it was announced by the Home Office that SOCA would subsume the Assets Recovery Agency (ARA) in Northern Ireland^[4].

2.0 Legislative Basis

The original legislative basis for SOCA comes from the Proceeds of Crime Act 2002 (PoCA 2002). The Proceeds of Crime Act 2002 (PoCA 2002) created a specific offence of money laundering, set up an Assets Recovery Agency whose job is to confiscate the profits of crime, and made it unlawful for anyone working in banks, building societies and bureaux de change not to report suspicious transactions^[5].

The Agency itself was set up under the Serious Organised Crime and Police Act 2005, and was given four additional powers regarding:

1. Queen's Evidence,
2. Financial Reporting Orders,
3. Disclosure Notices and
4. the creation of officers with combined powers.

Details of these new powers are in Table 1 (Appended).

3.0 The role and functions of SOCA

SOCA is an Executive Non-Departmental Public Body sponsored by, but operationally independent from, the Home Office. It is intelligence-led and has law enforcement powers and harm reduction responsibilities. Harm in this context is the damage caused to people and communities by serious organised crime.

In its 2006/2007 Annual Report, SOCA revealed that during 2006/07 it had received £442m from the Home Office, HMRC, the Northern Ireland Office and the Scottish Executive and employed 4,400 full-time staff[\[6\]](#).

The functions of SOCA are detailed in full in the Serious Organised Crime and Police Act 2005. However they are paraphrased in the 2007/2008 SOCA Annual Plan[\[7\]](#).

They are to prevent and detect serious organised crime, to contribute to its reduction in other ways and the mitigation of its consequences, and to gather, store, analyse and disseminate information on crime. In summary, as explained in the 2004 White Paper "One Step Ahead", SOCA has been tasked with making an impact on serious organized crime that affects the UK so that the harm that it causes is reduced.

Priorities for SOCA

In June 2005, the Home Secretary set out the Government's priorities for SOCA's first three years and explained how its performance would be judged. The main points are that[\[8\]](#):

- SOCA should devote a higher proportion of its resources and activity to intelligence work than the agencies that it replaced;

- Class A drugs and organized immigration crime, in that order, should be its top priorities;
- effort should continue to be devoted also to the other organised crime
- threats identified, including fraud against individuals and the private
- sector, hi-tech crime, counterfeiting, the use of firearms and serious
- robbery; and
- emphasis should be placed on recovering the proceeds of crime.

The SOCA Board has subsequently created 5 strategic priorities each with a number of related actions, measures and milestones. The 5 priorities are [\[9\]](#):

1. To build knowledge and understanding of serious organised crime, the harm it causes, and of the effectiveness of different responses.
2. To increase the amount of criminal assets recovered and increase the proportion of cases in which the proceeds of crime are pursued.
3. To increase the risk to serious organised criminals operating in the UK, through proven investigation capabilities and in new ways.
4. To collaborate with partners in the UK and internationally to maximise efforts to reduce harm.
5. To provide agreed levels of high quality support to SOCA's operational partners and, as appropriate, seek their support in return.

SOCA has also determined that SOCA should aim to apportion its efforts to the main sectors of its operation. They are [\[10\]](#):

- drugs trafficking, primarily Class A - 40%
- organised immigration crime - 25%
- individual & private sector fraud - 10%
- other organised crime - 15%
- supporting law enforcement partners – 10%

SOCA and the Assets Recovery Agency (ARA)

On 16th January 2007, the UK Government introduced the Serious Crime Bill to Westminster, setting out Government proposals to

merge the operational elements of the Assets Recovery Agency (ARA) with SOCA. Subject to the passing of the necessary legislation, the merger provisions are likely to come into force from April 2008^[11]. Until then ARA will continue to operate as before and use its powers to the full in proceeding to complete existing cases and adopt new cases for future action.

SOCA's 2007/2008 Annual Plan points to the absorption of the ARA^[12]:

While the initiative for this came from Ministers, we understand the rationale and believe that in time there will be advantages to asset recovery and work against organised crime more generally from this change. We are determined to maintain and enhance the work that ARA has begun, including the important and distinct effort in Northern Ireland.

To provide an effective and coherent response to organised crime threats, SOCA has agreed to work in partnership with the agencies in Scotland and Northern Ireland^[13].

In this context, SOCA:

- provides intelligence support to law enforcement agencies in Scotland and Northern Ireland;
- conducts a range of intervention activity, aimed at making life harder for organised criminals throughout the UK, in close co-operation with the relevant authorities where a geographical link outside England and Wales is identified;
- runs enforcement operations in Scotland or Northern Ireland working with the Scottish Crime and Drug Enforcement Agency (SCDEA), Police Service of Northern Ireland (PSNI) and other existing agencies there and in support of their efforts; and
- facilitates international law enforcement assistance to agencies in Scotland and Northern Ireland.

4.0 SOCA's relationship with the Northern Ireland Office

Given that SOCA is an Executive Non-Departmental Public Body, operationally independent from the Home Office, it is also operationally independent from NIO. SOCA plans its own priorities, including how it exercises its functions. SOCA's Annual Plan includes specific reference as to how it will exercise its functions in Northern Ireland.

In Northern Ireland SOCA and the other law enforcement agencies have come together to form the Organised Crime Taskforce (OCTF) to tackle organized crime. SOCA is not required by the Serious Organised Crime and Police Act 2005 to be a member of the OCTF, but it has agreed to work in partnership with law enforcement agencies in Northern Ireland. The OCTF concentrates its efforts on those criminal gangs in Northern Ireland that are causing the most harm^[14].

The principal threats in Northern Ireland from organised crime during 2007/08 are likely to be armed robbery, drugs, excise and tax frauds (including oils), extortion, immigration, intellectual property crime and money laundering. The work of ARA in Northern Ireland has been particularly important in this context. Accordingly SOCA has agreed to maintain the level and focus of asset recovery work in the Northern Ireland going forward, and to ensure that local circumstances are taken into account in its approach

to former ARA work undertaken there.

The Role of SOCA if Policing and Justice matters are devolved

If, in the future, Policing and Justice matters are devolved to the Northern Ireland Assembly, the Northern Ireland Office (NIO) have indicated that SOCA "will consult with Northern Ireland Ministers, where appropriate, instead of the Secretary of State" [\[15\]](#).

The NIO have stated that the situation in Northern Ireland would be similar to the situation in Scotland, if justice matters are devolved. In Scotland the Home Secretary is [\[16\]](#):

obliged to consult with the Scottish Ministers in a range of matters governing SOCA, including the setting of strategic priorities, codes of practice, action plans and specific activities in Scotland. Scottish Ministers also have direct functions in directed arrangements or designation of powers to SOCA staff.

The NIO point out that the Northern Ireland Policing Board will not have oversight of SOCA, but that the Northern Ireland Police Ombusman will have jurisdiction over SOCA officers [\[17\]](#).

SOCA Briefing - 20 September 2007

Appendix A:

New powers given to SOCA under the Serious Organised Crime and Police Act 2005 [\[18\]](#)

1 Queen's Evidence

Prosecutors will now be able to strike deals with suspects within a statutory footing, offering either immunity from prosecution or reduction in sentence in return for co-operation. This will provide a strong incentive for those further down the 'food chain' to give evidence against the most powerful heads of organised criminal networks.

It is hoped this will lead to the arrest and imprisonment of more senior figures which in turn will help to make the UK a more difficult place to do business. But it will also help to breed uncertainty inside criminal organisations, whilst maintaining the essential checks and balances to prevent potential miscarriages of justice

2 Financial reporting orders

Under the old rules, criminals could continue with their businesses either in prison or once they got out because their finances

were not transparent.

On conviction, a court can now decide to place an order on a criminal. This means they are obliged to report on their financial affairs including specified documents with each report. This allows the authorities to check the criminal has no illicit sources of income. Including false or misleading information is an offence resulting in imprisonment of up to a year or a fine or both. These orders can last up to 20 years.

3 Disclosure notices

Before SOCA, those suspected of organised crime were entitled to remain silent, making it tricky to get sufficient evidence for cases, particularly in complex cases.

The Prosecutor will be able to authorise police or SOCA to serve a notice on a suspect that requires them to answer questions, provide information and produce documents. If they can't produce the documents required, they may be obliged to say where they are. If a suspect fails to comply, they can be imprisoned for up to a year or fined or both. In effect this limits the right to silence - although information obtained in this way cannot be used in evidence in a criminal prosecution against the person who gives it.

4 Law enforcement officers with multiple powers

Operations used to be complex and time-consuming because many different categories of officer were needed - for example, police officers could not deport people.

Once officers are trained, they will now have a full set of powers. This will allow SOCA to deploy teams that will be far more flexible, and speed up the time to deal with suspects.

[1] <http://www.number10.gov.uk/output/page9274.asp>

[2] <http://www.soca.gov.uk/aboutUs/index.html>

[3] <http://www.number10.gov.uk/output/Page9273.asp>

[4] Serious Organised Crime Agency Annual Plan 2007/2008, Serious Organised Crime Agency, The Stationary Office.

[5] <http://news.bbc.co.uk/1/hi/uk/2150798.stm>

[6] Serious Organised Crime Agency Annual Plan 2007/2008, Serious Organised Crime Agency, The Stationary Office

[7] Ibid. p.7

[8] <http://www.soca.gov.uk/downloads/annualPlan.pdf>

[9] Serious Organised Crime Agency Annual Plan 2007/2008, Serious Organised Crime Agency, The Stationary Office

[10] http://www.soca.gov.uk/assessPublications/downloads/SOCAAnnualPlan2007_8.pdf

[11] <http://www.assetsrecovery.gov.uk/>

[12] Serious Organised Crime Agency Annual Plan 2007/2008, Serious Organised Crime Agency, The Stationary Office

[13] Ibid.

[14] Serious Organised Crime Agency Annual Plan 2007/2008, Serious Organised Crime Agency, The Stationary Office

[15] Devolving Policing and Justice in Northern Ireland: A Discussion Paper, February 2006, Northern Ireland Office

[16] Letter by NIO to Assembly and Executive Review Committee, July 2007

[17] Ibid para 9

[18] <http://www.number10.gov.uk/output/Page9273.asp>

Briefing Paper: The Northern Ireland Court Service 3 October 2007

Introduction

This briefing is prepared for Members of the Executive Review Committee to facilitate their understanding of the Northern Ireland (NI) Court Service, in view of the possible devolution of Policing and Justice to NI.

Section 1.0 of this briefing provides the background information on the NI Court Service outlining the basic information, for example, the court structure, organisational structure of the NI Court Service and recent developments.

For comparative purposes, sections 2.0 and 3.0, respectively concern the court services in Scotland and the Republic of Ireland. Each section sets out information relating to the court structure, organisations structure and a commentary on recent developments, where appropriate.

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

Section 1.0 - The Northern Ireland (Ni) Court Service

This section outlines the following:

1.1 Legislative basis of NI Court Service;

1.2 Role of the NI Court Service;

1.3 Accountability of NI Court Service;

1.4 Interaction of NI Court Service with Public;

1.5 Court Structure within NI Court Service;

1.6 Organisational Structure of NI Court Service;

1.7 Recent Developments; and,

1.8 Comments

1.1 Legislative basis of the NI Court Service

The legislation underpinning the NI Court Service is the Judicature (Northern Ireland) Act 1978. [\[1\]](#) This legislation established the NI Court Service "to carry out the administration of court business." [\[2\]](#) It is an independent body, separate from the NI Civil Service. [\[3\]](#)

1.2 Role of the NI Court Service

The NI Court Service in carrying out its administrative functions has a number of responsibilities, which are listed as follows:[\[4\]](#)

- To facilitate the work of the courts;
- To give effect to judgments;
- To advise the Lord Chancellor on policy matters and provide legislative support;
- To support the Lord Chancellor in carrying out his responsibilities.

The Court Service also has a number of strategic aims set out in their Corporate Plan 2005-2008,[\[5\]](#) which “include modernising the court service; improving access to justice and promoting confidence in the justice system”.[\[6\]](#)

1.3 Accountability of the NI Court Service

The NI Court Service is funded by the UK Parliament and is accountable to it through the Lord Chancellor.[\[7\]](#)

1.4 Interaction of the NI Court Service with the Public

The NI Court Service has a Court’s Charter which provides the public with information about what to expect when they come to court, phone a court office or write to the court.[\[8\]](#) The Court Service also has a complaints procedure, dealing with complaints about services or facilities. The complaints procedure does not deal with complaints about judicial decisions, solicitors or officials from other agencies.[\[9\]](#)

1.5 Court Structure within the NI Court Service

The court structure in NI is a hierarchical structure and consists of the House of Lords, the Court of Appeal, the High Court, County Courts, the Crown Court, Magistrates Courts, Coroners’ Court and the Enforcements of Judgements Office. For further detail on their responsibilities, see Annex 1.

1.6 Organisational Structure of the NI Court Service

The organisational structure of the NI Court Service 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.[\[10\]](#) For further detail on structure, see Annex 2.

1.7 Recent Developments

There has recently been debate on the suggested model for a Department of Ministry for Justice in devolved criminal justice arrangements.[\[11\]](#) However the scope of this paper is to consider possible arrangements regarding the NI Court Service after the devolution of Justice and Policing. The following paragraphs highlight developments to date in this area.

The UK Government supports the view that the future court service could become an executive agency of the Department of Justice, headed by a Chief Executive.[\[12\]](#) The proposed functions of this agency under devolution would include administrative support for NI Courts. However there is some ambiguity as to whether the agency would provide policy and legislative support or if these should transfer to the Department of Justice and the Government notes that this requires further consideration.[\[13\]](#)

The NI Court Service Director suggests in his oral evidence to the Assembly and Executive Review Committee on the 25th September 2005[\[14\]](#) that the Legal Aid system would be best placed in the new Justice Department.[\[15\]](#) He further states that responsibilities such as running of courts and tribunals should remain with the court service to become part of a new unified courts and tribunals' service.[\[16\]](#) In his evidence he states that new courts and tribunals service would be linked to or funded by a new justice department.[\[17\]](#)

The NI Court Service director also highlights the relationship between the new court service and justice department could take on a number of forms, and a possible form is that the Court Service could become an agency of the new department of justice.[\[18\]](#)

The Lord Chief Justice of NI has taken somewhat a different view to the proposed agency model. In his written evidence which was submitted on 30 July 2007 to the Assembly and Executive Review Committee, he recommends that the Court Service should be a non-ministerial department model such as the model in place in ROI and the proposed Scottish Court Service model.[\[19\]](#)

In his oral evidence to the Assembly and Executive Review Committee[\[20\]](#), the Lord Chief Justice suggests that there should be an independent Board which would not deal with policy matters.[\[21\]](#) The Lord Chief Justice sets out that there should be accountability measures in place such as accountability to the Executive for funding, a strategic plan produced by the Board which would be submitted to the minister for approval, a requirement that the Board would report annually to the Minister, the Board would agree with the Minister the staff numbers, grades and budget.[\[22\]](#) Finally, the Ministry of Justice would be represented on the Board.[\[23\]](#)

1.8 Comments

Having outlined some of the suggested models, there are some key points that emerge. First, it could be argued that an agency model could provide for greater efficiency and accountability as it would be more clearly and directly responsible to a Minister in the Assembly. Conversely, the non-ministerial department model preferred by the Lord Chief Justice could ensure greater independence than an agency model. However, this model would require legislation to reposition the Court Service as a non-ministerial department, which may not be practical before devolution of justice matters in NI.[\[24\]](#)

Section 2.0 - The Scottish Court Service (Scs)

This section outlines the following:

2.1 Legislative basis of the SCS;

2.2 Role of the SCS;

2.3 Accountability of the SCS;

2.4 Interaction of the SCS with the Public;

2.5 Court Structure within the SCS;

2.6 Organisational Structure of the SCS

2.7 Recommendations from the Agency Review (2005) of the Scottish Court Service;

2.8 Recent Developments.

2.1 Legislative basis of the Scottish Court Service

Ministers are responsible for the justice system in Scotland under the provisions in the Scotland Act 1998. They are answerable to the Scottish Parliament for devolved functions, including the provision of an effective court structure.

2.2 Role of the Scottish Court Service

The SCS became an Executive Agency [\[25\]](#) in 1995. It has achieved recognition as the body which delivers services to Scotland's courts. It is held accountable for its effectiveness and it is the responsibility of the Ministers.

Its aim as set out in the initial Agency Framework Document, is to: [\[26\]](#)

Help secure ready access to Justice for the people of Scotland.

The SCS provides services to users of the Supreme and Sheriff Courts by clerking courts; supporting the judiciary; creating, storing

and processing case records; fielding from public and professional user; providing technical and procedural advice; accepting payments of fines and court fees; etc. The SCS also manages and develops the court estate and maintains the court buildings and, through contractual arrangements, provides security, cleaning and catering facilities. Headquarters in Edinburgh provides a number of corporate functions including the Chief Executive's Office; IT; finance; purchasing; planning; human resources; estates; and operational policy. The Office of the Public Guardian and Accountant of Court are included within the SCS.[\[27\]](#)

As was mentioned, the aim of the SCS is to help secure ready access to Justice for the people of Scotland. To achieve this aim, the SCS has the following objectives:[\[28\]](#)

- To provide the staff and services required to meet the needs of the Judiciary and court users.
- To provide courthouses of appropriate size and quality.
- To implement and develop the Justice Charter for Scotland and the Scottish Court Service Statement of Charter Standards.
- To secure value for money and to manage the Agency's resources efficiently, effectively and with due regard to value for money.

2.3 Accountability of SCS

The Chief Executive is the administrative head of the SCS and is accountable to the Minister for Justice. The Agency is part of the Scottish Executive Justice Department, the government department responsible for reporting to the First Minister on the performance of the SCS.

2.4 Interaction of SCS with Public

The SCS has published a leaflet entitled Court Users Charter which is intended for all members of the public using the court service. Amongst other information, this Charter provides guidance on what user's can expect when they come to court, when phoning a court or when writing to a court.[\[29\]](#) The SCS also has a complaints procedure dealing with complaints regarding a member of the SCS staff.[\[30\]](#)

2.5 Court Structure within the Scottish Court Service

The SCS consists of the, Supreme Courts which are the Court of Session, the High Court of Justiciary, the Accountant of Court's Office and the Office of the Public Guardian. There are also Sheriff Courts which are divided into 6 regional Sheriffdoms.[\[31\]](#)

District Courts also make up another tier of the courts within the SCS. The administration of the District Courts is currently a local authority responsibility, however the Criminal Proceedings etc (Reform) (Scotland) Act 2007 provides for the establishment of justice of the peace courts in place of the current district courts. The SCS as an Agency is currently preparing to become responsible for the District Courts.[\[32\]](#)

2.6 Organisational Structure of Scottish Court Service.

The SCS's Headquarters consists of the Chief Executive and its secretariat plus 4 discrete Units that provide support to the Supreme and Sheriff Courts and the Accountant of Court and Public Guardian. The 4 Units are outlined below.

- Operations and Policy Unit

This Unit drives the business planning processes of the Agency. It also promotes service quality throughout the court system and liaises with the Justice Department on the operational implications of developments in criminal and civil justice policy.

- Finance and Information Technology Unit

This Unit provides advice to the courts on budget management and is responsible for financial reporting and audit issues. It is also responsible for developing and supporting new information technology initiatives in the courts and offices. FITU incorporates the Electronic Service Delivery Unit which tasked with looking at how the Agency can improve its services to customers through e-enabled processes.

- Personnel and Development Unit

This Unit provides a comprehensive personnel and development service to SCS staff including personnel management, developing training strategies and payroll processing. It develops employment policy and procedure and supports operational managers in the areas training delivery.

- Property and Services Unit

This Unit manages the estate and is engaged in a programme of rebuilding or refurbishing those courthouses in Scotland under direct SCS control. In addition, the Unit is responsible for developing Health and Safety and security.

The Management Board of the SCS currently comprises the 4 Directors of Units based in HQ and 4 operational Directors, chaired by the Chief Executive. It is responsible both for setting the strategic direction of the Agency and for managing performance towards those aims.[\[33\]](#) (Refer to Annex 3 for a diagram of the structure of the SCS).

2.7 Recommendations from the Agency Review (2005) of the Scottish Court Service

A review of the structure and governance of the SCS was established with Ministerial approval in June 2005. An important part of the Review's work was to consider whether the SCS should retain its status as an Executive Agency.[\[34\]](#)

The Review considered a spectrum of possible roles for the SCS namely: abolition; privatisation; contracting out; status as a Non-Departmental Public Body; merger with another public service and reversion to a Government Department. The arguments against these options are detailed in the Review document published by the Scottish Government. (These have not been included in this paper as they are beyond its scope).

With regard to the consideration of whether the SCS should retain its status as an Executive Agency, the Review recommended that the SCS remain an Executive Agency.[\[35\]](#) However, it is worthy to note the Review does state:

This does not mean that there is no scope for change.[\[36\]](#)

The Review makes several recommendations for change regarding for example, the SCS and the Scottish Executive Justice Department, the governance arrangements for the SCS and the relationship between the SCS and the Judiciary. With regard to the relationship between the Judiciary and the SCS, the Scottish Executive published in February 2007, proposals for a Judiciary (Scotland) Bill.[\[37\]](#) This was in response to a consultation paper published in February 2006, inviting views on proposals to improve the justice system by modernising arrangements made for the Judiciary.[\[38\]](#)

2.8 Recent Developments

As was previously mentioned, the Scottish Executive has published proposals for a Judiciary Bill, which marks an important development in the Executive's ongoing programme to reform and improve Scotland's justice system.

In February 2006 the Executive published a consultation paper inviting views on the proposals to improve Scotland's justice system by modernising the arrangements made for the judiciary, and strengthening their role in the system.[\[39\]](#) It is worthy of note that the governance of the Court Service was not discussed in the consultation paper.[\[40\]](#)

In the proposals for a Judiciary Bill published in 2007, the Scottish Executive acknowledges there were some strong views in the consultation on the link between the unification of the Judiciary and the governance of the Court Service. The Scottish Executive states in the 2007 document:[\[41\]](#)

The view was that the Lord President should not take an overall responsibility for the efficient disposal of business in all courts without having authority over the administrative support for those courts.

In response to these views the Executive has stated they have entered into more detailed discussion about how more judicial authority over the Court Service would work in practice. It is further stated that the Executive is aware proposals to change the way the Court Service is governed were not specifically consulted on and therefore would not wish to make changes without consulting on this issue properly.[\[42\]](#)

When the proposals for a Judiciary Bill were published in February 2007, discussions on the details on the governance of the Court Service were continuing. However the Scottish Executive stated that a number of features have emerged as likely to have a place in a revised governance model. They go further by welcoming thoughts on these features. [\[43\]](#) (For a more detailed outline of the possible features of a revised governance model see Appendix 4).

2.9 Comments

Having outlined the current roles and responsibilities of the SCS, some key points emerge. First, the SCS as an Executive Agency of the Justice Department has arguably allowed for greater accountability in that it is a separate entity from the Ministerial Department. The senior management can focus exclusively on setting targets for service delivery, with the flexibility which Agency status brings. For example, the Chief Executive may have greater freedom in determining the means by which those targets are achieved.

Lessons also could be learnt from the way the Scottish Executive prepared for SCS becoming an Executive Agency. Before the decision was made to make the SCS an Executive Agency, a feasibility study reviewed other possibilities. Many lessons may be learnt, for example what methodology did the Executive employ to undertake this study; and who were the consultees.

Section 3.0 - The Court Service in the Republic of Ireland (ROI)

This section outlines the following:

- 3.1 Legislative basis of the Court Service in ROI;
- 3.2 Role of the Court Service in ROI;
- 3.3 Accountability of the Court Service in ROI;
- 3.4 Interaction of ROI Court Service with the Public;
- 3.5 Court Structure within Court Service in ROI;
- 3.6 Organisational Structure of the Court Service;
- 3.7 Comments

3.1 Legislative basis of the Court Service in ROI

The legislation underpinning the Court Service in ROI is the Courts Service Act 1998.[\[44\]](#) This legislation established the Court Service in 1999, as a result of a recommendation made in reports by the Working Group on Courts Commission that “there should be established by statute as a matter of urgency an independent and permanent body to manage a unified court system”.[\[45\]](#)

3.2 Role of the Court service in ROI

The role of the Court Service in ROI includes the following:[\[46\]](#)

- Management of courts;
- Provision of support services to judiciary;
- Provision of information to public;
- Provision and maintenance of court buildings;
- Provision of facilities for court users; and
- Making proposals to Minister for Justice, Equality and Law Reform on matters of jurisdiction, business of courts and procedural matters.

3.3 Accountability of the Court Service in ROI

The Court Service in ROI is funded by the State and is accountable to the Oireachtas through the Minister for Justice, Equality and Law Reform.[\[47\]](#) It is also accountable to the Dáil Public Accounts Committee for its financial spending.[\[48\]](#) The Minister is responsible for legislation relating to the courts and is accountable to the Oireachtas for the performance of the Court Service.[\[49\]](#) The Court Service reports to the Minister on an annual basis.[\[50\]](#)

3.4 Interaction of the Court Service with the Public in ROI

The Court Service in ROI has a Customer Services Charter.[\[51\]](#) The Charter is a statement relating to how the Court Services will provide their services. The Charter is underpinned by principles such as ethics, professionalism, courtesy and equality and diversity. The Charter includes information on correspondence with Court Service by telephone or writing, physical access to the courts and a complaints procedure. The Charter outlines that they will make provisions for people who wish to conduct their business in Irish.[\[52\]](#)

3.5 Court Structure within the Court Service in ROI

The court structure within the Court Service in ROI is a hierarchical structure and includes the Supreme Court, High Court, Central Criminal Court, Court of Criminal Appeal, Circuit Court, Special Criminal Court and District Court. See Annex 6 for further details.

3.6 Organisational Structure of the Court Service in ROI

- The organisational structure of the Court Service in ROI includes;
- The Board (See Annex 7 for Board Composition): [\[53\]](#)
- Committees of the Board;
- Audit Committee;
- Head of Internal Audit;
- Chief Executive Office;
- Director of Operations, Supreme and High Courts;
- Director of Human Resources;
- Director of Finance;
- Director of Reform and Development;
- Director of Information Technology;
- Director of Corporate Services;
- Director of Operations; Circuit and District Court.

For further details on organisational structure of the Court Service in ROI, see Annex 6.

3.7 Comments

The ROI Court Service model is an independent body, with accountability mechanisms as outlined in section 2.3. As an independent body, it secures greater judicial independence which can be reflected in its Board composition, See Annex 6.

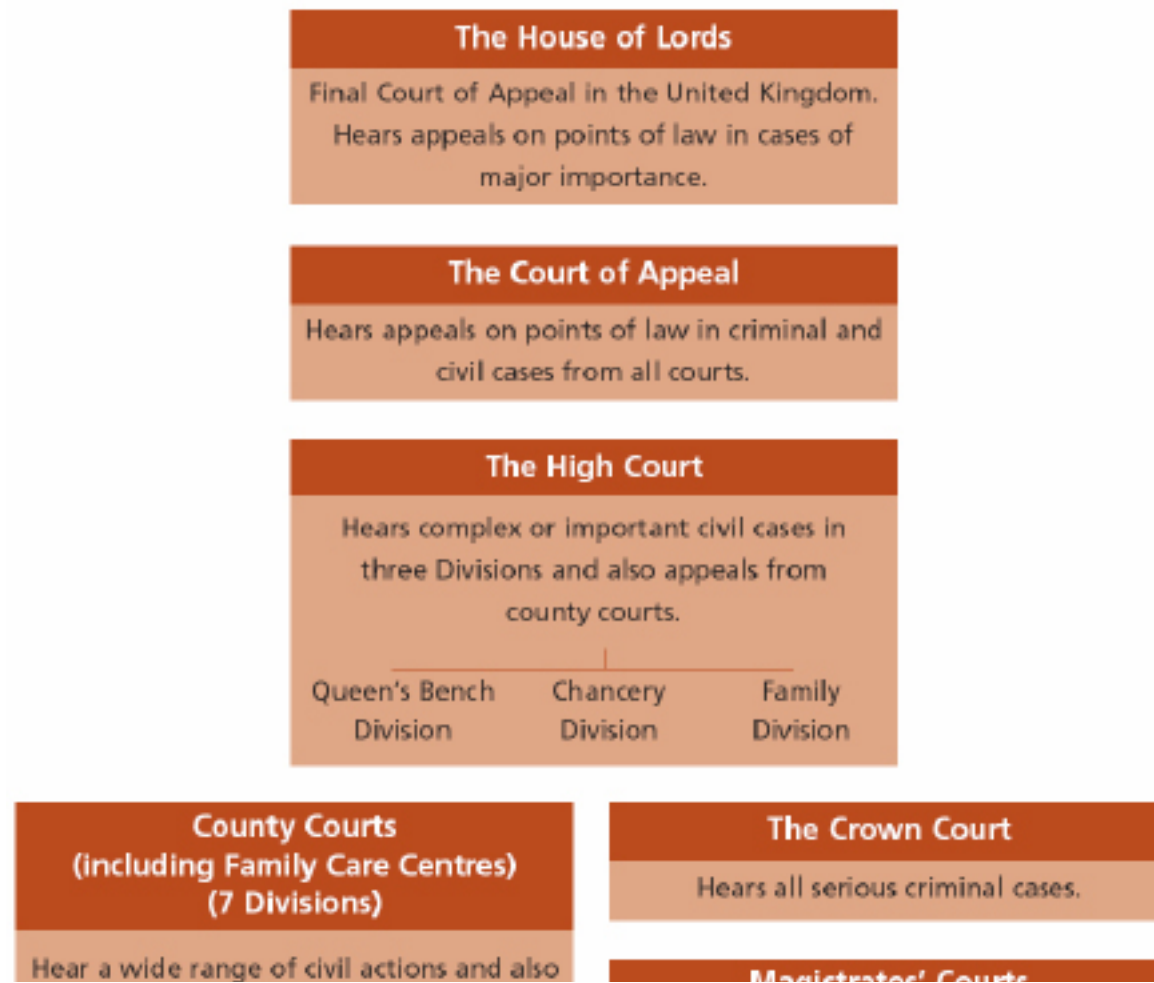
However, an observation on this Board model is that it is 'lawyer heavy' and it can be questioned as to how it can ensure greater lay and ministerial involvement.

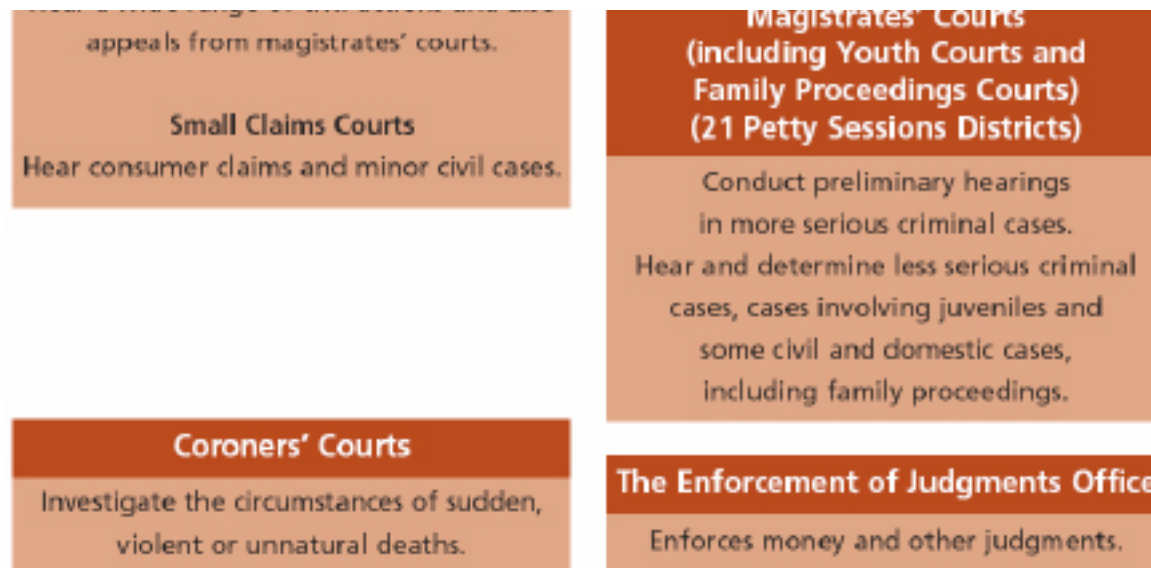
Section 4.0 - Potential Issues for Consideration

1. How could the composition of a Management Board for a future NI Court Service allow for lay involvement, ministerial involvement and judicial involvement?
2. What functions would this Management Board have?

3. How would accountability be ensured in a future NI Court Service model?
4. How would judicial independence be secured in a future NI Court Service?
5. What would be the division of responsibilities between the future NI Court Service agency/ independent body and a new Ministry of Justice for NI?
6. What can be learnt from Scotland and ROI in this area and can be reflected in any future consultation on a future NI Court Service, for example economic implications?

Annex 1 - Outline of Current Court Structure within NI Court Service [\[54\]](#)





Annex 2 - Current Organisational Structure of NI Court Service [\[55\]](#)

| | | | | | | |
|---------------------|----------------------|------------------------------|-------------------------|------------------------------|------------------------|-------------------------------|
| | | Director | | MB Secretariat | | |
| Finance Directorate | Policy & Legislation | Public Funded Legal Services | | Court Operations | | Tribunal Reform |
| Finance | Criminal | Legal Aid Policy | Business Support | Business Operations | Business Development | Tribunal Operations |
| Court Funds | Civil | LSC Sponsorship | HRU | BCC Business Manager | Operational Policy | Tribunal Business Development |
| Audit | | | Information Service | RCJ Business Manager | Service Improvement | |
| Procurement | | | Judicial Services Group | Enforcement Business Manager | Business Modernisation | |

LCJ's
Office

JAC

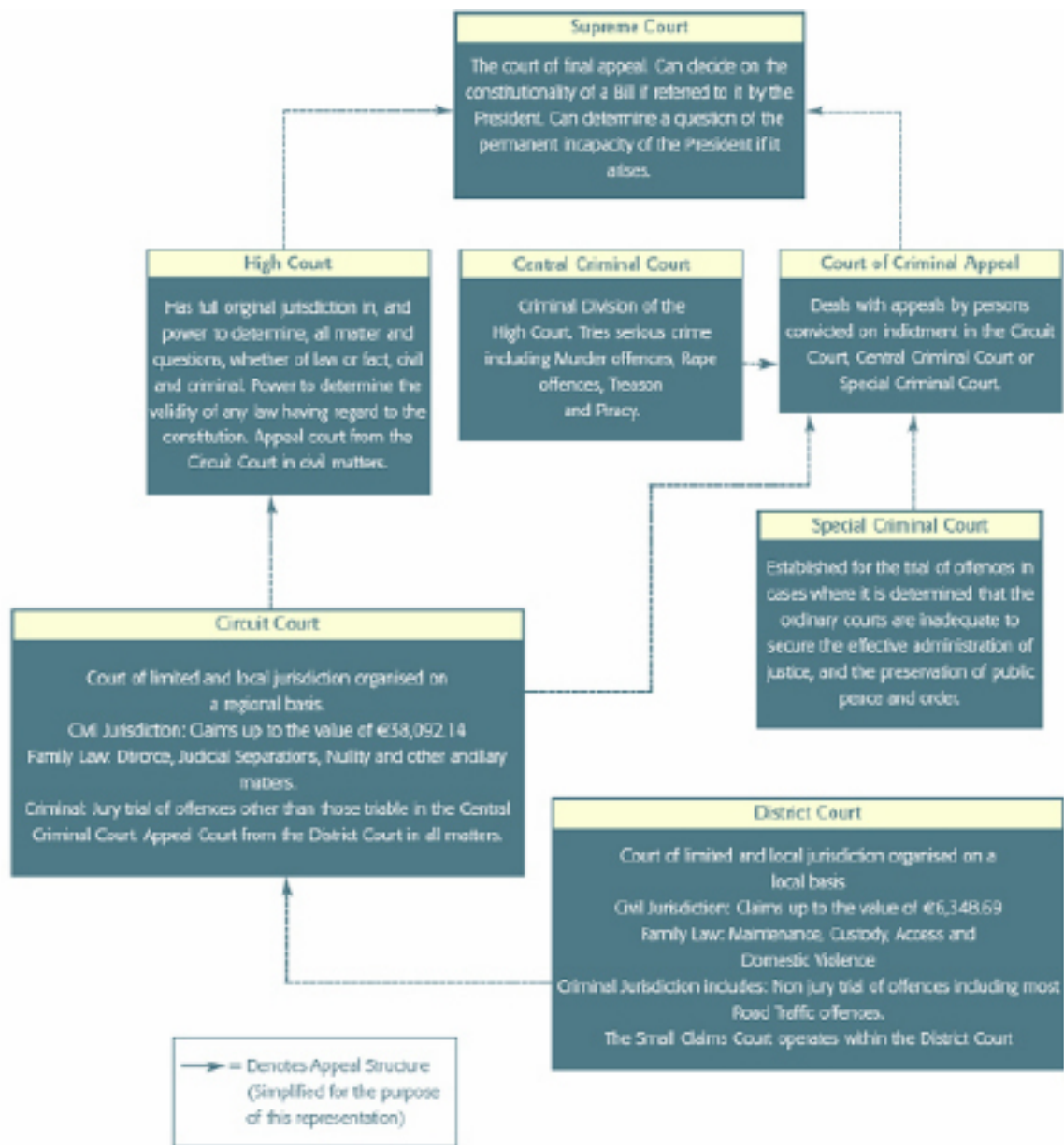
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Annex 3 - Outline of current SCS structure[\[56\]](#)

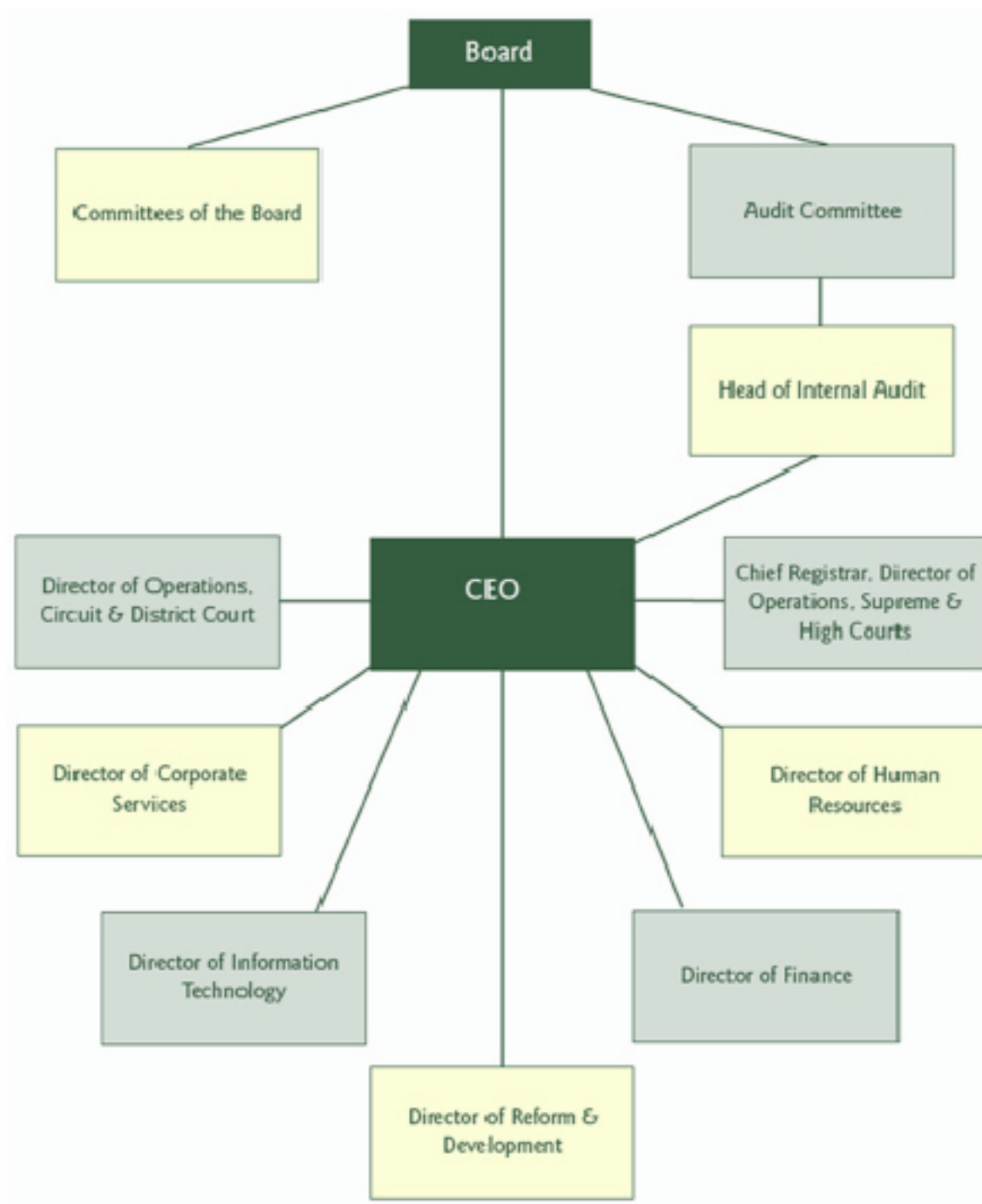
Annex 4 - Revised Governance Model

- The Scottish Court Service should be overseen by a non-executive board, chaired by the Lord President.
- Other directors on the board should have a range of different backgrounds and interests, including representatives of the different levels of the Judiciary and a nominee from the Scottish Executive Justice Department.
- The Chief Executive would report to the Court Service Board, which would set overall policy for, and monitor the performance of, the Court Service, taking account of strategic priorities agreed between the board and Ministers. Within the framework set by the board, the Chief Executive would have delegated authority to take operational decisions.
- Resources would be allocated to the Court Service by Ministers in line with agreed strategic priorities, and subject to approval by Parliament.
- The Chief Executive would be the accountability officer, in line with sections 14 and 15 of the Public Finance and Accountability (Scotland) Act 2000, and would be required to report as appropriate to the Parliament and to Ministers on the performance of the Court Service and its use of public funds.
- From time to time, the Lord President, as Chair of the Court Service Board, might also provide an account of policy set by the Board to Parliament.[\[57\]](#)

Annex 5 - Outline of Court Structure in ROI[\[58\]](#)



Annex 7 - Organisational Structure of Court Service in ROI [\[59\]](#)



Annex 8 - The Court Service Board Composition in ROI [\[60\]](#)

The Board

The Board of the Service consists of 17 people and is chaired by the Chief Justice or another judge of the Supreme Court nominated by him/her. Section 11 of the 1998 Act specifies the composition of the Board to be:

- ▶ the Chief Justice or a Supreme Court judge nominated by him/her
- ▶ the President of the High Court or a judge of that court nominated by him/her
- ▶ a judge of the Supreme Court elected by the ordinary Judiciary of that court
- ▶ a judge of the High Court elected by the ordinary Judiciary of that court
- ▶ the President of the Circuit Court or a judge of that court nominated by him/her
- ▶ a judge of the Circuit Court elected by the ordinary Judiciary of that court
- ▶ the President of the District Court or a judge of that court nominated by him/her
- ▶ a judge of the District Court elected by the ordinary Judiciary of that court
- ▶ a judge nominated by the Chief Justice in respect of expertise in a specific area of court business
- ▶ the Chief Executive
- ▶ a practising barrister nominated by the Chairman of the Council of the Bar of Ireland,
- ▶ a practising solicitor nominated by the President of the Law Society of Ireland,
- ▶ an elected staff member,
- ▶ an officer of the Minister for Justice, Equality and Law Reform,
- ▶ a nominee of the Minister representing consumers of the services provided by the courts,
- ▶ a nominee of the Irish Congress of Trade Unions and
- ▶ A nominee of the Minister, following consultation, of a person with knowledge and experience in commerce, finance or administration.

[1] <http://www.courtsni.gov.uk/en-GB/AboutUs/>

[2] http://www.courtsni.gov.uk/en-GB/AboutUs/25th+Anniversary+Year/p_ay_Judicature_Act.htm

[3] Written Submission from Northern Ireland Court Service for Assembly and Executive Review Committee, Pg 1, para 1.

[4] See Northern Ireland Court Service (2007) "A Guide for users of the Northern Ireland Court Service: About the Court Service", Pg 2.

[5] http://www.courtsni.gov.uk/NR/rdonlyres/66AB4F4E-24D2-4512-884A-B8C5F7BDDD06/0/t_tp_corporateplan20052008.pdf

[6] Ibid, Pg 14.

[8] Ibid, Pg 8.

[9] Ibid, Pg 11.

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

[11] See NIO (2006) "Devolving Policing and Justice in Northern Ireland: A Discussion Paper" and "Committee on Administration of Justice (2006) "Change and Devolution of Criminal Justice and Policing in Northern Ireland: International Lessons".

[12] See NIO (2006) "Devolving Policing and Justice in Northern Ireland: A Discussion Paper" Pg 34

[13] Id

[14] Hansard Official Report, Assembly Executive Review Committee: Inquiry into the Devolution of Policing and Justice Matters, 25 September 2007,

[15] Ibid, Pg 4.

[16] Ibid, Pg 4.

[17] Id

[18] Id

[19] Written submission to Assembly and Executive Review Committee on behalf of Lord Chief Justice Kerr, 30 July 2007, Pg 6.

[20] Opening Statement to the Assembly and Executive Review Committee: Inquiry into Devolution of Policing and Justice Matters, 2 October 2007

[21] Ibid , Pg 4

[22] Id

[23] Id

[24] Id.

[25] Executive Agencies are established by Ministers as part of Scottish Government departments (now called directorates), or as departments in their own right, to carry out a discrete area of work. Agencies are staffed by civil servants.

[26] <http://www.scotcourts.gov.uk/>

[27] Agency Review of the Scottish Court Service, Scottish Executive Justice Department (January 2006) Pg, 5. http://www.scotcourts.gov.uk/library/Agency_Review.pdf

[28] <http://www.scotcourts.gov.uk/courtsadmin/scs.asp>

[29] The Scottish Court Service "User's Charter", <http://www.scotcourts.gov.uk/courtusers/charter/charter.pdf>

[30] http://www.scotcourts.gov.uk/you_and_us/feedback.asp

[31] Scottish Court Service Corporate Plan 2005-2008, Pg 5 http://www.scotcourts.gov.uk/library/corporate/corporateplan2005_2008.pdf

[32] Agency Review of the Scottish Court Service, Scottish Executive Justice Department (January 2006) Pg, 51. http://www.scotcourts.gov.uk/library/Agency_Review.pdf

[33] Ibid, Pg 52

[34] Ibid, Pg, 1.

[35] Ibid, Pg 25

[36] Ibid, Pg 25

[37] Proposals for a Judiciary (Scotland) Bill <http://www.scotland.gov.uk/Resource/Doc/165568/0045075.pdf>

[38] Ibid, Pg 3

[39] Ibid, Pg 2

[40] Some commentators did however mention it in their responses.

[41] Proposals for a Judiciary (Scotland) Bill, Pg 23 <http://www.scotland.gov.uk/Resource/Doc/165568/0045075.pdf>

[42] Ibid, Pg 23

[43] Id.

[44] Courts Service (2006) "Sustaining the Momentum: Strategic Plan 2005-2008" , Pg 10 <http://www.courts.ie/Courts.ie/library3.nsf/>

[45] <http://www.courts.ie/courts.ie/library3.nsf/WebPageCurrentWeb/38EBFD1D6667200980256D9F0048E59E?OpenDocument&l=en>

[46] Courts Service (2006) "Sustaining the Momentum: Strategic Plan 2005-2008" Ibid, Pg 10. <http://www.courts.ie/Courts.ie/library3.nsf/>

[47] Ibid, Pg 1.

[48] <http://www.courts.ie/Courts.ie/library3.nsf/pagecurrent/39EE41AE3259894B80256DA90036F8BD?opendocument&l=en>

[49] Id.

[50] Id.

[51] Court Service (2004) "The Customer Charter".

[52] Ibid, Pg 4.

[53] The Functions of the Board are to determine policy relating to service and oversee implementation of policy by Chief Executive, see Courts Service (2006) "Sustaining the Momentum: Strategic Plan 2005-2008" Pg 31.

[54] Diagram taken from Northern Ireland Court Service (2003), "A Guide for Users of the Northern Ireland Court Service: About the Court Service", p15

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

[56] Please note this is a diagram of current arrangements and not the proposed arrangements. Diagram Taken from Scottish Court Service: Annual Report and Accounts 2004-2005.

[57] Proposals for a Judiciary (Scotland) Bill <http://www.scotland.gov.uk/Resource/Doc/165568/0045075.pdf>

[58] Diagram taken from "Sustaining the Momentum: Strategic Plan 2005-2008" ,Pg 30.

[59] Ibid, p32

[60] Ibid, Pg 31.

Supplemental Briefing Paper: Policy Responsibilities of the Court

Services in Northern Ireland, Scotland and the Republic of Ireland. 30 October 2007

Introduction

This supplemental briefing is prepared for Members of the Assembly and Executive Review Committee to facilitate their consideration of court service policy making responsibilities, in their inquiry into the devolution of policing and justice matters in Northern Ireland (NI). Section 1.0 of this supplemental briefing provides some information on current policy making responsibilities of the NI Court Service and furthermore provides some views on policy making responsibilities in future Court Service arrangements in NI, after the devolution of policing and justice. Section 2.0 provides information on policy making responsibilities in the current Scottish Court Service (SCS) model and in future governance arrangements of the SCS. Furthermore, section 2.0 also considers policy making responsibilities in the existing Court Service model in the Republic of Ireland (ROI). Section 3.0 outlines concluding comments and identifies potential key issues arising from the previous sections.

1.0 Policy making responsibilities in NI

1.1 Existing Court Service responsibilities relating to policy in Northern Ireland

The Court Service advises the Lord Chancellor on policy and legislation relating to his ministerial responsibilities in NI such as:[\[1\]](#)

- Responsibility for Legal Aid;
- Judicial and Quasi Judicial Appointments;
- Matters affecting the provision of legal service to the public;
- Deciding the statutory framework for the structure; and
- Jurisdiction and operation of the courts in NI.

1.1.2 A Discussion on responsibilities relating to policy in future Court Service arrangements.

In its discussion paper on the devolution of policing and justice matters in NI,[\[2\]](#) the NIO supported the view that the Court Service would become an executive agency of a future Department of Justice, headed by a Chief Executive.[\[3\]](#) The NIO indicated in its discussion paper that consideration would need to be given as to whether the Agency would continue to provide policy and legislative support, or whether these functions would be transferred to the core Department of Justice.[\[4\]](#)

The NIO has also indicated in their discussion paper, that responsibilities for legal aid policy and funding and the Northern Ireland

Legal Services Commission, (which are currently the responsibility of the Lord Chancellor through the Northern Ireland Court Service), will transfer to the Northern Ireland Minister for Justice.[\[5\]](#)

The Lord Chief Justice, in his oral evidence to the Assembly and Executive Review Committee suggested that the Court Service should be a body at arms length from the government under a Board chaired by the Lord Chief Justice.[\[6\]](#) The Lord Chief Justice indicated that the Board in his proposed model would not deal with policy, which would be a government responsibility. However the Lord Chief Justice states that the Board would produce a strategic plan with key objectives, outputs and strategies including on the use of resources.[\[7\]](#)

2.0 Policy making responsibilities of the SCS and Court Service in ROI

2.1 Policy making responsibilities of SCS

The Scottish Justice Department is the parent Department of the SCS and has responsibility for policy matters affecting the justice system in Scotland. A number of divisions within the Justice Department have responsibilities which bring them into contact with the SCS on a regular basis. Due to this close working relationship, one of the responsibilities of the SCS is to maintain good working relationships with the Justice Department.[\[8\]](#)

More specifically, the Director of Operational Policy and Planning who is a member of the SCS Management Board, is responsible for liaising with the Justice Department on the operational implications of legislative change.[\[9\]](#) Douglas Osler, formerly HM Senior Chief inspector of Education in Scotland, stated in the external review on the structure and effectiveness of the SCS:[\[10\]](#)

The Department's responsibility for policy which affects the capacity of the SCS to deliver its services means that policy decisions must be informed by the technical expertise of the SCS. It is therefore important that the SCS is involved at what policy staff call the 'design and build' stage and that they can also raise at a senior level matters which come to their notice through operational experience which could be useful to policy makers.

There are no definite and detailed proposals on a revised court service model. However, one of the features of the revised governance model of the SCS in the proposals for the Judiciary (Scotland) Bill is:

The Chief Executive would report to the Court Service Board, which would set overall policy for, and monitor the performance of, the Court Service, taking account of strategic priorities agreed between the board and Ministers. Within the framework set by the board, the Chief Executive would have delegated authority to take operational decisions.[\[11\]](#)

The preliminary comments in the Draft Judiciary Scotland Bill paper therefore indicate that the Scottish Court Service Board would determine policy for the Court Service, taking account of any priorities agreed between the Board and Ministers. The Scottish Executive plans to flesh out these details once consultations are complete.[\[12\]](#)

2.2 Policy making responsibilities of Court Service in ROI

In ROI, the Courts Service has the following functions under the Courts Service Act 1998:[\[13\]](#)

- To manage the courts;
- To Provide support Services for the judges;
- To provide information on the courts system to the public;
- To Provide, manage and maintain court buildings;
- To provide facilities for the users of the courts.

The Courts Service Act 1998 establishes a Board to oversee the Courts Service. The functions of the Board are to consider and determine policy in relation to the service and to oversee the implementation of that policy by the Chief Executive.[\[14\]](#)

In carrying out its functions the Board “shall have regard to the resources of the service for the purposes of such performance and the need to secure the most beneficial, effective and efficient use of resources”[\[15\]](#). The Board also has to have regard to government or ministerial policy or objectives relating to functions of the court service.[\[16\]](#)

2.0 Concluding Comments and Potential Issues for Consideration

The existing Court Service in NI does not have a policy making role, however it provides the Lord Chancellor with policy and legislative advice in discharging his ministerial responsibilities.

The proposed SCS and existing ROI models suggest that a Court Service Board makes policy in relation to the functions of the Court Service. However, under both models, the Board in making policy must consider any Government or Ministerial policy or objective (ROI), or any priorities agreed with the Minister (Scotland).

Some potential key issues arising from the previous sections are:

1. In relation to policy areas such as Legal Aid, Northern Ireland Legal Services, Judicial Appointments or Court Operations, who will have responsibilities for making policy in these areas? Policy making responsibility might lie with a Minister, or, for example, a Court Service Board (in respect of court operations).
2. What arrangements should be put into place to ensure that the policymaker is accountable to the Assembly?
3. Who will have responsibilities for offering policy advice in these areas?

4. Are there lessons to be learnt from the proposed SCS model or the ROI model that can be reflected in consultations on policy making responsibilities in future Court Service arrangements?

[1] See written response on behalf of the Court Service to the Assembly and Executive Review Committee's Inquiry into Policing and Justice Matters, Para 2 and Guide for Users of the NI Court Service, Pg 2, http://www.courtsni.gov.uk/NR/rdonlyres/C93FEE18-4396-4410-BC5D-479DBC8789DA/0/p_ucs_aboutthecourtservice.pdf

[2] NIO (2006) Devolving Police and Justice in Northern Ireland: A Discussion Paper.

[3] Ibid, Pg 34.

[4] Id

[5] Id.

[6] See Introductory Remarks made by the Lord Chief Justice to the Assembly and Executive Review Committee's Inquiry into the Devolution of Policing and Justice Matters, Tuesday 2 October 2007.

[7] Ibid, Pg 4.

[8] Annual Report and Accounts of the Scottish Court Service 2005/06, Pg 3. http://www.scotcourts.gov.uk/library/annual_reports/docs/annualreport0506.pdf

[9] Ibid, Pg 22.

[10] Agency Review of the Scottish Court Service, January 2006 Pg 31. http://www.scotcourts.gov.uk/library/Agency_Review.pdf

[11] Proposals for a Judiciary (Scotland) Bill 2007, Pg 23

[12] Ibid, Pg 25

[13] The Courts Service Act 1998, S.5

[14] The Courts Service Act 1998, S 13 ,see the following link [http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/53B3A30B19BC8AA580256DA60054A032/\\$FILE/Courts%20Service%20Act%2C%201998.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/53B3A30B19BC8AA580256DA60054A032/$FILE/Courts%20Service%20Act%2C%201998.pdf)

[15] Id.

[16] Id.

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.[\[1\]](#)

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;
- 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.[\[16\]](#)

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:

“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.

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 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.[\[42\]](#)

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.)

Annex A - Organisational Management Structure of the Court Service In England and Wales[\[45\]](#)

Chief Executive



Sir Ronald DeWitt
Chief Executive

Centre Directors

Philip Lloyd
Director of Resources



Core Sumner
Director of Crime and Strategy



Mark Ormond
Director, Civil & Family and Customer Services



Niel Ward
Chief Operating Officer



Arla Gair
Communications Director



Aan Ferris
Estates Director



Karen Wheeler
Change Programme Director



Damen Stiles
IT Business Partner



Dorothy Brown
HR Director



Regional Directors

Keith Budgen
South East



Stephen Cavan
North East



Nick Orinall
HMCS Wales



Alastair Clegg
RCI Group



Aan Dooly
Midlands



Chris Poyser
North West



Kevin Popper
London



Peter Risk
South West



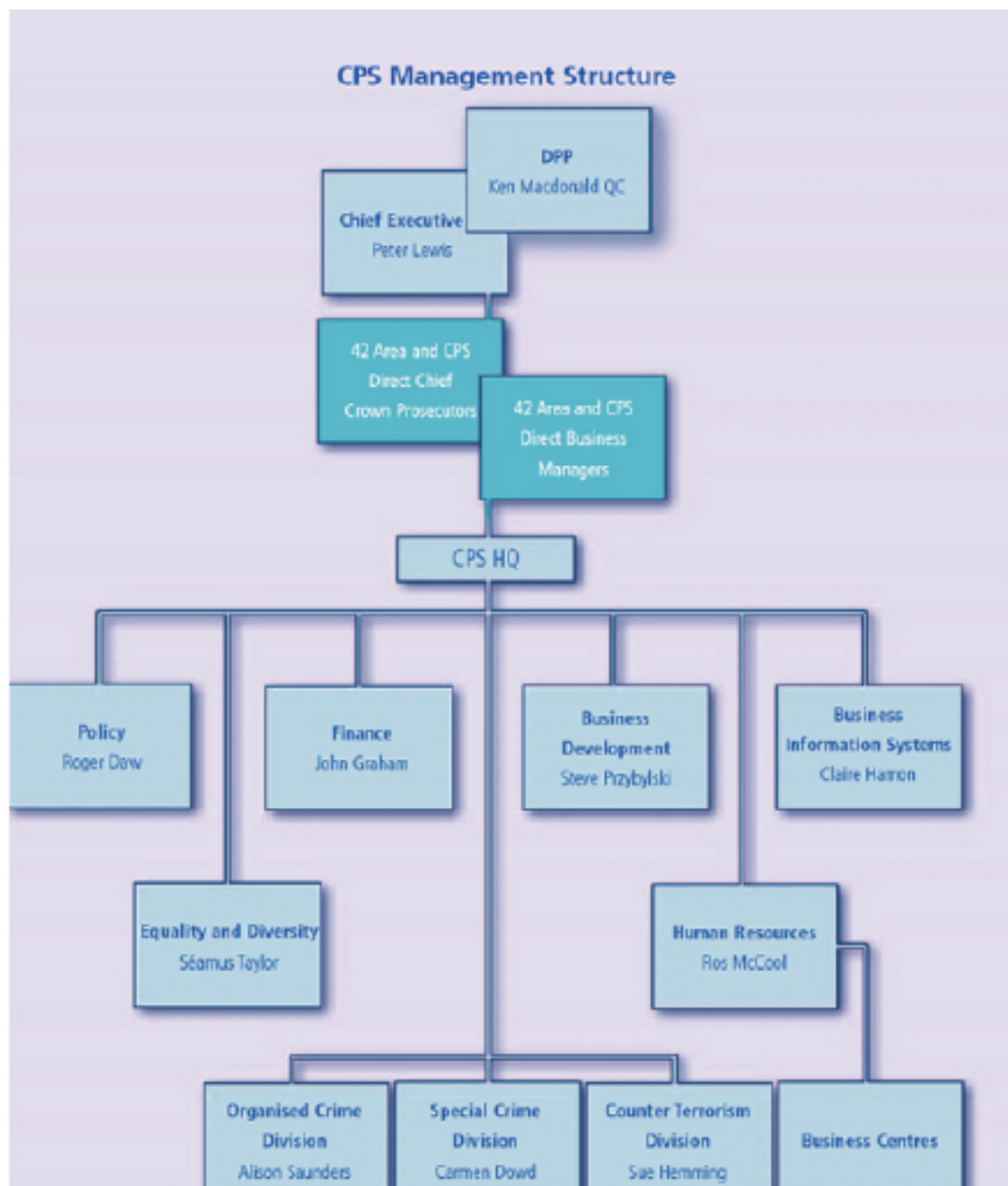
Annex B- Court Service Board Composition in England and Wales [\[46\]](#)

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 |

Annex C- Organisational Structure of CPS in England and Wales [47]

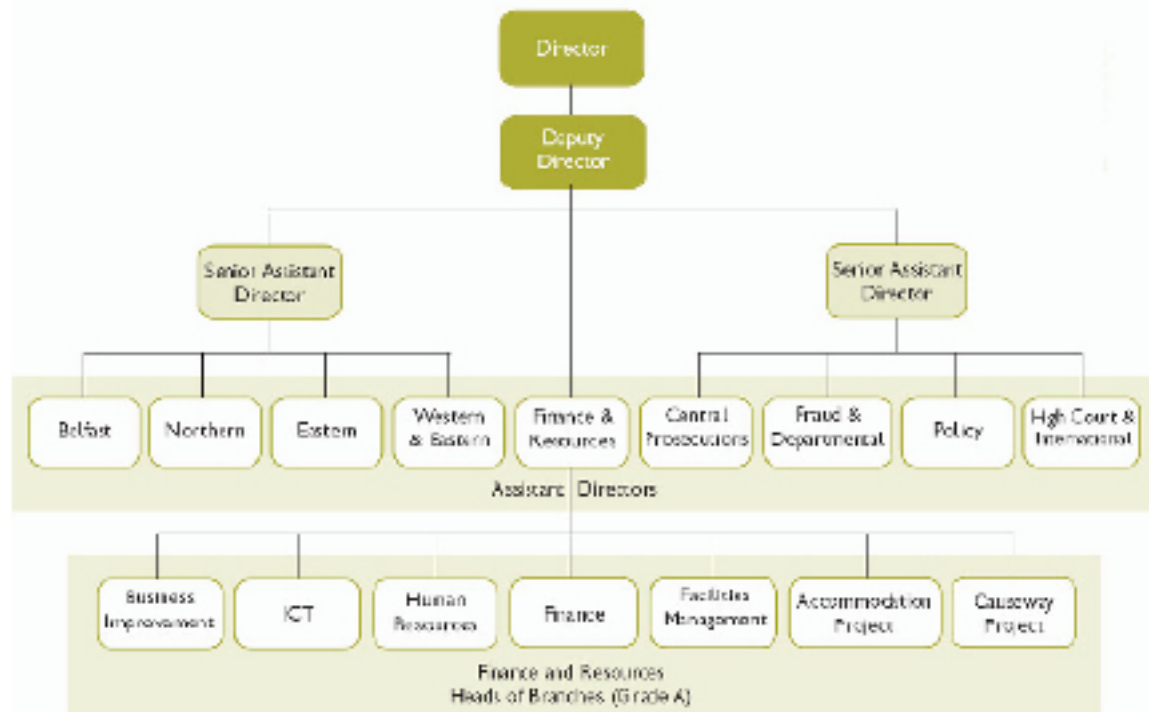


Annex D-Current Organisational Structure of NI Court Service [\[48\]](#)

| | | | | | | |
|---------------------|----------------------|------------------------------|-------------------------|---|------------------------|-------------------------------|
| | | Director | | MB Secretariat | | |
| Finance Directorate | Policy & Legislation | Public Funded Legal Services | | Court Operations | | Tribunal Reform |
| Finance | Criminal | Legal Aid Policy | Business Support | Business Operations | Business Development | Tribunal Operations |
| Court Funds | Civil | LSC Sponsorship | HRU | BCC Business Manager | Operational Policy | Tribunal Business Development |
| Audit | | | Information Service | RCJ Business Manager | Service Improvement | |
| Procurement | | | Judicial Services Group | Enforcement Business Manager Regional Business Manager | Business Modernisation | |
| | LCJ's Office | JAC | LSC | | | |

Annex E- Current Organisational Structure of PPSNI [\[49\]](#)

PPS ORGANISATIONAL CHART



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

[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

[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.

[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

[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%](http://www.attorneygeneral.gov.uk/attachments/Constitutional%20Affairs%20)

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

[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.

[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

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

[44] Id.

[45] HMCS “Working Together: Annual Report and Accounts 2006/2007”. Pg 29

[46] Ibid at Pg 30

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

[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>

Appendix 8

Other Papers



The Accountability of the Judiciary

Introduction

Individual judges and the position of the judiciary as a branch of the state
The respective responsibilities of the Lord Chancellor and the Lord Chief Justice

Issues and principles

What is meant by “accountability”?
For what should individual judges and the judiciary as an institution be accountable?
To whom are individual judges and the judiciary accountable?

The accountability of individual judges

Accountability to the executive of the state
Accountability to the legislative branch of the state
Internal accountability to “the judiciary”
Accountability to the public
The limits of these forms of accountability and practices

The institutional accountability of the judiciary

Introduction
Accountability to the executive branch of the state
Accountability to the legislative branch of the state
Accountability to the public and amenity to scrutiny by civil society

Summary

Introduction

The constitutional changes reflected in the Constitutional Reform Act 2005 (“CRA”), in particular the displacement of the Lord Chancellor as the Head of the Judiciary and the creation of a Supreme Court, led to new interest in the judiciary as an institution and in the issue of the accountability of judges and the judiciary.

Both individual judges and the judiciary as a branch of the state are subject to a number of forms of accountability which are not incompatible with their individual and institutional independence. These are, however, not always understood: nor are the necessary limits to judicial accountability required to protect that individual and institutional independence.

So in what sense, if any, are they “accountable”, and to whom?

The forms of accountability and their limits are discussed below. The limits result from the acknowledged need in a democracy for an independent and impartial judiciary which is free from improper influence.

Individual judges and the position of the judiciary as a branch of the state:

In the past, attention has primarily been focussed on the position of individual judges. There was almost no consideration of the position of the judiciary as an institution. The reason for this was that the Lord Chancellor, as the Head of the Judiciary, was responsible through Parliament to the public for the overall efficiency of the justice system. Accountability was thus achieved through the ordinary channel of ministerial responsibility.^[1] There was little need for the consideration of the position of the judiciary as an institution separately from the position of the Department and Minister responsible for the justice system. This has now changed.

The respective responsibilities of the Lord Chancellor and the Lord Chief Justice:

The present position, as now more clearly demarcated by the CRA and the Concordat, is:-

- The Lord Chancellor remains responsible through Parliament to the public for the funding of and the provision of the administrative system for the courts pursuant to Part 1 of the Courts Act 2003. In particular, pursuant to section 1 the Lord Chancellor is responsible for ensuring “that there is an efficient and effective system to support the carrying on of the business of” the courts, that is the provision and allocation of resources for the court service and the judiciary, and for the education and training of the judiciary. The Lord Chancellor is also responsible for setting the framework for the organisation of the court system, including functional and geographical jurisdictional boundaries.
- The Lord Chief Justice is responsible for deployment of individual members of the judiciary, the judicial business of the courts (including the allocation of work within the courts), and the well-being, training and provision of guidance for the judiciary.
- There is concurrent responsibility for some matters, for example appointment of Presiding Judges and discipline.

Responsibility for other matters is allocated to either the Lord Chancellor or the Lord Chief Justice, but subject to a duty to consult the other.

This requires there to be a working relationship between the Lord Chancellor and the Lord Chief Justice.

The accountability of individual judges and of the judiciary as an institution, a branch of the state is considered below. Under current legislation the position of tribunal judges differs from that of the judiciary and their position is not considered.

Issues and principles

There are three issues: what is meant by “accountability”, and for what and to whom should individual judges and the judiciary as an institution be accountable.

What is meant by “accountability”?

Accountability was once seen as part of a command and control relationship. Today, however, the concept is more fluid including a number of practices which explain, justify and open the area in question to public dialogue and scrutiny. The difference is captured by Professor Vernon Bogdanor’s distinction between “sacrificial” and “explanatory” accountability.^[2] The former involves taking the blame for what goes wrong, and forfeiting one’s job if something goes seriously wrong. The latter involves giving an account of stewardship, for instance, in the case of ministers to Parliament and to the electorate.

It is generally accepted that, save in accordance with the Act of Settlement 1701, judges cannot be held accountable either to Parliament or to the executive in the sacrificial sense and that they cannot be externally accountable for their decisions. Such accountability would be incompatible with the principle of the independence of the judiciary. But, save for the House of Lords, they are held to account by higher courts hearing appeals, and (save where the issue is one of EU law) it is open to Parliament to legislate in order to reverse the effect of a decision or body of doctrine. Moreover, the duty to give reasons for decisions is a clear example of “explanatory” accountability which assists transparency and scrutiny by the other branches of the state and the public (as well as facilitating appeals).

Some consider that a judge cannot be both independent and externally accountable, and that even “explanatory” accountability is incompatible with or a danger to judicial independence. The late Lord Cooke of Thorndon argued that “... [j]udicial accountability has to be mainly a matter of self-policing; otherwise, the very purpose of entrusting some decisions to judges is jeopardised”.^[3]

In relation to the judiciary of England and Wales, it is suggested that the position now is that there are a number of practices which can be understood as forms of accountability in one or other of the senses of that term. They and their limits are discussed in the paragraphs below. It is suggested that their limits stem from the requirements of the principle of judicial independence.

For what should individual judges and the judiciary as an institution be accountable?

Once there is recognition that some practices which fall within the broad and amorphous meaning now given to the term “accountability” are not incompatible with the independence of individual judges and the judiciary, the question arises as to what these are and for what the judiciary should be accountable.

In answering this question the following five principles are of central importance:

- a. The nature and form of accountability depends on the responsibilities and conduct of the individual or the group.
- b. The vital importance of the independence of individual judges and the judiciary as a body, now recognised by section 3 of the CRA, follows from the judiciary's core responsibility as the branch of the state responsible for providing the fair and impartial resolution of disputes between citizens and between citizens and the state in accordance with the prevailing rules of statutory and common law.
- c. Neither individual judges nor the judiciary as a body should be subject to forms of accountability prejudicing that core responsibility.
- d. Within the resources provided, and subject to the areas for which there is shared responsibility with the Lord Chancellor, the responsibility of the Lord Chief Justice for deployment of individual judges, the allocation of work within the courts, and the well-being, training and guidance of serving (full and part-time) judges, mean that the judiciary is responsible for:-
 - i. An effective judicial system, including the correction of errors;
 - ii. Training judges in the light of changes in law and practice; and
 - iii. Identifying and dealing with pastoral, equality, and health and safety issues concerning serving judges.

The Lord Chancellor and the Lord Chief Justice share responsibility for the provision of a complaints and disciplinary system to identify and deal with issues of competence, misconduct, and personal integrity.

- e. Within a common law system the judiciary is responsible for the interpretation of statutes and the development of the non-statutory principles embodied in case-law. This is done by the system of precedent and incremental development of the principles of law, in particular by appellate courts.

Comments on these principles:

“a”: This follows from the proposition that one cannot properly be made accountable for that for which one is not responsible. Accordingly, for example, notwithstanding the extent of judicial representation on the Judicial Appointments Commission, it is the Commission and not the judiciary which is responsible for and therefore accountable for appointments and it is the Lord Chancellor who is responsible for and therefore accountable for providing resources for the courts and the judiciary. For this reason, issues of

accountability concerning the appointment process and the resourcing of the courts are not discussed.

“b”: Judicial independence is not an absolute concept and there are many formulations of it.^[4] There is, however, general agreement that the minimum requirements are that the judiciary is impartial, that its decisions are accepted, that it is free from improper influence, and that it has jurisdiction, directly or by way of review, over all issues of a justiciable nature so that it is capable of rendering justice on all issues of substantial legal and constitutional importance.^[5]

“c”: The executive, legislative and judicial branches of the state should show appropriate respect for the different positions occupied by the other branches (see e.g. the Commonwealth’s Latimer House Principles). The need for appropriate respect for the different positions occupied by others also applies to respect for and by the media. The branches of the state should respect the importance in a democratic society of vigorous scrutiny by the media, and the media should recognise the positions of and restrictions on the branches of the state, including the judiciary. The limits of what it is proper for judges to say to Parliamentary Committees, Ministers, the media, or in lectures, follow from the need to safeguard the core constitutional responsibility of the judiciary. The corollary should be that government ministers, Members of Parliament, and the media should also respect the need to safeguard and to avoid prejudicing or corroding this core responsibility. That should limit what it is appropriate to say to or about judges and individual decisions.

“d”: The structure of the system including the appellate process and the process for making complaints about the conduct of judges is determined by statute and regulation and, in the case of complaints and discipline, by the Concordat.^[6] The appropriate forms of accountability are thus in part identified by those instruments. To furnish information about court process, delays, workloads, training, appeals, complaints, lack of integrity and misconduct and equality issues to Parliament and the public is an appropriate way of explaining, justifying and opening these areas to public examination and scrutiny. It can also identify the boundary between the respective responsibilities of the judiciary (for the business of the courts) and of the Lord Chancellor (for resourcing the courts) and HMCS (for providing court buildings and court staff). To voluntarily offer what is a form of “explanatory” accountability for the matters which are the responsibility of the judiciary set out in “d” is not inconsistent with the requirements of judicial independence.

“e”: One of the justifications for two levels of appeal (to the Court of Appeal and then to the House of Lords) is the particular responsibility of the judiciary in a common law system for developing the law.

To whom are individual judges and the judiciary accountable?

Four forms of accountability are considered:-

- Internal accountability to more senior judges or courts by way of (a) the system of appeals against judicial decisions, and (b) procedures for dealing with complaints about the conduct of judges,
- External accountability to the public by way of amenability to scrutiny in particular by the media, but more widely by civil society,
- Accountability to the executive branch of the state (the government), and

- Accountability to the legislative branch of the state (Parliament).

These forms of accountability overlap. For instance, the appeal and complaints processes provide both internal accountability and accountability to the public, and the giving of evidence to legislative committees provides direct accountability to Parliament and indirect accountability to the public.

The accountability of individual judges

Accountability to the executive of the state:

Under the Act of Settlement 1701 and subsequent legislation (currently the Supreme Court Act 1981, section 11(3) as amended by the CRA) judges of the High Court and the Court of Appeal hold office during “good behaviour”. This protection was given to protect judges against the power of the executive. These judges are not individually accountable to the executive in their capacity as such in either the “sacrificial” or the “explanatory” senses. It is axiomatic that safeguards on their tenure are a vital part of the independence of the judiciary.

That is not to say that the executive in the form of the Lord Chancellor has no role to play in the consideration of complaints and disciplinary proceedings made against judges. Such accountability, however, is subject to the limits set out in the CRA and the Concordat. The fundamentally important requirement is that the Lord Chancellor and the Lord Chief Justice have to agree before a judge is removed or disciplined in some other way. The fact that both have a role ensures that the independence of an individual judge is not improperly infringed, either by the executive, or internally by another member of the judiciary.

Accountability to the legislative branch of the state:

As has been stated, both Houses of Parliament have the power, originating in the Act of Settlement, to petition the Queen for the removal of a judge of the High Court and the Court of Appeal, i.e. the ultimate form of accountability. It has not been exercised in modern history.

Turning to other forms of accountability, subject to a rule (“the sub judice rule”) preventing the discussion of ongoing cases, the decisions and conduct of individual judges may be mentioned in debates in either House. This, however, does not mean that judges are accountable to Parliament for their decisions in particular cases, save insofar as Parliament may legislate to reverse the effect of a decision (on which see below). Accountability for their decisions is incompatible with judges’ necessary independence.

Individual judges may also be invited to give evidence to Parliamentary Committees. Under Standing Orders, Select Committees and their sub-Committees have power to “send for persons, papers and records” relevant to their terms of reference. In modern times judges who have been asked to attend have done so voluntarily, subject to the well-established and long-standing rules and conventions that prevent judges from commenting on certain matters.^[7] Parliamentary Committees respect these rules and conventions. The prohibited matters include; the merits of government policy, the merits of individual cases whether involving that judge or other judges, or of particular serving judicial officers, politicians and other public figures, and the merits, meaning or likely effect of provisions in prospective legislation.

Internal accountability to “the judiciary”:

In the sense that their decisions are subject to appeal and other judges are responsible for the allocation of cases to them, individual judges are accountable to senior judges or judges holding positions of responsibility. As for the conduct of judges, a working group established by the Judges' Council published a Guide to Judicial Conduct in October 2004. [8] This seeks to provide guidance on matters such as; impartiality, integrity, competence and diligence, personal relationships and perceived bias and activities outside the court.

The responsibilities of the Heads of Division, Presiding, Resident and Family Liaison and Chancery Supervision Judges, and judges in charge of a particular jurisdiction, are designed to assist in the effective management of judicial work. [9] They must be exercised with due regard to the importance of the need to respect the independence of individual judges in relation to the decisions before them. This means, for example, that they cannot tell another judge how to decide a case. Decisions as to listing and allocation are designed to ensure that cases are heard by an appropriate judge and that the available judiciary is fully and effectively deployed within the resources provided by the executive branch of the state. It is to be observed, however, that one of the guarantees of independence under Article 6 of the European Convention of Human Rights, reflecting underlying common law principle, is that judges must be free from outside instructions or pressure from other members of the court or the judiciary. This limits the extent and form of discipline to which a judge may be subjected.

Accountability to the public:

The formal processes of court proceedings provide a form of accountability to the public enabling scrutiny of the work of individual judges. As a general rule court proceedings and the decisions of judges are made in public. Decisions must be reasoned, and are subject to comment, often robust comment, by the media and other commentators. The quality of individual decisions is also subject to control in the form of appeal to higher courts against alleged errors. This identification and correction of error by appellate courts is also public and reasoned.

Complaints against the personal conduct of the judiciary (other than against decisions in proceedings) are handled by the Office for Judicial Complaints. Ultimately a report is made to the Lord Chief Justice and Lord Chancellor. Complaints about the handling of such complaints can be made to the Judicial Appointments and Conduct Ombudsman.

The limits of these forms of accountability and practices:

Reference has been made to the limits on what a judge may properly deal with in giving evidence to a Parliamentary Committee and the fact that High Court Judges and above can only be removed by the Queen on an address from both Houses of Parliament. Other judges can be removed for incapacity or misconduct pursuant to statutory powers.

When the Lord Chancellor was Head of the Judiciary he exercised the power to remove members of the circuit and district benches alone. The changes in the nature of the office of Lord Chancellor in 2003 mean this is no longer appropriate and the CRA and the Concordat provide he may only do so if the Lord Chief Justice agrees. [10] The Lord Chief Justice may only suspend a person from

a judicial office if the requirements of section 108(4)-(7) are satisfied.

Judges of the High Court and the Court of Appeal court are also absolutely immune from personal civil liability in respect of any judicial act done in the bona fide exercise of their office as a judge of that court.

The position of circuit and district judges who sit in courts of limited jurisdiction is different. They may be in certain circumstances liable in tort for acts beyond their jurisdiction and to judicial review proceedings. The immunity extends to judicial acts undertaken by officers of the courts but not to administrative acts by HMCS.

The reason for a judge's immunity from civil suit is "so that he should be able to do his duty with complete independence and free from fear". It is not because the judge has any privilege to make mistakes or to do wrong. The appeal system deals with such matters, and the criminal courts deal with criminal wrongdoing.[\[11\]](#)

The institutional accountability of the judiciary

Introduction:

There are clear links between the features of individual accountability and the question of institutional accountability.

It is important to distinguish the accountability of the judiciary as an institution from that of the courts as an institution and that of HMCS. This is because of the responsibility of the Lord Chancellor for the resourcing of the courts. For example, if a lack of resources means there are insufficient courts, court staff or judges and the result of this is delay, it is the Lord Chancellor and not the judiciary who is responsible and accountable.

The responsibility of the judiciary for the deployment of judges, training, pastoral issues, part of the complaints and disciplinary system, and the provision of an effective judicial system within the resources provided mean that it is legitimate for there to be some form of accountability in respect of these matters. In respect of those matters on which the judiciary share responsibility with the Lord Chancellor, it is legitimate for there to be a measure of "explanatory" accountability by the judiciary. The remainder of this section considers existing forms of such accountability.

Accountability to the executive branch of the state:

The reasons precluding the accountability of individual judges to the executive apply equally to institutional accountability. In the light of the dangers to judicial independence of direct accountability to the executive, it would appear that the primary forms of accountability must either be to the legislature or to the public in the sense that the system is made amenable to and subjected to scrutiny by civil society.[\[12\]](#)

Accountability to the legislative branch of the state:

This takes a number of forms. The first is strictly a matter of control rather than accountability. Save where the issue is one of EU law, Parliament may change the law by legislation reversing a decision or decisions concerning the interpretation of a statute or a body of common law doctrine.

Judges also give evidence to legislative committees in a representative capacity. The basis for such invitations and the matters on which judges should not give evidence are set out above, and more fully, in July 2006 Guidance produced by the Judicial Executive Board (JEB). [13] The Guidance recognises that an individual judge might appear as a representative. It states that judges should carefully consider whether they can answer questions about matters concerning the administration of justice which fall outside their area of judicial responsibility or previous responsibility.

The boundaries of legitimate questioning reflect the need to protect the independence and impartiality of the judiciary. Increasingly, committees are interested in hearing from a judicial witness who can give evidence in a representative capacity, although there are also invitations to judges because of their experience. Senior judges including the Lord Chief Justice, the Master of the Rolls, President of the Queen's Bench Division, President of the Family Division, the lead judge in the Administrative Court, the Judge Advocate General, and the Senior District Judge responsible for extradition have responded to invitations by Parliamentary Committees and have given evidence in a representative capacity.

The giving of evidence pursuant to such invitations by representatives of the judiciary, including those responsible for a particular jurisdiction, is a form of institutional "explanatory" accountability. The accountability is primarily to Parliament, but indirectly it is also to the public. Select Committees can also be an appropriate forum for the Lord Chief Justice or other senior judges to explain or state their views on aspects of the administration of justice that are of general interest or concern and upon which it is appropriate for them to comment. The appearance of judges before Select Committees should, however, be a relatively rare, and thus a significant event less the proper boundary between the judiciary and Parliament is crossed. Appearances by judges before Parliamentary Committees should be a relatively rare and significant event. Such appearances must be truly necessary and appropriate.

Accountability to the public and amenity to scrutiny by civil society:

Some of the forms of accountability discussed above can be seen as an indirect form of accountability to the public. This is so in the case of the formal processes of court proceedings and the appellate process. These enable scrutiny of the outcomes of cases and comment by the press, interested parties and commentators. In addition, there is also the giving of evidence to Parliamentary Committees by representatives of the judiciary on occasions where this is truly necessary and appropriate.

Interviews and media briefings: The giving of interviews and subjecting oneself to questions by representatives of the press and other media is certainly a form of accountability. From time to time, at any rate since Lord Taylor became LCJ in 1993, the holder of that office has given occasional interviews and media briefings, as have other senior members of the judiciary.

The judiciary's website: Much information about the judiciary is now available to the public on the judiciary's website. It has assisted in explaining and opening up the work of judges to public scrutiny. There are sections on 'About the Judiciary', containing sections inter alia on 'roles and types of jurisdiction', 'Judges and the Constitution', 'Conduct, complaints and appeals', 'Terms of service', and 'Court dress'. The focus of the site is on accessibility and on matters which are considered to be of interest to the

public.

Annual Reports: The annual reports on the operation of particular jurisdictions and the report that the Lord Chief Justice makes to the Queen and Parliament are another and more direct form of accountability to the public.

Annual reports are made by the Civil and Criminal Divisions of the Court of Appeal, the Commercial and Admiralty Courts, and the Technology and Construction Court, the regional reports by the Crown, County, Family and Magistrates Courts, and "overview" reports by the Senior Presiding Judge on the Crown and County Courts, and by the President of the Family Division on the Family Courts. There are also reports by the Judges' Council by the Ethnic Minority Liaison Judges on the judiciary's website, and the JSB publishes an annual report which can be seen on its website. HMCS also publishes the annual Judicial Statistics.

Formal complaints about personal conduct and other complaints against judges will be considered by the Office for Judicial Complaints (OJC) and the Judicial Appointments and Conduct Ombudsman (JACO). Both publish annual reports.

The court reports and Judicial Statistics provide a statistical analysis of the work and waiting times based on the figures provided by HMCS. Many of them discuss significant developments and assessments of the implication of trends. The other reports referred to, such as the Judicial Studies Board (JSB) annual report, also contain much valuable information. The reports are valuable tools for external scrutiny of the system and are thus potentially another and more direct form of accountability to the public for the administration of justice.

The court reports do not always clearly identify and separate the respective responsibilities of the department, HMCS, and the judiciary and thus the respective areas for which each should be accountable. While this means that they are not purely tools for the accountability of the judiciary, they do in part provide such accountability. They are important sources of information for the public, for Parliamentarians, and for the government. They are also an important resource for the judiciary in that it is the detailed information in reports which enable the judiciary to comment, for example in the Lord Chief Justice's annual report, on matters such as the condition of the court estate, staffing levels, and the provision and allocation of resources.

Summary

Individual judges are subject to a strong system of internal accountability in respect of legal errors and personal conduct, but outside the judiciary these are often not understood in terms of accountability.

Individual judges are accountable to the public in the sense that in general their decisions are in public and are discussed, often critically, in the media and by interest groups and sections of the public affected by them. The judiciary is similarly institutionally accountable in respect of first instance and appellate decisions.

Neither individual judges nor the judiciary are, nor should they be, accountable to the executive branch of the state because that is inimical to the judicial independence which is a necessary requirement for the discharge by judges of their core responsibility to resolve disputes fairly and impartially. The Lord Chancellor's role in the consideration of complaints and disciplinary proceedings against judges is not inconsistent with this. The requirement that the Lord Chancellor and the Lord Chief Justice have to agree

before a judge is removed or disciplined in some other way ensures that the independence of an individual judge is not improperly infringed, either by the executive, or internally by another member of the judiciary.

Individual judges should not be accountable to Parliament for their decisions or for matters which fall outside their area of judicial responsibility or previous responsibility, but may be invited to give evidence to Select Committees on the operation of the jurisdictions for which they are responsible and in which they operate. The matters on which they should not answer questions are set out in the Judicial Executive Board's Guidance. Senior judges are accountable to Parliament through the procedure for removal set out in the Act of Settlement, but there are no examples of dismissal being considered let alone exercised in modern times. There are, however, a small number of examples of senior judges resigning following public discussion about their conduct, including delay in delivering judgment.

When representatives of the senior judiciary and those responsible for particular jurisdictions give evidence to Select Committees on aspects of the administration of justice that are of general interest or concern and upon which it is appropriate for them to comment this can be seen as a form of institutional accountability to Parliament and through Parliament to the public. The boundaries of legitimate questioning are indicated in the Guidance.

The annual reports on the operation of particular jurisdictions and that by the Lord Chief Justice to The Queen in Parliament are valuable tools for external scrutiny of the system and are thus another form of accountability for the administration of justice.

[1] See e.g. Irvine Human Rights, Constitutional Law and the Development of the English Legal System (2003) 205; Shetreet, Judges on Trial: A Study of the App 1. See e.g. Irvine Human Rights, Constitutional Law and the Development of the English Legal System (2003) 205; Shetreet, Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary (1976), 39-41.

[2] Bogdanor, Parliament and the Judiciary: The Problem of Accountability, (Third Sunningdale Accountability Lecture 2006); Le Sueur in Independence, Accountability and the Judiciary (BIICL 2006), eds Andeanas and Fairgrieve, 49-50.

[3] Robin Cooke, 'Empowerment and Accountability: the Quest for Administrative Justice' (1992) 18 Commonwealth Law Bulletin 1326.

[4] See the United Nations Basic Principles on the Independence of the Judiciary (1985), the European Charter on the Statute for Judges, adopted by the Council of Europe in 1998, the Bangalore Principles of Judicial Conduct, 2002, the Commonwealth (Latimer House), Principles on the Accountability of and the relationship between the Three Branches of Government, agreed by Commonwealth Law Ministers and Heads of Government in 2003, and the Beijing Statement of Principles of the Independence of the Judiciary.

[5] See for example, page 10 of the Latimer House Principles.

[6] There are currently discussions between the Lord Chancellor and the Lord Chief Justice about their respective responsibilities in relation to HMCS.

[7] Guidance to judges agreed by the Judicial Executive Board in July 2006 is available on this website: www.judiciary.gov.uk.

[8] Available on the judiciary's website: www.judiciary.gov.uk.

[9] See The Responsibilities of Resident Judges and Designated Civil and Family Judges (July 2004), esp. paragraphs 9, 10(a) and 11(a).

[10] Section 17(4) of the Courts Act 1971 and section 11(5) of the County Courts Act 1984, both as amended by paragraphs 68 and 164 of Schedule 4 to the CRA.

[11] *Sirros v Moore* [1975] 1 QB 118, 133, 148. See also *Re McC* [1985] AC 528.

[12] No public funds are entrusted directly to the judiciary as opposed to the Directorate for Judicial Offices for England and Wales.

[13] Available on the judiciary's website: www.judiciary.gov.uk. *Appointment and Accountability of the English Judiciary* (1976), 39-41.

Management of the Courts: the Irish Experience

1. Background

Until the coming into operation of the Courts Service Act 1998, the arrangements for the management and administration of the courts in Ireland had remained essentially unchanged since the Courts of Justice Act 1924, which provided the courts system of the new State shortly after independence.^[1] It could be said that the 1924 regime left a vacuum, in that no provision was made for an independence administrative structure for the Courts (i.e. no Department such as the Lord Chancellor's Department). The scheme implemented was that the Department of Justice managed the Courts and their funding apart from judicial salaries. Those arrangements followed what is often loosely referred to as the "Ministry of Justice" model. Responsibility for the provision of budgetary, staffing and other resources, and the management of those resources, rested with the Department of Justice, Equality and Law Reform, as it is now known, through its Courts Division. As distinct from the allocation of business before the courts, the Judiciary – although they might be consulted and make representations – had little input into the allocation of such resources or the way in which they were deployed.

The extent of the Minister for Justice's remit - and limits of the Judiciary's – in this regard is best summed up by the provisions which governed the management of the various offices of the High Court and staffing arrangements for the Superior Courts generally. Senior management in the courts were "subject to the general direction of the Minister in regard to all matters of general administration" and answered to the senior Judiciary (the Chief Justice in the case of the Supreme Courts and the

President of the High Court in the case of that court) on matters relating to the conduct of the business of the court required by law to be transacted before a judge.^[2] The Minister for Justice, with the sanction of the Minister for Finance and after consultation with the Chief Justice and the President of the High Court in relation to the offices of the Supreme Court and High Court respectively, determined how many and what categories of court officers and ancillary staff would be deployed in the offices concerned and, after similar consultation, how they were deployed.^[3]

Concern about the deficiencies in the system was such that, by the mid-1990s, proposals for new machinery to administer the courts had entered the agendas of successive governments.^[4] The Working Group on a Courts Commission, chaired by The Hon. Mrs Justice Denham, Judge of the Supreme Court, was established by the Minister for Justice in October 1995 to: -

1. "review:

(a) the operation of the Courts System, having regard to the level and quality of service provided to the public, staffing, information technology, etc;

(b) the financing of the Courts system, including the current relationship between the Courts, the Department of Justice and the Oireachtas in this regard; and

(c) any such aspect of the operation of the Courts system which the Group considers appropriate; and

2. in the light of the foregoing review, to consider the matter of the establishment of a Commission on the Management of the Courts as an independent and permanent body which financial and management autonomy..."

and to report its recommendations to the Minister.

In the first report, published in 1996^[5], the Working Group recommended the establishment as a matter of urgency under statute of an independent and permanent body to manage a unified court system, supervised by a Board chaired by the Chief Justice or the Chief Justice's nominee, and composed, "in light of the constitutional parameters involved"^[6], of a majority of judges of the various jurisdictions, as well as representatives of the Department of Justice, each branch of the legal profession, court staff, court users, business and the trade unions. Day to day operational responsibility would lie with a Chief Executive who would, in respect only of the financial and administrative management of the Courts Service, be accountable to the Oireachtas (Legislature). These recommendations led to the enactment of the Courts Service Act, 1998 in April of that year and the establishment of the Courts Service, initially under transitional arrangements, and in November 1999 as a permanent agency. The courts administration model in Ireland was thus recast as an "independent agency" model, to which more detailed reference is made later.

2. The Judiciary and Judicial Independence

Management of the Judiciary has always been a matter for the Chief Justice, as leader of the Judiciary, and the Presidents of the other court jurisdictions. In formal terms, however, the powers of management given by statute to the Chief Justice and the

Presidents are quite limited, being confined essentially to allocation of business to and among judges. Quite apart from the provisions of the Constitution guaranteeing the independence of the exercise of the judicial function,^[7] the Courts Acts contain express safeguards to ensure that the conduct of the business of their court is controlled by judges, and that officers of the court observe the directions of the Judiciary while engaged on duties relating to the business of the court.^[8]

Judges were understandably concerned about the separation of powers and the independence of the judiciary. After lengthy and careful consideration the Working Group recommended that it would be appropriate for Judges to work alongside others on matters relating to the administration and management of the Courts.

3. The Courts Service

3.1 Functions

The statutory mandate given to the Courts Service on its establishment emphasises the roles of that organisation as court manager and service provider. Under section 5 of the Courts Service Act, 1998, the functions of the Service are to:

- (a) manage the courts,
- (b) provide support services for the judges,
- (c) provide information on the courts system to the public,
- (d) provide, manage and maintain court buildings, and
- (e) provide facilities for users of the courts.

Powers ancillary to Courts Service's functions include: -

½ Acquire, hold and dispose of land

½ Enter into contracts

½ Make proposals to the minister in relation to – reform and development, the distribution of jurisdiction and business among the courts and matters of procedure

½ Designate court venues

The Service is a body corporate with perpetual succession and power to sue or be sued. The Service is subject to the legislation, independent in the performance of its functions. The Board may establish such committees as it considers fit to advise it and must notify the Minister of the establishment of committees, their functions and membership.[\[9\]](#)

A leading commentary on the administration of justice in Ireland has described this development as:

“a fundamental shift in the “philosophy” of the courts system, requiring it to take account of the concepts of quality, service and competitiveness more associated heretofore with the private sector...there can be no doubt of move from “court system” to “court service”.[\[10\]](#)

The functions previously exercised by the Minister under the Courts Acts in respect of court management and administrations were transferred from the Minister to the new agency[\[11\]](#). The Department of Justice, Equality and Law Reform retained responsibility for securing the annual vote of funds from the Oireachtas. Some staff from the Department’s Courts Division were transferred to the Service. The Department now oversees the vote and manages its relationship with the Judiciary and the Courts Service through a slimmed down Courts Policy Division.

4. Functions of the Board

The Board considers and determines policy (operational policy for the Service) in relation to the Service, and oversees its implementation by the Chief Executive Officer.[\[12\]](#)

4.2 Membership of the Board

Reflecting the Working Group’s recommendations, the Board consists of

- the Chief Justice for the time being or a judge of the Supreme Court nominated by the Chief Justice, as Chairperson
- the Presidents of the High, Circuit and District Courts
- a judge nominated by the Chief Justice in “respect of his or her experience or expertise in a specific area of court business”
- a judge from each of the courts aforementioned other than the court president, elected by the ordinary judges of the courts concerned
- the Chief Executive
- a practising barrister nominated by the Bar Council
- a practising solicitor nominated Law Society
- a member of the staff of the Courts Service
- an officer of the Minister for Justice, Equality and Law Reform nominated by the Minister

- a person nominated by the Minister to represent “consumers of the services provided by the courts”
- a person nominated by the Irish Congress of Trade Unions, and
- a person who, in the Minister’s opinion, “has relevant knowledge and experience in commerce, finance or administration and who is nominated by the Minister after consultation with such bodies as the Minister considers are representative of such interests in the State”

Members of the Judiciary, therefore, have 9 of the 17 places on the Board. It should be emphasised, however, that the Judiciary has never found it necessary to rely on its majority, matters of policy being determined by the Board largely by consensus and in a spirit of collaboration.

4.3 Term of Office of Members

The term of office for Board Members generally is 3 years. The Chief Justice, the President of each Court and the Chief Executive Officer are ex-officio members of the Board.

4.4 Meetings of the Board

The Board meets as often as it considers necessary but must not meet less than once in every period of 3 months.[\[13\]](#)

5. Functions of the Chief Executive Officer

The Chief Executive manages and controls generally the staff, administration and business of the Service and such other functions as may be conferred on him or her by or under the Act or by the Board. The Chief Executive is responsible to the Board for the performance of his or her functions and the implementation of the Board’s policies. The Chief Executive provides to the Board such information (including financial information) in relation to the performance of his or her functions as the Board may from time to time require.[\[14\]](#)

The Chief Executive is the accounting officer for the appropriation accounts of the Service, and attends before Oireachtas Committees including the Public Accounts Committee.[\[15\]](#)

6. Accountability

The Board must prepare and submit to the Minister an Annual Report each year. The Report must include information on the performance of its functions. The Board must also supply to the Minister any information the Minister requests relating to its functions. The Board is accountable to the public through the publication of its annual report.[\[16\]](#)

In overseeing expenditure of resources allocated, the Courts Service Board is required to have regard to

- the resources available and the need to secure “the most beneficial, effective and efficient use of such resources”, and
- any policy or objective of the Government or a Minister of the Government insofar as it may affect or relate to the functions of the Courts Service. [\[17\]](#)

Every 3 years the Board must prepare and submit to the Minister for approval a 3 year strategic plan. When approved, with or without amendments, the Minister must lay a copy of the plan before both houses of the Oireachtas. Strategic plans shall —

(a) comprise the key objectives, outputs and related strategies (including use of resources) of the Service,

(b) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister,

(c) have regard to the need to ensure the most beneficial, effective and efficient use of the resources of the Service, and

(d) have regard to the Government policy on bilingualism and, in particular, to the need to ensure that an adequate number of staff are competent in the Irish language so as to be able to provide service through Irish as well as English. [\[18\]](#)

7. Role of the Minister for Justice, Equality & Law Reform

The Minister for Justice, Equality and Law Reform is politically accountable for the Service. Funding is negotiated through the Department of Justice, Equality and Law Reform. The Service has its budget voted directly by Dáil Éireann.

8. The Courts Service and the Judiciary

The 1998 Act contains provisions designed to ensure that the new arrangements did not permit either the Executive or the Legislature to encroach on matters that are appropriately the preserve of the judicial function. Section 9 provides:

“No function conferred on or power vested in the Service, the Board or the Chief Executive, under this Act shall be exercised so as to interfere with the conduct of that part of the business of the courts required by law to be transacted by or before one or more judges or to impugn the independence of—

(a) a judge in the performance of his or her judicial functions,

or

(b) person other than a judge in the performance of limited functions of a judicial nature conferred on that person by law.”

While the Chief Executive Officer may be called upon by a committee of the Oireachtas (Legislature) to “give account for the general administration” of the Courts Service, that obligation is qualified in that the CEO cannot be requested to give account for any matter relating to—

(a) the exercise by a judge of his or her judicial functions

or

(b) the exercise by a person other than a judge of limited jurisdiction of a judicial nature

including a matter which is, has been or may at a future time be the subject of proceedings before a court in the State. Where the CEO is of the opinion that a matter falls within these categories, he or she must inform the committee giving reasons and, should the committee not withdraw the request, the CEO or the committee chairperson may apply to the High Court for a ruling on whether the matter is excluded from inquiry. If the High Court does so determine, the Committee must withdraw the request. If the High Court determines that it is not a matter falling within the area of judicial functions, the CEO must attend before the committee to give account for it. [\[19\]](#)

9. Funding and Staffing

The Bulk of funding for the Service is provided by the State. The Budget for 2007 is €131m. The Service employs 1100 staff. The Service may only employ such number of staff as are approved by the Minister with the consent of the Minister of Finance. [\[20\]](#) The Service manages funds in a trustee capacity totalling €1.062bn. Fees collected annually amount to €32m.

A Judicial Support Unit within the Courts Service provides a “one stop shop” in delivering on the agency’s mandate to provide support services for judges, and the Courts Service also provides staffing and support to bodies such as the Judicial Appointments Advisory Board, the Judicial Studies Institute and the three Courts Rules Committees, all of which are independent of the Courts Service.

10. Obtaining and allocating resources

In common with other jurisdictions, the courts are largely dependent for funding and other resourcing on the other branches of Government. While judicial salaries are met from the Central Fund, the bulk of the Courts Service’s funding is secured by means of the annual vote of funds by the Oireachtas referred to earlier.

By contrast with the position in England and Wales, the courts in Ireland are not required to recover the full economic cost of their operations from court fees revenue, nor indeed could they be, given the limits set by case-law on the extent to which court fees may be imposed in light of the constitutionally guaranteed right of access to the courts.

Judges actively participate in the decisions on allocation of resources, both through their membership on the Board and through membership of committees and project boards, such as the Finance, Audit, Investment (the latter of which oversees investment policy in relation to the €1 billion in funds of beneficiaries managed by the courts), Family Law Committee and Buildings Committees and project boards such as for the new Criminal Courts Complex and ICT projects.

11. Reform

The 1998 Act gave to the Courts Service an advisory role not previously enjoyed by the court administration. The Courts Service is empowered to “make proposals to the Minister in relation to the distribution of jurisdiction and business among the courts and matters of procedure”. [21] The Service prepares proposals for amendments to primary legislation and court rules to modernise and reform court procedure. It provides a vehicle through which the Judiciary may have input into court reform without encroaching on the boundary between competencies of the Judiciary and the Executive.

12. Conclusion

The Irish courts governance model combines a strong combination of judicial and non judicial involvement in the setting of policy on the management and administration of the courts. The effective resourcing of the courts depends heavily on a successful partnership with the Executive (The Department of Justice, Equality and Law Reform). The partnership, as it has evolved in Ireland since 1998, has, it is fair to say, worked very well.

7th December 2007

[1] The jurisdictional arrangements established by the 1924 Act were substantially replicated on the reconstituting of the courts by the Courts (Establishment and Constitution) Act 1961

[2] Par.7, Eighth Schedule, Courts (Supplemental Provisions) Act, 1961

[3] Par. 22, Eighth Schedule, Courts (Supplemental Provisions) Act, 1961

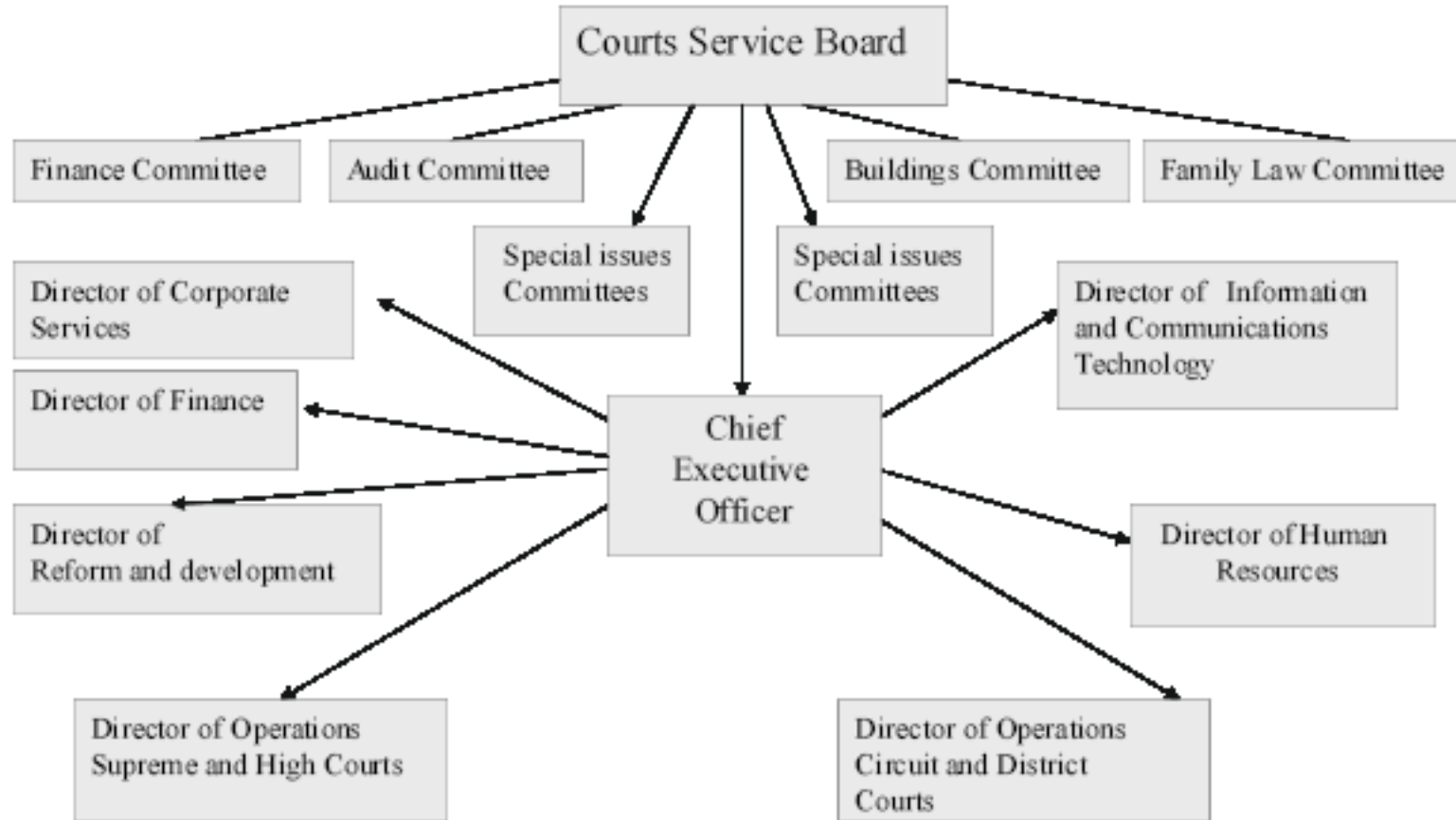
[4] The “Programme for a Partnership Government” announced in 1993 by the Fianna Fáil-Labour Government of that year had included provision for the establishment of a Judicial Commission to examine and make recommendations on overall management of the courts and the streamlining of court services, the fixing of the courts’ budget and court charges, and the review and reform of court practice. The Fine Gael-Labour-Democratic Left Coalition Government which succeeded to office in December 1994, in its Programme “A Government of Renewal”, envisaged the establishment of an independent management authority for the courts.

[5] The working Group published a series of six reports between 1996 and November 1998 on various aspects of the administration of justice.

- [6] Working Group on a Courts Commission , First Report "Management And Financing of The Courts", April, 1996, page 46.
- [7] See Articles 6 and 34-37 of the Constitution: see Buckley v Attorney General [1950] IR 67.
- [8] Section 65, Court Officers Act, 1926, carried over in its effect by section 48, Courts (Supplemental Provisions) Act 1961.
- [9] Section 15, Courts Service Act, 1998
- [10] Byrne, Raymond and J. Paul, McCutcheon, The Irish Legal System (4th ed.), (Dublin: Butterworths, 2001), at page 156
- [11] Section 29, Courts Service Act, 1998.
- [12] Section 13(1), Courts Service Act, 1998.
- [13] Section 14, Courts Service Act, 1998
- [14] Section 20, Courts Service Act, 1998
- [15] Sections 19 & 20, Courts Service Act, 1998.
- [16] Section 8, Courts Service Act, 1998.
- [17] Section 13(2), Courts Service Act, 1998.
- [18] Section 7, Courts Service Act, 1998.
- [19] Section 21, Courts Service Act, 1998.
- [20] Section 23, Courts Service Act, 1998.
- [21] Section 6(F), Courts Service Act, 1998.

Appendix 1

Courts Service Management Structure



The Courts Service User Groups

1. Court User Groups

The Courts Service is committed to providing a high quality customer focussed service for persons using the courts. As part of our Customer Service Action Plan user groups have been established to assist us develop a customer centred approach to service delivery. User Groups have been set up in Dublin and in the regions.

1.1. Purpose of Groups

These groups help ensure that the views and suggestions of those intimately involved in the courts system are taken into consideration in the development and operation of policy and initiatives. Such groups assist greatly in improving the efficiency and effectiveness of the system. They also provide a useful forum for the exchange of ideas and help in making users aware of each others needs and concerns.

1.2. Membership

The members of the court user groups are persons representing organisations and others who use the courts or court offices. These include representatives from professional bodies such as the Law Society of Ireland, the Bar Council, the Dublin Solicitors' Bar Association, the Family Lawyers' Association, the Office of the Director of Corporate Enforcement, the Consultative Committee of Accounting Bodies in Ireland, the Institute of Chartered Accountants in Ireland, the Prisons Service, the Garda Síochána, the Probation & Welfare Service, the Legal Aid Board, the Office of the Director of Public Prosecutions, the Chief Prosecutions' Solicitors' Office, the Chief State Solicitors' Office, Law Agencies, Victim Support organisations and various other advocacy groups such as Women's Aid and Amen.

1.3. National Groups

There are six Dublin based user groups which meet at least 3 times per year as follows:

- Criminal cross jurisdiction User Group forum
- Civil cross jurisdiction User Group forum
- Circuit Criminal Court User Group
- Central Criminal Court User Group
- Family Law Court User Group for the Circuit & High Courts
- Dublin Metropolitan District Court User Groups which include the Children Court, Family Law Court, Criminal Court and Traffic Court.

There are also user groups specific to particular areas of the courts such as the Insolvency User Group and the Probate User Group.

1.4. Regional & Local Groups

There are also cross jurisdictional user groups for each county which are managed by the local Regional Offices. These user groups include representatives from the local practicing Barristers, Solicitors, Probation & Welfare Service, An Garda Síochána, Prisons, Legal Aid Board, Victim Support organisations and advocacy groups. The provincial groups meet at least once a year and deal with general issues of interest and concern. When specific local projects are being undertaken the user groups meet as and when the need arises.

In addition to being excellent mechanisms for delivering good customer service, user groups also provide a very useful means of testing the tolerance of a user group for proposed changes e.g. new methods of service delivery, and for communicating informally with the bodies they represent. The experience of the Irish Courts Service has been that the longer a user group has been in existence the more useful it becomes. A level of mutual trust builds up over the passage of time, not only between the Courts Service and the users but also among the various external members

2. Customer Service Annual Forum

In addition to the Court User Groups, the Courts Service hosts an annual forum for all users of the Courts Service. This meeting is a forum for the Courts Service to consult with the following organisations:

- AdVIC
- An Garda Síochána
- Ballymun Community Law Centre
- Bar Council
- Bar Council
- Bridewell Garda Station
- CCABI, Institute of Chartered Accountants in Ireland
- Chief Prosecution Solicitor
- Chief State Solicitor
- Child Care Directorate
- Citizens' Information Centres
- CLRG (company law review group)
- Commission for Victims of Crime
- Companies Registration Office
- Competition Authority
- Coroners Society of Ireland & Medical Bureau of Road Safety
- Court Support Service
- Crime Victims Helpline
- Dept. of JE&LR
- Dublin Solicitors' Bar Association
- Family Lawyers Assoc

- FLAC (free legal advice centre)
- HSE
- Immigrant Council of Ireland
- Law Reform Commission
- Law Society
- Legal Aid Board
- MABS (money advice & budget services)
- National Crime Council
- National Network of Women's Refuges & Support Services
- Northside Community Law Centre
- Office of the Director of Corporate Enforcement
- Office of the Min. for Children
- Personal Injuries Assessment Board
- Prisons Service
- Probation and Welfare Service
- Rape Crisis Network
- Revenue Commissioners Solicitor
- Revenue Solicitors Office
- Special Residential Services Board
- Women's Aid
- Youth Justice Service (DJELR)

This annual event provides the Courts Service with an opportunity to inform user organisations of proposed new developments. They also allow the Service to obtain feedback from these organisations on future plans and proposals, and on past performance. The presentations to the 2007 meeting of the forum dealt with such issues as the Courts Service capital development programme, the new Criminal Court Complex, an on-line search facility for the High Court case tracking system, e-small claims and developments in the Courts Service website. The fourth annual forum will take place in the Hilary Term of 2008 (January to March 2008).

Assembly and Executive Review Committee Inquiry

into The Devolution of Policing and Justice Matters

Prosecutions: Independence And Accountability

Introduction

1. This short paper addresses issues which the Committee has been considering in relation to prosecutions. The future arrangements for prosecution under the new devolved arrangements significantly change the relationship between the Public Prosecution Service for NI (PPS) and the Attorney General by underpinning the independence of the Director of Public Prosecutions for Northern Ireland (DPP). In the light of this change, the Committee raises the question of the relationship between the PPS and the Assembly.

2. By way of introduction, it may be noted that although the changes to be introduced in Northern Ireland are a considerable departure from the model that has existed hitherto in the United Kingdom, the nature of the Attorney General's role has been the subject of considerable debate in England and Wales in recent years. This led the Government to publish in July 2007 a Consultation Paper on the Role of the Attorney General which sets out various options for reform of the role of the Attorney General. One of the options is whether changes should be made to the role of the Attorney General in relation to criminal proceedings including the role of superintending the prosecuting authorities.

The New Arrangements for Northern Ireland

3. As explained in the Government's Consultation Paper, Devolving Policing and Justice in Northern Ireland, the current position in Northern Ireland is that one person, the Attorney General, holds two posts: Attorney General for England and Wales and Attorney General for Northern Ireland. The DPP as head of the PPS is subject to the superintendence and direction of the Attorney General and is accountable to the Attorney for the performance of his functions. The Attorney is in turn answerable to Parliament for the PPS.

4. Under the new arrangements the Attorney General for England and Wales will no longer be the Attorney General for Northern Ireland and the First Minister and deputy First Minister must appoint the Attorney General for Northern Ireland. The functions that the current Attorney General exercises relating to Northern Ireland which are excepted and not devolved will be the responsibility of the Advocate General for Northern Ireland who will be the Attorney General for England and Wales.

5. The DPP's relationship with both the new Attorney General for Northern Ireland and the Advocate General for Northern Ireland will change. Section 42 (1) of the Justice (NI) Act 2002 (the 2002 Act) states that the functions of the Director shall be exercised independently of any other person. The section goes on to prescribe a different relationship between the Director and the Attorney General for Northern Ireland – one of consultation rather than superintendence. Section 42(2) provides that the Director must consult the Attorney General for Northern Ireland and the Advocate General (a) before issuing or making alterations to a code under section 37 (Code for Prosecutors), and (b) before preparing his annual report. Section 42(3) provides that the Attorney General and the Director may (from time to time) consult each other on any matter for which the Attorney General for Northern Ireland is accountable to the Assembly. Section 42(4) provides for a similar relationship regarding the matters for which the

Advocate General is responsible to Parliament.

The Changed Relationship between the Attorney General and the DPP

6. To understand the context of the changed relationship between the Attorney General and the DPP one has to turn to the Criminal Justice Review which originally proposed the changes that have been enacted in the 2002 Act. The Review considered that in the particular circumstances of Northern Ireland the independence of the prosecution process from political pressure should be strengthened, by ensuring that the relationship between the Attorney General and head of the Prosecution Service, while containing elements of oversight, is consultative and not supervisory. In other words:

...[T]here should be no power for the Attorney General to direct the prosecutor, whether in individual cases or on policy matters. (para 4.162)

7. The Review stated that it was attracted to aspects of the model in the Republic of Ireland. There section 2(5) of the Prosecution of Offences Act 1974 states in similar terms to section 42(1) of the 2002 Act that the DPP shall be independent in the performance of his or her functions. The relationship between the DPP and the Attorney General is also expressed in similar terms to section 42 (3) of the 2002 Act. Section 2(6) provides that the Attorney and the Director shall consult each other from time to time in relation to matters pertaining to the functions of the Director. In his book, *The Attorney General, Politics and the Public Interest*, Edwards records that in the explanatory memorandum issued by the Department of the Prime Minister of Ireland in making public the terms of the Prosecution of Offences Bill, it was envisaged that the provision for consultation would not confer on the Attorney General any right to give directions to the Director as to how he will perform his functions in relation to particular cases or generally. Edwards concludes that the DPP in the Republic of Ireland is not accountable to the Attorney General.

8. It may useful at this point to draw upon a distinction made by the Criminal Justice Review between accountability in the subordinate/obedient sense and accountability in the explanatory/answerability which was identified in research undertaken for the Review. The DPP will no longer be accountable to the Attorney General in the subordinate/obedient sense. The logic of the consultative relationship would seem to require that the Attorney General will no longer be able to make decisions in relation to prosecution and the section 41 of the 2002 Act transfers a number of decision making functions to the DPP. But it is clear that the Attorney General will still have certain functions in relation to prosecution which the Review described as 'elements of oversight'. For example, as mentioned above, the DPP must consult the Attorney General before preparing his or her annual report and before issuing or making alterations to the Code for Prosecutors. Although the Attorney General has no power to give directions on these matters, the fact that the DPP must consult on them could be characterized as accountability in the explanatory/answerability sense. In addition, the Review recommended that the Criminal Justice Inspectorate be under a duty to inspect the work of the PPS and report to the Attorney General on this. Section 47 of the 2002 Act enables inspections to take place after consultation with the Attorney General and this work must be reported to the Attorney General.

The Relationship between the PPS and the Assembly

9. It is suggested that it may be useful to distinguish between three different functions relating to the work of the PPS and the DDP – the general work of the Service, prosecution policy and individual prosecution decisions. The Criminal Justice Review recommended that the head of the prosecution service should be accountable to the appropriate Assembly Committee for financial

and administrative matters relating to the running of the service. Section 30(11) of the Justice Act provides that the Director may not be required in any proceedings of the Assembly to answer any question or produce any document relating to a matter other than the finances and administration of the Service. This implies that the DPP may be required to account directly to the Assembly for matters of finance and administration. A parallel may be drawn here with the Republic of Ireland where legislation provides that the Committee of Public Accounts may in respect of the DPP and his officers direct their attendance to answer questions on matters relating to 'the general administration of the office'.^[1]

10. It is also clear that it is envisaged that the Assembly will have a role in relation to the work of the PPS through the Attorney General. This will have to be set out clearly in standing orders. The Criminal Justice Review considered that the Attorney General would be answerable to the Assembly for the work of the prosecution service in general terms. This contrasts with the position in the Republic of Ireland where it appears that the Attorney General is not personally answerable to parliament for the way he discharges his functions. Section 25(1) of the 2002 Act provides that the Attorney General may participate in the proceedings of the Assembly to the extent permitted by its standing orders. Section 25(3) provides that the Attorney General may, in any proceedings of the Assembly, decline to answer any question or produce any document relating to the operation of the system of prosecution of offences in any particular case if he considers that answering the question or producing the document might prejudice criminal proceedings in that case or would be otherwise against the public interest. It would seem to be implicit in these provisions that standing orders may require the Attorney General to answer questions on the general work of the PPS, not related to a specific case. This is borne out further by section 42(3) which provides that the Attorney General and the DPP may consult each other on any matter for which the Attorney General is accountable to the Assembly. Section 42(6) in addition provides that the Attorney General must lay a copy of each annual report of the PPS before the Assembly.

11. It may seem anomalous that the Attorney General should be 'accountable' for the general work of the PPS when the Attorney General is not responsible for the work of the PPS. The Criminal Justice Inspectorate in its report on the Public Prosecution Service considered that the new arrangements whereby the PPS will be a non-Ministerial Department funded from the Northern Ireland block grant with an Attorney General unable to provide a line of accountability may perpetuate some of the difficulties it identified in the current arrangements whereby there is a disjunction between one Department (the NIO) being responsible for funding while not being able to engage in a normal dialogue about performance which would routinely take place between a funding department and a publicly funded body. The importance of the PPS, in its view, required that it be accountable through its funding body for the delivery of a high quality service. It considered that it was beyond its remit to recommend a specific structure but thought that an arrangement was possible which would provide the necessary accountability while preserving the independence of decision making.

12. Turning to questions of prosecution policy, the Criminal Justice Review considered that the Attorney General should not be able to direct the DPP on any matter of policy and this is carried through into the 2002 Act by the consultative nature of the relationship. However, as noted above, the DPP must consult the Attorney General before issuing or making alterations to the Code for Prosecutors which gives guidance on general principles to be applied when making prosecution decisions. This suggests that prosecution policy is not an issue which is the exclusive concern of the PPS. The recent Consultation Paper on the Role of the Attorney General in England and Wales states that the Government has a legitimate interest in overall prosecution policy and takes as an example the role of the Attorney General for England and Wales in ensuring that prosecutors give greater priority to certain categories of cases such as street crime, rape, counter-terrorism, animal rights extremism and tackling radicalism (para 3.19). It is suggested that under the new arrangements in Northern Ireland the Attorney General could continue to have a role of bringing policy matters of concern to the Northern Ireland Executive and Assembly to the attention of the PPS through the consultative mechanism.

13. Finally, there is the question of individual decisions. The consultative nature of the relationship precludes the Attorney General from exercising any power of direction over individual prosecution decisions. A further question is whether the Assembly may have a legitimate interest in being provided with an explanation for individual decisions in certain, perhaps high profile cases. As noted, section 25(3) enables the Attorney General to decline to answer any question in any particular case which may prejudice the proceedings or be against the public interest. But the 2002 Act does not appear to preclude the Attorney General from answering questions in individual cases subject to these exceptions. The Criminal Justice Review considered that it may be that the prosecutor and the Attorney General would conclude that in no circumstances should they be expected to answer such questions but it did not think that this should be ruled out for all time. Its approach was to stand firm against the DPP being accountable in the subordinate/obedient sense for individual decisions but to encourage explanatory mechanisms where it was possible to do so.

14. It may be thought anomalous that the Attorney General should be asked to explain decisions which he has not taken and is not responsible for. Under the existing arrangements, however, in recent times Attorneys seeking to explain prosecution decisions to Parliament have made it clear that they did not direct such decisions and that they were made independently by the DPP. Alternatively, it may be thought more appropriate for the Director of Public Prosecutions to explain his own decisions directly to the public where there is a request for reasons and it is possible to do so. This would be consistent with the present Code for Prosecutors which states that where a request for reasons is made the PPS will consider what information may reasonably be given. This is a difficult area that will have to be worked out between the First Minister, the deputy First Minister, the Attorney General and DPP and within the consultative relationship between the Attorney General and the DPP.

Conclusion

15. In its review of other jurisdictions the Criminal Justice Review concluded that there were discernible trends in the direction of independence of prosecution decision making from political influence (in other words away from accountability in the subordinate/obedient sense) but that there was also a discernible trend in the direction of enhancing transparency through 'explanatory' mechanisms. In proposing a changed relationship between the Attorney General and the DPP under devolved arrangements, the Criminal Justice Review was attempting to balance prosecutorial independence and political accountability along these lines. A recent study co-authored by this commentator has argued that the arrangements for Northern Ireland are more in line with international standards than those that currently operate in the rest of the United Kingdom. It is one thing, however, to prescribe a model for the future; it is quite another to make it work effectively. The 2002 Act has set the framework for the arrangements but there will need to be a shared understanding of what is required by the DPP, the Attorney General, the First Minister and deputy First Minister and the Assembly in order to make the new arrangements work.

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December 2007

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[1] See Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities of Witnesses) Act 1997.