House of Commons
Justice Committee

The budget and structure of the Ministry of Justice

Second Report of Session 2012–13

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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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.

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.

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The current staff of the Committee are Tom Goldsmith (Clerk), Sarah Petit (Second Clark), Hannah Stewart (Committee Legal Specialist), Helen Kinghorn (Committee Legal Specialist), Gemma Buckland (Committee Legal 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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Witnesses

Tuesday 6 December 2011

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

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

Tuesday 24 January 2012

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

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

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

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

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

Tuesday 6 March 2012

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

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

Tuesday 22 May 2012

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

Michael Spurr, Chief Executive, National Offender Management Service
Budget and structure of the Ministry of Justice

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

<table>
<thead>
<tr>
<th></th>
<th>Name of Organization</th>
<th>Evidence Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ministry of Justice</td>
<td>Ev 105, 129, 159, 174</td>
</tr>
<tr>
<td>2</td>
<td>Criminal Justice Alliance</td>
<td>Ev 111</td>
</tr>
<tr>
<td>3</td>
<td>The Legal Ombudsman</td>
<td>Ev 114</td>
</tr>
<tr>
<td>4</td>
<td>Prison Reform Trust</td>
<td>Ev 118</td>
</tr>
<tr>
<td>5</td>
<td>Law Society of England and Wales</td>
<td>Ev 123</td>
</tr>
<tr>
<td>6</td>
<td>The Howard League for Penal Reform</td>
<td>Ev 126</td>
</tr>
<tr>
<td>7</td>
<td>Liberata</td>
<td>Ev 148, 173</td>
</tr>
<tr>
<td>8</td>
<td>G4S Care and Justice Services</td>
<td>Ev 150, 160</td>
</tr>
<tr>
<td>9</td>
<td>Pact</td>
<td>Ev 154</td>
</tr>
<tr>
<td>10</td>
<td>Public and Commercial Services Union</td>
<td>Ev 157</td>
</tr>
<tr>
<td>11</td>
<td>Thebigword</td>
<td>Ev 162</td>
</tr>
<tr>
<td>12</td>
<td>Joint submission from HM Chief Inspectors of Prisons and Probation, and the Probation Ombudsman</td>
<td>Ev 164</td>
</tr>
<tr>
<td>13</td>
<td>Lord Chief Justice of England and Wales</td>
<td>Ev 167</td>
</tr>
<tr>
<td>14</td>
<td>Probation Chiefs Association</td>
<td>Ev 169</td>
</tr>
<tr>
<td>15</td>
<td>Letter from Matthew Coats, Chief Executive, Legal Services Commission to Rt Hon Sir Alan Beith MP, Chair, Justice Committee</td>
<td>Ev 169</td>
</tr>
<tr>
<td>16</td>
<td>Applied Language Solutions</td>
<td>Ev 171</td>
</tr>
<tr>
<td>17</td>
<td>Spurgeons</td>
<td>Ev 171</td>
</tr>
<tr>
<td>18</td>
<td>Professional Interpreters’ Alliance</td>
<td>Ev 182</td>
</tr>
</tbody>
</table>
Oral evidence

Taken before the Justice Committee on Tuesday 6 December 2011

Members present:

Sir Alan Beith (Chair)
Mr Steve Brine
Mr Robert Buckland
Jeremy Corbyn

Ben Gummer
Mr Elfyn Llwyd

Examination of Witnesses

Witnesses: Julian McCrae, Director of Research, and James Page, Senior Researcher, Institute for Government, gave evidence.

Q1 Chair: Welcome, Mr Page and Mr McCrae from the Institute for Government. Mr McCrae, you are the Director of Research, and Mr Page, you are a Senior Researcher. Thank you for coming in to help us in our work on the budget and structure of the Ministry of Justice. This is the first evidence session. It is a core task of Select Committees to examine the efficiency and competence of the Departments they are scrutinising, and we spend a lot of our time discussing subjects, but we thought it was time we had a proper look at whether the Department is geared up to the jobs that it has to do.

By way of introduction, as I understand it, the study you did—we have the report here—and all your work has been focused not on the policy issues which arise in the Department but on precisely what I said earlier. Is that right?

Julian McCrae: Yes; that is exactly right. The Institute looks not at policy issues of government but at the mechanics of government and how the civil service and Whitehall generally take those policies and implement them and, indeed, how they go about the process of policy making itself.

Q2 Chair: Given that there is a programme which has this rather grand title “Transforming Justice”, what has it achieved so far?

Julian McCrae: The time scale over which we have looked at the Department goes right the way back to 2009. These extremely large-scale transformations—which is the word people tend to write about, and it is, as you say, a very grandiose term—tend to be measured in numbers of years in how they get from start to finish. The context for the Department is one in which, in 2009, there was a very clear realisation of the consequences of the fiscal situation for the forthcoming budget of the Department. But, interestingly at that time, unlike in a private sector firm where that would immediately translate into a crunch in your cash, it was another year and a half or more before the spending review set the cash reduction for the Department. Up to that, the Department had been going through a phase of planning for and working up to the options that it would have to implement. The last time we looked in depth at the Department was in January 2011, when the Department was moving out of that planning phase and into the implementation, crunching through how to take those savings out of the Department and what that meant.

To come back to your question, Chair, in one sense the Department has achieved relatively little in moving the Department to where it needs to be by the end of the spending review. In another phase, and we might go into this in a little more detail, it has moved through the preparation phase in preparing the Department for that change quite a long way. There are strengths and weaknesses inside that which I think are picked up in our report, and I am happy to delve into them in more detail as we go through this.

Q3 Chair: What are the main means by which progress is measured towards the achievement of the programme or budget?

Julian McCrae: The principal means will be the budget of the Department. The spending review settlement is very clearly at the forefront of everyone’s minds.

Q4 Chair: You keep using the word “programme”. I am not sure if that is the right word. It started before the spending review.

Julian McCrae: Yes, indeed. In terms of the final outcomes for all of this, the cash totals are the driver, and the Department has been trying to layer on top of that some measures of what “better” means for a justice system. If you think about what a transformation programme can be judged on, essentially “Did it hit those outcomes?” is the ultimate test for it. In three or four years’ time, did the Ministry take out the amount of cash the spending review requires it to take out, and did we have a justice system that was in any meaningful and measurable sense better than where it is now?

To date, in the Institute’s work, we have been looking at what you can tell from the way the Department is setting itself up and managing itself to take on that task, in its planning, bringing in the people who would have the skills and the ability to achieve that, and in being clear and engaging people who are working for it. It is in those kinds of ways that you prepare and take through this change. How has the Department been doing and how is it appraised against that?
We have not used hard metrics. We are not giving the Department a score out of 10. The methodology has been far more to say, “These are the types of things you should be looking at. How are you doing on that? Indeed, how do your own people in the Department feel you are doing in terms of the challenges they face in their day-to-day jobs?”

**Q5 Chair:** What is the role of “Transforming Justice” as a concept? You have just described a number of things which might fall under it such as getting the right people in place and changing some of the structures. Is it in some way psychologically important to maintain the pace of improvement—an almost necessary myth that reminds people they cannot simply carry on as they are but have to do things differently?

**Julian McCrae:** At its most basic level “Transforming Justice” is a brand. I do not think “myth” is quite the word. If it is simply a myth, people will not—

**Q6 Chair:** It might be a better word than “brand”. I associate “brand” with Campbell’s soup. “Transforming Justice” as a phrase is the packaging device for it. “Do you have something that is real to the people in that Department?” which is how you are going to take an organisation that extends to about 90,000 in its largest definition of its headcount and change that in a way that ensures it stays functional and produces the cash savings?

In a sense, there are various approaches to doing this kind of transformation which different companies, organisations or businesses have used, but it is very common to try and have that overarching label that allows people to see that what you are doing in your own job is part of a bigger whole. It is about how the overall aim of the organisation you are working for is being improved. In a sense the “Transforming Justice” label is less important in this than the sense that we pick up of “better for less”. Is it that what people credibly believe they are doing in their day job is going to lead to a better justice system, or is it that that is just branding in itself and it is really going to be a worse justice system and a PR exercise? The latter will not motivate people. The former is almost certainly necessary and entirely vital if you are going to keep people motivated across the number of years this will take.

**James Page:** It might be worth adding that part of the point of a brand is also to have a few key messages that go along with that. It is getting those messages through the organisation, as Julian says, to 90,000 people. It is a huge task. There has been a kind of beginning at the top. All of our research suggests that all of the key leaders really understand the depth of the messages and are able to articulate what “Transforming Justice” is all about. The real importance is not just building that at the top but then how you push that down through the organisation and make sure that those 90,000 understand those simple key messages so that you can see how the new ways of working fit into a new Department and a new way of doing justice.

**Q7 Chair:** Like “better for less”.

**James Page:** Indeed.

**Q8 Mr Buckland:** I well appreciate your remit and we do not want to get into arguments about whether the perceived benefits of creating MoJ were right or wrong. Let us assume that they were right for a moment. It was all about bringing together prisons, probation and other machinery of justice Departments into what is now one of the largest Departments in Whitehall. Do you think that the perceived benefits of bringing together all of these structures and agencies are being realised now, four years on?

**Julian McCrae:** I want to make a broader comment about the rest of the Institute’s research. We are professionally sceptical about reorganisations inside Whitehall delivering benefits. It is much easier to move the Departments about than it is to realise, as you say, the synergies between those new organisations. If you look at the process from 2009 onwards, some of the benefits that one might expect from the creation of a single organisation out of the disparate parts from which the MoJ was formed are really taking place. It is one of the real benefits of the process they had to go through. It is probably a wider reflection for Whitehall and government in general that it took the imminent spending crunch to drive some of those things that, more normally in a corporate world, you would have expected to occur around the time you did your mergers or demergers. I do not think that is an MoJ-specific point; I think that is a general point about how government does these things.

**Q9 Mr Buckland:** You said the drivers were the cost savings. Using your word “synergies”, do you think they are there now or is it still work in progress?

**Julian McCrae:** I think the organisation has come together. One of the things we talk about quite a lot is how the senior leadership team of the organisation has moved from, essentially, representatives of their own areas of the business, in loose terms, to thinking corporately about what the Ministry of Justice as a whole has to achieve and how the different parts work together to achieve that. That has been a very big change. A lot of the internal savings are predicated on realising synergies in the more usual corporate sense of taking the various functions that are duplicated between the different operations and reducing those down to being done once, and that is a fairly large chunk. It goes outside policy; it is not about policy. Any organisation would want to do that. It is too early to say. These are large-scale changes. It is very easy to take costs out, but can you still do the task or the job you are supposed to be doing if you take the costs out? It is too early to say whether they have realised them yet.

**Q10 Mr Buckland:** That is a sort of Zhou Enlai answer, isn’t it? It is Zhou Enlai’s famous remark about the French Revolution. “What is your view of the impact?” “It’s too early to say.”
**Julian McCrae:** It is too early to say, but it is not quite in 200 years. Over the next 12 months or so you will have a very good idea. We intend to go back to the Ministry and see, so I should have a better and more precise answer to that the next time round.

**Q11 Mr Buckland:** Moving on to the Department’s relations with other Departments and agencies, the need to work more effectively with them is demonstrably clear, whether it is the MoJ or any other Department. Do you think progress is being made there? If not, what do you think the problem is?

**Julian McCrae:** We observed in the original report the degree to which, internally in MoJ, a lot of bringing together the senior leadership team was about the Department doing things quite differently from the traditional way that Whitehall works. There was a lot of emphasis on getting people just to work together on the same problem and think about it from different perspectives jointly rather than in an adversarial way. The cross-Whitehall element was strikingly similar to how Whitehall traditionally operates. There was very little attempt to change the ways of working that were going on. On “Transforming Justice” in its broad sense has done much to improve or worsen the long-standing and well-observed silo nature of Whitehall. It has been very much an internal-to-the-Ministry process where it has been different rather than in its external relationships.

**Q12 Mr Buckland:** I will give you the example of mental health, where the Ministry has to work with the Department of Health to pilot an improved position for mental health treatment. Are you saying that “Transforming Justice” is not addressing that particular area, and therefore we are left with good old-fashioned ministerial willpower to achieve cross-departmental working in areas such as that?

**Julian McCrae:** I do not think there is a change in the way that the cross-departmental working is going. Because we have not looked at the policy side, I know little about the actual policy linkages with DH and how that is operating in its traditional sense. It is certainly right that this has not been a transformation in the relationship between the Ministry and other Departments, but then the Department did not really set out to do that. In some sense, it is very difficult to change those relationships unless the other side and the whole of Whitehall is moving to a different form, which of course is in the interests of the Institute but not particularly this piece of work.

**Q13 Mr Buckland:** Finally, they have to get the participation and involvement of the legal profession and the judiciary, because they are key, in order to make sure that changes are implemented on the ground. How successful do you think the Department has been to get them to buy in, as it were?

**Julian McCrae:** We have not done specific work with the judiciary. I suggest they should speak for themselves as to how they believe they are engaged in this. From the departmental side, one of the things we constantly return to as an area of focus in this work is that you cannot change the justice system simply by the willpower of the people in the Ministry. The engagement of the judiciary, as we know from the reports, was very much at that top level, to bring in the senior judiciary gently into this process. There are constitutional issues for the judiciary in how they can be involved in anything along these lines. So the Department has handled that relatively carefully.

The issue we certainly have not seen in the work we have done is more broadly the wider linkages to the judiciary. There are a large number of magistrates in the country and I suspect the engagement of that has gone more through the Courts Service than a central initiative in “Transforming Justice” which we were looking at. As I say, it is not a specific. We have not looked at the judiciary and asked them their views, so I cannot give you a definitive answer to that question.

**Q14 Chair:** Did you look at all at how the Courts Service had developed and whether it had become integrated with the Department?

**Julian McCrae:** One of the observations we would have is that both courts and probation at that departmental Ministry level have become much more integrated into a way of thinking that what happens in the courts matters to probation. There is joint thinking at the Director General and the Director levels in the Ministry is much stronger now than it was. Again, I have to disclaim. We have not talked to people working at the front line of the Courts Service about their interactions with the Prison Service. There is a lot of work in this area and with the police, which would be the other key area.

**Q15 Chair:** We will come on to that aspect of cross-departmental working later. I was thinking, in terms of the Ministry of Justice side, whether the Courts Service had become effectively integrated, with the caveat, of course, that it has a special role in relation to courts.

**Julian McCrae:** It is much more integrated at the top level of the organisation. In 2009 these were very disparate groupings with very disparate management. That has come much more closely together into a single, clear, centralised management that understands what the Courts Service has to achieve in order to help other parts of that business take out the money. That is a very clear move forward for the Department over the last two or three years.

**Q16 Mr Llwyd:** I have one or two brief points. Could I draw your attention to page 11 of your report? You list four areas where you say the MoJ plan to reduce budgets. The Courts Service is one, with the closure of magistrates courts and county courts. The Justice Secretary gave evidence to us. He said that those closures were nothing to do with costs but were about slimming and were not cost-driven. He must have come clean with you at some point.

**Julian McCrae:** I will leave the Ministry to comment on its own budget plans. We have not done an assessment of their budget plans. As I understand the Courts Service changes, this is part of how you think about “better for less”, and the justification for a lot of the Courts Service changes was about the efficiency of the court operation. That was certainly central to the thinking.
I can comment, however, that when the officials were looking at how they could change how the organisation operates and how they could make it more efficient and effective, that was at the forefront of their minds. I suspect, without commenting on what the Justice Secretary has said, that the efficiency and effectiveness of those courts and what you do to drive that was what people were putting first when they were thinking about the policy implications, rather than starting from the premise, “How do we take out as much cost as possible? Let’s simply shut the most expensive courts, regardless of the impact on efficiency.”

Q17 Mr Llwyd: On the issue of legal aid, which is the next one down, have you evaluated the possibility that there will be very little saving at the end of the day if litigants in person turn up in droves, as many judges have told us is likely?

Julian McCrae: On the scope of this, we are not evaluating whether the policy proposals work out. We are looking at whether the Department knows whether or not it is realising those savings. If it turned out that it has not realising those savings and it turned out that those savings did not occur, would it have the capability inside to know that that was happening? Secondly, would it have the capability to think, “What do we do now to re-plan and figure out how we can hit the spending review while still trying to improve the justice system?” Those are the two things that we are looking at inside this.

Q18 Jeremy Corbyn: Following the points made by Mr Llwyd just now, when you are looking at the costs of legal aid and the alleged savings to the Department, are you looking at it in a departmental budget in the sense of the effect on the Ministry of Justice, or are you looking at the multiplier effect of legal aid cuts?

For example, if you cut benefit advice, that eventually costs the Department for Work and Pensions far more. For example, if you cut legal aid advice, they end up getting probation or community service. If you give them bad legal advice, they end up in prison. Who pays for that? Where is the cost of that? There is an internal cost, never mind the external cost.

Julian McCrae: Yes. On the internal cost, a lot of the work has been predicated on precisely those types of savings in various policy contexts. The entire notion of the rehabilitation revolution, which is a slightly different example from the one you are using, is about whether, if you can put the investment in, for want of a better phrase, up front, you can save yourself costs within the justice system at a later date. On legal aid, again, you should ask people who are experts on legal aid reforms. The principles that underlie it and any claim for it to be better have to be about managing to divert people away, otherwise you end up with a system that is, at best, “less for less”, and, at worst, “less here, more there”. One of the things we refer to in the latest report is the need for real clarity about what exactly you are trying to achieve and how you are measuring that. The Department has made some progress on that compared to where it was two or three years ago. For the scale of change here, understanding whether you are pushing costs round the system is really quite a crucial point, and therefore, as I was saying in the earlier question, the Department needs to be able to see those things. That will be something that we will want to look at in the next report we do. Does it actually have people who understand the effects and the ways of measuring those effects that it can bring back into its planning?

Chair: I have kept Mr Gummer patiently waiting for quite a long time.

Q19 Jeremy Corbyn: We all dream of a well-functioning Whitehall, and I am sure you do too.

Julian McCrae: I do indeed.

Q20 Jeremy Corbyn: But there has to be an interrelationship of spending. For any one Department on any subject, they say, “We will cut. Never mind the consequences to anybody else.” We all go through this in our constituency casework with local authorities saying, “Your saving is somebody else’s cost,” between health and local government, for example. Surely, as experts in this area, you must be trying to force those quite hard lessons on Whitehall as a whole.

Julian McCrae: That is definitely the Institute in its broader sense, but the scope of this particular piece of work is within the Ministry. Where the Ministry has moved on quite a considerable way is in the appreciation of how, within the Ministry, the consequences for different cost bases and different changes occur. I am not saying there has been no cross-Whitehall process that looks at the cost between Departments. We have not looked in specific detail at that, but that cross-Whitehall process resembles what it looked like throughout the rest of Whitehall over this period.

Q21 Jeremy Corbyn: But even within the Ministry there is a huge saving. If you give somebody good legal advice, they end up getting probation or community service. If you give them bad legal advice, they end up in prison. Who pays for that? Where is the cost of that? There is an internal cost, never mind the external cost.

Julian McCrae: On the issue of legal aid, which is the next one down, have you evaluated the possibility that there will be very little saving at the end of the day if litigants in person turn up in droves, as many judges have told us is likely?
financial management has therefore delivered good value for money.” By analogy, the Ministry of Justice should, therefore, be able to achieve a 23% cut in its budget while producing better services if it can do it in its finance department. Do you agree with that?

**Julian McCrae:** I have no basis on which to judge one way or the other. The Ministry has set out a set of plans. It intends to achieve those. Effectively, you had a lot of functions in the old Departments that it was merged into. Some of the savings that you are seeing there are savings from precisely that and getting some of the synergies from that previous merger that were not realised.

It is difficult for me to say exactly because I am not the judge of this. The Department has signed up to a set of spending plans that it intends to deliver over the course of the period, part of which comes out of finance functions and core functions and part of which comes out of other functions of the Department.

**Q23 Ben Gummer:** On the central question of “less for less” or “better for less”, it seems from your report that the majority of people interviewed were very much “up for it”, if I can put it in technical language. Then it started to fall down a bit when people were asked, “Given the obstacles in your way, would you be able to do it, and are you going to be rewarded appropriately?” When it came down to the personal incentive for people to realise the change they knew was possible and necessary and that they wanted to make, it then started to fall apart a bit. Can you explain why that is?

**Julian McCrae:** We are very interested to see how at least three of the things that we highlighted in that report play out. As you say, one is the personal incentives. It is quite usual for people who are engaged in this kind of change to see a very large personal return. The traditional private sector route would be to give them equity stakes within the business and incentivise them very heavily. It is quite clear that in the civil service that is not a route that is going to occur. That does not mean that people do not get rewarded. It means it is quite likely that people will leave, if they have been performing very well, to get higher-paid jobs elsewhere on the basis of their record. Retention of key people will be a key issue for the Ministry.

**Q24 Ben Gummer:** I am just not sure if I agree with that analysis. If you take Tesco, where the majority of their employees are on low and medium-low wages, not incentivised, if you ask someone who packs bags or is on a check-out, “What should we be doing?” they would talk about the customer first and about value for money for the business. They have five key business values which they all know. Why is that not possible within the MoJ?

**Julian McCrae:** Your point is exactly right. If you look at how you motivate employees, financial reward needs to be there, but it is not the thing that really motivates you to change an organisation. I have to believe that what I am doing is going to make something I care about better, which is at the heart of this. In the parts of the organisation we have been looking at, that sense of people coming together to change an organisation and make it better is very strongly there. I only referred to the reward because you mentioned it in your question.

The other two things I would highlight, which are probably more important in this space, are whether the Ministry has got the way it runs its governance right and whether people are able to get on and make the changes at the working level in the Department without referring back to head office all the time. That is something where the civil service generally has a problem. It tends to be a very centralised organisation, which does not necessarily work in this context.

The second one is just the experience and the skills to do this. A lot of people who are involved in this will be doing this kind of work for the first time in their career. That is a very real question for them.

**Q25 Ben Gummer:** That is a very reasonable point. Mr Page, when you did these interviews, did you ask people what they felt “better” to be? Was there a coherent vision?

**James Page:** Let’s remember that we were talking to the senior leadership team rather than the 90,000 within the Department. Let’s remember the scope of who we were talking to. There definitely was a sense of “better”, but there were a lot of different versions of “better”, depending on what you talk about. There is not a single set of outcome measures that everyone agrees. You can say that reducing recidivism would be a great outcome and that is fantastic, but a lot of the things we were talking about were efficiency savings or a more efficient court system and things like that. One of the things that we keep challenging on is whether that sense of “better” is articulated. The sense of “less” certainly is. It is obviously clear what the financial targets are that need to be delivered and that motivates everyone, but does everyone have a vision of what that “better” means? As I say, it is patchy and differently applied in different places.

**Q26 Ben Gummer:** Did anyone spontaneously use the word “user” or “consumer”?

**James Page:** There is definitely a sense of thinking that the process would work better. Whether it is designed specifically around a user experience I am not so sure, but there is definitely the sense that the system does not necessarily work perfectly in all settings and there is a lot of scope for improving that, as well as saving a lot of money by doing so at the same time.

**Julian McCrae:** With “user” and “consumer”, it is difficult in the justice system to know exactly who you are talking about. Is it the citizen looking for justice, the victim of crime or the person who is going through the justice system? I would say that the Department, when it was talking about “better”, was starting from what a justice system is supposed to achieve for the people of Britain. That is a key distinction. That is the motivator of the people and makes it different rather than what suits a bureaucracy.

Most of these people have worked throughout their careers in a bureaucracy. They know the distinction between the two and they are far more motivated by, “What can we do to make this justice system better...
for the UK?” rather than, “Have we made life easier for ourselves?”

Q27 Ben Gummer: But that is a subjective judgment in itself.

Julian McCrae: It is a subjective judgment, but I think it does come out quite strongly from the things that people were saying in response to the questions we were asking about “better”. You asked what people meant when they talked about “better”. It was much closer to that than, “Life will be easier if we can just”—

Q28 Ben Gummer: I have one final question. If Ministers were able to identify in order of preference users or consumers and said, “This is how we measure ‘better’,” would that give greater focus to the outcome measures of which you are talking?

Julian McCrae: The question, in a sense, is almost prior to that. One of the challenges for the Ministry, certainly going back to January 2011, was, “What are the outcome measures you are using?” and then as a secondary question, “Are these as good, or could you use other indicators of success rather than just measurement?” You will be aware of the entire debate inside Government about how far you can go with targets in management of performance and how much you should use markets and incentives from markets to drive change. At the moment, in response to the question, “What does ‘better’ look like?” we got some reasonably coherent answers to that. “How is that going to be measured?” came back, as James said, very rapidly simply to the cash savings as being the clear thing that was articulated. There was very little measurable about what “better” would actually mean and look like. That is always going to be a worry for any change on this scale, because you tend to look at what you are measuring rather than what you are not.

James Page: There is one small extra point as well. Some of the issues like payment by results, which is being taken forward by the Ministry, do have clear metrics and clear management information and evaluation built in. Effectively, you only pay if the recidivism rate goes down, for example. It is also becoming more hands-off. Do we have to have a nationally designed process and allow those who take on those challenges to design their own process to a much larger extent and to fit that around people? In that sense, there is a recognition of a much greater ability to be hands-off and let things be designed around those users, if that is the right phrase.

Q29 Mr Llwyd: In your report you say that the headcount reduction was generally thought to have been well handled so far, but there was a risk of the wrong staff being lost. What skills have been lost due to the reduction in senior civil service staff?

Julian McCrae: At this particular point we do not have the outcome on that. One of the things that is being conducted at the moment is the civil service Staff Survey. The key question there will be what has happened to the balance of skills within the Department but also what has happened to the motivation of people post this. One of the key things goes back to an earlier question about the finance function losing 25% of its headcount budget but improving its performance. That will be about which people left the organisation. Was or was it not the people who had clear roles within the organisation? Generally, you will see that through surveys of staff engagement because you will find that people who do not have clear roles within an organisation tend not to be very happy in their work life and tend to be more likely to take redundancy when offered. The thing we are worried about is that you can get exactly the opposite effect if you do not design this right. People who know they can get their next job fairly easily—therefore, this is simply an extra payout from a redundancy scheme and you move on immediately to your next job—can also have very strong incentives to engage in a voluntary scheme. The question for the Ministry is which group overall the scheme was biased toward. I hope that makes sense. I am not sure I have quite answered your question.

Q30 Mr Llwyd: I appreciate it is a difficult area. Could you tell me what benefits you think have accrued from appointing senior managers from outside the civil service, or is it too early to tell?

Julian McCrae: There is a range of points at which senior management tends to come into the civil service. I will answer this in a more general way than just for the Ministry. You will tend to see people coming into the civil service from more professional backgrounds. You will tend to see them coming in as finance, IT and communications professionals who have worked round business areas. The work we have done here and, indeed, in other spaces shows that those people have quite a big problem in adapting to the civil service. While they bring quite professional skills into their professional areas, which really does make a big difference to the capability of the civil service, the sense that they move into organisations which harness those skills together is one of the things that they find quite difficult. Quite often in the civil service IT is slightly separate from finance, which is slightly separate from policy. That is probably one of the underlying causes of why we don’t do particularly well at IT or finance going back to the NAO reports and things like this.

In a sense, how well they do and what impact they have are quite powerful factors within the professions; a lot of skills are brought in that way. But does it help the entire organisation move forward? That is one of the biggest challenges facing the civil service and the Ministry. How do you pull those groups together?

Q31 Mr Llwyd: I suppose I am building up to the question: are you confident that the MoJ does in fact have the capability to implement the next stages of “Transforming Justice”?

Julian McCrae: We highlighted in the report that, as an area on which the MoJ needs to focus, we will want to look at how they get enough capability into the organisation to make this change. There are two or three ways of getting capability. One is bringing people in from outside through recruitment. Another is training and developing your own staff internally. That one is probably the most important for the
Ministry at the moment. The third one is to hire in skills through consultancy, which is something that the MoJ is consciously trying to do as little of as possible in “Transforming Justice” on the grounds, first, of budget, secondly, presentation, and thirdly, that it would end up without the skills in-house to do this if it was relying on an external resource. It is a more complex picture, but if you ask me whether I am confident, no, I am not in a position to be confident, but I am not unconfident. I think it is a huge issue for them to address.

Q32 Mr Llwyd: My final question is this. How has the Ministry of Justice been able to improve its evidence base for “what works” since 2010?

Julian McCrae: Historically, the Ministry has not been strong on analytics. That was something that was recognised in the capability reviews in about 2008. The approach they have taken to this has been quite interesting. Essentially, going back to your question on skills and capabilities, this is where they have hired in a set of skills around the analytical side. The Department they took most but not all of it from was the Department for Work and Pensions, which has historically been quite strong. If you go back to the capability reviews, you will find that they score quite highly on that analytical ability. The first thing was bringing in people who could perform and had in the past in the context of Government done analytical roles to pull together the information and data.

The second thing that they have done is to put in some of what are often seen by the civil service as sometimes second order functions far closer to the heart of decision making. The Director of Analysis is one of the key people in devising the programme of “Transforming Justice”, making sure that her colleagues are using the same methodologies, data and work, and that things are consistent. The emphasis is coming from the top that this is part of what everyone needs to do and we cannot just leave the analytics to the analysts. Part of the whole machinery of working through what “Transforming Justice” means has been the second factor which has helped the Department to raise its ability. As I say, I think the Department would accept that it has quite a way to go, as most Whitehall Departments do, in matching the type of analytical ability that you would find in some of the top-performing private sector companies where huge investment has gone into this over the last 10 or 15 years.

Q33 Steve Brine: We have already covered this. Bearing in mind the time, I will cut to the chase. It relates to cross-departmental working. Does the fact that the MoJ has a cross-departmental Minister help or hinder the Department?

Julian McCrae: I do not think it hinders it. I have taken it out of the MoJ report because it becomes a very specific person doing this job, and we have not done an evaluation of that. The Institute has long been in favour of greater links between Departments, but we are suspicious of things that look slightly tacked on. A cross-departmental Minister looks slightly tacked on to the system in Whitehall. In our report in 2009 “Shaping Up: A Whitehall for the Future”, we were suggesting that, if you really want to pull together cross-departmental working and look at things that the Dutch have done, for example, creating Ministers who are not necessarily attached to Departments but who have budgets, because budgets are power and influence, with Ministers working cross-departmentally, it is very amorphous what the levers are for that Minister—

Q34 Steve Brine: Maybe you are just a suspicious chap, but what is your suspicion fuelled by? Surely, a modern Minister in a modern Government Department has enough to do. Is there a danger that one becomes a jack of all trades and master of none?

Julian McCrae: The danger is that you are going to concentrate on the thing that is the most immediate and precise to what you are doing. In this case the Minister has a very large portfolio, of which the cross-departmental Minister aspect is just one aspect. It is very difficult. This is not in relation just to Ministers. It has been done in Whitehall; you have civil servants reporting cross-departmentally. It is extremely difficult to operate in those circumstances. What you need to do generally in these sorts of situations is to change the incentives at the top, not trying to compensate through creating new roles further down. It is a general point. We have not done a specific analysis. I am a suspicious chap in general.

James Page: It is what the levers are. Working to two Secretaries of State, should there be any disagreement on approach or anything else? What levers does a junior Minister have working across those two? It is a difficult one to answer. It is just a general question about what level you build that in at.

Chair: Thank you very much indeed. We are grateful for your help today.

Examination of Witnesses

Witnesses: Juliet Lyon CBE, Director, Prison Reform Trust, and Mark Stobbs, Director of Legal Policy, Law Society, gave evidence.

Q35 Chair: Ms Lyon from the Prison Reform Trust, welcome back. You are an old friend of ours and have given evidence to us several times before. Mr Stobbs, you are from the Law Society, which is, again, a body we hear a great deal from and we are very glad to. As you know, we are looking at the Ministry of Justice as an organisation with which you both deal extensively. In these sessions we are not looking so much at the policy but the capacity of the Department to do the jobs it has been given. Do you have a different view from the Department about how it should be running itself and delivering on its objectives?

Juliet Lyon: The difficulty is fully knowing what the Department’s own view is. I need to say right at the outset that we are an independent group. We are not
funded by Government. We would like to see ourselves as critical friends. We would like to see the Government particularly, through the Ministry of Justice, achieving a just, effective and moderate penal system. The comments I can offer are from that perspective. We are not of the Department or in the Department.

An observation would be that the Department is under extreme pressure. The Prison Service itself is experiencing unprecedented high numbers. I looked at the evidence we had offered to the Committee only a matter of a short while ago to discover that we had said the prison population was over 87,000. You will know that it is now over 88,000. The exponential rise is troubling everybody. There are then the budgetary pressures on the Department and seeing through a major justice Bill. We can see that it is under fire from a number of fronts.

**Q36 Chair:** We will turn in a moment to the significance of prisons and NOMS as a major element within the Department. I am going to ask both of you—and I turn first to Mr Stobbs—whether you are particularly aware of the Government's programme at the Department and whether, when you look at the Department, you see it in terms of that, or are you blissfully unaware that it is engaged in this programme?

**Mark Stobbs:** It would be too much to say we were blissfully unaware. We were certainly aware of its existence. I do not think a huge amount has been done to sell it to outside stakeholders. Reading the Institute for Government’s report, that gives some of the reasons why. It has been largely based on the way it works internally. The point we would make is that solicitors and the legal profession are key actors in the justice system. We are providing a lot of the services without which the system cannot work and which are crucial in obtaining a just society in making sure that people are properly represented, have proper advice and that the system works efficiently. Greater involvement of us would be welcomed.

**Juliet Lyon:** I would add that the headline, which people cannot argue with, is either doing “more for less” or “better for less”. It is attractive as a slogan, but, given that that is a headline, we are disconcerted to see very little reference, as far as we can tell, to your Committee’s previous report on “Justice Reinvestment”, which arguably could be at the heart of such an exercise.

**Q37 Chair:** Leaving aside, as far as one can, the policy issues—although they become relevant when you look at the Department’s ability to develop policy and particularly its analytical skills—over the time you have each dealt with the Department have you noticed any difference in its capacity to do the job within whatever policy decisions have been made?

**Mark Stobbs:** I do not think I have noticed a huge difference at this stage. There have been some things which, on the whole, the Department has done quite well. For example, it managed the probation experience. So, both in terms of probation, because I am sure they do, but they do not particularly aware of the “Transforming Justice” programme at the Department and whether, when you look at the Department, you see it in terms of that, or are you blissfully unaware that it is engaged in this programme?

**Q38 Mr Llwyd:** Does the prisons element of NOMS exercise too much power within the new MoJ/NOMS set-up? If so, what restructuring of NOMS would you wish to see?

**Juliet Lyon:** Almost without a doubt it exercises considerable power. Simply in budgetary terms—I do not have the exact figures but I am sure they are available to the Committee—it occupies a huge space. Prisoners have always been the day job. You could not envisage a time when a prison would not be allowed to run even if it was running at a minimal level. It would have to be managed and run, given the numbers it is dealing with. It is a huge machine.

You then start looking at levels of authority within NOMS. You see that very few people with probation experience are anywhere near the top in terms of leading NOMS. That does not mean that the people who are at the top don’t have a commitment to probation, because I am sure they do, but they do not come with probation experience. So, both in terms of hierarchy and in terms of budget, you have a disconnect. That is particularly disconcerting given the pressure on the prison system. What Government figures from the MoJ are clearly showing is that there is an 8%
improvement when you compare community sentences with short prison sentences, and similar offenders/similar offences. Community sentences are outperforming short prison sentences by 8%, which is an achievement, but if the mechanism is not there to promote that and to provide more opportunities for the courts to have those community sentences available to them, you could argue that Government are not capitalising on their success. Consequently, they are dealing with this continual revolving door of short prison terms. The answer from our perspective is an unequivocal yes, prison does dominate, and other measures like community sentences and restorative justice, which were all over the Green Paper and to which Government have given a commitment, have not been taken forward in the way that they could be as yet.

Q39 Mr Llwyd: In general, does the split between the responsibilities of the Home Office and the MoJ result in an effective and more efficient service for the taxpayer?

Mark Stobbs: I find this quite difficult, in that we have very mixed experience of what happens after sentencing. We have noticed that there seems to be less ministerial time available for the pre-sentencing work. I would not say this has necessarily caused a major disadvantage, but you have a Department with significantly greater responsibilities so there is perhaps less time for some of the justice elements.

We have yet to see major advantages coming out of this. One of the major problems that practitioners have is when they see prisoners on remand. The Crown Prosecution Service is trying to implement a technology programme ending up with a digital system. It is going to be very difficult to achieve that if it is at the discretion of individual prison governors as to what bits of technology, if any, can be brought into prisons. Those sort of joined-up elements do not seem to have happened yet.

Q40 Mr Llwyd: The Prison Reform Trust has highlighted that Canada, for example, has an integrated and co-ordinated correctional service. What lessons do you think we could learn on departmental integrated and co-ordinated correctional service? What highlighted that Canada, for example, has an achievement, but if the mechanism is not there to promote that and to provide more opportunities for the courts to have those community sentences available to them, you could argue that Government are not capitalising on their success. Consequently, they are dealing with this continual revolving door of short prison terms. The answer from our perspective is an unequivocal yes, prison does dominate, and other measures like community sentences and restorative justice, which were all over the Green Paper and to which Government have given a commitment, have not been taken forward in the way that they could be as yet.

Juliet Lyon: In regard to the Canadian model, the person I would like to refer the Committee to would be David Daubney, the Chair of Penal Reform International, who up until very recently was working for the Canadian Justice Service, who could answer that more fully. We have other international examples from that particular charity, the PRI, which indicates that certainly in Russia, where prisons have just gone back into the purview of the Home Department, that is seen by reformers as a very retrograde step. That would be true for other countries. We could ask PRI to gather evidence on that. In terms of how the Canadian model works, certainly when that was working at its best—and David might say it is not any longer quite working at its best—it was a model where a more moderate justice system could be developed because the communication was so clear.

I did not answer you in relation to the split between the Home Office and MoJ. I remember Douglas Hurd, who is our President, saying that he had some concerns about dividing police functions from prison functions. I do not know whether he is satisfied that that is now fine. In terms of the way it is presented to the public, it would be useful to have better co-ordination between Departments, even if it was only in communications and public messaging. You don’t want a system which, at worst, is characterised by dealing with fear of crime, chasing people down, and then a parody about being soft on crime. A hard/soft divide which the press seem to be developing between those two Departments is not helpful. It might be healed somewhat by better and shared communications across those two Departments.

Q41 Mr Llwyd: This is a question for Mr Stobbs. I suspect, What issues need to be addressed to ensure that the Legal Services Commission executive agency provides an improved performance?

Mark Stobbs: There are three. The first is the dichotomy between a policy-making role in the Legal Services Commission and a policy-making role in the MoJ. We have seen over the last five or six years a battle at times between the two. It is very difficult for practitioners who have businesses to run to know how far individual initiatives are going to go when they are consulted on by the LSC, almost brought in by the LSC and then delayed or changed. That should be addressed by turning the LSC into an executive agency.

The second is in terms of the burdens placed on practitioners. You have significantly different contracts for different types of work, which require considerable paperwork and bureaucracy by firms. That is at a considerable cost and they do not always speak to each other. If you are a firm doing family, criminal and civil work, you have to operate a number of different systems. That is not a great way for small businesses to run.

The third is in terms of its own administrative structure. Practitioners are in some cases waiting over six months to be paid for work. They will eventually get paid, but three times in the last two years our Chief Executive has had to write to the major clearing banks saying, “Please go easy on practitioners’ overdrafts because there are massive delays in the Legal Services Commission paying out to them.” Again, it is difficult for businesses to run, provide services and plan for the future without this. We would urge a settled policy that would enable these firms to invest properly for the future. Even after the cuts, there is £1.7 billion of work here which the profession would want to use, but it needs to have the sense of stability that enables it to plan and provide quality services.

Q42 Ben Gummer: I would like to carry on talking about the relationship between external providers and the MoJ. We have already looked in some detail in this Committee at volunteer organisations, payment by results and so on. I will leave that for a moment and continue on about the LSC. Mr Stobbs, how would you characterise the relationship currently between the LSC and legal firms?

Mark Stobbs: There is substantial distrust between individual firms and the Legal Services Commission.
Q43 Ben Gummer: I probably need to phrase it better. If we use words like “customer”, “contractor”, “provider” and “subcontractor”, how would you characterise that relationship?
Mark Stobbs: The relationship between firms is one of contracting with the Legal Services Commission to provide services.

Q44 Ben Gummer: What, therefore, are the legal firms doing on behalf of the Legal Services Commission?
Mark Stobbs: They are providing the advice, services and advocacy that it is the duty of the Legal Services Commission to ensure that there is provision for under the Act.

Q45 Ben Gummer: So the role that the Legal Services Commission performs is effectively to stand in on behalf of those who cannot pay for themselves in many instances.
Mark Stobbs: Yes.

Q46 Ben Gummer: Is the relationship between those who can pay for themselves and their contracting firms different or the same as that between the Legal Services Commission and their contracting firms?
Mark Stobbs: It depends on who the clients are. The Legal Services Commission, as any purchaser of legal services, is entitled to say upon what terms it is prepared to do business, what standards it is providing and what it is expecting providers to achieve. It provides the contractual terms for that. They have their particular terms under the contract. Insurers, who equally provide bulk legal services, will have their particular contractual arrangements. Individual clients will go to the firm and again receive a service that is tailored for them. In terms of professionalism, you would not expect solicitors to provide a significantly different level of service from legal aid—

Q47 Ben Gummer: No; I would not be suggesting that. For instance, the Law Society has encouraged the MoJ and the LSC to formulate the way it contracts to protect small providers and to allow them to cooperate and participate in LSC contracts. Is that fair to say?
Mark Stobbs: We encourage the LSC and the MoJ to ensure that there is a proper spread of providers to ensure access to justice. Many providers are small firms and businesses.

Q48 Ben Gummer: The majority of them.
Mark Stobbs: In the legally aided sector, yes. Clearly, that is the fact.

Q49 Ben Gummer: To a degree the LSC agrees with that, doesn’t it? It is willing to participate with that kind of engagement with the Law Society.
Mark Stobbs: The LSC sees us as a key stakeholder representing the thousands of firms that provide legal services. It is difficult to negotiate with every single one. We try and provide assistance to the LSC which we believe will broadly—

Q50 Ben Gummer: When the Law Society makes a statement about the number of providers who are within legal aid contracts going down, does the Law Society see that as a good, bad or neutral thing?
Mark Stobbs: We would regard the crucial thing as ensuring appropriate access to justice.

Q51 Ben Gummer: Is the number of providers a proxy for it?
Mark Stobbs: It need not be. There is no reason why access to justice could not be provided by a suitable number of large firms. We do not try to favour one business model over another. There should be sufficient firms so that where there are conflicts of interest people have access to a suitable number of providers within adequate travelling distance from their homes.

Q52 Ben Gummer: My reason for asking these little questions before is because some members of the Committee might think that the LSC has a slightly conflicted relationship with the way that it contracts for legal services. On the one hand, it is a contracting body, as we were discussing at the beginning, but on the other hand, it overlays a rather confused policy patina which conflates number of providers with coverage, access and non-conflicts, and it has not properly resolved that, has it?
Mark Stobbs: Over the years we have been receiving mixed messages from the LSC about what it wants. At one point the flavour of the month appeared to be a small number of large providers. That seems to have changed in recent years. So far as we are concerned, the important thing is to ensure coverage.

Q53 Ben Gummer: As far as the Law Society is concerned, if access to justice could be ensured with, let’s say, 300 legal aid providers rather than 2,000, the Law Society would have no problem with that.
Mark Stobbs: We might have problems with individual members there, but we would need to ensure that there was the coverage and that people were getting the appropriate quality of advice.

Q54 Ben Gummer: But if there were, the total number would not be a problem for the Law Society.
Mark Stobbs: We would need to look at exactly what was being provided there. I doubt in practice whether 300 firms could provide—

Q55 Ben Gummer: Hypothetically, if it were possible to provide coverage of access, which is what we were discussing at the beginning, the number is irrelevant.
Mark Stobbs: I suspect the number of firms is irrelevant, though we would want to ensure that the number of people providing the advice was of the appropriate quality.

Q56 Mr Buckland: I want to move back to the issue of commissioning of services and the skill set within the MoJ in order to deliver effective commissioning of services, for example, where provision is made for community sentences. We know the area that we are talking about. Do you think at the moment that the
Ministry has the capacity to reach the required standard? If not, what are your concerns?

**Juliet Lyon:** It is genuinely difficult to know that. It is an excellent question. It is going to be vital, because of the model that is emerging, that those skills are very well developed because there is a very high reliance on the capacity to commission properly and to have the oversight in terms of delivery to manage those contracts well. Our sense is that it is probably still “in development”. It probably is not, for example, as highly developed as many of those who might be making application to be providers—in particular, the large private companies who have a much wider and longer experience of both bidding for contracts and internally managing those contracts. That is probably not a very healthy state of play, if that is true, because you would hope that the commissioner would at least have the same set of skills, if not more developed skills, than those making the applications to provide services.

**Q57 Mr Buckland:** It is not quite taking sweets from babies, but we are in danger of having that situation with large experienced firms that know their way round commissioning.

**Juliet Lyon:** Yes, I think there is a risk.

**Q58 Mr Buckland:** What would you say are the steps that need to be taken in order to minimise that risk?

**Juliet Lyon:** I do not think this is in our earlier evidence, but I was wondering about the role of various regulatory bodies. We have mentioned the NAO in relation to taking account of the reports that the NAO issues. The immediate regulatory bodies for prisons and probation are of course the inspectorates. They inspect to standards or expectations. I am not aware of a connection being made between what they are inspecting and what is being commissioned. It would be quite instructive to see if some links could be made, because, after all, what most of us would want would be the best standards and, if not the best standards, utterly acceptable standards. There is a worry that things can fall below standards, particularly on an economies of scale basis. If you get larger and larger, there may not be the attention to detail that you would hope.

**Q59 Mr Buckland:** What is the Law Society’s view as to where we are in the Ministry in terms of expertise?

**Mark Stobbs:** Our principal experience here is with the Legal Services Commission. We have had at least two very unfortunate experiences where the Society has had to judicially review a tender round because it was flawed, which suggests that the LSC does need to put more work into developing these rounds. There are a number of reasons for this. First, you are dealing with extremely difficult and complex procurement law and a wide variety of tenderers, many of whom do not have the expertise in tendering that my colleague was referring to. Also, they have been done in a rush. It is very heartening that the Government appear to have learnt from that experience by delaying the implementation of what they were proposing in the Bill for a year, recognising that they do need at least a year to get it right.

**Q60 Mr Buckland:** One of the problems has been the constant revolution, has it not?

**Mark Stobbs:** Exactly.

**Q61 Mr Buckland:** There has been no time in the last 10 years in which the profession or indeed any provider—let’s not forget the “not for profits” as well—has been able to plan ahead and see a clear playing field for four or five years, which is what you really need, don’t you?

**Mark Stobbs:** Exactly.

**Q62 Mr Buckland:** You just have not had that continuity. The LSC in its last report said that £120 million was spent on the cost of administration. That is all known about. Looking ahead to the successor—son of LSC—within the Department, what would your hopes be for that body in terms of commissioning and procurement?

**Mark Stobbs:** The hope would be that it would be able to streamline the contractual arrangements and manage clear tendering arrangements that the profession can rely on without changing goalposts late on. We would hope that it can produce a strategy for the way in which it wants legal services to be provided which practitioners can rely upon, not just for the five years of a tender round but for longer, so that businesses that are committed to providing these services and can see a way of making money out of them are able to plan appropriately and properly. It is to recognise the nature of the providers that they are dealing with, whether they are large or small firms, and to provide a level playing field so that firms are able to compete on quality.

**Q63 Mr Buckland:** Coming back to the point I was making about provision of community orders, or, indeed, provision within prisons, what would be your view, Juliet, as to how procurement should take into account the smaller charities and organisations’ needs? In other words, how do they avoid just having the big players taking on all the contracts?

**Juliet Lyon:** It is important to explore that. At the moment they are grossly disadvantaged, in our view. You will have small specialist agencies that may not be able to scale up operations but are offering an extremely valuable and effective service, for example, in a region or over a specialist field. For example, you could take Circles, which is the charity that provides impressively supportive work, working with volunteers, for people who have committed sexual offences when they are released from prison.

**Q64 Chair:** Would you give us the name of the charity again?

**Juliet Lyon:** Circles UK. It used to be called Circles of Support; that is why I hesitated. They are providing a very specialist form of support and resettlement which is particularly effective. Unless they have changed remarkably in the last few months, they would not strike me as the kind of charity that would
have the capacity to enter a bidding war and yet what they are offering is quite unique.

I was pleased to hear that the Samaritans, who provide support for trained prisoners to act as listeners inside virtually every prison in the country, have just been awarded a grant by NOMS. We would very much like to see a mixed economy. We would like to see recognition given to particular charities that should be grant-aided to provide a service where payment by results is probably not applicable. We have concerns about the fact that payment by results is seen as a holy grail, which it is unlikely to be. It may well be a method that leads to better delivery of services and a more effective system. It is unnerving that we are seen as a world leader; that is, nobody knows what is going to happen. I think that is disconcerting.

There needs to be much more work and attention from the MoJ on how it can enable the smaller charities to function in a way that does not face them with a very unpalatable choice, which is that they either become a sub prime of a very large charity or a very large company, which has implications both for their budget line and their identity, or they face going out of business. The MoJ is on the edge of that choice.

I do think it really is important for the MoJ to pay attention to that right now, before it loses some very valuable resources, almost by accident.

Q65 Steve Brine: Juliet, obviously this inquiry is about the budget and the structure of the MoJ. Reading your words, you seem to foresee an MoJ that is an organisation comparatively light at the centre but highly skilled and experienced. Do you feel that it is moving in that direction or away from that direction as we speak?

Juliet Lyon: It is moving in the direction of lighter at the centre perforce managing the cuts.

Q66 Steve Brine: Yes, but that is a budgetary driver.

Juliet Lyon: Indeed. That may well not have been planned quite as carefully as officials might have wished and we might have wished, but it is certainly far lighter at the centre. Simply by eye, you can see that there are fewer people. It is all the more important then for those people at the centre to be the best-skilled people. Many of them still are; I think it is fair to say that.

We have a particular concern about the use of skilled people who are diverted on to other tasks. I will give you an example of that. Because the Justice Secretary is very keen on competition and sees that as a driver to improving standards, the plan is to bring forward a group of prisons, followed by another group of prisons, and to have a competitive tendering exercise to improve standards. That means in effect that for the public service tendering each bid needs to be led by an experienced governor. There are a limited number of very experienced governors. You have a situation now where we have long had a problem of high turnover of governors and an impact on quality of services, prison by prison. Some of the best governors and some of the most skilled are occupied leading a bid team. I do not know what the cost of that is, both in terms of leadership and skill and money, because there is not transparency about that, but the Prison Reform Trust does have concerns about that.

Q67 Ben Gummer: Ms Lyon, on the issue of commissioning again—and you raise an interesting and valid point, as you have done before, about small providers—could I put a naughty suggestion to you that perhaps the MoJ is not commissioning big enough? Yesterday I was at the Work programme provided in my constituency, which is huge. It takes in the whole of the eastern region. The provider in Ipswich is a subcontractor and they are sub-subcontracting to some micro charities in my constituency, some of whom are very new. There are some older ones which are not providing because they are no good. There is a model of an ecosystem where you are providing work for small micro charities who are not incentivised and do not have to bid in these big bidding contracts, but you allow the very large providers who are able to do it to engage in that complicated and expensive process.

Juliet Lyon: I guess that is another example of how this is a very experimental process, which may have all sorts of unintended consequences. I do not feel that it is a carefully planned process. There are casualties along the way. A charity that we admire is PACT. It was delivering the entire visitor centre services for the London prisons. Indeed, it helped to raise the money for the brand new visitor centre at Wormwood Scrubs. It found itself in a competition which it lost to a much larger children’s charity, albeit a good one, Spurgeons, but without any experience whatsoever of running those services as far as I know. They lost because of the nature of the bid and the way they were competed. Through the TUPE process, of course, many of the staff who were working for PACT will be working for this other charity now.

It is a confusing process. It requires the bigger charities to take on board a risk that the smaller ones simply could not, in terms of deferred payments and delivery of services. It is a process of experiment without necessarily the kind of checks and balances that you would need to make sure it was working. I am not quite sure how carefully monitored it is. If it were carefully monitored, what you have described would be picked up and hopefully addressed.

Mark Stobbs: From the Law Society’s point of view there would potentially be significant problems with that, particularly in terms of retaining the expertise of voluntary organisations and smaller firms. They might well find themselves at the mercy of a larger contractor who might very well be their competitor. You may end up losing some of the diversity and important expertise in the system unless you are very careful about the tendering process in that route. We would urge caution.

Q68 Chair: I want to look at a couple of points—one from each of you—which you brought up in your very helpful submission. One was a submission from the Law Society about the IT history and the fact that IT does not always keep up with ambition, if I can put it that way. Does that not also place a responsibility upon your members? If the Department could get its act right and keep its IT up to the level
that business and the work requires, then your
members are going to have to accept what farmers
and Members of Parliament and all sorts of other
people now accept— that they have to do everything
online.

Mark Stobbs: Yes, and the Law Society has no
problem with that. 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.
I will give an example about cloud computing and the
CPS system. We were told that you needed to have
your cloud computing supplier somewhere in the UK.
A number of firms invested in a firm in Northern
Ireland. We are now told it has to be on the mainland.

Chair: Really; that is extraordinary.

Mark Stobbs: That is the version that we are getting
from the MoJ. I am not sure that the Law Society
particularly cares where it is. We would just like to
have the clarity so that our members can invest
properly and play their part in this. We have no brief
for solicitors who are not interested in moving into
technology. We want to have the clarity and the
certainty.

Q69 Chair: In the Prison Reform Trust’s submission
the point is made that information is neither collected
nor appropriately shared, even within the system, let
alone with external participants in the system like you.
Do you want to add anything to that?

Juliet Lyon: I realise that I am coming in from a very
critical perspective. At the end perhaps I can say a
couple of things about where we really admire what
the MoJ is doing, but in relation to information
gathering and dissemination, it would be helpful if we
could hear more from the MoJ and the MoJ was
prepared to make more public some of the things that
it does do well.

There was a question earlier on, for example, about
protection. There has been recent information about
probation’s achievements in relation to MAPPA and
management of very serious offenders in the
community. There are some very good examples of
work with young adults in Manchester under
something called IAC—Intensive Alternatives to
Custody. There are a number of things that the
Department oversees that do well that are not
necessarily shared in a way that would be helpful for
the courts and reassuring for the public. It is that kind
of outward-facing information that could be done
better. It is reasonable to have a gatekeeping function
within those responsible for information. The press
constantly raise the issue of whether they can visit a
prison or do this or do that. You would expect some
checks and balances in order to protect vulnerable
people and hard-pressed staff. That particular part of
the MoJ works too fiercely at the moment to guard
against any kind of incursion, which leads to a public
lack of knowledge.

Prisons are still our most neglected and least visible
public service. There are whole territories for which
the MoJ is responsible which could become more
visible. We could see clearly how prisons could
perform better. We could see clearly how probation is
performing well in some aspects. But that is not seen
as a function. As I said, it is viewed more as a
gatekeeping function and keeping those who could
report out, rather than enabling them to see and report
in a good way.

Chair: Thank you both very much indeed. We are
grateful for your help this morning.
Tuesday 24 January 2012

Members present:
Sir Alan Beith (Chair)
Steve Brine
Mr Robert Buckland
Jeremy Corbyn
Christopher Evans
Ben Gummer
Mr Elfyn Llwyd
Elizabeth Truss

Examination of Witness

Witness: Rt Hon Jack Straw MP, former Lord Chancellor and Secretary of State for Justice, gave evidence.

Chair: Mr Straw, it seems a while since you were in front of us answering questions about the conduct of your work when you were in office. We hope that you will feel able to be totally frank with us today and to look back over your experience to see what we can learn about how the Ministry of Justice works—a Ministry that you helped to create in its present form. We are conducting an inquiry. Last week, for example, courts do, which is to say a very significant part of the Ministry of Justice—its central organisation—other than NOMS, which we will be visiting separately. We are trying to get a clear picture of how the Department functions, whether there are ways in which it could function better and whether it has realised some of the hopes and ambitions that surrounded its creation. I am going to ask Jeremy Corbyn to open the questions.

Q70 Jeremy Corbyn: Good morning and thank you for coming. Jack, you were there when the Ministry of Justice was created. Why was it set up?

Mr Straw: Just so that we are clear about the sequence, the Department was created about two months before I took over, which was in very late June 2007, once Gordon Brown had become Prime Minister. The Justice Department was already in place as a Department—Charlie Falconer had been running it for about six weeks—so I had less to do with the creation of the Department than might be anticipated. I have views about it, let me say. It may be recalled that the first the public knew about the creation of a Ministry of Justice was through a television interview that John Reid gave in the January. Do I think that that was the appropriate way for these things to be announced? Absolutely not. Let me make these observations, if I may, Chair. Once the Constitutional Reform Act had been passed, which formally separated the judiciary from the Lord Chancellor and established a more, as it were, typical relationship between politician Ministers and the judiciary, it was inevitable that there would be a clear and entirely justifiable demand for that aspect of the work of the justice system to be subject to a Minister in the House of Commons, and for the natural synergies of the courts system and what the courts do, which is to issue sentences and try to ensure that they are effectively followed through, to be brought together. There was a strong rationale for there to be a Ministry of Justice. I also think that the people in the Department—it was not under my direction—Alex Allan, the permanent secretary, and the principal private secretary to the Lord Chancellor, Antonia Romeo, and others did a phenomenal job from a standing start in bringing it together. I was very struck when I got there about how well it was appearing to gel, at least on the surface. Alex, as you know, then moved on—probably about five or six months later—and I appointed Suma Chakrabarti as the permanent secretary. He and I then worked very well and effectively to deepen this sense of a new Department. I am happy to go into that.

A wider issue here, Mr Chairman, is about how machinery of government changes are made. As you know, the NAO published a report on this in the last session of the last Government in 2009–10 and pointed out that there had been an extraordinary number of reorganisations—90, in fact—of central Government Departments and arm’s length bodies between May 2005 and June 2009. I have never approved, and do not approve, of the way in which machinery of government changes are made in our system. It is too capricious, too informal and too much at the whim of whoever is Prime Minister. There are, sometimes, good reasons for making changes but, if there are good reasons, there is no earthly argument why those reasons should not be set out in advance and subjected to proper examination before a decision is made. If there are not any good reasons, that is an even better argument for having those set out.

In my opinion, this particular change has brought benefits and, in any case, was inevitable, but is the system of change a sensible one?

Q71 Jeremy Corbyn: Could you just remind us why it was inevitable?

Mr Straw: I was very attached to the old Home Office and it had many merits, not least the fact that the prime responsibility for order and maintaining the state’s monopoly of the use of force in our society, which is the hard end of the Home Office, was balanced by a very clear responsibility for liberty as well. We were responsible for human rights, race and community relations and all that. It led to interesting debates within the Department and the mind of the Home Secretary. That is a good thing.

Q72 Chair: It did not always work to the benefit of liberty, did it?

Mr Straw: With great respect, it did. We can go down that route, if you like, but there is the Human Rights Act, the Freedom of Information Act, the Data Protection Act, the Lawrence report, and all the changes in respect of people who are gay and so on.
Going back, the Lord Chancellor’s position was fundamentally anomalous—this holy trinity of responsibilities that he had—but it worked as long as the Lord Chancellor was seen above the battle, a very senior and distinguished jurist. James Mackay is the best recent example of someone in that position, and it sort of worked. In our period in government, as the Lord Chancellor got involved in more and more legislation—and, indeed, Derry Irvine decided to sit on the Judicial Committee of the Law Lords—the position was becoming less and less tenable. It had to change, and Charles Falconer changed it in the Constitutional Reform Act. That was fine. Once you had a normal relationship, there was going to be a demand, which was very strong, to bring the running of the courts and the supervision of the judiciary, with the other things which are cognate to those, into the Commons.

That said, what would be pretty unconstitutional would be if you had the same Minister who was responsible for police and the hard end of law enforcement also responsible, ultimately, for judicial appointments and the supervision of the courts. That was why it was inevitable that there should be a split.

Q73 Jeremy Corbyn: Do you think it has worked?
Mr Straw: Overall, it has. The Ministry of Justice has developed a separate identity from the Home Office. It has also been helped by the fact that it has had relative stability in terms of who has been running the Department. If I may say so, because there have been only two Justice Ministers, those two Ministers were very experienced and also happened to have been Home Secretaries as well. It is very important that the appointment should be a senior one, otherwise, for example, they will not command the respect of the judiciary.

Q74 Jeremy Corbyn: This is the last point from me. You said at the beginning of your evidence that you were unhappy about the method of restructuring government. This is not new; Harold Wilson endlessly changed Ministries himself. Would you agree that it would be better if the Prime Minister proposed structural changes in government that were then examined by Select Committees that could make recommendations so that there was a proper process of thinking through the implications of ministerial change?
Mr Straw: Absolutely. My fundamental point here is that the institutions of government—the Departments—should not be seen as being owned by the Prime Minister of the day. These are national institutions and they are very important. The Select Committees would have an input on these things, but they become quite proprietorial about their Departments, so I do not think that they should have a veto. You would have to have supervision, for example by a body such as the Public Administration Select Committee.

You would also have to have arrangements for handling the perfectly legitimate plans of an Opposition party in the run-up to an election. To pick up your point about Harold Wilson, he and his colleagues, George Brown and Callaghan, decided in opposition that there should be a counterbalance to the Treasury with a Department of Economic Affairs. They had made a pretty standard arrangement in some jurisdictions. That led to the establishment of the DEA. There was quite a lot of work done in opposition that was put into the manifesto, and that is fine.

My own view, however, is that there is no particular reason why there should not be provision for a Leader of the Opposition who wants to do that to be able himself or herself to say to the Public Administration Select Committee, “This is our plan. This is what we are proposing to do. What do you think about it?” You could put it forward a year or six months before an election. After all, these plans have to be known. They are not secrets, so there is no reason why not.

Q75 Chair: You made an interesting point that, when you were in the Home Office, a debate took place between the libertarian issues or agenda for which the Department was responsible, and what you called the “hard end”—the authority of the state. Do you think it works at least as well and possibly better that that debate is now external—that it is within the Government and between the two Departments of the Home Office and the Ministry of Justice?

Mr Straw: It is difficult to say. If you do split a responsibility that had previously been in place—in this case, since 1782—you do lose something. Government Departments are very strong institutions within our system. I refer to the observation that Michael Heseltine made—he should know—about a Prime Minister’s difficulty to rein in a strong Secretary of State. It has always struck me that this analogy was a fleet of the line under sail, where the Prime Minister is a kind of admiral trying to run up signal flags, and the Secretaries of State are captains of their own boats, and, if they want to do something a bit different, they can do something a bit different. In terms of a single culture, something has been lost. As I say, it is inevitable. You must have proper systems in government for having those arguments. One other point I add, Mr Chairman, is in terms of the division of responsibilities. I was very surprised when I got there to discover that the Judicial Co-operation Unit, which is the unit that handles extradition, for example, had not been shifted from the Home Office, and I think it should be. I argued that it should have been because it fits with the other things that the Department is doing on judicial cooperation. It is similar to some of the other decisions that the Justice Secretary has to take and not the Home Secretary.

Q76 Mr Buckland: Let me develop the point that you have just made. The dividing line that was taken was the moment of arrest, was it not? Pre-arrest would be the Home Office and then post-arrest would be the Ministry of Justice.

Mr Straw: Sort of, yes.

Q77 Mr Buckland: That is what I want to explore. First of all, did you think it was an absolute line? No, I think, is what you are suggesting. Do you think it was the right line? Let us take another statement.
Could it have been better done if it was “charge” rather than “arrest”, for example? I am not saying that that would be the right thing to do, but what is your view about it?

Mr Straw: You have to bear in mind that, in practice, the dividing line between arrest and charge is not that much because, in our system, the prosecuting authorities are under the Attorney-General. In some systems they are under a Ministry of Justice, as they are famously in France, for example, and they are also, although it is a different structure, under the Department of Justice in the United States, which is run by the Attorney-General. It is more or less right. If you are asking me, there are wider issues about the Home Office’s responsibility in terms of the functions that it lost in the 2001 transfer, some of which went to DCMS, which I do not think was sensible. It lost alcohol licensing, public order licensing and control over gambling to DCMS. That never seemed to me to be an appropriate place for those because these are about social control, and the DCMS is too vulnerable to the industries because it is a small Department and it has no tradition of social control. That is going back 11 years now.

Q78 Ben Gummer: Mr Straw, on this issue of balance between liberty and the hard edge of the state, which is fascinating, the examples you cited were largely under your leadership in the Home Office, and that is to be commended. Of course, subsequent Home Secretaries took a different line. The balance actually sat in the person rather than in the nature of the Department. Do you now feel that, having a structural dividing line between the Home Office—it being really only an enforcing Department—and giving where all the other parts of the Government that you named are, that creates a balance of itself within the Government, or is it dangerous? Where are we?

Mr Straw: I accept what you say. In fairness to my successors, the big legislation in terms of rights had happened. You could not do the Human Rights Act or the Race Relations (Amendment) Act twice over. It fell to David Blunkett and his successors to implement it. The other really big change was 9/11. When I was Home Secretary between 1997 and June 2001, there was concern about terrorism, which was why I introduced the 2000 Terrorism Act. The power of threat was still there but diminishing, and the other threats were around but not seen as so acute. Post-9/11, the Home Office became, inevitably, preoccupied with terrorism. I know that John Reid felt there was such demand on his time and that of the Office for Security and Counter-Terrorism—as I said, it is the hard-end stuff—that there was no time to have an opportunity to deal with the other stuff. This system is in place. I do not think that we are ever going to get a Prime Minister proposing or deciding to go back to a single Home Office. What you then need, Mr Gummer, is effective systems in government so that there can be sparky debates about these issues. That may depend on the personality of the Ministers involved and how strong and experienced they are.

Q79 Steve Brine: Good morning, Mr Straw. The Public Accounts Committee reported in January 2011 that the accountability of the arm’s length bodies was a matter of concern for the MoJ. When you were in the job, did you have enough information about, and influence on, the performance of the arm’s length bodies?

Mr Straw: It varied very much from arm’s length body to arm’s length body. Overall, I would say no rather than yes. Just running through the major ones, in relation to the Youth Justice Board—I took a very close interest in that as I set it up initially—I shared some policy responsibility with Ed Balls for youth justice during that period, although I maintained sole responsibility for things like running the secure estate. We both took a lot of interest in it. I did not really feel that I was in a position to offer information about it. We appointed a new chair, Frances Done, which is always a helpful process.

The Criminal Cases Review Commission tended to be handled by one of the Ministers, but it had a good reputation as a well administered body. I did not receive any complaints upon that score. The Criminal Injuries Compensation Authority had a very difficult task. Changes were made, but I was reasonably satisfied on that front. I was not satisfied with the Legal Services Commission—I was extremely unhappy with it.

Q80 Steve Brine: Why?

Mr Straw: Because I had a sense that I did not know what was going on. I also had a sense that they did not know what was going on.

Steve Brine: That is a bad combination.

Mr Straw: After I developed this sense, I wondered what they were keeping from me, and I realised what they were keeping from me was what they did not know. There had to be changes. There were immediate changes at the top of the organisation, as you may know, and then I decided that we needed to finish the role of the Legal Services Commission and turn it into an Executive agency.

Mr Brine, I remember going to a meeting of the Legal Services Commission. There must have been 12 board members around the table, which was top heavy. There were far too many. One of these people started talking about the policy that they were pursuing. I thought, “Hang on a second. Call me naive, but I thought policy was a matter for Ministers to propose to the Commons and the Commons to agree. What gives this chap and this body the right to decide on policy in terms of expending quite large sums of public money?” I also, frankly, thought that it was quite strongly infused with the original system for running legal aid, which was that legal aid was run for the lawyers by the lawyers. The Law Society used to do it on behalf of Parliament. Where the Labour Government at the end of the 1940s had to get to meant it had to get their compliance, and the situation was not satisfactory.

There were also emerging issues. I was trying to reform legal aid, to get the costs down particularly of VHCCCs—very high-cost criminal cases—which were taking up an extraordinary proportion of the total budget, and I did not believe that they had effective
Q81 Chair: Of course it is now thought necessary to take it a further step to bring it closer under the Ministry of Justice.

Mr Straw: You can do that if it is an agency. You do not have the superstructure of a formal statutory body above it that is seeking to be autonomous and developing its own corporate structure, having its own press officers and lord knows what.

Q82 Mr Buckland: And costing £128 million a year.

Mr Straw: It is not cheap.

Chair: Mr Brine?

Steve Brine: We have limited time and lots to get through, so I suggest we move on.

Q83 Mr Llwyd: Not being an unquestioning observer of Government policy myself, when the Justice Department was formed I thought it was a very good idea, both from the constitutional point of view, and also, to be honest, because having observed the Home Office over some years, it had become so big that it was almost unwieldy. I believe that some Government Ministers said that it was not fit for purpose, but we will not go there just now.

Mr Straw: They were wrong about that, weren’t they?

Q84 Mr Llwyd: Yes, but at the time, the then Lord Chief Justice, Lord Phillips, said 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 ministry [of Justice] interfering with or damaging the independent administration and proper funding of the court service.” He went on to say that there could be strains on the prisons’ budget and there could be a situation where judges might feel under pressure to impose sentences that they did not believe to be appropriate. That was his view at that stage. Do you believe that the MoJ has had any negative impact, particularly on the independence of the judiciary?

Mr Straw: No, I do not. I do not, in answer to that question, believe that the senior judiciary, as is widely known now, were extremely discombobulated by the way they found out about the proposals for change—and I do not blame them because they were, effectively, blindsided about them. You will have to ask them. They are the witnesses, not me.

I do not think that they now have these anxieties. When I took over in late June 2007, I was extremely anxious to ensure that the judiciary at every level had confidence that whoever was Secretary of State—in this case me—was going to seek to protect their independence. I sought to do so. Among other things, I asked the Prime Minister, Gordon Brown, to which he readily agreed without a flicker, to make it clear to all ministerial colleagues that on no account were they to start gratuitously criticising the judiciary because I think it is completely wrong. I also offered some of my colleagues, who I thought might have a propensity to do that, certain career advice in private in a more robust way. They have got their job and we have got ours. I do not think that that has happened.

From a standing start in 1997–98 with the sentencing council, there is now acceptance by the judiciary that Parliament and Ministers have a proper role, for example in helping to determine the guidelines for sentence. That did not exist before. I got it going in 1997, but it was very tentative then. That is accepted. This morning on the radio we heard a judicial member of the Sentencing Council talking about their guidelines. There is a more formal process for resolving that. On sentences, it is interesting that since the senior judiciary took on the responsibility for setting tariffs for mandatory lifers—for murderers—sentence lengths have got longer, not shorter, than when the Home Secretary set them.

Q85 Mr Llwyd: I take it from your response that the judiciary did not have very much input into the creation of a new Department.

Mr Straw: Let me be clear. I was not there at the time. If you ask them, they will say that they found out about the plans while on a residential conference. That was not an appropriate way for them to find it out. It goes back to this issue of the way in which the machinery of government changes have been handled. Because it is in the hands of the Prime Minister, what happens is that you get a very small unit in the Cabinet Office and often some earnest young Turks in No. 10 who have a bright idea about how the Government’s problems will be solved if they change this Department or that Department, but there is no proper check on it.

Q86 Chair: This Committee in its predecessor form reported adversely about that process.

Mr Straw: It was completely unsatisfactory.

Q87 Mr Llwyd: Since then—and you came in after that particular point—I take it that the judges have been receptive to the change.

control over those. They were also duplicating the policy function of the Ministry of Justice. We discovered that they had about 60 people working on policy. Policy is the responsibility of the Ministry of Justice. They were there to implement the policy, not to create it.

I have always been leery about arm’s length bodies. You have to have some, of course, if they have a quasi-judicial function, and some do a perfectly good job. There was the Next Steps programme, which started in the early 1990s, about setting up Executive agencies. I certainly felt that the Conservative Administration had gone too far, for example, with what they had done with the Prison Service. There was constitutional outrage where, even on the Prison Service, it was its chief executive who was answering parliamentary questions and not Ministers, which was just preposterous. The first decision I made when I became Home Secretary was to tell the officials that Ministers are answering parliamentary questions, not chief executives.

The decision to turn the LSC into an Executive agency was mine, obviously with Cabinet approval, but I did ensure that it was going to be received sympathetically by Conservative colleagues, and I know it has been.
Mr Straw: I think so. The relationship with the old Lord Chancellors was a close one; it worked. Although constitutional theorists will say it was preposterous to have a guy who was the Speaker of the House of Lords, a senior member of the Cabinet and, at the same time, the head of the judiciary and at times sitting in our senior court, it worked. The judicial appointment decisions, in practice, were not taken capriciously by the Lord Chancellor but collaboratively with the senior judiciary but, for reasons I have given, it was bound to change. There remains an important issue that the Constitutional Committee and the Lords have been looking at about a system for senior judicial appointments. I am on record, as plenty of others are, as saying that the system that was established in the Constitutional Reform Act is, in my judgment, not satisfactory because it gives insufficient input to the Lord Chancellor—I am talking about the very senior posts—and also puts far too much power in the hands of whoever is the President of the Supreme Court, including power over who should be their successor. That is not an appropriate way to run organisations.

Chair: Important though that is, it goes beyond what we are looking at today, which is how the Department itself functions.

Ben Gummer: Sir Alan, I hope you do not mind but I think it is relevant as to how the Department functions. Could I just ask a supplementary on that about the relationship between the JAC and the Secretary of State?

Chair: I will see how it goes.

Q88 Ben Gummer: Without going into individual cases, how would you recommend, therefore, that that relationship between the Secretary of State and the MoJ operates?

Mr Straw: And the JAC?

Ben Gummer: And the JAC, which clearly was not satisfactory, in your experience, in cases. How could that be improved?

Mr Straw: Both sides were trying to get used to the system. Inevitably, if you set up an arm’s length body, it will seek to assert its autonomy-cum-independence. It was quite a complicated relationship to begin with.

Q89 Ben Gummer: Why not just subsume the JAC as an advisory panel within the MoJ?

Mr Straw: You could do. That was what happened before, but then there was a big demand—in many ways not very well-founded—to get away from the idea that it was a politician who was making these appointments, which in practice was not true.

What is my opinion? Indeed, a very senior member of the judiciary said that the irony about the JAC is that you have simply exchanged one lot of people sitting around a table to make decisions on who is going to be appointed for another lot of people sitting around a table. On the whole, the appointments have worked out not too much the same, but if it had been the old less formal system, you would have seen more women coming through more quickly and more talented people from the black and Asian community. That is one of the ironies of this. What would I do? There is no particular reason why you should not have a far less formal basis. It would have to be done jointly with the judiciary.

One of the things that I did was to end the role of the Lord Chancellor in respect of appointments at Crown court level and below. I did not know the people; I might, by chance, but there were a large number of these appointments coming through and I saw no great merit in my formally having to endorse the recommendations. For the more senior ones—the High Court, Court of Appeal, the heads of divisions and the people on the Supreme Court—the system needs to be changed.

Chair: Can we now return to the question on the paper?

Q90 Ben Gummer: I apologise, Chairman. On Transforming Justice—I am not seeking to take a party political angle here—

Mr Straw: Feel free.

Ben Gummer: I really am not. You are one of the most experienced Ministers. You come into the same Department twice in different guises, much as the current Minister of Justice has. There is a radical transformation programme instituted by Sir Suma Chakrabarti, and, when you study it, you wonder why a lot of it has not been done before. My first question relates to why that did not happen and the ease with which you found the process of instituting that change. Secondly, on a broader point, stage one of Harvard Business School is about successful organisations that can continuously bring about efficiencies within themselves. Are the Government immune to that state of being, or is it something that can be engendered?

Mr Straw: I think it can be engendered. In terms of why it did not happen before, the Lord Chancellor’s Department was a very different animal from any other Government Department. It was a small Department and it had a strong sense of itself. It was pretty immune to ministerial direction in the classical sense as well. The Lord Chancellor operated from his suite of rooms at the far end of this Palace, and the rest of the Department was almost by Victoria in Selborne House. They grew their own. Also, the overall budget was not all that big, so there was no great propensity for change and no particular culture, although quite important changes had been made. When I got there I had opinions. One of the reasons I appointed Suma Chakrabarti was that he was experienced as a permanent secretary. He had come to view the role of the Department in a fresh way. I gave him every encouragement on the Transforming Justice programme and endorsed it.

Picking up your point, one of the things I did as a Minister was to have town hall meetings in the central atrium in the Ministry of Justice, which is ideal for those meetings, because, as you will know, not in June 2007 but by October 2007 it became perfectly obvious that we were going to be in for a restriction on budgets and then for cuts. I wanted to ensure that we were well placed for those and were thinking about it. Anyway, I held them every six months.

Q91 Chair: When you say “town hall meetings”, do you mean of the Department’s staff?
Mr Straw: Yes. I do these in Blackburn between the town hall and Marks and Spencer, as it happens, but they are outside. This was an indoor version of those. All the staff were invited. Hundreds used to turn up. I would make a presentation and then take questions. One of the points—Mr Gummer, they must have got bored with this—I used to make was to tell a parable about successful manufacturing firms in my constituency and what had enabled the ones that had survived to survive. I made the point that they were having to undergo a constant process of change and that they were always examining their processes to see how they could take costs out and do things more imaginatively, which was what we had to do. I also got them to think about the fact that, in many areas of the Department’s work, the money and the effort was going on process, not outcome. Shed loads of money was going on process. If they just thought a bit more about how they could streamline the process, the public would be better served, the Exchequer would about how they could streamline the process, the public would be better served, the Exchequer would

Chair: Mr Straw, thank you very much, indeed. We are grateful for your help this morning.

Q92 Ben Gummer: If you have got them to think about the fact that, in many areas of the Department’s work, the money and the effort was going on process, not outcome. Shed loads of money was going on process. If they just thought a bit more about how they could streamline the process, the public would be better served, the Exchequer would save money and they would be happier in their jobs. I was trying to do all that stuff. I know that the programme has been continued since.

Q93 Chair: But does not that underline the point that other witnesses have made to us that the Department has great difficulty in making decisions of radical effect so long as such a large part of its expenditure is fixed in the prison system—and rising?

Mr Straw: My view—you and I may disagree about this, Sir Alan—is that the responsibility of the Ministry of Justice is to ensure that there are sufficient prison places available for the courts to use within the guidelines as they think appropriate. That is why I am unapologetic about the fact that when I got to the Home Office there were 60,000 prisoners or so and there are now 87,000.

Q94 Chair: My question is much more about what effect that has.

Mr Straw: The effect is that you have to have a very spirited debate with the Treasury about the fact that this is a demand-led service and that they will have to pay up, which was what I did. In December 2007, I got a lot of money out of the Treasury for a building programme in order to improve places. You will have to ask Mr Clarke whether he regrets it because he abandoned part of this, although the money was available. None the less, can you take out costs from the Prison Service? Yes, you can. We were doing a lot of work and the Department now is doing a lot of work on what is called “benchmarking and specifications” or something like that. We were trying to look at the costs of providing a standard level of service for a given type of prison and prisoner and comparing them across services. You can do a lot there. You can concentrate the mind of the Prison Officers Association, which is not usually thoughtful, even in its own interests, about what needs to be done.

I started the programme that led to the transfer of Birmingham prison to the private sector. I said to the POA a dozen years before that, when I agreed to make this a two-way street, that it was a two-way street. Just as I brought back Blakenhurst into the public sector because the numbers were better, Birmingham and one or two other prisons may have to go the other way. You can take costs out, but you still have to make provision for a rising prison population.

Q95 Chris Evans: I know that time is running out, so I will ask you a quick question. What was your interpretation of the culture of the MoJ during your time there?

Mr Straw: It was a good one. We conducted fairly regular staff surveys, which showed a fairly positive attitude among the staff. We were able to get the identity of the Department established fairly quickly. The officials worked loyally and efficiently. Like with any other group of people, some of the officials are better than others, but that would be true in a perfect world. On the whole, I thought it was pretty positive. You need to ask the staff that to get a better fix on it.

Q96 Chris Evans: Two criticisms of the MoJ when it was set up were about poor financial management and the fact that a lot of the information systems did not connect across the Department. Do you think that this was an example of a lack of being prepared, or do you think there were other factors there as well?

Mr Straw: There is a continuing problem about information systems that do not join up. It is a wholly separate subject about Government procurement and implementation of big IT projects. When I got to the Home Office in 1997, I was told that there were going to be all-singing, all-dancing IT systems in the next couple of years—on the immigration and asylum side, and on the criminal justice side. When I got back 10 years later, they were not around.

Q97 Mr Llwyd: Still no singing.

Mr Straw: Yes. I did not have a sense of poor financial management, except in specific cases, such as, for example, the Legal Services Commission. There was an issue about the running of NOMS. It was an Executive agency with good people running it, but it was a matter of trying to get that more under central control. There were certainly problems with IT systems joining up.

Chair: Mr Straw, thank you very much, indeed. We are grateful for your help this morning.
Examination of Witness

Witness: Phil Wheatley CB, former Director General, National Offender Management Service, gave evidence.

Q98 Chair: Mr Wheatley, welcome. You take over from your former ministerial boss. Incidentally, I will not go over again what I said at the beginning about the nature of the inquiry that we are doing. I know you appreciate what it is that we are trying to do. Is the Ministry of Justice an integrated Department or is it just individual bodies, like NOMS, who happen to share a Secretary of State?

Phil Wheatley: It became more integrated. As it was thrown together—it was a bit of a shotgun marriage—there was not a lot of notice. I read about what was likely to happen in *The Sunday Times* or some other newspaper, and I knew that this was possibly a runner. That was all done very quickly—certainly far too quickly to sort out IT systems and things like that. It often takes years to co-ordinate great big IT systems. I finished in June 2010, so I more or less match when Jack Straw left—I think I have a month extra on him. Over the time I was there, it was more integrated and moving towards greater integration. It was not perfectly fitted and there was a lot more to do to make sure that the different parts worked co-operatively and leveraged shared services so that they got a lower cost, because there were lots of transactions going through a single big shared service centre and a single provision of estates, and that work was under way. There was further work to do but it was moving in the right direction.

It is quite difficult work and it requires, interestingly, senior civil servants who take charge of the enterprise to have a real understanding of management issues as opposed to developing clever policy and serving Ministers, which they are very good at indeed, but they often do not come with a track record of managing big operational outfits and they would slightly look down on us. I used to feel over the years. They saw us as a bit below the salt.

Q99 Chair: As far as NOMS itself is concerned, has it justified the effort of creating it and achieved any purpose other than getting two organisations to co-operate a little?

Phil Wheatley: Bear in mind that I went right through the NOMS period, and for much of that time I was simply running the public sector Prison Service as a stand-alone agency in competition with other providers. That was the Home Office model that we came with. It was often irritating because it did not produce join-up. It produced a degree of conflict. It was not very good at integrating systems and thinking, and it was quite expensive. The relaunch, which occurred as Jack Straw arrived and took place the following April in the revised NOMS, which I headed up, was much more about how we make savings out of the centre, how we avoid duplication and how we unite the systems. We did reasonably well at making it work better and making management work better, because the system works well only if the money is being used wisely. Because the Probation Service, in particular, has not been exposed to any sort of competition, it probably has not got the sharpest of managers. It was very good at knowing about what it was doing, thinking about what it was doing and speaking about it, but in terms of where the Probation Service is sharply managed with all the money working hard, I was less impressed. We used the Trust programme to try to drive improvements and we got improvements. NOMS has achieved things, but there is probably more to do. I do not like the title; I would have loved to have relaunched with a different name. It was not the same beast that we had before. Politically, it probably would have been seen as unsatisfactory to change the name because it might suggest that what we did first was wrong.

Q100 Chair: Governments never like to admit that.

Phil Wheatley: They do not. It is a bit like the Post Office; they did not like being Consignia and became the Post Office again. If we had been relaunching, I would much have preferred to say that we were the “Prison and Probation Services”, which would have been better for uniting staff, and also would have prevented that constant carping about NOMS being awful. Actually, whoever sits at the centre with limited resources at a time of great stringency is not going to be popular with many people because there will be cuts to make and efficiencies to be achieved, and they will be uncomfortable. They may be needed, but making them will be uncomfortable.

Q101 Chair: You mentioned the Home Office culture in which NOMS was initially created. Did the move into the Ministry of Justice have an effect on what NOMS could do, how it could develop and how you could achieve the sort of things that you have just been talking about?

Phil Wheatley: It did, and the work was already under way. It was easier in a new Ministry to say that we had not got it right before and we could restructure. You have to bear in mind that before I left we had taken out £45 million of headquarters’ costs that came from putting old NOMS and new NOMS together. That is non-trivial; it’s worth having.

Q102 Chair: Was that just because it was a new Ministry—a different Ministry—or was it because there was something different about the culture?

Phil Wheatley: It was because new Ministers were prepared to look afresh at something they did not own, because Lord Carter was already relooking at his original report. I am trying to remember the time lags. I do not have my papers to refer to, but that started before, or more or less at the same time as, the Ministry came together. It was not related to that. It was easier in government with a new Minister to say, “Let’s look at what we have been doing and relaunch it so that it is different.” It is not easy for them to admit that by changing its name.

Q103 Mr Llwyd: On the issue of changing names, it did bring in a host of fascinating acronyms. There is a certain individual called a “DOM”, I believe, which is what, in Welsh, cows leave on fields. Anyway, we will leave it there.
Moving on to a more serious point, there is genuine concern that there are so few from the Probation Service in senior positions in NOMS. As you say, it was a shotgun marriage—your words—and nearly all the senior posts are from the prison element. I am not saying that there is anything wrong with the prison element, but one would have thought that there would have been a clearer balance because of the nature and duties imposed upon the new organisation. The fear is that the prison element has far too much power within NOMS and also the Ministry of Justice.

Phil Wheatley: I will pick my way through that. First of all, the shotgun marriage that I referred to was of Ministries, not NOMS. That was more carefully thought through as we coalesced old NOMS and the Prison Service, and relaunched what I could probably call the “new NOMS”, if I wanted to. That was more carefully thought through.

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—London is an exception; nowadays, in its new form west Midlands is very much an exception; and Wales, in its new form, is an exception—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.

On the Probation Service’s experience of managers coming into the centre, Eithne Wallis, was the first and probably one of the most influential probation leaders at the centre. However, it had never worked satisfactorily. Many of the people who had come to the centre had either failed or not been selected for jobs. It was nothing to do with me and the Prison Service; I was doing something entirely different at that time.

The big IT programme that I inherited, together with what other people in the new NOMS structure— I managed to retrieve from what had been the brink of disaster, had been run by somebody from a probation background who had absolutely no experience in running very big projects. The answer to how you get a probation balance, which is important from my point of view as I had left, was to try to plough management development, training opportunities and some career help into probation services. There are good people there who are quite capable of becoming very senior managers, but if you just pick them out and say, “We want a probation person. We know you haven’t quite got the background, but we are going to hope for the best because it looks better,” and prevent questions like this, you would have done them a great disservice and put them in a position where they probably would not have managed what were pretty enormous jobs in, basically, what was a £4 billion operating cost enterprise. It is a very big and complex organisation for which they were not prepared.

Q104 Mr Llwyd: You will appreciate that there is a feeling among the probation community that they are very much a junior partner in this and that the important work that they do is not being highlighted within NOMS.

Phil Wheatley: There may well be that feeling, and I cannot say what is currently happening. I went to some trouble, as the person leading the organisation, to recognise the complexity of probation work and the degree to which, if it goes wrong, it produces disaster. The Sonnex case in London is a good example. You could not say, “That is easy work, whereas us people doing prison work are doing difficult work,” because they are on the leading edge of protecting the public. I also tried to do the other thing that I found difficult, because, politically, it was difficult to get clearance for it in the run-up to an election, which was simplifying the work they were doing so that they were not just doing process. They had very much been pushed into a box-ticking approach to probation, which was not of their creation. It was created at the centre, which I did not think was adding value. I am very pleased that, as a new Government arrived, they felt able to rebrand the approach that we were developing and take some of the specification out, and let probation staff have more discretion. With that discretion comes praise for using it well. It is very important that you do not just complain when things go wrong, because that never, ever persuades people to work well, but that you also praise them for taking on this new work and doing it really well. That was the strategy I was using.

The probation services did not like the idea that they were accountable centrally. It is a much more comfortable position to be a locally accountable group, with very little direct political involvement. Having politicians watch you carefully and hold you to account like this is not easy. I understand why they rather yearn for the old position that they had been in.

Q105 Mr Llwyd: You say that, but I have had meetings with the Welsh Trust and they are very much up for the current challenges. They are preparing in-house bids for various things and they are really up to speed.

Phil Wheatley: I am not surprised. I think the Welsh Trust is an interesting creation. I am very pleased that it was created. It took small probation services of the sort I am talking about and turned them into a large probation service. It has recruited somebody to lead it with an interesting background, which includes some prison experience and some voluntary sector experience. That is just the sort of person I want to see—I know that she is very capable—and it is the sort of step change we were looking for. It is just what I was hoping to achieve.

Q106 Mr Llwyd: I do not want to take up too much time, but I will just put one further point to you. You were here when Mr Straw gave his evidence and I mentioned that the Lord Chief Justice at the time of the creation of the Ministry of Justice felt that there could be a real conflict of demand in terms of budgets. In 2010–11, nearly half the Ministry of Justice’s expenditure—and 74% of the staff—belonged to
NOMS. That is a pretty huge percentage. How were competing demands on the MoJ budget settled within the board?

**Phil Wheatley:** They were settled by Ministers following advice, in those days, from a board that Ministers did not chair. We had a separate meeting with Ministers as a board. There was an attempt to understand what it was possible to save in the various bits of the Department, which is demand-led. Legal aid was a big spend and difficult to control without changing the criteria for it. The Legal Services Commission is now acknowledged to be in a degree of difficulty and not on top of its own data in an understanding of what it was doing. The Courts Service is a relatively new creation. It was a new-ish agency. If you went and scratched lots of people in the Courts Service, they felt that they were working for a court system—much more than they could save. Therefore, you contemplated a redundancy because, under the old scheme, they were so expensive that, in year, they cost you much more than you could save. Therefore, you had to do it by natural wastage, and natural wastage was much more than you could save. Therefore, you had to do it by natural wastage, and natural wastage was very slow, particularly in a recession when age-related retirement was going off the agenda as people were not leaving because they could not get other jobs.

**Q107 Mr Llwyd:** And the prison population was rising.

**Phil Wheatley:** And the population was going up. It was difficult to sort out. Politically—and I do not mean you personally—Parliament was very concerned that the Probation Service was not to take cuts. Squaring that circle was difficult. It was squared as best it could be. We managed and survived with a balanced budget, and we were making substantial savings in prisons. More savings have been made since. There is the shared services programme and the sharpening up of the procurement of building new accommodation projects, which was making big savings on what had been expected and continues to do so. The specs and benchmarking programme, which I initiated, has ground fairly slow. It is complex detailed work that is grinding and produces another way of making savings along with what is now more possible than it once was, which is a reduction in the real value of staff wages and staff pensions. They were very expensive. All those things have allowed savings to be made, but it was difficult in the short run to take all those at once. You could not just wave a magic wand and make them all happen.

**Q108 Chair:** You heard Mr Straw argue his well-established view that prisons are a demand-led service and you address them on a predict and provide basis. That was his view. That must, surely, have a pretty profound effect on the decision-making process in the Department and the allocation of resources as between prisons and alternatives to custody, if those are seen as discretionary things that you provide if you can, and prison is predict and provide.

**Phil Wheatley:** Our strategy was to try to increase the take-up of probation/community punishment at the bottom end of the custody range. That was what we were trying to do. We certainly did not underfund any of that. We were working hard to make sure that, by mistake, the Probation Service did not hoover people into probation who might otherwise have got a fine or a caution, where there is no evidence that getting a fairly minimal probation intervention—unpaid work or something like that—is going to make any difference to their ability to reduce reoffending. You have to be careful that you don’t just hoover up a relatively cheap series of disposals because you say, “We have got this wonderful new programme and the magistrates courts”—it tends to be the magistrates courts—“think, ‘Oh, we’ll give it a go. We’ll try that’”, with somebody they would otherwise just have fined and it would have worked reasonably well. I do not think that we were constrained in doing that. It was part of our strategy. It does constrain your ability to make savings if the prison population is rising. There is always a danger in the budget planning process that people believe it is going to get better or it won’t be as bad as it really is. You will have looked at the prison projections. They normally do a fan of three: they do a middle, a low and a high. You would find that people were planning on the low and saying, “We’ll do all of these things and that will get us on the low.” In practice, the reality would be nearer to the medium or high over time. It is currently running just under the high projection, which nobody has plans for managing within.

Jack Straw described that game of dare with the Treasury that I have seen Home Office and Ministry of Justice Ministers do over the years. They say, “I’m going to be overwhelmed.” The Treasury says, “You’ve got to live within your money”, and then at the last possible minute, usually with some intervention from the Prime Minister, we start building like stink to accommodate the rise in population. Usually, it is grossly unsatisfactory accommodation in the wrong place, because when you are building like stink you can’t build in the right places. That is bad news, but that is how we have managed it. That is because politically, not just for Ministers but I suspect for you, it is very difficult to take the action that would be necessary to reduce the population, which means, because it is so heavily made up of long termers now, you have to do something about imprisonment for serious and violent offenders. As to the 10% or so who are on short-term sentences—I have not checked the figures recently but it would be something like 10%—you cannot just reduce the population by putting pressure on that 10%. It is like Marks and Spencer trying to increase their profits just out of selling tights and forgetting everything else that they sell. You have to look at the bulk of the accommodation, which is being used for long-sentence prisoners. At the moment we have something like 14,000 lifers or at least indeterminate sentence prisoners, which will continue to drive the population and is doing so. We have a public climate,
to which you all contribute, and to which certainly Ministers and newspapers contribute, of feeling that crime needs squashing fairly hard. That usually produces longer sentences as the courts have a choice of whereabouts on the recommendations of what is possible they settle for.

Chair: In this Committee we try to promote evidence-based policy directed toward reducing reoffending.

Q109 Ben Gummer: Mr Wheatley, let me return to the traditional criticism of NOMS. It was invented to manage offenders but still settled into the old structural hierarchies that had existed beforehand. Do you accept that as an analysis? Do you think that it is possible for an organisation that, by its nature, has to manage an enormous estate of buildings to think in terms of an offender and its process through a system or a journey of rehabilitation?

Phil Wheatley: The answer to that is yes, and most organisations have to do that sort of complicated work. If I was working for a big retail outfit, I would be thinking about where I sited my superstores, and how I built and maintained them. I would also be thinking about how my IT worked and how my staff were interacting with customers. If I was Tesco, I might begin to wonder whether I had got that right. There is nothing strange about having to do all those things. If you do not do them, you end up with something that is not integrated.

With regard to the state of our prisons, are they falling down? Are they grossly overcrowded? Do staff get a chance to interact with prisoners or are they behind their doors all the time? Are the prisoners safe because they are being protected from each other? Are they being helped when they are feeling suicidal and when they have mental problems? Are the right provisions in place? These are all things that you have to bother about as well as “just doing offender management”. They blur together. It is integrated. If you don’t integrate it, it is a mistake. There is a run of data on reoffending that has been collected in the same form since 2000, and the interesting thing is that, over at least a 10-year period when we have been watching this data, it shows that we have made about a 10% improvement, allowing for the differences in population. It is rather more if you do not allow for it. That means that, if you just arrest and deal with people who have lots of convictions, they are more likely to reoffend than if you deal only with people who have done something that is a one-off and will never get a chance to do it again. Looking at that, we have made a 10% improvement.

If you look at the heavier end of the population, the same data shows that there is about a 25% improvement for the four-year-and-over group. We have done that because we have offender-managed. We have better provision of offending behaviour programmes. We have better access to health care and we have improved education. That integrated package, which has not always felt integrated but we have been working hard to integrate, has given a bigger pay-off than any other service can show. Similarly, the Probation Service has made about a 9.7% improvement. It is a similar improvement measured in the same way and, again, with the same introduction of offending behaviour programmes and better offender management, a sharper management of people and holding people to account. The query is whether that has gone too far, so that probation officers are just policing things rather than helping people. Trying to get the balance right is always difficult. That shows that it has paid off and more is to be gained. I do not think that we have reached a beautiful point. I am not saying that as I left it was perfect by any manner of means.

Q110 Ben Gummer: Of course. In the early stage of the PBR contracts, which were initiated under your direction, they were formed around the structures still. There was a contract around a prison and a probation trust rather than looking at the through-life management of an offender, if I can put it that way.

Phil Wheatley: You have got to deal with somebody. If you are going to pay by results, you have to say who you are dealing with. How do you measure that you have got results? You must have a pilot that is somewhere. You cannot have a pilot in nothingness, as it were. The Peterborough pilot, which is the one I know most about, certainly involves the voluntary sector working with the statutory sector and working with the prison where the programme is hosted, trying to make sure that that combination of people working together integrates to give better support to people who come out often with good intentions, because lots of prisoners leave with good intentions, that fail in the face of the world not going right and too much temptation.

Q111 Ben Gummer: That is not a problem unique to prisoners.

Phil Wheatley: Probably not. It is like most bad habits, I am afraid. Crime is a very unpleasant bad habit—I am not being flippant about it. That is a sensible approach.

My worry about the payment-by-results approach, which I have some concerns about, is that it assumes you can graft something on to the system. The best criminological thinking at the moment suggests that if you try and work on the whole experience—and that is both in prison and probation; it is not just a prison-specific thing—the system will work better. When you go to a probation service you are treated sensitively by the receptionist and consistently by probation staff, and they are working with partners who work in a co-operative way that ties in with the whole. It is much the same in prison. When the security staff search you they do it efficiently, professionally and not abrasively, and when your visitors arrive they are treated with respect, because they are not criminals. You are given proper attention and are praised when you do things well and do not get away with things when you don’t do them well.

If you integrate all that, it will work better than just saying, “Here is a programme that we graft on to something.” That is the danger of payment by results if we think we can buy bits of treatment. To me, that is the equivalent of saying that a hospital could have a brilliant surgeon, but the nurses have dirty hands,
the surgery was not properly equipped and the follow-up consisted of wheeling round to a general ward and not paying attention.

Q112 Chair: But the patients would die and you would not get your payments by results.

Phil Wheatley: You would not. That is the risk about it. We do not yet know whether these payment-by-results pilots are going to pay off. I expect they will. I am not pessimistic but we do not yet have the results; they are pilots. The Peterborough project, which is the one I know most about, has a quite proper and elaborate method of checking whether they are achieving results. That is important because you do not want a payment-by-results approach that allows those who are doing it to game it. I can select the area where I want to do it, I can pick those people that will work. People have ideas. They often have panaceas. They are sure that x is the answer, but we have no real evidence to prove it. We need to invest more in research. That is not an easy thing to say at the moment. The better IT systems did begin to allow us to dig into it. The OASys system, for example, did give us a lot of data, which we were trying to work out what the needs were of offenders and what looked as though they were the right things to work on.

As to the reoffending results, the run of data we had was very good, national data to national standard, but I think that run of data has come to an end, which means it can be done faster, but they have then reworked all the figures. You can look at data from 2000 to 2009–10. When I say there is a 25% improvement for the four-year-and-over groups—it is slightly over 25%—that comes from that run of data. It is sound national stats, quality data. It is on the “Yes/No. Did they offend or didn’t they offend?” It also does frequency. There are even better results if you look at frequency. I do not know what the result is. I always worry when you take a data set and change it because you do not want a payment-by-results approach that allows you to change it. I always worry when you take a data set and change it because it makes it much more difficult to see what is going on. They may have solved that problem; you should ask somebody else, not me.

Q113 Ben Gummer: Was NOMS set up in the way that the management thought every day to try and discover data, to drill down into the information which you received, to commission new research and to understand the statistics behind the prison and probation population?

Phil Wheatley: The answer to that is partly yes, but not as much as it should be. You are speaking a language that I understand. I, as the person in charge, would have been saying that we need to do just that. I need to use our data, much of which was held in a very non-user friendly form in old computer systems. The research, of course, did not belong to NOMS. The research budget belongs to the Ministry as a whole. At a time of substantial pressure on budgets, there is not a lot of incentive on the Ministry to invest in more research. I would argue that in this area we needed really good data that works. People have ideas. They often have panaceas. They are sure that x is the answer, but we have no real evidence to prove it. We need to invest more in research. That is not an easy thing to say at the moment. The better IT systems did begin to allow us to dig into it. The OASys system, for example, did give us a lot of data, which we were trying to work out what the needs were of offenders and what looked as though they were the right things to work on.

As to the reoffending results, the run of data we had was very good, national data to national standard, but I think that run of data has come to an end, which means you cannot compare like with like in a way. That may have improved, but I have yet to see what they are going to produce this year. I am worried that that will not be as user-friendly. We were beginning to use that on an establishment-by-establishment basis, using actual results versus predictive results, which starts to show whether you are adding value. More could have been done with it. Better IT enables you to do more. I would have liked to have seen greater investment in research to work out whether we were really succeeding. There is always a risk in this area that people want to prove that their ideas are right rather than that they want to know the truth. That affects all of us. It is certainly a problem for politicians. If you said that the answer is whatever, you do not want to find that, when looked at, you have got the wrong answer.

Q114 Mr Buckland: To clarify something you have just said, in terms of calculating the reoffending rates, the current system is coming to an end. What is going to replace it?

Phil Wheatley: I do not know. All I know is what is in the public domain because this happened after my time. If you look, there has been a run of exactly the same data showing reoffending. It has been changed slightly because it is now on a one-year follow-up, which means it can be done faster, but they have then reworked all the figures. You can look at data from 2000 to 2009–10. When I say there is a 25% improvement for the four-year-and-over groups—it is slightly over 25%—that comes from that run of data. It is sound national stats, quality data. It is on the “Yes/No. Did they offend or didn’t they offend?” It also does frequency. There are even better results if you look at frequency. I do not know what the result is. I always worry when you take a data set and change it because it makes it much more difficult to see what is going on. They may have solved that problem; you should ask somebody else, not me.

Q115 Steve Brine: Mr Wheatley, good morning. Consistency is pretty important to any organisation, and that is certainly true in Her Majesty’s prisons, as you know. Prison governors are very important people in running their estates and especially their offender management. As nine more English jails are put out for private tender, there was a great quote in last week’s Monday The Times that said, “They steal my best governors”, which was speaking about the private prisons stealing governors from the public sector. What incentives are there for the best prison governors to remain in the public sector prisons?

Phil Wheatley: I must declare an interest there. I do some day work with G4S and am paid on a daily basis. I am not a member of its board and do not hold any shares, but I use my prison expertise. I have the right approvals for doing that. Yes, as you introduce the private sector into providing prisons, they will need to use the existing prison governors. You have learned to be a prison governor through some training and you have a lot of experience, and the only supply of experienced governors was from the public sector. Inevitably, the private sector had to entice, attract and retain good governors to lead new establishments.

Q116 Steve Brine: But so does the public sector have to entice.

Phil Wheatley: Yes, but because the public sector had 100% of the market up until 1993, if I remember rightly, when the first private sector prison opened, the supply for the initial private sector establishment inevitably had to come from the public sector. It is not so now. I do some work for G4S, and the governor of one of its biggest prisons—arguably one of its most successful prisons—which is Altcourse near Liverpool, is a private sector-grown governor because
there has now been enough experience to grow governors. There is a market in prison governors. The reality of having lots of providers is that there is a market in a scarce resource, and really good governors are a scarce resource, because, at the same time, the size of the service has increased; so there are a lot more opportunities. There has been something like a 29% rise between 2000 and the time I left, and that continues. New prisons mean a greater demand for prison governors.

Q117 Steve Brine: Is there enough incentive to be innovative as a governor in the public sector when the rewards in the private sector for being innovative—payment by results—are there and plain to see? Are there enough incentives for that if you remain in the public sector?

Phil Wheatley: It is difficult for me to say with certainty. At the time I left, the best governors were staying in the public sector. There is no doubt that we were not having difficulty in retaining some good people. Some good people left, but it certainly was not a major problem. I do not know what the situation is now. I want the private sector to produce a better product, because the public sector bites very hard and there being a no pay increase—and, by the way, we don’t approve of bonuses—it will not make it easy to retain staff when the private sector does not have the same constraints. The private sector always pays its directors on average more than the public sector. That is there in the Pay Review Body evidence, so it is not a great secret. I cannot say where they are at the moment. There are likely to be more private sector-run establishments, and the present competition increases the likelihood that there will be more. It will depend on who is able to produce a good product at a price that is affordable and better than others are offering. Nobody knows the answer to that yet.

Q118 Jeremy Corbyn: Do you have any concerns about accountability of the privatised prisons and the amount of money that is being made by various companies through contracts in the Prison Service that could be spent on more direct public service?

Phil Wheatley: No, I do not. When I was running the public sector I did not have any concerns about that. Because the competition was straightforward and done carefully, and there was a judgment about who produces what at what price, with a live-in controller in most establishments who watched exactly what happens in the private sector-run establishments, I am confident that we were getting good prices and that people delivered against them. They were not perfect, but there were good remedial measures that brought poor performing prisons in both the public and private sectors back into line very rapidly. There is no doubt that the ability to fine the private sector concentrated the minds of private sector senior managers to make sure that, if somebody was not hacking it and was not producing good results, they either got support or they were changed pretty quickly in order to make sure that poorly performing private sector places were sorted out. That is acceptable.

I do not personally have a problem with the profit mechanism. Most people who work in prisons, me included, work because they are paid. We work for money. We don’t go to work for nothing. Most prison officers similarly go to work to make money. It is not that we do not make money out of it. Most of the profits, I guess, will be going back to pension funds because many of the people who hold the shares are pension funds. It is not a system I dislike. With anybody running a prison, you have to keep a close eye on what they are doing—public or private—because prisons can behave badly, mistreat people and not use public money well. Some of the biggest pressures against using public money well came from some of the pressure put on by the POA, in particular, which often worked, in my experience, to prevent desirable change happening quickly. The private sector has enabled us to make rather more changes more rapidly and, overall, we have better use of public money.

Q119 Mr Buckland: Just developing some of the points that you have already touched upon in your evidence, we know that the regional structure of NOMS was, in effect, stripped out to make a leaner management structure. What sort of impact do you think that is going to have on how NOMS delivers services?

Phil Wheatley: I don’t know. In my time I had to have a regional structure. That was politically mandated. I had to have a director of offender management. It was not my choice. We had to have a regional structure. That has been stripped out. I was not a wild fan of the regional structure. It was difficult to operate. There was a risk that it put another step in the chain that made it more difficult at the top to know what was happening at the bottom in the outfit for both prisons and probation services. It was not something that I felt we had got right. If it is being taken out, it must be replaced with a clear connection between what happens in services and prisons and the top, to deal with the answer I have just given. You have to make sure that you spot when things are not right. If the London probation service is not managed well and is not operating well on a range of things, it may produce another Sonnex. If a prison is not being operated safely and properly, it could produce riots, escapes or suicides. Very real risks are being managed. Management has to be on top of it and able to make proper interventions to make things better, and not just say, “You must be better,” but make sure that it actually happens.

Q120 Mr Buckland: One of the concerns that some of us have is with the new commissioning structure. How much is going to be genuinely localised as opposed to national schemes? You will remember—it has now been suspended—the rather odd structures or groupings that were used for the potential commissioning of community—

Phil Wheatley: Yes, I do remember it. It is after my time but I know about it.

Q121 Mr Buckland: There were bizarre regions. The west midlands was being put in with the north-west, for example, which was ridiculous. That is not localised commissioning. How do you think the system will
work? How are we going to achieve localised commissioning when you have a Probation Service that is very much as a national service because of the need to move prisoners around the system rather than having genuine local accountability?

Phil Wheatley: I see no sign that the prison system is going to have to run at anything other than absolutely full capacity. It is ramping up there. There are a couple of thousand spare places at the moment but it is a quiet time of year. The population builds towards June and July. I expect it to be well over 89,000, which is the way it is heading. It will mean that they are very tight. You have to run that nationally. If you have spare places in a far distant part of the world, such as Haverigg, Acklington and Dartmoor, you have to use them, and they will not be for people who come from the area because they are not near areas where lots of people commit crime. I do not think you can avoid that. You can do local commissioning in the Probation Service. I was very keen on getting the Probation Service to regard its operating model, where it did its business, to line up with the crime and disorder partnerships or the crime reduction partnerships, as they are called nowadays, where police and local authorities are working together. It is important that the Probation Service works with the police and local authorities to develop those links so that those three services all work together to produce safer communities, because although local authorities do not have as big budgets as they would like, they still command many other things that will make a difference in offending. Instead of me saying everything that happens at county level, probation chiefs say the probation chief in West Yorkshire has to ensure that whoever is in charge of the Leeds Metropolitan area—to use them as examples—works with the police in Leeds, meaning that they are organised at that level and with the local authority, rather than trying centrally to fly it from Wakefield. It is possible but difficult to do. We need to make sure that that message goes out because that cohesion at a local level will make a real difference in reducing crime.

Q122 Mr Buckland: The basic point is that big organisations tend to look for other big organisations to obtain services from. It seems to me that a lot of the success will come from very small organisations, small charities and small bodies that, perhaps, are not used to processes involving large arms of Government. How are we going to fit them into a system that in the past has not favoured that type of enterprise?

Phil Wheatley: The answer is with difficulty, because it is difficult. Another one of my jobs is that I am a trustee of the St Giles Trust, which is a relatively small charity with a national profile, basically operating in London and the south-east. I know that working in an environment where local authorities and central Government are trying to make money go further and trying to take money out means that it is very difficult to win contracts, to develop new ideas and to get the space to do that. It is not an issue for NOMS, as such; it is an issue for you. Politically, it needs direction to say that we do not want to have everything commissioned on the basis of, “Is it cheap?” and “Can it be produced at scale?”, otherwise we will not get that local buy-in from some really good local charities that have local knowledge.

St Giles Trust is a good example in London. I can think of ones in the north-east that match that very well, where people who understand the area understand the problems, really care and are endlessly committed. If they get the chance to have a go at it, they make a difference. The one thing that I am sure makes a difference is having committed and good staff who are capable of persuading offenders that they could be different. Just throwing programmes at people will not do. You have to persuade them that they really could hack it, it is worth trying it, and that is best done by having believable, straight-talking people who know the problems and are able to persuade them that it is worth it this time and then trying to plan some genuine support when they are trying to have a go at it.

Q123 Chair: Some of those people are working for small organisations. The answer we get when we ask people currently involved is that it will have to be done by sub-contracting and that large organisations will want to engage St Giles Trust and other small organisations because they have those skills. Do you think that is the case?

Phil Wheatley: There is some truth in that. You can see that happening and that is built into the current contracting round. What that does not deal with is probably the very small organisations that you are speaking about at local level. St Giles Trust is probably at the level and with a national profile that it will be able to do that. I do not know how that will play out because you have to make a partnership with a private sector provider, who then wins. It is all a bit of a lottery.

Q124 Chair: You can back the wrong horse.

Phil Wheatley: For small charities without a lot of resources, the risk of spending everything they have got is quite something. I am not complacent about it. It is a real issue and I do not think we have solved the issue. I would like to grow more local involvement with people who know what is happening locally and getting the right sort of people. You also do get them in the big outfits. The Probation Service and the Prison Service has them. You need to recruit more people who match that. People are genuinely interested in offenders but can set boundaries. You do not want somebody who always says, “Yes”—they are dangerous. You want somebody who can say what is right and what is wrong. You want the sort of person who commands respect. So, if you speak to an offender and they say, “Miss so-and-so or Mr somebody else are really good,” they make a difference. The more of them we can get the better, wherever they come from.

Chair: Mr Wheatley, thank you very much indeed for your help this morning.
Tuesday 31 January 2012

Members present:

Sir Alan Beith (Chair)
Mr Robert Buckland
Jeremy Corbyn
Nick de Bois
Ben Gummer

Mr Elfyn Llwyd
Yasmin Qureshi
Elizabeth Truss

Examination of Witnesses

Witnesses: 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, gave evidence.

Q125 Chair: Good morning, Sir Suma, Ms Beasley, Ms Edwards and Ms Romeo. We are glad to have you with us as we pursue our inquiry into the Department itself and how it runs its affairs. We were genuinely very appreciative of the way we were able to roam freely all over the Department and ask anything of anybody we wanted to. We much appreciate the Department’s co-operation in all of that. Having done so, we were surprised to find that internal communication is still a problem in the Department. How could it be that the Secretary of State made a statement on Monday that was the subject of an embargoed press release and this Committee was not told that this was going to happen?

Sir Suma Chakrabarti: If that is the case, I am sorry about it. That should not have happened. I will look into it as soon as I get back. I would have expected the Committee to be informed first and it should have been.

Q126 Chair: It is not the first time and it puzzles us that it happens in a Department that is open plan, where people move about freely and where, quite clearly, a genuine effort has been made to change the culture as we get better internal communication. It appears that it may be the case that the parliamentary branch does not always know what is going on, or maybe the fault lies elsewhere. That is for you to find out, I think.

Sir Suma Chakrabarti: Yes. I think the parliamentary branch does know what is going on, but, clearly, there is a problem here. If this is happening systematically, we must obviously correct it and we will go back and do that.

Q127 Chair: You are engaged in quite a significant culture change, both in the way you run the Department and in the subject matter of what you do. “Rehabilitation revolution” implies a major change in culture. I thought I would give you the opportunity to say how you saw that working out now.

Sir Suma Chakrabarti: The culture change itself, yes.

Chair: Yes.

Sir Suma Chakrabarti: We have been embarked on a culture change for some time on a number of fronts. There are aspects to it that are about our systems, structures and our skills. The three Ss are always in my mind about this.

In terms of our systems, we basically had a very siloed Department and its arm’s-length bodies, with not much joined up. Our systems perpetuated that to a large extent. Where we can and should join up, for example, is on all the back-office functions and so on. We are changing our system so that we can do that much better. This is particularly in the case of the Department’s co-operation in all of that. Having done so, we were surprised to find that internal communication is still a problem in the Department. How could it be that the Secretary of State made a statement on Monday that was the subject of an embargoed press release and this Committee was not told that this was going to happen?

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too it is shown through our competition strategy. It has been quite a culture change. I can add lots of other examples too, but those are three.

Q128 Chair: We are going to explore some of those issues in more detail. Ms Edwards, do you want to say something?

Helen Edwards: I don’t know if you want me to say a little on the rehabilitation revolution directly. The only thing I would add is that Ministers have been very clear about what matters to them and what is important. They have delivered the message very widely and clearly that they want reoffending reduced. People know that we are good civil servants, so we want to deliver on that, and we know that performance is judged on that. We have payment by results, for example, which is increasingly judging people on how successful they are.

One of the other things we have done is made, very clearly, the links with crime. As we know, about half the people who go through the criminal justice system have been there before. Reducing reoffending makes a big contribution to reducing crime. Our partners understand that. For example, the police are joining with us to work on integrated offender management, where we are trying to grip the most prolific offenders and those who come out of prison with no supervision to stop them reoffending, because, otherwise, they go through the system time and time again. There are some clear messages and people have been very responsive to the logic of what we are trying to do, as we saw during the consultation on Breaking the Cycle.

Q129 Mr Buckland: Moving to financial management, we have all seen a copy of the National Audit Office Financial Management Report for 2011 that was published in November. I know that you have now had an opportunity to consider that report. A couple of key concerns arise from that document. Can I first deal with the lack of promptness in filing accounts? Is it the second year in a row now that the MoJ was unable to lay its accounts before Parliament before the summer recess. I understand that the Ministry has taken assistance from an external independent top-four accounting firm. That is two years in a row of late filing. Has that firm been paid in full for its work?

Sir Suma Chakrabarti: Ann manages the KPMG contracts.

Ann Beasley: There was a clause in the contract that said if we delivered our accounts pre-recess they would get, effectively, a bonus payment, which they did not get because we did not deliver pre-recess. To that extent, they were not paid in full.

Q130 Mr Buckland: The NAO report has identified as one of its key recommendations that the Ministry needs to produce a report next year in a more timely or timely way. How are you going to do that, bearing in mind the failure of the last two years?

Ann Beasley: We have undertaken a number of studies and as a result have brought in CIPFA—our professional accountancy body—to look at what was fundamentally wrong with the way we were producing our accounts. The NAO concluded that, although we set off for the 2010–11 accounts with a lot of energy and determination to try and deliver pre-recess, there had not been a fundamental change in the way that we produced the accounts. So we brought in the professional body, CIPFA, and they have made a number of recommendations about approaching the accounts in a different way, which we are now doing and following, in order to take some of the time out of it, and in fact to get rid of some of the blurring of the responsibilities between ourselves and the National Audit Office as our external auditors. We have also engaged with a private sector firm to supply us with sufficient resource. One of the conclusions was that we had not sufficiently resourced the accounts production, because it involves a very intense amount of work in a relatively short period of time. We have now brought in extra resources. We have recruited permanent staff and have brought in contractors. The agencies are now reporting that they are very pleased with the quality of the people that they have and we have them on the ground working now, so we have improved the quality of the people that we have.

Q131 Mr Buckland: Would you say there was any one particular problem that was causing this unacceptable delay? Was it the fact that there are different arm’s-length agencies—NOMS, for example—and it was difficult to co-ordinate all the information that you needed from the various bodies, or was it something else?

Ann Beasley: CIPFA concluded that there was not a single cause. The presenting cause was that the National Offender Management Service accounts were late compared to the internal timetable, but CIPFA concluded that there were some other issues that meant our accounts production was not working as smoothly as it should. Within NOMS there were two specific issues. One was as to their non-current assets where they did not have their balance-sheet valuations up to date and were not able to produce the notes to the accounts on time. It had been a problem in the previous year and, although they said that they had sorted it, in practice they had not.

Q132 Mr Buckland: Why was that? One year they identify the problem, and yet they have another year and they fail. It is unacceptable, is it not?

Ann Beasley: It is unacceptable and the individuals concerned are no longer doing that. We have brought in new individuals, who have now resolved the non-current asset issues. We are waiting for the National Audit Office to confirm, through their audit, that that is right. They recommended that we produced the notes to the accounts quarterly and we are now doing that. So I have more confidence that the process is working. There is a more fundamental issue with the NOMS accounts, and it is sometimes difficult to get this across without making it look like an excuse. NOMS is unusual as an Executive agency in that it has to consolidate non-departmental bodies into its accounts.

Mr Buckland: I see.

Sir Suma Chakrabarti: It is 35.
Ann Beasley: There are 35 probation trusts. We have not come across any other Executive agencies that have that element of consolidation. You have two problems with that. One is that it does take you an amount of time to consolidate their accounts into your accounts. It adds two weeks to the process. Also, in order to get the probation trusts’ accounts, they are reliant on pension information that comes from local authorities, who operate to a different timetable. We have been working hard with the Audit Commission to try and speed that up, but the probation staff are a very small element of a much bigger pension. We think we have made a breakthrough this year where the Audit Commission have said that the auditors do not need to wait for the final statement on the pension in order to produce the accounts. But that is always going to push out the NOMS timetable compared to other agencies.

Q133 Mr Buckland: There has also been a problem, has there not, with Her Majesty’s Courts and Tribunals Services?

Ann Beasley: Not with their fundamental accounts, no.

Q134 Mr Buckland: But with the trusts. What impact did that have? That was a very unusual event, was it not?

Ann Beasley: It is clearly not a good place to be, but the HMCS accounts, because last year they were two separate accounts, were produced early and were of good quality without any issues. For the first time, for 2010–11, the courts had to produce what is called a trust statement. It is part of the transparency agenda and it is about trying to make clearer to the public—to people like you—money that we collect on behalf of the Exchequer that goes back to the consolidated fund. It looks at fines and confiscation orders. This is a new requirement. We received the formal request to produce it in December 2010. That was the statement that the Comptroller and Auditor General said he was unable to audit. This was a conversation we were having last week. The reason you cannot audit it is that, if you pull the information off real-time case management systems, it is very difficult. If you had an accounting system, you would be able to draw a line at a particular date. You would know where each of those cases was and be able to evidence that to the NAO. But, after the event, all of those 2 million records have moved on, or a number of them have moved on. Recreating a position as of 1 April, after the event, was too difficult.

Q135 Mr Buckland: They are living documents, are they not?

Ann Beasley: It is a living case management system.

Q136 Mr Buckland: I understand that. What impact did that have, if any, on the filing of the accounts?

Ann Beasley: It had no impact at all because we had separate resource. In fact, we had some really good-quality resource working on that.

Q137 Mr Buckland: Before leaving that issue, this year are you confident that you will get the accounts filed by the summer recess?

Sir Suma Chakrabarti: Shall I answer that?

Mr Buckland: Yes.

Sir Suma Chakrabarti: I will have to go through several layers. This is exactly what I said to the PAC, so I will repeat it here. It is a position that is agreed with the National Audit Office and with all our independent non-executive directors who formed the audit committee. The actual target that the Government have set themselves is a clear line of sight deadline target, which is a new target—for the end of June, in fact, and not even pre-recess. It is a month earlier. I have been absolutely clear with the PAC that that target is impossible for this organisation to hit because, for the first time, LSC have to be part of the consolidated accounts.

Q138 Chair: That happens this year, does it?

Sir Suma Chakrabarti: It happens this year for 2011–12. It is well in advance of the statutory deadline. We have always met the statutory deadline, so there is an interesting issue as to why this target is so far ahead of the statutory deadline. LSC have to be part of the consolidated accounts for the first time ever. It would require LSC to produce their accounts four months earlier than they have ever done before. It is just not feasible to do that, given the amount of testing they have to do on error payments and so on. NAO agree with that, leaving aside the NOMS issues, which are there as well, which Ann mentioned. Our aim was, of course, to try and get it in pre-recess, but I do not want to make a commitment that says we will definitely do it, having made that commitment last year and found ourselves wanting, until we have got through what is called the “quarter 3 hard close,” which will be during the next couple of months. In early May my plan is to write to the PAC Chair, copied to the Justice Select Committee Chair, saying whether we are going to make pre-recess or not. There are some real issues there. Ann has mentioned, obviously, the NOMS issues, but also at the LSC there are some issues we need to work through. The NAO is fully supportive of that. They also do not want us to make a commitment they would be unable to achieve themselves, because they have to audit the final consolidated accounts and need time to do that. Last year was an improvement on the previous year. One thing we should say is that all the individual accounts that make up the consolidated accounts were in on time, laid before recess, unqualified. That was an improvement because NOMS missed that last year as well. In that sense it is better, but it is not in a good enough place yet. I would fully agree with that. There is some way to go on that.

Q139 Elizabeth Truss: I want to focus up on the point about the hiring of the additional accounting resource. What has been the cost of hiring that additional resource? Also, what has happened to the staff that were proved to be incapable of putting together the asset register? Has the impact of not having an asset register properly done affected the
business of those probation trusts if they do not understand their own cost base?

**Ann Beasley:** Picking those up, as I remember them, obviously we do have an asset register, but it was not as up to date as it needed to be. Most of the assets on the asset register relate to prisons and therefore do not have a huge impact on probation because most of the property that probation have is leasehold rather than owned by the Ministry. The individuals concerned left the organisation on a voluntary exit scheme as part of the exit. We have now recruited some really good quality people to take that on going forward.

**Q140 Elizabeth Truss:** What about the additional costs to the organisation of the external people that you have hired?

**Ann Beasley:** We have recruited—or we have brought in—23 contractors. Most of those we would need. Accounts production is quite a challenging area in central Government. It is not something that many civil servants want to do. We struggle to get the right people to do it, and it is difficult to get permanent civil servants.

**Q141 Elizabeth Truss:** That may say something about civil service recruitment, if you don’t mind my saying.

**Ann Beasley:** It is possibly about the amount of money we pay for professionals. We would normally have a complement of about 18 people. We have brought in an additional five or six to give us the extra resource to deal with some of the problems.

**Q142 Elizabeth Truss:** But you do not have a figure for the additional pot?

**Ann Beasley:** The contract is of the value of about £4 million.

**Elizabeth Truss:** £4 million.

**Q143 Mr Buckland:** One of the other recommendations of the NAO report was further improvement in collection of income—fees, fines and confiscation orders. Looking at the figures, it seems that, although there has been an improvement in collection, the outstanding amount of fines in the last five years has increased by a quarter. What proposals do you have in order to improve the collection of those various streams of income?

**Sir Suma Chakrabarti:** Ann leads on this as well.

**Ann Beasley:** Did you want to talk specifically about fines? On fees—

**Sir Suma Chakrabarti:** We should split them up.

**Q144 Mr Buckland:** Fees, fines and confiscation orders under POCA or anything like that.

**Ann Beasley:** I will start with fees. We have now agreed a fee income strategy that has two elements to it. One is that we need to make sure we take opportunities to put fees up in line with inflation where fees are below cost. In a number of areas, that is not the case. In civil cases the cost recovery was, I think, 99%, last year. It is in the kind of family income space where it is below. We need to take those opportunities. That is not wholly within our gift because we need to go out to consultation and agree that. We have made some increases to fees from April that gave us something like £20 million extra in income. The other thing we need to do is to look at our costs. If you were to go immediately to full cost recovery on family cases—and you are looking at private family cases such as access hearings for fathers wanting to see their children—you would be putting costs up from a couple of hundred to more than £1,000, which does not feel acceptable. Our other strategy is to look at the cost base that we are using. Because we are driving efficiency in the courts anyway, we expect those costs to come down, but we are looking at restructuring the fees in a way that better reflects the elements of the service that the individuals use. We are agreeing that with the Treasury. If an individual settles something out of court and does not require a hearing, they would pay less than if they wanted to take it to a hearing. We are doing the work to restructure the fees and we expect, by the end of this spending review, to have closed the gap. The gap last year was £120 million. We expect it to be about £100 million by the end of this year and to keep closing it.

As to fines, we have collected more fine income in the last year than before. As you say, the fines awarded are going up. We are looking at a new approach to fines. The Courts Service have centralised it now; it is the responsibility of a single director. They are having a number of initiatives, like payment blitzes. They have made it easier to pay fines; you can now pay fines online. There are lots of initiatives like that, but, fundamentally, we need to restructure the way we enforce fines and to engage, probably, a third-party partner to look at developing better IT, better methods for fine collection. We are working through that proposal at the moment.

We are also doing some pilots looking at some of the aged debt. We have given some of the old fine debts to four separate private sector companies. They are looking at how much of that they can collect. Effectively, we could look at whether or not we wanted to sell off the aged debt book. At the minute we do not know what we would get as a return, so we are doing these pilots to look at what they are able to do that would allow us to set a realistic value for the aged debt book.

**Q145 Mr Buckland:** What is the time scale for this?

**Ann Beasley:** If you are looking at something like a public value partnership, it does take a while to procure it and set it up. It is not a completely quick fix. Meanwhile, the Courts Service is absolutely committed to these fine initiatives where we are trying to get better at getting the fine off somebody while they are still in the court rather than getting them to leave the premises. There are also these new nudge techniques such as, if you text somebody using their name, they are more likely to pay up. Obviously, do not tell anybody else that because we don’t want them to stop doing it.

**Sir Suma Chakrabarti:** I think you just have.

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1 Note by witness: The three companies are Marston (a Debt Collection Agency), BT Global Solutions, and Deloitte.
Ann Beasley: These are the innovative things you can do to try and get a better return on fine income.

Q146 Mr Buckland: Is it the same for confiscation orders?
Ann Beasley: For confiscation orders, there is something like £1.3 billion on the balance sheet, for which the Ministry of Justice is only responsible in terms of collection for a very small proportion.

Q147 Mr Buckland: I wanted to ask you that. There is a separate pot somewhere.
Ann Beasley: That is right. We are responsible, by and large, for the low-value confiscation orders, mostly ones that are up to £50,000. We collect something like 66% compared with other agencies on the more complex confiscation orders, it is something like 41%. We are in the low-value end and we are making reasonable progress in terms of collecting those. The other parts of the confiscation orders are largely owned by the CPS or the Serious Fraud Office and, almost by their very nature, are very difficult to collect. Many of them are hidden: they are abroad. We have been working with the Home Office, who have the lead on confiscation orders, to try and encourage them to improve the progress with that. Their strategy has been much more about asset denial because some of the assets that are still shown on our balance sheet have been frozen by foreign Governments and are not available to the criminal, which is the primary aim of this. Something like 60% of the assets are hidden or denied to the criminal, which is their strategy. We have done some work—I forget exactly what we call it—where we have created an additional order that allows us to go after the people that help criminals hide their assets. We can now start going after accountants and other people who help the individuals to hide their assets. The Home Office have set up the Criminal Finance Board, chaired by James Brokenshire as the Minister, which met last week. They are starting to drive progress on this.

Sir Suma Chakrabarti: Can I add a couple more things on the financial management point in general? First of all, it is really good that the NAO recognise this. Something like 60% of the assets are hidden or denied to the criminal, which is their strategy. We have done some work—I forget exactly what we call it—where we have created an additional order that allows us to go after the people that help criminals hide their assets. We can now start going after accountants and other people who help the individuals to hide their assets. The Home Office have set up the Criminal Finance Board, chaired by James Brokenshire as the Minister, which met last week. They are starting to drive progress on this.

Ann Beasley: For confiscation orders, there is something like £1.3 billion on the balance sheet, for which the Ministry of Justice is responsible.

Q148 Ben Gummer: Can I add a couple more questions to what Mr Buckland has asked? On the issue of fees, there seem to be some very easy wins here. For instance, for the Information Commissioner’s Office, on page 12 of the NAO report, there is a £5 million difference between income and expenditure. Surely it would be possible to close that very quickly by changing a fee structure.

Sir Suma Chakrabarti: Yes, please, if you could.

Mr Buckland: Yes, please, if you could.

Sir Suma Chakrabarti: The final thing I should say on financial management is that the NAO report says in very clear terms that the work we have done delivers very good value for money. It is not something that you see in many NAO reports and it is worth highlighting. There has been a lot of progress in this. We are now at level 4 out of five levels, and the fifth level, frankly, would require far too much expenditure to get to. No one is aiming for level 5 in Government. In two areas we are at over 3.5 in three other areas. Other Departments are now coming to us on the back of the NAO report and asking how we did this.

The fact that people in the Prison Service and the Courts Service understand their costs much better—the point I made at the beginning—is a major advance. To go to a prison and have a governor say, “Reception costs this much. The benchmark is this much. I am trying to get close to the benchmark,” is something that did not happen before. It is a real change in the culture that is going on because of this work on financial management.

Q149 Ben Gummer: So, by definition, you will never, ever break even in those particular areas.
Ann Beasley: No. Our policy, although we call it “full cost recovery”, is strictly “full cost pricing”, so we price as if everybody was paying. Those elements that are given remissions because of insufficient means fall to the general taxpayer. I am doing some work as part of a cross-Government fees working group to try and talk to the Treasury about whether or not that is the right policy, but, at the moment, that is their policy.
Q150 Ben Gummer: That is very interesting. What about on the Information Commissioner’s Office?

Sir Suma Chakrabarti: We will have to come back to you on exactly what is going on and how we set the fees there. We do not have the detail to hand.

Q151 Ben Gummer: I do not want to re-hash ground gone over by the PAC or by Mr Buckland, but on the general issue about financial accounts, it seems to me that the main concern about the lateness—and it is true that there are particular difficulties the Department faces—is not so much the lateness, but that it reflects a weakness in management accounting. The better your management accounts, the quicker you can produce statutory accounts. The concern that we have is the indication that this shows about lack of strict financial management—the £4 million spent on external accounting consultants that you mentioned would pay for quite a lot of good high-quality internal financial managers—and the effect that has, therefore, on your Transforming Justice programme. That will require very detailed financial management if you are going to successfully outsource, privatise, payment by results, and trying to make savings not by salami slicing the budget, but rather identifying areas where savings can be made without it harming front-line services. You called this your Transforming Justice agenda. Would you say that perhaps you underestimated the amount of money that you would need to carry out the work of the MoJ, bearing in mind we have heard the former Home Secretary Jack Straw and the Justice Minister say in the past that the MoJ is very demand-led? Therefore, in light of that, do you not think that you perhaps might have underestimated and asked for less than you should have had?

Sir Suma Chakrabarti: I am not sure we were in a position to ask for anything, necessarily. I do not think that is quite how the negotiation panned out.

Q152 Ben Gummer: The point I am trying to make—I am sorry, Sir Suma, and I fully accept the remarkable progress you have made—is that the things the Department is trying to do in the next two or three years are beyond anything that anyone else in Government is trying to achieve.

Sir Suma Chakrabarti: Absolutely.

Q153 Ben Gummer: For that you need exceptional financial management.

Sir Suma Chakrabarti: You need even more than that. You need a different set of skills altogether. 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. We will be sending you the details quite soon once the board has looked at it. That is the area we have to make a major push on. I do not only mean hiring a lot of people in procurement. Of course, our procurement arm is rather good and we need to keep strengthening that—there is a pay issue we also need to talk about—but 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. None of us grew up that way and 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.

Q154 Yasin Qureshi: That leads on to the issue about the spending review. Recently your Department said that you were trying to spend money responsibly and trying to make savings not by salami slicing the budget, but rather identifying areas where savings can be made without it harming front-line services. You called this your Transforming Justice agenda. Would you say that perhaps you underestimated the amount of money that you would need to carry out the work of the MoJ, bearing in mind we have heard the former Home Secretary Jack Straw and the Justice Minister say in the past that the MoJ is very demand-led? Therefore, in light of that, do you not think that you perhaps might have underestimated and asked for less than you should have had?

Sir Suma Chakrabarti: I am not sure we were in a position to ask for anything, necessarily. I do not think that is quite how the negotiation panned out.

Q155 Yasin Qureshi: What I am saying is not you, but the Department itself, it is suggested, did not fight enough to get extra resources that it should have had, bearing in mind that your Ministry is very much demand-led.

Sir Suma Chakrabarti: I can assure you that we fought tooth and nail for our budget. You have an ex-Chancellor as Secretary of State and an ex-head of public spending as the Permanent Secretary. We knew all the tricks from both sides of the fence. We got what the Government decided we were going to get. Essentially, they prioritised; we were not one of the Departments that were ring-fenced, as you know, and we got this average size of cut. It is very important to lay out that we planned and modelled all the various options in great detail, so we have a very good sense of what the plans are and what we need to do to deliver them. At the time of the spending review settlement we knew exactly where we were going to have to make the cuts and so on, and that is what we have been pursuing. There was a further change mid-year, as you know, because of sentencing policy change. Your basic point that we are a demand-led Department is absolutely right, which is why it is very important to have the changes to both sentencing and legal aid reforms in terms of reducing demand. That is part of the plan, if you like. But the changes in
sentencing policy added a further pressure that we had not budgeted for clearly at the end of the spending review settlement. We did some further modelling, some further efficiency work, and we have had to increase the share of efficiency savings in our overall plans from 50% to 60% to make the plans add up. We have detailed plans all the way through to 2014–15.

**Q156 Yasmin Qureshi:** Can I ask you for an example of which areas of your business you have streamlined, and how were the staff and the stakeholders involved in that particular process? Can you give us an idea of some of the areas where you have done your streamlining and how you achieved it?

**Antonia Romeo:** We took the decision to focus on protecting, where possible, the front line and to take the cost out of management and back office where possible. We have so far taken out 22% from the senior civil service and 8% from the non-senior civil service, which demonstrates that we have driven to focus on taking out from the top, including a 50% reduction in the number of directors general. We did not want to make arbitrary cuts, so we designed and put in place an operating model blueprint, which looked at reorganising how we did the Department restructuring. We brought our back offices together into a shared services model. Ann may want to say more about that in a moment. We focused on allowing the front line the space to get on, do its job and focus on trying, as I say, to reduce efficiencies that have to be made in the front-line and more on taking the costs out of headquarters.

**Q157 Yasmin Qureshi:** You probably all know what you are talking about, but can you explain to us how you define front-line services?

**Antonia Romeo:** For example, the NOMS headquarters has been asked to reduce its costs by 37%, whereas the prisons are being asked to find 10% efficiency savings over the SR period. Does that answer your question? By front-line services, I mean courts, tribunals and prisons and so on.

**Yasmin Qureshi:** I just wanted clarification on that.

**Q158 Jeremy Corbyn:** Do those figures of 8% and 22% relate to cash or people?

**Antonia Romeo:** People.

**Q159 Jeremy Corbyn:** How many senior civil service jobs have been lost compared to the rest?

**Antonia Romeo:** Currently—I am doing a bit of quick mental maths here—56 have been taken out of the senior civil service since March 2010 and something that looks to be about 6,000, or a bit under, out of the non-senior civil service.

**Q160 Jeremy Corbyn:** Of the 6,000, what grades would they be, mostly? Do you have a breakdown?

**Antonia Romeo:** I do not have a breakdown. I can get you a breakdown if you would like it.

**Sir Suma Chakrabarti:** On the senior civil service, I know that within Whitehall we have taken more out of the 5Cs than anywhere else. If you look at the tier below me, there were 13 directors general a year and a half ago and we are down to six. There was a massive cull. That was partly because I wanted to send a very strong signal to the organisation that we have to take our share of the cuts at the top and in headquarters, very much going to the heart of Ms Qureshi’s question.

**Q161 Jeremy Corbyn:** Of the 6,000 that have gone, how many are from the London head office compared to regional and local?

**Sir Suma Chakrabarti:** We will have to come back with a breakdown.

**Q162 Jeremy Corbyn:** If we could have that information, Chair, it would be very helpful.

**Sir Suma Chakrabarti:** Of course.

**Q163 Yasmin Qureshi:** Taking you on to a point about savings, we understand that you have yet to complete your estate strategy programme. It is estimated that, at the moment, the balance sheet of properties owned by the MoJ is about £8.6 billion and we know that you want to reduce the number of administrative properties from 183 to 89 and then maybe close about 142 courts and 100 probation properties. Bearing in mind that is what you are intending to do, but that you do not have an estate strategy in place yet, is it not a bit risky to embark on an estate rationalisation programme?

**Sir Suma Chakrabarti:** I think there is a bit of a misunderstanding here. Our new estate strategy, which you heard about on your visit, will come into being later this year. We have had an estate strategy, which we have been pursuing, and that has consisted of a number of things on the administrative estate. We are trying to close buildings that are underutilised. In London, a few years ago we were at 22 buildings, then it was down to 18 and now we are down to 13. We will be down to four in the medium term in London in administrative buildings. This Committee knows a lot about court closures. There are 121 court closures, again because of very low utilisation rates. We will have to go further in that area as well because there is still quite a lot of co-ordination and efficiency to be got out of that.

As to the prisons, four have been closed since the election as well. All of these have been part of a strategy that was bound in with the spending review strategy, which you mentioned at the beginning. Clearly, we have to have a new estate strategy and we are working on that now. We have very much linked it to the Transforming Justice next stage. It has to be linked to that. These plans are enmeshed together. They are not something separate from each other.

**Q164 Yasmin Qureshi:** As you said, you have closed some prisons and buildings. Approximately—and we are talking about round figures—how much of a saving has the Ministry made, or how much money has it realised from selling these?

**Ann Beasley:** You mean from the selling of the assets?
Q165 Yasmin Qureshi: Yes, from selling the assets; that is right.

Ann Beasley: At the moment, the total value of the courts, for example, that are due to be closed is about £30 million. We have sold four and that has raised £1 million, or of that order. As part of our capital programme over the spending review we are expecting to sell £250 million worth of assets, which would include headquarters buildings that we do not need and courts and prisons that we are going to close.

We are allowed to retain that as part of our capital programme throughout the spending review\(^2\). It will be about £250 million.

Q166 Chair: Have you taken a view about market conditions and the extent to which you should defer selling?

Ann Beasley: We always look at maximising the sale value. Quite often where we are selling land that we no longer require, we will seek planning permission for that land to increase the value of it so that when we sell it we get the best value. Sometimes, even where we are not able to do that initially, we put clauses into the contract such that, if the person buying it subsequently gets planning permission and increases the value, we have some claw-back provisions.

Q167 Chair: I was also thinking that in some parts of the country it is not a very good time to be a seller.

Ann Beasley: No.

Q168 Yasmin Qureshi: As to the prisons that have now been closed, have the inmates been put into other prisons? In that case, is that one of the reasons the numbers have gone up in the prison system?

Sir Suma Chakrabarti: The numbers are going up for other reasons. Those inmates have been transferred to other prisons, yes. The four are, I think, Ashwell, Lancaster Castle, Latchmere and Brockhill. I think all those prisons have now been closed.

Q169 Chair: Lancaster Castle used to appear in the estates list as the only building that was 1,000 years old.

Sir Suma Chakrabarti: I know, and it was incredibly expensive to maintain, so I am quite pleased we have managed to send it back to the Duchy.

Q170 Elizabeth Truss: You mentioned earlier that civil servants often do not necessarily want to work in the finance function or that there was not a great sort of skills match there. When we visited the Department, the feedback I got from the finance team was that, quite often, a lot of work is done before getting the financials checked out. In terms of some of the policy work, it is driven by ideas first and then the economics second rather than the other way round. In terms of the balance of staff that I observed, there were some pretty large policy teams all working in their own particular area. The finance team seemed to be relatively small. Do you think that the current balance is right, or do you think more needs to be done to make the Department led by economic decision making, given the big focus on payment by results and value for money?

Sir Suma Chakrabarti: I am going to ask Helen to talk about the linkages between policy and the analysts, if you like, and Ann can talk about the finance people. It is much more integrated than it was. Four years ago this Department did not have any analytical sense half the time. Submissions used to go up with no consideration of finance. I used to find that submissions did not have a paragraph covering the financial issues at all. That has completely changed. The NAO report says that it has completely changed. The question is where the analysts or the finance people come into the process. Do they come in at the end of the assembly line or much earlier? What is happening is they are coming into the decision making much earlier now than they ever did before, but I am sure there are some areas where we can improve that further. Do you want to give some examples?

Helen Edwards: Yes. It depends a little on how you define good policy making and the way we are trying to implement it in the Department, is first of all that the task is to understand what it is that Ministers want to achieve, what is the ambition. Then, second, is to pull everyone together—the analysts, the lawyers, the delivery people and the finance people—so that we can work up options that are evidence-based, where you understand the finance, where you know that they are deliverable and legal, and then put options to Ministers. I see it as one integrated package. Are we fully there yet? We are not 100%. We are one of the first Departments to be implementing and embedding the new Policy Professions Skills Framework in Whitehall, which sets out that approach to policy making. As we establish the new policy group, making sure that we work in that way every time is what we want to achieve.

\(^2\) Note by witness: HMT will allow the Ministry of Justice to keep proceeds up to 20% in excess of anticipated receipts (of £250m), any proceeds in excess of that will be given to the consolidated fund.
Ann Beasley: Absolutely.

Helen Edwards: With the local authority, we are looking at the risk from the MoJ level rather than the entire Government level. We have said is that you are looking at the risk from the right way to maximise results? That may not be under our control at the Ministry of Justice, but are we having tails wagging dogs across Government rather than looking at the whole dog? I apologise for that.

Jeremy Corbyn: I am getting a bit confused here.

Helen Edwards: I think we are looking at the whole dog in local authority areas because most of them have set up boards that bring in health, local authorities and all the partners. They are testing the proposition that, if you work together to manage the most prolific offenders, and if you look at all the problems that they present and have a co-ordinated response, you can make a real dent in that and that brings savings. Then those savings would be shared. We are working on a methodology. It is not confined just to criminal justice organisations.

Q175 Elizabeth Truss: You are saying that the logical conclusion of that is that the budget should be at a local level if that is where they all link up.

Sir Suma Chakrabarti: Quite possibly.

Helen Edwards: That is possible.

Sir Suma Chakrabarti: That is one of the things that Government will have to explore more of.

Q176 Chair: We have been trying to encourage them to explore it for some time.

Sir Suma Chakrabarti: Yes. Some of this was explored in the last Administration as well, as to what extent you can delegate budgets out and so on, and what the right incentives are then. Troubled families would be another good example where we are not a lead Department, DCLG is, but there is no way that that agenda—and it has been a very important agenda for us—can be delivered without lots of players being involved, including us. So we are helping to finance that. There will be plenty of other examples as well. Do you want to say something on the finance policy nexus as well?

Ann Beasley: Yes. I want to correct something. If I have given you the impression that nobody wanted to work in finance, what I was saying was that nobody wants to work in the production of statutory accounts rather than finance. I have a very enthusiastic finance team on the management accounting. I want to come back to your point about when the analysts engage versus policy. One of the things that we did well during the spending review was to start from a really deep understanding of what it was that drove our costs in the Department. Having done a lot of the modelling work that Suma had set up, we did understand what it was that drove our costs. We started from the base of, “This is what drives the prison population,” and then looked to see what the policy options were to stop those drivers, if you see what I mean. We knew, for example, that issues relating to indeterminate public protection sentences were a driver of our prison population. That then fed into the policy options as to what you would do to reduce those drivers. We had to start with an analysis of where we were.

Q177 Elizabeth Truss: Can I ask if you looked at what actions other Government Departments took, if they drove your costs and what—

Ann Beasley: Absolutely.
Q178 Elizabeth Truss: What actions did you take to get those other Departments to change their behaviour?

Ann Beasley: Some of the work is in Helen’s area, but there are a number of things where we have something called the justice impact test. When other Government Departments want to introduce a policy, we run it through our models to see what impact we think it will have on our costs and then we have to have some negotiation about who pays for it. We now have a much better relationship with the Home Office, because they are one of the Departments that quite often drive our costs, where we are looking at how we take account of policy changes that they want that have an impact in our world and how you would pay for those, but this is where Helen is—

Q179 Elizabeth Truss: That is a reactive approach, essentially. Do you have a proactive approach that says, “What the Department for Education is doing here is having a negative impact on youth offending. Therefore, we are going to say to the Secretary of State for Education that we want you to change this policy in this way and this would be the benefit.”? If there was a cost benefit, how would you share it between the Departments?

Helen Edwards: By and large, things that the Department for Education does tend to save us money because the more it engages, educates and ensures that troubled families are dealt with across Government, the 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. Some of the health inputs—for example, prioritising services to offenders in a way that, arguably, has not been done before—should help us with the rehabilitation revolution. In the same way as with early access to the Work Programme with DWP, there is a cost for them, but it delivers a benefit to us.

Because we have a reasonably good analysis of what review proposals were designed to limit the demand when sentencing changes are proposed, and we do drives our cost, but also the benefits we can get from it. Because the more it engages, educates and ensures that troubled families are dealt with across Government, the 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. Some of the health inputs—for example, prioritising services to offenders in a way that, arguably, has not been done before—should help us with the rehabilitation revolution. In the same way as with early access to the Work Programme with DWP, there is a cost for them, but it delivers a benefit to us. It is sentencing policy that drives the costs on our system to a large extent. We have lots of negotiations when sentencing changes are proposed, and we do model and then negotiate those. Some of our spending review proposals were designed to limit the demand on our system through changes to that area of policy. Because the more it engages, educates and ensures that troubled families are dealt with across Government, the 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. Some of the health inputs—for example, prioritising services to offenders in a way that, arguably, has not been done before—should help us with the rehabilitation revolution. In the same way as with early access to the Work Programme with DWP, there is a cost for them, but it delivers a benefit to us.

Q180 Chair: You have one cross-departmental Minister. I do not want to get into the no doubt significant merits of the Minister concerned, but rather the institutional arrangement and whether that contributes. We observed the empty desks and empty room because we were not there on the day that he is in the Department. Does that mechanism add anything to the process by which you would normally work together with two Ministers sitting around a table with officials looking at matters that are of joint interest to two Departments?

Sir Suma Chakrabarti: I am not going to comment on the particular Minister, but just on the issue of joint Ministers. I suppose I have form in this area. I was Private Secretary to Lynda Chalker when she was ODA Minister and also Minister for Africa in the Foreign Office, so I did run a private office that managed that relationship. I am also, obviously, working with Nick Herbert very closely. Things that make it work, when it works well, are, first of all, a recognition that you have a remit from the relevant Secretaries of State to roam across the agenda. The second is that you have time to challenge established ways of doing things, because one of the things we are going to have to do join up bits of the justice system, let us say, is to challenge—and Jack Straw would have said this, I am sure—very strong institutions, which are very proud of what they do and have done, and their history. They do not necessarily want to engage in quite the way we might need to, to join them up. You have to have time to do that and time to get out and talk to people in the front line and to citizens about the system as well. Those are the fundamental things, in addition to being well supported and so on.

In the case of the CJS, it makes sense to have a joint Minister as long as you have all those conditions in place. Nick Herbert and I have talked about this. The fair thing to say is that, over the last six months, this has begun to work. For the first year, because he was so tied up with the Police Reform and Social Responsibility Bill and so on, it was very difficult for him to give time to the CJS, but it is because of him...
that we have been able to challenge some of the things relating to the use of technology in the CJS. He has pushed very hard to have electronic case files. This is not rocket science and the idea has been around for a while, but it did require a Minister with clout to go in and say to us, to the Courts Service, to the CPS and to the police, “For heaven’s sake, you should be able, in this day and age, to have a case file that passes electronically between you.” That is what we will have from April, all bar three police authorities. That is amazing progress in six months, but it has required him to have the time to do that.

Q181 Ben Gummer: There are a lot of arm’s-length bodies. In your briefing notes—MoJ 01, evidence to this Committee of September 2011—you said: “4.6 ‘The Public Bodies Bill seeks to abolish a number of ALBs,’”—and so on and so forth—“This includes the Youth Justice Board.” Clearly, events have changed since then. What is the financial cost to the Department of the YJB remaining a non-departmental public body?

Sir Suma Chakrabarti: It does not really change.

Helen Edwards: It appears relatively small. If we had not had a YJB, we would have not run a board with board members. We would not have needed some of the Government’s arrangements that the Youth Justice Board has because—

Q182 Chair: You were going to have an advisory board, were you not?

Helen Edwards: We were going to have an advisory board, so we were weighing up the cost, but it was fairly marginal either way, to be honest. The real savings that we are trying to take forward with the Youth Justice Board are through things like shared services. Like any other organisation, we do not want to waste money on duplicating back-office functions. We want to make sure that the money we do have goes straight into services.

Q183 Ben Gummer: I am sorry to interrupt you, but in your evidence of September 2011 you said that this “will allow their functions to be undertaken more efficiently within the Department”, but you now say the difference is marginal. One or other of those statements is—

Helen Edwards: If I can finish, it is because we are pursuing the shared services agenda anyway. Whether or not they remain as an NDPB or come into the Department, they will be part of our shared services arrangement for back-office costs, so we make those savings either way.

Q184 Ben Gummer: Okay; that is an entirely fair point. Now I turn to the Legal Services Commission. Some of us visited the Legal Services Commission at the end of last year. I cannot speak for the rest of the Committee, but, if I may say so, Sir Alan, I found the non-executive board members to be lacking in any sense of their fiduciary duties to the taxpayer. We were presented, with some excitement, with the new IT arrangements for case management, which should have been standard practice 10 years ago, and a completely muddled approach to collection of assets.

We came away pretty astounded by it. It is very concerning, I think, that the date at which it is going to be absorbed into the MoJ has been extended. Could you explain, please, how we are going to get a real grip on the LSC between now and then?

Sir Suma Chakrabarti: I will go first and Helen may want to add something. First on the commissioners, we now have a set of commissioners who are more focused on the fiduciary and operational risks than we had before. There is a long history as to what went wrong, but something clearly did go seriously wrong with the LSC that led to their accounts being qualified in 2008–09. We then changed the management, which was the only power we had, as this was an NDPB. Since then, for the last not quite two years, there has been a serious programme of change management taking place, which has involved us seconding people into the LSC to try and improve their operations. In terms of the latest score card I have seen, things are going in the right direction, which I reviewed yesterday. Against their key performance indicators they are doing reasonably well now. Their error rates, which we talk about in terms of the accounts, have come down by over a third in one year. The CAG has commended their work on that, so it is going in the right direction.

Is it in as good a state and as effective as we want it to be? No. The chief executive would say that, not just me. The last chief executive said that it is going to take a couple more years at least to get it into the sort of shape we want it to be in. Part of that will be helped by coming into the Department. I think, personally—and this has cross-party consensus—it was set up on the wrong premise as an NDPB, leaving it far too distant from the Department and the skills and help the Department could have provided. Becoming an agency will help us provide greater support. In effect, we are already running it pretty much like a shadow agency. We are much more intrusive than we ever used to be. Ann is very strongly involved in the financial management side and Helen, obviously, through the policy lead, but she also chairs a transition board bringing them in.

Q185 Chair: Wait a moment. I thought they had shed policy responsibility already.

Sir Suma Chakrabarti: They have, and Helen takes the lead on that. On the transition board, Helen leads that now, which is the board for bringing them into the agency. We have recently selected a new chief executive as well, who has very strong change management skills. They have a very strong finance director now as well, so I am more optimistic than I would have been a year ago about where the LSC is. But it is not the stellar organisation it needs to be.

Q186 Ben Gummer: The difference between our visit to the main Department and to the LSC was very significant, so, even if progress has been made, I would suggest a lot more needs to happen. On the issue of skills, again, in your briefing paper of last year, you said: “6.3 The transition of the LSC will allow the Agency to focus on developing skills and expertise in the areas it has responsibility for (commissioning and administering legal aid services).” On the
Q187 Ben Gummer: I have one final question on ALBs, on NOMS. Again, this is familiar territory. Do you feel that the financial management within NOMS is, to some extent, driving the decisions being made about the structure for PbR contracts or is it flexible enough to look at really innovative ways of delivering PbR contracts much along the lines that Ms Truss was referring to earlier?

Sir Suma Chakrabarti: NOMS do not do this on their own, so it has been a cross-departmental team. Procurement people under Ann and the policy people under Helen have been heavily involved in designing those contracts. It is not a NOMS-only show here at all. Again, I go back to what I said to Ms Truss. We have to get those skills more broadly across the Ministry, but, in terms of the PbR contracts, there has certainly been a cross-departmental effort so far.

Q188 Ben Gummer: I have a few questions on staffing and talking about skills again. Paragraph 19 on page 9 of the NAO report says that you achieved very considerable improvements in your financial management within the Ministry itself and achieved these benefits “while reducing the number of finance staff by a quarter”. Is that a ratio that could be rolled out across the Department?

Sir Suma Chakrabarti: That is better for less; there you are. That is what is going on elsewhere. If you look at the policy side and the corporate side, we are delivering very good outcomes. I have the score cards all here in front of me, which show we are achieving as good outcomes, if not better in some areas, with fewer staff. The key thing on the finance side is how many qualified staff we have. Again, this was an area where 10 years ago you would have found loads of people who were unqualified working in the finance area. That is not the case any more. We know the numbers of people who are qualified. Even if we were reducing, the question is, who are left able to do the job better? I think they are.
of others on the subsidiary boards. Most of them are private sector people and they are heavily engaged in a lot of this change management stuff, advising us. One of them sits on our workforce committee and he has advised us very strongly on this change process, bringing in examples from the private sector.

**Antonia Romeo:** One of the key lessons from the private sector is always focusing on the outcomes and then the capabilities you need to deliver that, which is on your point earlier about ensuring that we are building the capability now to get ourselves in the right space for the ambitious programme and performance we have to continue to take forward.

**Q190 Ben Gummer:** That was certainly apparent talking anecdotally to people in the Department. You can see the voluntary departures programme is working well, especially in the Courts Service. Can I ask a very quick question on sickness and the figures you provided? Let us take it that the generally accepted figure for sickness in the private sector averages at around four days per annum. If you look at your figures for headquarters, for the lowest grade staff it is running at just under 13 days per annum, an increase over the last three years from eight days. In NOMS, where you would have thought it might go up, given the kind of work that some of the low-grade staff are doing, it is at 11 days per annum, just over, and has gone down slightly. Her Majesty’s Courts Service is at nine, and Land Registry, for some reason, is at 11 days per annum. How can this possibly be accounted for?

**Antonia Romeo:** I will start by saying—the point you have made already—that of course our figures are skewed in some areas, for example, in NOMS. I take your point that NOMS is not providing the entirety of the skew, but, of course, there is a huge number of staff in there, so it would drive up the average, because of things like the impact of assaults and accidents and so on at work. We know this is an area we have to focus on. On average, we are at 9.1 days, and we are third. We know there are only two Departments below us in Whitehall and we are very much focusing on taking this forward in with business groups leading this.

**Sir Suma Chakrabarti:** The key thing is to compare us with the other four Departments that have big delivery arms and private sector entities that have big delivery arms at the front line where jobs are quite risky in comparison.

**Q191 Chair:** But NOMS is not the worst of your areas for sickness, and NOMS is the area where you are quite likely to be assaulted at work.

**Sir Suma Chakrabarti:** That is right. NOMS has improved a lot. NOMS’s numbers were way up in the high teens and have come down quite a lot through very targeted work. We have further to go on this. The DWP have made major strides into the area and they are the ones we should be trying to emulate much more.

**Q192 Ben Gummer:** It is double the private sector rate for this desk-based work.
Helen Edwards: It is probably too early to say because part of the idea of the pilots is that we are testing the method of contracting. We are very conscious of the position of voluntary and community organisations in these arrangements. In a previous life I was at a voluntary and community organisation that was trying to work with the private sector and with bodies like further education colleges, where we often felt we were getting the crumbs from the table. So we are very conscious of the issue. We have a voluntary and community board, which is advising us on how this is going. If we can get this right, it is very much about playing to strengths because private sector and voluntary community organisations bring different things to this. In an area, for example, like Community Payback, the private sector is often very well placed to deal with the logistics and organisational administrative parts of that, but other organisations can be much more involved in the face-to-face delivery. All I can say at this point is that we are very conscious of it. We want to get it right. We are looking at the consortia, and there are some very interesting consortia. In the context of one of our prisons, they have seconded a member of their staff into one of the voluntary organisations that is delivering part of it to make sure that they are working across. In the Peterborough pilot, of course it is a voluntary organisation—the St Giles Trust—that is contracting. But the problem we are struggling with all the time, as I am sure you appreciate, is that contracting with lots and lots of bodies is more difficult. If we do move to a different form of contracting, in a different field, in victim services, for example, yesterday in the consultation we trailed the idea of those services being commissioned locally so that you can get a different feel. Most of the commissioning will be with voluntary bodies.

Q198 Nick de Bois: It is interesting that you pick up on the work of the St Giles Trust, which is very effective from what I have seen in dealing with the reoffending issue and bringing down reoffending, which we all agree is critical. However, I get a sense that there are barriers developing. For example, some of the most effective people who can help reform are prisons. When they are on licence, larger organisations, who may be prime contractors, have barriers to utilising what is turning out to be a very effective resource. We are all aware that using former offenders is an issue, but, if the evidence from the pilots is suggesting that this is successful, can we not break down these barriers so that we are not having a culture of risk drive and hold back what could be a very effective outcome? Can we do that? Can we break down these barriers, or is it that a lot of Departments are not doing it?

Helen Edwards: No. We would certainly want to break down those barriers. Our advice would always be that you carry out a sensible risk assessment. There are certain jobs that you might not put an ex-offender into, but, actually, there are probably very few. Having blanket bans on people with criminal records is not at all a policy that we would endorse. We need to look at what the evidence of that is, because, as you say, the St Giles Trust experience is that using ex-offenders can be very powerful, particularly in a mentoring support role. If there are barriers, those are precisely the things we want to identify and try and do something about.

Q199 Nick de Bois: I am pleased to hear it, but how will we monitor it? Do you think there will be an effect from the pilots where we will be able to take this on robustly? My fear is that, if you combine that with a bidding system for work that will eventually come in, some of the talent that operates on a smaller, scale such as organisations like the St Giles Trust, will have too many barriers to expand the work that they do. Will you look for some positive action from the pilots to see that we overcome this, if the evidence backs up what we think it is already?

Helen Edwards: I think you are right. We must make sure we extract as much learning from the pilots as we can. The formal evaluation is very much focused on looking at impact on reoffending, but there is a qualitative aspect to this as well. The points you make are very powerful ones. We should take that away and make sure that we are doing the evaluation in a way that will enable us to pick up the number of these pilots is suggesting that this is successful, can we not break down these barriers so that we are not having a culture of risk drive and hold back what could be a very effective outcome? Can we do that? Can we break down these barriers, or is it that a lot of Departments are not doing it?

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Q200 Jeremy Corbyn: The problem your Department has—I suppose like most aspects of public service—is that you are victims of whatever is happening elsewhere. You have no control over how many people are going to be in court or put in prison and yet you have to accommodate everybody at the end of it. What sort of real-time modelling do you have of cases going through court, the likelihood of many people are going to be in court or put in prison and yet you have to accommodate everybody at the end of it. What sort of real-time modelling do you have of cases going through court, the likelihood of
**Sir Suma Chakrabarti:** Again, Ann and Helen can talk on this in detail, but we do have modelling that gives us very quick answers now, which we did not have before. After the riots last year, for example, our team—our analysts—were asked to model this. “If this happened again, could we cope? How would we cope? What would happen to the system to adjust and deal with those sorts of numbers?” We were able to provide answers to Ministers very quickly on that compared with before.

**Ann Beasley:** We have a much more integrated modelling system now so that we can look at the impact of what is going on in the courts and what it is likely to do in terms of prisoners held on remand or sentenced and so on. Over the summer riots we had very close links with the police. We were getting their understanding of who they expected to arrest and were then able to model how we thought that would feed through our system in order to know how many prison places we thought we would need to cope with it. That was a very good demonstration of the system working very well in fast time.

**Q201 Jeremy Corbyn:** We will take it forward a bit. The prison estate is almost near capacity. If there was another serious outbreak like last August and the traditional system ended up putting 2,000 or 3,000 people into custody, it would take us to 100% or 101% capacity. What do you do then and how much does all that cost?

**Ann Beasley:** We model the prison population regularly. We publish it annually through the Office for National Statistics, but we regularly monitor the trends in the prison population and forecast going ahead. At the moment, because we have new capacity coming on in April—we probably have another 2,500 places coming on—we are able to model the difference between what we expect the population to be and capacity with sufficient lead time for us to be able to take action to deal with it. Obviously, in extreme cases that is building new house blocks on prisons. There are other things we can do to bring in capacity in a slightly faster time than that. It is reasonably current in terms of what is happening. It does allow us to plan. For next year, for example, we know what we expect to happen to the prison population.

**Q202 Jeremy Corbyn:** I have another point. On legal aid, if the changes go through as envisaged by the Government, there is clearly going to be a very different geography of access to legal aid. That probably will result in differing costs in court time, for example, with maybe fewer cases coming into court, but more people self-representing, which takes longer and increases costs. What sort of modelling have you done of the legal aid changes and the effect on your whole Department?

**Helen Edwards:** In our impact assessment we tried to set out what we thought the impact might be. On litigants in person, the evidence is quite mixed. It is hard to evaluate. Active litigants do take longer, but it seems to split in that you can then get inactive litigants and that offsets. Overall, the evaluation we have done, although it does seem a bit counter-intuitive, shows that the impact is not necessarily as great as people might have predicted. Of course our overall approach, particularly with some of the civil and family cases, is to try and resolve more cases out of court because we do not necessarily think that resolving disputes in a court setting is always the right thing to do. Our overall strategy is to deal with more cases through dispute resolution and mediation where we can and then, of course, to allow the courts to focus on those cases that must come before them.

**Q203 Jeremy Corbyn:** With the cuts that are being made now and planned, do you envisage that times taken for justice will, for the individual, take longer?

**Helen Edwards:** Not necessarily. It will depend on the case. Our modelling overall has not shown that, but it is something we will have to keep a close eye on.

**Q204 Jeremy Corbyn:** What predictions are you working on for reoffending rates?

**Helen Edwards:** Our aim is to bring down reoffending rates through the work we are doing, the rehabilitation revolution and payment by results. Reoffending rates have been coming down, more for young people than for adults. We have not modelled any savings into this spending review period because we think this is a longer-term endeavour, but we would hope that, if we can bring down reoffending rates, then in the next spending review we will begin to see some of that translate into savings, depending on what happens to overall demand on the system.

**Q205 Jeremy Corbyn:** Quickly on this, how much do you keep in touch with what is happening in young offender institutions and the varying effects they have in success or otherwise on reoffending rates?

**Helen Edwards:** We do, and we have the figures. We have different institutions, as you know, different settings on the youth side. We have the young offender institutions, secure children’s homes and secure training centres. It is difficult to compare across because they are different and they cater for different populations of young people, but, if you look at the raw figures, the reoffending rates for secure children’s homes are in the region of 79%, for secure training centres 69%, and for YOIs 70%. But, as I say, I would use those figures with caution because they are different ages and different populations of young people.

**Q206 Chair:** They are all dreadful really, are they not?

**Helen Edwards:** They are not good, no, but, overall, if you look at the cohort reoffending rates, if you look at the number of young offenders, they have been fairly stable or coming down. If you look at the volume of offences committed by young people, it has come down something like 17% over the last few years.

**Q207 Jeremy Corbyn:** But if two thirds are reoffending, that is not a good outcome.

**Helen Edwards:** It is high.
Sir Suma Chakrabarti: The key area of success in the youth justice system has been in reducing the number of first-time entrants into the system, which again goes back to the demand-led point. The more we can get to these people before they enter the justice system, the better. It is better for costs, better for them and better for society. That has been achieved through very strong prevention work done at a local level between a number of different players working together with the youth offending teams. That has been the great success.

Helen Edwards: Yes. The 55% reduction since 2007–08 is striking. You could say that fewer young people are coming into the system, so hopefully prevention is working. A lot are dealt with on community sentences and there are quite a lot of intensive programmes for young people, including some reparation, which is built into the youth system, and the number going into youth custody has been coming down as well. Those who do get through into youth custody really are the young people for whom other things have failed rather badly.

Q208 Jeremy Corbyn: Agreed, but there is still a very disturbing figure that, of those that get through into the youth custody system, two thirds, at least, end up reoffending. Those that have been maybe unlucky, or whatever, and brought into the criminal justice system are then likely to end up in a career of crime, rather than a solution. Surely that must be of concern, and also massive cost, to the Department.

Helen Edwards: It is of huge concern. As I say, overall, we have seen fewer numbers coming in and fewer young people going through to custody, but we want more focus on resettlement, working with local authorities, because they have a statutory responsibility to resettle young people. Through the work we are doing on local incentives and the Pathfinder schemes in the youth system, we want to major on that. If we are serious about reducing reoffending, then not doing something about those young people coming out of custody is a missed opportunity to turn their lives around.

Q209 Jeremy Corbyn: How have you been able to build on research of Justice Departments in other countries on their real-time modelling of what goes on and how they predict future behaviour? Clearly, at the heart of the whole justice system is public behaviour. Helen Edwards: It is. We try and draw from international experience. For example, some of the offending behaviour programmes that we now use with offenders, both in the community and in prison, were drawn in from Canada originally. Those programmes are providing some of the best evidence about what works in terms of reducing reoffending. We look to other systems. Part of the difficulty we have is that other systems are very different from ours; sometimes adapting the lessons is quite hard. We are very keen to do that and we have reasonably strong links with European partners and, as I say, with countries like New Zealand and Canada.

Sir Suma Chakrabarti: During the legal aid reform process as well we did quite an extensive search of what other countries were doing in this area with common law.

Helen Edwards: We did.

Q210 Yasmin Qureshi: Sir Suma, you mentioned electronic files. I know it is a fairly obscure kind of question, and the only reason I ask it—and the Chairman may kindly indulge me on this—is that 10 years ago, when I used to work in the Crown Prosecution Service, we heard about these electronic case files coming through. I am not for one minute saying they are good or bad things, but I wanted to find out how far the Ministry and the CPS are with this at the moment, or is it very far away?

Sir Suma Chakrabarti: This is, I think, a very good example of cross-boundary co-operation that really has kicked off over the last year. The Courts and Tribunals Service and the CPS have led the way. It has taken far too long to get to this point. Glacial progress has been made.

Q211 Chair: A lot of money was lost on the way earlier on as well.

Sir Suma Chakrabarti: Indeed. What has happened is that political will and leadership changes in the great organisations—and, of course, the fact we all have to save money concentrates minds—have pushed this agenda very strongly. The issues have been not so much within Government, but more about how to get the legal sector—let us say the defence community in particular—to come along with this. Those have been the sorts of issue. There is an interesting issue coming up, I think, which will link back to the LSC point, about to what extent you can use LSC contracts in future to drive the mandatory use of secure e-mail, for example. Again, I think that would save costs. That is one we are exploring now for future contracts.

Q212 Ben Gummer: I have a final question on collecting the evidence base internationally, and especially in Europe. Evidence to this Committee and elsewhere has suggested that, because of the difficulty of establishing parity across statistical bases, it was very difficult to draw firm conclusions from European studies. I understand that there is a European project to harmonise measurement of criminality/reoffending/imprisonment. Is that the case and is the Department contributing to it, driving it and trying to—

Helen Edwards: I personally do not know about it, but I am sure we will be contributing to it. Rebecca Endean is our head of analysis.

Q213 Chair: Perhaps you can let us know.

Sir Suma Chakrabarti: We will drop you a note. I am intrigued by it myself, so it sounds like something that we should be pursuing.

Chair: Thank you very much, Sir Suma, Ms Edwards, Ms Romeo and Ms Beasley. We are very grateful to you this morning. We will continue looking closely at the Department. We intend to pay a similar visit to NOMS to the one we did to the Department itself. Thank you very much.
Tuesday 7 February 2012

Members present:

Sir Alan Beith (Chair)
Steve Brine
Jeremy Corbyn
Nick de Bois
Chris Evans
Mr Elfyn Llwyd
Seema Malhotra
Yasmin Qureshi
Elizabeth Truss
Karl Turner

Examination of Witnesses

Witnesses: 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, gave evidence.

Q214 Chair: Mr Bruin from Liberata, Mr Leech from Sodexo Justice Services, and Mr Morris from G4S Care and Justice Services—we are in for an alphabet soup of names this morning—we are very glad to have you with us and are grateful for your help. As you know, we are looking at the Ministry of Justice as an organisation and a Government Department—how it functions, how effective it is, how carefully and efficiently it spends its money and how it organises things such as the contracting process, which is assuming an increasingly large part of its responsibilities. We are particularly glad to hear the experience of organisations that have contracted to the Department and have some inside experience of how it works. How do you think the Ministry of Justice has handled its outsourcing? How does it compare with other Departments that you may have dealt with? Richard Morris: I am happy to offer a view on that. From our point of view, there has been significant progress by the Ministry of Justice, probably over the last three to four years, in terms of its professionalism on tendering and procurement. We saw that in 2008, when a unit within the National Offender Management Service was disbanded and the Ministry of Justice procurement directorate was given responsibility for a much greater proportion of the tendering and procurement for offender services. From our point of view, it is a lot more professional, with more structure, more clarity and forward visibility in its procurement and tendering opportunities.

Hearing said that, we still believe that there is significant opportunity to improve. That comes in a number of areas. On some projects and some procurements, the pace of progress is painfully slow. From our point of view, it means that we have to keep guessing when tenders are actually going to start. It seems that a lot of time is taken to get to a point where they can agree a specification and then move forward on that specification. That is one observation; it is something about pace in the process. Of course, the slower the tender or procurement process, the more missed opportunity there is in putting in place a new service that could give better value for money for the taxpayer.

The other observation, and then I will hand over to the others, is that at times there is a tendency to over-engineer and over-complicate the approach to procurement. A great real-life example that we are working on now is the use of what is called the competitive dialogue procedure for a £4 million-a-year contract to provide juvenile escorting. That is the secure escorting of young people. That £4 million a year is relatively small in the grand scheme of things. I think the Ministry of Justice will end up procuring something that is broadly similar to what it has in place now, and yet it is embarking on a process that will 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.

Q215 Chair: What is the nature of this process? Richard Morris: Competitive dialogue is based on the premise that, at the outset of procurement, the Ministry of Justice does not have a clear view of what it wants to buy; it therefore makes sense to go through an iterative process where, incrementally, it builds up a view of what it wants to buy, with input from prospective bidders along the way. In practical terms, it means a series of regular meetings and at times quite resource-intensive activity for bidders where you have to assemble a team, and you have to get that team moving down to London on a regular basis to have conversations about all sorts of different things. My view is that competitive dialogue has a place, although if you are buying aircraft carriers and the like it does not particularly have a place.

Q216 Chair: It did not work very well for them either. Richard Morris: Maybe not; maybe it would have done. Using it for something that is relatively straightforward, of quite small value and of low risk is the wrong way to go. We welcome what seems to be the trend in the Ministry of Justice to move away from competitive dialogue towards something called negotiated procedure, which, in theory, should allow a more streamlined approach to procurement and tendering.

Q217 Chair: Does anyone wish to add to that? Tony Leech: I would agree with Richard. Having first begun a contractual and partnership relationship with
MoJ back in 2003, there has been a huge advancement in the process, given the length and complexity of what was a very laborious process four or five years ago. One area where it was extremely costly and took a huge amount of time was that of contract negotiation. Contracts, especially for PFI deals, were extremely complex. You would expect to see a time frame of maybe three, four or five months after a preferred bidder announcement before you were ready to agree a contract that you could move forward on. In some ways that has improved the process dramatically, but in others it is very much now a matter of saying, “Here is the contract.” There is very little discussion these days on the contract, and some of that has been the result of good work that has taken place through Partnerships UK and the SOPC programme, which has been established. Now, most people pretty much know where they stand with the contract form. For me, that would be one of the improvements. Like Richard, however, I believe that for large, multiple-bid, complex contracts there are still better ways than currently exist to streamline that process; for most of us, the process around that bidding time is still approximately 12 months.

Q219 Elizabeth Truss: As external observers of the Ministry of Justice, if you had to recommend changes to save costs and still achieve the same output, what would you do?

Charlie Bruin: Liberata is primarily involved in back-office support services; for instance, we pay invoices on behalf of the Department and we run its payroll, so we are very much into ancillary and support services for the Department. There is no great science in what we do as a private sector organisation in terms of saving costs. We would make adequate investments in the underlying systems and ensure that those systems are connected to each other so that there is no opportunity for the manually intensive and expensive processes inside an organisation to perpetuate or to be a drag on costs of the organisation.

By its nature, the MoJ is a large and sprawling organisation. It is highly diverse, managing prisons and disparate courts and tribunals estates, so there is a lot of opportunity among a diverse and sprawling organisation to have lots of manual processes at its periphery. As a private sector organisation, we always recommend and advocate investment in core systems, and ensuring consistency and compliance among the officers in those organisations is one of the key factors that enable them to save money. One area where the MoJ has made progress and has shown a fairly mature attitude to compliance is in its willingness to accept non-compliance charges from suppliers that are running processes when its own offices and staff do not comply with processes that have been agreed centrally. As a result, it demonstrates where the core of some of the costs can occur through non-compliance with the processes that have been laid out.

Q220 Elizabeth Truss: May I ask the same question of the other two members of the panel? Where do you think the great escape is within the Department to improve efficiency and lower costs?

Tony Leech: One is obviously the outsourcing of services. You can use the analogy of the different utility organisations digging up the same patch of road for things like gas, water or electricity. You have that sprawling estate, and, if you start looking at regional issues, there is an ability to outsource a range of services that link together rather than picking them one at a time; but you might go back in three years and find that a range of other services could have been linked as part of an outsourcing process.

Q221 Elizabeth Truss: Could you provide us with a list of those services because that would be very useful?

Tony Leech: From our perspective, we are dealing with a very large prison estate, and you are talking about a probation and parole estate. As we move towards a structure of payment by results, where you can work in a region and you have a large group of people where the interface is solely with your organisation, there will be much greater clarity about the risk that you are willing to accept because you
have the individual going from prison to the community.

Q222 Elizabeth Truss: What is stopping that happening within the MoJ at the moment?

Tony Leech: It is its size, scope and pace. We have seen improvements in both the number of senior people and the calibre of those people within MoJ, but we are now embarking on a very large path in terms of outsourcing, and we are market-testing it within the prison estate. It is about learning from that and moving quickly so that we can move from one process to another, understand what has worked well and change what has not, and continue with the process. With that, you will see a greater speed in outsourcing and market testing, which will lead to greater savings.

Q223 Elizabeth Truss: Mr Morris, where do you see the big opportunities?

Richard Morris: The biggest opportunity is prison market testing. Savings have been delivered through competition with the last round of prisons; we have saved the taxpayer £140 million to run HMP Birmingham to July. The Ministry of Justice, having realised that, has clearly started to press its foot on the accelerator with the launch of a second phase of that competition programme. The key word is competition. It is not necessarily about outsourcing or the public or private sectors; it is about introducing competition in the delivery of services, including prisons, but also the transformation of how probation services are delivered is a big opportunity for the Ministry of Justice, in terms of both effectiveness and efficiency. No doubt, we will hear later this month what the proposals are in that regard. Our strong encouragement is that the Ministry chooses to find a way of introducing effective and meaningful competition into the delivery of probation services. That is an opportunity. As Charlie mentioned, looking at back and middle-office activities, particularly in areas such as the HMCTS, and seeing how they can be reconfigured and redesigned to be delivered in a more simple and streamlined way, is another big opportunity.

Q224 Elizabeth Truss: Mr Bruin, at our last session we heard that £4 million had been spent on additional accounting services, partly because the Department was not achieving its year-end target. Was that with your company?

Charlie Bruin: Yes, it was. We provide assistance to the Department in the production of its statutory accounts; that is correct. As for the figure that you mentioned, the contract that we have in place with the Department is flexible. We provide assistance on a month-on-month basis, so that is not the total amount of money spent to date but the amount of money that might be spent throughout the contract run to July; the Department has the flexibility to decrease or increase that spend as we go along.

As for the finance processes that have led to statutory accounts being late two years in a row, these are some of the things that we are doing to assist with the process this year. As part of the assistance that we are providing to Ann Beasley and her team, we are engaged in three key activities. The first is micromanagement of the timetable to get to the point where they can lay their accounts on time. We are providing project management support on a working-day basis, because every working day between now and the point when those accounts need to be laid is important. The second is dealing with the technical accounting issues as they arise. There are a number of them, some of which have been discussed before the Committee, including aspects on fixed asset accounting and so forth. The third is ensuring that there is enough time to liaise with the National Audit Office, which obviously has to audit the work that has been done as part of the statutory accounting process. We were retained relatively recently, in late December, to provide assistance with this process, and that is ongoing.

Q225 Elizabeth Truss: From what you are saying, it sounds as if the capacity to deal with these matters is not necessarily being put in place in the Department. If we are talking about a figure of £4 million, that would pay for quite a lot of accountants to do that work in a timely fashion rather than the Department incurring additional expenditure through the use of contractors. Is there a failure at the Department’s management level to get a grip of the problem early enough, because this is the second year in a row?

Charlie Bruin: One thing that we have been able to do is bring in a number of well-qualified resources at short notice to augment the existing capacity that resides within the Department.

Q226 Elizabeth Truss: Are you saying that it does not have enough qualified people?

Charlie Bruin: The Department is making an ongoing effort to hire full-time staff and qualified accountants in the various accounting posts, and that process is ongoing. In terms of its existing capacity, we are providing additional qualified capacity at short notice in order to help it with this year’s process.

Q227 Elizabeth Truss: I have a question about work with other Departments. Mr Leech, you mentioned that efficiencies could be gained essentially by feeding lots on a regional basis across prisons and probation, but do you see scope in the work that your company resides within the Department.
scope of services being required at different times and different levels of service, so it can add a level of complexity. From a timing perspective, the most important thing is to ensure that, as each of these things takes place, there are good learnings from what has occurred. New innovations have happened; that is essential. For instance, our organisation is disparate; we have 440,000-odd people across the globe, and making sure that you have ways to share that good practice and get that information out is the key. Once you have done that, you can start looking at efficiencies that may go across to partners.

Q228 Elizabeth Truss: In your dealings with the various Departments, how would you rate them for effectiveness and efficiency without losing any of your contracts?

Tony Leech: My main dealings are with the MoJ, but my fellow managing directors work across other Government Departments. Their discussions would be similar to mine. Over the last four or five years, right across our business we are seeing very good improvements in the way that outsourcing and contract management has been going, and I think my colleagues would share that view.

Chair: Because we have three witnesses with plenty to tell us and we have a certain amount of ground to cover in a limited time, we shall have to cut back hard on supplementary points for the moment, although we may be able to pick them up towards the end.

Q229 Chris Evans: There seems to be a fluctuation in your experiences of working for the MoJ. Mr Bruin, your company gave as an example to the Committee your automated expense claims process, which was delivered within the four-month deadline, on budget and with annual savings of £300,000. Your company, Mr Morris, has given us your experience of the transition of HMP Birmingham from the public process, which took nearly three years. Why do you think there are such wild fluctuations in your experiences?

Richard Morris: I think that every project and every service that is procured can be quite different. The two examples that you give have some fundamental differences, in the sense that running a competition for a public sector prison for the first time had with it many complexities to do with pensions and the risk associated with industrial relations. The fact that there was a general election in the middle of the process would no doubt have had an impact on the progress of the procurement. However, there is no obvious reason. I would encourage the Ministry of Justice to have more structure in relation to determining what level of resource and what type of approach it should be undertaking, given the complexity and value of a particular service. There does not seem to be any clear link between complexity and value and the procurement approach that is taken. It seems to be a little ad hoc in that sense.

Q230 Chris Evans: Did you foresee any of these obstacles before you took on this project? It took three years, affected the morale of staff and prisoners and, from what I saw, was a grandstanding mess. How did that come about? Whose fault was it? Was it the MoJ or your company? What was the main reason why it took nearly three years to bring about that contract?

Richard Morris: It certainly was not any of the bidders. It was out of our control. The procurement is run by the Department. Let’s face it, the process was politically very sensitive. I am sure that, out of view of the bidders, there were all sorts of discussions and tensions in place to do with taking a public sector prison and putting it up for competition. Having done Birmingham, having set it up, and got it up and over the fence, if you like, through the process, in the second phase of competitions I would expect the Ministry of Justice to take much less time.

If you want to map that out, the nine prisons that are now being put through market testing were announced in July 2011; the competition is well under way and it will conclude in October 2012, with commencement in July 2011; the competition is well under way and it will conclude in October 2012, with commencement for successful bidders in early 2013. You could argue that that is still a long period of time, and it is; it perpetuates the uncertainties and anxieties that employees in Birmingham prison would have faced. However, I imagine that the Ministry of Justice will continue to improve the process as it goes through and gets more experience; bidders will also get more experienced, and we should be able to start compressing that time scale.

Q231 Chris Evans: What concerns me is that the obstacles that you mention should have been foreseen. You say that there was a general election in between, but we knew that it was coming. Why were those factors not accounted for before you went into the project? Why did it take three years, and how much did that eventually cost the taxpayer?

Richard Morris: I do not know how much it cost the Department, but I know how much it cost G4S; it was a considerable amount of money because you have to have a big team running for a long period. We want to work with the Ministry of Justice to see how we can compress and shorten time scales further.

Q232 Chris Evans: This is a question that you may not want to answer. Did you at any point regret becoming involved?

Richard Morris: In the process for Birmingham specifically?

Q233 Chris Evans: Yes. You were halfway through, it was delayed for three years, and everything seemed to be going wrong. Did you ever regret getting involved?

Richard Morris: No, we did not. As a bidder, we always had the option to pull out if we thought that it was not worth pursuing any longer. Indeed, with other Government projects we have taken that decision. With this one, however, we could see there was a level of determination to see the process through, both by the Labour Administration and whatever Administration followed. We therefore believed that it was worth continuing with it.

Q234 Chris Evans: Mr Bruin, you had a far better experience. Would you talk us through why the
process of automating the expenses system worked far better? I understand that it was a smaller project.
Richard Morris: It is a good example where you are in control of a number of the variables that enable the process to happen more quickly and to realise the benefits sooner.
In respect of the expense management claims, it was a service that we already provided to the Department via a manual expense claim service where we would charge the Department for a manual claim circa £4 a claim. As a result of implementing the electronic expense claim management service, we reduced that from £4 to £1 a claim. We were able to do that because we were leveraging an existing system that was already in place; it was the enterprise resource planning software that we used in Liberata to maintain the finance systems. We were able to do it via a change control to the contract as opposed to a new competition. It was a combination of all those things. First, the process and services were already provided by Liberata; secondly, we could essentially pass those savings back to the Department within Liberata’s contract; and, thirdly, there was no need for an external competition at that point, which enabled the lead time to realise those benefits as being relatively short.

Q235 Chris Evans: This is a question for all three of you, and then I shall leave it there as time is ticking on. Do you think that these wild fluctuations, with good and bad experiences, would discourage the private sector from becoming more involved with MoJ projects?
Richard Morris: As I said at the beginning, the Ministry of Justice has come a long way in the last three years, and we see it now at the very forefront. If we surveyed the whole of Government and asked which Departments we found it relatively easy to do business with and to bid for contracts with, the Ministry of Justice would be right up there.
Tony Leech: There will be no hesitation from us in terms of continuing with that partnership and relationship and looking at new business.
Charlie Bruin: There are huge opportunities within the estate that we operate across the Courts and Tribunals Service to make further efficiency savings through electronification, the removal of paper and the consistency of processes across that estate. We have been in the business for 13 years, and we find every month interesting; we like MoJ, we like working with MoJ, and we find it a progressive Department.

Q236 Nick de Bois: I would like to touch on how your companies work with SMEs and voluntary organisations, which is one of the goals of the MoJ. Are you contractually bound to place work with SMEs or voluntary organisations? If so, and if you are prepared to say, how much of your business with those sectors is contracted with the MoJ, and do you have a view as to how that might look in the future?
Richard Morris: In answer to the question of whether we are contractually bound, I cannot think of any contractual obligations saying that we must source from SMEs or 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. For example, if we want to bid for a prison, we know that to get it right and to be able to deliver a compelling solution we must be able to source local services—and those local services are usually provided by SMEs or voluntary organisations in the locality. 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 the capabilities of the voluntary sector and SMEs, we will struggle to compete with those who do.

Q237 Nick de Bois: At a slight tangent, when talking about rehabilitation programmes, does the governor have a say or is it defined by your contract with the MoJ? We have some very good examples of governors having made the decision to bring in local companies to work with reoffenders, who ultimately go on to employment. At the moment, would they have the flexibility to do that under the contract, or would you have to agree to it?
Richard Morris: It is not one or the other. It is both in reality. We would have a more strategic approach to building partnerships with small organisations, but governors—or directors, as we call them in our prisons—absolutely have the autonomy to go out and look at worthwhile partnerships to build with SMEs. For example, in some of our prisons, where we have developed the concept of a working prison, bringing employment and real commercial activity into the prison, the directors are responsible for going out and building relationships with the SMEs that provide that employment.

Q238 Nick de Bois: Thank you. Would you like to add anything, Mr Leech?
Tony Leech: Again, I agree. Our prison directors have the flexibility to be encouraged to purchase what they do locally, supporting local business surrounding the facilities that we manage. It is very clear, when we look at the range of opportunities out there, that the voluntary sector has enormous reach and has been strongly involved in assisting offenders. We have a partnership relationship with a very well known not-for-profit organisation that assists offenders. Even though it is not a contractual requirement, I believe that it is clearly seen as being highly beneficial by the MoJ for a whole range of reasons, including good business reasons. It is an extremely solid reason why we should be involved with those organisations. From my experience, they enhance whatever services you can provide and offer.

Q239 Nick de Bois: Organisations such as St Giles Trust.
Tony Leech: St Giles Trust, Nacro and a range of organisations.

Q240 Nick de Bois: There are two questions on that point. First, I would be interested to know what that is as a percentage of your contracts or agreements. Secondly, going back to the contractual point, you spoke of very onerous contracts from MoJ that are at
times inappropriate. Are you required to impose onerous contracts on SMEs as a result of your prime contract with the MoJ, or can you make it less burdensome on them? 

**Tony Leech:** 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. It is very clear to us that you cannot work with the voluntary sector and say, “By the way, if you’re providing 10% of the services that we are paid to deliver, somehow the expectation of you and your trustees will be that you will take on that risk.” It is very clear from the MoJ, and rightly so, that business organisations should have the capability of providing the necessary back-to-back provisions within a contract for services but that, with the voluntary sector, we should look to ways of working with our partners to ensure that we deliver the service that we are contracted to deliver. However, the prime is that we retain the risk and not the voluntary sector organisation.

**Q241 Nick de Bois:** That brings up the matter of competition between the voluntary and private sectors. We will not go into that at the moment, but I imagine that back to back is, by implication, somewhat onerous.

**Tony Leech:** It does not have to be. The service level is clear, and the requirements are passed down to that organisation. For the most part, being an organisation that provides a broad spread of services across the prison environment, the vast majority of services are directly provided. We provide the FM services and we provide the custodial services; we may also have contracts for nursing, and that may be done through the commissioning of a PCT or privately. Those are the types of services, and medical services are also part of that, but they would not be large within our prison contracts.

**Q242 Nick de Bois:** Can you put percentages on that?

**Tony Leech:** It depends on the level of the service that you are providing or the type of service. Within a prison environment, the vast majority of services are directly provided. We provide the FM services and we provide the custodial services; we may also have contracts for nursing, and that may be done through the commissioning of a PCT or privately. Those are the types of services, and medical services are also part of that, but they would not be large within our prison contracts.

**Q243 Nick de Bois:** Do you wish to add anything, Mr Bruin?

**Charlie Bruin:** I reiterate what Tony and Richard have said about the opportunity to work with SMEs. It tends to be around the locale. For instance, in Liberata’s case, our main delivery centre in Newport in south Wales will engage with a number of SMEs in that locale; 15 or 20 small suppliers will service Liberata, which is a direct flow-down of the business.

**Q244 Nick de Bois:** What is it as a percentage of your business with MoJ contracts? Will you identify how much might be with SMEs or the voluntary sector?

**Charlie Bruin:** Rather than give a figure off the top of my head, I can certainly provide something to you.

**Q245 Chair:** If any of you have any helpful figures that would be of use to us, please let us have them later.

**Charlie Bruin:** I shall give them to the Committee.

**Richard Morris:** I would make just a quick point. A useful example of where we use SMEs and VCS organisations is on work programmes; so the vast majority of our supply chain is made up of voluntary organisations and SMEs. Does that mean it is onerous for them? Through that model, we definitely help the smaller organisations to win work without having to go through burdensome and overly complex Government procurement processes. As Tony said, we are not in the business of getting into onerous contracts, but we would always seek to flow down obligations and risks to our partners.

**Nick de Bois:** I understand that.

**Q246 Yasmin Qureshi:** I wish to explore the question of payment by results. I am not sure how many of your companies have been involved in some of the pilot projects or are likely to be so in future. Basically, I want to explore with you some of the concerns expressed by various individuals and organisations in the criminal justice system, in particular the Howard League for Penal Reform, which, in evidence to this Committee, was sceptical about the benefits of payment by result. It said that “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 was concerned about two particular areas. One was that the complexity of the application procedure produced inefficiency, in that payment by result encourages a one-size-fits-all approach that prioritises those individuals that generate the highest income and disregards those who may the most problematic. Secondly, of course, it would lead to cherry-picking, in the sense that some people will be easier to work with and others will be more difficult.

If your companies are going to be involved in these things, what practical steps would you put in place to ensure that those sorts of problems do not occur, that people are being properly looked at and that difficult clients are not ignored or marginalised?

**Tony Leech:** For all of us, everything that we do is payment by results. Our contracts are based on poor outcomes, and risks to our partners.

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**Q244 Nick de Bois:** What is it as a percentage of your business with MoJ contracts? Will you identify how much might be with SMEs or the voluntary sector?
clear measure. The lower you go the harder it gets, and often the more expensive it gets. But you are right that a clear, simple model will say that, yes, if you provide this amount of effort, a certain group will more than likely have a good chance of not reoffending.

The main issue is that you are seeing a reduction in the level of reoffending after release from 12 months in prison. As you move into the more difficult cases of those that require far more assistance and far more help, yes, it becomes more expensive, and the challenge to deal with those people and work with them becomes far more complex. If you are looking at a triangle, those at the top should be relatively easy against the others who will be more difficult; it would be an inverse, so you have a group across the top.

Q247 Yasmin Qureshi: My question was what are you going to do in practice to ensure that that does not happen? It is very easy to say that, if 100 people go through the system, you can manage to deal with about 30 of them as they will not reoffend, but they are probably the easier ones in the first place, and you will probably be able to deal with them. What about the 20 or 30 that are the complicated cases? What will you do to ensure that those people are dealt with properly and that they are not forgotten? So far, you have said that your aims are laudable. What are you going to be doing to ensure that they get some help?

Tony Leech: There are a number of innovative ways. It almost goes back to the previous question about working with a number of organisations and voluntary sector bodies in partnership on PbR to reduce reoffending. You have a target, which should be substantial, to show that you are reducing the reoffending level for those who are released from the facility for which you have responsibility.

With organisations like ours, and I am sure with Richard’s, it is not about taking our eye off those that need far more assistance and help; we are looking at working with a range of organisations to make sure that that assistance is still very much provided. It is not about cherry-picking and saying, “We’ll just work with that group and totally forget about the others.” Even outside this particular PbR measure against reoffending, that is not currently the case. A huge amount of effort is being put into working with the most vulnerable and those most likely to suffer issues such as mental health problems, ensuring that we have support mechanisms on the outside for them, and for housing and their ability to gain employment; all those factors are there.

Again, I can speak only for our organisation, but we are very clear about making sure that we work with those offenders to provide the best possible support. However, it is clear that we have to have relationships with organisations that are best placed in the community to provide that assistance. We are looking at ways within our contract delivery to ensure that those organisations are at the front and centre and that they are being supported and paid to provide that support to those offenders.

Richard Morris: The best designed payment-by-results systems will address the particular issue of what is called creaming and parking. We want to get it right. We need to design payment-by-results systems that allow the segmentation of different cohorts of offender, according to the different factors that determine how difficult the offenders are likely to be in changing behaviour. If you draw a comparison with the work programme, there are different segments or groups that attract different levels of reward to reflect the fact that different groups require different amounts of effort to get the outcome. It would be a big mistake to say, “Every offender is an offender”, and that you get paid £10 from x% changing behaviour, whatever that offender’s background or circumstances. A payment-by-results system that will work needs to allow for that segmentation.

The other point is that we need to accept that not all offenders will be suitable for payment by results because some have extremely intractable problems and issues, and to put them into a payment-by-results system would cause a risk. Even if you allowed providers to receive a premium for working with them, there would still be the risk that they would drop off the radar as a result of the way that providers are being incentivised.

Q248 Chair: In saying that, are you not saying that you do not want to take the most difficult cases?

Richard Morris: You have to accept that there are some cases where the issues are so complex and difficult that you need to take the view that you should just focus on designing and delivering interventions and services that will work with that offender, but at the extreme edges. I am talking about the extreme edges of the overall offender cohort, where payment by results may not be appropriate.

Q249 Yasmin Qureshi: May I pick up on a couple of things that you have said? You draw an analogy with the work programmes and the fact that they have different levels, but I have a question on that. You have someone, say Mr A, who is being looked after by yourselves, who is also going to the DWP to look for a job; he may also have mental health issues and is also going to the hospital. If we take the hospital out of the equation and deal only with the work, under your system, if this person finds a job and readjusts his life and so on, two agencies will be paid for the same person.

Richard Morris: In the example that you describe it, it is not inconceivable that the two agencies will both have played a part in achieving the outcome. To get the person ready for employment, you may have had to help them get housing or deal with substance misuse, or help them rebuild relationships with their family. They then move into a stage of desistance where they can start to think about changing their offending behaviour, and they can then move into employment.

Q250 Yasmin Qureshi: That is a double payment; so the Government and the public purse are not saving. One person is going to various different agencies that are all being paid for saving this person.

Richard Morris: I take the point. It is a valid point in the sense that you need to design carefully how different systems integrate with each other. Equally, it
is not inconceivable that different providers can play a valid and reward-worthy role in getting an offender to a certain position.

Q251 Yasmin Qureshi: My final point takes up what the Chair was saying. You accept that there are people who are going to be difficult to help. We should bear in mind that the system at the moment is about reoffending within one year, whereas anyone who has worked within the criminal justice system knows that one year is too short a period to judge whether someone has been successfully rehabilitated. Realistically, it is at least two years, and that does not come into the equation. Again, do you see savings for the public purse? Are there savings from such projects, given the reality that it will take two years?

Richard Morris: It is pretty compelling that, if you get someone to reduce their offending behaviour or to stop offending, it will produce savings for the public purse.

Q252 Yasmin Qureshi: That is for one year: the current schemes are that they are going to see changes within one year, but everybody knows that in reality it takes a slightly longer period to see whether somebody has been rehabilitated successfully. Therefore, where is the public saving? Richard Morris: I think you would get a public saving just on reductions in the occurrence of offending. I take the point on whether it is a sustainable reduction, but moving into the territory of asking people to take a risk on someone never offending ever again is probably not that feasible.

Tony Leech: At the moment we are talking about the 55% or 60% who reoffend in the first 12 months. Obviously, any reduction in that must ultimately mean a saving and an improvement in what has occurred. In other jurisdictions where the two-year method is used—and these are many of the jurisdictions in which I have worked in Australia—the two years is a recidivism rate and not a reoffending rate. Those that often use two years will measure whether they have returned to custody and not whether they have reoffended.

Chair: I would like to take some more sequential points, but we have another group of five witnesses to hear, so I must thank you for your help. I invite our other witnesses to the table.

Examination of Witnesses

Witnesses: Andy Keen-Downs, Chief Executive, Prison Advice and Care Trust, Sarah Payne, Chief Executive, Wales Probation Trust; Ian Barrow, Acting Director of Operations, Wales Probation Trust, Bernadette Byrne, Group Client Services Director, thebigword, and Diane Cheesebrough, Chief Operating Officer, thebigword, gave evidence.

Chair: It is a rather crowded witness table, but I welcome you to the Committee this morning. Because there are quite a lot of you, please do not feel that you all have to contribute to every question. Between you, you can tell us quite a lot about the work and effectiveness of the Ministry of Justice. I welcome Mr Keen-Downs from the Prison Advice and Care Trust; Ms Payne and Mr Barrow from the Wales Probation Trust; and Ms Byrne and Ms Cheesebrough from thebigword. Thank you all for coming here this morning. I invite Mr Evans to begin.

Q254 Chair: What was the field of your previous charity?

Sarah Payne: It is now known as Platform 51, but it was previously the YWCA in England and Wales, the women’s charity.

Q255 Chris Evans: When you say that the MoJ is on a journey, that means there are going to be mistakes and that money will be lost. I am worried that there seems not to be any clear process right down the line and, because of that, things are going to go wrong and money will be wasted once again. You say that is it going on a journey, but can you develop that idea? Do you mean that it is still making mistakes and getting things wrong? We have information before us about the LSC. Can you give us an idea of that journey?

Sarah Payne: My most recent experience has been the unpaid work competition. I found the initial briefing to be very helpful, although that was not how everyone perceived it—but I did. Having come most recently from an organisation where I was used to competing for business, I expected the briefing to be clear, and it was: the time scales that were known were clear; and I found the process of working in my Lot with other chief executives really interesting and a very positive experience. The competition was announced last January and we are still only on Lot 1 being completed. So there is a delay, but we understand why that is. There are a lot of other policy developments in the background, but in truth our
deals with the authority have been reasonably straightforward.

**Q256 Chris Evans:** From what I have read, it seems that the MoJ often plucks deadlines out of the air without any regard for the processes in place. Is that a fair comment? I base this on the fact that the Legal Services Commission’s tendering process was given a six-month deadline that was achievable. Do you think that it is fair to say they are plucked out of the air?

**Sarah Payne:** My reading of it is that they do not come out of the air; when they are set, there is a genuine belief that that is what people are working towards. What has changed is that it has brought in some delay; there is now a massive review about the probation service and its future. Until that reports and consultation has been completed, I do not want to be in the position of setting out on a particular road and then find that I have spent an inordinate amount of time and resources on it and have to go and do something else.

**Q257 Chris Evans:** What I am trying to get at is where the genuine belief comes from that these deadlines can be achieved, when I hear that they are failing and going way overboard and costing money. Why do they believe that something can take six months but then, all of a sudden, they realise halfway through that it cannot be achieved and everything goes wrong?

**Sarah Payne:** I wish I knew the answer to that. In running my trust, we have a business plan with deadlines, and we pretty much stick to them. If there are complicating factors, we re-evaluate, we understand why, and we continue on that basis.

**Q258 Chris Evans:** May I ask for any other comments on that?

**Ian Barrow:** This may lead back to earlier comments this morning by Mr Leech on some of the issues on TUPE and pensions, and what comes at the end of the process rather than the front. From our point of view, relative to feedback on competition, one of the things that is beneficial for us as an organisation—we have seized some of the efficiencies through the rationalisation of the headquarters, the estates, the senior management teams, the boards and internal processes. That has enabled me to create a small commercial team. As we are in this competitive marketplace and I am now an NDPB that is required to compete, that is what I will do. I have recruited someone with a great deal of expertise in this area. It is also important to acknowledge that the experience of living through that amount of change has created a sense of adventure and endeavour in the people of the organisation, who embraced change.

I lead a really good organisation, and we have very frank conversations about what the future might look like. All of us understand that we have to live with a degree of ambiguity—everybody does—but I see it as my job to encourage healthy conversation about what that might mean for us. We are also doing an awful lot internally to make sure that we are as efficient and effective as we can possibly be. We have also seized opportunities to bid for new business as subcontractors and also in partnership with the private sector; and, in partnership with those Wales Government services that join up with ours, we have seized the opportunity to commission services—for example, in drug provision in a large part of our patch.

**Q260 Chair:** Could I ask you to speak up as much as possible because the acoustics are not easy in this room?

**Diane Cheesebrough:** The landscape changes as you go through the process.
four stages to this competitive process, and it seems that the last man/woman standing got the gig because they were the last man/woman standing. That is an interesting position to be in. If that had happened in my business, I would have expected my board to ask me questions. What are your reflections on the process? Was it a very robust four-stage process? The initial pre-qualification questionnaire was not a very robust process, because it did not weed out problems further down the line that left the last man standing.

Bernadette Byrne: I think that you are right. 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. Following on from what others have said in the previous panel, the competitive dialogue for this particular framework was cumbersome and overcomplicated, and it had numerous stages; it lasted well over nine months. As you rightly say, 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.

Q264 Steve Brine: That was a great place for that organisation, was it not? It was rather like expecting an organisation, was it not? It was rather like expecting that you could have a final round with only one organisation.

Bernadette Byrne: But it took them a year to go live on that. Even though it was a great place, I still have some sympathy with the organisation being awarded it and it taking a whole year to go live.

Q265 Steve Brine: Why do you think you were unsuccessful?

Bernadette Byrne: If I am honest, that is probably a question to ask the panel that made the decision.

Q266 Steve Brine: You must have had an internal process under which you sat down and did some soul searching, which any organisation does when they compete for a tender and do not succeed.

Bernadette Byrne: We did, and, even though we were given some limited feedback, we were still unable to put the finger on the reason why we were not successful.

Q267 Steve Brine: That, in itself, is very telling. What chance have you had as an organisation to feed back your thoughts other than through the opportunity of this Select Committee today?

Bernadette Byrne: We met two of the panel after we went on to work for the successful organisation.

Q268 Steve Brine: If I may, I shall move on to Andy from PACT. Juliet Lyon of the Prison Reform Trust came here a few weeks ago and described to us the process, with which you have had an unhappy time, to do with visitor centre services across the London prisons. Tell us your reflections on your experience.

Particularly as a smaller charity, did you feel that you were disadvantaged when it came to taking the sort of risks that Spurgeons, which went on to get the work, were able to take?

Andy Keen-Downs: There seemed to be a level of risk that was difficult for us to take and some ambiguity in the language on the kind of results being required; we did not seem able to please the commissioners in terms of the language on that. We engage a lot in policy work, and we thought that we had an understanding of the general thrust of the payment-by-results agenda, and evidencing some causal link in reducing reoffending or recidivism. However, something like 20% or 30% of the contract value, which was in itself set at around 70% of our previous cost of delivering those services, was at risk on the basis of being able to demonstrate results. The results were not stated in the tender; we were invited to suggest what those results might be. It was a tortuous process trying to come up with a logical process for looking at how services such as a visitor centre, a children’s play service or a tea bar in the visits hall might demonstrate some genuine outcomes, because that is the focus of our charity.

Q269 Steve Brine: Of course, you have proven experience in that field.

Andy Keen-Downs: We invented many of these services.

Q270 Steve Brine: Even better.

Andy Keen-Downs: We have spent many years funding them ourselves. In partnership with the Tudor Trust, we funded the building of three visitor centres in London, including the new centre at Wormwood Scrubs. We raised £1 million to build that centre, and it is now an MoJ asset. That was in excess of the value of the entire contract for all the services that we were running in London. It was something of a bitter pill, given the contribution of added value, which did not seem to come into the equation.

Q271 Steve Brine: Is it true to say that a number of the staff working for you under TUPE arrangements went on to work for the successful organisation?

Andy Keen-Downs: Yes.

Q272 Steve Brine: Do you take any comfort from that?

Andy Keen-Downs: We are driven by our charitable mission. From our point of view, we played a role over more than a decade by inventing services and establishing a really good understanding within the MoJ that family relationships and maintaining family relationships during custody can have a massive impact on reducing reoffending. We played a big part in that and those services that we innovated have now been mainstreamed. It is difficult for us that we are
not the organisation running those services, but we are delighted to have achieved that outcome.

**Q273 Nick de Bois**: Before moving on to another subject, may I ask a supplementary? It is more to get something on the record than anything else. Am I right in thinking that, as part of this rather laborious tender process, there is no acknowledgment that there will be a formal wash-up for losing candidates—in other words, if you lose, you would at least have the advantage of knowing what you got wrong or where you went wrong? You asked for that information, if I understand you aright. Was there no provision for it laid down in the guidelines?

**Diane Cheesebrough**: Not that I can think of.

**Q274 Nick de Bois**: Mr Keen-Downs, was that your experience too?

**Andy Keen-Downs**: We were invited to meet one of the commissioning and procurement panel following the loss of the work.

**Q275 Nick de Bois**: Was that at the commissioning panel’s invitation?

**Andy Keen-Downs**: Yes.

**Q276 Nick de Bois**: It seems a bit hit and miss, judging from the evidence. Thank you.

Moving on a little, we have been talking about the role of SMEs and the voluntary sector, and some of the challenges. Given where we stand today, it seems that most roles for the voluntary and charitable sector and SMEs are going to be subservient to a prime contractor. I do not want everyone to answer, as we do not have time, but could you tell me if you think that that is a viable way to go forward for the SMEs and the voluntary sector?

**Diane Cheesebrough**: I personally think that, yes, there is a viable way for the private and voluntary sectors and SMEs to work together, predominantly because we do that. We have experience of doing that. The big word for longer.

**Q277 Chair**: Would you make that last point again but a bit louder?

**Diane Cheesebrough**: I do not think that anybody that we currently work with from the voluntary sector or an SME has turned to us and said, “I am sorry, but we cannot continue working with you. It is no longer viable.” I am checking that with Bernie, who has been with them for longer.

**Bernadette Byrne**: That is true.

**Diane Cheesebrough**: Therefore, there must be some viable ways of doing that.

**Q278 Nick de Bois**: Do you think that that strikes the right balance in terms of value for money? There is always the risk of top slicing or subcontracting, and the costs hidden in that. Shall I move on and take a second opinion? I saw you agreeing with me there, I think, Mr Barrow. Do you think that is right?

**Ian Barrow**: There is always that potential. From the Wales Probation Trust point of view, we are spending in the region of £3.5 million or £4 million a year, or about 7% of our budget, on contracts with third sector and private sector providers. Again, that is a reflection of some of the evidence that you heard earlier. In terms of getting delivery right for the end user, engaging that cross-section capability is vital. In terms of the contracting arrangements, there is always an issue with contracting costs the more providers that you have. Again, from the Wales Probation Trust’s point of view, one of the benefits that we have achieved through occasionally taking an all-Wales approach is that the delivery of services, for example in Cardiff, may be with the same provider that delivers services in Aberystwyth and the contract management can achieve some efficiencies that way.

**Q279 Nick de Bois**: Do you find that the contract arrangements with the third sector particularly are complex? Do you have any way of stopping them being complex so as to encourage more to step up to the mark? I understand that some aspects can be quite onerous, including the sharing of risk and the back-to-back implications of the contract. Do you have thoughts on that?

**Sarah Payne**: Since I have been chief executive, we have conducted a thorough review of all our contracts looking at precisely those things but also making sure that, in getting value for the taxpayers’ pound, we are absolutely clear about what we want the contract to deliver—the outcomes. It might be the description of a service, and it might be a measurable outcome. Again, there is lots of learning. There were contracts let in Wales that were not that precise, and we needed to revisit them. Some contracts were duplicatory, and we are trying to ensure that everything is much better aligned.

**Q280 Nick de Bois**: May I ask a final question? As I understand it, there is no contract requirement between the MoJ and its prime contractors to use the third sector or SMEs. Am I right that it is entirely needs-based? It is entirely down to the prime contractor to do this, hopefully for practical and sensible reasons, but that is it, basically.

**Sarah Payne**: It is, but, if you are committed to delivering the best service possible—

**Q281 Nick de Bois**: You will use them.

**Sarah Payne**: You would have to, because we just do not have the expertise in every nook and cranny.

**Chair**: Thank you very much indeed. We are grateful to you. You have all been very concise but have helped us a great deal. Thank you.
Tuesday 6 March 2012

Members present:

Sir Alan Beith (Chair)
Steve Brine
Mr Robert Buckland
Jeremy Corbyn
Ben Gummer
Mr Elwyn Llywyd
Yasmin Qureshi
Elizabeth Truss
Karl Turner

Examination of Witnesses

Witnesses: Frances Done CBE, Chair, and John Drew, Chief Executive, Youth Justice Board, gave evidence.

Chair: Frances Done and John Drew from the Youth Justice Board, we were not sure the last time we saw you whether we would be seeing you again. Quite clearly we are, so perhaps we should congratulate you on survival. Before we turn to questioning, it would be helpful if any interests that need to be declared for either part of this morning’s session could be declared.

Mr Buckland: I should declare that I am a Crown Court Recorder and therefore up to 15 days a year I work in the Courts Service.

Q282 Yasmin Qureshi: Good morning. As the Chair has said, when we last met there was the question of whether the Youth Justice Board would survive. During the course of our hearings we heard evidence from Mr Blunt, the Parliamentary Under-Secretary of State. He explained that one of the reasons why they were thinking of bringing the Youth Justice Board activity into the Ministry was that, when they were dealing with the riots in the summer, for example, they were not aware of what was being done with the under-18s. I know that is not something that the Youth Justice Board would accept as correct. We know that you made representations, or the organisation did, and you gave as much information as you could and worked very well with the Ministry. Having moved forward, the Government decided that the YJB would survive. When this process of proposed abolition was going on and being discussed, what impact did it have, if any, on your ability to work effectively in the course of your duties?

Frances Done: The whole process of going through and preparing for transition and the abolition of the YJB was quite distracting. Bear in mind that we had a period of uncertainty from the date of the election until October, and then the decision was taken. There was then a year until the Government changed their mind. So we had quite a long period of uncertainty. The members of the board, working with our Chief Executive and our executive team, made a very clear decision that we were going to make sure that, whatever happened, while we would also co-operate with planning for transition, we would move full steam ahead on all the work that we would normally do. The reason for that was because everyone felt so strongly that there had been such progress made and nobody was prepared to put it at risk. Everyone wanted to make sure that whatever was handed over was handed over at full throttle. That is what happened. We made quite sure that all the planning was twin-track. We planned for transition but at the same time bore in mind that maybe we would not end up with a transition.

The biggest challenge for us was that stakeholders—the people we work with such as magistrates, youth offending teams, ACPO and all the reform groups, who are the people who are really important to making progress—were very worried about what was going to happen and felt uncertainty. The whole youth justice system felt uncertainty. We had to be very strong in reassuring everyone that we were doing our utmost to make sure that, whatever happened in the future, the focus would remain on getting on with the front-line work—the sort of co-operation and partnership that delivers results. It was very distracting. Inevitably, everyone had to work incredibly hard just to keep the show on the road as well as planning for transition, but that was the right thing because, in the end, it paid off.

Q283 Yasmin Qureshi: Has the Youth Justice Board made any structural decision to allow the Minister to have more direct responsibilities or involvement in what you are doing?

Frances Done: The Youth Justice Minister?

Yasmin Qureshi: Yes.

Frances Done: The whole process of going through and planning for transition and the abolition of the YJB was quite distracting. Bear in mind that we had a period of uncertainty from the date of the election until October, and then the decision was taken. There was then a year until the Government changed their mind. So we had quite a long period of uncertainty. The members of the board, working with our Chief Executive and our executive team, made a very clear decision that we were going to make sure that, whatever happened, while we would also cooperate with planning for transition, we would move full steam ahead on all the work that we would normally do. The reason for that was because everyone felt so strongly that there had been such progress made and nobody was prepared to put it at risk. Everyone wanted to make sure that whatever was handed over was handed over at full throttle. That is what happened. We made quite sure that all the planning was twin-track. We planned for transition but at the same time bore in mind that maybe we would not end up with a transition.

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Q284 Yasmin Qureshi: In light of the fact that there is now a closer relationship and you are meeting the Ministers much more regularly, would you consider that Ministers have become more involved in your
business planning? If so, has any of this had any impact on your programme of activities at all?

**Frances Done:** I will ask John to answer that because he is very involved in those discussions.

**John Drew:** Our business planning cycle begins in the autumn of the preceding year. We develop proposals for our board on the overarching objectives for the coming year. That is based on an analysis of market position, intelligence and what is happening in the youth justice world. After the board had produced its own view on what our overarching objectives should be, we then took them to the Minister. There is ministerial sign-off, which happens in the autumn. That happened and the Minister was very engaged in the discussion about that. There are choices.

Then we take that material away and, through to a period of about two weeks ago, develop from the overarching objectives a series of deliverables. There are perhaps 30 or 35 in all. They would be quite specific programmes that we are going to work on in the current year that contribute to the overarching objectives of the YJB. Again, our board is very engaged in that process, but ultimately each of those deliverables goes to the Minister for sign-off.

With that, Crispin Blunt has asked for a clear articulation of how much resource we would imagine attaching to each of the deliverables. We are due to discuss that with him on 13 March, which is next week. The Minister is very engaged in that process of looking at what we intend to do and helping shape that direction, and ultimately saying yea or nay. That is the situation.

We have always believed was a cornerstone of our effectiveness is having that relationship between the Minister and the senior civil servants. When you get that, you get the level of expertise, understanding, knowledge and commitment that drives changes in policy that will work. We completely welcome that.

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**Q285 Steve Brine:** I would like to talk about the question of ministerial sign-off in the coming year. That is based on an analysis of market position, intelligence and what is happening in the youth justice world. After the board had produced its own view on what our overarching objectives should be, we then took them to the Minister. There is ministerial sign-off, which happens in the autumn. That happened and the Minister was very engaged in the discussion about that. There are choices.

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**Q287 Chair:** You mean it works better when it is not arm’s length.

**Frances Done:** No. It depends on the function. In our case the body is arm’s length, but there is a very close relationship between the Minister and the senior people in the arm’s length body and the senior civil servants. When you get that, you get the level of expertise, understanding, knowledge and commitment that drives changes in policy that will work. We completely welcome that.

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**Q288 Steve Brine:** With respect, I am not sure that directly answered my question. The meetings became more frequent since the threat of abolition and since your saving, but I am interested in before that period. What led to the breakdown in communication that would have led to the Minister saying what he actually said in the House? How often did you meet before this process started and how often do you meet subsequently?

**John Drew:** Each Government is different. Before the last general election we were jointly sponsored and the cadence of meetings was different from what it has been since. All through this period of potential abolition I have been meeting Crispin Blunt on roughly a monthly basis. The meetings had a slightly different flavour to them because we were meeting under the assumption that we were heading towards abolition. I was meeting him in many ways more as, for example, Michael Spurr might meet him as head of the Prison Service—the head of NOMS. At the risk of reducing something to personalities and personal interests, it has always been the case that Crispin Blunt has been very interested in youth justice and has had a great appetite for learning about it. I read the things that he said in Parliament and, indeed, have discussed with him his feeling that he was not as involved as he would have liked to have been with certain specific issues. I heard his evidence to you on that point. That disappointed me in the sense that it has never been a part of the YJB’s brief to keep Ministers away from any of the big issues we grapple with, simply because our authority, such as it is, comes from the proximity of our relationship with them.

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**Q289 Steve Brine:** It disappointed you, but was it accurate?

**John Drew:** It is a bit like bullying. If someone says they are being bullied, they are being bullied. If a Minister feels that he is not informed, then, however hard we may have tried to keep him informed, I accept that he is right, he is not informed and we have committed ourselves to doing better on that.
Q290 Jeremy Corbyn: In January 2011 the Public Accounts Committee expressed concern about the management, governance and operation of arm’s length organisations within the Ministry. What is your experience about the efficiency of monitoring and managing what they do from within the Ministry of Justice?

John Drew: Our relationship with the Ministry of Justice is slightly unusual in the sense that, while we do have a relationship with the governance unit, we also have our own sponsorship unit—the youth justice policy unit. I think it is unique in that regard. We are one of relatively few—

Q291 Jeremy Corbyn: Is that not a duplication?

John Drew: No. The MoJ has been pretty clear about what the governance unit will do and what the policy unit will do. You have to remember in all of this that to do the business of the Government we have to work very closely with the policy unit because they are responsible for youth justice policy, which in turn is informed by what is happening in the field in the world of youth justice. Indeed, our statutory function is to monitor the operation of the youth justice system and to advise Ministers on that. That function is very close.

I could describe in detail, if you wanted, the division of labour between the governance unit and the policy unit, but on a practical level it does not feel like a duplication. The governance unit is much more concerned with issues, such as, for example, the development of shared services and the negotiation of a framework agreement. The policy unit is much more concerned with taking policy initiatives, operationalising them and then seeing them delivered in the youth justice world. We work very closely with both the policy unit and more recently the governance unit.

In some senses the process we went through on potential abolition brought us closer together. They were the group of people who, with us, were planning for the eventuality of abolition. That is a pretty healthy relationship. It is certainly a challenge. There was certainly sign-off of our major plans, our budgets and so on.

Q292 Jeremy Corbyn: Do you think there is a problem of a lack of innovation in arm’s length bodies? At the same time, do you think they tend to go off in their own way and essentially try and ignore what the Ministry of Justice wants?

John Drew: There are two questions there.

Q293 Jeremy Corbyn: Yes, there are and they are different questions. They are opposites as well.

John Drew: In relation to innovation I would certainly put the record of my board up against any organisation in public service in terms of our record of innovation, which I think is very good. I do not think we are in any sense an organisation that settles for the status quo. That is a major reason why we have been able to achieve what we have achieved in terms of the performance improvements in the youth justice system. I also think that is a major reason why so many voices spoke up against abolition because they could see our record in relation to that.

On the issue of going off on your own, the Youth Justice Board operates in two worlds that matter intensely to Government. It operates in the children’s world and in the criminal justice world. There is never a quiet day. You are never going to be able to plough your own furrow when you operate in that area. It is an area of intense controversy and intense interest. There are probably more opinions on the street on those issues than there are on many others. I have never felt that we were operating in a vacuum or an area where people were not interested.

Q294 Jeremy Corbyn: What is the advantage of an arm’s length body that Government cannot do themselves, in your view?

Frances Done: Responding in relation to youth justice, because obviously there are different reasons for different areas of policy, the case for an arm’s length body in youth justice is overwhelming because of the complexity of the youth justice system, as John said. It encompasses children, welfare, enforcement and public protection. There are so many bodies. We have a chart, which is rather interesting, showing all the bodies that have a role in youth justice and it is extremely complicated. There are of course a large number of Government Departments as well, the main sponsor Department being the Ministry of Justice.

If those parts of the system do not work together—if they do not share the same objective and work in a way that is coherently aligned—then you can never improve what is going to happen. That was essentially what the Crime and Disorder Act 1998 was all about. It has been demonstrated over the last 12 years that an arm’s length body is able to operate with all those bits of the system in a way that is much more flexible, much more front-line focused and much more based on experience of what works and what can work than a Government Department. The strength of the argument is all around that.

I was asked a question about whether it was a distraction to be going through the abolition discussions, but there were some positives. First of all, without any doubt, within a matter of months all the main players in youth justice—the magistrates, judges, ACPO and the local authorities—had a real understanding and there was a worry about the risk of making this change because of the way that YJB has been able to operate across that system very flexibly. We are quite open in our discussions because that is the way of getting partnerships to work. It is not any civil servant’s fault, but there was a real concern that by the nature of the civil service that could not be replicated. It is that freedom of action, the focus and the front-line experience that is the key.

Following on from the previous questions, I do not think it is at all surprising that the chair and the chief executive of an arm’s length body think that a very close relationship with the Minister is a good thing. We do not in any sense feel that that is oppressive. We know that we can discuss the issues that we are concerned about—the developments, the progress, the challenges and the problems—knowing all about the system and what we feel will work. It is far better to
Justice Committee: Evidence  Ev 57
6 March 2012  Frances Done CBE and John Drew

have direct access to the Minister to talk about those things so that he or she can make the judgment as to whether we are talking sense or not. The worst thing for an arm’s length body is to have a disconnect between the ministerial role and what we are doing. Ploughing our own furrow is pointless. We have to have the ability to influence those who make the key decisions, decide the budgets and so on. I am feeling very optimistic at the moment. It is getting that balance right because we are arm’s length. We are not part of the Department. We give our views very clearly to the Minister, but it is by making all that work together that you get the best results. The results in the last 12 years show that this can work. This is a personal opinion and not a board opinion. I feel regret that, so far, Ministers and the MoJ have not recognised that this sort of model could be beneficial in other areas. For example, in women’s justice I feel very strongly about that. You have bigger numbers and you have the potential to make those sorts of changes in another area of justice, I would like to think that lessons were learned about that. Obviously that is a matter for the Minister.

Q295 Jeremy Corbyn: Do you think, in your own case, that there has been an efficient and effective way of communicating to colleagues within the civil service and Parliament, but also the wider public, the work that is done and why it is done? I ask the question because I get the feeling that a lot of the public have enormous instant opinions on all aspects of justice, particularly where young people and children are concerned, but are often completely unaware of the wider policy parameters that are in operation.

Frances Done: Yes; that is absolutely true. There has been quite a lot of consideration about the whole issue of public confidence in the justice system and what contributed to this sort of model could be beneficial. There has to be a local awareness and what they do when they work with young people, what happens when children are sentenced and what those sentences are. I would not say that that, overall, has been a huge success. In relation to the level of public confidence in what happens about youth crime, as we know, people tend to feel reasonably confident about their own area but they do not feel confident nationally. They do not think things are under control. The confidence survey showed this dichotomy between the local and the national. There is quite a way to go on that. It is a huge area.

John Drew: I would only say one other thing. This has always been something that we have been focused on and there is always more that we can do in respect of it. One of the things that we do know from polling the public is that the area of the youth justice system that the public are least confident about and know least about is the operation of courts in relation to children before the courts. Of course, that is properly shrouded in secrecy in most cases to protect identity. That certainly creates a problem. I am not saying that we should reverse that—I believe very strongly that children’s anonymity in most instances should be protected—but it is one of the very particular challenges that we have. We also operate in a climate in which high-profile stories are almost always stories where something has gone wrong. We focused a lot of our energy on working with local papers to produce stories of progress for them about individual atonement and the like. Local media has much less of an influence these days than it did even five years ago. You will see in our business plan for next year, as you would have seen for this year, further resources devoted to trying to improve public awareness of what is happening, good and bad.

Q296 Ben Gummer: As a quick supplementary to Mr Corbyn’s questions, how do you feel that you are democratically accountable?

Frances Done: It is entirely due to the fact that I am appointed to my post by the Minister and I am accountable to the Minister. All the board members are appointed by the Secretary of State. In terms of our corporate plan, our accounts are presented to Parliament. We are subject to review by NAO and there are all the normal arrangements to do with public accountability. Speaking personally, I feel that my influence in authority comes entirely through that. We feel that we are completely publicly accountable. Everything we do is transparent in the same way that public sector organisations always should be.

Q297 Ben Gummer: I want to put a proposition to you. I have constituents who are very concerned about a local youth offending institution, where inmates are allowed to throw their televisions out of the window and have them replaced within 24 hours because of an injunction from the Youth Justice Board. They are concerned about that. Who do I write to in order to express their dissent?

Frances Done: Certainly start with myself or John; absolutely.

Q298 Ben Gummer: What would happen if you decided that that was not something that you wanted to reverse?

Frances Done: You are asking me to comment on an actual case to which I have not given any consideration.

Q299 Ben Gummer: Let me suppose I had tapped the Minister and you then had a discussion with the Minister in one of these very regular meetings you are having. What weight would you put on his protest?

Frances Done: If you were to contact me about your constituents’ concern about that, first of all I would establish the facts and find out exactly what was happening.

Q300 Ben Gummer: Assuming you decided it was not worthy of changing your mind and I therefore talked to the Minister, and the Minister then talked to you in one of these regular meetings you are having, what weight would you put on his protest?
Frances Done: I would be extremely concerned if it was not possible for us to come to the same conclusion about something. In the end, matters to do with custody and the way in which young people are dealt with in custody and so on are absolutely matters for discussion between the Minister and us. We would not take the view that it is something on which we could just say, “Well, fine; we are going to do that.”

Q301 Ben Gummer: If he suggested that you change the policy, would you do so therefore?
Frances Done: Essentially I would say yes.

Q302 Ben Gummer: So what is the purpose of the Youth Justice Board?
Frances Done: You are talking about one very specific function of the Youth Justice Board.

Q303 Ben Gummer: I am trying to explain the line of democratic accountability.
Frances Done: I am making the point that, in the end, the Minister is the one with the commissioning powers for the secure estate. That commissioning power is exercised through the Youth Justice Board. In the particular case you are talking about, it is our responsibility to be satisfied that the Minister is entirely happy. We very rarely talk about something of that degree of detail, but we do on occasion because there is a great deal of public concern about various aspects of custodial regimes. I do not find that inconsistent at all with the Youth Justice Board having a very important role. We also have a role across the whole of the community side of youth justice. We are not totally focused on the custodial estate. The important thing to bear in mind there would be that, when we were talking to the Minister, we would be talking to him about the particular issue, whatever it was, with the basis of the experience, knowledge and understanding of how the system works, how it is intended to work, what the reasons have been for the various decisions and whether they stand up and are valid.

Q304 Ben Gummer: Of course that does not happen in any other division within the Ministry of Justice, does it? When the Minister interacts with officials, that kind of conversation does not happen.
Frances Done: It does.

Q305 Ben Gummer: What is the value of the £250,000 that pays for the board that you have just described, which is not described otherwise within the Ministry of Justice?
Frances Done: I would argue that there is a big difference in terms of commissioning. One of the reasons that our commissioning of the secure estate has been more successful and makes more sense, and our ability, for example, to reduce the numbers of young people in custody very significantly compared to the adult estate, which has continued to grow year on year, has been that we have the ability to stand back from the provider of the secure estate. In our case the providers are the prison service, two private companies and also 10 local authorities. We have a very complex provision of secure estate. We stand back. We are not directly responsible for delivering any of those services. We are also not directly responsible for delivering the youth offending teams’ services. They are delivered by 158 local authority agreements. By being able to work across that whole complex system we have been able to deliver, with all the people working in those systems, some quite impressive results. That is not to say there is any complacency, but it is interesting to see that the most recent reoffending rate from custody has gone down to 68%. Obviously, that is far too high.

Q306 Ben Gummer: But it is also interesting to note that youth crime has fallen across Europe, has it not?
Frances Done: Yes; I am not denying that.

Q307 Ben Gummer: How does the fall in the United Kingdom compare with our European comparators?
Frances Done: I could not give you that answer just off the top of my head.

Q308 Ben Gummer: Why not?
Frances Done: Because it is quite a complex issue.

Q309 Ben Gummer: But surely the first thing that the Youth Justice Board should do, if it is going to do anything, is benchmark against European competitors.
Frances Done: We have benchmarks. We do understand the information. The MoJ analysis team, working with our team, have international comparisons.

Q310 Ben Gummer: I would like to know what value added the Youth Justice Board brought above the European fall in youth crime.
Frances Done: I would like to say that there has been a demonstrable improvement in the situation in the UK, in England and Wales.

Q311 Ben Gummer: How does that differ from elsewhere in Europe, across a trend that goes across the western world in fact in most jurisdictions?
Frances Done: With respect, I think you are asking quite a sweeping question, which it would be very difficult to answer without comparable definitions of youth crime and so on. Certainly, if the Committee wants to look at that, we would be more than happy to co-operate on that.

Q312 Ben Gummer: All I am saying is that you have three times pointed to the success of the Youth Justice Board. You have done so every time that I have sat in this Committee and you have come before it. It was an argument made in the House of Lords. Yet the fact is that youth crime has fallen across Europe. What I would like to know is what value the Youth Justice Board has brought to that fall or whether you are just claiming credit for a fall that is determined by a trend.
John Drew: Perhaps I might try and introduce some figures here. The generally accepted view about the fall in levels of youth crime across western Europe and indeed across the UK is an absolute fall of about 5% across a period of 10 years. It is very hard to come to an absolutely certain figure in relation to that, but that is generally accepted to be the figure.
We would say that we have added value in that, even within that, we have managed to reduce figures for children entering the system, for both absolute reoffending and also for the frequency of reoffending or volume of reoffending. We have also reduced the numbers of children in custody at a proportion that is much greater than that. The numbers of children entering the youth justice system has reduced by 50%. The frequency of reoffending over the last 10 years—the volume—has reduced by 30%. We would say that is a consequence of work that the Youth Justice Board and many others have done in bringing together a system that, in 1997, was very fragmented and where there were very varied levels of local commitment to working at all on the issue of youth justice, bringing it together, giving it life and ensuring that, after the first initial honeymoon period when everyone is very excited about a new creation, that continues on thereafter.

Q313 Ben Gummer: With all that success, would you therefore argue that the budget for the Youth Justice Board should be cut as you have to deal with less crime?

John Drew: Our budget has been cut significantly.

Q314 Ben Gummer: Is it being cut by the appropriate amount?

John Drew: The appropriate amount would always be one for others to comment on. I can say that we have sought to reduce our overheads and our core costs—the costs of just running the board as such—at a rate that is greater than any other level of reduction in terms of cuts for services for youth justice. In fact we have gone from being an organisation of 393 people in 2001 to a situation today where we have 224 employees.

Q315 Mr Buckland: I want to develop the point on analysis that has already been touched upon. It is clear from our recent visit to the MoJ that a lot of work has been done to improve the evidence base. The analysts are developing new systems by which we can bring together the information in a more understandable way. It is right to say, is it not, that recent reports, and particularly an NAO report in 2010, questioned whether or not the MoJ or indeed the arm’s length bodies had the correct information upon which to base decisions? What do you feel, as an arm’s length body, as to whether or not you have had sufficient evidence in recent years to judge basically what works and what does not work in terms of sentencing and reoffending when it comes to young offenders?

John Drew: There is both the work that we have led ourselves and there is the degree to which we have been able to tap into the resources of the MoJ and indeed the resources of other Departments. Perhaps I could start there and reassure that very briefly. We work very closely with the Analytical Services division of the MoJ. We have some of their staff out-based within the YJB and vice versa. It is hard to be sure whether someone is working for the MoJ or the YJB. That is a situation we encourage. We have a joint research committee and the like, so we are very closely tied in together and very closely tied in to the DfE, who do a lot of work in related fields, particularly on what works in terms of early intervention, prevention and the like. As the quality of the performance from MoJ Analytical Services and others has improved, so that has come directly into our organisation.

So far as the YJB then is concerned, we have some very particular responsibilities in relation to effective practice. It says “good practice” in the statute, but it means the same thing. We have taken the international evidence, which is relatively limited but strong in relation to certain programmes. Intensive fostering would be one; multi-systemic therapy would be another. We have made sure that there are innovations in England and Wales that follow those programmes. In particular, we have emphasised to the organisations who are delivering that, often with direct funding from us, that they must maintain integrity of programme; in other words, they must replicate here the evidence from, principally, north America. I think we can say that, of all the internationally gold-standard type programmes that are about in terms of validation, we have ensured that they are being innovated. Most recently, for example, in relation to multi-systemic therapy, our programme to innovate with four consortia or similar local authorities to try and drive down the numbers of children in custody has seen two of them adopt multi-systemic approaches with our encouragement. We have done that.

I do not think our track record is perfect in relation to effective practice. I have said that in this Committee before. What we are doing for this year is refreshing our offer in a number of different ways. The first thing we have done is to go to the sector and say, “What are the next things that you would like to know more about in order to be effective?” They have identified a whole series of things. Not surprisingly, it starts with stuff like, “How do we properly evaluate in a scientific way some of the programmes we are running that we have devised locally?”, and goes on to emerging issues of work with girls and the like, where there is a feeling in the sector that they do not know enough about how they can really turn girls’ lives away from crime and the like. From that, we have a list of priorities that we have built into our key deliverables for next year. We have allocated more resources than previously, and certainly more resources proportionately than we have previously put into the dissemination of effective practice.

Q316 Mr Buckland: Has this been done in the wake of the National Audit Office report? You will recall that, in 2010, youth offending team leaders were asked whether or not they knew what impact their measures were having on reoffending and 76% said they did not have enough information.

John Drew: Absolutely. As the chief executive of the Youth Justice Board, that could never satisfy me, although I would make the point that good managers in youth justice will always say they could know more. You could interpret that as meaning that. The National Audit Office and the subsequent Public Accounts Committee hearing were wake-up calls to us that we needed to raise our game. That is what we have been trying to do over the last 18 months.
Q317 Mr Buckland: I touched quite clearly upon the reforms within the MoJ in terms of their analytical function. Do you see that already having an impact on the formulation of policy?

John Drew: It is less easy for us to see that. Their focus is across the whole of the criminal justice system rather than only on youth justice, but I can certainly see it so far as it impacts on youth justice. We entered into a joint programme with MoJ Analytical Services in 2007, which is called the Juvenile Cohort Study. That studied 14,000 young people entering the criminal justice system in 2007 across a 12-month period. It is beginning to produce data for us.

The first report from that study—which we have now published and was something that MoJ Analytical Services led on—is an evaluation of the predictability of our assessment tool. A good assessment tool ought to be one that helps us to identify children who are most likely to be at risk of offending or children who have started offending and who are most likely to go on and cause the highest level of nuisance, damage and the like. We have fed that report into work that we are doing to introduce a new assessment system. That would be a direct concrete example of a piece of work led by MoJ Analytical Services feeding into the youth justice programme.

Q318 Mr Buckland: Do you think you have enough data or enough of a base to model the future demand—the future pattern of likely offenders and offending?

John Drew: We have a very robust system for modelling demand so far as custody is concerned. It is an easier thing to model than total levels of crime within society because there are a lot of social constructs around total levels of crime within society. Laws can change, things that were offences can cease to be offences and vice versa. Equally, there is the operation of policing by police forces and others. The expectations within sentencing guidelines and so on can change. I do not think we have as good a model as perhaps we could have in relation to forecasting trends with impunity, but we have a very strong model in relation to custody. Since that is where cost is most critically placed, that is why we have concentrated in that area.

Q319 Mr Buckland: Coming back to pathways into offending in the first place, do you think now that the models you are using are more robust at identifying pathways into offending, which then can be used by local youth offending teams and other voluntary providers, who do a lot of work in the area of mentoring and assisting young people who have been identified as on a pathway into potential offending?

John Drew: One of the very first things that the Youth Justice Board did when it came into existence was to identify what we call the risk factors. It is just what you are describing. It is that conglomeration of factors that makes it more or less likely for a young person to become an offender later on. We have refined that, and the Juvenile Cohort Study I talked about has further refined that for us.

Not all of the research in this area is done by Government. There is a major study that has been carried out by Edinburgh university. Although it is in Scotland and is therefore in a different jurisdiction, it nevertheless has huge lessons for us. One of the roles of the YJB is to make sure that it keeps its eye on other jurisdictions and other countries and takes those lessons on board.

The short answer to your question is, yes, we are pretty clear about pathways. There remains a huge problem of predictability. If you look at the risk factors and identify children who fall within that cohort or are clearly at risk of offending, it would still be the case that perhaps two do not go on to offend for every one who does. That is a problem in criminology and sociology. It is not unique to the particular area of youth justice in England and Wales.

Q320 Elizabeth Truss: When we visited the Ministry of Justice, we noticed that there was a lot of focus on policy and there were a lot of policy teams. Quite often those teams appeared to have overlapping roles. You would have a youth justice policy team separate from the adult justice policy team. Can you see scope for making efficiencies and conducting more studies across the whole cohort rather than having siloed areas that may be doing some of the same work? Further to that, where would you identify savings in the overall Ministry of Justice structure?

John Drew: First, on the issue of policy, it has certainly been of great concern to me to make sure that there is not a duplication between the Youth Justice Board and the Ministry of Justice because that is within our control.

Q321 Elizabeth Truss: I am talking about the teams within the Ministry of Justice.

John Drew: I realise that and I apologise for saying that, but you probably need to hear me say that. Sometimes one of the mistakes that NDPBs make is that they themselves mirror the activity within a host department. You heard evidence suggesting that that might have been the case in relation to the LSC earlier in this series. That is the first thing that we have been focused on.

I believe that youth justice is a distinctive area because of the reasons that I have described previously. You need to be thinking about both criminal justice matters and matters of children’s well-being. For example, the sentence of the courts is driven, among other things, by section 44 of the 1933 Children and Young Persons Act, which says that in reaching any sentence the court must attend to the well-being of the child. It is quite a specialist area. I would be loth to say that it should just be merged into a general responsibility for criminal justice policy, not least because we know that the big beast at the party is adults. That is where most of the money is and most of the offenders. My fear would be that we would lose a distinctive focus, which is about children, were we not to have that.

Q322 Chair: Would you not say that you have been able to achieve more in radical approaches to custody because you are operating within that defined area
than the rest of the Ministry of Justice has been able to do?

Frances Done: With regard to achievements on custody in terms of the secure estate commissioning, we would say we were in a stronger position to be able to drive improvement in that because we are at arm’s length from the provider in each case—three different providers. That is a really important part of the system. In the wider system, the fact that we are not directly responsible for provision is helpful. If I could follow up that question in a slightly different direction and going well outside my remit here, I absolutely agree with John that youth justice has to have a very specific focus. It was when it did not have that very strong focus that we were not delivering the results and improvements that are needed. That could apply more broadly to other areas—for example, women—because, if the solutions are different, if the activities and directions of policy are different for different groups, it is definitely worthwhile to have a policy focus on those groups. If you could accumulate 18 to 25s within adult men and children all together and get just as good results, fine, but I absolutely do not think you can do that. There are different solutions—

Q323 Elizabeth Truss: What I am suggesting is a question about organisational structure here. Do we need all those directors and all those managers? Are we failing to learn from some parts of the justice system by having different silos that are operating, particularly when there are a lot of crossovers with the Department for Education or the Heath Department as well? I observed some of those financial drivers during our visit to the Department. You make a very good point about the commissioning and provider split, but I would say that is an argument for contracting out more prisons; so you could see it in an entirely different way. I am more broadly interested in where you see the savings coming from in the Ministry of Justice. If the Youth Justice Board is working so well, what are the lessons for the rest of the Ministry of Justice about where savings could be made?

Frances Done: I would hesitate to express an opinion about the whole of the Ministry of Justice. I do feel, though, in an area where we do have the experience to comment, that consideration should be given to thinking about a more arm’s length approach to commissioning on areas where there would be the potential to do what has happened in youth justice. That is why I mentioned women, because I think they can and should be treated in a way that is separate. There has been a long discussion about this, but at the moment that is all wrapped up in internal commissioning within the MoJ. That is my personal opinion; it is not the opinion of the board simply because the board’s remit is not to consider the question of women and justice. There is some learning within MoJ that ought to be drawn from the experience of youth justice. It may not be totally applicable, but there should be some thought given to that because that is an area where the MoJ might feel, in the longer term, that they could get better results with a particular group. Arguably, you could also talk about that in terms of over-18s or 18 to 25s. These are all areas of policy that are widely discussed. It seems to me that our experience has some relevance for that.

Q324 Mr Llwyd: On that very point, during the Committee stage of the Legal Aid, Sentencing and Punishment of Offenders Bill, the Minister to whom we have already referred today said that he thought that that particular cohort had been left behind and there is not a properly evidenced suite of approaches to deal with the 18 to 25s. Has any work been done recently on that and have you been involved at all?

Frances Done: Yes. We have a very particular interest in that group, in the sense that we are responsible for making sure that our young people transfer either in the community being dealt with by youth offending teams or in custody being dealt with by the secure units that we commission. It is quite a challenging area. There is potential for the support and services to young people, who, after all, are potentially going to cause damage if they reoffend after release or after they finish their community sentence, making sure that they are dealt with in a way that is appropriate as they get to 18. I am pleased to say that there is now a real will among Government Departments—the MoJ included and NOMS—and we are working with them in a cross-Government group to identify the key issues about that and working on an action plan that will take those issues forward.

One of the starting points is information that every young person coming through our system gets transferred properly, accurately and in a timely manner into the probation system and ultimately into the prison system, if necessary. Some of the most distressing cases that have been investigated, where very serious crimes have been committed by young people over 18, have often turned on lack of information being available to those dealing with offenders later on. That is really crucial.

We are also very focussed on the question of how you properly support some of the most vulnerable young people who are turning 18 and who, in no sense, are prepared for a system that is a very different one in adult prisons or in probation, where the level of support that probation are able to provide is much less than that provided by a youth offending team. If you turn this on its head and think about the victims and communities that are being damaged by 18 to 25-year-olds who are committing crimes, it is a really important area. I cannot give you definitive results on that. This is a matter of developing policy that Ministers will have an interest in. I agree that it is absolutely key to making future progress. There are lessons to be learned from what we have been achieving, but there is also an awful lot that probation and the prison service will contribute to that.

Q325 Mr Llwyd: In fact this work is going on as we speak.

Frances Done: In that this work is going on as we speak.

Q326 Mr Llwyd: That is a good thing. In your opinion, how can the criminal justice agencies work
better together and more effectively to improve the justice system as a whole?

Frances Done: The youth justice system is an example of how you can drive the joining-up of justice systems, but I would say it takes permanent vigilance to keep those partnerships going. We are focusing very strongly at the youth level on our relationship with local government nationally and local government locally in England and in Wales because they are really the key to a great deal of the progress that still has to be made. This is why there are developments towards the devolution of the custody budget towards local Government, working very much in partnership across all the agencies to deliver support to young people that prevents them from offending and ending up in custody. This sort of partnership working, in my view, is as relevant on the adult side of justice and is beginning to develop very strongly. You will see that in the MoJ pilots on payment by results and so on. I am no expert in that, but I am well aware of that move.

Partnership requires shared objectives. It requires good leadership. That applies across any part of the justice system, but it requires permanent effort on everyone’s part to be clear about what everyone is trying to achieve, to make sure they do not duplicate but there are no gaps in the middle of their services. That has improved enormously in youth justice over the last 10 to 12 years. There is still a way to go, and we have to keep on the case to make sure it happens.

Q327 Mr Llwyd: You referred to local authorities. Would I be right in thinking that a lot can be learned from youth offending teams and the way in which they work? Could their relative success be transferred to the agencies in Whitehall, for example, in terms of working closely together and having a common aim?

Frances Done: In principle, yes. My observation, as somebody who has worked with senior civil servants for probably 12 or 13 years now across a whole range of Departments—this is not just about the MoJ—is that Departments struggle with it because, in a sense, working very effectively together in a partnership requires you to share objectives and to be very clear what they are. That is not that easy to achieve across Government Departments. There will be different departmental agenda and so on. An example is the troubled families programme, where there is a great deal of intense cross-departmental effort on a programme that is potentially very worthwhile. We were 100% supportive of it, because, if you start identifying children in those families that are causing the most difficulty, without a doubt you will end up with fewer young people in the youth justice system.

Watching the process of that happening, it is very hard work for Government Departments to achieve that. I come from local government, and that sort of joint working has improved enormously. It is not perfect by any means, but it has improved enormously over the last 20 years. The reason is that, because they are so much closer to the ground, it is easier for the people who have to co-operate and share to see why it matters because it really makes a difference on the ground. With civil service Departments it is much more difficult. They are much more separate from why it matters that you join things up because they are not delivering a service on the ground. I just think it is much more challenging for them.

Q328 Mr Llwyd: And they live in silos, do they not?

Frances Done: There is a natural tendency to silos for every organisation, is there not?

Mr Llwyd: I did not expect you to answer that, anyway.

Chair: Thank you very much indeed, Ms Done and Mr Drew. We are grateful for your help this morning.

Examination of Witness

Witness: Peter Handcock CBE, Chief Executive, Her Majesty’s Courts and Tribunals Service, gave evidence.

Chair: Welcome, Mr Handcock. We turn now to the Courts and Tribunals Service as part of our inquiry into the functioning of the Ministry of Justice. I will ask Mr Turner to open the questioning.

Q329 Karl Turner: Thank you, Sir Alan. Good morning. The Courts Service and the Tribunals Service were merged in 2011. The Minister, Mr Djanogly, gave evidence to the Public Administration Select Committee and said that the merger of the two services was, in his view, one of the great successes in the last 12 months of the Ministry of Justice. I suspect you are bound to agree with that. In practical terms, how has the service improved for service users?

Peter Handcock: You are absolutely right; I am bound to agree that the merger has been a great success, and I can evidence that as well. There are a whole host of benefits that flow from bringing the two organisations together, not least in creating a single delivery infrastructure instead of the two that were there before. For example, it was a big challenge to reduce the level of management overheads so that we only had one team of managers. We seemed to be very rich in managerial capability; so we worked very hard to get that properly in scale. By the end of this financial year the total benefits taken out of the merger will amount to about £90 million. In a real way, that is £90 million in the front line of the business that would not have been there before.

On specific improvements in customer service, one of the other things that we argued was that the two systems have expertise they can share. The Tribunals Service had been very good at modernising its business model. It had, for example, customer contact centres. It had back office processing and all of that. On 19 March we will launch a national money claims service for 500,000 users of the county court. It is a transition that has been led by the former chief executive of the Tribunals Service, bringing his
expertise into this new business and delivering in a more modern way.
As you might expect, if we had all day, I would be very happy to give you more examples. There are so many synergies and connections between the business, but the big things are taking out management overheads and changing the business model so that we get better value for money.

Q330 Karl Turner: Who has overall responsibility for ensuring that trials and hearings are conducted in efficient ways and in a timely fashion?

Peter Handcock: It is my responsibility to provide the supporting resources. The staff that deal with issues such as listing and the staff that support the staff in court are staff of my organisation. They work in partnership with the judges in delivering all of that. Absolute decisions on timeliness, such as when a case is listed and how a case proceeds once it is in court, are all decisions for judges.

Q331 Karl Turner: If it was such a fantastic idea, why do you think the previous Government did not come up with an idea like this? It sounds like a great idea. I cannot see any objection to merging the two services, to be perfectly honest.

Peter Handcock: I think that is an unfairly challenging question to ask really. The Courts Service and the Tribunals Service were created at about the same time—about a year apart. It was recognised that there was enormous value in bringing the magistrates courts into the Courts Service and bringing the tribunals together. At the time it was seen as just too much heavy lifting to be done in one enterprise. The organisations were always on a pathway that at some point would bring them together. The moment just seemed right. I think it would have happened and that was the plan regardless of Government.

Q332 Mr Llwyd: I do not share your optimism about how things are working at the moment. I have done 300 or 400 DLA disallowance appeals over the last so many years and I am having a devil of a job with the Tribunals Service at the moment. I send a list of dates, Mondays and Fridays, to them saying, “Please don’t list mid-week”, and typically they fix it on a Wednesday. Then I have to go on my hands and knees to some judge in order to beg for another date; otherwise I say, “I will take you to the Minister if you say no because that person will be unrepresented.” Then they relent and I get a letter back. They ignore the fact that there is a need for Welsh language provision in Wales. Frankly, since the amalgamation, it has been a disaster on the tribunal side.

Peter Handcock: I am disappointed to hear you say that. I do not want to pass the buck here at all, but, if we are talking about the listing of cases and when cases are brought on, that is a matter for judges and not a matter for me. I do not make those decisions. There is a specific issue, which I absolutely recognise, with the social security and child support jurisdictions. That arises from the welfare reform programme; they are the cases to which you refer. The consequence of the welfare reform programme has been to double the amount of work going into that jurisdiction.

Q333 Jeremy Corbyn: The Secretary of State says that the courts process cannot set its own budget; therefore, the Ministry of Justice has to set the budget for it. Do you feel at any stage that there is an undermining of the independence of the judiciary by the Ministry of Justice holding the purse strings on what can be spent? Clearly what is spent affects the speed at which justice can be delivered.

Peter Handcock: It would be an interesting question to ask the Lord Chief Justice rather than me. I do have a view. From my perspective I have not felt, certainly since the agency was launched and it is only 11 months old, that the issue is that we do not have enough money. You could always do more with more, but the issue for me is the way in which we spend the money and the way in which we aim to get best value for that out of that money.

Q334 Jeremy Corbyn: How do you do the budget? Do you make bids or is it sent down to you?

Peter Handcock: I am a member of the departmental management board of the Ministry of Justice as well as chief executive of the Courts and Tribunals Service. I am a part of the debate that sets budgets and part of the debate that goes on with the Treasury over budget setting. I am deeply immersed in that process at both ends. As I have said, there are some trade-offs to be made, there are not? The size of the court network and the number of locations that you continue to operate are all driven by cost. Interestingly, having closed 140-odd underused courts, I still find myself operating on well over 700 sites. I suspect the cost of maintaining that infrastructure has an impact on quality of service across the whole system. The issue for me is not so much about the absolute numbers but about the way in which we spend that money and whether we are spending it wisely.

Q335 Mr Buckland: I want to deal with the issue of the relationship between the judiciary and the Department as an arm’s length body. I have read your framework document and I understand there is a clear enjoiner in there for neither the Lord Chancellor nor the Lord Chief Justice to get involved in operational matters. There is an exception where there is a substantial issue of public or judicial concern. Could
you help us as to the input that the judiciary have into the strategy that the Department sets? How would you characterise that at present?

Peter Handcock: There are formal, close and regular contacts between senior judges and policy makers in the Ministry. Across all policy areas, judges, as a matter of routine, would be part of the discussion about developing policy. So far as my organisation is concerned, of course there are three judges on the board. They are absolutely right in the mix in determining the strategy for the Courts and Tribunals Service. They are part of that decision-making process.

Q336 Mr Buckland: There are three senior judges. Let us look at the judiciary as a whole. We know that judges at varying levels will have their own viewpoints, some forcibly expressed. How do they make an input?

Peter Handcock: In my experience, every individual judge has a viewpoint. That is part of the difficulty. You cannot get a corporate view easily from judges at a working level. As a general rule, the Judicial Executive Board, the Lord Chief Justice and the senior judiciary speak for the judiciary as a whole on those matters of policy. They have their own machinery for establishing the views that run across the rest of the judiciary through things like the presiding judges’ network and so on.

Q337 Mr Buckland: With regard to operational matters—let us take efficiency savings—how receptive would you say the judiciary are to proposals that emanate from HMCTS about things like efficiency in operational matters?

Peter Handcock: It always seems to come as a slight surprise to everybody that the judges are really just like everybody else. Some of them are hugely committed to the efficiency agenda and some of them are coming along slightly more slowly. There is no doubt that there has been a marked tendency over the past few years for the judges generally to become more managerial and to have a much better understanding of the need for efficiency. It has not been difficult to settle a budget that has in it the kind of efficiency measures that we have needed to make to deliver savings of £90 million plus across the last financial year. The concordat with the Lord Chief Justice requires the Lord Chief Justice to agree to that budget. The HMCTS Board, which has judges on it, has to agree to that budget. It has not been difficult. It has been as difficult as it would be in any other bit of corporate governance to satisfy people that you are managing risk appropriately.

Q338 Mr Buckland: Touching on Transforming Justice, which is of course a Ministry initiative, with regard to involvement and support from the judiciary and the legal profession, what is your take on how the MoJ has attempted to secure that?

Peter Handcock: Transforming Justice is quite a wide portfolio of projects in effect. The whole purpose of the Transforming Justice system is to make a coherent agenda of that. The overall agenda is not of interest to all the stakeholders across the whole spectrum of projects. The way, for example, in which the legal profession or judges are bound in is in relation to the individual projects that are of interest to them. There are hugely extensive formal and informal mechanisms for talking to the legal profession about things like legal aid change, policy change and so on. Those are critical components of TJ, so people are brought in by engagement in the things that interest them rather than in the whole TJ portfolio.

Q339 Mr Buckland: I accept what you say about the differing priorities. The legal profession has so many different aspects to it.

Peter Handcock: The legal profession, for example, is not interested in the development of shared services within the Ministry, which is a way of saving money, but it is interested in the rehabilitation revolution and legal aid reform. It may be interested in some aspects of Courts and Tribunals Service integration. The practice is to bring those stakeholders into those projects individually. I think that works very satisfactorily.

If I think about the creation of the Courts and Tribunals Service, in the process of running a project to bring the organisation together we met something like 100 or so stakeholders from across the tribunal user community regularly and gave everybody an opportunity to influence the way in which we were doing that planning. I certainly have not had any complaints from anyone about the degree of stakeholder engagement. It varies across projects, largely on the basis of how much a particular stakeholder likes or does not like the projects.

Q340 Steve Brine: I have a left-field question, going back to what my colleague Mr Turner referred to earlier. You were the chief executive of Her Majesty’s Courts Service and before that the Tribunals Service. Maybe it is quite a robust question to have asked you why it was not done before, but did you ever suggest that it was done before, bringing those organisations together?

Peter Handcock: I was actually the chief executive of the Courts Service that preceded Her Majesty’s Courts Service. I then went off to run the Tribunals Service. When I was interviewed for the job, I did actually because, like everybody, I was concerned that the job needed to last a little while because I did not immediately have anything else to do. My question was, “Why are you doing this? Why are you not putting the Tribunals Service and the Courts Service together?” The answer at that time was, “We want to get both of these things done and we want to get them done on a reasonable time scale, and in order to do that we need to do them separately.” Looking back on that with hindsight, that does seem to me to have been the right decision. The project to create Her Majesty’s Courts Service, which effectively was amalgamating 43 organisations—a big project—was a success, certainly from where I sit now; and, similarly, the project to create the Tribunals Service was a success. It would have been a much bigger challenge if we had tried to do everything at once.
Q341 Steve Brine: One had to come before the other, but maybe you could claim it was originally your baby. Turning to Her Majesty’s Inspectorate of Court Administration, what is your perception or your view on how the functions of that body will be carried out after its abolition? Do you recognise the concerns that some have expressed that you might be seen as self-regulating after that happens?

Peter Handcock: I understand why people would be concerned if we appeared to be self-regulating, but we are not, any more than any other agency is and possibly less. First of all, we are subject to scrutiny by our own internal auditors, who are independent. They come from the Ministry and not from the Courts Service. We are subject to scrutiny by the National Audit Office and the kind of value-for-money scrutiny that otherwise the Inspectorate might have done. We have governance arrangements that are quite different from those that were in place when the Inspectorate was created, including what I regard as a genuinely proper corporate board with independent non-executive members and the judiciary on it. As chief executive of the agency, if I think about the way in which I am held to account, I am held to account from frankly more directions than you can shake a stick at. I am personally not convinced at all that the Inspectorate was likely to have added value if you think about all of the other accountability mechanisms.

Q342 Steve Brine: Obviously there is the stick shaking, but are you held to account in too many directions? That is possible, is it not?

Peter Handcock: Yes, it is. To be honest, this job is quite a challenge because in ordinary circumstances an agency chief executive has a straightforward accountability to Ministers and to the Permanent Secretary of the sponsoring Department. Agency boards are not generally executive boards in the way that mine is. My accountabilities are to an independent chairman, the Lord Chief Justice, the Justice Secretary and my Permanent Secretary. Given the position of the Courts and Tribunals Service in the constitution, those extra accountabilities are inevitable.

Q343 Elizabeth Truss: The NAO criticised the accounts of the HMCTS on several occasions and the accounts were disclaimed. What steps has the organisation taken to deal with that?

Peter Handcock: Can I just challenge that? Our accounts have never been criticised. The Trust Statement, which is a new requirement, was disclaimed, but we have a pretty good track record of what I would regard as prudent financial management and our accounts have generally gone in on time. The Trust Statement, though, was a real problem for us. 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 Government by HMCTS. That is fines, confiscation orders, fixed penalty notices and so on. 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.

Q344 Elizabeth Truss: But you think it is fit for purpose in terms of the job it is doing.

Peter Handcock: The system I use enables me to know, in relation to every single one of two million fine accounts, how much somebody owes on that fine account whenever they want to make a payment.

Q345 Elizabeth Truss: So yes is the answer.

Peter Handcock: It is fit for purpose operationally, yes.

Q346 Elizabeth Truss: I want to ask what benchmarking you have done of the Courts and Tribunals Service compared with other countries. I am particularly interested to understand the level of move over to an electronic case management system and all those kinds of things in other jurisdictions.

Peter Handcock: We have from time to time not made whole system comparisons but made individual comparisons of components of the system. It is really difficult to make whole system comparisons, partly because systems vary. Even if you look at common law jurisdictions, processes vary so much and the published data vary so much that it is difficult to match it to make meaningful comparisons. By way of example, we looked very carefully at the electronic case management system that is being used in Northern Ireland. We have looked again at the electronic case management systems in use in Australia in the Australian Family Court. We have looked several times at the sorts of systems that are in use in Singapore, particularly on the civil justice side. Every time we have done that, we have found that the obstacles to a meaningful comparison are almost overwhelming and they are hard to resolve at a reasonable cost. Systems used elsewhere are so closely tailored to processes in use in those jurisdictions that you cannot readily take something off the shelf or they are not scalable.

Q347 Elizabeth Truss: If you had to compare the generality of other countries, where are we in terms of electronic processing of court activities? Are we in the Premier League or the Conference?

Peter Handcock: I am inclined to feel that it is more like the Conference than the Premiership, but I think lots of justice systems around the world are also in the Conference. The standard is not all that high.

Q348 Elizabeth Truss: Have you benchmarked cost per case?

Peter Handcock: If you look at the published data—the OECD, for example, publishes data on expenditure on public safety—it is very difficult to isolate from that data a component that is attributable to the court system. If you can isolate the data in a component that
is attributable to the court system, you then have to understand whether all the processes that take place in our court system are also in the court system in other jurisdictions.

Q349 Elizabeth Truss: But there are other countries that have similar legal processes, such as Canada and New Zealand.

Peter Handcock: It is very easy to say that. They are common law jurisdictions, but they do not have the same process. I do not know quite how to illustrate it. If you look at the end-to-end process, the division in the process between where the police operate, where prosecutors operate and where the court operates tends to be different across pretty well every jurisdiction. Each jurisdiction publishes data—of course it does—on the basis of where that process or division. Trying to reconcile them to a different system is very difficult. To be honest, there is a very substantial investment required to make that sort of comparison meaningful. You have to have a pretty good idea that there is a business case for doing that in the first place.

Going back to the first part of your question, if I thought there was the remotest chance that I might be able to go and pick up a fully functioning case management IT system from another jurisdiction somewhere around the world and put it in, you wouldn’t see me for dust. I inherit a position where we run 300 IT applications and 70 different case management applications, when actually there are not 70 different jurisdictions. The reason for that is because what is available pre-packaged is extremely difficult to get into the system.

Q350 Elizabeth Truss: What concerns me, though, is that the Courts Service is the fulcrum of the justice system. We have been discussing commissioning and the idea of regional commissioning. Given that the department runs 300 IT applications and 70 different case management applications, when actually there are not 70 different jurisdictions. The reason for that is because what is available pre-packaged is extremely difficult to get into the system.

Q351 Elizabeth Truss: On this overall point, though, do you think the Ministry of Justice has enough focus on collecting and disseminating the evidence on what works and what does not work across the whole legal system? It seems to me that it should be possible to conduct some kind of benchmark of what court costs are in other countries. We should be able to best follow the evidence about which sort of rehabilitation or punishment process is most effective and courts should be able to receive that information. Is there just a bit of a silo mentality going on between the different parts of the MoJ where no one is looking at the whole piece?

Peter Handcock: I honestly do not think that is true. You have slightly widened the question by talking, for example, about rehabilitation. What I said at the beginning of this was that on particular issues, where there is likely to be a read-across and where the data effectively supports comparison, it is pretty much routine for the Ministry to look at experience elsewhere. On rehabilitation and on prisons, for example, it would be routine to make those comparisons. Those comparisons then figure in the way that we make policy. On the provision of legal aid, for example, again those comparisons are made. The bit that frankly we have not done, and there would be some value in doing, is benchmarking court costs. I would be up for that but only if it is possible to do that at reasonable cost. The trouble is that disaggregating the data, which are published in different formats in relation to different processes in different countries and in different jurisdictions, is quite expensive and the product that you get at the end of that can be a bit variable.

Q352 Elizabeth Truss: Of all the systems you have looked at, which would you say is the most efficient system?

Peter Handcock: Of the justice system?

Q353 Elizabeth Truss: Yes, as part of this inquiry on the structure and function of the Ministry of Justice, where should we be looking?

Peter Handcock: I would not want to mislead you into thinking that I am any kind of authority on this. Over the years, meeting judges from a variety of
jurisdictions across both the EU and more widely, and certainly from Canada and Australia, I do not think there is a significantly more efficient system than ours if you look at outcome. There are systems where, frankly, we might not think the outcome was the sort of outcome we would want in the UK, which operates at a much higher level of efficiency. Outcome for outcome, our system is pretty good.

Q354 Mr Llwyd: You may be aware that a few weeks ago we had a visit to the MoJ in Petty France. Some of us paused at the section where they were recovering costs and collecting fines. The current percentages of recovery on that day were very encouraging, quite honestly. I would like to ask you what progress is being made towards full cost recovery of fees and are you on course to bridge the gap by 2014–15?
Peter Handcock: On fees, the commitment is to have a fee structure in place that delivers full cost recovery by 2014–15, and I believe we will. We still currently have a fee gap of about £100 million. There are two ways in which that gap needs to be bridged. One of our difficulties in the past is that we have had relatively little commercial acumen applied to this process and, therefore, generating more income has always been a simple matter of putting up the price. When you put up the price, fewer people use the system. We have to do two things. We have to drive down our costs and make the gap meet somewhere in the middle. We have to make our business model, which is still essentially a 19th century business model, efficient so that it costs much less. Then we have to put in a system that recovers the full cost of that more economical and efficient system. We are on course to do that.

Q355 Mr Llwyd: Can you give an assessment, albeit early, of the pilots on aged debt? Why, may I ask, do you think the private sector would be more successful in achieving returns?
Peter Handcock: I need to be slightly cautious because we are still analysing the outcome of the pilot and part of the pilot has yet formally to complete, but it looks really promising. We are talking here about fine debt in particular, some of which is four or five years old and has been right through the process and is seen as unrecoverable in the process for which I am responsible. In every case the private sector partner, who took a proportion of that debt to work for us, was successful in recovering some money. In some cases it looks as if they may have been significantly successful in tracing offenders who we might have thought were lost for ever.
There are a number of reasons for that. One reason for private sector organisation success is the extent to which they are invested in the kind of technology that enables them to run contact arrangements with people very effectively. I simply do not have those sorts of arrangements and it is not easy for me to get access to the investment that would enable me to do that. They are heavily invested in technology that I do not have.
The second thing is that in the pilot they were not being paid at all but were participating in the hope that eventually we would take a proposition to market that they would want to bid for, and so they are strongly incentivised by the commercial opportunity. In a payment-by-results model they are strongly incentivised, are they not, because their remuneration depends on their success?

Q356 Mr Llwyd: When do you expect the reports to be available on how the pilots have worked?
Peter Handcock: Over the next couple of months. I can say, although it is still early days, that the results of the analysis are so compelling that it is quite likely we will want to take something to market.

Q357 Mr Llwyd: Do you believe that the confiscation order debt book should be on the HMCTS accounts?
Peter Handcock: No.
Mr Llwyd: That is a straight answer.

Q358 Chair: It is just embarrassing to have it there, is it?
Peter Handcock: I am responsible for enforcing about 18% of the debt book, and yet the whole debt book is on my accounts and I end up with a qualified Trust Statement. It is not just confiscations that I would like off my books, frankly. It is also things like fixed penalty notices from police forces. One of the reasons my Trust Statement was qualified was that it is pretty well impossible to audit fixed penalty notices issued in police stations across 42 police force areas by policemen, many of whom will still be carrying in their pocket the fixed penalty ticket stub of the book that is needed for audit purposes. Having that on my accounts is a real challenge. I doubt that we will ever get into a position where we have respectable auditable evidence in relation to that debt. The accounting responsibility is with the chief constable and, therefore, generating more income has always been a simple matter of putting up the price. When you put up the price, fewer people use the system. We have to do two things. We have to drive down our costs and make the gap meet somewhere in the middle. We have to make our business model, which is still essentially a 19th century business model, efficient so that it costs much less. Then we have to put in a system that recovers the full cost of that more economical and efficient system. We are on course to do that.

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able to deliver both a more efficient and responsive service and a cheaper one. We spent quite a lot of time working through with the contractors on the transition and an implementation path for the new contract. When the contract launched, for quite complicated reasons, the contractor simply did not have enough people and was not able to offer the service, particularly in one or two—and still in one or two—relative minority languages. In the first week of the implementation of the contract the level of fulfilment against the requirement ran at about 40%, which made life very difficult. As a result of that we immediately reverted large parts of our business to our old arrangements and went back to booking interpreters ourselves. The contractors, having, I think, been slightly taken by surprise by the difficulties, have worked pretty hard to put it right. As we speak, their fulfilment rate is close to 90% from the 40% it was at the beginning. It is partly the process of letting a new contract and putting it in place, but, frankly, we need to do much better at understanding the potential risks before we roll these things out.

Q362 Chair: There were quite a lot of warnings in this House and evidence before the Committee earlier that there may have been an underestimation of the challenges the contract posed. Peter Handcock: Both within Her Majesty’s Courts and Tribunals Service and on the part of the contractors we simply underestimated the difficulty of getting the new contract in place.

Q363 Chair: Was the contract structured so that you have sufficient penalty and cancellation provisions at your disposal to deal with this situation? Peter Handcock: It is. I made it very clear right from the outset that step one was to revert to our old arrangements, simply to roll back. Step two, if the level of performance did not improve very rapidly, would be to withdraw from the contract.

Q364 Karl Turner: On the interpreter issue, what is the problem? I can give you a very specific situation. My wife is a criminal solicitor in Hull. The contract is with a provider based in Leeds. I am not sure why, but I am told that, for whatever reason, the interpreters do not always want to travel to Hull. The local interpreters are not prepared to do the work because the fees are nothing like what they used to receive. Very recently a defendant appeared in Hull magistrates court charged with a shop theft with a value of a few pounds. I think he was Lithuanian. He was remanded in custody for five days. Eventually someone volunteered to interpret for the court. The district judge, who was hearing the case, agreed to accept this young man, who was on work experience with a firm of solicitors. He did not take the oath; he just volunteered and the judge agreed. Eventually the defendant was sentenced by the judge to a day in prison.

The cost of all of that is completely and utterly ridiculous to me. What are you doing about these interpreter contracts? Are you able to deal with that? Are you addressing the issue?

Peter Handcock: Is your point just about the interpreter or that all of that is generally disproportionate?

Q365 Karl Turner: That scenario is just completely mad, in my view. The reality of that is that, if the offender in the police station had been given legal advice and had had access to an interpreter, I suspect it could have been dealt with by way of an 80 quid fixed penalty ticket rather than an appearance in court and five days remanded in custody. The cost of that must run into many thousands of pounds.

Peter Handcock: I agree with you that it seems ridiculous. The availability of the interpreter is a critical problem here. The fact is that the contractors providing this service overestimated the willingness of interpreters to sign up under the terms of a new contract.

Q366 Karl Turner: Is that about the fee, though? Peter Handcock: There will be a remuneration package.

Q367 Karl Turner: I have to be honest; I have always thought interpreters charge too much money, in truth. It is very often more than I would be charging per hour, even if I was representing the defendant privately. Is it about the money? Peter Handcock: That is one of the reasons for wanting to put a proper contract in place rather than to be booking individual interpreters as a self-employed work force ad hoc. The idea is that the contract gives us more reliability, and ultimately it will. It will give us a better spread of languages and a better guarantee that we are using interpreters in an integrated way across the system. We started out with an implementation problem because we underestimated the extent to which people would not be prepared to sign up to these new arrangements. In the first couple of weeks after the contract was in place the numbers of people signing up to new contracts went up massively and it is still going up now.

If my memory serves me correctly, we have a problem with three languages where, nationally, the number of translators is not very high. They are Lithuanian, Romanian and Vietnamese. What I have said to the contractors is that they have to solve that problem quickly. The risk is not proportionate to the fulfilment level under the contract. You only need one person, for example, who ought to be deported and who is unable to be deported because there is not an interpreter available for an immigration hearing; or you only need one person for whom the custody time limit has expired and who has to be released unexpectedly on bail because no interpreter is available. I recognise that it leads to this kind of problem and this kind of risk, but I am just about satisfied at a fulfilment rate of 90% that we are making progress towards a decent level of performance. I suspect we are still going to be fingers crossed for another couple of weeks.

Q368 Chair: I want to move to this final question. You have had a long opportunity to observe the Ministry of Justice through your involvement in the
Courts Service. How much has it changed and is it changing in the right direction as a Department?

Peter Handcock: It has changed massively, pretty much out of all recognition. For me, the pace of change in the Ministry has accelerated probably over the last four or five years. It now has proper and serious corporate governance that means what it says. Just looking at it as a chief executive on the receiving end of scrutiny from the Ministry and in debate about the delivery of change, money and all of that, it is a significantly more challenging place to work. It is much better at looking at performance, for example. It is much more focused on delivery. It is much better at putting money alongside performance, so commitments to delivery have to be very specific and then those commitments will be followed up in a way that would not once have been the case. It manages its money and its risks again in a properly corporate way that it probably did not five or six years ago. It feels like a better place to work.

I have always worried, certainly in past incarnations with the Ministry, about the huge amount of weight that attaches to criminal justice and that family and civil justice are poor relations, and they have been for years. It is the first time in my experience that the governance arrangements for the Ministry work in a way that gives those things proper balance and proper weight.

Chair: Thank you very much, Mr Handcock. We appreciate your evidence this morning.
Tuesday 22 May 2012

Members present:

Sir Alan Beith (Chair)

Steve Brine
Mr Robert Buckland
Jeremy Corbyn
Chris Evans

Ben Gummer
Mr Elfyn Llwyd
Elizabeth Truss
Karl Turner

Examination of Witnesses

Witnesses: James Allen, Head of Public Services and Partnerships, National Council for Voluntary Organisations, and Clive Martin, Director, Clinks, gave evidence.

Chair: Good morning and welcome. We have Mr Clive Martin from Clinks, an organisation we have had contact with and evidence from before. Indeed the same goes for the National Council for Voluntary Organisations, where Mr Allen is Head of Public Services and Partnerships. We are very glad to have you with us this morning. In general, we are very interested in your experience that your organisations do, but at the moment we are looking particularly at how the Ministry of Justice functions. You have perhaps a particular opportunity to view that because of the work that your own organisations or those that are associated with you carry out for the Ministry. I am going to ask Mr Buckland to open the questioning.

Q369 Mr Buckland: Good morning. I want to start off by asking questions about the role of the voluntary sector and its relationship with the Ministry of Justice, particularly at a time when, as we all understand, budgets have become tighter and financial constraints are far more evident. How would you say the Ministry’s relationship with the voluntary sector has changed in this climate? If it has changed in a negative way, are there examples of other Government Departments that are doing it right that could be applied to the Ministry?

Clive Martin: It is probably worth saying a bit about the history of the relationship. 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.

The sector is experiencing that in two different ways. Generally, relations with the prison part of NOMS and the Ministry of Justice are probably fairly stable and have not as yet experienced a huge amount of disillusionment to the extent that we would expect. There have been funding cuts. People are working to tighter budgets but there is still access to prisons. Prisons still seem to be able to cope with the number of organisations coming in, coming out and so on. It is slightly different looking at organisations where the primary relationship is with the Probation Service, where there seems to be a larger amount of uncertainty about the future. There are other political initiatives that are making that territory more difficult—particularly local commissioning, health reforms, the election of police and crime commissioners and so on. The agenda at a local area for organisations working with the Probation Service is more complicated and that has caused more difficulty.

In terms of the cuts or the tight financial situation itself, we have recently done a survey of our members, and 95% of those organisations report that this is having some impact on their work. Rather startlingly, 77% of them are using their free reserves to support their work. It is a fluid situation, but it is probably very variable according to whether the focus is prisons or probation and according to the locality.

James Allen: In terms of the MoJ specifically I do not really have much to add to Clive’s comment. However, from our experience this does mirror what is going on across Government very closely. There is no getting away from the fact that funding cuts are having an impact on that. That can make relationships difficult, although it is the way that those cuts are implemented and the level of certainty that organisations have that has a bigger impact on that relationship. We have seen cuts being implemented fairly quickly and deeply as well, but, where that is communicated clearly and where the voluntary sector is brought in early to shape a change in the service, then that tends to help the relationship.

Q370 Mr Buckland: Mr Martin touched upon the fact that the cuts scenario is important, but prior to that there has been a build-up of a certain expectation over years that has never really been met. Is that down to a failure of communication over the long term between the Department and its predecessors and the voluntary sector?

James Allen: More broadly across the whole public services delivery landscape in the voluntary sector, there was a huge amount of growth over the decade that preceded the Comprehensive Spending Review and the implementation of those cuts. There was growth of about 120% in terms of services delivered by the sector overall. Sometimes those services were built up in a sustainable and sensible kind of way and sometimes they were not. There is clearly some responsibility for that on both sides. Some of the
At the heart of this debate is the question of responsibility. The Government has a responsibility to ensure that contracts are awarded in the most sustainable and far-sighted way, but some of that responsibility lies with the sector as well. We recognise that we are now getting better at building sustainable partnerships.

**Q371 Mr Buckland:** In terms of your getting better, which is good to hear, and how you and the Department work together to get it better, what would you say are the pluses and what are the areas of work still to do?

**James Allen:** It is important to resist the temptation to identify good and bad Government Departments and similarly good and bad local authorities because, unfortunately, the picture is a lot more complicated than that. There are things that the MoJ does well. My relationship with the MoJ does not go back very far. I have more experience of working with other Departments, but I have to say that I have been quite impressed with the way that they have brought the sector in during the consultation stage. Looking at some of the changes that are coming in—payment by results is an example—I am impressed by the amount of time and resource that the Department is prepared to put into pilots, which is in stark contrast to other Departments. The Work Programme is something that I spend a lot of time looking at. That is an area that could have benefited from more piloting and gathering of evidence. So there are clearly things that MoJ does do well.

**Clive Martin:** There are two things for me. One is a very clear intention in the MoJ at a very high level to embrace and support the voluntary sector. That is clearly there. Two things happen as a result of that. One is that it gets caught up in the commissioning frameworks, which are much more difficult for the voluntary sector to penetrate and implement. You have a warm embrace, if you like, but then, when it comes down to the business of securing the work via contracts, it becomes bogged down in different commissioning practice, European legislation and so on and so forth. That is a difficulty.

If the voluntary sector is a key element of influence in the drive for consortia in the sector is something that makes sense is a joined-up approach. Consortia? Is that the future? Maybe Clinks would like to start there. Devon reForm. Would you tell us a bit more about the voluntary sector organisations taking on, and specifically with Devon reForm. Would you tell us a bit more about the voluntary sector organisations taking on, and specifically with Devon reForm. Would you tell us a bit more about the voluntary sector organisations taking on, and specifically with...
formed. There are very few voluntary sector organisations that can span across the whole range of services that might be needed.

The problems in the past with forming consortia have been to do with lead responsibility, risk and capacity. That is where it becomes a stickier issue. From a commissioning point of view there has always needed to be one responsible agent. Commissioners have been reluctant to contract to a consortium that does not have a credible or past history of development. You have one key responsible agency; the delivery lies with them, and the scope and capacity of that has been variable.

There has been success, both in the south-west and in Yorkshire and Humberside, particularly around integrated offender management where a voluntary sector organisation, normally a non-service provider—in the past it has been Councils for Voluntary Service—has had a key consortia role. It has worked very well. It seems that consortia are good, both in delivery and commissioning, but it needs quite a lot of unpicking in terms of the skill to deliver those. Where that will come from is up for grabs, I would guess.

Q375 Steve Brine: Mr Allen, over to you: Devon reForm.

James Allen: I am not really qualified to talk specifically about that, but could I say a bit about consortia? We have a lot of experience of working with organisations in the voluntary sector to form those consortia. The short answer to the question as to whether this is essential really depends on the size of the contract. If contracts are issued at a very large scale, then that probably does push organisations to collaborative working or consortia, or perhaps merger, depending on the nature of the contract; but there is no reason per se why working in consortia is better than organisations working separately to deliver smaller contracts. Generally speaking, we see enormous benefits of collaborative working in the sector. It is something that we are encouraging organisations to consider, but there are challenges in forming consortia as well. There are financial challenges. There is often an investment cost in setting it up. There is sometimes a danger when delivering very specialist services that you lose some of the unique characteristics of two organisations when you bring them together.

The overarching point about collaborative working is that we feel that is a decision that should be led by the sector. It is for those organisations to decide whether they should be working collaboratively or in consortia rather than necessarily for a commissioner to be telling them that they should be working together to deliver this service.

Q376 Karl Turner: It has been claimed that some voluntary organisations have been used as “bid candy” by large firms. How prevalent is this practice, if it exists at all? What impact does it have on the voluntary organisations? We wonder whether you think a code of conduct might help.

James Allen: If I could start by talking about the so-called “bid candy” issue, we are confident that it is happening. In a similar way to proving that organisations are not speaking out because of fear of reprisals, it is quite hard to gather evidence on that. Anecdotally, a significant number of organisations are telling us that they think this has happened. For example, organisations are named as part of supply chains and then referred absolutely no work or they are not clear whether they are on the supply chain or not. When that is happening a lot, as it is in parts of the Work Programme, it would suggest that this might be going on. The impact of that certainly is to undermine confidence in the programme. Organisations are saying to us, “We are not prepared to bid again because we think this is too much of a risk.” The potential consequence in the long term, although I do not think we are there quite yet, is that it damages the relationship between the sectors as well. In an era when we are trying to build better relationships between the public sector, the private sector and the voluntary sector, if there is a perception that this is going on and nothing is being done about it, then it damages that relationship and that long-term trust as well.

Clive Martin: Part of the issue is clearly just the way in which these things work. Organisations are going to be part of a bid that might or might not be successful and I suppose we all have to live with that. I guess the damage comes when organisations are being asked to sign exclusivity arrangements with certain providers. There are all sorts of seemingly ill-informed reasons to do that. That essentially means tying themselves up with one provider that potentially won’t win a contract, thus damaging their business opportunities in the future. That is something that we think is potentially more dangerous than just being fair game, where you are in the bid, it does not win, you get over it and move on.

Connected with that is the inability to understand exactly what the nature of those relationships are and whether someone is in a contractual relationship to bid again because we think this is too much of a risk.” The potential consequence in the long term, although I do not think we are there quite yet, is that it damages the relationship between the sectors as well. In an era when we are trying to build better relationships between the public sector, the private sector and the voluntary sector, if there is a perception that this is going on and nothing is being done about it, then it damages that relationship and that long-term trust as well.

Q377 Karl Turner: What measures do you think might help the voluntary sector in that?

Clive Martin: First of all, a more open process. Why does a potential prime provider choose another voluntary sector organisation to become part of its network? Some sort of open process about that—some sort of tendering process—would be useful. Secondly, some sort of understanding as to what the risk involved in that bidding process was and what capacity needed building would be useful—in other words, “If you bid with us, this is the expectation of it and this is what we are prepared to do.” Again, some sort of transparency and some idea about the resources involved in that and how they would be met would be useful.

Q378 Chair: How does it work in practice? If you are a well-established but small local organisation providing an experienced drug rehabilitation
programme, let us say, and your chance for the future depends on subcontracting to a provider covering a much larger area, you presumably want to keep open the opportunity of subcontracting to whichever provider gets it, don't you, unless you go into a consortium? From the start you need to keep all your options open, don't you?

**Clive Martin:** That is our view. You do need to keep all your options open. That is why it is hard to see sometimes why organisations sign themselves up to work with a particular provider. They obviously do it for their own reasons, but to keep your options open is certainly something that you would need to do for as long as possible because that is the only rational position to take up. Sometimes it works like that and sometimes it does not. That is purely down to some discussion that has gone on between the prime and the organisation involved.

**Q379 Chair:** Do you have any redress or any ability to restrain a prime contractor who tries to give the impression that he will work with you but there is no guarantee that he will in the end?

**Clive Martin:** We have no ability to do that, no. We see voluntary organisations responding in different ways. Voluntary organisations, by and large, are very enthusiastic about their work. They will talk to prime providers, as they should. Sometimes that results in a contract; other times it involves a prime provider almost collating and understanding the work in a way that they can then bid for it themselves, but there is very little that can be done about that. From our point of view, it is more about making organisations aware of some of the pitfalls of these discussions rather than trying to control what they are doing. We cannot believe in the independence of the sector and then suggest to organisations how they keep their independence. We can only provide guidance and point to where other things have happened.

**Q380 Mr Llwyd:** I would like to ask you one or two questions about payment by results. The Howard League gave evidence to this Committee. They were very sceptical about it. They referred, for example, to the complexity of application processes; the idea that one size fits all; the danger of cherry picking; the fact that they said it is not based on any meaningful outcomes; and that there was no record of success. That is all they had to say. In your opinion, do you think that payment by results will deliver beneficial outcomes for the public purse? Furthermore, do you think it is feasible to have a PbR element in all contracts?

**James Allen:** As to whether it will definitely deliver savings for the public purse, it is impossible to answer that. The attractiveness of PbR is obviously related to the potential to save money. I would agree with the Howard League on a number of the challenges that they have identified in payment by results, both within MoJ and across Government. Having said that, we do not think there is any reason why payment by results can't work. All of those concerns are about the way that those PbR contracts are designed and the way that the transition from either a grant funding or an up-front contract payment model to PbR is managed. If it is applied skilfully, PbR can be part of the solution in moving towards more outcomes-based commissioning, which is what most people say they want and what we would support. That said, there is a lot of nervousness in the voluntary sector about payment by results. There are a lot of structural challenges as well where organisations do not have the capital, for example, to be able to bid for those contracts. They do not have the risk appetite, if you like, whether that is about money or culture, to be prepared to wait for a long time before payment. Our view is that none of those are challenges that cannot be overcome. I would not say there is any contract that immediately springs to mind that absolutely could not have PbR as part of it, but PbR should be used as one of many mechanisms of funding. There might, for example, be the need for grant funding as well if you want providers to innovate within a service alongside that kind of PbR model.

**Q381 Mr Llwyd:** Is there a danger, Mr Martin, of cherry picking in terms of the more obvious cases being dealt with and the more difficult being left behind?

**Clive Martin:** Yes, there is, but I imagine that all depends on how well the contract is designed and the way in which the incentives are made. In principle, that could well happen, but, again, it would depend on the thoroughness of the contract and the way in which it is designed to ensure that it is not only those people with whom you can succeed who trigger the payment. It feels to us that payment by results has potential but it needs quite a staged process in order for us to get this right, both in terms of developing the market and the mechanism, whether it is a binary mechanism or not. We need to ensure that it does not create other perverse behaviours in letting all sorts of groups of people fall off the edge of the contract. In principle, they are right about cherry picking, but there is no reason that could not be overcome.

**Q380 Mr Llwyd:** You refer to the binary model. What difficulties do you see a binary model would present to the voluntary sector? How could these difficulties be overcome?

**Clive Martin:** The binary model of offending/reoffending presents a number of issues. I know it is blindingly obvious, but it is just worth reminding ourselves that capturing reoffending data is slightly different from whether someone has reoffended. It is not a foolproof method; it is just who gets caught again. There are all sorts of difficulties then about who provided the intervention that worked, who should get the payment and at what level the payment should be. All those are attributable factors. The other thing that sits in the middle of all of that is the new theory, which the MoJ in our view is rightfully embracing, around desistance and how a person’s journey towards reoffending is not a one-off event. It is not something that just happens; it is a decision people make. They are likely to reoffend, but, once they have made the decision, their progress generally gets better. That comes about through the better quality of their relationships, more enhanced
self-worth and all those sorts of things, which you would want to reward people for. The straightforward offending/reoffending is problematic at the moment.

Q383 Mr Llwyd: Mr Allen, do you have a view on that?

James Allen: The obvious challenge that we see very often from a financial point of view is just that organisations are not prepared or are not able to take the risk. There is no reason why, under a PBR contract, there cannot be an agreement that there is an element of up-front payment, for example, and an element of payment by result, depending on how that is agreed. The overarching complexity here, which a number of people have grappled with for a long time, is how you define and attribute those outcomes. It is enormously complicated and it gets more complicated when dealing with people with chaotic and difficult lives, who have all kinds of interactions with different parts of the public sector, the voluntary sector and the private sector. Deciding who gets the credit for quite a messy and unclear outcome at the end is incredibly complicated. That is a danger. I think, with trying to move towards a yes/no very straightforward kind of model.

Q384 Mr Llwyd: I think Mr Allen mentioned earlier on about smaller ventures being limited in terms of capital in the bidding process. How can the voluntary sector make use of social finance initiatives?

James Allen: Social finance is a relatively small but growing market. Our view is that for some organisations that can provide a useful vehicle for getting that kind of capital. It is important to be quite circumspect about social investment. It works really well for some organisations in some situations, but it is not a solution for the whole of the voluntary sector. Its usefulness will grow as people become more familiar with it and they develop the kind of skills that they need to access those sorts of financial instruments. But social investment should never be seen as a replacement for every other type of funding. That is never going to work. There will always need to be other forms of investment in the sector. That said, from a practical perspective, we are increasingly getting requests for training from small organisations that are becoming aware of it and want to use it. At the moment the level of understanding in the sector is very mixed. Among small organisations I think there is quite a low level of understanding of what social investment actually is. We would see it as our responsibility to work with those organisations, to help them to decide whether this is the right route for them or not, and then to work with them in a practical way as well to access that finance if they do decide to go down that route.

Clive Martin: I would echo all of that. I would say, particularly in this part of the voluntary sector in criminal justice, if you look around at even the household names of Nacro and organisations such as that, you do not have any organisations with major free reserves to use. Most of the organisations are on pretty tight income/outcome budgets; so there is no established capital. Alongside that, there is no real history or sympathy in public terms of public fundraising, which means you have very little flexibility in how you can use your funding and what you can do with that. You also have some organisations that already have current liabilities in terms of pension funds and so on.

The raising capital part of the market for many voluntary sector organisations in this field is limited. You do, of course, have voluntary sector organisations outside this field that do have larger capital reserves. Some of those could be deployed in this area, but that, again, is a transition issue rather than something that we could achieve tomorrow.

Chair: Thank you both very much indeed. We are grateful to you for your help this morning.

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**Examination of Witness**


Chair: Good morning and welcome, Mr Spurr. The Committee benefited greatly from a free-ranging visit to the National Offender Management Service in which we wandered all over your building and talked to all of your staff, who were very happy to talk to us and explain what they were doing. We now want to pursue some of the issues that we are concerned about in looking at how the MoJ and NOMS are organised and function. I am going to ask Mr Buckland to begin.

Q385 Mr Buckland: I want to deal first of all with the change in the nature of the Board that runs the Ministry. We know there was a change from the corporate Board to the Departmental Board after the election. The net effect of the change is that NOMS is no longer a constant presence on the Board. Is that a problem?

Michael Spurr: It has changed. That is how it started but we are now a constant presence in all of the delivery agencies. The Court Service, the LSC and NOMS now are full attenders at the Board. Initially, the Board met with two of my colleague Director-Generals attending from the centre. It became clear that, if the Board was going to be really effective, it needed to look at how the Department was performing across all of its business, and it made sense to have the chief execs from three delivery agencies on the Board. The Secretary of State therefore asked us to attend and we have been attending for the last six to nine months.

Q386 Chair: In attendance or as members of the Board.

Michael Spurr: As members of the Board.

Q387 Mr Buckland: So you are now members of the Board.
**Q388** Mr Buckland: That is helpful. We know also, importantly, that the structure of NOMS was changed. The old regional structure was removed and now it is a different operating model. What impact has that had on delivery?

**Michael Spurr:** On delivery, at the minute I am pleased to say we have been able to maintain good performance, with the one exception of a serious Category A escape, which was not about the restructure, but that was something that obviously we did not want to happen.

**Q389** Mr Buckland: That had not happened for about 16 years, had it?

**Michael Spurr:** No, but there were local failures there that were not about the structure. We have obviously been investigating that and there will be a statement to Parliament in due course about what that led to. I did not want to minimise that; that occurred. If you take the range of performance, that has been maintained. If you look at the Inspectorate of Probation, for example, they would say that performance across probation trusts has continued to improve. I think that is true. London has just had the most positive inspection it has had. It has been one of the more problematic areas.

Equally on the prison side, if you speak to the Chief Inspector of Prisons, not everything is where we would want it to be, but you can demonstrate in the individual health prison tests that prisons have continued to improve. Overall performance has been maintained, the Cat A escape being the exception. We have only had four escapes from prison or prison escort this year. We used to record them not very well. If you look at the Inspectorate of Probation, for example, they would say that performance across probation trusts has continued to improve. I think that is true. London has just had the most positive inspection it has had. It has been one of the more problematic areas.

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**Q390** Mr Buckland: On the measure for escape, there has not been any change of the criteria.

**Michael Spurr:** No.

**Q391** Mr Buckland: We know there are escapes and there are escapes, aren’t there?

**Michael Spurr:** No. We measure escapes in three ways. There are Category A escapes, escapes from prison or prison escort and contractor escapes. If you want the full total, this year there was one Category A escape, four escapes from prison or prison escort and 13 escapes from contractors. There were then 182 absconds. That is about all the ways that you would get out.

**Q392** Mr Buckland: I am very grateful, Mr Spurr. I used the phrase, which caused a bit of amusement, “there are escapes and escapes”, but from my experience, having prosecuted and defended in escape cases, what I am trying to say is that there are different types of escapes.

**Michael Spurr:** I understand that, and we have not massaged the figures, which is the most important thing.

**Q393** Mr Buckland: That is what I wanted to know. We have dealt with delivery therefore. How has the new model helped NOMS meet its required savings targets?

**Michael Spurr:** It has been fundamental to it. We developed in the first two years of the agency. NOMS restructured as an agency in 2008 and we were operating on a regional model with the aim, at that point, to devolve responsibility to individual directors in each region who would have responsibility for both what was being commissioned in community and at prison level. We moved away from that regional model because it did not fit with the view that is about having much more local involvement rather than regional devolvement and because it was necessary to be able to drive savings.

The functional model enabled me initially to reduce the number of directors, for example, by seven. I took seven directors out from the start, and we are going through a major restructure, which, by the end of the spending review, will save £91 million. We have at this moment saved £63 million of that already. So the bulk of it has been done in the first two years. We have reduced our total headcount at headquarters by 649 posts. That is everything above establishment and probation trust level, because it is not just pure administration that we have reduced. It includes all our training facilities—for example, training new prison officers and so on. We have managed that with good consultation with trade unions and being able to exit people through a range of schemes. We have not filled vacancies for some time. We have reorganised internally and had some voluntary exit schemes for people to leave. So we have 649 fewer people, £63 million delivered to date, and it will deliver £91 million by the end of the spending review period.

**Q394** Mr Buckland: We were grateful for our visit to NOMS. An abiding concern that members of the Committee have is the danger of duplication between your work and the work of the MoJ. Where would you identify duplication now and where can you eliminate that?

**Michael Spurr:** You are absolutely right. 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.
Q395 Mr Buckland: With regard to the development of strategy, do you regard NOMS as still having a key role in that and how does that interchange with Transforming Justice? They are developing a strategy as well, aren’t they?

Michael Spurr: Transforming Justice is the right model to develop the strategy for the Department. We have expertise in particular areas that the Department is responsible for, so it would be mad for us not to contribute to the development of the strategic position. I am very clear that Antonia Romeo, who is the DG for Transforming Justice, has put what I think is going to be a very talented team together. In fact she has just recruited a person from NOMS to be part of that team. I think it is very helpful bringing people from different parts of the programme to the strategic team. We will input into that so that the future has proper operational advice, but the strategy needs to be developed departmentally.

Q396 Mr Buckland: In other words, you will not be going off doing your own thing in your own silo on strategy. You will be working with Antonia Romeo’s team to create a strategy for NOMS and the Ministry.

Michael Spurr: Yes. The NOMS strategy must reflect what the departmental strategy is and not the other way round. Absolutely we are going to operate like that.

Q397 Chris Evans: Do you agree with what the Prison Reform Trust told us? They said that the Probation and the Prison Service are two different organisations operating in two different environments and there is a lack of communication in many areas between the two. Do you think that is a fair comment?

Michael Spurr: As ever, there is some truth in it. They are different organisations doing, in some senses, different things. The one thing that is common is that the responsibility that the agency has—and probation and prisons deliver this in different ways—is discharging the punishment, orders and sentences of the courts for offenders who come to be managed either in the community or in prison. There is some crossover in terms of the work because it is increasingly the case that offenders who come into prison are equally going to be managed in the community on release unless they are serving less than 12 months.

It is equally the case that we have tried to develop—and I think it has been right to do so—an offender management model that recognises that you should try and manage an offender through the whole period of their sentence, whether that is in prison or in community. Offender managers in community, who are going to have a lot to do with those offenders, have to be part of decision making, particularly when offenders are coming towards release. They do some different things; of course they do, but there are close links between them. Communication has improved enormously over recent times. It will improve further as we develop better and joined-up assessment systems. There is the OASys system, for example, which is now shared. Case management is increasingly shared through the OASys system, which is a risk-assessment system. That did not occur before; it does occur now. That makes lots of sense.

The point is often made that probation have very strong links with the police and with the courts. They do indeed and that is very important. We should not minimise the importance of probation working in the community with the police and the courts. I would not do that. Prisons, on the other side, work with the police and other services in terms of a range of security issues with offenders in prison. Both of those are important, but it does not mean there is not an important relationship between probation and prisons, though the work they do differs depending on where the offenders are.

Q398 Chris Evans: From what you have set out there, I think it is quite clear that there is still this “them and us” culture in there. We still get the perception that the Prison Service is in charge and the Probation Service is the junior partner. Your whole answer to the question there was about the Prison
Service and you did not give that much time to probation. I just feel there is a “them and us” culture there. How can you overcome that? That is a perception I am getting everywhere—that probation is the junior partner in NOMS. How can you overcome that barrier?

Michael Spurr: It is a fair question. I do not think it is a fair interpretation of my answer to say that I did not speak about probation in that. I did talk about offender management and I spoke about probation being important.

Q399 Chris Evans: But the bulk of your answer was about prison.

Michael Spurr: That is your interpretation of what I said. I do not think it was fair. If that was the impression, it certainly was not intended to be the impression. You cannot get away from the fact that the agencies are responsible for a number of different things. Probation is delivered by independent non-departmental public bodies that are probation trusts. I am not responsible for the direct employment of probation staff. I am responsible for the direct employment of 40,000 publicly employed prison staff. I am not responsible for the 14 prisons that are now run by the private sector and for their employment or for the myriad other contracts—electronic monitoring and contract escorts, for example, just being the two big ones—and a range of contracting arrangements that we have with the voluntary sector. The agencies are trying to do a number of different things. Because the Prison Service in terms of direct employees is the largest body, people can always say that that is the one that dominates. With regard to time—my time and attention and the Board’s time—it is not the case that the public sector Prison Service is the one that dominates everything we do; far from that. As to what more we can do, I recognise the issue about how probation feels. I have worked very hard to work with the Probation Chiefs Association, the Probation Association—the employer body—and with the trade unions in probation to make sure that their voice is heard very clearly. I have also been promoting the Probation Chiefs Association and the Probation Association themselves to speak their voice because that is the employer organisation and the professional body. That is quite important.

The final thing I would say is that it is often said it is Prison Service-dominated. I have given reasons why that can be the perception. The fact is also that NOMS provides a headquarters function for the public sector Prison Service. The headquarters functions for probation are provided primarily in the individual trusts. Again, that is an important distinction. We have over 100 people in the agency who have a probation background. There are 40 or so on secondment from the Probation Service. There are 70-odd directly employed.

Q400 Chris Evans: How many of them are senior managers?

Michael Spurr: Most of them are senior managers. I have four former chief executives from probation area trusts. I am looking to implement the Probation Review. I am looking now at whether or not I can attract a non-executive with probation experience on to my Board. I am looking to take. I hope, a chief executive from one of the probation trusts to lead the work in implementing what becomes the outcome from the consultation on Probation Review.

Q401 Chris Evans: Is there anybody on the Board with probation experience at the moment?

Michael Spurr: If what you are saying is, “Is there anyone who has worked in the Probation Service?”, the answer is no.

Q402 Chris Evans: Why has it taken so long for you to recruit someone to go on to the Board who has worked in the Probation Service?

Michael Spurr: Because we have just gone through a major restructure where I reduced my directors from 15 to seven. There was a person who was a director with direct probation experience that was in that number. That individual chose not to apply for the Probation Director’s post but chose to exit. Following civil service rules, I cannot simply say, “I will exit and make more people redundant”, unless they are capable of doing the job. Colin Allars is the Probation and Contract Services Manager at the moment. He was a Director of Offender Management and responsible for probation in the community, and he is more than able to understand and lead that work. He has working to him, as I say, former chief officers of probation and assistant chief officers of probation, so there is significant expertise. Quite simply, I was not prepared to make somebody redundant and go out and say, “We will recruit somebody else.” I am looking for opportunities to make sure I have the right calibre of people. If the individual was not of that right calibre, I would not have him doing the job.

Q403 Chris Evans: I am not asking you to justify appointments. What I am asking, quite simply, is why working in the Probation Service seems to be a barrier to being on the Board. It goes back to the main question that I tried to raise. The Prison Service seems to be the senior partner and seems to dominate NOMS.

Michael Spurr: I have tried to answer that. The final point on that is that the Board is part of the civil service. Probation staff are not employed as direct civil servants. To employ a member of the Probation Service into NOMS there has to be an external advert and therefore it has to be agreed by civil service commissioners. We have done that to fill specific posts where we felt able to go with probation experience. We did have a Director of Probation. I have explained that. It was that individual’s personal choice not to apply for this role. He would have been very good in this role, I have to say.

You talk about probation experience. I have worked with probation myself all of my career. I had a short period actually attached to the Probation Service when I was a junior assistant governor. It is not that I am unaware of this. Many of the issues that occur in probation in terms of offenders are similar. Equally, I have said I have been looking to promote the Probation Association and Probation Chiefs
Association as the professional voice and include them to ensure that we have a proper understanding of how the Probation Service operates. I am equally keen, as we tried to demonstrate through the Probation Review and the Government’s consultation on that, that we have a long-term vision for probation. The long-term vision set out in that consultation document takes probation forward with a move towards giving much more autonomy to probation trusts to commission services directly. I think that is the right move for the future.

Q404 Chris Evans: This is my last point. My concern is that one of the outcomes is that you have prisoners in overcrowded prisons moved far away from home and it is impossible to make any links between local organisations or local employers because there seems to be some sort of breakdown in communication between the Prison Service and the Probation Service in NOMS. How do you reform the organisation to make sure that does not occur any more?

Michael Spurr: The main problem for that is not—

Q405 Elizabeth Truss: Isn’t part of the problem, which my colleague referred to just now, that the structure within NOMS is not creating that coherent drive? If, for example, there were single PbR contracts across each region for both prison and probation, you would get the economic drivers in the system to create the prison places in the locations they are needed, whereas at the moment it seems to be more a game of trying to get the prisoners to where the prisons are rather than creating the capacity in the areas they are needed. That is what is preventing the better interworking of prisons and probation.

Michael Spurr: Again, I can see a rationale to that argument. The difficulty, though—

Q406 Elizabeth Truss: Some of NOMS staff said that to me when we were walking round the NOMS building.

Michael Spurr: I can see the rationale to that argument. The difficulty has been, I would argue, not the structure. Again, it constantly comes back to the fact that what you are trying to do is keep the number of places available. You need some space to be able to develop those structures at a local level. That has been the conundrum that we have found difficult to overcome.

I am an advocate, interestingly, of what has happened with the youth budget, for example, of putting the remand budget for under-18s to local authorities. That is a very good attempt to look at what would happen when you put what is, effectively, a custody budget across to a local authority to see what impact that would have. I am not in any sense against having a greater local engagement. It is how we get there, given the fact that we have been operating—I hope we can stop that—under significant pressure and providing the space to be able to make those decisions. London has 8,000-plus prisoners and 4,000 places. That is a heck of a lot of places to create to be able to resolve that issue. A lot of them, you are quite right, are in East Anglia or on the Isle of Wight. We should be trying to resolve that, but it is a long-term strategic issue.
Q408 Elizabeth Truss: You say it is a long-term strategic issue but this problem has been going on for a number of years. My question is, yes, you have sold the prison in Richmond Park, but why isn’t NOMS getting on with sorting out the London prisons where there is high-value real estate to be realised and getting on with building new ones? What is holding it up? This follows on to my other question, which is, do you think there is an issue within the Ministry of Justice and within NOMS between the balance of focus on policy and implementation? What I notice going round is that a lot of people work in policy compared to the people who seem to be making things happen. Would you say that is a just criticism?

Michael Spurr: Most people in my bit of the organisation are about trying to make things happen. Getting that balance right is important. The central policy part within the MoJ has been reduced quite significantly as part of the savings requirement. Why aren’t we getting on and doing it? It is because, if we wanted to do a new-for-old build and do that in London, we need capital. Even if it is a PFI build that is going on to balance sheet, we have to get agreement through Treasury that that is something that makes sense.

The attempt under the last Government, for example, to build larger prisons included a significantly large prison that was being proposed for London. It was going to be a 1,500-bed prison at Thamesmead. That did not proceed. The idea that we have just been sitting there not thinking about how we might be able to do that is not right. The idea of building a 1,500-bed prison in Thamesmead was to reduce prisons outside London and bring more people back to London. That did not proceed prior to the last election. We are looking again now and are in discussion about what can be the future estates strategy. The strategy we would like to have is exactly in the direction you have just said; we would bring people closer to home and close particularly inefficient smaller sites. That is absolutely part of the strategy that we want. We are trying to develop that and trying to get agreement to be able to take that strategy forward.

Q409 Elizabeth Truss: On the subject of estates management, what is your feeling across the MoJ—not just in NOMS—about the speed of selling off buildings that are no longer being used? I am not sure that that is happening quickly enough in terms of realising that capital that could be used. I am not just talking about prisons. I am talking about redundant courts and other assets. What is your view of how efficiently the MoJ is being in selling off the assets?

Michael Spurr: I have to be careful here. I do not know enough about what we have done or the time scales. I have not prepared that; it is not my area of work. My focus has been on being able effectively in the prison world to close five prisons. That is more than we have done in the last 25 years. Managing that has been my priority. We have managed to do that without creating compulsory redundancies. We have done voluntary exits. We have managed to do that without difficulty in terms of working with the trade unions, placing staff and successfully closing the places. I then hand over to my MoJ colleagues in terms of the disposal. I will be quite frank that because that is not within my budget I have not followed that through, so I am unable to give you any detail on that. I know it is difficult to be able to dispose of buildings. I do not have any detailed information about what we have done to deal with that.

Q410 Elizabeth Truss: Clearly there are a lot of buildings up for sale. If those buildings are successfully sold, then that will release capital that could be used for investment.

Michael Spurr: We are keen to do that. The one thing I do know about is that the MoJ were very good in terms of disposing of the two previous buildings that NOMS were in—Cleland House and Abell House—which were disposed of very quickly with capital receipts of about £60 million. We downsized and moved into the office that you visited. That was very effective. There is no question but that that was a big positive at a time when you have significant financial pressure to make that type of estates saving.

Q411 Elizabeth Truss: I want to ask you about the provision of accounts by NOMS and whether the accounts are going to be on time.

Michael Spurr: We are on schedule. From the NAO point of view, they are very happy with where we are at the moment. You will be aware, because you have taken evidence already, of the two significant issues within that, which are sorting out the non-current assets and probation trusts. Of course 35 separate trust group accounts have to be consolidated into our accounts and then consolidated into the MoJ. I am pleased to say that we have all of the probation trust accounts in, which is earlier than we have ever been able to manage that before. We have worked very closely with them to be able to achieve that. They have done a terrifically good job in getting that in. We will be able to provide our full set of accounts to the NAO on time scale by the end of this month. Of course that will depend on what the NAO find when they are there. I am confident that what we have are a good set of accounts and, therefore, I think we will be in a better position this year than we have been previously. I hope that will mean that the MoJ are then able to consolidate the accounts and present before recess.

Q412 Chair: I want to take you back to recent history and the transfer of HM Prison Birmingham to be managed by G4S. According to the Independent Monitoring Board, the process took nearly three years. The announcement was poorly handled and there were delays and uncertainties, which had an adverse effect on the morale of staff and prisoners. In oral evidence, G4S informed the Committee that the delays were within the MoJ. Can you throw any light on that?

Michael Spurr: That is the end-to-end process. The reality for that competition is that it took some time, having been announced by previous Secretary of State, to get up and running. The announcement was made and then there were six to nine months of working through what the tender for procurement would look like. It was not just Birmingham; there were a number of prisons. Wellingborough was
another one at that time. There was Buckley Hall and others. There is no question that that nine-month period was far too long to determine how the competition was going to operate and what the principles of competition were going to be. That accounts for a good deal of the delay at the start.

The actual process was delayed for a number of reasons, one of which was a significant change in the middle of the process to the arrangements for pensions to switch from RPI to CPI. That did have an impact and we had to have all of the issues for TUPE and pensions relooked at. In the middle of all of that, quite understandably, Government actuaries were unable to take on that work given the other work they were doing on pensions at the time. There were issues within the process. I do not agree with the IMB about the final handover. It is impossible to transfer a prison in much less than six months once you have made a decision that a provider has to change over. There are 700-plus staff. You have to work through what the actual TUPE arrangements are in reality and all of the arrangements to do change from one provider to another. Of course it would have been ideal if you could make the announcement and then switch over, but, in reality, for a big organisation like that, a six-month handover is probably reasonable.

The fact is that other competitions will not be of anything like that length. We announced the current Phase 2 Competitions in September of last year. We went to tender. We announced them just before that in the summer and went to formal tender in September. I anticipate the outcome will be by this autumn. The outcome will be known by the autumn and the handover will probably be a six-month handover as well. For the handover, if there is a handover—because I do not know if there will be—six months is necessary.

In terms of staff working through that, of course that is difficult for people in the middle of an organisation. You could argue, equally, that Doncaster had been going through the same process as a private sector prison, knowing that it was going to be re-contracted with the staff at Doncaster in exactly the same position. They ended up with Serco winning that prison back, but they went through a similar degree of uncertainty. The reality with competition—I am trying to get this across to the majority of staff in prisons, and it is equally true on the probation side with community paybacks being competed in London at the moment—is that there is an issue about how people handle a competition process and the fact that that does mean anxiety and waiting to see who you are going to work for.

Q413 Jeremy Corbyn: What monitoring do you take of the staff conditions on the privatised prisons compared to the directly employed staff?

Michael Spurr: Do you mean in terms of staff conditions?

Q414 Jeremy Corbyn: Pay and conditions of service.

Michael Spurr: We are aware from the individual providers what their basic terms and conditions are and what their basic pay is. Indeed, the Pay Review Body looks as a comparator at what the basic pay of private sectors providers is compared to public sector providers. Obviously the responsibility for the pay and terms and conditions for a private sector company is the responsibility of the private company; it is not my responsibility. It is relatively open in terms of knowledge of what the pay and basic conditions are. As I say, because the Pay Review Body is a public body looking at pay for public sector workers, it does comparators with the private sector, it is open.

Q415 Chair: Just going back to what we were looking at earlier, in the first part of this morning’s session we were listening to representatives of voluntary organisations and the difficulties that they face, particularly smaller niche organisations within a locality, in remaining involved and using their expertise through a contracting process in which, if they do not form part of a consortium, they have to consider which private sector bidder is likely to get the contract and therefore to which one they should cosy up to try and get a relationship with them. There is also the reverse problem of situations where it is implied perhaps to you as an organisation that the private sector contractor will make use of established local organisations, but, as it turns out, there is no guarantee that they will. What thought have you given to this problem?

Michael Spurr: Quite a lot of thought because it is important for us to try and have a diverse number of providers. We do think that that helps to maintain momentum and innovation. Often, smaller local providers are best placed, particularly linking into local communities, to support offenders and to help them stop reoffending. So it is important.

On the contracting side, we have made clear that our expectation is that prime providers will look to work with others, particularly local smaller voluntary sector organisations, in order to deliver the services. When we did the current Prisons Competition Phase 2 for the nine prisons being competed for, we had the initial tender arrangement and we said to providers, “Encourage voluntary sector bodies who you wish to work with to come”, and 15 of them came along with the prime providers. That is something public in the contracting terms that we are encouraging. I would make a big point on the probation consultation. One of the issues is particularly to do with who is working with offenders in local communities. We have to get better going forward at “through-the-gate” type competitions. It is a point that your colleague was making earlier about how you get a much greater local investment in things.

The consultation on probation suggests we have commissioning trusts. The rationale and part of the reason I am keen on commissioning to be pushed down to that level is because the likelihood is that you will get more opportunities for local providers. NOMS can help support that by creating framework competitions, for example, where we get smaller voluntary sector and third sector providers on to a framework from which you can call off those services rather than them having to go through significant major competitions. We would want to look to
develop models like that that would encourage people to use a range of the smaller providers.

Q416 Mr Llwyd: You may have seen an article in The Times in January about the competition to run the nine prisons. There was a remark within that article attributed to a senior official who said, “All the private sector does is steal my best governors.” What incentives are there for the best prison governors to remain in the public sector prisons? In your view, is innovation only feasible in the private sector or can it be extended to the public sector?

Michael Spurr: As the market becomes more developed and as there is a wider range of providers, inevitably the opportunities for people who are governing prisons broaden. The reality is that it is quite a niche market. The expertise for governing prisons is generally gained in the prison world, in the private sector or the public sector. The public sector has encouraged a range of different people to come into prison management, through both the classic graduate schemes but also at senior management level trying to attract people with management experience in other spheres to come in and work in the public sector. We have been successful at doing that, which is quite important, because that has brought in a whole stream of potentially new governors with different backgrounds who are gaining operational experience at the moment.

The thing the public sector offers that at the moment the private sector does not offer is a potential for career development that is wider than just prisons. That is into the wider civil service. Increasingly, we will develop people whose career path will not just be in the Prison Service. They may well operate in a number of different fields, potentially working in the private or voluntary sector and in the wider civil service fields. The public sector offers that opportunity. We can still attract people from different backgrounds into the public sector, for all the difficulty that there is at the moment. Whilst it is true that some good people have left the public sector to go and work for the private sector, it is equally true that some people have come from the private sector to work in the public sector. My current Director of Commissioning and Commercial Activities left the private sector and came and joined the public sector because he was attracted by the challenge and the—well, it is the challenge and the work that we are doing.

Q417 Mr Llwyd: Were you going to say the salary?

Michael Spurr: He took a significant cut in his salary.

Mr Llwyd: I beg your pardon, sorry.

Michael Spurr: He took a significant cut in his salary to come and work in the public sector—I want to be very clear about that—as a lot of people actually do.

Q418 Mr Llwyd: You referred to the training and expertise of the governors and so on. We understand that the initial training for prison warders—the standard gentlemen and women who work in prisons—has been cut from eight to seven weeks. During a visit to Norway a few weeks ago we discovered that each prison officer over there undertakes a two-year training programme. If they are going to be a member of the staff academy, they need entrance qualifications for higher education. In your opinion, therefore, are prison officers sufficiently trained to take part in the so-called rehabilitation revolution?

Michael Spurr: The first thing I should say is that the training for prison officers is no longer just a number of weeks at the training college. That does still take place. There are seven weeks at this training college where they basically get some interpersonal skills development and some very basic training in control and restraint. The two are important; they balance each other, but that is not the whole training. Prison officers now undertake an NVQ. That has been really important because it is proper professional training, which lasts not just for those weeks but they are required to go through the whole NVQ process to Level 3 over a 12-month period. If they do not do that, then they are not accredited as prison officers. It is not fair simply to say they are only doing the seven weeks.

Would I like to do much more, as Norway do with a two-year course? Yes, it would be great. Can we afford it? No. That is the problem we have. Of course I would like to train people to a greater and a higher standard. I think we do train prison officers very well. You did a very important report, I thought, on the prison officer. I read that. You took a lot of evidence about that and I do not want to rehearse that. We have some very good people operating in prisons who are well able to support the rehabilitation revolution. Most of it is how you relate to individuals, how you relate to people, and how you interact and provide a role model. You can help people to develop that through training. Some of it is about recruiting the right sort of people, supporting them in that role and giving them the right leadership to be able to operate in that way.

I heard Clive Martin as I came in talking about desistance, which is the current chronological view about what makes the biggest impact on people. It is about how you support an individual to change. That involves proper support, which is not just all soft; it is about giving appropriate boundaries and appropriate challenges. It is about people who have committed offences but, equally, providing a model to help them to change through the process.

Q419 Mr Llwyd: I did not know in fact about the NVQ. A typical prison officer therefore would be doing an NVQ for the first 12 months; is that right?

Michael Spurr: Yes.

Q420 Mr Llwyd: Where would that training and education take place?

Michael Spurr: It takes place in the establishment with external assessors coming in to support that. Most NVQs take place on the job.

Q421 Mr Llwyd: In the workplace.

Michael Spurr: You produce your portfolio and we have external assessors come in. That has been an important development, which is why I say—and forgive me for my frustration—that it is not the case
that we have just neglected what prison officers are doing. That has been well received and we will continue to develop that.

Q422 Mr Llwyd: How prepared was NOMS for the prison officer strike? How does this action reflect overall on morale?

Michael Spurr: I did not anticipate that prison officers were going to go on strike on the day of protest the other day in May. I did not anticipate that because I had met with the Secretary and Chair of the Prison Officers Association on the Tuesday and we talked, as they had done previously, about them having lunch-time meetings but recognising it was unlawful. The NEC took a decision late on the Wednesday that they would encourage members to come out in protest. They did that. We had contingency arrangements in place. We learned about it early in the morning. We put those arrangements in place and they worked pretty effectively through the day. We did not have any serious incidents or indeed require police support to manage that day. Prison officers went back at 1.30 in establishments where they had not been working properly.

We were prepared enough in the sense that we had contingency plans and we deployed the contingency plans. Prisons were safe that morning, but it was unlawful action. One of the difficulties from our perspective is that you get no notice of unlawful action.

Q423 Mr Llwyd: I want to ask you one other question. Why is it virtually impossible to get an accurate figure of the number of officers assaulted each week?

Michael Spurr: Each week? I am sorry; we do record the number of assault incidents. I have not personally been asked for the number of actual officers, and I am surprised that we would not be able to take that out from the figure. I am not aware of the difficulty. I suspect it would require a simple interrogation of the individual incident reports that are put in through the computer system, which will record an incident. It may say one or two officers were involved in that incident and the detail of the assault. We would probably have to pull the data out from those individual incident reports, but we would know the number of officers.

Q424 Mr Llwyd: It has been put to me by the Prison Officers Association that it is very difficult to get an accurate figure and, secondly, that there is active discouragement of any prosecutions.

Michael Spurr: There is certainly not active discouragement; it is the complete opposite of that. I am really surprised that the POA have raised that with you. I have signed and agreed a zero tolerance policy with the union. They know that and we work collaboratively on that. We have pursued with the CPS and others prosecutions where assaults have taken place. The POA know that and we have general discussions about the importance of doing that. I would always want to see appropriate prosecution in the public interest where officers are assaulted.

In terms of the issue that you have just raised, I am surprised they have not raised that with me. That has never been raised with me by the POA, otherwise I would have looked at the issue.

Q425 Ben Gummer: On that issue of prosecutions, what action are you taking, disciplinary or otherwise, against those who went out on strike illegally?

Michael Spurr: All those who went out on strike illegally will lose pay.

Q426 Ben Gummer: Are there any further measures that you think might be necessary in order to discourage them from going out on strike illegally again?

Michael Spurr: To make it clear, we would go for an injunction in terms of that and we would put that matter to the court. I should say that it is not the case that all members of staff went on strike. There is a law in place. We will take pay for the unlawful strike action.

It is equally the case that staff did act unlawfully. I have been very clear that that was unacceptable and I have been very clear with all our governors. They did maintain safety in establishments so they did have a skeleton staff, which was different from the last time that they took unlawful action. I would not want to discourage that either. I do not want unlawful action. We will go to the courts. We will use the courts to address that and it seems to me that that is the way to deal with it. If it is unlawful, we will use the legal process to challenge the illegality of it.

Q427 Ben Gummer: Some of my constituents rang in on their day off in order to offer their services and help when the strike was called illegally by other members of staff. It is not fair on them, is it?

Michael Spurr: There were a lot of staff, as I said, who did work. I wrote out to all of those in terms of doing that. I do not think it is sensible for prison staff to take strike action. It puts people at risk in doing that. It puts prisoners, staff and the public at risk, and they should not do it. There is no question about that.

Q428 Ben Gummer: On the issue about the knowledge base within NOMS, you have been very open about how bad that has been in the past. In fact the Cabinet Minister was here the other day saying that this is a problem across Government with which all the partners have to contend at the moment. It was noticeable on our visit to NOMS how you are affixing statistical analyst teams, and that was very good. In terms of your direction of travel, cost and outcome of those two measures, on a scale of one to 10 how far do you think you are in the collection of rigorous data?

Michael Spurr: I would say six or seven probably. We have done a huge amount of critical work over the last two or three years to set what we are calling “should cost prices”. They are specifications for work with a “should cost price”. That is what we think is the benchmarked cost for each bit of the work that goes on across the business—probation and prisons. We have systems that we are developing that will give us actual cost data. We have actual cost data for prisons, probation trusts and for big bits of business.
We have always had that. It is not fair to say that that was not the case. What we do not have is the granularity of going down to understand, “This particular bit in this particular prison or probation trust is actually costing this.” The difficulty with that is simply about ensuring that there is a consistency of how that is reported, because you get a complete mix-up if that is not the case. That has been the challenge. Frankly, it has been a challenge over 20-odd years. I remember attempts to try to do this in the ’80s that failed. We are much closer now than we have ever been and we are using that data to help us deliver the services at reduced costs.

We saved £143 million in 2010–11. This year we will have met and exceeded our savings targets of £223 million. I have mentioned that in terms of overall performance that has been maintained and, in some areas, improved. That is because we have been very careful in saying, “As you make the savings, don’t just slash things, but look at what the benchmarked costs are and apply that.” In both prisons and probation in terms of management structures, which is an obvious one, one of the key areas that we have looked at is the management structures and the level of that. We have taken individual service delivery. In prisons, it is what level of induction we would expect and we would expect everybody to be doing it for around this amount of cost. You have to have some flexibility at prison level. In regard to court reports, we look at the difference between various trusts delivering them at quite widely different levels and cost. There, we have managed to switch round to many more single-day reporting for probation trusts. It is almost the reverse. It used to be 30% single-day reporting and 70% longer-term reporting, but it has reversed to 70% and 30%. From working with sentencers and probation trusts themselves we have found we have equal satisfaction from magistrates and others. I work closely with the Magistrates’ Association because we do not want to not deliver what the courts want from us, but if you can do it in a single day it speeds up justice and reduces costs. That is to everybody’s benefit. Those are examples of things that we have been trying to do.

Q429 Ben Gummer: The specification regime that you are bringing in is clearly having an impact on costs.

Michael Spurr: Yes.

Q430 Ben Gummer: I do not want to be unfair, but on the outcomes side it seems that you would be rather lower down the scale. Anecdotally, I visited a prison serving London that is doing some innovative work with young offenders. The prison officers, who were very dedicated to what they were doing there, had no idea what was happening to those offenders when they were leaving, whether they were reoffending or whether what they were doing was making any impact whatsoever. They were desperate for that information because it could calibrate how they ran their course.

Michael Spurr: In a big system, where you are managing 240,000 a year, it is difficult to track individuals throughout the whole system in that way. We do have the collective data. We now have reoffending rates by establishment. If members of staff go on to the website, they could check what the actual reoffending rate is for their establishment. The problem with some of that, though, is that it does need to be controlled. So many of the factors that play in to an individual prison may be nothing to do with what the prison is doing. How long have you had the individual? What was the individual’s background before coming into custody? You have to be able to demonstrate what the additional “value added” is by the individual establishment. We have more work to do to get data that really does matter to show that you have made a big impact in this way.

As colleagues were saying from social finance earlier, it is complicated to be able to say whether it is this piece of work or that piece of work that makes the big difference on whether somebody offends or not.

Q431 Chair: Judges don’t have the information either.

Michael Spurr: No. It is complicated and difficult. It is a fair point, but for the first time we do have local reoffending data for probation trusts and, by establishment, reoffending data now, which we did not have two years ago.

Q432 Ben Gummer: If I could just push back on you, I cannot see why it is difficult to find that data for individuals. It is perfectly possible quite cheaply to track individuals across the world in purchasing decisions. There is no reason at all why you cannot do it in what is actually a very small population. I know you talk about a quarter of a million, but that is a very small population compared with the number of people who shop at major supermarkets, whose individual purchasing decisions are known intimately to the supermarket.

Michael Spurr: It is true that an individual offender manager would know what is happening with their individual offenders. Of course it is much easier to do that if everybody is being managed at a local level where they are going into a local prison, going back to an offender manager outside and there can be communication about what has happened about the individual. For the most prolific cases, that is exactly what happens with integrated offender management, for example. The parties—the police, drug workers, accommodation support workers, probation staff and prisons where appropriate—know exactly what is going on for the individual offenders that they have been working with. At the prolific end that is happening. Where you have establishments that are holding people—and I suspect it was the young offender establishment in York that your constituents were thinking about—they often hold people from a wider distance and it is about getting that contact. If you are holding somebody in East Anglia or London, as again your colleague mentioned earlier, it is harder to keep that—

Q433 Chair: It is not rocket science.

Ben Gummer: You can pull off a report, surely.

Michael Spurr: You can pull off a report. When we get the joined-up case management system we can say where an individual is, but there is not a link-up,
Again, this is what we are trying to do in improving the wider criminal justice system. There is not an automatic link back to the Police National Computer system. The data systems do not all talk to each other in a way that enables that to happen.

Q434 Ben Gummer: On costs I am ready to believe that you are a six or seven on the scale because huge work has been done on specification, but on outcomes are you a three or a two?

Michael Spurr: If that is what you say.

Q435 Ben Gummer: No, I am asking you.

Michael Spurr: On outcomes across the piece I think it is much higher than that. On individual outcomes then I would agree with you. I cannot say to an individual officer, “Johnny Brown has done this.” He would not know the outcome; that is right.

Chairman: Thank you very much, Mr Spurr. We are grateful to you for your time with us this morning. You will no doubt be interested in what we eventually have to say on this matter.

Michael Spurr: I will be very interested. Thank you very much indeed.

Chairman: Thank you.
Wednesday 23 May 2012

Members present:

Sir Alan Beith (Chair)

Steve Brine
Jeremy Corbyn
Ben Gummer

Mr Elfyn Llwyd
Seema Malhotra
Karl Turner

Examination of Witnesses

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

Chair: Lord Chancellor, Sir Suma and Ms Romeo, welcome to all of you. In particular, welcome to Sir Suma and congratulations on being appointed or designated as the head of the European Bank for Reconstruction and Development. We wish you well in that role. We are delighted for you.

Sir Suma Chakrabarti: Thank you very much. I shall miss this—bitterly.

Chair: I am sure you will feel your life is—

Steve Brine: Perhaps your new role could be described as “from the frying pan into the fire”.

Sir Suma Chakrabarti: Not yet, but I will use that as a stand-by.

Mr Clarke: He is going to enjoy all those marble palaces that Jacques Attali got us to build for their headquarters.

Chair: I shall have a word with my colleague the Chairman of the International Development Committee who I am sure will be very glad to see you back in front of him.

Sir Suma Chakrabarti: There are rules as to that, fortunately.

Mr Clarke: May I join in with what you said? I have not properly thanked Suma. I am very sorry to be losing him from the Department. I am delighted he is going to the EBRD, but as to our subject-matter today—the Transforming Justice agenda, the management and budgeting of the Department—I have never had a better Permanent Secretary on whom I could rely to deal with all that side of the Department. It is very rare for these international appointments to be made on merit and I hope it is a habit that is going to continue. All political deals fell apart, and they appointed Suma. That should happen more often.

Q436 Chair: We are confident that this appointment has been made on merit. It was very good news, apart from not being quite such good news for the Ministry of Justice. Talking of which, your predecessor Jack Straw told the Committee that one of the merits of the old Home Office was that the state’s monopoly of the use of force was balanced by a very clear responsibility for liberty within the one Department. What is the situation now? Do you think we have lost something?

Mr Clarke: Yes. I have some sympathy with what Jack said but I would not leap to the defence of everything about the old Home Office. It has been divided up very oddly, I think. The old Home Office has been divided and the old Lord Chancellor’s Department put in. There is obviously a slight danger for people like Jack and myself to say, “It is not quite what it used to be, so it is wrong.” It is a slightly odd division, 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. You busily reorganise everything and, at the end of it, do not seem quite to have achieved what you thought you were going to achieve when you changed. It is working all right at the moment.

The old Home Office was a very good Department but it was a bit big and amorphous. There is a slight tendency for what is left of the Home Office to be all authority and security and for the Justice Department to be all liberty, courts and human rights, but most of the time that is a bit of an exaggeration of the way the culture goes in the two.

Q437 Chair: You are concentrating on Transforming Justice. What will it look like if you succeed?

Mr Clarke: 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. I think Theresa is finding the police, perhaps, are in urgent need of reform as well.

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.

Sir Suma Chakrabarti: I agree with all of that. First of all, Antonia has now been appointed to develop the programme through to 2020. The end point was 2015 before but, clearly, we have to go further. In my mind, I always had three things that we wanted to do under the “Better for less” umbrella. One was to reduce demand on the system. Elsewhere you have heard in your evidence words of “the end of the assembly line”, receiving demand from all sources. How can we get upstream in the process and try and reduce demand, whether it is through mediation or through reducing reoffending—actually and fundamentally—and flattening the prison population? All of these things we are trying to do through policy changes, but fundamentally—and Antonia may want to say something about this—it is about working better with other Government Departments. The first phase of Transforming Justice was very much trying to sort our own house out, working better within what we control within the MoJ—courts, prisons and so on. The next phase has to be about working better with other Departments.

The second one was reducing cost. Obviously reducing demand helps that, but, as you know, we have been on this crusade to understand our costs far better through specification, benchmarking, costing, the ABC programming in the courts and so on, and better targeting. The new legal aid approach should give us better targeting with legal aid than we have had previously.

The third one was efficiency. We have pushed the efficiency agenda very hard, particularly in the first two years of this spending review, with restructuring—taking out tiers, reorganising ourselves and doing a lot of change management—and through shared services and better prioritisation, including on policy as well. Shared services are a big part of the agenda. That is also a very important part of it. Fundamentally, at the end of it, we also want the “better” bit; that people who do have to come into our system, for whatever reason, have a better service than they currently get in some of the ways that the Secretary of State mentioned.

Q438 Chair: When you first set up the board structure you did not put the director of the National Offender Management Service on the board. This seemed to be partly trying to get a smaller board but also not allowing the continuing dominance of all thinking in the Department—or particularly in offender management—by the Prison Service. Then we understand, from evidence we took earlier this week, that you changed that—

Sir Suma Chakrabarti: That is right.

Q439 Chair: And brought NOMS back on to the board. What was behind all that?

Mr Clarke: The board pre-dated us, I think, but we had given some thought, in opposition, to what boards would be like. Where we rapidly arrived at, in my time, was to have a board on which the executives were there. The number of directors has dramatically reduced. Suma did that. I think we reduced 15 directors to three, or something. The board works best where it is roughly balanced but the executives and the non-executives are there and it is a manageable size. It is a little unreal if key executives are not there. As the whole idea is to interact with each other, to spark off ideas, to challenge and all the rest of it, it is much better to be there than for the executives just to be the Permanent Secretary and perhaps one or two other people. There are not that many of us. The board works very well.

Sir Suma Chakrabarti: What we had before the election of 2010 was a board chaired by me that had all the delivery agency heads on it. Then we took a different approach to the board after the election, as you know. The guidance we had from the centre at that time was to have about three executives on it. We had to make a choice. The Permanent Secretary had to be one, the finance DG had to be one and we had room for one other. That had to be the Transforming Justice person because Antonia related, obviously, into the delivery bodies. We then took a view with the Secretary of State, after about a year in, that this was a bit of a problem for 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.

Q440 Ben Gummer: Sir Suma, how is the process of integrating the arm’s length bodies into the Department going and are there any hurdles remaining?

Sir Suma Chakrabarti: There are always hurdles. If you will forgive me a bit of a story, the 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, I would say, 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 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.

Q441 Ben Gummer: You are still on track to bring the LSC in next year, are you?
Sir Suma Chakrabarti: We are still on track to bring the LSC in next year, yes.

Q442 Ben Gummer: As a rider to that, Mr Spurr, who appeared yesterday, was very interesting on his relationship with the probation trusts and the nature of the NOMS board. He said that, with the nature of the many probation trusts being arm’s length themselves to NOMS, it was difficult to create the integration that NOMS had originally envisaged. That was the implication. Are you doing any work on trying to get firmer central control on probation so that there is an equality in NOMS between prisons and probation?
Sir Suma Chakrabarti: There is a difference between parity of esteem, which there is, and, “Are they represented on the top in the senior structures?”, which they are not. There is no point denying that. They are not. I think this is going to be more the case. NOMS is, for me, more and more almost like a holding company. It has three elements to it, which Michael Spurr manages. One is the public sector prisons, where he has a direct labour force of 43,000 people that he has to manage; then there are the private sector prisons, with which he has contractual agreements, that he is managing in a contractual way; and he has these trusts as well, which are, again, at arm’s length. These are three very different types of relationship that he is trying to manage. I would say—and I will not be here in 2015—that Michael’s job will be much more the commissioner of offender management services, I suspect, because even the public sector prison side, of course, is being more competed for, as is probation. It will evolve and the structure of NOMS will have to evolve to take account of that.

Q443 Ben Gummer: That is very interesting. Lord Chancellor, there were two arm’s length bodies that escaped the cull, the Judicial Appointments Commission and the Youth Justice Board. There are some members of this Committee who were rather surprised by the decision on the Youth Justice Board. They claimed the credit for a reduction in youth crime that is comparable to reductions in youth crime across the European Union—something their lordships did not recognise. On the Judicial Appointments Commission your predecessor pointed out that in fact it may even have retarded the progress of equality and diversity in judicial appointments and suggested that an advisory committee might be a rather more flexible and better way of furthering judicial appointments. Could you comment on both those bodies?

Mr Clarke: The Judicial Appointments Committee was not working wholly satisfactorily when we came in. I received a lot of complaints about it. But we have tackled that quite vigorously. The two main aims we had—and I put these across strongly to the new chairman when I appointed him—was to try to reduce the extraordinary cost, to get quicker decisions when it was taking anything up to 18 months or more to get people appointed to comparatively minor and junior posts in tribunals, and to try to get the whole thing less obsessed with process and to concentrate more on what it was really for, which was to get the highest possible quality of judicial appointments. I never contemplated taking back into political hands the appointment of judges and tribunal heads. Once given up, that is not going to be taken back. With the pressures of modern political life, it is probably as well that it is put at arm’s length and there is an independent trusted appointments commission of the sort we have. Indeed, I am sure it is a very good thing. It seems to me to be improving in relation to the time.

Q444 Ben Gummer: Do they not make appointments more risk averse, though? If you are doing it by committee, there cannot be a brave Minister who says, “I am going to promote that person more quickly through the ranks,” in order to achieve another end but also because they are willing to take a risk on an individual.

Mr Clarke: I hope so. The person I have appointed is an extremely experienced high-ranking person from human resources, from the outside world, to use the modern jargon of “human resources”. He is a selector of personnel. As I have said, I was anxious that he should consider how far he could stop it being process-oriented and more outcome-oriented and then which was to get the highest possible quality of judicial appointments. All I can say is that I personally have not had any complaints for quite a long time. We are taking steps in this legislation, which we are about to introduce in this Session that has just started—the court reform part of the relevant Bill. We will probably alter the powers we have vis-à-vis the JAC to make it a bit more flexible. One thing we inherited was a statute that had prescribed, very closely and tightly, exactly how it is organised and so on. We can adjust over time and in the light of experience of the people on the Commission and ourselves, perhaps, a little more.

Q445 Ben Gummer: What about the Youth Justice Board?

Mr Clarke: As to the Youth Justice Board, I could not see any case for its continued existence, as I argued to Parliament, but we were unable to satisfy particularly the House of Lords of that. We are proceeding quite sensibly. There is no point in being
churlish. I allowed myself to be persuaded by the debate. All right, people wanted a Youth Justice Board and we can carry on having a Youth Justice Board. We are re-examining the things that cause disquiet. I think Ministers are going to have a much closer relationship with the work of the Youth Justice Board and the Department is going to have a better relationship with them. We do not want this totally autonomous competitor body out there and it is actually physically going to come into the Department. It is still going to have its own headquarters but it will be part of our present headquarters. We are getting rid of huge numbers of buildings in the Department, one way or another, and we are not going to have so many different office buildings. Other than that, I am determined not to get on bad terms with them. Our main interest is in youth justice. Parliament has decided and we will, therefore, work constructively with the Youth Justice Board. I do not think there is any real difference between Ministers and the Youth Justice Board about the direction in which we want to go. I remember the arguments I used to use were that it has slightly outings in it and it has got no boundaries and there was no longer any great need for it. But if that is how Parliament wants us to run the youth justice system, we will make the best of it and not sulk, as it were.

Chair: I think Ms Romeo wants to add something.

Antonia Romeo: May I add that joining up with the Youth Justice Board is part of a broader thing we are trying to do to join up across the justice system as a whole, working more closely with them to understand how flows into the system at the youth end have effects later on in the justice system, and to get more to grips with the evidence? You have mentioned some evidence already that has been cited. So it is to understand the flows through the system and what could be done upstream to try and help control volumes further downstream. We have, critically, got to work closely with the YJB to do that.

Q446 Seema Malhotra: Sir Suma, my first question is to you. I am really interested in cross-departmental working as a factor in Transforming Justice. There has been some suggestion that engaging staff internally within Departments has been stronger than perhaps being able to work with other Departments. I am very interested in whether that is an area where you see more needs to be done, and, secondly, whether having a joint Minister for the Home Office has helped improve collaboration.

Sir Suma Chakrabarti: As I said earlier, there is no doubt that, if we are to make the justice system even more effective, we are going to have to work across boundaries much better than we have previously. There are some interesting, and in some ways appalling, data, which are now about four or five years old, that always stick in my mind. If you ask the various bits of the justice system who they think is responsible for some of the problems in the system, they all blame each other. There is quite a high percentage of that within the system, whether it is police officers blaming the courts or prison officers blaming police officers. Culturally, it is a big issue. It is a very siloed sort of system. That requires us, obviously—because we are at the end of the system with the sorts of services we control, as I said earlier—to get much more upstream and work better. On the Troubled Families agenda, for example, we are working better with local authorities on family justice. There are all those sorts of thing, which we are now beginning to do. But we are in the foothills of that and it requires, in my view, incentives for people to feel that if they do this then we, as leaders—this is the point Mr Gummer made—will push and promote those people who want to do that rather than those who are blocking change. It is very important for the Permanent Secretary, as the chief executive to these organisations, and the agencies to give that signal out, which I think we are beginning to do.

Secondly, you need a strategy, and we are working very closely with the partners in trying to devise a criminal justice strategy that stands up. At the moment, the best examples I have where this is working well—and Nick Herbert has led this—has been with video technology and secure e-mail. I would not have predicted, a year ago, that we would have persuaded nearly all the police authorities bar three. I think—which cannot do it, for technical reasons, quickly enough—to sign up to this approach with the CPS and the courts. That is enormous progress but that is, again, the start of something we need to take much further.

On the cross-departmental side—and I am sure the Secretary of State will have views—those things work in specific circumstances. I was once Private Secretary to Lynda Chalker, who was Minister for Africa and Minister for Aid at the same time. That worked because, frankly, our aid policy in those days was just about Africa and our foreign policy in Africa was just about aid. So the objectives were pretty much the same. Having objectives that are mutually consistent is, fundamentally, a part of this. That is why you have to have a strategy, in a way, to make the Minister work within the strategy that will give him or her a chance to make it happen. The strategy is very important. The other thing is making sure that the Minister has enough time. As I said when I appeared before this Committee previously, I think Nick has done very well and I get on very well with him. Nick has done very well and I get on very well with him. Nick is Minister for Police and has been for most of the last two years. But, as Suma said, there is one very relevant area to cross-border working where Nick’s position has turned out to be extremely advantageous and he is going to be producing, in this Session of Parliament, the results of all that.

If you ask why criminal courts are so slow, why is it so inconvenient for everybody and why does it take so long to get anyone up for trial and so on, the police
blame the Crown Prosecution Service, who blame the Courts Service, who blame the judges, who blame the police and then the defence solicitors are all blamed by everybody. They are all in little silos. People have been tackling it for years and nothing happens. We have already tackled it by getting people together from all those areas—who are responsible to the Home Office, to the Law Officers’ Departments and to the Justice Department—around a table, the senior keen people who do want change, with one Minister. We are hoping, by getting far more use of video services in prisons and courts and by getting the preparation of the case co-ordinated between the different people, to speed up the whole process for everybody’s advantage—including the courts.

The other area where cross-departmental working is very important—a policy area—is family policy, particularly adoption and all the issues that surround private family law, including contact and access to children and so on.

Chair: Which we will be debating tomorrow.

Mr Clarke: If you ask what goes wrong there, the courts all blame Cafcass and Cafcass blames the judges. Then they both agree that it is all the local authorities’ social workers who are causing the dreadful delays, as we know them to be. We are having to work with the relevant Minister, the Minister for Children in the Department for Education, and we are trying to break these silos, as Suma calls them, which stand in the way of making the whole thing perform better.

Antonia Romeo: There are two other areas where we are making progress in joining up. 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 agreed to. Sir Alan earlier on said, we are keen that in the next phase of Transforming Justice we will be joining up across Whitehall, not only bilaterally but Whitehall to Europe bilaterally and Whitehall to Europe. 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.

Mr Clarke: 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 are we having these two separate teams, like an American football team, running off and running on, I am not quite sure.

Sir Suma Chakrabarti: When we do things in front of Committees here, we present joint evidence now. There are two other areas where we have already tackled it by getting people together from our two Departments. We have had an uneven level of success over the years, but, by and large, I think it is better. The Departments are working together better. They did have—how could I guess?—a slight history of rivalry when the thing was first divided. There is the tendency that Jack Straw talked about—that one of them is security and the...
other is liberty and they are slightly infused about it. I hope my colleagues would agree that there is a lot less of that about. Nobody would believe me if I assured you, but Theresa and I do try to work at making sure that is where we go.

Q448 Chair: Why is there a Judicial Co-Operation Unit in the Home Office? What does it do?

Mr Clarke: I do not know.

Sir Suma Chakrabarti: I presume that it is to do with extradition and mutual legal assistance, which links the police usually. You are right to ask the question, though, because in some continental countries that is in the Justice Ministry rather than the Interior Ministry. It seems to vary according to country, but I think here it is because of the link to the police. That was the initial issue.

Q449 Chair: If you have any later thoughts on that—

Mr Clarke: It probably does mainly include extradition and things like all the European agreements for exchanging and accessing criminal records, enforcing arrest warrants and so on. Quite a lot of the judicial exchanges, which are linking up systems and judges—liaising with their respective numbers in other countries, human rights and so on—come out of budgets or areas that we cover. But there are quite a few areas where the border between the two Departments is not absolutely certain. There is a slight tendency, with no trouble at all, for everybody to carry on doing what they have been doing before without worrying too much about which side of the fence it strictly falls.

Q450 Steve Brine: If I may, I would touch on the spending review a little. Spending reviews tend to show Government Departments at their best and worst. You talked a bit about this, Sir Suma, in evidence to the Public Accounts Committee—that changes in sentencing policy, extra costs and the capping of public sector pay added up to you having to find roughly an extra £140 million to £150 million worth of extra savings. I wondered how that was going. How are you going to do that and still meet your CSR commitments?

Sir Suma Chakrabarti: It is going pretty well. What we did was increase the amount of savings with outcome efficiency. Efficiency, if my memory is right, was about 55% before and it is now 60% of the total savings plan. So it is taking up a bigger share. In terms of actual progress in year 1, which has recently completed, we saved £700 million. We are on track. We are going to have to save about £500 million this year. As of today—and I have just come back—it is about £75 million off track at the moment, but I am pretty sure we will find those savings. We are only just into the financial year, so it is a pretty good position.

Q451 Steve Brine: The response to the riots last summer does not affect your CSR plans. Is that correct?

Sir Suma Chakrabarti: No. We managed within the existing budget and we will continue to do so. It was a bit of a shock to the system at the time in terms of having to manage it, but we dealt with that. The courts managed it within their existing budgets simply by changing their opening hours, as you know, and, on the prison side, we managed it essentially by delaying some maintenance, having some temporary extra crowding and by bringing on some accommodation slightly earlier than we planned. So it did not really disturb the planning as such. The issue is: do we, going forward, have enough margin if there were more, a series of riots like that?

Q452 Steve Brine: What is the answer?

Sir Suma Chakrabarti: That is quite difficult for us to manage without thinking of things that none of us would like to do, like more crowding, for example.

Mr Clarke: We pay quite a lot of attention to that. Of all the risks that one does tend to consider, if I have one big risk at the back of my mind that would really have alarmed me it would be that we had miscalculated the prison population and started facing overcrowding most of the time. I can remember one stage while I was at the Home Office when we had them in police cells and we got dangerously near to having too many people. The last Government—and I will not make it a political point—had to let a lot of people out eventually. That was a disaster. It is also notoriously difficult to forecast and you are never quite sure.

Chair: That is something we will come back to.

Mr Clarke: The riots were a blip—or turned out, at the moment, to be a blip—but we do keep a close an eye on it and having an adequate margin is given a very high priority in our planning.

Q453 Steve Brine: Our Chairman is suggesting we are going to come back to that, so that is my warning. I wanted to ask, before we move on, about the judiciary. How receptive, Lord Chancellor, are the judiciary, in your experience thus far in this latest incarnation in Government, to efficiency savings. Do tightened budgets threaten their independence? We had the discussion of the judiciary’s pension pots come up today at Prime Minister’s Question Time. Can we have your experience of the judiciary and Transforming Justice, please?

Mr Clarke: I was once a lawyer and most of the people I can remember engaging with in practice are now judges, so I am quite used to the judiciary. It has changed, but the top of the judiciary are pretty well up for efficiency and change. They are very conscious of their own independence and they like to get involved with policy issues. In my personal opinion, they are okay. They are receptive to sensible suggestions and I do not think the Courts Service has too much trouble. There are areas like speed and the delays in the family justice system, which we are going to have to tackle with more seriousness, but, at the top, they are up for it. Of course, it is very difficult out there in “Barsetshire”, as it were, because people do get appointed for life, they have run their court in the same way before, and it will require quite a bit of judicial leadership from those inside the judiciary to get a spirit of change and reform going throughout the system where there is a good case for change and reform.
It is also improving in that they were very suspicious when the Department was set up. If it was one of them, I would have shared it. They thought they were being put in a Department responsible for prisons. They thought the whole Government was on a law and order kick so that thousands more people were going to come into prisons and soak up all the money. I have to go through an elaborate process, which has been designed, called a concordat where they all, in theory, have to agree exactly what is being allocated to the Courts Service and I have a legal duty to ensure they can carry out their obligations. That always goes back to the deep suspicion that they were going to be starved of money to pay for more and more tabloid newspaper prisoners who were being put into the prisons, but that is fading. So, of course, we have had tussles with them.

On pensions, I do not know a group in the public service that is not capable of lobbying, so they are not very happy. My reaction to the question today would have been that, previously, they have paid no contribution at all. To move them into having a contributory public sector pension scheme is regarded by some of the judiciary as a fundamental change, but it is much overdue. I think it is unfair to characterise them as Victorian and anti-reform. Most of the leadership—the senior ones now—are very much up for modernising the whole system in sensible ways when we can persuade them. They are quite right to be ultra cautious about their independence and they thus, therefore, tend to see threats to their independence carried out by the passage of time. When we can persuade them, they will be better than it was, but I think that is the legacy of the past.

Whether they can get it down further again, without huge improvement, but it is still not good enough. Going to be about £37 million for last year. That is a huge improvement for them, from October to early June, frankly, given the constraints on spending and resources to do so. They are on track at the moment to do that. But as to the idea that all these bodies could produce their accounts—essentially they would have to be done by late May—in order for us to consolidate everything, and for the NAO to do their two-week check for us, then to be able to produce them by the Clear Line of Sight date of end June, I think is just not deliverable. But there has been progress every year. I hope within a couple more years the MoJ would be able to do it by the end of June, but I think it is quite a stretch to do so.

In terms of qualification—on that issue as well—there are two types of qualification, are there not, on the LSC? One is the issue about a regularity-type qualification to, “Are the payments accurate and made to the right people?” and, “Were people eligible for legal aid?” That was a big issue in the past. The error rate was £78 million two years ago. I think it is going to be about £37 million for last year. That is a huge improvement, but it is still not good enough. Whether they can get it down further again, without spending a lot of money on systems to do so, is an issue. On the debt qualification, this is not unusual. DWP have the same issue on the debt qualification on their books as well. Again, they have cleansed their portfolio and it will be better than it was, but I think...
a new accounting system is due in this October, and you may have talked about it with Matthew Coates. That is likely to bring much better control over the debt book. So, again, I do not think it is going to be resolved for about another year and a half, because that will then have an impact. We are moving in the right direction, but we are not there yet.

In terms of deadline—again, because I am leaving I can say this—one of the issues is to look across the piece here. We are not alone in this. The Departments that are having the most difficulty in meeting this Clear Line of Sight deadline of end June are the ones with large numbers of external bodies. The DfE are not going to meet it and the Department of Health are not going to meet it. I have a whole list here of those who are not going to meet it—FCO, MOD, DECC, BIS—

**Q456 Chair:** I wonder why you thought to bring that list along.

**Sir Suma Chakrabarti:** I thought it would be quite amusing. DEFRA and so on. DCMS, the smallest Department of all, are not even going to meet their deadline. They are going to a point that I think does not need debate between Parliament and the Executive: what is this deadline about? The statutory deadline, which is the one that I have to meet in terms of legal responsibility, is still end of January. Meanwhile, this deadline that the Treasury and we have all agreed to is now end of June. 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 with end of January.

**Q457 Ben Gummer:** Could I push back on two things that you have said. It is absolutely clear that there has been phenomenal progress in the last few years. On the issue of timeliness, is it not the case—and I know this is a boring refrain from Conservative Members of Select Committees—that in the private sector if you had a large multinational with many associated companies it would be possible? This is a small operation compared with, let us say, Vodafone, which is able to consolidate its accounts very quickly. The reason for that is because they have much closer control of their management accounts. The real purpose of the tight deadline is that it acts as a proxy for the control that a Department might have over its management accounts. I am fully aware that it might be a problem across the public sector but, unfortunately, we do not scrutinise every other Department and we are trying to concentrate now on yours.

**Sir Suma Chakrabarti:** There is no doubt—and we can talk about the history of the MoJ’s financial management—that your basic point is accurate, that MoJ was not strong enough on its financial management or management accounts control going back several years. It has got better. It is still not where it should be, of course, but it is now regarded in the top quartile in Whitehall. The difference between Vodafone and the MoJ is that Vodafone controls all its subsidiary bodies. We do not control corporation trusts’ timetables. That is the issue. We did not control the LSC’s timetable. We will, of course, in the future, when it becomes an agency. So there is a sort of control issue, an outside boundary issue, that Vodafone does not have. DFID would be a better analogy for Vodafone than MoJ. DFID is worldwide but it controls the whole worldwide operation. That is why they are going to meet the Clear Line of Sight deadline. They will not have a problem doing it because they have control.

**Q458 Ben Gummer:** I have one final small issue. In the case of the LSC, the qualification on assets is basically a problem with accounting for work in progress, as I seem to remember.

**Sir Suma Chakrabarti:** Yes.

**Q459 Ben Gummer:** Again, that is something which is easily solved now in most accounting packages—and I am glad there is the new accounting system coming in—but will it mean that we can guarantee that qualification will disappear next year?

**Sir Suma Chakrabarti:** I am not sure we can guarantee next year, but the year after I would have thought so. You are seeing Matthew Coates, I think, on 13 June. I have asked him to look at this issue because I was sure you were going to ask that question. I do not know, for sure, it would for next year because when it comes in, in October, that is halfway through the financial year. Whether it is really going to solve the problem in this financial year or whether it will solve it for the year after, you had better ask him.

**Q460 Karl Turner:** Lord Chancellor, when you took up your post—I think it was 12 May 2010—you made it very clear that the direction of travel for the Department was competing services to external providers. Two years on, are you satisfied that the Department has the necessary skills to handle an increased number of outsourcing competitions?

**Mr Clarke:** That is a very good question. It is a very relevant question and I think we are going to be able to answer yes as, obviously, it is essential we do. Outsourcing—purchaser-provider divides, internally or externally, or whatever you like to call it—is a good way of getting value for money and challenging efficiency, but it is also a way of getting you a much greater handle over what regime you want in prisons, what priorities you want in rehabilitation and actually challenging your resources to what works if you use payment by results in your contracting. We are steadily extending it across the field. The tendering process we have run for prisons is going remarkably smoothly. It has not been done like this before. It is a little controversial, but it is going well. With the Probation Service, of course—and again it is not an exact analogy—we are going much more to what could be described as outsourcing, certainly with some of the ingredients of probation community sentences but also the actual delivery of the service.

**Q461 Karl Turner:** It is fair to say, Lord Chancellor—
Mr Clarke: 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. Antonia may want to add something. 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 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.

Q462 Karl Turner: Are there any specifics where you think it has gone wrong? I am thinking of the language services framework, for example—Applied Language Solutions. In my own experience, that has been a disaster.

Mr Clarke: Yes, that is a bit of an industrial dispute. We are saving money. We thought the expenditure on the interpretation service was completely out of control. That is why we went out to contract, to try and systemise it and get our costs under control. Actually, it is people who interpret in particular languages who seem to have got upset about the impact on their potential income. I am not closely involved, but at the moment I am looking at that and thinking that this is largely an industrial relations dispute—a pay and conditions dispute—which I hope will be soon resolved, and it is getting better. Antonia may have some other views on the capacity of the system, how we can strengthen it, with this general commissioning role and relationships with outside providers and so on.

Antonia Romeo: 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. We have had four prison competitions already. We are now running another eight, with another phase to come. What we want to do now—and this is the work we are doing over the summer—is to look at the whole business of the Department, including on the courts side, and look at what the state needs to do and must do and what could be done better by another provider, so could be competed and commissioned. 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.

Karl Turner: I am satisfied with that, Sir Alan.

Q463 Chair: Earlier this week—or maybe it was last week—we have been taking evidence from voluntary organisations about the extent to which they can take part in this process. It seemed clear that there were quite significant problems of getting small voluntary organisations, who might have real expertise locally based, into the system without them either becoming part of a consortium with a bidder, and the bidder might not get the contract in which case we lose the services of that provider, or without getting a situation in which the bidder rather implies that good local organisations will be used but it does not happen afterwards. Have you given thought to how this problem could be addressed?

Mr Clarke: I will leave Antonia to deal with it, but we are wanting voluntary not-for-profit local organisations to take part in some areas like cutting the reoffending rate of criminal offenders. It is very important that we use them and it is quite difficult to fit them in. There is a bit of a tension between cost saving, which tends to argue in favour of great block contracts covering large parts of the country, and the local focus that we want. Prisons is the area where we are furthest developed prominently—it is not the only one—but it tends to be large companies that come in with leading consortia. They subcontract the actual delivery to charities and not-for-profit organisations and so on. That is where we are at the moment.

I have been worried, as I told you, first of all, about, “Will the Department get ripped off by these extremely good companies?” They are good commercial people so they can drive a good bargain when they are doing the contract. My other fear was, “Will they get the best they can out of the MoJ and then take it for themselves and not drive a very hard bargain with the voluntary bodies and charities below?” I have expressed those fears. As far as I can see at the moment, from the very limited pilots we have, our contractors are not even passing on the risk to the voluntary bodies. I have not had a voluntary body come and complain to me that they are being, as it were, exploited. But we are going to do more and more of this and there are many other dangers, on which I am sure Antonia could add more authority, that we have to keep an eye on.

Q464 Karl Turner: I am aware there is a requirement for a code of conduct in fact to regulate the prime and subcontractor relationships and I think the Committee wonders how, for example, an SME or voluntary sector organisation would make representations to the Department, to the Minister. Is there a facility for that?

Mr Clarke: At the moment they could ask to come and see me, but I will agree that that is because we have so few of these. I do know the people in the St Giles Trust who have subcontracted with whoever it is at Peterborough and so on, but I think—

Q465 Karl Turner: But it is rather ad hoc—

Mr Clarke: Antonia has done that bit about, when this becomes more normal, how we might handle disputes or concerns we might have that we are not encouraging voluntary and smaller bodies at the rate we wish.

Q466 Karl Turner: How likely is it for a small provider or voluntary sector organisation to get an appointment with the Secretary of State on a particular issue?

Mr Clarke: On an individual contract, it will eventually not be very likely. At the moment we are developing a policy, so it is quite easy for them to see
me because I am anxious to hear views on the policy. It is a perfectly good point. There will come a day when Secretaries of State will not be accessible to people who want to come in and complain about their contract.

Sir Suma Chakrabarti: I have engaged with a couple of them myself directly on this issue. I would say that the worry, the concern that was certainly there—there is no doubt about it—has slightly abated. One of the reasons for that is, first of all—and this is an interesting fact that the two of us were musing over yesterday, and we did not realise we had made quite so much progress—33% of MoJ’s departmental spend, which went to private contractors, now goes to SMEs. We are No. 1 in the Government now on that, so that is a big shift.

Where the voluntary sector have had difficulties around the cost and duration of competitions—particularly when they have to pre-qualify, which takes even more resource and they do not have that—there are a couple of things we have done. One is that we have now removed pre-qualification for transactions under £100,000—the sort of thing, obviously, that they should be going for, and that has made it much easier for them to engage. The second thing we have done is this. In the past we used to go through a whole competitive dialogue process, which is an all-singing, all-dancing process. We have tried to strip all that out and gone to a much less onerous, open and negotiated procedure, which helps smaller companies much more. That is one of the reasons we have reached the 33% that both of us were quite amazed by when we looked at the figures.

Mr Clarke: I am still trying to find out how it has happened. My latest suspicion, which I shall try out, is that it turns out we have started counting the individual solicitors getting legal aid. It is a very good record and I am delighted. I do not want to qualify our claim to triumph. We can both congratulate each other that we have somehow got there, but I am trying to make sure that it is genuine. At the moment, we have suddenly gone miles ahead of the field across Whitehall. But if there is anything wrong with the figures, we will carry on striving to get more SME contractors.

Sir Suma Chakrabarti: The other thing is that we need to pay quickly to the smallest subcontractors because of the cash-flow issues they face. We are trying to pilot what are called project bank accounts so that we can bang the money out as fast as possible and not hold on to it for very long.

Antonia Romeo: Although we do not have a stand-alone code of conduct, we have clear policies for suppliers working with the Department. We will have some arrangements in place for SMEs who feel that those policies are not being met, which we can write to the Committee on. We are developing it. It may not be easy to get immediately into the Secretary of State’s diary, but there is a whole Department that seeks to respond to that.

One other thing to add to what the Secretary of State said is that, in particular, Peterborough is a great example of where the payment-by-results pilot, although it does involve a big final contractor, is working very closely with a lot of small local organisations to deliver the results. So as we increasingly move into payment-by-results territory, we will be working with a whole range of organisations in the private and the voluntary and community sectors.

Mr Clarke: A good contractor—the sort of companies they are—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. That is the experience at Doncaster as well. 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 through the payment by results for the small subcontractor as there is to the main contractor.

Chair: We are turning to payment by results. Mr Gummer.

Q467 Ben Gummer: I am sorry you have to hear me again. It is the third and last time, I promise. On the issue of payment by results—and we have looked at this from several angles on a number of occasions—the Department still seems to be heading down the route of letting a whole series of contracts according to the structure that pre-exists within the Department, be it a prison, a probation trust or Community Payback rather than centring the payment on the offender. The consequence—and it has been repeated by many of the people who have come and sat before us—is that it will be fiendishly difficult to determine, for an offender that passes through any number of these different structures, how to apportion the result so that a body can get the correct payment. We identified this in our report and it was one of the few areas where you disagreed with us. What we do not understand still is why the Department cannot copy what the DWP has done, which is to let very large prime contracts and it is then up to the prime contractor to determine where they wish to apportion their own internal relationship with subcontractors. Then you only have one organisation with which you can have a simple payment-by-results model. We are a bit concerned that you might end up at the end of these pilots not really determining anything, with a whole series of incomparable data from which you cannot decide whether it has made any difference or whether we are any further forward, and we have lost four years. I am sorry to ask that question at length but I will not ask any more.

Mr Clarke: Our prison contracts are essentially with one prime contractor. I do not think we specify the arrangements. It is just my knowledge, or what I think my knowledge is. My feedback is that they are not just passing the risk on to their subcontractors. But I do not think we are party to the arrangements between the prime contractor and the subcontractor directly.

Antonia Romeo: Is it not an issue of defining the cohort? What you are talking about is that an offender passes through a whole range of organisations, so how can we make sure we properly understand what has had the most impact on the outcome, be it reducing the offending or whatever?

Ben Gummer: Precisely.
Antonia Romeo: This is part of a problem that we face in the system. As you say, we are starting from where we are in the structure we have at the moment. What we have tried to do in those pilots we are running is to try different models for ways of looking at the cohort. With Doncaster it is easier to define a cohort geographically than perhaps in some other places, which is why we have a particular Through the Gates pilot happening there. We want to increasingly look at different ways of doing it. In terms of going forward, all options would be on the table. If we could come up with a way of mapping the offender journey—joining up all the different bits of the system and properly knowing which bit of the system had led to that outcome—then we would be delighted to do so and payment by results would be according to that.

Mr Clarke: I do not see how you are ever going to break it down. Doncaster is a good one to choose because it is a local prison, and so is Peterborough. That is why they are up front and we got them going. The population is nice and handy and they can deal with all the local rehabilitative services. You can also compare the Doncaster cohort. You have a good measurement of whether you are improving the reoffending rate because, really, you have the same sort of people coming out all the time. You can put a contract together which starts in the cell, as it were, with the prison people themselves preparing for release, and then goes through to some outside partner with mentoring and help with getting a job and perhaps goes into a Work Programme and gets work training and so on. It is true that, at the end, assuming that person ceases to be a criminal and stops reoffending, you probably will not be sure who should take the major praise for improvement in that case. It is not possible to say if it was the mentoring they got at this or that stage. What you need is a consortium where they will count up the total success one way or another at the end. They are all contributing to the picture and we pay them. That is, off the cuff, how I see it. It does get more complicated with quite lot of other prisons because the population is not so convenient. As to probation and prison, you know whether somebody is on a community sentence or whether they are in prison so they are quite an identifiable group. One can have a separate contract.

Q468 Ben Gummer: That is true, but offenders might pass through both systems in the course of one sentence.

Mr Clarke: Of course, they may well in the course of their career.

Q469 Ben Gummer: I return to what the DWP have done with the Work Programme, which is to divide the country up by regions. You would have one prime contractor, in the Work Programme instance, who will deal with confidence-building, literacy and whatever is needed to prepare that person get back into work. It is a similar problem you face with offenders. The only difference is that you have this large prison estate where the prisons are in the wrong place for the prisoners and you are carting them all over the place. NOMS seem to think this is an insuperable problem, but we, on this Committee, do not understand why you cannot effectively buy and sell prisoners across regional borders and spaces can be managed in that way. There seems to be an obsession within NOMS with moving prisoners around like on a Battle of Britain chart where they are shoved from one end of the country to the other individually. We saw the desk where it happened.

Mr Clarke: They do quite a lot of moving prisoners about, which must make a difference in measuring performance on contracts. I can see that.

Q470 Ben Gummer: I suppose that was not a question. The Department, I hope, is open to looking at—

Mr Clarke: Yes. We would like to tackle the problem if we could because we are going to find it more difficult in some parts. At the moment, we are starting with the simple ones, not surprisingly, in prison-based pilots. We have other non-prison based pilots. With prison pilots, there is no doubt that Peterborough and Doncaster are at the simple end. The configuration of the estate, and also the make-up of the population in some other places, is going to get us to start challenging the things you are talking about. People do get moved from prison to prison as they go through different categories.

Q471 Chair: Our view has been—and still is—that until you link the commissioning of prison places with the commissioning of other ways of dealing with offenders, you will perpetuate this problem. Therefore, you should move towards a more regional commissioning, in which commissioning of both types, over the whole range of disposals, are managed together.

Mr Clarke: I disapprove of compartmentalising too much. I agree, and in NOMS I do not think the Probation Service suffers, which is why we have not bothered to take NOMS apart again. But probation is undoubtedly the junior partner. It is bound to be the prisons that take up most of the time, but they are quite distinct communities. Although in the course of a criminal career they may find themselves first in one and then in the other, at any given moment, when you are trying to rehabilitate them, they are either on a community sentence at liberty—at large—or they are in prison. Inevitably, you design slightly different programmes, depending on whether they are in the community or in prison.

Q472 Ben Gummer: Bear in mind, if you do not mind me saying so, Lord Chancellor, the problem with our system. We have just seen evidence from a Norwegian prison dealing with repeat offenders where they are achieving a 20% recidivism rate—remarkable—precisely because the probation officer is also the prison officer and moves with the offender from the prison out into the community and manages that cohort at the same time. So there is that look-through. We are not even at the stage of thinking about that.

Antonia Romeo: We are in some of the pilots. In the Through the Gates pilots, that is exactly what the contractors are trying do because they own the
problem through the gate. I think, to come back to your earlier point, Mr Gummer, we are very focused on all possible options. What the DWP pilots themselves are trying to do is to take a part of this commissioning model, where it exists, and say, “Since it is the case that 49% of prisoners have not had a job in the year before the offence, let us look at what the role of having a job would be on the offending.” If the commissioning structure exists, why would we duplicate another commissioning structure on top of that? We want to look at what is already happening out there and what works. Perhaps, if I may, I can make one final point. We are also doing some interesting data linking and data matching work with DWP and HMRC and other Departments, which is to look into specifically what works in reducing the offending so that we can make sure we have an across-the-piece picture and understand more about which interventions will make a difference. We would want to then get everybody using that, not just in one particular local area. **Chair:** Thank you. On payment by results, Mr Llwyd.

**Q473 Mr Llwyd:** As to the two pilot projects, the Doncaster and Peterborough experience, I would lay odds that they will come out fairly favourably because of the compact nature of the population and the easy tracking of the individual when he or she leaves prison. But here in London, for example, a vast number of people who are convicted are outside prisons in London. I can tell you that in north Wales there is no prison. Therefore, it bears no relation to the outside big picture. You may well trumpet some good success in Doncaster—and I wish you well on it and the other place—but I do not see how that is going to translate throughout the UK at the present time. **Mr Clarke:** It is going to have to be modified. That is why we are piloting it. I would agree that in some other prisons you will not be able to have the local providers quite so easily tied in for the very practical reason that they are not all local prisoners and they are not going to stay local once you release them. That is one of the things we are steadily going to have to confront. The bigger picture about Norway and probation hostels goes to the whole heart of sentencing. It sounds extremely interesting. I shall look forward to the report and seek to decide whether British public opinion is ready for that yet. I am not sure.

**Q474 Chair:** We think the British public is ready to have less crime and what we are looking at are ways to achieve that. **Mr Clarke:** That is how I sell all these things, otherwise there is a tremendous reaction. It is believed that the British public does not wish to demand that more people should be sent to more prisons for ever longer sentences. They have discovered, even in America, that that is a fairly non-productive avenue to go down, although we have gone quite a long way down it. But you do have to make it clear to people that what we are trying do is stop criminals continuing to be criminals. We are punishing them first and then making them stop reoffending so that they can go back to a sensible way of life. But it is going to be difficult to organise in some places. It is easier in Doncaster and Peterborough, and I began by conceding that.

**Q475 Mr Llwyd:** I am sure we all share the intention, and hopefully it will come forward okay, but are you aware, for example, of what the Howard League told us in their views on payment by results? They said that it is not based on any meaningful outcomes. The reduction in raw reconviction rates, before statistical modelling, is just one outcome—one outcome. Interim outcomes such as a reduction in severity or frequency of offending are just as valid, but do not constitute “a result.” **Sir Suma Chakrabarti:** It is the frequency finding. **Mr Clarke:** I am responsible for that. I have been resisting that. Of course it is true that all kinds of desirable outcome can come out of attempting to intervene. But I think the contracting model we are using works best if you focus on your primary objective. The object we are driving at—the object we wish to reward particularly—is a reduction in reoffending where someone ceases to offend. Of course, it is desirable if the next time they come in they have not committed as many offences as the time before, or if the nature of the offences has become slightly less severe, or even if there has been some improvement in their behaviour. They are more responsible people but they are still committing crime. The only way to sell this to the public—but not necessarily to the public, it is my own conviction—is that we will get more value for money, more bang for our buck, if we concentrate on what really matters, which is getting up the proportion who stop committing more crimes. I personally have been somewhat resistant to the quite attractive arguments of the kind you are putting to me, but you lose the point after a bit, I think, if you start taking too much of that in.

**Q476 Jeremy Corbyn:** Is one of the perverse effects of a much higher rate of crime over the past 20 or 30 years that more people have more experience of the prison system and more people know people who have had experience of it so they begin to question the sense of keeping two or three prisoners to a cell, the lack of education, the lack of association time and all the rest of it? There is, surely, a knock-on effect there. The reason I raise that is that when we had this delegation to Denmark and Norway—there were five of us who went on it—it was extremely interesting. We asked a question of one of the Norwegian prison governors. We said, “What do you do about prison overcrowding?” His English was perfect and he absolutely understood the question, but he asked why we were asking the question because it made no sense to him. He said that they do not have prison overcrowding. They do not put more than one prisoner to a cell ever and they have a much lower rate of reoffending. There are lots of reasons for reoffending, but we have this very unfortunate situation with grossly overcrowded Victorian prisons. Is it surprising that people reoffend?
Mr Clarke: Personally, I agree with most of the things you have said.

Jeremy Corbyn: Good.

Mr Clarke: It is just that we have to get from where we are to where we need to be. The prison population is much higher now, which does have this effect—as you say, must have—that more people have experienced prison than used to. There are not enough of them yet to bend public opinion significantly, but most Members of Parliament who go to prison seem to come out as very committed prison reformers. I think that happens to quite a lot of them.

Jeremy Corbyn: Or religious converts or something, yes.

Mr Clarke: Being more serious, the figures are very bad—the apparent growth in crime and so on. We do know more people are going to prison, that is undoubtedly the case, but it is very difficult to measure. Overcrowding is one of the curses of our system. It is extraordinary. I hope that in a hundred years’ time people will look back and think it was quite absurd that in the 21st century it was taken for granted that the entire prison system was overcrowded. We open overcrowded prisons, we open them overcrowded. Everybody seems to think this is fine, and it is not. It is a real problem when it comes to what we have been talking about as to how to stop so overcrowded. Everybody seems to think this is fine, and it is not. It is a real problem when it comes to what we have been talking about as to how to stop so many of them reoffending so quickly when they leave and coming back again. It inhibits your ability to do anything about it.

Q477 Jeremy Corbyn: Is it not a question of sentencing policy as well as the intensity of support given to an individual prisoner? We have a sentencing policy. Many young offenders at last year’s riots, for example, got long custodial sentences—goodness knows what the long-term effect on their lives is going to be, but probably not good—and when they are in prison more generally, they are going to prison, you have to meet the other local priorities, of which I am sure there will be a few?

Mr Clarke: I agree with your general drift. If we are going to get the best value for money out of what we spend on punishing criminal offenders, it is best to spend it on the way that produces the best results for the public. The first result is public satisfaction that justice has been done and that someone has made retribution for whatever, sometimes quite serious, offence they have committed. They are prisoners. But then you do your best to make sure that the majority of them are not criminals when they leave so that nobody has to put up with their criminal behaviour again. The more prisoners you put into overcrowded conditions, the more difficult it is to organise all the things we are talking about, to deal with drug rehabilitation and alcohol problems and to provide work and training. We have seen such a surge in the prison population in the last 15 years and such a surge in sentencing length that it would be very helpful if we could have a bit of a pause in order to address what we can do with the people we have. I put it cautiously because any suggestion that you might have as a main policy objective of reducing the number of prisoners in prison sets off great excitement in parts of the political world.

In America, I always cite Newt Gingrich with approval on this particular subject. He is one of the leading right-wing American politicians in the last campaign who has been campaigning on a reduction in the prison population because it is such appalling value for money to the American taxpayer. The Supreme Court in America has passed a judgment ordering the state of California to reduce its prison population, though I am not quite sure how they are going to comply with it. So the right in America, with whom you and I are not usually instinctively in agreement, does contain quite a lot of people urging reductions in the prison population. I am not urging that, but it would be nice if we could resist some of the pressures we get from the popular press to keep increasing the number at the rate we have in recent years. The popular press, I think, are themselves responsible for tens of thousands of people being in prison, not all of whom need to be there.

Q478 Jeremy Corbyn: It is always the case that if the moral argument does not work, you can try the money argument.

Mr Clarke: In the end, when all else fails, I point out that we cannot afford it, at £45,000 a time. I say let us spend £45,000 on serious nasty people who need to be punished in that way, but let us try and find a slightly more sensible way of dealing with the ones that are just a damn nuisance.

Q479 Jeremy Corbyn: The point Mr Gummer was making, though, about the link of people—prison staff with probation and so on—where there is a follow-through on the individual prisoner, is surely a good thing. A lot of particularly young prisoners come from very dysfunctional backgrounds and very difficult lives. If there is somebody, or a group of people, they know that they can build a relationship and trust with them are more likely to develop rather than being shifted from institution to institution, probation officer to probation officer. That personal link is quite important in their lives.

Mr Clarke: I agree with that. Let us do that.

Chair: We have one final topic, which Mr Llwyd is going to address.

Q480 Mr Llwyd: Thank you, Mr Chairman. In your recent consultation paper you proposed to devolve commissioning of victim support to the Police and Crime Commissioners. Would funding for these services be ring-fenced or would they have to compete with the other local priorities, of which I am sure there will be a few?

Mr Clarke: First, we contemplated doing it, but not immediately. We are minded to do it, I think, in 2015. A lot will happen between now and 2015 when we see how the Police and Crime Commissioners get along, when they come into existence. It is attractive
and our present intention is to devolve it to Police and Crime Commissioners, we think, in 2015. We have not decided, is the straightforward answer, on whether we would ring-fence it when we transferred money. I am not too keen on ring-fencing, actually. You either go for localism or you do not. You have a central provision or not. At the moment, we have gone through a process of undoing all the ring-fencing we have been imposing on local government in recent years. If the idea of having Police and Crime Commissioners is to have people who are locally accountable to the local population for responding to local priorities, my personal instinct would be to say, “What on earth are we ring-fencing it all for? Why is a Minister sitting in the Ministry of Justice telling Cumbria to ring-fence, and so on, to what they should spend?” But that is my personal instinct at the moment. There is no need for a clear Government policy at this stage.

Q481 Mr Llwyd: I can understand what you have said, Secretary of State, but if you were to have a Police and Crime Commissioner who would give a very low priority to this, you would end up with an absolute disaster.

Mr Clarke: The argument would be that he would answer to his local population for that quite rapidly.

Q482 Mr Llwyd: But there would be five years of—

Mr Clarke: At the moment the lobbying in favour of victim services, I am very glad to say, is very much stronger than any lobbying I have ever come across against it. We are putting a lot more money into victim services and we are very keen to do so. But we have to be careful that all this is going to be sensibly spent. It is one of the reasons we have been looking at it again. We do not want victim counsellors chasing victims wanting to persuade them to have the service, which, anecdotally, does occasionally happen at the moment. For some victims who are totally traumatised by the crime, there is a great need to strengthen the victim services we have now, and there are all kinds of specialist groups where I think we should improve what is done. Again, that could be said to argue for a bit more localism, for the individual Police and Crime Commissioner who wants to develop a service in his area to make a virtue of it. But somebody else may think that he has some other great priority on his hands in his area. I know I am giving long answers, but I hope I am making it clear that this is all speculative. As we are minded to do it in 2015, we have plenty of time to debate this and decide what to do.

Q483 Mr Llwyd: Is it possible, do you think, to achieve a more consistent approach to victim support services and greater local discretion at the same time as is advocated in the consultation paper?

Mr Clarke: I am inclined to approve of the local discretion and then you have to stop people imposing any unnecessary constraints on that. Obviously, you specify the kind of things for which you are making money available, but it is always a mistake to be too prescriptive in what you do in such an area as victim support. We are about to produce a response to our consultation document which will deal with this more fully and more directly. The trouble is with the circumstances of individual victims. No two victims are quite the same. It is very difficult to predict sometimes what kind of victim will need an awful lot of support and what kind of victim will be able to handle it with a little support and so on. Different things work with different people. So I am reluctant to be very prescriptive.

Q484 Mr Llwyd: You will know, for example, that Victim Support are very concerned about what may happen to them in the coming months. They have questioned whether the Victims’ Code will retain its statutory footing and the current level of rights it affords to victims. The Government suggest that the current 99 standards imposed on criminal justice agencies can “stifle innovation and, due to limited resources, lead to some victims not getting the information and support they need while others are needlessly contacted by agencies simply because the Code requires it.”

Mr Clarke: That is, in good formal language, repeating what I just said. If you start setting out too much, you impose a sort of rigidity on the thing. I do have anecdotes of people who tell me they have been pursued by people offering them counselling in order to increase the number of people they can say they have offered counselling to. Then we do know that there are people who take years to recover from a crime and they need far more attention. Victim Support is an extremely good organisation, but if they are suggesting more central description of the nature of the service, I am very hesitant to agree with that.

Q485 Mr Llwyd: Can I rush in on that point and say that in 2010 and 2011 Victim Support had more than 1 million referrals. With a figure of 94% user satisfaction, it begs the question, “If it ain’t broke, why fix it?”

Mr Clarke: Yes. I am very much a supporter of Victim Support. It has transformed things compared with 10 years ago. It is a very good organisation but sometimes when you have a consultation document you do not always agree even with the good organisations. So I am not being rude about Victim Support when I say of their reaction to Police and Crime Commissioners, “They would, wouldn’t they?” I would have known that when we went out to consultation because they have such a high proportion of the national service at the moment. If I were active in Victim Support I would not be very keen on seeing that, in future, we might have to deal with a whole lot of different Police and Crime Commissioners. I have no doubt that, with the quality of service they provide at the moment in most places, they would actually get over that problem quite easily if we do transfer it to Police and Crime Commissioners. But when it comes to stipulating minimum standards and all that kind of thing, I am very cautious. Of course, we will try to get the services more and more concentrated on those that are vulnerable, but they are difficult to define because so much depends on personal reactions.
Mr Llwyd: Clearly, Victim Support do have a vested interest, in reality, but they are—
Mr Clarke: Yes, and I am not saying that to be hostile to them.

Mr Llwyd: No, neither am I, but, in reality, that is the description. But other concerns, for example, NSPCC, Mind, Liberty and another 23 organisations are concerned along the very same lines as they are, and they are not—
Mr Clarke: They sound like big national ones, most of them.

Mr Llwyd: They are, but they are not competing with Victim Support. They are saying, “Here is a beacon of excellence. Why break it up?” That is what they are saying. For people who are in the know, have no axe to grind, are not competing and are not interested in terms of taking over any of the business, then that surely is something that should be looked at, is it not?
Mr Clarke: Yes, we are in the process of consulting. We are considering it. But plainly the intention of policy was never to be hostile to Victim Support. It was not designed with that in mind. Victim Support has made a huge contribution in this field. But a big national organisation is going to be tempted to keep a big national way of distributing the money. Going back to where we were a few moments ago, to all these voluntary not-for-profit groups working with offenders, locally there might be people who could make a contribution to the service who never will, if we stay as we are, but might if some accountable local responsibility for the quality of the service was introduced to it. We are going very slowly. We have not even responded to the consultation document yet. We are not threatening Victim Support with any reduction in provision at the moment. We will continue to move cautiously towards a possible move to PCCs in 2015, and I think that is likely to remain our intention.

Steve Brine: As we are talking on this point, is it not the case that in a grown-up democracy where we back localism—this Government have made a decision to do so in lots of areas, and PCCs are just one example of that—and Victim Support mention that well-used term “postcode lottery”, and presumably, from what you are saying, localism can mean a postcode lottery, surely the challenge is to raise the standard across the game instead of to drop the standard across the piece?
Mr Clarke: My instincts are the same as yours, Mr Brine, as long as we do not get too purist about it. If you see daft things being done locally you eventually have to step in and stop them, but, yes, most people espouse localism and then want the Government to import all kinds of severe constraints on what can actually be done locally once it has been transferred. The words “postcode lottery” should never be used by any politician because if you believe that that is a criticism—

Steve Brine: If you put the public in charge, the public are in the driving seat in electing PCCs and they will be able to un-elect them as well.
Chair: I have to allow a final word to Sir Suma.
Mr Clarke: Going back to Jack Straw and my Department, it would be rather nice if the Police and Crime Commissioners were responsible for things like victim support and not just law enforcement and crime as part of the whole picture, if they are also to be responsible for victims and so on. There are other services you can tie in. I think the Police and Crime Commissioners should walk before they start to run. So let us see how they get on with the police.

Chair: I really will get the final word in from Sir Suma.
Sir Suma Chakrabarti: I will only add one sentence.
If we go down this route of devolving the victim support budget, it will be important for the centre to do one thing, which is the lesson learning across various PCCs in the way we have done with youth justice. We know which YATs have done well and why they have done well. Then it is not to say that we impose a consistent standard and everyone must do the same thing but, rather, “Here are some lessons. Apply them if you wish locally.” I think the centre does have that duty. It cannot just stop completely off the field of play.

Chair: Thank you very much, Lord Chancellor, Sir Suma and Ms Romeo. Again, Sir Suma, very best wishes for the future.

Sir Suma Chakrabarti: Thank you very much. I hope to see you all at my retirement party on 25 June at the MoJ.
Chair: We look forward to that.
Wednesday 13 June 2012

Members present:

Sir Alan Beith (Chair)
Steve Brine
Mr Robert Buckland
Jeremy Corbyn

Witness: Matthew Coats, Chief Executive, Legal Services Commission, gave evidence.

Q493 Chair: Mr Coats, welcome. We have some questions to ask you about the Legal Services Commission. What date did you take up the post?

Matthew Coats: 27th February.

Q494 Chair: It is still early days.

Matthew Coats: Indeed—three and a bit months.

Q495 Mr Buckland: Mr Coats, welcome. I want to deal with the change in nature of the LSC in April of next year from an NDPB—non-departmental public body—to an Executive agency. First of all, how will that change improve the performance of the LSC and what will be different from the current arrangements?

Matthew Coats: I think the move to Executive agency status is the right decision and provides an opportunity for the organisation to improve. As well as saving a significant amount of money, it will also give us a clear focus—a clear purpose—to the competent administration of the legal aid system. Secondly, it will give us an opportunity to be a closer part of the justice family of organisations and Government more broadly and should give us the platform to improve our relationships across the board. Finally, there are opportunities for our staff in being part of the wider civil service, which of course in turn should help us engage with them better and get better results. So there is a strong argument for doing that. What you will find to be different is a clear focus, as I have said, on administration, performance, rigour and the stewardship of public money.

Q496 Mr Buckland: One of the issues that has concerned policy makers and politicians is the potential infringement of independent decision making when it comes to the funding of legal aid decisions. What is the LSC and its successor body going to be doing to ensure that that independence is retained?

Matthew Coats: The independence is now part of the Bill as well and, of course, that frames it well. Part of this is to prepare properly and to make sure that we fully understand decision-making processes and how we are going to operate in the future. We also need to consider how we are going to demonstrate the independence, too. The primary mechanisms for demonstrating that independence will be the Lord Chancellor and Secretary of State publishing the guidelines for the classes of cases but not becoming involved in any of the individual cases. Then the Legal Aid Agency and I will publish an annual report about our work that will give transparency to the way that we work within those guidelines and the decisions that we have made. That is the preparation we are doing at the moment and that will be a way of ensuring and demonstrating that independence, too.

Q497 Mr Buckland: You are particularly sensitive when the Government are a party to an action because, increasingly, legal aid is being focused upon those areas where the individual is having to challenge decisions by the state, which is normally the Government. Are you confident that the new arrangements will be able to establish the degree of independence that is quite clearly necessary for a decision-making body like yours?

Matthew Coats: The cases you talk about are not the only sensitive issues and not the only place we will need to demonstrate independence, but I am satisfied that the basic mechanism of the publication of guidelines, the statutory duty of independence and the transparency of publishing what we do will give us some confidence that independence will be delivered.

Q498 Mr Buckland: As you know, the LSC—you are fairly new on the block—has had a very difficult and troubled history. It has come in for a lot of criticism by this Committee and other bodies, which is the background to its abolition. How are you managing the morale of staff, bearing in mind the difficult previous history?

Matthew Coats: The LSC does a difficult job; there is no doubt about that. As you say, there has been a fair amount of criticism. There has also been a fair amount of success and improvement in the last couple of years—and in particular the last six months, with the clearing of backlogs, for example. Part of my job is to present to the staff a balanced picture, to make sure they get recognition for the good things that they have done over the last couple of years but being sufficiently challenging about the improvements that we need to make into the future. If I may, I might just refer to the kind of direction I am giving to them. I am saying to the organisation at this point—I agree it is early days, but the situation seems relatively clear to me—that we should be doing and thinking about three things. We should be thinking about improving our casework—that is making sure we work within those guidelines and the decisions that we have made. That is the preparation we are doing at the moment and that will be a way of ensuring and demonstrating that independence, too.

We need to turn ourselves into an agency without being distracted by that from the day job but also to reduce...
our size and become a more efficient and productive organisation. With lots of people within the organisation, I will need to look at our capability and also set the right culture.

Thirdly, I am saying to the organisation that we need to work with others and we need to work with others better, whether it is being a more active member of the justice family working with CPS, the MoJ and a lot of other different organisations, but also working with the profession, with the providers in what will be a difficult year with the implementation of legal aid reform form, and to deepen and broaden those relationships.

To balance that, we are the people who select providers and enforce the rules but at the same time provide good customer service and guidance to them. Setting that clear direction to the staff and acknowledging the good things they have been doing, but being honest with them about the improvements they need to be making, is what will get the best from them, in my experience.

Q499 Chris Evans: Jack Straw, when he came before the Committee, and the Law Society’s written evidence, have both made claims about the policy-making roles between the LSC and MoJ. In fact, Jack Straw when he came before us said that the LSC had 60 people working on policy when they were there to implement policy and not make it. Have things changed or are there still tensions in that regard?
Matthew Coats: My experience is that there are not tensions in that regard. That decision has been made and has been put into place. I have worked in a variety of settings over the years, with policy being part of the job, or policy and implementation, and it being strictly delivered. For this particular situation, to separate policy and delivery is entirely the right answer. What I find is a set of very good relationships, and the implementation of legal aid reform and the preparation for implementation, now we are into that, is a really good example of very close working relationships between my team and the team at the Ministry, whether they are policy or legal colleagues. I have seen no tension at all. In fact it is a very productive collaboration.

Q500 Chris Evans: There seems to have been in the past a belief that the LSC has spent time formulating policies, only to be rejected or substantially changed by the MoJ. Do you think money and resources have been wasted in that regard or do you think that is just a myth?
Matthew Coats: I do not know enough to give you a definitive answer on that, I am afraid.

Q501 Chris Evans: You have demands on Ministry of Justice resources. How are they settled within the organisation? Does the dominance of NOMS present difficulties for other agencies?
Matthew Coats: That has not been my experience thus far. I have been welcomed on to the board, which is a very strong, proactive and good team in my experience. 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

Q502 Chris Evans: Thank you for your answers, but, finally, could you just set the journey that the LSC is going on at the moment towards being an Executive agency from the present arrangements? I think that would be quite helpful.
Matthew Coats: Now that the Bill is an Act, that is the big thing that actually creates us, and we have had for some time a quite detailed project plan that divides into a number of strands, whether that is the HR strand or things about IT, governance or finance. The plan is a good one. We are well into implementation of that, and, for example, I have just written to all the staff with the basic terms of the transfer that we have agreed with the MoJ. I did that yesterday.

I have accelerated that part to give staff certainty about the future. There are a number of things that need to be done through the autumn—the review of various policies and procedures to make sure they are right for the new agency. We will be preparing a framework agreement with the Ministry, a plan for the future, which I am sure we will develop. There are structures and so on about the recruitment of new non-executive directors, for example, which we are processing at the moment. So there is a strong plan. We are in the middle of implementation and I am confident that we will be able to create the agency to the correct timetable in the right way.

Q503 Steve Brine: You said there are a lot of things to be done and, obviously with the sea of change that lies ahead for you, the Bill is an Act and you have to re-tender several thousand civil legal aid contracts as well as make this change to the new organisation. Is that a challenge that you are prepared for or is it a perfect storm that could be a disaster?
Matthew Coats: There is a lot to do.

Q504 Steve Brine: That is self-evident, but are you resourced and set up to do it?
Matthew Coats: I think we are. There has been a good deal of planning prior to my arrival. I am pleased with how my induction period has gone and the grip that we have on both the day-to-day and also the more strategic aspects. Clearly, the risk we have to manage is to make sure that we keep the day job going—the processing and the paying of bills within the service standard. The organisation has done very well on that. At the same time we need to create the new organisation and implement legal aid reform. Broadly different teams are working on that. It comes together around our Executive teams’ table, and my job is to ensure that we are not trading off but that we are balancing and we are doing all the things satisfactorily. I am watching carefully for signs of stress and strain because—of course you are right—there are risks with that. But I am satisfied for the moment that we are managing them.

Q505 Jeremy Corbyn: Thank you for coming. What will all these changes mean for the delivery of justice and access to justice? I have very serious concerns about the quality of some immigration advice that is...
Matthew Coats: I will resist the temptation to talk about my perspective from a previous job on immigration. Broadly, the impact on clients and on the legal system is a matter for the Ministers rather than our side in implementation, so I am limited in what I could say about it. The LSC has a very important role, though, in making sure that Ministers are aware of what is happening on the ground. We deal with a very large number of providers and are, if you like, the day-to-day knowledge that the Ministry has of what is occurring. A big part of what I need to do is to feed back the consequences of the reforms that will be implemented so that future policy can reflect what has actually happened.

Matthew Coats: I am limited in my experience of this and it is early days. I see an organisation that has learned about the administration of contracts, about making the rules clear, about making processes well run and communicating results clearly and explicitly to people. I think those lessons have been learned, improvements have been made over the last few years and there has been progressive improvement. Going back to the earlier point, we have a lot of procurement work to do this year. I have tested the process and looked at the overall process, and I am satisfied that we are well set to see that through, but it will be quite difficult. Some people obviously do not like the answers that they might get from the process too, which is always an issue, but the organisation has learned in the ways that I have described and is well set to do a good implementation of the procurement to come.

Matthew Coats: Again, this is before my time, but what has happened is that the organisation has drawn up a number of people with outside experience and broader experience who have worked in more commercial roles, particularly in the leadership area. We have also invested in not just the commissioning and procurement—the front end of the process—but also in the contract management. There is a particularly strong team in the LSC, which I have found, around contract management; people around the country are able to help providers operate the contract. So there has been a development of capability, but that is not to say there should not be more development in commissioning, procurement and subsequent contract management.

Matthew Coats: That is a good question. It is too early for me to form my views completely and for the procurements to come that will influence more, and there will be reform of the crime side. That is clearly something that we need to do. My view is that we need to have contracting mechanisms that incentivise innovation, improvement and have quality built in. Unfortunately, it is a bit early for me to say exactly how we will do that. I am sure that will be something that I will be able to share with you as time passes.

Matthew Coats: A big part of my induction has been taken up by getting some direct experience, whether through solicitors or chambers, by understanding the views of the providers. So I have spoken and visited a couple of dozen of those in one way or another over my first three months. I have also taken some time to go through the administrative side with them. It strikes me that the plans that we have to put our services online will be a big part of helping them do business properly. That is probably the biggest thing we can do. I am keen to continue the dialogue with both representative bodies and individual providers to make sure that we are sensitive to the needs of their business and, again, as I have said earlier, strike that balance between being the people who make and enforce the rules but subsequently provide good customer service and support to people in different times.

Matthew Coats: I am not sure I find either to be. Clearly, times have moved on. I have worked quite hard to talk to the representative bodies and to develop my relationship with them, and I have a strong sense, I think, of the challenges they face. My position is that we are not always going to agree on everything; we have different jobs to do. Our job is the competent administration of the legal aid system and theirs is to represent their members, but it does not mean that we are not part of the same system and that we cannot find common ground. Having a mature and open discussion with people about what you agree on and what you do not is the way to improve things, and I can see signs of that already beginning. But I do not think I would be unrealistic in how far that goes.
There will be times when people have radically different opinions.

Q511 Chair: When we visited the Commission before you arrived, those of us who were there that day were rather struck by the very hesitant approach that the Commission took towards the unwillingness of solicitors to submit legal aid claims online, to use an online system, as though this was really very difficult to them. I have to say it is something we all have to do in our parliamentary financial claims. We got the impression that the Commission was very hesitant about securing innovation from its client solicitors.

Matthew Coats: Again, I cannot comment on the impression that was created then. We clearly need to do this and we need to give people confidence that new systems work. People sometimes are hesitant if systems are not reliable or do not work properly. We have selected 40 providers in the north-east to be the pilot for the online system for civil. The feedback from them about the front end of the new system is positive and we will need to build confidence with them. If we can build confidence with arrangements that work, we can be strongly encouraging everyone in due course to use it, because of course in time—

Q512 Chair: In due course. Is this optional? As MPs we were not given the option when an online system was introduced. We were just told, “You won’t get the money if you don’t use this system.”

Matthew Coats: No, we would be strongly encouraging that people use the system.

Q513 Chair: On the other side of the coin, the Law Society chief executive wrote to the major clearing banks on two occasions saying, “Please go easy on practitioners’ overdrafts because there are massive delays in the Legal Services Commission paying out to them.”

Matthew Coats: That may have been true at one point, and, again, I referred earlier to the organisation working very hard to make sure that we process applications and pay the bills, which is a core purpose of our organisation. I am pleased to say that we are working within our service standards now and, although there are voices that may say there are still delays, I am sure that part of that is a bit of a time lag until people realise the situation. So, for basically crime and civil, we are within the time for processing that we publish. The challenge for us is to stay there, and it is a central challenge. A point was made about the crowded agenda that we have. The important thing for me to continue focusing on is that the bills are paid on time—the day job—whilst we are doing the other things that need to be done too.

Q514 Jeremy Corbyn: Is it any part of your responsibility to report back or monitor and report back to the Home Office or Justice Department and Ministers the effect of the legal aid changes, access to justice and the numbers of people who simply do not get access to justice because of the cutbacks?

Matthew Coats: Yes. It is part of our job to feed back the effect of the reforms, yes.

Q515 Jeremy Corbyn: Are you undertaking a research project or monitoring of it then?

Matthew Coats: Not in terms of research but I mentioned the contract management team earlier. We have a large team that deal day-to-day with providers and they will be the primary mechanism through which we feed back the effects of the current reforms.

Q516 Jeremy Corbyn: Will they be monitoring the courts as well as the numbers of people that turn up on self-representation?

Matthew Coats: That would not be part of my team’s responsibility, but I am sure that might well be a sensible thing for me to say to my colleagues in the Ministry who do that job that it is something we should look at.

Q517 Jeremy Corbyn: Will you be doing that then?

Matthew Coats: I will, yes.

Q518 Chair: The NAO said that poor financial management in the LSC was strongly related to poor financial management by the MoJ itself. What engagement and support are you getting from the MoJ and is it enough?

Matthew Coats: Since my arrival I have felt strongly supported by the MoJ and, indeed, a good finance team at the LSC. The first task for us, as I am sure you are aware, is to make sure that we lay our accounts pre-recess, and we are on track to do that. Enormous strides have been made already. We have actually submitted our accounts to the NAO already and the final audit is under way. That is a big achievement and a big success. That has been a joint piece of work with MoJ and one that has been a really good collaboration. So I have felt strongly supported in the time I have been with the Department.

Q519 Chair: You wrote to us about this in April. Are you satisfied that you are making the progress that you specified in that letter?

Matthew Coats: Yes, and we are still on track.

Q520 Chair: What about the savings? You referred earlier to the transition to an Executive agency, which has been delayed. Does that mean the savings will come later?

Matthew Coats: The quantum of savings—the overall amount—will not be affected. A small amount has been deferred by the delay, yes, but it does not affect the overall situation.

Q521 Chair: Do you know enough about your costs?

Matthew Coats: The costs break down into two broad groups. There is the cost of running the organisation, which is the smaller number, and there is the cost of the legal aid fund, which is the larger number. I find an organisation with strong and normal cost and budgeting systems that you might expect to find anywhere in terms of budgets and monthly reporting; in running the organisation they are perfectly satisfactory, and we have a good understanding of the costs of the various functions within the organisation. The understanding of the costs of the legal aid fund is
a more specific and more unique function to us and there is a very strong costs model—a projection model—that we run. We have already run it for the current year and that does represent a good understanding of our costs.

If I was to point to an improvement that should be made, currently, because it is quite a complex undertaking, we only run the projection once a quarter. I have asked the team to intensify that to once a month because during the period of change—the point was made earlier—we need to have an even stronger grip at a time when we are making savings, and we need to understand what is happening in order that we can both manage our own costs but also, which is the point made earlier, that we are able to feed back about the effect of the reforms and what is actually happening.

Q522 Chair: The MoJ told us that you have recently introduced new driver-based forecasting models that include underlying drivers of case starts that take into account key external economic factors such as levels of earnings and eligibility. Can you confirm that or is there anything you want to say?

Matthew Coats: On the specifics I could not comment.

Q523 Chair: Assume it is true. The MoJ did tell us.

Matthew Coats: I would assume it is true. I have been quite impressed actually with the complexity and the sensitivity of the overall model. It has been something that has been developed over many years, and the best and most accurate models are done by increment and constant improvement rather than just as a one-off for unveiling something. So, overall, the understanding of cost is good.

Q524 Mr Buckland: I am sorry I hesitated earlier. I wanted to declare the fact that I have been a criminal legal aid practitioner but I have not done any new cases since the general election of 2010. But it is in the light of my experience, having regularly overwhelmingly done legal aid practice and been paid promptly under the old system in criminal defence fees, that the accounts I am now getting from the organisation over a period of time. Changes that were made a year or two ago did result in a big backlog growing up and processing times going to an unacceptable length. That is undeniable. However, that has been remedied and we are now processing within the published service standard. I am sure perceptions will catch up over a period of time as well around that.

Q525 Mr Buckland: What is the published service standard?

Matthew Coats: The published service standard is to complete our processing within eight weeks, and we have achieved that.

Q526 Mr Buckland: Does that involve payment too?

Matthew Coats: No, it does not. The BACS run that actually gets the money into the account is on top of that. We have reduced our internal standard to six weeks, because, of course, it is just obvious that for people who publish eight weeks, if they do not get the money within eight weeks, it is going to be difficult to explain to them. We have set an internal standard of six weeks and we are currently processing at five.

Q527 Mr Buckland: From the time the submission is made to payment, what is the time scale now?

Matthew Coats: It depends on the individual case because the submission and exactly how it works will depend, but, as I said, from the time the bill is submitted to the payment is five weeks, plus the BACS run.

Q528 Mr Buckland: That is now happening in cases with effect from a particular date or—

Matthew Coats: It has been happening for the last two or three months. Our service standard is to deal with 90% of the cases within that time period, and that has been achieved now since March. There was a question and our organisation has done well, and it is something I have reinforced. Because it was an issue during my induction period I went to Nottingham, which is the place where this is processed, to reinforce the importance of solving this problem even before I started, which I believe they have done. The organisation has made progress on the high volume lower-cost cases. With regard to the low volume very high cost, whilst we are also within the service standard, because of the complexity of that and what is at stake for providers, as I am sure you know, there are improvements we can make with that. I have been visiting chambers to understand people’s feelings about that and I am keen to see if there are operational improvements that we can make. Part of the issue is that quite a lot of this is about perception, and there this is anxiety, quite clearly, because of what is at stake for people. I am hopeful, when we sustain performance, that that will feed through into people’s perceptions of the organisation over a period of time.

Chair: Mr Coats, thank you very much indeed for your help this morning.
Written evidence

Written evidence from the Ministry of Justice

Executive Summary

(i) Since the Ministry of Justice (MoJ) was formed in 2007 it has significantly reduced its budget (by £878 million), whilst maintaining levels of performance and in a number of areas dealing with an increased workload.

(ii) The MoJ is currently in the middle of one of the largest transformation programmes in Government (Transforming Justice). This programme seeks not only to reform the way in which justice services are delivered to the public but also how the Department operates.

(iii) The Department has made significant steps to improve its understanding of the costs of its services and has plans to live within the significant budget reductions that the Spending Review settlement presents (well over £2 billion annually by 2014–15).

1. What should the core objectives be of the MoJ?

1.1 The Ministry has responsibility for the courts, tribunals, prisons and probation services. Our work spans criminal, civil, family and administrative justice, and making new laws. We work in partnership with other Government Departments and agencies to improve the Criminal Justice System, to serve the public and support victims of crime.

1.2 The MoJ has set out its vision of Justice Transformed 2015; there are two objectives, to transform justice and transform the Department. We have described the future of our services under the following three headings:

- increasing the power and responsibility of the citizen;
- changing how we provide services to the public; and
- working differently, saving money and focussing on the frontline.

1.3 The MoJ’s Business Plan 2011–15 is brigaded under five headings. We have connected these objectives to the vision as set out below:

<table>
<thead>
<tr>
<th>DEPARTMENTAL OBJECTIVES</th>
<th>JUSTICE TRANSFORMED 2015 CORPORATE VISION</th>
<th>STRUCTURAL REFORM PRIORITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transforming Justice</td>
<td>Increasing responsibility and power of the citizen</td>
<td>Introduce a Rehabilitation Revolution</td>
</tr>
<tr>
<td>Transforming the Department</td>
<td>Changing how we provide services to the public</td>
<td>Reform sentencing and penalties</td>
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<td></td>
<td>Working differently, saving money and focussing on the frontline</td>
<td>Assure Better Law</td>
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<td>Reform courts, tribunals &amp; legal aid and work with others to reform delivery of criminal justice</td>
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<td></td>
<td></td>
<td>Reform how we deliver our services</td>
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1.4 As an example, sentencing reform will increase the responsibility of the citizen; improving access to alternative dispute resolution methods will change how the Department provides services to the public; and changes to the Arm’s Length Bodies of the MoJ will mean that we can work differently, save money and focus on the frontline.

2. Which functions provided by the MoJ are essential, and which could be best provided by others or not at all?

2.1 There are a number of functions that the Department is legislatively required to carry out directly; these primarily involve issues regarding the judiciary and certain offender management activities. Outside of those areas the Department regularly considers whether functions ought to be provided by it directly or through the private, voluntary or community sectors.

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1 This figure represents a comparison of the total DEL reduction from November 2007 until the latest published accounts in April 2011.

2 Information on Transforming Justice is available on the Department’s website at http://www.justice.gov.uk/about/moj/tj/index.htm.
2.2 MoJ’s strategic principles for competition are set out in the Offender Services Competition Strategy.3 They 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 we are competing localised services and robustly held to account where successful.

2.3 Having set out the strategic principles of competition the MoJ is working to see how to best apply them in a way which will allow better identification and assessment of services that could be improved through competition. The Department will take an open-minded, outcome-focused approach, involving suppliers at the earliest opportunity to ensure that the services commissioned meet the objectives. This may require the Department to radically re-shape the way it thinks about the services it currently delivers.

2.4 The Department is currently reviewing the future shape of probation services in England and Wales. This will consider different models for delivering offender services in the community, including the scope for further competition. It will also look to drive efficiency and build on recent improvements in the delivery of probation services, such as the move to Trust status. The overarching aim of this work is to create a long-term direction for probation which is consistent with the Government’s key objectives for reform of public services.

2.5 Public safety will always be of paramount importance in considering how probation services are delivered. The Department will set out our preferred approach later in the Autumn of 2011, which will take account of the Justice Committee’s recent report on the role of probation.

3. Does the MoJ have sufficient understanding of costs to enable it to model the impact of future change?

3.1 The Department has developed robust plans to deliver savings of over £2 billion required to meet our Spending Review settlement, including policy reform, a new operating model and front-line efficiencies. These plans have been driven by our growing understanding of MoJ costs and the extensive range of analytical and financial models that have been developed. This is fundamental to ensure savings plans are robust and deliverable, and are consistent with achieving MoJ’s vision of justice transformed.

3.2 The major policy changes being taken forward—legal aid reform, sentencing reform, and the rehabilitation revolution—have all involved analytical and financial modelling to ensure the impacts, costs and benefits of the changes are fully understood, including impacts on customers. The estimated effects, models and assumptions are set out in Impact Assessments, which are signed off by the Chief Economist and ministers, and are published to ensure proper public and Parliamentary scrutiny.

3.3 The Department has made significant improvements to its modelling capability, developing a suite of caseload forecast models that underpin robust assessments of the impacts of proposed policy changes. For example, the New Justice Framework models policy effects across the justice system, the first time this has been possible.

3.4 Analysis of the legal aid reform package used detailed cost information from the Legal Services Commission (LSC) to estimate expected savings, as well as to identify the impact including from an equalities angle on clients and on providers. The proposals were subject to public consultation and the large number of responses further enhanced the evidence base and ensured that the final proposals were based on the best possible understanding of stakeholder impacts.

3.5 Detailed assessment of the sentencing reform options was essential to understand the potential impacts on the workload of NOMS, the courts and wider Criminal Justice System (CJS) agencies. To understand these impacts, robust analysis of workloads has been undertaken and cost data (including unit costs) has been used to assess the financial impact on different parts of the MoJ. This work continues as part of the review of indeterminate sentences of Imprisonment for Public Protection (IPP), the consultation on squatting and work to assess the financial impact of recent civil disorder.

3.6 The Department’s improved understanding of costs has also supported the development of plans to deliver front-line efficiencies. This has involved extensive new analysis of costs in a range of areas to ensure that we get value for money from the planned changes. For example, work to specify, benchmark and cost (SBC) services delivered in prisons and probation and to develop activity-based costing (ABC) for the Crown Court and the Magistrates’ Courts—a major undertaking—is well underway and is being managed as a priority in NOMS and HMCTS respectively.

3.7 In another example, the Prison Cost Analysis allows NOMS to identify which prisons are expensive relative to their peers and target efficiencies appropriately. Competition is also being used to deliver efficiencies in NOMS, again supported by analysis such as of the relative efficiency of different prisons.

3.8 In HMCTS, the courts estate model informed the courts closure plan, through estimating the most efficient use of Magistrates’ and County Court estate, and activity based costing is supporting the annual business planning process.

3.9 In NOMS, significant progress has been made on projects to capture the “does cost” of specified services in prisons and probation. Systems known as INview (for prisons) and PREview (for probation) go a step further than Prison Cost Analysis to record the actual (or forecast) spending by service. Probation Trusts are starting to use PREview information to compare the resources they use to deliver activities and determine whether they are delivering at high or low cost.

3.10 The Department’s savings plans are brought together in an overall financial planning model—the Financial Planning Model—to provide a single, consistent picture of our financial resource requirements and, savings plans. The model also incorporates the Department’s future workload pressures from the suite of forecast models, key economic assumptions (notably on inflationary pressures) and other financial information to determine the MoJ’s overall financial position, including the assessment of financial risks. This medium-term financial position is used to inform decisions on financial allocations across business groups and is aligned with the Department’s strategic and performance planning. The model is updated regularly (at least quarterly) and updates presented to the Departmental Board on a six monthly basis or more frequently as required.

3.11 The Department has moved away from annual budgeting to a multi-year financial planning model. This is supported by full and clear “assumption books” that outline the inputs, assumptions and methods behind financial and savings plans (such as for key policy reforms). These are shared with stakeholders, including agencies, to ensure consistency.

3.12 This costing work complements existing performance information, for example on court timeliness and re-offending rates, to help the Department deliver value for money. The MoJ has also improved the data available publicly, such as on impact indicators and unit costs, to enable the assessment of the amount spent on services and what is being received for these services. For example the headline cost per prison place and cost per prisoner are published alongside previous period comparators in quarterly updates on the business plan. Over the next year the Department will further increase the data available at a local level to allow comparisons of the cost of services and the impact these have.

4. What changes to the current structure of the MoJ could contribute to improved performance or efficiency savings?

4.1 The MoJ Spending Review settlement required the Department to make savings of well over £2 billion by the end of 2014–15. The Department has plans to make over £500 million of these savings through changes to its operating model and over £1 billion overall through frontline and operating model efficiencies.

4.2 In 2010 the MoJ created a new Operating Model Blueprint (OMB). The OMB sets out the principles and design choices that have been made to transform the Department over the Spending Review period. These choices result in changes to the management structures, how back office functions are undertaken, and savings through procurement and ICT efficiencies.

4.3 The Department is currently part way through implementing the OMB. The Department is now structured around four Business Groups: Justice Policy Group (JPG); Corporate Performance Group (CPG); HMCTS and NOMS, with the majority of Arm’s Length Bodies (ALBs) being sponsored by JPG.

4.4 The OMB seeks to ensure that: all policy is undertaken in a single Business Group and is focused on Ministerial priorities or changes required by delivery bodies; wherever appropriate, corporate services are provided on a shared or combined basis, including to ALBs; there is a small strategic core that supports Ministers, provides a strategic framework and ensures governance; and delivery bodies can focus on their core mission of leading the delivery of services.

4.5 Restructuring the Senior Civil Service (SCS) has already been undertaken. Since December 2009 the Department has reduced the numbers of Deputy Directors by 22%, Directors by 32% and Directors General by more than half. Further restructuring at lower levels is ongoing.

4.6 The Public Bodies Bill seeks to abolish a number of ALBs, in many instances this will allow their functions to be undertaken more efficiently within the Department. This includes the Youth Justice Board (YJB) which is planned to be abolished as an Executive NDPB and its functions brought into a discrete Youth Justice Division within the MoJ.

5. Does the MoJ have the right processes and measures in place to manage robustly the organisations it sponsors?

5.1 The Department has significantly strengthened its sponsorship of its ALBs. On 1 April 2011 the ALB Governance Division was established to drive up sponsorship standards across the MoJ. The Division ensures
that ALBs are supported by consistent governance arrangements, with clear lines of accountability and regular periodic reviews and performance monitoring.

5.2 Each ALB has a named policy sponsor who has regular accountability meetings with the lead official in the ALB.

5.3 The level of scrutiny of an ALB is proportionate with and determined by a formal, consistent and documented risk analysis that is signed off by the Principal Accounting Officer and the Executive Management Committee of the Board. The risk analysis looks at the level of risk posed to the Department by each of the ALBs across a range of criteria including financial exposure, reputational impact and the complexity of the service provision. It assists sponsors to select proportionate controls and determine appropriate levels of reporting.

5.4 The risk analyses have been moderated by a group including the Head of ALB Governance and the Head of Internal Audit. Further moderation will be undertaken on an annual basis.

5.5 All ALBs and Executive Agencies are in scope of the MoJ requirements on financial and business planning and allocations and receive communications throughout the year. Delegation letters are sent to all Chief Executive Officers of NDPBs and Executive Agencies early in the financial year setting out the budget delegation and the conditions under which the delegations are made. The Permanent Secretary directly line manages the Chief Executives of NOMS and HMCTS and Directors General within MoJ headquarters.

5.6 In June 2011 the Department reviewed the financial governance and supporting documentation of executive NDPBs and their internal documentation. ALBs and the MoJ are now taking the recommendations of the review forward.

5.7 The MoJ Internal Audit function provides audit services to all of the Department’s Executive Agencies and all but four of its ALBs (the Department is looking to bring the audit functions of the LSC, CCRC, Information Commissioner’s Office and Legal Services Board in-house when their current contracts end and maintains close links in the mean-time). The Head of Internal Audit, or designate, regularly meets with senior management of the ALBs and undertakes an agreed programme of audit. Any significant findings are reported to the Accounting Officer and presented to the Corporate Audit Committee.

5.8 In line with the Minister for the Cabinet Office’s announcement the Department is planning to commence triennial reviews of its NDPBs. These will look at both the function of the NDPBs and their control and governance arrangements.

6. 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?

6.1 The Department believes that the transition of the LSC from an NDPB to an Executive Agency will lead to more efficient and effective performance.

6.2 After transition there will be clarity over roles, responsibilities and accountability for legal aid, both politically and financially. The MoJ’s Principal Accounting Officer and Ministers will have more direct control of risks and potential risks to the legal aid fund. However, decisions on the grant of legal aid in individual cases will continue to be taken at arm’s length from the Lord Chancellor.

6.3 The transition of the LSC will allow the Agency to focus on developing skills and expertise in the areas it has responsibility for (commissioning and administering legal aid services) rather than having to focus on a wider range of areas including policy development.

6.4 Over the 2011–15 spending period the transition to Executive Agency will result in an estimated £8.4 million saving against the 2010–11 administrative budget. The anticipated savings will come from the greater use of shared and centralised services from the Department, use of shared accommodation and streamlined governance and senior management structures. Savings will also accrue from changes to employer pension contributions and savings on VAT payments due to the change of status. Savings from the transition will be recurring, there will, however, be one-off costs which are estimated to be £8 million over this spending period.4

7. Does the relationship between the MoJ and NOMS, and the relationship between prison and probation, contribute to effective and efficient working?

7.1 As well as being an Executive Agency, NOMS is also a Business Group of the MoJ. Its Chief Executive is a member of the Executive Management Committee of the MoJ Board and representatives from NOMS attend all MoJ Board sub-committees. At all levels of the organisations there are close working relationships between officials.

7.2 To drive efficiencies, the new MoJ Operating Model places greater emphasis on grouping and sharing resources to deliver agreed priorities and reducing the burden on the frontline through streamlining the tiers of management needed to monitor and assure delivery.

7.3 In addition, the Government’s proposed step change in reducing re-offending through the Rehabilitation Revolution will mean a greater focus on local delivery with the ambition to deliver greater accountability to local communities. This, coupled with the changes to the MoJ operating model, has had a major impact on NOMS operating model which has moved from a regional to a leaner functional model.

7.4 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.

7.5 These changes have provided the following benefits to the relationship between the Ministry and NOMS and prison and probation:

- An increased shared services approach to core functions including ICT, estates and procurement, and common finance and HR services.
- Greater collaboration between NOMS and MoJ policy to develop a policy programme focused on Ministerial priorities with duplication and overlap removed.
- Clear line accountability for public sector prisons: maintaining operational grip, reducing risk and driving efficiencies whilst developing innovative models of public sector delivery to respond to competition and the Payment by Results model.
- Greater emphasis on effective outcome focused contract management with the Director for Probation and Contracted Services responsible for providing clear consistent oversight of an increasing mix of providers, supporting provider development and promoting effective engagement and partnership working at a local level.

7.6 The Agency is considering further the relationship between NOMS, prisons and probation as part of the work looking at the future of probation and in response to the recent Justice Committee report.

7.7 The youth justice system, by virtue of wider responsibilities to welfare and statutory education, relies more heavily on links to local providers and Local Authorities (LAs)—who manage the Youth Offending Services in their area. Here, the MoJ and Youth Justice Board (YJB) are striving to increase the effectiveness of delivery to its resettlement provision through a range of measures:

- Dissemination of effective practice linked to Resettlement Support grants and Welsh resettlement panels.
- Setting up and encouraging expansion of the regional resettlement consortia, which promote joint planning and commissioning activity between custodial establishments, Youth Offending teams (YOTs) and their partners in the voluntary and statutory sectors.
- Piloting a number of financial incentives schemes, as set out in Breaking the Cycle Green Paper, to explore further incentives for LAs to reduce youth offending. In particular, the sharing of the financial risks with the youth custody budget to LAs, thereby providing incentive to improve youth justice performance and decrease custody rates.
- The reforms to young offender education contained in the Apprenticeships, Skills, Children and Learning Act 2009 made LAs responsible for securing suitable education provision for young people in custody and introduced a range of duties on LAs to share information about young peoples’ learning. This should also allow greater continuity of learning and consistency of provision between community and custody.
- Announcing new financial support for social workers in Young Offender Institutions which should ensure better links to support in the community.

8. How effectively does the MoJ use IT, and does the MoJ have the right balance between centrally and locally commissioned IT?

8.1 MoJ uses ICT extensively: in administration (eg delivering shared services); for business operations (eg case management systems); and to supply digital public services (eg Money Claim OnLine).

8.2 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 three to five 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.

8.3 The Department’s view (in line with the OMB) is that best value for money can be achieved by providing shared ICT services, with local solutions being considered where they might provide better value. Our ICT business plans are developed and agreed across the Ministry to ensure the balance of local and central ICT initiatives is appropriate to meet overall business goals (this is implicit in the FITS model).
8.4 Our approaches to effective IT also include completion of current infrastructure programmes; reduction in the number of data centres; implementation of a single MoJ network; delivery of a standardised desktop infrastructure; the use (and development of) government standards; and completion of the NOMIS programme.

9. Does the MoJ have procedures in place in order to realise its objectives of having more services delivered by the voluntary and community and private sectors?

9.1 Through the MoJ strategic principles for competition, the Department is seeking to develop its ability to identify, scope and exploit opportunities to compete current services or functions.

9.2 One of our principles is that small and medium sized enterprises (SMEs) and the voluntary and community sector (VCS) should be encouraged to participate in competitions, particularly in order to drive innovation in service delivery.

9.3 By developing service specifications in partnership with the market and supplier representative we will aim to ensure that competed services provide the maximum possible scope for innovation and market diversity.

9.4 We aim to ensure that commissioning arrangements level the “playing field” for voluntary sector organisations in line with the renewed Compact between the Government and voluntary sector organisations in England.

9.5 Breaking the Cycle Green Paper announced that we would develop at least six new payment by results pilots, and that the principles of payment by results would be applied to all providers by 2015.

9.6 There has been significant interest in the issues surrounding payment by results and a growing and varied market place of potential providers who are interested to participate in the projects. We will consider the specific barriers for all providers, to help us determine how we can successfully develop a mixed market of provision.

9.7 Where it is not possible or desirable to open competitions directly to smaller enterprises, we will work with larger prime providers to ensure that the right incentives are in place for them to encourage SME and VCS specialist providers in their supply chain.

10. Does the MoJ have the necessary skills to ensure value for money contracts for the public purse and to effectively manage those contracts?

10.1 MoJ Procurement Directorate employs 314 staff (temporary and permanent) working across Category Management and Logistics, ICT Procurement, Major Contracts and Compliance divisions. 60% of the permanent procurement staff are fully or partly professionally qualified (MCIPS—Member of the Chartered Institute of Purchasing and Supply).

10.2 MoJ Procurement Directorate operates a Category Management approach whereby goods and services are only procured by individuals with in-depth experience of the items procured to ensure that best value for money is achieved. Individuals typically procure a limited range of related products to ensure they have wide category knowledge—as an example, the food category management team concentrate on the procurement of prison food, vending services and catering equipment and do not procure goods and services outside a general definition of food and catering.

10.3 MoJ Procurement seeks to increase the skills of the permanent procurement staff. Staff in MoJ Procurement are supported in gaining professional qualifications from the Chartered Institute of Purchase and Supply (CIPS). In 2010–11 32 members of the Procurement Directorate undertook Professional CIPS training. MoJ Procurement also has a Competency Framework which sets out the technical skills procurement practitioners need for every procurement post in the business. The competencies are based on standards set out by the Chartered Institute of Purchasing and Supply (CIPS). All procurement staff are assessed against the Competency Framework as part of annual performance reviews and skills gaps and areas for development are identified.

10.4 Ensuring that MoJ Procurement is resourced and can recruit and retain professional procurement staff able to deliver value for money contract and savings is a departmental priority. The Procurement Resource Plan is discussed monthly at the Procurement Committee. It provides a comprehensive list of both current and known pending procurement activity, highlights pressure points where demand for procurement activity is outstripping supply of resource and enables the availability of procurement resources to be considered in policy and commissioning decisions. Where resource gaps are identified MoJ Procurement has recruited resource in order to meet this demand.

September 2011

5 July 2011
Written evidence from the Criminal Justice Alliance

EXECUTIVE SUMMARY

The Criminal Justice Alliance (CJA) is pleased to have the opportunity to submit evidence to this Inquiry and welcome greater scrutiny of the overall structure and budget of the Ministry of Justice. This submission briefly considers those questions posed by the Committee on which we have a view. Our key concerns are that a focus on cost may obstruct “value for money”; that the MoJ senior leadership structures should be realigned to reflect responsibilities for managing community sentences as well as prison; and that the core priorities of implementing a rehabilitation revolution and reforming of sentencing are pursued.

ABOUT THE CRIMINAL JUSTICE ALLIANCE

The Criminal Justice Alliance (CJA) is a coalition of 64 organisations—including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions—involved in policy and practice across the criminal justice system. The CJA works to establish a fairer and more effective criminal justice system.

Introduction

1. The CJA welcomes the opportunity to submit evidence to this Inquiry by the Justice Committee. There is a need for greater scrutiny of the overall structure and budget of the Ministry of Justice (MoJ); this is particularly relevant given that 2011–12 is the first year of the new Spending Review Period with a final settlement which represents a real reduction in budget of 23% over four years. Although the MoJ was already one year into implementing its “transforming justice” programme of cost-savings, the spending review outlined savings much more far-reaching than previously expected. Therefore, strong financial management and a clear focus on value for money will be essential if the MoJ is to reduce its costs without negatively impacting on services.

2. It is also timely to examine the structural reform priorities outlined in the Ministry of Justice Business Plan, given the pace of change over the first year of the coalition government. The Criminal Justice Alliance welcomes the government response to the green paper Breaking the Cycle consultation and welcomes much of the measures contained in the Legal Aid, Sentencing and Punishment of Offenders Bill. The ambition of government to implement a rehabilitation revolution and reform sentencing will begin to address some 20 years of penal populism that have resulted in an overcrowded, expensive and largely ineffective prison system.

3. The coalition agreement committed the government to “conduct a full policy review of sentencing to ensure that it is effective in deterring crime, protecting the public, punishing offenders and cutting reoffending”. The Criminal Justice Alliance strongly urges the coalition government to press on with their reforms. The public disorder witnessed over the summer must not be allowed to derail important justice legislation that has been developed in order to address serious and long-standing criminal justice failings. This submission briefly considers those questions posed by the Committee on which we have a view.

What should the core objectives be of the MoJ?

4. The Ministry of Justice website currently defines the department objectives as “to protect the public and reduce reoffending, and to provide a more effective, transparent and responsive criminal justice system for victims and the public.” The CJA agrees with this statement of objectives. The MoJ has to balance several competing priorities and ensure a fair, effective and efficient justice system.

5. The vision set out in the MoJ Business Plan 2011–15 to implement a rehabilitation revolution that will reduce reoffending is particularly welcome, as well as the commitment to reform sentencing and penalties. In implementing these proposals, it must be recognised that MoJ is one of the largest and most complex government departments. It will, therefore, require a continued focus and determination by ministers and officials to ensure these priorities are maintained and that progress is achieved within the current parliament.

6. The business plan does not place sufficient weight on cross-departmental working. We realise this is an ambition of the coalition government and urge further work at strategic ministerial level to ensure this becomes a reality. Cross-departmental working is essential if the MoJ want to make real progress on reducing reoffending as the ability to stay clear of crime involves a range of factors outside the direct control of justice agencies, including stable housing, access to employment and education opportunities, family support and health and mental health treatment.

7. A fair and proportionate justice system should adequately address issues of diversity. The CJA believes that the MoJ Business Plan does not sufficiently outline how the department will address the needs of women, young adults and minority ethnic groups. Strong leadership and accountability structures are necessary to ensure the distinct needs of these groups are represented and progress made. A recent report by Clinks made

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6 Although the CJA works closely with its members, this submission should not be seen to represent the views or policy positions of each individual member organisation. For a full list of the CJA's members, please see http://www.criminaljusticealliance.org/organisations.htm

the case for distinct resettlement needs of Black, Asian and minority ethnic offenders’ in which the report cited evidence of continuing direct and indirect racial discrimination across the criminal justice system as a whole.8

8. There is very strong evidence for a distinct strategy for vulnerable women in the justice system, as outlined by the Corston Review. The Criminal Justice Alliance and several of our members, including Prison Reform Trust, believe there is a need for a Ministerial Champion for Women in the Criminal Justice System. Without such structural reform, the needs of women are at risk of being sidelined by other government priorities.

9. Furthermore, the evidence for the distinct needs of young adults has been effectively outlined by the Transition to Adulthood Alliance.9 We note however there is no team in MoJ dedicated to policy and practice for this age group. The CIA, along with others, had called for a national strategy for this age group which reflects their developing maturity and distinct needs.

10. The Criminal Justice Alliance believes further work is needed to evaluate the cost-benefit of interventions used across the whole justice system to reduce reoffending. This would provide a more useful evidence base from which to draw conclusions. The MoJ, moving the spending priorities of MoJ, the debate beyond simply “cost” to “value for money”. Some important work has already been undertaken; MoJ research, for example, shows that restorative justice saves £9 for every £1 spent through reductions in reoffending, using a cost-benefit calculation based on the Home Office model for the full cost of crime.10 The MoJ Business Plan commits the government to consider the use of restorative justice for adult and youth crimes, and we urge the department to revisit the potential cost savings by increased use of restorative justice across the system. Despite being a key focus on the green paper, restorative justice has not been specifically included in the Legal Aid, Sentencing and Punishment of Offenders Bill.

11. The National Audit Office has argued that departments could better link costs to services and benchmark outcomes; this is essential to determine whether value for money can be improved. The National Audit Office report Ministry of Justice: Financial Management Report found that “the Ministry does not understand the costs of its activities within prisons and probation service, and in the courts in sufficient detail”.11

12. The Centre for Social Justice report Outcome Based Government states that “a core aim of government is to improve social outcomes; yet for most government expenditure the real impact of improved outcomes (ie their value) is rarely considered or even understood.”12 The CSJ goes on to argue “policy makers and civil servants are often slow to recognise social value and the interconnected nature of social breakdown in their spending decisions.” This is particularly relevant in criminal justice where spending decisions, such as the use of prison, can have vast negative consequences for social justice. For example, a recent report by Prison Advice and Care Trust, a member of the CJA, found that 17,000 children are separated from their mother by imprisonment each year, and estimated that as many as 6,000 children may be being cared for by family members and friends.13

13. The Public Accounts Committee report Ministry of Justice Financial Management (2011) found that, until recently, the MoJ was failing to place sufficient focus on financial management, and that there were concerns regarding MoJ financial oversight of arms length bodies.14 The report noted that the MoJ intends to drive down the cost of a prison place from £40,000 to £25,000, and that to do this it was targeting prisons with the highest average cost per place but did not have the data to identify causes of cost variation. It found “The Ministry’s understanding of its expenditure has improved but it still lacks in-depth analyses of its costs across all its business areas”. Concern was raised about the MoJ understanding of the cost of prison and it was noted “there is a risk that the Ministry will make ill-informed cuts to services if it makes cost savings without a proper understanding of value for money”.15

What changes to the current structure of the MoJ could contribute to improved performance or efficiency savings?

14. The MoJ Business Plan for the spending review period outlines the following five priority areas for structural reform: introduce a rehabilitation revolution; reform sentencing and penalties; reform courts, tribunals and legal aid; assure better law; and reform how we deliver our services. The first reform priority of introducing a “rehabilitation revolution” is very welcome. High reoffending rates, spiralling prison population and low public confidence make this an urgent priority.

15. We note that introduction of payment-by-results (PBR) is an integral part of delivering the rehabilitation revolution. The CJA welcomes the move towards measuring and rewarding outcomes not outputs, and is positive about the opportunities this may provide for the voluntary sector to work more widely across the justice system.

16. Several organisations in the voluntary sector have raised concerns about the development of PBR models, and we have outlined this more fully elsewhere.16 In summary, the key concerns focus on the ability of smaller and medium-sized charities to participate fully in PBR contracts. Clinks have outlined the arguments in their role as infrastructure body for the criminal justice voluntary sector.17 Another key concern is the potential dangers of “creaming” and “cherry picking” which will need to be robustly tested by the evaluation of the pilots to ensure the measurements reward the right outcomes. These challenges will need to be fully addressed before PBR principles can be rolled out further. The government timetable should be flexible to respond to the evaluation findings from pilots, which will be important to ensure PBR models do not negatively impact on vulnerable groups.

17. The Criminal Justice Alliance welcomes the second priority to reform sentencing and penalties. The most significant savings to be made by the MoJ will come from reduced use of prison and decommissioning prison wings or whole prisons. The CJA notes that the prison population has now exceeded 87,000 which represents approximately 2,000 more prisoners than this time last year. A concerted effort should be made to safely bring the prison population down. This can be best achieved by reform of sentencing, in particular abolishing the Indeterminate Sentence for Public Protection (IPPs) to be replaced by a clear system of determinate sentences, and by restricting the use of custodial remand.

18. The CJA strongly endorses the use of community sentences as preferable to custodial sentences where an offender does not pose a threat to public safety. A determined effort to divert non-violent offenders into community sentences will produce cost-savings and also deliver reduced reoffending. However, we believe that greater demands placed on the probation service should be matched by appropriate resources. Given the current financial climate, this is likely to require savings to be made elsewhere and a reduction in the prison population would reduce costs and ensure those who need to be in prison are better rehabilitated. For this reason, the CJA very much welcomes the two PBR pilots, in Greater Manchester and five London boroughs, which will trial a “justice reinvestment” model.

19. We do have concerns, however, that the overall focus on cost savings, rightly promoted by the spending review, could distort the importance of value for money. As mentioned, the Public Accounts Committee has questioned the ability of the MoJ to drive down the cost of prison places when they did not have the data to identify causes of cost variation; “there is a risk that the Ministry will make ill-informed cuts to services if it makes cost savings without a proper understanding of value for money”.18 The Institute for Government’s interim evaluation of the “Transforming Justice” programme launched by MoJ in 2009 in anticipation of costpressures found that with the transition to a new government, the “better for less” thinking has remained central to the department’s cost savings. However, the report also notes “looking ahead, a future area for focus will be whether the emphasis on ‘better’ can be maintained as the transformation is inevitably reconfigured in the light of events.”

20. A further area of importance for this inquiry is the National Audit Office (NAO) work on improving efficiency in the MoJ. In 2010 the NAO published a report into offenders on short custodial sentences, in which it criticised NOMS for failure to measure the impact that it was having with short-sentenced prisoners.19 The report found that NOMS was not reducing their risk of reoffending and had inefficient systems for collecting information about where to target assistance.

21. A report by the NAO in 2008 criticised the supervision of community orders concluding that funding did not match demand, which made it difficult to provide services of the expected standard.20 Although cost savings must be found, reducing resources from services that are already under-funded may not achieve the rehabilitation revolution to which the government is committed.

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16 Collins, J (April 2011). Payment-by-results in the Criminal Justice System: Can it deliver?
19 National Audit Office (March, 2010). Managing Offenders on Short Custodial Sentences
Does the relationship between the MoJ and NOMS, and the relationship between prison and probation, contribute to effective and efficient working?

22. Feedback from our members indicates that the relationship between NOMS and MoJ is not working as effectively as it should. The separate policy teams in MoJ Justice Policy and in NOMS do not work sufficiently closely and there is often overlap. Organisations from the voluntary and community sector are not always sure where to go within MoJ/NOMS for information and the routes to input into policy are not clear.

23. A key concern is the lack of representation by Probation at the senior level of NOMS. The MoJ is disproportionately a “prisons-focused” service which should be rebalanced to reflect both custody and community responsibilities. This can only be achieved with more representation for probation services at the “top table”. The former Chief of London Probation outlines this in recent article for Probation Journal, questioning “Who represents Probation in the corridors of power and argues its corner when crucial decisions about resourcing and public profile are made?”21 The CJA would therefore like to see greater representation for probation services, and those who manage offenders in the community, at senior level.

24. The Justice Committee has previously recommended that NOMS should be radically restructured, as it may not be delivering value for money. At this time of tightened finances it is important that every available resource that can reaches the frontline. We therefore support the Justice Committee’s recommendation that MoJ commission an externally-led review of NOMS and be prepared to take radical steps to redesign its structure and operation.

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?

25. The infrastructure funding provided by MoJ for the voluntary sector is welcome. It is positive that the Third Sector Advisory Group, chaired by Clinks, can directly input into work of MoJ bringing together NOMS, MoJ and voluntary sector. This is important given that the payment-by-results model for delivering the “rehabilitation revolution” will need the firm involvement of voluntary and community sector, alongside the private sector, in order to succeed.

26. We do not know whether sufficient procedures and structures are in place to realize the objectives outlined above. The government should outline more fully the procedures currently in place, and how it intends to engage with the various sectors. As previously mentioned, the timetable for rolling out PBR across the justice system is ambitious, and there must be sufficient time to get the payment models right. Other government departments, such as DWP, have had a much longer time frame to establish PBR and still encounter difficulties in implementation.

September 2011

Written evidence from the Legal Ombudsman

Executive Summary

1. The Legal Ombudsman has been in place for one year, having opened in October 2010. At six months, the Ombudsman received nearly 40,000 contacts by phone, letter or email. At the end of August this was around 70,000. Seventy per cent of contacts are over the phone.

2. What has become clear in 12 months is that the structure is cheaper than the system it replaced. The organisation was established to simplify redress in the legal services market. It operates within a budget of £19.9 million. The old system, run by the professional bodies (including the Law Society), was estimated at £32.5 million p.a. by independent analysis commissioned by the Ministry of Justice in 2006–07. But, despite offering better value for money, the following themes are now beginning to emerge:

(a) The evolving legal landscape presents difficulties for consumer protection. Ten years ago, the boundaries between the professions were clear. Bankers banked, insurers insured, lawyers practised law. Now those boundaries are less distinct. Major banks, insurance companies and others offer legal services bundled together alongside their core products. Access to redress for consumers if things go wrong can be confusing. The Legal Ombudsman’s terms of reference apply to activities performed by registered legal professionals, whereas, with increased innovation and competition, we are seeing more and more bundling together of regulated and unregulated services and products. We are also seeing increasing potential overlaps with financial and other services that are subject to different regulatory frameworks. The problem of jurisdiction is at its most acute when it comes to claims management companies as well as will writing businesses.

(b) Consumers appear to be confused about the jurisdictions that exist between different Ombudsman schemes and sometimes have difficulty navigating between them. Of the 300–400 contacts that the Legal Ombudsman has each day from the public, there is evidence to suggest that many are confused by the current array of regulatory/protection organisations. The people

that the Legal Ombudsman cannot help are signposted to other organisations. The biggest is the SRA (47%), then Citizens Advice (7%), followed by Community Law Centres, Consumer Direct, Trading Standards and the Claims Management Regulator (all at around 3–4%).

3. It is these themes the Legal Ombudsman would like the Justice Select Committee to consider in its inquiry when it investigates the current structure of the Ministry of Justice and its role in improving performance and consumer protection. The Committee may also want to take this evidence into account as part of its wider consideration of how services might be delivered by voluntary, community and private sectors.

**The Evolving Legal Landscape**

4. The Legal Services Act, which brought the Legal Ombudsman into existence, also sought to free up the legal services market. Now there are new forms of legal service being offered to meet consumer demand for ease of access, fixed or lower prices, and innovative use of technology. New players are coming into the legal market, including large corporate businesses looking to offer bundled professional services.

5. This poses a real challenge for regulation and for access to redress. In the face of this diversity of provision, the traditional distinction between what is regulated and what is unregulated is becoming difficult to negotiate. Newer providers are, as we might expect, interested primarily in finding structures and business models that work in market terms rather than ones which easily fit the existing regulatory structures.

6. While these developments may offer a wider range of legal products to customers, there is a danger of both consumer confusion and regulatory inefficiency. Here is just one example where the new landscape has left consumers with little protection:

   **Mr and Mrs G** had a home visit from a will-writing company following an initial telephone enquiry. They agreed to pay the company to prepare a lasting power of attorney and some protective property trusts for them.

   A few months passed and the couple had not received anything from the firm. Mr G rang and was told that more information was needed, but that work was nevertheless being carried out. Another month went by. Mr and Mrs G still hadn’t heard anything, so they decided to write a letter of complaint to the firm. They heard nothing back, but a month later some documentation did arrive.

   Mr and Mrs G thought the quality of the work was very poor. All they received was a standard document with a few personal details inserted. Mr and Mrs G felt that this was something they could have done themselves, using a pack from a stationer. In their view, it was certainly not worth the £1,500 they had paid the company.

   Mr and Mrs G sent another formal letter of complaint to the firm—again with no response.

   When they complained to us, we reviewed the status of the company to see whether it fell within our jurisdiction. However, it quickly became apparent that the company was not regulated and that there were no regulated individuals sufficiently closely connected with the service provided that we could accept for the complaint to be investigated. There appears to be little prospect of Mr and Mrs G getting access to effective redress for the loss they consider they have suffered.

7. Of course new businesses may or may not provide good quality legal services which may satisfy consumer demands. But, if they do not, how confident can we be that consumers—or indeed we ourselves—know who would be the proper avenue for appropriate redress? Is it the Legal Ombudsman, another Ombudsman scheme, Trading Standards? Or is it no one?

8. There are some emerging figures on how legal aid interacts with the Legal Ombudsman. What is clear is that privately funded cases form the largest percentage of those received by the Legal Ombudsman (see Figure 1). This is likely to change as the framework around legal aid and reforms to Conditional Fee Agreement (CFA) style funding come into place.
Figure 1

HOW CASES HAVE BEEN FUNDED

- CFA: 0.3%
- Part Public: 17%
- Private: 9.1%
- Pro-bono: 2.4%
- Public: 71.1%

9. This is an area we are actively monitoring. We will, in due course, share our information with the sector and consumers on the relationship between legal aid and complaints to the Ombudsman. Early findings suggest that people who have funded themselves appear to be more willing to negotiate and try to push for mutually satisfactory remedies.

Figure 2

LEGAL AID FUNDING BY AREA OF LAW

- Crime: 32.2%
- Family Law: 16.9%
- Immigration/Asylum: 6.8%
- Litigation: 8.5%
- Housing: 8.5%
- All Other: 27.1%

Consumer Confusion

10. There are aspects of jurisdiction which are problematic to everyone involved—the Legal Ombudsman, consumers and those providing legal services. These centre on the gap between consumer expectations of what sort of legal services are protected by access to the Legal Ombudsman and the equally vexed question about when those providing such legal services fall within the ambit of another regulator. Much of this revolves around difficulties in understanding whether it is the entity, product or service that is regulated and when.

11. In legal services, the internet is increasingly used to attract customers and elicit information. Often the service is to provide largely generic documents for matters such as divorce. There are also firms that offer “expert” advice on a wide range of issues, often by “bundling” them with other professional services, such as financial services or insurance. Many of these are backed by large corporations.
12. One of the clearest examples is with will writing firms. This is not a “reserved activity”—the thing that makes lawyers unique and what they need to be regulated to do. So, although such work is often carried out by lawyers, it is also done by will writing firms who are not regulated and who don't have to abide by the same standards. This creates a potential confusion about whether or not the service being bought is regulated—and whether the consumer has access to redress from Legal Ombudsman.

13. These cases reveal a mismatch between consumer expectations of what constitutes a “legal service”—which consumers clearly assume implies access to redress—and the reality of the diverse market providing such services. This confusion is not helped by the habit many unregulated companies have of presenting themselves as though they were traditional law firms, with websites and advertising material branded with the panoply of wigs, gowns and quill pens.

14. For claims management companies, there is a regulatory regime in place—the Ministry of Justice. Nevertheless, while many of the consumers who use these firms’ services appear to believe that they are being provided with legal services, most of that work is carried out by non-authorised persons. So consumers are unable to get access to the sorts of protection provided by the Legal Ombudsman. Here’s an example:

Mr H hired a claims management company to represent him in an unfair dismissal claim. Mr H told us that, after preparing paperwork, the company failed to appear at the employment tribunal on three separate occasions.

Mr H complained to the company and received a response to the effect that, as some work had been done preparing the case, he would not be refunded any fees. Mr H took his complaint to the Ministry of Justice, who regulate both the claims management company and their parent company. The Ministry referred him to the Solicitors Regulatory Authority, who in turn referred him on to the Legal Ombudsman.

But when we looked into it, we found the company’s advisers were not qualified lawyers and therefore not regulated by one of the Approved Regulators. We contacted the Ministry who then agreed to take on Mr H’s complaint because of the number of complaints they had already received about the parent company.

15. The way the Legal Ombudsman’s jurisdiction is constructed has improved the ability to offer a joined-up response to complaints about services by a team of regulated legal professionals. But it is not so helpful in enabling us to deal with cases where the service has involved both regulated and unregulated entities. Some of these structures, whether accidentally or by design, have the effect of taking the complaint outside the Legal Ombudsman’s jurisdiction. For example:

Mr K’s wife passed away. Mr K then looked for help to execute his wife’s will and with the administration of her estate. He shopped around, and chose to go with a firm offering online wills and probate services, thinking that their quote of around £2,500 seemed reasonable.

The company came to his home to explain what they would do and how much it would cost. Mr K agreed to go ahead and the company started with the administration. As the work drew to an end, Mr K received the final bill and found that it was nearly double the amount he had been quoted. He raised his concern with the company. Their response was to refuse to complete the work until the full amount of the bill was paid. Mr K was told that the additional amount was for “third party” costs. Although he had signed an agreement which included this information, Mr K said that he was not told this explicitly by the company when they visited him to explain their service.

Mr K came to us with his complaint. When we looked into it, the company told us that they didn’t carry out reserved legal activities themselves—in short, no one in the company is a lawyer regulated by one of the legal regulators. Instead, the company is structured so that they use a third party firm of solicitors to apply for the “grant of probate” (which allows an executor to distribute assets as detailed in a person’s will). These were the “third party” services that were in Mr K’s agreement.

Technically, this complaint was outside our jurisdiction as Mr K had employed this company and not a lawyer to do this work. However, once we were involved, the company did agree to contact Mr K again to attempt to resolve the complaint. And they have now offered to waive the third party costs, taking the final bill much closer to the original quote that Mr K had received.

16. This sort of subcontracting structure appears increasingly common. It will be important that the issues it creates are kept closely under review by the regulatory authorities so that the dangers of widespread injustice are avoided.

17. Difficulties in understanding the extent to which the legal services being complained about have been provided by a regulated or unregulated organisation are particularly pronounced where those services have been delivered via the internet. Given the move of services from high street to web, it’s not surprising to find a growing number of entirely web-based legal service organisations coming to market.

CONCLUSION

18. The Legal Ombudsman’s office has had a successful year. During this time a number of issues have come to light year, which, if left unaddressed risk leaving consumers with less protection than they deserve. The profession too would benefit from further clarity about jurisdiction. It is worth emphasising that the Legal
Ombudsman is a resource for both complainants and lawyers. LeO’s role is to resolve problems, not exacerbate them, to take disputes out of court, not create more work for the courts.

19. But the issues contained in this paper should be resolved sooner rather than later. Consumers must be protected from unscrupulous firms who use clever organisational design to argue they are subject to no regulation at all. There are no formal standards to which they have to adhere, no professional body of which they have to be a member, no redress scheme to which they have to sign up. Regulation has yet to catch up with them and their customers have no protection should they make a mistake.

20. It’s a fact that people go to lawyers at some of the most critical times of their lives: when someone has died, when they are getting divorced, when there are family problems, when they are engaging in the largest financial transaction of their lives by buying a house. If the legal service they rely on to help them is inadequate and something goes wrong, the consequences for them are devastating. That is why professional standards, and access to redress are so vital.

21. Lack of regulation can lead to problems as both the pensions and banking industry know only too well. Now is the time to make sure that legal services are regulated in such a way as to protect the consumer, enhance the reputation of those who provide a good service and discourage the bad.

September 2011

Written evidence from the Prison Reform Trust

The Prison Reform Trust is a registered charity that works to create a just, human and effective justice system.

We welcome the opportunity to make a submission to the committee. Our observations focus largely on the prison estate, which is our primary area of concern.

Executive Summary

1. This submission envisages a Ministry of Justice charged with ensuring that a decent, effective prison estate is used as a place of last resort. It would work across Government to develop and administer justice policy and practice and support a full range of restorative and reparative responses to crime. The infrastructure would be comparatively light at the centre but highly skilled and experienced, with an emphasis on co-operation across the sectors at a local level, with the Probation Service taking a central role.

What should the core objectives be of the MoJ?

2. To ensure the delivery of just, humane, efficient and effective responses to crime and in the fields of civil and family justice.

Which functions provided by the MoJ are essential, and which could be best provided by others or not at all?

3. To administer a fair, effective and humane justice system should the MoJ consider a model where delivery of services is largely done through the bodies it sponsors? If so should it have a more active engagement in maintaining standards and consistency of delivery? A small centre at the MoJ would by definition require excellent commissioning and outsourcing capacity and the ability to monitor quality and standards both in relation to UK legislation and international justice requirements.

4. The Ministry of Justice needs 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.

5. The Justice website would suggest that the Ministry exists to serve the many organisations which carry out its duties, rather than to carry out a number of essential functions.

6. The functions that involve the use of imprisonment were usefully summarised in March 1980 by the then Home Secretary, Willie Whitelaw, in a speech to the Conservative Central Council, as: “….we must ensure that prison is reserved for those whom we really need to contain in custody and that sentences are no longer than necessary to achieve this objective.”

7. At the time there was concern at a record high prison population for England and Wales of 44,800 and consequent problems of overcrowding.

8. With the prison population in September 2011 above 87,000; reoffending rates showing that one in two prisoners will be convicted within a year of release; and the average cost of each prison place averaging £45,000; it is apparent that the Ministry of Justice is failing to provide and promote sufficient options to ensure that prison is reserved for those who commit the most serious offences.
Does the MoJ have sufficient understanding of costs to enable it to model the impact of future changes?

9. It is difficult to determine MoJ costs from documentation publicly available. A limitation of costing a single department is that it does not take account of wider cross-governmental costs. A model which took into account costs across government departments and extended beyond the parliamentary lifetime would be more likely to enable the MoJ to model the impact of future changes.

10. There is little transparency, particularly on the real costs of imprisonment. For example, official estimates of the cost of keeping children in a Young Offender Institution (£70,000 pa) do not include transportation costs, the costs of health services, of social and YOT worker visits, or the overheads in NOMS and the YJB. Without knowing the real cost of imprisonment and community alternatives, the MoJ cannot properly develop policy. Comparative costs of different sentences should take account of full costs and their social and economic impact. This is particularly when considering community disposals as opposed to use of custody.

11. Decisions about budget allocation are skewed by the long term commitment to fund prison places. Many community options, such as the provision of women’s centres, are by contrast dependent on annual funding decisions from a number of funding streams. Such a massive disparity inevitably places the prison estate at the centre of the criminal justice system, with community initiatives continuously struggling to survive.

12. If the MoJ were to build a justice model based on the principles of justice, fairness, efficiency and effectiveness, the criminal justice system would arguably look very different.

13. Essential features would include:

— Diversion of those suffering from mental illness or severe learning disability away from the criminal justice system and into treatment. It would be helpful if the justice and health select committees were to jointly oversee the implementation of Lord Bradley’s review.

— Diversion from court processes of all minor offences, using cautions and conditional cautions as appropriate.

— Restorative practices placed at the heart of the criminal justice system. This is an approach that gives priority to the needs of victims, while facing offenders with the harm they have caused and requiring them to take practical steps to repair the damage. It can involve direct contact between an offender and the victim, or victims; and/or reparative work to repair damage done and harm caused to the victim(s) or the wider community. Restorative justice should be available to victims at all stages of the criminal justice process: as an alternative to prosecution; at the remand stage, prior to sentence; as a requirement in a community order; or, in the most serious cases, as an adjunct to a prison sentence. With confidence in our framework of law and order at a low ebb, politicians should seize the moment and give priority in terms of funding and structural changes to creating the necessary infra-structure for the delivery of high quality restorative justice. A recent ICM opinion poll commissioned by Prison Reform Trust indicates there would be public support for such an approach.

— Community sentences: recent robust Ministry of Justice research has shown community sentences to be seven percentage points better in preventing reoffending than short prison sentences. Funding and structural changes should reflect this clear performance disparity and build on the success of community measures.

— Prison to be reserved as a place of last resort with prison sentences to be determinate in all but the most exceptional cases.

— Once people are in prison, they should have every possible opportunity to make progress. The current system means that many people are often stuck and unable to make constructive use of their time. This could be alleviated somewhat by expansions of the open estate, so that all security cleared prisoners can move into open conditions. (which are considerably less expensive than closed conditions) centralised waiting lists for offending behaviour courses, so prisoners are not moving to prisons that cannot facilitate their sentence plan, central oversight of allocating prisoners with social care, and mobility needs so that they can be accommodated appropriately and increasing volunteering and purposeful activities in prisons.

What changes to the current structure of the MoJ could contribute to improved performance or efficiency savings?

14. We recognise that it is difficult to deliver a wide range of services and maintain quality and standards while at the same time ensuring flexibility and scope for policy and planning. The MoJ could usefully examine whether at Board and top management level it has the capacity to combine these two functions, maintain oversight and avoid vested interest. Where relevant, more account could be taken of NAO reports.

15. The Justice Reinvestment report produced by the Justice Committee in January 2010 provides an alternative model. It postulates that the prison population could be safely reduced by one-third over the next few years, with benefits arising from reduced costs made available for local crime prevention measures.

16. The Ministry of Justice should be restructured to develop and support a national infra-structure of restorative approaches as both an alternative to court proceedings and as an integral part of community and
custodial sentences. It is apparent that many of those involved in the recent disturbances gave little if any thought to the consequences of their offending. The Prison Reform Trust has published Making Amends, a detailed study of the Youth Conference Service, established in Northern Ireland in 2003. This has placed restorative justice at the heart of the youth justice system, integrated within both the prosecution and sentencing processes. Youth conferences bring together the offender, victim (or victim representative), professionals and others from the local community to discuss the offence and its repercussions, and to agree an action plan for the offender. The number of young people engaged in youth conferencing in Northern Ireland has grown, year on year, reaching more than 5,500 by 2009. There is sound evidence that victims who attend conferences express high levels of satisfaction with the process and outcomes. There are also encouraging signs that youth conferencing is leading to a reduction in reoffending rates. These findings mirror those of an intensive Ministry of Justice study by Professor Joanna Shapland and others published in 2008, which demonstrated the wider applicability of restorative practices for adults as well as young people and children.

17. In terms of how it is structured the MoJ needs to pay proper attention to particular groups. This would pay dividends, reduce reoffending and save costs.

18. Reforming Women's Justice, the report of the Women’s Justice Taskforce published by the Prison Reform Trust in 2011 calls for: “A cross-government strategy to be developed to divert women from crime and reduce the women’s prison population, which includes measures of success and a clear monitoring framework. Responsibility for implementation to lie with a designated minister and accountability for the strategy to be built into relevant roles within government departments and local authorities.” It further suggests that this may benefit from “the appointment of a director of women’s justice and the establishment of a women’s justice agency.”

19. Young adult offenders (18–20 year olds) have long been recognised as the age group most at risk of offending. The Prison Reform Trust is calling for the following reforms to meet the needs of young adult offenders more effectively and reduce the number sentenced to custody:

- Diverting first-time and low-level offenders out of the criminal justice system through the use of a restorative pre-court disposal similar to the Youth Restorative Order;
- Expanding the age-remit of Youth Offending Teams (YOTs) to accommodate 18–20 year olds—this would enable health, well-being and social care needs of this age group to be more effectively addressed through the multi-agency structure of YOTs—or, for Probation and other relevant agencies to adopt the YOT multi disciplinary model for 18–20 year olds;
- The development of Sentencing Guidelines specific to young adults—in recognition of the age, maturity, intellectual and emotional capacity of this particular group;
- Introducing a robust community sentence, tailored to the specific needs of this age group, as an alternative to custody—this could take the form of the Intensive Alternative to Custody (IAC) currently being piloted.

20. Sharing information and reducing bureaucracy is crucial. People who come into contact with the justice system often find they are completing multiple forms or assessments or being asked during interviews repeatedly for the same information. Currently, prison departments within a single establishment don’t fully share information. Work on the Isle of Wight cluster has shown the benefit, efficiency and economy of a Single Assessment System. All information sourced pre-court by police and probation must be shared with a prison if there are implications for safer custody or risk assessments.

Does the MoJ have the right processes and measures in place to manage robustly the organisations it sponsors?

21. Robust management of NOMS would have led to a better balance being struck between prison and probation services. The MoJ has not acted decisively on the evidence that community sentences are more effective in reducing reoffending than short prison sentences.

22. Until recently, the MoJ has accepted and administered without demonstrating its discomfort at the imprisonment of thousands of people on indeterminate sentences of imprisonment for public protection (IPPs), with little prospect of release. Such apparent passivity in the face of large scale inhumane practices has undermined justice. We would hope that a fair resolution can be found in the LASPO Bill.

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?

23. This is an area that Liberty and Justice are better placed to comment on. The concern from the Prison Reform Trust is to ensure access to justice for the most vulnerable in our society.

Does the relationship between the MoJ and NOMs, and the relationship between prison and probation, contribute to effective and efficient working?

24. Closer working arrangements between the Prison Service and the Probation Service have long been a desirable goal. Other countries, such as Canada have a corrections service that is integrated and coordinated.
In Canada this includes shared management systems, accountabilities and IT. However, the means by which this has been taken forward in England and Wales was misguided and has created more problems than it has solved. These were two organisations with different cultures and which needed to operate in different environments. The Probation Service is now in a chain of command that is dominated by Prison Service managers. Communication between prisons and probation is still not working in many areas. By way of example, on a recent visit to Stoke Heath YOI it became apparent that senior staff there had never heard of the Manchester IAC (Intensive Alternative to Custody) for young adults, despite the fact that Stoke Heath takes many Manchester young adults and the IAC scheme is well established.

25. A successful innovation of recent years in protecting the public and ensuring effective multi-agency cooperation has been MAPPA. Based on a particular construct, the essence of the work is for intelligence to be pooled and actions agreed on a carefully co-ordinated local approach to working together across agency boundaries. There are lessons to be taken from this approach and the Total Place pilots that would develop the concepts of pooled budgets and devolved responsibilities.

26. To be successful the Probation Service needs to be alert to local needs and to have a good awareness of local resources. This requires a national strategic framework, with strong professional Probation leadership, allied to formal links to local authorities and local courts. Local managers and leaders of the Service must be empowered to make key decisions in allocating resources to protect the public and reduce reoffending in their locality. Such devolution of powers should also establish Probation Trusts as the prime commissioners of services. At a national level, the Probation Service requires a small number of objectives and operational standards. A secure information system should ideally be provided for courts, police, crown prosecutors, prisons, probation and local authorities.

27. Whether NOMS has a future in such a model should be subject to specific review.

**How effectively does the MoJ use IT, and does the MoJ have the right balance between centrally and locally commissioned IT?**

28. If the criminal justice system is to act as a proper system, then a pre-requisite is a single information base. The attempt to create C-NOMIS to underpin the work of prisons and probation was an expensive failure.

29. In relation to prisons the MoJ seems to have quite an unbalanced approach and could benefit from a centralised strategy for deployment of IT that could cut costs; assist in better allocation of staff time and resources as well as benefitting prisoners in terms of access to educational resources, resettlement materials and family contact. It appears that IT decision making in the prison estate is hit and miss and left to area managers or individual governors to decide policy—which is good in the private sector prisons but not so good in the state-run establishments.

30. The importance of a joined up IT system across the justice system cannot be overstated. Research conducted by the Prison Reform Trust found that data provided by local courts to the MoJ appeared patchy and in this instance did not appear to give adequate reasons for use of custodial remand.

**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?**

31. It is not clear that current arrangements for commissioning and contracting are adequately developed and incorporate the necessary checks and balances that the MoJ would like to see.

32. The current “Payment by results” model is proving particularly difficult for small and medium sized voluntary sector organisations. The model may not be sustainable unless blended or flexible arrangements are introduced. There are concerns about whether PBR is best value for the tax payer. The costs involved in complicated contractual arrangements, the use of prime contractors that will top slice funding, and the costs involved in developing and monitoring/evaluating pilot services will all divert money from service delivery. Justice reinvestment models offer more effective use of resources, better opportunities for a mixed economy and more sustainable ways of reducing reoffending.

33. The voluntary sector could make a huge contribution—providing enormous value for money—to reducing re-offending and improving prisons. There are two major structural impediments which undermine the involvement of the voluntary sector and obstruct its efficiency in working with offenders. They are: risk-averse policies which create barriers to working with offenders; and uncertain funding arrangements, in particular the system of deferred payments, which makes work with offenders unsustainable. 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 voluntary or the private sector. Currently this threatens the viability of many small to medium charities both in terms of their resources and maintenance of their unique identity.

34. The aim of reducing reoffending depends on partnerships between NOMS and agencies which can bring particular expertise. A risk avoidance ethos within prisons is effective in keeping voluntary sector agencies at arms’ length.
35. The Prison Reform Trust report *Time Well Spent* (2010) details the contribution that volunteering and active citizenship can play in rehabilitation, developing work in prison and the wider concept of the “Big Society”. It shows that a great deal of active citizenship work can be established and carried out with little additional investment of resources. Such work enables establishments to make full use of a vast and valuable resource which is otherwise largely wasted: namely the prisoners themselves. To achieve the necessary shift in culture for personal responsibility to be realised will require strong and consistent leadership.

36. A Guide produced by Clinks and NOMS included a range of recommendations for facilitating partnership.

— “The prison should have accurate information about all the agencies that work within the prison, the services that they provide and their contact details.”

37. Few prisons do this, or prioritise the voluntary sector partnership by maintaining good communications with their voluntary sector providers.

— “A process should exist that enables community-based agencies to communicate directly with prisoners. This process should be clearly defined and made explicit to staff and prisoners in written form.”

38. Many prisons are poor at enabling voluntary sector partners to have direct contact with prisoners; nor are prisons efficient in referring prisoners to appropriate voluntary sector support. In the Shapland study of restorative justice schemes, the system depended on referrals to the schemes from criminal justice partners. Few referrals were forthcoming, and as a result, the voluntary sector schemes were forced to recruit participants themselves—not the function for which they contracted.

“… by the end of the first year, many of our schemes had effectively given up on the likelihood of many individual referrals. … They had decided they could not afford to wait on this difficult, uncertain process to obtain referrals. They moved to organise acquisition of agencies’ or courts’ records of forthcoming cases and to a process of extraction, rather than referral, of cases.” (Shapland et al.: 52)

39. In PRT’s review of the CSV prisoner volunteering pilot, we recommended that:

“CSV staff must have regular, direct contact with prisoners on the wings in order to become familiar to prisoners and staff. The case for direct access to prisoners can be made on the outputs from successful pilot prisons and the explicit recommendation of the Clinks Guide.”

40. We know of no evidence that prisons have improved their performance in facilitating voluntary sector access to serving prisoners.

41. The principle, in the voluntary sector, that values voluntary participation is regularly trampled by criminal justice professionals, who impose the condition that the voluntary sector jettisons the principle of engagement by consent.

42. The few prison governors who fully recognise the unique contribution which the voluntary sector makes are forced to take extraordinary steps to promote voluntary sector involvement in the prison; and for this, they receive no acknowledgement in terms of career advancement.

43. Drawing on the resource of thousands of people who are willing to give up their time voluntarily, the voluntary sector could provide real value for money. However, the commissioning relationship with NOMS is exploitative, to the extent that smaller, local charities cannot survive if they try to provide a service to offenders and their families. NOMS commissioning favours large organisations (on the presumption that the lowest cost per head confers value for money); and arrangements in particular prisons are short-term, such that the voluntary sector partner assumes long-term risk of loss of funding.


*Does the MoJ have the necessary skills to ensure value for money contracts for the public purse and to effectively manage those contracts?*

44. Effective commissioning involves strategic planning, procurement and review. It is not currently evident that many officials will have the highly developed skills or knowledge base necessary to set contracts and objectives. Some of the examples given above would suggest that the necessary skills have been lacking hitherto. In fairness, few commissioners would have the analytical, technical, negotiation, programme management and relationship management skills needed to fully operationalise payment by results.
45. The payment by results approach is a high risk single strategy with evident shortcomings. It is essential that the MoJ develops a range of methods for ensuring value for money for the tax payer including the application of justice reinvestment principles and practice.

September 2011

Written evidence from the Law Society of England and Wales

The Law Society is the representative body for more than 145,000 solicitors in England and Wales (“the Society”). The Society negotiates on behalf of the profession, and lobbies regulators, government and others.

We have focused our response on those issues of most concern to the Society, and on which it is best placed to comment given the experiences and expertise of its members.

What should the core objectives be of the MoJ?

The MoJ’s many responsibilities include: the administration of correctional services and youth justice in England and Wales; maintenance and development of criminal, civil, family and administrative law; administration of the civil, family and criminal courts in England and Wales and of tribunals across the UK; Legal Aid and the wider Community Legal Service; support for the judiciary and judicial appointments; and constitutional affairs.

Its central role in administering the justice system by way of these responsibilities means that it has a uniquely important task in protecting fundamental elements of our constitutional democracy, including: the independence of the courts, the judiciary and the legal profession; access to the courts for people, particularly those who may wish to challenge the Government; the standards of the judiciary; the integrity of the UK legal system as the jurisdiction of choice for international lawyers; and the rule of law and human rights.

Each of these elements go to the heart of the British constitution in ensuring that we remain a democratic state that protects rights and freedoms under the rule of law. The MoJ’s key role in administering the justice system demands that these elements be at the core of its objectives.

Which functions provided by the MoJ are essential, and which could be best provided by others or not at all?

We consider that the functions outlined above are rightly provided by the MoJ, rather than any other Government department or other body. However, there are some vital public functions, such as the appointment of judges, the regulation of an independent legal profession, the independence of the courts and the granting of legal aid in individual cases which must be protected from political influence and so require governance, funding and policy arrangements that both are and are seen to be independent of direct political control.

These are vital public functions (as are the control of prisons and the probation service) and, while independence from political control is crucial to decision making, there nevertheless needs to proper democratic control and accountability in respect of the administration of these functions. They should not simply be contracted out and it is essential that there should be proper processes which provide independent scrutiny of the work and mechanisms which protect independence.

Does the MoJ have sufficient understanding of costs to enable it to model the impact of future changes?

Our particular concerns and knowledge are in respect of the legal aid system. We are concerned that the 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.

For example, in the Green Paper consultation “proposals for the reform of legal aid In England and Wales” the government proposed to make drastic cuts to the provision of legal aid. The MoJ recognises in the IA published alongside the consultation paper that these proposals are likely to be associated with “wider social and economic costs” (Paragraph 27 ii) which have the capacity to outweigh the economic benefits arising from the proposals, including: reduced social cohesion, increased criminality and increased resource costs for other Government departments. There is, however, no attempt to assess or understand what these knock-on costs might be.

The proposals for legal aid reform are also likely to bring with them additional knock-on effects which will create increased costs to the State, but which do not appear to have been considered at all, such as:

— increased cost to the state by not providing early assistance in resolving problems;
— increased levels of homelessness and poverty, which will place a further financial burden on the state;
— increased numbers of children living in poverty; and
— increased domestic violence as a result of private family cases being taken out of scope.
The estimates of some of the savings that would arise from specific proposals in the Green paper changed dramatically in the final IA published alongside the response to consultation. For example, the introduction of the “Telephone Gateway” was initially estimated to be likely to save “between £40 million and £60 million per year” (paragraph 30: “Legal Aid Reform: Provision of Telephone Advice—Impact Assessment”, November 2010). This reduced to “£1 million to £2 million” in the final IA (Table 1: paragraph 30: “Cumulative Legal Aid Reform Proposals”, June 2011). There had been some small changes made to the original proposals, but none likely to have such a dramatic impact on the estimated savings. This would appear to suggest that the estimates were not based on very reliable data.

We note that the Committee observed such problems in its Third Report at paragraph 30:

“We are disappointed in the dearth of evidence on legal aid expenditure at case level to enable the identification of key influences on cost. We note the difficulties in collating quantitative evidence for useful national and international observations to be made, and we 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.”

As far as we are aware, no such attempt has been made. The Society was disappointed to note the response of the Government, which did not appear to address the essence or detail of the Committee’s concerns regarding evidence; it focused instead on the need to make savings, without acknowledging the poor evidence base supporting the contention that the changes would in fact save money:

“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… 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.”

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?

The 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, and the many administrative burdens placed on providers by the LSC’s requirements.

The transition may therefore bring some benefits, namely in terms of unified policy making, the lack of which has until now caused problems for the provision of legal aid as described below. However, we also believe that the transition presents an opportunity to examine the processes of the LSC that have caused problems for providers, and how they might be improved upon transition to the MoJ.

Policy making

Damage has been caused by the unclear delineation of policy-making roles between the LSC and MoJ, stemming from the LSC’s ambiguous role as a so-called “arms length body” that has at the same time operated under policy and financial constraints imposed by the government. The consolidation of the LSC into an executive agency within the MoJ will, we hope, put an end to the problems that previously arose when the LSC spent time developing policies that were subsequently rejected or substantially changed by the MoJ. It will also remove any element of duplication of policy functions. This change is therefore likely to lead to some savings. It is important, however, that there are clear safeguards to ensure proper independence of decision-making in respect of the funding of individual cases.

We are concerned, however, that many of the mistakes made by the LSC will be repeated by Government. Over the last few years we have seen the LSC back down on or delay several policy initiatives, often after the Law Society and other representative bodies have made strong representations that policies are fundamentally flawed, or that the LSC has set an unrealistically tight timetable. Unfortunately, the MoJ seems to be repeating this mistake, given the plan to implement the changes under the Bill in October 2012. The idea that the Government could devise the contracts and tendering processes, consult on them, hold the tender and give the bidders adequate notice of the result of their bids all within a period of only six months is completely unrealistic.

Further problems have arisen because constant policy change creating uncertainty for practitioners who are unable to make long-term business planning decisions relating to legal aid work. For example, in the 2010 family tender process the LSC required firms to deliver the whole range of services for both public law (care proceedings) and private law (divorce and related disputes about children and money) family work. Many specialists in public law work therefore had to adjust their businesses to deliver additional services. No sooner had they done so than the announcement was made that legal aid for private law family work was to be largely abolished, so their investment was wasted.

It is essential that the MoJ take account of these concerns.
Administrative burdens

There has been a steady decline in the number of legal aid providers since the advent of contracting in 2000.22 A significant disincentive to undertaking legal aid work is the high administrative overhead of maintaining a legal aid contract. These requirements are particularly burdensome for small businesses which constitute the greater part of the legal aid supply base and, who struggle to employ sufficient administrative staff to deal with all of the LSC’s requirements.

There are complex rules for determining clients’ financial eligibility even in situations where clients (such as the majority of asylum seekers) clearly have no means at all. There are also many different payment schemes across the different legal aid categories of law which together with complex case reporting procedures, makes it difficult and time consuming to bill legal aid work.

We believe that some of the LSC’s accounting problems noted by the National Audit Office stemmed from unwitting mistakes being made by providers as a result of these complicated procedures.

In addition, since the advent of contracting in 2000 there has been a constant process of significant change. Changes include the move from hourly rates to fixed fees, changes to billing and reconciliation procedures, changes to contract terms on short notice, repeated but as yet unfulfilled proposals to introduce price competitive tendering and a new civil contract tendering process. We do not say that all the changes are bad but make the point that that the rapid pace of change makes it difficult for providers to plan for the future, especially as they do not know whether they will still have a legal aid contract when their current contract expires. A period of stability is now required.

The LSC has also tended to micromanage providers through the intrusive manner in which it runs legal aid contracts, often by specifying the minutiae of how things should be done. For example, although now removed, one draft of the 2010 criminal contract contained three pages of terms spread across 21 clauses on how a file number should be allocated. The system still requires firms to bill each case individually, even if it only relates to half an hour of advice; and to seek LSC approval for steps within cases. The Law Society’s view is that the agency responsible for legal aid should be managing the system overall, not each individual case within it. Providers should have a broader discretion as to how work under the contract is performed. Seeking directly to control the expenditure of sums of less than £100 in a £2 billion system is not proportionate.

How effectively does the MoJ use IT, and does the MoJ have the right balance between centrally and locally commissioned IT?

It is difficult for an external stakeholder to properly evaluate the effectiveness (or efficiency) of MoJ’s use of information technology. In part this is due to the complex history of MoJ IT, its inheritance of legacy systems in 2007, and the changing landscape of overall government ICT strategy.

We can, however, make a number of observations. The first is the long history of underinvestment in court IT. There is now a real disparity between the Courts Service and court users in terms of their speed and ability to communicate. This is the cause of considerable delay and costs and a significant contributor to ineffective and/or incorrect case management. We are concerned that civil courts remain under-resourced in terms of both staff and IT. The current round of public expenditure cuts is exacerbating this problem, as may court closures.

Similar difficulties have arisen in relation to the LSC’s problems in processing and in gathering data that could be effectively used to inform policy making, which have been a result of inadequate and outdated IT systems. We hope that the introduction of the Integrated Delivery Project may improve matters, provided lessons have been learnt from previous IT implementations such as the problematic and costly LSC Online electronic billing system.

MoJ IT has not, therefore, been effective in relation to these major strategic needs.

This suboptimal efficacy may be due to the apparent disconnection between business strategy and IT strategy within the Ministry. No ICT plans are outlined in MoJ’s Business Plan 2011–15 reflecting perhaps the problem highlighted in the MPs report on information and communications technology in government (July 2011) that “ICT is not well enough embedded in departments’ business, and as a result not enough reform programmes have had ICT at the core”.

Whether this problem should now be addressed through centrally or locally commissioned IT is a moot point; both are possible. The government’s strategic shift towards pan-government software and asset consolidation and the adoption of cloud computing offers the prospect that central provision of software, infrastructure and standard setting will provide a framework that permits local decision making. It might also lead to a significant reduction in MoJ’s historic ICT costs (£567.5 million to third party suppliers in 2009–10 and an average cost of desktop computing for each full time equivalent staff member of £788). The MoJ should be encouraged to set out its strategic IT-related business plans for the next four years against the government’s overall ICT strategy.

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 effectively manage those contracts?

The examples above regarding management of services delivered by the LSC, and procurement of IT for the Courts Service and the LSC indicate that there have been considerable deficiencies in the processes for service delivery by external bodies, and in achieving value for money when procuring them. We are therefore not fully convinced that the relevant procedures or expertise are necessarily in place, and suggest that this may be a matter for more detailed review.

April 2012

Written evidence from the Howard League for Penal Reform

STRUCTURE AND BUDGET OF THE MINISTRY OF JUSTICE

The Howard League for Penal Reform welcomes the opportunity to respond to this high level inquiry by the Justice Committee into the structure and budget of the Ministry of Justice (MoJ). We are limiting our response to those questions which fall within the themes of achieving value for money and the structure of delivery services.

1. INTRODUCTION

1.1 The Howard League for Penal Reform is the oldest penal reform charity in the world. We campaign for less crime, safer communities and fewer people in prison. Our response to the inquiry is based on the principle that the criminal justice system, and imprisonment in particular, is a blunt tool which cannot in itself provide lasting solutions to the problem of crime. The use of prison should be administered only in strict proportion to the harm done and with the aim of reducing the likelihood of exacerbating that harm. It should focus on those that commit serious and violent offences and who present a danger to the public. Community sentences provide the most cost effective and appropriate way of dealing with those that come into contact with the criminal justice system and we promote their use for all but the most serious and violent cases.

1.2 In 2001, we set up a legal department to represent children in the penal system. The Howard League for Penal Reform legal team has represented hundreds of children in the criminal justice system and has a track record of forcing improvements in prison conditions, parole procedures and support for children on release from custody. The work of the legal department expanded to represent young adults in 2007.

1.3 The underlying causes of local crime are best tackled through investment in public services beyond the remit of the MoJ, be it health, education or welfare. The Howard League welcomes this high level inquiry as it provides an excellent opportunity to review how the MoJ operates within the context of other government departments and policy.

2. COSTS/VALUE FOR MONEY

Does the MoJ have sufficient understanding of costs to enable it to model the impact of future changes? Does the MoJ have the necessary skills to ensure value for money contracts for the public purse and to effectively manage those contracts?

2.1 We are concerned that the MoJ does not utilise a sophisticated enough analysis of its costs and outcomes and therefore has represented hundreds of children in the criminal justice system and has a track record of forcing improvements in prison conditions, parole procedures and support for children on release from custody. The work of the legal department expanded to represent young adults in 2007.

2.2 The criminal justice system is complex and by its very nature must bear the cost of other departments’ failures. People that come into contact with the system are likely to have been failed by either educational, healthcare or social services at some point in their lives. These failures not only lead to the offending behaviour which costs the MoJ money, but must be paid for again when the MoJ attempts to address them in the form of community sentence provisions or interventions involving prison.

2.3 When the MoJ works in partnership with government departments and the private and voluntary sector the benefits of collaboration also lead to complexities in attributing costs and savings. The Department for Education (DfE) for example runs a grant programme which funds activities that financially benefit the MoJ. The DfE pays for prison officer training, visitor centre staff and prisoner interventions; all of these activities save the MoJ money now, and also in the future. The Department of Health provides healthcare within prison, and funds the activities which increasingly are used to divert those with mental health problems from entering the criminal justice system. The Department for Business Innovation and Skills funds the education staff who work with those in prison and in the community. Local authorities increasingly bear the cost of preventative measures that are designed to reduce the number of people who come into contact with the courts, yet they do not share in the savings their work generates.
2.4 The MoJ is attempting to better understand its costs by drawing up service specifications and moving to an outcomes-based approach to commissioning. However, in its drive for savings it is focussing only on achieving a reduction in raw reconviction rates—yet this could actually lead to more inefficiency. 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. The Howard League provided extensive feedback to the MoJ’s breaking the cycle paper earlier this year about the payment by results proposals. We have a number of concerns which characterise the problems MoJ has in understanding its core business:

2.4.1 **Complexity of application produces inefficiency**—The link between prevention and savings, costs and outcomes are hard to define, and especially so when they are born by different departments and organisations. Most importantly, people and their problems are complex and the solutions to their problems must be flexible and adapted to the individual. Payment by results encourages a “one size fits all” approach which prioritises the individuals that generate the highest income, and disregards those whose problems do not fit within the mould.

2.4.2 **This leads to cherry picking**—where providers focus on those that will most easily meet their targets, leaving the people most in need without support. We are already seeing the impact of this at Peterborough prison whose recent inspection highlighted that the prison is not meeting the needs of those not eligible for the Social Impact Bond pilot (HM Chief Inspector of Prisons 2011).

2.4.3 **Payment by results is not based on meaningful outcomes**—A reduction in raw reconviction rates before statistical modelling is just one outcome, but interim outcomes such as a reduction in severity or frequency of offending are just as valid, but do not constitute a “result”. Desistance research would also suggest that there are a range of relatively mundane results which may prove more valuable for practitioners to focus on: such as ensuring an individual is registered with a GP or ensuring an individual has some way of keeping time in order to attend probation appointments or job interviews. Government has criticised the tick box culture which characterised the previous administration, and yet payment by results encourages a focus on meeting the definition of “result” rather than the best outcome for the individual.

2.4.4 **No record of success**—The payment by results model has not been adequately tested in the criminal justice sector, yet the MoJ is committed to using it as a model for delivering many of its services at a lower cost. Where it has been tested in the area of welfare to work, the verdict has not been promising. Far from providing innovative and effective services at a lower cost, providers were found to have “seriously underperformed against their contracts and their success rates [were] worse than Jobcentre Plus even though private contractors work in easier areas with fewer incapacity claimants and higher demand for labour” (Public Accounts Committee 2010, p.3).

2.4.5 Although the government is relying on the Peterborough model to demonstrate the effectiveness of payment by results, we are concerned that the trial does not accurately portray how payment by results would work on a wider scale. Using social finance to fund through-the-gate services that compliment, rather than replace statutory provision is not the model government is proposing to roll-out and therefore care should be taken in evaluating the trial’s success. Even if the payment by results pilots do save the public money over the long period it takes to assess them, this will still be too late to benefit the MoJ’s decreasing budget and therefore will not provide the answers to its immediate cash flow problems.

2.5 The MoJ must focus on what works and use an evidence based approach to policy making if it is going to design services that create value for money. Value for money is about more than cost saving—it is about ensuring a just and effective system that can be delivered efficiently. We know that community sentences not only produce better outcomes than prison sentences, but because of their lower cost constitute better value for money. Yet whilst the MoJ has been vocal about reducing ineffective short sentences and using community sanctions as an alternative to custody, the prison population is increasing at a record-breaking rate. Until the MoJ make a concerted effort to reduce the use of imprisonment, it cannot claim to be achieving value for money.

2.6 Achieving value for money does not end in the design of services, it continues with the tendering and management of contracts. However, the MoJ has a history of making poor judgements in commissioning and contract management and the Howard League is concerned that this track record will continue. The Justice committee has already highlighted the errors that were made in the tendering of community payback, and to quote the committee’s own report:

“\[The experience of national contracts currently in place has not inspired confidence that NOMS understands its business sufficiently well to draw up robust contracts that meet the needs of future stakeholders\].” (Justice committee 2011, p.36)

2.7 The Howard League is concerned that the MoJ face an uphill battle in delivering effective justice. Its approach to achieving value for money grossly oversimplifies the array of services, departments and interventions which impact on the criminal justice system and crucially the complexities of the people who come into contact with it. In order to create an effective and just system the MoJ must make significant changes
from the top down, reduce the use of imprisonment in favour of community based resolutions and ensure its policies are driven by what works, rather than what is populist.

3. Service Delivery

Which functions provided by the MoJ are essential, and which could be best provided by others or not at all? What changes to the current structure of the MoJ could contribute to improved performance or efficiency savings?

Does the relationship between the MoJ and NOMS, and the relationship between prison and probation, contribute to effective and efficient working?

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?

3.1 The Howard League has long campaigned for a radically different approach to dealing with the particularly vulnerable groups of people who come into contact with the criminal justice system. The Corston Report correctly identified the significant issues which face women in prison, and made sensible recommendations for reform. There is still significant potential for women to be diverted away from the criminal justice system, and out of the remit of the MoJ. Services for women would be much better provided by social and healthcare services and only in the most serious cases would a woman need to be dealt with through the justice system.

3.2 The same is also true for children, and the Howard League continues to campaign to reform the system for dealing with children and young people. Criminalising children from the age of ten, labelling them as offenders and placing them in secure training centres and young offender institutions is not just morally unjust, but ineffective. The MoJ must have a much smaller remit in dealing with women and children, who should instead be diverted to the support agencies best suited to meet their needs.

3.3 The following comments and recommendations relate to the work that takes place with the adult males that make up the vast majority of people who come into contact with the criminal justice system.

3.4 The creation of NOMS has been rightly described as a probation take-over by the prison service. The problems that arose have already been analysed in detail, but this high level inquiry provides an excellent opportunity to identify what should be done now to ensure a just and effective system.

3.5 The aim of NOMS was to coordinate the prison and probation service to ensure “end to end offender management”. However, the Howard League advocate a shift away from this offender management approach and a shift towards a localised “resolution service” with powers to intervene in community conflict and anti-social behaviour. This end to end service would bring together local authority preventative projects; divert people away from the criminal justice system and utilise the probation service’s ability to form meaningful relationships and support mechanisms for the people they work with.

3.6 A locally based resolution service would provide value for money as anti-social behaviour and low level crime would be resolved without escalation to the courts. Triggers for crime often stem from problems based in the community, whether that is a housing, mental health or employment problem. The resolution service would solve these issues where they originate, at a far lower cost and more successful rate than a prison sentence could. Where a sanction is required, community sentences would be prioritised and they would be delivered swiftly and intensively so the public can see justice in action. Prison would be reserved for the most serious and dangerous crimes, therefore reserving this high cost intervention for those who pose the highest risk to the public. The resolution service would be an effective and efficient means of tackling the range of problems which, if left unattended, can lead to antisocial and ultimately criminal behaviour. The impact of such a system would lead to less crime, safer communities and fewer people in prison.

3.7 The MoJ supports a localised approach to criminal justice, but for this to be achieved it is absolutely crucial that prisoners are able to develop sustainable links with their families and communities. Housing prisoners far from home or shuffling them around an overcrowded prison system makes a mockery of the MoJ’s attempts to create links with local organisations and employers. The prison and probation services must be restructured and refocused on community resolution rather than imprisonment. This would deliver the localised “end to end” system the government is looking for, but in a far more effective way.

3.8 Even with a local resolution based structure in place, the delivery of those services must be carefully considered. The Howard League is extremely concerned about the privatisation and contracting out of the criminal justice sector. The commissioning process is not only bureaucratic and expensive, but also heavily weighted towards large organisations. Lead contractors are able to undercut the smaller charities who have the local knowledge and expertise needed to do the job well. Voluntary sector organisations are then forced to either take roles as subcontractors, or not compete at all. This undermines the “Big Society” rhetoric, as the reality is big business delivering poor quality services at bargain rates. Payment by results will aggravate this situation, as the need for statistically measurable reoffending outcomes will drive towards commissioning on a large scale.

3.9 Local authorities and voluntary sector organisations do not have the money or capacity to deliver services for the huge number of men, women and children in the criminal justice system. Large private providers such as G4S, Serco and A4E will continue to pick up the contracts and deliver a generic programme of work.
which if not worse, will only replicate the centralised approach which has gone before. The MoJ’s attempts at commissioning are not localism in action and do not provide value for money.

3.10 The criminal justice system can be effective and provide the public with value for money. Restructuring prison and probation to become locally responsive, resolution based services where only the most serious crimes warrant a prison sentence, will ensure a system which effectively deals with crime, reduces the rate of reoffending and saves the public money in the long term.

September 2011

REFERENCES


Supplementary written evidence from the Ministry of Justice

1. What modelling of demand for both criminal and civil justice services (legal aid, courts, probation, prisons, alternatives to custodial sentences, youths) has been undertaken? With which organisations, and departments have you collaborated to ensure that the models are as realistic as possible?

1.1 The Department has made significant improvements to its modelling capability, developing a suite of caseload forecast models that underpin robust assessments of the impacts of proposed policy changes. These models produce forecasts of demand for criminal, civil and family justice. Where possible, they take into account key drivers of caseload including demographic, economic and policy changes.

1.2 The caseload forecast models on the criminal justice system are linked to a more detailed set of workload models covering demand for services in the Crown Court, probation and prison services (including young offender institutions). Work is currently underway to extend this more detailed workload modelling to the magistrates’ courts (including youth courts and family proceedings courts), the county courts and the Parole Board. The Department works closely with the Legal Services Commission to ensure that the suite of models provide a consistent basis for understanding demand for Legal Aid.

1.3 The models are designed to provide a baseline understanding of demand but are also used to support an assessment of planned policy changes or unexpected shocks to the system such as the public disorder in August 2011. The major policy changes being taken forward—legal aid reform, sentencing reform, and the rehabilitation revolution—have all involved analytical and financial modelling to ensure the impacts, costs, and benefits of the changes are fully understood, including impacts on customers. 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.

1.4 The models of demand also provide a coherent and consistent platform for operational and financial planning. For example, the Department’s Financial Planning Model combines these forecasts of demand with key economic assumptions (notably on inflationary pressures) and other financial information to determine the MoJ’s overall financial position, including the assessment of financial risks.

1.5 Advisory groups, involving representatives from a wide range of organisations and departments, are engaged in the development of the forecast models. The purpose of these groups is to provide a richer understanding of historical and future drivers of demand, and to help validate the modelling approach and assumptions used.

1.6 For the models of family caseload, advisory groups have involved representatives from the Judiciary, the British Association of Social Workers, the Children and Family Court Advisory and Support Service, the Family Law Bar Association, the Justices Clerk Society, the Magistrates Association, the NSPCC, Relate, Resolution, the Department for Education and the Legal Services Commission.

1.7 For the models of civil caseload, advisory groups have involved representatives from the Judiciary, the Advice Services Alliance, Citizen’s Advice, R3 (The Association of Business Recovery Professionals), the Law Society, Shelter, the Council of Mortgage Lenders, the Civil Court Users Association, the NHS Litigation Authority, the Department for Communities and Local Government, the Department for Work and Pensions, Her Majesty’s Revenue and Customs and the Insolvency Service.

1.8 For the models covering the criminal justice system, advisory groups have involved representatives from the Judiciary, the National Offender Management Service, Her Majesty’s Courts and Tribunals Service, the Legal Services Commission, the Youth Justice Board, the Magistrates’ Association, the Parole Board,
Sentencing Council, the National Bench Chairmen’s Forum, the Home Office and the Crown Prosecution Service.

1.9 In addition, the set of models leading to projections of the future prison population were subject to an independent peer review involving a consultancy (Qinetiq) and an academic (Chris Lewis, Institute of Criminal Justice Studies, University of Portsmouth). This review covered both the technical specification and the suitability of the approach taken.

2. Has the Department assessed the efficiency of the UK justice system compared to international comparators? What data is available with which to do so?

2.1 We have explored international comparisons during our work on efficiency. However, different justice systems in each country make reliable comparisons of efficiency difficult—we often aren’t comparing like for like—and comparable data is not readily available or published that would allow efficiency to be compared in a meaningful way. Differences between countries often reflect a wide range of factors, including the different systems and institutions in those countries, and so may not always indicate better performance that can be quickly and easily replicated.

2.2 In spite of these challenges, policy development in this area has incorporated the result of case studies into efficiency across justice systems of a number of countries, based on the published research. To supplement this, the MoJ, as with other departments, seeks out good practice in financial management through a variety of mechanisms. Senior officials, for example, have meetings with international counterparts and are supported in this through their professional networks.

2.3 International data of spending on justice systems, such as OECD information on spending on public order and safety (which includes justice) are considered by the Department. In September 2011, the Department published an Ad hoc Statistics Note on International Comparisons of Public Expenditure on Legally Aided Services.

3. What has net MoJ expenditure and annual change in net MoJ expenditure been (a) at current prices and (b) in real terms in each year since the creation of the MoJ?

3.1 The table below sets out the MoJ’s expenditure since 2007–08. The figures are Fiscal Resource DEL rather than Total DEL. Fiscal Resource DEL reductions are a better indicator of efficiency savings as they relate directly to the running costs of the Department. To include capital spend would provide a slightly distorted picture given the wide variation in year on year spend on capital projects.

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>MoJ Expenditure (Current)</td>
<td>8,906</td>
<td>9,094</td>
<td>9,000</td>
<td>9,018</td>
<td></td>
</tr>
<tr>
<td>£m Change</td>
<td>−188</td>
<td>94</td>
<td>−18</td>
<td>−112</td>
<td>−1.3%</td>
</tr>
<tr>
<td>% Change</td>
<td>−2.1%</td>
<td>1.0%</td>
<td>−0.2%</td>
<td>−1.3%</td>
<td></td>
</tr>
<tr>
<td>MoJ Expenditure (Real)</td>
<td>9,577</td>
<td>9,516</td>
<td>9,267</td>
<td>9,018</td>
<td></td>
</tr>
<tr>
<td>£m Change</td>
<td>61</td>
<td>249</td>
<td>249</td>
<td>559</td>
<td>5.8%</td>
</tr>
<tr>
<td>% Change</td>
<td>0.6%</td>
<td>2.6%</td>
<td>2.7%</td>
<td>5.8%</td>
<td></td>
</tr>
</tbody>
</table>

*All figures are Resource DEL and are those produced by ONS and published on HMT website as PESA tables—not internally produced to ensure consistency with data available externally.

3.2 Since the Department’s first full financial year (2007–08), it received, in current prices, an increase of £188 million (2.1%) in 2008–09, a decrease of £94 million (1.0%) in 2009–10 and a small increase of £18 million (0.2%) in 2010–11. This amounts to a total increase in funding over the four years of £112 million (1.3%) against the 2007–08 budget.

3.3 In real terms, the Department’s reductions are £61 million (0.6%) in 2008–09, £249 million (2.6%) in 2009–10 and £249 million (2.7%) in 2010–11—a total reduction in expenditure of £559 million (5.8%) since 2007–08.

4. What has MoJ expenditure as a percentage of overall Government expenditure been (a) at current prices and (b) in real terms in each year since the creation of the MoJ?

4.1 Since the Department’s creation in the 2007–08 financial year, the Department has, in current prices, represented 1.5% of Public Sector Current Expenditure (PSCE) for three of the last four years, falling to 1.4% in 2010–11.

4.2 In real terms, the Department represented 1.7% of PSCE in 2007–08 falling by 0.1% each year to 1.4% in 2010–11.
5. The Department’s memorandum states “since the MoJ was formed in 2007 it has significantly reduced its budget by £878 million”. Can you provide a breakdown of these savings?

5.1 From the formation of the MoJ to the 2010–11 financial year, the Department has reduced its budget requirement by £880 million (in nominal terms). The comparison here looks at Total DEL across the time period rather than just Fiscal Resource DEL. As mentioned at 3 above, Fiscal Resource DEL reductions are a better indicator of efficiency savings over a period of time.

5.2 This has been achieved through reductions made across business areas in the following proportions:
- NOMS c£330 million.
- HMCTS c£160 million.
- LSC c£240 million.
- Policy & Corporate Centre c£150 million.

5.3 The Department’s budget requirement has also been affected by a number of machinery of government changes. The most material 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 for the cost of the Directorate, and will mean that the cost of elections is no longer provided through the Department’s allocation.

6. Given the scale of savings required following the CSR 2010, what was the approach to identifying savings, eg to what extent did the MoJ and its Arm’s Length Bodies rely on across-the-board percentage cuts on all services, rather than alternative delivery mechanisms or transformational change?

6.1 The Department expected that we would be asked to deliver a challenging SR settlement and started preparing well in advance. The Department did not want to “salami slice” budgets, but identify those areas where savings could be made whilst still delivering and improving the services it must provide to the public. A review of services was undertaken to identify areas for reform. This culminated in an ambitious programme of departmental and service reform, called Transforming Justice.

6.2 Transforming Justice covers three main areas: policy reform; a new operating model for HQ (to consolidate and streamline activities); and, making efficiencies in both back-office functions and front-line operations. The Institute for Government has been and continues to provide real-time evaluation of the ‘Transforming Justice’ programme. The first two reports, published on the Institute for Government website, are very positive about the way in which the Department has gone about initiating its transformation programme and the progress that has been made. The Department continues to work on the Institute’s recommendations for improvement and looks forward to their future reports.

6.3 As set out in response to question 1, the major policy changes being taken forward—legal aid reform, sentencing reform, and the rehabilitation revolution—involve transformational change and alternative delivery mechanisms such as payment by results. All of these reforms have been informed by analytical and financial modelling to ensure the impacts, costs and benefits of the changes are fully understood, including their impacts on customers. 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.

6.4 Given the scale of the SR challenge the Department also targeted more uniform reductions in spend across its business groups through efficiencies. In 2014–15 the Department plans to deliver over £1 billion of annual efficiency savings through reforms to front line and back office functions. These efficiencies are focused to protect front line functions. The Department is planning savings of over 30% in back office functions and around 10% from front line operations.

6.5 In 2010 the Department created a new Operating Model Blueprint (OMB). The OMB supports the delivery of back office efficiencies and sets out the principles and design choices that have been made to transform the Department over the Spending Review period. These choices result in streamlining of management structures, how back office functions are undertaken, and savings through procurement and ICT efficiencies.

6.6 The delivery of front line efficiencies within each business group is supported by the Department’s improved understanding of costs. This has involved extensive new analysis in a range of areas to ensure that we get value for money from the planned changes. For example, work to specify, benchmark and cost (SBC) services delivered in prisons and probation and to develop activity-based costing (ABC) for the Crown Court and the Magistrates’ Courts—a major undertaking—is well underway and is being managed as a priority in NOMS and HMCTS respectively.

7. Has the MoJ carried out any sensitivity analysis, or identified possible scope for further savings, should they be required?

7.1 The Department’s SR10 savings plans are underpinned by financial and analytical modelling which assesses the workload and financial impact of demand and reforms on the Ministry’s activities. In planning for...
SR10, the Department looked at a range of options for delivering savings, for example different options for sentencing reform and the scope for savings in front line and back office functions.

7.2 The MoJ is largely a demand led organisation and, as such, savings plans are based on assumptions and forecasts for workload. These assumptions and the impact of proposed reforms have been subject to careful scrutiny as part of the policy appraisal process.

7.3 The Department has been required to revise its original savings plans as a result of policy decisions and external factors. This includes the removal of early guilty plea reforms from plans and the impact of public disorder in August 2011. The Department continues to monitor the delivery of its plans through continuous review of the Transforming Justice programme to ensure that they are on track and to assess how they are being affected by external factors.

7.4 The Department continually looks for ways to work better and more efficiently. If further savings are required the Department will assess options in light of the reforms that have already been delivered, as well as the Department’s anticipated workload and performance.

8. What MoJ contracts have been outsourced since the creation of the department? To which companies? At what value?

8.1 Since the creation of the Department outsourcing contracts have been placed in two areas—prisons and retail.

Prisons (Outsourced Contracts)

— Custodial Services—HMP Birmingham.
— Custodial Services—HMP Featherstone 2.

<table>
<thead>
<tr>
<th>Site</th>
<th>Contractor</th>
<th>Contract Spend (£m)</th>
<th>Net Present Cost Contract Value (£m)</th>
<th>Savings against spend (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>HMP Birmingham</td>
<td>G4S</td>
<td>468.3</td>
<td>316.5m</td>
<td>£139.4*</td>
</tr>
<tr>
<td>HMP Featherstone II</td>
<td>G4S</td>
<td>360.0</td>
<td>233.9</td>
<td>£233.5**</td>
</tr>
</tbody>
</table>

8.2 Both contracts were awarded in 2011 for a period of 15 years to G4S. Birmingham is an existing prison that has been open since 1849. Featherstone II is currently being constructed by NOMS and is scheduled to start operations in April 2012.

8.3 HMP & YOI Doncaster and HMP Buckley Hall were also included in the phase 1 competition. HMP & YOI Doncaster was retained by Serco and HMP Buckley Hall was retained by HM Prisons Service (NOMS).

Retail (Outsourced Contracts)

8.4 Prison retail was only partially outsourced until a new contract was awarded in 2009 to DHL Limited which outsourced it fully. Starting in August 2009, the contract with DHL is for six years and includes an option to extend by a further four years.

8.5 The contract has a maximum value of £55 million per annum and was designed to develop a nil cost solution over its life. Under the previous arrangements the deficit was £6 million per annum.

Other services procured

8.6 Some services have never been provided directly by the Department and have always been procured. In addition, the Department has renewed and renegotiated a number of contracts for areas of work that were outsourced prior to the creation of the Ministry of Justice.

8.7 In the 2010–11 financial year the department spent £3.1 billion on services, supplies, utilities and works procured from external sources (excluding legal aid). What’s procured spans everything from the building and operation of prisons through to janitorial supplies. At any one time there are over one hundred procurement projects underway. Some examples of major procurement projects undertaken by the department include but are not limited the following.

— HMP Featherstone II (build and operation of new 2,106 place prison).
— HMP Thameside (finance, build and operation of new 900 place prison).
— HMP Birmingham (operation of 1,450 prison—transferred from public to private sector).
— HMP & YOI Doncaster (Operation of 1,145 place prison—with payment by results for re-offending).

24 savings for HMP Birmingham are against 2010–11 current spend
25 savings for HMP Featherstone are against the budgeted operating cost as it is a new build site being constructed by NOMS.
— Prison escorting and custodial services (PECS)—all contracted externally except high-security movements.
— Bail accommodation support services (BASS).
— ICT contracts for next generation shared services (applications, hosting and systems integration.
— Facilities management and minor works (prison and court estate).
— European social funding for resettlement projects.
— Court bailiffs.
— Interpreters.
— Prisoner foodstuff.

8.8 The department has been at the forefront of innovative procurement. For example: it has implemented the world’s first social impact bond to reduce re-offending at HMP Peterborough; implemented a payment-by-results model for reducing re-offending at HMP & YOI Doncaster; and introduced a “zero waste” mattress for prisoners that won both the Civil Service Award and Guardian Public Service Award. 32% of spend in the year 2011–12 is with small and medium sized enterprises which exceeds the Government’s aspiration of 25%; this is one of the few departments to have achieved that.

8.9 Through a programme of competition and renegotiation called “Procurement Success” the department has achieved the annual savings (actual cost reductions) listed below. The Department’s procurement directorate was recently established in April 2009, building on a capability established in HM Prison Service. Hence procurement records prior to April 2009 are more limited.

8.10 A breakdown of the savings in each year made, through procurement and re-negotiation, are shown below:
— 2007–08 £36.9 million (HMPS only).
— 2008–09 £24.9 million (HMPS and part NOMS).
— 2009–10 £49.9 million (whole department).
— 2010–11 £84.2 million (whole department).
— 2011–12 c£93 million forecast (whole department).

8.11 The cost of the Department’s procurement operation has decreased from £21.5 million in 2007–08 to £18.6 million in 2010–11. This is despite the Department’s competition programme expanding significantly. For example, the Department is now competing the operation of nine prisons for c.5,800 places; one of the largest competitions of its kind in the world. There are also competitions ongoing in areas including, but not limited to: electronic monitoring; community payback; secure training centres and homes; payment-by-results; future information and communications supply; prisoner foodstuff; and staff uniforms.

8.12 The department’s procurement directorate was the first in central government department to achieve the “Standard of Excellence” from the Chartered Institute of Purchasing and Supply and has won many prestigious awards for its work.

9. Can you provide an update on the six payment by results pilots?

9.1 We committed in the Breaking the Cycle Green Paper to delivering at least six payment by results pilots, in addition to the Peterborough Social Impact Bond (SIB) already in place.

9.2 The Peterborough Social Impact Bond pilot scheme, known locally as the One Service, is working exclusively with adult male offenders sentenced to less than 12 months in custody and discharged from Peterborough prison. There are two reports available:
— the RAND report, commissioned by the MoJ, which does some process evaluation; and
— a “one year on” report drafted by Social Finance.

9.3 The delivery of the pilots announced in the Green Paper are in the early stages and it is too soon to provide any form of formal evaluation.

9.4 As part of their ongoing evaluation of Transforming Justice the Institute for Government are just beginning a review of Payment by Results, the outcome of this work will form part of the Institute’s next evaluation report.

9.5 Some general updates on the pilots are provided below:
Two projects for offenders released from prison:
— The first of these pilots, based at HMP Doncaster, was announced on 31 March 2011. This pilot scheme began in October 2011. Serco is delivering its model, based around the prison, to deliver and commission rehabilitation services; working with Catch 22 and local public sector partners. We expect to publish our first evaluation report in Summer 2012.
— Design of the public sector prison pilot, at HMP Leeds, is underway. This will seek to involve the public sector as well as external partners, and achieve financial risk transfer. The delivery model is currently being developed. The procurement process is anticipated to commence by Spring 2012.

— The Department also intends to provide for a further prison pilot at HMP High Down during 2012. This will test how MoJ might incentivise a public sector prison to focus on outcomes with financial risk transfer.

Two projects testing a local approach to payment by results based on justice reinvestment principles:

— These projects, based in Greater Manchester and London started on 1 July 2011. The projects will test how we can motivate local partners to work together more effectively to reduce crime and reoffending.

Two pilot projects covering offenders managed on community sentences:

— The design of these pilots is underway. We will align the procurement and implementation of these pilots with the outcomes of our Probation Review.

In addition to this, the Department has said that it will provide an opportunity for the market to put forward additional ideas for payment by results projects:

Innovation pilots proposed by the market;

— The innovation pilot work stream is expected to result in one large or two medium sized pilots with a high throughput of offenders. The models for these will be proposed by voluntary, charitable or private sector organisations. Based on specific criteria the Ministry of Justice will decide which proposals to take forward. It is our ambition that all of the pilot projects will launch in spring 2012.

9.6 We are also working closely with a number of other government departments to test the principles of payment by results:

— With the Youth Justice Board (YJB) in the development and delivery of a youth custody pathfinder. The pathfinder will involve re-investing part of the YJB custody budget upfront in four local authority consortia pilot areas. Those areas will invest this funding in diversionary schemes and alternatives to custody in order to reduce the numbers of young people in their area being sentenced or remanded to custody.

— With the Department for Work and Pensions to explore how the Work Programme can best get offenders in to employment and reduce re-offending.

— With the Department of Health and the Home Office to develop and implement pilots for payment by results for drugs and alcohol recovery. These pilots aim to explore different models to incentivise the system to deliver on identified recovery outcomes, including re-offending. Eight local areas are working with central government to co-design and pilot this approach. They are: Bracknell Forest, London Borough of Enfield, Kent, Lincolnshire, Oxfordshire, Stockport, Wakefield and Wigan. The pilots are focused on individuals in the community (England only) and include offenders on short sentences and those on Community Orders with a Drug Rehabilitation Requirement.

10. There are no ICT plans included within the MoJ’s Business Plan 2011–15. Can you provide a copy of the Department’s ICT strategy?

10.1 The first MoJ ICT Strategy was published in March 2011. It focuses on delivering “Better for Less” and in supporting the business changes that are being driven by activity in the Department’s Structural Reform Plan and the Department’s Transforming Justice programme. A copy is attached.

10.2 The Executive Summary (pages 6–8) provides an overview of the main ICT goals for the current CSR period.

11. The Department’s memorandum states “our approach to effective IT also include ... completion of the NOMIS programme”. Can you explain what stage the NOMIS programme is at currently, what the total expenditure has been, and how much has been spent per year since the start of the programme?

11.1 The NOMIS Programme is being delivered as a portfolio of five projects:

(1) Prison-NOMIS.

(2) Data Sharing System (DSS).

(3) Inmate Information System Replacement (IIS-R).

(4) Probation Case Management System (PCMS).

(5) Offender Assessment Systems Replacement (OASys-R).

11.2 The first three projects have been successfully delivered and the latter two are in progress, both are currently being re-appraised in light of issues that have arisen. The assessment and replanning of both PCMS and OASys-R will impact on previously planned delivery dates.
11.3 The planned financial envelope for the whole programme was reduced to £444 million during 2010, with the removal of £10 million contingency. The total expenditure to date (Oct 2011) is £353 million. This remains within the planned financial envelope. A breakdown of spend, year on year, is provided below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 31 Mar 2006</td>
<td>£56m</td>
</tr>
<tr>
<td>2006–07</td>
<td>£67m</td>
</tr>
<tr>
<td>2007–08</td>
<td>£51m</td>
</tr>
<tr>
<td>2008–09</td>
<td>£61m</td>
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<tr>
<td>2009–10</td>
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<tr>
<td>2010–11</td>
<td>£54m</td>
</tr>
<tr>
<td>2011–12</td>
<td>£12m</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£353m</strong></td>
</tr>
</tbody>
</table>

12. The NAO’s Criminal Justice Landscape Review refers to MoJ’s review of data flows and information requirements. Can you provide a copy of the summary and recommendations of that review, and any equivalent review undertaken covering other aspects of justice (eg family and other civil justice)?

12.1 A copy of the data flows and information requirements review is attached. The review of data flows and information requirements has been carried out in support of the Criminal Justice System efficiency programme. The Criminal Justice Chief Information Officers in MoJ, CPS and NPIA have led work to identify and map the key information flows between the Criminal Justice Agencies.

12.2 The main use of these information and process maps is to support the CJ Efficiency Programme. The CJ Efficiency Programme is leading work across the CJS to move to digital working by 1 April 2012. The programme is being developed collaboratively with all of the criminal justice agencies, and will be focused on system-wide inefficiency, to deliver a more efficient and cost-effective system. Proposals and implementation plans to increase the efficiency of the Criminal Justice System will be published by December 2011. Additionally agencies have been actively pursuing ways to improve information sharing between each agency.

13. Can you provide a copy of the Estates Strategy, including a summary of priorities for rationalisation of the Ministry of Justice’s (MoJ) and Arms Length Bodies’ estates, through disposal or reallocation of any surplus estate, and any plans to meet demand for additional estate?

13.1 The Department is currently developing the MoJ Estates Strategy and so are not able to attach a copy. This is the first strategy to cover the entire estate and will provide a high-level statement of how we will deliver the estates vision, to support delivery of Justice Transformed by providing an estate of an appropriate capacity and quality that is efficient, less costly to run and sustainable.

13.2 The Ministry of Justice’s (MoJ) estate is one of the largest across Government, second only to the Ministry of Defence. Before the 2010 Spending Review (SR), there were around 2,140 property holdings with a total annual resource and capital cost of around £1.4 billion and with a value on the MoJ balance sheet of £8.6 billion.

13.3 To deliver its estate vision, the MoJ has three strategic estate priorities:

— an estate of appropriate capacity to meet business needs;
— an efficient, less costly estate; and
— a more sustainable estate.

13.4 MoJ will always ensure there is sufficient prison and court capacity to deliver civil and criminal justice. As part of this, we build additional capacity where necessary and close surplus capacity where possible.

13.5 The multi-billion pound prison capacity programme is nearing completion; 56 of the 58 building projects have been completed and the programme is on schedule. As of November 2011 the programme was around £230 million under budget. The two remaining projects are new prisons Thameside, in south east London, and the provisionally named “Featherstone 2”, in Staffordshire, which will start accepting prisoners in March and April 2012 respectively. The more efficient designs of the new build prison accommodation has realised reduced operational costs for NOMS.

13.6 NOMS is monitoring immediate population pressures closely and providing 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 reclams or rapid delivery conversion projects requiring limited investment, and additional crowding where it is safe and decent to do so.

13.7 The court build programme is progressing well. The new Westminster Court started hearing cases on 27 September, the new 31 courtroom Business Court, Royal Courts of Justice (Rolls Building) began business on 3 October. The five courtroom Woolwich Crown Court extension also became operational on 3 October.

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28 This figure includes capital costs and “near cash” resource costs, but excludes “non cash” costs such as depreciation. It also includes £161 million of “sunk costs” associated with the predecessor project (known as “C-NOMIS”).
13.8 As part of its efforts to reduce cost and increase efficiencies across the estate the MoJ is rationalising properties, where this is appropriate, including, co-locating and exiting leases where possible, as well as disposing of freehold properties:

13.9 **Administrative estate**: the aim is to reduce 183 properties by 89; 40 have already closed. Within London, 18 properties will reduce to a maximum of four. Once complete, the administrative estate rationalisation will save around £47 million a year in resource costs;

13.10 **HMCTS estate**: of the 142 courts announced for closure as part of the Court Estate Reform Programme (CERP), 112 have already closed as of 26 November. Once complete, property related resource costs will reduce by around £14 million a year;

13.11 **Prison estate**: in 2011 five prisons have closed (one, Morton Hall, is now an immigration removal centre operated by the National Offender Management Service (NOMS) on behalf of the UK Border Agency). The closure of these prisons will realise resource costs savings of around £30 million a year; and

13.12 **Probation estate**: over the SR period we expect to dispose of in excess of 100 probation properties; 32 have already closed (to November 2011). Over the SR period estimated property resource savings should deliver cumulative annual savings of £6 million.

13.13 The MoJ’s Asset Realisation Programme aims to identify up to £300 million of capital receipts, agreed as part of the SR settlement for the department.

13.14 Around half of the £300 million has been identified through already planned or announced closures from across the MoJ estate:

- around £135 million of this is from court closures; and
- £24 million is planned to be raised over the SR through sale of three former prison sites (Ashwell, Latchmere House and Brockhill).

13.15 Around a further £110 million has been provisionally identified but is subject to verification.

14. Can you provide a breakdown of staff (numbers and full-time equivalents) by grade as at 1 April 2010, 1 April 2011, and expected at 1 April 2012, 1 April 2013 and 1 April 2014?

14.1 A breakdown of our staff numbers by FTE and by grade as at April 2010 and April 2011 are shown in the attached table. A breakdown on this basis for future years is not possible as numbers are subject to ongoing review as part of our forward planning of workforce restructuring. Our current estimates suggest that the Ministry will lose around 13,000 posts over the four year spending review period.

<table>
<thead>
<tr>
<th></th>
<th>1 April 2010</th>
<th>1 April 2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>AA/AO</td>
<td>55,040</td>
<td>53,740</td>
</tr>
<tr>
<td>EO</td>
<td>11,480</td>
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</tr>
<tr>
<td>HEO/SEO</td>
<td>10,890</td>
<td>10,480</td>
</tr>
<tr>
<td>G6/7</td>
<td>2,740</td>
<td>2,690</td>
</tr>
<tr>
<td>SCS</td>
<td>290</td>
<td>270</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>80,440</strong></td>
<td><strong>78,190</strong></td>
</tr>
</tbody>
</table>

14.3 The data above is sourced from data supplied by MoJ and published on the Office for National Statistics website. It includes the following:

- MoJ HQ.
- HMCS.
- Land Registry.
- National Archives.
- OPG.
- Tribunals Service.
- Scotland Office.
- Wales Office.
- NOMS.
- UK Supreme Court.

15. Can you provide a breakdown of numbers and grades of staff redeployed, and numbers and grades of staff who took up early release arrangements in 2010–11 and 2011–12 so far?

15.1. The table below shows the number of staff by grade who have been redeployed. Data on redeployment on MoJ prior to May 2011 was not collated centrally and can only be obtained at disproportionate cost.
NOMS REDEPLOYMENT DATA

<table>
<thead>
<tr>
<th>Grade</th>
<th>April 2010 to March 2011 Redeployed</th>
<th>April II to October II Redeployed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band A</td>
<td>12</td>
<td>10</td>
</tr>
<tr>
<td>Band B</td>
<td>39</td>
<td>13</td>
</tr>
<tr>
<td>Band C</td>
<td>12</td>
<td>11</td>
</tr>
<tr>
<td>Band D</td>
<td>61</td>
<td>46</td>
</tr>
<tr>
<td>Band E</td>
<td>46</td>
<td>28</td>
</tr>
<tr>
<td>Band F</td>
<td>7</td>
<td>39</td>
</tr>
<tr>
<td></td>
<td><strong>177</strong></td>
<td><strong>147</strong></td>
</tr>
</tbody>
</table>

MOJ REDEPLOYMENT DATA

<table>
<thead>
<tr>
<th>Grade</th>
<th>May to October 2011 Redeployed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Band A</td>
<td>24</td>
</tr>
<tr>
<td>Band B</td>
<td>7</td>
</tr>
<tr>
<td>Band C</td>
<td>21</td>
</tr>
<tr>
<td>Band D</td>
<td>22</td>
</tr>
<tr>
<td>Band E</td>
<td>24</td>
</tr>
<tr>
<td>Band F</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td><strong>98</strong></td>
</tr>
</tbody>
</table>

15.2 The table below shows the number of staff by grade who have taken up early release arrangements:

<table>
<thead>
<tr>
<th>Voluntary Early Departure Schemes (VEDS) 1 and 2</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accepted</td>
<td></td>
</tr>
<tr>
<td>Band A</td>
<td>359</td>
</tr>
<tr>
<td>Band B</td>
<td>768</td>
</tr>
<tr>
<td>Band C</td>
<td>410</td>
</tr>
<tr>
<td>Band D</td>
<td>744</td>
</tr>
<tr>
<td>Band E</td>
<td>429</td>
</tr>
<tr>
<td>Band F</td>
<td>73</td>
</tr>
<tr>
<td>SCS</td>
<td>22</td>
</tr>
<tr>
<td><strong>Accepted Total</strong></td>
<td><strong>2805</strong></td>
</tr>
</tbody>
</table>

| Decision Outstanding                            |       |
| Band A                                          | 45    |
| Band B                                          | 107   |
| Band C                                          | 107   |
| Band D                                          | 318   |
| Band E                                          | 58    |
| Band F                                          | 10    |
| SCS                                             | 0     |
| **Decision Outstanding Total**                  | **645**|

15.3 All staff who have accepted or who are yet to accept the voluntary early departure scheme (VEDS 1 and 2) will have left MoJ by 31 March 2012.

16. How many people have been brought in either on an agency, consultancy or temporary basis, either in MoJ or its Arm’s Length Bodies, and for what purposes since the creation of the MoJ?

16.1 For the years from 2009–10 onwards, the number of consultants, agency or temporary staff was an average of 2476 FTE in 2009–10, falling to 1952 in 2010–11. Figures now published on the MoJ website, as part of the transparency agenda, show a further drop to 1320 in April 2011, falling again to 1181 in July 2011. Central records are not available for the period prior to 2009–10.

16.2 Every business area in the Ministry is required to look critically at the need for consultancy/agency/interim staff in order to keep such services to an absolute minimum consistent with effective delivery and our drive to achieve value for money. Before interim staff or specialist contractors can be engaged an interim business case has to be prepared setting out a thorough justification to demonstrate the reason for the interim, how this engagement will benefit MoJ and the risks involved in not having an interim resource. Relevant Business Area Directors, HR Directors and Financial Directors are the required to approve the interim business case. Once these approvals have been received, if the contract value of the requirement, including, potential expenses but excluding VAT, is £20k or above ministerial approval is required.

16.3 There will always be occasions when the engagement of consultancy, agency or interim resources is necessary to ensure effective delivery of our services. Generally the Department engages consultancy where there is a short term need for additional staff or expertise or where expertise is being brought in and knowledge
transferred to permanent civil servants. We will continue to evaluate closely whether it is right to take on agency, consultancy or temporary staff and where it is necessary to do so ensure we get best value from the use of such resources.

17. What percentage of MoJ/Arm’s Length Bodies’ budget was/is spent on consultancy and for what purposes in 2010–11 and 2011–12?

17.1 As a result of our work and improved stewardship of consultancy there is a significant reduction in costs on engagement of such resources. In 2010–11 the Ministry of Justice and its ALBs spent £104,323,000 (from a budget of £8.976 billion) on consultancy which equates to 1.16% of the budget. In 2011–12 this is anticipated to reduce to £75,001,000 from budget of £8.952 billion which equals 0.84% of budget.

17.2 The projected costs for 2011–12 represents a reduction in spend of over 50% since 2009–10. This is based on the fact the Department has reduced its expenditure from £152 million to £104 million over the two years 2009–10 to 2010–11 with a projected further reduction in costs over 2011–12 of £29 million (a projected outturn of £75 million).

17.3 Every business area in the Department is required to look critically at the need for consultancy/agency/interim resourcing in order to keep such services to an absolute minimum. As set out in the response to question 16 the Department engages consultancy where there is a short term need for additional staff or expertise or where expertise is being brought in and knowledge transferred to permanent civil servants. We will continue in our drive to ensure we get best value from the use of such resources.

18. Can you provide a breakdown of sickness absence levels for MoJ/Arm’s Length Bodies by grade and specialism, and compared to Civil Service averages since the creation of the MoJ?

18.1 The creation of MoJ in May 2007 brought together a number of previously separate organisations. This, combined with the fact that since then there have been a number of machinery of Government changes, moving organisations into or out of MoJ, means that our overall sickness absence data has included or excluded a number of units over the last four years. A copy of the available information is attached with explanatory notes.

18.2 Sickness absence data for other MoJ Public Servant ALBs (ICO, CCRC, Parole Board, Probation Trust, LSB, LSC) are not included because currently those organisations calculate their sick data on a different basis and this does not allow comparisons with the Civil Service average.

19. Which aspects of training programmes run by MoJ and its Arms’ Length Bodies (for existing and new and/ or temporary staff) have ceased? What were the priorities, in deciding which aspects to drop and which to retain?

19.1 In the last financial year, 134,420 days of training and learning were delivered in MoJ.

19.2 Since April 2011 MoJ has been working with Civil Service Learning to transition to the new model of learning which will become fully operational from April 2012. During this period MoJ has continued to offer staff a choice of learning through the existing Justice Academy learning portal, learning delivery provided by our shared services function and business specific, locally delivered learning. Additionally, in July 2011, MoJ launched the new Civil Service Learning portal and has continued to use the National School for Government to deliver events, where courses cannot be delivered in house or there is benefit in having a cross Government perspective.

19.3 As part of work to continually review our learning and development offering we have stopped the following courses although in some cases these are delivered differently, for example through e-learning.

<table>
<thead>
<tr>
<th>Course/Learning</th>
<th>Date Stopped</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Starting the management journey</td>
<td>May/June 2011</td>
<td>Other e learning provision available</td>
</tr>
<tr>
<td>Communicating Effectively</td>
<td>May/June 2011</td>
<td>Other e learning provision available</td>
</tr>
<tr>
<td>Focusing on Yourself</td>
<td>May/June 2011</td>
<td>Other e learning provision available</td>
</tr>
<tr>
<td>The Challenge of Change</td>
<td>Feb 2011</td>
<td>Changing business needs, changing environment and materials out of date and replaced by e learning.</td>
</tr>
<tr>
<td>Coaching for better performance</td>
<td>Jan 2011</td>
<td>Replaced use of external coaches by internal provision and x-Govt programme</td>
</tr>
<tr>
<td>Executive Coaching</td>
<td>March 2011</td>
<td>Changing business priority</td>
</tr>
<tr>
<td>People make the difference</td>
<td>Dec 2010</td>
<td>Replaced by Engagement Champions group learning resources</td>
</tr>
<tr>
<td>Equality Impact Assessment training</td>
<td>Dec 2010</td>
<td>Replaced by e learning</td>
</tr>
</tbody>
</table>

29 This is an approximation based on current trend for 11/12.
<table>
<thead>
<tr>
<th>Course/Learning</th>
<th>Date Stopped</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum Impact Manager</td>
<td>Sep 2010</td>
<td>Changing business needs and out of date materials</td>
</tr>
<tr>
<td>BTEC Site Manager programme for National Offender Management Service Sites</td>
<td>Planned to end in 2012–13</td>
<td>To be replaced by mixture of CSL provision and e learning programme</td>
</tr>
<tr>
<td>Introduction to Leadership &amp; Management Developing Managers Developing Leaders</td>
<td>Planned to end in 2012–13</td>
<td>To be replaced by new Civil Service Learning leadership events</td>
</tr>
</tbody>
</table>

19.5 In line with direction from Cabinet Office we have implemented processes to source new generic training through Civil Service Learning, end the use of consultants and introduced an internal Learning Gateway. This Gateway reviews changes to our learning and development programme, including business and technical training and provides internal governance on decisions to withdraw or cease training programmes where there is duplication of provision or insufficient internal demand.

19.6 Increasingly there is a demand for e-learning and “at desk” provision. One aspect of change is to examine where knowledge elements of business and technical learning can be converted and delivered via e learning reducing the need for travel or time away from work stations to attend face to face learning delivery.

20.1 The MoJ is committed to ensuring that the Annual Report and Accounts are robustly prepared and laid in a timely manner. Although it is regrettable that the MoJ was not able to lay its Departmental Annual Report and Accounts before summer recess, the MoJ did lay its accounts, unqualified, at the next available opportunity—when Parliament returned in September 2011—thus meeting the statutory deadline of laying its accounts for 2010–11 by 31 January 2012.

20.2 In addition, the NOMS agency 2010–11 resource accounts were laid on time, an important improvement over last year.

20.3 To support a more timely production of the Annual Report and Accounts, an independent external “Top 4” accounting firm was engaged to provide a project management framework and oversight of the Annual Report and Accounts production process. Recommendations from this engagement are currently being examined to help further improve the accounts production process in the future.

20.4 As part of a wider Finance Improvement Programme, the MoJ is re-designing its finance structures to ensure that it is better able to meet its future reporting requirements and timetables. Structural changes at the Senior Civil Service (SCS) level have already been undertaken and we are now implementing changes to structures below the SCS level. The restructure is expected to conclude by the end of the 2011–12 financial year. The department is currently in the process of recruiting specialist staff into the new structure to support accounts production. In the interim, the department has secured additional resources to bridge capability and capacity gaps for the 2011–12 accounts process while new permanent staff come on board.

20.5 The NAO reviewed our progress on improving financial management over the Summer/Autumn of this year. Their report acknowledges the significant improvements the department has made since their last report in 2010. Over this period we have moved from a financial maturity score of around 3 to nearer our target score of level 4 (against the NAO 5 level system). Their report acknowledges that we took action to improve our production of the accounts. In addition, the Department engaged CIPFA to review the reasons for the department not meeting a pre recess lay date.

20.6 The LSC accounts for 2010–11 were qualified by its external auditors, the NAO, when published on 27 October 2011, 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.

20.7 The Legal Services Commission (LSC) has instituted a significant and ongoing programme of work in an effort to ensure that it will deliver timely accounts and continue to reduce error rates for the year 2011–12. These are detailed below.

20.8 For the financial year 2011–12, the LSC is reviewing 100 cases a month across all its controlled work to identify the error rate as the year progresses rather than in retrospect. Work is also underway on testing eligibility on an on-going basis and early indications are that errors levels are falling.

20.9 The LSC has improved its internal quality control testing to reduce potential errors made by LSC staff. On Civil Representation cases since September 2010, extensive and rigorous monthly cross-office Quality
Control assessments are undertaken on merits testing, means assessments and the final bills paid, reducing the likelihood of internal errors.

20.10 The LSC has also implemented a number of improvements to its systems to reduce the scope for errors being made when making payments to providers. The LSC has made changes to its online submission system to reduce the ability for providers to input incorrect codes/amounts in the system for crime lower work.

20.11 In 2010–11 the LSC introduced a new Provider Management Strategy designed to profile provider risk, target areas of greatest concern and improve provider performance. This strategy has assisted the LSC’s Contract Managers—who are responsible for managing the Commission’s relationship with providers—and its on-site auditors, who between them made nearly 3,000 visits to providers in 2010–11 to identify and correct errors, and to offer guidance and support to help providers claim more accurately. Similar level of visits are continuing in 2011–12.

20.12 During 2010–11 the LSC issued far greater numbers of contract sanctions than ever before in the form of over 1,100 Contract Notices. These require providers to improve the way they claim for payments, within a certain period. In subsequent follow-up visits, initial results show that 80% of providers have required no further contract sanction or process improvement in the area of concern.

20.13 In December 2010, to tackle one of the main causes of error, the LSC significantly strengthened its assessment of client eligibility for Civil Representation cases by requiring all clients to submit their last three months’ bank statements. From May 2011, the LSC now requires original evidence of a wide range of other financial information from clients to support both income and expenditure figures cited on the legal aid means forms.

20.14 Other examples of evidence required from clients are items such as wage slips, letters from DWP, details of any other bank accounts, mortgage statements and rental agreements etc. This new approach was adopted as a pilot in the LSC’s Chester office before being rolled out nationally on civil means assessments. A number of additional staff have been recruited to assist with the new approach and the LSC is confident that it should significantly reduce the extrapolated error levels in that type of processing over time.

20.15 The LSC continues to review and improve its written guidance for providers. For example, further guidance was issued to Immigration providers in both November 2010 and April 2011 to enhance their understanding of the scheme and how to claim for payments.

20.16 The LSC has used its ongoing analysis of errors to target recoveries from overpayments made to providers. In 2009–10 and 2010–11, the LSC recovered £5 million and £7.1 million of overpayments respectively. This level of recoveries has been achieved through review and audit work undertaken both at providers and through targeted file reviews undertaken within LSC offices. The additional resource to achieve these recoveries is £1.2 million; the LSC is on track to recover a further £10 million of overpayments in 2011–12.

21. What progress has the MoJ made on implementing recommendations of the Committee of Public Accounts?

21.1 The MoJ operates a proactive system that ensures that all PAC and NAO recommendations are logged and proactively dealt with, transparently reporting on progress to the MoJ’s Audit committee and holding recommendation owners to account for ensuring delivery. This approach has been recognised by the NAO as being an exemplar across Whitehall and seen a significant increase in the number of recommendations implemented since its introduction.

21.2 Of the total of 206 recommendations addressed to the Department in NAO and PAC reports since 2002, a further 14 have been implemented since our last report to our Corporate Audit Committee in May 2011, bringing the total number of recommendations implemented to 176, or 81%. Of those outstanding, none have a Red RAG status, only one is Amber/Red, and only one predates the formation of the Department. MoJ Corporate Finance continues to monitor these recommendations and are working with business leads on the resolution path/timetable for the remaining recommendations.

21.3 Turning to the NAO’s financial management review the NAO has recently concluded a follow-up review and published a report on its findings. This review considers the progress that the Department has made in implementing the recommendations made by the PAC in its report on MoJ’s financial management in January 2011.

21.4 NAO considers that we have fully or mostly implemented three of the nine PAC recommendations with progress made on five of the remaining six.

21.5 The recommendations fully or mostly implemented are:

— PAC 1—Produce a Report for PAC on financial management progress—The MoJ submitted the required report to the PAC on 30 September 2011, with a copy sent to the JSC.
21.6 The recommendations that are partially implemented are:

— PAC 2—Clarify funding arrangements and improve oversight of arm’s length bodies (ALBs)—The MoJ has set up a steering group to oversee ALB’s which has been informed by a structured risk assessment of all ALBs. Those assessments identified the organisations presenting the greatest risks to the work of the MoJ and have allowed us to work to mitigate those risks. Work continues to review and update the Framework Documents for all ALBs to clearly set out the expectations and responsibilities of each ALB—this will be completed by the end of March 2012.

— PAC 4—Robust business planning and modelling—The MoJ has made significant improvements to its modelling capability, developing a suite of caseload forecast models that underpin robust assessments of proposed policy changes. The Department’s savings plans are brought together in a single model—the Financial Planning Model—to provide a single, consistent picture of our financial resource requirements and savings plans. The model also incorporates the Department’s future workload pressures from the suite of forecast models, key economic assumptions (notably on inflationary pressures) and other financial information to determine the MoJ’s overall financial position, including the assessment of financial risks. This medium-term financial position is used to inform decisions on financial allocations across business groups and is aligned with the Department’s strategic and performance planning.

21.7 Recommendation 5 to produce accounts on time in future is unimplemented and is discussed in response to question 20.

December 2011
APPENDIX 2

REVIEW OF DATA FLOWS AND INFORMATION REQUIREMENTS (MAY 2011)

MINISTRY OF JUSTICE

MoJ does not place major burdens on external organisations. The majority of our data comes as a by-product of administrative systems. This does not mean we are complacent. We have already made significant progress in looking at the rationale for our data collections, and therefore the return reflects a number of actions already in place to stop or refine data collections.

Moving forward we plan to continually challenge ourselves and many of our Agencies are undertaking systematic reviews of the data they need in the future with the aim to further reduce burdens where possible. This will also be informed by the development of Payment by Results and the information requirements needed to support this.

KEY PROGRESS IN REVIEWING DATA COLLECTIONS

We have already (since May 2010) completed a review of surveys which resulted in the following actions:

— Ceased collection of the Witness and Victims Experiences Survey (WAVES) after reviewing the use of survey data in the department.
— Ceased collection of the Court Users Survey based on value for money.

NOMS have put in place a new gateway function to review and streamline data collections.

YJB are currently reviewing their data collections, especially in the light of the removal of National Indicator targets.

MoJ has taken forward a project to link up core criminal justice administrative databases, to enable us to follow an offender through the system, and be better placed to produce MI and evidence from core admin systems.

MoJ have consulted on improvements to MoJ statistics and considered the needs of users and operational colleagues in developing proposals.

As a result of the work above, we have plans in place to:

— cease collection of police cautions data as a separate return from police forces (by taking it off the administrative data from the Police National Computer);
— reduce the amount of information collected from Prisons and Probation Trusts by making better use of automated reporting, stopping two large collections and only collecting information that is needed;
— cease collection of the Time Intervals Survey (of timeliness in magistrates courts) and replace it with a more comprehensive measure of timeliness using administrative data from Court case management systems; and
— reduce the amount of information Youth Offending Teams have to manually report to the Youth Justice Board through better use of the Youth Justice Management Information System and the Police National Computer.

PRINCIPLES FOR DATA COLLECTION

In reviewing existing data collections or assessing new collections the Ministry of Justice will:

— review the business need for the data (is it needed for operational purposes or to measure a key impact/input indicator, is it essential for transparency);
— review the burden/cost that would be imposed by the collection;
— consider whether a suitable produce can be produced from existing admin systems instead;
— consider the frequency of collection; and
— consult on any proposed changes to existing collections.

PROGRESS IN TRANSPARENCY

We have made good progress in delivering on the Transparency agenda:

— Court level data on sentencing (published Oct 10).
— Individual prison re-offending rates (published Nov 10).
— Data being made available in .csv as well as excel format to make more accessible for re-use (most publications already adopted, and planned for all existing ones).
— Range of further proposals being considered in addition to the core information every department has been required to produce, particularly looking at making data available at lower levels of disaggregation as a routine output.
INSPECTORATES—DATA COLLECTION

There are two main inspectorates relating to Prison and Probation.

There is no significant data collection burden being imposed by either inspectorate.

HM Inspectorate of Probation

The inspectorate asks for information on cases which commenced within a specified time period; this includes the usual identifying details (name, date of birth, sentence and date, tier level, risk of harm, offender manager and local delivery unit). This would just be a simple extract of data from case management systems.

This information is used to select the case sample for the inspection.

Following a recent review, from April 2011 onwards, Trusts will no longer be asked to submit Evidence in Advance (except for a few key existing documents—business plan, training plan etc). In addition, they are no longer required to submit a self-assessment with the focus of the inspection now almost entirely on the assessment of cases.

HM Inspectorate of Prisons

The inspectorate does not carry out routine data collections to inform inspections, but do request local information and data from establishments as part of the inspection methodology. A large proportion of this local data can be accessed through P-NOMIS (the Prison IT system) by individual inspectors.

NOMS Data Management Information Strategy and Data Gateway Service

1. On 1 June 2010 NOMS issued a Management Information Strategy with the vision of accurate and timely management information to support the commissioning, delivery and monitoring of cost-effective offender services.

Management of data collections

2. A key component of the Management Information strategy is the NOMS Data Gateway Service which introduced mandatory arrangements to regulate the collection of data across NOMS where there is an impact on staff.

3. The Data Gateway Service aims to reduce the burden of data collection from prisons and probation services, and on data requestors, by ensuring that:
   - Data collection serves business needs.
   - Collection of information is not duplicated.
   - There is one definitive data set; ie one version of the truth.
   - Data is collected efficiently and effectively.
   - Data is extracted from operational systems wherever possible.
   - Data collections maintain high standards of data quality and security.

4. The Data Gateway covers both routine and one-off quantitative data collections. Gateway approval is also required for any changes to existing data collections. It includes a requirement for detailed information to be provided so the committee can understand the proposed data collection. This covers business justification; collection details; reporting and analysis; data quality and data security.

5. Underpinning the Data Gateway process is the NOMS Data Catalogue. This is a record of all quantitative data collections. It provides details on the collections and supports the routine review of all collections to ensure we continue to collect and deliver only the information we need in the most cost effective way.

6. All collections in the NOMS Data Catalogue have an expiry date which determines when a collection has expired or needs to be reviewed to ensure continuing business need. The standard period for this is six months for new and one-off collections, and two years for regular data collections.

Impact and cost of data collections

7. At the proposal stage all collections which are submitted for approval need to identify the member(s) of staff who will be performing the analysis, and provide evidence based estimates of the effort required to report and analyse the information: looking at “Total hours per year” by Senior Managers, Managers and Administrative Staff. This information is applied to figures for staff hourly rates to derive a compliance cost for the data collection.

8. Data collections implemented before 1 June 2010 are exempt from the Data Gateway; however, during summer 2010, all of the collections which inform NOMS performance metrics were reviewed against four
criteria: cost, data quality, political impact and business value. From this, a typology of sets was produced which identified potential data collections for stopping or refining.

9. Two of the data collections that were identified were REGMON, the Prison Regime Monitoring System, and NSMART, a monthly survey of offenders from all trusts. For both these data collections the initial review identified quality issues combined with a high cost.

10. A further exercise, based on the principles of the Data Gateway approval process, assessed the respondent burden for both collections and estimate an annual compliance cost of around £3 million for REGMON and £1.5 million for NSMART.

11. Two work programmes have been established to look at alternative collection and reporting options with the aim of stopping both of these collections during 2011–12.

Managing the burden of data collection

12. There is a NOMS Data Review team which is responsible for reviewing, assessing and rationalising data collections within NOMS. The team are accountable to the NOMS Board through the NOMS Performance Sub-Committee.

13. The focus over the last couple of years has been on establishing the NOMS Management Information Strategy, and the Data Gateway Service; gathering information on the data collections across NOMS and identifying the priority collections for review.

14. Going forward, the NOMS Data Review will be managing the projects for specific collections, for example, REGMON; as well as, undertaking the routine bi-annual data review of all collections as set out by the Data Gateway.

15. The NOMS Data Review work programme for 2011–12 covers:

— Deliver replacement data collection for Regime Monitoring and NSMART;
— Following reduction in performance indicators: Review the business need for data to facilitate Prison and Probation Trust management information;
— Review data collection and reporting for Equalities Group and HR.

16. Whilst this work programme is being delivered there remains a need for all data to continue to be collected whilst we review requirements and consider future management information needs.

Data Rationalisation in the Court Service

As outlined in the challenge meeting, this information is already contained within the template. Key developments are:

- **Ceased collection of Court User Survey**—this was an outcome of a review of surveys conducted in 09/10. The survey (of court users satisfaction) represented poor value for money.
- **Planning to stop the Time Intervals Survey in 2011–12**—this survey is being replaced by linking administrative together from the Magistrates and Crown courts case management systems to assess the time taken for cases to progress through the courts.

Further Information on Land Registry Initiatives

The Land Registry are on track to exceed their KPI for percentage of transactions delivered electronically.

MoJ and KPMG have undertaken a feasibility study of Land Registry which is due to report soon. One area that has been noted for improvement is the need to develop more e-services. Land Registry are now considering more new electronic services including e-lodgement.

Land Registry’s business plan also includes the following commitments by March 2012:

— Electronically deliver the top six dealing transactions.
— View the index map online.
— Increase the number of services available on the business gateway.
### Sickness Absence Data

Sickness absence data for other MOJ Public Servant ALBs (ICO, CCRC, Parole Board, Probation Trust, LSB, LSC) are not included because currently those organisations calculate their sick data on a different basis and this does not allow comparisons with the Civil Service average. For each group of gradings the organisation title for that group is shown, highlighted blue, at the bottom.

#### Former DCA

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<thead>
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<th></th>
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</thead>
<tbody>
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<td></td>
<td>(Apr 07 - Mar 08)</td>
<td>(Apr 08 - Mar 09)</td>
<td>(Apr 09 - Mar 10)</td>
<td>(Apr 10 - Mar 11)</td>
</tr>
<tr>
<td>AA</td>
<td>9.70</td>
<td>9.14</td>
<td>9.74</td>
<td>8.18</td>
</tr>
<tr>
<td>AO</td>
<td>9.25</td>
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**Average working days lost**

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
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Sickness absence data for other MOJ Public Servant ALBs (ICO, CCRC, Parole Board, Probation Trust, LSB, LSC) are not included because currently those organisations calculate their sick data on a different basis and this does not allow comparisons with the Civil Service average. For each group of gradings the organisation title for that group is shown, highlighted blue, at the bottom.

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Sickness Absence Data

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### MOJ Average Working Days Lost

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### Civil Service Average Working Days Lost

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Narrative on changes in scope of data -

The creation of MoJ in May 2007 brought together a number of previously separate organisations. This, combined with the fact that since then there have been a number of machinery of Government changes, moving organisations into or out of MoJ means that our overall sickness absence data has included or excluded a number of units over the last 4 years. These changes are reflected in the tables by greying the years that they were not part of MoJ.

Notes

(i) The courts and tribunals services data features in the Formal DCA data from 2007-2008, it then moves into the MOJ HQ (Non NOMS) data in 2008-2010 before being reported as HMCS and Tribunals. No HMCTS figures are included as a full year of figures for the amalgamated organisation is not yet available.

(ii) In the case of HMPS and NOMS, both organisations record data in 2010 despite the fact that the majority of the staff are the same because HMPS recorded data for quarters 1 and 2 of 2010 and NOMS started recording data during quarters 3 and 4 of that same year. This situation has also occurred for the former DCA and MOJ HQ (Non NOMS).

*Any differences between the annual AWDL for MoJ in this table and the quarterly AWDL figures provided to ECMB are due to the aggregation of data by financial year in this table.

The MoJ Average Working Days Lost due to sickness figure is calculated using the Cabinet Office methodology issued to every government department in order to produce their sickness statistics. AWDL is calculated by dividing the total number of working days lost to absence (over the 12 month reporting period) divided by the total number of staff years (over the reporting period).
Written evidence from Liberata

1. Executive Summary

1.1 Liberata and the MoJ have had a contractual relationship for the past 13 years. Liberata feels it is a positive working relationship which achieves the right balance of commercial challenge and focuses on new value-adding activities. The services are stable and managed through service level agreements.

1.2 There are a number of formal mechanisms in place for monitoring the performance of the contract, including an operations board and monthly written reports.

1.3 Liberata invests significant time with the Department forecasting and managing its workload, particularly where change projects are concerned. Liberata recommends that the implications of any proposed change projects for the back-office operations it runs for the Department are considered early in the life of a project, so that the risk of resource conflicts can be minimised and/or avoided.

1.4 MoJ does a good job of engaging with suppliers before undertaking formal procurement exercises. Liberata recommends that, when doing so, the Department makes the best use it can of its incumbent suppliers, who will have built up an understanding and behaviour of MoJ’s core business.

1.5 Liberata believes there is an increasing role for the private sector in the delivery of Central Government white collar back office services and its own experience reinforces its belief that collaboration between the voluntary and private sector can have a compelling commercial and social business case.

2. Introduction to Liberata and submitter, Charlie Bruin

2.1 Liberata is a UK company employing approximately 2,000 people and is engaged primarily in the provision of finance, accounting and human resources services to local and central government.

2.2 Liberata is often referred to as a business process outsourcing (BPO) firm. Over 60% of its employees have transferred to Liberata from the public sector as a result of it being awarded contracts to provide services to public sector organisations.

2.3 Liberata’s association with the Ministry of Justice (MoJ) began in 1998, when the Lord Chancellor’s Department signed a contract with Liberata to provide finance, accounting and IT services. The contract is currently due to expire at the end of 2012. The contract provides services today to the Courts and Tribunal Service (CTS); MoJ Corporate; the Legal Services Commission (LSC) and a number of smaller MoJ bodies.

2.4 Charlie Bruin is the Business Director for Central Government and is responsible for all aspects of Liberata’s Central Government contracts.

2.5 Mr. Bruin joined Liberata in April 2004 and has worked across Liberata’s local and central government businesses in a number of different corporate and client facing roles. Since 2008 Mr. Bruin has worked in the Central Government business taking up his current role in April 2010.

3. How MoJ puts out tenders and manages contracted firms

3.1 Managing Contracted Firms

3.1.1 The following evidence describes Liberata’s experience as an incumbent supplier of 13 years, and as a prospective supplier in tender processes it has engaged in with the Department over that time.

3.1.2 This evidence does not comment on MoJ’s obligations under EU Procurement Law or the associated processes that MoJ is obliged to follow.

3.1.3 As an existing supplier to the Department there are a number of formal contract mechanisms in place that monitor and manage the day to day services that Liberata provides.

3.1.4 These take the form of regular and minuted face-to-face meetings between senior Department and Liberata representatives and written reports submitted by Liberata.

3.1.5 Contractually, Liberata is managed by the MoJ Service Management Organisation (SMO) which is part of the MoJ Shared Services Centre (SSC) which is under the control of the Director General for Finance and Corporate Services, Ann Beasley.

3.1.6 MoJ client responsibility on a day to day basis rests with Mr. Carl Moynihan the head of the Service Management Organisation.

3.1.7 Every month Liberata submits a written report, the “ARAMIS Report” which reports in detail Liberata’s performance against its service level agreements (“SLAs”) with the Department.

3.1.8 These reports are then discussed at the SMO Operations Board every quarter—a face to face meeting with senior Liberata and MoJ managers and chaired by the head of the SMO. SMO Operations Board Meetings used to take place every month, but now take place quarterly, reflecting the relatively stable nature of the services.
3.1.9 The Department also regularly requests a number of contract changes ("Requests for Change"). These are conducted using a separate process and governance and are managed by the SMO with involvement with the Department’s procurement function.

3.1.10 The mature nature of the contract, stable operation and long tenure of both Department and Liberata officers has allowed the parties to focus their respective efforts, in recent years, on initiatives and changes which add value to the Department.

3.1.11 Examples of initiatives include the implementation of electronic expense management across the MoJ’s headquarters and the Courts and Tribunal Service (CTS). The Department was able to achieve its deadline for implementing Government Banking Services (GBS) with Liberata’s help.

3.1.12 Liberata’s experience of the Department’s approach to managing its contracted firms is positive and collegiate. It is, however, a commercially and operationally challenging relationship which ensures that Department continues to draw value from the ARAMIS contract.

3.1.13 It is anticipated that the MoJ Shared Service Centre will ultimately assume control of the back office operations currently delivered by Liberata.

3.1.14 Liberata is therefore helping the Department to manage this transition as part of its obligations under the ARAMIS contract.

3.2 New Tenders

3.2.1 MoJ invests significant effort in engaging with the supplier community before undertaking formal procurement exercises, particularly for larger scale procurements.

3.2.2 The Department also makes full use of intermediary channels including its electronic eProcurement portal and utilising 3rd party organisations such as Intellect to facilitate supplier feedback and dialogue.

3.2.3 As a prospective supplier Liberata finds this approach helpful and an effective means of understanding the scope and relevance of upcoming procurements to Liberata before the formal procurement activities commence.

3.2.4 This is important, because any public procurement process is resource intensive and Liberata selects which new business opportunities to pursue carefully. Consequently, a process which enables Liberata to understand as much as it can about an opportunity prior to bidding is very useful.

3.3 Further observations

3.3.1 Incumbent contracted firms, particularly those with significant tenure, can act as a rich source of information and advice to assist the Department with its procurement activity. This is based on the level of understanding that is built up over an extended period of MoJ’s core businesses (CTS particularly in Liberata’s case). Liberata encourages the Department to utilise this knowledge and experience.

4. MoJ knowledge of future demand

4.1 To an extent MoJ’s workload is “demand led” ie it is hard to forecast accurately the total number of fines, fees and custodial sentences each year.

4.2 However, a significant amount of work, such as the planning and implementation of policy, which can have a significant impact on the back office finance operation, can be forecast and planned over the medium term.

4.3 A significant amount of time is spent by Liberata and MoJ officers planning and executing change projects deriving from policy changes, particularly for the CTS, and Liberata rely on the Department’s knowledge of forthcoming initiatives in this area.

4.4 Liberata recommends that when the Department looks at its pipeline of change projects the impact on the back office operation is considered early in the life of a project.

4.5 This avoids changes to the underlying finance systems and the draw on expert resources becoming the bottleneck for important change projects late in the cycle of a given project.

5. Can more be done by the private/voluntary sector?

5.1 Outsourcing of white collar services (specifically non-IT services) from Central Government has been modest in comparison to local government where the latter market for BPO services is approximately double that of Central Government.

5.2 MoJ has been an exception to this having outsourced a number of its finance, accounting and HR services to Liberata.
5.3 There is an appetite from the private sector to undertake more work of this nature for Central Government, evidenced by the interest in the currently active procurement sponsored by the Department for Transport, which is looking to divest its shared service operation to the private sector.

5.4 The Efficiency and Reform Group have also set out an agenda of further procurement activity in this area in respect of DWP which again is welcomed by Liberata.

5.5 A key observation is that the size and scale of these opportunities precludes many organisations from competing. However, Liberata observes and recognizes that a number of procurement frameworks, however, are emerging that will enable Small and Medium Enterprises (SMEs) to compete effectively using their niche expertise.

5.6 MoJ have also set out specific dialogue channels for SMEs to identify a means and channel for them to participate in large scale procurements.

5.7 Many voluntary sector firms fit into this latter category and it is encouraging that public sector procurement is taking account of this sector in their plans and activities.

6. How contractors are engaging with the voluntary sector

6.1 Liberata has had experience in working with the voluntary sector through direct engagement with organisations such as Skills Training UK looking to provide employment opportunities for unemployed people.

6.2 Liberata provides a number of internship opportunities in its customer services and business administration functions, whereby recruits can gain valuable experience (which in some instances has led to offers of permanent employment).

6.3 This initiative has been effective particularly with local government clients as it provides a direct benefit to their local unemployed citizens as a result of contracting with Liberata and provides a targeted means of local investment.

6.4 There is a natural constraint on the number of internships that can be offered due to the supervisory investment required, however, based on the successful graduation of a number of candidates Liberata considers this a worthwhile investment.

January 2012

Written evidence from G4S Care and Justice Services

INTRODUCTION

1. G4S is the world’s leading security solutions group, which specialises in outsourcing of business processes in sectors where security and safety risks are considered a strategic threat. G4S is the largest employer quoted on the London Stock Exchange and has a secondary stock exchange listing in Copenhagen. G4S has operations in more than 125 countries and more than 635,000 employees. For more information on G4S, visit www.g4s.com.

2. In the UK, G4S Care and Justice Services employs around 4,000 highly trained people delivering services to UK and local Government departments and agencies in a wide range of areas including: Courts and Prisoner Escorting Services; Offender Management and Prisons; Children’s Services; Electronic Monitoring; Transitional Support Services and Drug Intervention Programmes.

3. Our partnerships with more than 500 voluntary, community and training organisations across the UK help our businesses to provide a wide range of support programmes for over 100,000 disadvantaged people each year.

4. We believe that everyone has the right to live and work in a safe and secure environment. In order to help create this environment we are committed to working in partnership with Government, the voluntary sector and other organisations to reduce the risk presented by people in our care, meeting both their needs and those of the wider society. The welfare and safety of those in our care is paramount and we believe all are entitled to be treated with dignity and respect.

5. G4S welcomes the opportunity to share our experience and ideas with the Justice Select Committee.

OPEN PUBLIC SERVICES

6. We have welcomed the Government’s commitment to a comprehensive policy framework and a programme for public services reform over the next few years. We particularly support the new presumption that—with some important exemptions—the public sector should no longer be considered the default provider of government services.

7. It is refreshing to see a Government that does not have an ideological presumption that only one sector should run services as we passionately believe it is time to set aside “us” and “them” attitudes that have stifled
innovation in public service delivery for far too long. We believe greater competition will have a catalytic impact on public sector providers, from reviewing their working practices to introducing greater innovation driven by a desire to compete effectively with private sector providers.

8. To attract a diverse range of providers to commit and invest in the UK we believe all Government departments should follow the lead of the Ministry of Justice and the Department for Work and Pensions by setting out a clear competition strategy which translates the policy framework into a long term commercial commitment and sending out an unequivocal message to the market.

9. We also support the Government’s commitment to payment by results (PbR) 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).

10. We strongly support the funding model used in the Government’s new Work Programme procurement process. Companies such as G4S welcome the opportunity to incorporate payment by results and take on significant levels of risk as long as they have sufficient control of the levers to achieve results and are measured by outcomes not input.

**Questions Raised by the Committee**

**Question 1:** How does the Ministry of Justice put out tenders?

11. We welcome the investment by the Government in a national training programme for commissioners. The skills transfer program that is underway in the Cabinet Office could be expanded to other public sector purchasers.

12. In general Commissioners should focus more on how their procurement process will help achieve the desired outcomes rather than focussing on inputs.

13. We have been encouraged by the rolling programme of competition as set out by the Ministry of Justice and Department for Work and Pensions to give new and existing providers time to prepare their offering and secure long term funding. We believe this approach should be adopted by all Government departments.

14. We also welcome the recent announcement that Staffordshire and West Midlands and Wales Probation Trusts have been chosen to run the two pilots as part of the government’s PbR programme to cut reoffending. This is ground-breaking as for the first time Probation Trusts will be given freedom to innovate, and work together in public, private and voluntary sector partnerships, to reduce reoffending and strengthen community sentencing.

15. Effective procurement enables providers to use their expertise to deliver better results. The new approach to commissioning public services as set out in the Open Public Services White Paper is therefore very welcome, because too often, providers find their actions constrained by over-specified contracts. Delivering outcome focussed commissioning will require more effective market engagement before, during and after the procurement process.

16. Proposals need to be evaluated according to value for money, longer-term benefits and quality of services. In too many cases the decision to award contracts seems to be based on lowest cost. The danger of this “race to the bottom” could seriously undermine the Government’s aim to open up public services and improve service delivery.

17. Each Government department should carefully assess how the criteria to award contracts promote both high-quality, cost effective and outcome driven proposals. An improved procurement process will increase interest from a wider range of service providers.

**Question 2:** How does the Ministry of Justice manage contracted firms?

18. Transparency should be applied to both in-house and outsourced provisions. The publication of cost with performance against contracted outcomes will be a real driver for reform for all services.

19. This means providing fair funding on the basis of quality, so that public service providers are paid for the results they achieve regardless of which sector they are from, and should extend to all organisations in receipt of public funds, regardless of whether they commission services from others or provide them directly.

20. The Government should also consider the introduction of more robust governance frameworks across Departments to ensure that all aspects of contracts and relationships with providers are monitored, reviewed and, if necessary, amended regularly and effectively. These frameworks could include:

- Departmental contract governance teams;
- Professional governance boards, incorporating departmental, provider and external representatives;
- External inspectorates;

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21. Private sector providers are already more regularly inspected than in the public sector and they are often more transparent due to contractual requirements and information shared with the Government. For example:

— In contrast to prisons run by HMP Prison Service, privately contracted prisons have an independent monitor on site who provide detailed information on key performance indicators and providers can and will be financially punished if they do not deliver the agreed level of services.

— Secure Training Centres have a full unannounced and announced inspection annually by Ofsted, whereas a secure children’s home will only have a full inspection to license it every three years with an unannounced inspection annually. It is a testament to the dedication and professionalism of our staff all three STCs which G4S currently runs recently received an “outstanding” rating from Ofsted.

— The Youth Justice Board (YJB) also has an Assistant Monitor based at each STC. There are regular meetings between the Director and Performance Monitor and quarterly contract meetings with the Managing Director—where performance is scrutinised based on thematic audits carried out by the YJB each month against the contract specification. There is also a vigorous performance measure schedule in each contract where we can be financially penalised if we do not deliver services.

22. Another important area of transparency is a clear commissioner/provider split: NOMS for example acts both as a commissioner of services and as a provider though HM Prison Service.

23. The Ministry of Justice is right to emphasise that it is important that appropriate “ethical walls” are in place to ensure fair treatment for all providers. This needs to be guarded at all time and a clear commissioner/provider split needs 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.

Question 3: Can more be done by the private/voluntary sector?

24. The challenge facing government is considerable: maintain and improve the quality of frontline services and drive growth while reducing both current and capital spending. In order to achieve this, getting better value for money through an effective procurement strategy is crucial.

25. Immediate and longer term savings can be achieved by opening up service delivery to a diverse range of providers from across public, private and voluntary sectors. KPMG for example has estimated that 20% improvement in the average unit cost of public services could save the taxpayer £50 billion per year.

26. High quality, ethical and moral standards are not the preserve of the public sector, both excellent and poor-quality services can occur in any sector. That is why an open framework, encouraging competition between diverse providers with a strong emphasis on accountability and transparency is important.

27. The opening up of delivery of public services has proven to drive down the cost of delivery by 10–30% without a negative impact on quality. Introducing competition is a good way to incentivise better control over budgets and greater efficiency. For example, in the prison services the introduction of competitive tendering has been successful in significantly reducing costs, shaking up service delivery and driving innovative practice.

28. Organisations such as G4S have the experience, interest, capacity and capability to step up their involvement in public services delivery across different areas. To secure significant private sector investment the Government needs to make an ongoing commitment to long term competitive programmes, such as that the Ministry of Justice has articulated, which will encourage both the private sector, voluntary sector and its public sector counterparts to make the long term investments in personnel and resources to deliver the best results to the public.

29. The potential scale and benefits of broadening the diversity of provision are dependent on a high degree of political commitment to see through changes which may be unpopular with some stakeholder groups.

30. Our experience over the last 20 years shows us that it is the first generation of programmes which prove the most politically sensitive, particularly in areas which are more complex due to embedded public sector institutions. However, in our experience once those initial barriers are overcome and a market has been created then the benefits quickly become indisputable.

31. We believe there is a strong case for extending the commissioning approach, as a matter of priority, in partially outsourced and proven areas first, such as:

— Police services;
— Prisons and the wider secure estate;
32. In addition to existing areas, government should consider other areas to increase competition such as:
   - Welfare services and benefit fraud reduction;
   - Probation services;
   - Ministry of Defence support services.

33. To maximise success, programmes must continue beyond the gate into the communities working in partnership with public, private and voluntary sector organisations. It is important that the new PbR pilots announced in the Government’s Green Paper “Breaking the Cycle” support this “through the gate approach”.

34. Community Sentencing for example should be demanding and visible, but also beneficial to both the community and offender. It is essential that electronic monitoring and enforcement is used to ensure offenders actually attend their work placement, while violations should be followed up to ensure that offenders realise that their engagement is critical to their future.

35. G4S has extensive experience of electronically monitored curfews; we monitor around 13,500 people under curfew in the UK. This type of mobile field IT system could provide the increased monitoring required and allow curfews to be more targeted and flexible, becoming both tougher and more effective. There are also opportunities for greater use of smarter curfews in relation to those who are remanded in custody prior to conviction.

36. Based on our experience over the last 17 years, working with police and other agencies, we believe curfews can make tough, targeted and more effective using electronic monitoring and GPS technologies.

37. G4S and our partners within the police and probation services know that an electronically monitored or GPS tracked curfew can be a very effective punishment tool as well as assisting police in solving crimes and making communities safer.

38. A common approach used in Norway and the Netherlands for example is to require an offender to leave their place of residence by a defined time in the morning to attend an appointment, programme or work placement. If the offender has not left at the required time, a response is generated to investigate why the offender has not started to make their way to the required destination.

39. Some countries such as the USA and Spain are using GPS tracking technology for domestic violence cases. For example, Cook County Illinois uses G4S equipment and monitoring service to implement a domestic violence program whereby both victim and perpetrator are fitted with GPS equipment. Inclusion, exclusion and mobile zones are established and the perpetrator is court ordered to “stay away” from the victim.

40. We therefore endorse the Government’s call for a more joined-up approach to offender management. This should include using curfews more effectively and build on existing partnerships between public and private sector organisations to improve intelligence sharing, joint ownership of compliance and enforcement issues.

41. Government can help remove barriers to implementing an integrated approach, but ultimately the delivery of local integrated offender management (IOM) programmes should be about tackling local issues.

How are contractors engaging with the voluntary sector?

42. G4S works in partnership with more than 500 voluntary, community and training organisations across the UK help us provide a wide range of support programmes for over 100,000 disadvantaged people each year.

43. Success of partnerships depends on the people involved, a mutual understanding of the partner’s culture, values and behaviour and clearly articulated mutual benefits are essential to achieve successful public private partnerships. Research confirms our experience that partnerships need to pay attention to “softer” non-contractual aspects such as ensuring that partners have compatible cultures, objectives and people.

44. Genuine partnerships between public, private and voluntary sector need to be encouraged, for example through joint ventures, shared risk approaches, payment by results or outcome based contracts. A good example of this close working relationship is the plan for Lincolnshire Police and G4S to work together to deliver services for local communities, with G4S supporting the Police to fight crime.

45. We believe prime contractors should be incentivised to strengthen partnerships with public and voluntary sector. Our G4S Work Programme or our COMPASS models are a good example of this partnership approach as we subcontract service delivery to those organisations that are best placed to deliver those services locally. Combining our financial strength, international experience and supply chain management skills with the local knowledge and expertise of our delivery partners.

46. G4S currently works with a wide range of partners in the criminal justice sector: an example of this is our Strategic Partnership with St Giles Trust who we are currently working with to develop through-the-gate
services and improved rehabilitation services. We also work closely with private companies in our efforts to incorporate the Government’s “Working Prisons” initiative with partnerships at four UK prisons and work is currently underway to establish these at HMP Birmingham, for which we assumed managerial control from the public sector towards the end of 2011.

47. With contracts to run six prisons in the UK, G4S has demonstrated that work in prison can be a reality. At HMP Altcourse near Liverpool for example G4S works in partnership with a local SME to operate a strict work regime where around 120 prisoners, out of 1,000 eligible prisoners, work a normal working week in industries ranging from book recycling work to a metal fabrication factory. Within the prison industries they get paid on average £20 per week. Prisoners at HMP Altcourse are invited to make a voluntary contribution towards victim support, equivalent of five% of their weekly pay.

48. At HMP Wolds G4S works with a local digital marketing company Summit Media to allow people to go from working inside the prison to outside through the ROTL process. Summit Media has employed large numbers of these prisoners upon release and even those who do not join full-time have gained valuable work experience and skills backed with the appropriate qualifications. Summit Media has now grown into a successful international company operating in a high skills sector.

49. Restorative justice has a place in both prisons and community sentences. For example G4S has supervised offenders on temporary release from HMP Altcourse in a range of reparation activities including repairing furniture in local churchyards. G4S also provides a team of Community Outreach Officers to Greater Manchester Probation Trust’s Intensive Alternative to Custody project. As part of this project offenders are encouraged to participate in restorative justice campaigns.

50. G4S has been involved with integrated offender management since the initial pathfinders began in 2008, seconding staff into Lancashire, Nottinghamshire, West Yorkshire and Greater Manchester integrated offender management teams. Evidence of compliance with electronically monitored curfews has been used by the integrated offender management schemes as one of the indicators of a lifestyle change away from offending. Where an offender has breached their curfew conditions, the police see swift enforcement of the electronic monitoring order as a tool with which to remind offenders of the consequences of their actions.

January 2012

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Written evidence from PACT

ONE CHARITY’S EXPERIENCE OF MINISTRY OF JUSTICE COMPETITIVE TENDERING PROCESSES BRIEF HISTORY

Pact is an independent charity, first founded in 1898 as a Catholic Christian charity working with prisoners, ex-prisoners and their families. We offer inclusive support and services to support the children and families of offenders in custody; work inside prisons to reduce the risk of suicide and self-harm; support ex-prisoners on release; and develop programmes to enable members of the public to make a difference as volunteers within the criminal justice sector.

Pact has spent the past decade innovating, fundraising, and developing prison-based services for offenders’ families, including prison visitors centres, that enable families to cope with what can be a traumatic experience, and prisoners to maintain contact with family, which is known to be one of the most significant factors in reducing the risk of re-offending. Over this period, we have raised several million pounds for capital and revenue costs, recruited and trained over 1,000 volunteers, developed new models of service which have been copied and mainstreamed, developed policies and procedures, training programmes, and quality assurance programmes for this specialised area of work.

Over the course of the past three years, our contracts for services (which were initially negotiated on a prison by prison basis), have been reviewed and renewed on an annual basis. This has made it extremely challenging to develop, retain and recruit talented staff, to plan ahead, and to fundraise. Despite this, we have continued to work in good faith, and have provided pro-bono advice and guidance to officials, responded to consultations, and have raised Elm to design and build a new “family and visitors centres” for HMP Wormwood Scrubs, and other funding to enhance services and improve facilities elsewhere.

One innovation has been to develop “Pact Lunch”: a team within the charity which manages refreshments services in visits halls and visitors centres. This operates as a form of social enterprise. All surpluses have been re-invested in services, offsetting the cost to the tax payer, or enhancing services. For example, many of the children’s play services we operate within prison visits halls have been financed in this way. We have also incentivised healthy eating through differential pricing.

In 2010, it was announced that all our public sector contracted services across London were to be put out to competitive tender in a single competition. The price of the tender was approximately 70% of the current operating cost. The tender included all the visitors centres, supervised play services, and refreshments services we ran.

The tender also included our positively evaluated First Night in Custody service at HMP Holloway which has been operating and developing since 2000.
In the tender, it was noticeable that many of the services of the type being tendered which we didn’t run (such as the visits refreshments services at Belmarsh, Wormwood Scrubs and Feltham), were not included in the tender. The Feltham Visitors Centre was the only service included which we did not already run, however, in this case, specific additional clauses were attached to the TUPE obligations which meant that to take this service over would have presented the charity with a very high level of financial risk. Our very successful visits refreshments service at HMP Wandsworth, which helped to finance our children’s service, was however excluded. The consequence was that we had no opportunity to bid for any significant new work, other than Feltham Visitors Centre which would have clearly posed a financial risk, whilst work we had developed which generated a significant income stream we had been using to part-finance services, was removed from the specification.

First Night in Custody Service

This service was different from all of the other services in the tender in that it was based inside the prison reception area, and was focused on reducing the risk of suicide and self-harm amongst women arriving into the prison. The service was developed over many years with the support of a number of progressive Governors, the former Deputy Chief Inspector of Prisons, and significant funding from charitable trusts and foundations. It was independently reviewed by the Prison Reform Trust in a report entitled “There When You Need Most”, which recommended that other prisons develop provision on the model developed by Pact at HMP Holloway.

The service operated 6 evenings per week, and cost pact over £40,000 per year to deliver. The service was offered for tender at £20,000 per annum. Pact submitted a tender for close to this figure within the tender deadline. No response was received from MoJ in the advertised schedule. Pact made several representations, offering to meet the prison, offering to reduce the cost further to the advertised £20,000, and providing a copy of our “First Night and Early Days Good Practice Guide”. We were forced to place our staff on risk of redundancy notice, which lasted for three months whilst we awaited a decision. We were then informed that the service was being “withdrawn from tender”. We enquired as to whether the prison was intending to deliver the service itself, as this would entail a TUPE obligation, and we were informed that there would be no TUPE obligations. We assumed therefore that the service was being terminated. We have received no explanation, or reassurances, regarding how the prison intends to maintain the quality of care for women coming into the prison. Our work and funding contributions over a decade have not been acknowledged and to date we have still not received any correspondence from the prison regarding the decision.

We submitted a tender based on what would have been for us a painful and challenging restructuring. Having submitted the tender, we were invited to a clarification meeting at which we were told that the surpluses we proposed to generate from Pact Lunch, which offset the cost, were not acceptable, and that we had to operate the refreshments service at break-even. We explained that operating any business model on a breakeven basis, particularly during a period of rising food costs, was not feasible. We also explained that our surpluses were well below a commercial level, in order to make prices affordable for prisoners’ families, and that reducing them in the way that was proposed would add £100,000 + per annum to the cost of delivering the service. We were advised that this was not negotiable. We asked if this was a policy decision as we were under the impression that social enterprise was encouraged by the government, but we were advised that this was a local view of the London NOMS commissioning team. This created a significant problem for us financially, however, we decided to take the risk in order to maintain our services, and we re-priced our bid accordingly.

Payment by Results

We were invited to propose a PBR model to our tender. No suggestions were offered as to what were relevant “results” for these purposes. We struggled to understand how PBR might be made applicable to the services we run, which are focused on the children and families of offenders, and where proving that our intervention results in reduced re-offending would be impossible. The contract required the provider to put up to 30% of the contract price at risk. This was not a financially viable risk for us, as pact’s reserves are not so substantial as to mitigate the risk of insolvency in the event that the contractual “result” were not achieved. We proposed that a focus on outcomes would be preferable, based on work we have conducted with New Philanthropy Capital. Subsequently, we have been informed that the PBR model that has been applied to the successful bidder, which has significantly greater charitable reserves than ourselves, is that of basic service performance (opening times for example). Failure to open on time has, up until now, been regarded as under-performance in many of the contracts we hold, sometimes attracting clawback clauses. We never considered that the language of PBR might be used to refer to contract clawback clauses for under-performance.

Values

In the post-tender feedback we received and the face to face session which was provided to us, we were advised that our statement of values was not understood by the panel. Our values statements are based on our founding principles as a Catholic Christian charity. We believe in the “innate dignity of the human being”. We stated our commitment to equal opportunities and celebrating diversity, commitment to quality, and focus on human relationships. We were advised that this was not understood by the panel.
Track Record

We were also advised that in spite of the widespread knowledge amongst those involved in the commissioning process, our track record would not be taken into account, unless we were able to “bring it to life” sufficiently well in the tender document. This has not been the case in more recent tenders we have seen for the same services in different regions.

Commissioning Panels and Expertise

The commissioning panel included a number of relatively junior operational prison staff (below Governor grade). It was not made clear to us on what basis their neutrality or capability for commissioning decisions was assessed. Our work involves raising concerns with governors on behalf of prisoners’ families. Inevitably, this will at time require us to challenge and question the decisions of junior prison staff. In some cases, this had involved members of the panel. We felt uncomfortable with this but had no power to challenge it.

Added Value?

We were asked to describe our potential added value in our tender. Amongst other things, we explained that over the past three years, we had fundraised several million pounds worth of added value. Three of the buildings in which we operated in London were fully funded thanks to our efforts (Holloway, Belmarsh and Wormwood Scrubs visitors centres). We committed ourselves to further fundraising. We were left with the impression however that this form of contribution was not considered significant, or that this was simply history.

Impact of the Decision

The loss of the London tender threatened the charity’s solvency as it represented nearly half of our turnover. We restructured and made redundancies. This was mitigated by a fundraising effort and a number of charitable trusts, foundations and private donors rallied to our support. We also secured a separate tender to develop Family Support Workers in prisons from a different commissioning panel within NOMS, and a major grant from the DfE to support troubled families affected by offending. We remain an active, innovative charity, working with people affected by imprisonment but we have lost many of the staff who had committed themselves to the charity’s aims. We are also currently bidding for work similar to that we lost in London that has been tendered in three other regions. This procurement seems to have some distinct differences from the process in London. We have sought to work with smaller local charities; however, several have said that they have decided that the process of competition is too challenging and they are likely to close and transfer any staff to the winning bidder.

We have lost many experienced staff through TUPE and redundancy.

We have been entirely unable to protect the policies (which amount to intellectual property) we developed to promote consistent and value added Pact services, as to do so would have meant obstructing the smooth transfer of services. This would have been detrimental to the people for whom we have developed our services and against our charitable mission.

Pact continues to work in good faith to achieve our mission, and to do so requires continuing constructive engagement with NOMS, MoJ, prison staff, other charities and the private sector. We will not change our values, ethical standards or culture as a result of this experience.

Several major trusts and foundations, including the Tudor Trust who have contributed over £5 million to prison based projects in recent years, The Sainsbury Family Charitable Trusts, and others, have spoken publicly about how this experience has left them feeling with regards to “partnership” with NOMS and MoJ. Charitable foundations, working with service delivery charities like Pact, have accounted for the vast bulk of inward investment into rehabilitation services and innovation within criminal justice.

Some Reflections on Policy from our Experience

It would appear that MoJ aims to reduce transaction costs for procurement and contracting. One method of course is to let fewer, larger contracts, and achieving economies of scale and reduction in central bureaucracy. Driving efficiencies through the NOMS “business” is clearly necessary. However, organisations such as ours, and smaller local charities, tap into a spirit of local community action, philanthropy, voluntarism and a shared commitment to the common good. Smaller numbers of contracts to larger organisations requiring higher reserves, more over trading strategies, and higher insurance coverage are all factors that push smaller and medium size charities into obscurity, and away from the visibility of projects that attract donors and trusts. These are being put at risk.

Contracts are being tendered on terms which are clearly not in the spirit of the Compact with the voluntary sector, or which make any attempt to open up public services to voluntary sector providers. The London Visits Tender excluded the voluntary sector from bidding for services which are currently delivered “in-house”, removed a voluntary sector-run service which generated the highest revenue stream to support costs, and placed additional risks and burdens on bidders wishing to bid to run the one service that was not currently being run by the voluntary sector. This appears to be a pattern. Services tendered in the recent East of England tender...
also appeared to be those which were being run by the voluntary sector. Services run by prisons did not appear to be subject to tender. In the current tender for services in the North West, one “Lot” being tendered is for a service priced at £8,000, with TUPE liability costs of over £38,000.

There appears to be no compensation for charities which invest time and money in innovation and providing free advice and guidance to Government who then lose services they have built up over many years. If the government wishes to see continued innovation, this should be a cause for concern.

Government policy encouraging social enterprise as a means to recycle earned income into services appears to be open to local interpretation, and can be disincentivised by commissioners who lack any experience of running independent self-financing organisations, charities or businesses, or whose personal views become de-facto policy.

Services are frequently being priced at levels that appear to bear no relation to a realistic appraisal of the cost of delivery, or the minimal management costs required to ensure quality and consistency, and so appear to assume a level of charitable subsidy. This excludes smaller charities and those which either do not have the charitable reserves to subsidise the cost of delivery and remain solvent, or who believe it is unethical or improper to use donors’ money, given for charitable purposes, to under-cut competitors to win market share.

We wonder whether the values of certain faiths are either not understood or are at odds with local commissioners, and whether this will lead to fewer faith-based charities gaining contracts. Our mission makes it impossible for us to discriminate against those who continue to offend. This also makes it particularly hard for many faith-based charities to subscribe to a payments by result ethic.

February 2012

Written evidence from PCS

Budget and Structure of the MoJ

1. The Public and Commercial Service union (PCS) is the largest trade union in the civil service with over 285,000 members. This includes representing staff in the HM Court Service (HMCS) and wider Ministry of Justice (MoJ).

2. PCS represents over 15,000 members working in the Ministry of Justice (MoJ) as well as over 5,000 in the National Offender Management Service (NOMS) and 2,800 in the Crown Prosecution Service (CPS). Our members undertake a wide variety of jobs in courts, prison establishments, police stations and in headquarters. These range from legal advisers, instructional officers, associate prosecutors, prison governors, managerial, administrative and secretarial jobs to support tasks such as cleaners and office management.

3. PCS welcome the committee’s inquiry and have addressed most of the questions it is seeking to answer directly in this submission. We would welcome the opportunity to give oral evidence or further written information if required.

What should the core objectives be of the MoJ?

4. PCS believe that the core objectives of the MoJ should be to ensure that:
   — Justice (criminal and civil) is done locally in a fair, open, honest, transparent and efficient manner and that all citizens are truly equal before the law irrespective of class, creed, wealth, race, gender and all other protected characteristics under the Equality Act 2010.
   — Fundamental human rights are protected.
   — The interests of victims are not overlooked.
   — A well run, and effective administration which can respond to the needs of users in a personal manner.

5. As justice pervades every aspect of the life of society pretending otherwise is to be blind to the truth. Withdrawing a service or making it so difficult to use as to make it unavailable denies the reality of the needs that the community has.

Which functions provided by the MoJ are essential, and which could be best provided by others or not at all?

6. We would argue that all of the current functions are essential as they have been developed over the years to accommodate and ensure the fair administration of justice. We believe that justice delivery is a core responsibility of the state and should be delivered by the public servants.

Does the MoJ have sufficient understanding of costs to enable it to model the impact of future changes?

7. Primarily due to resource pressures which have built up over the years we are very doubtful that it does. The MoJ budget has faced cuts of £3 billion since 2009–10. This scale of reduction in the budget has resulted in a clear policy of reducing demand for justice services and increasing privatisation—which forms a
fundamental element of the philosophy for the MoJ’s transformation programme. The near constant restructuring of the MoJ since its creation in our view has not resulted in improved public confidence in the delivery of justice and the rule of law. However much of the demand reduction plans are engineered and artificial reductions.

8. The intention to reduce the prison population, which the government had thought would account for some savings over the next period has not been realised. In fact the prison population has grown to its highest level.

9. The proposed changes to legal aid will result in more litigants appearing in person and will therefore increase the time it takes to process and conclude cases. Some changes to sentencing and the increased use of out of court disposals for criminal behaviour risks undermining community confidence in the justice system as currently more than 50% of criminal offences do not result in a court appearance. The cumulative effect of these plans we believe will prove more expensive.

10. There is not an agreed set of costs in NOMS. There is a cost per court per day but that does not include issues such as legal aid. There are also hidden costs that are not measured. For example someone could tell you how much it would cost to administer and manage the supervision of a young person through a community order. However, they could not tell you how much it would have cost the taxpayer if the young person had been imprisoned and become a serial criminal.

11. The cumulative impacts of changes to cut costs across the justice sector are not captured. For example any increased numbers of ineffective or cracked cases will have costs to MoJ as well as other justice agencies such as the Police and CPS and there is no cross justice sector attempt to quantify or evaluate these cumulative changes. There is likely to be further pressure to strip down to the bare minimum the data collected in future, (as part of the administrative cost savings) but which will result in less available data on which justice sector agencies can do this type of work in future.

What changes to the current structure of the MoJ could contribute to improved performance or efficiency savings?

12. We believe that the most efficient way of dealing with offenders is by dealing with the issues that turned them into offenders in the first place such as poverty, poor parenting, housing deprivation, low educational attainment, mental health issues.

13. In terms of prisons we would suggest the following:
   — That there should be a wholly separate Women’s Prison Service.
   — That there should be an end to the incarceration in prisons of 15–17 year-olds and a separate service should be established for them based on secure local authority care.
   — That 17–21 year olds should never be kept in adult prisons and a separate service provided for them.
   — That the responsibility for prisons should be transferred to local authorities.

Does the relationship between the MoJ and NOMS, and the relationship between prison and probation, contribute to effective and efficient working?

14. We are concerned that there are real issues. The two organisations are culturally different with prisons operating a command and control type structure whilst probation relies more heavily on individual professional judgement and guidance. All of this is brow beaten though by a Ministry and Agency that cannot let go of some very basic things. The requirement to continue to fuse these two disparate resources is awkward and only works at a local level where you have some working within prison by offender managers.

15. We also feel that closer working and co-ordination between the MoJ and the CPS would improve the performance of the MoJ and wider criminal justice system. Areas including listing practices, court sitting times and file readiness could all be improved by a greater understanding of respective organisational issues and a closer dialogue at a local level. The general under-utilisation of associate prosecutors in magistrates’ courts is in part due to current listing practices, which in many court centres, the CPS has tried but failed to influence. Greater utilisation of paralegal officers and assistants in the crown court would also greatly assist the performance of the system. Worryingly, in many court centres now, there is a distinct lack of CPS paralegal support with officers spread across two, three or sometimes more courts, causing confusion and a lack of co-ordination between the court staff, police, victims and witnesses.

How effectively does the MoJ use IT, and does the MoJ have the right balance between centrally and locally commissioned IT?

16. We are not confident that the MoJ is an “intelligent customer” when it comes to being able to set its requirements and negotiate the best deal in terms of cost, maintenance and development issues.

17. Reductions in the number of staff able to perform this function has, over the years, declined leaving us with IT systems that are archaic and expensive per desktop.
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?

18. PCS has grave concerns about the ability of voluntary and community organisations to effectively engage in this area and believe that private sector organisations have an inbuilt advantage leading them to be more effective at responding to the large scale bidding processes which require skills and resources that voluntary sector organisations simply do not have.

19. In September 2011, PCS responded to the government’s White Paper on Opening up Public Services. The White Paper seeks to open up public services to a range of providers. We believe that its proposals will be damaging to the social fabric of the country and that they are driven by an ideologically attempt to reduce the state rather than being out of either economic necessity or to benefit public service delivery. Our response covered the position in general but applies to the Ministry of Justice in equal measure.

Does the MoJ have the necessary skills to ensure value for money contracts for the public purse and to effectively manage those contracts?

20. Over the years, the Ministry has not built up its contract management skills at the highest level. Staff reductions have led to there being not enough staff with the requisite skill sets or those that do have them are only able to allocate part of their job towards contract management.

21. An example of where we believe the Department has not acted as an “intelligent customer” is on the E-working project. The project that was meant to enable electronic filing of cases at the Royal Courts of Justice’s new Rolls Building. Since its inception in 2009 less than 400 cases have been electronically filed. The total cost to the HMCTS has been £7 million. PCS are extremely concerned that such a costly case management system is clearly not fit for purpose with no delivery date yet set for completion.

22. Our comments relating to the “intelligent customer” function above, apply equally in other areas with regard to ensuring value for money and effective contract management.

February 2012

Further supplementary written evidence from the Ministry of Justice

I hope that the evidence that my colleagues and I provided on Tuesday was helpful in furthering your understanding of the Department’s budget and structure. At the hearing I said I would write to you to cover additional information in three areas. I also touch on the LSC at the end of this letter.

Information Commissioner’s Fees

In relation to the Information Commissioner’s fees, I think it would be useful to set out a little of the background. The Information Commissioner’s work on data protection is funded from notification fees paid by individual data controllers (around £15 million this year), the levels of which are set by secondary legislation under section 26 of the Data Protection Act. Separately, his work on freedom of information is funded through grant-in-aid from MoJ (£4.5 million in 2011–12). Under current arrangements set out in the Framework Agreement between the Ministry of Justice and the Information Commissioner’s Office, the latter has to apply a strict apportionment model between the two funding streams. Both the current Post-Legislative Scrutiny of the Freedom of Information Act and the European Commission’s proposals for a new Data Protection Regulation have the potential to impact upon the way the Information Commissioner’s Office is funded. The Information Commissioner has also suggested that the funding mechanism might be revised. We are working with him to establish how it might be improved.

International Comparisons of Offending Behaviour

The Committee also asked about comparing offending behaviour with other European countries. The Department has taken the lead in trying to make realistic comparisons between national rates of re-offending. In 2010 we showed that a significant part of the difference in re-offending rates between England and Wales, Scotland and the Netherlands was due to the different measurement techniques—rather than any real difference in the level of re-offending in each country. In addition to the work on re-offending, MoJ continues to contribute to the ongoing work of the European Commission for the Efficiency of Justice (CEPEJ) on international comparisons of judicial systems across countries. The Government has also previously contributed to the work on the European Source Book—a compendium of criminal justice data from member states of the Council of Europe.

Staff Reductions

Finally, I undertook to provide the Committee with a breakdown of the staff that have left the Department since March 2010 by grade and by geographical location. I attach the information to this letter. It shows that
the SCS reduction was 22%, compared with 8% in non-SCS grades. As we said to the Committee on Tuesday, 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".

**LEGAL SERVICES COMMISSION**

On the LSC, as I said at the hearing, it is still some way from being the high performing organisation we all want it to be. But it is in far better shape than two years ago, the point at which the seriousness of its problems became apparent and the MoJ started using its limited powers of intervention to put in place a stronger leadership team. Over the last two years, the LSC leadership team, including the Commissioners, and supported by the MoJ, have been implementing a thoroughgoing programme of change. That is yielding benefits, as evidenced by the LSC’s performance scorecard and comments from the Comptroller and Auditor General. So I am very concerned if the Committee’s visit to the LSC on 1 December has led to it to hold a different view, as suggested by the line of questioning at the hearing. I think it would be helpful for all concerned to have—before your inquiry is completed—a further discussion with the LSC and me on this issue, perhaps informed by a paper that we would provide beforehand. Do let me know if you would find that helpful.

February 2012

**APPENDIX**

**REDUCTIONS BY GRADE/REGION**

**By Grade**

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<th>Grade</th>
<th>30/03/2010</th>
<th>31/12/2011</th>
<th>Reduction</th>
<th>Reduction %</th>
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<td>56</td>
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<td><strong>8%</strong></td>
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**By Region**

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<th>Region</th>
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<th>31/12/2011</th>
<th>Reduction</th>
<th>Reduction %</th>
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<td>816</td>
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**Supplementary evidence from G4S**

**SMEs and Voluntary Sector Suppliers to G4S**

The overwhelming majority of our suppliers on our Ministry of Justice contracts are with Small and Medium Sized companies, with 850 SMEs out of a total of 890 suppliers on these contacts.

In addition, G4S has extensive experience in building partnerships with the voluntary sector, public sector, the community and local employers, which have rehabilitation at their heart.

Too often rehabilitation only starts on the day a prisoner is released. This is simply too late. Rehabilitation has to begin inside prisons and continue through the gate. That is why nationally we work together in a strategic partnership with St Giles Trust to deliver peer mentoring in prisons and the community, and locally we work with over 80 public and voluntary sector organisations to deliver expert support and offer a targeted approach.

**Examples of Contracts and Partnerships with Public and Voluntary Sector Organisations**

— HMP Birmingham: BVSC (resettlement work) and Citizens Advice Bureau (debt advice to prisoners);
— HMP Altcourse: Merseyside Probation Service (through the gate support), Liverpool City Council and PSS (social care charity);
— HMP Rye Hill: Citizens Advice Bureau, Surestart (supporting families), Triple P (parenting course) and NACRO;
— HMP Parc: Kaleidoscope Project Wales (Clinical Services), RESTORE Programme (part of The Forgiveness Project around restorative justice), New Pathways (counselling for prisoners on Drug Recovery Wing), Alcoholics Anonymous (AA) and the Welsh Probation Trust (through the gate support);
— HMP Wolds: Hull All Nations Alliance (equality advice), User Voice (the Prison Council initiative), Time for Families (family support) and The Samaritans.

**Examples of Small Businesses Operating in our Prisons Providing Employment to Offenders**

— HMP Altcourse: Mersey Towels, Norburn Products Limited and Independent Workwear Solutions;
— HMP Parc: Macmillan Distribution Ltd, N2S, Bearmach, Ribbons, Gremer Aviation, Opella and Assembly & Inspection;
— HMP Wolds: Summit Media, Bonus Electrical and ASD lighting.

**Employing Ex-offenders**

The same rules apply to both charities and private companies regarding employing ex-offenders. In our experience barriers are often based on perception. When businesses have no experience working with ex-offenders, this can be unknown and challenging. However, companies who do employ ex-offenders know that they are often very dedicated employees. We therefore welcome the Government’s amendments to the Rehabilitation of Offenders Act.

Success is possible. At HMP Wolds we have been working for over a decade with Summit Media, an online marketing and strategy company, which employs prisoners within a working media centre inside the prison. Many of these prisoners have gone to full employment with Summit on release, with many others gaining valuable work experience and skills backed with relevant qualifications. Of the 450 prisoners who have worked at Summit in the last ten years, the company knows of less than 20 who have reoffended—equivalent to a reoffending rate of around 3%.

At HMP Altcourse prisoners work a 40-hour week for Norburn Products, a small local company producing office furniture for a major UK retailer, which allowed this local engineering firm to bring production back to the UK from overseas.

As an employer G4S actively encourages our business partners to get involved. We have produced a brochure to explain benefits working within prisons, organised a roundtable with the CBI to promote the concept and are in the process of hosting local business seminars near the prisons we manage. In addition, this year we will bring together all our major suppliers across the UK in an attempt to get them engaged in the programme.

G4S, being a major employer in the UK, has adopted an Employment of Ex-Offenders Charter encouraging G4S businesses to employ ex-offenders where appropriate.

**Work Programme**

Our partnerships with more than 500 organisations across the voluntary, private and public sectors help us provide a wide range of employment services for tens of thousands of disadvantaged people each year.

The Work Programme represents the most significant shift in the welfare-to-work industry for many years. G4S Welfare to Work is delivering Work Programme contracts in the following areas:

— Kent, Surrey and Sussex.
— Greater Manchester, Cheshire and Warrington.
— North East Yorkshire & The Humber.

G4S subcontracts all service delivery to those organisations that are best placed to deliver those services. In our unique delivery model, support to jobseekers is provided by a carefully selected set of organisations called “Job Brokers” who act as the first point of contact for customers referred to G4S on The Work Programme. 25% of our Job Brokers are from the voluntary sector. In addition, 40% of our “Knowledge Bank” of specialist services (eg mental health support and vocational training) is made up of voluntary sector organisations. By having such a large percentage of voluntary sector partners, we are able to draw on their local knowledge and experience in a way that other organisations cannot.

In terms of our commitment to the voluntary sector, our funding model has also been an important consideration. 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. Not only does G4S flow more funding directly to our supply chain partners than other providers, we also offer unparalleled support to them from an operational perspective.

March 2012

Written evidence from thebigword

Question 1: How has the MoJ handled its outsourcing competitions? From your experience, what can they learn from other organisations?

Competitive Dialogue Bidding Process Management

The competitive dialogue bidding process was adopted in order that the MoJ could fine-tune its own requirements and meet the needs of its end users by developing innovative and highly cost-effective approaches.

Changes to the requirement and process led to a number of concerns/difficulties in working within this tender process:

— Clarity on requirement may necessarily flex during a competitive dialogue process. However, usually this is iterative rather than major, giving continuity to the bid. In this bid the purpose and qualification criteria for each of the nine stages was not fully defined at the outset, resulting in less clarity and transparency than in other tenders. This gave the impression that comparisons made between bidders were unnecessarily subjective.

— thebigword had no sight of a scoring matrix in place on issue of the OJEU notice and therefore no transparency on requirement, purpose and output.

— A visit to the Courts and Probation services to see interpreters in action to enable information gathering and to inform solutions took place half way through the tendering process when some companies had already been rejected.

— Particularly on larger tenders, timescales between evaluation stages are clear from the outset; however, timescales between the evaluation stages here were extremely tight, in some cases allowing as little as three to four days to prepare a submission. Site visits by the Authority are common and can be an informative part of this process for the Authority but in this case there was no evidence of any site visits being undertaken by MoJ or any checks being made on the robustness of the bidders’ finances.

— thebigword was not aware that the final round would comprise just one bidder and this led to additional work fine-tuning the innovation within the bid which was no longer part of the process.

— It is usual for comprehensive feedback against the qualification criteria to be available and shared with bidders. In this case post-bid feedback was less transparent and comprehensive than other Authorities’ and did not include a breakdown as to how the 80% “qualification” level had been comprised or criteria to review bidders at any of the nine stages.

What can be learned from other organisations?

— Rigorous examination of the bidders’ financial position:
  This is particularly important for a contract of this value, £200 million.

— Contingency Planning and Secondary Suppliers:
  A secondary supplier is common in order to cover any failures in the primary service and could be seen as an essential element for a non-discretionary legal service such as that provided by the MoJ.

— Evaluation Criteria:
  A focus on quality as well as value for money, and a clear indication of the importance placed on each, enables bidders to propose a service that will effectively meet both criteria.

— Process Clarity:
  Clarity and transparency about the stages of the process and what is required from the bidders at each stage enables innovative solutions to be proposed and presents a clear route towards achieving the contract aims.

— VSO’s, SMEs and 3rd Sector:
  A contractual requirement to comply with an Sustainable Procurement Strategy could lead to more contractual focus on working with the voluntary sector, SMEs and the third sector.

— Timescales:
  Adequate time devoted to the different stages within the process would ensure that the Authority has absolute clarity on the impacts of the final tender.
— Feedback:
Effective feedback to failed bidders enables the Authority to ratify its decision process and scoring systems and enables bidders to improve future tenders.

Question 2: What achievements from other public sector delivery contracts can your company bring to the Justice system?

Sustainable Procurement

thebigword’s extensive experience of partnering with local suppliers, including SMEs and the voluntary and third sector ensures that contract requirements can be fulfilled at local level.

For the MoJ, this would put money back into the local economy, create sustainable procurement within the location, and meet the tenets of the Localism Bill. For the service user, this would provide interpreters who understand legal terminology, are familiar with regional accents and the local history and geography.

Cost and Quality

thebigword is a world leader in technology to support language services, specifically the development of Telephone Interpreting, used by the DWP among others. Also in booking technology which enables interpreters to be block booked and not booked back-to-back by different departments, thus reducing costs. This already operates effectively within other Government framework agreements.

Question 3: Do you envisage competition driving improved standards as is intended by the MoJ?

Competition will only drive improve standards if the tendering process is revisited with this as the aim. Specifically in terms of the scoring balance between quality and cost, and the ability to include innovative solutions such as the transfer of some work to Telephone Interpreting, which has proved highly successful across a number of Government agencies.

Question 4: Having been unsuccessful in a competition what further opportunities are there to work in partnership with the MoJ, or a successful prime provider?

The secondary provider contingency planning could work extremely well with the MoJ in this instance. thebigword remains committed and immediately available to support the MoJ working as a secondary provider, partnering with like-minded businesses.

In addition thebigword holds three Government-approved frameworks through which our services can be accesses: face to face interpreting (RM738/1), telephone interpreting (CAG/912/0181) and translation services (11/GEN/25).

Question 5: Why do you think you were unsuccessful in your respective applications?

Answered at the committee.

Question 6: Do you think the processes by which you competed for contracts were fair and transparent?

Please see response to Question 1 above.

Question 7: How should the MoJ balance the use of local and voluntary organisations with a requirement to provide value for money?

Innovation has always been a cornerstone of thebigword’s approach and in this tender, thebigword presented some highly innovative and groundbreaking ideas within the competitive dialogue process.

Specifically, these focussed on thebigword’s proposal to partner with 52 language services providers including SMEs, voluntary and third sector organisations to provide service at local level.

For the MoJ, This would put money back into the local economy, create sustainable procurement within the location, and meet the tenets of the Localism Bill. For the service user, this would provide interpreters who understand legal terminology, are familiar with regional accents and the local history and geography.

The partnering option was proposed by thebigword in order to ensure that the contract requirements were fulfilled at local level and thebigword still believe this is both a commercial and sustainable solution for the MoJ to balance the use of local organisations and VSOs.

Question 8: Is it feasible and desirable from your perspective for smaller firms to act as subcontractor to larger organisations?

Please see response to Question 7 above.
Ev 164 Justice Committee: Evidence

Question 9: What contractual commitments should the MoJ put in place to encourage contractors to work in partnership with smaller firms?

Please see response to Question 1 section 2 and Question 7 above.

Summary

thebigword hopes this further information proves useful for the HOC Justice Committee and remains committed and available to support this committee and the MoJ in any way.

June 2012

Written evidence from HM Chief Inspector of Prisons, HM Chief Inspector of Probation and The Prisons and Probation Ombudsman

Executive Summary

— This submission by the Chief Inspectors of Prisons and Probation and the Prisons and Probation Ombudsman addresses the question of sponsorship posed by the Justice Committee inquiry into the budget and structure of the Ministry of Justice (MoJ).

— We set out the requirements on us to discharge our remits independently and note the Committee’s previous support for our actual and perceived independence. We note our good relationships with the MoJ and that there has been no attempt to influence our judgements or reports. We recognise that all three bodies have to take their share of the financial savings required and welcome the obligation on all of us to account publicly for our work.

— However, there is confusion in the MOJ about our independent status and we are concerned that moves to apply MOJ appraisal processes to us, move our offices to the main MOJ building, stop our independent websites, restrict our ability to recruit the diverse staff we require and prolonged budget uncertainty risks damaging our actual or perceived independence. Each individual issue does not concern us all equally—but we are all equally concerned about the application of processes that may be perceived as compromising our independent judgement.

— We hope the Committee will support us in establishing or revising framework documents with the MoJ that robustly protect our independence and we would welcome an opportunity to account fully and regularly for our work to the Committee should it so wish.

1. Introduction

1.1 This submission set out the views of Nick Hardwick, Her Majesty’s Chief Inspector of Prisons (HMCI Prisons), Liz Calderbank, Her Majesty’s Chief Inspector of Probation (HMCI Probation) and Nigel Newcomen, the Prisons and Probation Ombudsman (PPO) about how the services they provide should relate to the budget and structure of the Ministry of Justice (MoJ).

1.2 The submission seeks to address the following Inquiry question:

Does the MoJ have the right processes in place to manage robustly the organisations it sponsors?

HM Chief Inspector of Prisons

1.3 The responsibilities of HMCI Prisons are set out in the Prisons Act 1952 s5A as amended by the Criminal Justice Act 1982 s57, the Immigration, Asylum and Nationality Act 2006 s46 (1) and the Police and Justice Act 2006 s28. In essence, they are to report to the relevant Secretary of State on the treatment of prisoners and detainees and the conditions in prison and detention, co-operating with other inspectorates as necessary. HMCI Prison’s remit includes prisons, immigration detention and escorts, police custody and court custody. Prison inspections make up the largest part of the inspectorate’s work and the inspectorate is sponsored by the MoJ.

1.4 The work of HMCI fulfils a major part of the UK’s obligations to ensure the regular, independent inspection of places of detention which arise from its status as a party to the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The Prisons and Probation Ombudsman

1.5 The responsibilities of the PPO are not defined in statute, although the Government has for some years been committed to placing the PPO on a statutory footing at the earliest appropriate legislative opportunity. Instead, the PPO’s powers and responsibilities are derived from terms of reference set by the Secretary of State for Justice. These are: to investigate complaints made by prisoners, immigration detainees and offenders under the supervision of the probation service; to investigate deaths of prisoners, immigration detainees, and residents of approved premises; using discretionary powers, investigate deaths of recently released prisoners or detainees. A particular focus of the PPO is to support learning, by bodies in remit, of lessons from his investigations.
1.6 The PPO’s terms of reference make clear that he is wholly independent of the services within remit and operationally independent of the MOJ, though the office is sponsored by the MOJ. The PPO reports to the Secretary of State and a framework document sets out the respective responsibilities of the PPO, the Secretary of State and the MOJ and how the relationship between them is to be conducted.

1.7 The work of the PPO, in conjunction with the Coroner’s inquest, contributes to fulfilling the investigative obligation on the United Kingdom arising under Article 2 of the European Convention of Human Rights (ECHR) to ensure independent investigation of all deaths in custody.

HM Chief Inspector of Probation


1.9 HMI Probation’s main statutory functions are:

— to report to the Secretary of State on the effectiveness of work with individual offenders, children and young people aimed at reducing reoffending and protecting the public, whoever undertakes this work under the auspices of the National Offender Management Service or the Youth Justice Board;
— to report on the effectiveness of the arrangements for this work, working with other Inspectorates as necessary; and
— to contribute to the overall effectiveness of the Criminal Justice System, particularly through joint work with other inspectorates.

1.10 In carrying out these functions, the Inspectorate also:

— contributes to improved performance by the organisations whose work it inspects;
— contributes to sound policy and effective service delivery, especially in public protection, by providing advice and disseminating good practice, based on inspection findings, to Ministers, officials, managers and practitioners; and
— actively promotes race equality and wider diversity, especially in the organisations whose work it inspects.

2. BACKGROUND

2.1 Nick Hardwick, the current HMCI Prisons was appointed in June 2010. Nigel Newcomen, the current PPO was appointed in September 2011. Both appointments were the subject of a hearing by the Justice Committee. Liz Calderbank was appointed as HMCI Probation on a temporary basis in September 2011, following the decision by the Justice Secretary, made on the recommendation by the Justice Select Committee, against the appointment of the identified preferred candidate.

2.2 The Committee’s report relating to the appointment of Mr Hardwick noted:

The independence of the inspection function, and its unequivocal perception as such, is crucial for the conduct of objective scrutiny and for public confidence in the service.

2.3 The report went on to state:

We note that “annual appraisal” appears amongst the terms and conditions for this appointment, as it did for the role of Chief Inspector of the Crown Prosecution Service. We repeat our belief that the performance of the occupants of such independent posts is better assessed by feedback from stakeholders and periodic peer review than by a quasi-management process.

2.4 The Committee’s report relating to Mr Newcomen’s appointment noted:

The post of Prisons and Probation Ombudsman needs to be seen to have the same status and independence as successive Chief Inspectors of Prisons have enjoyed in that role.

2.5 We welcome the Committee’s acknowledgement of the importance of being able—and being perceived to be able—to carry out our functions independently.

2.6 The “functional independence” of inspectors and investigators from bodies they inspect or investigate is a requirement of OPCAT and Article 2 of the ECHR.

2.6 The MOJ has responsibility for most of the bodies we inspect or consider complaints against and in whose care the deaths we investigate occur. The Home Office is the other principal department with which we deal, largely regarding immigration detention.

2.7 In these circumstances, it is therefore very important that our place in the MOJ structure and our relationship with it is carefully considered and a distinction is made between ourselves and those other organisations sponsored by the MoJ such as NOMS where direct management is appropriate.

3. CONCERNS

3.1 We generally have a good relationship with the MoJ, our sponsorship teams, other officials and Ministers. We are grateful for the support we receive. There has been no attempt to influence our inspection findings or conclusions on individual complaints cases and investigations. We welcome the obligation to account publicly and formally for our work. These arrangements are set out in general terms in Framework documents between MoJ and each of our organisations.

3.2 We acknowledge the current state of the public finances, accept the need to make significant savings and have already taken major steps to do so. However, the uncertainty that surrounds our budget allocation has the potential to impact on our ability to fulfil our remits, particularly the demand led responsibility of the PPO’s office.

3.3 Despite generally supportive relationships with the MOJ, we do have concerns about some aspects of our relationship. The level of concern we have about any individual issues may differ between us but we all share a view that there are occasions when the department fails to recognise the risks to our actual and perceived independence of treating us as parts of the MOJ “family”. These concerns include:

- Confusion about the nature of our relationship.
- Annual appraisals of Chief Inspectors and the Ombudsman.
- Accommodation.
- Appointment of staff.
- Budget uncertainty.
- The website.
- IT and other support arrangements for inspection staff.

Confusion

3.4 Not surprisingly, some officials are confused about our relationship with the MoJ. One draft MoJ public document setting out a departmental organogram as part of the transparency agenda recently described us as MoJ “Business Areas” with a line management reporting relationship to the Director, Offender Management Policy. This was easily corrected but the confusion it illustrates could lead to a more serious real or perceived loss of independence.

Appraisals of Chief Inspectors and Ombudsman

3.5 We are have all been asked to attend annual performance reviews or appraisals. Our circumstances are different. However, as the Committee suggested, we have established our own peer review process and receive detailed stakeholder feedback. We have no objection to discussing the performance of our organisations and future plans with the department. However, a management process of the kind suggested would, as the Committee recognised, compromise the independence of HMCI Prisons and the PPO.

Accommodation

3.6 It appears likely that we will shortly be asked to move from our current accommodation into the main MoJ building in Petty France. A move to Petty France would clearly damage perceptions of our independence and working in close proximity to those responsible for the services we inspect or investigate risks undermining the robustness of our independence from them. It is particularly inappropriate when dealing with bereaved families or others in dispute with the MoJ to meet with them in and correspond with them from that department’s headquarters. This issue is of lesser concern to HMI Probation whose main office base is in London.

Budget uncertainty

3.7 We do not in this submission seek to argue that our three bodies can be excluded from the difficulties facing public finances. Indeed, we have taken steps to make substantial efficiencies. However, in a context where reductions are being made, we do want to ensure that there is no compromise to our respective remits and no perception that the robust and proper assertion of our independent functions might be constrained by a fear of adversely affecting our final financial settlement.

Appointments of staff

3.8 Even once our budgets are agreed, we are subject to requirements to have a business case agreed for each recruitment and to prioritise redeployments, following a lengthy process. We have been subject to short notice rejections of previously agreed appointments, presumably as a response to departmental headcount obligations. These issues restrict our ability to manage our agreed resources effectively, recruit an appropriately diverse staff with the skills and attitudes we require in a timely fashion.
Website

3.9 Our websites are the entrances to our services for many of those we deal with. The inspectorates are now required to have their reports accessed through sections of the “Justice” website. This was supposed to make navigation easier. Both inspectorates have control over their content. However, in the case of HMCI Prisons, the Justice website will contain both the criticisms they make of an establishment and that establishment’s response. Feedback from stakeholders is that the new website is confusing and undermines perceptions of independence. Both are concerned that in the development of the new website MoJ have been reluctant to recognise the valid interest the inspectorates have in ensuring that the material they produce is displayed clearly and unambiguously, and reflects our independence. The PPO waits to learn if similar strictures are to be imposed on him.

4. Recommendations

4.1 We would be grateful for the Committee’s support in urging the Department to:
   — Establish or revise Framework documents with us that recognise the importance of our real and perceived independence.
   — Ensure that the Framework documents set out clearly how the difficulties we have outlined will be resolved.

4.2 We recognise the importance of our own accountability and if our relationship with the MOJ becomes appropriately arms length, we would welcome more regular contact with the Justice Committee where we could properly account for our use of resources, our programme of work as well as informing the Committee of our findings.

March 2012

Written evidence from the Lord Chief Justice of England and Wales

Where appropriate references to the Lord Chief Justice includes the Senior President of Tribunals, the content of the paper has been agreed with him

The Chairman of the Magistrates’ Association has also seen and commented on this evidence.

1. The Concordat since the creation of the MoJ—This is of interest given Lord Phillips comments last February http://www.bbc.co.uk/news/uk-12400913

  1.1 The Concordat (or to use its correct title “Constitutional Reform—the Lord Chancellor’s judicially-related functions: proposals”) was agreed in January 2004 following the creation of the Department for Constitutional Affairs and the agreement to transfer the Lord Chancellor’s judicially-related functions to the Lord Chief Justice. Its main focus, therefore, was not the issue of resources although paragraph 19 of the Concordat set out the Lord Chancellor’s statutory responsibilities under Part One of the Courts Act 2003 “to ensure that there is an efficient and effective system to support the carrying on of the business of [the courts in England and Wales]” and that appropriate services are provided for those courts. Paragraph 20 went on to say that arrangements would be put in place to ensure that the judiciary would be effectively involved in the resource planning of what subsequently became HM Courts Service and the Department for Constitutional affairs, “to ensure that the judiciary is enabled to have early engagement with the new agency and Department at a strategic level, including on issues concerning resources plans and bids.”

  1.2 Many of the principles embodied in the Concordat were then incorporated into the Constitutional Reform Act 2005, which was implemented on 3 April 2006. The 2005 Act did not, however, deal with the question of resources as that was already incorporated within the earlier Courts Act 2003.

  1.3 The creation of the Ministry of Justice and the changes to the Lord Chancellor’s Department in 2006 led to the need to redefine the status of the courts’ administration, HM Courts Service. Lengthy discussions led eventually to the April 2008 Framework Document. That created a unique partnership between the Lord Chancellor and the Lord Chief Justice “in relation to the effective governance, financing and operation of Her Majesty’s Courts Service with a view to preserving the due and independent administration of justice.”

  1.4 The Framework Document contained elaborate, and with hindsight perhaps over-elaborate, provisions relating to the finance, resource allocation and business plans for HMCS. The Tribunals Service operated differently within less formal structures. Accordingly, with the merger of HMCS and the Tribunals Service in April 2011, the opportunity was taken to revisit the wording of the original Framework Document.

  1.5 In a new Framework Document effective from April 2011, what had previously been a partnership between the Lord Chancellor and the Lord Chief Justice became a partnership also including the Senior President of Tribunals. The aim of the new organisation, Her Majesty’s Courts and Tribunals Service (HMCTS), is “to run an efficient and effective courts and tribunals system which enables the rule of law to be upheld and provides access to justice for all.”
1.6 There are three judges on the board of HMCTS including the Senior President of Tribunals and the Senior Presiding Judge. The board is chaired by an independent chairman, Bob Ayling, and has two other non-executive directors. 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 underlining the fundamental need to protect judicial independence.

1.7 The staff of HMCTS has a joint responsibility both to the Lord Chancellor and to the Lord Chief Justice/Senior President of Tribunals “for the effective, efficient and speedy operation of the courts and tribunals”. Of course they are civil servants, accountable to the Permanent Secretary. But equally they have an obligation to judges to ensure the effective and efficient operation of the individual judge’s court, as well as ensuring, where the judge has a managerial function, that the judge receives “high quality, impartial, transparent and honest advice”.

1.8 I have noted the link to previous discussions about the status and funding of the Supreme Court but that is not for me to answer.

2. Effect of efficiency savings—Where are the pinch points going to happen? What is the impact on independence?

2.1 There is an inevitable tension between the Lord Chancellor’s duties under the Courts Act 2003 and the positions of the Senior President and myself as Heads of our respective judicial systems. As a government minister, the Lord Chancellor is constrained in the resources available to him; we would almost certainly wish him to be in a position to spend more money on the courts and tribunals than he is able.

2.2 The Lord Chancellor and I have an annual dialogue in relation to the allocation of financial resources to HMCTS for the following year. Whilst we may not always be in total agreement, our discussed are based on a general understanding of the position of the other partner. We are assisted by the same impartial advice we both receive from senior officials within the Ministry who themselves are aware of the need to protect judicial independence and to ensure the effective and efficient administration of justice.

2.3 The Lord Chancellor and I agreed an allocation of £1083 million to HMCTS for 2012–13. That was at the conclusion of an iterative process involving senior officials within the Ministry, the Chief Executive of HMCTS and the Senior Presiding Judge. Whilst we agreed the budget, the Senior Presiding Judge and I remained concerned about the robustness of some of the fundamental assumptions implicit within it in relation to workload and income and therefore expressly reserved the right to revisit the allocation were any of those assumptions to prove inaccurate. The assumptions were that: “workload in the Crown Court and Magistrates’ Court continues to fall at the level forecast; workload in the civil and family courts, as well as in the tribunals, remains broadly in line with current volumes; county court civil work is not put under undue pressure from the transfer of 4,000 sitting days to family; receipt of income from Other Government Departments remains on target; and fee income is as predicted.”

2.4 In tribunals there has been, historically, discussion between administrators and judges and monitoring of performance issues (perhaps in part because in the past tribunals were often under the sponsorship of the department making the original decisions and linked into their budgeting processes). In the courts, I am conscious that the judiciary has much more awareness of the need to monitor the performance and timeliness than hitherto has ever been the case. Members of the courts judiciary with leadership roles are now in regular liaison with officials within HMCTS; this would not have been contemplated even just a few years ago. I am satisfied, however, that this change in role has come about without any diminution of judicial independence.

2.5 Since its inception, HMCTS has pursued a vigorous plan for the reduction in staff numbers necessary if it is to live within the resources made available to it by the MoJ for the remainder of the present Spending Review period. The agency has reached all of its targets in relation to the reduction in staff numbers. To date there is no evidence available which shows any adverse effect on performance. Of course I continue to monitor the situation and harbour concerns about the impact on morale of both the judiciary and staff; I am conscious that staff numbers are presently reducing in number more dramatically than the present reduction in workload. I derive comfort from the reassurance that the HMCTS board has every intention of investing whatever money it has available from savings elsewhere in maintaining the numbers of front-line staff.

2.6 One particular matter which concerns me, however, is the reduced budget available for training and similar activities. Of course, the judiciary is not alone in this. The budget for the Judicial College has been reduced. The proposals to reduce the number of Justices’ Clerks and Deputy Justices’ Clerks may have a significant impact on the training of the magistracy, although I do hope that together the Judicial College and the Magistrates’ Association will be able to devise suitable alternative arrangements. The greater awareness judges, including the magistracy, have of the effectiveness of community programmes, the greater is the likelihood that use will be made of them in the sentencing of offenders; it is therefore important to ensure that Probation Trusts continue to provide information to the judiciary, whether by means of compliance with a statutory duty or otherwise.
3. Structural changes within HMCTS—Is the intention of the merger being met? How are the internal structures organised?

3.1 In considering structural changes within HMCTS it is probably worth dwelling on the two significant structural changes that have quietly revolutionised tribunals since 2006—bringing together the administration of individual tribunals (under the sponsorship of the then DCA) into a single over-arching Tribunals Service in April 2006 and the judicial restructuring under the reforms of the Tribunals, Courts and Enforcement Act 2007.

3.2 Since 2006 over 20 individual tribunals, each with its own judicial appointments and leadership as well as separate supporting administrations, have been absorbed within the new administrative and judicial structures, streamlining judicial and administrative leadership and management as well as allowing more flexibility in deploying judges and non legal members to meet business needs.

3.3 I leave to HMCTS any narrative explaining the structural changes which have been achieved as a result of the creation of the present agency. At managerial level, the aims behind creation of HMCTS appear to have been achieved. The management is much more streamlined. The percentage of resources spent on management overhead has been considerably reduced.

3.4 One change which has particularly impacted on the courts judiciary is the introduction of jurisdictional leads for Crime and for Civil, Family and Tribunals. Previously, within HMCS, the regional directors had jurisdictional responsibilities in addition to their primary role in respect of running their particular regions. Now, there are senior officials within HMCTS solely responsible for the operational aspects of the various jurisdictions. This should lead to a much greater focus on the needs of those jurisdictions than previously has been the case and mirrors existing arrangements in the Tribunals Service where the larger jurisdictions (such as employment and social security) also have jurisdictional boards comprised of HMCTS administrators from operations and the jurisdictional support teams as well as the lead judges.

3.5 The operational impact of the introduction of cluster managers, each of whom will be responsible for about 500 members of staff, is still a matter under development and therefore one which we are watching closely. Some cluster managers will have a responsibility for a considerable number of courts and tribunal locations spread over a wide geographical area. There is also some concern over the lack of articulation as to how individual courthouses will be run after the abolition of the role of their individual court managers.

3.6 The aims behind the merger of HMCS and the Tribunal Service are sound; it is regrettable that it has come about at a time of considerable reduction in the public funds available to fund the service and in circumstances therefore where it is easy to confuse the laudable aims behind the merger and the need to reduce public expenditure.

March 2012

Written evidence from the Probation Chiefs Association

1. Probation Chiefs saw the transcript of the oral evidence given by Phil Wheatley to the Justice Committee on 24 January, in relation to the Committee’s Inquiry on the Budget and Structure of the Ministry of Justice.

2. We appreciate that this is uncorrected evidence. However we think you should know that Probation Chiefs have found his 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.

3. Probation Services in England and Wales have, and will continue to respond to the challenges of reducing re-offending and pubic protection and do so with the highest integrity and competence. The Committee took evidence from the PCA in its inquiry on The Role of The Probation Service. However, if it would be helpful for the PCA also to contribute to the Committee’s thinking in this Inquiry we are ready to do so.

March 2012

Letter from Matthew Coats, Chief Executive, Legal Services Commission to Rt Hon Sir Alan Beith MP, Chair, Justice Committee

In advance of my first appearance before your committee on 1 May, as suggested by Sir Suma Chakrabarti in his letter of 2 February 2012, I am writing to address the issues relating to the Legal Services Commission raised at your hearing on 31 January 2012.

My overall impression six weeks into my new role as the Chief Executive of the Legal Services Commission mirrors that of the Permanent Secretary—that the Legal Services Commission has made significant progress over the past two years but there is much more to do to become a first rate organisation delivering value for money, respected by all stakeholders in the justice system for the way it commissions and administers legal aid.
Of paramount importance we need to continue to improve our financial controls and demonstrate that we are good custodians of public money.

The Legal Services Commission has made substantial progress in this regard and reduced the level of estimated mis-payments to legal aid providers. Whilst the external audit of our 2011–12 accounts is still underway, we anticipate that error levels will have been significantly driven down over the last two years.

Whilst this is encouraging, we recognise we still have a lot more to do to reduce errors to immaterial levels and remove the relevant accounts qualifications. Therefore, we have recently launched the latest phase of our financial stewardship improvement work, focusing on three main areas.

Firstly, we are intensifying our work to continue reducing errors in the areas responsible for the majority of mis-payments. Through a combination of additional IT controls, targeted audit testing, staff training and continued engagement with legal aid providers, we expect to tackle the causes of remaining errors.

Secondly, we will complete work to overhaul the organisation-wide approach to all areas of governance, assurance and audit. This will include enhanced risk management practices and robust programmes of both internal and external audit.

Thirdly, we will continue our efforts to improve all aspects of our financial management capability. This includes further strengthening the skills and capacity of staff in our finance and assurance functions and implementing a modern accounting system, featuring Oracle general ledger and debt management systems, as part of our Integrated Delivery Programme.

We are also implementing an intensive programme of work to cleanse the inaccurate records that have caused our debtor account balances to be qualified. Allied to our participation in the government-wide Fraud, Error and Debt programme, and our move to modern debt recovery IT systems and processes, we are confident that we will deliver significant improvements in debt management.

As well as improving our financial controls we have also radically improved our operational performance— in the middle of last year we had a total backlog of 114,000 cases and were not meeting most of our agreed service standards; I am pleased to be able to tell you that the backlog has been roughly halved to 65,000 cases, and as of today our service standards are being achieved. My objective is to ensure that we maintain or improve on these standards in the future.

As I write this note, the Legal Aid, Sentencing and Punishment of Offenders Bill is in the final stages of consideration by Parliament, but we expect it will have received Royal Assent by the time I appear as a witness. Implementing the Bill will be a big challenge for the LSC in two main regards. The first is that with much reduced scope for civil legal aid we will have to re-tender several thousand of our civil legal aid contracts. Given that our overriding objective is to de-risk the delivery of the Bill, our approach to this round of commissioning services is not to make radical changes from our historical approach. This approach was summarised by the Legal Aid Minister, Jonathan Djanogly, who said in February “The goal will be the delivery of contracts with provisions familiar to providers, tendered in a familiar way ... ensuring a smooth transition between the system we have now and the one brought in by the Bill.”

Because the LSC contracts with several thousand legal firms, we operate in a uniquely challenging commercial environment. To give you some numbers, in 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.

Longer term, the government intends to introduce price based competition, initially in criminal legal aid, as the mechanism to ensure that taxpayers get value for money and that recipients of legal aid receive good quality services. The government intends to consult on its proposals in this area later in 2013 and I will be working closely with MoJ colleagues over the coming months on this new approach to commissioning services which needs to be delivered in the context of the Ministry’s overall Transforming Justice strategy.

The second major change is the abolition of the Legal Services Commission and its replacement by an executive agency—the Legal Aid Agency—in April 2013. Our challenge, which I am looking forward to, will be to set the right culture and to create the necessary capability for the new agency.

Finally, I’d like to update you on how our new client and case management IT system is progressing.

The system, based on “off the shelf” Oracle software, is currently in testing; once this is complete we intend to run a six-month intensive pilot with approximately 50 legal aid providers in the north-east of England. Once this pilot is successfully concluded and the changes required to our systems as a result of the Legal Aid Sentencing and Punishment of Offenders Bill have been delivered in April 2013, we plan to roll the system out to the remainder of providers and our offices.

This system will move civil legal aid online, reducing costs and improving accuracy and controls. We are also looking at expanding our criminal legal aid online service.
I trust the above has been helpful and look forward to further assisting the Committee with its enquiry on 1 May.

April 2012

Written evidence from Applied Language

1. In response to the Committee’s request for comments on Peter Handcock’s assessment on the interpreting contract, I can confirm that we agree with the content of the responses he has provided to date and can also add the following.

2. There have always been some cases that have been held back, with suspects detained longer, bailed or occasionally released without charge because of a lack of available interpreters at a specific time. This is not a new problem because of the new service. It is actually one of the inefficiencies that the language services framework agreement will counter and it will do so when it is completely bedded in and operating optimally.

3. Official feedback from the courts suggests that there are only a very small number of cases where interpreters do not turn up (eg because of sickness or travel problems) and even fewer where they are late. This problem, of course, was at least equally likely under the old system. Where we know we cannot fill a booking we give courts advance notice.

4. In terms of the way that the procurement process was carried out, our experience as a bidding contractor and the communication of the final award, we can confirm that the process was thorough, fair and robust. During all stages of the tender submission and face-to-face dialogue, Applied Language Solutions was an independent SME.

5. The framework agreement was awarded to address operational inefficiencies, lack of transparency or management information, and disproportionate costs across the justice sector in terms of language services. Inevitably, there will be a period of transition as the new provision is fully embedded, but inefficient, working practices are changing with the aim of achieving higher quality and more cost effective services.

6. We are fulfilling the vast majority of bookings (approximately 3,000 a week) and have 2,500 experienced and qualified linguists actively working within the system. Assigning qualified and experienced linguists to assignments and insisting on continuous professional development, while reducing operational inefficiencies, remains our focus. We are determined to get the service running at a level that meets the MoJ’s requirements, provides transparency of opportunity for linguists and fully supports the justice sector.

April 2012

Written evidence from Spurgeon

SPURGEON’S RESPONSE TO THE EXPERIENCE OF MINISTRY OF JUSTICE COMPETITIVE TENDERING PROCESSES

BRIEF HISTORY

Spurgeons is a medium-sized national children’s charity, first founded in 1867 by the Baptist Preacher Charles Haddon Spurgeon as a compassionate and distinctively Christian response to the plight of orphaned and vulnerable children in London. Motivated by their faith, Charles Spurgeon and his associates sought to provide shelter, education and a loving environment for the city’s most vulnerable children.

In the 21st Century we continue to live out this legacy working with our society’s most vulnerable children striving to leave a positive imprint on the life of every child we work with. Today this Christian faith remains an active and important motivation for the work we do. It forms the transparent base from which we engage with people of all faiths and none. Spurgeons has a more recent history of being involved in prison visits during the late 1990’s up to 2007, providing supervised play areas in two prisons in the East of England.

We are a specialist children’s charity providing services through commissioned contracts, statutory grants and trusts and foundations across 25 local authorities in England. Our service portfolio includes management of Children’s Centres, Targeted Family Support (Family Intervention Projects, Parenting Assessments, Supervised Child Contact, Intensive Case work, parenting education and domestic abuse programmes including the domestic violence perpetrators programme), Targeted youth support (bereavement and loss counselling, support for young carers, and preventative and diversionary community activities), and support for children and young people affected by imprisonment (bespoke family support, visit centres, and mentoring and befriending services).

TENDER FOR PROVISION OF LONDON PRISON VISITS CENTRES

1. In 2011 Spurgeons successfully tendered for and were awarded the regional contract for delivery of Prison Visitor centres within London.
Our reflections on the process and involvement as a new provider entering the market are:

1.1 We recognised there was a distinct shift from the historical individual prison contracts for the service to a single regionalised contract. This contractual shift emphasised that the commissioners were looking for a new integrated service with a greater emphasis upon children and families. Our feedback following success indicated that as a new provider we had effectively understood this change in culture from the commissioners and required needs for the local service to change and adapt accordingly. As a national organisation this approach to regional contracts was an attractive opportunity for us and effectively opened up the market for us. We would not have been interested in smaller individual contract lots, as they would not generate sufficient economies of scale to develop a competitive tender.

1.2 As a new provider we were able to review the existing provision on offer with objective eyes and assess areas of inefficiency that we believed we could enhance or add value to. One such area was in relation to the existing catering provision that had historically been used by the existing provider to generate profit and re-invest into the service on a social enterprise basis. From our experience in other settings working in deprived communities we understood that it is important to make refreshments affordable for the most disadvantaged families, especially when you have a captive market and families are not allowed to bring their own food/drinks into the visitor centre. We were very happy to propose to make this more affordable to visitors and from our research and scouting our view was this didn’t provide value for money from the incumbent provider. This we believe demonstrates the value of competitive tendering, enabling providers to critique established methods of operating and propose new service solutions.

1.3 Through the process we experienced potential barriers around TUPE liabilities in regards to one prison with transferring staff. The pension liabilities would have cost us up to £100,000 should we have taken on the staff. As an experienced organisation in dealing with TUPE situations we were able to propose and negotiate a mutually satisfactory position of phasing the transfer of staff posts with liabilities remaining outside of Spurgeons until vacancies occurred through natural wastage. This demonstrates the commissioners were able to operate flexibly and reasonably to reach a mutually beneficial position for both sides whilst retaining fidelity to the delivery of services commissioned.

1.4 Contrary to comments made by PACT in their written submission of evidence regarding the Payment by Results element of our contract, we have actually been commissioned to a balance of both outputs and outcomes including opening times as referenced by PACT but also covering levels of customer satisfaction, engagement with families, and families’ experiences and improvements. The commissioning process we experienced asked us to propose relevant outcome measures and processes for measuring impact. We found the commissioners receptive to our methodology of Outcomes Based Accountability and willingness to negotiate with us regarding only contracting us against outcomes that are within our control to influence. For example—reducing re-offending is outside of our control and influence within this service contract.

1.5 We were pleased within the process we experienced that the commissioners explored our values as an organisation. In our dialogue meetings with the panel we were asked many questions about our values and ethos as a Christian charity. The feedback we received from the panel following our success indicated that we had effectively integrated our values throughout our tender submission responses and demonstrated how they are applied in practice. We feel this is an important aspect of commissioning that was effectively undertaken to ensure the provider of services had a “values fit”.

1.6 We were aware following the award of contract that there would be a significant impact on the incumbent provider that required us to operate sensitively within the transition period. We have experience of transferring services in and out of Spurgeons and understand how this feels when investments in staff and services move into a new organisation that can be viewed as a potential competitor. There is often anxiety that intellectual property and procedures also transfer into new organisations, but the commissioning process assesses the capability and capacity for organisations to deliver under their own policy, procedures and resources. Upon taking on the provision we agreed with the existing provider there would be a three month time-limited period for the incumbent provider to generate profit and re-invest into the service on a social enterprise basis. This contractual shift emphasised that the commissioners were able to operate flexibly and reasonably to reach a mutually beneficial position for both sides whilst retaining fidelity to the delivery of services commissioned.

1.7 We know 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. It is also often proposed that it is only small organisations that can operate at a local community level. We would suggest that “large” does not simply mean remote and detached from the local. The consideration is more how effectively does any organisation undertake engagement activity irrelevant of size. We welcome commissioning approaches that assess expertise in engagement with the most vulnerable communities and do not pre-judge the capability of organisations based on their size.
1.8 We would also suggest, that as a medium sized organisation who is also involved in a number of national forums we were able to bring added value to the policy agenda in this area of work. For example, as a leading provider of Children’s Centres we are working closely with the DfE on developing the Payments by Results initiatives within the Children’s Centres arena, which enables us to bring this learning to a wide range of Government Departments. We have welcomed the opportunity to work closely with Central Government Commissioners to ensure this does indeed improve standards and outcomes that are delivered in order to provide best value for the public purse.

What more could be done?

2. We would welcome continued on-going dialogue with the market by commissioners. 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.

3. We would also welcome greater contestability from within Ministry of Justice 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. For example, the universal commissioning of prison visitor centres across the secure estate or group programmes, in order to propose new solutions and efficiencies in service delivery.

May 2012

Supplementary evidence from Liberata

Payment by Results Initiatives

1. Liberata is currently piloting a solution for the electronic settlement of civil court fees (through a setting up a customer account facility) on behalf of HMCTS.

2. Cost savings are generated for the Department through the removal of cheques (the predominant current payment method) and their associated administration. Liberata is compensated on the basis of electronic fee payments that are put through the “Payment by Account” solution ie it is a “usage” based commercial model. The customer base, predominantly solicitor firms, have responded well to this initiative.

3. There was quite a bit of debate in the committee session that it is the “difficult to convert” transactions that can undermine an initiative. The equivalent in this instance will be those customers that insist on paying by cash or cheque at a physical distribution point thus requiring HMCTS to keep all its physical distribution points open and bear those costs. The agency is statute bound to provide access to justice so must facilitate this. The agency has come up with the innovative approach of exploring other existing physical distribution points such as Post Office Counters to overcome this.

4. The roll out of this initiative is currently a matter for the HMCTS Change and Modernisation Board, Liberata has been impressed by the Department’s willingness to explore new commercial models.

Provision of External Accountancy Services

5. I believe KPMG were retained to provide assistance on the 2010–11 accounts. Liberata is providing support on the production of the 2011–12 accounts and I am not aware of a continuing role of KPMG in this cycle. Liberata was not involved in the 2010–11 statutory accounts work.

6. The £4 million figure quoted is broadly the compensation Liberata will receive for work and support with the statutory accounts up to and including 5 July 2012. The Department has the option to terminate this arrangement with 20 days notice with no penalty on either side.

7. In terms of the work we are doing—we have provided the Department with up to 32 resources which are deployed across MoJ HQ and the major agencies (NOMS, HMCTS, LSC) to provide support on the production of the statutory accounts including: generating the numbers; writing the notes to the accounts; liaising with the National Audit Office; and dealing with technical accounting issues. Liberata also have applied dedicated resources to making improvement recommendations across the agencies and HQ to make the process stronger in following years. Liberata are also providing oversight and project management to the production of the accounts reporting to the Director General for Finance and Corporate Services, Ann Beasley.

February 2012
Supplementary evidence from the Ministry of Justice

1. For what reason did the run of data on reoffending change? What has replaced it? Are the two data runs comparable?

1.1 The new measure is a single measure of proven re-offending that aims to provide a complete picture of re-offending which is easily understood by all. It has been developed in response to an extensive public consultation where users were overwhelmingly in support of the changes.

1.2 We have replaced six different measures of re-offending, which were previously split across five publications, with a single, coherent overview of proven re-offending for the first time.

This meant that in 2011, for the first time:
- each Prison Governor was able to see his or her re-offending rate;
- each Probation Trust chief had data on re-offending of those on community orders;
- we published re-offending rates for each Local Authority so the public can see re-offending levels in their community; and
- people can see re-offending rates for adults, juveniles, drug misusing and prolific offenders measures on a consistent basis both nationally and locally.

1.3 In addition, re-offending figures have been back-cast to 2000 to provide consistent data over time, and full comparisons between the old and new measure have been published.

1.4 We are also continuing to publish and provide NOMS with figures based on the previous local re-offending measure to support its use in the Probation Trust rating system as it is the agreed measure for 2011–12.

2. Which companies are contracted to assist on the statutory accounts? What work are they contracted to do? In which areas do contracted firms overlap? How does their work fit into the overall process of producing the accounts? How much do contractors receive for this aspect of their work?

2.1 The Department routinely uses contractors to supplement our accounts production teams. For the 2010–11 accounts we engaged KPMG. They were contracted to provide support both on the Departmental accounts production and the production of the HMCTS Trust Statement that HMT required the Department to produce for the first time for 2010–11. The total value of the contract, encompassing both these elements, with KPMG was £244k.

2.2 Having been unable to deliver the 2010–11 Departmental Accounts before the summer parliamentary recess in 2011, we asked CIPFA to conduct an independent review of our accounts production process. In light of the findings of that review, and a reorganisation within Corporate Finance, we have 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.

2.3 The contract with Liberata is worth approximately £4 million. Of that value it is estimated that half of the costs (£2 million) are offset by what the Department would have spent if existing vacancies in our permanent staff structures had been filled (taking into account salaries, on-costs and recruitment costs). We keep resource usage by Liberata under regular review to ensure we are achieving value for money for the taxpayer.

2.4 Following the CIPFA review of the 2010–11 accounts production process and the lessons we are learning during the current 2011–12 process we 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 moving forward.

3. The IT strategy is a detailed document, setting out major goals. Do you have the resources to support those changes and to realise the benefits?

3.1 To meet the challenge of the IT Strategy we will work smarter and undertake key programmes of work which will deliver genuine business benefit. The business case for each programme emerging from the strategy will be justified in its own right.

3.2 For MoJ ICT to deliver “Better for Less”, expenditure on running and maintaining current infrastructure and systems will be reduced. In addition to updating its ICT operating model, the MoJ intends to change its supplier model from one in which a full range of services is bought from prime contractors by line of business, to one which is a multi-supplier “Service Tower” based. Our Future IT Services Sourcing (FTS) Programme aims to deliver a reduction in MoJ ICT “run and maintain” costs of approximately 30% (£100 million per annum).

3.3 FITS will also provide a platform for common services, reducing the cost and complexity of transferring, processing and storing information across MoJ, and the Criminal Justice System.

3.4 Ahead of FITS we have negotiated with incumbent suppliers for built in programmes of work to both improve services and reduce costs (eg data network optimisation and application rationalisation in the HMCTS
3.5 We are developing the capability of our own workforce through the IT Profession and the Organisation and Change project, integrated with the FITS Programme. A senior team has been recruited with wide experience from both public and private sectors. We have also established managed services to provide specialist expertise we cannot afford to maintain in-house and to help with peaks in workload.

3.6 MoJ is active in the delivery of the Government ICT Strategy, taking a lead in a number of areas such as cloud computing, data centre rationalisation, and IT capability, as well as contributing to others such as the Public Services Network and Green ICT. These all have the potential to realise new ways of delivering more with less resource.

4. How confident are you that lessons have been learned following C-NOMIS? How do you assure yourself that we will not see another example of a waste of public funds?

4.1 Following the previous problems with the C-NOMIS Project a succession of reviews was undertaken to identify the root causes of the difficulties encountered. These reviews included a comprehensive NAO study in 2009 and extensive scrutiny from the subsequent PAC Hearing. The review activities identified a range of recommendations, all of which have been proactively addressed by the Ministry of Justice.

Actions taken in the initial years included:

— 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.

4.2 Three of the five projects in the NOMIS Programme have now been delivered successfully. However, the remaining two projects are particularly complex because they involve introducing standardised systems across the very varied landscape of Probation Trusts in which there are particular legacy related challenges.

4.3 Proactive governance has led to early recognition of challenges to delivery. In recognition of these, and because the suppliers were having great difficulty in meeting delivery dates, the Ministry of Justice embarked on a further series of actions to ensure that public funds continue to be expended as efficiently as possible. These actions have included:

— introducing additional resources in the form of two Project Directors to drive/oversee the re-planning of the projects;
— establishing additional senior oversight by establishing a weekly Probation ICT Executive Board;
— working with the suppliers to develop robust implementation plans;
— commissioning further independent reviews to strengthen assurance confidence; and
— addressing the resulting recommendations.

4.4 The intended way forward entails completing the delivery of the remaining two projects. As previously stated, they are complex and, as such, will continue to challenge the combined expertise of the Department and its suppliers. Nevertheless, the applications are built and have been well received by front-line staff and the projects are under tight control. We will update you again on this in the Autumn.

5. What progress are the courts making in introducing video technology? Have prison governors, who have a degree of autonomy in this area, been fully cooperative in relation to prison video links?

5.1 By July 2012 HMCTS and NOMS will have ensured that all Crown Court sites and the vast majority of magistrates’ courts sites have at least one court room equipped with video end points capable of connecting to the Prison Court Video Link and to other video-enabled court processes.

5.2 As an integral part of developing these new links we will be developing revised guidance, developed jointly between courts and prisons, on the most effective usage of PCVL and looking to maximise the potential that the equipment provides. The working relationship between the courts and prisons is very good with both seeing the benefits in maximising usage.
6. Does MoJ have sufficient evidence to know what does and doesn’t work?

6.1 We have a large and growing evidence base on the effects of different measures and interventions across the justice system, although there are some areas where our evidence is limited or incomplete and this is considered in developing our analytical and research programmes.


6.3 Significant new knowledge has been produced in recent years to help achieve our aim to reduce reoffending. This is summarised in the Evidence Report we published alongside the “Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders” consultation and in other research and statistical publications.

The Evidence Report is available here:

In terms of what works in relation to offender management for adult offenders:

— There is evidence that suggests that an offender’s education/training, employment and accommodation needs have a bearing on their reoffending. Offender managers also believe that having a stable environment is key to getting the offender on the journey of change. Key factors in offenders desisting from offending are their motivation and belief in the ability to change, positive relationships with their case manager, and offenders having effective resettlement support to help address accommodation and employment problems.

— There is very good evidence from UK and North America that accredited cognitive behavioural/skills programme based interventions reduce reoffending. For example, the most recent evaluation of the prison based Enhanced Thinking Skills programme showed a reduction of 6 percentage points in the one-year reconviction rate when comparing similar offenders and a statistically significant reduction in the frequency of reoffending.

— There is promising evidence that drug treatment programmes can reduce reoffending. Drug interventions shown to be effective include methadone treatment, heroin treatment, therapeutic communities, psycho-social approaches (eg, CARATS) and drug courts.

— There is promising evidence of what works to reduce reoffending in sex offenders. To further build the evidence base there is a programme of work to explore the effectiveness of Sex Offender Treatment Programmes (SOTP). There is also an evaluation of the polygraph disclosure pilots that is aimed at understanding the impact of the polygraph on disclosures by sexual offenders. The findings of this research are likely to be available in the latter part of 2012.

— There is developing evidence that violence/anger management programmes help reduce reoffending. A systematic review for the MoJ found that, overall, interventions with violent offenders were successful at reducing reoffending. Evaluations of domestic violence treatment programmes have yet to demonstrate reductions in reoffending.

— There is developing evidence on the effectiveness of mentoring. Mentoring programmes appear to contribute to reducing reoffending when used to complement a range of professional interventions. NOMS is developing a programme of research to look at interim outcomes of the mentoring process that is likely to be relevant to factors that impact reoffending.

— There is developing evidence on the effectiveness of restorative justice and other approaches which enable greater reparation to the community. An evaluation found that, when looking at a number of restorative justice pilots together, they were effective in reducing the frequency of reoffending. Recent further analysis of the data by the MoJ has suggested that the size of this impact was around 14%.

— There are positive indicators that Multi-Agency Public Protection Arrangements (MAPPA) may contribute to reducing reoffending. Offenders released from custody between 2001 and 2004 after the implementation of MAPPA (in 2001) had a lower one year reconviction rate than similar offenders released between 1998 and 2000 before MAPPA implementation. The one year reconviction rate declined before 2001, but fell more steeply after MAPPA was implemented.

In terms of what works in relation to sentencing for adult offenders:

— There is evidence that short custodial sentences are less effective than comparable court order commencements on probation. A comparison of all short custodial sentences (under twelve months) and court order commencements under probation supervision in 2007 showed that court orders were more effective (by 7 percentage points) at reducing one-year proven reoffending rates than custodial sentences of less than twelve months for similar offenders.
— There is some evidence that Intensive Alternatives to Custody (IAC) when compared against short custodial sentences, given the differential costs between these two disposals, are likely to be more cost effective (in terms of the costs of each sentence and the expected costs of future offending), provided that they do at least as well as short custodial sentences in rehabilitating offenders and provided that offenders given an IAC order are those who would otherwise have got a short-term custodial sentence. The evidence currently available suggests up-tariffing by sentencers was relatively low, ie the IAC sentences were not inappropriately targeted at offenders who might not have been at risk of receiving a custodial sentence. However, further work is required before we can conclude whether there are cost savings from the use of IAC orders.

— There are a number of recent publications from the longitudinal cohorts studies of offenders carried out by the MoJ. These shed further insight to childhood experiences, employment, accommodation, disabilities of our offender populations. The reports are available here: http://www.justice.gov.uk/publications/research-and-analysis/moj

In terms of what works in relation to offender management for young offenders:

— There is no strong evidence base in the UK for interventions that reduce reoffending but there is good international evidence and indicative findings from the UK to support family based interventions such as Multi-Systemic Therapy (MST), can have a positive impact on the behaviour of juveniles offenders.

— Evidence also indicates that Programmes like “Scared Straight”, which involve organised visits to prison facilities by juvenile delinquents or children at risk for becoming delinquent, actually leads to more offending behaviour.

— For offender management within the CJS there is some indicative support in the UK for rehabilitative treatment; employment, training and education schemes; ISSP (Intensive Supervision and Surveillance often given as community part of DTO custodial sentence and to serious/prolific offenders in the community) and support tailored to individual needs during and after custody. There is mixed evidence to support mentoring which can reduce delinquency and aggressive behaviour.

— Research was recently published by MoJ on the predictive validity of Asset, which is a juvenile risk assessment tool. The report is available here: http://www.justice.gov.uk/publications/research-and-analysis/moj/2011

There are still some gaps in our knowledge in relation to what works for young and adult offenders and we have plans in place to tackle these:

— Key areas where we plan to focus on include continuing to improve our understanding of what works to reduce reoffending especially to further enable the right commissioning choices.

— Work is underway to test the feasibility of assessing the relative effectiveness of different juvenile sentences.

— We will be undertaking analysis to determine the effectiveness of different community order requirements for similar adult offenders.

— We are undertaking analysis to compare re-offending rates for IAC adult offenders with re-offending rates for similar offenders receiving custodial sentences of less than 12 months, and similar offenders receiving court orders.

— Some of the evaluations of the payment by results pilots will shed further light on the impact on reoffending of interventions targeted at addressing these needs eg the joint work programme with the DWP on getting offenders back to employment.

— We also plan to continue to develop our understanding and knowledge of the adult and juvenile offending populations through analysis of the MoJ cohort studies.

In terms of what works in relation to civil, family and administrative justice, the evidence base is less developed relative to criminal justice:

— We hold information on volumes of cases that come into the court and tribunal system and have survey data on the experience of justice problems in the general population and the experiences of those who use the justice system to resolve these problems. We have also undertaken some bespoke research to build the evidence base in recent years.
7. However, we do not yet have a full understanding of the nature of problems experienced, the pathways people take to resolve issues, including outside the court system, why people choose to use different approaches, and the effectiveness of different resolution methods. A MoJ study of legally-aided clients also indicates agreements reached through mediation may be more sustainable than those reached as a result of legal representation. However, it is difficult to assess the impact of mediation compared with court given that individuals self-select into dispute resolution services depending on the nature of the case and what they may feel is appropriate.

7. We need to understand better why and how people use court, advice and alternative dispute resolution methods, and the medium and longer term outcomes for those using these services. We are considering how to improve the research evidence in relation to these areas as part of the development of our forward research programme.

In terms of legal aid:

7. We have management information from the Legal Services Commission on case volumes and spending, broken down by categories of case and by types of legal aid support. The Legal Services Research Centre publishes a survey which provides more detail on the kinds of problems faced by legal aid clients.

7. We are currently undertaking research with the LSC and LSB into how they might be affected by the legal aid reforms. The MoJ is also planning research into clients to get a better understanding of their characteristics.

7. In which areas has modelling of demand improved, and where are there still weaknesses?

7.1 The Forecasting & Model Development Unit (FMDU) was set up to deliver the MoJ's vision of high-level, driven-based forecasts of demand linked to detailed agency workload and financial models. This suite of models analyse demand on, and flow through, the different parts of the Justice System and, by linking this work to our operational and financial business planning processes, the Department and its Arm's-Length Bodies are able to better assess, on a consistent basis, the impact that reform or savings in one area will have on the others, including potential consequences for legal aid expenditure.

7.2 FMDU initially developed a high-level vision for a fully-integrated forecasting landscape (where we want to be) for all MoJ operational business areas. We have firmed up this vision into a more detailed blueprint setting out all the work streams that will be needed to deliver the vision and a roadmap containing a proposed sequencing of projects.

7.3 Driver-based forecasting models of future family and civil caseload have been completed and regular forecasts produced. A county court model is being developed to deliver basic forecasts of the administrative resource requirements to carry out this caseload. A high-level model of the Criminal Justice System (the Criminal Justice Framework) has been developed to analyse the potential downstream impacts of proposed changes to policy and operational changes. This model was used extensively in planning for the Spending Review. More detail is now being added to the component parts of this model; for example, a more detailed model of the Crown Court that forecasts sitting days has been developed, and a similar model of the magistrates' court is currently being developed. To ensure consistency of data and assumptions, the annual prison population projections publication is based on forecasts produced using this framework of models.

7.4 In terms of the demand for legal aid, MoJ and the Legal Services Commission (LSC) continue to work closely to develop our understanding and analysis of the drivers of demand for legal aid. Linked to this, the LSC has recently introduced new driver-based forecasting models that include underlying drivers of case starts, and which take into account key external economic factors such as levels of earnings and eligibility. We have also established links with models in the wider MoJ (eg in HMCTS, YJB and NOMS) to ensure consistency of approach and common use of data and assumptions.

7.5 As well as developing a coherent and consistent set of forecast models, FMDU has also established a clear governance framework to support the development and running of the forecast models. This governance helps to ensure that all stakeholders and users are engaged in the models, can feed in key needs and intelligence, comment on and agree the methodology and assumptions, and quality assure the forecasts produced.

7.6 However, we recognise that there are some limitations to our approach. Shocks to the system, such as the additional caseload arising from the public disorder in August 2011 are, by their very nature, difficult to predict. However, our modelling capacity made it possible to gain very quickly a good, after-the-event understanding of the likely impact of the additional cases.

7.7 The number of entrants to the criminal justice system will depend on the priorities and capacity of the police and Crown Prosecution Service alongside changing patterns of crime. It is difficult to build a robust model that can fully account for this complexity and so we also work closely with our colleagues in the Home Justice Committee: Evidence
Office and Crown Prosecution Service (CPS) to ensure we have a common understanding of likely demand, in addition to regularly monitoring the volume and composition of our caseload.

7.8 For some services, changes in demand are driven by changes in the economy (for example debt or repossession cases in the civil courts). It is recognised that the economic forecasts provided by the Office for Budget Responsibility and the Bank of England carry considerable uncertainty, especially in the current climate. This limits our ability to accurately model future workload.

8. What impact is the Specification, Benchmarking and Costing Programme having?

**Improved effectiveness**—The service specifications, which form part of the Service Level Agreements and Contracts for prison and probation providers, specify clearly “what” must be delivered—ie the minimum outcomes and outputs (legal, safe and decent) required for each service. This has led to improvements to services where providers had been under-delivering against the specification, for example at HMP Leeds where improvements have been made to visits services.

**Improved economy**—The specifications have helped to identify and address services where providers have been over-delivering against the specification.

**Improved efficiency**—The SBC costings and non-mandatory operating models have been used by public sector prisons and probation Trusts for local benchmarking, contributing to operational savings for SR10. Case studies from HMP Leeds, HMP Guys Marsh, and Norfolk & Suffolk Probation Trust provide evidence of this. Another example is West Yorkshire Probation Trust which has made efficiencies in its services to courts.

**Greater freedom for providers to determine “how” to deliver services.** For example, the Residential Services specification does not require a personal officer scheme. The HMP Leeds case study explains how this has allowed resources to be refocused to ensure all officers interact in a positive way with prisoners. The Cell & Area Searching specification has enabled HMP Guys Marsh to reduce routine searching and increase intelligence led searching, based on local risk assessments.

**Improved transparency**—The NOMS Directory of Services on the MoJ website specifies around 60 services funded by NOMS and delivered to offenders, defendants, victims and courts. The SBC service definitions are the basis for the collection of the actual costs of delivering services, which will support the “input indicators” to be published starting from Autumn 2012.

**More effective commissioning and competitions**—provider-neutral outcome-based service specifications are at the heart of SLAs for public prisons, Trust Contracts for probation and the current offender services competitions.

**Improved strategic planning**—the SBC service costings have informed the development of strategy, including the probation review, competition strategy, and development of PbR.

9. How has the MoJ been able to build on the research of Justice Departments overseas?

9.1 The MoJ works closely with a range of international partners to share best practice and evidence, and we use this information to inform a range of policy issues as highlighted in the recent NAO report on “Comparing International Criminal Justice Systems”. One example is the trilateral forum we have with Canada and the US. This trilateral is due to meet again in May this year to share evidence on the links between justice reform, economic prosperity and security.

9.2 The first Quadrilateral Group on Justice Reform (UK, Australia, New Zealand and Canada) teleconference took place in February this year in preparation for the forthcoming Senior Officials of Law Ministries meeting (a Commonwealth forum) which is due to be held in the UK from 30 April to 1 May 2012. Future agenda items and issues on which we might share expertise may include: “doing more with less”; legal aid reform; and family justice, in support of improving best practice.

9.3 One of the objectives of Crispin Blunt’s visit to the US in September 2011 was to learn how prison industries have been expanded in US prisons; how the US has attracted private sector involvement through the Prison Industrial Enhancement (PIE) programme; and to understand the barriers to growth of prison industries.

9.4 The Minister was also interested to learn more about the US experience of private prisons, use of electronic monitoring, drug and alcohol treatment, and combatting gang culture. US interlocutors expressed an interest in the UK’s payment by results model of commissioning and lessons learned from the initial pilots.

10. What consideration are you giving to extending the pilots relating to the collection of aged debt by private sector companies, so that all categories of debts can be so collected, rather than just those included in the pilots? Have you estimated the possible benefits which might accrue from such an approach?

10.1 Early indications of the success of the pilot are favourable and HMCTS has the potential to substantially improve its capability to recover similarly aged outstanding impositions should it seek a future contract with a commercial provider to manage a large proportion of its aged debt book. Independent validation as part of the final evaluation of the pilot is currently being undertaken by the Project Team and supported by the MoJ Estates, Competition and Courts Economics team.
10.2 It is important to note that although it seems likely that a much higher proportion of fine defaulters will be contactable (and therefore capable of successful case conclusions), this does not equate to high net value to HMG—the low average value of the majority of the debt will mean that even relatively low levels of activity per account will have the effect of significantly eroding the overall net amount of value obtained. However, in terms of increased confidence in fines as a method of punishment, and in the criminal justice system more generally, it is likely that provided the net value remains positive, action is worth taking if a significant proportion of fine defaulters can be traced and made to pay.

10.3 The evaluation of the pilot is provisionally expected to be completed with a supporting evaluation by the summer. Following the completion of this evaluation report the future strategy for HMCTS aged debt will be developed.

11. Could you expand on comments in oral evidence (from Peter Handcock) concerning the effects of increases in fees? Specifically: what work is being done to make fees more contingent on the process used to determine a case (eg, to charge higher fees for more complex processes?); have there been perverse impacts of fee rises in the past, and if so, what have these been?

11.1 We have developed a fees strategy for achieving full cost recovery by the end of 2014–15. In implementing the strategy we are looking across HMCTS with the aim of providing a more coherent and straightforward system of fees. Our view is that fees should be set according to the amount of resources a particular process uses so, based on those principles it is logical that more complex and costly cases will be likely to attract a higher fee. However, as indicated in the evidence given to the Committee, this is not just about increasing fees to meet current costs, but also about reducing those costs to ensure that we are able to keep down the level of fees charged.

11.2 The MoJ published research (What's cost got to do with it?, MoJ Research Series 4/07, 2007) on the sensitivity of civil and family court users in England and Wales to changing fee levels. This research concluded that, overall, individuals feel that cost played a minor role in their initial decision to go to court—ranked 8th out of a list of nine factors. The primary drivers were those relating to resolution such as “getting a final decision” (especially for those going through a divorce or in child contact/residency cases) and “getting justice”. The implication is that price sensitivity is relatively low, at least in terms of the factors people say are important to their decision to start court proceedings.

11.3 However, there is evidence that the level of fee charged can have an impact in some instances. By way of example, in 2008 changes the two tier fee charging structure for warrants of enforcement had an adverse effect to the way regular court users approached debt enforcement. The two tier fee charging structure changed from £25 or £35 for debt between £0 to £125, and £45 or £55 for debt over £125. The new charging structure charged £70 or £100 irrespective of the value of debt. The impact of the change saw a substantial drop in volumes for specified money claims as well as warrant of enforcement for such claims. Feedback from users confirmed they had changed their approach to debt enforcement permanently because the change had made debt collection no longer cost effective.

12. What potential is there for making more from very high value civil cases?

12.1 There is potential for recovering a greater proportion of the cost of very high value civil cases through fees. The department recently closed a consultation on fees in the High Court and Court of Appeal Civil Division which recognised that the cases heard in these jurisdictions are generally more complex, time consuming and therefore more costly than in other parts of the justice system. At present almost all money claims with a value of £25,000 or more are heard in the High Court. The maximum fee charged currently for issuing such a claim is £1,670 and the hearing fee is £1,090. The consultation paper sought views on increasing issue fees for higher value money claims (those over £300,000), up to an upper limit of £10,000 for the highest value claims, and also on introducing hearing fees based on the length of time taken by a case, rather than as a flat rate. The response to the consultation will be published in due course.

13. What suggestions do you have for marketing our commercial and chancery courts across the world in what is an increasingly competitive global legal market?

13.1 Legal services as a whole are an important contributor to the UK economy—UK legal services generated £19.3 billion in 2010, while legal services exports for 2010 totalled £3.6 billion.

13.2 MoJ’s Plan for Growth, published in May 2011, set out our plans for supporting the growth of legal services in the UK. It described how MoJ would work with industry experts, including the Law Society of England and Wales, the Bar Council and TheCityUK, to deliver a joint approach to encouraging growth in the legal services sector.

13.3 A key element of our plan was to deliver a range of promotional activity coordinated by TheCityUK, the body responsible for promoting the UK financial and related professional services industry, and its members, including the Bar Council, the Law Society and UKTI. Specifically, the plan stated that an industry-led campaign would be established to promote the UK as a centre of excellence for dispute resolution.
13.4 MoJ also actively promotes the UK’s legal expertise and services through overseas visits and during inward visits from international delegations. We have also been working with UKTI to make sure trade and investment advisors in British Embassies and High Commissions have the right material to promote UK legal services and UK law and are seeking feedback on how useful this has been.

13.5 The Unlocking Disputes campaign was launched in October 2011—www.unlockingdisputes.co.uk. At the heart of the campaign was the new Rolls Building, London’s new state of the art court complex, which for the first time brings together the expertise of the Chancery Division of the High Court, the Admiralty and Commercial Court, the Patent Court and the Technology and Construction Court, under one roof. Targeting international business leaders, the campaign highlights and promotes the UK’s unrivalled professional expertise, the quality of English law, the independence of our judiciary and the world-class facilities now offered though the Rolls Building to cement the UK’s position as a world leader, attract new clients and maintain existing clients.

13.6 We believe that this approach of marketing the totality of the UK’s offer is the key to success; while our courts are an important part of the picture, they are only one of the reasons why international businesses bring their legal business to the UK. We are continuing to work with our partners over the coming year—the Law Society, the Bar Council, TheCityUK and the City of London—to promote the UK as a centre of excellence for dispute resolution, through the Lord Mayor’s visit programme and a programme of proactive media relations targeting the international business community.

14. Procurement

14.1 On 7 February the Committee heard evidence from G4S, Sodexho, Liberata and we want to use this letter to clarify some of the issues that were raised.

14.2 The MoJ does, as a matter of routine, have the procurement strategies for its projects approved via the requisite governance process. In the case of the Secure Escorting of Young People this included the management board of the YJB who signed off the competitive dialogue process as the most appropriate approach to the market. This meant that output based specification for vehicles and staffing solutions could be robustly tested, a solution that achieved new, higher levels of security accreditation for the handling of restricted data, and manage the forthcoming change in legislation (Legal Aid, Punishment of Offenders and Sentencing Act) which increases the volume of journeys by 50%. For the prisons competition, final approval went to the Major Project Authority and HM Treasury.

14.3 With regard to the duration of procurements in the MoJ, it is entirely accepted that complexity of the requirement and ability of the department to adequately define such complex needs does affect the time taken to complete the competition process. Two projects referenced at the JSC hearing were: the Prisons Competition which lasted 18 months from contract notice (Nov 2009) to contract award in (Apr 2011) and Secure Escorting of Young People was planned to take eight months. The duration of the prisons competition was delayed by the Government deciding to change the basis of pension valuation from CPI to RPI.

14.4 By comparison, the latest prison competition, which is double the size (competing nine prisons concurrently) is scheduled to last 12 months, is anticipated to deliver greater savings than that first competition and award contracts totalling over £2 billion.

14.5 None of the submissions from Bidders for Secure Escorting of Young People (including G4S) achieved the quality threshold, there were several issues with some of the bids in terms of vehicles, staffing and their understanding of Care in the Court Cell area. The competitive dialogue process allowed the MoJ to adopt a prudent approach to ensure as many acceptable solutions as possible were available to the MoJ. Any other shorter process could have resulted in the competition being null and void at that point. Contracts will now be

awarded for Secure Escorting of Young People in Apr 12 so the procurement duration will be 10 months overall.

April 2012

Written evidence from the Professional Interpreters’ Alliance (PIA)

THE MINISTRY OF JUSTICE FRAMEWORK AGREEMENT WITH APPLIED LANGUAGE SOLUTIONS LTD/CAPITA PLC. FOR THE PROVISION OF INTERPRETING AND TRANSLATION SERVICES IN THE CRIMINAL JUSTICE SECTOR

What? A National Framework Agreement that changed, ie lowered, the minimum standards for interpreters working in CIS.

Where? The MoJ has contracted on behalf of:
— all of HMCTS in England and Wales;
— the CPS; and
— NOMS.

In addition, nine police forces currently use ALS Ltd (not all under the FWA). If the Home Office Police Procurement Proposals are adopted, the MOJ/ALS FWA will become mandatory for all police forces.

When? In HMCTS in North West England, since November 2011; HMCTS across England and Wales from 01 February 2012. However, interpreters continue to be engaged directly by HMCTS and the AIT Bookings centre as well as through other agencies, alongside ALS Ltd.

The CPS contract is signed but not yet live across all regions. The CPS has been making use of the Framework Agreement in four Witness Care Units since 1 February 2012. The CPS is now scheduled to start using the Contract for the remainder of its interpreting services from 1 September 2012, but this date is being kept under review.

BEFORE

Under the previous system, as outlined in the National Agreement, freelancers drawn from the NRPSI and other approved lists were contacted directly by courts and police. Rates were set centrally. Around 2,300 NRPSI interpreters (qualified, vetted, registered, experienced, subject to an independent complaints and disciplinary procedure) served the courts with problems occurring only rarely. The MoJ’s rationale for changing the system is unpersuasive.

Since February 2012

More than 60% of NRPSI interpreters expressly reject ALS Ltd’s terms of engagement and lowered quality standards and are currently refusing all direct court bookings as well.

Media coverage in the first weeks of the contract concentrated on ALS linguists simply not turning up, turning up late, or leaving early, causing adjournments and unnecessary remands.

As an interim measure, in the first weeks of ALS supplying courts nationwide HMCTS reverted to using the old system alongside ALS to provide for hearings at short notice. Most NRPSI interpreters who refuse to work for ALS Ltd are also refusing direct HMCTS bookings as they refuse to help prop up ALS. Effectively, the majority of NRPSI interpreters have withheld their services from HMCTS since 1 February 2012.

40 The Home Office consultation documents on Police Procurement are here: http://www.homeoffice.gov.uk/publications/about-us/consultations/police-procurement-
42 The National Register of Public Service Interpreters, www.nrpsi.co.uk.
43 See the MoJ’s ‘Letter to stakeholders’ dated 6 July 2011.
44 A summary per language and per region is here: http://goo.gl/g9WHM. A survey carried out by Involvis found that 90% of the 1,200 respondents refuse to work for ALS, see http://www.familvlawweek.co.uk/site.aspx?i=ed96223
45 For all media coverage see http://professionalinterpretersalliance.blogspot.co.uk/search/label/MoJ%20outsourcing
As we predicted, ALS does not have sufficient linguists with the necessary skills and qualifications for CJS work.46 Now, the poor quality of ALS Linguists is receiving media attention and Judges are increasingly outspoken.47 Recently, a trial collapsed due to interpreter error, costing £25k.48 There have been others.

In addition, concerns have been expressed about unlawful harvesting of interpreters’ personal data by ALS to purport to have more on its books than it does.49 Interpreters who are known to have a police record or criminal record (and were struck off the NRPSI) are verifiably working in the courts through ALS.50

**Concerns**

There is no assurance of quality, experience, professional ethics, vetting or professional indemnity insurance cover.

The MoJ has taken ALS Ltd/Capita’s assurances (about quality, vetting, number of qualified linguists) at face value and made no checks.

Legal professionals including Judges appear to be allowing incompetent ALS linguists to muddle on, even when defendants protest about the poor quality.51

There is a lack of awareness about the change in interpreter provision and a lack of vigilance by defence counsel to ensure the interpreter is competent.

The figures released by the Ministry of Justice on 24 May 2012 constituted only one tenth of the management information that ALS Ltd is required to provide according to the terms of the contract.52 The presentation of the figures is skewed,53 but even by the Ministry of Justice’s own admission more than one in ten assignments (12%) resulted in a complaint. ALS Ltd’s fulfilment rate is cited as 81% (of the requests placed with it), overlooking the fact that a large proportion of HMCTS assignments bypass ALS Ltd when courts book interpreters directly or through other commercial agencies. ALS Ltd has not fulfilled 81% of all HMCTS bookings, but just 81% of the bookings entrusted to it.

The continued operation of this ‘mixed economy’ approach to sourcing interpreters for the courts and police is evidence that Applied Language Solutions is failing to meet the Key Performance Indicators of the Framework Agreement. Moreover, with HMCTS and police forces paying to engage interpreters directly in addition to the budget set aside for ALS Ltd’s services, just where are the savings promised by the Framework Agreement being achieved?

A formal complaint sent by PIA to ALS Ltd on 22 May 2012 logged more than 250 separate incidents where ALS Ltd’s performance caused disruption to the legal system, and more than seventy separate incidents where the competence and performance of ALS workers has been inadequate. ALS Ltd has not responded to PIA’s complaint.

Adjournments result in wasted costs: wasted court days, the cost of prisoner transport and detention, expenses of parties and witnesses attending court, and the cost of unnecessary remands in custody. The costs incurred by ALS Ltd’s failings are both human and material.

In the courts, wasted costs caused by ALS Ltd’s failings have been granted routinely since the contract began. Non-English speakers denied an interpreter and unnecessary remanded in custody as a consequence are now bringing damages claims based on HRA Art 5&6 breaches. Appeals resulting from mistrials are sure to follow.

ALS Ltd has not published a formal complaints procedure. No Disciplinary Framework and Procedure is published by ALS Ltd, so that neither complainants nor ALS Ltd workers facing disciplinary procedures are fully informed of the process they can expect to be followed, or of any Appeals Procedure open to them. This is contrary to principles of Natural Justice and accepted employment practice.

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46 Respondents in a recent survey by Crimeline reported that ALS Ltd failed to provide an interpreter in 40% of cases in April and 56% of cases in March http://t.co/v2aGYinZ.
48 The Lawyer, 17 April 2012 Interpreting error leads to £25,000 retrial costs, BBC News, 13 April 2012 Trial collapses at Snareshbrook court after interpreter error.
49 See BBC News, 21 March 2012 Ministry of Justice translation firm accused of data theft A complaint regarding systemic misuse of data (DPA s.55) was submitted to the ICO.
50 Luton & Dunstable Express, 25 March 2012 New Courts service lost in translation Also see The Telegraph, 18 January 2011: Police translator bombarded inspector with suggestive emails
51 See Manchester Evening News, 19 April 2012 Court official left in tears after outburst at Rochdale sex gang trial
53 See Involvis Press Release 7 June 2012 Unanswered questions re: court interpreting service
The various responsibilities that ALS Ltd has under the Framework Agreement are in direct conflict with one another: ALS Ltd controls registration, assessment, work provision, quality standards, recruitment, code of conduct and disciplinary functions and sanctions.

INTERPRETER INITIATIVES

At grassroots level, interpreters are effectively on strike and are monitoring the courts; their reports are centrally collected. Eyewitness accounts of ALS failings are also reported on a dedicated website set up by interpreters.54

A number of interpreter organisations are working together to continue to lobby through the Professional Interpreters for Justice Campaign.55 There have been various demonstrations, two of them at Westminster.

PIA’s members are volunteering to interpret for solicitors pursuing damages claims with their non-English speaking clients and information has been produced in various languages.56

June 2012

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54 RPSI Linguist Lounge, www.linguistlounge.org
55 Professional Interpreters for Justice, www.unitetheunion.org
56 Damages claims: Translated posters and internet pictures and Lawyers’ cut & paste translations in one booklet