House of Commons
Justice Committee

The budget and structure of the Ministry of Justice

Second Report of Session 2012–13

Volume I
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Second Report of Session 2012–13

Volume I

Volume I: Report, together with formal minutes

Volume II: Oral and written evidence

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The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General’s Office, the Treasury Solicitor’s Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk.

Publication

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/justicecttee. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Tom Goldsmith (Clerk), Sarah Petit (Second Clerk), Hannah Stewart (Committee Legal Specialist), Helen Kinghorn (Committee Legal Specialist), Gemma Buckland (Committee Specialist), John-Paul Flaherty (Committee Specialist), Ana Ferreira (Senior Committee Assistant), Miguel Boo Fraga (Committee Assistant), Greta Piacquadio (Committee Support Assistant), and Nick Davies (Committee Media Officer).

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## Contents

**Report**

<table>
<thead>
<tr>
<th>Summary</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Summary</strong></td>
<td>3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>Introduction</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Committee’s inquiry</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Context</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>The creation of the Ministry of Justice</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>The multi-agency aspect of the justice system</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>The Ministry of Justice’s budgetary commitments: pre and post CSR 2010</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>The aims of the Transforming Justice programme</td>
<td>9</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th>The direction of travel</th>
<th>11</th>
</tr>
</thead>
<tbody>
<tr>
<td>Structural changes to improve governance and accountability</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>The Departmental Board</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>Sponsored Bodies</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Cultural change through Transforming Justice</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Change of emphasis – understanding the business</td>
<td>21</td>
<td></td>
</tr>
<tr>
<td>Benefiting from experiences overseas</td>
<td>24</td>
<td></td>
</tr>
<tr>
<td>Addressing poor financial management</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Laying the accounts on time</td>
<td>26</td>
<td></td>
</tr>
<tr>
<td>Gaining a clear audit opinion</td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>Presenting robust evidence to support the accounts</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>Improving financial management</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Benchmarking of costs</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Working with others</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>Other Government departments</td>
<td>33</td>
<td></td>
</tr>
<tr>
<td>Relationship with the judiciary</td>
<td>37</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>3</th>
<th>Improving cost-effectiveness</th>
<th>39</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial planning model and the new Operating model</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Improved financial planning</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Operating model</td>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Reducing staff costs</td>
<td>41</td>
<td></td>
</tr>
<tr>
<td>Smaller estate</td>
<td>44</td>
<td></td>
</tr>
<tr>
<td>Targeted IT changes</td>
<td>48</td>
<td></td>
</tr>
<tr>
<td>Income generation</td>
<td>51</td>
<td></td>
</tr>
<tr>
<td>Outsourced services</td>
<td>53</td>
<td></td>
</tr>
<tr>
<td>The Ministry’s commissioning process</td>
<td>56</td>
<td></td>
</tr>
<tr>
<td>Small and medium sized enterprises and the voluntary and community sector</td>
<td>61</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4</th>
<th>Achieving “better for less”</th>
<th>67</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Ministry’s long-term policies</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>Payment by results</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>The next stage of Transforming Justice</td>
<td>72</td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>------------------------------------------------------------------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Conclusion</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Conclusions and recommendations</td>
<td>78</td>
<td></td>
</tr>
<tr>
<td>Formal Minutes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Witnesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td>List of written evidence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>List of Reports from the Committee during the current Parliament</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Summary

In the five years since the creation of the Ministry of Justice, it has made improvements to its structure and performance and is now a more integrated Department. However, this period has been marked by criticism of and, in cases such as the performance of the Legal Services Commission (LSC), failure by, the Department. Many of the improvements it has made have been from a fairly low starting point.

The Department’s structure has been changed at the highest level, with a new Departmental Board which has direct input from the ministerial team. Ministers have also increased their influence on, and are more accountable for the Department’s Arm’s Length Bodies. These bodies have also been able to reduce their costs through using shared services so corporate and back office functions are not duplicated and, in some cases, by moving their offices into the Department’s headquarters. Some Arm’s Length Bodies, because of their role, need to be clearly free from political influence. This must be the perception and the reality, and their framework documents should make this clear. However, this does not mean that they can be free from the constraints on public expenditure.

The Department has changed the way it operates, and the new operating model minimises duplication and allows its Executive Agencies to focus on delivery. This has led to a change in culture in the Department as the importance of programme management is recognised alongside policy. More could be done to further shift the staff balance towards implementation. The management structure too has changed, making it more streamlined by removing unnecessary layers. This was done to improve efficiency and to free up resources so that frontline jobs could be safeguarded. We believe further steps can be taken both in this area and in order to restructure the Department into a single delivery body.

The Department has also examined its expenditure on services provided to it, and has attempted to make savings. For example it has reduced the use of agency staff by half, but this still amounts to expenditure of £75 million a year. A significant number of agency staff have been employed to help shore up the Department’s finance team. This is an area that has been performing poorly, with the Department unable to meet the Government agreed deadline to submit its accounts to Parliament for the past three years. In addition, its sponsored bodies have also submitted their accounts late; the Legal Services Commission has had its accounts qualified by the Comptroller and Auditor General; and Her Majesty’s Courts and Tribunals Service has had a disclaimer of opinion by the Comptroller against its Trust Statement. The Ministry is making efforts to improve its finance function, and is trying to increase its understanding of costs. Most of the Department’s costs are incurred as a consequence of demand for its services, and through an improved analytical function it has been able to model how its proposed policies will reduce that demand. However, the analytical function is still not sufficiently robust, and all analytical and policy capacity should be provided through a central strategic function.

In the future, the Department wants there to be a functioning market for the rehabilitation of offenders which will be provided by whoever can meet the need most effectively and efficiently. The Department will also increasingly contract out these services on a payment
by results basis. We can see the benefits of taking this approach, but have some concerns. The Department has had some success in engaging with small and medium sized enterprises, and the justice system has a large number of vital voluntary organisations within it. However, if the Department is trying to make significant savings it is likely that it will set contracts at a large scale which will preclude these groups from bidding for them, and they will have to establish a sub-prime relationship with the prime contractor. Additionally, we are not convinced that the Department has the necessary commissioning and contracting capability to achieve its objective. Currently its commissioning processes are often poorly designed, the stages involved do not whittle down contenders appropriately and bidders do not receive sufficient feedback at the end of the process. Furthermore, the potential benefits of payment by results programmes may not be realised because of structural problems in the Department and the National Offender Management Service.

The changes made so far have helped to join up the work of the Department, and will enable it to perform better. However, it is not clear how the justice system more generally will also be better. Efforts have been made to work with other Government departments, with the Troubled Families agenda being an innovative example, and there is a joint Minister with the Home Office. However, this is an area where the Department needs to do more. The Department acknowledges this, but we have seen little compelling evidence of how it is seeking to engage with others within central Government, local government and the voluntary and private sectors. It will be essential for these different groups to work together more effectively, if momentum to transform the justice system is to be maintained.

We will continue to monitor the performance of the Ministry of Justice and its sponsored bodies over the course of this Parliament, and many of the issues we raise in this Report will be scrutinised through our ongoing work.
1 Introduction

The Committee’s inquiry

1. On 21 July 2011 we announced a high level inquiry looking at the overall structure and budget of the Ministry of Justice (MoJ) and its associated public bodies. The inquiry has focused on the potential contribution of further structural changes to future efficiency savings and improved performance.

2. Our terms of reference raised a number of questions to be addressed throughout the inquiry:

   - What should the core objectives be of the MoJ?
   - Which functions provided by the MoJ are essential, and which could be best provided by others or not at all?
   - Does the MoJ have sufficient understanding of costs to enable it to model the impact of future changes?
   - What changes to the current structure of the MoJ could contribute to improved performance or efficiency savings?
   - Does the MoJ have the right processes and measures in place to manage robustly the organisations it sponsors?
   - Will the transition of the administration of legal aid from the Legal Services Commission to an executive agency within the MoJ lead to more effective and efficient performance?
   - Does the relationship between the MoJ and NOMS, and the relationship between prison and probation, contribute to effective and efficient working?
   - How effectively does the MoJ use IT, and does the MoJ have the right balance between centrally and locally commissioned IT?
   - Does the MoJ have procedures in place in order to realise its objective of having more services delivered by the voluntary and community and private sectors?
   - Does the MoJ have the necessary skills to ensure value for money contracts for the public purse and to manage effectively those contracts?

3. We received 23 written submissions from witnesses with close associations to the MoJ, and held oral evidence sessions with 13 panels of witnesses listed at the end of this Report. We visited the MoJ headquarters at 102 Petty France, and the headquarters of the National Offender Management Service (NOMS) at Clive House, Petty France, where we were given free access to all areas and were able to discuss the work of the Department at every level. In addition we received a presentation from the Legal Services Commission (LSC) at its headquarters. Furthermore, during a visit to Denmark and Norway in April, which focused on our current inquiry into Youth Justice, we also took the opportunity to discuss elements of this inquiry with officials from their justice ministries. We also commissioned a report
by the National Audit Office on international comparisons of criminal justice systems which helped inform our work. We would like to thank Jo James, the Specialist Advisor appointed to assist us with the inquiry. We are grateful to all those who took the time to contribute to our inquiry.

**Context**

**The creation of the Ministry of Justice**

4. In March 2007 a major machinery of government change was announced with the objective of allowing the Home Office to concentrate on its responsibilities in relation to counter-terrorism, policing, and asylum and immigration. Furthermore, a new Ministry of Justice (MoJ) was created to take on the responsibilities of the Department for Constitutional Affairs (DCA) and the criminal justice functions of the Home Office and its agencies — of which the largest was NOMS. The new MoJ would have responsibility for constitutional matters, civil and administrative justice, the courts and legal aid, and also become the lead department for criminal justice policy and as such would ‘house’ the Office for Criminal Justice Reform. It would be led by the Lord Chancellor as Secretary of State for Justice.¹ The MoJ was formed on 9 May 2007.

5. Whereas the previous Home Office/DCA boundary ran between all ‘law and order’ activities on the one hand and the courts on the other, the new boundary line lay between activities leading up to arrest (on the Home Office side) and the subsequent courts and sentence-related activities (run by the MoJ).² Deciding charges and prosecuting defendants continued to be the responsibility of the Crown Prosecution Service, overseen by the Attorney General’s Office. A Cabinet Office document³ that accompanied the Prime Minister’s announcement stated the MoJ’s key objectives would be to:

- Protect the public from dangerous offenders
- Reduce re-offending through common sense custodial and non-custodial penalties
- Provide access to justice for all, especially the most vulnerable
- Uphold people’s rights
- Deliver democracy and constitutional reform

6. We agree with the objectives set out at the formation of the Ministry of Justice, and believe there are benefits in having a separate Ministry of Justice dedicated to achieving them. We welcome the emphasis the Department places on re-offending, but believe the Department still has structures in place which do not assist in achieving that objective.

¹ Constitutional Affairs Committee, Sixth Report of Session 2006–07, The Creation of the Ministry of Justice, HC 466, para 1
² Institute for Government and London School of Economics, Making and breaking Whitehall Departments: A guide to machinery of government changes, 12 May 2010
7. The Ministry is one of the largest Government departments, employing around 76,000 people, with a budget of approximately £9 billion, and is administered from a small central core. In 2010–11, nearly half the MoJ’s expenditure and 74% of its work force was accounted for by NOMS, with 43,000 posts held by the Prison Service. It is currently organised into four main business groups: Justice Policy, HM Courts and Tribunals Service, the National Offender Management Service and Corporate Performance (which provides professional services and administrative support).

8. The MoJ devolves the delivery of most of its aims to a number of smaller bodies. The Committee of Public Accounts reported in January 2011 that the MoJ sponsored 53 Arm’s Length Bodies, or some 350 organisations when accounting for sub-bodies. The Department is reliant upon its Non-Departmental Public Bodies and Executive Agencies to deliver its functions, but these bodies are subject to differing levels of control from central MoJ.

9. The Department’s largest spending Arm’s Length Bodies in 2010–11 were:

- Executive Agencies (EAs):
  - National Offender Management Service (NOMS) – £4,180m
  - HM Courts and Tribunals Service (HMCTS) – £1,186m

- Non-Departmental Public Bodies (NDPBs):
  - Legal Services Commission (LSC) – £2,210m
  - Youth Justice Board (YJB) – £425m
  - Criminal Injuries Compensation Authority (CICA) – £327m

Additionally, there were 6 NDPBs that performed important functions, but spent far less in a year, typically between £5–10 million: These were: The Parole Board; The Office for Legal Complaints; The Information Commissioner’s Office; The Criminal Cases Review Commission; The Judicial Appointments Commission; and the Legal Services Board.

10. Comments by the then Secretary of State for Justice, Rt Hon Jack Straw MP, in the foreword of a series of corporate reports gave an indication of how the new Department established itself following the reorganisation:

May 2008 – “Shortly after the creation of the MoJ, an in-depth review was commissioned to ensure the Department’s structure created the right conditions to deliver its wide agenda”.

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4 About the Ministry of Justice, http://www.justice.gov.uk/about/moj
6 As at 31 January 2012. HC Deb, 23 April 2012, c673-82W
7 National Audit Office, A summary of the NAO's work on the Ministry of Justice 2010-11, September 2011
9 The LSC is due to be replaced in 2013 by a new agency.
Dec 2008 – “In our first year, we focused on the organisational changes needed to bring together several different organisation to form an 80,000 whole”.¹¹

Jan 2009 – “The MoJ is, however, still a young department and there are many more opportunities we are yet to grasp”.¹²

Dec 2009 – “In a short space of time it has I believe established itself as one of the major Departments of State, unique in its breadth and influence”.¹³

The multi-agency aspect of the justice system

11. In addition to providing a civil and family justice system, the MoJ works to protect the public and reduce reoffending, and to provide a more effective, transparent and responsive criminal justice system for victims and the public.¹⁴ Under the current constitution and structure of government, there can be no single “owner” for the criminal justice system:

- The MoJ is responsible for providing a range of services (including courts, prisons, youth justice services and probation) that are focused on providing access to justice and punishing and rehabilitating offenders.

- The Home Office is responsible for enabling the police and local communities to tackle crime and antisocial behaviour.

- The Attorney General’s Office has responsibility for superintending the independent prosecuting departments, the Crown Prosecution Service, and the Serious Fraud Office.

- The judiciary, which constitutionally is the third arm of the state, is independent of both the legislature and the executive. Independence is important so that judges can discharge their responsibility to be fair and impartial – including protecting citizens against any unlawful acts of government.¹⁵

The Ministry of Justice’s budgetary commitments: pre and post CSR 2010

12. In 2010–11 the MoJ spent £9.3 billion, of which 90% was spent through its main sponsored bodies on its core justice responsibilities. The central Ministry spent £565 million on its own administration.¹⁶

13. Between the formation of the MoJ in 2007 and the publication of its 2010–11 accounts, it had significantly reduced its budget by £878 million.¹⁷ This has been achieved through reductions made across business areas by the following amounts:

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¹¹ Ministry of Justice, Autumn Performance Report 2008, Foreword
¹² Ministry of Justice, Corporate Plan 2009–11, Foreword
¹³ Ministry of Justice, Autumn Performance Report 2009, Foreword
¹⁴ About the Ministry of Justice, http://www.justice.gov.uk/about/moj
¹⁵ National Audit Office, Criminal Justice System Landscape Review, November 2010, Paras 1.2–1.3,
¹⁶ National Audit Office, A summary of the NAO’s work on the Ministry of Justice 2010–11, September 2011
¹⁷ Ev 105
14. In the 2010 Comprehensive Spending Review (CSR), the Ministry was subject to a cut of 23% in its resource budget by 2014–15. It has to find savings over the CSR period, rising from around £500 million in the first year to £1.7 billion in the final year. To achieve this the MoJ has planned to deliver over £1 billion of annual efficiency savings, whilst protecting front line functions.

15. The Department’s budget requirement has also been affected by a number of machinery of government changes. The most significant of these is the movement of the Constitution Directorate to the Cabinet Office in June 2010. This amounted to a £10 million reduction in the Department’s budget, and will mean that the cost of elections is no longer provided through the Department’s allocation.

16. In the introduction to the Department’s 2010–11 Annual Report and Accounts, Sir Suma Chakrabarti KCB, the then Permanent Secretary, Ministry of Justice, stated:

   Our very tight financial settlement has made it a challenging year, we have worked to make efficiencies and target our resources where they are most needed. We’ve streamlined the business and worked hard to cut out unnecessary overheads and non-essential projects, whilst working to continually improve the service we provide to the public.

The aims of the Transforming Justice programme

17. In February 2009, the then Permanent Secretary decided that the new Department would embark on major change aimed at achieving a better justice system at less cost to the public. This decision was, in part, based on a clear realisation that the fiscal situation would have consequences on the forthcoming Departmental budget. This change was branded the Transforming Justice programme, and encapsulated a number of activities which aimed to meet this goal.

18. Within Whitehall, long-term planning was usually conducted in the pre-election period and had generally been conducted privately: typically, with just a handful of policy

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18 Part of the savings attributed to HMCTS is due to the merger of HM Courts Service and the Tribunals Service

19 National Audit Office, A summary of the NAO’s work on the Ministry of Justice 2010-11, September 2011

20 Ev 131

21 Ibid.

22 Ministry of Justice, Annual Report and Accounts 2010-11, p 5

23 Q 2

staff being involved, and prone to taking a ‘wait and see’ approach. The Permanent Secretary was convinced that ‘business as usual’ would not deliver the Department’s long-term goals, and thus the MoJ opted to adopt a collaborative approach to develop the vision and strategy for Transforming Justice in order to build a strong coalition for change.

19. When Transforming Justice started, no one in the Department knew the full extent of the change activity taking place across the Ministry. In February 2010 a ‘Change Audit’ was carried out by the Transforming Justice office in the MoJ, which found 197 change programmes and policy initiatives within the Department, some of which lacked solid business cases for continuation. Since then all major Departmental change activities have been subsumed under the Transforming Justice brand.

20. At its inception, Jonathan Slater was appointed as a dedicated Director General of Transformation, whilst the Institute for Government (IfG) was invited to evaluate future changes. The ten provisional Transforming Justice Programmes were as follows:

**Table 2: Ten provisional Transforming Justice Programmes**

<table>
<thead>
<tr>
<th>Transforming Justice Programmes at February 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Frontline services</strong></td>
</tr>
<tr>
<td>1. Incentivising Local Delivery (PVP): adjusting the incentives of local agencies to reduce reoffending</td>
</tr>
<tr>
<td>2. Diversion into alternative civil and family justice services (PVP): Developing options for alternative methods of dispute resolution</td>
</tr>
<tr>
<td>3. New responses to crime: Developing alternative sentencing options</td>
</tr>
<tr>
<td>4. A better CJS for the public (PVP): improving effectiveness and efficiency of case management (from arrest and sentence)</td>
</tr>
<tr>
<td><strong>Back office services</strong></td>
</tr>
<tr>
<td>5. Shared services (OEP)*: Sharing NOMS back office services with courts and other MoJ organisations</td>
</tr>
<tr>
<td>6. Estates (OEP)*: Consolidating the estate in London and the regions</td>
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<tr>
<td>7. New operating model: Developing option for new MoJ operating models (structures accountabilities processes etc. (expanded from initial focus on SCS downsizing in March 2010)</td>
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<tr>
<td><strong>Enabling transformation</strong></td>
</tr>
<tr>
<td>8. Public engagement: Developing options to build public trust and public action to improve justice</td>
</tr>
<tr>
<td>9. Management Information: improving data quality and information flows across MoJ organisations*</td>
</tr>
<tr>
<td>10. Engaging our people: building staff engagement across MoJ headquarters and executive agencies</td>
</tr>
</tbody>
</table>

Key: * denotes a pre-existing programme; (PVP) = aligned to MoJ’s work supporting Government’s Public Value Programme; (OEP) = aligned to MoJ’s work supporting Government’s Operational Efficiency Programme


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26 Ibid. pp 24–25

27 Ibid. pp 48
2 The direction of travel

Structural changes to improve governance and accountability

21. The MoJ is a large Department, controlled from a small central core. In order to carry out its responsibilities it devolves the delivery of many of its functions to Arm’s Length Bodies (ALBs). In addition, there are certain functions of the justice system, such as the appointment of judges, which must be independent of the Executive. Such functions are also performed by ALBs that require governance, funding and policy arrangements, but are independent of direct political control. Because of this structure, the MoJ must ensure it has the right internal structures to monitor performance and has effective oversight of its sponsored bodies. Additionally, it must also consider whether its structure provides for the right level of accountability, so that ministers or the accounting officer are suitably placed to take responsibility for the actions of the MoJ.

The Departmental Board

22. Prior to the General Election in May 2010 the MoJ was run through the Corporate Management Board, a corporate body operating within a framework of strategy and policy agreed with the Secretary of State. It was chaired by the Permanent Secretary; and its job was to make a reality of the ministerial vision for the MoJ. Since May 2010, the MoJ has been run by the Departmental Board which has overall responsibility for the MoJ’s strategic direction. The new Board is chaired by the Secretary of State and membership includes the ministerial team, the Permanent Secretary, DG Finance & Corporate Services, DG Transforming Justice, and Non-Executive Members. This arrangement, as well as directly involving ministers, was in line with central Government guidance that the Board should have three Departmental Executives represented. Initially, other Directors General were invited to join Board meetings when appropriate, but over time the MoJ took the view that this structure was causing a problem. Sir Suma told us:

[without the heads of delivery bodies there, we could not discuss some of the strategic issues, the change management issues and the delivery issues we needed to discuss properly. We were having to have, if you like, second order debates with them as well, out of the room. It did not make a lot of sense. Although, because of that, it is a larger board, the discussions have improved as well.]

As a result, the Chief Executives of all the delivery agencies (HMCTS, LSC, and NOMS) are now full members of the Board.

23. The Ministry of Justice has taken a pragmatic approach by adapting its top level structure to ensure all delivery agencies have a seat on the Departmental Board. These changes will speed up internal processes, and allow all agencies to have a direct input into Departmental decision making, which now rightly involves ministers directly. We

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28 Ministry of Justice, Annual Report and Accounts 2010-11, pp 12–13
29 Ibid. pp 13–14
30 Q 439
commend this flexible approach and wish to see it continue: if circumstances or demands change, it might be necessary for the composition of the Board also to change.

24. In 2010–11, nearly half the MoJ’s expenditure (over £4 billion) and 74% of its staff belonged to NOMS.\(^{31}\) In 2007, the then Lord Chief Justice appeared before the Constitutional Affairs Committee, a predecessor of this Committee, and warned that the amalgamation of responsibilities and budgets in the new MoJ could lead to a “real conflict of demand on a single budget”.\(^{32}\) The Prison Reform Trust also claimed that “decisions about budget allocation are skewed by the long term commitment to fund prison places, [...] [and] such a massive disparity inevitably places the prison estate at the centre of the criminal justice system”.\(^{33}\) By comparison, in 2010-11 the MoJ distributed more than £2 billion to the LSC, almost £1.5 billion to courts and tribunals, and more than £0.4 billion to the Youth Justice Board.

25. We asked Board members whether the dominant presence of NOMS presented difficulties for the MoJ, to which Matthew Coats, Chief Executive, Legal Services Commission, responded “While we might be smaller in head count terms, our budget is more than a quarter of the Department’s budget, so I have not felt us to be without influence at all. I could see why you might ask the question, but that has not been my experience”.\(^{34}\)

**Sponsored Bodies**

26. The MoJ sponsors a wide-range of Arm’s Length Bodies, including three Executive Agencies (EAs) and nine executive Non-Departmental Public Bodies referred to in paragraph 9.\(^{35}\) The Department is reliant upon its NDPBs and EAs to deliver its functions. The Cabinet Office provides guidance to departments to assist in the classification of Public Bodies, and distinguishes between Executive Agencies and Non-Departmental Public Bodies as follows:

**Table 3: Classification of Public Bodies**

<table>
<thead>
<tr>
<th>EXECUTIVE AGENCIES</th>
<th>EXECUTIVE NDPBs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Agencies are part of a Government department.</td>
<td>Executive NDPBs are usually established by Statute or under the Companies Act. A small number of NDPBs have been established by Royal Charter. They are (with a couple of exceptions) not part of The Crown but have their own legal personality.</td>
</tr>
<tr>
<td>They are defined business units headed up by a Chief Executive (who is often supported by a Management Board).</td>
<td>They carry out a wide range of administrative, commercial, executive and regulatory or technical functions which are considered to be better delivered at arm’s length from Ministers.</td>
</tr>
<tr>
<td>They operate with a degree of autonomy from Ministers and the main department. Ministers do not concern themselves with the day to day running of Agencies - but are directly accountable to Parliament and the public for the overall performance of Agencies and for</td>
<td>They have a regional or national remit. Bodies</td>
</tr>
</tbody>
</table>

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32 Constitutional Affairs Committee, *The Creation of the Ministry of Justice*, HC 466, Q 75
33 Ev 119
34 Q 501
35 Ministry of Justice, *Annual Report and Accounts 2010-11*, pp 6-10
their continued existence.

They may provide services or functions on behalf of other Government departments, Devolved Administrations.

They do not have a separate legal personality.

They are staffed by civil servants.

They typically deliver a service.

They do not have their own vote but come under the Department’s vote. They publish their own Annual Report and Accounts. Accounts are consolidated into those of the parent department.

which operate at a local level, or an international level, are rarely NDPBs.

They have varying degrees of operational autonomy and independence from Ministers and the sponsoring Department - but all work within a strategic framework set by Ministers. They are directly accountable to Ministers who, in turn, are ultimately accountable to Parliament and the public for the performance of their NDPBs and their continued existence.

They are headed by boards (or occasionally office-holders). Board members are usually appointed by Ministers or by The Queen on the advice of Ministers. Appointments are typically made in line with the Code of Practice issued by the Commissioner for Public Appointments.

The board usually appoints a CEO with day-to-day responsibility for managing the body. The CEO, and staff, are not usually civil servants. The CEO is also usually the Accounting Officer for the NDPBs and the sponsor department’s permanent secretary, as principal accounting officer, is usually involved in the appointment.

They do not have their own vote. Funding is usually delivered through a grant or grant-in-aid - although many executive NDPBs also generate additional income through other sources. Some are funded by levies on particular sectors and receive no central funding

They are accountable for their own budget and publish their own Annual Report and Accounts. Most will have their accounts consolidated (as they are considered central Government for ONS purposes). NAO is the external auditor.

Data Source: Categories of Public Bodies: A guide for Departments, Cabinet Office, April 2011

27. Several of the MoJ’s Public Bodies have been or are being reorganised:

- The National Offender Management Service (NOMS) was originally created in June 2004; in May 2007 its responsibilities were shifted from the Home Office to the new Ministry of Justice. In April 2008, NOMS became an agency and in line with the objective of ‘end-to end management of offenders’, brought HM Prison Service into NOMS. HM Prison Service and HM Probation Service remain distinct bodies, but they are jointly responsible for protecting the public and reducing reoffending. More recently NOMS has changed its operating model from a regional to a functional model. The Agency is now structured around its core functions of commissioning; contract management; and system integration whilst also establishing a resilient structure for the management of public sector prisons.37

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37 Ev 109
• Her Majesty’s Courts and Tribunals Service (HMCTS) is an Executive Agency of the MoJ, created on 1 April 2011 through the merger of the Tribunals Service with Her Majesty’s Courts Service (HMCS). The new entity is a partnership between the Lord Chancellor, the Lord Chief Justice, and the Senior President of Tribunals and is responsible for the administration of the criminal, civil and family courts and tribunals in England and Wales, and non-devolved tribunals in Scotland and Northern Ireland.  

• The Legal Services Commission (LSC) which runs the legal aid scheme in England and Wales, is a Non-Departmental Public Body which has suffered from poor performance and criticism in a number of areas for several years. Following a review by Sir Ian Magee in March 2010, it was announced that the LSC would be replaced with a new Executive Agency, which is due to be established from April 2013.

• The Youth Justice Board (YJB), which has responsibility for justice services specifically for people under 18, is a Non-Departmental Public Body that the Government intended to abolish via the Public Bodies Act, with its functions transferred into a new Youth Justice Division within the MoJ. Subsequently, due to opposition in Parliament, during consideration of the Bill, the Government decided not to pursue its abolition. The MoJ has since sought to establish closer working between itself and the YJB, and remains of the view that ministers should have more direct accountability for youth justice.

• The Judicial Appointments Commission (JAC) was established to maintain and strengthen judicial independence by taking responsibility for selecting candidates for judicial office out of the hands of the Lord Chancellor and making the appointments process clearer and more accountable. Its current Chairman was given a steer on appointment by the Secretary of State that the costs and time involved in making appointments had to be reduced, and that the focus must be on getting the highest possible quality of judicial appointments.

• HM Inspectorate of Court Administration (HMICA) has been abolished by means of the Public Bodies Act 2011. During consultation on its abolition, concerns were raised that there would no longer be independent scrutiny of HMCTS, but the Government disagreed, noting that external oversight would be provided by the National Audit Office.

• The Administrative Justice and Tribunals Council (AJTC), which reviews the administrative justice system, has been scheduled for abolition via the process introduced in the Public Bodies Act 2011. The AJTC said it was puzzled and frustrated by its proposed abolition, and was “deeply sceptical that the [MoJ] could,

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38 Ministry of Justice, Annual Report and Accounts 2010-11, p 187
39 Q 186
40 Ministry of Justice, Government response to the Justice Committee’s Report: The proposed abolition of the Youth Justice Board, Cm 8257, January 2012, para 4
41 Q 443
42 Ministry of Justice, Response to consultation on reforms proposed in the Public Bodies Bill, December 2011, p 10-18
should or would [...] take over [the] functions”. The responsible Minister, Jonathan Djanogly MP, Parliamentary Under-Secretary, has argued that the formation of HMCTS had changed the tribunal structure, with most tribunals within HMCTS and subject to common standards, adding “over the last year [...] tribunals have got stronger”.

**Independence**

28. The Chief Inspectors of Prisons and Probation and the Prisons and Probation Ombudsman jointly submitted written evidence which said there was confusion in the MoJ about their independent status. They were also concerned that their actual or perceived independence would be damaged by applying the MoJ appraisal processes to them; by moving their offices to the main MoJ building; by stopping their independent websites; by restricting their ability to recruit the diverse staff they required; and by prolonged budget uncertainty.

29. **We note the concerns of the Chief Inspectors of Prisons and Probation and the Prisons and Probation Ombudsman.** As they have a role as watchdogs it is particularly important that they have independence from the Department. We call on ministers to discuss these concerns with the Inspectors and Ombudsman, and in response to this Report to outline what steps they are taking to allay fears regarding their independent status.

30. **Where the function of an Arm’s Length Body requires it to be protected from political influence, it is important that the appropriate arrangements are in place so that this is the perception as well as the reality.** We recommend that, where necessary, the Ministry of Justice establish or revise Framework documents so that they recognise the importance of real and perceived independence.

**Accountability**

31. The Committee of Public Accounts reported in January 2011 that the accountability of the 53 Arm’s Length Bodies (some 350 organisations including sub-bodies) was a matter of concern for the MoJ. Two of these bodies (NOMS and HM Courts Service) were Executive Agencies and most of the rest were NDPBs. The MoJ was satisfied that it was able to oversee the activities of its Executive Agencies. However, with regard to its management of NDPBs, the MoJ considered that there was a mismatch between the Department’s accountability for these bodies and the extent to which it could exercise effective oversight. Until recently, the MoJ had not had the systems in place to require bodies to notify it of emerging problems. For example, senior management had not always received feedback from audit committees. It also played no part in selecting Arm’s Length Bodies’

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44 Ibid. Q 125

45 Ibid.

46 Ev 164. We do not consider in our Report the independence of the judicial appointment process. We will consider whether to do further work on the judicial appointment process when the proposed changes set out in the Crime and Courts Bill reach their House of Commons stages.
management teams; it did not have appropriate levers to enable it to intervene if things went wrong; and it had not always used its framework agreements to best effect to specify its information requirements.\(^{47}\) When we raised the issue of ministerial oversight of Public Bodies with Rt Hon Jack Straw MP, former Secretary of State for Justice, he commented that he did not believe he had sufficient control of NDPBs.\(^{48}\)

32. The MoJ has recently taken steps to improve the accountability of NDPBs. As referred to above, the MoJ recently changed its relationship with the LSC, following the Commission’s poor performance, to mimic the arrangements the Department has with Executive Agencies prior to the LSC formally becoming an Agency with effect from April 2013. These changes will ensure greater accountability for ministers in terms of financial management of legal aid. The closer control by central MoJ has also removed responsibility for a wide range of areas, such as policy development, from the Legal Services Commission. This change was welcomed by the Law Society who told us in written evidence “[t]he existing structure of legal aid provision through the LSC has proved sub-optimal due to duplications and conflicts in policy work between the LSC and MoJ”.\(^{49}\) It was hoped that the transition of the LSC would allow the Agency to focus on developing skills and expertise in the areas it had responsibility for: commissioning and administering legal aid services. When the Law Society appeared before us at the first evidence session in this inquiry they told us it was heartening that the Government was listening to the sector in delaying the implementation of the Legal Aid, Sentencing and Punishment of Offenders Act for a year, recognising that time was required to get it right. In addition, they hoped the LSC would now streamline its contractual arrangements and develop a longer term strategy on which providers could rely and which would provide a level playing field.\(^{50}\)

33. The MoJ also tried to change the accountability arrangements it had for youth justice policy. The Government’s written evidence to our inquiry into the proposed abolition of the YJB stated:

>[the change] will restore direct Ministerial accountability for youth justice so that Ministers, not an arm’s length body, will be responsible for youth justice. Increasing the Ministerial accountability for youth justice will create a strong impetus for improvement. Ministers are better placed to influence policy across government and they will ensure that other departments play their part in stopping young people from becoming involved in crime and reoffending.\(^{51}\)

34. In our Report we raised concerns that, over time, the strategic priorities of NOMS might dominate and overwhelm the proposed new Youth Justice Division within the MoJ. We therefore recommended that the new Youth Justice Advisory Board be given a specific responsibility to assess and report on the independence of the Youth Justice Division.\(^{52}\)

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\(^{47}\) Committee of Public Accounts, *Ministry of Justice Financial Management*, HC 574, paras 3-4

\(^{48}\) Qq 79-80

\(^{49}\) Ev 124

\(^{50}\) Qq 59–62


\(^{52}\) *Ibid.* para 13
Following opposition in Parliament, and defeat in the House of Lords, the Government decided not to proceed with the Board’s abolition. However, the Government’s response to our Report states, “[the Government] remains of the view that Ministers should have more direct accountability for youth justice and we are currently working with the YJB on how this can be made a reality”.53

35. Where there is no requirement for the function of an Arm’s Length Body to be protected from political influence, it is important that ministers are held accountable, and have influence on the performance of that function. Notwithstanding retention of the Youth Justice Board as a Non-Departmental Public Body, we recommend the Ministry ensures that the YJB works as efficiently as it would as an Agency, with similar accountability requirements.

36. We note that the Ministry of Justice will be reviewing regularly the functions of its Arm’s Length Bodies, and wish to be informed of any proposals to alter governance arrangements.

Performance monitoring

37. In April 2011 the MoJ established an ALB Governance Division, which has responsibility for driving up standards to ensure that its Arm’s Length Bodies are supported by consistent governance arrangements with clear lines of accountability.54

38. Sir Suma told us:

[T]he story of 2007–08, when the Ministry of Justice was put together, was one where there was no consistent approach to the arm’s length bodies whatsoever. The sponsor relationships existed, but there was not a central division that looked across the piece and you were pretty much at the mercy of individual relationships between the sponsor person in the Ministry and the chief executive, or the chair, of the arm’s length body. So we created an arm’s length body governance division to give us some sort of consistency, and to look across. Then we asked that division to take a risk-based approach, to look across all the arm’s length bodies and try and work out—basically on the size of budget and the risks contained in the work they are doing—how much oversight the Ministry should have and what the relationship should be. That was a major development.

The second thing we did was that I started having meetings, every quarter, with the accounting officers of the most serious arm’s length bodies—of course, the sponsors now see them more frequently—and we can compare across much better than we used to be able to.

Finally, in the last [...] nine months to a year we have tried to get them to embrace Transforming Justice as well. Again, the first phase was very much within the Ministry and the executive agencies only, but the NDPBs are also much more

53 Ministry of Justice, Government response to the Justice Committee’s Report: The proposed abolition of the Youth Justice Board, Cm 8257, January 2012, para 4

54 Ev 107
involved. It is a much more systematic approach to it. We obviously fed into the Public Bodies Bill as well and, now, into the triennial reviews too. It is one of the areas in which the NAO and the PAC have actually commended us for our work.\textsuperscript{35}

39. In addition, The Government’s response to our Report on the abolition of the YJB states, “the MoJ is [...] strengthening the framework documents that set out the relationships between the Department and its [NDPBs]. [...] We expect this document to be launched later this year”.\textsuperscript{36}

40. We acknowledge the improvements that the MoJ has made to its oversight of Arm’s Length Bodies. However, these are improvements from a situation that the Committee of Public Accounts described as “a matter of concern for the Ministry”.

41. We welcome the establishment of the Arm’s Length Bodies’ Governance Division. This Division should endeavour to support and monitor the ALBs so that poor performance and duplicated processes, as previously seen in the LSC, are not repeated elsewhere.

42. We recommend that the MoJ report to us on a regular basis – perhaps twice a year – on the work of the ALB Governance Division, drawing on its risk-based approach, and flagging up any significant risks identified, and the mitigating steps taken to manage those risks.

\section*{Cultural change through Transforming Justice}

43. In its 2010 interim report on the Transforming Justice programme, the Institute for Government (IfG) identified key challenges facing the MoJ as a new Department. First, as a post-merger organisation, the MoJ had a diverse set of structures and organisational cultures. In particular, it was still working out how its relationship with its main Executive Agencies would operate and which decisions would be made at each level. Secondly, although individuals had clear frameworks for thinking about the parts of the system associated with MoJ’s predecessor organisations there was no common conceptual framework.\textsuperscript{57}

44. The IfG also reported in 2010 that there were apparent cultural differences between those officials with operational backgrounds and those with policy backgrounds. Policy was the most valued skill-set for progression to senior levels in the civil service, and operational expertise was undervalued. But there was also an increasingly confident and vocal cadre of operational managers operating at senior levels, in part due to a significant increase in external appointments into the civil service.\textsuperscript{58} In 2011 it reported that the difference in culture was still present, but the balance between the different groups was different. By early 2011 the policy group was being seen as needing to adopt more of a programme management-style approach if it was to meet the deadlines necessary to take forward the transformation. The policy function itself has been reformed, with policy

\textsuperscript{35} Q 440
\textsuperscript{36} Cm 8257, para 4
\textsuperscript{58} Ibid. p 39
teams having been brought together to form a single group with much greater focus on how resource is deployed to meet business critical requirements.  

45. Given the MoJ’s history, the IfG concluded that it was remarkable that by January 2010 the MoJ had developed around the Transforming Justice programme a “clear coalition of around 20 senior civil servants coming from across MoJ’s business groups”.  

In addition, the MoJ increased its efforts to connect to those working nearer to the front line of justice services. MoJ staff who wanted to become more involved in change efforts were invited to sign up online as ‘Transformers’, who would be invited to provide ideas, act as a testing ground for early propositions and work on emerging initiatives. Sir Suma Chakrabarti and Jonathan Slater held a web-chat with all staff to explain Transforming Justice to staff across the MoJ and its Agencies – an event that was followed by a series of ‘roadshows’ in which senior MoJ staff visited all parts of the country.  

The Transforming Justice programme is ongoing and has been extended to 2020. We examine the future of the programme in chapter 4.

46. We welcome the achievements of the Transforming Justice programme in uniting the Ministry behind this brand. This work has helped the Department to coalesce around a common purpose. We further welcome the efforts that have been made to involve front-line staff in these changes at an early stage, and found evidence of the understanding of and commitment to the programme among staff at every level when we toured the Ministry’s and NOMS headquarters on an ‘open access’ basis.

47. There has been a historical tendency throughout government to favour policy at the expense of delivery. We welcome the change in culture in the Ministry, with an increasing recognition of the importance of programme management as well as policy. We recommend that greater efforts be made to alter the balance from policy creation to its implementation. It should be a prerequisite that officials at a senior level have had hands-on experience of delivery or project management.

Prison Service and Probation Service relations

48. Throughout this inquiry we have been told about a less harmonious relationship within NOMS. The Prison Reform Trust argued that the attempt to create an integrated and co-ordinated correctional service was misguided and created more problems than it has solved. It claimed that the Prison Service and the Probation Service had different cultures and needed to operate in different environments, but now the Probation Service was in a chain of command dominated by Prison Service managers, and communication between prisons and probation was not working in many areas. In addition, the Howard League’s evidence said the creation of NOMS was rightly described as a probation take-over by the Prison Service.

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61 Ibid. p 34
62 Ev 121
63 Ev 128
49. We raised with Phil Wheatley CB, Former Director General, NOMS, the concern that there were so few people from the Probation Service in senior positions in NOMS, to which he responded:

In terms of who could become senior managers, the crucial thing was to get the best people able to lead that degree of change. If you look at most probation services, with exceptions [...] they were small organisations, not feeling politically accountable to the centre. They tended to be led by people who were used to running small organisations without direct political accountability. They also had no competitive pressure on them and probably with the committee feeling quite loyal towards "their" probation service, which is how committees used to feel. That was not a very challenging environment and did not help grow the sharpest managers.64

50. The Probation Chiefs Association’s reaction was:

we [...] have found [Phil Wheatley’s] comments in relation to the management capability in the probation service, as a generalisation, to be unjustified. It is impossible to reconcile the comment that “Probation Service [...] probably was not the sharpest of managers” with the accolade given by the British Quality Foundation in November 2011, when the Probation Service in England and Wales became the first public sector organisation to win the British Quality Foundation’s coveted Gold medal for Excellence, the most rigorous business award scheme in the UK.65

51. Michael Spurr, Chief Executive, National Offender Management Service, denied that NOMS was prison-dominated and reiterated the importance of close links between the Prison and Probation Services. NOMS had over 100 people in the central agency with probation experience—both directly employed and on secondment from the Probation Service—and most were senior managers. NOMS had also been trying to attract to its Board a non-executive with probation experience. Structural differences between the two services may lead people to think the service is prison-dominated. Unlike prison staff who are directly employed by NOMS, probation staff are employed by probation trusts which are non-departmental bodies independent of NOMS.66

52. We have long argued that the difficulties NOMS has experienced in reducing re-offending are inherent in its current structure and that there should be a more ambitious integrated system of offender management involving the commissioning of both prison and probation services in defined geographical areas. While we appreciate that efforts have been made to bring prisons and probation closer together, such efforts amount to little more than a sticking plaster; they do not address the fundamental structure of NOMS, which is currently inadequate to fulfil its aspirations. As such, the rigidities in the current structure militate against doing what works. Furthermore, probation does not enjoy the same status as prisons in NOMS, which reflects the fact that non-custodial sentences do not have the same status as custodial sentences throughout the system.

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64 Q 103
65 Ev 169
66 Qq 397–403
Change of emphasis – understanding the business

53. Demand for the services provided by the MoJ is driven largely by external factors. This was demonstrated by the riots of August 2011, which led to a swift increase in workloads at individual courts as well as a spike in the prison population.

54. Throughout this inquiry we have heard of examples which indicate that the MoJ does not have sufficient understanding of demands, resources and responses within the justice system:

- The Institute for Government reported in 2010 that information systems did not yet connect across the MoJ. Different data systems focused on different entities – some tracking cases and others individuals. This meant that policy-makers were not able to use operational data for policy decisions and relied instead on models that estimated system flows and impacts. In addition, the evidence base for ‘what works’ in driving the outcomes that the MoJ is responsible for was notoriously weak.67

- A 2010 NAO study concluded that “practitioners in the youth justice system do not know which interventions have the most impact on reducing reoffending. 76% of Youth Offending Team managers agreed with the statement, “it is difficult to find evidence on ‘what works’ for certain areas of our work”. There has been little research published in this area by the Board or Ministry since 2006. With the prospect of resources reducing in the near future, the youth justice system is, therefore, in a weak position to know which activities to cut and which to keep to ensure that outcomes do not deteriorate”.68

55. The Law Society’s written evidence stated:

[T]he Ministry of Justice does not appear to have a sufficiently developed understanding of costs in relation to the impact of proposed changes to the legal aid scheme, and frequently publishes Impact Assessments (IAs) alongside consultation papers that are lacking in sufficient detail.69

It gave the example of the Impact Assessment for the Green Paper consultation, Proposals for the reform of legal aid in England and Wales, where the MoJ recognised the proposals were likely to be associated with “wider social and economic costs”, but there was no attempt to assess what these knock-on costs might be. It also gave the example of the ‘Telephone Gateway’. Here the estimated savings fell from £40–60 million per year to £1–2 million per year in a seven month period. The Law Society suggested this showed the proposals were not based on very reliable data.70

56. At the time we also commented on this in our Report, Government’s proposed reform of legal aid, and concluded:

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68 National Audit Office, The Youth Justice System in England and Wales, HC 663, para 19
69 Ev 123
70 Ev 124
We are disappointed in the dearth of evidence on legal aid expenditure at case level to enable the identification of key influences on cost. [W]e believe that a series of small-scale domestic qualitative research studies, examining the drivers of cost per case, would provide the Government with more valuable data to inform its efforts to reduce spending.\(^{71}\)

The Government’s response grouped this conclusion with another separate conclusion and stated:

The Government is confident that its programme of reform is well evidenced and represents the most proportionate and effective package of measures available to meet our objectives for legal aid reform.

The Government accepts that the evidence base available to inform policy making can always be improved. The Impact Assessment [...] draws on the existing evidence base to assess the impacts the programme of reform is expected to have. [...] These identify a number of areas where we would ideally have liked more information. [...] However, there is a pressing need for reform to meet our objectives for legal aid, including delivering substantial savings during the current spending review period and we must therefore proceed on the basis of the information that we have.\(^{72}\)

57. **We recommend that the Ministry provides a follow-up response to our 2011 conclusion on the dearth of evidence on legal aid expenditure and its outcomes, so that we can use it as a case study of the progress the Department has made. We note the inclusion for the first time in the 2011-12 Annual Report of figures for the average cost per case of legal aid accounting; we welcome this progress.**

58. The Impact Assessment for the Green Paper consultation was also raised during the MoJ’s appearance before the Committee of Public Accounts on its financial management. Sir Suma told them:

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. [...] As a former economist, I have been through it myself [...]. 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.\(^{73}\)

59. The MoJ has sought to tackle long-term data and systems problems by including a ‘management information’ programme in its Transforming Justice work.\(^{74}\) The MoJ

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\(^{71}\) Justice Committee, Third Report of Session 2010-12, Government’s proposed reform of legal aid, HC 681-I, para 30

\(^{72}\) Ministry of Justice, Government response to the Justice Committee’s Report: The Government’s proposed reform of legal aid, Cm 8111, June 2011, p 4

\(^{73}\) Committee of Public Accounts, Seventy Fifth Report of Session 2010-12, Ministry of Justice Financial Management, HC 1778, Qq 48–49

\(^{74}\) Institute for Government, Transformation in the Ministry of Justice: 2010 interim evaluation report, June 2010, p 43
informed us that it had made significant improvements in its modelling capability so that it could forecast demand for criminal, civil and family justice.\textsuperscript{75}

60. When we visited the MoJ Headquarters we were told that the Department was: placing more emphasis on understanding its cost-drivers; improving its analytical function and ensuring policy was evidence based (this included strengthening links with relevant academics); and, trying to make better use of data, including considering the possibility of sharing a single statistical unit with the CPS. Additionally, officials who were working on policy had to develop transferable skills which could be used in different policy areas, rather than focusing on one area of policy for a whole career. As such they now formed part of a single policy group.

61. Another way the MoJ has improved its modelling capability is through a general improvement of its finance skills, both at senior levels and amongst operational staff. The MoJ is aiming to achieve a good representation of finance skills at senior level, and a suitable understanding of finance among operational staff. A new training strategy has been put in place and all senior civil servants and budget holders are now required to have a financial objective in their annual objectives.\textsuperscript{76} It is hoped these measures will help the MoJ to improve its understanding of the cost implications of policy proposals. To identify whether the financial implications have been sufficiently well costed all new policy proposals raised internally are subject to review by corporate finance, with assistance from analytical services, before being submitted to the Board.\textsuperscript{77} In addition, the Institute for Government reported that the MoJ had brought in high-calibre analytical specialists, with many coming from the Department for Work and Pensions, a Department that was recognised as being particularly strong at generating operational data that could be used for policy decisions.\textsuperscript{78}

62. The MoJ informed us that recent reforms – legal aid, sentencing and the rehabilitation revolution – have all been informed by improved analytical modelling to ensure that their costs and benefits, and impacts on customers are fully understood. The estimated effects, models and assumptions are set out in Impact Assessments, which are signed off by the Department’s Chief Economist and ministers, and are published to ensure proper public and Parliamentary scrutiny.\textsuperscript{79} In addition, Ann Beasley CBE, Director General - Finance and Corporate Services, Ministry of Justice, told us that during the spending review the Department was able to start from an understanding of what drove their costs, and were then able to see what the policy options were to stop those drivers.\textsuperscript{80} Although the MoJ had a large and growing evidence base on the effects of different measures and interventions across the justice system, there were some areas where their evidence was limited or

\textsuperscript{75}Ev 129
\textsuperscript{76}National Audit Office, Financial Management Report 2011, HC 1591, Paras 2.6-9
\textsuperscript{77}Ibid. Para 2.15
\textsuperscript{78}Institute for Government, Transformation in the Ministry of Justice: 2010 interim evaluation report, June 2010, p 42
\textsuperscript{79}Ev 131
\textsuperscript{80}Q 176
incomplete and this was considered when developing analytical and research programmes.\textsuperscript{81}

63. We welcome the improvements made in modelling and the use of analytical techniques. We recommend that the Department further improves its analytical function, and its evidence base, so that evidence of effectiveness can lead policy. The Department should bring together all its analytical and policy capacity, both in the MoJ and in NOMS, to provide a central strategic function. The Department should further develop its work with other departments to take account of the wider social and economic costs of crime, particularly with a view to reducing the number of people entering the criminal justice system and the inherent demands upon it.

\textit{Benefiting from experiences overseas}

64. Throughout this inquiry, we have sought to establish to what extent the MoJ has considered building on examples of good practice overseas. In addition we have attempted to establish to what extent comparisons of justice systems can be made, for example to establish what different aspects cost.

65. In its written evidence, the Prison Reform Trust highlighted Canada as having an integrated and co-ordinated corrections service, which includes shared management systems, accountabilities and IT, and compared this to NOMS which it said required closer working arrangements.\textsuperscript{82} It should be noted, however, that Canada has a system of both Federal and Provincial correction services.

66. The Department told us that it tried to draw from international experience, and gave the example that some of the offending behaviour programmes it used were drawn from Canada originally. However, it admitted there was a difficulty as other justice systems were very different to England and Wales, which meant that adaptation was quite hard.\textsuperscript{83} These difficulties were commented on in the conclusion of an MoJ research paper, \textit{International comparison of publicly funded legal services and justice systems.}\textsuperscript{84} It said that although it seemed that legal aid in England and Wales was significantly more costly than elsewhere, the same did not apply to the overall costs of the justice system as spending on courts and public prosecution was comparatively low in England and Wales. This implied that looking at legal aid expenditure in isolation risked missing important structural differences between justice systems. In addition, there was also an element of ‘path dependence’ that would inhibit a major overnight shift to a lower spending system.\textsuperscript{85} We raised the scope and eligibility for legal aid with officials in Denmark and Norway when we visited in April this year. In Norway the scope for legal aid was limited to certain civil cases for those with an income under 200,000NK (approximately £21,000). It could be available in divorce cases, though these were mainly dealt with administratively. It was available for family law

\textsuperscript{81} Ev 176
\textsuperscript{82} Ev 121
\textsuperscript{83} Q 209
\textsuperscript{84} Ministry of Justice, \textit{International comparison of publicly funded legal services and justice systems}, October 2009
\textsuperscript{85} Ibid. p 36
and social security cases, but not for contract law. In comparison to Denmark, legal aid cost Norway less but there was a wider scope.

67. Peter Handcock, Chief Executive, Her Majesty’s Courts and Tribunals Service (HMCTS), told us that from time to time HMCTS had made individual comparisons of components of the electronic case management systems used in other jurisdictions. It was difficult to make whole system comparisons because systems and processes varied a lot, and the published data varied so much that it was difficult to match it to make meaningful comparisons. For example, HMCTS had looked several times at the systems used in Singapore’s civil justice system, but found that the obstacles to an insightful comparison were almost overwhelming and hard to resolve at a reasonable cost. Additionally, he added that very substantial investment was required to make comparisons across jurisdictions meaningful. 86

68. We requested a briefing from the National Audit Office which compared crime and criminal justice data from a number of different countries and set out some of the challenges of making such comparisons. The briefing found that whilst international comparisons seldom provide a ‘silver bullet’ answer, they could provide valuable information about how similar problems were tackled in different jurisdictions. 87 It additionally commented that a great deal might be achieved by studying practices in other countries and piloting them in England and Wales. 88 It also identified the following as areas where it could be beneficial for the Ministry or others to do additional comparative work:

- Fines were the most common type of sentence in England and Wales in 2009–10. 89 We have seen recent evidence that fine collection has improved, and this must continue. Cross-border comparisons of fine collection systems could be beneficial, if there are better results elsewhere.

- In 2011, the average cost per prisoner in England and Wales was £37,163. The MoJ should conduct more work to see how this compares to other countries. 90

- The Netherlands and Finland had seen reductions in their prison populations in recent years. It could be helpful to gain insight from their experience as the MoJ tries to manage prison capacity whilst meeting its savings requirements. 91

- The rate of reoffending is a key measure, and it would be highly desirable if more could be done to compare rates in different countries, or produce a regular international survey. 92

- Due to the way that crime was recorded in Canada, its Government could report on the changing severity of recorded crime as well as the change in the recorded

86 Qq 346–349
88 Ibid. Para 1.13
89 Ibid. Paras 2.33-35
90 Ibid. Para 2.45
91 Ibid. Para 2.48
92 Ibid. Para 2.58
crime rate. There could be merit in the Home Office and the MoJ reporting in a similar way from time to time.\textsuperscript{93}

- Most other countries are also undergoing fiscal consolidations, so there would be benefit to the MoJ of forging new links or finding other ways to share good practice with other jurisdictions.\textsuperscript{94}

In addition, the National Audit Office highlighted a future major study from the European Social Survey ‘Trust in Justice’ project which will look at perception and legitimacy in criminal justice throughout Europe.\textsuperscript{95}

69. Whilst there are difficulties in making straight comparisons between different jurisdictions, the MoJ should continue to draw on examples of innovative or efficient practice in other justice systems. We recommend that the Department takes note of the National Audit Office’s briefing, \textit{Comparing International Criminal Justice Systems}, which indicates where further work may be beneficial. This includes in particular: research into prison systems, such as those in the Netherlands and Finland, which have seen reductions in the prison population; a comparison of fine collection rates, which is an area where further improvement is required; and improved sharing of positive experiences across jurisdictions of how services have been provided at a lower cost. There are also potential lessons to be learned by comparing the distinct criminal justice systems in Scotland and Northern Ireland with that of England and Wales. The Department should, in its response, set out how, if at all, it intends to learn lessons from other jurisdictions.

**Addressing poor financial management**

**Laying the accounts on time**

70. The Ministry of Justice has had a number of ongoing problems related to its financial management. Most critically, for the past two years it has not been able to lay its Annual Report and Accounts before Parliament prior to the summer recess in accordance with HM Treasury’s timetable for central Government bodies.

- In 2009–10, the Ministry was the only Department to submit its resource accounts late. It blamed the delay on a change in accounting principles governing its prisons property portfolio, and also stated that there were timing issues with probation trust accounts, which operate to local authority timetables, rather than central Government timings.\textsuperscript{96}

- In 2010–11, the Ministry again failed to produce its accounts before the July Parliamentary recess. It explained that this was due to timing difficulties in accounting for probation trusts in the National Offender Management Service, and

\textsuperscript{93} Ibid. Para 2.6

\textsuperscript{94} Ibid. Para 3.7

\textsuperscript{95} Ibid. Para 2.74

\textsuperscript{96} Committee of Public Accounts, \textit{Ministry of Justice Financial Management}, HC 574, Para 7
the late completion of accounts for 2009–10 which had led to a late start to the process for 2010–11.97

71. Sir Suma Chakrabarti, the then Permanent Secretary, told us that the Department’s performance had improved each year, and that the MoJ was aiming to lay its 2011–12 accounts pre-recess, but after the new 30 June deadline required under the new Clear Line of Sight initiative.98 He particularly highlighted the challenge presented by consolidating the 35 probation trust accounts into NOMS accounts as these NDPBs worked to a September accounting deadline. The MoJ has been able to persuade them to bring their processes forward so it can meet a recess deadline, but considered it unfeasible to expect them to meet an end of June deadline. He also stressed the progress made by the LSC, whose accounts are to be consolidated with the MoJ for the first time. Last year it produced its accounts by October, but this year it did so by early July.

72. Sir Suma commented that expecting all bodies to produce their accounts in time for consolidation and for the NAO to do its two-week check, all before the end of June, was undeliverable at this stage. He considered that the same applied to a number of other departments with large numbers of external bodies. He queried the difference between the Clear Line of Sight deadline, the end of June, and the statutory deadline, the end of January, and said:

If we cared so much, why not move the statutory deadline forward? I do not understand why this target has been set, quite honestly. I am sure it is a good thing to do because we should get our accounts done as soon as possible, and I do not disagree with that, but the revealed preference of Parliament is for the end of January.99

73. On 12 July, Ursula Brennan, Sir Suma’s successor as Permanent Secretary, told us that the Departmental accounts, and those of the sponsored bodies, had been laid before Parliament that day. Whilst this showed further improvement, as expected it did not meet the agreed deadline of 30 June.100

74. Not adhering to the deadline for submitting departmental accounts, agreed across Government, is unacceptable. It creates the impression that the Ministry of Justice is a poor-performing Department with poor financial controls.

Gaining a clear audit opinion

75. A second criticism of the MoJ’s financial management was that the accounts of the Legal Services Commission were qualified for the third year running.101 The LSC’s accounts were qualified by the Comptroller and Auditor General in 2008–09 because of estimated

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97 Committee of Public Accounts, Ministry of Justice Financial Management, HC 1778, Paras 12-13
98 Letter dated 16 May 2012, from Sir Suma Chakrabarti, Permanent Secretary, Ministry of Justice, to Rt Hon Margaret Hodge MP, Chair, Committee of Public Accounts
99 Qq 455-456
100 Letter dated 12 July 2012, from Ursula Brennan, Permanent Secretary, Ministry of Justice, to Rt Hon Margaret Hodge MP, Chair, Committee of Public Accounts
overpayments of £24.7 million. By 2009–10, the estimated level of overpayments rose to £78.6 million, meaning the accounts were qualified again. In November 2010, Carolyn Downs, the Chief Executive of the LSC at the time, explained the overpayments to the Committee of Public Accounts, saying “the majority of providers are not making fraudulent claims. Our fee schemes are complicated and very different. There are add-ons, fixed fees and so on, which creates a complex system”.

76. The MoJ explained that the LSC accounts for 2010–11 were qualified because the error rate figures extrapolated by the NAO from the LSC’s own projected error rates were higher than the auditor’s maximum. The picture developing from 2010–11 actuals reveals a significant fall in error rates. Additionally, a significant and ongoing programme of work has been instigated in an effort to ensure the LSC delivers timely accounts and continues to reduce error rates for the year 2011–12.

77. The Committee of Public Accounts reported in March that the MoJ had improved the management of finances at the LSC, evidenced by 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. However, the scale of the challenge at the LSC remains very high, as it must also ensure its errors are sufficiently small not to impact on the Ministry’s accounts.

78. Matthew Coats, Chief Executive, LSC, told us how the LSC sought to gain control of its finances:

The LSC has made substantial progress in this regard and reduced the level of estimated mis-payments to legal aid providers. [...] [W]e anticipate that error levels will have been significantly driven down over the last two years [,but] we recognise we still have a lot more to do to reduce errors to immaterial levels and remove the relevant accounts qualifications.

Mr Coats added that the LSC had recently launched the latest phase of its financial stewardship improvement work, which focused on three main areas:

- Intensifying the reduction of errors in the areas responsible for the majority of mis-payments, through a combination of IT controls, targeted audit testing and staff training.
- Completing work to overhaul the organisation-wide approach to all areas of governance, assurance and audit.
- Continuing to improve financial management capability, including the further strengthening of the finance and assurance functions and by implementing a modern accounting system.

102 Committee of Public Accounts, *Ministry of Justice Financial Management*, HC 574, Q 131
103 Ev 139
105 Ev 169
79. Ursula Brennan told us that the LSC’s accounts for 2011-12 were again qualified due to the error rate in payments to legal aid providers. The NAO quantified the level of error at £35.7 million, a 28% reduction from the previous year. This reduced error rate has meant that the Departmental accounts, into which the LSC’s accounts have been consolidated for the first time, have not been qualified.106

80. **The Legal Services Commission must establish a clear plan for how it intends to reduce significantly its error rate. The ongoing qualification of the LSC’s accounts raises concerns that public expenditure is being used inappropriately.**

**Presenting robust evidence to support the accounts**

81. A third criticism of the MoJ’s financial management was that the Comptroller and Auditor General (C&AG) issued a disclaimer of opinion on the HMCTS Trust Statement, meaning he was unable to arrive at an opinion on whether the accounts gave a true and fair view. This was the first time the C&AG had disclaimed the accounts of any Whitehall body since January 2006.107

82. In 2010–11, the Department was required for the first time to produce a separate set of accounts (the Trust Statement) to record the court fines, confiscation orders and fixed penalties collected by the MoJ on behalf of the Exchequer. Because of limitations in the MoJ’s case management systems, it was unable to provide a sufficiently detailed transaction listing to support the Trust Statement, and consequently the C&AG disclaimed his opinion for 2010–11.108

83. On 15 December 2011, the Secretary of State made a Written Ministerial Statement explaining why the C&AG issued a disclaimer:

>This reflects the fact that the IT systems used in the enforcement of impositions are live “case management” systems, rather than accounting systems: they are fully effective in reporting the value of money owed to ensure targeted enforcement, but cannot be used for retrospective reporting of individual transactions for audit. The IT system was rolled out in 2007–8: the requirement to produce a trust statement first arose for 2010–11. We estimate that to implement a new accounting system for these purposes would cost at least £3 million, and would not present good value for public money. We are, however, taking steps to ensure that we are better able to evidence the robustness of the historical figures for audit purposes in future.109

84. In March Peter Handcock, Chief Executive, HMCTS, explained to us why the Trust Statement was a problem for the Agency:

>The Trust Statement is not an account of the operating costs of HMCTS; it is a statement of third-party money in effect. It is money that is collected on behalf of

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106 Letter dated 12 July 2012, from Ursula Brennan, Permanent Secretary, Ministry of Justice, to Rt Hon Margaret Hodge MP, Chair, Committee of Public Accounts


108 Letter dated 16 May 2012, from Sir Suma Chakrabarti, Permanent Secretary, Ministry of Justice, to Rt Hon Margaret Hodge MP, Chair, Committee of Public Accounts

109 HC Deb, 15 December 2011, col 128WS
Government by HMCTS. [...] We simply do not have an accruals accounting system to manage that money. We have never required one. The Treasury introduced a new requirement, but we do not have a system that can deliver what is required.

We have an accounting system that looks a bit like old-fashioned machine ledger cards, where somebody makes a payment and you put it in a machine, crank a handle and it prints the amount of the payment. From that system you cannot produce a properly consolidated auditable report of all those accounts. NAO simply were not able to say whether the Trust Statement was accurate or not.

85. Sir Suma explained how progress in this area had been addressed:

Since [2010–11], we have completed extensive work with the supplier of the case management system which records fines and confiscation orders enabling us to produce more robust evidence to underpin the figures in the Trust Statement.\textsuperscript{110}

He also highlighted the challenge of providing quality information about fixed penalty notices, for which the end-to-end imposition payment systems are the responsibility of separate constabularies and are therefore beyond the level of the MoJ’s control.\textsuperscript{111} The MoJ will be discussing with HM Treasury whether the MoJ is best placed to report on these items, and this an issue we address in paragraphs 112-115. The 2011-12 draft Trust Statement has been prepared, and is in the process of being audited by the NAO. It is anticipated that it will be laid before Parliament in early September, as agreed with HM Treasury.\textsuperscript{112}

86. We acknowledge the difficulties presented in producing the HMCTS Trust Statement for 2010–11. We note the progress made to provide robust evidence for 2011–12 for fines and confiscation orders. If the 2011–12 Trust Statement does not demonstrate significant improvements we will require ministers and officials to explain to us why the Department is failing in this respect.

**Improving financial management**

87. The Department routinely uses contractors to supplement its accounts production teams. For the 2010-11 accounts it used KPMG to provide support on the Departmental accounts production and the production of the HMCTS Trust Statement. The total value of the contract, encompassing both these elements, was £244,000. There was a clause in the contract with KPMG so that if the MoJ delivered its accounts pre-recess, KPMG would receive a bonus payment. This was not awarded as the deadline was missed.\textsuperscript{113}

88. When it was unable to deliver the 2010-11 Departmental accounts before the summer parliamentary recess in 2011, the MoJ asked the Chartered Institute of Public Finance and

\textsuperscript{110} Letter dated 16 May 2012, from Sir Suma Chakrabarti, Permanent Secretary, Ministry of Justice, to Rt Hon Margaret Hodge MP, Chair, Committee of Public Accounts

\textsuperscript{111} Ibid.

\textsuperscript{112} Letter dated 12 July 2012, from Ursula Brennan, Permanent Secretary, Ministry of Justice, to Rt Hon Margaret Hodge MP, Chair, Committee of Public Accounts

\textsuperscript{113} Q 129
Accountancy (CIPFA) to conduct an independent review of its accounts production process.

89. In light of the findings of that review, and a reorganisation within Corporate Finance, the MoJ contracted with Liberata to support the production of the 2011-12 Departmental accounts. This takes the form of providing interim staff to fill vacant posts within accounts production teams across the Department and project management resource. The contract is worth approximately £4 million, of which half of the costs are offset by what the Department would have spent if existing vacancies in permanent staff structures had been filled (taking into account salaries, on-costs and recruitment costs). Resource usage by Liberata is under regular review to ensure the MoJ is achieving value for money for the taxpayer.\textsuperscript{114}

90. Following the CIPFA review of the 2010-11 accounts production process and the lessons the MoJ is learning during the current 2011-12 process it will look at what the longer term resources and operating model for the delivery of the Departmental accounts need to be to enable production of quality and timely accounts.\textsuperscript{115}

91. Additionally, as part of a wider Finance Improvement Programme, the MoJ has redesigned its finance structures to ensure it meets its future reporting requirements and timetables. Structural changes both at the Senior Civil Service (SCS) level and the structures below have been implemented with an expectation that the restructure concludes by the end of the 2011–12 financial year.\textsuperscript{116} The NAO reviewed the MoJ’s progress on improving financial management over the Summer/Autumn of 2011. Their report acknowledged significant improvements the MoJ had made. The Department had moved from a financial maturity score of around 3 to nearer its target score of level 4 (against the NAO 5 level system). The NAO also acknowledged that the MoJ had taken action to improve its production of the accounts, and that it had engaged CIPFA to review the reasons for the Department not meeting a pre recess lay date.\textsuperscript{117}

92. Sir Suma told us that the MoJ was not strong enough on its financial management or management accounts control going back several years. He also emphasised that it had got better, not to where it should be, but it was now regarded in the top quartile in Whitehall.\textsuperscript{118}

93. We recognise the progress being made in improving financial management, but this comes from a low base. It seems to us that, until recently, there has been an unacceptable complacency about the Department’s performance. We fear that there is still a defeatist mindset within the MoJ on this issue, exemplified by the outgoing Permanent Secretary’s apparent dismissal of the possibility of meeting the Government’s own deadline of laying accounts by 30 June. This is not acceptable. If the circumstances of the MoJ are genuinely unique—which we doubt—the Department

\textsuperscript{114} Ev 174
\textsuperscript{115} Ibid.
\textsuperscript{116} Ev 139
\textsuperscript{117} Ibid.
\textsuperscript{118} Q 457
should negotiate different arrangements with HM Treasury. If they are not, then repeated failure to meet deadlines is unprofessional and shoddy. It should be a priority objective for the new Permanent Secretary to sort this out, and her performance should be measured against it.

**Benchmarking of costs**

94. In 2010, the National Audit Office criticised the MoJ for not understanding its costs, commenting that its “incomplete knowledge of the costs of its activities and policy proposals reduced its ability to make decisions on the efficient allocation of resources”.\(^{119}\) The NAO’s follow-up report in 2011 said that within NOMS the understanding of costs had been advanced through the specification, benchmarking and costing project. This project aims to specify the minimum legal and safe requirements for services delivered in the prison and probation services and quantify how much these services should cost. By November 2011, this work was over 90% complete and the MoJ had provided details of the results on its website, although providers of services will not be required to demonstrate that they have made use of specifications until later in 2012. The Ministry has stated that this work has helped inform both budget allocations and its tendering for contracts for private prisons.\(^{120}\) HMCTS was also producing similar activity-based costings in the Crown and Magistrates’ Courts as a matter of priority.\(^{121}\)

95. In January, Sir Suma told us that the fact that people in the Prison Service and the Courts Service understand their costs much better was a major advance. For example, it enabled a prison governor to say, “Reception costs this much. The benchmark is this much. I am trying to get close to the benchmark.” Sir Suma noted that this was something that did not happen before, and had come about because there had been work on financial management.\(^{122}\) The MoJ also informed us of the following impacts that the Specification, Benchmarking and Costing Programme is having: Improved effectiveness; improved economy; improved efficiency; greater freedom for providers to determine how to deliver services; improved transparency; more effective commissioning and competitions; and improved strategic planning.

96. We welcome the progress made through the Specification, Benchmarking and Costing Programme in NOMS, and the activity-based costings in HMCTS. Both are further examples of how the Ministry of Justice’s financial management is gradually improving, and how knowledge of its costs is providing the basis for decisions throughout the Department. We await further details about the benefits these programmes are bringing, and whether similar work can be done elsewhere in the MoJ.

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\(^{120}\) National Audit Office, *Financial Management Report 2011*, HC 1591, Paras 3.5-3.6

\(^{121}\) Ev 131

\(^{122}\) Q 147
Working with others

97. Through the Transforming Justice programme, the Ministry of Justice has tried to “sort its own house out by working better within what it controls”.123 The next phase of Transforming Justice will be about working better with other Government departments. We focus on the Department’s future plans in this area in Chapter 4. However, there are some issues concerning how the MoJ has engaged across the justice system since its creation which are more appropriately addressed at this point.

98. As the Institute for Government (IfG) highlighted in 2010, due to the breadth of the MoJ’s Departmental mission many of those who are needed to lead justice system change are not within the MoJ’s organisational control. Making improvements to the justice system requires leadership and consent from a range of groups, including: judiciary and magistrates; unions; other Government departments; local government and other local agencies; and politicians.124

Other Government departments

99. The Institute for Government’s 2010 report contrasted the radical approach the MoJ had taken to engage its own staff in the transformation process with the discussions it held with other Government departments, whose policies may have an impact on the numbers of people using the justice system. It explained that the MoJ had not attempted to engage other departments heavily in its internal thinking about Transforming Justice,125 but it was “the department that picks up the pieces when other departments have let people fall through the cracks”.126 By the time of the IfG’s 2011 report, most interviewees felt there was more integrated working with other departments (Home Office, Department of Health and Department of Work and Pensions) but that this was still at an early stage and should be strengthened. We examine the MoJ’s plans to strengthen this area in Chapter 4.127

100. A notable improvement is the modelling that MoJ has introduced for assessing the cost implications of policy changes proposed by other Government departments. Based on the results, the MoJ negotiates with other departments about how those costs are to be borne. We were told that this had led to a better relationship with the Home Office because the MoJ could now assess the cost impact of policy changes and decide with the Home Office how they would be paid for.128

101. In most cases, other departments’ policies which increased their own costs usually delivered benefits to the MoJ. The work by the Department for Education on troubled families was highlighted as an example: “the more [the Department for Education] engages, educates and ensures that troubled families are dealt with across Government, the

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123 Q 437
125 Ibid. pp 31-2
126 Ibid. p 21
128 Q 178
less demand, hopefully, there will be on the justice system. Through the business planning process, we are trying to get other departments to assist us in a positive way.”

102. The MoJ has also worked closely with other departments on youth justice policy. Until June 2010, this had been an area of joint responsibility between the then Department for Children, Schools and Families and the MoJ, but is now the sole responsibility of the MoJ. The Youth Justice Board told us that this change had simplified reporting processes as it now only had to feed into one department’s reporting arrangements. However, the YJB recognised some risks that arose from the change to single departmental oversight:

[Our] main concern is that over time the DfE’s focus on youth justice will diminish. An example of the risk is that initial guidance for the new DfE combined Early Intervention Grant (EIG) did not make clear that funding could be directed towards youth crime prevention, despite the ending of a previous DfE youth crime prevention funding stream.

103. During our inquiry into the proposed abolition of the Youth Justice Board, Crispin Blunt MP, Parliamentary Under-Secretary, Ministry of Justice, told us that as the Minister for youth justice, he had to make sure that other Government departments and local authorities “step up to the plate” to play their part in the delivery and funding of youth justice. He stated that “I am concerned that I am being engaged later than I would wish [...] in the process to ensure that there is proper financing for Youth Offending Teams on the ground, to make sure that before the local authority and other departmental budget settlements are cleared, youth justice is getting a proper shout from inside the Government”.

104. In the context of improving cross-departmental working, we explored the effectiveness of cross-department ministers, such as the appointment of Nick Herbert MP as Minister for Policing and Criminal Justice on which he reports jointly to the Secretary of State for Justice and the Home Secretary. The IfG argued that effectiveness could be increased if a joint minister was able to dismantle or at least manage cultural barriers across departments, although junior ministers could face problems exerting authority in more than one department.

105. Sir Suma gave the development of criminal justice video technology and secure email as examples of cross-departmental success. The Minister had been able to persuade all police authorities, the CPS, and the courts to sign up to the programme of modernisation. In the early stages, when he had police reforms to deal with, it had been very difficult for him to focus on the cross-departmental agenda, but he had been able to do that more in

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129 Q 179
131 Ibid. Ev 36
132 Ibid. para 8
133 Institute for Government, Shaping up: A Whitehall for the future, January 2010, pp 88-9
recent months. Additionally, having objectives that were mutually consistent across departments was also fundamental.\textsuperscript{134}

106. Kenneth Clarke MP, Secretary of State for Justice, gave the example of the preparation of a case in the criminal courts as an area where having a joint minister had been advantageous. He said that having all the interested parties sitting around the table with one minister brought them out of their silos and open to discussing improvements to the system, the results of which the Minister would present to Parliament in this Session.\textsuperscript{135}

107. If the potential benefits of having joint ministers working across departments are to be realised, they require the allocation to joint ministers of an appropriate range of responsibilities, giving them a realistic opportunity to be effectively involved in both departments.

108. We raised with the Secretary of State whether there were aspects of the justice system that could be better located in another department. On the overall division of responsibilities between the MoJ and the Home Office he said:

\begin{quote}
It has been divided up very oddly, [..] but it does not create any great problems in practice. Personally, I would leave it alone, certainly for the foreseeable future. My experience of reorganising the size, shape and name of Departments is that it is usually a disruptive and rather disappointing procedure. It means that for about six months nobody does anything.\textsuperscript{136}
\end{quote}

On specific responsibilities he said:

\begin{quote}
There is no obvious part of my Department, in my opinion, that ought to be moved somewhere else or vice versa. There is a slight query—and you really get a departmental turf battle between some of the people involved—on the division of responsibility for children in litigation between the Department for Education and ourselves, which is a bit odd. [..] That has been partially dismantled, though not entirely, but it is not for me to be concerned with these things anyway. I should always move cautiously before you start moving things about.\textsuperscript{137}
\end{quote}

109. Sir Suma commented that the division of Europe an and international justice and home affairs (JHA) issues could be better organised between the MoJ and the Home Office:

\begin{quote}
Increasingly, as the two of us talk a lot about JHA with the Home Office, that sort of thing, and also beyond Europe, with the international work we do, quite often, when either of us goes abroad, we are reading out a brief across the Home Office and ourselves, and Theresa May and Helen Ghosh will be doing the same. I do wonder whether an international directorate that covered both Departments would not be a sensible thing to have, but that is probably a personal opinion.\textsuperscript{138}
\end{quote}

\textsuperscript{134} Q 446
\textsuperscript{135} Ibid.
\textsuperscript{136} Q 436
\textsuperscript{137} Q 447
\textsuperscript{138} Ibid.
The Secretary of State expressed some sympathy with that opinion when he continued:

At the moment, for European Councils of Ministers, a Home Office team, including a Minister, go out on a Thursday and a Justice team and a Minister go out on a Friday. We usually say hello to each other at the airport. Unfortunately, the agenda of the Council does not always 100% match that. So usually Thursday is Interior Ministers and Home Office and usually Friday is ours, but, as all the countries are divided up slightly differently, I think Suma’s idea is quite interesting. Why we are having these two separate teams, like an American football team, running off and running on, I am not quite sure.\textsuperscript{139}

\textbf{110. We recommend that the Ministry of Justice and the Home Office establish a single team to support their responsibilities for European and international justice and home affairs issues. This is an obvious area of unnecessary duplication.}

111. During this inquiry, and through the work of the National Audit Office into the MoJ’s financial management, we have become aware of the anomaly that all of the Government’s confiscation order debt book appears on HMCTS accounts. 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. The MoJ told the Committee of Public Accounts that 60% of this amount was unlikely to be collected, as the assets concerned were either abroad or very well hidden, but there was a clear benefit in maintaining these orders as live as they limited the ability of criminals to move any proceeds of crime back to the United Kingdom.\textsuperscript{140} The MoJ recovered on average 68% of the value of the orders for which it was responsible, but admitted that this was largely because they were responsible for lower value orders which were easier to collect. High value orders were typically the responsibility of the Serious Fraud Office and the Crown Prosecution Service.\textsuperscript{141}

112. Peter Handcock, Chief Executive, HM Courts and Tribunals Service, said the confiscation order debt book should not be on the HMCTS accounts as he was only responsible for enforcing 18% of the debt book, and it resulted with HMCTS receiving a qualified Trust Statement. He added that there were other things he would like off the HMCTS accounts, such as fixed penalty notices from police forces.\textsuperscript{142} We referred to this earlier in paragraph 84.

113. The Committee of Public Accounts reported that the MoJ had been involved in setting up a cross-Government board, chaired at ministerial level, to discuss confiscation orders and consider the appropriate action.\textsuperscript{143} Ann Beasley CBE, Director General – Finance and Corporate Services, Ministry of Justice, explained to us they were working with the Home Office, which led on confiscation orders, to try to encourage them to improve progress. The Home Office had set up the Criminal Finance Board, chaired by

\textsuperscript{139} Q 447
\textsuperscript{140} Committee of Public Accounts, \textit{Ministry of Justice Financial Management}, HC 1778, Para 10
\textsuperscript{141} Ibid. Para 11
\textsuperscript{142} Q 358
\textsuperscript{143} Committee of Public Accounts, \textit{Ministry of Justice Financial Management}, HC 1778, Para 11
James Brokenshire MP, Parliamentary Under-Secretary, Home Office, who is responsible for crime and security.

114. The current system for the collection of confiscation orders appears muddled. The administrative responsibility for a confiscation order, or other type of fine or penalty, should fall on the organisation whose duty it is to collect it. This would be a clear and transparent approach. We recommend that those confiscation orders that are not HMCTS’s responsibility to collect are removed from their accounts.

**Relationship with the judiciary**

115. When the then Prime Minister announced the creation of the MoJ, the then Lord Chief Justice, Rt Hon Lord Phillips of Worth Matravers, declared publicly that the announcement raised “important issues of principle”. He stated that “structures are required which will prevent the additional responsibilities taken over by the new [MoJ] interfering with or damaging the independent administration and proper funding of the court service” and “the continuing problems of prison overcrowding and the availability of resources to provide the sentences imposed by the courts necessitate public debate” as, on account of the strains on the prisons’ budget, judges might feel under pressure to impose sentences they did not believe to be appropriate. Provided that these concerns were addressed, he concluded that “there would be no objection in principle to the creation of a new ministry with responsibility for both offender management and the court service.”

116. In February last year, Lord Phillips, now President of the Supreme Court, warned that the Court’s independence could not be properly guaranteed because of the way it was funded by the Government. He said the court was dependent on what it could persuade the MoJ to give “by way of contribution”, and argued that the court’s budget should be pre-set and ring-fenced.

117. In response, the Justice Secretary said “Of course we have judicial independence, it’s at the heart of our freedom in this country. The Government is bound by the law, it doesn’t actually determine judgements of courts. [But] I’m afraid Lord Phillips cannot be in some unique position where the court decides on its own budget and tells the Ministry of Justice and the Government what it should be.” There had been a deep suspicion that the courts would be starved of money to pay for prison, but that suspicion was fading.

118. We received written evidence from the Lord Chief Justice of England and Wales which stated that the April 2008 Framework Document, that created a unique partnership between the Lord Chancellor and the Lord Chief Justice, contained “elaborate, and with hindsight perhaps over-elaborate, provisions relating to the finance, resource allocation and business plans for HMCS”. It further stated:

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144 Constitutional Affairs Committee, Sixth Report of Session 2006–07, The Creation of the Ministry of Justice, HC 466, para 2
146 Q 453
Whilst HMCTS remains an agency of the MoJ, both the Senior President and I have been impressed by the independent position it has adopted in respect of many of the issues it has had to address in the short time since its creation last April. I am well aware of the very keen interest the board takes in performance and timeliness, whilst of course also underlying the fundamental need to protect judicial independence.\footnote{Ev 168}

The Justice Secretary told us that “the top of the judiciary are pretty well up for efficiency and change” and were receptive to sensible suggestions. He and the Lord Chief Justice have an annual dialogue in relation to the allocation of financial resources to HMCTS for the following year. Additionally, the Lord Chief Justice did raise the reduced budget available for training and similar activities as a particular matter of concern.\footnote{Ibid.}

119. We note the inevitable tensions between the Lord Chancellor and the Lord Chief Justice on funding for the courts and tribunals service, but welcome the annual dialogue in relation to the allocation of financial resources. We believe that this is the appropriate mechanism through which any concerns about funding can be raised, and agreement reached. Essential though judicial independence is, we agree with the Secretary of State that that does not mean the judiciary can set its own budget without reference to the constraints on overall public expenditure.
3 Improving cost-effectiveness

120. Transforming Justice activities, prior to the 2010 Spending Review, were expected to accrue savings amounting to hundreds of millions of pounds. By June 2010, the MoJ had identified additional, highly provisional, savings from the programme, with a top range of £1 billion. Ideas emerging at this stage had provided the framework for Spending Review discussions, but the MoJ’s final Spending Review settlement later that year required a 23% cut in annual budgets over the ensuing four years – far higher at £1.6 billion\(^\text{149}\) than the savings identified from the Transforming Justice Programme.\(^\text{150}\)

121. In the face of financial austerity, the Institute for Government concluded in May 2011 that the challenge for the MoJ was to maintain the focus on the original ambition of Transforming Justice—to make its services better—and to ensure that the initiative did not become conflated into a programme of cuts. Transforming Justice was the ‘brand’ that packaged the overall reforms, but ‘better for less’ was the phrase that resonated amongst staff in the MoJ as they could apply that concept to their day jobs.\(^\text{151}\)

122. The MoJ told us that it was seeking to make savings where they were most achievable without harming front line services, rather than ‘salami-slicing’ budgets.\(^\text{152}\) Sir Suma Chakrabarti explained:

> Our very tight financial settlement has made it a challenging year, we have worked to make efficiencies and target our resources where they are most needed. We’ve streamlined the business and worked hard to cut out unnecessary overheads and non-essential projects, whilst working to continually improve the service we provide to the public.\(^\text{153}\)

123. Following the 2011 summer riots, and in response to policy decisions, such as the decision not to proceed with plans to reform early guilty pleas, the MoJ has had to revise its savings plans. The Department emphasised that it continued to monitor the delivery of its plans to ensure that they were on track.\(^\text{154}\)

124. The National Audit Office’s briefing to us explained that most governments throughout Europe were trying to drive down costs in their justice departments, and there was significant overlap in the measures these departments and the MoJ were taking.\(^\text{155}\) When we were in Denmark as part of our youth justice inquiry, we raised this with their officials who said that their Ministry of Justice had struggled to find efficiency savings and were unable to fund new initiatives because budgets had been tightened.

\(^{149}\)HM Treasury, Spending Review 2010, p 55


\(^{151}\)Ibid. p 31

\(^{152}\)Ev 131

\(^{153}\)Ministry of Justice, Annual Report and Accounts 2010-11, p 5

\(^{154}\)Ev 132

\(^{155}\)National Audit Office, Comparing International Criminal Justice Systems, March 2012, Paras 3.4-3.6
125. Last November the MoJ topped an efficiency ranking survey conducted by Civil Service World, based on data contained on departmental business plans in 2009–10. The survey ranked 17 departments in four key fields of annual spending: HR cost per full-time equivalent (FTE) employee; desktop PC cost per FTE; estates cost per FTE; and the value of goods and services bought for every pound spent on procurement.¹⁵⁶

Financial planning model and the new Operating model

Improved financial planning

126. The NAO reported that the MoJ had used its improved modelling capability in its financial planning. It now had workflow models covering criminal, family and civil justice, and used data from these in its financial planning model to estimate the potential impact of changes in demand throughout the justice system; for example, increased flow through the courts and prisons due to the impact of the summer 2011 riots. These workflow models provided a coherent and consistent platform for operational and financial modelling.¹⁵⁷

127. The new multi-year financial planning model (which replaced annual budgeting) provided a single, consistent picture of financial resource requirements and savings plans.¹⁵⁸ This was supported by full and clear “assumption books” that outlined the inputs, assumptions and methods behind financial and savings plans (such as for key policy reforms), and were shared with stakeholders, including agencies, to ensure they were consistent.¹⁵⁹ This enabled the Department’s decision-makers to see how far current saving plans would bridge the gap between ‘business as usual’ projected spending and target spending under the spending review settlement.¹⁶⁰

128. Another improvement was the ability of the MoJ’s financial management committee to be able to use data collated from different accounting systems to identify likely areas of underspend and redeploy these funds to meet long-term liabilities and to meet other spending priorities, which in turn reduced funding pressure.¹⁶¹

129. As well as having good financial control over what it has spent, the Ministry also needs to have detailed knowledge and budgetary control of its future spending plans. This is particularly the case as the Ministry is susceptible to shocks in demand as seen following the riots in the summer of 2011. The steps the Ministry has taken in this area should help to mitigate this risk.

Operating model

130. In 2010 the MoJ created a new Operating Model Blueprint (OMB). The aims were to ensure that:

¹⁵⁶ “MoJ most efficient department according to government data”, Civil Service World, 2 November 2011
¹⁵⁷ Ev 129
¹⁵⁸ Ev 107
¹⁵⁹ Ibid
¹⁶¹ Ibid. Summary, Para 10
• all policy was undertaken in a single Business Group and focused on ministerial priorities or changes required by delivery bodies;

• wherever appropriate, corporate services were provided on a shared or combined basis, including to ALBs;

• there was a small strategic core that supported ministers, provided a strategic framework and ensured governance; and

• delivery bodies could focus on their core mission of leading the delivery of services.

The MoJ told us that it was part of the way through implementing the blueprint. The Department was now structured around four Business Groups: Justice Policy Group; Corporate Performance Group; HMCTS; and NOMS, with the majority of Arm’s Length Bodies contained within the Justice Policy Group.\textsuperscript{162}

131. Changes to the MoJ’s operating model also led to NOMS moving from a regional to a functional structure. NOMS was now structured around its core functions of commissioning; contract management; and system integration whilst it established a resilient structure for the management of public sector prisons.\textsuperscript{163}

132. Michael Spurr, Chief Executive, NOMS, explained how the new operating model helped to remove duplication:

One of the key factors is moving towards a new functional model and also a new operating model that says, “We will take services from the core Department where it makes sense to do that so that we do not duplicate.” That is absolutely a core part of how we are operating. Estates is now managed [...] across the Ministry, as is procurement. [...] Audit is now being done across the Ministry. [...] What we have to avoid is rehearsing or redoing work that has already been done or duplicating work. We are working closely with our MoJ colleagues to avoid that happening. We will continue to have to look very closely at where there is potential for duplication as we implement the new operating model over the next year or so. We will do that because I cannot afford, quite frankly, for there to be duplication between us and the MoJ or indeed across various directorates within my own organisation.\textsuperscript{164}

133. We welcome the introduction of the new operating model which has enabled corporate and back office functions to be shared by all parts of the Ministry to avoid duplication. However, we believe that further integration is required so that the MoJ is a single delivery body.

**Reducing staff costs**

134. The MoJ estimated that it would lose around 13,000 posts over the four year spending review period.\textsuperscript{165} Between April 2010 and December 2011, full-time equivalent staff (FTE)
numbers fell by 6,195 to 67,819. Sir Suma told us “we have focused reductions, including those outside London, on back office and management functions - including the removal of the regional structure in NOMS, an entire management tier in HMCTS, and a consolidation of corporate services in ‘My Services’”. To protect front line operations, 30% of the annual £1 billion efficiency savings would come from back office operations but only 10% from front line operations.

135. Headcount reductions started at the top, with a reduction from 13 to six in the number of Directors General. There was also a 22% reduction in Senior Civil Service staff across HMCTS, NOMS and HQ. In 2011, the Institute for Government expressed some concerns that, whilst the headcount reduction was generally thought to have been well handled so far, there was a risk of the wrong staff being lost.

136. Despite its vigorous staff reduction plan, the Lord Chief Justice told us that there was no evidence to show any adverse effect on the performance of HMCTS. He was conscious that staff numbers were reducing more dramatically than the reduction in workload. He added that he found comfort from the reassurances received that any money available from savings elsewhere would be used to maintain the numbers of front-line staff.

137. In contrast, the joint written submission from HM Chief Inspector of Prisons, HM Chief Inspector of Probation and The Prisons and Probation Ombudsman described difficulties in securing the right skills in their teams. It was critical of the lengthy process it was subject to in order to agree a business case for appointments, and that approval for previous agreed posts had subsequently been withdrawn, presumably due to Departmental headcount obligations. It concluded that these issues restricted their ability to manage agreed resources effectively, and to recruit an appropriately diverse staff with the skills and attitudes they required in a timely fashion.

138. The MoJ has taken the correct approach by focusing the highest proportion of job losses in senior management grades in order to safeguard frontline jobs. We call on the Ministry to go further in removing unnecessary layers from their management structures in order to free up resources for the front line.

139. The difficulties in recruitment raised by the Chief Inspectors of Prisons and Probation and the Prisons and Probation Ombudsman are a matter for concern. In the response to this Report the Ministry must explain why previously agreed posts had subsequently been withdrawn. The Chief Inspectors and Ombudsman have a role as watchdogs and, although they will also be subject to efficiency savings, they must be able to recruit the staff they require in a reasonable fashion.

166 Ev 160
167 Ibid.
168 Ev 131
169 Ev 160
171 Ev 169
172 Ev 166
140. As we mention in paragraph 44, over time there has been a shift in culture within the MoJ as staff with a policy background are increasingly required to adopt more of a programme management-style approach in order to take forward the MoJ’s reforms. Sir Suma told the Public Administration Committee that the MoJ was committed to acquiring and retaining the expertise necessary to carry out its reforms, and in particular it was reviewing how the MoJ commissioned services. This review would explore whether the right skills were in the right place in order to achieve efficient and effective commissioning and contracting of services over the next 5–10 years.\textsuperscript{173}

141. The Prison Reform Trust expressed concern that few officials had the highly developed skills or knowledge base required for effective commissioning and contracting,\textsuperscript{174} and the Public and Commercial Services Union considered that staff reductions had led to there being too few staff with this skill set. For those that did have the skills, they were only able to allocate part of their job towards contract management.\textsuperscript{175} In addition, the MoJ’s 2012 Capability Action Plan also stated that “[c]ommercial skills and awareness should be strengthened throughout the organisation”.\textsuperscript{176}

142. Concerns have been raised with us that the Ministry does not have the skills in place to meet the increased demands of commissioning and contract management. This places the Department, and the public purse, in a dangerous position when it enters into negotiations with private sector firms. We call on the Department to demonstrate in its response that it has the necessary skills to deliver its plans in this area, and to set out the steps it has already taken and will be taking to ensure its workforce has the necessary capabilities.

143. In January 2012, The Times raised concerns that the private sector repeatedly poached governors from public sector prisons. It claimed Governors were attracted by the greater freedom available in the private sector to innovate in an attempt to cut reoffending.\textsuperscript{177} Phil Wheatley, former Chief Executive of NOMS, confirmed that good governors were a scarce resource. His impression whilst in post was that the best governors were staying in the public sector, but he suspected that as public sector pay restraint continued it would not be easy to retain staff when the private sector did not have these constraints. He had been successful in recruiting people with management experience in other spheres to work as governors.\textsuperscript{178} Whilst some good people had left the public sector, it was equally true that some people have come from the private sector to work in the public sector. Michael Spurr, Chief Executive, NOMS, argued “the thing the public sector offers that [...] the private sector does not offer is a potential for career development that is wider than just prisons”.\textsuperscript{179}

\begin{thebibliography}{99}
\bibitem{173} Public Administration Committee, Eleventh Report of Session 2010–12, Good Governance and Civil Service Reform: ‘End of Term’ report on Whitehall plans for structural reform, HC 901, p 9
\bibitem{174} Ev 118, 121, and 122
\bibitem{175} Ev 159
\bibitem{176} Cabinet Office, Ministry of Justice 2012 Capability Action Plan, p 13
\bibitem{177} “£2bn prisons sell-off opens door to mass privatisation”, The Times, 16 January 2012
\bibitem{178} Qq 116-117
\bibitem{179} Q 416
\end{thebibliography}
144. The prospect of talented individuals leaving the Department is likely to have a big impact. In the MoJ’s Capability Action Plan 2012 it was admitted that successful outcomes were sometimes harder won than was necessary as the Department was overly reliant on relatively small numbers of staff. It continued, “[t]his needs addressing through improved talent management, development and succession planning to ensure a greater depth of people capability”.180

145. As competition for the Ministry’s services increases there will be greater opportunities for staff to move from the public to the private sector and vice versa. This experience should be beneficial for individuals and the Department as a whole. Whilst it is not clear that the Department has a problem in attracting staff, we recommend that it creates a strategy for attracting and retaining talented individuals.

146. From 2009–10 onwards, the number of consultants, agency or temporary staff used by the MoJ was an average of 2,476 FTE in 2009–10, falling to 1,181 in July 2011. Every business area of the MoJ was required to look critically at the need for consultancy staff in order to keep such services to an absolute minimum. The Department introduced processes whereby a detailed business case was required before consultants or agency staff could be taken on. This business case was challenged by the relevant directors, and if the contract value was £20,000 or above ministerial approval was required. This improved stewardship resulted in a significant reduction in costs. In 2010–11 the MoJ spent £104 million on consultancy (1.16% of the budget); In 2011–12 this was anticipated to reduce to £75 million (0.84% of the budget). The projected costs for 2011–12 represents a reduction in spend of over 50% since 2009-10 when expenditure was £152 million.181

147. The Department has made some progress in reducing its previously high levels of spending on agency staff. Given that the Department has assessed its structures and introduced new operating models, it should have a clear idea where the capability gaps amongst staff are. We recommend that the Department redeploy and retrain its existing permanent staff where possible to fill current gaps. If there are full-time vacancies then the Department itself should seek to recruit. Consultants and agency staff should only be required on specialised projects and during seasonal or unexpected peaks in work. We expect the expenditure in this area to continue to decrease significantly.

Smaller estate

148. Prior to the 2010 Spending Review, the MoJ estate consisted of 2,140 property holdings with a balance sheet value of £8.6 billion—second only to the MoD across Government. It is currently developing its Estates Strategy, taking account of its three strategic priorities:

- an estate of appropriate capacity to meet business needs;
- an efficient, less costly estate; and

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181 Ev 137-8
The budget and structure of the Ministry of Justice

149. The MoJ has already made progress in rationalising its estate through new builds and building closures where appropriate:

- **Administrative estate:** 40 properties of the planned reduction of 94 properties have already closed. Within London, 18 properties will reduce to a maximum of four. Once complete this should save around £47 million a year.

- **HMCTS estate:** 112 of the 142 courts identified for closure in the Court Estate Reform Programme had closed by November 2011. Once complete the programme should reduce costs by around £14 million a year. New court buildings (Westminster, Royal Courts of Justice Rolls Building and the extension to the Woolwich Crown Court) had also opened.

- **Prison estate:** As part of its commitment to deliver sufficient prison and court capacity for civil and criminal justice, the MoJ was building additional capacity where necessary and closing surplus capacity where possible. Five prisons closed in 2011 which should realise savings of around £30 million a year. The multi-billion pound prison capacity programme is also nearing completion, with 56 of the 58 projects completed on schedule. New accommodation had reduced operational costs for NOMS.\(^{183}\)

- **Probation estate:** 32 of the planned reduction of 100 properties had closed by November 2011. This should deliver savings of £6 million a year.

150. London has 8,000-plus prisoners and only 4,000 prison places which means that a large number of London prisoners are housed in East Anglia or on the Isle of Wight. We raised with Michael Spurr, Chief Executive, NOMS, the possibility of selling off old prisons within London, which were of potentially high value, and replacing them with new fit-for-purpose prisons just outside London. His response was that NOMS was looking into it alongside analytical colleagues in the MoJ, but that the land value for many London sites was not as great as people assumed it would be.\(^{184}\)

151. We asked about how the Department seeks to maximise value from sales of surplus estate. The Department told us that its Asset Realisation Programme aimed to identify up to £300 million of capital receipts of which the MoJ would be able to retain sale proceeds of up to £250 million plus 20% during the spending review, with any excess returning to the Consolidated Fund.\(^{185}\)

152. In order to maximise the sale value of land, the MoJ sought to obtain planning permission prior to sale. On occasions it had also put clauses into the contract of sale such that, if the person buying it subsequently got planning permission and increased the value,
the MoJ would have a claw-back provision. However, the Department admitted that there was not currently a buoyant market for their estate.\textsuperscript{186}

153. There remains significant scope for rationalising and improving the prison estate, which should continue to be pursued while taking full account of the available evidence of the impact of prison location on the effectiveness of rehabilitation. It is essential that when the Ministry chooses to sell off parts of its estate it receives the best possible value. Furthermore, it should ensure that where land or property may appreciate it has in place appropriate claw-back provisions in all cases.

154. The Department told us it would ensure it has sufficient prison places to deliver criminal justice and as part of this will build additional capacity where necessary.\textsuperscript{187} This commitment represents a significant challenge for the Department if it is to rationalise its estate and reduce accommodation costs. In October 2010, Kenneth Clarke MP pledged to cut the numbers in prison to 85,000 over the next four years,\textsuperscript{188} but the population had exceeded 88,000 by December 2011.\textsuperscript{189}

155. NOMS monitors immediate population pressures closely and provides additional accommodation where necessary to ensure that there are always sufficient places to manage all those committed to custody by the courts. Measures available to increase capacity in the short-term include: bringing forward the availability of new or out of use accommodation earlier than planned; postponing planned maintenance work; cell reclaims or rapid delivery conversion projects requiring limited investment; and additional crowding where it is safe and decent to do so.\textsuperscript{190}

156. Our predecessor Committee concluded the following in its 2009 Report, \textit{Cutting crime: the case for justice reinvestment}:

> The Government has spent too much time pursuing an unrealistic attempt to build its way out of the prisons crisis. Lord Carter’s review of prisons, and the stark demonstration of the exorbitant costs of penal expansion, should have been seen as a watershed and a warning against the “predict and provide” approach to criminal justice policy. The reaction against the proposed Titan prisons should be seized by the Government as an opportunity to switch direction and halt the seemingly inexorable growth of imprisonment.\textsuperscript{191}

157. In the summary of that Report the Committee set out two paths:

> We believe the Government faces a choice of risks: either to muddle through with the current plans hoping that commitments made under the ‘predict and provide’ model of penal policy will prove affordable (and not merely a self-fulfilling prophecy); or to make more radical decisions, and investments, putting the system

\textsuperscript{186} Q 166
\textsuperscript{187} Ev 135
\textsuperscript{188} “Kenneth Clarke pledges to cut daily prison population”, \textit{The Guardian}, 20 October 2010
\textsuperscript{189} \textit{Prison population statistics}, Standard Note: SN/5G/4334, House of Commons Library, May 2012
\textsuperscript{190} Ev 135
on a sustainable footing over the longer term by shifting resources away from incarceration towards rehabilitation and ‘prehabilitation’.  

158. As referred to in paragraph 151, we asked Michael Spurr about the possibility of replacing old prisons with new fit-for-purpose ones to which he said “over the last 10 or 15 years the Department had to build prisons wherever it had the ability to build quickly because it had been trying to avoid people being kept in police cells instead.” We also asked him whether structures within NOMS failed to create the coherent drive for a long term prison estates strategy. At the moment the Prison Service is a national service whilst probation trusts are localised. It was put to Michael Spurr that if there were single payment by results contracts across each region for both prison and probation, there would be economic drivers in the system to create the prison places in the locations they were needed, rather than the current situation of matching prisoners to where the prison spaces were. His response was that space was required to be able to develop those structures at a local level but because the prison population ran at such a high level every prison place was required, so that space was never available.

159. While our emphasis in this Report is on managerial and operational issues, we need to re-iterate a policy concern which lies at the heart of the MoJ’s work. The Government appears to be locked into the ‘predict and provide’ model of prison provision which characterised its predecessors. There is a disturbing anomaly at the core of our criminal justice system: if a sentence says that a criminal is to be imprisoned, the Government accepts as an unarguable imperative that a prison place must be provided. No such imperative exists in relation to non-custodial sentences. Despite Parliament legislating for the provision of a plethora of non-custodial options, sentencers are routinely restricted from stipulating that these options should be attached to sentences, because the money is not available to pay for them. This approach demonstrates indifference to the views of legislators and an unacceptable curtailment of judicial choice. The present Departmental structure needs to be reformed so that it does not inhibit effective sentencing, be that custodial, non-custodial, or a combination of the two. Proper consideration should be given to the possibility of local commissioning of both custodial and non-custodial provision.

160. The MoJ intends to reduce Central London properties from 18 to a maximum of four. When we visited, floors of its Petty France headquarters building were being cleared to make space for the LSC. The YJB, although it will be deemed to have its own headquarters, will also be moving into Petty France.

161. Consolidating the MoJ’s headquarters is a good idea. First, it will free up unnecessary office space that can then be disposed of. Second, as more bodies use the main headquarters they too can draw on the shared services facilities available. Third, it should help the separate bodies, agencies and the core Department collaborate more effectively and reduce any possible barriers that physical distance may bring.
recommend that the Department speeds up its consolidation of headquarters, bringing in all appropriate NDPBs.

**Targeted IT changes**

162. The complexity and history of the MoJ organisation – as well as that of some of its Arm’s Length Bodies – has resulted in the wide number of IT systems in use. In 2010-11, the estimated annual cost of Information and Communication Technology (ICT) to the MoJ was £590 million which included shared services, the Legal Services Commission, and the major Arm’s Length Bodies such as the Youth Justice Board. In its ICT strategy, the MoJ summarises that challenges it faces:

> The current MoJ ICT estate is large, complex and aging. A number of case management systems have been in place for many years and are using legacy technology which inhibits our ability to respond to business change. Communication channels with citizens are often paper based which is expensive in terms of storage, manual re-keying of data and checking of forms, paper and scanning costs. We run multiple different infrastructure networks and desktops where some applications can only run on one infrastructure which inhibits our ability for staff to work flexibly.

163. The MoJ recognised that to meet Spending Review targets of reducing its budget by 23% by 2014–15 would necessitate radically new ways of working. Cost reduction is the primary driver behind the MoJ’s strategic IT plan, but it is also important that ICT supports other MoJ initiatives such as the rehabilitation revolution, modernising courts, reforming legal aid and improving front-line services. The Department’s view is that best value can be achieved by providing shared ICT services with local solutions. The MoJ told us it was trying to improve its ICT capability within the ‘better for less’ framework:

> Our ICT Transformation Programme was completed last year, and whilst maintaining levels of operational service and improving project delivery it contributed to more than £20 million of cost savings. Over the next 3–5 years it is intended to further reduce ‘run and maintain’ ICT costs by over £100 million through replacing or renewing all major ICT supplier contracts under our Future ICT Sourcing (FITS) programme. In procuring by service tower we will standardise services across MoJ, making them much more economic.

164. The Law Society told us that there was a long history of underinvestment in court ICT. Civil courts remained under-resourced in terms of both staff and IT and the problems were being exacerbated by expenditure cuts. The Society claimed it was difficult to evaluate the MoJ’s use of IT because of: the complex history of MoJ IT; its inheritance of legacy systems in 2007; and the changing landscape of overall Government ICT strategy. The Prison Reform Trust highlighted the potential benefits from better use of IT, such as:

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162 Ev 109
163 Ev 125
cutting costs; better allocation of staff time and resources; and benefitting prisoners in terms of access to educational resources, resettlement materials and family contact.  

165. The Law Society expressed concerns that current systems were inadequate for the purposes of policy making. Inadequate and outdated IT systems in the LSC had created problems in processing and gathering data. This, the Law Society told us, may be due to an apparent disconnection between business strategy and IT strategy within the MoJ, with no ICT plans outlined in the MoJ’s Business Plan 2011–2015. At our request, the MoJ subsequently supplied us with its first ICT strategy, published in March 2011. The Institute of Government also commented that policy-makers were not able to use operational data for policy decisions and relied instead on models that estimated system flows and impacts. The MoJ sought to tackle long-term data and systems problems by including a ‘management information’ programme in its Transforming Justice work.  

166. Jack Straw explained that there was a continuing problem about information systems that do not join up. He told us that in 1997 the Home Office had promised “all-singing, all-dancing IT systems in the next couple of years” in relation to criminal justice. However, when he became Secretary of State for Justice, ten years later, he found they were not around, and there were problems regarding IT systems joining up.  

167. The Prison Reform Trust told us that if the criminal justice system was to act as a proper system, a pre-requisite was a single information base. It claimed that information was not effectively shared which increased bureaucracy through repeated form filling or requests for the same information. However, Peter Handcock told us that good progress is now being made on the electronic transmission of data around the system. The Criminal Justice Efficiency Programme, which is a joint effort between the CPS, the police and HMCTS, is now delivering the comprehensive electronic transfer of documentation around the system.  

168. We were told that by April 2012, all movement of paper between police, CPS and magistrates’ courts would be done electronically, replacing old paper systems. It was not a massively complicated IT system, but required the use of something like digital vault technology from which users could download data into their own systems. It would take some time to get similar technology into the Crown Court. There would also be police to court video-links in place in every magistrates’ court in the country and every Crown Court room in the country by the end of the next financial year, enabling people to give evidence without necessarily being moved from prison.
169. In taking forward major IT programmes, the MoJ told us that it recognises the need to be aware of lessons learned from previous ICT implementations. Following criticisms of NOMS initiation of the National Offender Management Information System (C-NOMIS) in 2009, the MoJ changed the way that it managed IT projects. The project was designed to introduce a single offender management IT system across prisons and probation trusts by 2008. The Committee of Public Accounts found that delays and cost overruns had led to a waste of £41 million, and no-one had been held to account for the failure.206

170. The Department told us that since the Committee of Public Accounts’ Report it had taken a number of actions, including:

- dividing the successor programme (known as the NOMIS Programme) into more manageable elements;
- mapping and standardising business processes where possible;
- recruiting a senior management team with extensive experience in delivering IT-enabled change;
- introducing a simplified governance structure with clear reporting and escalation procedures in accordance with PRINCE2 and Managing Successful Programmes principles;
- developing more robust processes to manage planning, change control and risks/issues;
- establishing a dedicated financial team;
- awarding fixed price contracts; and
- using earned value analysis to align expenditure with deliverables.

Three of the five projects in the NOMIS Programme had been delivered successfully. However, the remaining two projects were particularly complex because they involved introducing standardised systems across the Probation Trusts in which there were particular legacy related challenges.207

171. The MoJ told us that it was developing the capability of its own workforce. A senior team member had been recruited with wide experience from both public and private sectors. The Department also told us that it was updating its ICT operating model, changing its supplier model from one in which a full range of services was bought from prime contractors by line of business, to one which was multi-supplier ‘Service Tower’ based. It was also active in the delivery of the Government ICT Strategy, taking a lead in a number of areas such as cloud computing, data centre rationalisation, as well as

207 Ev 175
contributing to others such as the Public Services Network and Green ICT, all of which have the potential to realise new ways of delivering more with less resource.\footnote{Ev 174}

172. **We welcome the Ministry’s commitment to securing ‘better for less’ from its ICT and the improvements that are already in hand. For the future, we recommend that ICT should be an integral part of the MoJ’s business strategy. At a time when funds are scarce it is essential that the MoJ knows where to target improvements so that the greatest benefit can be achieved through the minimum cost.**

173. **We welcome the improvements made to project management, following criticisms related to the C-NOMIS project. ICT projects in central Government are renowned for their ability to be delayed, go over budget, and not deliver what was initially intended. Better project management should help to keep control of the ICT projects the MoJ chooses to proceed with. We recommend that for any future ICT projects the Project and Programme Management Leader be appointed on the basis that, wherever possible, they will follow that project from inception to implementation, and be the senior responsible owner for it.**

174. During our visit to the Legal Services Commission we were left under the impression that it was very hesitant about securing innovation from its client solicitors. The Chief Executive acknowledged that, as they moved to the digital submission of legal aid claims, a reliable system needed to be in place, and users needed to gain confidence in it.\footnote{Q 511} The Law Society indicated there was no issue for legal aid providers with working online:

> The overwhelming bulk of the profession now works online. Certainly, if you are doing commercial work or any work for a private client, the chances are that you will be using e-mail and such IT systems as are available. What we would love from the Courts Service is a clear direction which enables our members to invest in particular areas.\footnote{Q 68}

175. **There is no excuse for the Legal Services Commission’s failure to implement a system of online submissions by solicitors and we recognise that the Law Society suggests providers to the MoJ are willing to adhere to a fully online process. For future contracts there should be no choice for providers but to interact with the MoJ in a way that achieves the greatest efficiency. This should be decided at an early stage, so that a clear and certain message can be delivered to providers, the minor practical problems can be overcome, and providers can be confident in making the necessary investment decisions.**

### Income generation

176. One of the main achievements of the Transforming Justice programme has been the establishment of shared services centres, where corporate services are provided across the MoJ. Sir Suma told the Public Administration Committee shared services had cut down the replication of back office functions across Arm’s Length Bodies. He also highlighted the
shared service centre in Newport from which the Home Office had begun to purchase services.\textsuperscript{211}

177. \textbf{We urge the Department to promote its shared service centres to other Government departments, in order to gain additional income.}

178. In January 2011, in its Report on Financial Management, the Committee of Public Accounts concluded that “fee recovery and fines collection have to be priority areas for improvement” and that the Ministry should be setting civil (magistrates’ courts) and family court fees to achieve 100% cost recovery.\textsuperscript{212} In 2009–10 the MoJ recovered around 82% of the cost for Family Court and Civil (Magistrates’ Court) business. In January 2012, when he appeared before both ourselves and the PAC, the then Permanent Secretary acknowledged that there were complications in the fee structure which was not achieving 100% cost recovery. The MoJ expected to bridge the gap between fees and costs in civil and family cases by the end of 2014–15.\textsuperscript{213} Ursula Brennan told us that in 2011-12 the fee recovery rate had increased to 85%, and the MoJ was on course to meet its target.\textsuperscript{214}

179. Peter Handcock told us that previously relatively little commercial acumen was applied to this process and generating more income had always been a matter of putting up the price, which led to fewer people using the courts.\textsuperscript{215} The MoJ has since told us that research on the sensitivity of civil and family court users to changing fee levels concluded that, overall, individuals felt that cost played a minor role in their initial decision to go to court—ranking eighth out of a list of nine factors. However, there was evidence that the level of fee charged could have an impact in some instances. For example, in 2008 increases to the two tier fee charging structure for warrants of enforcement resulted in a substantial drop in their use. Feedback from users confirmed they had changed their approach because the increased fee had made debt collection no longer cost effective.\textsuperscript{216}

180. \textbf{It is right that the Department is trying to achieve full cost recovery for court fees. However, there is a danger that higher fees can act as a disincentive for individuals seeking access to justice. Therefore we welcome the Ministry’s approach to reducing costs so they match as low a fee as possible. The impact of higher fees on demand should be recorded and analysed so as to inform fully future decisions on fees.}

181. In 2010–11, fines imposed amounted to £413 million and the MoJ collected £395 million, of which it retained its share of about £100 million. Fines outstanding have increased year on year and exceeded £600 million in 2010–11. Peter Handcock told us that pilot exercises, where private sector companies tried to collect fine debts and retained a proportion for themselves, were looking promising. He considered they had been more

\textsuperscript{211} Public Administration Committee, Thirteenth Report of Session 2010–12, Change in Government: the agenda for leadership, HC 714, Q 172

\textsuperscript{212} Committee of Public Accounts, Sixteenth Report of Session 2010–12, Ministry of Justice Financial Management, HC 574

\textsuperscript{213} Committee of Public Accounts, Seventy Fifth Report of Session 2010-12, Ministry of Justice Financial Management, HC 1778, Qq 86-93

\textsuperscript{214} Letter dated 12 July 2012, from Ursula Brennan, Permanent Secretary, Ministry of Justice, to Rt Hon Margaret Hodge MP, Chair, Committee of Public Accounts

\textsuperscript{215} Q 354

\textsuperscript{216} Ev 180
successful as the private sector had invested in the types of technology that enabled them to take on this task more effectively.\textsuperscript{217} The MoJ later informed us that although more fine defaulters would be traced, this would not return much income to the Department because of the low value of the fines. However, in terms of increased confidence in fines as a method of punishment, this was action worth taking if a significant proportion of fine defaulters could be traced and made to pay, and returns exceeded cost.\textsuperscript{218}

182. Although it may not generate a large amount of income, the work of the aged debt pilots seems to be having a level of success by making offenders pay. It is important that there is confidence that methods of punishment used in the justice system are carried out. In response to this Report, we ask the Ministry to set out how these pilots will be taken forward, and whether a similar approach would be beneficial in relation to other areas of fine collection.

183. When we visited NOMS headquarters we were told that it had investigated what could be gained from selling some of its services to overseas Governments. One example was that the Saudi Arabian Government wished to purchase prison officer training from the Department.

184. The Department has also been promoting legal services exports, which totalled £3.6 billion in 2010, as part of the MoJ’s Plan for Growth. It described how the MoJ would work with industry experts to encourage growth in the legal services sector, specifically by the UK as a centre of excellence for dispute resolution. The Unlocking Disputes campaign was launched in October 2011 and, targeting international business leaders, the campaign highlighted and promoted: the UK’s unrivalled professional expertise; the quality of English law; the independence of the judiciary; and the world-class facilities offered through the Rolls Building. The Department believe that this approach of marketing the totality of the UK’s offer is the key to success.\textsuperscript{219}

185. The Ministry is taking some interesting steps in promoting both its own services and the wider justice system to an international audience. It is not clear to us whether the Department has analysed all its activities to assess which might have a commercial appeal domestically and internationally. We recommend it should do so and that a senior leader in the organisation be appointed to champion this work across all business units within it.

**Outsourced services**

186. In the 2010-11 financial year the MoJ spent £3.1billion on services, supplies, utilities and works procured from external sources (excluding legal aid). The breadth of procured services spanned from the building and operation of prisons through to janitorial supplies. The Department told us that at any one time there were over one hundred procurement projects underway.\textsuperscript{220}

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\textsuperscript{217} Qq 354-356
\textsuperscript{218} Ev 179
\textsuperscript{219} Ev 180
\textsuperscript{220} Ev 132
187. The Ministry’s procurement function originated in NOMS, which began major reforms in this area in 2004. In 2008, the National Audit Office reported that procurement was well delivered and had made substantial savings. Since 2010, the remit of the procurement function has continued to expand within the wider MoJ. The Committee of Public Accounts reported that the MoJ understood the cost of most of its goods and services and was able to drive savings and mitigate cost increases.\(^{221}\) The MoJ’s procurement directorate was the first central Government department to achieve the ‘Standard of Excellence’ from the Chartered Institute of Purchasing and Supply.\(^{222}\)

188. The Department told us that through a programme of competition and renegotiation, it had saved £49.9 million in 2009-10; £84.2 million in 2010-11; and a forecast £93 million in 2011-12. At the same time the cost of the MoJ’s procurement operation has decreased from £21.5 million in 2007-08 to £18.6 million in 2010-11, despite its competition programme expanding significantly.\(^{223}\)

189. Since the Spending Review, and the ethos of ‘better for less’ there has been an increased emphasis on having a functioning market for the provision of as many justice services as possible. The MoJ has set out its strategic principles for competition in the Offender Services Competition Strategy. These are:

- competition activity should be focused on achieving mid to long-term savings, not finding the cheapest solution at the expense of quality;
- competition should be used to deliver public sector reforms, ensuring providers are more effectively held to account for the outcomes they deliver;
- providers should be involved early to identify where efficiencies could be realised in national or process-based functions through competition;
- small and medium sized enterprises (SMEs) and the voluntary and community sector (VCS) should be encouraged to participate to drive innovation; and
- competition should be widely applied, with public sector providers allowed to bid where the Department is competing localised services and robustly held to account where successful.

190. Kenneth Clarke MP, Secretary of State, gave an indication of the MoJ’s direction of travel in competing services to external providers in the Department’s Business Plan 2011–15:

Lastly, the Ministry of Justice will work very differently. There will be a functioning market in the provision of legal aid, offender management and rehabilitation. Our aim will be to ensure that justice services are provided by whoever can most


\(^{222}\) Ev 133

\(^{223}\) Ibid.
effectively and efficiently meet public demand. We will not pay for good intentions, or for ticking procedural boxes, but by the results achieved.224

The Prison Reform Trust told us that:

the Justice Secretary is very keen on competition and sees that as a driver to improving standards, the plan is to bring forward to competition a group of prisons, followed by another group of prisons, followed by another group of prisons, and to have a competitive tendering exercise to improve standards.225

191. The Prison Reform Trust also raised concerns about the regulation of the private sector, and suggested that if firms were working towards economies of scale there might not be the same attention to detail as in the public sector, and that standards could fall.226 In November 2011, the Independent Monitoring Board Report on HMP Birmingham concluded that following that prison’s transition to the private sector its culture would be different as it would be run as a business by G4S and be answerable to shareholders.227 G4S told us that private sector providers were already more regularly inspected than in the public sector and they were often more transparent due to contractual requirements and information shared with the Government.228

192. In recent years there have been attempts to extend the scope of the Freedom of Information Act 2000 to cover the provision of public services that have been contracted to private sector companies. For example, the Freedom of Information (Amendment) Bill 2010 proposed the extension of FOI to contractors, but the Bill did not gain a Second reading.229 Currently, while private companies providing public services under contract are not subject to FOI, information held by contractors may also be brought within the scope of FOI where it is held “on behalf of” the contracting authority in accordance with section 3(2)(b) of the Act.230

193. We have recently conducted post-legislative scrutiny of the Act, and considered how information about the provision of public functions should apply in the likely case that an increased number of these functions are competed, and subsequently provided by private companies, not subject to the Act. We repeat our conclusion here; namely that:

The right to access information must not be undermined by the increased use of private providers in delivering public services. The evidence we have received suggests that the use of contractual terms to protect the right to access information is currently working relatively well. We note the indication that some public bodies may be reluctant to take action if a private provider compliant with all other

224 Ministry of Justice, Business Plan 2011-2015, May 2011, p 1
225 Q66
226 Q58
228 Ev 152
230 Ministry of Justice, Memorandum to the Justice Select Committee – Post-Legislative Assessment of the Freedom of Information Act 2000, December 2011, Paras 89-91
contractual terms fails to honour its obligations in this area. In a rapidly changing commissioning landscape this has the potential fundamentally to undermine the Act. We remind all concerned that the right to access information is crucial to ensuring accountability and transparency for the spending of taxpayers’ money, and that contracts for private or voluntary sector provision of public services should always contain clear and enforceable obligations which enable the commissioning authority to meet FOI requirements.

We believe that contracts provide a more practical basis for applying FOI to outsourced services than partial designation of commercial companies under section 5 of the Act, although it may be necessary to use designation powers if contract provisions are not put in place and enforced. We recommend that the Information Commissioner monitors complaints and applications for guidance in this area to him from public authorities.\(^{231}\)

**The Ministry’s commissioning process**

194. The Prison Reform Trust told us it envisaged the MoJ as an organisation comparatively light at the centre but highly skilled and experienced. In order to achieve this the Department would require excellent commissioning and outsourcing capacity.\(^{232}\) However, it was unconvinced that the current arrangements for commissioning and contracting were adequately developed or that they incorporated the necessary checks and balances that the MoJ would like to see, and said it was not evident that many officials had the highly developed skills or knowledge base necessary to set contracts and objectives.\(^ {233}\) The Law Society was also unconvinced that the relevant procedures or expertise were in place to achieve value for money through commissioning and contracting.\(^ {234}\)

195. The Justice Secretary told us that developing the capacity of people to commission was important. The MoJ was conscious of the dangers of inexperienced staff working in this area, which included entering into contracts that were extremely profitable for the contractors or which produced perverse incentives, and therefore it was working out how to develop that capacity.\(^ {235}\) In written evidence to the Public Administration Committee, the Permanent Secretary said the MoJ was committed to acquiring and retaining the expertise necessary to carry out their reforms, and as part of the Transforming Justice programme they were reviewing how the MoJ commissioned services. This would include exploring whether the right skills were in the right place in order to achieve efficient and effective commissioning and contracting of services over the next 5–10 years.\(^ {236}\)

196. **We reiterate our earlier recommendation that the Department needs to convince us in its response that it has the necessary skills to deliver its plans for increased**

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232 Ev 118

233 Ev 121-122

234 Ev 126

235 Q 461

competition of services, and to set out the steps it has already taken and will be taking to ensure its workforce has the necessary capabilities. The review of how the Department commissions services should involve an independent assessment of capability by those used to implementing best practice in the private sector. We call on the Government to let us have access to the full findings of this review as soon as it is available.

197. G4S gave a positive view of the MoJ’s competition processes which it described as “a lot more professional, with more structure, more clarity and forward visibility in its procurement and tendering opportunities”. It was also encouraged by the MoJ’s rolling programme of competition which gave new and existing providers time to prepare their offering and secure long term funding. They believed this approach should be adopted by all Government departments.

198. G4S believed that there was also significant opportunity to improve. Firstly, on some projects the pace of progress was painfully slow, which presented missed opportunities to speedily put in place a new service that could give better value for money for the taxpayer. The Independent Monitoring Board’s report on HMP Birmingham gave the example of the poor transition of that prison from the public sector to be managed by G4S. The process took nearly three years, and the final announcement was poorly handled. These delays and uncertainties had an adverse effect on the morale of staff and prisoners.

199. ‘Over-engineering’ of contracts was another issue raised during our evidence sessions. G4S explained that at times there was a tendency to over-engineer and over complicate the approach to procurement, such as by using the competitive dialogue procedure for a £4 million a year contract to provide juvenile escorting. G4S argued that £4 million a year was a relatively small contract, and the MoJ would end up procuring something that was broadly similar to what it had in place, and yet it was embarking on a process that would take the best part of a year and consume huge resources, both on the side of the bidder and the Department, in terms of the procurement process.

200. Thebigword, an established provider of language services, which unsuccessfully tendered for the Language Services Framework agreement, highlighted the complexity of the competitive dialogue process. 126 suppliers had been invited to submit a pre-qualification questionnaire, 77 accepted and 58 fully completed a tender. Thebigword commented as follows:

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237 Q 214

238 Ev 151

239 “Prison governor locks out probation staff in G4S joint bid to privatise jails”, The Guardian, 1 March 2012


241 Q 230


243 Q 214
The pre-qualifying questionnaire clearly did not do its job. It should have weeded out on financial robustness, ensuring that only those suppliers with the ability to deliver the service went forward. [...] [T]he competitive dialogue for this particular framework was cumbersome and overcomplicated, and it had numerous stages; it lasted well over nine months. [...] We got to the penultimate round, and, although it was made very clear when the stages would take place and whether it would be a written response or a dialogue, we were never really clear about what was expected at each stage. It was a process of elimination, but you did not realise who had gone or why or what they were being assessed on. When we got confirmation that we had not made it to the final round it came as a surprise, because we were still expecting at that stage that the final evaluation would take place and there would be other organisations involved. It seemed strange that you could have a final round with only one organisation.244

201. The Law Society was critical of the tendering process for provision in the Legal Aid, Sentencing and Punishment of Offenders Bill.245 The Committee received written evidence from the Citizens Advice Bureau in 2010, at the time of civil aid contract tendering. They set out a number of recurrent substantive and procedural problems, including: selection criteria; delays at all stages of the process; late availability of information; quality of information available; and mistakes.246 On 20 September 2010, the High Court ruled that the competitive procurement process adopted by the LSC to award these contracts was unlawful. This example followed a previous flawed tendering processes for immigration removal centres abandoned in March 2009 after running for eight months.

202. Matthew Coats, Chief Executive, LSC, explained to us the uniquely challenging commercial environment it operated in, placing contracts with several thousand legal firms:

[I]n the last two years we have either had litigation threatened or brought against our tender activity on 72 occasions. In that time we have had two adverse judgements in just two of these cases. We therefore have to ensure that our commissioning approach is legally robust — and it would be fair to say that on occasions this has constrained our approach to commissioning services.247

203. The MoJ told us that the transition of the LSC to Agency status would allow it to focus on developing skills and expertise in the areas for which it had responsibility (commissioning and administering legal aid services) rather than having to focus on a wider range of areas including policy development.248 Sir Suma told us that the MoJ would look at what more they could do to improve the LSC’s commissioning, but added that they felt it was moving in the right direction. He added “there is an interesting issue [...] about to what extent you can use LSC contracts in future to drive the mandatory use of secure

244 Q 263
245 Ev 124
246 Written evidence from the Citizens Advice Bureau (LSC 01 – The work of the Legal Services Commission, HC 649-i) [not printed or published]
247 Ev 169
248 Ev 108
e-mail, for example. Again, I think that would save costs. That is one we are exploring now for future contracts”.249

204. Pact are a small charity which was unsuccessful in bidding for the provision of Prison Visitor Centres. It criticised the MoJ’s tendering processes for a lack of explanation at several stages, giving the example of one service being put out to tender and then withdrawn after they had submitted an application. It also raised specific queries on how the criteria such as values, track record and added value had been applied.250 However, the successful bidder for the centres, Spurgeons, were positive about the approach the commissioners took, and said there was a good dialogue and feedback between both parties.251

205. Spurgeons also commented on what more could be done by commissioners in the MoJ:

We feel it is important for commissioners to engage with potential providers prior to the start of procurement processes in order to consult and shape commissioning priorities as well as providing opportunities to bring organisations together who may be able to form effective partnerships or consortiums as service providers.

We would also welcome greater contestability from within MoJ and NOMS commissioning. The majority of services we have seen advertised for tendering have been existing contracts or re-shaped services delivered by voluntary organisations and would welcome the opportunity to compete for the delivery of services currently provided in-house.252

206. G4S told us that it was important that there was a clear commissioner/provider split in the interest of transparency. They gave the example that NOMS acts both as a commissioner of services and as a provider though HM Prison Service. The MoJ’s competition strategy emphasised that it was important that appropriate ‘ethical walls’ were in place to ensure fair treatment for all providers. G4S added that this had to be guarded at all times and a clear commissioner/provider split needed to be ensured when looking at opening up public services in other areas, such as the role of Probation Trusts as both commissioner and provider of services.253

207. The Law Society was also concerned that the administrative overhead of maintaining a legal aid contract was a significant disincentive, particularly for small businesses. The constant process of significant change since 2000 had made it difficult for providers to plan for the future. The Law Society also claimed that the LSC was micromanaging providers through the intrusive manner in which it ran legal aid contracts, often by specifying the minutiae of how things should be done. The Law Society concluded that the agency responsible for legal aid should be managing the system overall, not each individual case.

249 Q 211
250 Ev 155
251 Ev 172
252 Ev 173
253 Ev 152
within it, and that providers should have a broader discretion as to how work under the contract was performed.\textsuperscript{254}

208. The Ministry of Justice has to improve extensively its commissioning and outsourcing processes. From the evidence we have received it appears that despite alleged improvements there are still too many faults with their contracts.

209. We recommend that the Department makes use of the knowledge and expertise of its provider firms at the outset of devising a new contract. The examples of problems within the MoJ’s commissioning show a tendency for them to be poorly designed. It seems clear that the Department has insufficient experience and skills to commission effectively, so the MoJ should draw upon the experience of others.

210. We recommend that once the Department has designed its competition process, more is done to make the stages clear to the potential bidders. In addition every stage must be robust and transparent, and each stage must whittle the contenders down by an appropriate amount. The commissioning process involves a lot of resources both for the MoJ and the bidders, so unrealistic applications should be removed at the earliest stage, and only those with a serious chance of providing the competed service should reach the later stages.

211. Several witnesses have told us that the Ministry uses the competitive dialogue approach inappropriately. This again suggests that those designing the commissioning process are inexperienced about when to use alternative methods. We welcome the Department’s recent commitment to move towards the less onerous, and more open and negotiated procedure.

212. The Ministry does not give unsuccessful bidders sufficient and appropriate feedback. Feedback is important so that bidders can adapt more easily to provide the type of services the MoJ wants, and as such the Department will have a greater choice of future providers. Good feedback is also important as it gives the MoJ the opportunity to display it has made a transparent decision about the contract objectively, and has therefore run an open competition process. We recommend that the MoJ reviews its guidance for feedback so that it is part of a meaningful process for the bidders.

213. Outsourcing for the Language Services Framework agreement attracted much criticism because of the difficulties faced by the new contractor in getting the new services in place.

214. The Language Services Framework Agreement has been in place nationally for HMCTS since February 2012. It is not clear whether the very serious problems experienced at the start of the contract have been resolved, or are in the process of being resolved. We intend to take evidence on this matter in October.
Small and medium sized enterprises and the voluntary and community sector

215. The MoJ told us that through its strategic principles for competition it was encouraging small and medium sized enterprises (SMEs) and the voluntary and community sector (VCS) to participate in competitions, particularly in order to drive innovation in service delivery. They aim to ensure that commissioning arrangements level the ‘playing field’ for voluntary organisations. Where it was not possible or desirable to open competitions directly to smaller enterprises, the MoJ said it would work with larger providers to ensure that the right incentives were in place for them to encourage SME and voluntary specialist providers in their supply chain.255

216. The National Council for Voluntary Organisations (NCVO) has examined Departmental Business Plans, which require the disclosure of spending on the voluntary sector. In 2010–11, the MoJ had contracts to the value of £39.5 million with the voluntary sector, but could not provide figures on its grants to that sector.256

217. Sir Suma told us that 33% of the MoJ’s Departmental spend went to SMEs, and the MoJ was the best performer across Government on this. He said there had been difficulties around the cost and duration of competitions, so the MoJ removed pre-qualification for transactions under £100,000, which SMEs and the voluntary sector were more likely to bid for, and had also moved from a competitive dialogue process to a the less onerous, open and negotiated procedure, which helped smaller companies much more. He added that the MoJ had to pay quickly to the smallest subcontractors because of the cash-flow issues they faced. It was trying to pilot a project bank account to speed up the payment process.257

218. We welcome the steps the MoJ is taking to use small and medium sized enterprises and the voluntary and community sector. In response to this Report, we request an assessment of how the MoJ has reached the figure of 33% of its Departmental spend going to small and medium enterprises.

219. The Howard League told us of its extreme concern about contracting out in the criminal justice sector. It stated that the commissioning process was bureaucratic, expensive and heavily weighted towards large organisations, who could undercut the smaller charities who had local knowledge and expertise. Voluntary organisations were then forced either to take on roles as subcontractors, or not compete. It argued that this undermined the ‘Big Society’ rhetoric, as the reality was big business delivering poor quality services at bargain rates.258

220. The Prison Reform Trust told us there were two major structural impediments which undermined the involvement of the voluntary sector in the criminal justice system. These

255 Ev 110
257 Q 466
258 Ev 128
were: risk-averse policies; and uncertain funding arrangements. They suggested it would be useful to join up work on the Big Society and its emphasis on the importance of volunteering to avoid an unintended consequence of reducing small voluntary organisations to sub prime contractors of either the large voluntaries or the private sector. This threatened the viability of many small to medium charities both in terms of their resources and maintenance of their unique identity.  

221. In particular, the Trust claimed the commissioning relationship with NOMS was exploitative, to the extent that smaller, local charities could not survive if they tried to provide a service to offenders and their families. NOMS commissioning favoured large organisations on the presumption that the lowest cost per head conferred value for money; and arrangements in particular prisons were short-term, such that the voluntary sector partner assumed a long-term risk of loss of funding. They additionally said that the few prison governors who recognised the contribution which the voluntary sector made were forced to take extraordinary steps to promote voluntary sector involvement in the prison; and for this, they received no acknowledgement in terms of career advancement.  

222. Liberata, a leading provider of business process services, told us that the size and scale of some outsourcing opportunities precluded many organisations from competing. However, it recognised that a number of procurement frameworks were emerging that would enable SMEs to compete effectively using their niche expertise.  

223. Spurgeons —a medium-sized charity—argued that “larger contracts are often harder for small organisations to compete for due to the risks and liabilities that present themselves. But equally small contracts close the market opportunity for larger organisations as they are not financially viable to consider”. They also suggested that ‘large’ did not mean remote and detached from the local and welcomed commissioning approaches that did not pre-judge the capability of organisations based on their size.  

224. Kenneth Clarke MP told us the MoJ wanted “voluntary not-for-profit local organisations to take part in some areas like cutting the reoffending rate of criminal offenders”. It was important that the MoJ used them, but it was difficult to fit them in. He said there was a tension between cost saving, which tended to argue in favour of block contracts covering large parts of the country, and the local focus that was wanted. He gave the example of prisons as the area that was furthest developed and said it tended to be large companies that came in with leading consortia. They then generally subcontracted the actual delivery to charities and not-for-profit organisations.  

225. Clinks is an organisation that provides infrastructure support to the Voluntary and Community Sector working with offenders across England and Wales. It chairs the Ministry of Justice Reducing Reoffending Third Sector Advisory Group (RR3). The RR3 provides advice to ministers and officials on reducing re-offending from a diverse
The budget and structure of the Ministry of Justice

Voluntary sector perspective and presents views and concerns about future priorities, issues and policies which might affect the sector. In the introduction to its most recent Annual Report, Dame Anne Owers, Chair, Clinks, summed up the challenges the voluntary sector faced in 2010–11:

At national level, the combination of large-scale contracting and back-loaded payment by results has excluded many VCS organisations or confined them to the role of sub-contractors, operating under a private sector prime provider. … In the immediate future many organisations will struggle to survive and others will face difficult choices between delivering sub-optimal services or none at all. […] It is vital that the Sector’s distinctive characteristics—its independence, responsiveness and capacity to innovate—are not lost.

226. In addition, Clive Martin, Director, stated:

Clinks has been monitoring the impact of the economic downturn. The most recent results indicate that the majority of the Sector has avoided the cliff edge which loomed at the end of the financial year in 2011, but many are still perilously close. It is deeply worrying that 77% of respondents are relying on reserves to run, which is symptomatic of a slow but steady erosion of the Sector.

When Mr Martin appeared before us he said:

Over the past 10 years a lot of expectation has been built up about criminal justice reform, particularly in prison and probation, and the role of the voluntary sector in helping deliver that reform mainly through commissioning. We had regional offender managers and so on and so forth. None of that has really been achieved or has brought about the success that the voluntary sector anticipated. There is a fair amount of cynicism in the sector to begin with, with an understanding that the needs of offenders and communities particularly are growing at the same time. That has then been overlaid by the cuts and different reforms.

227. The Panel on the Independence of the Voluntary Sector, a commission set up to monitor the voluntary sector, said service provider charities that traditionally also had an advocacy role were censoring their public utterances for fear of the response from local authority and central Government funders. It said, "some organisations that rely on state funding are fearful of challenging Government or local authorities, in case this could lead to reprisals" and warned that charities’ contributions to society could be eroded if safeguards were not introduced to preserve their independent voice.

228. The Department appears to be sending mixed messages about how it wants to engage with small and medium sized enterprises and the voluntary sector. On the one

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265 Clinks, Annual Review 2010-11, pp 4-5
266 Q 369
hand it has done some good work to increase its spending to them, and it is trying to change its processes so they can more easily do business with the Department; on the other hand, there seems to be an general impression that the Department will move to a system whereby they set a prime contract with a large organisation, leaving it to the prime contractor to interact with SMEs and the voluntary sector. We further examine the difficulties this presents, and how these can be mitigated. We call on the Ministry to give a clear message about the circumstances in which it will opt to engage directly with SMEs and the voluntary sector.

229. Clinks told us there was a requirement for voluntary organisations to take on a ‘brokering role’ in bringing together the local voluntary sector and statutory partners. They gave the example of Devon Reform, a new forum of voluntary organisations working across Devon, Plymouth and Torbay, which was seeking to enable consortium bidding by small and medium voluntary organisations.\(^\text{268}\) During evidence they told us that the drive for consortia in the sector was key as contracts are scaled up, but that it also made sense in terms of reforming offenders so a joined-up system of referrals from housing to drug-addiction programmes to education and employment, spanning across the whole range of services that might be needed, could be facilitated. However, the problem in the past with forming consortia was to do with lead responsibility, risk and capacity. From a commissioning point of view there had always been a need for one responsible agent. In addition, commissioners had been reluctant to contract to a consortium that did not have a credible or past history of development.\(^\text{269}\)

230. The National Council for Voluntary Organisations told us if contracts were issued at a very large scale, then that pushed organisations to collaborative working or consortia, but there is no reason per se why working in consortia was better than organisations working separately to deliver smaller contracts. The NCVO did see enormous benefits of collaborative working in the sector, and they encouraged organisations to consider forming them although they raised challenges for the organisations.\(^\text{270}\)

231. We recommend that the Ministry assesses how it might aid the voluntary sector in bringing together organisations to form consortia for those contracts it issues at a large scale that prohibits smaller organisations competing for them on their own.

232. G4S told us in terms of the Voluntary sector:

\[\text{[there were not] any contractual obligations saying that we must source from [...] voluntary organisations. However, it is extremely clear that, in order to be competitive and to bid successfully for offender services, we need to harness the talents that exist across the whole range of SMEs and voluntary organisations. [...] We see it as core and fundamental to our ability to win business. There does not need to be a contractual obligation; the self-reinforcing reality is that, unless we harness}\]


\(^{269}\) Q 374

\(^{270}\) Q 375
the capabilities of the voluntary sector and SMEs, we will struggle to compete with those who do.\textsuperscript{271}

233. This view was supported by Sodexo Justice Services who said the voluntary sector enhanced the services that prime contractors could provide.\textsuperscript{272} G4S additionally explained how their funding model for the DWP Work Programme showed commitment to the voluntary sector:

\begin{quote}
We are flowing 85\% of our government funding directly to our supply chain partners, which is more than any other organisation delivering Work Programme contracts. In addition, we gave smaller delivery partners the option of receiving more funding up-front to reduce the possibility of cash-flow problems arising from the ‘payment by results’ model.\textsuperscript{273}
\end{quote}

They told us that genuine partnerships needed to be encouraged, for example through joint ventures, payment by results or outcome based contracts. In addition, prime contractors should be given incentives to strengthen partnerships with the public and voluntary sectors. G4S currently subcontracted service delivery to organisations that were best placed to deliver those services locally. This combined financial strength, international experience and supply chain management with the local knowledge and expertise of delivery partners.\textsuperscript{274}

234. We asked the prime providers how they sub-contracted to SMEs and the voluntary sector to which Sodexo responded:

\begin{quote}
If you are looking at someone who is providing a specific service, then good business practice would suggest that you look for back-to-back contracts because the organisation has to take responsibility for what it is delivering. [However it] is very clear to us that you cannot work [that way] with the voluntary sector [...] the prime is that we retain the risk and not the voluntary sector organisation.\textsuperscript{275}
\end{quote}

235. However, Clinks previously reported that some voluntary organisations had been used as ‘bid candy’ by large firms, whereby they were characterised in bids by potential prime contractors as ‘delivery partners’ after only very limited contact and superficial relationships, which subsequently did not convert into a paid role.\textsuperscript{276} The NCVO told us it was confident that this was happening, but that it was quite hard to gather evidence. Anecdotally, a significant number of organisations told us that they thought this had happened. For example, organisations in parts of the DWP Work Programme were named

\begin{itemize}
\item \textsuperscript{271} Q 236
\item \textsuperscript{272} Q 238
\item \textsuperscript{273} Ev 161
\item \textsuperscript{274} Ev 153
\item \textsuperscript{275} Q 240
\end{itemize}
as part of supply chains and then referred absolutely no work or they were not clear whether they were on the supply chain or not.²⁷⁷

236. Clinks told us that the damage came when organisations were being asked to sign exclusivity arrangements with certain providers. There were all sorts of seemingly ill-informed reasons to do that, which meant tying the organisation to one provider that potentially would not win a contract, thus damaging their business opportunities in the future. Clinks considered this to be a more dangerous situation than where an organisation was in the bid, and if it did not win, the organisation got over it and moved on.²⁷⁸ Clinks had previously reported that voluntary organisations felt that a clear and detailed code of conduct resembling the Department for Work and Pensions’ Merlin Standards was required to regulate prime and subcontractor relationships within the criminal justice system.²⁷⁹

237. The Secretary of State told us:

A good contractor [...] will need to subcontract to someone to deliver aspects of their service. So they will be as keen as we are to identify the service providers who can do what they want in the locality of the prison, or wherever it is they are entering into a contract. [...] But we are alert to the danger and we will have to keep an eye on it to make sure that there is a genuine incentive [...] for the small subcontractor as there is to the main contractor.²⁸⁰

In addition, Antonia Romeo, Director General - Transforming Justice, Ministry of Justice, told us that although the MoJ did not have a stand-alone code of conduct, it had clear policies for suppliers working with the Department.²⁸¹

238. **We recommend that the Ministry of Justice assesses how its policies for suppliers compare to the Department for Work and Pensions’ Merlin Standards and considers whether it too should regulate the prime to sub-contractor relationship.**

239. **We recommend that the Department considers how it can use prime contracts to incentivise and increase the involvement of small and medium sized enterprises.**

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²⁷⁷ Q 376
²⁷⁸ Ibid.
²⁸⁰ Q 466
²⁸¹ Ibid.
4 Achieving “better for less”

The Ministry’s long-term policies

240. In the Annual Report and Accounts 2010–11, Kenneth Clarke MP, Secretary of State, explained the challenges faced by the Department:

Keeping the public safe, ensuring that those who break the law face the consequences and providing swift, cost-effective access to justice are fundamental responsibilities of the state towards its citizens. Yet for too long the system has not been working as well as it should. Our prisons are places of enforced idleness rather than proper punishment, and their dreadful reoffending rates blight the lives of new victims every day. Meanwhile, ordinary citizens turning to the courts sometimes find themselves part of a bureaucratic nightmare, not the beneficiaries of a public service. Addressing these problems is an urgent priority. That’s why the past year has seen the first steps in one of the biggest shake-ups of the justice system in a generation.\textsuperscript{282}

He set out the MoJ’s long term programme of change and in the first area of reform – punishment and rehabilitation – he highlighted: a full working week in prisons; greater rehabilitation in prisons and greater use of treatment requirements in community sentences; and a fundamental shift in rehabilitation, to paying by results to deliver better outcomes for the public at the same, or less, cost. In the second area – the civil justice system – the aim was to deliver a system that was affordable and promoted the early resolution of disputes. This was to be achieved by seeking to streamline civil procedure, improve the family justice system and to restore balance to the operation of ‘no-win, no fee’ agreements; reforming the scope of Legal Aid; and promoting mediation through extra funding.\textsuperscript{283}

241. The MoJ told us it was largely a demand led organisation and, as such, made its savings plans based on assumptions and forecasts for workload.\textsuperscript{284} Sir Suma Chakrabarti, the then Permanent Secretary, told us that he had three objectives which came together under the “better for less” umbrella. First was to reduce demand on the system, through mediation, reducing reoffending and flattening the prison population. He said these were being approached through policy changes, but it also involved working better with other Government departments. Second was to reduce cost, which was helped by reducing demand, but also involved a better understanding of the drivers of costs, which we have considered above. Third was to be more efficient, which was pursued in part through the restructuring of management tiers and through shared services.\textsuperscript{285}

242. The MoJ also explained that the major policy changes being taken forward—legal aid reform, sentencing reform, and the rehabilitation revolution—involved transformational change and alternative delivery mechanisms such as payment by results. These reforms

\textsuperscript{282} Ministry of Justice, Annual Report and Accounts 2010-11, p 3
\textsuperscript{283} Ibid.
\textsuperscript{284} Ev 132
\textsuperscript{285} Q 437
were informed by analytical and financial modelling to ensure the impacts, costs and benefits of the changes were fully understood, including their impacts on customers. The estimated effects, models and assumptions were set out in Impact Assessments, which were signed off by the Department’s Chief Economist and ministers, and were published to ensure proper public and Parliamentary scrutiny.

243. The Institute for Government reported in 2011 that most of its interviewees agreed that ‘better’ was still an important part of the Transforming Justice programme. This held true across all of the major policy plans with the exception of reducing legal aid, which was seen by some interviewees as being ‘less for less’.286

244. In an attempt to stabilise the prison population, the MoJ had planned to introduce early guilty plea reforms, which it hoped would reduce demand for prison places. The decision not to proceed with this policy meant the Department had to revise its original savings plans. The MoJ told us it continued to monitor the delivery of its savings plans through continuous review of the Transforming Justice programme to ensure that they were on track and to assess how they were being affected by external factors.

245. As many of the costs associated with the Ministry of Justice are driven by demand for its services, at times when expenditure has to be reduced it is sensible that attempts are made to reduce demand. However, this should be balanced by other steps the Department can take to reduce spending, such as reducing costs incurred through other drivers and working in more efficient ways.

246. Earlier in this Report we discussed the quality of the Department’s Impact Assessments. We recommend that the Department further improves its analytical function so that any future policy proposals are supported by high quality Impact Assessments that enable the fullest public scrutiny. We recommend that the Impact Assessment contains a statement of how the policy proposal fits with the label “better for less”. We reiterate that in the longer term, the Department should consider how best it can work with other departments so that Impact Assessments take into account the wider social and economic costs of a policy proposal.

**Payment by results**

247. In its 2010 Green Paper, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, the MoJ stated that it would be introducing payment by results for the rehabilitation of offenders: a development it described as “a radical and decentralising reform which will deliver a fundamental shift in the way rehabilitation is delivered”.287 The previous Government launched a pilot for payment by results with the Peterborough Social Impact Bond for the rehabilitation of offenders who had served custodial sentences of less than 12 months, and the coalition Government committed to delivering a further six pilots. The Department told us it would provide an opportunity for the market to put forward additional ideas for payment by results projects,288 and the National Council for Voluntary

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287 Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, December 2010

288 Ev 133
Organisations (NCVO) claimed the MoJ wants all contracts to be payment by results in some manner by 2015.  

248. The Prison Reform Trust outlined its concern that the current payment by results model may not offer the best value for the tax payer. It argued that: the costs involved in complicated contractual arrangements; the use of prime contractors that would top slice funding; and the costs involved in developing and monitoring pilot projects would all divert money from service delivery. It highlighted justice reinvestment models as offering: a more effective use of resources; better opportunities for a mixed economy; and a more sustainable way of reducing reoffending.

249. However, G4S told us:

We [...] support the Government’s commitment to payment by results as we believe the default setting for any contract should be to link payment for public services to outcomes. It is clear there are particular services where an outcomes/payment by results approach can be most easily adopted as clear and measurable outcomes can be established (for example in welfare to work, benefit fraud reduction or lower reoffending).

250. The NCVO has examined how payment by results has developed across Government. In terms of the MoJ, they said that the current payment by results pilots assumed results would be achieved to fit in with a predicted ‘envelope of affordability’. They argued:

[The] MoJ are concerned [...] of the risks of unintentionally increasing their spend: that they will be paying more to providers for achieving results which keep people out of prison; but that those (judges and magistrates) who also influence the numbers of people entering prison will fill any gaps by sentencing more individuals as places become available. The MoJ will then be spending more—the very opposite of their aim”.

251. The Howard League told us it was sceptical about the benefits of payment by results. It said “payment by results threatens to be an example of a system based on poorly conceived outcomes, and therefore one which will waste rather than save public money”. It also highlighted a number of specific concerns:

- Complexity of application produced inefficiency - payment by results encouraged a ‘one size fits all’ approach which prioritised the individuals that generated the highest income, and disregarded those whose problems did not fit within the mould.

- This led to cherry-picking - where providers focused on those that would most easily meet their targets, leaving the people most in need without support.

\[289\] “Payment by results (Public services)”, National Council of Voluntary Organisations, http://www.ncvo-vol.org.uk/commissioning/paymentbyresults

\[290\] Ev 121

\[291\] Ev 151

\[292\] “Payment by results (Public services)”, National Council of Voluntary Organisations, http://www.ncvo-vol.org.uk/commissioning/paymentbyresults
• Payment by results is not based on meaningful outcomes - a reduction in raw reconviction rates before statistical modelling was just one outcome, but interim outcomes such as a reduction in severity or frequency of offending were just as valid, but did not constitute a 'result'.

• No record of success – the payment by results model had not been adequately tested in the criminal justice sector, yet the MoJ was committed to using it as a model for delivering many of its services at a lower cost. 293

The Prison Reform Trust was concerned that payment by results was seen as a holy grail, which they suspected it was unlikely to be. Whilst payment by results could be a method that led to the better delivery of services and a more effective system, the Trust found it unnerving that the UK was seen as the world leader. 294

252. Phil Wheatley, former Chief Executive of NOMS, explained he was worried that the payment by results approach assumed an outcome could be grafted onto aspects of the criminal justice system. He referred to criminological thinking that suggested if the focus was on the whole offender experience—both in prison and probation—the system would work better. He also warned that there was a danger to payment by results that led people to think bits of treatment could be bought for offenders, rather than working to integrate all rehabilitation aspects together. 295 In addition, he said it was important that the payment by results models were designed so that they could not be gamed in a way that the ideal population of people could be selected so that it looked as though results were being achieved. 296

253. Clinks considered that the danger of providers cherry-picking depended on the design of payment by results contracts, and their incentive structures. They said that payment by results had potential but it needed a staged process to be successful both in terms of developing the market and the models. It was also essential not to create other perverse behaviours that led to groups of people falling out of scope of a contract. For Clinks, the binary model of offending/reoffending in particular presented a number of issues as capturing reoffending data was slightly different from whether someone had reoffended. It was not a foolproof method as it depended on who was unfortunate enough to be caught again. Additionally, there were difficulties about: deciding who provided the intervention that worked; who should get the payment; and at what level the payment should be. 297

254. The NCVO felt there was a difficulty in defining and attributing outcomes which became more complicated when dealing with people with chaotic and difficult lives, who had interactions with a number of different organisations. Deciding who got the credit for quite an unclear outcome at the end was incredibly complicated when using a very straightforward yes/no kind of model. 298
255. However, Tony Leech, Managing Director, Sodexo Justice Services, argued that the binary model was a good starting point as it was a clear simple model that showed if a certain level of effort, was expended, a certain group would have a good chance of not reoffending. He described the cohort as an inverted triangle where, as you moved into the more difficult cases that required far more assistance, it became more expensive, and the challenge became far more complex. For the complex cases, prime providers would need to call on other organisations to use their skills to a greater degree.

256. G4S considered that the best designed payment by results systems would address the issue of creaming and parking, and would allow the segmentation of different cohorts of offender, according to how difficult changing their behaviour was likely to be. They also argued that at the extreme edges of the overall offender cohort payment by results would not be suitable. This was because the extremely intractable problems and issues of these offenders would make it a risk to put them into a payment by results system. G4S also told us that there could be occasions when two or more agencies played a part in achieving an outcome, such as through helping with employment and addressing substance misuse. Here it was important to design carefully how different systems integrated with each other.

257. The Justice Secretary told us it was true that all kinds of desirable outcomes could come out of attempting to intervene, but he thought the contracting model that would work best in payment by results was one that focused on the primary objective. The objective that the MoJ particularly wished to reward was a reduction in reoffending where someone ceased to offend. Whilst it was desirable that if the next time they entered the criminal justice system they had not committed as many offences as the time before, or the nature of the offences had become less severe, or there had been some improvement in their behaviour, they were still committing crime. He was convinced that value for money would only be achieved if the focus was on what really mattered—increasing the proportion who stopped committing more crimes.

258. We raised with the Department the point that, in terms of the design of payment by results programmes on probation, Community Payback was to be let on a pan-regional level whilst the Prison Service performed at a national level. We put it to the MoJ that if they were to restructure within NOMS so that payment by results contracts could be performed over a region, both for prisons and probation, this would achieve greater results, but that due to current structures these ideas were not considered. Sir Suma responded that the work NOMS was doing on payment by results was as part of a cross-departmental team, and that both procurement and policy staff were involved in designing the contracts.

259. The NCVO was impressed with the way that the MoJ had engaged with the voluntary sector at the consultation stage for payment by results. In particular it was impressed by the time and resource that the Department had put into its pilots, which was in stark contrast
to other Departments. They noted that the DWP Work Programme could have benefited from following the MoJ’s example on piloting and gathering evidence.\textsuperscript{304}

260. We recognise the potential benefits of payment by results, but are concerned that this potential may not be realised because of structural problems in NOMS and the MoJ which we have identified earlier in this Report. We will continue to monitor the progress of the Department’s payment by results programme and call on the Department to report to us on the steps they are taking to mitigate the risks involved with this process, such as the risk that contractors will ‘cherry pick’ the individuals they chose to work with in order to maximise profit.

The next stage of Transforming Justice

261. In Chapter 2 of this Report we looked at the changes the Ministry of Justice had already made to its overarching and internal structures, and how it co-operated and collaborated with others in the wider justice system. Sir Suma told us that the first phase of Transforming Justice was “very much about trying to sort our own house out, working better within what we control within the MoJ”.\textsuperscript{305} As part of this, in the last nine months to a year, the MoJ had tried to get its NDPBs to embrace Transforming Justice in addition to the Ministry and the executive agencies.\textsuperscript{306} The next phase was to be about how the MoJ could work better with other departments. As a consequence, the Transforming Justice programme had been extended from 2015 through to 2020, and Antonia Romeo, Director General - Transforming Justice, Ministry of Justice, had been entrusted with the programme’s ongoing progress.\textsuperscript{307}

262. The Institute for Government’s (IfG) 2010 report contrasted the radical approach the MoJ had taken to engage its own staff in the transformation process with the lack of engagement there was with other Government departments about Transforming Justice.\textsuperscript{308} By 2011 they reported that MoJ staff felt there was more integrated working with other departments (Home Office, Health and Work and Pensions) but that this was still at an early stage and should be strengthened. It was also felt that further progress was needed to gain buy-in from other key stakeholders such as the judiciary, magistrates and the wider legal profession.\textsuperscript{309}

263. The MoJ argued that the Government was getting better at formulating policies and working across departments, and then dividing the costs between them, as with the troubled families agenda. However, that had required extensive negotiation about financing, and generally there were significant improvements to be made. The next stage of Transforming Justice was going to have to involve much more cross-boundary working.\textsuperscript{310}
264. Sir Suma told us that the MoJ would have to work across boundaries much better than it had previously if the justice system was to be made more effective. However, the system was very siloed and there were cultural issues to overcome. He noted that if various bits of the justice system were asked who was responsible for problems in the system, they would all blame each other.\textsuperscript{311} Through collaboration he thought that this could be overcome. He gave the example of the Troubled Families agenda, which involved collaborating with local authorities on family justice. This showed that the MoJ was moving in the right direction, albeit at an early stage. He argued that incentives were required for people to feel that if they left their silo then the MoJ’s leaders would push and promote them over those who were blocking change, and as the Permanent Secretary it was important for him to give that signal out.\textsuperscript{312}

265. Antonia Romeo told us about two other areas where the MoJ had made progress in joining up the Department’s work:

We have a number of pilots on payment by results with other departments, two of which will be kicking off in the summer with DWP, which builds Reducing Reoffending outcomes into the Work Programme, and eight drug recovery pilots that we have recently started with the Department of Health. So we are making progress, although there is certainly a long way to go. As Sir Suma said, we are keen that in the next phase of Transforming Justice we will be joining up across Whitehall, not only bilaterally but Whitehall getting together and also, critically, locally, to work out how we can jointly work to achieve outcomes better.\textsuperscript{313}

266. We asked stakeholders in the wider justice system if they were aware of the Transforming Justice programme, to which the Law Society said it was, but did not think much had been done to sell it to outside stakeholders. It argued that solicitors and the legal profession were key actors in the justice system, providing a lot of the services without which the system could not work, so would welcome an opportunity to provide input.\textsuperscript{314} Liberata told us that the MoJ could benefit from drawing on provider firms’ understanding of the MoJ’s core businesses as a rich source of information and advice to assist the Department with its procurement activity.\textsuperscript{315}

267. Peter Handcock, Chief Executive, HMCTS, told us that as a whole Transforming Justice involved a quite wide portfolio of projects, and the purpose of the Transforming Justice system was to make a coherent agenda of that. He argued that the overall agenda was not of interest to all stakeholders across the whole spectrum of projects, so people were brought in to engage on the things that interested them rather than the whole Transforming Justice portfolio.\textsuperscript{316}

\textsuperscript{311} Q 446
\textsuperscript{312} Ibid.
\textsuperscript{313} Ibid.
\textsuperscript{314} Qq 36-37
\textsuperscript{315} Ev 149
\textsuperscript{316} Q 338
268. Antonia Romeo told us that as the MoJ made progress on with Transforming Justice it had to see how it could create an environment which brought small scale organisations together in partnership. She gave the examples that at HMP Doncaster, the contractor, Serco, was working with the charities Turning Point and Catch22 to deliver outcomes, whilst at HMP Brixton prison the St Giles Trust worked with other groups round the table to focus on drugs or unemployment. In addition she stated:

We have to think about how the role of the Government or the state could increasingly be to facilitate these partnerships happening, keeping the bits that the Government should rightly keep to themselves in the public sector, and also critically share best practice so that we do not have problems with local implementation.  

269. One of the pre-requisites for justice to be transformed successfully is for all involved in the delivery of services to work more effectively with other partners. The Department has made good progress in breaking down silos within its own organisation. We are not convinced, however, that sufficient energy or attention has yet been given to engaging stakeholders in other Government departments, other parts of the public sector beyond Whitehall, the voluntary sector, and the private sector. We applaud the work done on Transforming Justice to date; the Department now needs to tell us how it will build on this work to make the justice system truly joined up.

270. Another aspect of the Transforming Justice programme is that it implies in the future the MoJ will be more streamlined, and be culturally different in order to approach policies such as the “rehabilitation revolution”. The Prison Reform Trust told us it saw the MoJ as being an organisation comparatively light at the centre but highly skilled and experienced. It needed to: develop policy and the context for legislation; publish original research; commission independent evaluations; disseminate good practice; monitor performance; and ensure regulatory mechanisms are in place; and required excellent commissioning and outsourcing capacity.  

Additionally, the IfG told us that the MoJ was becoming more hands-off and was questioning whether functions required a nationally designed process or could be taken on by others who could design their own process and fit that around individuals.  

271. Sir Suma explained that particularly since the election the culture of the MoJ had changed, and there was a sense that the MoJ was “less, shall we say, Stalinist, central control, and much more about front-line professionals exercising their experience, being able to make judgments for themselves, and about being much more open to non-state providers than we ever were before”. The Ministry of Justice 2012 Capability Action Plan set out the key challenges for the Department. In particular it stated:
The Ministry needs to improve its capability to deliver the reform programme through building capacity in the key specialists skills areas that are needed to support change and to improve the performance of some key operational systems.321

272. We have commented on the lack of financial management capability earlier in this Report, and we have been told that the MoJ lacked capability in other areas throughout our inquiry. The Prison Reform Trust told us it was unconvinced that the current arrangements for commissioning and contracting were adequately developed.322 The Law Society was also unconvinced that the relevant procedures or expertise were in place to achieve value for money through commissioning and contracting.323

273. In a memorandum to the Public Administration Committee, the Permanent Secretary said the MoJ was committed to acquiring and retaining the expertise necessary to carry out its reforms, and as part of the Transforming Justice programme it was reviewing how the MoJ commissioned services. This would include exploring whether the right skills were in the right place in order to achieve efficient and effective commissioning and contracting of services over the next five to ten years.324

274. Sir Suma argued that because what the Department was trying to do in the near future was beyond anything that anyone else in Government had tried to achieve it would require a different set of skills. He stated:

I was hoping we were going to talk about some of the skills for the future. The more we move into this area of payment by results, contracting out, there is a whole set of issues on commercial and contract management skills in the Department that we need to make a big push on. That is what our own capability review is telling us. [...] That is the area we have to make a major push on. I do not only mean hiring a lot of people in procurement. [...] It is much more about getting staff more broadly throughout the organisation thinking in commercial terms in a way that they have not grown up thinking. [...] It is quite important that we shift our thinking. That has begun to happen because of PbR. If you look at some of the people who have been working on PbR, they have learned, frankly, on the job, as they have tried to make the market. We are going to have to up the pace on that significantly in the next five or six years as part of the transformation. I agree with that.325

However, the Justice Secretary cautioned about the current risk of a lack of commissioning skills:

Developing the capacity of people to commission things is quite important. It is a problem we are aware of and we are focusing on a bit. [...] We are conscious of the dangers of trying to take people into this area when they have not done it before and all kinds of things can go wrong, including entering into contracts that are extremely

322 Ev 121
323 Ev 126
324 Good Governance and Civil Service Reform: ‘End of Term’ report on Whitehall plans for structural reform, Public Administration Committee, HC901
325 Q 153
profitable for your contractors or producing perverse incentives in how they deliver things. We are going to have to work at how we develop the capacity.\textsuperscript{326}

Additionally, Antonia Romeo set out how this risk was to be addressed:

What we are trying to do in the next phase of Transforming Justice is to look at the skills and capabilities we will need to get to where we will need to be in 10 years’ time. We are already in a major programme of competition. [...] Understanding that, over time, we are going to need to get even better at this, we have kicked off a capability steering group to look at the sort of capabilities, in particular focusing on commissioning capabilities—so contract management as well as contract writing and negotiation and so on, financial management and procurement—in order to make sure that as we move even further into this we have the capability in the Department to do it.\textsuperscript{327}

275. In the foreword to the 2012 Capability Action Plan, Sir Suma stated that the MoJ would publish a People Plan by May 2012 to drive improvements in its ability to work collaboratively and to develop its staff capacity to deliver, particularly through developing their commercial acumen.

276. Another key challenge set out in the 2012 Capability Action Plan was that the MoJ had to focus and communicate more on the “better” in “better for less”. It stated that the next stage of Transforming Justice needed a strong emphasis on defining and communicating the strategy for improving outcomes in the medium to longer term.\textsuperscript{328}

277. We asked the IfG, when they conducted their interviews for their reports, what MoJ staff thought “better” to be. They said amongst senior managers there was a sense of “better”, but there were a lot of different versions of “better”, depending on what you discussed. For some reducing recidivism would be a great outcome, but a lot of the things that were mentioned were about efficiency savings. They stated that there was very little measurable about what “better” would actually mean and look like. On the other hand, “less” was clearly the financial targets that needed to be delivered.\textsuperscript{329} Additionally, in the IfG’s 2011 report they concluded:

In the face of unprecedented fiscal austerity, TJ could lose sight of its ambition to make the justice system better—its original raison d’être—and become simply a programme of cuts […]. The focus on ‘better’ would be aided by the development of clear measurements of what a better justice system looks like, so that progress can be more easily tracked.\textsuperscript{330}

278. The Prison Reform Trust told us that as a headline, “better for less” could not be argued with and was attractive. However, they were disconcerted that there was very little

\textsuperscript{326} Qq 460-461
\textsuperscript{327} Q 462
\textsuperscript{328} Cabinet Office, Ministry of Justice 2012 Capability Action Plan, p 8
\textsuperscript{329} Qq 25-28
\textsuperscript{330} Institute for Government, Transformation in the Ministry of Justice: 2011 interim evaluation report, June 2011, p 31
reference to “Justice Reinvestment” within Transforming Justice, which it argued could be at the heart of the programme.\(^{331}\)

279. We asked the Justice Secretary what he thought a successfully transformed justice system would look like, to which he answered:

> I hope it will be more public-service oriented. Most public services are the same. They used to be run for the benefit of the people who worked in them and were very dominated by the processes to which they were accustomed. That, 40 years ago, was where most public service was in this country. I am not sure that the justice system has moved quite as quickly as some others.

The idea is that the whole thing is at the service of the public, be it the public you are protecting in the criminal law, the public whose disputes you are helping to resolve in an expeditious and reasonably affordable way or the public whose family disputes you are sorting out as quickly, properly and sensitively as you can. If you applied that first principle, “Let us look at the public interest and the consumer, first of all, and then decide how we run it,” there is a lot more reform to be done. It is inevitable, but courts tend to be run for lawyers, or they used to be; prisons tend to be run for prison officers, or they used to be; and the local government services and so on rather similarly. Reform, therefore, can do all kinds of things: save a lot of money, speed things up and get more tidy in management accountability and political accountability. Also, it ought to be asked, all the time, “What is it we are trying to deliver for the public and the public good?” That is the principal reason why we are reforming practically everything in the Department at the same time as we are reducing the cost and saving public money, but that is the general direction I would like us to go in.

In addition, Sir Suma said that at the end of Transforming Justice it was fundamental, that there was the “better” bit, so that people who did come into the justice system, for whatever reason, had a better service than they did currently.\(^{332}\)

280. Achieving “better for less” is a challenge faced by all departments. The Transforming Justice Programme has made some progress on making the Department better, in terms of being more effective and efficient, but we have indicated in this Report that further structural change and integration will be needed to carry this forward. We recommend that the Ministry sets out how it will measure a “better for less” justice system from the perspective of clients or users and the wider public.

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\(^{331}\) Q 36

\(^{332}\) Q 437
5 Conclusion

281. The Ministry of Justice’s structure and performance have improved since its creation and the responsibilities it holds provide the right balance against those of the Home Office. Since 2007, much effort has been expended in forging an integrated Department which is beginning to have rewards. However, the intervening five years have been a period marked by criticism of and, in cases such as the performance of the Legal Services Commission, failure by the Department. Many of the improvements the Ministry has made have been from a fairly low starting point.

282. Internally, the Department has united behind the Transforming Justice programme in a way that presents a shared common purpose. Its culture has also changed from a focus on policy creation to an increased recognition of programme management, although this shift has to continue further. The momentum which has been achieved under the leadership of Sir Suma Chakrabarti needs to be continued under the new Permanent Secretary, Ursula Brennan. The Department has a greater understanding of what drives its costs, which now feed in to an improved analytical function which can model the impact of its proposed policies. This has also helped the Department to budget for the future, and manage resources across its spending areas. However, it still does not have sufficient management of its finances, and will once again miss the Government’s agreed deadline for the submission of its 2011–12 accounts to Parliament.

283. The Department has sought to remove duplication, aided by a new operating model and the sharing of corporate and back office functions by all sponsored bodies of the Ministry. These sponsored bodies are now under closer central control, and accountable to ministers to a greater extent. It has also streamlined its senior management structures, removing unnecessary layers in order to free up resources to safeguard frontline jobs. However, there are further changes to its structure we would like to see, such as moving to an integrated system of offender management involving the commissioning of both prison and probation services in defined geographical areas.

284. The Department has also explored how its services can increasingly be provided externally. Through competition it aims to drive up service levels. However, we are not confident that it has the skills capacity needed for such a radically changed approach. Furthermore, there is a danger, if care is not taken, that the way payment by results is commissioned may undermine the work of voluntary sector organisations who play a vital role in the criminal justice sector.

285. The justice system includes a wide variety of organisations, in the public, voluntary and private sector. The system and the Department faces the challenge of having to do ‘better with less’. The Transforming Justice programme has made some progress is making the Department better, in terms of being more effective and efficient, but it is not clear how the justice system more generally will also be better. There has been an increase in joined-up working within the Department, but this has not been replicated across central Government, local government and the voluntary and private sectors. It will be essential for these to all work together more effectively if momentum to transform the justice system is to be maintained.
286. This Report has covered a broad range of issues that are central to how the Department is run. Many of the issues raised will recur as we proceed with our future programme of scrutiny.
Conclusions and recommendations

The creation of the Ministry of Justice

1. We agree with the objectives set out at the formation of the Ministry of Justice, and believe there are benefits in having a separate Ministry of Justice dedicated to achieving them. We welcome the emphasis the Department places on re-offending, but believe the Department still has structures in place which do not assist in achieving that objective. (Paragraph 6)

The Departmental Board

2. The Ministry of Justice has taken a pragmatic approach by adapting its top level structure to ensure all delivery agencies have a seat on the Departmental Board. These changes will speed up internal processes, and allow all agencies to have a direct input into Departmental decision making, which now rightly involves ministers directly. We commend this flexible approach and wish to see it continue: if circumstances or demands change, it might be necessary for the composition of the Board also to change. (Paragraph 23)

Sponsored Bodies

3. We note the concerns of the Chief Inspectors of Prisons and Probation and the Prisons and Probation Ombudsman. As they have a role as watchdogs it is particularly important that they have independence from the Department. We call on ministers to discuss these concerns with the Inspectors and Ombudsman, and in response to this Report to outline what steps they are taking to allay fears regarding their independent status. (Paragraph 29)

4. Where the function of an Arm’s Length Body requires it to be protected from political influence, it is important that the appropriate arrangements are in place so that this is the perception as well as the reality. We recommend that, where necessary, the Ministry of Justice establish or revise Framework documents so that they recognise the importance of real and perceived independence. (Paragraph 30)

5. Where there is no requirement for the function of an Arm’s Length Body to be protected from political influence, it is important that ministers are held accountable, and have influence on the performance of that function. Notwithstanding retention of the Youth Justice Board as a Non-Departmental Public Body, we recommend the Ministry ensures that the YJB works as efficiently as it would as an Agency, with similar accountability requirements. (Paragraph 35)

6. We note that the Ministry of Justice will be reviewing regularly the functions of its Arm’s Length Bodies, and wish to be informed of any proposals to alter governance arrangements. (Paragraph 36)

7. We acknowledge the improvements that the MoJ has made to its oversight of Arm’s Length Bodies. However, these are improvements from a situation that the
The budget and structure of the Ministry of Justice

Committee of Public Accounts described as “a matter of concern for the Ministry”. (Paragraph 40)

8. We welcome the establishment of the Arm’s Length Bodies’ Governance Division. This Division should endeavour to support and monitor the ALBs so that poor performance and duplicated processes, as previously seen in the LSC, are not repeated elsewhere. (Paragraph 41)

9. We recommend that the MoJ report to us on a regular basis – perhaps twice a year – on the work of the ALB Governance Division, drawing on its risk-based approach, and flagging up any significant risks identified, and the mitigating steps taken to manage those risks. (Paragraph 42)

Cultural change through Transforming Justice

10. We welcome the achievements of the Transforming Justice programme in uniting the Ministry behind this brand. This work has helped the Department to coalesce around a common purpose. We further welcome the efforts that have been made to involve front-line staff in these changes at an early stage, and found evidence of the understanding of and commitment to the programme among staff at every level when we toured the Ministry’s and NOMS headquarters on an ‘open access’ basis. (Paragraph 46)

11. There has been a historical tendency throughout government to favour policy at the expense of delivery. We welcome the change in culture in the Ministry, with an increasing recognition of the importance of programme management as well as policy. We recommend that greater efforts be made to alter the balance from policy creation to its implementation. It should be a prerequisite that officials at a senior level have had hands-on experience of delivery or project management. (Paragraph 47)

Prison Service and Probation Service relations

12. We have long argued that the difficulties NOMS has experienced in reducing re-offending are inherent in its current structure and that there should be a more ambitious integrated system of offender management involving the commissioning of both prison and probation services in defined geographical areas. While we appreciate that efforts have been made to bring prisons and probation closer together, such efforts amount to little more than a sticking plaster; they do not address the fundamental structure of NOMS, which is currently inadequate to fulfil its aspirations. As such, the rigidities in the current structure militate against doing what works. Furthermore, probation does not enjoy the same status as prisons in NOMS, which reflects the fact that non-custodial sentences do not have the same status as custodial sentences throughout the system. (Paragraph 52)

Change of emphasis – understanding the business

13. We recommend that the Ministry provides a follow-up response to our 2011 conclusion on the dearth of evidence on legal aid expenditure and its outcomes, so
that we can use it as a case study of the progress the Department has made. We note the inclusion for the first time in the 2011-12 Annual Report of figures for the average cost per case of legal aid accounting; we welcome this progress.

(Paragraph 57)

14. We welcome the improvements made in modelling and the use of analytical techniques. We recommend that the Department further improves its analytical function, and its evidence base, so that evidence of effectiveness can lead policy. The Department should bring together all its analytical and policy capacity, both in the MoJ and in NOMS, to provide a central strategic function. The Department should further develop its work with other departments to take account of the wider social and economic costs of crime, particularly with a view to reducing the number of people entering the criminal justice system and the inherent demands upon it. (Paragraph 63)

Benefiting from experiences overseas

15. Whilst there are difficulties in making straight comparisons between different jurisdictions, the MoJ should continue to draw on examples of innovative or efficient practice in other justice systems. We recommend that the Department takes note of the National Audit Office’s briefing, Comparing International Criminal Justice Systems, which indicates where further work may be beneficial. This includes in particular: research into prison systems, such as those in the Netherlands and Finland, which have seen reductions in the prison population; a comparison of fine collection rates, which is an area where further improvement is required; and improved sharing of positive experiences across jurisdictions of how services have been provided at a lower cost. There are also potential lessons to be learned by comparing the distinct criminal justice systems in Scotland and Northern Ireland with that of England and Wales. The Department should, in its response, set out how, if at all, it intends to learn lessons from other jurisdictions. (Paragraph 69)

Addressing poor financial management

16. Not adhering to the deadline for submitting departmental accounts, agreed across Government, is unacceptable. It creates the impression that the Ministry of Justice is a poor-performing Department with poor financial controls. (Paragraph 74)

17. The Legal Services Commission must establish a clear plan for how it intends to reduce significantly its error rate. The ongoing qualification of the LSC’s accounts raises concerns that public expenditure is being used inappropriately. (Paragraph 80)

18. We acknowledge the difficulties presented in producing the HMCTS Trust Statement for 2010–11. We note the progress made to provide robust evidence for 2011–12 for fines and confiscation orders. If the 2011–12 Trust Statement does not demonstrate significant improvements we will require ministers and officials to explain to us why the Department is failing in this respect. (Paragraph 86)

19. We recognise the progress being made in improving financial management, but this comes from a low base. It seems to us that, until recently, there has been an
The budget and structure of the Ministry of Justice

20. We welcome the progress made through the Specification, Benchmarking and Costing Programme in NOMS, and the activity-based costings in HMCTS. Both are further examples of how the Ministry of Justice’s financial management is gradually improving, and how knowledge of its costs is providing the basis for decisions throughout the Department. We await further details about the benefits these programmes are bringing, and whether similar work can be done elsewhere in the MoJ. (Paragraph 96)

Working with others

21. If the potential benefits of having joint ministers working across departments are to be realised, they require the allocation to joint ministers of an appropriate range of responsibilities, giving them a realistic opportunity to be effectively involved in both departments. (Paragraph 107)

22. We recommend that the Ministry of Justice and the Home Office establish a single team to support their responsibilities for European and international justice and home affairs issues. This is an obvious area of unnecessary duplication. (Paragraph 110)

23. The current system for the collection of confiscation orders appears muddled. The administrative responsibility for a confiscation order, or other type of fine or penalty, should fall on the organisation whose duty it is to collect it. This would be a clear and transparent approach. We recommend that those confiscation orders that are not HMCTS’s responsibility to collect are removed from their accounts. (Paragraph 114)

24. We note the inevitable tensions between the Lord Chancellor and the Lord Chief Justice on funding for the courts and tribunals service, but welcome the annual dialogue in relation to the allocation of financial resources. We believe that this is the appropriate mechanism through which any concerns about funding can be raised, and agreement reached. Essential though judicial independence is, we agree with the Secretary of State that that does not mean the judiciary can set its own budget without reference to the constraints on overall public expenditure. (Paragraph 119)

Financial planning model and the new Operating model

25. As well as having good financial control over what it has spent, the Ministry also needs to have detailed knowledge and budgetary control of its future spending plans. This is particularly the case as the Ministry is susceptible to shocks in demand as seen
following the riots in the summer of 2011. The steps the Ministry has taken in this area should help to mitigate this risk. (Paragraph 129)

26. We welcome the introduction of the new operating model which has enabled corporate and back office functions to be shared by all parts of the Ministry to avoid duplication. However, we believe that further integration is required so that the MoJ is a single delivery body. (Paragraph 133)

**Reducing staff costs**

27. The MoJ has taken the correct approach by focusing the highest proportion of job losses in senior management grades in order to safeguard frontline jobs. We call on the Ministry to go further in removing unnecessary layers from their management structures in order to free up resources for the front line. (Paragraph 138)

28. The difficulties in recruitment raised by the Chief Inspectors of Prisons and Probation and the Prisons and Probation Ombudsman are a matter for concern. In the response to this Report the Ministry must explain why previously agreed posts had subsequently been withdrawn. The Chief Inspectors and Ombudsman have a role as watchdogs and, although they will also be subject to efficiency savings, they must be able to recruit the staff they require in a reasonable fashion. (Paragraph 139)

29. Concerns have been raised with us that the Ministry does not have the skills in place to meet the increased demands of commissioning and contract management. This places the Department, and the public purse, in a dangerous position when it enters into negotiations with private sector firms. We call on the Department to demonstrate in its response that it has the necessary skills to deliver its plans in this area, and to set out the steps it has already taken and will be taking to ensure its workforce has the necessary capabilities. (Paragraph 142)

30. As competition for the Ministry’s services increases there will be greater opportunities for staff to move from the public to the private sector and vice versa. This experience should be beneficial for individuals and the Department as a whole. Whilst it is not clear that the Department has a problem in attracting staff, we recommend that it creates a strategy for attracting and retaining talented individuals. (Paragraph 145)

31. The Department has made some progress in reducing its previously high levels of spending on agency staff. Given that the Department has assessed its structures and introduced new operating models, it should have a clear idea where the capability gaps amongst staff are. We recommend that the Department redeploy and retrain its existing permanent staff where possible to fill current gaps. If there are full-time vacancies then the Department itself should seek to recruit. Consultants and agency staff should only be required on specialised projects and during seasonal or unexpected peaks in work. We expect the expenditure in this area to continue to decrease significantly. (Paragraph 147)
Smaller estate

32. There remains significant scope for rationalising and improving the prison estate, which should continue to be pursued while taking full account of the available evidence of the impact of prison location on the effectiveness of rehabilitation. It is essential that when the Ministry chooses to sell off parts of its estate it receives the best possible value. Furthermore, it should ensure that where land or property may appreciate it has in place appropriate claw-back provisions in all cases. (Paragraph 153)

33. While our emphasis in this Report is on managerial and operational issues, we need to re-iterate a policy concern which lies at the heart of the MoJ’s work. The Government appears to be locked into the ‘predict and provide’ model of prison provision which characterised its predecessors. There is a disturbing anomaly at the core of our criminal justice system: if a sentence says that a criminal is to be imprisoned, the Government accepts as an unarguable imperative that a prison place must be provided. No such imperative exists in relation to non-custodial sentences. Despite Parliament legislating for the provision of a plethora of non-custodial options, sentencers are routinely restricted from stipulating that these options should be attached to sentences, because the money is not available to pay for them. This approach demonstrates indifference to the views of legislators and an unacceptable curtailment of judicial choice. The present Departmental structure needs to be reformed so that it does not inhibit effective sentencing, be that custodial, non-custodial, or a combination of the two. Proper consideration should be given to the possibility of local commissioning of both custodial and non-custodial provision. (Paragraph 159)

34. Consolidating the MoJ’s headquarters is a good idea. First, it will free up unnecessary office space that can then be disposed of. Second, as more bodies use the main headquarters they too can draw on the shared services facilities available. Third, it should help the separate bodies, agencies and the core Department collaborate more effectively and reduce any possible barriers that physical distance may bring. We recommend that the Department speeds up its consolidation of headquarters, bringing in all appropriate NDPBs. (Paragraph 161)

Targeted IT changes

35. We welcome the Ministry’s commitment to securing ‘better for less’ from its ICT and the improvements that are already in hand. For the future, we recommend that ICT should be an integral part of the MoJ’s business strategy. At a time when funds are scarce it is essential that the MoJ knows where to target improvements so that the greatest benefit can be achieved through the minimum cost. (Paragraph 172)

36. We welcome the improvements made to project management, following criticisms related to the C-NOMIS project. ICT projects in central Government are renowned for their ability to be delayed, go over budget, and not deliver what was initially intended. Better project management should help to keep control of the ICT projects the MoJ chooses to proceed with. We recommend that for any future ICT projects the Project and Programme Management Leader be appointed on the basis that,
wherever possible, they will follow that project from inception to implementation, and be the senior responsible owner for it. (Paragraph 173)

37. There is no excuse for the Legal Services Commission’s failure to implement a system of online submissions by solicitors and we recognise that the Law Society suggests providers to the MoJ are willing to adhere to a fully online process. For future contracts there should be no choice for providers but to interact with the MoJ in a way that achieves the greatest efficiency. This should be decided at an early stage, so that a clear and certain message can be delivered to providers, the minor practical problems can be overcome, and providers can be confident in making the necessary investment decisions. (Paragraph 175)

**Income generation**

38. We urge the Department to promote its shared service centres to other Government departments, in order to gain additional income. (Paragraph 177)

39. It is right that the Department is trying to achieve full cost recovery for court fees. However, there is a danger that higher fees can act as a disincentive for individuals seeking access to justice. Therefore we welcome the Ministry’s approach to reducing costs so they match as low a fee as possible. The impact of higher fees on demand should be recorded and analysed so as to inform fully future decisions on fees. (Paragraph 180)

40. Although it may not generate a large amount of income, the work of the aged debt pilots seems to be having a level of success by making offenders pay. It is important that there is confidence that methods of punishment used in the justice system are carried out. In response to this Report, we ask the Ministry to set out how these pilots will be taken forward, and whether a similar approach would be beneficial in relation to other areas of fine collection. (Paragraph 182)

41. The Ministry is taking some interesting steps in promoting both its own services and the wider justice system to an international audience. It is not clear to us whether the Department has analysed all its activities to assess which might have a commercial appeal domestically and internationally. We recommend it should do so and that a senior leader in the organisation be appointed to champion this work across all business units within it. (Paragraph 185)

** Outsourced services**

42. We reiterate our earlier recommendation that the Department needs to convince us in its response that it has the necessary skills to deliver its plans for increased competition of services, and to set out the steps it has already taken and will be taking to ensure its workforce has the necessary capabilities. The review of how the Department commissions services should involve an independent assessment of capability by those used to implementing best practice in the private sector. We call on the Government to let us have access to the full findings of this review as soon as it is available. (Paragraph 196)
43. We recommend that the Department makes use of the knowledge and expertise of its provider firms at the outset of devising a new contract. The examples of problems within the MoJ’s commissioning show a tendency for them to be poorly designed. It seems clear that the Department has insufficient experience and skills to commission effectively, so the MoJ should draw upon the experience of others. (Paragraph 209)

44. We recommend that once the Department has designed its competition process, more is done to make the stages clear to the potential bidders. In addition every stage must be robust and transparent, and each stage must whittle the contenders down by an appropriate amount. The commissioning process involves a lot of resources both for the MoJ and the bidders, so unrealistic applications should be removed at the earliest stage, and only those with a serious chance of providing the competed service should reach the latter stages. (Paragraph 210)

45. We recommend that the MoJ reviews its guidance for feedback so that it is part of a meaningful process for the bidders. (Paragraph 212)

46. The Language Services Framework Agreement has been in place nationally for HMCTS since February 2012. It is not clear whether the very serious problems experienced at the start of the contract have been resolved, or are in the process of being resolved. We intend to take evidence on this matter in October. (Paragraph 214)

47. We welcome the steps the MoJ is taking to use small and medium sized enterprises and the voluntary and community sector. In response to this Report, we request an assessment of how the MoJ has reached the figure of 33% of its Departmental spend going to small and medium enterprises. (Paragraph 218)

48. The Department appears to be sending mixed messages about how it wants to engage with small and medium sized enterprises and the voluntary sector. On the one hand it has done some good work to increase its spending to them, and it is trying to change its processes so they can more easily do business with the Department; on the other hand, there seems to be an general impression that the Department will move to a system whereby they set a prime contract with a large organisation, leaving it to the prime contractor to interact with SMEs and the voluntary sector. We further examine the difficulties this presents, and how these can be mitigated. We call on the Ministry to give a clear message about the circumstances in which it will opt to engage directly with SMEs and the voluntary sector. (Paragraph 228)

49. We recommend that the Ministry assesses how it might aid the voluntary sector in bringing together organisations to form consortia for those contracts it issues at a large scale that prohibits smaller organisations competing for them on their own. (Paragraph 231)

50. We recommend that the Ministry of Justice assesses how its policies for suppliers compare to the Department for Work and Pensions’ Merlin Standards and considers whether it too should regulate the prime to sub-contractor relationship. (Paragraph 238)
51. We recommend that the Department considers how it can use prime contracts to incentivise and increase the involvement of small and medium-sized enterprises. (Paragraph 239)

The Ministry’s long-term policies

52. As many of the costs associated with the Ministry of Justice are driven by demand for its services, at times when expenditure has to be reduced it is sensible that attempts are made to reduce demand. However, this should be balanced by other steps the Department can take to reduce spending, such as reducing costs incurred through other drivers and working in more efficient ways. (Paragraph 245)

53. We recommend that the Department further improves its analytical function so that any future policy proposals are supported by high-quality Impact Assessments that enable the fullest public scrutiny. We recommend that the Impact Assessment contains a statement of how the policy proposal fits with the label “better for less”. We reiterate that in the longer term, the Department should consider how best it can work with other departments so that Impact Assessments take into account the wider social and economic costs of a policy proposal. (Paragraph 246)

Payment by results

54. We recognise the potential benefits of payment by results, but are concerned that this potential may not be realised because of structural problems in NOMS and the MoJ which we have identified earlier in this Report. We will continue to monitor the progress of the Department’s payment by results programme and call on the Department to report to us on the steps they are taking to mitigate the risks involved with this process, such as the risk that contractors will ‘cherry pick’ the individuals they chose to work with in order to maximise profit. (Paragraph 260)

The next stage of Transforming Justice

55. One of the pre-requisites for justice to be transformed successfully is for all involved in the delivery of services to work more effectively with other partners. The Department has made good progress in breaking down silos within its own organisation. We are not convinced, however, that sufficient energy or attention has yet been given to engaging stakeholders in other Government departments, other parts of the public sector beyond Whitehall, the voluntary sector, and the private sector. We applaud the work done on Transforming Justice to date; the Department now needs to tell us how it will build on this work to make the justice system truly joined up. (Paragraph 269)

56. Achieving “better for less” is a challenge faced by all departments. The Transforming Justice Programme has made some progress on making the Department better, in terms of being more effective and efficient, but we have indicated in this Report that further structural change and integration will be needed to carry this forward. We recommend that the Ministry sets out how it will measure a “better for less” justice system from the perspective of clients or users and the wider public. (Paragraph 280)
Formal Minutes

Tuesday 17 July 2012

Members present:

Sir Alan Beith, in the Chair

Steve Brine  Ben Gummer
Mr Robert Buckland  Mr Elfyn Llwyd
Jeremy Corbyn  Seema Malhotra
Nick de Bois  Elizabeth Truss

Draft Report (The budget and structure of the Ministry of Justice), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 286 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Second 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.

[Adjourned till Tuesday 4 September at 10.15am.]
Witnesses

Tuesday 6 December 2011

Julian McCrae, Director of Research, and James Page, Senior Researcher, Institute for Government

Ev 1

Juliet Lyon CBE, Director, Prison Reform Trust, and Mark Stobbs, Director, Legal Policy, Law Society

Ev 7

Tuesday 24 January 2012

Rt Hon Jack Straw MP, former Lord Chancellor and Secretary of State for Justice

Ev 14

Phil Wheatley CB, former Director General, National Offender Management Service

Ev 20

Tuesday 31 January 2012

Sir Suma Chakrabarti KCB, Permanent Secretary, Ann Beasley CBE, Director General, Finance and Corporate Services, Antonia Romeo, Director General, Transforming Justice, and Helen Edwards CBE, Director General, Justice Policy Group, Ministry of Justice

Ev 27

Tuesday 7 February 2012

Richard Morris, Group Managing Director, G4S Care and Justice Services (UK) Ltd, Tony Leech, Managing Director, Sodexo Justice Services, and Charlie Bruin, Business Director, Central Government Business Group, Liberata UK Ltd

Ev 43

Andy Keen-Downs, Chief Executive, Pact, Sarah Payne, Chief Executive, Wales Probation Trust, Ian Barrow, Acting Director of Operations, Wales Probation Trust, Diane Cheesbrough, Chief Operating Officer, and Bernadette Byrne, Group Client Services Director, thebigword

Ev 50

Tuesday 6 March 2012

Frances Done CBE, Chair, and John Drew, Chief Executive, Youth Justice Board

Ev 54

Peter Handcock CBE, Chief Executive, Her Majesty’s Courts and Tribunals Service

Ev 62

Tuesday 22 May 2012

James Allen, Head of Public Services and Partnerships, National Council for Voluntary Organisations, and Clive Martin, Director, Clinks

Ev 70

Michael Spurr, Chief Executive, National Offender Management Service

Ev 74
Wednesday 23 May 2012

Rt Hon Kenneth Clarke QC MP, Lord Chancellor and Secretary of State for Justice, Sir Suma Chakrabarti KCB, Permanent Secretary, and Antonia Romeo, Director General, Transforming Justice, Ministry of Justice

Ev 85

Wednesday 13 June 2012

Matthew Coats, Chief Executive, Legal Services Commission

Ev 100

List of written evidence

1. Ministry of Justice Ev 105, Ev 129, Ev 159, Ev 174
2. Criminal Justice Alliance Ev 111
3. The Legal Ombudsman Ev 114
4. Prison Reform Trust Ev 118
5. Law Society of England and Wales Ev 123
6. The Howard League for Penal Reform Ev 126
7. Liberata Ev 148, Ev 173
8. G4S Care and Justice Services Ev 150, Ev 160
9. Pact Ev 154
10. Public and Commercial Services Union Ev 157
11. Thebigword Ev 162
12. Joint submission from HM Chief Inspectors of Prisons and Probation, and the Probation Ombudsman Ev 164
14. Probation Chiefs Association Ev 169
15. Letter from Matthew Coats, Chief Executive, Legal Services Commission to Rt Hon Sir Alan Beith MP, Chair, Justice Committee Ev 169
16. Applied Language Solutions Ev 171
17. Spurgeons Ev 171
18. Professional Interpreters’ Alliance Ev 182
# 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

<table>
<thead>
<tr>
<th>Report</th>
<th>Title</th>
<th>HC</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Revised Sentencing Guideline: Assault</td>
<td>637</td>
</tr>
<tr>
<td>Second</td>
<td>Appointment of the Chair of the Judicial Appointments Commission</td>
<td>770</td>
</tr>
<tr>
<td>Third</td>
<td>Government’s proposed reform of legal aid</td>
<td>681–I (Cm 8111)</td>
</tr>
<tr>
<td>Fourth</td>
<td>Appointment of the Prisons and Probation Ombudsman for England and Wales</td>
<td>1022</td>
</tr>
<tr>
<td>Fifth</td>
<td>Appointment of HM Chief Inspector of Probation</td>
<td>1021</td>
</tr>
<tr>
<td>Sixth</td>
<td>Operation of the Family Courts</td>
<td>518-I (Cm 8189)</td>
</tr>
<tr>
<td>Seventh</td>
<td>Draft sentencing guidelines: drugs and burglary</td>
<td>1211</td>
</tr>
<tr>
<td>Eighth</td>
<td>The role of the Probation Service</td>
<td>519–I (Cm 8176)</td>
</tr>
<tr>
<td>Ninth</td>
<td>Referral fees and the theft of personal data: evidence from the Information Commissioner</td>
<td>1473(Cm 8240)</td>
</tr>
<tr>
<td>Tenth</td>
<td>The proposed abolition of the Youth Justice Board</td>
<td>1547 (Cm 8257)</td>
</tr>
<tr>
<td>Eleventh</td>
<td>Joint Enterprise</td>
<td>1597 (HC 1901)</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Presumption of Death</td>
<td>1663 (Cm 8377)</td>
</tr>
<tr>
<td>First Special</td>
<td>Joint Enterprise: Government Response to the Committee’s Eleventh Report of Session 2010–12</td>
<td>1901</td>
</tr>
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## Session 2012–13

<table>
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<th>Report</th>
<th>Title</th>
<th>HC</th>
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<td>First</td>
<td>Post-legislative scrutiny of the Freedom of Information Act 2000</td>
<td>96–I</td>
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