UK INTELLECTUAL PROPERTY OFFICE

A Value for Money Review

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A high level whole-of-office Value for Money Review commissioned by the UK Intellectual Property Office

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INTRODUCTION

Value for money is a widely used expression. Its meaning can vary from one context to another. Within the UK Government the term has been used to encapsulate a range of programmes aimed at securing improvements to the delivery of government services. One of the major vehicles for this direction has been the Operational Efficiency Programme which has highlighted areas of government activity or management which, if improved, would deliver better value for money to the public. Linked to this direction is the Capability Review programme which assesses government agencies against a model of capability. Value for money in this context is both an overarching term for improving the delivery of government services and a more narrow term for achieving cost efficiency.

This Value for Money Review fits broadly within this context. We were asked to undertake a high level review of the UK Intellectual Property Office to examine whether its overall business model is soundly based. We were asked to assess in particular the extent to which the governance arrangements, business plans, resource allocation and usage, the management and measurement of performance, and the methods of operation are capable of meeting the objectives of the UK government for the Office. (See Terms of Reference in Appendix 1).

This review was part of a wider Value for Money (VFM) Review process established by the Office in November 2009 which had two streams. The first stream was a whole of office review. The second stream was a rolling programme of business area reviews to highlight improvements and efficiencies within individual business areas. This report sets out the findings of the first stream. Although we were taking a high level view of the whole of the organisation, it was inevitable that we would go down into detail in some business areas and therefore touch on matters that more properly were the province of the more detailed business area reviews. We maintained contact with the other VFM stream to minimise such overlap and duplication and to assist with consistency. We have not, however, been able to compare our final conclusions or recommendations with the other team.

The initiative to set up the Value for Money reviews was taken by the former CEO of the Office, Ian Fletcher, who saw the value for the health of the Office of undertaking such an exercise. He approached each of us individually, knowing our backgrounds, to become involved in the review. While the rolling programme of individual business area reviews was set up using management consultants from the National School of Government, neither of us are management consultants. We bring to this high level review our combined experience. In one case, a former CEO of a large trading fund agency in the UK Government and currently a Non-Executive Director on a National Health Service Trust and on the UKIPO Steering Board. In the other case, a former CEO of the Australian intellectual property office (IP Australia) and other senior roles in the Australian Government and now consulting on IP issues with government and commercial clients. Our background as hands-on CEOs is reflected in our judgements throughout this report. We did not bring to the task a model against which we would test what we found, we tended more to ask: “What would we be doing if we were managing the organisation in these circumstances?” Nonetheless, scattered throughout the report are various models and frameworks, mainly taken from a UK context, which we have used to illustrate our findings and suggestions.

One key issue which threads through much of the report is the paucity of good management information currently developed and used within the Office. This obliged us to develop our own management information to underpin and illustrate some of the judgements and recommendations we wanted to make. The data work we did was necessarily crude and in some cases may be methodologically unsafe. In reading the report this should be kept in mind. Our view is that we have tried to illustrate the potential value of such management information not provide it. The challenge we put out to the Office is not to prove our data is wrong (it may well be in some cases) but to commit to developing better management information across the whole Office.

Another thread that winds through the report is a sense of urgency. We uncovered (or more commonly were told) many things that needed to be done or needed changing or could be managed better. We formed the view that many of the necessary changes we were going to recommend needed to be implemented urgently. The Office had had a major shock when the global financial crisis had undermined its confidence in its long term financial health. The reaction of the Office was in our view made extremely difficult because of the lack of good management information underpinning its management activity in more normal times. But the financial crisis is not over. It is clear, as a consequence of the financial crisis, that the Civil Service in the UK will be hard pressed after the next election. The Office will not escape these pressures. In our view it is currently poorly prepared for such pressures and needs urgently to put in place more robust management arrangements to prepare for this. We hope our recommendations will assist.

We were very gratified by the openness of all the internal and external people we interviewed. We have provided a list of our consultations in Appendix 3. We indicated to all of our interviewees that we would not identify them in the body of the report and we have not done so. Nonetheless in many cases the context makes clear who we were most likely referring to and all of our interviewees were comfortable with that.

Many of the issues we explore were readily acknowledged by those we were interviewing. We do not believe we are making unexpected revelations to the organisation. There is, however, a mismatch between how well regarded the Office is by its external stakeholders and the extent of the internal issues which we point to which need addressing. In some senses this should have been expected. The Office clearly does good quality work for its customers and has a good reputation generally with external stakeholders. The external stakeholders therefore have had no reason to look under the covers and see how it is all delivered. The corollary of this is that the Office is an excellent position to deal with the matters raised in this report as it is not being pressed by external stakeholders unhappy with its products and services and looking for radical fixes. The same satisfaction by external customers and stakeholders should not, however, lull the Office into a sense of complacency about the issues raised in this report. Our view is that unless these matters are addressed the good performance for customers will decline and may already be in danger.

As a review team we felt privileged to have the opportunity to take a high level view of the Office and where it is trying to go and how it is trying to get there. In some senses we were unusual as reviewers because we both saw how much better the Office could be. Through the undertaking of the review we both became committed to wanting to see the Office thrive and truly become a world class IP office.

Finally, we would like express our thanks to Susan Chalmers, Valerie Waters and Sian Giles who organised our access to huge volumes of information to which we hope we have done justice, the logistics and arranging of all our consultations, and our accommodation needs.

Gary Austin

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CHAPTER ONE - Perceptions from the Outside

In any organisation the views of the users of the service are an essential consideration when reviewing the value for money offering of the organisation. Not surprisingly the IPO conducts its own customer surveys on a regular basis, but these surveys have tended to take a more detailed operational level look at the services on offer. The review team were keen to make direct contact with a number of different stakeholders who were users of the IPO services in order to establish what views they held about the value for money provided by the IPO. From the outset all the people interviewed by the review team were informed that their comments would be kept anonymous for obvious reasons, so whilst quotes in *italics* are included in the text they are not attributed.

In total the review team managed to speak to 12 UK based representatives of various organisations who were either direct users of the IPO services or were professional bodies for the users of these services. The full list of organisations contacted is included in Appendix 3. In addition to the UK based stakeholders the review group also made contact with representatives of OHIM and the EPO plus a couple of patent offices in other countries.

The analysis of these views is best undertaken within the natural subsets of the full range of services provided by the IPO.

Rights Operations

The UK based users of the right's processing services were broadly very content with the service they were being provided with and generally regarded the costs as offering good value for money. These stakeholders had formed the view that the IPO is a well run organisation and, in the last two years especially, it has been increasing its efforts to improve its customer contacts. In particular, the stakeholders valued the quality of the rights processing work, especially the following aspects.

- Its timeliness
- Its value for money
- The quality of examiners
- The approachability and openness of examiners.

A number of the stakeholders privately acknowledged that the office gave very good value for money from their perspective. Indeed one added that "*they could charge more for fees, since the money is tiny for his players",* by comparison to the whole cost of registering a patent. For this respondent and many of the others, the quality and speed of delivery were much more important than the cost of the IPO service itself. Indeed one said that the IPO "*renewal fees were much cheaper*" than other jurisdictions. The IPO was seen as providing "*swift and high quality filing dates*" and they also wanted a "*good search system which they got from the UK office and they* *get the searches back in time for the decision on where to go next*". The opinion service was valued and felt to be cheaper than counsel but it was used "*only for customer comfort*".

The review panel was told that the IPO "*actually feels managed by comparison to the EPO"* with a "*strong and loyal middle management team*". For patent service users the comparison with the EPO was a frequent source of comment. For example, one large user of the patent service said "*the EPO could learn [from the IPO] a great deal about openness and general approach to customers".* They also went on to add that the examiners had an approach which took the view that "*the applicant was someone who has a good invention that deserves to get a good patent*". Indeed one went onto say that *"the reputation of the IPO was massively higher then EPO, with a focus on customers and management of the office".* However, in the view of one interviewee by comparison to the EPO, "*the IPO would have to work hard not to be covered in glory by comparison*". Feedback to queries by the IPO was good and by comparison the EPO was seen as poor. One exception would appear to be the website where the EPO system was felt to be easier to use and provided more information.

In summary, the rights service offered by the IPO was rated as good but another route did exist for patents especially. One of the interviewees did complain that the "*quality of searches could be better and was not as consistent as they would like at times*". Standards by comparison to the EPO were questioned since it was felt that "*it was easier* [to get a patent granted] *with the IPO*" and they wanted the IPO "*to be consistent with EPO standards".*

One further exception to this general good feedback was the IPO design system since this now tended to be used for priority date only by many "*since it is cheap and can be still delivered by hand*", but *"why have a UK design registered for £600 when you can have an EU one for £1,000 ?".*

From discussions with a number of the stakeholders who had an international remit it was clear that a number of strategies were used in filing, for patents especially. Many felt that they wanted to file in their home territory and use this as a springboard for further work elsewhere. The IPO "*provision of swift and high quality priority dates*" coupled with a "*good search system*" led them to use the IPO system for the early stages at least. However, the later stages depended on the market place that the organisation wanted to work in. In a global market place the USA, China and Japan were top priorities. One company said that for the ICT area it would classically select very few countries, usually just three including the UK, but for pharmaceuticals it would use up to 17 countries to register a patent. High value patents that were regarded as "*crown jewels*" would use a national system to protect against any "central attack" by competitors.

Europe was a more difficult market for the global players so it tended to be treated in a "just in case" way. Depending on the products being sold it was very common to take out patents in Germany and the UK even though renewal fees in Germany were comparatively expensive. One of the professional patent bodies confirmed that very few customers wanted a UK patent only. Filing figures for patents in the UK can look high in the first year but then applicants will not proceed with the UKIPO and go for regional and international recognition instead.

Comments were made that the searches "*could be faster*" and the *"quality of the IPO searches could be better"* and it was felt that it "*was easier to get the patents through"* the IPO than the EPO. Indeed the issue on standards is an important one for the customers of the IPO if it wants to be used in future in a local office role for either the current EPO or the future EU patent systems. Feedback was also given on the use of the e-filing system for patents since "*people were concerned about corruption i.e. a small change to an equation and therefore it is seen as dangerous until the customer insists. The system will need to be made compulsory if it is to be widely used in future."*

Clearly, many people felt that the IPO's patent examiners were a "*pleasure to deal with*" apart from "*one or two pockets of laziness*". One critical point that was made clearly by some of the interviewees concerned the role of the IPO in dealing with private patent applicants - "*the private applicant is really a charity for the IPO and a waste of time*". Another view that was firmly expressed was that they would support "*anything that got rid of the dross and* [they] *would like to see examiners reject claims that could not be enforced."*

On the trade marks side the comments were again very positive and the IPO was seen as providing excellent value for money "*£200 to register in one class all the way to publication*" which could be recognised in 5-6 months. In one case the interviewee said "*no complaints, it is almost too fast. There is no need for the accelerated system*". One representative said they "*could not see much threat to the UK system since it is used as a start for the recognition system*". If clients wanted 2-3 EU countries then it was worthwhile going to a community trade mark with OHIM and this system has been in existence for some 13 years now so is well known. However, decisions from OHIM do appear to "*take forever*" and they appeared to be "*a stickler for the rules and a tad too bureaucratic*". One felt that "*too many people file trade marks who do not know what they are doing*." And that *"they could live without cooling off periods being so long*". In general the view of IPO users was that "*things get done in a timely fashion and it appears to work."*

In an era when intangible assets such as branding have become critical to business, it was recognised that the IPO had shifted from being just a registry with a willingness to move into broader horizons such as branding. "*They are seen as <u>the</u> government body with an understanding of intangible assets*". "*No one else in government was seen as being interested in this area of economic activity."* The registry was seen as "*speedy*" and the rights granted were "*robust and worth something*" and that they were "*good rights when granted*". The IPO was said to have "*an excellent team in place at present and there was an understanding of the issues of a brand holder*". In particular people were again keen to see the IPO engage in debates in the EU and internationally. They are keen for the IPO to drive this aspect since "*the IPO team have the knowledge and drive*".

In summary the stakeholders said:

- They value the consultation with the office

- Generally feel they are listened to and issues responded to
- Value the quality and timeliness of the rights processing
- Value that the examiners seem to want to make the system work for the applicants
  - Patent examiners wanted good inventions to get protection (a point contrasted with the attitude of examiners in the EPO)
  - TM examiners seemed to understand the value of branding to industry and how TM fit within this

Policy Role

It was generally felt that the IPO consultation mechanism were effective since "*they consult and listen*". All of the people and organisations interviewed supported the growth and improvements in the IPO's activities in policy areas in recent years, "*IPO knows about IP*". In the last couple of years the IPO was widely felt to have been "*much more rapid and proactive and everyone is a much better for this",* with it being "*a million times better now*." But there was also a recognition that it needed "*to do more*". In the past the IPO had been seen as having more "*inwardness*" with solutions being put forward with little discussion. Relationships were quoted by a number of the interviewees as being very good and at a high level; one said that "*the IPO were very good at building trust*".

There was a great deal of support for the IPO to *"influence the debate across the whole of government"* and that this was one of the biggest challenges facing the IPO now. The IPO should build upon the "*big increase in government and industry talking about IP including file sharing, online copyright and the EU developments on the way patents are used."* The IPO needed to "*champion IP within government since other countries like Canada, Singapore and the USA had recognised the wider importance of IP within the economy".* To be successful the IPO would need to find a way to improve the knowledge of IP within the "*creative industries, which are mostly SMEs employing just 5-10 people with little knowledge of IP protection and commercialisation"*.

Within the civil service the IPO was seen as working well and co-operatively on policy issues, with a "*good relationship on commenting on drafts*" and not *"aware of any issues where the IPO do draft without consulting them".*

One international company did voice concerns that the IPO were more secretive when it came to international negotiations, and "*much more information on the papers under discussion are supplied by other countries."* The review team believe that this is likely to be because the UK delegations respect the use of the „restricted' tag on certain papers. The interviewees also felt that the UK delegation did not tend to "*speak up for industry or as forcefully as it could"* during these international negotiations.

Views varied on the quality of the consultation surrounding the recent **Digital Britain** exercise, which appeared to have been pushed through and was not seen by some as a shining example of consultation. However, one interviewee did acknowledge that there were "*conflicting views within industry on copyright and that the IPO were less respected on copyright than on the other more traditional areas of work*." The views of publishers did not for example match those of the software or music industry people. The contrast had been noted between the way the office had "*taken the lead on climate change and Copenhagen, and the lack of debate leadership by the IPO on copyright"*.

So within the UK it is clear that the IPO had taken a stronger line on the policy aspects with a great deal of support however, on the international front a more mixed picture appeared from the discussions with the EPO, OHIM and representatives from a couple of other patent offices. Whilst the IPO core functions are "*treated with respect and are seen as a serious if not perfect office",* the UK office has *"become weaker in showing the way"*. The UK voice appears to have been "*much quieter in the past two to three years"* with much less *"visibility on the floor"* and that they had been *"disappointed".* Some had felt that there was some reluctance in the IPO to demonstrate willingness to share internal information in support of comparative work with other offices.

Comments were also made about the "*lack of consistency of representation"* at various meetings having a detrimental impact on the influence of the office since it took time for people to build relationships at the international level. One interviewee said that the "*UK was mistrusted by many parts of Europe"*, since they could not work out what the IPO really wanted. In this respect the IPO also carries the usual UK baggage on European issues, namely "*are they in or out of Europe?"*

In summary the stakeholders said:

- Observed an improved policy role of the office in Whitehall
- Strong support for policy role in Europe & Internationally
- Strong support for wider/expanded role in supporting innovation especially through education
- Some criticism that the office does not speak up for UK industry and just puts a "pure policy" position

Education Role

There was strong and widespread support for the continuation of the education or outreach activities of the IPO. Indeed there was support for the wider role in educating users "*at grassroots*". It was acknowledged by one of the interviewees that "*academic careers are based on publishing and not on the number of patents filed. They think about research not about how to commercialise the research".* With this in mind and a view that says "*innovation is totally random*" it is clear that it is important that someone raise the IP profile since "*you will never know where the innovation will come from*". A number made the case for embedding some exposure to the intellectual property system firmly within the education system. The need is on increasing understanding on how to recognise innovation and then capture it. For example, in one organisation that saw 400 innovations last year they filed only 5- 15 patents and expect only 10% to get to product development stage and just 1% end with the creation of a start up company.

The existing education material produced by the IPO was seen to be of a really high standard, but it was felt it "*needed to add value using the IPO brand*" and find modern ways to get to these roots and "*not just hire hotel rooms and hope a few people will turn up*". One observer suggested that the IPO did not have any *"strategy for its outreach or education work".* The IPO brand is strong and efforts should be made to raise the profile of IP amongst as many people as possible not just patent attorneys. One part of the NHS for example has provided IP management exposure/training for 8,000 staff some of which lasted 20 minutes and some which lasted a day. If IPO were to offer training direct it would need to be of the usual high standards or offer an endorsement/ recognition system for the training provided by others. The "*risks of not doing education on IP are much greater for the UK".*

In summary the stakeholders said:

- Strong support for wider role in educating users (although the professions have some issues about encroaching on their role)
- Materials produced by the office are high quality
- Office could do more
    - Would need to be well targeted
    - Fit for purpose
    - High quality (not just materials but how it is managed, its content, presenters, etc)

<u>Future Outlook</u>

The proposed creation of the EU patent system will obviously bring about further challenges to the way international companies use the IPO patent system. Much will depend on the detail which is yet to be finalised but it is clear that a simple system could further reduce the volume of patents that go through the UK system. For one organisation the concern was expressed in this way "*if the costs of the EU patent were more expensive than the total current French, UK and Germany patent costs then they would need a radical rethink".* One major concern remained that an EU patent system could make it easier for competitors to mount a "central attack" on a patent. Any attack on a patent during the opposition phase will tie up resources.

One area of potential work for the IPO was mentioned and should be considered to see if a business case can be made. This suggestion concerns the renewal of patents which is currently dominated by a small number of global companies. Since the IPO controls the database for UK patents and therefore has the knowledge of when renewals are due it may be possible for the IPO to provide a cheaper and simpler system to ensure that applicants could renew their patents.

In this future world a number of respondents clearly saw a role for the IPO to continue as "*the local point of contact*". Unlike many of the other smaller patent offices within Europe, they saw a continuing value in the UKIPO and the IP offices in other countries that had active search facilities like Germany, Sweden, and Denmark for example. This was especially so if the IPO found a way to act as the "local processing office" for the EU Patent.

Further harmonisation agreements by the IPO with other countries was seen as very attractive along the lines of "*do it once and get it well examined then get rubber stamped elsewhere".* A plea was made for the IPO to be on top of the harmonisation process. However, the office would need to come to terms with "*a smaller market in future for UK only patents".*

In summary the stakeholders said:

- Strong support for continuation of a UK IPO
    - Essential for the branding industries
    - Highly desirable for users of patents
        - For tactical reasons
        - For maintaining expertise in the UK
- A sense that national offices/European Office (OHIM)/international options (PCT & Madrid Protocol) are complementary arrangements
- Consider the case for the IPO to become involved in the patent renewal reminder process on a commercial basis
- With the EPO/EU Patent a sense that the UK IPO role is desirable, provides options to avoid costs for some firms given their patent strategy, options to avoid central attack, and could be viable through a franchise, regional office arrangement. Major EU offices should remain – UK, Germany, Sweden, Denmark were named.

CHAPTER TWO - Trading Fund Issues

The Patent Office (as it was then known) became an Executive Agency on 1 March 1990 and achieved Trading Fund status on 1 October 1991. The Patent Office Trading Fund Order 1991 (Statutory Instrument 1991 No 1796) announced the purpose of establishing the Patent Office as a Trading Fund in the following terms:

> Whereas-
>
> (1) It appears to the Secretary of State for Trade and Industry that:-
>
> (a) those operations of the Department of Trade and Industry which are referred to in article 2 of, and, Schedule 1 to, this Order are suitable to be financed by means of a fund established under the Government Trading Funds Act 1973 ("the 1973 Act") and, in particular, to be so managed that the revenue of the fund would consist principally of receipts in respect of goods or services provided in the course of the operations in question, and
>
> (b) the financing of the operations in question by means of such a fund would be in the interests of the improved efficiency and effectiveness of the management of those operations;

Much meaning is buried in the legal language of this Order. Understanding the objectives of the Government when it establishes a Trading Fund is important to understand many of the issues discussed in this Value for Money Review.

Trading Fund Requirements

The key documents which set out the requirements of Trading Fund status are the Government Trading Funds Act 1973 as amended by the Government Trading Act 1990, and the Guide to the Establishment and Operation of Trading Funds issued by HM Treasury in May 2004 (updated August 2006).
The legislation sets out three statutory tests that must be met when setting up a Trading Fund. These are set out in the Treasury Guide as follows:

1. The first is that the operations to be financed by means of the trading fund are "operations of a department of Government for which [a Minister of the Crown] is responsible" (section 1(1)(a))
2. The second statutory test is that "the revenue of the proposed fund would consist principally [i.e. more than 50%] of receipts in respect of goods and services provided by the fund in the course of its operations" (section 1(1)(a))
3. The third statutory test is that the "financing of the body's operations by means of a trading fund would be in the interests of the improved efficiency and effectiveness of the management of those operations" (section 1(1)(b).

The Treasury Guide also indicates that the legislation in section 4(1) imposes two financial tests:

1. To ensure that the revenues of the fund are “sufficient, taking one year with another to meet outgoings which are properly chargeable to revenue account” (i.e., to break even after interest and dividends)
2. To achieve such further financial objectives as the Treasury may from time to time by minute laid before the House of Commons indicate as having been determined by the responsible Minister (with Treasury concurrence) to be desirable of achievement.

It should be noted that in the Treasury Guide (Para 2.4.2) “taking one year with another” is not defined. In practice, the wording has been taken to mean “over a period”, usually, but not necessarily, linked to the period over which the further financial objective is set.

Finally the Guide points out that the explanatory memorandum that accompanied the legislation (Cm 914) sets out three further criteria (administrative tests) to be met:

1. The first administrative test is to ensure that Ministers have agreed that levels of expenditure and activity should be allowed to vary in line with demand and receipts
2. The second administrative test is that where a trading fund will be wholly or mainly providing goods or services to Government departments there should be a genuine separation between the body and its customers and there is as much competition as is feasible in supplying goods and services
3. The third administrative test is that there should be a clear commitment to substantial and measurable improvements in performance both in terms of services and costs.

The benefits of operating as a Trading Fund are set out clearly in the Treasury Guide:

- It provides a real focus on outputs and performance;
- It leads to a change in culture within the organisation in that it becomes a value-driven business with greater focus on the needs of the customer;
- It facilities the funding of minor projects (which can be financed from self-generated income);
- It allows more autonomy to management on financial and managerial issues;
- It enables the recruitment of staff who are comfortable with working in a commercial environment;
- Being outside the Supply process can lead to quicker responses to changing circumstances and can aid longer term planning;
- It encourages managers and staff to think commercially, find opportunities to cut costs and seek more efficient ways of operating and to expand the business.

Measuring the performance of the IPO as a Trading Fund

The above discussion of the purpose of setting up a Trading Fund provides a good framework against which to measure the performance of the IPO. The key measures would seem to be:

- Does the IPO have a culture which is “value driven ... with greater focus on the needs of the customer”?
- Does the IPO have “a clear commitment to substantial and measurable improvements in performance both in terms of services and costs”?
- Is there evidence that “being outside the Supply process has lead to quicker responses to changing circumstances and has aided longer term planning”?
- Do managers and staff of the IPO “think commercially, find opportunities to cut costs and seek more efficient ways of operation and to expand the business”?

How does the IPO measure up?

Focus on the needs of the customers

The previous Chapter has discussed the external perspective on the IPO’s performance. As that discussion illustrates, the Office has a high reputation with its customers and stakeholders for the quality of its products and in general for the efficiency with which the Office delivers those services. Customers and stakeholders also generally praised the Office for the way the Office involved them in consultations on issues affecting them. This feedback suggests that the Office does focus on the needs of the customers and is therefore meeting this objective of its Trading Fund status.

Commitment to substantial and measureable performance improvements

The feedback from customers and stakeholders on the quality and timeliness of services reflects a reality within the Office. The Review found a range of examples where IPO management were focussed on service improvement in terms of timeliness and quality. While in some cases these improvements were achieved with a reduction in inputs (usually staff) and therefore costs, this cannot be claimed as a focus on cost performance.

As will be discussed in more detail in later Chapters, the IPO has significant shortcomings in its approach to measuring its performance in relation to its costs. While the Office has many measures in relation to the timeliness of its service delivery and has generally kept the pricing of its services low, this Review was unable to find sufficient evidence that the Office measured the costs of its services or had any systematic way of understanding whether it was improving those costs.

Improved capacity to respond to changing circumstances

The flexibility which is made available to Trading Fund agencies because they are not constrained by the Supply process (which essentially requires the approval of the Parliament to significantly change the amount of resources available to an agency within a budget cycle or to change the purpose for which available resources are applied) should mean that management of a Trading Fund agency has a greater capacity to respond quickly to changing circumstances and to plan longer term when making investment decisions.

The Review found little evidence that IPO management had properly understood the flexibilities available to them as a Trading Fund. Instead, the Review found some evidence that management felt constrained by the perceived restrictions of the Trading Fund status of the Office, especially given some of the peculiarities of the business model and its underlying funding model (see discussion of these issues in Chapter 5). This focus by management on the limitations and boundaries of Trading Fund status rather than on the flexibilities and possibilities of this status, has led to a situation where management has apparently struggled to make longer term investment decisions in areas such as staffing, information technology and accommodation. Each of these areas is discussed in detail in later Chapters.

Commercial approaches to the business and its expansion

As already noted, the Office does not have appropriate cost measurement arrangements in place which indicates that management is not taking a commercial approach to managing the operations of the Office. Furthermore, the Review found that while the Office had identified some opportunities to expand the business, these commercial opportunities had not been properly planned, resourced or supported by management and were, as a consequence, not thriving and not significantly expanding the business. (These examples are discussed in Chapter 5).

In summary the Review found:

- The IPO's focus on the needs of the customer was consistent with its Trading Fund status
- The IPO's commitment to measureable performance improvement fell short in the area of cost measurement
- The IPO exhibited a limited approach to financial flexibility and long term planning
- The IPO was not thinking or acting commercially in a substantial manner

Alternatives to Trading Fund Status

Overall, the Review found that the management of the Office was harvesting few of the benefits of its Trading Fund status. This therefore could lead to the following line of questioning - Is this status inappropriate for the agency? If so, what are the alternatives?

Essentially there are three main alternatives available from which to choose:

- Non-Departmental Public Body
- Privatisation
- Absorption back into a Department of State

Non-Departmental Public Body status would increase the autonomy of the organisation to carry out its functions. If independence from direct Government influence was important for the carrying out of the function then this option is often adopted. The Review formed the view that there were no negative substantive issues identified concerning direct government influence over the management or direction of the agency and for this reason NDPB status does not seem necessary or appropriate.

Privatisation of a government function or agency is considered appropriate where the function can operate fully in the commercial sector, potentially or actually in competition with other suppliers of the product or services in the market place, and ultimately succeeding or failing in commercial terms. The Review formed the view that the exercising of a government power to grant an exclusive right is not in itself an activity that should be privatised. It may be possible to establish a service provider to undertake this work under close regulatory supervision, but the overheads of such supervision and the managing of potential conflicts of interest which may arise with any privatised supplier of such specialised services suggests that privatisation is not an obvious model for the function. The Review team was not aware of any jurisdiction which had wholly privatised the IP rights granting function although there had been some partial outsourcing in some jurisdictions.

The Office could be absorbed back into a Department of State. This would be relatively straightforward to implement. It would, of course, remove the flexibilities inherent in its current status which as suggested above have been underutilised. The Review formed the view that there were no significant advantages that would flow from this option that could not be better achieved through improved approaches to the management of the Office as a Trading Fund. (Some of the hesitation of management concerning operating as a Trading Fund may be caused by a lack of clarity concerning the remit of the Office as it has developed its role in recent years.

This issue is discussed in Chapter 4, and one option discussed in that Chapter is whether some functions should be moved to a Department of State.)

Overall, the review formed the view that Trading Fund status is the most appropriate arrangement for an organisation which is so heavily organised around fee-based services. The management issues which have been briefly highlighted in the discussion above will, however, need to be urgently addressed. These issues are discussed in more detail in later Chapters and detailed recommendations are made to address the findings.

In summary the Review found:

- There is no evidence to suggest that NDPB status is necessary or appropriate for the IPO
- Full privatisation is inappropriate
- Re-absorption into a department of state is possible but not optimal

CHAPTER THREE – Governance of the IPO

In line with other Government executive agencies the governance of the IPO is outlined in a Framework Document, the latest 2008/9 version is effective from 1January 2009. Although, a revised version was considered at the Steering Board on 21 July 2009, it has not yet been finalised, so the 2008/9 version is the one that the review team have used in its analysis of the agency's current governance arrangements, with the obvious amendment to the parent department.

As mentioned earlier the IPO became an Executive Agency on the 1 March 1990 and achieved Trading Fund status on 1 October 1991. In recent years a number of machinery of government changes have seen the parent department change from the Department for Trade and Industry (DTI) on 28 June 2007 to the Department for Innovation, Universities and Skills (DIUS) and most recently to the Department for Business Innovation and Skills (BIS) from the 5 June 2009. Whilst the core functions of the IPO have remained largely unchanged, it is unlikely that this much machinery of government change in such a short period would have assisted the construction of a consistent strategic environment for the office to operate within.

The Secretary of State determines the policy framework for the IPO to operate within and then agrees the strategic objectives, key financial and performance targets and approves the annual revision to the corporate plan. In practice a minister within BIS is delegated approval of the corporate plan, and agreement and monitoring of the financial and performance targets. The chief executive has the right of direct access to the minister (currently weekly bilateral meetings) and at least once a year the minister is expected to meet with the IPO senior management team and other Steering Board members.

A departmental sponsor is also appointed at Director General (DG) level to form a key link between the department and the IPO. These arrangements are standard practice for Executive Agencies. In many cases the DG level sponsor is identified as assisting the permanent secretary for the department in the discharge of their responsibilities for the agency, mostly in a principal accounting officer capacity. Therefore commonly the CEO has a reporting line to both the top ministerial and "executive" posts within the department. The IPO is no different though in the framework document the role of the permanent secretary is only dealt with under the accounting officers section.

It is below this standard hierarchy for Executive Agencies that variations tend to be introduced. While other agencies have "Advisory" bodies that oversee the strategic planning process, review business performance and review internal control and risk management, the IPO has a Steering Board. The fact that the Steering Board is chaired by an independent director is commendable and is best practice within the public sector though still not commonplace.

Steering Board

The Steering Board currently fulfils the following roles:

> "The Steering Board has no executive functions. Its role is to advise Ministers, through the responsible Director General, on the strategies to be adopted by the Intellectual Property Office as set out in its Corporate Plan, the targets to be set for quality of service and financial performance (and monitoring and advising on performance against these) and the resources needed to meet those targets. The Board also provides advice and guidance from a commercial standpoint on the Office's performance, operation and development including its management of risk."
>
> Framework Document 2008/9 page 14.

The departmental DG sponsor is expected to discharge many of their sponsorship responsibilities through membership of the Steering Board. The remaining membership consists of the following:

> "The Steering Board will comprise the Chairman, currently an Independent Board member, senior representatives of BIS, the Chief Executive and four additional Independent Board Members."
>
> Framework Document 2008/9 page 14.

In addition the terms of reference for the Steering Board also state that:

> "Intellectual Property Office Directors will normally attend all Steering Board meetings. Other senior staff attend meetings by invitation."

The Steering Board has one sub-committee at present, the Audit committee, which is chaired by a non-executive and also has other non-executive members.

In practice, the Steering Board usually meets four times a year and is attended by a relatively large number of people. The value gained from these meetings is questionable because of a number of factors. Firstly, it is obvious from reading the minutes of the meetings that the flow of accurate and timely information to the Steering Board members to allow them to meet the requirement of monitoring performance is not being met. Comments on the format, content and timeliness of the financial reports have been found in the minutes in the past and the new finance director also voiced concerns when he met the review team. The review team also found no evidence of the routine supply of information to the non-executives on performance and financial matters between Steering Board meetings. This results in the Steering Board only being exposed to updates on the activities of the IPO on a quarterly basis. In other words the Steering Board only gets to see how the IPO is doing with four snapshots a year. The ability of the Steering Board members to give advice to the CEO is therefore limited by this patchy presentation of information.
A second cause for concern is the use made of the knowledge and expertise of the non-executive members of the Steering Board. When asked by the review team if the non-executives felt that they were being used effectively by the IPO, the

following comments were made. There was "*some frustration at being kept in a nice little box*" and "*spoon fed limited material*" with widespread agreement that "*limited use was made of knowledge*" of the non executives members.

One good example was used to illustrate the two points above. At the Steering Board meeting on 15 May 2009 the need to introduce a redundancy scheme was delivered as a fait accompli. No discussion on this issue appears to be obvious from an examination of the previous Steering Board meeting on 22 January 2009. The timing of the discussion on 15 May therefore appears to be after the decision had been taken. The minutes record the following discussion:

> 4. Louise Smyth provided an update, and stated that at the time 18 staff had formally been declared surplus, whilst the remaining were going through the process. These figures had included 3 volunteers. Support with training, mock boards and portfolios /CVs were well underway.
>
> 10. Ian Fletcher said that job losses this year were necessary to provide sustainable balancing for the future of the Office, and not just a short term solution.
>
> 13. Mr Fletcher thanked all members for their comments and said that he had found them extremely helpful. He made several points:
> (a) that this situation had been a shock to the organisation in so much as many staff who have worked here over the last 20 years, during which time the climate had never been as difficult as it was at present.

Despite the fact that at least two non executive members of the board had previous experience of redundancy situations, none of them had been contacted to provide advice to the management team in this very rare event for the IPO. Given the importance of this matter it is somewhat surprising that so little interaction with the Steering Board took place until after the actions had been started.

In other agencies the value and use of non-executives has been far clearer, indeed in the Department for Transport they are appointed to the management boards of the agencies and meet on a very regular basis.

> **Role of Non-executive Board Members**
> Agency Chief Executives are responsible for appointing at least two non-executive board members to their Agency's management board. Their role is to:
>
> - bring an external perspective to the work of the Agency board
> - provide an independent challenge and scrutiny to the board
> - provide support and advice to the Agency Chief Executive.
>
> Each Chief Executive will also appoint a non-executive board member to chair their Agency's audit committee.

> The appointments will be carried out in line with Cabinet Office guidance on the recruitment, appointment and development of non-executive board members
>
> Department for Transport, *Motoring and Freight Services Group Corporate Governance Framework*, April 2009.

It would appear that previous discussions had been held with the CEO of the IPO by members of the Steering Board about a change in both its frequency and working arrangements, yet no changes had been forthcoming. At present the Steering Board concept does not appear to be optimal in its value to either the management team nor in its utilisation of the non executive members. At the heart of this may be the lack of clarity about the real value to be gained from closer engagement with the Steering Board.

This is disappointing since other agencies clearly have a very close relationship. For example, Peter Collis the Land Registry Agency CEO, told the review team that he "*got more value from the NEDS when they work alongside on projects".* To illustrate this he went onto to say that he had a NED on the programme board for his large transformation project set up to counter the downturn in the housing market. In addition a governance review project was being chaired by a NED and a NED was also chairing a review of the future of the London HQ since it was felt the executive team were not independent enough.

It is therefore recommended as a matter of urgency that the Steering Board review its composition, frequency, format and contribution of the non-executives so that the IPO can maximise the value it gains from its governance arrangements. This review should also consider the formation of a single management board for the IPO. Whatever the outcome of the election this year, tough times are facing the public sector. The IPO has a limited amount of time to show that it is on the front foot in any response to these demands from a new government.

In summary the review team found:

- Poor engagement of Board members with the Office
    - Financial reports to the Board were not fit for purpose
- Structure and membership of the Board is not optimal
    - Membership – not clear, too many people attending
    - BIS DG is on the Board and yet is also reported to by the Board
    - Agenda and content of Board papers are not well focussed
    - Role of NEDs is not clear and underutilised

IPO (Management) Board

The chief executive and the board of directors comprise the management team for the agency. In the IPO's case the current management team consists of a chief executive and seven directors. The effectiveness of the board is an essential feature in the success of any organisation and therefore the review team did briefly examine the effectiveness of the IPO Board.

Cranfield University identified 10 common reasons why Boards fail:

TABLE 1 – TEN REASONS WHY BOARDS FAIL

Structure inappropriate	Not pushing the management
Inadequate information	Finance not kept under review
Insufficient challenge and debate	Power too concentrated
No post mortems	Rubber stamping
Won't take hard decisions	No rigorous reviews or appraisals

Source: Sheridan & Kendall 1992.

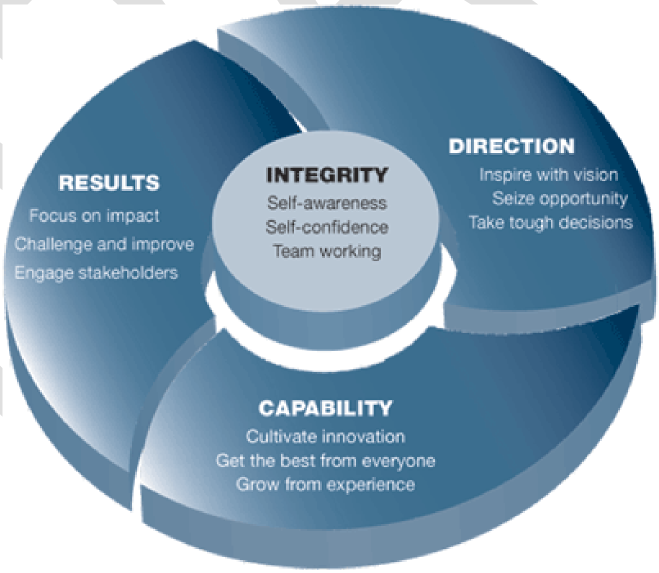
The management board are really in a position to judge how many of the above factors are inhibiting the IPO Board. However, at a number of points during this VFM review two issues have emerged concerning the management board. Firstly, the review team found a number of examples in the past where the management board failed to address some of the really tough decisions, for example, a financial model which caused the total dependence on EPO renewals to keep the agency in the black financially. This issue had been raised in the past by the Quinquennial Review 2001 and the Gowers review 2006, but has not been addressed yet. (This issue is discussed in Chapter 5) The reasons for this lack of action on the tougher issues may be complex and varied but some aspects could be explained by the lack of awareness of the corporate responsibilities of the directors.

The executive directors of the IPO have a dual role in common with every other board of directors, both in the private and public sectors. They are at the same time both directors, with corporate governance responsibilities and managers, with functional management responsibilities (Institute of Directors 2009). The direction of the organisation requires the formulation of strategy and the allocation of overall resources, setting policies which guide the agency and establishing a shared vision of possible futures and desirable directions. The corporate responsibilities of the directors are inevitably longer term and cover the entire operation of the organisation.

The executive management role involves the running of certain allocated functions within the business and by its nature has a shorter term and more immediate operational focus. The two roles can create tensions, since for example; executive directors control the flow of information to the board by which the board can be held accountable. (Tricker 1984) In short, the directors have a corporate responsibility to speak up and focus the board on outstanding decisions regardless of whether they are within their functional domain or not. The new chief executive would do well to ensure that the directors are encouraged to act in a corporate manner and to confront the tensions created by the two roles fulfilled by the position of director.

Secondly, the issue of leadership came into focus during the review team's investigation. Leadership must address all the elements shown in Figure 1 if the organisation is to feel that it is getting the best from its leaders and becoming more effective. A review conducted by Stanton Marris in October 2008 into developing the people of the IPO, found that the board was felt to be disconnected from the rest of the office. The quick wins listed in this report also included a need for the board to be seen "walking the walk" and communicating beyond board level. From the VFM review teams observations many of points still remain to be addressed completely.

FIGURE 1 – A BASIC LEADERSHIP MODEL



Source: UK Cabinet Office, Professional Skills for Government

Simple examples come to mind when looking at leadership within the IPO context. The first concerns the need to step up and take the tough decisions on investment or the future of commercial activities for example. Other previous reports have identified a number of difficult strategic areas that needed to be addressed. Some of these difficult decisions remain to be addressed and have once again been identified elsewhere in this report. The second example concerns the need to stand by the corporate decisions that have been taken for example, the retention of desks within the HQ for home working staff against the rules contained in the policy has been mentioned elsewhere in this report, but it does indicate a lack of resolve when corporate decisions are challenged by local staff. Leaving implementation decisions to local management discretion can be a sign of a flexible and well intentioned leadership, but not when it appears to go against sensible corporate decisions. "*Without courage, wisdom bears no fruit*" (Baltasar Gracian, *The Art of Worldly Wisdom*).

The Senior Civil Service Leadership Model (illustrated in Figure 1) which consists of four key components – Direction, Capability, Results and at its core Integrity - provides a model for the management team. The review team believes that the management team need to work on achieving improved leadership capability.

Another example relates to communication. During the three weeks that the review team were connected to the IPO intranet, the government published the pre-budget report which mentioned cuts in civil servants numbers and future pay restrictions. At the same time Number 10 also launched the „Putting the front line first: Smarter Government' initiative which included changes in property arrangements and cross government comparisons on the back offices functions, covering financial management, HR management and IT management. These reports include IPO figures and data. Both issues had a potential impact on the staff of the IPO, who could have been concerned by what they heard in the media, yet not one note was emailed to all users nor any messages placed on the front page of the intranet. Timely communications during times of change and potential threats is part of good leadership. The new CEO needs to re-examine the internal communications function within the IPO, since the changes will be coming fast and furiously after the election and the IPO staff will not be immune.

Another issue for the IPO Board is teamwork. In any organisation it is easy for silo working to develop especially when the activities are more discrete and have few natural links across functional boundaries. That this situation can also be found in the IPO is not surprising. Steps are usually taken by the management team to create cross boundary teams to tackle projects or problems and a number of examples can be found of this within the IPO. However, the organisation does not work in a way that needs a great deal of cross boundary activity in terms of taking tough decisions. Individual functions have created networks within the official directorate structures that follow the specific flows of work through the IPO. Mail opening and registration activities in finance feed into the patent examiners activities for example. The policy teams would appear to be better placed to co-operate across directorate boundaries given the need to interface with Ministers, customers, Whitehall and internationally. No doubt other examples can also be found of co-operation at an individual level given the long service of staff and the “family” culture found especially in Wales. What is less clear is how well the management teams think on a corporate level rather than a functional silo level when the going gets tough. The loss of staff through a VER/VES scheme that impacted on the whole organisation gives cause for optimism but the Board should seek greater opportunities to encourage this corporate team working view in future since the organisation will consist of a wider mixture of skills in future so rotational opportunities may be reduced.

The formal operation of the IPO Board also needs attention. The IPO executive team hold a regular series of IPO Board meetings which appear to be chaired on a rotational basis by the directors and the chief executive. From an examination of the agendas for the past two years it appears that there is no routine agenda or annual programme of topics for these meetings. Whilst the directors take turns chairing the meetings it is not clear that they each bring forward agenda items with the same frequency.

According to the information on the IPO intranet the IPO Board meetings are used for strategic decision making, allocation of resources, major operational decisions, decisions on priorities, organisational level performance monitoring, and financial/people issues. However, from the nineteen meeting agendas examined the routine balance of operational and strategic topics was not clear. Topics for discussion or decision appear in an almost random manner, and there was an absence of routine monthly financial or performance monitoring. The review team believes that regular (monthly) review of financial and other performance information should be considered standard practice in a trading fund executive agency. In our view, especially since the Steering Board only meets quarterly, the executive team need to meet and review the performance of the organisation on a more regular basis.

Another example relates to the Corporate Plan which appeared as an agenda item on a regular basis but this only appeared to be an oral update item. The absence of papers is a surprise given the nature of corporate plans in other organisations. Finally, it was not clear how the decisions that were taken by the IPO Board were communicated to the rest of the organisation.

It is recommended that the new chief executive reviews the format, content and agenda setting of the IPO executive board to improve its effectiveness as a matter of urgency.

The lack of formality apparent in the IPO Board agendas set the review team off into an investigation of the internal committee structure for the whole organisation. Using the same IPO intranet that provided details of the IPO Board, it was possible to find only the most basic terms of reference information on just three committees, the Audit Committee (see later), the Patents Directorate forum and the newly formed (14 May 2009) IPO Operating Committee. The review team failed to find any central register of the committees within the IPO and it was also unclear if, in line with governance best practice, regular reviews of the entire committee structure take place. Committees are a hidden burden on resources and can gain a life of their own well beyond the time span of any original purpose and therefore good governance encourages organisations to review its committee stricture on a regular basis.

It is recommended that the IPO undertake an exercise to identify and produce a common set of terms of reference for all its committees against a standard template. (See Appendix 5 for an example) Once these terms of reference have been collated the chief executive should judge whether they are still needed and are properly constituted. A single register should also be created within the office so that the effectiveness of the committee structure can be reviewed on a regular basis.

In summary the review team found:

- Leadership issues
- Failure to address tough decisions
- Internal communication could be improved
- The focus for the IPO Board is unclear – is it strategic/tactical/operational?
- Unclear how the Board is driving performance
- Planning appears rudimentary, review of performance against plans minimal
- There is no comprehensive committee terms of reference register.

Audit Committee

The only sub group of the Steering Board mentioned in the Framework Document is the Audit Committee and this is headed by a non-executive, and attendees include the CEO, finance director and two other non-executives. This structure is generally considered best practice within agencies. Somewhat unusually the Audit Committee also invites the entire executive team in addition to the internal and external auditors. This over representation of the executive team could be compensating for the infrequency of contact with the non-executive Steering Board members.

The internal audit function is provided to the IPO by the Department. It would be worth the IPO assuring itself that this provides good value for money, since the fees seemed expensive (average £530 a day) to the review team. Whilst the Framework Document says that the “department’s internal audit service must have the right of access to the IPO”, this is only to provide assurance to the principle accounting officer as to the “quality and integrity of the internal audit processes”. It would appear that the IPO is free to consider getting its internal audit services from other acceptable suppliers and should therefore test the value for money offering from its existing supplier.

An examination of the NAO 2009/10 Audit Strategy presented at the Audit committee on 14 October 2009, revealed the key areas of risk that would be given particular attention in the forthcoming audit. These included board changes, IT projects, WIPO reconciliations, VER/VES scheme, IFRS reporting and potential loss for the year. Only the last risk area might touch on the lack of value for money awareness within the IPO that the review team have discovered but this is unlikely since the emphasis is on targets and ROCE. The internal audit programme for the two years 2008/9 and 2009/10 contains an examination of fourteen areas, but only two small VFM studies, one concerns a review of the Aardman project and another the review of marketing to schools (outreach). The review of processes by internal audit also appears from these two years to be limited. It is recommended that the new finance director and the new chair of the audit committee urgently review the internal audit programme for future years to pick up on the very basic process and value for money concerns raised by this report.

A review of the last four Audit Committee minutes reveals that there is little wrong with the content of the meetings, but the style could be refined and benefit from more challenge. It would benefit from a regular review of audit report actions, especially outstanding and completed points. The review team understand that the Treasury is also examining the role of audit committees and is expected to make announcements on this after the next election. Given the comments above it is strongly recommended that the new chair of the Audit Committee reviews the format and function of the committee with the equally new finance director and Chief Executive at the earliest opportunity.

In summary the review team found:

- The Audit Committee format and attendance needs to be reviewed
- Using BIS IA may not be providing good value for money – cost per audit day looks high.
- Focus of Internal Audit seems biased to compliance audits and financial accounting – little evidence of fundamental process audits, value for money audits etc

CHAPTER FOUR – The Remit of the IPO

One of the issues that came up in many discussions with senior management of the IPO concerned the remit of the Office – was the Office operating within its mandate or had it become involved in areas beyond its remit as the responsibilities of the Office had evolved in the last decade or so? Uncertainty in management about the remit of the Office has the potential of reinforcing uncertainty about future directions and undermining long term planning. This Chapter explores the areas of uncertainty and looks at whether the perception of uncertainty needs to be positively addressed.

A Little History

It is fair to characterise the origins of the Office as having evolved from a rights processing "factory". The "factory" role of accepting, examining and granting intellectual property rights has been at the core of the Office's existence since 1876 when the Designs registry and the Trade Marks Registry were transferred to the Patent Office (which had been established in 1825).

Over the last two decades, there has been a relatively consistent trend in the evolution of the Office to develop capacity and programmes to improve customer focus, to deliver information to individuals and businesses about intellectual property and how to acquire and use it, and greater involvement in intellectual policy matching growth in the perceived importance of intellectual property policy to the UK economy.

In the current *Framework Document 2008/9*, which is approved by the Minister, the wider scope of the functions of the Office are set out. These functions now cover (with varying degrees of intensity):

- The processing of applications for patents, trade marks and designs
- Intellectual property policy relating to the above rights with the addition of responsibility for copyright policy
- Education and awareness programmes relating to intellectual property and its links with innovation and economic growth
- Involvement in cross-Government IP enforcement programmes

In addition to these functions explicitly listed in the Framework Document, the Office has also developed:

- Customer focus programmes to improve the operations of the processing
- Research to understand how businesses use intellectual property and how it contributes to economic growth
- A limited range of commercial services.

Clearly, the main areas of focus in the Office now include much more than running the rights processing "factory".

It is this evolution and growth that has raised the issue about the remit of the Office. Some managers are questioning whether the Office has already evolved beyond its remit or more commonly they have a sense that the Office is on the edge of its remit and are therefore cautious when considering any expansion of activities especially in what many regard as the "non-core" areas. Is this uncertainty justified?

External perspective

The Office has been encouraged down a path to a wider remit by various reviews and reports, by a succession of responsible Ministers, and by many of its customers and stakeholders. A flavour of this encouragement is set out below.

> We consider that more could be done to promote the synergy with innovation. In particular, we **recommend** that the web-site or proposed IP Portal should be extended to provide "marriage-broking" between inventors and potential manufacturers, building on the work being done jointly with the universities, and with private sector partners as appropriate. More work should be done, again possibly together with the private sector, to ensure that the potential value of patent information as a resource base is maximised, in particular to see whether searching by industry for patent information can be made easier. *Quinquennial Review 2001 Stage 1 Report* p.9
>
> We **recommend** that the Patent Office should consider whether any future activities, [such as are undertaken in other countries to support a synergy with innovation], are needed here and whether they could usefully be undertaken by the Patent Office, and in particular whether:
>
> - The Patent Office should undertake a greater awareness role with SME's, independent innovators, universities and higher education establishments, as well as at trade fairs and exhibitions
> - The Patent Office should work closely with the Small Business Service (SBS) so that the SBS can offer an informed service, including IPR, with advice from the Patent Office as needed
> - Patent distribution fairs should be arranged (whether by the private sector with Patent Office support or by the Office itself) to encourage licensing of potential inventions.
>
> In each of these areas the Patent Office needs to work in consort with other relevant bodies in the public and private sectors, such as by signposting and facilitating delivery rather than necessarily undertaking the various activities themselves.
>
> *Quinquennial Review 2001 Stage 2 Report,* p.14.

> In addition to providing a strong independent board to improve strategic policy making, the Review believes that the Patent Office's internal policy making function should be strengthened to provide a stronger strategic focus and link more effectively with wider themes and other Government objectives
>
> *The Gowers Review 2006*, p113.

> IP crime is a serious economic crime which needs to be tackled on a worldwide basis. The GPEN (Global Prosecutors' E-Crime Network) initiative provides an ideal opportunity to address this. This will ensure prosecutions are effectively managed and enforcement agencies can take informed decisions on targeting the criminal network. I am delighted that the UK Intellectual Property Office is taking an active part in the development of GPEN by contributing IP training material to fight IP Crime
>
> *Minister Lammy* Press Release 16 October 2008

> Government and business should be encouraged to make greater use of the enormous amount of technical information contained in patent databases to further innovation, avoid duplication of research and support informed decision-making. It is also recommended that UKIPO should continue to develop its expertise in patent informatics to provide information that can aid government and commercial bodies in strategic planning.
>
> *The Race to the Top* Sainsbury Review of Science and Innovation, 2007, p.69

> Without significant investment in the brand of IP there is a real danger that it will be seen as a hindrance to the consumer when the reverse is true. Business, alongside government, has a clear role in helping to articulate this message in a more convincing way than it has done so far. The IPO has started to deliver this message through events and education – this needs to continue and be expanded.
>
> *Ripe for Success: making the UK the place to develop and exploit IP,* CBI 2009, p14.

Other similar views from stakeholders have been mentioned in Chapter 1. Overall, there has been a consistent call from various reviews, generally endorsed through Ministerial acceptance of recommendations, and often supported by industry, for the IPO to broaden its activities and explore its remit to the fullest in the areas of policy, information and education, and generally taking up activities to connect the Office better with the wider innovation system and infrastructure.

The Legal Framework for the Remit of the Office

As discussed in Chapter Two, the Patent Office Trading Fund Order is a key legislative instrument which sets out the purpose and objectives of establishing a

Trading Fund. The instrument also sets out the remit of the Patent Office Trading Fund in Schedule 1 Article 2. It is instructive to set out this remit in full:

SCHEDULE 1

Article 2

FUNDED OPERATIONS

The operations to be funded by the fund are all the operations of the Patent Office, relating to or connected with:

(a) copyright;
(b) design rights;
(c) patents;
(d) patent and trade marks agents;
(e) registered designs;
(f) rights in performances;
(g) trade marks and service marks;

including, without prejudice to the generality of the foregoing –

1. operations concerned with the promotion and administration of legislation relating to the foregoing;
2. operations arising out of anything done or being proposed by the European Communities or any of their institutions or any international organisation, or in pursuance of any international instrument or convention, in relation to or in connection with the foregoing;
3. the provision and dissemination of information and the procuring of publicity and advertising relating to or in connection with the foregoing;
4. operations incidental, conducive or ancillary to the operations described above.

There are a couple of things worth noting about this schedule. First the list of “operations” includes much more than the traditional “operations” of the Patent Office (processing the registered rights of designs, trade marks and patents) and includes areas which would be more normally characterised as “policy” rather than as “”operations”. Secondly, there is an emphasis on information provision, publicity and advertising in relation to all the “operations”. Thirdly, there is an explicit recognition of international activities in relation to all the “operations”. When this remit is combined with the explicit endorsement elsewhere in the Order of commercial activities and expanding the business of the Patent Office, it is clear that the Trading Fund Order envisages quite a broad remit for the Office.

Some of the uncertainty concerning the remit of the IPO seems to be centred on a technical issue concerning the Department of Trade and Industry (Fees) Order 1988 (Statutory Instrument 1988 No 93). There are apparently legal views agreed with Treasury that the Fees Order is more limiting then the Patent Office Trading Fund Order 1991 (Statutory Instrument 1991 No 1796). The Review has not seen these legal opinions and cannot comment upon them. On the face of the documents we have seen the Fees Order appears to restrict the collection of statutory fees to the traditional IP rights. It does not appear to have any broader impact on the remit of the Office or the scope for non-statutory fees. Nonetheless if there is agreement that the Fees Order is not consistent with the Trading Fund Order then the former should be changed.

Overall, the VFM Review can find little reason for the apparent uncertainty within the Office concerning its broader remit.

In summary the Review found:

- the remit of the Office is sufficiently clear and broad to cover all of the current activities of the Office
- the implied remit of the Office gives sufficient cover to the Office to pursue more vigorously initiatives in the areas of policy, education and marketing and commercial services.

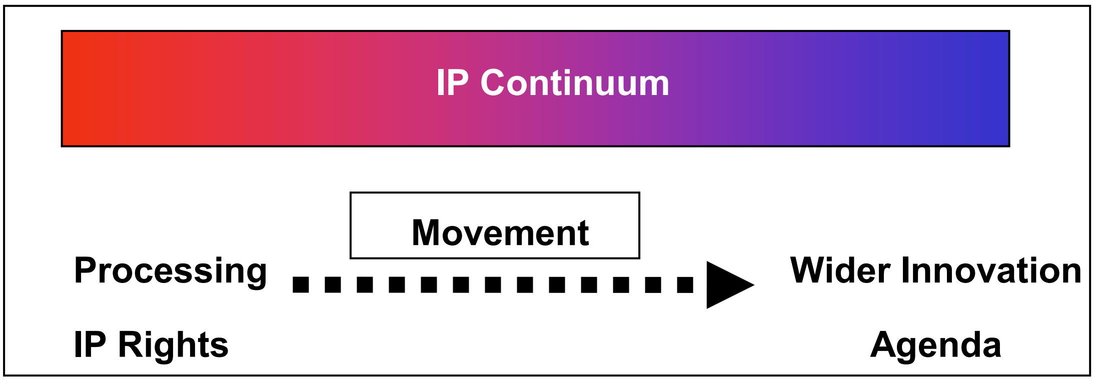
<u>The Challenge of Change</u>

While it is clear that the IPO currently has quite a wide remit and is operating clearly within that remit, it is useful to consider the question of whether this broad remit is the best arrangement for the future of the Office.

The broadening of the remit of the Office over the past couple of decades has challenged the Office's capacity to change on a number of fronts:

- The culture, staff skills and management approaches appropriate for a rights processing operation are no longer appropriate for an organisation that
  - has a growing role in increasingly higher profile policy advice,
  - that is expected to work closely with other key government agencies to develop policy and programmes,
  - that is required to interact with small and large businesses in order to not only deliver better rights processing but also to understand and support business in their use of the intellectual property system, and
  - that is expected to operate along more commercial lines including developing commercial products and services.

It is very clear that the balance of the focus of the Office has been shifting as illustrated below. Management seem to need a clearer understanding of this shift and the level of political and legal support for this changing balance to enable them without unnecessary caution to commit to the actions that will be necessary to properly manage the transition.



A clearer articulation of the meaning of this shift for the role of the Office also seems to be missing. As organisations move through these kind of transitions the new paradigm is usually reflected clearly in vision and mission statements in corporate plans and other similar documents. The vision statement in the current Corporate Plan, while it attempts to reflect the transition, it ultimately uses language which obscures rather than highlights the direction. This issue is discussed further in Chapter 6.

The need for a shift from largely reactive technical policy work to broader policy work within a Government-wide innovation agenda was commented upon in the Gowers Review. Gowers observed that such a shift required improved or new skill sets:

> However, the Patent Office has been less effective at taking a strategic view of IP policy. The Patent Office has not always been effective at linking IP and other, related areas, such as, trade, health and broader innovation policy. For example, it has not undertaken systematic work examining how the IP framework has helped or hindered the development of Open Source methods, or proteomics, a subset of genetic science (p112)
>
> The Patent Office is located in Newport in South Wales. Since moving to Wales the Patent Office has reduced running costs by more than ten per cent. Staff turnover has also reduced. However, this physical separation of Patent Office staff from central Government departments has contributed to the lack of connectivity with wider Government agendas and has made it more difficult to grow policy skills in the Patent Office. (p113)
>
> Patent Office staff sometimes lack an understanding of how businesses use IP and the problems they face negotiating the existing system. A greater understanding of how IP policy impacts on all stakeholders across industry, NGOs and consumers would ensure that Ministers were more fully appraised of the potential impacts of a policy under consideration. (p113)

The VFM Review found that the Office is still wrestling with some of these issues and seems uncertain whether to push forward and achieve a changed balance of the focus of the Office or pull back and look to other models that could be adopted that would still deliver the outcomes sought by government and industry.

Is pulling back an option?

The key role that is causing the current uncertainty is the broader approach to policy. The introduction of staff with a broader Whitehall policy background, the expansion of operations in London to provide a base nearer to stakeholders and Whitehall (both for easier access to other Government agencies and to be better able to attract policy staff to work for the Office), plus the significantly increased focus from Government on copyright policy issues (the main non-registered right and therefore with no processing base) are all changing the balance in the focus of the Office.

One way to resolve this tension is for the policy role to be taken away from the Office and moved to a Department of State (presumably BIS). This issue was not reflected upon in the Gowers Review which nonetheless made many recommendations about strengthening the policy capacity of the Office. The Quinquennial Review in 2001 did explicitly consider the question about whether the policy role could be better located away from the Office. That review concluded:

> ...We therefore considered whether the policy role should be moved as a whole into DTI. This would facilitate links with other relevant DTI policy departments and would make it easier to achieve a broad spread of experience, both of which are important in the broader policy debates which are now needed.
> 23. However it would require a new layer of consultation with the operational side, particularly if operational experts attended some meetings such as those of WIPO. Moreover, intellectual property is a specialised area of law and relevant expertise is helpful.
> 24. We conclude that locating the policy with operational functions has advantages in this case ...
>
> Quinquennial Review Stage 1, July 2000, p123.

The Quinquennial Review went on to make recommendations about strengthening the policy capacity of the Office and increasing its London presence.

The model in the UK is not unique but it is also common for IP offices in other countries not to have the policy role – Canada, Germany and New Zealand – or for the policy role to be shared with other agencies – Australia and the USA. (In some countries such as Singapore and Korea the IP office role goes beyond policy and is seamlessly inter-woven with government delivery of business and industry innovation support and R&D programmes). While little research has been done to indicate which of these various models is better, anecdotal evidence suggests that given that intellectual property is a specialised area of policy and law, careful arrangements are needed to ensure that specialist input into policy development is appropriately managed under any model. The two issues which the Quinquennial Review and the Gowers Review both pointed to - concerning the need to ensure that broader government policy experience is available to the Office and that broadening the understanding within the Office of the context of policy work is needed because of the operational focus of much of its work – remain challenges for the Office.

The review formed the view that the Office is wrestling with this challenge. While on the one hand a commitment has been made to recruit skilled policy staff to its expanded London base, on the other hand no serious attempt has been made to broaden the understanding within the wider Office of the context of policy work. In fact there is a danger (discussed further in Chapter 8) that the London/Newport physical divide could undermine good policy work by divorcing the policy staff from the technical understanding at the same time as isolating the technical staff from policy work.

The Review recommends that a properly planned development me (with a clear sub-agenda of minimising the potential problems of an emerging London/Newport divide) be established for technical staff to understand better the context of policy work and for policy staff to gain a necessary understanding of technical issues.

In summary the Review found:

- the growth in policy work creates a tension with the more traditional “factory” work which needs to be recognised and managed
- moving policy work to a department of state is possible but no more optimal than current arrangements
- a development programme designed to help policy and technical staff understand their relative contexts should be developed

<u>Other pressures on the remit of the Office</u>

One factor which paradoxically will assist with improving the balance of focus within the Office as it continues to develop its policy role will be the diminution of the rights processing work. Each of the processed rights is under some threat of reduction in volume. Patent work has survived the establishment of the EPO but the existence of the EPO has significantly reduced the volume of work that would otherwise have been put to the Office. The development of an EU patent could further challenge the volume of this work. The creation of OHIM has significantly reduced the volume of trade marks processing that would otherwise have developed in the IPO, but the situation now seems relatively stable and the likely long term future of a system of domestic and Community rights seems secure. The registered Design right has been in serious decline since the creation of the Community Design Right and one would have to question the future of a UK only registered design right. These changes combined with an increasing policy workload will provide some additional impetus to a cultural rebalancing of the Office to one where the traditional rights processing operations are much less dominant in the overall operations of the Office.

Increasing commercial work would also assist with this cultural change. In the Quinquennial Review the future of commercial services was touched upon. In relation to the patent work undertaken in the Search and Advisory Service, the Quinquennial Review found that it was a valuable service and should continue:

> ... provided that the Office continues to price the service to fully cover its costs, we concluded that this service should continue to be offered where it could be done without detriment to the Office's statutory functions.
> Quinquennial Review Stage 1, July 2000, p136.

In relation to the trade marks work undertaken in SAS, the Quinquennial Review found that given concerns from the profession about the competence of IPO staff to offer broad infringement advice:

> ... we believe the limits of the service and the assistance which is available from trade mark agents should be made clear to enquirers.
> Quinquennial Review Stage 1, July 2000, p137.

The Office still reflects this hesitant view of commercial services. The patent informatics capacity which the Gowers Review strongly urged to increase (for policy input purposes) has continued to languish. Its growth path as a commercial service has been blocked by poor workforce planning and the consequential resource conflict with the Office's statutory functions.

If the Office shook off the hesitations of the Quinquennial Review and took up the remit for commercial work with more vigour the desired change in focus of the Office would be accelerated. There are other benefits to be gained for the Office from pursuing more commercial work. These include:

- Spreading of overheads further,
- Allowing more resources to be employed than just concentrating on statutory areas only
- Broadening the skill base of the Office

There are also other external events which may affect the remit of the Office. The likely future government directions for the Civil Service will potentially create some threats and some opportunities for the Office.

The threats will come from the likely restrictive climate for Civil Service growth over the next few years. The Office's Trading Fund status may protect it to some extent from this but it is likely regardless of the outcome of the forthcoming election that an incoming government will reduce headcount across the Civil Service and other reforms, especially those focussed on so called QUANGOs, may inadvertently sweep up agencies such as the IPO.

The same potentially sweeping changes to the Civil Service could produce opportunities for the IPO to pick up other functions which would be compatible with its broad area of responsibilities and expertise but would require changing its formal remit. In the intellectual property field, there are other registered rights such as plant breeders' rights which could be brought into the Office (this occurred in Australia in 2004). In a broader view of the focus of the Office, all the government registration functions that are relevant to business could be brought together into a more coherent management structure (see New Zealand model for example). None of these changes is being proposed in this Review but the Office needs to be alert to the context of change and the threats and opportunities that it may bring for its remit.

In summary the Review found:

- A clearer commitment to expanding the commercial work would help accelerate the change in the balance of culture within the IPO
- Threats to workload levels and broader Civil Service changes may also provide opportunities to accelerate change

CHAPTER FIVE – The Business Model of the IPO

The foundation of the business model of the IPO is its status as a Trading Fund. As discussed in Chapter 2, Trading Fund status explicitly requires agencies to meet a range of tests set out in the legislation and expects agencies to operate along more commercial lines, focussing on customer needs and improving the efficiency and effectiveness of the management of the operations of the Trading Fund agency. This Chapter looks into the fundamental business model of the IPO – essentially the model of how it raises revenue and funds its various activities. (The financial management of the Office is a different (but not unrelated) perspective which is discussed in Chapter 7).

The business model is controlled or influenced by a range of different factors. The broadest level of control is established in the Government Trading Fund Act 1973 which sets down two of the key financial tests that are required of a Trading Fund agency:

- The revenue of the Trading Fund would consist principally of receipts in respect of goods and services provided by the fund in the course of its operations (section 1(1)(a))
- Revenues of the fund are sufficient, taking one year with another to meet outgoings which are properly chargeable to the revenue account (section 4(1))

As set out in Chapter 2, the Trading Fund Order establishes the scope of the "operations" of the agency. This framework essentially limits both the potential sources of revenue (but does not require all operations to be revenue generating) and the areas of possible expenditure.
Within this overall framework, the business model of the Trading Fund is further influenced and guided by the nature of the business carried out by the Trading Fund and policy decisions taken by Government which directly affect the way the business is carried out.

This Chapter examines how the business model operates in the IPO, what effects the business model has on the efficiency and effectiveness of the Office, and explores possible changes to the business model which might be considered to improve the overall management of the IPO.

The IPO Funding Model

The Office receives the bulk of its funding from the statutory fees and charges it levies on its customers for the processing of the various intellectual property rights. The Office also receives a small amount of income from the non-statutory charges it levies for its commercial services.

TABLE 2 – IPO INCOME BY SOURCE 2006-2009

Source of Income	2006	2007	2008	2009
	£000	£000	£000	£000
Patents	38,386	38,086	39,128	39,949
Trade Marks	17,926	18,107	20,982	18,658
Designs	1,465	1,547	1,728	1,334
Publications	257	255	239	216
Commercial Services	943	1,102	1,258	983
TOTAL INCOME	56,977	59,097	63,335	61,139

Each of the key statutory income streams (patents, trade marks and designs) can be analysed and understood better by breaking down the total income by stream into the component fees and charges that are levied and that contribute to the total for each stream.

In order to understand the business model, each of the statutory rights needs to be discussed and analysed separately as the different nature of each of the statutory rights has affected to a different extent the main features of the business model. However, the principal influence on the business model is the patent funding model which will be discussed in the most detail.

The Patent Funding Model

The management of the financial health of the UK Intellectual Property Office is complicated by the policy and management decisions that drive where in the processing steps a fee is charged and how much of the total cost of the work undertaken is recovered at each fee point. As we will see there are three competing public policy objectives which influence the patent funding model.

The public policy objectives of setting up Trading Funds were discussed in Chapter 2. For this discussion, we can summarise the public policy objective as achieving full cost recovery. To achieve this objective, the Trading Fund rules essentially assume that there is a relatively direct link in time between the fee charging/collecting activity and the supply of the goods or services for which the fee or charge is being levied (Revenues of the fund are sufficient, taking one year with another to meet outgoings which are properly chargeable to the revenue account). In other words the customer would normally pay the fee or charge and receive the goods or service in the same transaction for example the conducting an MOT test on a heavy goods vehicle

(Vehicle and Operator Services Agency). Or would receive the goods or services at some later point in time when the goods/service is ready/finalised and can be delivered. An example of this would be the payment of a provisional drivers licence fee to the Driver and Vehicle Licensing Agency which includes the cost of automatically issuing a new full licence once the person has passed a driving test.

Almost universally around the world, this simple time bound connection is not how IP offices set and collect their fees and charges for patents.

The approach in the UK Office is broadly in line with other offices. In a typical IP office, the patent applicant pays a fee when the application is lodged, another fee when the application is examined (or when a request for examination is made) and then pays renewal or maintenance fees periodically (usually annually) once the patent has been granted up to the maximum life of a patent (20 years in most cases). There may be some extra fee points in some offices, for example some offices also charge grant fees.

Typically the costs of providing a patent search and examination service are incurred by an IP office over a shorter period of time (some 3 to 4 years from first applying) than the period necessary for the full recovery of those costs. The balance between the proportion recovered during the processing period and the proportion recovered through renewal/maintenance fees varies from office to office. Given that renewal fees do not usually commence until about 5 years after filing it may take somewhere between 5 (theoretical minimum) and 20 years (theoretical maximum) after filing before the costs of searching and examining a patent are fully recovered by an office.

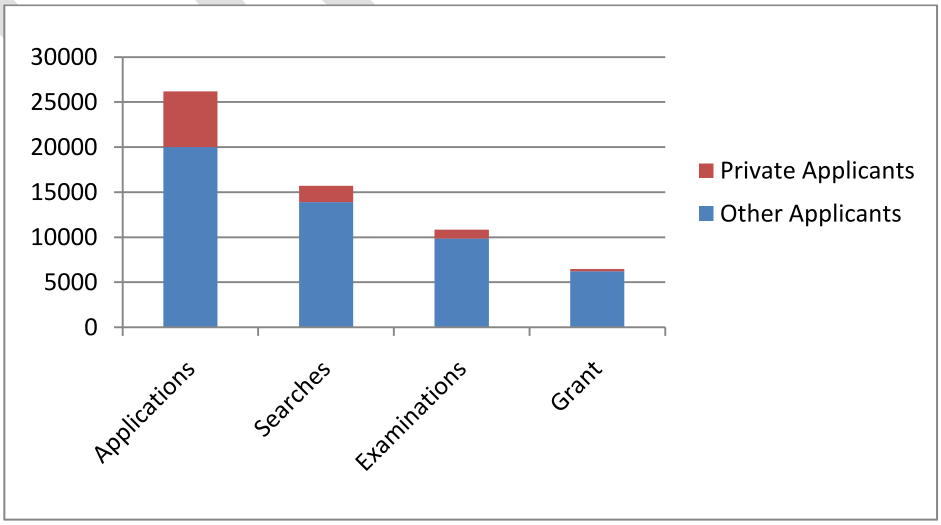
This approach to cost recovery is based on a competing public policy position, linked to broader innovation policy. The view is commonly held that if the full costs of searching and examining a patent were levied at the time of application (or during the 3 to 4 years of processing) this would be a significant financial barrier to entry to the patent system, especially for SMEs, and consequently innovations which otherwise would be protected, published and commercially exploited would either not occur or would be unprotected (and impliedly less profitable) or protected by trade secrets and therefore not publicly available for others to understand and build further innovation upon.

There are, however, limits to this policy logic. The cheaper it is for applicants to enter the patent system the more likely it is that there will be an increase in the number of trivial patents entering the system. This outcome would both impinge on the office's capacity to process "more deserving innovations" and thereby increase backlogs and also have a negative impact on third parties as it would increase their uncertainty about their freedom to operate because of the known but unprocessed (unexamined and un-granted) content of the backlogs. Increasing the volume of trivial patent applications would also increase the chances of some of them being granted thereby privatising trivial innovations that would otherwise have simply fallen into the public domain.

The policy logic of patent office fees being held low at the beginning of the process has other flaws. If the price signal to potential users of the system is set too low it could seriously mislead a potential applicant into entering what appears to be a cheap system when in fact it is quite expensive to secure appropriate patent protection for a worthwhile innovation. Few worthwhile innovations are likely to be useful only in one national jurisdiction. Applicants with a serious innovation not only face paying official fees in multiple jurisdictions but also a far greater cost in attorney fees to draft and prosecute their application before offices in multiple jurisdictions. While it is hard to be precise a common estimate of the likely costs of securing a relatively straightforward patent in say 12 or so jurisdictions is at least 150,000 USD, the overwhelming majority of that cost being attorney fees (based on 15,000 USD before the USPTO and the EPO and 10-12,000 USD in other jurisdictions). From this perspective, enticing SMEs into the system with low official fees could be characterised as misleading and a potentially expensive trap for the unwary.

Perhaps the best illustration of the problems with entry costs set too low is to look at the fate of Private Applicants (as a proxy for those most likely to be attracted by low fees). Private applicants are a greater proportion of applicants in the UK than any other jurisdiction. The chart below illustrates how quickly they abandon their applications and how few proceed to grant and possible commercial exploitation. Bringing such a volume of non-commercial work into the Office is only an impediment to the Office focussing on potentially more important applications.

GRAPH 1 – FATE OF APPLICATIONS FROM PRIVATE APPLICANTS



Source: Application, Search, Examination and Grant Data 2003-2005, IPO December 2009.

In summary, there needs to be a careful balance struck when deciding how IP office fees are to be structured and what degree of back end cost recovery is appropriate to meet the innovation policy objective of delaying costs to innovators.

It should be noted that the policy justification for keeping up-front fees low (and therefore requiring recovery through mechanisms such as renewal/maintenance fees) is also usually combined with a third public policy justification, again linked to innovation policy, for the scale of the renewal/maintenance fees themselves. These fees, which usually rise each year that the patent stays in force, are believed to encourage patent holders through this rising mechanism to release non-profitable (non-commercial) innovations into the public domain earlier than otherwise would be the case if the renewal fees were non-existent or low. In other words, while the renewal/maintenance fees are considered necessary to achieve cost recovery, they are generally set at a much higher level than strict cost recovery policy requires in order to achieve a different public policy objective.

Designs Funding Model

The funding model for the processing of registered designs is identical in concept to the patent funding model. The cost of applying for a design is kept low so as not to act as a barrier to entry for innovators, especially SMEs. Cost recovery is theoretically achieved through renewal fees which rise steeply to encourage release of the protected design into the public domain when it no longer brings a commercial return to the owner.

The arguments in relation to patents given above about what considerations should have weight when striking the balance between low entry costs and later recovery, apply broadly to the designs funding model. However, the volume of designs applications and the simpler processing means that the negative consequences of low up-front fees are largely avoided.

Trade Marks Funding Model

The trade marks funding model has some different features. Generally speaking the public policy position is to keep the cost of entry to the trade marks system as low as practicable. The policy recognises that securing trade mark protection is a significant part of how innovation can be commercialised (especially in the services sector) and ensuring that cost is not an unnecessary barrier forms part of that policy setting. As with patents, there is a public policy interest which needs to be considered when lowering trade marks fees – namely, that excessive use of the trade marks system would lead to unnecessary reduction in freedom to operate for others. Clogging up the processing system with trivial claims to trade marks would also be a poor outcome.

Trade marks renewal fees have some different characteristics than patent and design renewal fees. A trade mark right is not time limited. Provided the owner is prepared to continue to pay the renewal fee, then the life of a trade mark is unlimited. As a consequence, trade marks renewal fees do not increase as the length of time the right has been in force increases. Furthermore, renewal fees are only paid every 5 years in the UK system. While the public policy (innovation policy) purpose of the renewal fee is similar to the other rights – it is an incentive to relinquish the trade mark when it is no longer commercially viable – it is less clear, given these arrangements, that there is any link long term with cost recovery public policy.

Implications for the Business Model

What does this all mean for the business model of the IPO? First, the innovation policy setting that keeps fees low at the front end means that it is inevitable that the Office cannot cover all its costs within a timeframe that is consistent with normal cost recovery policy which assumes a reasonable time link between income and costs. Secondly, the innovation policy setting that sets renewal fees at a level that will incentivise owners to relinquish their right, when commercially sensible to do so, means the that Office will inevitably receive more income than is necessary to meet the policy objective of cost recovery.

Before turning to look at the evidence for how the IPO is meeting these competing public policy objectives in its business model are there any other considerations that should be taken into account when striking a balance in the structuring of official fees?

One further consideration arguably should be the effect of significantly delayed cost recovery on the financial management of the IP office. Where such offices operate under Trading Fund-like arrangements (and many if not most IP offices do), it is assumed that because they levy fees and charges for the services they provide that they can therefore operate in a quasi-commercial manner and use quasi-commercial management to operate more efficiently and effectively. The consequence of significantly delayed cost recovery for financial management in IP offices is to de-link the service provision costs from the recovery of the costs and thereby undermine the commercial perspective that the Trading Fund model has been established to promote. Significantly delayed recovery of costs means there is no direct price link in day-to-day management between the cost of work performed and income earned. This is likely to reduce the focus of management on managing and reducing costs of the delivery of services – one of the key purposes of giving an agency Trading Fund status.

In summary the Review found:

- Setting up front fees for patent applications too low has a negative consequence for the innovation system
- Competing public policy objectives lead to a surplus of patent income above strict cost recovery policy
- Up front design fees should not be set too low
- Delayed cost recovery has a negative impact on good financial management and should be minimised

What does cost recovery look like in the IPO?

At discussed above, cost recovery in its usual meaning is not expected to be achieved before renewal income for any of the rights processed in the IPO. Table 3 below illustrates the extent of the loss made on each type of application before renewal income of any form is received.

TABLE 3 - PROCESSING INCOME COMPARED WITH PROCESSING COSTS PER APPLICATION

	STANDARD (NON-RENEWAL) FEES INCOME PER APPLICATION	AVERAGE COST OF PROCESSING PER APPLICATION	LOSS PER APPLICATION
PATENTS	£250	£3052	£2802
TRADE MARKS (3 CLASSES)	£300	£529	£229
DESIGNS (SINGLE DESIGN)	£60	£218	£158

Source: Fees from IPO website. Costs from Tables in Chapter 8.

As can be seen the most significant shortfall in application income against application costs occurs in the patent area which is discussed in some detail below.

Patents

For each of the rights we first developed a fees comparison with other IP offices. There are some clear limitations to the value of this given the variety of ways offices choose to establish their fee regimes but nonetheless the comparison provides some context. Graph 2 and Table 4 set out a comparison of patent fees with a selection of other IP offices.

GRAPH 2 – APPLICATION & PROCESSING FEES SELECTED OFFICES

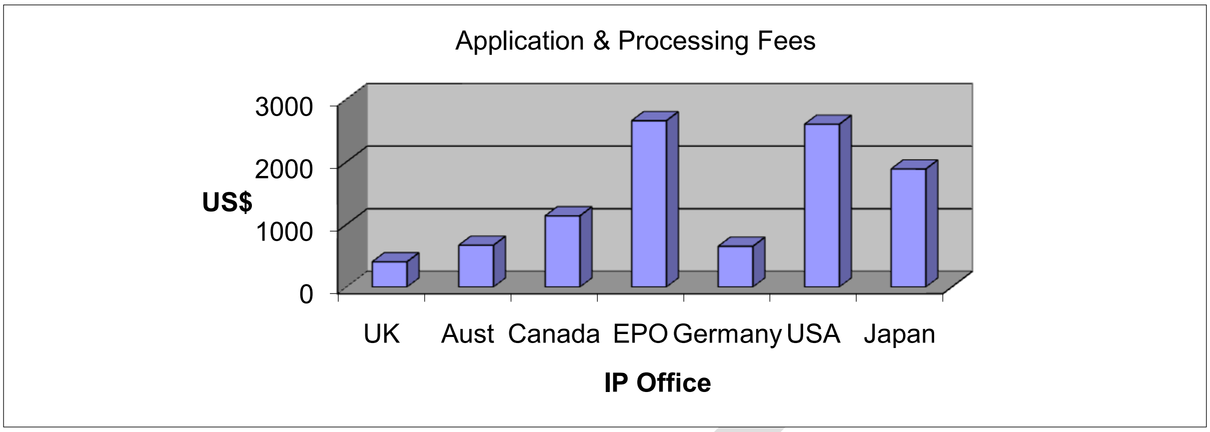


TABLE 4 – COMPARISON OF PATENT APPLICATION AND RENEWAL FEES SELECTED OFFICES

Office	Application & Processing Fees (filing, search & exam fees only)	5-10 renewal fees	10-19 year renewal fees
	USD[1]	*USD*[1]	*USD*[1]
UKIPO	403	967	4367
IP Australia	667[2]	1486	5495
Canadian IPO	1137[3]	1184	3079
EPO[4]	2657[5]		
German IPO[4]	650		
USPTO[4]	2600[6]		
Japan IPO	1885		

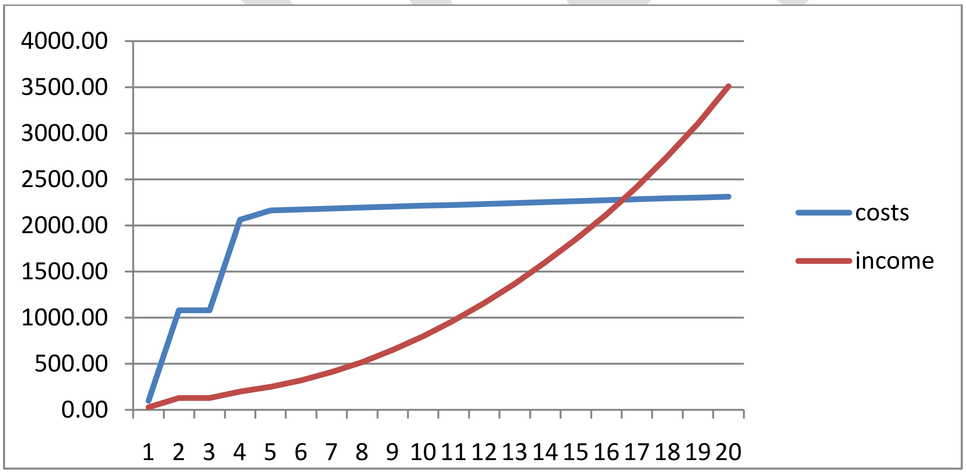
Source: Selected Office fee schedules available on websites.
Note 1. Market exchange rate on 23 January 2010
Note 2. IP Australia also charges an excess claim fee on 100 AUD for each claim above 20.
Note 3. CIPO has a small entity discount on all fees of 50%.
Note 4. Renewal data is not available or not easily comparable for these offices.
Note 5. EPO data is for international applications. EPO charges 12 Euros excess page count fee per excess page over 35 pages.
Note 6. USPTO has a small entity discount.

Because of the lack of management information on production costs that has been discussed in later Chapters, the Review Team used the data that it was able to collect and we created our own cost modelling. Given that there is no rigorously tested underlying activity cost information our crude work should be treated with caution. Nonetheless we believe that the management information we have produced is reliable enough to give a picture of production costs and illustrate areas of concern.

Given that cost recovery policy for patents in the IPO assumed that costs would be fully recovered over time through renewals income we first developed a model which would allow us to estimate when cost recovery would be achieved. Our estimates of the costs of production used two different approaches to reduce the likelihood of significant error. Both approaches used the information prepared by the Finance Directorate which showed salary costs, directorate overheads, and corporate overheads by registered right. (The Finance Directorate chart also distributed the costs of policy work, Copyright & Enforcement, and the education and marketing costs to the three registered right areas but we excluded those costs as well as the VERS/VES costs from our models).

The first model we developed used salary information for examiners in the Patent Directorate and production information from the patent directorate and established an average cost per unit of production (we were told that the effort to undertake one search and one examination were considered equivalent in examiner productivity measurement). We had no cost data for application handling (receipt, formalities, grant, issue of certificates, etc) or renewal processing so we used conservative estimates (£200 per application and £10 per renewal). Then using fees data we modelled the cost versus potential income for any application that proceeded to grant and was renewed every year thereafter. Graph 3 shows the results.

GRAPH 3 - COST RECOVERY OF PATENT PRODUCTION
(Examiner costs only plus overheads)

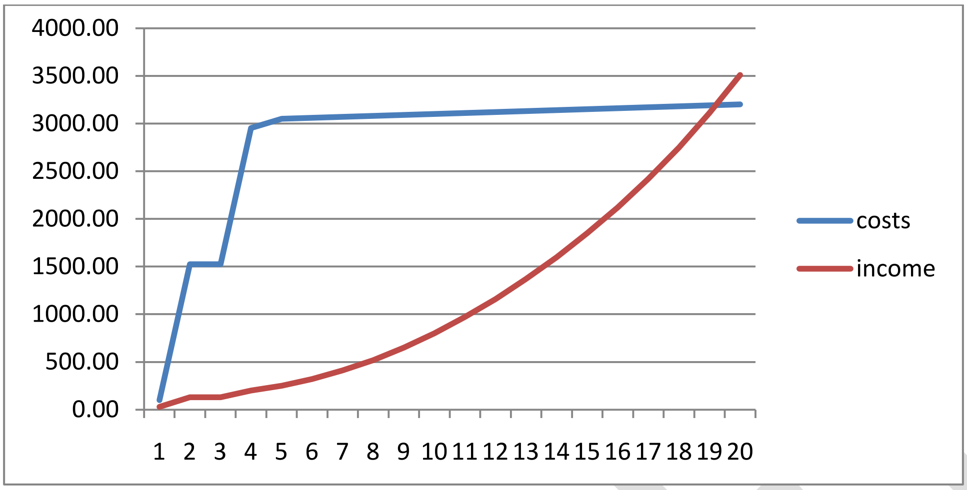


Cost source: Calculation of annual cost of an examiner (including overheads) £107,265
(see Total Average Cost per Examiner Spreadsheet)
Calculation of average output per examiner of 70.8 searches and 38.4 examinations
(see Backlog Spreadsheet)

The second model replaced salary costs and productivity data with actual production data for 2008-9 and estimated the costs per unit of production using just the Finance Directorate information mentioned earlier. That data and the calculations are set out later in this report in Table 13. Comparing this cost calculation with potential income for a granted application produced the picture in Graph 4 below.

GRAPH 4 - COST RECOVERY OF PATENT PRODUCTION

(All Patent Directorate Costs including overheads)

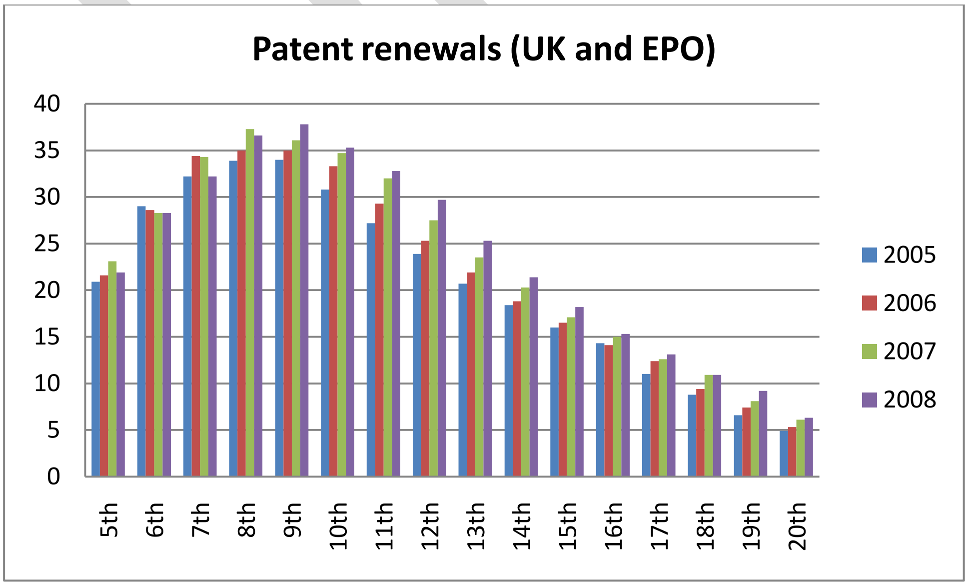


Cost Source: See Table 13.
Note: Patents also earned £978,274 in 2008/9 for other services which has not been included in this model

The results suggest that cost recovery is only achieved somewhere between year 16 and year 19 after the application is received (or its priority date).

We then tested whether this was realistic and we had access to renewal data by patent life year over four years. We graphed this data and it is reproduced in Graph 5 below.

GRAPH 5 – NUMBER OF PATENT RENEWALS 2005-2008



Source: Facts & Figures and Annual Reviews, UKIPO various years.

It is clear from this Graph that very few patents are renewed into year 16 and beyond. Although the number of patents renewed is steadily increasing it is not clear from this data that the life of individual patents is lengthening (given the steady increase in the overall volume of patents). There is some evidence that the average life of a patent is reducing but we did not investigate that data. Nonetheless, if our cost modelling is correct then it follows that those few patents being renewed beyond year 16 are subsidising all the other granted patents (as well as the costs of searching and examining patent applications which do not proceed to grant through the UK system – both the "trivial" private applicants discussed earlier and the applications which flow across to the EPO after only some processing in the UKIPO which are further discussed below).

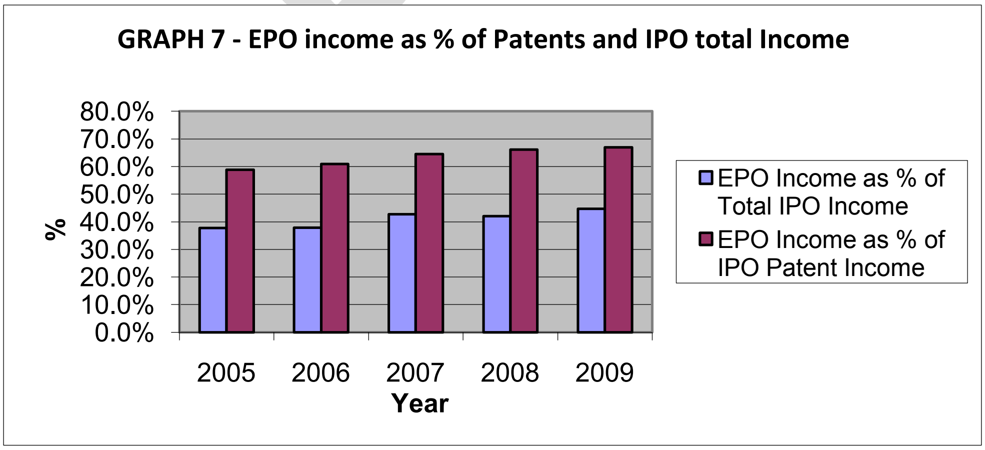
EPO Renewals Income

However, this picture is complicated by a further source of significant income for the UK office, namely renewal income for patents that have been processed and approved by the European Patent Office which are maintained on the UK register of patents through the payment of renewal fees to the UK Office. This income in total is

TABLE 5 – EPO RENEWAL INCOME AS A PROPORTION OF UKIPO TOTAL INCOME 2005-2009

	2005	2006	2007	2008	2009
	£000	£000	£000	£000	£000
TOTAL UKIPO Income	54,349	57,512	57,550	61,607	59,806
Patent Income	34,851	35,745	38,086	39,128	39,947
EPO (UK) Renewals	20,507	21,715	24,567	25,876	26,743
EPO Income as % of Total	37.70%	37.80%	42.70%	42.00%	44.70%
EPO Income as % of patent income	58.80%	60.90%	64.50%	66.10%	67.00%

Source: Data supplied by Finance Directorate, December 2009.



now more than 44% of total revenue and 67% of patent revenue. As Table 5 and Graph 7 illustrate there has been a steady deterioration in the proportion of income earned from domestic work.

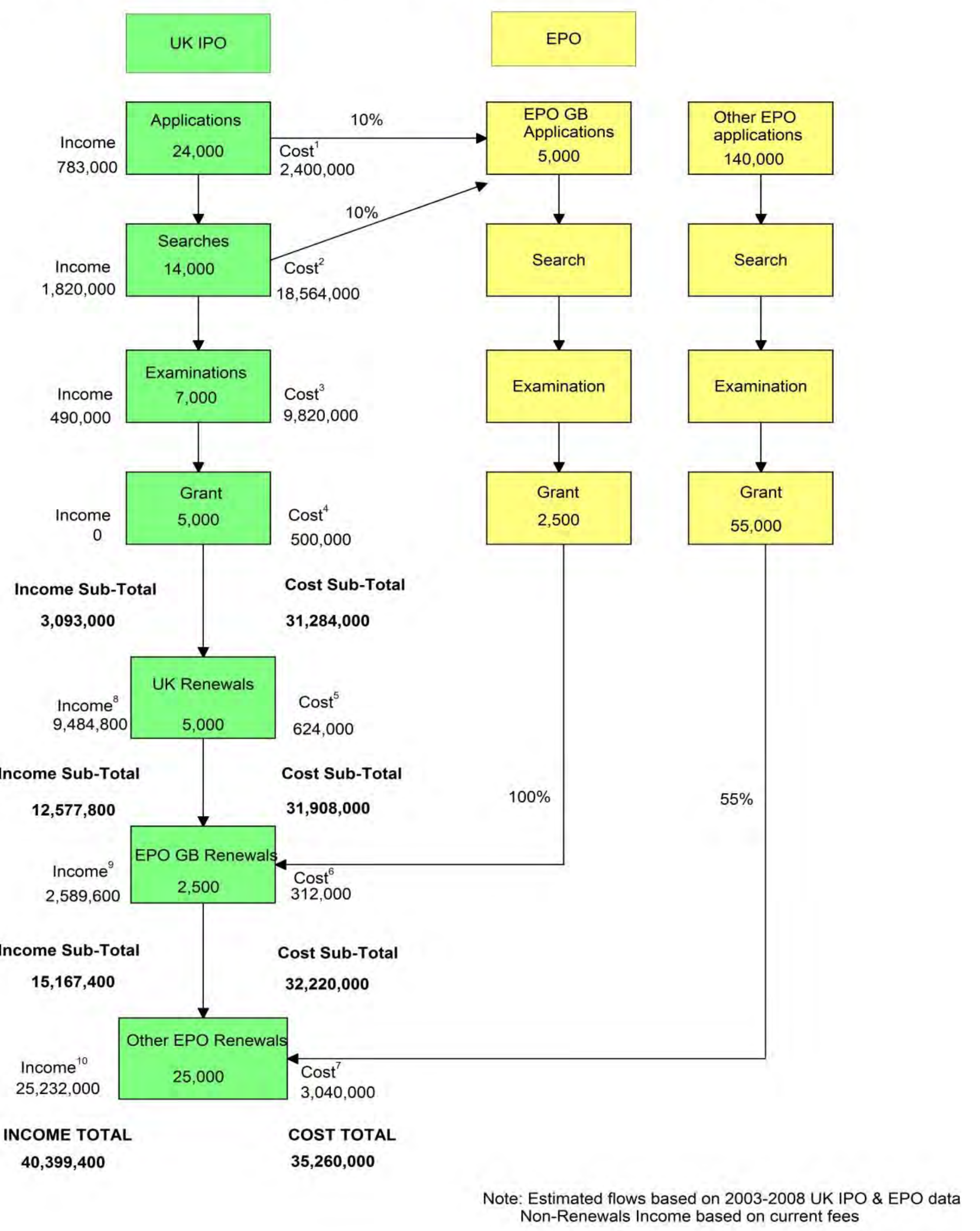
Superficially, the Office does very little work (and therefore incurs very little cost) for this income. Little effort or cost is involved in registering the EPO approved patents onto the UK database and processing annual renewal payments. A reasonable case can be made however that the UK Office incurs greater costs than this. All UK based entities seeking a patent through the EPO must begin by filing with the UK Office. A proportion of these applicants proceed to ask for a UK Office search to be done on their application (reflecting the quality and timeliness of this service from the UK Office) before abandoning their UK application and proceeding to search and examination before the EPO. From a cost recovery point of view the UK Office has incurred the full costs of processing these applications to search stage but unless the applicant is granted a patent by the EPO and it is subsequently registered and renewed in the UK, the UK Office receives only the small application and search fees and therefore makes a heavy loss on such work. The schematic in Figure 2 sets out our best estimates of how work flows between the IPO and the EPO and illustrates the income and costs for the IPO at each stage of process.

As the schematic illustrates, even after allowance is made for work done by the UK Office which needs to be cost recovered through the EPO renewal income stream, it is clear that the EPO renewal income stream makes up the shortfall in cost recovery for all the other patent work done by the UK Office (and, see below, subsidises other work done by the Office).

A number of conclusions can be drawn from all this data. First, it is clear that cost recovery takes too long for patent processing. It is also clear that there is an emerging divergence between when cost recovery is theoretically achieved and the average life of a patent. If there is a trend towards shorter patent life then cost recovery will take longer as renewal income will proportionately reduce. In many cases it is difficult to see how the current fee structure can cover the costs for the greater proportion of patent applications, even if they are granted, given that the lifespan of the overwhelming majority is less than the 16+ year breakeven point.

Secondly, long lived patents (i.e., the commercially successful ones) are cross subsidising the processing of less commercially successful patents (including the processing costs of the trivial patents encouraged into the system by low entry fees).

FIGURE 2 - SCHEMATIC OF UK IPO PATENT INCOME & COSTS - SHOWING UK IPO & EPO PATHWAYS



Notes:
1. Estimated £100 handling costs per patent application.
2. Search cost estimated at £1326 per search using adjusted costs (minus handling costs) from Table 13.
3. Examination costs estimated at £1326 per examination using adjusted costs (minus handling costs) from Table 13.
4. Estimated £100 handling costs per patent grant.
5. Av. no. of UK renewals per year over 16 renewal years for 5000 patents is 3900 at £10 per transaction.
6. Av. no. of EPO renewals per year over 16 renewal years for 2500 patents is 1950 at £10 per transaction.
7. Av. no. of EPO renewals per year over 16 renewal years for 25,000 patents is 19,000 at £10 per transaction.
8. Average income per year over 16 years of the average UK patent renewal transaction (£152).
9. Average income per year over 16 years of the average EPO patent renewal transaction (£83).
10. Average income per year over 16 years of the average EPO patent renewal transaction (£83).

Thirdly, UK processing fees are significantly lower than processing fees charged in other comparable offices and there is some evidence that this has encouraged poor quality (trivial) patent applications into the system.

Fourthly, taken in isolation, it would appear that the low fees and the high costs of processing UK patents lead to unsustainable heavy losses in breach of cost recovery policy which renewals income will struggle to make up in future.

Designs

The data for designs we present is not as comprehensive as for patents. As indicated earlier in Table 3 there is a loss made on the processing of each design application. This loss (£158) on each application is quickly covered by the first renewal payment (£210 for a single design) for a second 5 year period of protection. The total costs of designs processing (£790,147) are not significant within the whole IPO budget and the £1.3m income makes a small "profit" contribution of to other overheads (see Table 16).

The data comparing the UK with other jurisdictions set out in Table 6 suggest that the fees for a UK design are comparatively low.

TABLE 6 – COMPARISON OF DESIGN APPLICATION AND RENEWAL FEES SELECTED OFFICES

Office	Application & Processing Fees (filing, & exam fees only)	Year 6 to year 10 renewal fees
	USD[1]	*USD*[1]
UKIPO	97	210[2]
IP Australia	180[3]	247
Canadian IPO	378[4]	331
OHIM[5]	325	127
Japan IPO	178	1600[6]

Source: Selected offices fee schedules available on websites.
Note 1. Currency conversion at market rates 23 January 2010.
Note 2. UK designs can be renewed up to 25 years with total renewal fees reaching £1310.
Note 3. Australian design right is unexamined. There is an optional examination fee of 360 AUD.
Note 4. Canadian design right is an examined right.
Note 5. OHIM designs can be renewed up to 25 years with total renewal fees reaching €540.
Note 6. Japan renewal figure includes fees for years 1-5, included in application costs in other offices.

Overall, the Designs data suggests some similar conclusions as the Patent data. Entry level fees are comparatively cheap, and cost recovery is not initially achieved. Unlike patents, however, cost recovery is achieved within a relatively short period.

The small and decreasing volume of registered Designs work, especially since the introduction of the Community Registered Design Right, suggests that the future of the UK right is in doubt.

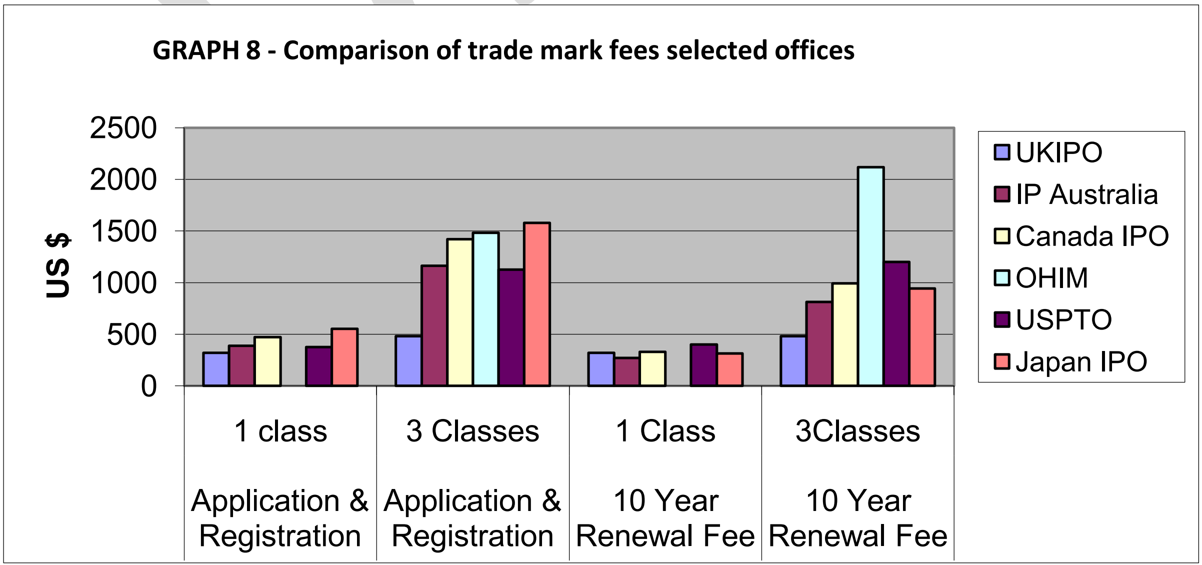
Trade marks

Unlike the patent and designs, trade marks can be maintained indefinitely. There is therefore a potential income stream continuing long after processing costs have been covered. As indicated in Table 3 initial processing makes a loss of £313 which is, like designs, quickly recovered at the first renewal payment.
When compared with other jurisdictions, trade marks fees appear closer to international norms although the extra fees charged by most offices for additional classes are clearly of an order higher than in the UK as illustrated in Table 7 and Graph 8.

TABLE 7 – COMPARISON OF TRADE MARKS APPLICATION AND RENEWAL FEES SELECTED OFFICES

Office	Application & Processing Fees (1class/3classes)	Year 6to year 10 renewal fees (1 class/3 classes)
	USD[1]	*USD*[1]
UKIPO	322/483	322/483
IP Australia	388/1165	271/813
Canadian IPO[2]	473/1420	331/994
OHIM	n/a/1484	n/a/2119
USPTO[2]	375/1125	400/1200
Japan IPO	552/1579	315/944

Source: Selected offices fee schedules available on websites.
Note 1. Currency conversion at market rates 23 January 2010.
Note 2. Offices have significant small entity discounts.



From a business model point of view there were few concerns with the trade marks business model. We did form the view based on the data in Table 15 that the overall costs of processing trade marks could be reduced. This issue is discussed further in Chapter 8.

In summary the review found:

- Patent processing costs and income (without EPO sourced income) suggest significant losses which should be rebalanced
- Trade marks and designs costs and income suggest a more healthy cost recovery position
- Heavy and unhealthy reliance on EPO renewal fees for cost recovery activities

<u>Suggested changes to improve business model</u>

In the course of the review we came across again and again where earlier reviews had touched on some of the same issues discussed above and in many cases reached similar conclusions. In particular:

- "the fee structure for UK applications should be progressively adjusted so that, within 3-5 years, the costs of processing UK applications will once again be substantially covered by UK fees (both pre and post grant)", Quinquennial Review (2001) Stage 1 Report pp130-1,
- "put that part of the income of the Office which derives from the delivery of statutory rights on a sounder footing by rebalancing front-end fees and renewal fees", Proposal to Lord Sainsbury, Patent Office of 21st Century (2005), and
- "Recommendation 50: Realign UK Patent Office administrative fees to cover costs more closely on Patent Office administrative operations (e.g. granting patents)". The Gowers Review (2006)

In other words they all suggested to the Office that the balance between upfront fees and the recovery of costs needed to be corrected through increasing upfront fees. Despite these recommendations, the proportion of up-front cost recovery has continued to deteriorate. The consequences of this situation for the overall management of the Office need to be understood.

First, the UK patent processing system is becoming slowly swamped with private applicants and trivial inventions to the detriment of processing "more deserving innovations" in a timely manner.

Secondly, the lack of connection in time between income from charging for processing work and the costs of undertaking the processing has allowed, contrary to the intention of Trading Fund arrangements, management to lose focus on managing costs and achieving efficiencies.

Thirdly, the lack of transparency in the allocation of the additional income received through renewals, especially the EPO renewals, has added to the loss of focus on managing costs and achieving efficiencies across the Office.

We think there is a strong case for the Office to review its thinking about how to establish the balance between upfront fees and longer term cost recovery. New principles could be established and agreed with Treasury to guide future fee setting by the Office.

Such principles could include target models setting out what level of cost recovery must be achieved through upfront fees and within what time period full cost recovery should be achieved. The principles could also recognise that because of the public policy (other than cost recovery) that drives the level renewal fees the Office receives additional non-cost recovery income which it can use for agreed purposes (such as the already agreed operations which do not generate income – education & awareness, policy and copyright).

In summary the Review found:

- Three previous reviews have raised the balance of fees issues but the matter has not been adequately addressed
- The negative consequences for the innovation system and for the healthy management of the Office require the issue to be addressed
- New fee setting principles are required to better reflect the reality of the policy settings for an IPO office

A Different Funding Model Concept

If the usual funding model for a Trading Fund (fees and charges are levied on customers at the time of application to recover the costs of providing the services applied for) does not fit the IPO, is there a better way to structure or re-conceptualise a funding model for the IPO which would more appropriately recognise its unique business model but be consistent with its Trading Fund status?

One restructuring option as suggested earlier is to establish cost recovery parameters within which the IPO is required to manage its cost recovery. There are a number of ways such parameters could be set. For example:

OPTION ONE

- Set application, search and examination fees so that direct costs of processing each right (examiner and support staff salaries and their direct over-heads such as travel, telephones, postage, printing, office supplies, IT desktop services and processing system maintenance) were recovered
- Use UK (IPO processed) right renewal fees to cover broader corporate over-heads (finance, HR, corporate IT, corporate planning, and senior management costs)

- Use UK (non-IPO processed) right renewals to fund policy, enforcement, innovation support, communication and marketing

OPTION TWO

- Set application, search and examination fees so that only direct costs of examiners (salaries and other staff costs of examiners) were recovered
- Use UK (IPO processed) right renewal fees plus an agreed percentage (say 20%) of the UK (non-IPO processed) renewals to cover support staff salaries, direct over-heads such as travel, telephones, postage, printing, office supplies, IT desktop services and processing system maintenance as well as finance, HR, corporate IT, corporate planning, and senior management costs.
- Use remaining UK (non-IPO processed) right renewals to fund policy, enforcement, innovation support, communication and marketing

A re-conceptualisation might be more challenging. The purpose would be to give to management of the IPO a new conceptual framework in which to understand its Trading Fund status, and one which would better support management focus on financial management and such issues as efficiency and cost reduction. The commercial perspective which Trading Fund status is meant to support would be an important part of such re-conceptualisation.

From a commercial perspective, the IPO is investing in production (search and examination) to produce potentially valuable rights (patents, trade marks and designs). It will seek a return on this investment through a combination of down-payments by its investor clients (application, search and examination fees) and later investments by these clients once the right has been fully produced (renewal fees). Not all initial client investors will go on to make subsequent investments. This decision by client investors is largely driven by the commercial value to them over time of the right granted by the IPO. The IPO has little control over subsequent decision-making by client investors (in fact normal policy setting suggests that the IPO will actively discourage subsequent investment except from those who clearly believe they will gain commercial advantage from such further investment).

This re-conceptualised model drives a number of approaches to managing the business. It would require management to discourage investment by the IPO on “trivial” poor quality rights unless the IPO investment was matched by the client investment at the time. It would require management of the IPO to develop a price structure which would be based on a clear understanding of the investment they expect to make in each right and which would reflect among other things the risk of investing in rights which ultimately do not attract further client investment. The Office might have to devise models or approaches to handle this risk.

In summary the Review believes:

- There are clear options to set the level of cost recovery to better meet the needs of the innovation system and broader cost recovery policy
- Exploring a re-conceptualisation of the business model might lead to a clearer understanding of public policy choices and risks

Treatment of Surpluses

One final issue needs to be touched on in relation to the financial business model, the issue of surpluses and how they are treated.

Historically, the IPO has always been profitable. Currently (Annual Report 2009) the cash reserves of the Office stand at £54.6m after recognising its first loss in recent memory of £7.3m. The cash reserves of the Office would be considerably higher were it not for substantial transfers to its parent agency in three instalments between 2004 and 2006 of £100m "to support innovation and benefit the wider intellectual property community".

As suggested elsewhere these regular annual surpluses may be one factor in the poor cost awareness in management and the Office generally which this Review has identified. Over and above its potential effects on cost awareness, the Office also does not appear to have a clear understanding of the purpose to which a Trading Fund should direct surpluses nor of the true nature of the surpluses themselves and potential calls on them.

The principle source of the surpluses is of course the EPO (UK) renewal income discussed earlier. Without this income the Office would have been running significant and unsustainable deficits for a number of years. But the Office appears to treat the excess of annual income above annual costs as profit for which no purpose has been identified. Furthermore, in the wake of the recent financial shock, when management was confronted with an unprecedented loss, management seems to have acted on the view that the language of the Trading Fund Act which requires the revenue of the Office to be "sufficient, taking one year with another to meet outgoings which are properly chargeable to the revenue account" to mean that accumulated cash surpluses cannot be used to tide the organisation through bad times without an aggressive plan to rectify within the "one year with another" cycle. These are both false views.

As discussed earlier in the Chapter on Trading Fund status one purpose of trading fund status is to allow management to plan longer term without the narrower constraint of the budget cycle. While this may not have been sufficient to allow management to avoid aggressive cost cutting in the light of the financial shock, it would have been sufficient to manage the correction over a longer timeframe given the accumulated surpluses in the revenue account.

The longer term issue of how the surpluses should be viewed and how they can be used needs to be addressed. As set out elsewhere in this Report the Office has failed to use some of the historical surpluses to undertake sensible investment, particularly in accommodation and information technology. It is not clear whether this is because such expenditure (particularly IT) is higher risk than operating costs and management was being risk averse or whether the surpluses were not seen as available for this purpose. Either way this lack of investment is a hidden liability on the accumulated surpluses. This is a very hard figure to estimate especially without detailed analysis of both the current state of IT in the Office and of the state of the accommodation. We did ask for an educated but rough estimate of the quantity of investment required to carry out a full refurbishment of Concept House to bring it up to a commercial and high standard. The “ball park” estimate we received was between £17.4m and £23.7m. It should be made more transparent within management decision making (and ideally with Treasury) that a proportion of the surplus has been accumulated to allow without borrowing both capital replacement and capital improvement decisions.

Perhaps equally important to understand transparently is the hidden liability on the surpluses in the patent area. While the Office accounts correctly adjust for deferred income to account for the fees that have been collected for services not yet performed (namely the search and examination backlog at any point in time). However accounting rules do not require an adjustment to the accounts for the <u>cost</u> of doing this unperformed work, only for the monies collected as fees for this unperformed work. Thus the 2009 Accounts were adjusted by £1.13m to account for 3,028 pending searches and 11,786 unexamined patent applications. However, on our estimates the <u>cost</u> to the Office to complete these searches and examinations would be £22.61m. In other words, the Office is carrying a £21.48m liability hidden inside the £54.6m accumulated cash surplus. The Office needs to develop at least for internal understanding a proper understanding of the “liabilities” at least from a management perspective that should be held against the accumulated surpluses.

In summary the Review found:

- Limited financial understanding of the nature and purpose of the accumulated cash reserves of the Office
- A more transparent internal view of the financial position needs to be developed.

CHAPTER SIX – Strategy Setting

The IPO is required by its Framework Document to produce a Corporate Plan setting out the programme of work and priorities for five years. The plan is expected to be reviewed by the Steering Board before it is sent for approval to the Minister and the Secretary of State. The Framework also gives the timeline for the annual exercise, beginning at the autumn Steering Board meeting and presented to ministers in March. This Chapter examines how strategy setting and corporate planning is undertaken in the IPO.

The Minister is able to get involved in the setting of the strategic direction for the IPO via a number of mechanisms. Firstly, the Minister formerly approves the corporate plan on a yearly basis. Secondly, the Minister will also see and approve a large number of policy submissions from the IPO. Any changes in direction can be communicated directly during one of the many bilateral meetings the Minister holds with, either the CEO or directly with the IPO policy official. Providing time is allocated this should provide sufficient input for the Minister. The Steering Board also have access to the Minister at least once a year, according to the IPO framework document, although historically given time pressures this may not allow for a full discussion on strategic direction. However, the IPO could improve the buy-in of the Minister especially with greater horizon scanning of other wider governmental initiatives that impact on the IP area by considering a more formal strategic document that sets out a 10 year vision. This short document would create the framework for the corporate plans and allow the minister to focus on desired outcomes without the burden of needing to also consider the 1 and 3 year operational delivery objectives. Such a concise visioning document would be extremely useful to discuss with any new ministers shortly after they are appointed.

No organisation in the public sector sits in isolation when it comes to creating a strategy and the IPO is no exception. Any strategy developed by the IPO must take notice of the impact of three main strategic drivers. Firstly, the demands made by the parent department, in this case the Department for Business, Innovation and Skills, secondly, the wider government demands and lastly, the international aspects of the intellectual property world.

The current Corporate Plan 2009/10 should reflect these demands and add any internal IPO requirements. In the private sector the strategy would also attempt to take into account customers and competitors, but one could argue that these aspects have less impact on the construction of a strategy for the IPO, though it would be wrong to ignore these aspects totally since the IPO does have "competitors" internationally that its customers are free to use.

The revised Corporate Plan for the IPO was created in 2008/9 to answer a number of wider strategic demands. In December 2006, the government published the Gowers Review of the IP framework which made a number of recommendations. This has since been followed in October 2007 by Lord Sainsbury's Review, "The Race to the Top" on science and innovation. A strategy for the creative industries, "Creative Britain: New Talents for the New Economy" followed in February 2008. A White Paper on innovation, "Innovation Nation" followed in March 2008.

The resulting plan introduced the concept of four key pillars to describe the IPO role:-

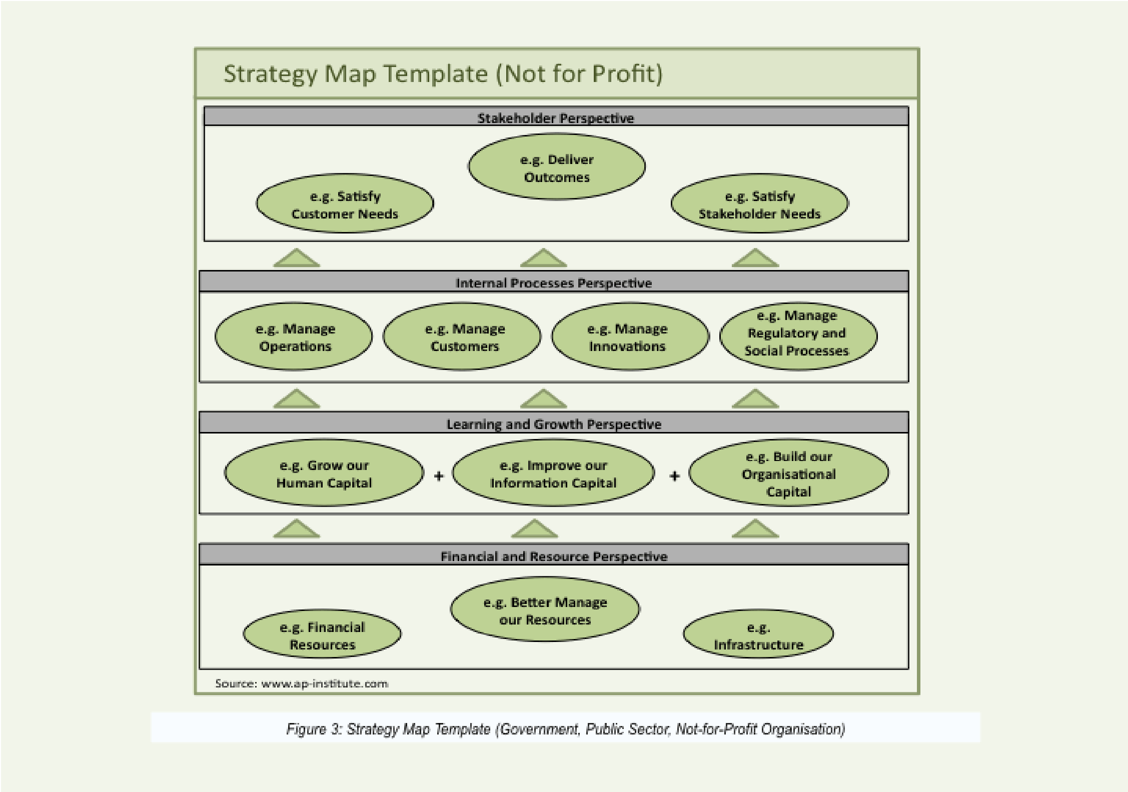
- Improving our understanding of the role intellectual property plays in Britain's economic life, and in the competitiveness of UK's businesses
- Continued excellence in delivering individual rights: patents, trade marks and registered designs
- Shaping the policy environment on IP, particularly in Europe and internationally on IP issues, and
- Reaching out more effectively to individuals and individual companies in the UK to help them better understand, manage and benefit from IP effectively.

Each of the four pillars in the latest version now has 3 year objectives and a total of 31 more detailed objectives for the current 2009/10 year. It is the review team's impression that although the Steering Board have been involved in the construction of the plan it was not engaged in huge detail. It would also appear to be a plan constructed in a highly top down manner with limited "customer" involvement. The objectives are expressed in terms which are not very SMART (Specific, Measurable, Achievable, Realistic and Timely). For example, "develop a more strategic approach to communications and to embed that into all our policy making activities". An internal audit report on the performance related bonus scheme 2009-10 (IA report 1622) dated 13 July 2009 also stated "some measures depended on personal perception of the achievement of the target rather than published criteria for measurement". It went on to add that "there is no centralised Agency oversight of activity to the rigor of the scorecard resulting in directorates deciding for themselves what the target was and whether they had achieved it". How are the Steering Board and executive team to monitor and hold people to account if the objectives are not SMART?

In part the IPO has argued that they use the balanced score card for this purpose. But this is a flawed argument since there are 31 objectives and only 18 measures, and the mapping of objectives to targets is far from complete or easy to follow or clearly defined, with too many objectives without any measurable targets expressed.

The idea of the Balanced Scorecard (BSC) is simple but extremely powerful if implemented well. As long as you use the key ideas of the BSC to (a) create a unique strategy and visualise it in a cause-and-effect map, (b) align the organisation and its processes to the objectives identified in the strategic map, (c) design meaningful key performance indicators and (d) use them to facilitate learning and improved decision making you will end up with a powerful tool that should lead to better performance. Figure 3 illustrates such a map. However, the current IPO BSC appears to be no more than a list of targets and leaves much to be desired.

FIGURE 3 – STRATEGY MAP TEMPLATE FOR BALANCED SCORECARD



Source: www.ap-institute.com

The IPO also has the following current long term (10 year) vision:

> "*Play a central role in the support that Government provides business. We will be offering cost effective and timely access to Intellectual Property Rights (IPRs) in the UK and internationally. We will support that role with good advice to our immediate customers and the wider business community. This will be complemented by excellent support to Ministers, and strong advocacy of the UK interests in IP in Europe and around the world.*"

When the Steering Board held an away day to re-examine the corporate planning process on 8 October 2009, concerns were expressed about the lack of ambition in the vision for the agency. Now was the time for the office to take a leading role, not just a central role and to endeavour in a more comprehensive and proactive way to improve the IP knowledge and innovation in the UK economy. Concerns were also expressed about the strategic planning process itself and the need for a top down and bottom up approach to its construction. This review of the corporate plan was followed by a discussion at the Leadership Conference held shortly after the October Steering Board Meeting.

In the latest published version of the Corporate Plan 2009/2010 a "fifth" pillar has been added to recognise the changed economic circumstances that the IPO has found itself in since the autumn of 2008. This new "Building a sustainable financial future" pillar recognises that it has been sometime since the wider business model was reviewed. This review is part of the steps taken in answer to this new pillar and the need to focus on the following;-

- "the way the office„s business is structured,
- the way the business model is funded
- and the way assets are used ... to ensure we are as efficient as possible, providing best value for money consistent with delivering our strategic objectives."

Whilst the five pillars appear relatively sound in outlining the broad strategic needs of the IPO, the planning process that surrounds the Corporate Plan is surprising sub-optimal. It is hard to see how the wider strategic demands from government are also fed into the process, for example the Smarter Government initiatives or the Operational Efficiency Programme. The latest Corporate plan is not really a plan, but a set of ambitions that are intended to improve things for the user and the UK economy, but the steps are not always comprehensively plotted nor is it easy to follow the contribution each makes to the over arching strategic goal. Outcome measures are hard to find in the current documents so it remains difficult to understand how much each step contributes to the goal of improving life for the customer or the impact on the UK economy. The IPO is already using its economics team and SABIP to understand the impact of IP on the UK economy but the IPO should put more effort into quantifying the impact of changes on the customer experience.

The review team found:

- The 5 pillars concept is relatively sound in outline
- Use of Balanced Scorecard terminology seems inappropriate – it is just a list of targets
- Steering Board involvement through away-day process is somewhat limited
- Strategy outcomes were seen by Steering Board as too narrow and Steering Board wanted more ambitious outcomes to deliver more ambitious directions and take a wider view of the IPO remit
- Corporate planning process is sub-optimal

<u>Corporate Planning Process</u>

Such a well established trading fund agency as the IPO would have been expected to have had a very well thought through and practised corporate planning function. In fact the corporate planning process seems to be one of the few areas of the IPO that is under resourced.

In August 2009 a revised corporate planning process was put forward to the CEO and put into action. This was in recognition that the previous year's process had not been satisfactory and had not involved enough people in a timely manner. It sought to move the IPO to an organisation that aspired to do corporate planning and not just produce a corporate plan. The revised process also wanted to help the IPO manage achievement of the objectives and ensure best use of resources. In essence it sought to follow the more traditional process for creating a plan using both the top down and bottom up approaches shown in the pyramid in Figure 4.

FIGURE 4 – CORPORATE PLANNING MODEL

Scope was provided for presentation to and discussion by managers at the Leadership conference in October. This would be followed by directorate planning discussions in November with a first cut directorate plan produced by Christmas. This was to be followed by a discussion on the draft plan at the January Steering Board meeting, with any revision timed for February and a final clearance round of the executive, the Steering Board and Minister in March 2010.

It is clear to the review team that key aspects of the usual planning cycle are not being adequately resourced by the IPO.

FIGURE 5 – CORPORATE PLANNING CYCLE

Source: www.gaca.gov.sa

Firstly, the process does not appear to start with the outline of a comprehensive strategic forecast of likely demand or an outline of key IPO and wider government initiatives and objectives that need to be met by any plan. This planning framework would usually be cascaded to all the people working on the bottom up directorate plans. Together with any financial guidelines, these basic future looking guidance notes are there to help the directorates in building their plans.

Secondly, there does not appear to have been a process constructed that recognises that the first consolidation of initial directorate plans is likely to be unaffordable or not stretching enough. Many organisations cope with this by holding a round of discussion with the CEO and Finance Director and the individual directors. This “star chamber” approach has a great deal to recommend it since the accounting officer is responsible for not only meeting targets but also balancing the finances and so they are uniquely placed to say which initiatives or plans go forward or get dropped or are put into reserve.

Thirdly, the IPO is no longer an island and needs to take into account developments taking place in other bodies such as the WIPO, EPO or OHIM that may impact upon the office. This input of horizon or environmental scanning does not appear to be a feature of the previous planning process.

Fourthly, a workforce plan has not been traditionally included in the corporate plan even though a skilled workforce is a key component for the success of the office. Furthermore, the corporate plans and reports are largely narrative based and lack numbers and data to bring the plans alive.

Fifthly, the process to compile the corporate plan appears to be separate from the process used by finance to calculate the overall size of the budget bids. Continuing with two separate streams of work can result in the budgets for the new year being issued to budget holders much later and out of synchronisation with the issue of the final corporate plan.

Lastly, not enough time and effort has historically been put into trying to engage with the customers and stakeholders at a strategic planning level to find out what they would really like to see and how it could work for their businesses.

The whole management structure needs to engage in the development of the plans since differing levels of detail in the plans is needed at different levels. (See Figure 6)

FIGURE 6 – Management Structure & the Planning Process

Source: www.cognitivedesignsolution.com

The corporate planning teams in other agencies are also usually tasked with the production of the annual report. They often monitor and report on the monthly performance figures to the management or executive board and to all the other bodies that monitor the agency. For this reason they are given responsibilities for activities throughout the year not just once a year when the plan is under construction. These teams often oversee or undertake the demand forecasting work and produce the first draft of the planning guidance. Over time they develop such a large body of knowledge about the organisation that they become an essential support to the CEO and the board.

The IPO corporate planning process appears to be being managed by one individual, in a one off type exercise since they are not permanently established or resourced to provide all the other activities found in other agencies. In the circumstances it is not surprising that the production of the Corporate Plan appears to be so relatively fraught by comparison to others.

It is recommended that the IPO give consideration to establishing a proper corporate planning function that is constituted to provide support to the management team throughout the year and not just to produce a plan.

Once the plan has been seen by the Steering Board and approved by Ministers and published, the mechanism for managing performance against the strategy is far from transparent. From the papers supplied to the Steering Board it is not clear how the Steering Board monitors the plan, once the year is underway, except by examining the finance report and the IPO balanced scorecard. The mismatch between objectives and items included in the balanced scorecard has been commented upon elsewhere. In part this is explained by the lack of clearly measurable objectives that have been included in the corporate plan in the past. Until the identified goals for the year take on a more SMART like expression, it will remain hard for the Steering Board to understand if the plan is being achieved or not. This position is also not aided by the general absence of numbers on volumes or workforce or specific target dates included in the plan in the first place. It is not clear to the Review team how the

IPO board itself monitors the performance against this Corporate plan throughout the year. It is recommended that the IPO review its monitoring arrangements and put in place a simple corporate plan monitoring report mechanism that feeds into the IPO Board and Steering Board on a monthly basis. However, for this to be successful the goals contained in the plan would need to be able to be plotted against forecasts of numbers or timelines, which is not generally the case now.

The review found that the IPO needs to do the following:

- Develop a good planning process
- Provide an adequately resourced permanent planning team
- Undertake horizon scanning as part of its planning work.
- Properly engage with stakeholders and customers in developing the plan
- Establish how the UK government agenda such as Operational Efficiency Programme, Smarter Government, or recovery from recent financial crisis effect the IPO through sound context setting/scenario planning
- Improve demand forecasting which appears inadequate/rudimentary
- Undertake workforce planning
- Improve use of data in regular reports and annual reports which are currently largely narrative and little or no data

CHAPTER SEVEN – Management of the Back Office

In this Chapter we look at the value for money issues in relation to all the internal or "back office" functions in the IPO. Each of the functions examined – financial management, HR management, accommodation management, IT management and office services – has the potential to deliver significant value to the organisation if they are strategically aligned with the direction of the organisation and provided a focus on value for money underpins their activities.

Financial Management

The finance function covers finance, procurement, governance risk and performance and surprisingly other functions including pre-examination formalities checks for rights processing, renewals processing and the register administration function. A total number of 72.83 FTE are forecast to be employed by March 2010, with a pay bill of £1.96m together with other costs that add to a total budget of £3.64m in 2009/10. Yet only 4 staff are qualified accountants and only 1 is in a management accountant role. Confirmation of the absence of qualified staff came from the government's 'Putting the front line first: Smarter government' benchmarking data for the back office functions published in December 2009. The 11% qualified staff for the IPO compares very poorly against the average for the whole civil service of 36% and 29% for agencies alone. In fact the IPO result is in the lowest quartile and could help to explain why the reporting cycle of 11 days for the accounts is well above the average of 8 days and is so slow that it is in the top quartile.

The absence of management accountants does help to explain why the review team were given the same answer when we asked the directors to show us information on their costs. The absence of cost data and awareness within the IPO has been commented upon elsewhere in this report. Unlike the HR team who had assigned a specific member of HR (business advisers) to liaise with each director, finance has not undertaken the same „customer' relations or budget holder support activities.

The poor nature of the information supplied to budget holders was commented on several times. The absence of knowledge of the budget holders and directors on the true costs of their activities is unusual in such a long established trading fund. The VFM review team did not have the time to delve into the history of the organisation to understand why this key functional area had been neglected. However, the historic surplus position of the IPO is unlikely to have helped focus attention on the need for good financial support. One issue that is worth reflecting on is the lack of people beating a path to the finance team demanding spreadsheets on costs.

The absence of qualified staff may also explain why forecasting of the future financial position is so rudimentary. Comments have also been made elsewhere about the poor standard of the reports produced for the Steering Board. Whilst no one can criticise from a technical accounting point of view, the high standard and quality of the annual report and accounts, the rest of the financial reporting leaves much to be desired. For example, the overheads appear to be allocated in a fashion which does not appear to be well understood by the business areas. Another small oddity in the accounts is a payment of £452K paid annually to the Department of BIS (started with DIUS) which is calculated on the numbers of staff in each grade, but for which no service level agreement appears to exist.

TABLE 8 – PERCENTAGE OF IPO INCOME & COSTS BY SOURCE
(Table shows % of IPO totals in each category)

	Patents	Trademarks	Designs	Publications	Commercial
Income	65.3%	30.5%	2.1%	0.3%	1.6%
Expenditure	70.2%	27.1	0.7%	0.7	1.2%
Back office Overheads	59.5%	36.4%	2.3%	0.8%	0.8%
Marketing and policy overheads	62.5%	33%	4.3%	0	0

The VFM review team did not examine in minute detail the procedures or the staffing levels in each of the traditional finance operations. However, the FD Business Review hints at some “overly bureaucratic processes” and it would not be surprising to find some areas with more staff than normal. Benchmarking is well established in the finance profession and the IPO should ask CIPFA or other civil service agencies to provide this key data, especially if they had moved to a shared service. This would help to identify the areas of most concern in more detail.

One fundamental building block is in place since the finance function use the Oracle system. Unfortunately, it does not yet link with HR who also use Oracle and a number of other modules within this well known system have also not been switched on. Indeed the new Finance Director informed the VFM review team that budget information had not been input into the Oracle system. In short, the bad news is that the current position of the finance function is not helping the value for money activities of the IPO.

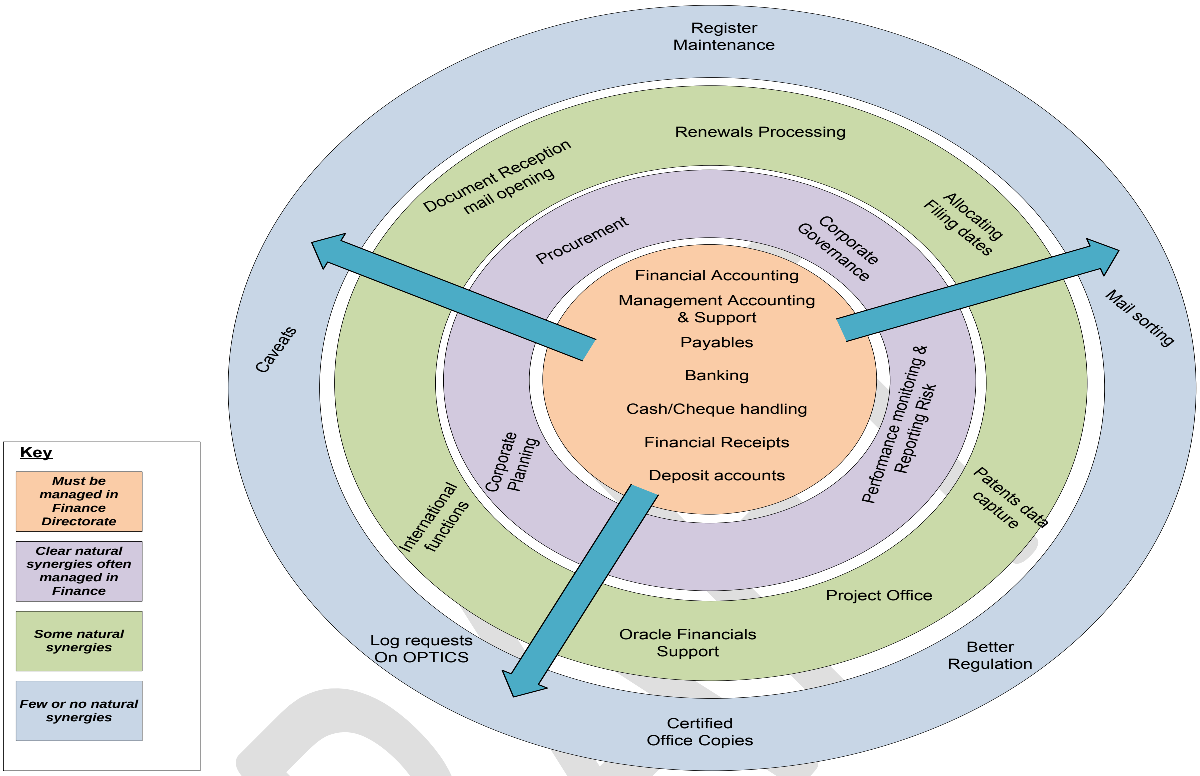
The good news is that this problem had been identified before the VFM team arrived and a Business Review had been conducted with the aim of improving the efficiency and value for money of the function. The VFM team were fortunate to be able to see a copy of the FD Business Review recommendations. In the version the VFM team saw (version 1) a total of 35 recommendations had been made. Since then the new Finance Director has started and we hope he will have a major input into the final version of this agenda for change in the finance function. These changes must be given a very high priority by the IPO Board since the weaknesses found by the VFM review team and commented on by others are potentially very serious for the future well being of the organisation.

The VFM review team endorse the vision for the future of the function of:

> “Our **vision** of the FD is of a proactive business partner, working with business areas to drive improved corporate performance and resource use, and delivering excellent customer service.”

However, we are not so supportive of the analysis of the areas in the current function that need to stay and which ones could move to other directorates. (See Figure 7)

FIGURE 7 – ILLUSTRATION OF THE RELEVANCE OF FUNCTIONS TO CORE FINANCIAL ACTIVITIES



Source: FD Business Review (Draft) December 2009

Given the huge improvement needed it makes sense for the finance function to concentrate on its core activities and move the more unusual activities like the project office, filing date allocation, patents data capture and register maintenance. It is very common for corporate planning and governance to be under the finance director and we support this allocation in the future. The resultant scope of the revised finance function is down to the IPO board to determine, but a large amount of work needs to be done to change the culture and impact of finance on the whole organisation and it would do well to shed potential distractions to its core mission to others. For this reason the VFM review team would expect to see the register maintenance, filling date allocation and patents data capture moved away from finance and under a more operational arm of the IPO so the directorate can concentrate more on the first two rings of the circle in Figure 7.

Two factors also need to be considered when decisions are taken on the future of the function. Firstly, the number of qualified accountants must increase, especially in the management accountant area. Secondly, the organisation must decide if it is better value for money for it to run many of it finance functions in house or outsource them to one of the many shared service providers in the public sector. For example, DVLA in Swansea already host the shared service for finance, procurement and HR functions for a number of other agencies within the civil service. If the functions are all to be kept in house, then more money will need to be spent on enabling further modules on Oracle. This will be needed so staff can manage for example, travel and subsistence claims, purchase requests and invoice payments on the IPO network and functional areas can share databases on Oracle.

The absence of a system for detailed costing is also an issue for the IPO given that application and processing fees do not currently cover even direct costs. Activity based costing or any other system of costing should be examined as a matter of priority and the new Finance Director should be given authority to undertake a cost identification project.

It is also recommended that the IPO implement more detailed process and efficiency (VFM) reviews on a regular basis in future and extend the initiative started with the National School of Government to the whole organisation. This should also be supported by internal audit that should not just conduct compliance audits or projects, but examine key parts of the business process.

The IPO has accumulated historic surpluses and is now confronted by a problem. The general reserve stood at £54.6m as at the end March 2009 for which the IPO is charged ROCE of 4%. The office has had to place these funds with the government's Debt Management Office and received only 0.25% in interest. Some of these reserves are for work taken in, but not yet undertaken since the deferred income provision does not cover the cost of doing this work only the income received (see earlier chapter on business model for fuller discussion of this). Some should be invested in the IPO to ensure that it its resources are up to date and ready to enable the improvements in effectiveness and efficiency that will be demanded in the near future.

In summary the review team found:

- The finance function is not properly resourced –undermanned and under skilled according to OEP review (only 1 management accountant and only 11% qualified)
- No proper cost information made available to the organisation
- No proper management information made available to organisation
- No FD/other Directorates liaison system in place (management accountants with responsibility for each directorate)
- No joined up use of system between Finance (Oracle) and HR (Oracle)
- No budget information input into Oracle
- Allocation of overheads is not well understood by business areas
- No widespread cost awareness in business units
- FD must be empowered to implement a cost system
- Need to increase the qualified management accountants necessary to assign account managers to Directorates (see HR model)
- Wider use of Oracle – joined up with HR, implement budget modules etc
- Need for a process to be developed to embed (full) cost awareness in all managers as budget holders
- Need to implement process and efficiency (VFM) reviews on a regular basis

  - The VFM internal work should be carried through whole organisation
  - Internal Audit needs to get involved – not just compliance reviews
- Need to reconceptualise the cash reserves as discussed in Chapter 5.

Other areas under the finance directorate

By comparison to the core finance team, the procurement team has 56% of its staff qualified which is above the average of 49% for the entire civil service. The costs of procurement are exactly on the average of 0.42%. The VFM review team were shown no data that would allow any assessment of the effectiveness of procurement. This should form another area that would need to be examined in more detail at a later date.

The project office is also under this directorate which is somewhat unusual since it would usually be under the IT team. This gave the impression that the project office was given a much wider remit then just IT but in reality when it was asked for its terms of reference, the resulting list was dominated by IT based projects. In other organisations one central team would maintain a register of all the initiatives and studies underway within the organisation and this should be no different in the IPO. The need for a renewed examination of this project office was identified in the FD Business Review and we endorse the following recommendation in version 1 of this review.

> The Office should reaffirm its commitment to project management and the Project Office should develop to become a centre of excellence, adding value in the control and support of all projects and developing PPM capability within the IPO.

A number of other activities have ended up under the current Finance Directorate for historical reasons. From the small amount of information supplied about the mailroom, register maintenance, non-examination patent filing activities it is hard to form a view about the value for money of the current operation. Some 20 FTE staff in finance are involved in the register maintenance work and it is not impossible to envisage scope for improvement in the utilisation of these staff, if they were integrated into an area where there was more synergy with other areas of the IP operation. The operation of the mailroom is commonly under the facilities function since this ties in with other porter activities. The receiving of cheques in the mail is also a function that in other organisations is not unusual for the operations teams to handle and pass the cheques onto finance once they have been accounted for and balanced.

In summary the review team found:

- A number of activities are under finance only for historic reasons and a decision needs to be made to move them to a more logical operational area with more synergies.
- A more detailed examination of the outputs and costs of these unusual additional finance activities needs to be undertaken before their VFM can be assessed.

HR Management

The UK Government report on “Benchmarking the back office” was published in December 2009 and the comparisons in Table 9 were made for the HR function in the IPO across the rest of government and the agencies.

TABLE 9 – BENCHMARKING THE BACK OFFICE HR FUNCTION

	IPO	Govt Average	Agencies Average
% Cost of HR Function	3.1%	2%	2.1%
Ratio of employees (fte) to HR staff	34 to 1	50	47.2
Average working days lost to sickness	8.2 days/fte	7.8	8.9

From this data it is clear that the IPO spends more as a proportion on its HR function than other parts of Government and the agencies. The % spent on the HR function of 3.1% puts the IPO into the top quartile. A position also confirmed by the very high ratio of HR staff to employees where the IPO is in the lowest ratio quartile (1 to just 34 FTE compared with the government wide average of 50 FTE). So on the face on it with such a high level of inputs into the area of HR you would expect the IPO to have an impressive HR related performance. Unfortunately, the one other indicator included in this benchmarking report showed the sickness levels for the IPO were above average for government. Sadly, unlike the finance staff the same benchmark report did not capture the percentage of qualified HR staff so we are unable to make any comments about the professionally qualified levels in HR.

Are there any further clues to the level of value for money outcomes from such a well resourced function to be found in the latest Corporate Plan (2009). No workforce plan is included, which is a surprise given the recent redundancy/early retirement exercise conducted and in the whole document of 43 pages, just one small paragraph is included on the HR function.

> “However, we must not lose sight of the fact that we rely on our people to deliver excellent customer service and to provide quality outputs. To achieve this, we are working with colleagues across the organisation to understand the skills, knowledge and behaviours we currently have; and to learn how we can best equip ourselves to deliver the strategy set out in this plan and be ready for future challenges. This requires that we build on our leadership capability at all levels within the organisation and develop

our people to realise our potential and build succession plans." Corporate Plan 2009

Just two of the objectives for 2009/10 concern the people aspects of the IPO.

- to enhance our leadership capability by cascading our values – Support; Empower; Develop; Listen; Communicate; Trust. We will consolidate work on embedding these values in job descriptions, learning and development events, the performance management system and other activities. And we will undertake further work to promote best practice, to support our leaders and to build on the concept of "leadership from every chair"; and
- to improve our talent development and succession planning by reviewing HR structures, policies and processes to ensure everything from recruitment, induction, development through to departure is focused on facilitating our people's delivery of the four pillars

The first of the two targets included in the balanced scorecard for 2009/10 concerns the performance management system for the IPO, "*95% of performance management forms signed off and return to HR by 31 May 2009*". On closer examination the performance management system for the IPO is very unusual and the introduction of a deadline for completion should be the least of its concerns. A three box marking system is used to assess the annual performance of every individual and a maximum of 10% are allowed to get a box 1 "outstanding" mark, yet 50% can get the lowest Box 3 marking for "performance fully meets the normal requirements of the span". The presumption that 50% of staff can be box 1 or 2, "outstanding" or "significantly above requirements" is not realistic. There is no lower box marking to cover anyone with a less than satisfactory performance. This is somewhat puzzling as it means that even those who are new and still learning the role, where it would be fully expected that they showed some areas of weakness, must be marked "satisfactory". The scheme is a recipe for complacency and will not help to deliver a high performing organisation. This scheme should be reviewed and changed to bring it into line with best practice in other schemes within the civil service.

So how do managers encourage the poor performers to improve? The Managing Poor Performance guide for managers contains the process for encouraging poor performers to improve. This consists of 8 stages and includes two trial periods which must be undertaken and evaluated before dismissal is considered. It would be a surprise if many managers had the perseverance needed to stay with this process all the way to dismissal.

So what other signs are there that HR and the managers are on top of performance and providing good value for money? The second target for 2009/10 in the Corporate Plan concerns "Numbers of sick absence days per person to be reduced to 7.0 days". It is disappointing to find such a relatively high sick absence rate for an organisation that is office based and mainly operates in one building, with the result that absence management should be very easy. An IPO report produced in June 2009 showed that 55% of sick absence was short term, which compares badly for figures for the whole civil service of just 46%. The more junior grades especially take more sick leave than any other with the average for grades A1 at 15.9 and A3 at 13.1 days lost. The IPO Operating Committee received a report in June 2009 that made recommendations against a Cabinet Office good practice checklist. Actions do appear to have been taken on a number of areas and by December 2009 the Average Working Days Lost per person decreased to 7.4 days at a cost of £723,779 for the year to date (December). Sickness absence is a problem for the office and will require continuous focus by management if unnecessary cost is to be reduced to more acceptable levels. It is hoped that the recently conducted training for managers on absence management will pay dividends.

On HR matters the supply of timely and accurate information and advice is crucial for line managers. Credit is paid to the establishing of 3 HR Advisers posts within the team whose role it is to link and liaise with directorates. This vital change in the internal business relationships is to be commended and should be mirrored in finance. The signs of change and improvement in the performance in HR date back to a new HR strategy in 2006 and the recruitment of new professional staff from outside the IPO. This team have reinvigorated the function and whilst they still have a great deal more to achieve they have started to move the organisation in the right direction. The IPO Board should encourage them to keep up this progress and ensure that it takes full advantage of the “Next Generation HR” work being led by the Cabinet Office since much still remains to be done. It is expected that aspects of HR in the IPO will also need to be considered for shared service centres in future as part of this initiative to save money across government. A number of shared services can be supplied by facilities in South Wales, including DVLA.

One area which remains disappointing is the lack of links between the HR and finance teams in terms of the use of Oracle. This potentially results in both teams remaining inefficient and does not allow the IPO to gain full advantages from the potential of the Oracle system. Comments on this have also been made in the finance section and the management board need to make a decision on the future of this corporate system.

Another of the areas that still need to be tackled is the introduction of a competence framework for the IPO. This must be one of the few parts of the Civil Service not to have a comprehensive competence framework. It is clearly an objective that the HR team have in their sights but the often painful process of devising a framework that others did years ago will need management support throughout the organisation.

A new learning and development strategy was presented to the Operating Committee at its meeting on 16 June 2009. It is geared to rightly support the achievement of the 4 pillars of the Corporate Plan. The strategy set itself some steep objectives for three years time, “where learning is valued at every level and encouraged as a continuous process.” The introduction of Learning and Development business partners for liaising with the directorates is to be encouraged. This strategy now needs to be revised to take into account the introduction of the 5th pillar, “Building a sustainable financial future”, since much work is need to make all the staff far more cost conscious in the IPO, especially the managers and budget holders. A new approach to the procurement of Learning and Development was presented to the Operating Committee in October 2009 since the existing contract runs out in January 2010 (See Table 10). It is hoped that the management board will support this more flexible approach and will not starve it of funds since much remains to be achieved.

TABLE 10 – EXPENDITURE ON LEARNING & DEVELOPMENT 2007-2009

	Spend outside training framework contract	Spend within training framework contract
2007/8	152,507	45,339
2008/9	492,284	49,227

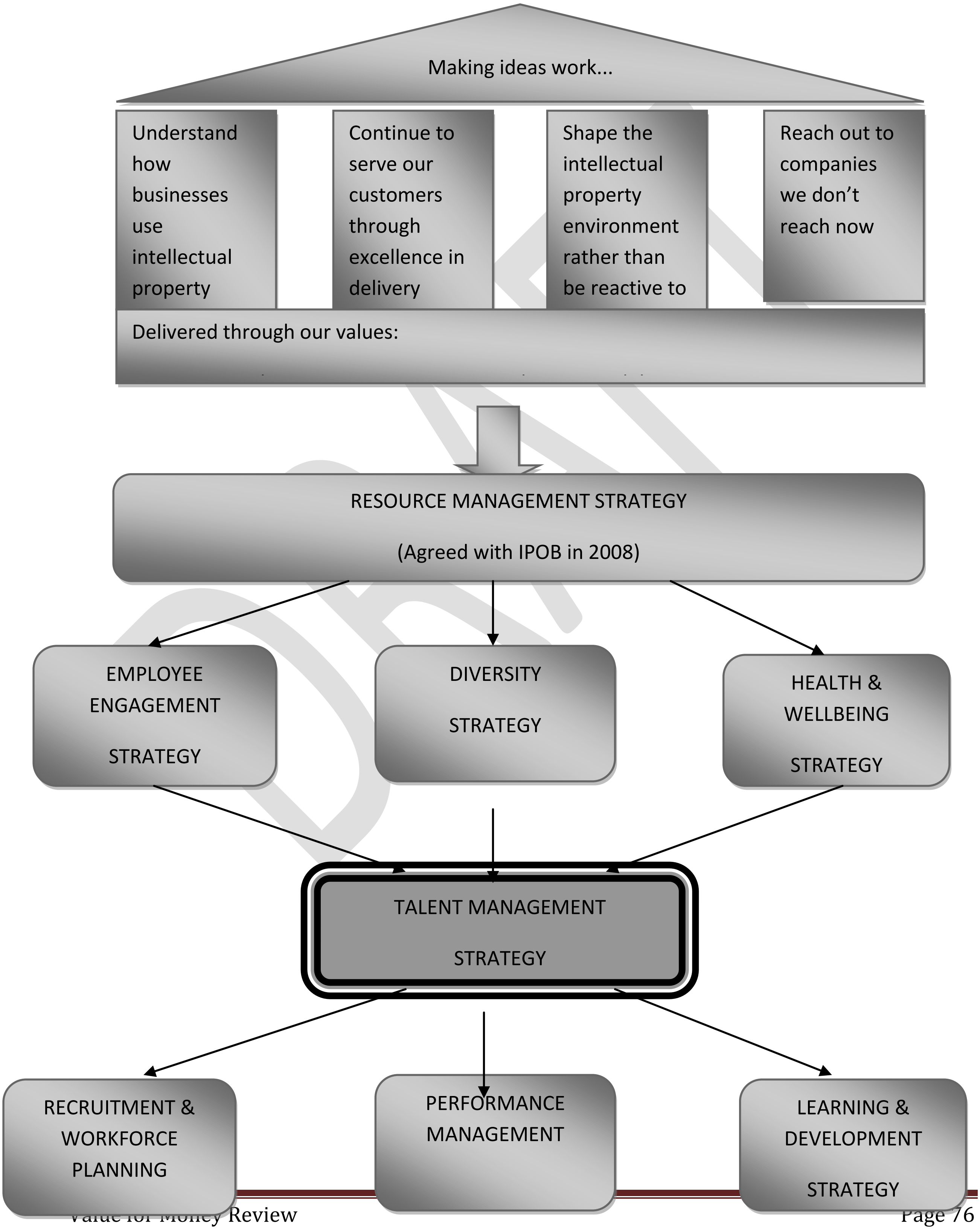
The improvements in HR are in part because of the input of new and experienced professionals into the function who are working to a coherent strategy in support of the Corporate Plan (see Figure 8). This work has also benefitted from the research undertaken by Stanton Marris in 2008.

Support for learning and development is essential during lean financial times when it is often one of the first areas to be cut back, but the management board should hold on to this strategy since it is one key part of the culture change needed to make the office “fly”. The balance of the staffing of the organisation is also changing – in the past the processing work dominated staffing with the highly skilled patent examiner processers forming the main skill pool. However, the recent corporate plans have introduced a Newport and London twin focus plus a shift in the IPO balance towards more policy, education, marketing, and commercial skills so the patent examiner focus is not as dominant. The new CEO will need to manage the emergence of this twin focus in office locations and the introduction of more “creative types” of people, so as not to enhance a “them and us” feel to the IPO.

It is also curious that such fundamentally important people related strategies appear to be discussed and agreed by the Operating Committee and not the IPO Board directly. The new CEO would do well to reconsider if in future key aspects of the management and development of the people in the IPO would be better signed off at the top level given its importance.

Coaching and mentoring is one of the areas that was started to be tackled in late 2009 and mini evaluations are due in March and June 2010. Experience in other organisations has confirmed the value of this approach and the stated objectives "to make coaching and mentoring an integral part of management and development within the IPO" are commendable and achievable, but will need ongoing support from the new CEO.

FIGURE 8 – ILLUSTRATION OF HR FUNCTION STRATEGIC SUPPORT FOR CORPORATE PLAN



The previous CEO Ian Fletcher recognised the specific challenges confronting the IPO in the management of its talent.

> "Talent management is a challenge in the IPO, where policy staff are especially hard to attract in Wales, and where talent development for ex-specialists is always a challenge."

The new system for talent management was recently agreed by the Operating Committee and has been successfully launched in November 2009. The programme is owned and led by members of the board and is split into three pools. The first line and middle management pool attracted forty-four applicants from which 8 people were selected to begin a two year programme in January 2010. It is hoped that this success is mirrored in the remaining pools, one for staff aspiring to leadership (grades 6 &7) and for those aspiring to SCS.

The IPO also operate a staff suggestion scheme but this is a low level scheme that is similar to many in operation throughout the Civil Service. Surprisingly, given its role in encouraging the UK economy to be innovative, the internal mechanisms to support the generation of truly innovative ideas within the office is unclear. Some examples of innovative working can be found within the office and are usually driven by keen individuals with much perseverance, for example, informatics. The talent management scheme is likely to encourage some individuals to blossom but the general culture appears too cautious and risk adverse to encourage much innovation. Permission to explore new ideas and systems must be sought by more people and supported by those in senior positions if the IPO is to be able to "walk the talk" in the innovation world.

In summary the VFM review team found:

- No comprehensive competency framework in place
- HR Oracle not linked to Finance Oracle
- Performance management system rudimentary (3 levels of performance, lowest level is still satisfactory)
- OEP suggest area over staffed
- OEP suggest sick leave above average (but recent improvement in IPO)
- HR approach to sick absence issue appears sound – getting information to line managers about results in their area
- New learning and development strategy needs adequate funding
- Talent spotting – new scheme needs support
- Issue of London vs Newport will need to be managed. This is/will be a culture issue within the organisation with the split reflecting different skill sets in each location.

Accommodation

In conjunction with the recent release of the report *Putting the frontline first: smarter government* (HM Treasury 2009), the UK Government also released the report *Operational Efficiency Programme: Asset Portfolio* (HM Treasury 2009) in which it announced that the Shareholder Executive will review different public sector estate management and ownership options, including the feasibility of creating one or more property companies that could own and manage portfolios of public sector properties. As part of the background analysis for these reports, HM Treasury collected data from all government departments and agencies on property and estate management and presented this data in an Annex *Back Office Improvement Plans* to *Putting the Frontline First*.

The data on the IPO set out in the comparative tables in the Annex provides a good starting point to look at the issue of value for money in accommodation management.

The Government-wide comparison used three measures:

- Cost per FTE
- Area per office-based FTE
- Cost per square metre

Table 11 compares the IPO data with the average for Agencies (excluding Ministerial Departments, Non-Ministerial Departments, NDPBs and Others)

TABLE 11 – BENCHMARKING THE BACK OFFICE - ACOMMODATION

	IPO	Agency Average	Govt Standard
Cost per FTE (£/FTE)	1,992	4,181	
Area per office-based FTE (m^2/FTE)	16.9	14.0	10-12
Cost per square metre (£/m^2)	118	300	

Table 11 shows a mixed picture for the IPO. It suggests that the cost of accommodation (measured by both cost per FTE and cost per square metre) is significantly below the average cost for other UK Government agencies. It also suggests that the space available per FTE in the IPO is significantly higher than the average for other UK Government agencies, and more than 50% higher than the UK Government standard for new or significantly refurbished accommodation (10^2m per FTE) or the 10-12^2m per FTE standard for all other refurbishment opportunities. In other words the IPO's accommodation is extremely cheap and generously spacious.

The implications of these findings for the forthcoming whole of government review of estate management are fairly clear. There would be no pressure on the IPO to increase the costs of its accommodation but there would be considerable pressure to reduce the space allocation per FTE.

For the VFM Review this situation raised a number of questions. How well was the existing accommodation actually managed? How well positioned was the IPO to take advantage of any wider changes to UK Government management of the government estate?

Management of Accommodation

Concept House

The first thing that strikes a visitor to Concept House is the considerable amount of vacant space. There are significant areas on most floors which are clearly under-utilised. Our observations suggest between 10-20% of Concept House is vacant and these estimates were not rejected in discussions with relevant managers.
There would appear to be very little pressure to consolidate the vacant areas to make the space available for sub-letting or just to reduce maintenance costs (cleaning, lighting and heating) by “moth-balling” vacant areas. Nonetheless the Accommodation Services area is attempting to systematically vacate the so-called “crank” areas which are apparently hard to heat and the source of many staff complaints.

Overall the abundance of space has induced a form of management laziness. A good example was brought to our attention in the implementation of home working. Arrangements for home working were put in place for patent examiners in January 2007. As part of these arrangements the “Patent Office Home Working Agreement” made it clear that a staff member working from home under these arrangements “might or might not have a permanent personal working space in the Office”. Hot-desking arrangements would be made as appropriate. We were informed that at present only 6 of the 70 staff on home working arrangements had been asked to give up a permanent personal space in the Office as local management was unwilling to enforce the giving up of personal space.

Equally obvious as the vacant space is the extremely poor design of the building, the apparently ad hoc space utilisation, and the low quality generally of the fabric, furnishings and fit-out of the building.

The main elements of this can be summarised as follows:

- The hollow squares design of the building makes it difficult to consolidate the use of space and makes movement between different areas inefficient

- The fit-out largely consists of long blank corridors which cut off the narrow work areas and the myriad of individual offices from viewing and being viewed by other staff
- Managers and supervisors are housed in blank wall offices which cuts them off from viewing and being viewed by the staff they are supervising
- There is an absence of breakout areas for use by small or large work groups which isolates individual workgroups from related work groups
- There is little sense of theme or consistency in furnishings across the office
- Meeting rooms in work areas are poorly furnished (tables do not match the size of the room for example)
- The floor coverings are cheap (and often worn) with little cushioning underfoot for comfort or noise reduction
- There are damaged and dirty ceiling tiles in many areas (especially around air conditioning vents)
- There appears to be no discernable plan in the location of work units and manager's offices

When we looked into the background to some of these observations it became clear that there had been little senior management attention to accommodation for some time.

The building had not had a full refurbishment since it was first occupied in 1991/2 which in part explains the generally "tired" appearance of the fit-out of the building. The view was put to us that senior management has generally been reluctant to commit to the costs of a significant refurbishment. We sought a "ball park" figure to carry out a full refurbishment of Concept House to bring it up to a commercial and high standard. We were informed that this would be £17.4 million to £23.7 million.

To the modern eye the style of fit-out appears a throwback to the 1970s. Open plan fit-out was adopted by most organisations in the 1970s and 1980s because its flexibility allowed for more efficient change as organisations re-organised or areas within an organisation grew or shrank. Open plan configurations also reduced heating and cooling maintenance costs by eliminating "hot" and "cold" spots in isolated office and closed corridor fit-out. Open plan configurations were also seen as facilitating management change, internal communication and generally supporting healthy cultures within an office environment. The continuation into the second decade of the 21st Century of "closed corridor" fit-out in Concept House seems to be a confirmation of the view that there was general resistance from managers and staff to more open plan accommodation, and the view that senior management was apparently reluctant to deal with managing such a change.

The reluctance to challenge or change the "closed corridor" fit-out was also linked to the view that patent examination staff, in particular, are wedded to their private space as a necessary condition for them to undertake their function. This view is apparently unchallenged by senior management even though open plan fit-out is used in many (but perhaps significantly not all) patent offices around the world.

Bloomsbury Street

The recent move to the Bloomsbury Street accommodation in London was apparently driven in part by the ending of the lease of space in Harmsworth House and the strategic decision to build up the policy capacity of the Office and base more of that capacity in London. The choice of the particular site was linked to the accommodation being available through the parent Department (BIS).

On a cost per square metre basis the London accommodation is significantly more expensive (£379 per sqm excluding minor works for Bloomsbury Street compared to £67 per sqm excluding minor works for Concept House). The Annex *Back Office Improvement Plans* to the *Putting the Frontline First* Report suggests that the costs of London accommodation is generally "two to three times more" than accommodation in the regions (p39), however, the very low cost of Concept House probably explains the higher differential with Bloomsbury Street. (It should be noted that Harmsworth House accommodation was £573 per sqm excluding minor works).

The open plan and glass-walled office fit-out of Bloomsbury Street is a dramatic contrast with the fit-out of Concept House. Given that the policy and research work that is carried out in Bloomsbury Street is arguably similar in character to the sort of work that a patent examiner undertakes the justification for the continuation of the closed corridor and myriad offices fit-out in Concept House is weak.

The space in Bloomsbury Street is clearly not fully utilised but this is partly linked with decisions about the dual location of some policy staff causing underutilised (duplicated) space in both Bloomsbury Street and in Concept House. This issue is explored further in the section on the development of the policy programme.

Nine Mile Point

The VFM review did not visit the storage facility at Nine Mile Point. We were advised, however, that the facility suffers from a lack of management attention to its utilisation and as a consequence is probably twice as large as would be necessary if it were "cleaned out". For example, we learned that the facility has in storage considerable quantity of left over personal belongings of staff who have left the organisation. We were not clear why there has been a reluctance to dispose of these belongings at the time of departure.

We also understand that recent changes to the Public Records Act mean that there is a considerable quantity of files in storage which can now be properly sentenced or disposed of. In addition, the PECS project in patents which introduced electronic case files to patent processing (switchover completed in May 2008) has had a documented positive impact on the use of file storage areas in Concept House. It is not clear to the Review Team from reading the post implementation review of PECS whether there will be any flow on effects to Nine Mile Point.

The TM10 Project will introduce electronic case files to trade marks processing. It is not clear from the TM10 Business Case whether the trade marks resource located at Nine Mile Point will be part of the 8.5 trade marks FTE savings identified from the implementation. Nonetheless the introduction of PECS and TM10 combined with the changes to the Public Records Act should be an opportunity to rationalise Nine Mile Point and reduce the accommodation needs there.

The Nine Mile Point facility also houses back-up servers for the IT business recovery plan. We did not look into the efficiency of this arrangement.

While we did not examine in any detail the functions performed by the staff located at Nine Mile Point we understand there are 10 business services staff (6 are part time) and one trade marks staff at the facility. Prima facie this level of staffing seems high and a reduction would be expected given PECS and TM10.

Planning and Financing Accommodation

An Accommodation Strategy was drawn up in 2006 which included some ambitious goals of more open plan accommodation and introducing break out areas. A review of progress in 2009 against some of the more innovative ambitions suggests that little has been achieved as decisions were deferred or not actioned. A new strategy document is under preparation but without greater ambition and senior management commitment the new document is likely to be little more than a plan of (largely necessary) activities over the next few years rather than a new accommodation strategy. And if the past is any guide the more ambitious and expensive elements will be unlikely to progress.

Funding accommodation management is a strategic decision. The IPO already spends significant funds on accommodation from year to year. It is not clear that value for money is achieved. In 2008-9 some £1.5m was spent on accommodation services. Office moves (and associated refurbishment) cost £203,884 involving 702 staff moves (the equivalent of moving 8 out of every 10 staff). A further £1.1m was spent on on-going maintenance and refurbishment (the bulk on Concept House). Similar expenditure is budgeted for 2009/10 (£1.3) although the bulk has been spent on setting up the new Bloomsbury Street accommodation.

The VFM Review was unable to get a sense that re-investment in the fabric and fit-out of accommodation (especially Concept House) was seen as part of the normal management of a building. At the very least we would have expected that the value of the fit-out would be depreciated each year against an agreed life (usually about 10 years) and funds the equivalent of that depreciation put aside each year for capital reinvestment in new fit-out at the end of the life of the existing fit-out. The accumulated surpluses of the Office discussed in Chapter 5 in part reflect the long term lack of investment in fit-out.

Given that the IPO owns Concept House (not just the fit-out as would be the case in a lease arrangement) there are also depreciation issues and reinvestment in the fabric of the building that need to be considered. Apart from the repainting of the outside of the building some 3 years ago we found little evidence of investment in the fabric of the building. Major decisions will apparently be coming forward concerning the replacement of the boilers. Again without an agreed understanding of the need to accumulate capital (largely calculated through depreciation) to provide for reinvestment in the fabric of the building, decisions to spend on building fabric will compete with operating priorities.

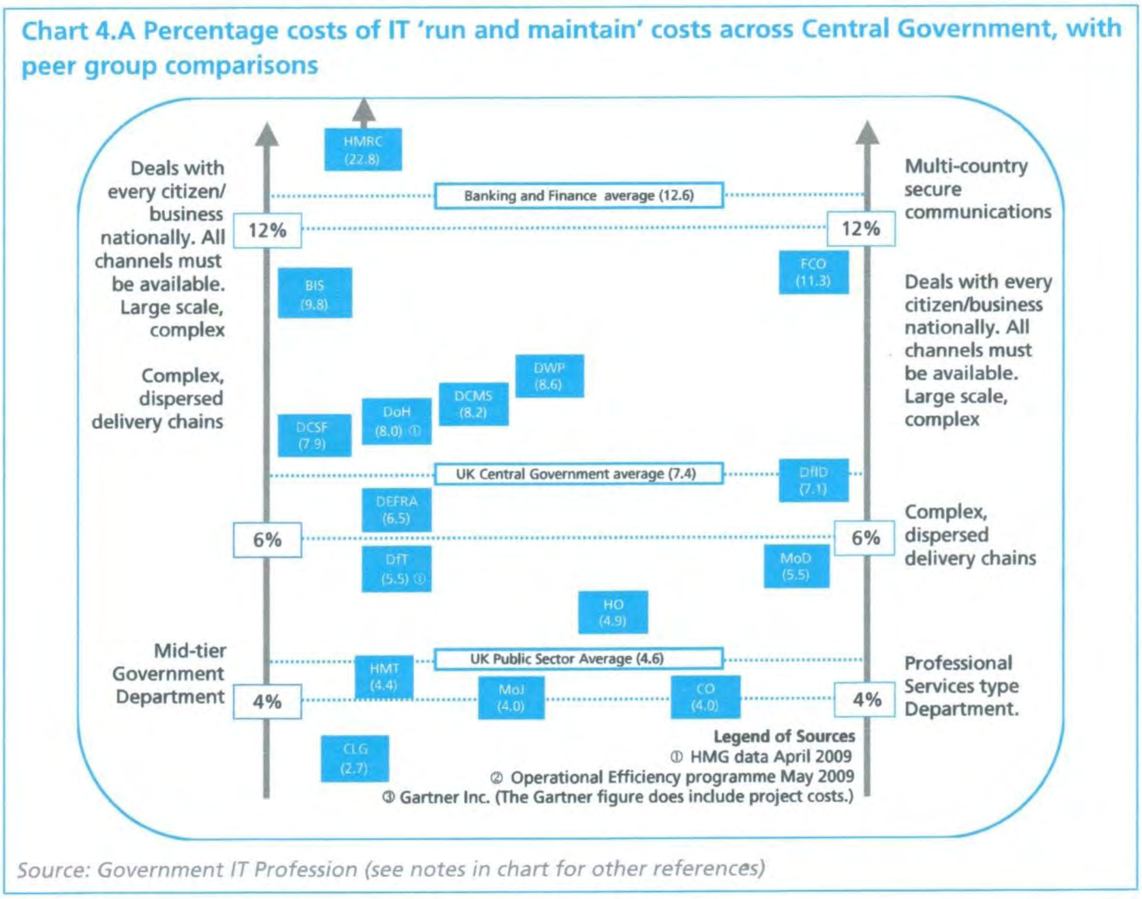
In summary the Review found:

- Concept House is poorly designed and utilised
- A strategic accommodation plan is needed to address significant investment needs in the fabric and fit-out of Concept House or to propose alternative accommodation options
- Underutilisation of Bloomsbury St is in part driven by the unresolved duplication of the use of space by staff moving between Bloomsbury St and Concept House
- Nine Mile Point needs attention to rationalise space utilisation

<u>Information Technology</u>

In the *Benchmarking the Back Office: Central Government,* released as part of the UK Government Report *Putting the Frontline First: smarter government* (HM Treasury 2009), an attempt has been made to benchmark IT costs across the UK Government. The study recognised that the nature of government business is varied and complex and that this makes a straight comparison of the costs in one agency with the costs in another problematic. The study therefore established an approach showing relative performance (% cost of IT) with reference to external benchmark values and types of business. This model is in Figure 9.

FIGURE 9 – PERCENTAGE OF IT RUN & MAINTAIN COSTS ACROSS CENTRAL GOVERNMENT



Source: Benchmarking the Back Office: Central Government, UK Treasury December 2009

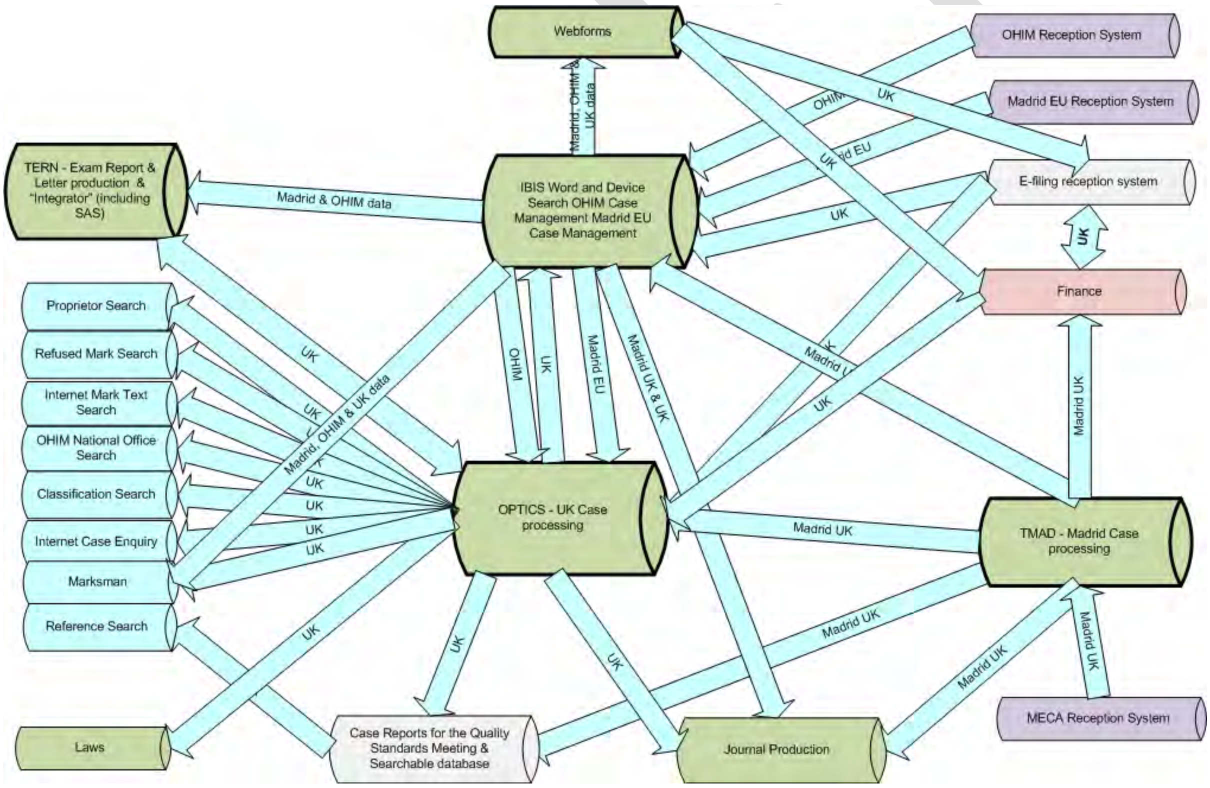
The model suggests that departments and agencies can be classified according to the type of agency (mid-tier government department, professional services type department) or the type of business conducted (complex dispersed delivery chains, deals with every citizen/business nationally, etc). While the model when it was developed did not include non-ministerial departments, agencies, NDPBs or the wider public sector it is nonetheless informative when the benchmarking data from the IPO and other agencies is compared with the model.

According to the benchmarking survey the total cost of IT spend as a percentage of organisational running costs (excluding capital expenditure on future one-off major transformation projects) for the IPO was 16.7%. When this figure is plotted against the above model it can be seen that it is an outlier at the high end. In fact in the full benchmarking tables only 8 other departments or agencies out the 153 surveyed exceeded 15% total cost of IT spend as a percentage of organisational running costs. By comparison, according to the *Four Office Statistics Report 2008 Edition,* the EPO spent only 6% of its budget in 2008 maintaining (non-capital expenditure) its patent IT systems (p11). By way of contrast, according to the same report, the JPO spent 25% of its patent related expenditure on "Computerization of patent processing work" (which may include capital expenditure) (p14).

While the benchmarking data requires more case by case examination to validate the picture for each agency the broad sweep nonetheless clearly indicates that the IT costs of the IPO are significantly higher than the generality of other agencies, with the possible exception of the JPO. Given this, the VFM review looked for the reasons behind the high costs.

In our discussions with management in the area, it became clear that many of the reasons were well known. According to management, significant costs are driven by the fact that the IT in the IPO has become poorly architected over time. There are too many systems (some 400 systems and sub-systems of which 141 are regarded

FIGURE 10 – ILLUSTRATION OF COMPLEXITY OF CURRENT TRADE MARKS SYSTEMS



Source: TM10 Business Case 2009.

as major systems), too many languages (12+), and it has become increasingly difficult to integrate the older systems (such as the old IP rights register system OPTICS which was developed in the mid 1980s) with newer systems (such as modern input sub-systems, workflow systems, case management systems, or data mining or data extraction systems). Figure 10 maps the trade marks systems before the proposed implementation of TM10 and illustrates the current multiplicity of systems and complexity of integration.

It is not clear how quickly this situation has come about. In 2003 in response to an Efficiency Review questionnaire from Treasury the IPO reported only 45 “applications” supported by the IT area. In the same year IT expenditure (excluding capital) was 16.4% of operating costs and 20.8% (including capital expenditure). In other words the high rate of expenditure was occurring when the number of systems were apparently many fewer.

There was also evidence that staffing levels were too high given the overall scale of the operations. This appears to have developed as the number of systems proliferated and individual staff were allowed to specialise in supporting narrow single systems without proper management rationalisation of resources and skills. While the head count appears to have reduced since the 2003 survey (105 staff in IT area) to 82 staff (80.98 FTE) in 2009, the 2009/10 budget has provision for £1.8m for contractors in addition to the staff budget. As far as we could ascertain these resources were exclusive of any resource decisions for the implementation of TM10.

The VFM Review understands that a new IT strategic plan is being developed which will address many of these issues. In addition the decision to proceed with the acquisition of the OHIM system for the processing of trade marks applications will, we were told, make a significant contribution to the reduction of the total number of systems that are supported. However, while we have not seen a draft of the new strategic plan, we were not convinced that the right focus would be taken to address the underlying cause of many of the issues noted above.

Our prime concern was an apparent lack of focus on wider opportunities and approaches that could be identified and incorporated into the direction of a strategic plan. Addressing the proliferation of systems and the over staffing would only tidy up the existing situation. It would not provide a blueprint for the future.

We uncovered very little focus on how and when full electronic processing of all work in the IPO would be achieved. We heard, for example, that web-based patent filing was successful but when questioned it became clear that it was largely used by private applicants and that professionals continued mainly to lodge paper-based applications. The conservative nature of the profession was cited as a barrier to further progress in this direction. By way of contrast the UK Land Registry has achieved full electronic filing with its fairly conservative solicitor professionals by strategically working with software suppliers to the profession and the profession itself to demonstrate the benefits for all.

A similar absence of strategic direction was apparent concerning the future of renewal and maintenance processing. The split responsibility for this work between the Finance area and the different rights areas probably contributes to this lack of strategic view. Nonetheless renewal processing is a high volume area of activity with significant potential for full automation and even alternative service development in competition with the dominant supplier in the marketplace.

Overall in our discussions with managers we found little risk appetite to deal strategically with IT investment even though IT has now become essential to the business of running the IPO. The decision to proceed with the OHIM acquisition is a counter example but the alternatives were probably more difficult and expensive and the "free offer" from OHIM allowed the decision to be taken. Similar to the lack of investment in accommodation, the lack of investment in IT over a long period has probably contributed to a higher accumulation of reserves than would otherwise have been the case, although the high running cost of the existing IT has reduced this effect considerably.

In summary the Review found:

- No strategic direction to guide planning and investment in IT
- Poor architecture and over staffing contributing to high costs of IT services
- Little appetite shown in senior management for significant IT investment

Office Services

The Business support directorate also manages office services including facilities and the design and print services. The established number of staff in facilities and records management and publications totals 22.22 + 12.51=34.73FTE. It is difficult to analyse if this is a generous staffing without getting into the detail of exactly what is done by who in the directorate and this level of detail is beyond the scope of this current strategic VFM study. However, the office also has a separate budget of £160,000 for cleaning and another of £200,000 for security guards which add weight to the feeling that IPO facilities area may be overstaffed. The inclusion of a spacious and well equipped printing and design service in house is very unusual now.

The VFM review team were assured that the publications team offered very good value for money but it would still be worth considering another look at the market place. Market testing has been conducted in the past but it is always worth keeping this under review in such dynamic and fast moving economic conditions. If the service is to stay in house because it is a cheap offering, then it should also seek to maximise its commercial income from other organisations. External comparisons and pressure will be forced upon IPO by wider government initiatives. Any monies released from these efficiencies could be used to reinvest in the income generating areas or new directions of activity.

In summary the VFM review team found:

- Office services should be subject to regular market testing to ensure continuing VFM.
- The case for an in house publication facility is questionable and should be tested for VFM against the external market place or made to maximise its income generating earnings from the external market.

CHAPTER EIGHT - Management of the Front Office functions

This Chapter examines the issue of value for money for each of the front office functions of the IPO. For each of the functions the Review asked management to outline how they measured value for money for the function they were responsible for, and we discussed key issues concerning the management of the function. We analysed the data and information made available to us assessing strategic direction, leadership and management, resource usage and staff issues.

Patents

In the Corporate Plan 2009, the 3-year objectives for the patent function are to:

- Continue to provide a high quality, cost effective and timely system for patent search, examination and grant;
- Amend the legal framework and develop the necessary IT to provide online inspection of patent files;
- Have persuaded key partners of the case for patent reform and begun to put in place a system of work-sharing arrangements between major offices.
-

The patent function is discussed below against four elements of these key objectives – work sharing, quality, cost effectiveness and timeliness.

Work Sharing

One of the key outcomes for 2009/10 set out in the 2009/10 Corporate Plan is:

- Develop a coordinated strategy on mutual recognition and promote that strategy with key international partners, and sign two agreements on work sharing (p15)

Work sharing has been on the agenda of the IPO for a number of years. As a strategic direction work sharing was endorsed in the Gowers Review which recommended that the Office "should pursue work sharing arrangements with EPC member States, and trilaterally with the USA and Japan to reduce cross-national duplication of effort" (p80). Mutual recognition is a related but more ambitious goal.

The IPO has initiated and participated in a number of projects with other IP offices to support this strategic direction. For example, the IPO has undertaken examiner exchange with the Japan Patent Office as far back as the year 2000 and recently undertook a detailed study with the Japan Patent Office comparing the procedures and processes to assess the comparability of the quality of patent search and examination between the offices and to identify areas where greater confidence in each office in the work of the other office could be achieved. (See *Joint Interim Report of the Quality Framework Working Group*, August 2009).

Also as part of this strategic direction the UKIPO has been an early participant in the so called “patent prosecution highway” arrangements sponsored by the JPO. These arrangements have been adopted by many offices around the world. Each office choosing to participate has entered into bilateral agreements with other participating offices to expedite work where work sharing suggests efficiencies can be achieved.

Since 2008 the IPO has also been working with the Canadian Intellectual Property Office (CIPO) and IP Australia on a series of projects aimed at strengthening the understanding between offices of the methods and approaches to search and examination with the goal of laying strong foundations for greater use of the work of other offices. This work has included examiner exchange, and comparative studies of how quality is measured and built into processes in each of the offices.

The IPO has been very active in this area and the Review strongly supports its continued involvement. In addition to the value for the international system of greater co-operation, there are numerous benefits for the IPO. As discussed below, a fundamental theme of the work sharing strategic direction has been the assessment and understanding of quality. The IPO has clearly benefited from its focus in this area. It is less clear that IPO has fully captured the potential efficiency values from its participation. Benchmarking efficiency is another possible spin off from the work sharing strategic direction but with the exception of one study discussed below the IPO does not seem to have taken up this challenge.

<u>Quality</u>

There is a very strong link between work on quality and the work sharing direction. It was recognised early by offices which espoused the efficiency of work sharing that the quality of the work done in participating offices was critical to the success of the work sharing direction. While many offices were already comfortable with the level of their own quality the key to work sharing was to convince other offices of this claim and at the same time find methodologies to be satisfied about the quality of the work being done by the sharing partner.

The IPO was one of the first IP offices to seek ISO 9001 accreditation for the quality of the patent function processes. As the Review team understand it, this step was taken to demonstrate to others that the office had quality processes in place and was prepared to have these processes independently audited. Some other offices have since followed the UK lead.

All of the inter-office activities about sharing knowledge and understanding about patent processes which were discussed above have provided the IPO with a sound grasp of quality processes and how the office compares with others.

It is clear in all of these quality-focussed reviews and comparisons that the patent search and examination work of the IPO compares favourably with its peers. Furthermore, as discussed in Chapter 1, this finding supports the very positive external perception of the quality of the output of the Patent Directorate. Almost universally in the discussions we held with stakeholders and customers the search and examination quality was considered to be good (although not as high as the EPO); the UKIPO was praised for providing timely search reports which clearly suited the business needs of many filers; and while there are long delays with full examination, the finalisation of cases was still regarded as quicker than the EPO (although as discussed below this measure is in danger of not being met in the near future).

<u>Cost effectiveness</u>

Unlike for quality, comparative work on productivity and efficiency measurement has not been pursued to the same extent. The most significant productivity study undertaken to date is a benchmarking study involving the UKIPO, the German Patent Office (DPMA) and the European Patent Office (EPO). The study *Benchmarking Project – Productivity of the EPO, UKIPO & DPMA"* (2007), which was carried out by Ernst & Young, examined in some detail the patent grant procedures in each of the three offices in order to establish a proper benchmarking framework. However, productivity was defined very narrowly and the study only measured and compared 'time' for search and examination and did not measure or link this measure with any benchmarking framework of cost or quality.

Nonetheless, the Ernst & Young study did clearly show that the UKIPO and DPMA had productivity "at the same level, with the difference between UKIPO and DPMA .... ranging from 2% to 3%". Whereas the EPO's productivity as measured "falls significantly behind the level of the national offices, with the difference that needs to be explained ranging from +37% to +51%" (p53).

The Ernst & Young report examines in some detail the possible procedural reasons for the significant difference between the EPO and the two national offices. In the end the report suggests areas for further study and benchmarking.

The need for a more thorough and systematic effort to understand comparative efficiency was reinforced in our discussions with Office management. From these discussions we formed the view that value for money was not properly focussed upon in relation to the patent function or within the Patent Directorate.

At a whole-of-office level the Corporate Plan does not focus on internal costs of the patent function at all. There is a commitment to providing “cost effective” patent services as cited above but this translates throughout the Corporate Plan more as a commitment to keeping fees low rather than keeping costs low. As discussed in Chapter 5 the focus on low fees is potentially misplaced and is a barrier to a properly functioning IP office.

The regular internal management reporting made available to us did focus in some detail on production statistics, and did focus on examiner productivity, but these reports did not have any focus on the actual costs of the production achieved at a Patent Directorate level or at a whole of office level. As a consequence, the VFM Review developed its own measures to test the broader value for money proposition for patent production.

The first measure we developed was a comparative one. We simply used the published production data (search and examinations performed) and the published examiner workforce data in office annual reports. Methodologically such comparisons are very crude but the results can be used to check whether more detailed study looks promising. We took the data provided in the 2008 edition of the Four Office Statistics Report and compared the four offices (EPO, JPO, KIPO and USPTO) with the UKIPO data we had available. The results are set out in the table below.

Table 12 - Production per Examiner Comparison, 2008

Office	Number of Examiners	Search & Examinations	Production per Examiner
European Patent Office	3,864	298,299	77.2
Japan Patent Office	1,680	318,903	189.9
Korean Patent Office	678	108,897	160.6
US Patent & Trademark Office	5,955	436,947	73.4
UKIPO[1]	213	23,745	111.4

Note 1. UKIPO data for 2009.

As this quick comparison demonstrates, the UK Office is more productive by this measure than the EPO or the USPTO (the two least productive offices by reputation) but is well behind the JPO and KIPO. (Both the JPO and KIPO have invested heavily in sophisticated IT systems to manage patent examination work, and both offices outsource some of their initial search work). Given that the results of the Ernst & Young study suggest that the EPO is up to 50% less productive than the UKIPO and on this data is 44% less productive this different perspective is interesting. Continuing with more detailed benchmarking should reveal the explanation.

The VFM review also looked at the total cost of patent production (as opposed to just the quantity of examiners used) and compared this with income to get a feel for the patent cost model. Graph 6 provides a summary picture.

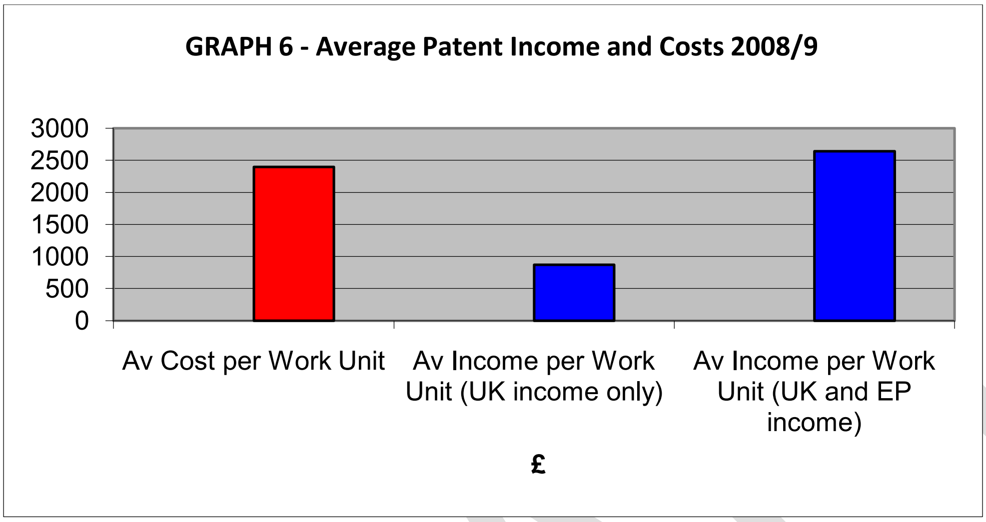


Table 13 illustrates some of measures we thought were useful. These tentative measures illustrate, we believe, the sort of management perspective that is lacking in the current approach to managing the patent function in the office. The lack of an end-to-end cost view seriously impedes the efficient management of the function.

The costs of achieving a key patent function outcome (a searched, examined and granted patent) are not confined to the Patent Directorate. Our data suggests that 40% of the costs are corporate overheads from other areas (IT, HR, Finance). However, it was not clear to us how a number of patent functions that were not carried out by the Patent Directorate were being accounted for. These functions include maintaining the patent register, processing patent forms and fees, non-technical examination of all patent applications, managing the patent renewal function, and processing forms and fees associated with international patent applications. All these functions are managed in the Finance Directorate.

It is inevitable in any organization that a range of cost centres will contribute costs to key functions. The issue within the IPO is the very low visibility of how these costs contribute to the whole picture and the lack of focus of Patent Directorate management on these total costs.

TABLE 13 - PATENT PRODUCTION 2008-9	
Patent Searches	16,280
Patent Examinations	7465
TOTAL PATENT WORK UNITS	23745
Total Patent FTE	348.56
Staff Costs	£16,462,818
Patent Direct Overheads	£5,676,491
Patent Indirect Corporate Overheads	£14,095,241
Total Patent Costs	£36,234,550
Av Salary per FTE	£47,231
Av Total Cost per FTE	£103,955
Av Cost per Work Unit	£1,526
Total Patent Income (UK Only)	£13,185,887
Total Patent Income (UK and EP)	£39,947,213
Av Income per Work Unit (UK income only)	£555.31
Av Income per Work Unit (UK and EP income)	£1,682.34

There did not seem to be even a lot of focus on direct costs within the Patent Directorate. Given the range of patent functions performed elsewhere in the Office our first impression of staffing levels was that they were high. We understand that since the PECS project was delivered in 2007 which introduced electronic case files for patent processing the number of non-examination staff in the Patent Directorate was reduced by 20 FTE. Yet currently, of some 364 staff (341.05 FTE) in 2008/9 some 140 (128.51 FTE) were non-examiners. This still seems very high. We noted for example that apart from the Director there were five assistants attached to his office. Similarly, there were 12 staff listed as working on “business change & IT”. Given the disproportionate gap between the income of the patents function (excluding the EPO renewal income) and the costs of the patent function the review team believes that the office must give a greater priority to cost awareness considerations in response to this Review.

Timeliness

There is considerable management information used by Patent Directorate management on the issue of timeliness. This is driven by two perspectives. The first is the “clock driven” nature of the patent process which requires a series of steps to be taken within defined time limits (in the legislation and in international agreements). The second is the emergence of significant backlogs in the search and examination queues with strong pressure from users to maintain timely search reports and some pressure from some users concerning the timeliness of examination reports and finalization.

The Office has maintained its commitment to providing timely search services (which users have clearly indicated is desirable) but this has been at the expense of lengthening queues in examination. There is both a legal and an “undesirable” upper time limit for patent examination. The examination queue in the office is approaching the 4.5 year upper legal limit for a patent to remain unexamined after filing. The Office is also in danger of taking as long as the EPO to finalise examination which will certainly damage the reputation of the Office and may cause further leakage away from the UK Office to the EPO.

The limiting factor for management to eliminate the backlogs is the availability and productivity of highly skilled examiner resources. We discussed with Patent Directorate management their plans to reduce the backlog. There did not seem to be any view of how productivity could be significantly improved. There also seemed to be a view that recruitment plans needed to be tempered to avoid a possible downstream problem of over-staffing once the backlogs had been reduced. We formed the view that a very conservative approach was being taken to a problem that requires less cautious treatment. Given the size of the examination backlog there was no serious prospect of excess examiner resources emerging for a number of years. We calculated that even if no new work came to the office it would be 18 months before the backlog was entirely eliminated. From our crude calculations, even if the office increased its total number of examiners by 10 (which was the sort of level being discussed) and worked overtime so that it examined a total of some 150 patents more each month, the backlog would take at least 6 ¾ years to process, assuming the IPO kept up with the input of new work with its existing resources. Furthermore, as discussed later in this Chapter, there is unfulfilled demand for a range of commercial services that require the high level of skill of a patent examiner which if planned appropriately would provide a more diversified range of activities against which to deploy examiner resources.

In summary the Review found:

- Strong evidence of good focus on quality
- Active commitment to harmonisation
- No real understanding of costs and efficiencies
- Need to develop a coherent forward looking plan for reducing costs of production across the end-to-end function
- Evidence of over-staffing in non-examination areas
- Need for bolder recruitment planning

Trade Marks

The current Corporate Plan 2009 contains the following 3 year objective for Trademarks:

- Continue to provide a high quality, cost effective and timely system for registration of trade marks; and ensure that there is a comparably good system in the EU for Community TMs.

The trademark function is discussed below against three elements of these key objectives – quality, cost effectiveness and timeliness.

Quality

The IPO Trade Marks Directorate takes quality very seriously and has one agency target for 2009/10:

- to make the correct decision on registerability in at least 98.5% of trade marks applications.

A quality manager is tasked with comparing the findings from each team and the directorate hold a quality committee to ensure that standards are kept. The team managers already sample a number of the case files completed by their staff and difficult cases can often be decided in committee. This would appear to have elements of best practice and it is therefore not surprising that in the business plan for 2009/10 the directorate is contemplating ISO certification and a further review of its quality systems.

The VFM review team would also encourage the directorate to continue this drive on quality and to actively seek to benchmark the quality of its work against other trade marks offices and the OHIM to ensure that it maintains it high quality reputation.

In practice this agency target on quality is being met consistently and consideration could be given to moving it to 99% since the actual performance all three quarters of 2009/10 till end December have been in excess of 99%.

Cost effectiveness

The volume of trade marks is very responsive to economic confidence in the business community, and therefore the IPO must keep a constant eye on the demand for its services. A fall in demand will result in too many resources being left idle and a faster than expected recovery could mean the IPO miss its deadline for processing. The office has been shedding staff recently to bring its costs down more in line with the reduction in demand for its trade marks services. The impression is given of an operation where productivity is monitored on a regular basis and efforts made to respond to changes in demand. It is somewhat easier in trade marks by comparison to patents to recruit new people if demand picks up since the training period is very much shorter in duration before they become effective. This gives management the opportunity to flex the workforce to match demand to a much greater extent than is possible within patents. Having the ability to undertake this flexing is one thing but thankfully the current management team have also demonstrated a willingness to take these decisions when needed.

The income table below (Table 14) is taken from the Trade Marks Directorate mid-year overview report produced in October 2009. From this table it is clear that domestic applications make up 48% of the total income half way through the financial year and Domestic renewals form another 31%. Clearly, the trade marks area is less dependent on "non domestic" activity than patents since Madrid applications and

TABLE 14 – TRADE MARKS YTD BUDGET SEPTEMBER 2009

	Budget Ytd	Actual Ytd
Domestic Applications	£3,762,500	£3,941,988
Madrid Applications	£745,000	£533,112
Domestic Renewals	£2,712,500	£2,565,050
Madrid Renewals	£352,500	£444,938
OHIM Searches	£0	£2,665
Oppositions	£200,000	£158,015
Assignments	£105,000	£98,500
Other	£430,222	£484,945
TOTAL BUDGET YTD	**£8,308,222**	**£8,229,213**

renewals account for only 11.9% of the total income of the directorate. In total the renewals both domestic and under the Madrid Protocol only account for some 36.5% of the total income, which again is very, very different than the situation of patents. On average 46% of applications for a trade mark are renewed. From this it is clear that there is more of a direct relationship between costs and expenditure in terms of time than was clearly the case in patents, where many years of renewals need to pass before the office covers its costs. The same is not true for the trademark area.

One short term issue for the office is that the changes introduced in the 1994 Act has reduced the number of cases that are eligible for renewal and therefore income from renewals will decrease for the next few years before recovering.

The VFM review team undertook a crude cost effectiveness exercise in the same way that one was conducted for the patents area since hard data on unit costs was hard to find. Different results are found since the directorate does cover its direct costs and its share of corporate overheads in broad terms, with the costs per application of £529 compared to income of £653. This situation changes when the extra costs of wider IPO policy, marketing and copyright are also allocated against the directorate income, since the £4,099,679 accrued in 2008/9 raises the total cost per application carried by the trade marks area to £673 from £529

TABLE 15 – TRADE MARKS PRODUCTION 2008-9	
Trade Marks Applications	28,561
Total Trade Marks FTE	137.61
Total Trade Marks Staff Costs	£4,883,539
Trade Marks Direct Overheads	£4,009,652
Trade Marks Indirect Corporate Overheads	£8,624,454
TOTAL TRADE MARKS COSTS	£15,114,874
Av Salary per FTE	£35,489
Av Total Cost per FTE	£109,839
Av Cost per Application	£529
Total Trade Marks Income	£18,658,265
Average Income per Application	£653

One of the areas for further investigation that Table 15 highlights is the Average Total Cost per FTE in Trade Marks which is higher than the same metric for Patents even though patent examiner grades are paid at a higher level than examiners in trade marks. This discrepancy which may be linked to higher IT costs for trade marks processing should be looked into.

Further efficiencies can be expected from the processing of trade marks once the new computer system TM10 is introduced since further reductions in staff can be expected from the reduction in paper handling and with further encouragement of the e-filing and Right Start services. Although the impression of cost awareness is greater here than anywhere else in the IPO there is obviously still some scope to improve cost effectiveness still further. Reductions in overhead costs would do a great deal to improve the overall cost effectiveness of this area of activity in the face of any further movements in volumes towards a community trademark. Thankfully, the office will continue to have customers who will only want a trademark within the UK, but it is not known what the residual level of demand for this type of domestic only work will be so cost awareness will need to be constantly kept under review.

It has not been possible to examine the detailed costs of the tribunal and enforcement activities of the directorate against its specific income from this work. However, from an examination of the limited income from these activities it would be a surprise if they covered the full costs of such activities.

<u>Timeliness</u>

One target exists for the trade marks area on timeliness and we know from customers that speed is important to them.

- to register 90% of processed trade marks applications, to which no substantive objections have been raised or oppositions filed, within 7 months of application

On the face of it this would appear a somewhat generous target for the IPO since:

- over 50% of applications lead to registration within 4 months
- this climbs to over 70% within 6 months

In practice the IPO have achieved in excess of 99% in each of the three quarters of 2009/10 up to the end of December so consideration should be given to a more stretching target. So how does this compare with other offices around the world, the following information was supplied, but it has not been cross checked.

Denmark: average time taken to registration = 18+weeks
France: average time: 5-6months
Ireland: 57 weeks
Portugal: 12 weeks
Slovakia: 32 weeks
Switzerland: 19 weeks
USA :10-18 months
Canada: 12-18months
OHIM: reported to be 13months

Since the time taken to initially examine the application is between 1 and 3 weeks no one in the UK uses the IPO fast track examination service any more. This speed of processing is to be congratulated, but further refinements will no doubt present themselves during the TM10 project and it is hoped that this processing speed could be further reduced.

Designs

The 3-year objective in the current Corporate Plan for design work in the IPO is to:

- continue to provide a high quality, cost effective and timely system for registration of designs; and ensure that there is a comparably good system in the EU for community registered designs.

This is an area of activity which has reduced from 9000 design applications per year in 2002 down to just over 4100 projected for 2009/10. It is likely that the volume of design work will continue to reduce in favour of Community Design applications. This is not a reflection on the quality or the speed of the IPO service, but simply a reflection of the need for a greater geographical protection for good design. The proportion of income from design work is now about £1.4 million and is expected to reduce further in 2010/11.

Once again the customers of the IPO design service appear to have no major issues with the quality of the service they are being offered. Some flexibility in the workforce is provided here by the ability of some trade marks examiners to also be able undertake design work. This flexibility will prove essential to holding onto the design service as the volume in the UK continues to decline.

One target for design is reported within the IPO's so called balanced scorecard is:

- to register 95% of all correctly filed design applications within 2 months.

Once again this would appear to be a generous target since during all the three quarters of 2009/10 up till December, the office has achieved in excess of 98.6%. It may be worth considering a more stretching target for this are of activity in future years.

Sadly, the flexibility of staff has made it very hard to establish the full time equivalent used on design work in 2008/9 from the information we were provided with. However, it is clear from the calculations in the table below that this is an area where the IPO costs are below the income levels. Once the additional costs of £545,363 for marketing, policy and copyright are allocated, this area made a loss during 2008/9. This additional overhead increases the costs to a grand total of £368 per application matching average income.

TABLE 16 – DESIGN PRODUCTION 2008-9	
Design Applications	3627
Total Design FTE	?
Total Design Staff Costs	£145,250
Design Direct Overheads	£85,080
Design Indirect Corporate Overheads	£559,817
TOTAL DESIGN COSTS	£790,147
Av Salary per FTE	?
Av Total Cost per FTE	?
Av Cost per Application	£218
Total Design Income	£1,333,905
Average Income per Application	£368

One further indicator is used to measure the performance of both the trade marks and design areas, this is a satisfaction measure:

- receive an overall “good” or “satisfactory” rating in at least 80% of responses to customer surveys.

Once again the results to date are in excess of this target and therefore it would appear to be another generous measure.

The VFM review team found:

- Costs were understood in broad terms but would benefit from yet more closer scrutiny
- Overheads allocation has large impact upon financial position of this activity
- Quality is a feature of the trade marks work already but could be improved further.
- New computer system TM10 will offer opportunity for greater cost saving once implemented
- OHIM and Community Designs registrations will further reduce the volume through IPO in future
- Targets are generous and could be tightened further.
- Long term future of UK Designs processing is questionable

Policy

Responsibility for policy work in the IPO is divided among three policy directorates – the International Policy Directorate, the Copyright and Enforcement Directorate, and the Innovation Directorate. The IP technical directorates (patents, designs and trade marks) are also involved on a range of policy activities.

The work of the IPO on policy generally (not just in the International Policy Directorate), unlike production work, raises the issue for the Review of how value for money can be measured in a policy environment.

We put this question to the managers of the various policy areas when we sought information on how they measured value for money in relation to their responsibilities.

The best articulated view was the proposition that a policy area needed a good business plan setting out clearly the policy objectives and expected outputs in specified timeframes, and that value for money would be measured by a judgement based on evidence of the resources consumed for the outcomes/outputs delivered.

We have examined each of the policy areas within the Office against this framework and our findings are set out below.

International Policy Directorate

In the Corporate Plan 2009, the key 3-year policy objectives which are the responsibility of the International Policy Directorate are as follows:

European Patent Reform

- Have carried out the analysis needed on the current global IP system so that reforms will be underway or have taken place

- Work closely with our partners in the EU, to agree a Community Patent and Unified Patent Litigation system which shows clear benefits to business and society

Climate Change

- Have identified and implemented a package of measures to ensure the intellectual property system supports the development and dissemination of technologies needed to tackle climate change

International IP Strategy (2009/10 plan)

- Develop a cross-government international IP strategy
- Strengthen our policy capacity, to cement our reputation with other government departments as the lead on IP policy

These high level objectives of the Corporate Plan are translated into a Business Plan which sets out sixteen 2009/10 objectives (including two corporate objectives) to be achieved in the planning year which in turn are described in more detail in 56 outputs and 113 activities. Each of the 16 objectives is assigned to the Director or one his four teams. Against this information we formed the view that the first element of the framework to judge value for money (the policy objectives and expected outputs in specified timeframes) had been put in place.

The business plan framework used allows for resources to be allocated at the Objective, Output or Activity level. However, no resource allocation was made in the Business Plan documentation made available to the Review. There were some notes about additional resources that would be consumed for certain outputs (for example “International Travel” or “Regular EU Travel”) and in instances where outside consultants were planned a budget was allocated.

The plan itself does indicate the overall staffing resources for the area (23 staff) but the Review had to look elsewhere to find financial information about the costs of the Directorates operations. The budget information provided, however, is not linked to the detail of the Business Plan and therefore cannot be used to judge the second element of the value for money framework (evidence of the resources consumed for the outcomes/outputs delivered).

Given we were unable to judge value for money using our preferred framework we therefore turned our attention to looking more broadly at the evidence. In Chapter 1 we outlined the feedback we had received about the Office, including its policy work. As set out in the Chapter, the report card for domestic policy was particularly strong. UK stakeholders believed that the Office was being much more proactive and effective in taking up policy issues, in influencing Whitehall, and in consulting and liaising with interest groups on policy issues. We also received strong praise for the work of the Office in relation to IP issues and the forthcoming Copenhagen conference on climate change, and we noted that there was a successful ministerial level meeting on setting up an EU Patent in December 2009. The recent effectiveness of the Office in other policy environments such as WIPO, OHIM and the EPC Administrative Council was not as clear as we gleaned mixed reviews. On balance, however, the policy work of the International Policy Directorate would have to be judged effective.

Is it cost effective? With 23 staff and a budget of £1.5m (excluding the affiliation fee to WIPO) and an ambitious Business Plan it could be. On the face of it the staff numbers look generous for such an area, but if the ambitious agenda of the Business Plan is largely delivered (and we could not judge this part way through the year) then it may also be judged cost effective. The danger will be with the lack of linking resources with particular outcomes that the cost effectiveness of the particular successes and failures will be hidden inside a global budget which will make it harder to set budgets in future years. It is also unclear how the “technical” policy resources in the rights processing areas are used and accounted for. Some form of coherent resource picture needs to be built into policy business plans to reflect the entirety of the resources devoted to policy work.

One of the issues that became clear as we discussed management issues with all the policy areas was the inefficiency of the London/Newport arrangements. There does not seem to be any coherent strategy for locating staff. Significant inefficiency is generated by the productive loss caused by constant travel time between London and Newport. We were left with the impression that while a commitment had been made to grow the London presence in part to attract skilled policy staff, there had been no attempt to rationalise staff between the two locations or decide whether working over two locations was the best arrangement. As a consequence staff levels were probably higher than necessary and because of the shift in gravity towards a London base for policy work, staff normally based in Newport doing policy work now travelled more frequently to London but because of the lost travel time were less cost effective.

In our view if the Business Plan process was fully implemented this would significantly improve the ability of local management to demonstrate value for money and for the Office and its management and Steering Boards to be in a good position to a judgement about value for money. In addition, a proper workforce assessment should be done to determine staffing levels and the skill required for the policy work, and the assessment should include clarifying and resolving the right location for staff.

<u>Copyright & Enforcement Directorate</u>

In the Corporate Plan the 3 year objectives which are the responsibility of the Copyright & Enforcement Directorate are to:

Copyright

- Have improved the framework both at home and overseas so as to improve the flow of copyright works and increase the level of legal use.

This objective is supported by the 2009/10 plan to:

- Lead the debate domestically on how copyright should be shaped best to provide for creators, business and users in the digital age, take the debate to the European and international level, and begin to translate findings into actions.

Enforcement

- Ensure that the legal framework as well as IP enforcement activity across all the agencies and bodies concerned is both coherent and co-ordinated, and recognized as an effective and efficient instrument in the fight against IP crime.

The translation of these high level objectives in the Corporate Plan into a Business Plan for the area uses a different format from that used in IPD. The Plan outlines 17 objectives (including two corporate objectives) and lists 36 Outputs/Indicators against which the effectiveness of the work could be measured. It is not clear in many of the outputs/indicators what the expected timeframe is for delivery – in theory in a 2009/10 Business Plan they are all to be completed within the year but few of them are couched in terms where that could be expected.

There is no resource information at all in the Copyright & Enforcement Business Plan. Elsewhere, we found that the total budget for the area was £2.4m and were told that the current staff numbers were 35. This staffing level seems very high for a policy role. We understand that much of this resource (we were told 20-30 staff based in Newport have been involved at various times) is devoted to managing the enforcement intelligence hub. We did not look in any depth at the work of this hub but we understand that it essentially provides a free intelligence collating service to other agencies and businesses. It was not clear to us that the value of this work and the cost of this work were being appropriately weighed in the balance. Again greater visibility of the linkage between resource cost and outputs would assist.

The Review found it hard, therefore, to reach any clear conclusions about value for money. The stakeholders generally supported the work being carried out but the highly controversial nature of copyright policy meant that there was little consensus among stakeholders about policy directions. This political reality would have to be taken into consideration in any judgement about value for money.

Similar to our conclusion about the International Policy Directorate, if the Business Plan process was fully implemented including the allocation of resources to particular sub-objectives, this would significantly improve the ability of local management to demonstrate value for money and for the Office and its management and Steering Boards to be in a good position to make appropriate value for money judgements. The Copyright & Enforcement Directorate should participate in the proposed workforce assessment for policy work. Its operations are also split between Newport and London and the basis for this split and its cost effectiveness should be addressed.

Another issue that crossed both these policy areas was the degree to which the IPO was engaged in cross-cutting government activities. The secondment of staff to the IPO from the Foreign Office and the ONS for example provides an encouraging sign that the IPO is thinking about cross cutting activities. The engagement with wider government on issues like climate change and copyright is a testament to the success of the push to interact more effectively with other parts of government that has emerged as a strategic goal in recent years. If the IPO is to seize the opportunity to take the lead on IP issue across government then it needs to do more cross cutting activities. Further secondments in both directions with other parts of BIS and Whitehall should be encouraged to raise the profile and exchange specialist knowledge. Much has been done but much more is still needed if the IPO is to be widely recognised as a leader on IP throughout government.

In summary the Review found:

- Better business planning combining time based objectives with resource plans would improve value for money visibility for policy areas
- The staff resources available to policy work appear high
- The built in inefficiencies of using staff across London and Newport needs to be addressed with commitment of staff to particular locations and appropriate management activities to minimise the “two culture” effects

Innovation Directorate

The directorate only dates from November 2007 and was designed to bring all the innovation related activities in the IPO under a single directorate. The corporate plan for 2009 contains three 3 year objectives for the IPO which involve the innovation directorate directly.

- Understand the extent to which UK firms and institutions are making the best decisions on creating, exploiting and managing IP, and to be supplying evidence based advice on achieving improvement.

- Utilize the Office’s standing as an expert partner and an authoritative and trusted source of IP information to develop a comprehensive suite of accessible guidance materials on the management of IP for public and private sector.

- Ensure that every key business intermediary whom we have identified will be working effectively in partnership with us to help businesses to understand how best to use and manage their IP.

The innovation directorate listed the following objectives in support of the four pillars in the Corporate Plan for 2009 in its own directorate business plan for 2009/10.

Understanding the role and value of IP

- To understand how UK firms and institutions use and are affected by IP in order to improve the offices services and policy advice.

Shaping the policy environment

- To ensure that European and UK innovation, research and enterprise policies take appropriate account of IP.
- To use the media to advance Minister's policy goals
- To ensure that IPO business outreach is aligned with wider government business support

Outreach

- To advise enquirers, and gain insight into customers' priorities and drivers in order to inform the Office's business planning, service delivery and policy decisions.
- To provide commercial IP services that UK businesses need and cannot equally well get elsewhere.
- To identify and take opportunities to support improved use of IP by business.
- To promote better management of intangible assets within the public sector.
- To deliver intellectual property training, awareness and education programmes to benefit businesses and young innovators.
-

To deliver against these objectives the directorate contains a mix of skills in its 43 staff and has a very broad remit with a budget for 2009/10 of £2,545,865. It is an area of the IPO that is easy to challenge during tough times and yet hard in many ways to provide the evidence of cost effectiveness since many of its activities are aimed at longer pay back periods.

Economics activity

The recruitment of two economists is a new venture for the IPO and is in direct response to the recommendations in Gowers. Gowers also led to the establishment of SABIP and it is vital that the work of these two bodies is dovetailed since

potentially they could both overlap research activities. The IPO and SABIP teams jointly launched their outline research programme at a ministerial event on 26 November 2009.
The work for the economics team initially is a mix of joint programmes and operational projects.

- Building capability
  - Knowledge base
  - Cross cutting project on IPO data
  - One rights specific project on copyright value
  - Partnership working with others on
    - Effects and incentives for IPR use for patents and trademarks
    - IP/intangible investment and the role of IP rights.
- Constructing the economic work programme
  - Nine major areas of work in support of the IPO objective of building better economic understanding of the IPO work.

It is much too early to judge if this newly created team will add value to the work of the IPO. It needs time to build up capability and a network of partners outside of the IPO. The new CEO would do well to keep a keen eye on this new activity, especially the potential overlap with SABIP. If the work is done well it will radically strengthen the evidence base for IP and the IPO could use this knowledge in many ways. If done badly, it will represent a very poor value for money concept. Only time will be able to confirm which it is to be. The VFM review team is convinced that this work is essential and should be a successful addition to the IPO knowledge base.

Commercial

The IPO Board has not taken a paper on the strategy for the commercial services the IPO offers. From discussion with the stakeholders and key IPO staff it is very clear that the IPO Board and the Steering Board should see and discuss a strategy as a matter of urgency. A number of concerns have been raised about the commercial service and some have been noted in other parts of this report.

For the ¾ year to the end of December 2009 the commercial services contributed an income of £502,000 to the IPO which is 13% behind the budget. In many cases the services have to compete for resources from patent examiners and this is a limitation on the quantity of work that can be catered for and therefore restricts the marketing that is undertaken. It is unclear what incentives the operational directorates get from supplying staff for these income generating activities. Although the review team asked for a profit and loss account for this commercial activity one could not be shown to us. For activities like the Search and Advisory Service it is unclear exactly where in the market place the IPO is trying to put itself. Others are offering services at the cheaper end and therefore it would make sense to go for a higher quality service. However, this requires a differentiation in quality and customer service which is linked to resources for specialist training and guarantees on resources. It is frustrating to note that the SAS activity appears to be inhibited by the lack of access to examiner resources yet it started in 1986, which is plenty of time to build any additional resources into the total workforce plan for patent examiners.

The introduction of a strategic document would allow the IPO Board and indeed the Steering Board to discuss the value and benefit of the full range of commercial activities. This would allow the IPO to firmly decide if it was truly committed to maximising its commercial potential or not. At present the efforts feel half hearted at best and appear to be restricted by resource concerns that a comprehensive workforce plan would need to address.

In January 2009 a final report into the Search and Advisory Service was completed, in which one of the conclusions was:

- "SAS services presently provided continue to fulfil a need within the UK and that the IPO's reputation and high quality staff goes someway to answering the continued use of the service especially amongst attorneys. What isn't so clear is whether there is a true economic need for this intervention and it is hoped that the work of the IPO economists will facilitate an answer to this"
-

At that time over twenty providers were found to offer some or all of the SAS services. Most did not specify costs and turnaround times, but those that gave indicative figures are set out in Table 17.

TABLE 17 – COMPARISON OF ALTERNATIVE PROVIDERS OF SAS SERVICES

Alternative Provider	**Location**	**Cost**	**Timescale**
IPO	*South Wales*	*£100 per hour*	*10 working days*
Danish Patent Office		€141 per hour (= £113) excl. VAT	10 working days
Swedish Patent Office		On quotation	10 working days
Swiss Patent Office		€2,509 (= £2000)	10 working days
Ellsbrook Ltd.	Vale of Glamorgan	From £1000	10 working days
IP.com, Inc. UK	Cumbria	Not stated	7-10 working days
Patent Seekers	Newport	On quotation	Not stated

The report is far from clear on the issue of whether the income from SAS activities really do cover the costs of undertaking the work. This uncertainty appears equally true today.

> "The cost of an FTO search varies, being dependent on the scope of the question asked. However, guide costs are given as approximately £1500 to £3000 + VAT for most technologies. This cost is made up of the (charged) £100 per hour rate which includes examiner costs and additional overheads (SAS front office staff costs; accommodation and on-line tools)." Para 4.4
>
> "A client will seldom be contacted to alter an estimate unless there is likely to be a significant change (hundreds of pounds) in the estimated and invoiced amount. This decision means that, depending how close the estimated and invoiced amounts are, the SAS sometimes invoices more than the estimate and sometimes invoices less than the estimate." Para 4.5

Customer Contact

The Innovation Directorate has responsibility for customer contact. This role includes managing the Contact Centre, undertaking customer surveys and working with other directorates to co-ordinate customer contact activities (other than day-to-day contact with customers on their applications).

The Review Team met with the manager of the Contact Centre, and with an across organisation customer co-ordination group. We were also provided with detailed materials from recent customer surveys carried out centrally or by individual directorates. We were also able to assess customer focus in internal management reporting documents from various directorates and from reports taken to the Steering Board and the IPO Board.

In the view of the Review Team, the dominant theme of nearly all the customer contact work is a focus on operational performance and individual issues and complaints. The target of "'Good' or „satisfactory' ratings received in at least 80% of responses to customer surveys" set in the so called Balanced Scorecard in the Corporate Plan reflects and drives this focus.

At a recent Steering Board meeting the quality of reporting customer feedback was discussed. Reports tend to be lists of particular complaints or issues raised by customers and how the Office has dealt with the individual matter. Until the Steering Board Meeting on 26 January2010 little attempt had been made to aggregate the data into trends or even categories and analyse possible systemic issues. Reporting within Directorates of customer feedback seemed to follow a similar pattern.

The major missing perspective in the customer contact area is that of what the customers are trying to achieve through their use of the services of the Office. The work now being commissioned through SABIP and the new Economics Unit will come some way towards this perspective, providing at least an economic understanding of how firms use the IP system. Given the detailed amount of customer research undertaken within the Office focussed on processing issues it would seem desirable that some of this effort took a broader view working with customers and sought information beyond satisfaction ratings and feedback on fees, quality and timeliness.

Education/marketing

The IPO Board have discussed outreach in the context of corporate plan discussions but has not taken papers on Outreach specifically. However, the IPO Board did receive a paper dated 6 November 2009 to follow up a pilot promotion of statutory rights in the East Midlands area so attempts have been made to ensure the executive buy into the process and steps have been made to assess the impact. (The East Midlands pilot will be discussed later).

In 2008 the UK represented 9.24% of all applications for trademarks with the EU's Office for the Harmonization of the Internal Market (OHIM); and 3.5% of all patent applications to the European Patent Office (EPO). With less than 1% of world population this figure is respectable, but less so if one considers that the UK represented 4.3% of world GDP in 2008. Aggregating domestic and international applications in the following table it is clear, the UK is not performing as well as its economic neighbours, France, Germany and the USA, in terms of applications per head.

TABLE 18 – TOTAL PATENT APPLICATIONS DOMESTICALLY AND WITH EPO 2006-8

	2006	2007	2008	Applications per million in 2008
UK	30,446	29,984	28,430	465
Germany	84,090	83,792	86,036	1,047
Spain	4,445	4,722	5,105	113
France	25,255	25,466	25,757	404
USA	479,430	503,918	532,454	1,751

Sources: EPO and German, Spanish, French, US and UK IP offices

TABLE 19 – TOTAL TRADE MARKS APPLICATIONS DOMESTICALLY AND WITH OHIM 2006-9

	2006	2007	2008	Applications per million in 2008
UK	39,232	39,929	41,684	681
Germany	79,829	83,673	81,411	990
Spain	65,491	N/A	55,113	1,217
France	78,259	80,854	79,619	1,248
USA	279,491	304,380	293,526	965

Sources: OHIM, German figures derived from domestic applications (DPMA), UK 2008 figure partially from IPO

In the past the IPO have believed that those most likely to use intellectual property rights were large firms who have a strong internal research capacity and firms in highly competitive industrial sectors. Small firms, who appear to gain more from IPR are the ones least likely to be aware or to make use of these IP rights. (IPO UK intellectual property awareness survey 2006).

The case for undertaking activity to improve the knowledge of IP and the rights safeguarding systems would appear to be very strong. The difficulty comes from the approach taken to tackle this issue across the whole UK economy.
Two objectives were presented for 2009/10 in this business outreach and education activity area.

TABLE 20 – MARKETING OBJECTIVES 2009-10

Activity	Outcome
To extend our outreach to business through: • Well-publicised regional awareness events • Successful marketing of the IP diagnostic tool (linking this with services to other government departments) • Successful marketing of the business advisor training tool • Successful marketing of the e-newsletter, and use of this letter to promote other outreach activities	• Every UK region has at least one IPO awareness event for business, with average attendance of at least 100 and feedback confirming increased awareness of the existence of IP, the value of IP rights and the methods for protecting those rights. • 10,000 health checks are completed. 66% of surveyed respondents find the health check useful • 100% of Business Links Advisors undergo IP training • E-newsletter reaches 6,000 subscribers
Extend our outreach to young innovators by further developing the 'Cracking Ideas' website and competition	• 8,000 entries to „Cracking Ideas' competition are received

A total of over £0.5 million of marketing activities was identified in the business plan for the directorate for 2009/10 (see Table 21). This is in addition to £125,000 spent on the Aardman work in 2009.

TABLE 21 - Marketing Budget Breakdown 2009-10	
Awareness campaign for SMEs	32,000
Cracking Ideas web site development	50,000
Cracking Ideas competition development	30,000
Cracking Ideas Awards Ceremony & PR	40,000
HMRC Business Advice Open Days	45,000
Exhibitions	55,000
E-Newsletter	30,000
Editorials and advertorials	40,000
Further development of Tactix game	20,000
Further development of IP Healthcheck tool	40,000
Young Enterprise Cracking Ideas for business	15,000
Times 100	22,000
Press and PR to promote IP campaign	30,000
Press and PR to promote IP Health check tool	50,000
Refurbishment and maintenance of exhibition equipment	10,000
Total	509,000

The East Midlands Pilot ran from May to the end of August 2009 and was designed to promote the benefits of registering IP rights, with a strong focus on trade marks. All the outcomes listed below were achieved against a budget of £40,000 mostly for the support of an external PR firm.

In East Midlands regional media, during the pilot there were:

- 18 mentions of IPO
- 17 mentions of trade marks
- 11 links to IPO website / central enquiry unit
- 4 links to IP health check tool
- 14 spokesperson quotes
- 3 spokesperson pictures
- 15 calls to action

<u>This equated to:</u>

- 19 pieces of coverage over 3 months – and more pending
- Campaign reached 2.6 million people
- Campaign had total AVE of £20,662 (excluding BBC coverage)
- For every £1 spent, 66 people were reached
- 7 additional pieces of coverage over 3 months in wider press
- Wider coverage obtained in Financial Times (AVE of £20,000)

<u>Resulting in:</u>

- 40% increase in trade mark applications in July 2009 vs. July 2008 in the East Midlands region
- 6% increase in trade mark applications for the pilot period when compared to the same period in 2008.
- 6% increase in patent applications in July 2009 vs. July 2008 in the East Midlands region.

<u>Events:</u>

- 12 events created or attended in East Midlands region pilot
- 788 SME's met and presented to at regional events during the pilot
- 2 IP Health Checks – 1 intends to file a trade mark, 1 found it relevant to his needs
- Creating brand value from your business, Derby - 150 SME's, 6 partner organisations exhibited (Business Link, Prospect IP, UKTI, ITMA, Derby CC, HMRC, guest speakers)
- Feedback results showed 93% of attendees stated the event was good or excellent.

Following this exercise a total of five recommendations were made:

- To develop a rolling regional programme of business outreach events (example below) which integrate the reasons for filing into wider IP awareness messages for business
- To use a regionalised communication strategy that has an appropriate mix of events, media articles and interviews and other tailored activities.
- To tailor communications material to SMEs per region, to maximise the reach and engagement of each item or activity initiated.
- To implement a formal CRM system to identify success and failure, to enable strategic decisions on what spend/activity to pursue and which to drop, to maximise outreach activity after piloting new ventures or spending on different communication approaches.
- To be aware that future pilot exercises that have a high level of media activity need to be planned further in advance so all initiatives can commence on pilot start dates (due to media lead times or activity set up delays).

The VFM review team is encouraged that an attempt was made to both pilot the work and evaluate the impact. However, this is not a substitute for a clear strategy for the outreach programme that needs to be put to the IPO Board and Steering Board. Concerns do remain about the effectiveness of this approach by comparison to other methods of raising the profile, given that the bottom line is the changes in volume shown in the Tables 22 & 23.

TABLE 22 – Patent applications East Midlands 2008-9

2008	Mar	Apr	May	Jun	Jul	Aug	Sep	Total
Patent applications	159	149	127	160	135	112	130	**972**
2009	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Total**
Patent applications	147	133	117	**123**	**163**	**122**	146	**805**

TABLE 23 - Trade marks applications East Midlands 2008-9

2008	Mar	Apr	May	Jun	Jul	Aug	Sep	Total
Trade marks applications	151	166	107	136	109	138	164	**971**
2009	**Mar**	**Apr**	**May**	**Jun**	**Jul**	**Aug**	**Sep**	**Total**
Trade marks applications	156	114	113	**141**	**153**	**112**	127	**789**

Secondly there is a concern about the ability of the IPO to handle the volume of activity needed and the associated costs of a truly national coverage. Especially given that many of the IPO resources for this are actually based in Wales and would therefore have to travel a great deal with the resulting loss in working time because of existing travel time arrangements.

<u>Communications</u>

The Corporate Plan 2009 also makes reference to an objective during 2009/10 to:

- Develop a more strategic approach to communications and to embed that into all our policy making activities.
-

A paper from Robin Webb to the IBO board dated 6 November 2009 made the following reference to communications:

11. *"A number of directorates have teams and individuals performing outwards communications roles. This can work very well, but does require a clear understanding of who does what, and a way of working that avoids duplication of activity, and coordinated approaches to the same partners, and information resources which are mutually coherent.*

12. *I would like to confirm that the Board sees these roles in the way described below, or revision of them into formulations which we prefer. They are intended to provide role clarity for all concerned.*

13. *<u>BOE</u> leads on outreach to business. It owns the business outreach strategy, and is responsible for delivering it. This responsibility includes:*

- *leading on, and delivering:*
  - *The regional IP campaign outlined above;*
  - *IP workshops to intermediaries and businesses;*

  - *The IP online diagnostic tools;*
  - *The e-news letter for business;*

- *owning, and supporting other directorates in utilizing:*
  - *the interface between the IPO and external business support providers;*
  - *brand consistency and messaging for business outreach activities;*
  - *use of external channels including any professional PR and marketing support, and messaging via press, radio and television.*

- *business outreach content on the website, including:*
  - *cross-directorate business outreach content;*
  - *Web-based tools;*
  - *social media messaging.*

14. *BOE's responsibilities do not include communication with stakeholders in order to advance policy objectives (apart, of course, from improving businesses' use of IP). Comms such as IPD strategic communications plan is in this category, as is CED's communication with enforcement bodies (though enforcement awareness products for business are for BOE). Nor do they include the "how to" communication on applying for rights, resolving disputes etc which PD and TMD do.*

15. *The Internal Communications team (within BSD) is responsible for all internal communication issues. This responsibility includes:*

- *Communicating corporate messages:*
  - *Issues within the organisation are cascaded to staff via production of link articles, lead stories, office wide mails, briefing documents, corporate message boards, poster campaigns etc.*

- *Developing website strategy*

- *Liaison with business areas to ensure:*
  - *The external website is able to support customers by delivering - web services, on-line diagnostic tools, social networking etc*
  - *The intranet is up to date and supports business area needs.*
  - *Collaboration on web-site liaison technical and process issues with other Departments."*

It remains unclear if this brief statement is in fact all the IPO has at present to cover this Corporate Plan objective for domestic communication. A very comprehensive strategic plan (*IPO Strategic Communication Plan for International Policy*, September 2009) has been produced by the International Policy Directorate to support international policy activity. The review team is unaware of an equivalent document for domestic policy or wider domestic communication. It does not appear to cover the international dimensions of the IPO remit. It also does not cover the customer insight activities of various parts of the IPO. These survey activities are all part of the wider customer communications strategy since a number of functions within the IPO could be contacting the same customer independently for customer feedback on their more narrow aspect of activity. This can look confusing to the customer and does not allow the IPO to benefit from the cross sectional messages that maybe present.

In summary the VFM review team found:

- The economics team needs time to reach its full potential but needs to be kept under review and co-ordinated with SABIP.
- The strategy for outreach, commercial services and communications have not been discussed and agreed by the IPO board or the Steering board.
- The IPO should decide if it wishes to continue commercial activities.
- The need for outreach activities is clear, however, the current approach can be challenged and does the IPO have the capacity and funds to deliver.
- Does the IPO have sufficient specialist skills to deliver against the innovation directorate's wide remit?
- Customer contact activities focus too narrowly on individual complaints and processing issues. Customer surveys need to take a broader view of what customers may want from the Office.

EXECUTIVE SUMMARY, CONCLUSIONS & RECOMMENDATIONS

The IPO is a well established government trading fund with a long and distinguished history in the intellectual property rights granting field. The request by the CEO of the IPO to undertake a strategic value for money study shows awareness of a need and willingness to confront any observed deficiencies. This is to the credit of the organisation and the VFM review team have sought to repay this courage by committing to find the areas that need to be addressed.

The overall impression of the organisation is a favourable one and clearly the IPO is not a broken or dysfunctional or unprofessional agency. The staff of the IPO have been very honest and up front with the review team and have shown repeatedly that they wanted to help the team identify all the areas where further improvement may be needed. In return the review team have made diligent efforts to identify any areas where the IPO could gain from further consideration or development. The summary and concluding comments set out below are intended to help the IPO become leaner and fitter. The recommendations at the end are put forward so the IPO can rightly see itself as one of the best IP Offices in the world and the UK economy can gain the maximum benefit from innovation. In short, the IPO is not a hospital case, but it does need to go to the gym for a serious tone up if it is to be fit enough to tackle the challenges it faces in the future.

Perceptions from the Outside

The IPO customers generally value the services provided very highly and feel that they get a value for money service in the UK. Contact with the IPO patent and trade mark examiners is seen in a very positive light and their expertise is recognised and appreciated. The timeliness and quality of rights processing is important to these customers and the IPO is well regarded. There is room for further harmonisation of the quality standards employed in the patents area since the IPO is perceived to be "easier" then the EPO. The IPO is perceived to have a very clear understanding of the value of intangible assets and this perspective is highly valued by customers. The IPO is part of a global IP rights system that is well understood and used by its customers in a very strategic way and the IPO would do well to monitor the global strategies that are used and take steps to maximise its position in this market place. There was continuing support for the IPO to play a full part in future harmonisation efforts and to maintain its "local" office position during the development of EU patents.

The customers also gave wide support to the strengthening of the policy role and taking a stronger leadership role on IP issues within government. An expanded role in promoting IP through education was also widely encouraged. Some criticism was made of the IPO role in international IP issues where the intellectual leadership of IP developments amongst the international community was felt to have been less obvious than in the past.

Trading Fund Issues

The IPO has been a Trading fund agency since 1991 and within the “Guide to the Establishment and Operation of Trading Funds” issued by HM Treasury in May 2004 are three statutory tests that must be met when setting up a Trading Fund. The IPO easily meet the requirements for the first two tests, but problems arise over the third test which concerns “improved efficiency and effectiveness of the management of those operations”. Whilst there is lots of evidence to show that the IPO have been focussed on the needs of its customers, the commitment to measurable improvement fell short when it comes to cost measurement. One of the benefits of operating as a Trading Fund set out clearly in the Treasury Guide is that it encourages managers and staff to think commercially, find opportunities to cut costs and seek more efficient ways of operating and to expand the business. The long history in the IPO of generating surpluses has dulled the cost awareness focus commonly found in other trading funds. The IPO could do more to improve its commercial approach to better match the performance of other trading fund agencies. These surpluses have also reduced the IPO’s approach to long term planning and financial flexibility.

Overall, the VFM review formed the opinion that Trading Fund status is still the most appropriate arrangement for an organisation which is so heavily organised around fee-based services. The management issues which have been briefly highlighted above will need to be urgently addressed.

Governance of the UKIPO

The governance arrangements currently found in the IPO appear to be providing less than optimal support in the achievement of its goals. The Steering Board concept does not allow the organisation to maximise the value to be gained from its independent directors. The interaction between the Steering Board and the IPO (Management) Board could benefit from a re-examination so that clear and simple direction on strategy and operational issues is provided. The IPO will need clearer mechanisms to ensure that it is monitoring its performance against plans on an ongoing basis during the difficult times ahead. Tough decisions will need to be taken and the senior management team will need to confront these issues if the agency is to be successful in these turbulent times.

The review of the governance structures should also extend to the Audit Committee and other committees within the IPO, to ensure that clarity of purpose and effectiveness is assured. This review should include purpose, membership, frequency and relationship to the other key governance structures and committees so that the maximum value can be gained. Clear governance arrangements are essential since in common with other parts of the public sector the organisation faces real challenges in future.

Remit of the UKIPO

The current remit contained in the Patent Office Trading Fund Order is sufficiently clear and broad to cover all the current activities of the IPO. Furthermore, the list of “operations” extends beyond the traditional “operations” of the Patent Office and includes areas which would be more normally seen as “policy” activities. There is a clear emphasis on information provision, publicity and advertising in relation to all the “operations”. Explicit recognition of international activities in relation to all the “operations” is also provided in the text. When this remit is combined with the explicit endorsement elsewhere in the Order of commercial activities and expanding the business of the Patent Office, it is clear that the Trading Fund Order envisages a broad remit for the Office. The implied remit of the Office gives sufficient cover to the Office to pursue more vigorously initiatives in the areas of policy, education and marketing and commercial services. However, the growth in policy work creates a tension with the more traditional “factory” rights activities, which needs to be recognised and managed. A clearer commitment to expanding the commercial work would help accelerate the change in the balance of culture within the IPO. Threats to traditional workload levels and wider Civil Service changes may also provide opportunities to accelerate change.

Business Model

The Office receives the bulk of its funding from the statutory fees and charges it levies on its customers for the processing of the various intellectual property rights. The Office also receives a small amount of income from the non-statutory charges it levies for its commercial services. A number of issues with the current business model were identified during the review and the review is honour bound to challenge these long held beliefs. On the one hand competing public policy objectives have led to a surplus of patent income above a strict cost recovery policy. Yet a significantly delayed recovery of costs means there is no direct price link in day-to-day management between the cost of work performed and income earned. This is likely to reduce the focus of management on managing and reducing costs of the delivery of services – one of the key purposes of giving an agency Trading Fund status. It can also be argued that setting up front fees for patent applications at too low a level also has a negative consequence for the innovation system.

This picture is complicated by a further source of significant income, namely renewal income for patents that have been processed and approved by the European Patent Office and which are maintained on the UK register of patents through the payment of renewal fees to the UK Office. Superficially, the Office does very little work (at very little cost) for this substantial income. It is clear that the EPO renewal income stream makes up the shortfall in cost recovery for all the other patent work done by the UK Office and subsidises other work done by the Office. Three previous reviews have raised the balance of fees issues but the matter has not yet been adequately addressed. Two factors compel the IPO to address this difficult problem. Firstly, the negative consequences for the innovation system and for the healthy management of the Office and secondly new fee setting principles are required to better reflect the reality of the policy activities of the office.

Strategy Setting

The current Corporate Plan contains four pillars which remains a relatively sound basis upon which to create a strategy provided the fifth pillar on building a sustainable financial future is added. Support exists for the IPO to undertake a wider role in promoting IP issues. However, the planning process needs to be reviewed and resourced correctly so that strategic intentions can be converted into operational plans that can be monitored and managed throughout the planning period. The current public sector environment requires the IPO to be far more aware of wider government initiatives when constructing it plans for the future. Greater attention to not only the construction of the strategy, but also the implementation of the plan will be essential if the IPO is to attain a position in the innovation vanguard for the UK economy.

Management of the Back Office

The back office functions of the IPO provide a varied picture, but the overall impression is one where the potential of the agency is inhibited by the lack of development in a number of these essential support functions. However, the agency has some key people in the right places to make a real impact. Provided they are given the right direction and supported with funds or resources the future is potentially promising. The finance function is under resourced in professionally qualified staff and struggles to supply the organisation with cost or other management information. The introduction of liaison posts for the budget holders would start the process of increasing the cost awareness of the entire agency from its very low base currently. Given the importance of this activity it would make sense to seriously consider the transfer of some of the activities under finance to their more operationally natural homes. The new finance director has started addressing these issues and needs support to tackle them as a matter of urgency.

The human resources function already has liaison posts to work along side the directorates in managing this essential resource for the IPO. The senior management team have already started to address a number of key deficiencies in the current HR policies and procedures. They need to be supported and given clear priorities since a great deal remains to be tackled if the agency is to maximise the effectiveness of its valuable people. A number of cultural issues will need to be tackled since the office needs to deal with increasing skill specialisation and a two centre focus.

The building in Newport itself is poorly designed and underutilised and the IPO is badly in need of a strategic plan for accommodation and this could be expensive. Yet the implications of not addressing the problem include the continuation of a working environment which does not allow the full effectiveness and efficiency of the office to be achieved.

The IT systems are also in need of a clear strategy to overcome the current inefficient use of numerous languages and muddle of legacy systems. A strategy is already being prepared and the management team need to confront some difficult issues this will raise and apply appropriate investment to allow the office to develop systems fit for the 21st century. The recent launch of the TM10 project in the trade mark area is a good start but much more is needed.

Management of the Front Office

Aside from concerns expressed elsewhere on the business model itself, the patents area of the IPO is a tremendous asset with strong evidence of a good focus on

quality and high customer service ethos. The active commitment to harmonisation must continue and the IPO must continue to engage in the development of the EU patent concept. The growth in the scale of the backlog is cause for concern and needs to be addressed by the development of a coherent forward looking plan that tackles the demand for examiners across all the IPO activities including commercial ones. A bold recruitment plan for examiners would not be misplaced and efforts must be made to gain a greater understanding of costs in this key area of activity.
The trade mark and designs directorate is clearly well managed with relatively short processing times and is already cost conscious, though without detailed cost information for some aspects of its work. The TM10 project is an essential element in the continuing fight to keep costs down. Quality is an aspect that has been identified as needing more work and this is supported by the review team. The current performance targets are too generous and could be made more stretching. Whilst the long term future for the design service is questionable this is not a reflection upon the quality of the IPO work just a recognition of the inevitable impact of alternative wider rights granting jurisdictions.

The relatively recent expansion of the policy activities is widely supported by the stakeholders and the desire for the IPO to have a greater impact on innovation in the UK economy widely accepted. Better business planning and smarter objective setting would help to improve the value for money visibility for these various policy areas. The current built in inefficiencies of operating policy across two widely spread sites needs to be confronted. Efforts will also be needed to counter any “two culture” effects of this two centre set up.

Similarly the newly created Innovation directorate needs time to develop appropriate strategies that support the wider remit for the IPO. This is especially true of the economics team which needs time to reach its full potential but needs to be kept under review and coordinated with SABIP. A clear strategy for outreach, commercial services and communications needs to be written and discussed by the IPO board or the Steering board. This is essential since it is not clear if the IPO wishes to continue with its small commercial operations or not. The need for outreach activities is clear, however, the current approach can be challenged.Questions can be asked about the strategic approach, capacity, funds to deliver, and the existence of sufficient specialist skills to deliver against the innovation directorate’s wide remit.

RECOMMENDATIONS

Chapter One - Perceptions from the Outside

1. The IPO is part of a global IP rights system that is well understood and used by its customers in a very strategic way and the IPO would do well to monitor the global strategies that are used and take steps to maximise its position in this market place.
2. The existing customer survey activity is somewhat fragmented and the IPO would benefit from some more holistic views of its customers, since a number of them interface with the office on a variety of matters.

Chapter Two - Trading Fund Issues

3. **Recommend** that the UK IPO continues to be a Trading Fund agency as the most appropriate financial arrangement given its fee earning capacity and customer service foundations.

Chapter Three - Governance of the IPO

4. **Recommend** that the Steering Board arrangements should be reviewed and changed to improve engagement and information flow, with the added benefit of greater involvement in the development of strategic directions and new initiatives plus the greater utilisation the expertise of the non-executive directors on the Board.

5. **Recommend** that the IPO Board arrangements should also be reviewed and changed to improve the direction given to the IPO organisation and the realisation of its strategic goals.

6. **Recommend** that the IPO Board review the role, membership and authority of all committees and sub-committees across the organisation with a view to eliminating any unnecessary committees, creating a coherent approach to delegated committee work by ensuring that gaps, duplication and overlap is reduced, and standardising terms of reference.

7. **Recommend** that the role, format of and attendance at the Audit Committee be reviewed and that the focus of internal audit is expanded beyond compliance audits and financial accounts to include fundamental process audits and value for money audits.

8. **Recommend** that the value for money of the supply of internal audit by BIS be reviewed and if appropriate market tested.

Chapter Four - Remit of the UKIPO

9. **Recommend** that the Steering Board and the IPO Board develop and endorse a clear statement of their view of the remit of the IPO which emphasises the broader remit that has evolved over the recent past and gives support for further development of this direction.

10. **Recommend** that any technical issues concerning consistency between the IPO's Trading Fund Order and the IPO's Fees Order be resolved with Treasury in favour of the clear broader remit in the Trading Funds Order.

11. **Recommend** that a planned staff development programme be initiated (in part to help support the creation of a unified culture across the organisation) to address the needs of technical staff to understand the policy context and the need for policy staff to gain a necessary understanding of technical issues.

Chapter Five - Business Model

12. **Recommend** that the issue of balance between upfront fees and renewal income be revisited by the Steering Board and the IPO Board with a view to establishing a new paradigm for fee setting. Any new approach would need to address:
    a. The potential negative consequences for the innovation system of excessively cheap entry costs, especially for the patent system
    b. Develop new fee setting principles with Treasury which would clarify how the necessarily time delayed and over cost-recovered fees income can be utilised for wider activities in the IPO.

Chapter Six - Strategy Setting

13. **Recommend** that the overall planning process in the IPO be redeveloped to include:
    a. Appropriate horizon scanning inputs
    b. Better engagement with stakeholders and customers
    c. Better understanding of wider UK government programmes and initiatives
    d. Improved demand forecasting
    e. Workforce planning
    f. Improved use of data and measurement in plans and reports

14. **Recommend** that the corporate planning function be properly resourced and upgraded to allow it to provide ongoing support for management in the development and production of corporate plans, business plans, strategic plans, annual reports and regular monitoring of performance.

Chapter Seven - Management of the Back Office

Financial Management

15. **Recommend** that the Financial Directorate:
    a. Upgrade the number of skilled staff, including qualified management accountants
    b. Put in place a liaison system (similar to the approach in HR) of management accountants with other directorates
    c. Develop a robust cost measurement system as part of the creation of an improved management information service to the organisation and individual directorates
    d. Improve transparency of financial information as part of a wider programme of developing financial understanding and cost awareness across the organisation
    e. In conjunction with HR link the financial and HR Oracle systems.

16. **Recommend** that the non-financial functions currently managed by the Finance Directorate be re-allocated to more appropriate functional areas of the organisation.

Human Resource Management

17. **Recommend** that the Human Resource Management area should:
    a. Institute a proper competency framework
    b. Review and upgrade the performance management system to meet at least current civil service standards or better
    c. Develop and seek endorsement and resourcing from the IPO Board for a comprehensive Learning and Development strategy and programme
    d. Investigate and prepare a business case for using shared service arrangements to deliver operational support for the function.

Accommodation

18. **Recommend** that a strategic accommodation plan is developed for discussion and endorsement by the Steering Board and the Executive Board to address significant investment needs in the fabric, fit-out and utilisation of Concept House, and the rationalisation of the use of premises at Nine Mile Point.

Information Technology

19. **Recommend** that a strategic information technology plan is developed for discussion and endorsement by the Steering Board and the IPO Board and in consultation with all directorates which sets out a medium to long term plan for the direction of and investment in information technology in support of the business of the organisation.

Office Services

20. **Recommend** that all core office services need to be regularly market tested to ensure value for money is established, in particular the in-house publication function needs to have a rigorous market test or be put on a more commercial services footing.

<u>Chapter Eight - Management of the Front Office</u>

Patents

21. **Recommend** that the patent function needs to create an end to end view of its costs of production (including all relevant areas contributing to the processing function currently located in the Finance Directorate, as well as all the corporate overheads utilised directly or indirectly) and develop a comprehensive cost reduction strategy.

22. **Recommend** that the issue of examiner recruiting requires a less risk averse approach which should be included in a comprehensive workforce plan which covers the resource needs for other areas such as SAS and patent informatics and dealing with the backlog.

Trade Marks

23. **Recommend** that the trade mark area continue to actively work to reduce costs and improve efficiency and deliver the cost benefits included in the TM10 business case.

Designs

24. **Recommend** that the IPO management team consider the longer term viability of the design area and make plans accordingly.

Policy Areas

25. **Recommend** improved business planning be put in place by all policy areas which would include rigorously allocating resources and timelines to activities within the plans.

26. **Recommend** that the London/Newport staff location issue be reviewed and rationalised to reduce unnecessary resource wastage.

27. **Recommend** that a medium to long term strategy be developed and agreed by the Steering Board and the IPO Board for:
    a. Outreach and education activities
    b. External communication and marketing activities
    c. Commercial services activities

    These strategic plans will need to address the level of investment required, the staff skills required, and the overall capacity of the organisation to achieve the directions proposed.

APPENDIX 1

Terms of Reference for VFM Office-Wide Review

Background

- The IPO has seen a strategic shift in its configuration in the last two years to put it in the best shape to meet current and future challenges. This has seen investment in policy development and economic analytical capability in particular.
- We are confident that these two new foci, along with our pre-existing concentration on outreach and education, and rights granting, (the four pillars explained in our Corporate Plan) allow us to meet the demand for advice from other government colleagues, and in other cases to promote the better consideration of IP issues relevant to larger policy debates.
- But the revised Departmental Capability Review Programme makes clear, the economic downturn obliges all government bodies to undertake delivery of excellent public services as efficiently as possible.
- We want to undertake a high level review of the UKIPO to examine whether its overall business model is soundly based. The review should assess in particular the extent to which the governance arrangements; business plans; resource allocation and usage; management and measurement of performance; and the methods of operation are capable of meeting the objectives of the UK government for the Office.
- We also want to address some specific issues (our building, scale of our capital reserves) that have a bearing on future strategic planning.

Areas for detailed examination

Direction of the organization

- Is the IPO Board (IPOB) clear about what the purpose of the Trading Fund is? [SHEX]
- Does the IPOB communicate a clear and compelling vision for the future of the organization? [CR]
- Is there clarity about what Ministers require of IPO? [SHEX]
- Is there clarity about what customers and stakeholders require of IPO? [CR]
- How does this “mission” compare with the plans of comparable organizations?

Strategy

- Does IPO have a clear and communicable strategy with challenging outcomes, aims, objectives and success measures? [CR]
- Is the IPO plan focused on improving the service to customers and benefiting the nation? [CR]
- What are the long term prospects for the market in which the IPO operates and have these influenced the strategy? [SHEX]
- Is the strategy kept up to date? [CR]
- Is the strategy developed with customer involvement; the used of evidence and analysis; after an identification of future trends? [CR]

- Are there alternative means of delivering the public policy objectives currently discharged by the IPO and why are these deemed undesirable? [SHEX]

Delivery of outcomes

- How does IPO delivery of outcomes compare with comparable benchmarked organizations? [SHEX]
- Do we have structures, people capacity, and systems for supporting internal innovation and effective management? [CR]
- Does business planning prioritize and sequence delivery to best achieve strategic outcomes? [CR]
- Does the IPO manage delivery against targets and milestones?
- Is there effective management of the IPO resources? Are there matters affecting IPO resources that are not adequately managed? [CR]
- Do we have high quality, timely and well-understood performance management information? [CR]
- Is the IPO performance in accordance with the intentions of the Trading Fund model? [SHEX]
- What are the barriers to any future reforms necessary for the TF to maximise opportunities in the market in which it operates? [SHEX]
- What do shareholders, competitors and other stakeholders think of the IPO's activities? [SHEX]

Management of performance / Methods of working

- Is performance against the strategy managed transparently? [CR]
- Does IPO make effective use of its non-executive directors? [CR]
- Does the IPOB work in a culture of teamwork, taking tough decisions, prioritizing and brigading resources and managing delivery of outcomes effectively? [CR]
- Is the IPOB creating a unifying culture that is focused to delivering the strategy outcomes? [CR]
- Does the IPO have systems for nurturing talent? Does it have plans to fill capability gaps that are critical to delivery of the strategy? [CR]
- Does the IPO work with others in government to address cross-cutting issues? [CR]
- Do we collaborate effectively with stakeholders? [CR]

Deliverables

An assessment of IPO performance in each of the key areas above and recommendations for any change to practices or business model thought necessary to better achieve the strategic outcomes the IPO is seeking.

APPENDIX 2

Terms of Reference for Office-Wide Review Cross Referenced to VFM Report

Background

- The IPO has seen a strategic shift in its configuration in the last two years to put it in the best shape to meet current and future challenges. This has seen investment in policy development and economic analytical capability in particular.
- We are confident that these two new foci, along with our pre-existing concentration on outreach and education, and rights granting, (the four pillars explained in our Corporate Plan) allow us to meet the demand for advice from other government colleagues, and in other cases to promote the better consideration of IP issues relevant to larger policy debates.
- But the revised Departmental Capability Review Programme makes clear, the economic downturn obliges all government bodies to undertake delivery of excellent public services as efficiently as possible.
- We want to undertake a high level review of the UKIPO to examine whether its overall business model is soundly based. The review should assess in particular the extent to which the governance arrangements; business plans; resource allocation and usage; management and measurement of performance; and the methods of operation are capable of meeting the objectives of the UK government for the Office.
- We also want to address some specific issues (our building, scale of our capital reserves) that have a bearing on future strategic planning.

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Areas for detailed examination

Direction of the organization

- Is the IPO Board (IPOB) clear about what the purpose of the Trading Fund is? [SHEX]
    1. Discussed in Chapter Two (Trading Fund Issues) and Chapter Four (Remit of the UKIPO)
- Does the IPOB communicate a clear and compelling vision for the future of the organization? [CR]
    1. Discussed in Chapter Six (Strategy Setting)

- Is there clarity about what Ministers require of IPO? [SHEX]
    1. Discussed in Chapter 4 (Remit of the UKIPO) and Chapter 6 (Strategy Setting)
- Is there clarity about what customers and stakeholders require of IPO? [CR]
    1. Discussed in Chapter One (Perceptions from the Outside)

- How does this “mission” compare with the plans of comparable organizations?
    1. Discussed in Chapter Four (Remit of the Office)

Strategy

- Does IPO have a clear and communicable strategy with challenging outcomes, aims, objectives and success measures? [CR]
    1. Discussed in Chapter Six
- Is the IPO plan focused on improving the service to customers and benefiting the nation? [CR]
    1. Discussed in Chapter Six (Strategy Setting)
- What are the long term prospects for the market in which the IPO operates and have these influenced the strategy? [SHEX]
    1. Discussed in Chapter Six (Strategy Setting) and Chapter Eight (Management of the Front Office)
- Is the strategy kept up to date? [CR]
    1. Discussed in Chapter Six (Strategy Setting)
- Is the strategy developed with customer involvement; the used of evidence and analysis; after an identification of future trends? [CR]
    1. Discussed in Chapter Six (Strategy Setting)
- Are there alternative means of delivering the public policy objectives currently discharged by the IPO and why are these deemed undesirable? [SHEX]
    1. Discussed in Chapter Four (Remit of the UKIPO)

Delivery of outcomes

- How does IPO delivery of outcomes compare with comparable benchmarked organizations? [SHEX]
    1. Discussed in Chapter Seven (Management of the Back Office) and Chapter Eight (Management of the Front Office)
- Do we have structures, people capacity, and systems for supporting internal innovation and effective management? [CR]
    1. Discussed in Chapter Seven (Management of the Back Office)
- Does business planning prioritize and sequence delivery to best achieve strategic outcomes? [CR]
    1. Discussed in Chapter Six (Strategy Setting), Chapter Seven (Management of the Back Office) and Chapter Eight (Management of the Front Office)
- Does the IPO manage delivery against targets and milestones?
    1. Discussed in Chapter Six (Strategy Setting), Chapter Seven (Management of the Back Office) and Chapter Eight (Management of the Front Office)
- Is there effective management of the IPO resources? Are there matters affecting IPO resources that are not adequately managed? [CR]
    1. Discussed in Chapter Five (Business Model), Chapter Seven (Management of the Back Office) and Chapter Eight (Management of the Front Office)
- Do we have high quality, timely and well-understood performance management information? [CR]

1. Discussed in Chapter Seven (Management of the Back Office) and Chapter Eight (Management of the Front Office)

- Is the IPO performance in accordance with the intentions of the Trading Fund model? [SHEX]
    1. Discussed in Chapter Two (Trading Fund Issues) and Chapter Four (Remit of the UKIPO)
- What are the barriers to any future reforms necessary for the TF to maximise opportunities in the market in which it operates? [SHEX]
    1. Discussed in Chapter Two (Trading Fund Issues) and Chapter Four (Remit of the UKIPO)

- What do shareholders, competitors and other stakeholders think of the IPO's activities? [SHEX]
    1. Discussed in Chapter One (Perceptions of the Outside)

<u>Management of performance / Methods of working</u>

- Is performance against the strategy managed transparently? [CR]
    1. Discussed in Chapter Six (Strategy Setting)
- Does IPO make effective use of its non-executive directors? [CR]
    1. Discussed in Chapter Three (Governance of the UKIPO)
- Does the IPOB work in a culture of teamwork, taking tough decisions, prioritizing and brigading resources and managing delivery of outcomes effectively? [CR]
    1. Discussed in Chapter Four (Governance of the IPO) and Chapter Eight (Managing the Front Office)
- Is the IPOB creating a unifying culture that is focused to delivering the strategy outcomes? [CR]
    1. Discussed in Chapter Three (Governance of the IPO) and Chapter Eight (Managing the Front Office)
- Does the IPO have systems for nurturing talent? Does it have plans to fill capability gaps that are critical to delivery of the strategy? [CR]
    1. Discussed in Chapter Seven (Managing the Back Office)
- Does the IPO work with others in government to address cross-cutting issues? [CR]
    1. Discussed in Chapter One (Perceptions from Outside) and Chapter Eight (Managing the Front Office)
- Do we collaborate effectively with stakeholders? [CR]
    1. Discussed in Chapter One (Perceptions from Outside)

<u>Deliverables</u>

An assessment of IPO performance in each of the key areas above and recommendations for any change to practices or business model thought necessary to better achieve the strategic outcomes the IPO is seeking.

APPENDIX 3 – List of Consultations

IPO staff

NAME	POSITION
Clare Boucher	Head of Governance & Planning
Ben Buchanan	Head of Patent Informatics
Steve Burton	Head of HR Operations & Learning and Development
Tony Clayton	Chief Economist
Sean Dennehey	Interim CEO
Andrew Hardingham	Director of Finance
Peter Holland	Director of International Policy
Tony Howard	Acting Director of Patents
Glyn Hughes	Head of Customer Relationship Management & Search and Advisory Service
Louise Kirby	Head of Organisational & People Development
Andrew Layton	Director of Trademarks & Designs
Ed Quilty	Director of Copyright & Enforcement
Dave Miller	Software Development Manager
Alison Reed	Head of HR Policy
Sue Saunders	Head of Facilities Management
Louise Smyth	Director Business Support
Duncan Wearmouth	Interim Head of Finance
Robin Webb	Director of Innovation
Ian Webber	Assistant Director of Finance
Customer Relations	Glyn Hughes (Head of Customer Relationship Management), Jason Holmes (Customer Relationship Officer), Theresa Roberts (Patents); Janice Smith (Trade Marks)
Trade Union Side (TUS)	June Ralph (PCS/Chair TUS), Nick Mole (Prospect/Secretary TUS), Eleanor Wade (Prospect), Morwenna Bell (PCS)

External Consultations

Paul Alsey	DCMS
Robert Bettley-Smith	SABIP –CEO
Graham Boydell	Consultant from the National School of Government
Alison Brimelow	EPO President
Roger Burt	IBM – Senior Counsel, Intellectual Property Law
Mary Carman	CEO Canadian IPO
Mary Champion	Steering Board member
David Chilvers	Chief Executive NHS Innovations
Peter Collis	Chief Land Registrar and CEO UK Land Registry
Gillian Deas	ITMA – President
Joly Dixon	SABIP – Chair
Sara Draper	Head of Knowledge Economy, CBI
Tim Frain	Director IPR, Regulatory Affairs, Nokia
Ashley Giles	Patent Attorney, Partner, Haseltine Lake LLP
Hilary Goldsmith	Consultant from the National School of Government
David Humphries	SABIP – Secretary
Peter Lawrence	OHIM – Vice President
John Noble	British Brands Group – Director
Sir Anthony Pigott	Steering Board member
David Richards	Steering Board – Chair
David Roberts	Steering Board member
Gwilym Roberts	CIPA
Philip Rycroft	Director General of Innovation & Enterprise Group & Better Regulation Executive, BIS
Gill Smith	Head of IP, Dyson

APPENDIX 4 - LIST OF RECOMMENDATIONS

Chapter One - Perceptions from the Outside

1. The IPO is part of a global IP rights system that is well understood and used by its customers in a very strategic way and the IPO would do well to monitor the global strategies that are used and take steps to maximise its position in this market place.
2. The existing customer survey activity is somewhat fragmented and the IPO would benefit from some more holistic views of its customers, since a number of them interface with the office on a variety of matters.

Chapter Two - Trading Fund Issues

3. **Recommend** that the UK IPO continues to be a Trading Fund agency as the most appropriate financial arrangement given its fee earning capacity and customer service foundations.

Chapter Three - Governance of the IPO

4. **Recommend** that the Steering Board arrangements should be reviewed and changed to improve engagement and information flow, with the added benefit of greater involvement in the development of strategic directions and new initiatives plus the greater utilisation the expertise of the non-executive directors on the Board.

5. **Recommend** that the IPO Board arrangements should also be reviewed and changed to improve the direction given to the IPO organisation and the realisation of its strategic goals.

6. **Recommend** that the IPO Board review the role, membership and authority of all committees and sub-committees across the organisation with a view to eliminating any unnecessary committees, creating a coherent approach to delegated committee work by ensuring that gaps, duplication and overlap is reduced, and standardising terms of reference.

7. **Recommend** that the role, format of and attendance at the Audit Committee be reviewed and that the focus of internal audit is expanded beyond compliance audits and financial accounts to include fundamental process audits and value for money audits.

8. **Recommend** that the value for money of the supply of internal audit by BIS be reviewed and if appropriate market tested.

Chapter Four - Remit of the UKIPO

9. **Recommend** that the Steering Board and the IPO Board develop and endorse a clear statement of their view of the remit of the IPO which

emphasises the broader remit that has evolved over the recent past and gives support for further development of this direction.

10. **Recommend** that any technical issues concerning consistency between the IPO's Trading Fund Order and the IPO's Fees Order be resolved with Treasury in favour of the clear broader remit in the Trading Funds Order.

11. **Recommend** that a planned staff development programme be initiated (in part to help support the creation of a unified culture across the organisation) to address the needs of technical staff to understand the policy context and the need for policy staff to gain a necessary understanding of technical issues.

Chapter Five - Business Model

12. **Recommend** that the issue of balance between upfront fees and renewal income be revisited by the Steering Board and the IPO Board with a view to establishing a new paradigm for fee setting. Any new approach would need to address:
    a. The potential negative consequences for the innovation system of excessively cheap entry costs, especially for the patent system
    b. Develop new fee setting principles with Treasury which would clarify how the necessarily time delayed and over cost-recovered fees income can be utilised for wider activities in the IPO.

Chapter Six - Strategy Setting

13. **Recommend** that the overall planning process in the IPO be redeveloped to include:
    a. Appropriate horizon scanning inputs
    b. Better engagement with stakeholders and customers
    c. Better understanding of wider UK government programmes and initiatives
    d. Improved demand forecasting
    e. Workforce planning
    f. Improved use of data and measurement in plans and reports

14. **Recommend** that the corporate planning function be properly resourced and upgraded to allow it to provide ongoing support for management in the development and production of corporate plans, business plans, strategic plans, annual reports and regular monitoring of performance.

Chapter Seven - Management of the Back Office

Financial Management

15. **Recommend** that the Financial Directorate:
    a. Upgrade the number of skilled staff, including qualified management accountants

b. Put in place a liaison system (similar to the approach in HR) of management accountants with other directorates
c. Develop a robust cost measurement system as part of the creation of an improved management information service to the organisation and individual directorates
d. Improve transparency of financial information as part of a wider programme of developing financial understanding and cost awareness across the organisation
e. In conjunction with HR link the financial and HR Oracle systems.

16. **Recommend** that the non-financial functions currently managed by the Finance Directorate be re-allocated to more appropriate functional areas of the organisation.

Human Resource Management

17. **Recommend** that the Human Resource Management area should:
    a. Institute a proper competency framework
    b. Review and upgrade the performance management system to meet at least current civil service standards or better
    c. Develop and seek endorsement and resourcing from the IPO Board for a comprehensive Learning and Development strategy and programme
    d. Investigate and prepare a business case for using shared service arrangements to deliver operational support for the function.

Accommodation

18. **Recommend** that a strategic accommodation plan is developed for discussion and endorsement by the Steering Board and the Executive Board to address significant investment needs in the fabric, fit-out and utilisation of Concept House, and the rationalisation of the use of premises at Nine Mile Point.

Information Technology

19. **Recommend** that a strategic information technology plan is developed for discussion and endorsement by the Steering Board and the IPO Board and in consultation with all directorates which sets out a medium to long term plan for the direction of and investment in information technology in support of the business of the organisation.

Office Services

20. **Recommend** that all core office services need to be regularly market tested to ensure value for money is established, in particular the in-house publication function needs to have a rigorous market test or be put on a more commercial services footing.

<u>Chapter Eight - Management of the Front Office</u>

Patents

21. **Recommend** that the patent function needs to create an end to end view of its costs of production (including all relevant areas contributing to the processing function currently located in the Finance Directorate, as well as all

the corporate overheads utilised directly or indirectly) and develop a comprehensive cost reduction strategy.

22. **Recommend** that the issue of examiner recruiting requires a less risk averse approach which should be included in a comprehensive workforce plan which covers the resource needs for other areas such as SAS and patent informatics and dealing with the backlog.

Trade Marks

23. **Recommend** that the trade marks area continue to actively work to reduce costs and improve efficiency and deliver the cost benefits included in the TM10 business case.

Designs

24. **Recommend** that the IPO management team consider the longer term viability of the design area and make plans accordingly.

Policy Areas

25. **Recommend** improved business planning be put in place by all policy areas which would include rigorously allocating resources and timelines to activities within the plans.

26. **Recommend** that the London/Newport staff location issue be reviewed and rationalised to reduce unnecessary resource wastage.

27. **Recommend** that a medium to long term strategy be developed and agreed by the Steering Board and the IPO Board for:
    a. Outreach and education activities
    b. External communication and marketing activities
    c. Commercial services activities

    These strategic plans will need to address the level of investment required, the staff skills required, and the overall capacity of the organisation to achieve the directions proposed.

APPENDIX 5 – SAMPLE TEMPLATE FOR COMMITTEE TERMS OF REFERENCE

Terms of Reference		
Title:	Foundation Trust Delivery committee	
Date approved, and approving body:	Trust Board and Foundation Trust Programme Board	
Date reviewed: **Next review date:**	DATE: October 2009 DATE: January 2010	
Purpose:	The group is responsible for contributing to effective delivery of the foundation trust application through its focus on governance, communications, the Integrated Business Plan (IBP) and supporting strategies; the Long Term Financial (LTFM), membership, elections and workforce reporting to the Foundation Trust Programme Board.	
Membership:	**Membership** Director of Strategy and Workforce (Chair) Director of Finance and Performance Trust Secretary	**Nominated Deputy**

	Non Executive Director Director of Operations Divisional Trade Union Lead Assistant Director Communications & Community Relations Assistant Director for Foundation Trust Foundation Trust Programme Manager Assistant Director of Finance – Business Support Director of Nursing and Quality 5 x divisional General Manager General Manager - Control	
Deputies:	Required	
Chair:	Director of Workforce and Strategy	
Vice Chair:	TBC	
Director Lead	Director of Workforce and Strategy	
Quorum:	1/3 of those eligible to attend	
Secretary:	Foundation Trust Project Support Officer	
Frequency of Meetings:	Monthly	
Rules as to Meetings & Proceedings:	Members should attend at least 75% of meetings. Agenda and supporting papers will be circulated to members at least five working days prior to any meeting and will be in the correct Trust format. Minutes shall be prepared and distributed in draft within 10 working days of the meeting. Standing Orders and Standing Financial Instructions of the Trust as appropriate apply to formally established Committees. As such, members of this Committee may	

	requisition a meeting in writing in line with Standing Orders. The Chair of the Committee shall draw to the attention of the Chairman any issues that require disclosure to the full Board or require Executive Action.
Attendance at meetings:	A Deputy should only be sent in unavoidable instances. Members should themselves attend at least 2 out of 3 committee meetings.
Authority/Tolerances:	The committee is authorised to: • Investigate any activity within its Terms of Reference • Seek any information it requires from any employee and all employees are directed to co-operate with any request made by the Committee. • Obtain outside legal or other independent professional advice • Secure the attendance/participation of outsiders with relevant experience and expertise • Establish time-limited task-groups to undertake specific pieces of work • Commission visits, inspections, research, surveys or other activities, as necessary for it to obtain knowledge and information required • Develop necessary policy and strategy documents relative to its remit
Duties – Decision Making:	**Governance** • To review the Trust's arrangements for Corporate, Clinical and Information Governance, including requirements for outcome and quality data • To develop and review the membership strategy and make recommendations for a membership structure including the effective management of the Trust membership. • To make recommendations for the constitution of the Council of Governors, including recruitment and election arrangements • To monitor the production of the Trusts new Governance Framework. • To upgrade the Trust's risk management strategy & framework to meet the requirements of a Foundation Trust • To upgrade the Trust's performance management arrangements to meet the requirements of a Foundation Trust • To upgrade the Trust's risk management arrangements to meet the requirements of a Foundation Trust • To improve our contracting and procurement processes to improve efficiency and value for money in the way that we purchase and provide services **Communications**

	• To produce relevant supporting communications strategies for the different elements of the foundation trust application • To produce marketing materials to support recruitment of members
Duties – Advisory/Performance Monitoring:	• To advise the Foundation Trust Programme Board that the Trust is progressing on target to apply for Foundation Trusts status within the agreed timescale.
Duties – Monitoring:	• To monitor the implementation of action plans and review adequacy of risk and control measures introduced to address gaps in controls and assurances. • To ensure resources are appropriately directed towards reducing risks to the Trust. • To ensure that the group works within, and fulfils its terms of reference.
Duties – Standing Agenda Items • **Every meeting:**	General items: • Apologies for absence • Minutes of the last meeting • Matters Arising Performance Monitoring: • Review of plan for delivery For Information: • National Updates • Regional Updates General Items: • Any other business • Date, time and venue of next meeting

Interfaces	Foundation Trust Programme Board
Accountability:	Foundation Trust Programme Board
Reporting responsibilities:	A highlight report will be made available to the Foundation Trust Programme Board and issues as appropriate will be escalated for its attention.
Self Assessment & **Monitoring:**	The group will monitor : • The attendance of members and how often they send a deputy. • Alignment of the workload(s) to the Foundation Trust Programme Board and the frequency of meetings. • Monitoring of the objectives and duties of the group as per the above terms of reference.

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