



House of Commons

Committee of Public Accounts

Ministry of Justice Financial Management

**Seventy-fifth Report of Session 2010–
12**

*Report, together with formal minutes, oral and
written evidence*

*Ordered by the House of Commons
to be printed 12 March 2012*

HC 1778

Published on 20 March 2012
by authority of the House of Commons
London: The Stationery Office Limited
£10.00

Committee of Public Accounts

The Committee of Public Accounts is appointed by the House of Commons to examine "the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit" (Standing Order No 148).

Current membership

Rt Hon Margaret Hodge (*Labour, Barking*) (Chair)
Mr Richard Bacon (*Conservative, South Norfolk*)
Mr Stephen Barclay (*Conservative, North East Cambridgeshire*)
Jackie Doyle-Price (*Conservative, Thurrock*)
Matthew Hancock (*Conservative, West Suffolk*)
Chris Heaton-Harris (*Conservative, Daventry*)
Meg Hillier (*Labour, Hackney South and Shoreditch*)
Mr Stewart Jackson, (*Conservative, Peterborough*)
Fiona Mactaggart (*Labour, Slough*)
Mr Austin Mitchell (*Labour, Great Grimsby*)
Chloe Smith (*Conservative, Norwich North*)
Nick Smith (*Labour, Blaenau Gwent*)
Ian Swales (*Liberal Democrats, Redcar*)
James Wharton (*Conservative, Stockton South*)

The following Members were also Members of the committee during the parliament:

Dr Stella Creasy (*Labour/Cooperative, Walthamstow*)
Justine Greening (*Conservative, Putney*)
Joseph Johnson (*Conservative, Orpington*)
Eric Joyce (*Labour, Falkirk*)
Rt Hon Mrs Anne McGuire (*Labour, Stirling*)

Powers

The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/pac. A list of Reports of the Committee in the present Parliament is at the back of this volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee is Philip Aylett (Clerk), Lori Verwaerde (Senior Committee Assistant), Ian Blair and Michelle Garratty (Committee Assistants) and Alex Paterson (Media Officer).

Contacts

All correspondence should be addressed to the Clerk, Committee of Public Accounts, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5708; the Committee's email address is pubaccom@parliament.uk.

Contents

Report	<i>Page</i>
Summary	3
Conclusions and recommendations	4
1 Management of expenditure	7
2 Management of Income	9
3 Reporting to Parliament	11
Formal Minutes	13
Witnesses	14
List of printed written evidence	14
List of Reports from the Committee during the current Parliament	15

Summary

The Ministry of Justice (the Ministry) has improved its financial management since the Committee's last report in January 2011. Many of the Ministry's processes have improved, including modelling and forecasting, but the Ministry has not achieved significant improvements in the delivery of key financial outcomes and therefore has much still to do.

The most serious issue, which the Accounting Officer recognises, is the Ministry's inability to report its financial affairs on a timely and accurate basis. The Ministry's own resource accounts for 2010-11 were delivered late and there were significant problems with the accounts produced by two of its major arm's length bodies. The Legal Services Commission was again unable to produce accounts sufficiently free from error to gain a clear audit opinion and the Ministry could not produce auditable data to support HM Courts Service's Trust Statement, produced for the first time in 2010-11.

The Ministry faces significant accounting challenges for the 2011-12 financial year, due to the more demanding requirements of the Clear Line of Sight initiative which requires earlier publication of the accounts. The Ministry has acknowledged that it might not be possible to produce its accounts in time for them to be certified before the end of June 2012 deadline. It needs to break the cycle of continuing failure to produce accurate and timely accounts.

The Ministry also faces considerable challenges in meeting its tough spending review commitments given the demand-led nature of its business. Although the Ministry has advanced its work on costing since our last report, it is still not complete. Without a full understanding of its costs, the Ministry risks unnecessarily cutting frontline services, which are critical to the poorest in the community, rather than ensuring savings are achieved through genuine efficiencies.

Maximising the income it obtains will help the Ministry deal with the current spending constraints, but it has not made enough progress in this area. Fine collection is improving, but it is being outpaced by the growth in fines outstanding. No progress has been made in improving fee recovery levels in the courts. Substantial sums of money are outstanding under confiscation orders and it is not clear how much of this money can really be recovered. The Ministry has recognised the need to improve its joint working with the Home Office on this issue and the Committee welcomes the creation of the joint Ministerial-led board to address confiscation orders.

Excellent financial management is critical to the Ministry's future success as it seeks to achieve significant efficiency gains while coping with workload pressures, such as increases in the prison population, that are largely outside its control.

On the basis of a Report by the Comptroller and Auditor General¹, we took evidence from the Ministry of Justice on its progress in improving financial management.

¹ C&AG's Report, *Ministry of Justice: Financial Management Report 2011*, HC 1591, Session 2010-12

Conclusions and recommendations

- 1. The Committee acknowledges the improvements the Ministry has made in its financial management, particularly in modelling and forecasting, since we last reported.** However, the Ministry must make further improvements if the public is to have confidence in its decision making, especially given the considerable challenges it faces with a demand-led workload and the need to make savings of £2 billion per year by 2014-15.
- 2. The Ministry again failed to deliver its departmental accounts on time and the Legal Services Commission's annual accounts and HM Courts Service's Trust Statement did not receive unqualified audit opinions. This is unacceptable and undermines public confidence in the Ministry's stewardship of funds.** The Accounting Officer was not willing to commit to meeting the Government timetable for the 2011-12 accounts, or even those for 2012-13. While we welcome his candour, this is not a tenable position. The Ministry must find a way to break the cycle and account to Parliament on a timely basis. The Ministry should develop a comprehensive project plan for delivering the resource accounts on time which includes key interdependencies and milestones. This should be robustly challenged by its audit committee on a continuing basis. The Ministry should also set out a clear plan to reduce errors in legal aid payments and remove the disclaimer on the Trust Statement account.
- 3. The Ministry does not have a proper basis for its current fee structure in the civil courts. It continues to under recover costs in the family courts and over recover probate fees.** The Committee welcomes steps the Ministry is taking to rationalise the fee structure as it seeks to achieve full cost recovery by reducing costs through efficiency savings and raising fees in line with inflation. Increasing fees, particularly in the family law area, may impact on people's access to justice. In developing a new fee structure designed to move to full cost recovery, the Ministry should monitor the impact on access to justice and ensure that it maximizes efficiency savings within the organization before increasing fees for individuals who need to use the courts.
- 4. Amounts owed under confiscation orders have risen dramatically and the Ministry acknowledges that up to 60% of these sums may never be recovered. No one body has overall responsibility for overseeing collection of confiscation orders but all the sums are accounted for in the Ministry's financial statements.** Compared to the other enforcement agencies involved, the Ministry has a better rate of success in collecting these amounts, albeit this in part reflects the fact that it is not responsible for obtaining larger and more complex assets. Under the Proceeds of Crime Act 2002 amounts owed cannot be written off and therefore these balances will continue to grow. The Ministry, through the new cross-Government board, should take steps to set responsibilities for raising, collecting and accounting for confiscation orders to incentivise collection agencies to maximise sums collected.
- 5. Over the last five years, whilst the Ministry has increased the monies collected through fines, the amount outstanding has increased even more.** HM Courts and Tribunals Service needs to improve its collection rates and should focus in particular on

the timeliness of collection given that it is easier to collect fines nearer the time of imposition.

6. The Ministry maintains that it has followed Government guidance in producing its impact assessment for proposed changes to legal aid, but admitted that in some areas where there were insufficient data, potential impacts could not be quantified.

The impact assessment has not identified the behaviour changes which may arise from the new legal aid arrangements, and should do so. The Ministry should arrange for the National Audit Office to review the impact assessment to ascertain whether the assumptions are sound and uncertainties have been clearly acknowledged.

1 Management of expenditure

1. The Ministry of Justice has made some good progress in improving its financial management since the Committee reported on the subject a year ago. It understands better the implications of changes in workload in the justice system through its modelling work, and therefore is better placed to respond accordingly. It also has a more thorough approach to costing policy proposals,² including where relevant those put forward by other Government departments. There has been some welcome and much needed progress on costing of services, particularly in prisons where establishments are now being challenged to meet established benchmarked costs.³ In some areas of financial management the Ministry is now performing sufficiently well for other Government departments to approach it for advice.⁴

2. These advances are crucial to the Ministry given its budget settlement for the next few years and the demand-led nature of its workload. A stark illustration of this vulnerability was the sudden surge in demand for court services and prison places arising from the widespread public disorder in August 2011. The Ministry responded quickly to deal with this, and was able to meet the £20 million of resulting costs from its contingency reserve.⁵

3. Despite these improvements, there are other areas where the Ministry has to make considerably more progress. The scale of the savings challenge is significant and the Ministry will need better data to be able to take the most cost-effective approach to finding savings, with minimal impact on users of justice services. For example, the Ministry has plans to improve fee recovery for court services by 2014-15,⁶ but admits that it doesn't know enough about how changes in fees might affect demand levels and therefore the income obtainable.⁷ And although the Ministry has stated that the impact assessment for changes in legal aid conformed to Government guidance, it has not been able to quantify the potential costs and benefits at a wider economic and social level.⁸

4. Tough savings targets have been made more challenging by factors over which the Ministry has not had control, such as the amendments to sentencing reform which were intended to reduce the prison population (among other outcomes). These have meant that the Ministry has needed to find savings of £150 million more than was originally envisaged.⁹ In addition, longstanding issues such as the large liabilities carried by the Criminal Injuries Compensation Authority will continue to have a noticeable impact on the Ministry's finances.¹⁰ The Ministry's current plan is to make 60% of the required savings through efficiency savings. It plans to achieve the remainder through a reduction in

2 Q75

3 Q19

4 Q72

5 Q76

6 Q93

7 Q56

8 Q49

9 Q75

10 Q84

demand for its services, including through policy changes. The Accounting Officer stated the Ministry was focused on achieving greater savings in particular in prisons and probation, where it spends around half of its money, and that the Ministry was also making use of competition to drive savings.¹¹

2 Management of Income

5. The Ministry collects substantial amounts of income through fees, fines and confiscation orders. The amount of fines collected has grown in recent years, but has failed to keep pace with the volume of impositions, such that the current outstanding balance is now over £600 million.¹² There has also been a startling growth in the level of confiscation orders outstanding, with over £1.3 billion outstanding by the middle of 2011-12.¹³

6. There has been no progress in recent years in increasing the proportion of court costs recovered through fees. To achieve full cost recovery, the Ministry either needs to increase the amount it collects, reduce costs, or balance the two. Yet the proportion of costs recovered actually fell in 2010-11 due to a reduction in the volume of cases against a relatively stable cost base.¹⁴ At present fees for civil court services recover only 80% of the associated costs.¹⁵ This 20% shortfall meant that the Ministry spent over £120 million more than was recovered through fees, after taking into account fee remissions.¹⁶

7. The Ministry admitted to us that the current fee structure was not rational.¹⁷ Fees are driven by the law under which they are collected, and there are, in total, 330 separate fees charged.¹⁸ This complexity, combined with the Ministry's limited understanding of how court users might react to changes in fee levels, makes it very hard for the Ministry to make informed decisions about how to change fee levels to recover more in the way of costs. For the moment the Ministry is restricted to raising some court fees in line with inflation, but even here this is not wholly within its remit, as changes to some fees are subject to public consultations or parliamentary scrutiny.¹⁹ Trying to move fees for individual services to full cost recovery is also not practical in some areas: witnesses gave the example of private family cases where full cost recovery would require an almost ten-fold increase in the fee rate.²⁰

8. The Ministry's aim is to set fee levels based on the type of service that the user receives. This would mean, for example, that civil matters would be much less expensive if dealt with pre-court, compared to when a hearing is required. Two clear benefits of this approach are that fees should be more consistent with underlying costs, and it should encourage more efficient behaviour, in cost terms, from users of legal services. The Ministry is currently trying to reduce the costs of delivering these services, which if successful will reduce any required increases in fees.²¹ The Ministry aims to have fewer fees

12 C&AG's report, Figure 5

13 Q99

14 Q85

15 Q85

16 C&AG's report, Figure 4

17 Q87

18 Q88

19 Q90

20 Q90

21 Q90

with each covering a wider variety of services, and to achieve full cost recovery by 2014-15.²² Rapid progress will be necessary in the next three years to achieve this.

9. The amount of money outstanding from fines imposed by courts continues to grow, and now stands at over £600 million. The value of impositions has increased year-on-year since 2006-07, and in 2010-11 amounted to £413 million.²³ Not every fine that is imposed is still being pursued. In some cases the court later decides to withdraw the fine, for example, because another penalty is feasible and more appropriate. In 2010-11 £62 million of fines were legally cancelled in this way.²⁴ But even where an offender might still in theory be pursued, the Ministry also writes off significant amounts in accounting terms when it considers that there is little prospect of recovery. This amounted to another £50 million of fines in 2010-11,²⁵ meaning that the actual amount collected that year was considerably less than that imposed.

10. There has also been a dramatic increase in the value of confiscation orders outstanding, from just over £500 million owed at the end of 2006-07 to over £1.25 billion four years later.²⁶ The Ministry's view, however, is that 60% of this amount is very unlikely to be collected, as the assets concerned are either abroad or very well hidden.²⁷ There is a clear benefit in maintaining these orders as live as they limit the ability of criminals to move any proceeds of crime back to the United Kingdom.

11. The muddled nature of the accountability arrangements for confiscation orders presents real challenges to sensible administration. While the Ministry ultimately holds the liability for these debts, it is only responsible for the collection of a small amount by value: less than 20%. The Accounting Officer told us that the Ministry recovered on average 68% of the value of the orders for which it held collection responsibility, but admitted to us that this was largely because they were mainly responsible for lower value orders which are often much easier to collect than high value orders, where typically the offenders concerned are more likely to hide assets abroad.²⁸ Such orders are more often the responsibility of the Serious Fraud Office and the Crown Prosecution Service.²⁹ The Ministry has been involved in setting up a cross-Government board, chaired at Ministerial level, to discuss these issues and consider what appropriate action would be. Rapid progress will be required to prevent the level of outstanding balances spiralling yet higher.

22 Q93

23 C&AG's report, Figure 5

24 Q96

25 Q96

26 Q99

27 Q99

28 Q100

29 Q100

3 Reporting to Parliament

12. Despite improvements in other areas, the Ministry again failed in 2011 to produce its accounts before the July Parliamentary recess. Furthermore, the accounts for the Legal Services Commission again received a qualified audit opinion, and the Ministry was unable to produce sufficient audit evidence for the Comptroller and Auditor General to provide an opinion on the new HM Courts Service Trust Statement accounts.

13. The Ministry set out a number of reasons to explain why its resource accounts were late. These included timing difficulties in accounting for probation trusts in the National Offender Management Service,³⁰ late completion of accounts for 2009-10 leading to a late start to the process for 2010-11,³¹ reliance on operational rather than financial systems to produce relevant data³² and the audit committees in both the Ministry and the National Offender Management Service failing to challenge the assurances they were being given sufficiently robustly.³³

14. The Accounting Officer apologised to the Committee at the time when the accounts missed the deadline and again during the hearing, stating that the failure was “lamentable”.³⁴ However, he was not willing to commit at this stage of the year to achieving pre-summer recess delivery for the 2011-12 accounts, or even those for 2012-13.³⁵ The Ministry’s current proposals include undertaking a dry run of the accounts production process for the first nine months of 2011-12.³⁶ Following this exercise, the Accounting Officer intends to update the Committee in May on whether pre-recess delivery will be possible.³⁷

15. It will be particularly difficult for the Ministry to achieve timely delivery of accounts in 2012 due to the new requirement this year to consolidate the accounts of the Legal Services Commission. In recent years, the Commission’s accounts have been both very late and erroneous enough for the Comptroller and Auditor General to qualify his audit opinion. The Ministry told us that much work had been put into improving the management of finances at the Legal Services Commission.³⁸ The evidence for this included a reduction in the estimated level of error on the accounts from £75 million to £50 million, although this was still too high for the accounts to receive a clear audit opinion. The Ministry also stated that its oversight of the Legal Services Commission was much more robust³⁹ and it was being managed similarly to the arrangements for a fully-fledged Executive Agency, in advance of its change to this status in 2013. Nonetheless it is clear that the scale of the

30 Q7

31 Q4

32 Q29

33 Q3

34 Q69

35 Q70

36 Q27

37 Q6

38 Q9

39 Q16

challenge at the Commission remains very high. In order to meet this year's timetable, the Commission will need to bring its accounts delivery forward by four months and ensure the errors are sufficiently small not to impact on the Ministry's accounts.⁴⁰

16. For the first time in 2010-11 the Ministry has produced a Trust Statement for income collected by HM Courts Service which, amongst other requirements, must account for the amounts owing to it through fines and confiscation orders. However, the Comptroller and Auditor General disclaimed his opinion on the statement as the Ministry was not able to produce auditable data to support the accounts. The Ministry explained that this was because Libra, the operational system used for managing these assets, could not produce summary level accruals data.⁴¹ The Ministry and the National Audit Office are exploring options to provide sufficient evidence for the Comptroller and Auditor General to be able to reach an opinion on the Trust Statement for 2011-12, but it is by no means certain that this will be possible.⁴²

40 Q9

41 Q35

42 Q38

Formal Minutes

Monday 12 March 2012

Rt Hon Margaret Hodge, in the Chair

Mr Richard Bacon
Jackie Doyle-Price
Matthew Hancock
Meg Hiller
Fiona Mactaggart

Austin Mitchell
Nick Smith
Ian Swales
James Wharton

Draft Report (*Ministry of Justice Financial Management*) proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 16 read and agreed to.

Conclusions and recommendations 1 to 6 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Seventy-fifth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Wednesday 14 March at 3.00pm]

Witnesses

Monday 16 January 2012

Page

Sir Suma Chakrabarti KCB, Permanent Secretary and Clerk of the Crown in Chancery, **Ann Beasley**, Director General Finance, Ministry of Justice, and **Peter Handcock**, Chief Executive, Her Majesty's Courts and Tribunals Service

Ev 1

List of printed written evidence

- | | | |
|---|--|-------|
| 1 | Ministry of Justice | Ev 17 |
| 2 | Administrative Justice and Tribunals Council | Ev 17 |

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2010–12

First Report	Support to incapacity benefits claimants through Pathways to Work	HC 404
Second Report	Delivering Multi-Role Tanker Aircraft Capability	HC 425
Third Report	Tackling inequalities in life expectancy in areas with the worst health and deprivation	HC 470
Fourth Report	Progress with VFM savings and lessons for cost reduction programmes	HC 440
Fifth Report	Increasing Passenger Rail Capacity	HC 471
Sixth Report	Cafcass's response to increased demand for its services	HC 439
Seventh Report	Funding the development of renewable energy technologies	HC 538
Eighth Report	Customer First Programme: Delivery of Student Finance	HC 424
Ninth Report	Financing PFI projects in the credit crisis and the Treasury's response	HC 553
Tenth Report	Managing the defence budget and estate	HC 503
Eleventh Report	Community Care Grant	HC 573
Twelfth Report	Central government's use of consultants and interims	HC 610
Thirteenth Report	Department for International Development's bilateral support to primary education	HC 594
Fourteenth Report	PFI in Housing and Hospitals	HC 631
Fifteenth Report	Educating the next generation of scientists	HC 632
Sixteenth Report	Ministry of Justice Financial Management	HC 574
Seventeenth Report	The Academies Programme	HC 552
Eighteenth Report	HM Revenue and Customs' 2009-10 Accounts	HC 502
Nineteenth Report	M25 Private Finance Contract	HC 651
Twentieth Report	Ofcom: the effectiveness of converged regulation	HC 688
Twenty-First Report	The youth justice system in England and Wales: reducing offending by young people	HC 721
Twenty-second Report	Excess Votes 2009-10	HC 801
Twenty-third Report	The Major Projects Report 2010	HC 687

Twenty-fourth Report	Delivering the Cancer Reform Strategy	HC 667
Twenty-fifth Report	Reducing errors in the benefit system	HC 668
Twenty-sixth Report	Management of NHS hospital productivity	HC 741
Twenty-seventh Report	HM Revenue and Customs: Managing civil tax investigations	HC 765
Twenty-eighth Report	Accountability for Public Money	HC 740
Twenty-ninth Report	The BBC's management of its Digital Media Initiative	HC 808
Thirtieth Report	Management of the Typhoon project	HC 860
Thirty-first Report	HM Treasury: The Asset Protection Scheme	HC 785
Thirty-second Report	Maintaining financial stability of UK banks: update on the support schemes	HC 973
Thirty-third Report	National Health Service Landscape Review	HC 764
Thirty-fourth Report	Immigration: the Points Based System – Work Routes	HC 913
Thirty-fifth Report	The procurement of consumables by National Health Service acute and Foundation Trusts	HC 875
Thirty-seventh Report	Departmental Business Planning	HC 650
Thirty-eighth Report	The impact of the 2007-08 changes to public service pensions	HC 833
Thirty-ninth Report	Department for Transport: The InterCity East Coast Passenger Rail Franchise	HC 1035
Fortieth Report	Information and Communications Technology in government	HC 1050
Forty-first Report	Office of Rail Regulation: Regulating Network Rail's efficiency	HC 1036
Forty-second Report	Getting value for money from the education of 16- to 18-year olds	HC 1116
Forty –third Report	The use of information to manage the defence logistics supply chain	HC 1202
Forty-fourth Report	Lessons from PFI and other projects	HC 1201
Forty-fifth Report	The National Programme for IT in the NHS: an update on the delivery of detailed care records	HC 1070
Forty-sixth report	Transforming NHS ambulance services	HC 1353
Forty-seventh Report	Reducing costs in the Department for Work and pensions	HC 1351
Forty-eighth Report	Spending reduction in the Foreign and Commonwealth Office	HC 1284
Forty-ninth Report	The Efficiency and Reform Group's role in improving public sector value for money	HC 1352
Fiftieth Report	The failure of the FiReControl project	HC 1397

Fifty-first Report	Independent Parliamentary Standards Authority	HC 1426
Fifty-second Report	DfID Financial Management	HC 1398
Fifty-third Report	Managing high value capital equipment	HC 1469
Fifty-fourth Report	Protecting Consumers – The system for enforcing consumer law	HC 1468
Fifty-fifth Report	Formula funding of local public services	HC 1502
Fifty-sixth Report	Providing the UK's Carrier Strike Capability	HC 1427
Fifty-seventh Report	Oversight of user choice and provider competition in care markets	HC 1530
Fifty-eighth Report	HM Revenue and Customs: PAYE, tax credit debt and cost reduction	HC 1565
Fifty-ninth Report	The cost-effective delivery of an armoured vehicle capability	HC 1444
Sixtieth Report	Achievement of foundation trust status by NHS hospital trusts	HC 1566
Sixty-first Report	HM Revenue and Customs 2010-11 Accounts: tax disputes	HC 1531
Sixty-second Report	Means Testing	HC 1627
Sixty-third Report	Preparations for the roll-out of smart meters	HC 1617
Sixty-fourth Report	Flood Risk Management	HC 1659
Sixty-fifth Report	DfID: Transferring cash and assets to the poor	HC 1695
Sixty-sixth Report	Excess Votes 2010-11	HC 1796
Sixty-seventh Report	Whole of Government Accounts 2009-10	HC 1696
Sixty-eighth Report	Ministry of Defence: The Major Projects Report 2011	HC 1678
Sixty-ninth Report	Rural payments Agency – follow up of previous PAC recommendations	HC 1616
Seventieth Report	Oversight of special education for young people aged 16-25	HC 1636
Seventy-first Report	Reducing costs in the Department for Transport	HC 1760
Seventy-second Report	Services for people with neurological conditions	HC 1759
Seventy-third Report	The BBC's efficiency programme	HC 1658
Seventy-fourth Report	Preparations for the London 2012 Olympic and Paralympic Games	HC 1716
Seventy-fifth Report	Ministry of Justice Financial Management	HC 1778

Oral evidence

Taken before the Committee of Public Accounts on Monday 23 January 2012

Members present:

Margaret Hodge (Chair)

Mr Richard Bacon
Jackie Doyle-Price
Matthew Hancock
Chris Heaton-Harris
Meg Hillier

Fiona Mactaggart
Austin Mitchell
Nick Smith
Ian Swales
James Wharton

Amyas Morse, Comptroller and Auditor General, NAO, **Gabrielle Cohen**, Assistant Auditor General, NAO, **Martin Sinclair**, Assistant Auditor General, NAO, **Aileen Murphie**, Director, NAO, and **Marius Gallaher**, Alternate Treasury Officer of Accounts, were in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

Ministry of Justice Financial Management Report 2011 (HC 1591)

Examination of Witnesses

Witnesses: **Sir Suma Chakrabarti**, Permanent Secretary and Clerk of the Crown in Chancery, Ministry of Justice, **Ann Beasley**, Director General Finance, Ministry of Justice, and **Peter Handcock**, Chief Executive, Her Majesty's Courts and Tribunals Service, gave evidence.

Q1 Chair: Welcome, and a happy new year. I think we were supposed to do this at the end of last year, so it has been slightly delayed. If I can start the questioning, the general thrust of the NAO Report is that you have been doing a lot of work and things are getting better. As Committee members, we acknowledge that and we will do so in our Report. Then there is a “but”. It just struck me when I was reading it that you promised us last year you would get your accounts in on time—you have failed. Worse than that, there is a sentence somewhere—on page 22, paragraph 2.24—referring to the “accounts production process starting late”. I have to say to you that, having given that commitment, you would have thought that somehow you would have got your machine to do its work on time. You did not get them in on time. You have got your accounts qualified for the third time, because of the Legal Services Commission.

Sir Suma Chakrabarti: The LSC accounts were qualified; not the consolidated ones.

Q2 Chair: Well, that is part of your responsibility. Most worrying to me was that you had a disclaimer issued on the Courts and Tribunals Service. If you were the chief executive of a plc and that happened, all hell would break out and there would be huge anger about all this. While your processes may have improved—and it reads to me like a pretty processy Report—when you look at the outcomes, it is pretty shocking. I do not know, Suma, if you want to comment on that.

Sir Suma Chakrabarti: May I comment, first of all, that I hope we will have some time to discuss the improvements made? The Report does say, in very clear terms—

Q3 Chair: Okay. Let us come back to that. You know that what I like is answers to the questions we ask. Let us have answers to the questions we ask.

Sir Suma Chakrabarti: Fine, but it is quite important that we get on to that as well. In terms of the three points you made, we will take those in turn, shall we? The accounts were late, and I am absolutely clear in my apology to this Committee.

Chair: You gave an apology last year.

Sir Suma Chakrabarti: I wrote to you in July as soon as I knew they were going to be late and apologised unreservedly. The Ministry takes accounts production very, very seriously and takes our PAC recommendations very seriously. We have a very good track record with PAC recommendations actually, so I am really not at all happy that this happened. As you know, we immediately had an independent investigation as to why it happened, because I wanted to learn the lessons of what happened. We can go into the detail of that because it is quite important to understand those lessons. There were technical issues, which Ann will cover; there were some staffing issues, which we dealt with subsequently; and there were some governance issues as well, which the NAO quite rightly alight on.

In terms of the governance issues that I have been personally focused on since that happened, basically, the NOMS audit committee and the main audit committee did not challenge sufficiently during the process. In other words, they were accepting of assurances given, if you like, during the process about the NOMS accounts and them being on time; but, they were not. Until early July, the NAO, ourselves and the main audit committee thought that the accounts would be on time.

Q4 Chair: So why do we have this sentence stating that the accounts production process started late for 2010–11? Often when there are things that are a bit contentious, the NAO tends not to emphasise them, but here it just says that the process started late, which sounds daft to me. If I were running the show and I knew that, last year, I was the only Department that did not get them in on time, I would have pulled out all the stops to get them in on time this year.

Sir Suma Chakrabarti: Yes. Do you want to answer the exact process point on that, Ann?

Ann Beasley: On the reference in the NAO report, having talked to the auditors, my understanding is that because we submitted our accounts for 2009–10 late—they were not submitted until September 2010—that put us behind on the process. It was not that we—

Q5 Fiona Mactaggart: Is the same going to happen next year?

Ann Beasley: There are other issues that will impact on the 2011–12 accounts that we can come to.

Q6 Chair: You should answer that question. Obviously, if you are in a position where you cannot start next year because you have not finished the year before, you have got to break that cycle. Fiona has asked a very pertinent question. We will come back to the other issues that I raised at the beginning.

Sir Suma Chakrabarti: Okay. On 2011–12, we had a meeting with our audit committee independent non-executives last week, at which the NAO was also present, as was I and Ann. A joint decision was made that we will not meet the clear line of sight timetable, which is the end of June—it is an earlier timetable this year—because the problems with NOMS, particularly with LSC, getting its accounts in on time will not allow us to meet the end of June deadline. That is a month earlier than last year.

On whether we get in by pre-recess, I would say that we have a lot of work to do to do that and I am not willing to commit to that until we have done that work. That is agreed with the NAO. We have to test a number of things. We have what is called a quarter 3 hard close coming up. We will know during April, and in early May I plan to write to the Chair to say whether we will meet the pre-recess deadline or not, but I cannot commit to that today.

Q7 Chair: You may agree it with the NAO, but as the Committee that is responsible and answerable to Parliament and the public, I am saying that it is not acceptable. If you are in this thing, at some point, you have to put in the resources to get yourself out of this cycle where you cannot start next year because you have not finished this year. Somebody has got to break the cycle.

Ann Beasley: Would it help to explain the specific issues that make the accounts timetable for 2011–12 particularly complex? One of the issues is that, within the National Offender Management Service, group accounts have to be produced. It is unusual as an executive agency across Government in that it has to produce group accounts and it consolidates 35 probation trusts that are non-departmental public

bodies into its accounts. That drives extra time in the process.

Q8 Chair: We know this. It is not something new. You should build into your process time to enable you to do that. It is not a sudden unknown.

Ann Beasley: It is not a sudden unknown, but they are reliant on information that comes from the local authority, which operates to a different timetable. That is what drives out the timetable for NOMS. We have done a lot of work with the Audit Commission to try to make that information available earlier, but that is what pushes out the timetable for NOMS. The other issue is that for the first time in 2011–12, under the clear line of sight rules, we will need to consolidate the Legal Services Commission accounts into the MOJ accounts. Previously, because it was a non-departmental public body, they just went through as grant in aid and we did not have to wait for the Legal Services Commission accounts before we could produce MOJ accounts. For the first time, for 2011–12, we will have to consolidate them.

Q9 Chair: But you know that, don't you? You know that.

Ann Beasley: We do know that, and we have been working very hard, following our appearance last time, to produce better accounts for the Legal Services Commission. In 2009–10, it laid its accounts at the end of November, and we were able, with a lot of work and a lot of co-operation from the NAO, to pull that forward by a month in 2010–11. In order to meet a pre-recess deadline, however, we would have to pull the Legal Services Commission forward by four months on its performance last year. Some of that is not just a question of resources; it is a question of waiting. When we send out for information on some of the testing work, we have to get replies back. It is not just something where you can throw lots of resources at it and make it happen more quickly. Inevitably, the eventual solution will be some new, proper case management systems that have accounting functionality within them, but at the moment we do not have that.

Q10 Chair: I do not find that acceptable.

Amyas Morse: I must say though, Chair, that we have been involved in this discussion, because all the major Departments are facing this and some have more severe technical challenges getting it done than others. I must say that the MOJ has difficult challenges; I think what Ann Beasley is saying is quite accurate. Our concern has been, as I said to you privately, in working with the MOJ that if it can realistically get it done before the House rises, that is great, but if it does so afterwards, that is a pity but it is still within the statutory deadline. It is worth remembering that that deadline is not until the end of the calendar year.

If it is possible for the MOJ to do it, it should do it. If, however, there is a judgment that it is really not feasible to do this—that is a decision for the Department to make—and it becomes clear that it cannot be done against that deadline, trying to just go forward with a higher probability of failure, and putting a lot of resource into something that will not

23 January 2012 Ministry of Justice and Her Majesty's Courts and Tribunal Service

be successful, is not something that we would, for our part as auditors, regard as particularly desirable or as a sensible use of public resources. We are very much involved in this discussion. That does not mean that we make the decisions, but we are very much in the discussion, and the account that you are hearing of the difficulties is something we recognise, as far as our information is concerned, as being accurate.

Chair: It may be accurate, but it is not acceptable.

Q11 Meg Hillier: I have the Hackney law centre in my area, as well as a citizens advice bureau and solicitors locally in receipt of legal aid, and this is the sort of standard that is being set by the Department responsible. We are seeing legal aid cuts, and I will give you some figures. It is all very processy, but out there on the ground the consequences are severe if those people or organisations do not deliver financially. I cannot see any sanctions on the MOJ or the agencies, however, and I wonder whether there are any sanctions on the Legal Services Commission.

I want to give you some figures. I have been looking at some of the work that the Law Society and King's College have done on legal aid, because it is a big issue in my area. You talk about £350 million of savings claimed by the Ministry of Justice, but according to the Law Society's work, "most of the claimed savings have so little data or evidence underpinning them that there can be no confidence they will be achieved." Given what we have just heard, Madam Chair, that seems to be backed up. On legal aid cuts, the Law Society's report states: "The MoJ admits that it does not have evidence to support its position in 15 separate statements in the impact assessments published with the Bill. The same impact assessments include 30 admissions by the MoJ that it is speculating on the likely effects of its proposals." The impact on the ground is that organisations lose out—in fact, some of them will close down—but what is the impact on the Legal Services Commission of not getting its accounts in order?

Sir Suma Chakrabarti: I can talk about the impact assessment as well, if you would like me to, but on the Legal Services Commission's accounts, they have improved. If you look at the testing errors, there were more than £70 million over a year and a half ago, and they are now down to £50 million. They will be down further this year to between £30 million and £50 million, I guess, based on the testing that they have done to date. That is still not good enough in our view, and it needs to come down further still. There will be a value-for-money issue about the investment that might be required to bring those numbers down further.

The Commission have done a lot of work with providers, including the Citizens Advice Bureau, given that many of the claims that came in were actually wrong, which is what caused some of the errors. They have reduced those errors, particularly among the providers, in the past year. That is actually very good work and that is why the CAG commended the work when he wrote to them in the management letter. There is still a long way to go, but Ann's basic point was that trying to get their accounts four months

earlier than they are currently producing them is an heroic assumption.

Q12 Meg Hillier: When will it be right? It does not give any certainty to those providers or to my constituents, many of whom will not get legal aid because of the change in policy, but nevertheless some are entitled.

Sir Suma Chakrabarti: They are still getting their legal aid on time.

Q13 Matthew Hancock: There is a question here in that we are going from a position where accounts were both qualified, or in one case worse, and late. From your replies and the replies of the comptroller, it seems to me that the question is, can we make them more accurate and more on time? There is a trade off between the two. I understand why, if you do not think that you can realistically get them on time this year, without loss of accuracy, you might want to go for accuracy and deal with lateness in time. How do you deal with that trade-off? Where we want to get to is where your accounts are not qualified—the Department and all the subsidiaries—and are delivered on time. If you keep playing the trade-off, we will never get there. How can we ensure that we nail both the problems?

Sir Suma Chakrabarti: We do not wish to play the trade-off. That trade-off is there and has been in the past. Clearly, the Department's accounts have not been qualified. It is the LSC's accounts—

Matthew Hancock: Even so, you are responsible for the LSC.

Q14 Fiona Mactaggart: It is responsible. It is an executive agency, so it will affect the Department.

Sir Suma Chakrabarti: It is an NDPB, actually. It will become an agency.

Fiona Mactaggart: That is what I mean, and will that not affect the Department's accounts?

Q15 Matthew Hancock: It is about to become one.

Sir Suma Chakrabarti: In April next year, and therefore the game plan is to keep trying to improve the LSC's accounting, and a lot of work has gone into that, as Ann said. I am pretty hopeful that within a couple of years, it will be in much better shape, but it was in very bad shape two years ago. We put in new management and we are working on the systems to get it in better shape.

Q16 Matthew Hancock: What exactly have you done to improve it? We were told six years ago that the problem needed to be sorted.

Sir Suma Chakrabarti: We have done a number of things. I will talk about the changes in management if you like and Ann can talk about the systems that we have changed. Two years ago, we discussed the changes in management in closed session, which you will know about. We changed the accounting officer and put in a new one. She made a major start in terms of getting different people in, particularly in the finance function, which I think is the most worrying area of the LSC. We have a very good finance director on secondment from the MOJ, who became the

interim chief executive in the autumn—he has taken over. A new chief executive will start in about a month. We have made quite a lot of changes in performance monitoring at the LSC, and in fact the Ministry is much more closely involved in the monitoring of the LSC's performance than it ever was before, in the run-up to agency status, for exactly that reason. It is not formally a shadow agency, but we are operating almost in that way now for those reasons. At the same time, a lot of investment has been going into the financial management systems as well. Do you want to say something, Ann?

Chair: Can we just go back to Meg's point? That is all very helpful, but the point that Meg is making—help me if I am wrong—is that if everything you do is late and you do not understand your underlying costs, which you still do not, as laid out in the Report, you end up having to cut front-line services due to lack of knowledge and lack of control. All the things about accounts not being on time, getting them qualified and disclaimers—I know that we want to come back to disclaimers—are about lack of control over the money. If you do not have control over the money or knowledge of your costs, you end up cutting very critical services, which are often absolutely important to the poorest in our community. I think that is what Meg was getting at. We will come to legal aid and other issues later. Criminal injuries compensation might be another issue. There are whole areas of your budget that you are forced to cut because of your lack of knowledge.

Sir Suma Chakrabarti: If you recall last time around, there was quite a long discussion about whether we actually knew our costs. We have speeded up the work that we have done since, and we are in much better shape on the cost side than we were, and the NAO report reflects that.

Q17 Chair: But you do not know how much is spent. As I understand it, you now have a framework in which you know what should be spent, but somewhere in the report it says that you do not know the costs of your prisons. You do not know. NOMS does not know.

Sir Suma Chakrabarti: It does not say that actually.

Q18 Chair: It does. I will find it for you, or maybe someone will help me to find it.

Aileen Murphie: If you look at paragraph 3.6 in part 3, that covers the “specification, benchmarking and costing programme” of NOMS.

Sir Suma Chakrabarti: Yes. It says quite clearly: “Specification work is over 90 per cent complete”. That was when the NAO did their fieldwork, and it is now 100% complete. It was 100% complete at the end of November.

Q19 Chair: You know what it should cost. Paragraph 3.6 also says: “The National Offender Management Service is also undertaking further work to identify how much the services actually cost.” Later on, it states: “Progress in estimating what services should cost is also well advanced but more work is required to calculate the actual cost of services, particularly in prisons.” It then goes on, quite rightly, to say that the work could contribute to “better financial management

and lead to front-line cost savings,” so that you do not do the cuts. We agree with that.

Sir Suma Chakrabarti: We have the specifications. If you remember last time, we had a discussion and we did not have all the specifications. I remember a particular discussion with Mr Handcock around that. We now have them all. They are given to each prison governor, who is then asked, “Why aren't you beating the benchmark? Where are you on your actual costs against the benchmark?”

I will give you an example. Last time, I recall your asking about Pentonville versus Wandsworth, and we can give you the data now. We know that Pentonville is 10% less than the benchmark costs, and Wandsworth is 6% less, so a good question to ask the Wandsworth governor is, “How are you going to get down to the Pentonville numbers?” That is the sort of thing that is actually happening already. I met with a bunch of prison governors last week, and they are all using the cost data much more than they ever did before, so that has already changed.

Similarly, in the Court Service, I can give an example from London magistrates court, where we use the activity-based costing that Peter has to actually model against the current work load and that shows that they were overstaffed by about 60%, so in order to save front-line services—

Q20 Meg Hillier: Per cent?

Sir Suma Chakrabarti: Sorry, 60 people. Therefore, that helped Peter in designing what the budget should be for the London magistrates court. It is already being used in exactly that way.

Q21 Ian Swales: The amount of work required here obviously needs a significant amount of resources, and I want to ask Miss Beasley something about her role in all of this. Your job title is director-general, finance, yes?

Ann Beasley: And corporate services.

Q22 Ian Swales: Okay. It just says “finance” on here. From reading your CV, you clearly have a large number of other activities, including—among many other things—operational delivery of shared services for NOMS. What proportion of your time do you give to the financial aspects at director level?

Ann Beasley: I would estimate that probably half my time is spent on finance.

Q23 Ian Swales: Half your time. This is an organisation that, according to the report, employs 90,000 people and has a money value of £9.7 billion. Given the amount of change that is required, do you think that that is sufficient resource at the top of the organisation for the financial aspects?

Ann Beasley: I would have to say yes, but I guess the question is probably more for Suma.

Sir Suma Chakrabarti: There are finance directors in all the major parts of the organisation. Again, another recommendation from last time around was concerned with how we can ensure that the arm's length bodies all have sufficient financial grip.

23 January 2012 Ministry of Justice and Her Majesty's Courts and Tribunal Service

Q24 Ian Swales: Do you have qualified accountants in all of these?

Sir Suma Chakrabarti: Yes, we have.

Q25 Ian Swales: Do you know how many there are in total in your organisation?

Ann Beasley: Not off the top of my head.

Sir Suma Chakrabarti: We can send you a table afterwards, but we do have qualified accountants.

Q26 Ian Swales: Approximately how many?

Ann Beasley: It must be more than 100

Q27 Ian Swales: You mentioned earlier that you were doing a quarter 3 hard close, so that is to the end of December. When are you doing that?

Ann Beasley: Obviously, we are doing that now. We would expect to have produced the results by mid-February and then to submit them to the NAO for audit.

Q28 Ian Swales: What are you learning from that process? If you are doing it by mid-February, what are you learning while going through it that is going to help you to improve the end-year close?

Ann Beasley: The kinds of issues that affected us last time were things such as the non-current assets within the National Offender Management Service. We have done some work on that. In fact, the NAO suggested to us that we produce that note quarterly, which we are now doing, but it will identify any issues, in the first nine months of the year, if our asset registers and the balance sheet are not up to date. Equally, there are issues around how we treat some of our outsourced contracts for things like prisoner escort contracts. It will give us an opportunity to bring those up to date, and I guess it also tests the process.

Q29 Ian Swales: If you were a global financial organisation—you would be a very large one if you employed 90,000 people and had a £9.7 billion turnover—you would still be doing your accounts in probably a month or so to report to the outside world. Have you learnt anything or are you doing any benchmarking more widely around accounting, particularly with the private sector for example, on how they can produce international accounts from hundreds of subsidiaries in a third of the time of the work you are doing? Is there anything you can learn from that?

Ann Beasley: The main thing they have is, in many cases, better underlying systems. Some of the difficulties and some of what drives the lateness of our accounts is the fact that we are reliant, in many cases, on operational IT systems. In Peter's world, quite a lot of the data we produce are based on real-time operational systems. Similarly, that is the case in the legal services world. If you were a FTSE 100 company, you would have invested considerable amounts of money in making sure that your IT systems had absolutely up-to-date financial information, but that would be more critical to your business, because you would be making daily decisions on what you were doing. That is not the kind of decision that we make in the public sector.

Q30 Ian Swales: Are you saying that having real-time operational systems is part of the problem? Is that what you're trying to say?

Ann Beasley: If you have real-time systems, partly what you need in order to produce financial accounts is to be able to close the system, so you can say on a particular day that this is exactly where you were in terms of all the moneys received, spent, and everything else, which is what you have in a finance system. You do not necessarily have that in a case management system, which is designed to say, for example, for an individual fine that has been imposed through a court, how much of that is outstanding. That means that the process to work out how much is owed on a particular day is far more complex in our world than it would be if we had the financial element of those systems.

Ian Swales: I remain to be convinced about that.

Q31 Mr Bacon: May I just pursue that very point? I have been looking at Libra for some years. The Committee took evidence on a report that the NAO produced in 2003, and the then permanent secretary of what was the Department for Constitutional Affairs gave evidence to us and mentioned it in 2006. You said that you do not have that degree of information available in a case management system, in the way that you would if it were a financial system.

Libra was a bespoke system and it cost hundreds of millions of pounds. In fact, Alex Allan, when he gave evidence to us five or six years ago, said that it was costing £97 million more than previously thought. The number previously thought was £390 million, for something that was causing huge problems and wasn't working properly. The latest number I have, which is admittedly very old, is £497 million, so it is many hundreds of millions of pounds and it was bespoke. Why was it not designed so that you could keep count? Case management involves managing cases. In a court, one of the key elements of punishment when courts make decisions, if they are not imprisoning people, is levying fines or penalties of some kind. Why was the system not designed in such a way that it could keep count?

Peter Handcock: It was designed and it does keep count.

Q32 Mr Bacon: But not in a way that you can get at. I am sorry, I should rephrase my question. Why was it not designed in a way that could both keep count and be easily accessed, so you could add them up? All Ms Beasley is saying is that you cannot extract information easily. What you described was being able to see how you stand at the end of a day, which you would expect, of course, to be able to do in a financial accounting department, and you would certainly expect to be able to do it in a bank, where you have transactions across counters and electronic transactions around the world. None the less, even though you might not necessarily require that kind of detail, where you have moneys outstanding, would it not be helpful to design a system where you could just see where you stood at any one moment?

Chair: Every firm of solicitors has to produce accounts, which do that. It is not rocket science.

Q33 Mr Bacon: You have to be honest when you are keeping client money separate

Peter Handcock: I will be happy to answer the question. So do we. I can tell you at any time for any one of 2 million separate file accounts exactly how much is owed by that individual.

Q34 Mr Bacon: Yes, but you can't add them up.

Peter Handcock: I can add them up.

Q35 Ian Swales: On that point, what is the information that you are unable to give to the people consolidating the accounts?

Peter Handcock: I will answer an earlier part of the question: since Libra was bespoke, why aren't we able to provide the data in auditable form? That part of Libra was not bespoke; it is a legacy carried forward from the previous system. The reason—as I think you will understand given the evidence you have previously taken on Libra—was a strong desire to limit the escalating cost of Libra. One decision made was not to put in an accrual-based accounting system, because at that point there was no requirement, for example, to produce a trust statement and it was not necessary. It was necessary to have a highly accurate case-management system that would enable us to tell exactly what fine was imposed on a debtor, exactly what the debtor had paid and what the balance was. It was not necessary to couple that to an accrual-based accounting system.

Q36 Mr Bacon: Hang on a minute. The Green Paper on resource accounting, which was basically accrual accounting, came out in 1994. The intention of the public sector to move towards accrual accounting has been widely understood for 16 to 18 years. This was some years later. This NAO report on the Libra project was 2003, nine years after the Green Paper on accrual and resource accounting and budgeting. Wouldn't it have been obvious?

I appreciate your point: you could go into one of 2 million case files and see exactly where it sat at any one moment. That is good news; it is better than not being able to. I find it difficult to believe that it is that difficult to take that piece of information—the exact balance—and add it up.

Peter Handcock: It is not difficult to take it.

Q37 Mr Bacon: Quickly, on a daily basis.

Peter Handcock: It is possible to do it quickly. The difficulty is not that as far as the trust statement is concerned. For example, in order to prove the opening balance of the account, you would have to look at every magistrates court's register in every court in the country—or sample all of those—and you would have to sample a massive amount of data from, for example, police stations, such as fixed penalty notice data, in order to establish that the opening balance of every account was accurate.

There are 2 million cases. What Libra cannot do is produce summary information across those 2 million cases that is auditable. You could perfectly well imagine Libra as if it was just an old-fashioned card filing system, take out every card and rule it off, but

you would be at it for ever. The fact that it is a case-management system means that it simply cannot marshal the data in an auditable format at present.

With colleagues from NAO we are working on how far we might be able to extract that data. When we set out on this process, frankly we did not expect that it would be quite so difficult. It is not anything to do with the accuracy of the record keeping. It is to do with extracting the auditable data in a way that makes them manageable.

Q38 Mr Bacon: When do you think you will succeed in doing that? What sort of deadline can you give us?

Peter Handcock: We are waiting for a further summary of the work that is being done now by our NAO colleagues, which is due to come to us in March, which will begin at least to fill in the gaps for the 2011–12 trust statement. I could not give any guarantee that we will have been able to extract the right kind of auditable data to get a clean opinion on the trust statement for 2011–12. It is an immensely complicated process. The data are so widely scattered that testing is very hard.

Q39 Matthew Hancock: I understand from that answer that the numbers in the individual cases are correct and that is all stored properly, which is reassuring. If you cannot add it up and audit it, how can you guarantee the accuracy of the individual cases?

Peter Handcock: You can add it up. Indeed, at the end of every month we add it up. It is a ruled-off balance, if you like, as if the old-fashioned IT system was a collection of paper ledger cards. What we cannot do is close the system at the end of the month and then guarantee to accrue on the right date, for example, £1.5 million worth of payments that are transiting some part of the system before they are actually posted to Libra. Once the—I don't know—five days or so that it takes all those payments to clear the system has gone by, because Libra is a case management system you cannot run a retrospective account.

Q40 Ian Swales: Tell me why this statement is wrong, because it clearly is. If you set an IT guy—a really good one—working for about three weeks, he could sort out extracting the management data, management information and accounting data, which Ms Beasley needs to add up the accounts. Why is that wrong?

Peter Handcock: We have had IT guys and accountants, including colleagues from the NAO, genuinely working very hard to establish whether we could get it out.

Q41 Ian Swales: What is the problem? It is an IT system with financial information in it. Why can't you get it out?

Peter Handcock: Because the underlying structure of the database and the way in which the thing is programmed does not immediately enable that data to be released, so it becomes a complicated process to get it out.

23 January 2012 Ministry of Justice and Her Majesty's Courts and Tribunal Service

Q42 Matthew Hancock: What language is it? It sounds archaic.

Peter Hancock: Probably Cobol. I am not sure.

Q43 Mr Bacon: That is the extraordinary thing. If it had just cost tuppence ha'penny, we might say, "We understand your system is very cheap; you got it off the back of a lorry and it doesn't do all the things you'd like it to do", but it cost hundreds of millions of pounds.

Peter Hancock: I am sorry, that is not right.

Q44 Mr Bacon: I didn't actually say that you did get it off the back of a lorry. That was a little unfair.

Peter Hancock: The accounting module of Libra was carried forward from the legacy systems. We made a conscious decision, because there was no requirement to do so at the time, not to spend millions of pounds building a new accounting module for Libra.

Q45 Mr Bacon: Do you mean that, when they cancelled the original software supplier and got a completely new one in, they got an off-the-shelf one?

Peter Hancock: When final decisions were made to close down the scope of Libra, complete work on it and roll it out, one of the things it was decided to do to try to contain the escalating costs of Libra was not to replace the accounting model.

Q46 Chair: Can I ask you when you are going to have a system in place that enables you to get the information so that the accounts come in on time and we do not have a disclaimer?

Peter Hancock: To be clear, it was the trust statement that was disclaimed. HMCTS accounts were clean, and indeed were laid early. I think we will have worked through a process that will enable us to get closer to an opinion on the trust statement in the course of this financial year, for last year's trust statement. I hope that that would mean we would have a decent shot at having a clean trust statement for the following financial year.

Sir Suma Chakrabarti: It might be worth explaining the idea we have, which we are working on with our NAO colleagues, for how we might do this without spending enormous amounts of money on the system: the snapshot.

Peter Hancock: Yes, rather than trying to mine the data from the system at year-end, we think it might be possible to take smaller snapshots throughout the year and mine the data from those snapshots. That might give us a better chance of extracting the right auditable evidence. We also need to look again at the functionality of Libra to understand the range of manipulations that it can potentially produce on the data from the underlying software. Actually, if it is more complicated than we thought, we may find ways to run programmes that can get us out more data. If it is less complicated than we thought, it might make audit testing rather easier. For example, if it cannot do anything other than add and subtract, it becomes rather easier to find the right testing regime. So there is still the possibility that we may extract the data from Libra.

We are also beginning to think about plan B. If we find that we cannot get the data out of Libra, are there ways, for example, in which we could close the existing account and move current data to an electronic sales ledger that would give us, if you like, a trust statement divided in half? The old data would gradually fall away from the closed file account and we would, across the space of a couple of years, move to a position of having a good, clean trust statement with up-to-date data.

Q47 Amyas Morse: I want to ask my colleague, Martin Sinclair, to give something on the audit side, if I may.

Martin Sinclair: I entirely endorse the picture Peter Hancock has painted. The fundamental problem is the structure of how the case management system holds the record of fines. There seems to be some possibility of using the snapshot approach that Mr Hancock has described. Although this still requires a fair amount of testing to know that it is a reasonable way forward for 2011–12, we are closely engaged in doing that at the moment.

Longer term, we wait to see what proposals the Department brings forward around the sales ledger idea, to see whether that offers a relatively cheap method to get to reliable figures for the accounts. Otherwise we are faced with a more fundamental revision of the case management system that has been described.

This is a short-term fix. In the first year of the trust statement we had not fully understood the complexity or the barriers that the case management structure left us with when it came to auditing the figures. When we came to look at this, in what would be the normal pattern of the accounts in May, June and July, in effect, it was already too late to get a solid handle on the balance as it stood at the year end. This year, we are endeavouring to do a virtually contemporaneous audit at the year end to be able to verify the balance as a way of moving us through this problem.

Q48 Austin Mitchell: I just want to revert to the point that Meg Hillier made—this parliamentary brief from the Law Society. I think this is the first time I have ever agreed with the Law Society. It makes telling points. Its detailed analysis shows that your impact assessments, published alongside the legal aid Bill, "identified a series of unsubstantiated assumptions...unexplained calculations...no reference to supporting data; and optimistic extrapolation". It also says that the Ministry has admitted, in response to the Justice Committee's report on the Bill, that it would "ideally have liked more information" on the costs of legal aid and the justice system before introducing the Bill. In other words, the cuts to civil and legal aid in the Bill were not the result of any evidence-based assessment. Are these allegations correct?

Sir Suma Chakrabarti: No, they're not. The Law Society clearly does not like the legal aid reforms and it is, of course, right to pursue its agenda. What the impact assessment clearly does do is try to tackle all the direct and indirect costs and benefits, whether to the benefit of those arguing for legal aid reform or

not. It is signed off by the chief economist and by the Minister responsible. I don't believe it was signed off—

Q49 Austin Mitchell: But is that a sufficient basis of evidence for the actual working and costs of the system?

Sir Suma Chakrabarti: No. As a former economist, I have been through it myself since I saw the Law Society's allegations. It does exactly what it is meant to do: it follows Government guidance on impact assessments. It does not attempt to quantify or monetise the costs and benefits of wider economic and social costs, for which there is no data.

Under this Government, it is the same if you look at the impact assessment on welfare reform. Under the previous Government, I can name a heap of impact assessments that I was involved in and know about—from DFT, DCMS, the Home Office—in which the same approach was taken. There was no attempt to monetise costs and benefits for which there was no data. It follows the process laid out by the Treasury in guidance on impact assessments.

Q50 Austin Mitchell: Except that there is no assessment. That is what the Law Society says and it is supported by an independent report from King's College London of the knock-on costs of cuts in this area. For instance, if you are cutting legal aid, it follows that more people will go to jail. If people cannot get a lawyer to represent them, it follows that there will be more personal appearances in court, which take longer, waste more time and are more expensive in the court. There is no assessment of all the knock-on costs that arise from the cuts that you are making.

Sir Suma Chakrabarti: All the downstream costs on which there is agreement and on which there is data are in the impact assessment. On how people might behave in certain situations, there is great disagreement and there is no data. As under the guidance, it does not try to quantify those things.

Q51 Austin Mitchell: Why is your assessment different from that of the Commission on Legal Aid in British Columbia, which said that the costs to the court were increased considerably by personal representation as opposed to representation by a solicitor or a barrister?

Sir Suma Chakrabarti: All I can tell you, because I do not think that I should be answering on the policy aspects of this, is that, in terms of how the impact assessment was carried out, it followed Government guidance, which is across successive Administrations.

Q52 Fiona Mactaggart: Would you be happy then for the National Audit Office to review the impact assessment?

Sir Suma Chakrabarti: I would be happy for anyone to review it and, moreover, to look at it against other impact assessments.

Q53 Fiona Mactaggart: It would be helpful if they could.

Sir Suma Chakrabarti: It is not for me, it is obviously an issue for you and the NAO.

Q54 Fiona Mactaggart: I think that you would have to invite them to do it, wouldn't you?

Sir Suma Chakrabarti: We could ask our Ministers. Our Ministers would have to invite them, not me. The key issue here is: did the impact assessment follow the Government guidance, which has been followed in impact assessments across successive Administrations? Yes, it did.

Q55 Fiona Mactaggart: But one of the things that the NAO says in its report, in paragraph 3.14 is: "The Ministry does not fully understand how changes in fees could affect demand." That is an evidence statement in its report. It seems to me that it is clear that the issue with changes is that one needs to fully understand how something like changes in fees can affect demand—for example, in LASPO, offering everyone mediation who is excluded from family law representation. You know that you do not really know how many people will take it up, because the figures in the impact assessment, as I understand it, have already changed very significantly. Am I right?

Sir Suma Chakrabarti: No. Do you want to talk about fees or do you want to talk about legal aid?

Q56 Fiona Mactaggart: I want to talk about things that you do not know and how you work out an impact assessment. I am using them as an example.

Sir Suma Chakrabarti: You may have me at a disadvantage, but let me have a go. I think that the fundamental issue on any impact assessment is to validate the costs and benefits for which there is data. If there is no data, they should be clearly saying, "I cannot evaluate this bit of it, Minister, we need some more research done or we don't." In the fees case, for example, where there is a direct cost-benefit issue and we do not have the data, it is quite right that we and our Ministers have been saying that we need to do some modelling to find out what the elasticity of demand is, essentially. That is particularly on the family law area—you can see it from the picture here—where there is not full-cost recovery and where the judiciary, ourselves and Ministers would be worried whether, if we increase fees, that will impact on people's access to justice. That is why there has to be some serious modelling done, because that is a direct impact. That is why that work is being done. In the case of the impact assessment on legal aid, I have the impact assessment with me and it is clear and set out in tables what the impacts are with their direct costs and benefits.

Q57 Fiona Mactaggart: Have you discussed the impact on other Departments with them?

Sir Suma Chakrabarti: Yes, we have, including the NHS, which is one of the arguments of the Law Society and King's College. The NHS and the Department of Health fully back the impact assessment and were involved in it. They think that it is a true reflection of the direct costs and benefits, because they see it on the NHS.

23 January 2012 Ministry of Justice and Her Majesty's Courts and Tribunal Service

Q58 Chair: Before we pursue that, there are two other questions of interest to me. Clearly, from the discussion that we have had about your accounts, there are complicated issues. Who are your non-executive directors?

Sir Suma Chakrabarti: There are a number of boards. On the main board, we have four non-executive directors. The lead non-executive director is Jim Leng, who is former private sector with Corus. He is a private sector guy. We then have Dame Sue Street, who was a permanent secretary—you know her well, I think. Then we have Bill Griffiths, who has just joined and is the lead non-exec on the finance side, and is strongly engaged in all this with us, and the fourth is David MacLeod, who is formerly ICI.

Q59 Chair: So, what role did they play with these issues of getting accounts in on time and getting them qualified?

Sir Suma Chakrabarti: It was Bill Griffiths' predecessor, because he has just joined the board. It was Anne Bulford, who is a finance director of Channel 4. She was the lead non-exec and was fully involved, with us and with the NAO in all this.

Q60 Chair: Were they shocked by the disclaimer?

Sir Suma Chakrabarti: I don't think they were shocked by the disclaimer, because they understood it exactly for the reasons that Peter has set out.

Q61 Chair: Okay. Can I ask you something else? Did Richard Douglas play any role in this?

Sir Suma Chakrabarti: In what?

Chair: In supporting you through this. You're the only Department we have had, I think, that has this cocktail of financial issues about getting things done on time, getting qualification and getting disclaimers.

Sir Suma Chakrabarti: Richard Douglas is a great guy. He is, of course, head of the finance profession in Whitehall.

Chair: Quite. That is why I am asking the question.

Sir Suma Chakrabarti: And he is also the finance director of DH, the other Department that did not get its accounts in on time. He has been very helpful, but he is also learning lessons in this process.

Q62 Chair: That says something about his position.

Sir Suma Chakrabarti: No, I think—

Chair: But if he's supposed to be accountable for financial services, if things go wrong across Government, if there's a point in his position—you came to us last year and said, "I'll get them in on time this year," and we are now hearing that you are not even going to get them in on time for next year, and we might, with a bit of luck, fingers crossed, get them in the year after that, and we might, fingers crossed, get the disclaimer issue resolved, but we're not sure we'll get the accounts not qualified for a few years. I know that everyone thinks that this is progress, but it doesn't feel like it to me.

Sir Suma Chakrabarti: I think there is a lot of progress, which is in the report. There is an interesting issue, which is the clear line of sight and how Departments that have these scale, complexity and dependency issues—not just us, but several others—

are tackling it. That is an interesting issue, which Richard is leading the work on in Government. So, there is something worth discussing with the Committee on that.

Q63 Meg Hillier: Given that we have heard about all these problems, would there have been fewer cuts at the front line had the budget been balanced?

Sir Suma Chakrabarti: The budget is balanced.

Q64 Meg Hillier: Not the budget, the accounts being in on time.

Sir Suma Chakrabarti: No, it makes absolutely no difference.

Q65 Meg Hillier: So, you get away with being late, but a small local firm or a legal aid provider would not be able to keep functioning.

Sir Suma Chakrabarti: There is no impact. We still make the payments on time to all the providers.

Q66 Meg Hillier: But if they were to behave in the same way as you did, they would not survive. I have seen law centres go because they have had this problem.

Sir Suma Chakrabarti: But not to do with their accounts being late or on time.

Q67 Meg Hillier: If I were on the board of a law centre and its accounts were regularly late, I would be overhauling the board and getting rid of the senior people and getting new people on there.

Sir Suma Chakrabarti: You may wish to do that, but that is not—

Q68 Meg Hillier: Action would be taken, and I am puzzled still about what action has been taken. When will the accounts be in on time, and when will we have real confidence in them?

Sir Suma Chakrabarti: For 2011–12, I will write to the PAC Chair in early May, to let you know exactly when I expect, with the agreement of the NAO and my audit committee, to produce the accounts.

Q69 Meg Hillier: I am concerned. I have great respect for the civil service. I was a Minister and I had great support. I think there is some real talent, and I am not very popular for saying that. But I am very perturbed that last time we had the promise that the accounts would be in on time, and it has not been kept. Where does the buck stop?

Sir Suma Chakrabarti: I have made a formal public apology here—

Meg Hillier: Which I have to say we appreciate, but—

Sir Suma Chakrabarti: I do not hide behind this. It was lamentable what happened. I do not feel happy about it. We have a good track record, as I say, on PAC recommendations, and 81% of them have been already taken care of. We are way ahead of other Departments. But this was a big one, and I am very sorry we got it wrong. I said that in my letter, and I am saying it again today. I don't enjoy that. We will try to do better, clearly.

Q70 Meg Hillier: Will it get right under your watch, and in which year do you predict that will definitely be?

Sir Suma Chakrabarti: As I say, in May I will be able to tell you about 2011–12, and from that I will learn lessons and so will my colleagues as to whether for 2012–13 we can definitely say yes. I am not going to say that before then, because it would be silly of me to do that. I wish that last year I hadn't made the pledge that we were going to do it, because I didn't know that the problems were quite so serious down the line.

Q71 Meg Hillier: For the taxpayer out there, for my constituents like the woman who came to see me today who had represented herself at a tribunal and lost—whether those things are connected we cannot tell. I did not want to tell her what I was doing this afternoon because she might have broken down at the idea that the Department that was responsible for the decisions about that budget cannot be sure of its financial situation at the right time of year, is not putting its accounts in on time and is not managing its money well.

Sir Suma Chakrabarti: The accounts production process is one thing. We are actually—in terms of financial management, the Report says—doing very much better.

Q72 Meg Hillier: Better?

Sir Suma Chakrabarti: It is for the NAO to judge, but I would say that it is quite interesting that, since this Report came out, several Departments have come to us to ask what we did to turn this round.

Q73 Meg Hillier: That makes me much more nervous, actually.

Sir Suma Chakrabarti: Well, that is exactly what is happening. How have we got to level 4 on the NAO model in two areas? Other Departments are struggling to get there. It is something—some parts of it—to be actually proud of. On the accounts production process, clearly we need to do better.

Q74 Jackie Doyle-Price: I want to bring us on to looking forward, if you like. Given the public spending constraints we are facing, you have got quite a challenging target to meet, and on the basis of the financial information that you of course have, this is going to be challenging. But it is worse than that, isn't it? According to this Report, you have plans to address and meet only half the cuts you have to make, with front-line savings of 10% and back-office function costs reduced by a third. How are you going to meet the entirety of your targets for cuts?

Sir Suma Chakrabarti: Actually, we now have plans that take us all the way through to 2014–15.

Q75 Jackie Doyle-Price: Can you update us, then? According to what we have in the Report, we have front-line savings of 10% and back-office function costs reduced by a third.

Sir Suma Chakrabarti: I can tell you. Efficiency savings go to the heart of the financial management issue, it seems to me. When we agreed this spending

settlement at the end of the spending review, we had, as you know, a different sentencing policy mix. During the course of the year, the Government changed their views on that. They now have a different set of sentencing policies, which are going through in the LASPO Bill. That imposed extra costs on us, because we lost about £100 million-worth of savings from that in 2014–15. If you take the autumn statement—the capping of public sector pay—we lost around another £40 million to £50 million again on that. We had, in the final year, to find another £140 million to £150 million of extra savings.

The good news—it is obviously not great news, but it is good news in terms of financial management—on that is we were able, because of our improved modelling capacity, to come up with all sorts of options for Ministers to consider on sentencing policy, work-load pressures and so on. We were also able to run a new efficiency exercise to come up with savings that would compensate. When the original settlement was agreed with the Treasury, efficiency savings was about 50% of the total; policy and work-load savings were the rest. Now, efficiency savings is 60% of the total. So we are pushing harder on probation and on prisons than we were at the beginning of the process. We are pushing hard on the criminal justice system generally—the joins between the various parts of the system—and pushing much harder on competition policy. We are recognised around the UK as being the most vigorous on competition policy, where we are making major savings through competition.

Q76 Jackie Doyle-Price: Ultimately, what you have to deliver is pretty much demand-led and there are constraints as to how far you can manage that. If we take what happened over the summer last year, for example, that presumably led to a massive increase in your costs. How do you manage the strains in the system to deal with that?

Sir Suma Chakrabarti: Your words are Ken Clarke's and mine in the negotiations with the Treasury. We are demand-led, absolutely. When you have something like the riots during the year, fortunately the system responded very efficiently and very effectively, and we could manage the extra costs within our contingency reserve.

Q77 Jackie Doyle-Price: Do you have a figure for how much that added to your budget?

Sir Suma Chakrabarti: Do you remember that?

Ann Beasley: About £20 million.

Sir Suma Chakrabarti: About £20 million extra this year. Clearly, the sentencing policy issues are very important, because the way we were going to make some savings was obviously to close some of the capacity in prisons, if those policy measures had gone through. They were changed, so some of those savings are not going to be met through closing capacity necessarily, but through further efficiencies instead.

Q78 Chair: Can I just ask about the criminal injuries compensation scheme? We had a very interesting Report on the Whole of Government accounts. It showed—I cannot remember—£15 billion for the potential liability from medical negligence over time,

which was a gobsmacking figure for some of us. What is the figure on criminal injuries compensation? Not the figure in the budget, but the long-term potential liability, accepting that there are child-care cases and things that, I know, go back years and years.

Ann Beasley: There are two elements to criminal injuries compensation. There is what is called the pre-tariff liabilities, which are the children who suffered brain damage and who are now all getting to an age where their claims can be dealt with through the first-tier tribunal. We expect that to cost us this year something in the order of £250 million.

Q79 Chair: Sorry, I must stop you, because I was not asking a “this year” question. What was interesting about the whole of Government accounts, which was the first time we saw it, was that you could look at the overall liability over time, which could be settled in anything of the next—

Ann Beasley: We do not have a complete figure, but we have a figure for what are called the pre-tariff liabilities.

Q80 Chair: Which are what?

Ann Beasley: They are in the order of £350 million, and we expect to resolve them this year and next year.

Q81 Chair: And that is it finished?

Ann Beasley: There are 134 cases that have to be dealt with. We expect to deal with something like 90 this year and the majority of the remainder next year. There may be one or two cases that will go on into subsequent years, but it will be a handful of cases if so. In terms of the ordinary tariff cases, we are now dealing with those far more quickly, which is why we were able to pay more of those off in the 2010–11 accounts. We have halved the backlog of cases; it is now something under 50,000, whereas a few years ago it was around 85,000. We are dealing with those much more quickly as they come through.

Q82 Chair: And the value?

Ann Beasley: The budget for those at the moment is around £200 million a year.

Chair: A year?

Ann Beasley: Yes.

Q83 Fiona Mactaggart: And there is an outstanding liability on the accounts of £770-something million, isn't there?

Ann Beasley: A large part of that will be the pre-tariff liabilities, and there will be an element of work in progress to deal with the—

Q84 Fiona Mactaggart: But you said that £200-and-something million was pre-tariff liabilities? So it is half a billion—

Ann Beasley: About £350 million is the pre-tariff.

Amyas Morse: Our understanding is that as at 31 March 2011 the total liability number is £780 million, of which roughly half are pre-tariff cases. Is that about right?

Ann Beasley: Yes.

Q85 Chair: It does not sound right, but never mind. Let us talk about fees and fines. The fee collection in this year went down as a proportion. I recognise that fees increased, but the proportion you collected, with an aim of going for 100%, went down from 82% to 80%.

Sir Suma Chakrabarti: Okay. I have already talked about the elasticity of demand. We need to do the work on that, because we are concerned to make sure—in particular, family law is an area that we need to investigate.

Peter Handcock: There was a modest fall in fee recovery, and the reason for that is that it is wholly dependent on volume. When you divide the cost of an individual case across a short-term fixed infrastructure, if you get fewer cases you cover proportionately less of the costs. A modest decline in case volumes led us to recover less overall.

Q86 Chair: But—Ian wants to come in—it is the same point that we make time and time again. Accepting the point about elasticity of demand, you accept that fees ought to be 100% recovery. If you do not get the money in on that, you are cutting something else.

Peter Handcock: I agree. It is a high priority for us to do something about our fee structure.

Q87 Chair: So it shouldn't be going down. The graph should be going in the opposite direction.

Peter Handcock: There is a whole range of hugely complicating factors about our fee structure. We would absolutely acknowledge that the present fee structure is not rational and it does not provide us with an opportunity to hit that 100% cost pricing.

Q88 Chair: So what are you doing?

Peter Handcock: I will ask Ann in a minute to say something about the strategy that we are adopting, but I will just illustrate the difficulty. At the moment, I have to operate 330-plus charging points. If we want to model court user behaviour, trying to do so across changes in 330 charging points gives you not a chance of modelling that accurately. It is very hard to predict where—

Q89 Mr Bacon: Are you saying that the Treasury economic model has no chance, then? There are 60 million different decision points there, aren't there?

Peter Handcock: What is really interesting is that we now do—for the first time, simply because the MOJ is now capable of doing some sensible economic modelling—very careful price modelling of what will happen when we change fees; for example, for debt recovery cases. What happens is precisely the opposite of what the economists said would happen, and I do not think any of us would necessarily find that hugely surprising. If it is difficult across that whole business stream—if you subdivide that business stream into 330 goes at trying to model the way that people's behaviour will change, you haven't got a chance. We are pursuing a strategy that will give us a much more rational approach to getting to full cost pricing, which I will ask Ann to say something about.

Q90 Chair: I'll let Ann come in and then Ian wants to ask a question.

Ann Beasley: So our fee strategy following our appearance last time has two elements to it. One is to ensure that we put fees up in line with inflation, where they are not recovering full cost. That is not wholly within our gift, because some of that is subject to public consultations and parliamentary scrutiny, to ensure that fees keep in line with inflation.

We recognise that if we were then to charge the full fee, even inflated, it would cause some real difficulties in some areas. If you look at family cases, for example, private family cases, for a case that currently costs £175, if you were to bridge that gap, you would be talking about £1,600. We recognise that is not sustainable in the first instance.

The other element of our strategy is about reducing our cost, so that eventually, as we put fees up in line with inflation and we reduce our costs, they will meet. We obviously reduce our costs through the work that Peter is doing within the Courts and Tribunals Service to drive efficiency. Some of that is about shared back-office. At the moment what drives the fee is very much the law under which the fee is being collected. We are trying to move to a structure where it depends on the sorts of process that the individual wants to go through. We create the right customer behaviour. If people deal with something on paper, it is cheaper. If they want to go to a hearing, they pay more. That will probably then match the fees more closely to the costs that we incur.

Q91 Chair: But you're not reducing from your 300-plus from the sound of that.

Ann Beasley: The actual fees will depend on a much smaller number of processes, because there will be an admin back-office process, there will be a hearing.

Q92 Chair: Will there be fewer? Are you expecting that?

Peter Handcock: The answer is to have a smaller number of fees covering broader business streams.

Q93 Chair: When?

Ann Beasley: We expect, on our current plan, to bridge the gap on civil and family by the end of this spending review, so by 2014–15.

Q94 Ian Swales: Following on from the Chair's comment about fines, I would like to refer to figure 5, which shows movements in fine amounts outstanding. The light green bar shows £395 million collected or cancelled in the last year, 2010–11. How much of that was cancelled, as opposed to collected?

Peter Handcock: Was that 2010–11?

Q95 Ian Swales: It was 2010–11: £395 million cancelled or collected.

Peter Handcock: The figure for cancellation was £62 million.

Q96 Ian Swales: £62 million was cancelled. Do you know the figure for the previous year, out of £365 million?

Peter Handcock: There are two figures. There is £62 million legally cancelled and a further £50 million of administrative cancellations.

Q97 Chair: Say that again.

Sir Suma Chakrabarti: Peter, do you want to explain the difference between legal and administrative cancellations?

Peter Handcock: Fines are cancelled in two circumstances. They may be cancelled because, for example, an offender who did not pitch up at the original hearing was fined and later did appear, so the court decided some other imposition was appropriate, and cancelled the fine. The second circumstance in which a fine might be cancelled, is if it has been right through the enforcement process and a range of conditions is satisfied, from which it becomes clear that the fine is not collectable.

In the first circumstance, the fine is gone—the legally cancelled fine is gone and off the record—and a different imposition is substituted for it. In the second, even though the fine is administratively cancelled, in effect that is an accounting issue. The penalty remains recorded on the system and if any enforcement action has been taken against a debtor—if an arrest warrant has been issued, for example, as will often be the case—it stays on PNC and, if the individual surfaces, we are after them again.

Q98 Ian Swales: For one reason or another then, £112 million of that figure was cancelled and not collected. I understand the difference.

Peter Handcock: £60 million of that comprises impositions that the judge and the court would never have made if the offender had troubled to turn up.

Q99 Ian Swales: Can I move on to figure 7 and ask some similar questions? Clearly, the outstanding value of confiscation orders rose dramatically over the period of this table from 2007 to 2011. It starts at £500 million and is now at £1.25 billion. I appreciate from the comments on page 30 that the Ministry of Justice is not responsible for much of this collection. However, given the tiny amounts of cancellations shown at the bottom of page 31 in dark blue, do you actually think that these amounts are collectable or should we have a big bad-debts provision against these amounts?

Peter Handcock: They are subject to impairment in the accounts if they appear not to be collectable, so the impact of that is similar, but this is really difficult. If you take the total £1.3 billion outstanding, we know, for example, that some 60% of that is either abroad or so well-hidden that our chances of finding it are fairly slim at present. You could argue, therefore, that when you reach the point at which it is quite clear that those assets are not available, you should have some process like administrative cancellation or some other imposition.

However, there is an argument—and this is really not for me as it is a policy issue—that says that if a confiscation order causes a criminal to have to export their assets and if it deprives them of the opportunity to use those assets to finance further crime in the UK, that is a good thing in itself. It leaves me with an

23 January 2012 Ministry of Justice and Her Majesty's Courts and Tribunal Service

accounting issue, because I periodically get taken to task for not having collected money that is impossible to collect.

Q100 Ian Swales: I understand that qualitative point, but we are here to talk about value for money. You are seriously suggesting that £700 million or so of the figures on your balance sheet is probably not going to appear over time.

Peter Handcock: A significant proportion of that money will not appear unless the offender attempts to bring the money back into the UK or unless the financial investigator finds where it has been hidden. However, the principle is that the offender and the offender's heirs and successors will not have access to that money, and if it surfaces anywhere, we will have it. Were we, for example, to have a policy of cancelling those confiscation orders then that possibility would not exist.

Sir Suma Chakrabarti: As you can see, this is actually a very live policy debate, and I think it is worth updating the Committee on where it has got to. Following the last hearing, when we had the same issue, I think the NAO has done a very good job of showing who is actually responsible for collecting these debts. We are essentially responsible for 16% of this book. Our recovery rate—Peter's recovery rate—is 68%, which is the best of the lot. The SFO and the CPS are responsible for the remainder. They, in particular, have this problem about hidden and overseas assets, because they are essentially responsible for the higher end.

After our last hearing, Ann and I went away and really challenged the whole system—the whole of Government—to sort this out. The Home Office actually leads on the policy for confiscation orders, and we have finally got it agreed that the Home Office will now chair a cross-Government board on this. It will be chaired at ministerial level, because these numbers are, in my view, startling, and it requires some serious work around Government. James Brokenshire will chair that board. They are waiting for this hearing to finish, and the first meeting is, I think, this Thursday. I have agreed it with the Home Office permanent secretary and with the DPP for the CPS that any recommendation that you make in this area will be taken forward by that cross-Government board.

Q101 Ian Swales: Should the numbers be on the Home Office's balance sheet?

Sir Suma Chakrabarti: That is an interesting issue.

Q102 Chair: In the current system, are there incentives or sanctions for the other Departments? It is all Home Office, and the SFO and CPS are both Home Office.

Sir Suma Chakrabarti: CPS is not, but the SFO is.

Q103 Chair: What are the sanctions and incentives for them? You have an incentive, because you come before us and we shout at you.

Sir Suma Chakrabarti: They also appear before you, so that is incentive enough.

James Wharton: We are very nice to them.

Sir Suma Chakrabarti: I do not think that they have noticed.

Q104 Chair: Incentives or sanctions?

Sir Suma Chakrabarti: It seems to me that the sort of debate that Mr Swales and Peter were just having about what to do about the policy is a fundamental issue. If these assets are very difficult to get hold of, what are we going to do? What is the line that we should be taking? I do not think that it is for want of trying. It is not that CPS and SFO are not trying. They are trying very hard to get this, but they simply cannot get their hands on these assets. I do not want to preempt the work of Mr Brokenshire's committee on this, but it seems to me that that is one of the first questions they will have to discuss.

Q105 Ian Swales: It is a resources question, partly.

Sir Suma Chakrabarti: I think it is more than that.

Peter Handcock: There is a little bit of process, and there is scope to make this better. One of the things that we have done relatively recently is to change the rules of court when there is a restraint order in place to allow the financial investigator to apply for what is called an ancillary order, which will enable them for the first time to compel people such as financial advisers and financial service providers to come to court and answer questions about the location of the assets. There are a combination of things that I think we need to do to make sure that the number is a rational number. One is always to be better at enforcement, and another is to write off where enforcement is impossible. The third one is to do something about the accuracy of impositions, because very often a confiscation order is fairly speculative in terms of the total value of the order, and it may bear no relation whatever to the assets that an individual has, even if we are able to get hold of them. So trying to get those numbers closer together would help, too.

Q106 Nick Smith: Are you saying that the SFO is not as good as you at using ancillary orders to get at some of the £700 million?

Peter Handcock: There is no doubt that we are the most successful agency in getting in money under confiscation orders. We are up by 20% year on year, so we are doing very well, but I am bound to acknowledge that we have got the easy end of that business.

Sir Suma Chakrabarti: Exactly. If you look at the last column in figure 6—the distribution of who is responsible—it shows the courts service responsibility. We tend to have the lower end of this, which tends to be in the UK. My guess is that the upper end of this, particularly around the SFO and CPS, which is much more difficult—

Peter Handcock: On serious and organised crime stuff, serious, organised criminals are adept at hiding their money, so it is a real challenge for—

Q107 Nick Smith: But you talked about process benefits and the ancillary order. How important is that?

Peter Handcock: It is important across the system, and that is a facility that is now available to all of

those financial investigators who are trying to do this work.

Q108 Chair: We have a few little questions. I wanted to ask you about consultants. It seems to be a lot—£2 million a month—if my *Daily Mail* is accurate; £43 million from May 2010 to November 2011. I can't believe that is right.

Sir Suma Chakrabarti: If you are citing the *Daily Mail*, I should cite *Civil Service World*, which rated us the most efficient Department in Whitehall in November. The number for consultants has been coming down. In 2010–11, it was £104 million, which equates to just over 1% of the MOJ budget. This year it will be down to about £75 million. In the current financial year, it will be about 0.8% of the MOJ budget. That is 50% down on 2009–10, so it is coming down rapidly. As you know, the controls that the Cabinet Office now has on agreeing consultants are very tight, so business cases have to be very good. Anything over £20,000 has to be agreed by the Secretary of State and Ministers. Ann can give you a couple of examples.

Q109 Mr Bacon: Are you saying you have to establish the business case before you can make the hire?

Sir Suma Chakrabarti: Oh yes, it's a real clampdown.

Q110 Mr Bacon: Is it the same everywhere?

Sir Suma Chakrabarti: It is the same everywhere—we have the same processes. In the Cabinet Office, Ian Watmore's group runs that process. We have to go through a number of hoops before we can get anything agreed. That has helped us, actually, to narrow this down.

Q111 Meg Hillier: Does that cover interim—temporary—staff as well?

Ann Beasley: *indicated assent.*

Q112 Meg Hillier: Do consultants or interims have the same badge that other staff have, or do they have something separate that identifies them?

Ann Beasley: They have different coloured badges.

Q113 Chair: Have you got interims at the moment?

Ann Beasley: We do have interims, because in some of our corporate services world—so, within our procurement function—we are doing some very ambitious competition programmes around competing prisons, and we sometimes need external expertise to help do that. We think it is justified, because the first round of prison competitions delivered savings of something like £200 million.

Q114 Chair: How many interims have you got, out of interest?

Ann Beasley: I do not have the figure in my head.

Q115 Chair: Do they all pay PAYE?

Ann Beasley: That would depend on the nature of the interim.

Q116 Chair: Would you let us have a note on those that do and do not pay PAYE?

Meg Hillier: Consultants, interims and temporary staff might be described in different ways, so if we could have a note on all of those, that would be helpful.

Q117 Chair: I know you want to come in, Nick, but I just want to ask one more question. Another MOJ building, in Greenwich, has been vacant since 2004. Is that true? I think I picked that up from a Cabinet Office report.

Sir Suma Chakrabarti: We are reducing the huge number of buildings we have in London. We had 22 buildings in London, but we are down to—

Q118 Chair: How many have you got that are empty? Again, it is another efficiency. Before you start cutting legal aid, it might be good to get all that money.

Sir Suma Chakrabarti: I don't know which building this is.

Q119 Chair: It was out of a Cabinet Office report. It seemed pretty shocking that it had been empty since 2004.

Ann Beasley: We have a good story on our London headquarters. In 2009, we had—

Q120 Chair: That is headquarters—this might be some of your courts. I do not know whether they are old magistrates courts or whatever. I have no idea.

Meg Hillier: Could I just chip in, Chair? We have Old Street magistrates court in my constituency, which has been closed for many years and is still empty, because as a court building, it is very difficult to reuse. That perhaps begs the question of whether it is efficient. There is clearly a running cost but if you cannot get rid of the building, you have a capital asset sitting on your books, although I am not sure that Old Street is still on your books, to be fair.

Peter Handcock: I am not sure about Old Street magistrates court, but one of my difficulties is that I have a huge richness of capital assets. There are about 700 buildings across the country.

Q121 Chair: How many are empty, as far as you know?

Peter Handcock: As far as I am aware, the only ones that are empty are those that are in the current court closure programme. I am not suggesting for a minute that there might not be an ancient, redundant magistrates court in Greenwich that I do not know about, but I will go away and find out about it. I certainly haven't heard of it.

Sir Suma Chakrabarti: We will write to you.

Q122 James Wharton: I understand there is also a building in Haverhill in Suffolk, which has been empty for many years and is run by the MOJ. I am only told that. Would you be able to do a note on the total number of buildings that you have at the moment, and what you are doing to reduce the number of buildings that you use?

Peter Handcock: Yes.

23 January 2012 Ministry of Justice and Her Majesty's Courts and Tribunal Service

Sir Suma Chakrabarti: We will do a note on our estate strategy that will cover all of that.

Q123 Mr Bacon: The NAO has done a number of studies on the property side, or the estates side, of a number of different Departments, and how efficiently they rank one to another. We have looked at Education, DCMS, Defence, and the NHS estate. You could even invite the NAO to do a helpful report to help you further with your strategy—just a thought.

Amyas Morse: Can we just do an objective report? Is that all right?

Q124 Mr Bacon: Ann Beasley was halfway through saying that you had a good story to tell about the HQ. I seem to remember that there was a possibility of selling the HQ building, and when it was not possible to get what the Government deemed a suitable price, it was decided not to sell it, and now, you have refurbished and occupied it. Is that correct?

Sir Suma Chakrabarti: I think this was when it was a Home Office building.

Q125 Mr Bacon: Yes, but it is the Queen Anne's Gate building that you now have.

Ann Beasley: It is Queen Anne's Gate.

Q126 Mr Bacon: That entire refurbishment—I have not been to the building since it was redone, but I went to it in the old days—is a conventional project, or is it a PFI?

Ann Beasley: I think it is a PFI. It is an expensive building, but it is difficult to get out of the lease that we have, so our alternative strategy is to close—

Q127 Mr Bacon: I thought the Government owned it freehold.

Ann Beasley: The financing of the refurbishment is I think what we are now financing.

Q128 Mr Bacon: How much is the PFI? We have looked at the new Home Office building, and at Modus Ltd for the MOD building, we have looked at PFI projects for specific departmental headquarters. What is the total cost of the PFI for the MOJ HQ building?

Ann Beasley: I do not have the figures for that in my head.

Sir Suma Chakrabarti: Shall we include it in the note?

Chair: Okay. Fiona, Nick, then Austin, and I think we are there.

Q129 Fiona Mactaggart: I was asking about impact assessments and the impact of decisions on other Government Departments. It seems that decisions by other Government Departments can end up causing your Department costs, particularly when it comes to administrative courts and tribunals. Have you looked at the “polluter pays” principle—making sure that those Departments that have decisions against them, chronically, have to pay an enhanced contribution towards to the cost of the tribunals compared with those who make the right decisions in the first place?

Sir Suma Chakrabarti: Yes, we have. You will remember, as a Minister, the arguments one has about this. In paragraph 2.15, the Ministry “also seeks to forecast costs for policies proposed by other government departments that could have a financial impact.” We do that—our modelling capacity now allows us to. We then go back to that Department and say, “Hang on a sec. Who’s going to pay this, because the downstream cost will be felt in the MOJ?” There is then a good discussion about who should be paying.

Q130 Fiona Mactaggart: Will they cough?

Peter Handcock: They do—look, for example, at the asylum and immigration tribunal, or the social security jurisdiction following the welfare reform. Both UKBA and DWP directly fund on the basis of a formula around case volumes. Those relationships work very well.

Q131 Fiona Mactaggart: But the formula is case volume. I am asking something more than that—just numbers of cases, because there are some classes of case in which people might be encouraged to appeal for all sorts of reasons. I am talking about outcomes of cases.

Peter Handcock: To stick with the DWP, we have a very well developed relationship. We and DWP colleagues think about where in the system we will put the money to deliver the best outcomes. DWP will work hard on improving the quality of its original decision making so that people do not need to come into the tribunals. We regard that spend as a sort of fungible pot that we might move from one end of the system to the other if doing so gives a better result. We have always operated the other biggest tribunal jurisdiction, asylum and immigration, with colleagues from the Home Office.

Q132 Nick Smith: I want to return to spending review pressures and your demand-led costs. The bottom table in figure 9 shows that the prison population is likely to increase in coming years and that we have had a spike in recent months. How will you pay for this?

Sir Suma Chakrabarti: At the moment, we have a plan—to add up, to pay—to take account of these work-load pressures, but the question is still relevant because it will be hard. The prison population, as you have seen, has gone up by 600 in the past two weeks, which is the fastest ever rise¹—certainly in the four years since I have been there—after the Christmas dip. If that rate of rise continues, we will have to revisit all the figures, but at the moment, based on last October’s fieldwork, the line is correct, and we have the funds to meet this. It is well worth hanging on to those,

¹ Since the hearing Sir Suma Chakrabarti has clarified for the Committee that although the rise in prison population of 623 in the two weeks to Friday 20 January 2012 is a significant increase, it does not represent the fastest rise in prison population over the same period in the four years that he has been Permanent Secretary at the Ministry of Justice. The population rose by 802 in the two weeks to 25 January 2008, when Operation Safeguard was in operation, and by 789 in the two weeks to 21 January 2011, following a period of severe disruption caused by adverse weather which had resulted in a temporary population reduction.

because one of the biggest risks we face is what happens to the prison population.

Q133 Austin Mitchell: I have a couple of general points. My impression of the law is that it is a vastly overpriced, greedy industry, living on fat fees, which it defends vigorously, so that, effectively, it has priced itself out of the realm of ordinary people. It has escalated its prices. It works by confrontation, too. Every fact is to be disputed and every case transferred to a higher court, where they can scabble for more money before a judge and jury. You do not have much control over those costs, do you?

Sir Suma Chakrabarti: In the end, we do not have control. One of the things that the Government are trying to do—again, this a policy issue—is to argue strongly that cases should be heard at the right tier, as part of the criminal justice review. Cases should not be pushed up the system—

Austin Mitchell: You get more convictions lower down.

Sir Suma Chakrabarti: The judiciary, the senior presiding judge, is very much of the same view. Whether one agrees or not, on legal aid, they are trying to deal with more cases before they get to court. Particularly in family law, the Government believe that it is not a good thing for some cases to come to court; they should be dealt with before.

Q134 Austin Mitchell: These are long-term issues. Effectively, you have little control over cost, which means that any economies by your Department, particularly in the legal aid area, will diminish the access of ordinary Joes to justice, to use the law.

Sir Suma Chakrabarti: Particularly for our Department, I think it means that we must get even better at working with those Departments that really can impact before people get into the justice system. We must work much better, not just with the Home Office, which is the traditional relationship, but also with—

Q135 Austin Mitchell: But when they do get into the justice system, you cannot help them.

Sir Suma Chakrabarti: But they are processed through the system when they do, and we do our best in that system.

Q136 Austin Mitchell: When they do, the defence of ordinary people, which is to have their own lawyer, is cut back. It ceases to exist because of the cuts in legal aid.

Sir Suma Chakrabarti: I am sorry—is this a policy issue or not?

Q137 Austin Mitchell: All that you do in cutting legal aid damages the interests and access of ordinary people.

Sir Suma Chakrabarti: I suggest that you write to Ken Clarke about the policy.

Austin Mitchell: Does that mean, therefore—?

Mr Bacon: Matt wants to ask a long, rambling policy question, too.

Matthew Hancock: Not a rambling one. The Ministry of Justice, through its subsidiaries, is a large buyer in the market for lawyers. Therefore, isn't a squeeze on the amount of money put in likely to reduce the cost, and particularly the charges, of lawyers in the criminal jurisdictions?

Chair: Listen you guys, I am going to stop it, because we are going to enter into policy and I am often told by Members across the board not to go into that realm.

Matthew Hancock: Okay. That is a perfectly reasonable point.

Austin Mitchell: I have another point.

Chair: Keep it off policy, because I'm going to shut you up.

Matthew Hancock: The link between supply and demand has always been a problem for those on the left.

Q138 Austin Mitchell: Why is it that the French system—which is inquisitorial, does not have this continuous confrontation and ends up sending fewer people to prison—is not investigated by your Department as a way of saving money and changing the system?

Sir Suma Chakrabarti: I asked the same question when I arrived in the MOJ. At various points in the past 20 years, people have looked at the continental systems. I am afraid that there has been a general preference in the political classes for the British system, which is adversarial and costly.

Chair: Right. Can I end you there? This has been a really good session, so thank you very much indeed for answering the questions well. I want to remind you that you have said that you will give us a note on the estate; that you are happy for the NAO to look at the impact assessment on legal aid, which has been questioned; and that you will give us a note on interim staff—I am particularly interested in whether they are on PAYE.

Q139 Mr Bacon: Specifically on interim staff, can you be clear in your note whether there are individuals who have entities—who own companies that receive the payment instead of the individual, and how many there are?

Sir Suma Chakrabarti: We will do our best to drill down.

Chair: It has been a good session.

Sir Suma Chakrabarti: On the impact assessment, I would have to get the agreement of the Secretary of State, because that is not a decision for me.

Chair: Thank you.

Written evidence from the Permanent Secretary, Ministry of Justice

REVIEW OF FINANCIAL MANAGEMENT IN THE MINISTRY OF JUSTICE

The Committee's report of 25 January 2011 entitled "Ministry of Justice Financial Management" (HC 574) asked the Department to produce a report setting out the progress that has been made to continue to improve its financial management. I attach a copy of the Department's report to my letter.

The report sets out how the Department has built upon the work that I discussed at the PAC hearing on 2 November 2010 to put in place the financial systems, processes and practices fitting of a large Department of State.

I believe the report shows the significant progress the Department has made to improve its financial management. This includes more robust governance, a deeper understanding of our costs, an integrated planning approach, more accurate and timely management information and the ability to readily expose the financial implications of policy proposals and operational decisions. While there remain some areas where progress needs to continue, these improvements—together with the culture change that we are driving across the Department—enable us to have greater confidence in meeting the challenges of the MOJ Spending Review settlement.

We have recently conducted a further self-assessment against the National Audit Office's (NAO's) Financial Management Maturity Model and have provided this information to the NAO to help inform their Financial Management Review of the Department. The NAO have also been provided with detailed responses to each of the recommendations made in your Committee's January Report. This detailed information is available to the Committee on request.

I have written to you separately about the laying of our Departmental Annual Report and Accounts. I am copying this letter and the report to the Rt Hon Sir Alan Beith MP, Chair of the Justice Select Committee.

30 September 2011

Written evidence from Administrative Justice & Tribunals Council

MINISTRY OF JUSTICE—EVIDENCE SESSION ON 6 DECEMBER 2011

I am writing to thank you for meeting me on 17 October 2011 to discuss the AJTC's report on "Right First Time". I found the meeting very helpful, and have since arranged to meet with Amyas Morse to consider the matters further.

You will recall that we discussed your Committee's forthcoming evidence session with the Ministry of Justice, and you suggested that it might be helpful for the AJTC to submit written evidence on "Right First Time" and the role of the Ministry of Justice. I have enclosed a short submission, which I hope you will find useful. Please do not hesitate to contact me or the office if you require any further information.

November 2011

SUBMISSION OF THE ADMINISTRATIVE JUSTICE AND TRIBUNALS COUNCIL "RIGHT FIRST TIME" AND THE ROLE OF THE MINISTRY OF JUSTICE

Background and Summary

1. The Administrative Justice and Tribunals Council (AJTC) is charged with keeping the administrative justice system under review and considering ways to make it more accessible, fair and efficient. The outcome of a Ministry of Justice (MoJ) consultation on its proposal to abolish the AJTC is expected shortly.

2. In June 2011, the AJTC published a report entitled "Right First Time" (**Annex A**), which investigated a core concern for all public bodies—how to ensure that decisions relating to individuals are made "right first time". The AJTC considers that the widespread adoption of a "right first time" approach could culminate in significant savings across the public sector, improving value for money and reducing waste. In this submission, the AJTC suggests that MoJ—which has policy responsibility for administrative justice across government—should be doing much more to promote a "right first time" culture in the public sector.

3. The report contained a series of recommendations directed to the Lord Chancellor, including that he should:

- commission a project, with advice from the National Audit Office, to develop funding models for ensuring that the costs of poor decision-making are borne by the department or public body concerned;
- align this project with the current policy initiatives aimed at introducing fees for tribunal cases and that any fees for individual appellants should only be introduced as part of wider package which also recovers outcome-related income from departments and public bodies; and

- make it a priority of the MoJ's own strategic programme to improve original decision-making in public bodies, with the explicit aim of reducing the volume of appeals caused by poor decision-making by 20% by 2015.

4. No response to these recommendations has yet been received from the MoJ.

Poor quality decision-making

5. Public bodies make tens of millions of decisions about individuals every year. These decisions cover a wide range of issues, including welfare benefits, immigration status, education, health, tax and pensions. These issues matter, and it is crucial that, as far as possible, decisions are made right first time—individuals are fully entitled to expect this to be the case.

6. Unfortunately, evidence suggests that the quality of decision-making and complaint handling across the public sector does not always meet an acceptable standard. Both the volumes and success rates of appeals that now reach tribunals are remarkable. In 2010–2011, the then Tribunals Service (now HMCTS) received 831,000 appeal applications, representing a 5% increase on the previous year.¹ Success rates vary from jurisdiction to jurisdiction, but figures of 30% are not uncommon.²

7. The AJTC recognises that all successful appeals cannot be attributed to poor original decision-making. However, further evidence suggests that it is at the root of a substantial number of these appeals, with the failure of decision-making bodies to learn from their mistakes only serving to compound the problem. The National Audit Office (NAO) has produced a number of reports looking at decision-making in different fields;³ parliamentary committees have consistently condemned poor decision-making by departments under their supervision;⁴ and reports from the Parliamentary and Health Service Ombudsman as well as the Local Government Ombudsman continue to highlight examples of poor service delivery and complaint handling.⁵ In Professor Malcolm Harrington's first Independent Review of the Work Capability Assessment for Employment and Support Allowance,⁶ it was noted that no-one in that system wanted to claim responsibility for making a decision.

The cost of getting it wrong

8. The high volume of appeals and complaints about public services has implications not just for the individuals concerned, but also for the organisations involved and, ultimately, the taxpayer. When an organisation gets it wrong and is challenged, it will incur costs at various stages in order to put it right. In addition to the initial cost of making the decision are added the costs of any review or reconsideration process (which may be internal or external) and the costs of preparing and defending any subsequent appeal or complaint. In certain situations, the public body may also be required to pay financial compensation to the appellant or complainant. From the perspective of the public purse, added to this are the costs of running HMCTS, other tribunals and the offices of the respective ombudsmen. In a report published in 2005, the NAO estimated the average cost to central government of a new tribunal case to be £455, and noted that on average just under a third of the total cost for appeals was incurred by the department or agency appealed against; the remainder was incurred by the tribunal or appeal body.⁷

9. Unfortunately, there is a paucity of data about the precise costs of poor decision-making and complaints handling in the public sector. There may be a number of reasons for this, such as inherent difficulties in calculating the unit cost of making a decision or handling a complaint. It also appears that organisations have a clear focus on budgets, but less of an understanding of costs. The lack of a joined-up approach, whereby departments can effectively “off-load” much of the cost of an appeal to a tribunal or other redress mechanism, also makes it difficult to know the full cost of poor decision-making.

¹ Tribunal Service Annual Statistics 2010–2011, available at www.justice.gov.uk/.../statistics...stats/annual-tribunals-statistics-2010-11.pdf

² AJTC, *Securing Fairness and Redress, Administrative Justice at Risk?* at page 11, available at [http://www.justice.gov.uk/ajtc/docs/AJTC_at_risk_\(10.11\)_web.pdf](http://www.justice.gov.uk/ajtc/docs/AJTC_at_risk_(10.11)_web.pdf)

³ National Audit Office (a) *Progress in improving the medical assessment of incapacity and disability benefits*, HC 1141, 17.10.2003, (b) *Getting it right, putting it right: Improving decision-making and appeals in social security benefits*, HC 1142, 07.11.2003, (c) *Helping those in financial hardship: the running of the Social Fund*, HC 179, 13.01.2005.

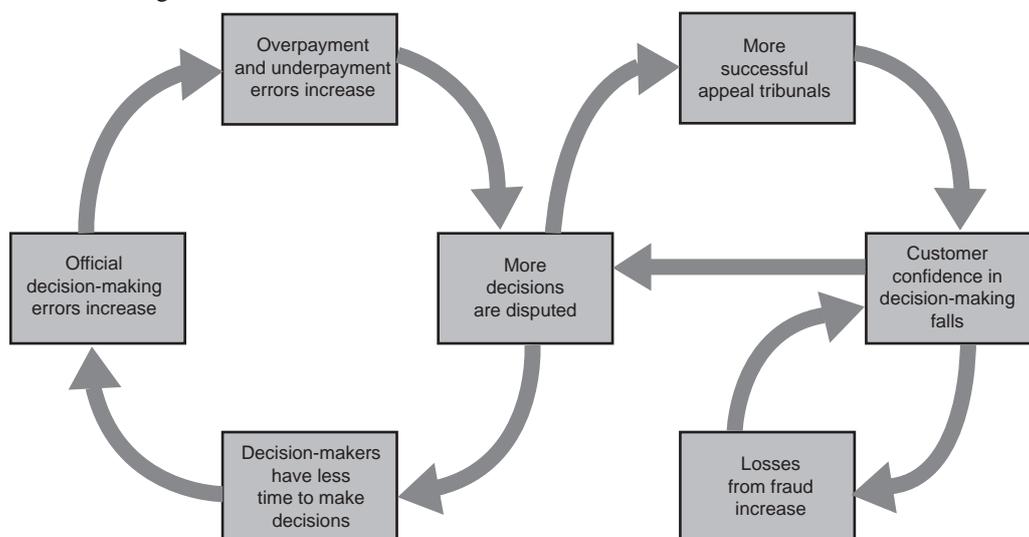
⁴ For example, Home Affairs Select Committee, *The Work of the UK Border Agency*, HC 587–1, 21.12.2010 and Work and Pensions Committee, *Decision making and appeals in the benefits system*, HC 313, 9.02.2010

⁵ For example, Parliamentary and Health Services Ombudsman, *Responsive and Accountable? The Parliamentary Ombudsman's review of complaints handling 2010–2011* available at <http://www.ombudsman.org.uk/responsive-and-accountable>

⁶ Professor Malcolm Harrington, *Statutory Independent Review of the Work Capability Assessment*, 2010 at page 10, available at www.dwp.gov.uk/docs/wca-review-2010.pdf

⁷ National Audit Office, *Citizen Redress: What citizens can do if things go wrong with public services* http://www.nao.org.uk/publications/0405/citizen_redress.aspx pages 38 and 39

10. Complicating matters further are the indirect financial costs of getting things wrong, as summarised by the NAO in this diagram:⁸



Source: National Audit Office

The benefits of “right first time”

11. The MoJ would stand to benefit directly from improved decision-making by public sector departments and agencies. The HMCTS tribunals budget for 2011–2012 is £279.4 million,⁹ and a reduction in the number of tribunal hearings it has to organise and conduct would enable it to make considerable savings. Looking at appeal success rates in two of the largest tribunal jurisdictions, in the Social Security and Child Support (First-tier Tribunal) 35% of appeals are successful, and in the Immigration and Asylum (First-tier Tribunal) 41% of cases succeed, with a further 15% withdrawn.¹⁰ Although HMCTS is reluctant to calculate the unit cost of holding an appeal, if even 20% of these successful cases were resolved before reaching a tribunal, the scale of savings would surely be significant.

12. In addition to this, the potential savings that would be accrued across the public sector by decision-making organisations themselves would be substantial. In terms of the direct financial costs, if departments and agencies were encouraged to cost their processes for handling appeals and complaints, it would be easier to understand and demonstrate the scale of potential savings.

The role of the MoJ

13. Improving the standard of administrative decision-making should be seen as a priority across government. At a time when government must focus simultaneously on cutting costs, reducing waste and providing a better service, the quality of decision-making is an obvious target.

14. The MoJ is well placed to play a key role in promoting “right first time” across government, particularly in view of its direct interest in reducing the volume of unnecessary appeals and the costs of running tribunals. This can be done on a number of fronts.

15. First, the MoJ should develop a clear and detailed work plan setting out how it will work collaboratively with other government departments to achieve “better for less” in the administrative justice system. The HMCTS objectives include a commitment to “work with government departments and agencies to improve the quality of their decision making in order to reduce the number of cases coming before courts and tribunals”.¹¹ The AJTC welcomes this commitment, but notes with concern that the HMCTS Business Plan did not specify how this objective would be pursued. The MoJ Business Plan contains no reference to improving decision-making. The AJTC considers that it will only be possible to realise the full benefits of a “right first time” approach by taking a structured and robust approach to improving decision-making. Approaching this matter in an *ad hoc* fashion is likely to waste time and even more money.

16. Second, it is important that all incentives and deterrents that influence the behaviour and priorities of decision-making bodies operate to encourage a “right first time” approach. At the moment, it seems that

⁸ National Audit Office, *Getting It Right, Putting It Right*, HC 1142, 7.11.2003

⁹ Parliamentary written answers, available at <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111012/text/111012w0002.htm#11101264003257>

¹⁰ Tribunal Service Annual Statistics 2010–2011, available at www.justice.gov.uk/.../statistics...stats/annual-tribunals-statistics-2010-11.pdf

¹¹ *HMCTS Framework Document 2010*, available at www.justice.gov.uk/downloads/.../hmcts/hmcts-framework-document.pdf

decision-making bodies do not have to deal with the full consequences of their actions. Although government departments are required to make some financial contribution towards the costs of running tribunals, this appears to be based on caseload forecasts and is not related to the outcome of cases. It seems sensible to align the interests of the justice with the interests of the decision-making department.

17. In view of this, the AJTC considers that it is time to adopt a “polluter pays” approach to the funding of tribunals. Although a considerable effort will be needed to develop workable funding models, as a matter of principle and incentive it seems right that original decision-makers should contribute to the costs of running tribunals by direct reference to the actual volumes of appeals they generate. Further to this, contributions should normally be increased when a decision is overturned on appeal. The Law Society of England and Wales¹² and the Justice Committee have both shown support for such an approach.¹³

ISBN 978-0-215-04335-1



9 780215 043351



Printed in the United Kingdom by The Stationery Office Limited
3/2012 018531 19585

¹² The Law Society of England and Wales, *Access to Justice Review 2010*, page 20

¹³ House of Commons Justice Committee, *Government's Proposed Reform of Legal Aid, HC 681-I, 30.3.2011*, pages 26–27