JUSTICE 1 COMMITTEE

AGENDA

21st Meeting, 2002 (Session 1)

Wednesday 22nd May 2002

The Committee will meet at 1.45pm in Committee Room 1.

1. **Prison Estates Review (in private):** The Committee will consider lines of questioning for witnesses.

2. **Prison Estates Review:** The Committee will take oral evidence from—

   Martin Mathers, the Chartered Institute of Public Finance and Accountability (CIPFA) in Scotland, Derek Yule, CIPFA in Scotland (and Head of Finance, Aberdeenshire Council) and Grant Macrae, CIPFA in Scotland (and partner, KPMG), CIPFA,

   Professor Christine Cooper, Department of Accounting and Finance, University of Strathclyde and Phil Taylor, Department of Management and Organization, University of Stirling,

   Paul Brewer, Partner, PricewaterhouseCoopers, and
The following papers are attached for this meeting:

Agenda items 1 and 2
Note by the Clerk (private paper) – TO FOLLOW J1/02/21/1
PFI/PPP: Stewardship Issues’, CIPFA publication - members only J1/02/21/2
Written evidence from Professor Neil Hutton, Centre for Sentencing Research, University of Strathclyde J1/02/21/4
I attach the following papers:

**Agenda Item 1 and 2**

Note by Clerk (Private Paper)  
Correspondence from Elaine Bailey, Managing Director, Premier Prisons Ltd  
‘Private Finance Initiative and Public Private Partnerships: What Future for Public Services?’ published by Centre for Public Services  
‘Privatised Prisons and Detention Centres in Scotland: An Independent Report’ by Prof. Christine Cooper and Phil Taylor  
The Howard League for Penal Reform in Scotland – Response to the consultation document on the Scottish Prison Estate

20th May 2002

Tony Reilly
Privatising Justice

The impact of the Private Finance Initiative in the Criminal Justice System
The Justice Forum was established by AMO – the trade union for magistrates’ courts staff, NAPO – the family court and probation union, Public and Commercial Services union (PCS), Prison Officers Association (POA) and UNISON:
- to coordinate the interests of those working in and using the justice system
- exchange information
- campaign jointly on issues of common concern
- work to achieve a fair, open and equally accessible system of justice for all citizens.

The Centre for Public Services is an independent, non-profit organisation. It is committed to the provision of good quality public services by democratically accountable public bodies implementing best practice management, employment and equal opportunities policies.

The Centre, established in 1973, has unrivalled experience of working with local authorities, other public bodies, trade unions and community organisations, and specialises in research, strategy, planning and training.

The research was carried out in collaboration with Stephen Nathan, Editor of ‘Prison Privatisation Report International’ (PPRI) which can be found on the internet at www.psiru.org/justice
Privatising Justice

The impact of the Private Finance Initiative in the Criminal Justice System

Justice Forum
(AMO, NAPO, PCS, POA, UNISON)

Researched and written by

Centre for Public Services

March 2002
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<td>PFI</td>
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<td>TUPE</td>
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Executive Summary and Recommendations

The extent of PFI in the Criminal Justice Service

When Labour came into power in 1997 a large part of the transport, energy and utilities and communications infrastructure had already been privatised by the Tories. Privatisation of the criminal justice system, the social and welfare state infrastructure (schools, hospitals) and defence infrastructure had been piecemeal. However, since 1997 the Labour government has systematically driven PFI/PPP into the remaining parts of the public sector, including the criminal justice system.

- We estimate that the total cost of signed and planned PFI projects in the criminal justice system in England, Wales and Scotland is £13bn, including capital and operational costs.

- The Home Office and Lord Chancellor’s Department expect to finance £1,019m capital expenditure on PFI projects which have either been signed or will reach preferred bidder stage in the 2000/01 – 2003/04 period. Since capital expenditure accounts for an average 22% of total PFI financial commitments, actual expenditure will be £4,630m.

- PFI expenditure by the Lord Chancellor’s Department has increased substantially over the last three years. Although total capital expenditure was projected to increase by 13% between 1998/99 and 2000/01, the PFI component increased from 20% to 57%, with a corresponding 40% decline in public sector capital expenditure. Net current payments under PFI contracts increased 95% in the same period.

- PFI projects consume large consultancy fees – the fees for Derbyshire and West Mercia court schemes and Cleveland Custody Centre represent 4.7%, 4.8% and 6.9% of the capital costs respectively. Assuming average consultancy fees of 5%, the total cost of PFI consultants in the criminal justice system to date has been about £145m – equivalent to nearly 5,000 new police officers for a year, or seven new publicly funded magistrates courts projects. The Home Office alone spent £5.3m on legal and accountancy fees between 1 May 1997 and 8 March 2001. This excludes the cost of Home Office, Lord Chancellor’s Department, Police Authority, Prison Service, Magistrates Courts and other criminal justice organisation staff engaged on PFI projects which is rarely quantified. For example, the LCD has about 35 staff engaged on the LIBRA project alone.

PFI failures

- The cost of three court service information technology contracts shatters the illusion that PFI contracts are fixed price for the contract period. The ARAMIS, LIBRA and Court Computer System (CCS) contracts have increased an average 79% - a total of £268m above the original cost. Since two contracts are less than half way through the original contract period, further additional costs would appear to be inevitable.

- The £183m LIBRA contract was awarded to ICL by the Lord Chancellors Department in late 1998. It was revised in 2000 when the cost soared 74% to £319m and the contract was extended from 8 to 12 years. The main reason for the original project, a new case management system, now accounts for less than half of the total cost. In other words, ICL will have received more than half its payment, yet has failed to deliver the core case management application. Clearly, very little risk has been transferred to the private sector. LIBRA is now subject to a second re-negotiation which is likely to reduce functionality (remove family andlicencing work from the contract), reduce the contract period back to the original contract end date and possibly increase costs still further.

- HMP Altcourse, the first PFI prison, has been mired in controversy from the start with its poor planning, lack of scrutiny of costs, a flawed savings assessment, performance failures and refinancing scandal. As of January 2002, the prison had 861 prisoners in a prison designed for 624, a 38% overcrowding (Prison Service Estates Planning Unit).

- The West Mercia courts case study highlights the inflexibility of PFI projects to meet the changing needs in the criminal justice system and the failure to assess the wider social and economic issues arising from the closure of courts in rural towns. PFI costs have reportedly spiralled out of control.
Savings claims

- The Public Sector Comparator (PSC) in the criminal justice system, as with the rest of the public sector, is used as a narrow financial comparison which fails to take account of innovation and modernisation within the public sector. It fails to take account of the full public sector costs of all options and fails to take account of social, economic, employment and environmental issues and community well-being. All the financial assumptions are biased towards the private sector.
- There is ample evidence that the transfer of risk to the private sector is largely illusory. The real risk is not financial but in service delivery, where poor performance and/or delays have a direct impact on services users. Public sector options are usually costed on the worst case scenario of delays and cost overruns in historic publicly financed schemes, frequently involving the same construction companies bidding for PFI contracts. There is no attempt to include the reform of public sector procurement.
- There is a distinct lack of evidence for claimed PFI cost savings in the criminal justice system. Studies to date have been selective, secretive, narrow and based on business case information, not practical reality.
- PFI projects in the criminal justice system have failed to justify Best Value in the planning, options appraisal and procurement stages.
- Financial issues dominate the PSC and value for money assessments in criminal justice PFI projects – the quality of buildings and services appear to receive scant attention.
- There is little evidence of the acclaimed innovation arising from private sector management of PFI projects in the criminal justice system. PFI information technology projects are costly and have largely failed to meet the specification let alone provide ‘added value’.
- The Cheshire Police headquarters project illustrates the cost escalation inherent in PFI projects and how services have to be restructured to achieve ‘savings’ to pay for the increased revenue cost of PFI. Consultation with trade unions has also been negligible.
- HMP Altcourse was refinanced after it was built and operating, increasing the return to Group 4 and Tarmac (now Carillion) by £10.7m (61%). They had already built in a projected profit of £17.5m when the contract was awarded. The Prison Service negotiated a £1m compensation payment but then waived £500,000 in performance penalties. Much of the so-called risk transfer is considerably reduced once construction has been completed and a facility is operational.
- Only 14% of PFI contracts in the criminal justice system have claw-back arrangements, which require PFI consortia to share re-financing gains with the public sector.

PFI overriding needs of criminal justice system

The Sussex centralised custody PFI project concentrates custodial services in six dedicated facilities with the closure of 24 cell blocks in police stations. Everything but policing has been contracted out with more than 60 uniformed custody assistants transferred to the contractor, Reliance, who are also managing identity parades.

PFI is shaping how services are delivered rather than the criminal justice system directly identifying needs and priorities and thus determining the design of buildings and service requirements. The spread of a contract culture increases fragmentation of the criminal justice system at the expense of joined up justice. There is also evidence that centralisation is limiting local access and local justice.

There is a real danger of reducing the numbers of police officers as Police Authorities, such as Cheshire, struggle to bridge the affordability gap created by PFI projects.
Employment

The various government departments, authorities, agencies and organisations, which comprise the criminal justice system employ 315,000 staff. There are a further 162,000 employed in the private security industry.

Nearly all private contractors operate two tier pay and conditions for public sector contracts with new staff employed on lower rates of pay, fewer holidays and limited sick pay entitlement compared to transferred staff. There are wide differentials between Prison Service and private sector pay rates. Private sector prison officer/prisoner custody officer and supervisor pay rates are, on average, between 24.6% and 32.4% lower than in the Prison Service, although senior managers and Directors in private prisons are better paid than their Prison Service counterparts. The value of a Prison Service pension is, on average, between 10.5% and 13.5% more valuable than those in privately managed prisons. Prison Service staff get between 5% - 28% more holidays.

The increasing centralisation of core parts of the criminal justice system, the relocation of headquarters and other facilities on green-field sites, widening pay differentials between those doing the same work and also between the highest and lowest paid staff, all raise equity and social inclusion issues. There is very little evidence of full and effective monitoring of equalities in PFI projects.

Some PFI contractors have been unable to provide ‘broadly comparable’ pension schemes, and some have refused to reveal to trade unions their Government Actuary Department advice on the comparability of their pension scheme. New PFI prisons do not involve a staff transfer and private contractors use money purchase pension schemes which are inferior to public sector final salary schemes. They enable private contractors to make a significant saving compared with the contribution costs of comparable public sector pensions at the expense of the staff.

Lack of disclosure and trade union involvement

The lack of transparency and information disclosure is widespread. Basic financial information is withheld from trade unions and ‘commercial confidentiality’ is used as a smokescreen to hide matters of public interest.

Consultation with trade unions in the planning and procurement processes has frequently been negligible or dominated by secrecy. There is failure to implement even the basic government consultation and information disclosure guidelines. There has been a particular failure to consult on the scope of projects, the staff and/or services to be included.

Longer term implications

The dominant use of PFI projects is proving to be a barrier to joined-up justice.

By 2010, virtually all 42 Magistrates Courts Committees in England and Wales will have PFI projects and the private sector will effectively own and operate most court complexes.

Thirteen of the 43 Police Authorities in England and Wales have PFI projects for headquarters, police stations and custody projects. If PFI projects continue at the current rate then virtually all police authorities will have one or more PFI projects by 2010. However, given the larger stock of police buildings and facilities the density of PFI projects will be less than that projected for magistrates courts.

By 2010 all new prisons built in the last twenty years could be managed and operated by the private sector.

Company profiteering

PFI in the criminal justice system has spawned new markets, for example, in the operation of jails and custody centres, facilities management of courts and police stations, for the security and construction industries. Many of the companies are foreign owned transnationals which means the export of profits and dividends

There is considerable scope for the government to increase public sector capital spending generally, and specifically in the criminal justice system. Adoption of the General Government Financial Deficit would allow public bodies more flexibility in financing capital projects.
The findings of this study lead us to make the following recommendations:

**The government should:**

- Stop all further procurement of PFI/PPP projects in the criminal justice system.
- Increase public sector capital investment in the criminal justice system and include a substantial increase in resources in the forthcoming Comprehensive Spending Review 2002.
- Terminate the tendering of projects which have not already been signed.
- Explore the legal and financial issues arising from the possible termination of signed PFI contracts and returning provision and ownership to the public sector.
- Replace PFI/PPP units in the Home Office and Lord Chancellor’s Department with Public Service Management Improvement Units together with training programmes to increase in-house capacity and skills.
- Initiate a much more rigorous Select Committee on Public Accounts and National Audit Office investigation into the use of PFI/PPP in the criminal justice system drawing on evidence from trade unions and penal reform organisations.

**In relation to existing PFI projects which cannot be terminated the government should:**

- Establish a unit in each department to strengthen the monitoring and performance evaluation of existing PFI/PPP contracts.
- Implement a policy of information disclosure and transparency of PFI projects to release information which is in the public interest and redefine commercial confidentiality to the minimum required level.

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**In addition, should new PFI projects go ahead:**

- Support services should remain directly provided by public organisations. Otherwise, all staff transfers must guarantee TUPE for the length of the contract with staff entitled to remain in public pension schemes. New staff employed on PFI contracts must be engaged on the same terms and conditions as transferred staff to avoid a two tier workforce. Trade union recognition should be guaranteed for the length of the contract.
- Equity and social justice must be mainstreamed throughout the planning, options appraisal, procurement and service delivery stages by both public and private sector organisations. Private contractors must be held accountable to public service standards.
- The allocation of risk in PFI projects must be restructured to reduce, if not eliminate, the possibility of refinancing schemes once the construction phase has been completed. In addition, contracts should contain stringent clawback arrangements to ensure the public sector receives an equitable share of any benefits if projects are refinanced.
- Any further cost increases in PFI contracts should be subject to Parliamentary scrutiny and approval.
- Both the Home Office and the Lord Chancellor’s Department should co-operate with the trade unions to provide a full and comprehensive employment database of the number, grade, gender, hours and other details of staff employed on PFI projects. This is essential to enable employers in the criminal justice system to fulfill their employment and human resource obligations.
Introduction

This report provides a critique and overview of the extent of the PFI within the criminal justice system in England, Wales and Scotland. The detailed evidence of the impact of PFI utilises case study information from the police, the courts and the prison service.

The government claims that PFI provides value for money, delivers innovation, high quality buildings and services, contributes to modernisation and joined-up services, protects staff and that procurement is carried out in a consultative and transparent process.

This report systematically examines these claims and provides evidence to counter each of them.

This study has been hampered by the shroud of commercial confidentiality, which cloaks PFI schemes, and the fears of a large number of staff either transferred or transferring to the private sector about speaking openly. Despite these problems, we are confident, that our findings are irrefutable and add weight to the Justice Forum’s call for an end to the PFI and for public sector finance and provision to be restored.

Labour’s agenda

When Labour came to power in 1997 a large part of the transport, energy and utilities and communications infrastructure had already been privatised by the Tories. Privatisation of the criminal justice system, the social and welfare state infrastructure (schools, hospitals) and the defence infrastructure had been piecemeal. However, since 1997 the Labour government has systematically driven PFI into the remaining parts of the public sector, including the criminal justice system.

The new Labour government acted quickly, setting up and implementing the Bates Review, which recommended streamlining the PFI process. They also rushed through legislation to clarify the powers of NHS Trusts and local authorities to enter into PFI agreements and guarantee financial payments over the life of the contract.

The switch to a pro-privatisation position is summed up in the Treasury paper on Public Private Partnerships: “...overall, privatisation had beneficial effects, with productivity improved and the economy better able to respond to change, but the record varied significantly industry by industry. ...At its best privatisation, when combined with competitive markets, led to the creation of world class companies, reduced costs and prices and improved services to the consumer” (Public Private Partnerships, The Government’s Approach, 2000).

While some private provision predated the Thatcher era, contracting out, commercialisation and privatisation within the criminal justice system increased dramatically under the Tories. But since May 1997, New Labour has extended private provision beyond even the Tories’ agenda, in particular, dropping its previous opposition to private prisons.

New Labour has also made much of ‘joined up’ government. However, as far as the criminal justice system is concerned, the only noticeable ‘joined up’ feature is that a handful of multinational corporations now have the majority of contracts and are consolidating their involvement through prisons, courts, police stations and associated services.

The UK now has the most privatised criminal justice system in Europe. Prior to the PFI, there was already a privatised prisoner escort service; contractually managed prisons; contracted out ancillary services within publicly run prisons; privately run immigration detention centres and electronic monitoring services. The immigration service has the notorious privately operated voucher scheme for asylum seekers as well as contracted out asylum support services.

With the introduction of the PFI, which is central to the
government’s privatisation strategy, there are now privately financed, designed, built and operated prisons, police stations, custody centres and other facilities. The Lord Chancellor’s Department also has a substantial programme of PFI projects ranging from IT to fully serviced court complexes.

PFI in other public services

PFI projects in other government departments have suffered long delays, soaring costs, poor service and large backlogs in processing applications. The House of Commons Select Committee on Public Accounts has carried out several investigations into PFI contracts. For example, Siemens £120m PFI contract with the Passport Agency for digital scanning of passport applications led to the tripling of waiting times in 1999, and the unit cost of a passport rose to £15.50 as opposed to the £12.00 target.

The National Insurance computer contract with Andersen Consulting (now Accenture), an early PFI project, has been plagued with delays and problems. In one instance 172,000 cases of underpayment of pensions required £43m compensation payments.

The Immigration and Nationality Directorate’s PFI £100m contract with Siemens in 1996 has also been plagued by problems. The government allocated an extra £120m in 1998, yet backlogged cases continued to grow – (76,000 asylum cases and 100,000 nationality cases). A core part of the Casework Application IT system has been scrapped in favour of employing 600 more staff.

There have also been serious design problems with new PFI hospitals, for example, at Carlisle and North Durham, in addition to concerns over affordability and value for money in most PFI hospital projects (Evidence to Health Select Committee Inquiry, UNISON, 2001).

The IPPR report

The Institute of Public Policy Research’s (IPPR) launched a Commission into Public Private Partnerships (PPP) in 2000 which was a national study intended to assess the scope for and performance of PPPs. The IPPR claims to be a left of centre ‘think tank’ although the Commission was funded in part by private firms and consultants, such as Serco, Norwich Union, Nomura, BT and KPMG, which are heavily involved in PFI and PPPs. It published its final report in June 2001. The Commission’s basic premise is that “getting public private partnerships (PPPs) right is vital if the quality of the UK’s public services is to meet the expectations of the British public over the next decade .... we aim to cut through the arguments on the rights and wrongs of PPPs and set out a reform programme aimed at ensuring that in future PPPs are used at the right times and to maximum effect” (Building Better Partnerships, 2001).

The notion of public sector provision was given short shrift. In terms of prisons and associated services, written and oral evidence to the IPPR from the private sector far outweighed other interests. There were contributions from HMP Lowdham Grange and HMP Doncaster (run by Premier Custodial Group Ltd); Carillion (Group 4’s construction partner); UK Detention Services Ltd (which runs HMP Forest Bank and Harmondsworth Immigration Detention Centre); WS Atkins (Securicor’s partner at HMP Parc); Serco PLC (Wackenhut Corrections Corporation’s joint venture partner in Premier Custodial Group); and the Serco Institute, as well as firms such as EDS, Innisfree, KPMG, Nomura and NM Rothschilds & Sons.

The report concluded that the Home Office had gone further than either health or education departments in establishing an environment whereby both public and private sectors can compete for the management of some new conventionally procured prisons. However, it is notable that no new conventionally procured public prisons have been commissioned and the government has now implied that all new prisons will be built under the PFI. This suggests that there is not a level playing field between the PFI and conventional procurement in the prison sector.

It also noted that there is considerable variation in levels of non-public provision in different parts of the publicly funded criminal justice system. Private/voluntary provision within the prison service showed a marked increase in the 1990s while for other areas the impact was negligible. Non-public provision in the Prison Service accounted for 14% of total expenditure in 1998-99. This is primarily composed of contracted out prisons (7.5%) and prisoner escort services (6%). In escort services there has been a more marked switch with the private sector now representing the ‘default provider’ for all except Category ‘A’ prisoners.

In short, the IPPR’s work did not consider the criminal justice system as a whole, nor did it consider the interface between different parts of the system. For example, it did not consider the effect of prison escort contracts on courts where the delivery of prisoners has an impact on the length of court sittings. Its analysis of prisons and prison services is shallow and makes no specific reference to how prisons should be financed and operated in the future.
Case studies

The findings of this report are underpinned by five case studies, which highlight the key problems and issues in using PFI in the criminal justice system: West Mercia Magistrates Courts, Cheshire Police Headquarters, Sussex Police Centralised Custody project, Her Majesty’s Prison Altcourse and several information and communications technology projects such as LIBRA in the magistrates courts.

The case studies were selected by the Justice Forum, as representing a good cross section of PFI projects in the justice system.

The projects examined are all at different stages - some are operating, some are partially implemented, others are still in procurement, and there are different levels of detail available. Each case study makes a distinct contribution to the analysis of PFI in the criminal justice system and the lessons which can be drawn from it. There is not, therefore, a common template for the case studies.

West Mercia Magistrates Courts: This PFI scheme consists of the construction of three new courthouses in Hereford, Worcester and Kidderminster, and refurbishment of an existing courthouse in Redditch resulting in the closure of rural courts in Droitwich, Evesham, Bromsgrove, Ledbury and Leominster. Capital funding for the replacement of the three main courthouses had been agreed with the Lord Chancellor’s Department. The Kidderminster project had been about to start on site in 1996 when the project was suddenly switched to PFI procurement.

This case study demonstrates the inflexibility of PFI projects to meet the changing needs of the criminal justice system, the lack of comparison with a public sector costed option, a lack of consultation on the scope of the project, the drive to centralise services, the failure to assess the wider social and economic issues arising from the closure of courts in rural towns, and the dislocation between services users, providers and contractors. It is not clear how the increased costs will be met from existing budgets.

Cheshire Police Headquarters: The use of PFI for new headquarters for the Cheshire Police Authority illustrates how schemes, which are poorly justified from the beginning also tend to have a subsequent trail of bad practice. Two Outline Business Cases have failed to prove that PFI was value for money, yet the project continues. The case study also illustrates how services will have to be restructured to achieve ‘savings’ in order to pay for the increased revenue costs of PFI. The Cheshire scheme is also an example of poor consultation with trade unions. It has been very limited and dominated by secrecy with a failure to implement even the most basic government consultation and information disclosure guidelines. The project also illustrates a complete failure to examine the wider social, economic and environmental issues arising from the relocation and centralisation of police facilities some 16 miles away from current facilities.

Her Majesty’s Prison (HMP) Altcourse demonstrates how a PFI project, claimed to be the ‘jewel in the crown’ of the English prison service, has failed to meet its original objectives, incurred stiff financial penalties for service failures and was refinanced, netting large profits for the consortium involved.

Not only was this the first prison to be procured under the PFI, but it has also been the subject of two National Audit Office reports, two Select Committees on Public Accounts and an inspection by the Chief Inspector of Prisons. And still the flaws in PFI have been ignored. Its planning was mired in controversy. Opposition to its siting on land adjacent to Fazakerley Hospital - and even the need for another prison at all - came from local residents, Liverpool City Council as well as Knowsley Metropolitan Borough Council. Liverpool City Council’s refusal to grant planning permission led to a public inquiry in October and November 1993. The decision to ignore these concerns and allow the Prison Service to go ahead was made by the Secretary of State in May 1994.

Sussex Police Centralised Custody project: Sussex Police Authority has awarded a 30 year contract worth around £90 million to a consortium comprising Reliance Secure Task Management Ltd and Ballast plc to provide police custody facilities and services across the whole county. This case study is important because it highlights the impact of increasing privatisation on staff and the justice system.

The project, described by the Authority as ‘ground breaking’ and the ‘most wide reaching of all current police authority PFI schemes’ will concentrate the Authority’s custodial services in six dedicated facilities and lead to the closure of 24 existing cell blocks in police stations. Three new centres will be built at Chichester, Worthing and Eastbourne. An existing building at Brighton will be converted to a custody centre and centres at Hastings and Crawley police stations will become privately managed. Everything but policing has been contracted out.

Information systems in the Criminal Justice System: The case studies also include the main PFI information technology projects in each service, for example, LIBRA in magistrates courts. These projects are important because they show how PFI costs escalate, contracts are re-negotiated and how claimed innovation becomes service failure in reality. The ‘Railtrack factor’ is also present in the criminal justice system. PFI projects and outsourcing have led to layers of contracts and the fragmentation of responsibility. The government wants public sector workers to be more ‘flexible’ and to change working practices, yet it is imposing an inflexible contracts system on the organisation and management of services. Private firms and consultants are dependent on each others performance. Poor performance and delays lead to a malaise and ‘blame culture’ which, in turn, become contractual and financial problems for the courts, police and prison services. Ironically, the courts, police and prison authorities could be forced to resort to the legal system to resolve contract disputes.

The report also draws on other examples of PFI projects in the criminal justice system such as HMP Kilmarnock, the National Crime Squad information technology project and the Dorset Police Authority divisional headquarters project.
This section of the report maps the extent of signed, approved and planned PFI projects in the Courts, Police and Prisons and other parts of the criminal justice system. It identifies 63 PFI projects in the criminal justice system, of which 59 are in England, 1 is in Wales and 3 are in Scotland. Another police training facility and more prison PFI projects, are expected to be announced for Scotland in 2002.

We estimate that the total cost of PFI projects (signed, in procurement and in planning stage) in the criminal justice system is £13bn. This includes capital and operational costs. An accurate national figure is not possible because of the poor levels of information disclosure, the misleading presentation of the capital cost of many PFI projects often ignoring the revenue costs over the life of the project and the presentation of costs in Net Present Value (NPV) terms. Under NPV terms the costs over the contract period are valued at today’s prices – which creates a bias in favour of PFI projects because of the different timing of payments under PFI and a public sector option.

PFI projects in the criminal justice system account for about 9% of the total number of PFI projects. There were 369 signed projects in the public sector in April 2001 with a capital value of £25.1 billion with another 226 projects in procurement and planning worth £8.3 billion (The PFI Report, April 2001).

The Home Office and Lord Chancellor’s Department (LCD) expect to finance £1,019m capital expenditure on PFI projects which have either been signed or reach preferred bidder stage in the 2000/01 - 2003/04 period (Table 1.1).

An analysis of PFI projects in the criminal justice system and other sectors shows that capital expenditure accounts for an average 22% of total PFI financial commitments, the real figure for Home Office and Lord Chancellor’s Department PFI expenditure in this period is £4,632m.

### Table 1.1: Estimated capital spending by the private sector in the criminal justice system

<table>
<thead>
<tr>
<th>Department</th>
<th>Estimate 2000-01 (£m)</th>
<th>Projections 2001-02 (£m)</th>
<th>2002-03 (£m)</th>
<th>2003-04 (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signed deals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home Office</td>
<td>160</td>
<td>136</td>
<td>297</td>
<td>0</td>
</tr>
<tr>
<td>Lord Chancellor’s</td>
<td>104</td>
<td>87</td>
<td>19</td>
<td>19</td>
</tr>
<tr>
<td>Scotland</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Wales</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Projects expected to reach preferred bidder stages within next 3 years Home Office</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Home Office</td>
<td>11</td>
<td>110</td>
<td>11</td>
<td>65</td>
</tr>
<tr>
<td>Lord Chancellor’s</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Scotland</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Wales</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Total</td>
<td>275</td>
<td>333</td>
<td>327</td>
<td>84</td>
</tr>
</tbody>
</table>


Note: The figures cover only the capital value of projects (which averages 22% of the total cost).

Twenty two PFI contracts were signed by the Home Office between May 1997 and July 2001 (Table 1.2).
The Lord Chancellor’s Department is committed to using Public Private Partnerships and the Private Finance Initiative as a major element of our investment plans for improved court facilities and services.”

Jane Kennedy MP, Parliamentary Secretary at the Lord Chancellor’s Department

When the Labour government was reviewing the PFI following the general election victory in May 1997 there was one existing ‘pathfinder’ PFI project for buildings in Hereford and Worcester and plans for the LIBRA IT system to be provided through the PFI. By May 2001 the Lord Chancellor’s Department was providing financial support to 13 Magistrates Courts Committee projects. Projects at various stages of operation or procurement are summarised in Table 1.4 with additional information provided in Appendix 1.

Eight of these projects will provide a total of 18 new or refurbished courthouses, six of which are currently under construction. The scope of the remaining five projects remain to be determined. No new crown or county court centres have yet been built under the PFI, although the Court Service plans to provide four new court buildings under this procurement method (Jane Kennedy, Parliamentary Secretary, Lord Chancellor’s Department, Hansard 8 May 2001).

PFI procurement has been used but the low capital values in these developments makes them relatively unattractive as PFI schemes: they have tended to attract bidders who have little knowledge of the Court service and have difficulty in meeting the public sector comparator.’


The capital value of PFI projects in the Criminal Justice System represents 22% of the total cost. This is the same average for all public sector PFI projects.

### Table 1.2: Home Office PFI projects agreed since May 1997

<table>
<thead>
<tr>
<th>Number of contracts</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of PFI contracts agreed in last five years</td>
<td>21</td>
</tr>
<tr>
<td>Number of PPP contracts agreed in last five years</td>
<td>1</td>
</tr>
<tr>
<td>Number satisfactorily completed</td>
<td>0</td>
</tr>
<tr>
<td>Number where compensation paid for performance failure</td>
<td>11</td>
</tr>
<tr>
<td>Number where compensation claimed for performance failure</td>
<td>12</td>
</tr>
</tbody>
</table>


The capital cost of PFI projects in the courts service is estimated to be £394m although the data for several schemes is not available. The total financial commitment for eight projects where this information is available is £1,112m – see Table 1.3.

PFI expenditure by the Lord Chancellor’s Department has increased substantially over the last three years. Although total capital expenditure was projected to increase by 13% between 1998/99 and 2000/01, the PFI component increased from 20% to 57% with a corresponding 40% decline in public sector capital expenditure. Net current payments under PFI contracts increased 95% in the same period (Table 1.4).

PFI is not the first choice for Civil and Family Court Hearing Centres although there have been four PFI projects (Sheffield Family Hearing Centre, Ipswich and Cambridge Crown Court Centres and Exeter Combined Court).

‘PFI procurement has been used but the low capital values in these developments makes them relatively unattractive as PFI schemes: they have tended to attract bidders who have little knowledge of the Court service and have difficulty in meeting the public sector comparator.’


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PFI is not the first choice for Civil and Family Court Hearing Centres although there have been four PFI projects (Sheffield Family Hearing Centre, Ipswich and Cambridge Crown Court Centres and Exeter Combined Court).

### Signed PFI projects in the Courts Service (January 2002)

<table>
<thead>
<tr>
<th>Project</th>
<th>Number of years</th>
<th>Capital cost £m</th>
<th>Total cost £m</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Buildings and services</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Mercia</td>
<td>21</td>
<td>133</td>
<td></td>
</tr>
<tr>
<td>Humberside</td>
<td>22</td>
<td>81</td>
<td></td>
</tr>
<tr>
<td>Manchester Magistrates</td>
<td>26</td>
<td>118</td>
<td></td>
</tr>
<tr>
<td>Probate Records Centre</td>
<td>11</td>
<td>56</td>
<td></td>
</tr>
<tr>
<td>Derbyshire</td>
<td>31</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Exeter Combined Courts</td>
<td>17</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sheffield Family</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Avon &amp; Somerset</td>
<td>32</td>
<td>130</td>
<td></td>
</tr>
<tr>
<td><strong>IT Contracts</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ARAMIS</td>
<td>9</td>
<td>39</td>
<td>180</td>
</tr>
<tr>
<td>CCS</td>
<td>7</td>
<td>20</td>
<td>107</td>
</tr>
<tr>
<td>LIBRA</td>
<td>14</td>
<td>68</td>
<td>319</td>
</tr>
<tr>
<td><strong>In Procurement</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>East Anglia</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bedfordshire</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>West Midlands</td>
<td>35</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manchester Civil Courts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Merseyside</td>
<td>30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bolton</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cheshire</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Essex</td>
<td>30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gloucestershire</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gwent (Wales)</td>
<td>n/a</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>394</td>
</tr>
<tr>
<td><strong>Estimated Outturn</strong></td>
<td></td>
<td></td>
<td>1,124</td>
</tr>
</tbody>
</table>


### Expenditure involving Private Finance: Lord Chancellor’s Department

<table>
<thead>
<tr>
<th>Estimated Outturn 1998/99 (£m)</th>
<th>Estimated Outturn 1999/00 (£m)</th>
<th>Projections 2000/01 (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated gross sponsored capital</td>
<td>78</td>
<td>58</td>
</tr>
<tr>
<td>Of which, capital spending (by private sector) on PFI Projects</td>
<td>16</td>
<td>15</td>
</tr>
<tr>
<td>Capital spending by public sector under conventional procurement</td>
<td>62</td>
<td>35</td>
</tr>
<tr>
<td>Net current payment by public sector under private finance contracts</td>
<td>20</td>
<td>28</td>
</tr>
<tr>
<td>Of which, central government local government</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Source: Spending Review 2000, Lord Chancellor’s Department.
Among the 43 police authorities in England and Wales PFI schemes range from facilities for firearms training, to riding stables, offices, custody suites and entire police complexes. Each authority has its own responsibility for developing schemes. There is no overall Home Office strategy. Each authority develops its own expertise for dealing with PFI – there is no pooling of resources and expertise. Each PFI team has to start from scratch. The Scottish Joint Police Boards operate under the Scottish Executive. Projects at various stages of operation or procurement are summarised in Table 1.6, with additional information provided in Appendix 1.

**Table 1.5: Court Service minimum committed payments under PFI contracts during 2001-02**

<table>
<thead>
<tr>
<th>Time period</th>
<th>CCS (EDS) £000</th>
<th>ARAMIS (CSL) £000</th>
<th>Probate Records (Hays) £000</th>
<th>Total £000</th>
</tr>
</thead>
<tbody>
<tr>
<td>within 1 year</td>
<td>8,120</td>
<td>11,763</td>
<td>1,470</td>
<td>21,353</td>
</tr>
<tr>
<td>within 2 - 5 years</td>
<td>12,180</td>
<td>47,084</td>
<td>5,880</td>
<td>65,144</td>
</tr>
<tr>
<td>within 6-10 years</td>
<td>–</td>
<td>8,991</td>
<td>7,350</td>
<td>16,341</td>
</tr>
<tr>
<td>within 11-15 years</td>
<td>–</td>
<td>–</td>
<td>7,350</td>
<td>7,350</td>
</tr>
<tr>
<td>within 16-20 years</td>
<td>–</td>
<td>–</td>
<td>7,350</td>
<td>7,350</td>
</tr>
<tr>
<td>within 21-25 years</td>
<td>–</td>
<td>–</td>
<td>4,900</td>
<td>4,900</td>
</tr>
</tbody>
</table>

Source: Court Service Annual Report, 2001

**Table 1.6: Summary of Police PFI projects**

<table>
<thead>
<tr>
<th>Police Authority</th>
<th>Capital Value of Project (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Custody Centres</strong></td>
<td></td>
</tr>
<tr>
<td>Cheshire</td>
<td>16</td>
</tr>
<tr>
<td>Cleveland</td>
<td>14</td>
</tr>
<tr>
<td>Sussex</td>
<td>40</td>
</tr>
<tr>
<td><strong>Headquarters</strong></td>
<td></td>
</tr>
<tr>
<td>Cheshire</td>
<td>10</td>
</tr>
<tr>
<td>Derbyshire</td>
<td>16</td>
</tr>
<tr>
<td>Dorset</td>
<td>15</td>
</tr>
<tr>
<td>Thames Valley</td>
<td>16</td>
</tr>
<tr>
<td><strong>Police Stations</strong></td>
<td></td>
</tr>
<tr>
<td>Cumbria</td>
<td>9</td>
</tr>
<tr>
<td>Greater Manchester</td>
<td>38</td>
</tr>
<tr>
<td>Kent</td>
<td>20</td>
</tr>
<tr>
<td>Metropolitan Police</td>
<td>30</td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td></td>
</tr>
<tr>
<td>Cleveland firearms training</td>
<td>10</td>
</tr>
<tr>
<td>Metropolitan Police firearms</td>
<td>30</td>
</tr>
<tr>
<td>Nottingham traffic</td>
<td>40</td>
</tr>
<tr>
<td>Strathclyde training centre</td>
<td>28</td>
</tr>
<tr>
<td>Wiltshire air support</td>
<td>6</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>338</strong></td>
</tr>
</tbody>
</table>
In 1993 the Conservative government decided that all new prisons would be privately financed, designed, built and operated. In opposition, Labour was against prison privatisation, but since coming to power, they have also decided that all new prisons in England and Wales are to be privately built and run.

Ten PFI prisons have either been built or are planned to open in the next two years in England, Wales and Scotland (Table 1.8). There has not been a new prison commissioned by the Prison Service, financed by the government and operated by the public sector, for 10 years. The freehold land for these prisons is owned by the Prison Service and leased to the contractors at a peppercorn rent.

Three Secure Training Centres (STC) have also been built under the PFI, with a further five planned to serve south east England, Essex, north west England, Nottingham/Yorkshire and Wales. The Rainsbrook and Medway STCs are to be expanded by a further 32 beds each, but it has not yet been decided whether to put these out to tender or simply have the existing contractor operate them.

### Table 1.7: Private prison contracts in the UK (January 2002)

<table>
<thead>
<tr>
<th>Prison</th>
<th>Open</th>
<th>Contractor</th>
<th>Population</th>
<th>NPV (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Contractually Managed</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wolds 1992</td>
<td></td>
<td>Group 4</td>
<td>390</td>
<td></td>
</tr>
<tr>
<td>Doncaster 1994</td>
<td></td>
<td>PPS</td>
<td>1,050</td>
<td></td>
</tr>
<tr>
<td><strong>PFI (contracts to design, construct, finance and manage)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parc 1997</td>
<td></td>
<td>Securicor</td>
<td>800</td>
<td>266</td>
</tr>
<tr>
<td>Altcourse 1997</td>
<td></td>
<td>Group 4</td>
<td>800</td>
<td>247</td>
</tr>
<tr>
<td>Lowdham Grange 1998</td>
<td></td>
<td>PPS</td>
<td>500</td>
<td>127</td>
</tr>
<tr>
<td>Ashfield 1999</td>
<td></td>
<td>PPS</td>
<td>340</td>
<td>121</td>
</tr>
<tr>
<td>Kilmarnock 1999</td>
<td></td>
<td>PPS</td>
<td>506</td>
<td>*32</td>
</tr>
<tr>
<td>Forest Bank 2000</td>
<td></td>
<td>UKDS</td>
<td>1,100</td>
<td>197</td>
</tr>
<tr>
<td>Rye Hill 2001</td>
<td></td>
<td>Group</td>
<td>4,600</td>
<td>154</td>
</tr>
<tr>
<td>Dovegate 2001</td>
<td></td>
<td>PPS</td>
<td>800</td>
<td>240</td>
</tr>
<tr>
<td>Ashford 2003</td>
<td></td>
<td>UKDS p.b</td>
<td>450</td>
<td>213</td>
</tr>
<tr>
<td>Peterborough 2004</td>
<td></td>
<td>UKDS p.b</td>
<td>840</td>
<td>265</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>8,176</td>
<td>1,830</td>
</tr>
</tbody>
</table>

* Capital cost only

### Table 1.8: Secure Training Centres (STCs, also DCMF)

<table>
<thead>
<tr>
<th>STC</th>
<th>Year</th>
<th>Contractor</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medway</td>
<td>1998</td>
<td>Group 4</td>
<td>40</td>
</tr>
<tr>
<td>Hassockfield</td>
<td>1999</td>
<td>PPS</td>
<td>40</td>
</tr>
<tr>
<td>Rainsbrook</td>
<td>1999</td>
<td>Group 4</td>
<td>40</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>120</td>
</tr>
</tbody>
</table>
In a speech to the Prison Officers’ Association (POA) annual conference, on 19 May 1998, the then Home Secretary, Jack Straw, announced, that a Prison Service review found the option of using private finance to build new prisons, while retaining the management function in the public sector, was not affordable and “…does not offer value for money.”

The Home Secretary also endorsed another review which concluded that “…the immediate transfer of existing private prisons to the public sector is not affordable and cannot be justified on value for money grounds.” But he said that “…the Prison Service will be allowed to bid for the chance to take over the management of existing privately managed prisons on the next occasions that the contracts expire.”

At the time of Mr Straw’s announcement, neither review had been made public, rendering independent evaluation impossible. Rejection of the private/public option was based largely on objections from the private prison companies.

Mr Straw, however, claimed that his decisions were based partly on the findings of the Labour members of the House of Commons Home Affairs Select Committee in 1997.

The Home Secretary’s announcement completed a ‘U-turn’ on pre-1997 election pledges. In 1994, John Prescott (now Deputy Prime Minister) told the POA conference that: “Labour will take back private prisons into public ownership – it is the only safe way forward.”

At a meeting of the Bourne Trust, a prisoners’ aid society, on 7 March 1995, Mr Straw, then Shadow Home Secretary, said that “at the expiration of their contracts, the Labour government will bring these [privately managed] prisons into proper public control and run them directly as public services.”

Speaking at the POA conference in April 1996, Mr Straw said that he found it “…morally unacceptable for the private sector to undertake the incarceration of those whom the state has decided need to be imprisoned … almost all people believe that this is one area where a free market does not exist.”

But the Government’s back-tracking started soon after the election on 1 May 1997. On 8 May, Mr Straw said “…if there are contracts in the pipeline and the only way of getting the [new prison] accommodation in place very quickly is by signing those contracts, then I will sign those contracts.”

On 19 June 1997, Mr Straw announced that he had renewed UK Detention Services Ltd’s management contract for HMP Blakenhurst and agreed to two new privately financed, designed, built and run prisons. He also said that the recommendations of the Home Affairs Select
Committee which reported in March 1997 were “still to be fully considered” and announced that he had ordered the two Prison Service reviews referred to above.

Since then, market testing exercises for contractually managed prisons have led to two prisons, Buckley Hall and Blakenhurst, being taken back into the public sector. At Strangeways, an in-house bid has twice beaten off a challenge from the private sector.

HMP Brixton, the first so called failing prison to be market tested, attracted no bids from the private sector. The contract for HMP Wolds, the first contractually managed prison which opened in 1992, was recently retendered with Group 4 winning a ten year £45m contract.

In October 2001, the Director General of the Prison Service, Martin Narey, stated: “It is now very possible that at some point we will have a prison designed, financed and built by the private sector but run by the public sector” (Financial Times 2 October 2001).

He also said: “We are pretty good at running a prison service but we are not good at contracting and design. At the moment, I anticipate that all new prisons will be built by the private sector.” He praised the effects of competition from the private sector on the prison service but also noted that “they (companies) have become, in running prisons, a bit complacent. They have not been as imaginative as this (public) service has had to become in terms of utilising staff – and of course they have to take a profit out of this. It may be that one or two of them are looking backwards to the days of very much higher profit margins.”

Ahead of the publication of the long awaited Carter report on the future of the prisons estate the Prisons Minister, Beverley Hughes, has forecast that up to 28 Victorian prisons could be closed and the buildings and land sold off. These will be replaced by 1,500 bed ‘super-prisons’ with separate units for women, young offenders and remand prisoners, as well as areas for different security categories.

The Minister described this as “a creative variant on Lord Woolf’s original proposals for community prisons. The idea of having a number of different kinds of facilities, either on one big estate or linked in the region, would be very attractive. It would create stability and stop people having to move from one end of the country to the other,” she said (Daily Telegraph, 19 January 2002).

Admitting that the logistics will be “fiendishly complicated” the Minister has commissioned research into the value of Holloway and Wormwood Scrubs prisons. The newspaper also reported that there is a major problem in trying to find sites for new jails that would not encounter fierce local opposition. So the minister is drawing up a strategy for persuading the public to accept a new jail in their area.

But speaking at a Prison Service conference in February 2002, the Director General of the Prison Service, Martin Narey, said: “I want to see us closing, permanently, some of our most inadequate establishments – not just the Victorian ones - giving staff a new environment with decent facilities in new replacement prisons. And while the private sector will build those new prisons I want to give the public sector the opportunity to demonstrate that they can run them.”

Until there is further clarification of these plans it could simply mean that the public sector will be allowed to bid for contracts to operate new prisons: it is another matter whether they will be able to win contracts.

Computer Projects

Projects in the Lord Chancellor’s Department (LCD)

The LCD currently has 15 Information and Communication and Technology (ICT) projects, which are due for completion between March 2001 and 2005 with a total value of between £465m - £495m (Hansard Written Answers, 26 February 2001). This includes two PFI projects, the LIBRA project and the provision of IT services for the Public Guardianship Office, Court Funds Office and Office of the Official Solicitor and Public Trustee for the which the date for completion and total cost was not known.

There are three PFI information technology contracts in the courts service:

Courts Computer System – (formerly LOCCS). A package of court-based computer systems including CREST, JUROR, CaseMan and FamilyMan. A seven year PFI contract was signed with technology firm EDS in September 1996 with three year extension option. The capital value of the contract is £20m with an estimated total contract value of £106.9m.

ARAMIS – A corporate management system including MIS and MANIFEST. A nine year PFI contract was awarded to CSL in December 1997 in competition with EDS. The capital value of the contract is currently estimated to be £39.5m with a total contract value of £180m.

LIBRA – A court support system for magistrates courts. A PFI contract worth £183m was awarded to ICL in December 1998 after limited competition with EDS. EDS withdrew because it was unhappy with the tendering process and claimed it could have provided the system for £120m.

The Northern Ireland Court Service awarded ICL a £27m PFI contract in April 2000 to design an IT desktop service for 650 staff.
National Probation Service

The CRAMS case management system is operated by the private sector (Bull) although it is not a PFI project.

Police

BT Airwave, a new police and emergency services radio system, £2.5bn.

Prison Service

A £200m 12-year PFI contract was signed with EDS in March 2000 to rebuild the Prison Service IT and communications system. The project is a scaled-down version of Home Office's Quantum system with Sema which ground to a halt in 1998 after a dispute about the allocation of risk.

Met Police avoid PFI

The Metropolitan Police announced in May 2001 that they are to invest £1.7bn (£169m capital and £1,536m revenue) on information technology to deal with 999 calls over the next 20 years. Significantly, the C3i project based on three centres at Hendon, Lambeth and Bow, will be financed from the Metropolitan Police Authority's (MPA) capital and revenue budget on grounds of 'affordability'. The project was originally a PFI project but this was abandoned on financial grounds. Precise details have not been released but financial and project reports to the Metropolitan Police Authority indicate that the costs of the PFI project were unacceptable and the project was halted in February 2001. The precise reasons for this decision and the level of expenditure on PFI consultants has never been revealed. In October 2001, the MPA submitted a revised business case. The Metropolitan Police Service (MPS) needs to finance £162m of capital expenditure to implement C3i but can only afford to finance £14.6m leaving a funding gap of £147.6m. The MPA is seeking Home Office and Treasury support for £180.5m, a threefold increase on its May 2001 bid. The Met plan to have the centres operational by 2004 and will be largely staffed by support staff replacing the current two-tier system of a centralised emergency system with non-urgent calls and deployment handled by police stations. The new system will incorporate BT’s Airwave digital voice and data radio system. The MPA are proceeding with the C3i project, starting with the construction of the new call centres. An affordability gap remains even after taking account of the deletion of approximately 1,000 police officer posts currently employed in call handling and dispatch.

The abandonment of the PFI project and the MPA's decision to carry out a review of PFI procurement (see Part 9) reveals fundamental reservations about the relevance of PFI for information technology projects.

Met Police avoid PFI

Criminal Record Bureau: £400m project with Capita.

Forensic Science Service PPP: This is a Partnerships UK (the privatised Treasury Taskforce on PFI) launch project, considering options for expanding commercial activity.

SW1 Estate – Home Office/Prison Service HQ: Build and operate a new London HQ. Contractor: Queen Anne’s Gate Property plc (includes European Land, Bouygues Group, CCF Charterhouse plc, Fortress Investments. Advisers: Knight Frank (property), Harris (project management), Berwin Leighton (legal) PricewaterhouseCoopers (finance).

Scottish Executive: Scottish Criminal Records Office: This project is still under discussion.

National Probation Service: Facility and estates management: The National Probation Service in England and Wales is outsourcing the facility and estate management of most of its 900 buildings in phases between January and August 2002. Services include repairs, maintenance, cleaning, catering and laundry in 88 approved hostels together with offices and other properties in three regional divisions. “The three to five year periods are intended to allow for a period of consolidation and preparation for a long term solution to the property needs of the Service and its staff” (Press Release, Home Office, 7 December 2001). This is not currently a PFI project, but the relatively short term nature of the contracts and the wording of the press statement gives the impression that the outsourcing is a precursor to PFI projects later.

Hostels: Five hostels for ex-short term offenders with drug problems are to be PFI projects. Four facilities for men will be located in Merseyside, Preston, Exeter and Bristol plus a facility for women in the Bristol area. Each will hold up to 15 residents for 12 weeks, after which they will be transferred to ‘move-on’ accommodation. Contracts are expected to be announced in the spring of 2002. The Prison Service will not reveal which companies have bid for the contracts.
Part 2

The savings and efficiency myths of PFI

As with privatisation generally, arguments for the development of PFI within the criminal justice system have been based on myth. At the core are claims of value for money, innovation and cost savings.

This section examines the use of the Public Sector Comparator (PSC) in justifying PFI projects, the lack of evidence on cost savings and large cost increases in PFI information technology contracts.

Limitations of the Public Sector Comparator

Value for money in PFI projects is supposedly derived from the comparison of PFI costs with the cost of a publicly financed option, the Public Sector Comparator (PSC).

It is claimed that competition for PFI contracts is an important means of achieving value for money. However, this can hardly be credible in the criminal justice system, where PFI projects have often proceeded with minimal or no competition, for example, the LIBRA contract and Avon and Somerset MCC buildings with one bid, and Bedfordshire MCC buildings with just two.

In common with the use of the PSC in other public services, there are a number of fundamental criticisms over its use in the criminal justice system:

The PSC is not a suitable mechanism for providing a benchmark to assess PFI projects. It is limited to financial analysis.

The PSC fails to take account of social, economic, employment and environmental issues and community well-being. It is not a mechanism for assessing social equity.

The PSC is generally based on historic public sector arrangements. Whilst PFI projects are based on claims of future ‘innovation and flexibility’ from the private sector which are not subsequently checked, the public sector option is based on the absence of reform, modernisation and innovation in the public sector.

In the PSC, the use of ‘savings’ for capital, operational and energy costs are not evidenced or justified. These usually amount to many millions of pounds and are usually highly significant in ‘proving’ value for money and showing the PFI option to be cheaper than a publicly financed option.

The lack of transparency is rife, with a widespread lack of information disclosure and clients and advisers terrified to provide trade unions and users with any financial information. In the course of this study we have seen several Outline Business Cases (OBCs) which have been cleansed of chapters and appendices containing financial information.

The quality of the buildings, services and employment practices is not taken into account in determining value for money and does not feature in the PSC.

Inflated values are often given for the transfer of risk to the private sector and where risk retained in a publicly financed option. The worst case scenario of delays and cost overruns in previous publicly financed schemes are used, frequently involving the same construction companies bidding for the PFI contract, with no attempt to build in the possibility of the public sector reforming its procurement process.

A Sensitivity Analysis (an assessment of the effect of making different assumptions about the level of efficiency savings and risk transfer) should be carried out in every PFI project but this has not been evident in many of the Outline Business Case reports in the criminal justice system. However, important as this analysis is, it is of limited use if the starting point is based on exaggerated savings. If savings of say 20% are used, a sensitivity analysis will commonly examine the financial implications of 15%, 10%, 5% and 0% savings but the high starting point makes it unlikely that PFI project teams and advisers will want to accept a 5% or even 0% saving as ‘credible’. Indeed, there is evidence that PFI projects have to build in high ‘PFI savings’ in order to prove that this option is ‘cheaper’ than a publicly funded option.

There are other fundamental problems with the PFI procurement process. Once the PSC has been compiled as part of the Outline Business Case and the PFI manipulated to demonstrate ‘value for money’, the procurement process starts after the project has received government approval. Following the shortlisting of potential bidders and the issue of the Invitation To Negotiate (ITN) – the specification and contract details – bids are evaluated to select a preferred
The negotiated process frequently involves price increases, changes in the transfer of risk and increases in the provision of facility management services provided by the private sector. PFI consortia are in a powerful position to extract further concessions from the public sector. We have been unable to trace a single FBC for a PFI project in the criminal justice system.

Flawed cost comparisons

**Prison Service**

The contract for HMP Altcourse was signed on 20 December 1995 with a consortium including contractors Tarmac Construction Ltd and Group 4 as operator of the prison. Altcourse was designed as a 600 place Category B local prison. The stated Net Present Value of the contract was £247m and the average annual cost of each prisoner place was given as £16,467.

At the time, the Prison Service was also in the process of procuring a second PFI prison, HMP Parc at Bridgend. The significance of these projects was such that, before either facility opened, the National Audit Office (NAO) examined the procurement process “to assess the extent to which the Prison Service’s procedures were well chosen and likely to give an outcome in line with their objectives...”, and, “... assessment, and where possible, quantification of the eventual outcome of the Prison Service’s work.” (The PFI Contracts for Bridgend and Fazakerley Prisons, NAO, Report by the Comptroller and Auditor General, HC 253, Session 1997-98, 31 October 1997).

In comparison with traditional procurement methods, the NAO stated that the benefits of PFI included “a faster construction period, the introduction of innovative forms of design and operational methods and the transfer of some major risks to the private sector relating to construction, maintenance and operations. In addition, the PFI solutions have enabled the Prison Service to start projects which would otherwise have had to be deferred.”

But the NAO also noted that “the Fazakerley PFI solution is estimated to cost approximately the same as the public sector comparator.”

The NAO referred to the Prison Service having “identified that cost savings generated by PFI solutions are greater if the comparison is made with publicly operated prisons. A Home Office review published in October 1996 indicated that privately operated prison unit costs were 11%-17% lower than those of comparable prisons operated directly by Service depending on the measure chosen.”

Also, this review was used by Charterhouse (the Prison Service’s financial advisers on a subsequent PFI prison contract) to compute a revised public sector comparator for Fazakerley which “assumed both public sector operation and construction of the prison and also optimistic improvements in public sector performance ... the Fazakerley PFI project showed an estimated Net Present Value saving of £2.5 million (1% of the expected total project cost) compared with the revised comparator of a more efficient and economic public sector procurement process and long term operation.”

The NAO did not examine or comment on the Prison Service’s 1996 study of comparative costs which, anyway, was flawed on several counts – not least because the comparisons were not ‘like with like’, nor did they relate to PFI prisons.

Also, it is significant that the Charterhouse calculations were not published for independent scrutiny. Nor did the NAO examine the public sector comparator for the PFI contract. The NAO’s only comment was “while ... the Prison Service’s existing comparator provides a useful indication of possible savings for the first PFI prison competition it cannot be a precise forecast of the actual savings which will be generated over the life of the PFI contracts.”

The external costs of letting the Altcourse contract were not published or scrutinised. Only the combined costs of the Altcourse and Parc projects were made available. These were estimated to be £636,000 for advice on legal, financial, project management, construction compliance and insurance issues. But the actual costs were £1.55 million. There was no scrutiny of the full internal costs of the exercise.

**First Select Committee investigation**

The Select Committee on Public Accounts first examined the PFI contracts for Altcourse and Bridgend in 1998, going over the ground covered by the NAO report (The PFI Contracts for Bridgend and Fazakerley Prisons, Select Committee on Public Accounts, Fifty Seventh Report 1997/98). We do not know how this report and its conclusions were used by the prison service but it is indicative of how established the flawed methodology is.

While there were issues related to the Bridgend contract that would be of concern here, we only refer to the Committee’s dealings with Altcourse.

In its conclusions, the Committee noted: “As regards
creating a market in PFI prisons, we recognise that these were the first prison contracts to be negotiated. But the number of bidders for these and subsequent contracts shows that there is active competition for this business. Furthermore, PFI contracts are always likely to be more expensive because of the higher financing costs paid by the private sector, and passed on to the taxpayer through the contract, unless they can be offset by innovation in design and delivery. If the market sees that the contracts are in fact being spread around that will take the edge off the stimulus to produce innovative bids and the taxpayer is likely to end up with an unsatisfactory deal.”

Second Select Committee investigation

When the Select Committee on Public Accounts held a hearing into the refinancing of HMP Altcourse in November 2000, Robin Herzberg of Carillion (formerly Tarmac) stated “I would confirm that we would expect higher construction profits on PFI jobs.”

The Committee heard that the Prison Service’s public sector comparator for Altcourse was £248 million, however, during the proceedings there was no cross examination of how this figure was calculated.

In view of the Service’s acknowledgement, that they were creating a risk by using the private sector, the Committee observed that “the risk had been created through awarding contracts to the private sector was an interesting trade-off when considered in the context of the Fazakerley contract which had delivered minuscule savings.”

The Committee also noted that “… the Service said that the taxpayer had reason to thank them for delivering efficiencies amounting to very substantial amounts of money over the last few years. The Service did not think these efficiencies would have been delivered without a small private sector market which they had developed and said that they had helped to establish a market for this first PFI competition.”

The Prison Service had claimed that by letting the Parc and Altcourse contracts to different consortia, compared with public sector costs, savings of £54 million had been made. Asked how these savings arose, the Committee was told that “the reason for this was almost wholly to do with different wage rates and different staffing levels and also pension arrangements, sick leave arrangements and different lengths to the working week. For example, the average annual prison officer salary cost was almost £20,000 for a 39 hour week but Securicor were paying £14,000 for a 44 hour week at Bridgend and Group 4 were paying £13,000 for a 40 hour week at Fazakerley. On the construction side, the Service said that the design and build arrangements used by Securicor/Costain at Bridgend were significantly cheaper than conventional build.”

The Committee asked why the Prison Service was unable to negotiate a better deal on the Fazakerley project. They were told that “… Group 4/Tarmac’s proposals for Fazakerley were more conventional, closer to designs which were being used in the public sector and involved higher staffing costs than the Securicor/Costain proposals for Bridgend.”

The Committee stated that it was “concerned” that the Prison Service were unable to use the cost saving approach offered by Securicor/Costain on the Fazakerley contract.

The Committee took at face value the Prison Service’s claimed savings for the existing publicly financed/privately managed prisons and concluded that “the Service could have considered awarding separate building and operating contracts which they have been previously been able to use effectively with good savings. In this connection, we note that they have been considering whether, in future, other PFI variants can be used such as letting a contract for the design, construction and financing of a prison, with the prison being managed by the public sector. We note that their recent review of this issue concluded that separate building and operating contracts do not offer value for money compared with contracts which combine these aspects and the financing of the project. Nonetheless, given their concerns about Securicor as an operator at both prisons, a separate building contract might have enabled them to make use of Costain’s cost saving design at both Fazakerley and Bridgend.”

Again, the Committee did not fully examine the Prison Service’s research and conclusions about other PFI variants compared with public sector provision.

What is clear from the evidence provided and the Committee’s conclusions, is that the core of the PFI strategy went unchallenged, as did the idea that public sector provision might be an option. Further, the issue of whether a prison per se provided ‘value for money’ was not a consideration.

It is a moot point whether a prison should have been built at Fazakerley at all. The original opposition to the development was ignored; the original claims for the prison being part of the solution to overcrowding have fallen by the wayside; and the claims for cost efficiency and value for money have been disproved. While claims for the success of the prison continue to be made, there is no evidence of this success either in reduced reoffending rates or re-entry to the community (particularly through employment).

Another flawed study

In 2000 the Prison Service commissioned Mouchel Consulting Ltd (advisers to the Prison Service and Scottish Prison Service in a variety of capacities on a number of PFI prison deals including Altcourse, Lowdham Grange and Kilmarnock), to examine the cost differential between publicly and privately operated prisons. Their report ‘Alternative Types of Prisons’ was produced in March 2000 but not published for wider consultation The findings were incorporated into the Carter Report of 2002.
Mouchel compared four models:

- Treasury funded public procurement with public sector management and operation
- Treasury funded public procurement with private management and operation (10 year term);
- Privately financed, privately maintained (25 year term) with public management and operation
- Privately financed, privately managed and operated (25 year term).

It found that the PFI was still the procurement method of choice since the report, without qualification, opened with: “The DCMF [prison] programme has generally been seen as one of the most successful across all PFI market sectors.”

It concluded:

- for best value for money, taking into consideration risk transfer, new prisons should be constructed and maintained by the private sector under long term contracts.
- within this framework, operations may be either subsumed into proven DCMF contracts or retendered at regular (10 yearly) intervals. The latter offers greater operational flexibility but also a generally higher risk of cost overrun because of its unproven status.

The report was strictly confined to the cost and assumed value for money of the procurement process. It did not attempt to assess:

- the quality of prisons
- the social, economic and environmental impact of a prison (the impact would not be the same because of differences in jobs, wages and conditions).
- differences in the performance (quality, education, rehabilitation outcomes, etc) of different prison regimes.

There were a number of highly questionable cost factors relating to the allocation of risk built into the calculations. The difference between options 1 and 2, both public build but with public or private operation, was, again, the differences in staffing, pay and conditions. So the argument was – and remains – not really about who builds the prison at the lowest cost but what system can be most ‘effective’ in cutting pay and conditions.

**Dorset police station example**

The Dorset Police Authority PFI project, which provided police stations and a divisional headquarters, also highlights the lack of financial transparency. The 4Ps, the local authority body set up to promote PFI/PPP projects in England and Wales, published a case study on the project but it contained very limited financial information and primarily dealt with procurement issues (4Ps, 2000).

The 4Ps document highlights several issues:

**Public Sector Comparator:** A PSC “…was used throughout the procurement to assess the robustness of proposed solutions, whether they represented value for money and to confirm the affordability of the project to Dorset Police Authority. In the event the PSC was understated and revisions to it were used to request additional PFI credits.” The case study is silent on a final comparison between the PSC and PFI and provides no details of the estimated value of the risks transferred.

**Value for Money:** No evidence is supplied to prove that the project delivered value for money. The 100% increase in the PFI credit probably reflects the Home Office, Dorset Police Authority and advisers commitment to achieve conclusion of the project whatever the cost.

**Project expansion:** The original project was for a new Divisional Headquarters in Dorchester and this project was selected as a Home Office pathfinder project in 1996. Within a year, the project had expanded to include new police stations in Weymouth, Bridport and Portland following a “reassessment of business need.” The bigger ‘bundled’ project “was also considered to be potentially of more interest to the private sector and likely to offer better value for money.”

**PFI credit doubles in five months:** The Home Office approved the project in May 1998 with an ‘indicative PFI credit’ (revenue support from central government) of £12.4m. However, “when priced bids were received it was evident that the original PFI credit allocated was insufficient. A request for a supplementary PFI credit was subsequently approved by the Home Office and the Treasury in October 1998.” The PFI credit was almost doubled to £24.2m.
Lack of evidence of cost savings

The source of stated cost savings from PFI rests on studies carried out by the National Audit Office and a joint Arthur Andersen/Enterprice LSE study commissioned by HM Treasury's Private Finance Taskforce in 2000 (the Taskforce was later privatised in March 2001 via a 51% sale of shares to PFI contractors and financial institutions). The only exception being Select Committee findings which show that lower staffing costs of PFI contractors (pay and conditions) account for two thirds of the cost differential.

National Audit Office studies into the Bridgend and Fazakerley prisons, the Dartford and Gravesham Hospital, the A74/M74 and the first four road PFI projects showed 10%, 3%, 8% and 12% savings on the PSC respectively. The Andersen study groups another three NAO PFI studies, NIRS (National Insurance IT project), PRIME (Newcastle DSS office project), and RAF vehicles and then concludes that: “If the NAO sample as a whole was regarded as being typical of PFI as a whole, then a rough estimate of the savings generated by the £16 billion PFI programme to date would be 20% or £3.2 billion. If the NAO sample with the exception of NIRS and PRIME was thought more typical, then the estimated savings would be 10% or £1.6 billion” (Arthur Andersen, 2000, para 3.55).

**Critique of Andersen et al**

The Andersen study claims an average PFI project cost saving of 17%. This was based on 29 unnamed Final Business Cases supplied by government departments following a request from the Taskforce. The number, if any, of criminal justice projects included in the survey is unknown. Andersen conclude that data “suggests that the PFI offers excellent value for money” (Andersen report, para 5.5). The findings of this study have been used around the world to promote the ‘success’ of PFI, particularly of prisons in Britain.

However, the financial advantage of PFI projects is usually centred on the highly questionable use of discounting (the net present cost of the PFI and the PSC are discounted, usually at a high 6%, over the contract period), the inclusion of PFI savings and efficiencies built into the PFI option, and costing of risk transfer. As Pollock and Vickers have noted, the net present cost of publicly financed projects tends to be high because capital expenditure is accounted for usually at the start of a project (Pollock and Vickers, Public Finance, 2000).

In contrast, PFI payments are spread over a longer period and the application of a discount rate lowers the net present value by a greater amount (Pollock and Vickers, Public Finance, 2000). The authors also challenged the 17% figure because more than half the total savings came from one project. When this and two other projects which collectively accounted for over 80% of savings are excluded, the average saving is reduced to 6%. Pollock and Vickers concluded that “…this margin is small enough to suggest that, for most projects in the report, value for money simply results from the front loading of the PSC and the level of the discount rate” (Pollock and Vickers, Public Finance, 2000).

The Andersen report also concluded that risk transfer valuations (risk transferred to the private sector) accounted for 60% of forecast cost savings. But only 17 of the 29 projects provided data on risk transfer and one project, ironically the National Insurance PFI project with Andersen Consulting, accounted for 80% of the savings from risk transfer.

In a reply to a Parliamentary Question in July 2001 asking what assessment the Treasury had carried out into PFI cost and efficiency savings, the reply merely noted that: “The information that has been requested is not kept centrally. The nature and diversity of PFI projects would make any global figure broken down in the way requested ambiguous.” The reply referred to the NAO and Andersen studies which “have indicated that PFI is delivering value for money” (Hansard 4 July 2001).

In 1998 it was revealed that of seven PFI contracts awarded by the Home Office, the Public Sector Comparator for four of them was calculated after bids from the private sector were received (Hansard, 19 February 1998). These were HM Prisons Altcourse (see Part 4) and Parc; the UK Passport Agency’s contract for dealing with applications and printing passports; and the Medway Secure Training Centre.

An Audit Commission management paper on PFI draws on lessons learnt from health and local government schemes which had reached contract closure. Significantly, no court schemes were included. Even more significant was the Commission’s statement that it: “…neither endorses the PFI nor questions the fundamental assumptions underlying it. It is too early to say whether PFI contracts generally offer the public sector long-term value for money in terms of service delivery. A conclusion will only be possible when post-implementation reviews of operational contracts are carried out and the cost of services procured under the PFI is compared with similar PFI contracts, as well as those by other means.”

(Building for the Future, Audit Commission, 2001)

A subsequent National Audit Office survey of 121 PFI projects is at odds with the Audit Commission position. The NAO did not produce any additional project evidence but surveyed authorities and contractors where PFI contracts had been let prior to 2000 (Managing the Relationship to Secure a Successful Partnership in PFI Projects, November 2001). The survey included 11 prisons and four projects in the LCD although no local authority or police contracts.

The study had a reference panel which included PFI contractors WS Atkins and Carillion and five representatives from the PFI units in the NHS, Prison Service, Office of Government Commerce, Ministry of Defence and the Highways Agency. Asking PFI project managers their opinion about value for money, the spirit of partnership, staff skill requirements and the lessons of procurement
inevitably ends in being little more than a primer for PFI and partnership.

The NAO report followed hard on the heels of a similar PricewaterhouseCoopers report based on a sample of 27 PFI projects. The report claimed that “PPP’s work: The benefits the public sector requires are being realised” (PricewaterhouseCoopers, 2001). The evidence consisted entirely of brief interviews with PFI project managers and PFI contractors. Included in the survey were the contractors that run HMP Dovegate, Rye Hill, Forest Bank, Ashfield, Lowdham Grange and Parc and the Hassockfield, Medway and Rainsbrook Secure Training Centres. The NAO also interviewed the prison service and youth justice board in relation to these contracts.

The NAO used an external reference panel “comprising representatives from the Office of Government Commerce (treasury), departmental PFI units and the private sector …to discuss and agree the overall direction of the study; the proposed questionnaires … the interpretation of the results of the surveys and the presentation of the information in this report.” The panel included the prison service’s contracts and competition group and, from the private sector, WS Atkins (involved in HMP Parc and private prison consultancy), Carillion (Group 4’s prison construction partner), the CBI (Confederation of British Industry, the Business Service Association, the Major Contractors Group and the Construction Industry Council. Notably absent from the NAO’s survey were the views of prisoners, prisoners’ families, prisoners’ advocates, criminologists, prison reform organisations, trade unions, probation services and others who provide services to private prisons and secure training centres.

The press reported in September 2001 that the Treasury had commissioned management consultants Mott MacDonald to compare the cost of PFI schemes with public sector procurement. The study is claimed to be “…one of the most comprehensive evaluations of the PFI process ever undertaken, the report will cost the extra benefits the Treasury receives by ceding control of public services to private companies” (Independent on Sunday, 16 September 2001). A subsequent press release from Mott MacDonald revealed that they were commissioned to “…determine the extent and causes of cost and time overruns, plus benefit shortfalls” in a sample of 60 major public sector capital projects costing over £100m in the last 20 years (Mott MacDonald press release, 12 October 2001).

The research will be used in the review of the Treasury’s ‘Green Book’ project appraisal guidelines “…to introduce a better understanding of the risks associated with capital cost overruns, operating cost increases and benefit shortfalls”. Given the focus on large public sector contracts such as the British Library and Great Ormond Street Hospital which were delayed and had substantial cost overruns, the Mott MacDonald study appears to be directed at providing yet more historic ‘evidence’ of the risks of public sector provision for use in future Public Sector Comparators. Of course, this only exposes the fraility of the case for PFI.

Evidence of public-private cost differentials

Cost comparisons are rarely valid for three reasons: Firstly, they compare the cost of services but ignore the cost differences between new and old buildings. For example, the Scottish Prison Service (SPS) presented the cost of HMP Kilmarnock to the Scottish Parliament as £11,000 per prisoner place per annum but omitted to explain that this was the 1997 NPV calculation. The cash value was actually £21,000 per prisoner place per annum. The cost per prisoner in other Scottish prisons, for example, Peterhead, was £26,581 per annum. However, Peterhead, Barlinnie, Perth, Inverness, Aberdeen and parts of Edinburgh prison are Victorian buildings and comparing the cost of a new private prison with old public prisons will inevitably produce cost differentials.

Secondly, new buildings facilitate the introduction of new security systems and working methods which may not be possible in older prisons and/or are more costly.

Thirdly, there is a substantial difference between public and private sector pay rates (see Select Committee findings in this section and Part 5). Pay rates in private prisons for prison officers/prisoner custody officers and supervisors is an average 25%-32% lower than for comparable jobs in the Prison Service. There is also a substantial difference in the quality of pensions with the private sector offering only money purchase schemes with relatively low levels of contributions in contrast to final salary schemes in the public sector. The difference can amount to between 10% and 13% of annual salary. In addition, private companies do not make additional payment for shift, out of hours working or special duties. The wide wage differentials between public and private sectors provide a key part of the ‘savings’ trumpeted for PFI projects.

This evidence of wide differentials in public/private pay rates was mirrored in earlier research. A comprehensive analysis of public/private pay rates and public costs of tendering was carried out as part of the Equal Opportunities Commission research into the gender impact of compulsory competitive tendering in local government (EOC, 1995). The Centre for Public Services study took account of the financial impact on tendering on budgets, changes in jobs, pay and conditions, the impact on benefit payments and changes in tax income to the government from employees and contractors. It concluded that not only that there were no savings but that the government was heavily subsidising competitive tendering.
Examples of cost increases

Rising costs in Cheshire

Cheshire Police Authority has a PFI project for the relocation of its headquarters and Force Training Centre in Chester to a greenfield site near Winsford. It produced the first Outline Business Case (OBC) in March 1997. The relocation proposal had earlier been referred to the Home Office and the project became one of 14 PFI Pathfinder projects in 1996 (pathfinder schemes were projects selected by government departments to be show case models and illustrate best practice). UNISON commissioned an appraisal of OBC No.1 (now defined as the ‘initial business case’) from the Centre for Public Services in 1999 which identified a number of fundamental shortcomings. OBC No.2 was assessed by the School of Public Policy, University College London the following year which also identified major concerns.

It was only after UNISON submitted its first report to senior management that the existence of OBC No.2 was revealed. There is no substantial difference between the two projects in terms of the buildings being provided. The schemes now differ because alternative premises were required for the northern garage after Halton BC served a CPO on the Widnes site. But this change only came about after OBC 2 had been approved and three bidders were shortlisted.

A strict comparison between OBC No.1 and No.2 is impossible but the changes in the different components are significant. The cost of the status quo options increased 130% between OBC No.1 and No.2 whilst the public financed option increased 34% compared to a 11% increase in the PFI option.

An analysis of OBC No.2 by the School of Public Policy, University College London, concluded that: “On a cash basis publicly financed investment is still clearly the cheaper option by some £30m even when risks have been adjusted for. On a discounted NPC basis, however, the PFI option shows marginally better VFM. ……narrow margins indicate that the result of the appraisal is largely an artefact of the discount rate and the scoring of public investment. It can not be held, therefore, that this business case convincingly demonstrates better value for the PFI option being promoted.”

(Cashire Police Authority PFI Scheme, October 2000).

The Police Authority refused to release the appendices to the OBC, hence it is not possible to fully assess the financial implications of the project. OBC 1 calculated the PFI charge to be £2.8m, financed by £1.5m from the Police Authority and £1.3m from the government. However, the PFI charge in OBC No.2 was 64% higher at £4.9m, creating an affordability gap. This forced the Police Authority to finance the project by reengineering services and savings from three sources:

- annual building running cost reductions of £1.35m per annum (at 1998 prices)
- annual savings generated by the business improvement programme of £1.78m per annum (1998 prices).

These savings are essential “…to meet the affordability gap between the NCA income (notional Credit Approval) and payments to the project company from 2003 – 2032.”

(OBC No.2, p61)

The ‘business improvement programme’ savings is a reconfiguration of police staffing in the Call Management project. By dividing call management into two distinct facilities, a call management bureau and a deployment centre, the cost of police wages is reduced by £2.2m per annum. Even allowing for additional staff to cope with an estimated 5% increase in call handling in the first five years of the project, the annual savings are estimated to be £1.78m.

West Mercia Court costs rise

The West Mercia Magistrates Court project became a Treasury PFI ‘pathfinder project’ in 1996, although at the time there was little evidence to merit the selection of Hereford & Worcester over other possible contenders. This decision appears to have been arbitrary.

The OBC boldly stated that “there is no public sector alternative to the proposed PFI scheme and hence value for money can only be demonstrated through the competition process for procurement.” The first version of the OBC (October 1996 – the same month the contract was advertised) contained very little financial information. It also included a statement that the original public sector scheme would be used for the public sector comparator.

There have been unconfirmed reports from West Mercia court staff that the annual PFI charge is now eight times the revenue cost of the original buildings. The West Mercia MCC budget forecast for premises in 2000/01 was £639,000 for all existing buildings in Hereford, Worcester and Shropshire. A sum of £750,000 was allocated for only part of the year for the PFI buildings in Kidderminster and Hereford. Given that the total cost of the PFI project is £133m it would indicate an annual unitary payment (the annual payment to the contractor consisting of the availability fee – covering the cost of capital investment, loan repayments and shareholder profits – and the fee for services) of between £4m – £5m and would appear to confirm these reports.

LIBRA – another example of cost increases

MCCs are subsidised by the Lord Chancellor’s Department for LIBRA. The LCD made £10m available per annum via a capital to revenue transfer to bridge the gap between the LIBRA charge and a MCCs current IT costs. MCCs would
bear the same level of contribution. A worked example, using the £1.97 per weighted case charge, shows, that an MCC with an annual revenue budget of £5m, a caseload of 305,000 per annum, current IT costs of £350,000, and an MCC contribution of 1.3% of its annual revenue budget, would result in the MCC receiving a top up subsidy of £185,000 from the £10m fund.

A paper for the Association of Justices’ Chief Executives in March 2000 made a number of statements about LIBRA:

Claim: “LIBRA will have failed if staff budgets cannot be cut because tasks are simplified or being performed once by another player in the CJS, rather than being duplicated by the MCC staff.” (Association of Justices’ Chief Executives, 8/9 March 2000);

FACT: The cost of LIBRA had risen 74% in just three years so savings vanished, instead turning into increased costs for MCCs and the LCD. With respect to duplication, court staff have to access two processors through a T switch because of the failure to provide a new case management system, ie the core system;

Claim: “Government has reassessed LIBRA technically and from a business perspective, it stands up technically......It cannot now be allowed to fail.” (Association of Justices’ Chief Executives, 8/9 March 2000);

FACT: Clearly, the 15-18 month delay and failure to introduce the full system is evidence of a technical failure.

Non-PFI funding within PFI
The LIBRA specification failed to include internet access. The LCD are currently negotiating with ICL to include it within the scope of the contract. The current cost of LIBRA is £1.97 per weighted case load and ICL advised that the extra cost of internet access would be 3p bring the total cost to £2.00. However, the LCD are considering financing the deal outside of the PFI contract by capitalising the development costs (paying the contractor a lump sum up front) thus reducing the extra cost. Why? – because it is cheaper to finance the deal through normal public sector capital spending than via the PFI route!

Cost increases in PFI information technology contracts

Three court service information technology contracts make a mockery of the claim by the government and PFI supporters that PFI contracts are fixed price for the contract period – see Table 2.1. One PFI contract, LIBRA, has been re-negotiated and extended from 8 to 12 years, although a 50% increase in the contract period does not account for a 74% cost increase.

Another contract, CCS, was originally costed at £25m but has so far increased to £107m, a 328% increase, although it is claimed that the baseline costs remain unchanged and the increased cost is due to “very significant additional services” (Hansard Written Answer, 17 July 2001). Since two contracts, ARAMIS and LIBRA, are less than half way through the original contract period, further additional costs would appear to be inevitable.

<table>
<thead>
<tr>
<th>Contract</th>
<th>Original cost at contract signing (£m)</th>
<th>Current estimated total cost (£m)</th>
<th>Increase (£m)</th>
<th>Percentage increase %</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARAMIS (CSL)</td>
<td>130</td>
<td>180</td>
<td>50</td>
<td>38</td>
</tr>
<tr>
<td>LIBRA (ICL)*</td>
<td>183</td>
<td><strong>319</strong></td>
<td>136</td>
<td>74</td>
</tr>
<tr>
<td>CCS (EDS)</td>
<td>25</td>
<td><em><strong>107</strong></em></td>
<td>82</td>
<td>328</td>
</tr>
<tr>
<td>Total</td>
<td>338</td>
<td>606</td>
<td>268</td>
<td>79</td>
</tr>
</tbody>
</table>

Source: House of Commons Written Answers, 17 July 2001; Court Service Annual report 1999-2000,

* Contract extended from 8 to 12 years.

** Currently subject to renegotiation

***Part of cost increase relates to increased workload in asylum and immigration appeals work.
The use of PFI for information technology contracts has had no effect whatsoever on containing the cost of projects. The massive cost increases and extension of contracts makes a mockery of the Outline Business Case, Public Sector Comparator and the original specification. The total cost of the PFI element of police service BT Airwave project was estimated to be £1.3 billion in June 2000 (in Net Present Value terms – the sum of cash payments over the contract period valued at current prices) or a total cost of £2.3 billion. The total cost figure now being used in the media is £2.9bn – a 26% increase on the previous figure. The ‘core’ costs of installation and equipment costs are funded centrally by the Home Office. In addition police authorities will have to pay the costs of control room terminals and radio terminals during the life of PSRCS. This will add an estimated £300m to the cost of the project (Hansard Written Answer, 28 July 2000).

PFI credits for revenue support
The level of PFI credits (revenue support or subsidy from government) frequently exceeds the capital cost of the scheme. In four Police Authority projects the PFI credits exceeded the capital value of the projects by £50.5m – see Table 2.2

Table 2.2: PFI credits exceed capital costs

<table>
<thead>
<tr>
<th>Project</th>
<th>Capital Cost (£m)</th>
<th>PFI Credits (£m)</th>
<th>Difference (£m)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dorset Police Divisional Headquarters</td>
<td>15.0</td>
<td>24.2</td>
<td>+9.2</td>
</tr>
<tr>
<td>Cleveland Custody Centre</td>
<td>13.5</td>
<td>22.7</td>
<td>+9.2</td>
</tr>
<tr>
<td>Cheshire Police Authority Headquarters</td>
<td>25.0</td>
<td>38.1</td>
<td>+13.1</td>
</tr>
<tr>
<td>Sussex Custody</td>
<td>15.0</td>
<td>34.0</td>
<td>+19.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>68.5</strong></td>
<td><strong>121.0 +</strong></td>
<td><strong>50.5</strong></td>
</tr>
</tbody>
</table>


Whose best value?
Best Value was introduced into local government in 1999. It is a performance management system consisting of a five year cycle of reviewing services by challenging how and why they are provided, comparing performance with other providers, consultation with service users and assessing their competitiveness. It is accompanied by a reporting and inspection regime.

Guidance issued by the 4Ps on the standardisation of local authority PFI contracts recommends that Best Value principles should be mainstreamed into PFI contracts particularly with regard to service requirements and availability, performance monitoring, price and payment mechanism, and changes in service and price variations. It also recommends that Best Value should be used in the pre-procurement stages to form the basis of decisions to commence procurement, to examine procurement options and to determine whether PFI is appropriate. However, there is very little evidence to date that this approach has been adopted in PFI projects in the justice system.

Comparing performance through the use of Key Performance Indicators (KPIs) cannot be done on a true ‘like for like’ basis. A recent study of the Prison Service’s KPIs for the year ended 31 March 2001 casts doubt on this system of measurement, stating:

- measuring performance in a quantitative way does not necessarily give an indication of quality;
- ... despite the fact that reducing re-offending is one of the Prison Service’s twin objectives, it is not measured by a KPI ...;
- meeting KPIs should be viewed as a way of encouraging improved performance in prisons and not as firm evidence that prisoners are being treated humanely or constructively.

(from The Prisons League Table 2000-2001, Performance Against Key Performance Indicators, Joe Levenson, Prison Reform Trust, August 2001)
PFI consultancy fees

Consultancy fees for PFI projects usually represent a considerably larger percentage of capital costs compared to public sector projects. PFI fees are required for legal, financial, project management and technical issues. The cost of Home Office, Lord Chancellor’s Departmental PFI units, project staff, Police Authority, Prison Service and Magistrates Courts and other criminal justice organisation staff engaged on PFI projects are rarely quantified and are excluded from the figures below. For example, the LCD has about 20 staff engaged on the LIBRA project alone. The figures also exclude consultants fees paid directly by MCCs, police authorities and other public bodies.

Central departments in the criminal justice system paid £13.2m in consultants fees in the four year period between 1998-2001. The Home Office paid out £5.3m fees to PFI consultants between May 1997 and March 2001 (Table 2.3). Legal fees accounted for nearly three quarters of the total – it seems that commercial lawyers are benefiting the most from PFI in the criminal justice system.

Table 2.3: Consultancy fees on Home Office PFI projects

<table>
<thead>
<tr>
<th>Year Accountancy</th>
<th>Fees (£)</th>
<th>Legal Fees (£)</th>
<th>Total (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 May 1997-31 March 1998*</td>
<td>90,046</td>
<td>191,361</td>
<td>281,407</td>
</tr>
<tr>
<td>1 April 1998-31 March 1999*</td>
<td>294,855</td>
<td>792,452</td>
<td>1,087,307</td>
</tr>
<tr>
<td>1 April 1999-31 March 2000</td>
<td>436,802</td>
<td>1,813,643</td>
<td>2,250,445</td>
</tr>
<tr>
<td>1 April 2000-8 March 2001</td>
<td>675,389</td>
<td>980,142</td>
<td>1,655,531</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,497,092</strong></td>
<td><strong>3,777,598</strong></td>
<td><strong>5,274,690</strong></td>
</tr>
</tbody>
</table>

* Excludes Quantum (Prison Service IT) project.

Another £7.9m was paid in consultants fees by the Lord Chancellor’s Department, the Crown Prosecution Service and the Serious Fraud Office (Table 2.4). Both tables show an annual increase in fee payments indicating the increasing number of PFI projects. The average daily cost of a consultant in the Crown Prosecution Office was £1,032 in 2001.

Table 2.4: Consultancy fees in other criminal justice PFI projects

<table>
<thead>
<tr>
<th></th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crown Prosecution Service</td>
<td>-</td>
<td>-</td>
<td>408,204</td>
<td>1,004,367</td>
<td>1,412,571</td>
</tr>
<tr>
<td>Serious Fraud Office</td>
<td>29,724</td>
<td>76,489</td>
<td>194,650</td>
<td>-</td>
<td>300,863</td>
</tr>
<tr>
<td>LCD</td>
<td>836,427</td>
<td>1,725,782</td>
<td>1,317,391</td>
<td>2,288,870</td>
<td>6,168,470</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>866,151</strong></td>
<td><strong>1,802,271</strong></td>
<td><strong>1,920,245</strong></td>
<td><strong>3,293,237</strong></td>
<td><strong>7,881,904</strong></td>
</tr>
</tbody>
</table>

There is less information disclosed about PFI consultancy fees in the LCD although between April-August in 2001-02 fees amounted to £1,224,172. PricewaterhouseCoopers feature as financial advisers to nine of the court PFI projects which have been signed or are in procurement. This reflects PricewaterhouseCoopers dominance of a PFI financial advisers league table with 102 deals (with a capital value of £8.6bn), over 60% more than KPMG and more than double the number for Deloitte Touche. Arthur Andersen and Ernst & Young have far fewer deals but these have a comparable total capital value (The PFI Report, June 2001). In the courts service PFI consultancy fees are normally financed 20%-80% between the Local Authority and the MCC. However, in the case of West Mercia, the LCD recognised that as a pathfinder project, “... costs are likely to be higher for this project than subsequent projects”. The LCD agreed to pay the full costs of the PFI, project management and financial advisers, with the cost of the legal and technical advisers being shared. The consultancy costs were in the region of £1m for this one project. This excluded the cost of LCD and MCC staff input, which was considerable.
The Lord Chancellor’s Department wrote to local authority chief executives and MCC chief executives in July 1997 stating that the cost of PFI advisers (general PFI advice, project management, financial, legal and technical) “… to take you from start to contract let is between £300K – £400K” (LCD, 28 July 1997).

Less than three years later, the Parliamentary Secretary for the LCD admitted that “the estimated cost of the investigation, preparation and assessment of the proposals for the PFI for Derbyshire is £940,000” (Hansard Written Answer, 13 July 2000).

The Merseyside MCC is expected to spend £800,000 on advisers fees alone between 2001-2003. This project has been under development for several years so this figure for advisers costs represents only part of the full costs (Hansard Written Answer, 16 January 2001).

On this evidence the cost of PFI advisers is almost three times the level anticipated by the LCD which grossly underestimated the real cost of PFI consultancy.

Consultants fees for Derbyshire and West Mercia court schemes represent 4.7% and 4.8% of the capital costs respectively. Professional fees for the the Cleveland Custody Centre project are £935,000 or 6.9% of the capital cost. Consultants fees in the criminal justice system are comparable to advisers fees for the first fifteen NHS PFI hospitals which represented between 2.4% and 8.7% of the capital cost of projects. Consultants fees are likely to remain substantial even if there is wider use of standard contract and procurement documentation. Consultants are adept at identifying exceptions and unique aspects of projects which justify additional advice and fees.

Assuming average consultancy fees of 5%, the total cost of PFI consultants in the criminal justice system to date has been about £145m – equivalent to nearly 5,000 new police officers or seven new publicly funded magistrates courts projects.
This section examines the refactoring, specifications and monitoring of PFI contracts in the criminal justice system.

Refactoring a contract: Although PFI contracts are, in theory, supposed to be for a fixed sum for a specific period there is evidence that the terms of some ICT contracts have been changed after only a few years of operating the contract.

Refactoring and PFI contract issues

PFI contracts renegotiated

The £183m LIBRA contract was awarded to ICL in late 1998. However, the deal was revised in 2000 and the contract was extended to over twelve years. The cost of the contract had risen 74% to £319m. The contract apparently ensures that ICL receives more than half the payment for delivery of the new computers and office automation software. The main reason for the project, a new case management system, accounts for less than half of the total cost. In other words, ICL can receive more than half its payment without delivering the core case management application.

The re-negotiation of the contract in 2000 radically changed its scope, finance and purpose:

Office Automation, originally an optional service for MCCs, became the first stage of LIBRA and started in October 2000, some nine months ahead of the planned new LIBRA application software. By March 2001, some 20% of magistrates courts staff had OA. MCCs to pay £1.40 per weighted caseload per annum for office automation.

Payments to ICL were planned as and when the LIBRA service was successfully implemented in each MCC. However, “the original payments were reprofiled, with the majority (up to 80%) of the original amount for each MCC being payable on delivery and acceptance of the OA service in each MCC. The balance to be paid on implementation of the LIBRA application software at each MCC.” (Letter to Justices’ Chief Executives from Head of Magistrates’ Court IT Division, 10 April 2000). In addition, a new set of payments were introduced, payable to ICL as stage payments on delivery of the application software, phased over three years beginning in April 2000. The ongoing service charge for the LIBRA service was reduced by 7% from £2.12 to £1.97 per weighted caseload per annum.

The LCD agreed not to change the arrangement for additional Revenue Grant funding for LIBRA, hence the reduction in the service charges “will be of direct benefit to MCCs” (ibid). This is another example of central government subsidy to ensure local co-operation with national PFI projects.

The main agreement was for 8 years from acceptance at Suffolk (the pilot site for the project) plus an option to extend it up to an additional four years. The option to extend the contract was invoked after only two years and the contract now runs for 12 years.

Invoices were raised by ICL quarterly in arrears but this was changed so that they are raised at the beginning of each quarter. This had the effect of speeding up payment to ICL over the length of the contract by three months.

The original agreement included a provision for a 15% discount on the service charge (the cost of running LIBRA) for MCCs for early implementation of LIBRA. This was abolished.

The re-negotiated contract now includes open book accounting (the contractor makes its accounts for the project available to the client) and profit sharing. LCD and MCCs will share any profit on an annual basis “once the forecast profit margin exceeds an agreed threshold.”

AMO – the trade union for magistrates’ courts staff, stated that the contract appeared to be “… geared more towards delivering finance to ICL than efficient systems to the courts”.

Computer Weekly reported that the contract was re-negotiated without any recourse to Parliament and that a further £26m was allocated for internal costs in the LCD (Computer Weekly, 28 June 2001).
Shareholders in Group 4 and Carillion (formerly Tarmac), the consortium that won the contract to finance, design, build and run HM Prison Altcourse, managed to increase their expected profit on investment by 81% since the contract was awarded.

Two major factors led to this windfall: re-financing the debt arrangements on the project, and being rewarded by the Prison Service for early completion of the prison's construction.

The company further benefited by having £500,000 in penalties for non-delivery of services waived. Profit taking from debt re-financing begs further questions about the validity of the PFI compared to public sector borrowing – see executive summary and recommendations.

The re-financing led to a report by the National Audit Office which noted that:

- Fazakerley Prison Services Ltd (FPSL), the project company set up by Group 4/Tarmac after the Altcourse contract was awarded in 1995, refinanced the project in November 1999;
- the arrangement included: extending the period over which FPSL's bank loan would be repaid; a reduction in the lending margin for the loan; a fixed rate of interest covering the full period of the loan; and early repayment of subordinated debt invested by FPSL's shareholders;
- the re-financing improved expected returns through early repayments of the original investment and by generating a more favourable flow of dividends;
- these expected returns increased by £10.7m (61%) compared to the original projected level of £17.5m at the time the contract was awarded;
- the contract between the Prison Service and FPSL did not oblige the company to share any gains made through re-financing;
- the company was advised to seek permission from the Prison Service to re-finance as, without it, the company might not be compensated in the event of early termination of the contract;
- after previously rejecting offers of £100,000 and £300,000, the Prison Service negotiated a settlement of £1m from the company. But, offset against this, was £500,000 in penalties that the Prison Service agreed to waive;
- the Prison Service regarded the company's windfall as "... a reward for FPSL taking risks in managing the first PFI prison project successfully." (The Re-financing of the Fazakerley PFI Prison Contract, Report by the Comptroller and Auditor General, National Audit Office, HC 584 Session 1999-2000, 29 June 2000)

In light of the NAO report, the Treasury was to issue new guidelines to government departments but, as the NAO also noted, it is "expected to recognise the private sector's rights to receive re-financing benefits as a reward for the successful management of risks where these are appropriately priced."

On 1 November 2000, in evidence to the Select Committee on Public Accounts, the current Director General of the prison service, Martin Narey, stated that new PFI prison contracts for Ashford and Peterborough will contain clauses stipulating that the Prison Service will receive "half of any re-financing benefits."

This does not deal with the substantive issue of whether excess profit taking from a PFI contract should be allowed.

In fact, while the Select Committee noted that "FPSL shareholders greatly improved returns and decreased their risk, whereas the Prison Service obtained no more than compensation for taking on increased risk" it did find that "... it is therefore unacceptable for 100 per cent of re-financing benefits to remain with the private sector side..." However, the Committee recognised the private sector's right to profit from re-financing and only recommended that "... departments should share in the benefits that will arise through the successful delivery of a PFI project" and that "better guidance is needed to help departments address re-financing issues and how the benefits of re-financing should be shared."

The Committee noted that "... when this contract was let in 1995, the Service estimated that it would only deliver marginal savings of £1 million compared with conventional procurement ... the re-financing appears, therefore, to give FPSL substantial further benefits on a contract which at the outset did not give the prospect of significant savings to the Prison Service."
Contracts with re-financing clawback clauses

Of the combined total of 21 PFI schemes in the Home Office and Lord Chancellor's Department, two Home Office contracts have been subject to re-financing. Only three contracts have clawback arrangements with an entitlement to share in the gains from re-financing (Table 3.1). With only 14% of contracts with clawback arrangements in the criminal justice system it falls well below the 24% average for all government PFI contracts (excluding the Channel Tunnel).

Premier Prisons, a joint venture between Serco and US security company Wackenhut (see Part 10) operates four PFI prisons plus the PFI financed Hassockfield Secure Training Centre. The company is reported to have combined together the separate borrowings and refinanced them thus increasing their profits by £7m (Refinancing – Profiteering Public Services, UNISON, 2001).

<table>
<thead>
<tr>
<th>Department</th>
<th>No of PFI contracts</th>
<th>Aggregate capital value of PFI contracts £m</th>
<th>No of PFI contracts with clawback to share in re-financing</th>
<th>PFI contracts with clawback to share in re-financing Capital value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Office (incl Prison Service)</td>
<td>15</td>
<td>986</td>
<td>2</td>
<td>–</td>
</tr>
<tr>
<td>Lord Chancellor's Department</td>
<td>6</td>
<td>1,835</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Scotland</td>
<td>2</td>
<td>n/a</td>
<td>0</td>
<td>n/a</td>
</tr>
</tbody>
</table>

*Source: Select Committee of Public Accounts, Minutes of Evidence, 1 November 2000. Scottish Executive PFI Unit.*

Specifications

Good specification and rigorous monitoring are essential to ensuring effective contract management.

Many contracts are negotiated with minimal or no competition, for example, the LIBRA contract and the Avon and Somerset court buildings project only had one bidder, and Bedfordshire courts had two bidders. Bidders are aware that there is no competition, and with no viable alternative funding available, are therefore in a highly advantageous negotiating position.

Good specification is difficult within the constraints of PFI. Specifications must be drawn up by reference to outputs and outcomes. It is difficult to contractually define quality measures and it is not permissible to specify ways in which outcomes should be delivered. Specifications will therefore relate to what is measurable, rather than what is important. They should be a combination of requirements covering inputs, processes, outputs and outcomes.

Monitoring

Effective monitoring requires clearly defined contracts, in-house expertise and realistic remedies for non-compliance. PFI places considerable constraints on how specifications may be drawn up because of the emphasis on outputs. In the case of IT, for example, in-house experts are transferred to the contractor and there is little or no expertise retained to ensure effective and rigorous monitoring of service delivery. As far as remedies for non-compliance or poor compliance are concerned they are exclusively financial. There has been a marked reluctance to exercise contractual remedies, particularly where there has been little competition.

Extracting financial penalties may exacerbate poor performance or lead to early termination of a contract where there is no viable alternative provision. This has to be avoided at all costs to ensure continuity of service. Financial penalties do not provide a realistic remedy for disruption to service delivery. Contractual remedies may not reflect the costs to associated agencies that suffer a knock-on effect. Small employer units may well lack the time and resources to become involved in complex contractual disputes with multi-national companies.
Impact on services and users

Questionable penalties at Altcourse Prison

Altcourse Prison was designed for 600 prisoners. At the time of the Chief Inspector of Prisons inspection in November 2000 it held 860 with an option to hold 900. To accommodate overcrowding, Group 4 had added a second bunk to cells designed for one prisoner. The average rate of overcrowding in prisons in England and Wales at 31 August 2001 was 5%. Altcourse was overcrowded by 33%, a small decline from the time of the inspection.

The Director General of the Prison Service reported in June 1998 that "Altcourse opened successfully on 1 December 1997. The population built up in phases until the operational capacity of 600 prisoners was reached on 7 March 1998. Contractual compliance has been carefully monitored and deficiencies drawn to the contractor’s attention. These are being remedied and, where appropriate, financial penalties have been applied" (Letter to Select Committee on Public Accounts, June 1998).

Contrast this with a reply on 12 February 1998 by the then prisons minister, Joyce Quinn, to a Parliamentary Question at the opening of Altcourse. There were services and facilities "…incomplete or not available" relating to: through care; the personal officer scheme; legal advice and information [available to prisoners]; sentence planning; levels of work and education; shop and hair cutting arrangements; drug testing; the number of sniffer dogs; arrangements for prisoners’ visitors; no creche for visitors’ children; and the incomplete fitting out of workshops.

Group 4 was penalised £212,728 for contract failures at Altcourse between 1 December 1997 and 30 August 1998 (Paul Boateng, then prisons minister in answer to Parliamentary Question, 16 May 2000).

Of this, £17,728 was deducted from the company’s fees for doubling cell capacity in excess of permitted levels; £195,000 was withheld for further non-compliance, including 66 incidents of items smuggled into the prison; 128 incidents of concerted indiscipline; 34 assaults on staff and others; 29 assaults on prisoners; 70 incidents of self harm; 155 occasions of failure to provide a medical response; 80 failures to provide sentence plans; 16 failures to respond to prisoners’ complaints; 44 failures to provide positive regimes; and 87 failures to help prisoners prepare for their return to the community.

In evidence to the Select Committee on Public Accounts in November 2000, the Director of Prisons confirmed that financial penalties had risen to £1.3m. However, the prisons minister Beverley Hughes reported that Group 4 had incurred financial penalties of £354,838 between September 1998 and June 2000 (Hansard, 15 October, 2001). This highlights the lack of accurate reporting of private sector performance.


This was the headline that caught the media’s attention, but one issue that did not get substantial coverage at the time was that prisoners had been kept in cells containing “substantial” ligature points.

In a report published on 19 April 2000 following an inspection of the prison between 1 and 10 November 1999, the chief inspector noted that “… a great number of these cells have been fitted with an extra steel bunk-bed reached by a vertical steel ladder and then used for two prisoners … the additional bunk in the cells provided obvious convenient and substantial ligature points … it could be held that the provision of such ligature points rendered the cells unfit for use at all”.

The chief inspector’s comment on ligature points was buried on pages 112 and 113 of a 140 page report in which, earlier on, the company’s appointment of a full time suicide and self awareness (SASH) coordinator was described as an example of good practice.

The Chief Inspector recommended to the director of Altcourse that “…the number of ligature points should be reduced in all cells.” He also recommended that “staffing levels should be reviewed in order to protect staff, improve the quality of care for prisoners and reduce the need for self-policing of the residential units by prisoners, without reducing the regime provision for them.”

Altcourse recorded the eighth highest, out of 40 local prisons in England and Wales, in the level of assaults in the 2000/2001 Prison Service performance indicators. It topped the league for enabling prisoners to have an average of 32.9 hours per week of purposeful activity. However, the prison offered no accredited courses in challenging offending behaviour or sex offender treatment. It fared well on drug testing, with only 8.1% positive tests. Even within the flawed mechanism of the Prison Service-run performance indicators, Altcourse’s performance was patchy.
Poor performance at Kilmarnock Prison

HM Prison Kilmarnock, run by Premier Prison Services, opened in March 1999 but was “Scotland’s most violent prison” in terms of assaults on staff, according to the Chief Inspector of Prisons for Scotland. It is Scotland’s only privately financed, designed, built and run facility. It reached its capacity of 500 screened prisoners in June 2000 and, at the time of the inspection, was overcrowded by 24.

Some 91% of staff had no previous experience of working in a prison and, notably, the Chief Inspector “… cautioned against the possible conditioning of staff by the more manipulative and experienced prisoners”. Between March 1999 and January 2000, 87 staff from “almost every area of the prison” had resigned. Some 45 had been on probation. The Chief Inspector also commented that:

- there is a need to do more about tackling offending behaviour;
- some prisoners … were still leading a relatively unstructured life and were not always being challenged to confront their offending behaviour;
- there was a very real danger of stagnation because long term prisoners would not wish to progress to other establishments;
- it was proving difficult on occasion to confirm the roll of the prison at meal times and lock-ups; meal times were frequently delayed because of problems reconciling the prisoner number checks.

A second suicide within 12 months at Kilmarnock led to calls for an inquiry into how the prison was run. A second inspection, in March 2001, found a staff turnover rate of 32%, significantly higher than any other Scottish prison (e.g., 9% in Barlinnie and 11% in Greenock). The inspection also expressed concern about the levels of violence against staff. The number of misconduct reports continued to be high - over 5,000 in the past year whereas HMP Perth, which has a similar size and prisoner mix, had only one third of that number in the same period. The inspector was also concerned about the high number of acts of deliberate self harm. The inspection concluded that “…it would certainly appear that Kilmarnock, with its considerably lower staffing levels, is cheaper to run than most public sector prisons, though by how much depends on the way figures are presented and interpreted.”

(Scottish Executive. HM Prisons Inspectorate, HMP Kilmarnock, Intermediate Inspection, 5-7 and 12 March 2001).

Failures in ICT court contract

CSL has a nine year contract to provide resource accounting and corporate and IT services to the LCD and Court Service under the ARAMIS project. This includes accounting, receipts, purchasing, payroll, asset management, payments, banking and desktop computing.

Eighty five staff were transferred or seconded to CSL in 1998.

CSL Group Ltd incurred financial deductions as a result of penalty clauses for poor or non-performance – see Table 4.1.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Total Deductions (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998-99</td>
<td>33,600</td>
</tr>
<tr>
<td>1999-00</td>
<td>113,250</td>
</tr>
<tr>
<td>2000-01 (to 13.06.01)</td>
<td>1,400</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>148,250</strong></td>
</tr>
</tbody>
</table>

Source: Hansard Written Answers, 13 June 2000.
LIBRA: delays impact on services and staff

The LIBRA PFI project in magistrates courts highlights how delays have a direct impact on services and staff and make the objective of ‘joined-up justice’ more difficult to achieve.

There are two parts to LIBRA. The first enables Magistrate Courts Committees (MCCs) and the Lord Chancellor’s Department to standardise information systems for a range of activities in magistrates courts in England and Wales (by 1997 three firms, ICL, Unisys and STL Technologies provided hardware and software to all but four MCC areas). The project also aimed to provide comprehensive national and local management information and enhance the exchange of information with other parts of the criminal justice system.

The link with other criminal justice systems, in particular the Police NSPIS enabling case details to be transferred automatically between the police and the courts system, the DVLA enabling transfer of driver records, the Home Office to provide better statistics, and the Crown courts to enable information to be transferred between the courts, were a key element of the LIBRA system. LIBRA is part of the ministerial level initiative, Integrated Business Information Systems (IBIS), to integrate IT systems across the criminal justice system.

The Statement of Business Requirements (1997) set out the objectives of the project which included: “To achieve common standards of practice in relation to: the general management of magistrates courts and their administration; case data; case management; accounting and enforcement procedures; and management information and financial controls; to ensure the effective and efficient operation of magistrates courts.”

The second part of LIBRA was to supply Office Automation consisting of networked PCs and printers based on Windows 2000 providing a common word processing, email and other office products. LIBRA is a purchased service and is not owned by either the LCD or MCCs. MCCs pay for the service on a price per weighted case.

The Office Automation (OA) part of the Libra ICT contract was split from the core system and has commenced roll-out. The case management core system phase of the project, was scheduled to start roll-out 6-9 months after OA but has been delayed indefinitely. This decision is highly embarrassing for the government because it is the third major delay in the last nine years in national computer projects intended to link up agencies within the Criminal Justice system.

The delay means that Magistrates’ Courts staff have to access two processors utilising a T.switch arrangement, one to run existing legacy systems for case management personnel, licensing, etc and one to run the new office administration systems. ICL tried to avoid this by using an a single PC with a ‘emulation’ system but staff found that was slow. Operating two processors will incur substantial additional costs for extra power points and network cabling. Office Automation reduced the numbers of colour printers and scanners and removed vital internet access for many staff. The contract is now, once again, subject to renegotiation, including the range of core functions to be covered, contract length and price.

The new system has suffered from significant performance problems in a number of locations. For example, to answer a telephone enquiry may require viewing five screens with a delay of 60-90 seconds in loading each screen. Although ICL gave the highest priority to resolving performance problems they remained unresolved for several months. Questions have already been raised as to whether such problems came within the ambit of the contract or are the responsibility of others.

The delay has been caused by “difficulties on integration and system testing” on the case management software (letter to Justices Chief Executives, 29 June 2001). The Head of the Magistrates Courts IT Division stated that “further urgent work is therefore needed to overcome the difficulties identified and encountered” and “once we understand better what will be needed to overcome the problems that have been encountered, then we will need to agree a revised timetable for implementation.” There has been no announcement regarding the outcome of the re-negotiation, between the LCD and ICL, commenced in 2001.
Restructuring custody

The Sussex custody project highlights the restructuring of services and jobs under PFI. Although custody centres have to be run by a police officer of at least the rank of sergeant, the Authority has already civilianised the police gaoler function. Some 60 uniformed custody assistants have transferred to the operator, Reliance. The staff in each centre, still have to work under the auspices of the Police. The Authority has worked out a complex management structure.

At a new facility in Brighton, Reliance even manage - but not police - identity parades. Other functions such as forensic medical services will, in turn, be sub-contracted by Reliance. Police surgeons in Sussex formed a consortium to bid for the contract and won. They have also negotiated that, for the first six months, they will not be penalised for failing to meet performance targets and a payment mechanism will be adjusted to fit the work.

Performance pressures

The need for new custody facilities in Sussex became apparent after a 1995 custody review revealed a lack of capacity in inadequately designed and equipped cells. There was also a recognition that custody services were a neglected area and needed to become more professional.

In 1995, some 40,000 detainees were held in the county’s police cells. By 1999 the number had fallen to 37,000 and that figure is now perceived as poor performance by the fifth largest non-metropolitan force in the country.

According to the authority, force performance has to improve. In November 2000 Sussex police were in the bottom quartile of Home Office league tables for the number of arrests per 100 officers. The Authority has aspirations of being in the top quartile. To do this they have to increase the number of arrests by 53%.

The Authority claims not to be driven by the need to improve performance but, at the same time, it is gearing up for that increase. But the Authority has also recognised that reducing the number of custody centres will mean longer journeys for police escorting and transporting detainees across the county.

This apparent inefficiency will not only undermine the claimed cost savings but it could also stymie plans to free up more police time to improve performance in the arrests league table. This raises a range of concerns not least about the workload impact on both the police and the custody assistants.

Custody assistants were already finding it difficult to cope with a throughput of 37,000 detainees a year. They were not told by the Authority about projected increased levels. Staff believe these levels will be unmanageable.

Just one example where the proposed performance standards are of concern to staff is the taking, processing and securing of a detainee’s DNA. At Brighton there are currently around 300 DNAs taken per month. Only some 24 DNAs are currently taken by custody staff, the rest by police. Under the proposed critical performance standards, custody assistants will be expected to take a detainee’s DNA and ensure it is processed and secured within 60 minutes of detention being authorised and on request and within 15 minutes of a detainee being charged and on request. Staff believe this will be unachievable and unless it is changed will lead to the deduction of penalty points which, in turn, could lead to financial penalties for the contractor.

There is also another issue that hinges on the performance criteria. If the contractor assumes responsibility for unachievable targets and staff fail to meet those targets, will that make staff vulnerable to disciplinary action. Further, the stress levels associated with trying to meet unachievable targets could lead to more staff quitting. This in turn could open up the possibility of more staff being employed on lower pay rates than existing staff in order offset the contractor’s financial losses accrued through penalties.

Sussex Police Authority believes that the monitoring system for the Custody Centres PFI project will be “one of trust” with Reliance having to report failures. Monitoring to ensure that the provisions of the Police and Criminal Evidence Act, the Codes of Practice and other specifications are enforced will be handled by a contracts manager with responsibility for all six sites.

The Authority will also set up their own system. But staff fear that the amount of reporting that they already have to do will increase dramatically and will add further pressure to their workloads. In the event of an extreme contract failure, penalty clauses allow for the contractor to lose up to 100% of its monthly unit repayment.
This was not a PFI project but the project illustrates the danger of over-confidence in the private sector’s ability to provide effective ICT solutions to complex public service requirements. A National Audit Office investigation into the project highlighted the difficulties of designing and implementing large long term information and communications technology projects (NAO, 2001).

The National Probation Service Information Systems Strategy (NPSISS) was designed to provide a common high quality information technology infrastructure linking all probation services in England and Wales. CRAMS is the software providing the case management element of the system. In December 1994 Bull Information Systems was appointed to install the infrastructure and provide a managed service. The projected cost was £97m over ten years. Roll out began in 1995 and was scheduled to be completed by March 1999.

By March 2001, 49 out of 54 of the local areas of the National Probation Service (38 out of 42 areas in the new service from April 2001) had access to the NPSISS computer network. However, a National Audit Office investigation found:

The CRAMS case management system was introduced in 39 out of 54 areas but is substantially used by only 16 areas – representing only 20% of the probation service budget.

CRAMS proved difficult to use and its development did not keep pace with the needs of the service. The Home Office has suspended further development of the system.

The full cost is now estimated to be £125m by the end of 2001 – 102% more than that forecast in the original Outline Business Case. This consists of £118m for the full economic cost of CRAMS and includes costs not taken into account in the business case estimates such as project management, consultancy, training and Year 2000 compliance. It also includes £7m incurred by local probation services in purchasing, developing, installing and operating supplementary equipment and software.

The staffing level in the Information and Technology Group for the new National probation Services will be increased from 12.5 staff to 50 following no criticism of the lack of project management, poor leadership and a lack of monitoring. It found that the benefits of the project could not be quantified because the costs and achievements had not been monitored with the OBC.

By March 2001 the NPSISS had not provided links with other parts of the criminal justice system nor had it provided internet access and external e-mail systems. This was blamed partly on the limited use of CRAMS and delays in IT development in other parts of the criminal justice system.

The failure of CRAMS has led to further fragmentation. The NAO found that 27 probation services “are developing or using alternative computerised systems for recording or managing case details. This position has resulted in case records being held in a number of different formats, creating problems for the transfer of cases between services.”

The NAO report had been preceded by a critical Home Office commissioned report from University College (Dowell study) and an ergonomic report from Amey Vectra commissioned by Merseyside Probation Service. The latter found that 75% of respondents stated that CRAMS added to their workload rather than reducing it. The study found the system illogical, inflexible and unforgiving of user error.

The contract with Bull was an enabling agreement which allowed the Home Office and probation services to issue purchase orders for a specified range and cost of products and services contained in the agreement. In 1998 the Home Office commissioned consultants to investigate the purchase order system. They identified duplication, overlap and unnecessary orders and a risk of overpayment. The Home Office responded by negotiating a consolidated purchase order to take effect from April 2000 (a 21 month £10m extension for Bull). But even this agreement was later found to have had significant inadequacies by the Home Office Audit and Assurance Unit.

CRAMS was supposed to be replaced by the end of 2000 but the development of two replacement systems were scrapped. In August 2001, the Home Office announced that it had shortlisted EDS, Unysis and Bull-Integris for a two and half year contract, starting January 2002, to “tide the probation service over”. A new contract to replace CRAMS will be let in 2003 or 2004.
Information on the number, gender and grade of staff affected by PFI projects proved very difficult to obtain. The prime cause of this is the lack of information disclosure by all organisations in the criminal justice system.

Cheshire Police Authority – flawed staffing impact analysis

Cheshire Police Authority commissioned a Human Resources Impact Study of Corporate Projects from management consultants PILOT UK Ltd which reported in March 2000. UNISON was informed that the study was to take place and that it had taken place. The branch had no involvement in the study apart from a ten minute briefing from the consultants. The authority has so far failed to initiate negotiations on the conclusions and recommendations of the study. The Police Authority recently took on two additional Human Resource officers for four years to deal with the headquarters move at an extra cost of £280,000.

The study was set up to assess the combined effect of twelve corporate projects, primarily the headquarters relocation, Call Management and Crime Management, on the personnel profile of the force. Over 400 support staff will be affected. The study recommended that all new support staff should be appointed on terms and conditions “that are as flexible and as cost efficient as is possible”. Flexibility was described as maximising the use of agency staff, the use of temporary staff “on a scale unprecedented within the Constabulary”, the potential for home-working and opportunities for outsourcing to deliver ‘best value’. Subsequently, all staff appointed since 1 December 2000 are on short term contracts in a bid to ensure that the transfer to Winsford is at minimum cost to the authority. In addition, new staff from that date will not qualify for any relocation package to the new site.

LIBRA staffing

A survey of staff employed on IT duties in 1997 identified a total of 119 full-time staff employed 100% on IT, 30 staff who were employed between 50% – 99% of their time on IT, 61 staff employed between 1% – 49% and a further 16 part-time staff employed on IT duties.

Only a handful of staff have transferred to the LIBRA to date. Two staff received formal notice of redundancy from ICL on the first day of transfer and were then taken back into MCC employment. Another was told that they would be given a month’s notice in four weeks time. ICL refuse to provide any training until a job is secured, but staff can’t secure a job without the relevant skills.

BT Airwave/West Mercia courts – health and safety concerns

BT Airwave is a new digital radio network for the police supplied by BT, Motorola and TRW and is planned for roll-out to all police forces by 2005. Up to four users will be able to communicate simultaneously on a single radio channel. It is claimed to provide better secure coverage, voice quality and messaging and coordination between different emergency services.

However, a number of health and safety issues have arisen and the Home Office has commissioned further research from the Defence Evaluation Research Agency on the impact of the high waveband used in the system. The system operates at 17.6Hz compared to the maximum 16Hz recommended by a previous government study. Lancashire Police completed a six month trial in 2001 and Computer Weekly reported that “30-odd” problems were identified during the trial. At one stage Lancashire Police were advised to turn off the system in hospitals. Greater Manchester Police will be the next force to use the system. Health and safety concerns have also been expressed by the Police Federation.

West Mercia court transfer

West Mercia Magistrates Courts employed 112 staff of whom 17 (15%) were affected by the PFI project. The 17 staff (9.5 full-time equivalents) consisted of three receptionist/telephone posts and 14 cleaners/ caretakers. There was a great deal of uncertainty over which staff would transfer and whether redundancy, based on the public sector norm of 66 weeks maximum, would be offered to staff whose jobs were being transferred to another location which would make travel to work uneconomic. Only when AMO threatened industrial action did the LCD eventually agree to finance an improved
Health and safety concerns have also been raised over the new West Mercia court building. The public counters are unsafe because the screens are too low, the building design has been questioned by AMO because it is not a unified building and court staff have to walk between buildings and are thus sometimes subjected to verbal abuse. The tannoy and affray panic buttons are located at the back of courts instead of at the court clerks desk.

Sussex Custody Centre staffing issues
Reliance, contractor for the Sussex custody project, will employ new categories of support staff; there will be receptionists, janitors and others who will take on some duties from existing staff.

This raises further concerns about how long it will be before all existing staff – protected by TUPE – will move on and be replaced by this second tier workforce and/or new custody officers employed on less favourable rates. But, overall, and in the short term, staff fear that their duties will increase.

Staff do know that there is a technical payment mechanism geared to incentivise. If a cell is empty the Authority will not pay for it. If it is not available, there will be a deduction from the company's fee. And there is a profit element built into the volume linked repayment mechanism.

But further explanation of the payment mechanism was impossible due to commercial confidentiality. Staff claim that commercial confidentiality has been used against them throughout the process. And this has not helped them allay fears and prevent experienced people leaving. Despite repeated requests by UNISON to have access to the contract documentation prior to contract award, this was refused.

Reliance said that if their payments are reduced, profits would be protected as there would be a trade off between different elements within the contract. But for the staff, that also raises the alarm about the future level of provision of other services.

Staff recognise the potential advantages of working in new buildings designed and equipped for the purpose. But they would have preferred to remain in the public sector. Some 15 of the 60 custody assistants left the service since the PFI process started in 1999. Staff began leaving towards the end of 2000 and this continued into 2001. The PFI has been referred to by colleagues as their impetus to go. It is also the case that the most experienced staff have left.

Former traffic wardens have been rapidly and, in the view of existing staff, inadequately trained in order to fill the vacancies. Employees have been rushed into being custody assistants after a 4.5 day training course. This was being seen as giving Reliance “the wrong message” for future training methods.

The full complement of custody assistants at the existing centres is 63, but even with the current levels of throughput of detainees, staff say they are overstretched. Asked what the optimum staffing levels should be to provide the level of service required to meet the current throughput, the staff’s response was around 90. Currently there are 10 cells at the Eastbourne facility. In the proposed new Eastbourne complex there will be 22 cells but no extra staff are being allocated.

Prior to transfer, staff were told of the duties that will be expected of them and that the company's income stream will depend upon staff meeting their performance targets. Staff were concerned that the contract specifications and the performance targets had been set at unrealistic levels of attainment.

Reliance has a nine month ‘bedding in’ period during which they will not be financially penalised. This period is also being used to amend some contract specifications. Staff have not been told which measures will be open to change.

The bottom line for the staff is that the service is being reorganised along financial lines rather than on the basis of what people need – both in terms of working practices and services required. They say that detention is about human rights and that these issues are being lost through the PFI process.

### Table 5.2: Prison Service employment (FTE) including senior management

<table>
<thead>
<tr>
<th>Type of employment</th>
<th>No of FTE jobs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>5,705</td>
</tr>
<tr>
<td>Industrial</td>
<td>2,826</td>
</tr>
<tr>
<td>Prison officers</td>
<td>31,127</td>
</tr>
<tr>
<td>Specialist</td>
<td>4,187</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>43,845</strong></td>
</tr>
</tbody>
</table>

*Source: Prison Service Annual Report 2001*
An exact analysis of the number of staff employed by the private sector is impossible, largely due to commercial confidentiality. But also, no records of the numbers of staff transferred from public to private sectors are held centrally by the government.

Premier Custodial Group is the largest prison/prison service contractor in the UK and employed an average of 2,585 people in the year ended 31 December 2000. Premier employed 2,209 people as at 31 December 1999 (up from 1,688 in 1998). These figures do not reveal the division of staff between managers, custody officers and other grades.

Group 4’s subsidiary, Rebound ECD (which runs two secure training centres), had an average of 269 employees plus 3 indirect and administration as at 31 Dec 2000 (25 and 3 in 1999).

Securicor Custodial Services Ltd employed a weekly average of 1,296 employees for the year ended 30 September 2000 (1,214 in 1999). These comprised 47 office and management and 1,249 operational (40 and 1,174 in 1999). The company’s principal activity is prisoner escort and court custody services and prison management operations. There are no figures for immigration detention centres.

### Table 5.3: Private sector prison staffing* (prisoner custody officers, full time equivalent as at 15 November 2000.)

<table>
<thead>
<tr>
<th>Prison</th>
<th>No of FTE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ashfield</td>
<td>253</td>
</tr>
<tr>
<td>Altcourse</td>
<td>526</td>
</tr>
<tr>
<td>Blakenhurst</td>
<td>315</td>
</tr>
<tr>
<td>(in public sector since August 2001)</td>
<td></td>
</tr>
<tr>
<td>Doncaster</td>
<td>618</td>
</tr>
<tr>
<td>Forest Bank</td>
<td>339</td>
</tr>
<tr>
<td>Lowdham Grange</td>
<td>254</td>
</tr>
<tr>
<td>Parc</td>
<td>330</td>
</tr>
<tr>
<td>Wolds</td>
<td>139</td>
</tr>
<tr>
<td>Rye Hill**</td>
<td>200</td>
</tr>
<tr>
<td>Dovegate**</td>
<td>200</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>2,859</strong></td>
</tr>
</tbody>
</table>

* There are also non-certified auxiliaries who have no prison contact – unknown number

** Estimate

Comparisons of Prison Service and private pay and conditions

Confidential research for the Prison Service Review Body in 2001 covered the Prison Service and nine privately managed prisons operated by four companies (Group 4 Falck, Premier Prison Services, Securicor Custodial Services and UK Detention Services) of which seven were PFI projects (MCG Consulting Group, 2001). Pay accounts for the great majority of prison running costs. Prison Service pay is centrally negotiated whereas Directors of privately managed prisons have authority to negotiate local rates.

The wide differential between Prison Service and private sector pay rates is shown in Table 5.4. Prison officer/custody officer and supervisor pay rates are, on average, between 24.6% and 32.4% lower in the private sector than in the Prison Service. Senior managers and Directors in private prisons are better paid than their Prison Service counterparts. But the differentials do not end there. The value of a Prison Service pension is, on average, between 10.5% and 13.5% more valuable than pensions in the privately managed prisons. There are also substantial differences in holidays with the Prison Service offering between 5% – 28% more holidays.
The Scottish Prison Service revealed in 2000 that it had been notified of 26 members of staff (of whom 17 were prison officers) in receipt of Working Families Tax Credit (WFTC), part of government support for those on low income (Written Answer S1W7101, 7 June 2000). Given the wide wage differential between public and private prisons, it is likely that a substantial larger number of staff in PFI prisons will be eligible for WFTC. This is another ‘hidden’ public cost of PFI which is not taken into account at any stage in the procurement process.

The pay differentials also have major implications for the rest of the criminal justice system. The private sector is well established in this part of the criminal justice system. It delivers the core service in prisons, not only the buildings and associated support services as in most PFI projects in the rest of the criminal justice system. When the private sector gets the opportunity to provide ‘new’ facilities or services in which they recruit new staff (thus avoiding staff transfers) they impose substantially reduced pay and conditions of service.

**Altcourse (opened 1997)**

Wages and conditions have been a constant issue for staff employed at HMP Altcourse.

In his November 1999 report the Chief Inspector of Prisons stated that, according to the GMB union:

- the (staff’s) main concerns were pay, conditions and under staffing;
- pay was an issue as staff in other Group 4 prisons were paid more, despite Altcourse being the only core Category A prison;
- there was no national structure for negotiation – pay bargaining was with directors of individual prisons;
- some of the concerns about conditions centred on not having meal breaks built into the working day, night staff not having annual leave because of the shift pattern and reliance of the prison on staff working overtime;
- physical facilities were good although there was no canteen at weekends;
- although staff who left were replaced promptly the staffing levels had not increased with the [prisoner] population. Staff were being asked to carry out more work without more money. The staffing provision should be revisited.

The chief inspector also met with a group of staff, whose comments included:

- there was no additional staff on the living units to cope with the increased population. There was a feeling of under-staffing particularly in the evenings.
- the eight hour shifts without a meal break were too long

From 1/11/2000 onwards, only recently implemented.

### Table 5.4: Difference between Prison Service and Privately Managed Prisons Pay and Conditions

<table>
<thead>
<tr>
<th>Pay</th>
<th>Prison Service</th>
<th>Privately Managed</th>
<th>Prison % Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>P. Officer/P. Custody Officer</td>
<td>£21,450</td>
<td>£14,500</td>
<td>-32.4</td>
</tr>
<tr>
<td>Senior Officer/Supervisor</td>
<td>24,536</td>
<td>18,500</td>
<td>-24.6</td>
</tr>
<tr>
<td>Operational Support</td>
<td>13,400</td>
<td>12,500</td>
<td>-6.7</td>
</tr>
<tr>
<td>Operational Manager</td>
<td>27,935</td>
<td>28,500</td>
<td>+2.0</td>
</tr>
<tr>
<td>Function Head</td>
<td>35,685</td>
<td>38,500</td>
<td>+7.9</td>
</tr>
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<td>(Oper. Support) +10.5</td>
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### Holidays*

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<td>Function Head/Director</td>
<td>30 days</td>
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**Source:** The Employment Framework in Privately Managed Prisons, MCG Consulting Group, 2001.

* Prison Service staff also receive an additional 2.5 privilege holidays taken on defined days during the year.
Prisoner custody officers: Commence at £13,000 pa, after one year £13,700, after two years £14,777. Altcourse rates increased by 4.5% at the last negotiation. Commencement rates have remained unchanged since opening.

Auxiliary custodial officer (no prisoner contact): Commence £12,000, after one year £12,600, after two years £13,041, after three years £13,848. Staff turnover is very high with constant resignations.

In 2001 the director of the prison asked staff to voluntarily increase their working week from 40 to 44 hours at flat rate pay (i.e., not time and a third). The company also planned to scrap overtime rates from the beginning of November 2001.

Two-tier workforce in the criminal justice system
Nearly all private contractors operate two tier pay and conditions for public sector contracts including the criminal justice system. Staff transferred under TUPE have one set of conditions whilst new staff employed on the same contract are employed on lower rates of pay, fewer holidays, limited sick pay entitlement and with more restricted access to a inferior, usually money purchase, pension scheme. Increased use of temporary and agency staff are another feature of a two-tier workforce.

Pensions
Where projects require a TUPE transfer of staff there have been a number of problems with private contractors unable to provide ‘broadly comparable’ pension schemes. In some court projects, contractors have refused to reveal to trade unions their Government Actuary Department advice on the comparability of their pension scheme.

New PFI prisons do not involve a staff transfer and private contractors use money purchase pension schemes. With low employer and employee contribution rates, these pensions are inferior to public sector final salary schemes. Such schemes enable private contractors to make a significant saving compared with the contribution costs of comparable public sector pensions.

Outsourcing support services
Police Authorities already contract out a number of support services such as cleaning and catering. UNISON data indicates that 19 police authorities outsource catering, 9 outsource building cleaning and 4 outsource ICT services. The main companies are Sodexho, Compass, Aramark, ISS and Reliance. However, there is little data currently available on the effect on jobs, terms and/or conditions.

Wider social and economic costs not taken into account
The relocation of the Cheshire police headquarters to Winsford will have a dramatic effect on staff. Chester based staff will have a 32 mile round trip to the new site. There is no direct bus service between Cheshire and Winsford, except a country bus service three days a week. Nor is there a direct service from Warrington. The site is outside of Winsford so another bus journey is necessary even if staff could get to Winsford, a Liverpool overspill estate built in the 1960s. The main centre is Northwich, six miles north of Winsford.

The Police Authority claimed that relocation will save 350,000 business miles per annum (but this was calculated before the garage facilities had to be centralised). However, private mileage is estimated to increase by 3,200,000 miles per annum. There has been no analysis of where staff live and how they will be affected by the substantial change in their journey to work.

Travelling time – the working day will increase by at least an hour day because of increased travel time for many staff. Protracted negotiations on relocation expenses over eighteen months finally agreed a one-off lump sum payment of £183 per mile for every extra mile travelled to the headquarters. This, however, is subject to taxation which further erodes any recompense for the increased travel costs of staff.

Child care – UNISON has demanded that a creche be provided in the new building but clarification is still awaited.

Cost to the environment – roads are mainly unlit and 90% go through the rural heartland of Cheshire. A large proportion of staff are women and lone drivers will have increased risk. The Chester-Northwich route is already heavily congested at peak times. Increased mileage will have a detrimental effect on the environment.

Shopping – Staff in the existing headquarters building have three minute access to shopping facilities in Chester town centre. However, they will have a 15-20 minute walk in Winsford or will have to drive to a retail park between Winsford and Northwich.

The absence of social criteria and limited economic analysis of PFI is illustrated by a joint study by KPMG and the Major Contractors Group, ‘The Benefits of PFI’, in 1998 claimed that PFI delivers value for money, new buildings and services which would otherwise be available both quickly and effectively, “allows public gain from the innovation...
derived from private sector investment and skills “and supports local employment. The study included the Lowdham Grange Prison plus four other hospital, school, motorway and further education projects. It claimed that locally sourced construction labour was estimated to be 70% on the Lowdham Grange project with £7m employee costs expected to be returned to the local economy. These were the only figures relating to the local economy for all five projects. The report was superficial and devoid of evidence to substantiate the claims made in the report. It was little more than a thinly veiled PFI promotion exercise by the construction industry.

Support staff can be excluded

Services not directly connected with the maintenance of the building do not have to be transferred in a PFI contract. Trade unions representing staff in the criminal justice system have encountered difficulty in getting PFI project teams to accept this Treasury position when their consultants are advising otherwise. The pilot scheme whereby staff remain employed but are managed by a PFI facilities management contractor remains exclusive to the health service although the Liverpool City Council PPP project with BT for information technology, financial and personnel services is based on secondment of city council staff to a joint venture company.
Part 6

Lack of equity and social justice

Despite the wide range of claims about the benefits of PFI, there is an absence of social, economic and environmental audit or analysis which could provide evidence to support these claims. Instead, PFI is rooted to a narrow financial comparison using the Public Sector Comparator.

PFI in the criminal justice system raises a number of other equalities issues:

- The effect on public access as a result of increasing centralisation of core parts of the criminal justice system, for example, the closure of small/rural courts and the concentration of custody facilities in fewer locations. This results in more restricted access and greater travel for employees and users alike.

- The relocation of headquarters and other facilities on greenfield sites resulting in staff having to rely more heavily on travel to work by car with increased costs and reduction of personal time. This also makes the implementation of family friendly policies more difficult. For example, there is little evidence of any assessment having been undertaken of the social and economic costs and benefits of reorganisation of the West Mercia magistrates courts, particularly of the effects of closure of courts in five smaller towns and centralisation in Hereford, Worcester and Kidderminster.

- The emergence of a two-tier workforce in which new staff engaged on facilities management work are employed on inferior terms and conditions. This widens pay differentials between those doing the same work and also between the highest and lowest paid staff. It also widens inequalities in terms of the value of pensions.

- Equalities must be a core part of monitoring the performance of PFI contractors, not only in terms of transferred staff but all employees and the implementation of policies which affect users. This is both a client and contractor responsibility. However, there is very little evidence of full and effective monitoring of equalities in PFI projects.

The Auld report, Review of the Criminal Courts, commenting on equality and diversity stated: "A number of studies have provided disturbing evidence of unequal or discriminatory treatment within individual criminal justice agencies, most recently Sir William MacPherson’s finding of institutional racism within the Metropolitan Police. A significant barrier to eliminating such conduct is difficulty in determining how minorities are treated across the whole of the system – or even within individual agencies. Not only is there no way of tracking individual cases between agencies, but in many cases different definitions or recording systems make it impossible for such data to be combined in any useful way.” (Lord Justice Auld, Review of the Criminal Courts, 2001)

The continued use of PFI will increase the problems identified by Auld because it results in at least two employers on each PFI site, usually more because of subcontracting. Compared to the public sector, private contractors have a inferior track record in implementing equalities policies. There is also frequently a difference in the priority accorded to improving equalities for both users and staff.

Government proposals for the implementation of the Race Relations (Amendment) Act 2000 currently only require a ‘public authority’ (including private organisations delivering public services) to liaise with its public sector partners to reduce the risk of unlawful race discrimination. The Home Office plans to introduce “experimental accreditation of security or patrol staff from other organisations working under police coordination to deliver improved community safety” (Criminal Justice: The Way Ahead)

Without compulsory implementation of Part II of the Act, the combination of PFI projects and further outsourcing of criminal justice functions will result in failure to deliver the government’s equality agenda.

Some companies are claiming that their corporate responsibility policies make them ‘good employers’ with ‘socially acceptable’ policies. This is a sham because these policies are essentially tokenistic, superficial and are more to do with public relations than any commitment to fundamental social change.
Human rights issues

The continued privatisation of the criminal justice system raises a number of important questions concerning human and civil rights. Examination of these issues is not within the remit of this study and further research is essential. However, we have identified a number of issues which need to be examined:

- the security of personal information and case management files being transferred to various parts of the criminal justice system in which information and communications technology is controlled and operated by the private sector.

- organisations in the criminal justice system are responsible for the welfare of people being detained and processed in, and transported between, privately managed custody centres, prisons/detention centres and the court system. Increasing privatisation and fragmented responsibility through the contracting system could affect how people’s rights are protected and appropriate recourse when they are infringed.

- the implications of single or multiple contract failures to provide a function or service on people’s human rights, for the administration of justice and for the client authority.
This section examines the minimum requirements for consultation and information disclosure. It compares this with the experience of trade unions involved in the case studies and the criminal justice system generally.

Consultation guidance

The Treasury Taskforce (1998) and the 4Ps (2000) have produced guidance on consultation with staff and service users and provided advice on the disclosure of information. The Treasury guidance is applicable across the public sector except local government. The more comprehensive 4Ps guidance is applicable for local authority PFI projects. However, present guidance and advice is not legally binding.

Both adopt four stages for consultation and information disclosure although they are slightly different phases which are summarised below.

Prior to any application for funding and commencement of PFI process: The Treasury guidance states that trade unions should be provided with details of strategic planning and business objectives, why PFI option, tendering timetable, services being subjected to efficiency reviews and the “key relevant business case information …including an assessment that the project is affordable”.

Local authorities must demonstrate at any early stage, the extent of the need and broad support for a project. Best Value reviews must examine options. Trade unions should be given information on the scope of the contract, services excluded/included, staff affected and an opportunity to comment on the strategy and the service and output specifications.

Following the contract notice, to preferred bidder stage and contract close: The Treasury guidance suggests that trade unions are invited to submit information about potential tenderers, supplied with a copy of Invitation to Negotiate, invited to meet with shortlisted bidders to discuss employment issues and that detailed TUPE information be made available. Trade unions can also propose an independent observer for the tender evaluation panel. The same guidance applies to local authorities.

Post contract award: The Treasury guidance states that an explanation of the contract decision, the final assumptions used in the PSC, the estimated savings and benefits of risk transfer should be publicly available. For example, the NHS has a policy of making the Full Business Case available to trade unions.

Disclosure and transparency

In practice, the contents of the Outline Business Case (OBC) are frequently classified as ‘commercially confidential’ when in fact they contain matters of fundamental public interest and their disclosure does not affect the ‘market’ or the level of interest expressed by the private sector. The OBC is usually published before the contract is advertised and before any private company is involved. The Home Office, the LCD, Police Authorities, Magistrates Courts Committees and other organisations in the criminal justice system do not have a good track record on meaningful user/employee consultation and are even more secretive about PFI projects.

This organisational culture prevents a full assessment of PFI projects.

The contents of an OBC such as the selection of potential options, their appraisal and the development of a Public Sector Comparator, affordability and the impact on current revenue budgets and hence other services, risk allocation, are all matters of public interest. They affect public expenditure and the level and quality of services. There is no justification as to why they should be classified as ‘commercially confidential’, particularly when some public bodies make OBCs more widely available.
Examples of poor consultation and limited disclosure

**Secret procurement in Cheshire**

Despite the government guidelines, UNISON has been excluded from any meaningful involvement in the PFI process in Cheshire. Although the branch secretary is represented on the authority’s Personnel Consultation Group, the union has been totally excluded from the Project Management Board responsible for the PFI project. UNISON has had to request PFI documentation such as the OBCs and ITN which were eventually supplied reluctantly and without the financial appendices. When UNISON published a national report, Public Services-Private Finance which included a critique of Cheshire’s OBC 2, senior management were ‘enraged’ that information had gone outside of the Police Authority. They claimed that if UNISON wanted any further information it had to stay within the force, in other words it could not be made available to UNISON national officers or to advisers engaged by the branch.

The force recognises UNISON but constantly refers to it as a staff association alongside the Police Federation and the Superintendents Association. All three organisations complained to the HM Inspector of Constabulary about the lack of communication and consultation and the complaints were noted by the HMIC.

Cheshire Police Authority had failed to:
- consult with trade unions in a full and meaningful manner
- disclose relevant information
- organise a transparent procurement process
- provide trade union access to the shortlisted bidders

In May 2001 the Police Authority produced terms of reference for trade union access to the preferred bidder. This document reveals the Police Authority’s narrow, minimalist and obstructive approach to consultation. All meetings between the unions and preferred bidder would have to be arranged by, and at the discretion of, the authority; a representative of the Constabulary Human Resource department would be present at all meetings; unions will have to provide notice in writing of the issues they want to raise to the preferred bidder and the authority at least five days prior to the meeting; and any issue not considered a relevant employment matter “will be removed from the agenda.” The appendix to the document stated that “there is also doubt about the application of TUPE to PFI procurement.”

The document claimed that this approach was in the ‘spirit’ of the 4P’s guidance on consultation although it “does not apply to police officers.”

**Limited disclosure in Sussex**

Another example of restricted consultation occurred in the Sussex custody centres project. Staff complained that, despite the length of the PFI process, consultation with the Police Authority only began in 1999. However, the design of the new custody centres was discussed with them from the beginning.

Staff did not see the Authority’s business case for the PFI project or the public sector comparator. And there are other complaints: there was no give and take; management told staff what is happening; minutes of meetings between the Authority and Reliance were not shared with the staff. So staff concentrated their efforts on meetings with Reliance as they were to be the new employer.

Following detailed negotiations up to the date that the contract was signed, Reliance agreed to seek admitted body status so that transferred staff could remain in their public sector pension scheme.

**Fears expressed about LIBRA at user consultation stage**

The LIBRA User Board invited 96 Magistrates Courts Committees to comment on the Statement of Business Requirement in April 1997. Only 48 MCCs (50% of those invited) replied to the consultation document. The Board claimed that eight MCCs expressed support for the proposal and 40 did not. However, the summary report revealed that the eight MCCs giving support in principle also made some fundamental comments. These included:
- ‘requires detailed and closer examination at a national level’
- ‘benefits will be offset by the higher charges’
- ‘wish to debate conflict in values’
- ‘PFI is not the vehicle for procuring standard services’
- ‘boundaries not clearly defined. Lack of vision for the future’
- ‘possible overstatement of benefits’

This is highly qualified support. The MCCs which did not support the project in principle made a number of
comments about the loss of ownership and control, additional costs and benefits not being achievable.

Also in 1997, AMO wrote to the chairperson of all MCCs and their Justices’ Chief Executives expressing a number of major concerns about LIBRA. These included:
- the potential impact of the planned 10% staff reduction
- loss of accountability
- loss of managerial control
- lack of proper consultation
- lack of competition
- length of contract period
- accuracy of information on system
- lack of effective monitoring

However, these concerns about LIBRA were largely ignored in the development of the project.

Scrutiny and accountability

Although the National Audit Office and the House of Commons Select Committee have carried out investigations of PFI policy and particular projects, major shortcomings are evident.

Firstly, despite numerous investigations, many of the fundamental issues of PFI have not been examined. The focus appears to be on whether PFI is working rather than challenging the legitimacy of the policy. To this extent, scrutiny at both national and local levels will continue to be of limited value.

Secondly, there is a wide gap between the consultation and information disclosure guidance and actual practice in the criminal justice system. It is apparent that very little has changed in the accountability of PFI projects since the Treasury guidance was first published in October 1998.

Thirdly, the problem of consultation, disclosure and accountability is going to get worse rather than better as PFI is extended further into the criminal justice system.

Substantial sums of public money are being committed to long term contracts with the private sector with minimal democratic accountability. Furthermore, some contracts are being re-negotiated and extended with even less accountability. Additional scrutiny is necessary but this cannot be a substitute for increasing the accountability and vetting of PFI projects at the planning stage i.e. before they are signed.

Independent assessment of PFI projects at an early stage of the planning process would make a contribution to openness and transparency, provided of course the assessment was publicly available. However, there will be little change until the hegemony of the PFI industry (consisting of construction companies, banks and other financial institutions, and the major law firms and management consultants) is more fundamentally challenged.
The acclaimed innovation arising from private sector management of PFI projects in the criminal justice system has not been realised. PFI information technology projects are costly and have largely failed to meet the specification let alone provide ‘added value’. The description of the Kidderminster court building as ‘cheap’ is more in line with traditional private sector ‘off the shelf’ building than a special private sector designed court facility.

The reliance on output service requirements contributes to the lack of innovation. The government argues, and is not surprisingly reinforced by all PFI consultants, that the specification must set out the basic requirements together with outputs and outcomes and must not contain detailed requirements nor demands about how the buildings should be designed or how the services should be operated. Hence ‘innovation’ is determined by profit and meeting the minimum requirements as quickly as possible since there is few other incentives to innovate.

The specification and design of new public buildings are heavily influenced by management and technical consultants (who are on-board the PFI gravy train), by construction companies keen on design-and-build solutions, and by private architects. User and staff views and public sector knowledge built up over the years usually have significantly less influence in the design and planning of facilities.

Prison design which takes account of new technology enabling new staffing arrangements is equally capable of implementation by the public sector. However both Tory and Labour governments have decided not to build new publicly provided prisons. Hence the private sector can falsely claim to be ‘innovative’. This is the pattern for the future. As a greater proportion of schools, hospitals, courts, police stations and other facilities are provided via PFI projects and public provision comes to a standstill, the private sector will be the only sector providing new buildings and will be able to intensify the ‘innovation’ claims.

The private sector relies heavily on attracting public sector managers to enable them to prepare bids and implement contracts. This is further evidence which discredits the ‘innovation’ claims from the government and the private sector.

Quality of the new courts

Court buildings have traditionally been regarded as important civic buildings and many have won architectural awards. However, the Kidderminster court building is unlikely to be cited for any design awards. The quality of the building has also led to problems. Court staff and AMO representatives compiled a dossier of complaints about the quality of the new building at Kidderminster:

- Overcrowding is some areas
- Insufficient power points throughout the building, particularly for IT equipment, which will be supplied at substantial additional cost
- Interview rooms do not provide public access from the public area and will have to be altered.
- Court papers were not properly relocated and refilled and were consequently not available to court staff when required for court hearings
- The meeting room is inadequate for the range of uses designated
- Witness facilities are poor, lacking natural light and sound-proofing for en-suite WCs
- Public counters are unusable as the screens are not sufficiently high to protect staff
- There is no café facility for court users, only vending machines in the foyer area
- The kitchen contains only a sink and no storage facilities
- The floor coverings are cheap and nasty
- Local management were not consulted about the furnishings

Lack of flexibility for restructuring of courts

From April 2001, Hereford and Worcester MCC merged with Shropshire MCC to form an enlarged Magistrates Courts Committee for West Mercia. The centralised administration building at Kidderminster is already too small for the extended area. It was not possible to alter the contract when the changed requirements, due to implementation of central government policy, became apparent.

The Derbyshire magistrates courts PFI project was planned to take account of the PFI LIBRA project. The new courts were planned on the basis that LIBRA would be operational by the time the building was completed and therefore there would be no requirement for space to accommodate a mainframe computer. However, LIBRA has been hit by problems and delays (see Part 4), thus forcing consideration of a facilities management arrangement to ensure continued IT services.
The store rooms had no shelving or racking

The shelving which is supplied is of a low standard

The storage for refuse bins is inadequate

Staff did most of the packing and unpacking which was supposed to have been carried out by Rentokill, the FM contractor.

There was shoddy finishing to tiling, toilets etc.

Buildings were not completed on time and rubble was left when staff took up occupation

There is a long tradition of innovation in the public sector but it is being stifled and starved of funds as investment is increasingly channelled into PFI projects. Although an increasing proportion of new buildings in the public sector are PFI projects, just because they are new does not automatically mean that they are ‘innovative’. The claim that PFI brings additional innovation to that which can be achieved by the public sector remains unsubstantiated, in particular, there is little evidence of innovation in the design of PFI buildings.
This section briefly examines the effect of PFI projects on joined-up justice, democratic accountability, disclosure and transparency in the criminal justice system, the implications of continued use of the PFI and identifies a number of key findings.

**Lack of joined-up policy**

Police authorities are developing their own plans for new infrastructure; Magistrates Courts Committees are, independently, going through a similar process. Plans for new prisons are being developed. An example is the inflexible contract prepared for the outsourcing of prison escort service services which are drawn up by the Home Office without consultation with other agencies who rely on prisoner delivery to plan their court schedules. Poor performance and contract failures lead to delays in court hearings and court sittings managed around the availability of the escort service.

All these various schemes are apparently being developed not only in isolation from each other, but also without taking into account developments in policy. These include, but are not limited to, the Criminal Courts Review, announced on 14 December 1999 when the Lord Chancellor appointed Lord Justice Auld to conduct an independent review of the criminal court system which was published in October 2001. A separate review (Halliday) of sentencing was also subject to consultation in 2001.

Just one of the myriad of issues to be dealt with was: “to what extent are current methods of government funding, in particular, PFI, a barrier to overall improvement in whatever form of information technology might otherwise be recommended?”

The use of the PFI in the prison service – the subject of an as yet unpublished report by Patrick Carter, a non-executive member of the Prisons Board – was drawn up not only in isolation from the policy issues being studied by Auld and Halliday but also the fundamental issue of whether prison works.

**Inappropriate use of PFI**

An information technology project in the Serious Fraud Office (SFO), Solicitor-General’s office, raises fundamental questions about the appropriateness of the use of PFI for IT contracts.

The SFO signed a PFI contract with IBM in January 1998 for an integrated document management system. In addition, IBM also took over management of the internal IT services for seven years, with an option to extend it for a further three years. The contract was valued at £15m. In September 2000 it was agreed that, “it was no longer appropriate to continue with the development of the document management system due to changes in the SFO’s business environment and in technology” (Hansard Written Answer, 17 July 2001). A variation to the contract was agreed with IBM providing internal IT systems for a further three years. Since 1998 IBM has received £4.8m for the internal IT services but no payments were made for the document management system.

So a PFI contract became obsolete after just over two years of it being signed. This questions the whole basis of using PFI to fund projects in sectors subject to rapid development and changing demands.

**Metropolitan Police Authority PFI review**

The Metropolitan Police Authority (MPA) abandoned a PFI project for the C3I command and control system in February 2001 (see Part 4). Three PFI projects were in progress when the MPA commenced in July 2000. The projects included a training and firearms centre and police stations in South East London in addition to the C3I project. The MPA was expressing increasing concern about
the use of PFI. “All (projects) have raised similar issues, including that of affordability. Given the outlook in respect of available capital resources, PFI must remain an option for future procurements. However, it is now appropriate for the Authority, in collaboration with the MPS (Metropolitan Police Service) to review and analyse the lessons that can be learned from these three projects before any further PFI procurement is commenced” (South East London PFI Scheme, Report by Treasurer to Finance, Planning and Best Value Committee, Metropolitan Police Authority, 20 February 2001).

The PFI review was agreed in September 2001, because “a number of concerns have arisen during the consideration of the PFI projects. These include questions about the appropriateness of PFI for the particular projects involved including the potential loss of flexibility for the future, the level of involvement and commitment of the service, the paucity of PFI credits, the effectiveness of professional advice etc.” (PFI Review, Report by Treasurer to Finance, Planning and Best Value Committee, Metropolitan Police Authority, 14 September 2001).

The joint local authority/government PFI agency, the 4Ps was appointed to carry out the £40,000 review which is yet to report.

Long and complex procurement process

The long and complex PFI procurement process also results in a loss of flexibility. The standardisation of contracts and other measures are likely to reduce the length of the procurement process, although there is little evidence of the actual effect this will have.

1996
July: Approval of proposals for the new stations.

1997
November: Outline Business Case sent to Home office.

1998
February: Advert in European Journal.
June: Shortlisting of four bidders and issue of Invitation To negotiate.
Summer: Scoping study on support services to be included – addendum to ITN issued.
November: Bids submitted.

1999
March: Selected two bidders to submit Best and Final Offers.
May: Realignment of MPS areas and changes in location of new Area Headquarters.
August: Best and Final Offers submitted by Equion and Babcock Brown.
November: Equion appointed preferred bidder.

2000

2001
January: MPS Resource Committee discuss affordability and other financial issues.
October: MPA and Equion sign PFI contract.

Total procurement time: Five years and three months.

PFI not suitable for asylum accommodation

The Home Office has decided that the proposed asylum accommodation centres will not be developed using the Private Finance Initiative. “The Home Office has considered a number of procurement strategies for the delivery of these projects and determined that the PFI route was not appropriate in view of the urgent nature of the programme” (Hansard Written Answer, 13 February 2002).
Earlier privatisation and, more recently, the PFI in the criminal justice system has spawned new markets for the security and construction industries. It has also created a growth area for legal, financial and other consultancy firms. Whether in prisons, courts, police stations, immigration centres, or non PFI services such as electronic monitoring and prisoner escorting, the names of the companies involved are relatively few.

Companies within Premier Custodial Group are jointly owned by British facilities management company Serco Plc and Wackenhut Corrections Corporation (WCC) of the United States (50% each).

Premier has grown from nowhere to a group with annual revenues of over £161 million (as at 31 December 2000). Its companies operate prisons and immigration detention centres in England and Scotland, a secure training centre, electronic monitoring and prisoner escorting services. It also manufactures and leases electronic monitoring equipment. The company was recently awarded a contract to operate police cells in East Staffordshire.

Companies such as Premier use commercial confidentiality to avoid disclosure and public scrutiny. For example, Premier Custodial Group Ltd, notes in its annual report that “an analysis of turnover, operating profit and net assets by class of business has not been included as the directors believe that to do so would be seriously prejudicial to the interests of the group” (Note 28, Directors’ Report and Accounts, 31 December 2000). Its operating profits increased 26% to £19m in 2000.

A sister company, Wackenhut UK Ltd, a direct subsidiary of The Wackenhut Corporation which, in turn, owns the majority of the shares in Wackenhut Corrections Corporation, also operates immigration detention centres and has a contract for the national asylum support service. Wackenhut UK Ltd also had a contract to operate the prison industries at HM Prison Coldingley but this failed and the contract ended after just one year in 2000.

Group 4 operates prisons, secure training centres, immigration detention centres and prisoner escort services. It is also partnering construction firm Carillion in the PFI contract for the Manchester Magistrates’ Court. Carillion itself is involved in some 15 PFI (criminal justice, health, transport and defence sectors) projects worth more than £2.7 billion and is short listed for a further 15 contracts worth about £3 billion in total.

An example of PFI company structures

The information below is an extract from the latest accounts of Group 4 Carillion (Fazakerley) Ltd, just one of the companies in the Group 4 network involved in privatisation and PFI deals. It shows how a PFI ‘money go round’ is created (Directors’ report and accounts, 31 December 2000).

Group 4 Carillion (Fazakerley) Ltd, is the holding company for Fazakerley Prison Services Ltd (FPSL). FPSL has a 28 year contract for the provision of design, construction and management services including related financial arrangements for HM Prison Altcourse at Fazakerley in Liverpool.

Under the terms of a contract dated 20 December 1995 with Carillion Construction Ltd, a company related to Carillion Private Finance Ltd, the company is committed to payments totalling £7,578,000 for major maintenance works over the remaining contract term.

An operating agreement with Group 4 Prison Services Ltd, a company related to Prison and Court Services Ltd, was signed by FPSL on 20 December 1995. FPSL is committed to pay fixed and variable fees to Group 4 Prison Services Ltd based on the number of available prisoner places for the remaining contract term. Payments in the year ended 31 December 2000 were £15,707,000 (1999- £13,770,000).

In addition to the contractual commitments set out above, Group 4 Prison Services Ltd provided administrative and technical services to the company during the year at a cost of £77,000 (1999 £117,000). Similar services were provided by Group 4 Falck Global Solutions UK Ltd (formerly Group 4 Management Services Ltd) a company related to Prison and Court Services Ltd, at a cost of £37,000 (1999- £nil), and Carillion Construction Ltd at a cost of £75,000 (1999- £83,000). At the year end there was £1,916,000 (1999- £1,316,000) payable to Group 4 Prison Services Ltd and £88,000 (1999-£nil) payable to Carillion Construction Ltd.

Fifty per cent of the shares of the company are held by Carillion Private Finance Ltd, with the remaining fifty per cent held by Prison & Court Services Ltd. Group 4 companies operating in the UK are now subsidiaries of Group 4 Falck A/S based in Denmark.
International network

- Paris-based Sodexho owns UK Detention Services Ltd (UKDS) which, until recently managed Blakenhurst prison and now operates HMP Forest Bank. Sodexho has recently been chosen as preferred bidder for two new prisons in England. It also operates an immigration detention centre. UKDS was recently shortlisted for the Sussex police contract. Sodexho is also part of the Enterprise Civic Buildings consortium which was recently chosen as preferred bidder for the Exeter Combined Courts PFI contract. Sodexho also operates the controversial ‘vouchers scheme’ for asylum seekers. The company is involved in bidding for a number of police and court PFI schemes and is involved in PFI schools projects.

- Construction firm John Mowlem Plc is the contractor on the Humberside Magistrates’ Court PFI scheme. Mowlem was one of the original joint venture partners with Corrections Corporation of America, which owned UK Detention Services Ltd.

- Securicor, through its Securicor Custodial Services subsidiary, operates one prison and also provides electronic monitoring and prisoner escort services.

- One of Securicor’s joint venture partners at HM Prison Parc is WS Atkins. Atkins claims that ‘in the custodial sector, we believe we are one of the few firms that combines virtually the full range of project sponsorship, architectural, building design, bid and project management, facilities management, land disposal, commercial and financial skills necessary for these types of PFI project. Our specialist team provides a comprehensive multi-discipline design service for Police Authorities, Courts Services, HM Prison Service, private providers and PFI consortia.’

- Ballast has refurbished police stations and prisons in the past, but it has no track record in building custody centres. The company had only been in the PFI market for just over three years and, at the time, it was shortlisted as preferred bidder for the Sussex contract, had completed two projects for five schools in Falkirk and a further two in Portsmouth. In a press release announcing the selection of the preferred bidder, Sussex Police Authority referred to Reliance as “market leader in police support services.”

- Reliance had a short lived dalliance with electronic monitoring. In 1998 Reliance Custodial Security Ltd and GSSC of Europe Ltd jointly won a Home Office contract to operate an electronic monitoring contract for the southern region of England (excluding London) for five years from 1 February 1999. GSSC sub-contracted the installation of electronic tags and equipment and the response to the breaking of curfew orders to Reliance, but terminated the contract soon after.

- Also, when selected as preferred bidder, Reliance was only half way through a one year pilot project providing 15 custody staff in West Mercia Police Authority. The company based its suitability for the Sussex contract largely on the experience of its one prisoner escort contract in South West England and South Wales.

- As for the advisers, time and again the same companies crop up: PricewaterhouseCoopers; KPMG, Nabarro Nathanson; Mouchel; Denton Wilde Sapte; Rainey Petri Johns Ltd; Wragg & Co; Eversheds and Masons.
The government should immediately stop all further procurement of PFI/PPP projects in the criminal justice system. Signed projects will have to continue unless agreement could be reached to terminate contracts on favourable terms to the public sector.

The state of the economy

The government’s 2001 Pre-Budget Report concluded that “the government is firmly on track to meet the fiscal rules over the economic cycle, including the cautious case” (Treasury, 2001). The economy is forecast to grow by 2.25% this year – the fastest rate of growth in the G7 (group of seven largest economies). Growth is expected to be between 2% – 2.5% next year and between 2.75% and 3.25% in 2003 as global growth recovers. The improvements in the public finances in the past four and a half years mean that fiscal policy is able to support monetary policy this year and next in maintaining economic stability.

The Treasury’s current fiscal rules include:

- The golden rule that on average, over the economic cycle, the government will borrow only to invest and not to fund revenue expenditure;
- The sustainable investment rule that public sector net debt as a proportion of GDP will be held at a stable and prudent level. This was nearly 45% in 1996/97 but has fallen to 32% in 2001-02.

The Maastricht convergence criteria (established for countries wishing to join the European Monetary Union), limit government borrowing (to 3% of GDP) and government debt (to 60 % of GDP). The government has repaid debt in each of the last three years and the UK now has the lowest level of all the G7 countries.

Increase public sector capital investment

Even within current government policy there is a strong case to further increase public sector capital investment in addition to the proposals for additional investment in health, education and transport outlined in the November 2001 Pre-Budget Report. The government should be directly investing in Britain’s infrastructure to make up for the years of under-investment in the previous two decades.

A new Comprehensive Spending Review will be published in July 2002 outlining public investment plans up to 2004/05. This is a golden opportunity to launch a new investment plan to strengthen public ownership and control of Britain’s infrastructure and to end the privatisation of the criminal justice system.

Adopt the General Government Financial Deficit

The government could adopt the General Government Financial Deficit for public sector current and capital expenditure accounting, replacing the Public Sector Net Borrowing (PSNB which replaced the PSBR). Public bodies could then borrow for capital investment from the European Investment Bank (EIB) and the European Investment Fund (EIF) at low rates of interest. Following the Amsterdam Treaty in 1997, both the EIB and EIF directly fund schemes under the Special Action Programme for investment in health, education, housing, regeneration and environmental projects. Since the EIB and EIF funds are not guaranteed by governments, they do not count against public borrowing except in Britain and the Netherlands.
Implications of continued privatisation

Thirteen PFI projects in 42 Magistrates Courts Committees in England and Wales (now aligned with Police Authority boundaries) were initiated in the 1996-2001 period with an acceleration of schemes in the second half of this period. A combination of closures in smaller/rural courts and the continued use of PFI for new courts will mean that, at the current rate of project approval, virtually all 42 MCC’s will have PFI projects at some stage of procurement or completion by 2010. In other words, the vast majority of Magistrates Courts will be effectively under private ownership and management.

The facilities management of magistrates court PFI projects to date has been based on a traditional separation of core (court) and non-core (building maintenance) functions. However, the growth of strategic provider partnerships in the bidding stage. Firms frequently withdraw leaving one firm to submit a best and final offer making a mockery of competition and the claim that this process ensures value for money.

It has been claimed that the wider use of information technology will reduce the need for the administration of the courts system and the police service to be located within courts and police stations thus creating a significant premises ‘dividend’. Expensive town centre sites could then be freed up by combining and relocating administrative functions to less expensive green field sites.

It is possible that the strategic service delivery partnership model, in which the private sector supplies a wide range of ‘back office services’, may be transferred from local government to the criminal justice system. This could result in the criminal justice system being left with strategic management and a core legal service with the rest contracted out. An indication of this trend, the government issued a Statutory Instrument in November 2001 enabling the Lord Chancellor to enter into contracts with private contractors to supply staff for administrating the court service and discharging the

Key findings

- The inflexibility of contracts for buildings and services, combined with poor performance of many ICT contracts, make the PFI a barrier to achieving a more effective and better integrated information and communication system in the criminal justice system.

- Increasing flexibility and change are basic features of the modernisation of the criminal courts system. This conflicts within the inflexibility of long term ring-fenced contracts with the private sector and their involvement of the design and planning of facilities. A multiplicity of often incompatible computer systems restricts the development of common information and communications systems.

- The specialist nature of court buildings, (including cell accommodation), the need for central locations and the need for a number of agencies to be involved in the planning and design process make them unsuitable for PFI projects.

- The dominant use of PFI projects could prove to be a barrier to any effective unification of the courts system, as recommended by the Auld Review.

- There is limited competition with few firms involved in the bidding stage. Firms frequently withdraw leaving one firm to submit a best and final offer making a mockery of competition and the claim that this process ensures value for money.

- It has been claimed that the wider use of information technology will reduce the need for the administration of the courts system and the police service to be located within courts and police stations thus creating a significant premises ‘dividend’. Expensive town centre sites could then be freed up by combining and relocating administrative functions to less expensive green field sites.

- It is possible that the strategic service delivery partnership model, in which the private sector supplies a wide range of ‘back office services’, may be transferred from local government to the criminal justice system. This could result in the criminal justice system being left with strategic management and a core legal service with the rest contracted out. An indication of this trend, the government issued a Statutory Instrument in November 2001 enabling the Lord Chancellor to enter into contracts with private contractors to supply staff for administrating the court service and discharging the
The statutory functions of court officers. It also applies to the work of Special Commissioners and VAT Tribunals. The Order prohibits contractor staff from the exercise of judicial functions and the power of arrest! (The Contracting Out (Administrative and Other Court Staff) Order 2001, Statutory Instrument No 3698).

- The concept of ‘Justice Parks’ is being explored in Wales where a North Wales industrial site is under consideration for a police, courts and probation complex in one location. This particular form of ‘joined-up justice’ could raise substantial issues of access for the public and staff.

- PFI is shaping how services are delivered rather than criminal justice system directly identifying needs and priorities and thus determining the design of buildings, service requirements and their location.

- There is a danger that Police Authorities and other criminal justice agencies resort to decreasing the number of police officers and other staff in order to be able to afford PFI payments.

- The complexity of PFI and lack of capacity, skills and training within the police, courts, prison and probation services results in either, or both, increased reliance on consultants and advisers and centralisation of decision making into departmental PFI specialist units which will impose general solutions ignoring local needs.

- The resources and capacity to negotiate, advise and monitor PFI information technology contracts have been fundamentally under-estimated.

- Once companies get entrenched in PFI contracts they are in a powerful position to shape policy and research and thus influence the future direction of the service and safeguard their vested interests and generous profit margins.
Courts

Contracts awarded

Avon and Somerset Magistrates’ Courts
Serviced courthouse accommodation in Avon courts area. ITN. Capital value: £32 with total cost £130m. Contractor: Amey. Advisers: PricewaterhouseCoopers (lead/finance), Citex Bucknall Austin (technical), Wragge & Co (Legal) (all advisers jointly with Bedfordshire scheme see below).

Derbyshire Magistrates’ Courts
Provision of new or refurbished serviced courthouses in each of three clerkships. Contractor: Babcock and Brown Properties Ltd. Capital value £31m. Advisers: JSS Pinnacle (lead), KPMG (financial), Wragg & Co (legal) and Edmond Shipway & Partners (technical).

Probate Records Centre

Humberside Magistrates’ Courts

Manchester Magistrates’ Court

West Mercia Magistrates’ Courts

The Chester Civil Justice Centre, which opened in May 2001, was a Private Developer Scheme, not a PFI project.

See below for details of IT contracts.

Schemes in procurement

Crown/County Courts in East Anglia

Exeter Combined Courts Service

Sheffield Family Court
Civil justice hearing centre for family related matters: provision of serviced accommodation. Preferred Bidder: Centreland Partnerships Ltd Advisers: PricewaterhouseCoopers (lead/financial), Denton Hall (legal), Mouchel (technical). Capital value £5.4m

Merseyside Magistrates’ Courts

Bedford Magistrates’ Court
Serviced courthouse accommodation in Bedford (new or refurbished). ITN. Capital value: approximately £35 million Advisers: PricewaterhouseCoopers (lead/finance); Citex Bucknall Austin (technical); Wragg & Co (Legal) (jointly with Avon scheme, see above).

Bristol Civil Justice Centre (Private Developer Scheme, not PFI). Court Service: serviced accommodation for Civil Courts and courts admin. Preferred Bidder: Norwich Union. Advisers: Citex (lead), Torpys (technical) and Michelmores (legal).

Manchester Civil Courts
Court Service: Serviced accommodation for civil courts, Tribunals and Probate Status: Preliminary investigation: Possibly PFI or Private Developer Scheme.
Schemes in planning (pre-procurement)

- **New Courts for Principle Registry Family Division (PRFD)**
  Permanent home for PRFD, recently moved out of Somerset House, London. Status: Preliminary investigation of options including PFI.

- **Greater Manchester Magistrates’ Courts Committee**

- **West Midlands Magistrates’ Courts**
  Serviced courthouse accommodation in Birmingham and West Bromwich. Status: Planning. Advisers: PricewaterhouseCoopers (lead), Ernst & Young (financial), Rainey Petrie Johns (technical) and Denton Wilde Sapte (legal).

- **Gloucestershire Magistrates’ Courts**

- **Cheshire Magistrates’ Courts**

- **Essex Magistrates’ Courts**
  Serviced courthouse accommodation in Essex, with new courts in Chelmsford and Colchester and refurbishment in Basildon, Southend and Harlow. Status: Planning with estimated capital value of £30m.

- **Gwent Magistrates’ Courts**

Awaiting position in programme:

There are a number of Magistrates’ Courts Committees (MCCs) bidding for a place in the programme. Generally, a number of schemes are admitted yearly, following an opportunity for MCCs to submit or resubmit bids that are evaluated against set criteria. The number of MCCs bidding varies from year to year.

**Crown Prosecution Service IT network**
Provision of a national IT network and associated support services for 6,200 staff.
This is not a PFI project

Police

The following Police PFI Schemes are at various stages of operation or procurement:

- **Sussex Police Authority**
  DBFO four custody centres, with operation of a further two at Crawley and Hastings. Contractor: Reliance Ballast. Capital value: £40 million, total value £90m, signed August 2001. Advisers: Eversheds (legal), Grant Thornton (finance).

- **Cheshire Constabulary HQ**

- **Cheshire Police Authority**

- **Cleveland Police Authority:**

- **Cleveland and Durham Police Firearms Training Facility:**
  Capital value: £10m. Contractor: Barr Holdings.

- **Cumbria Police Authority**
  Workington Police Station. Capital value: £8.6m Contractor: Thomas Armstrong Construction.

- **Norfolk Police Authority**
  Capital value: £21m.

- **Northumbria Police**
  Capital value: £3m.

- **Wiltshire Constabulary**
  Police Air Support. Capital value: £6m.

- **Thames Valley Police**
  Southern Oxfordshire Area HQ. Capital value: £15m.

- **Derbyshire Constabulary**

- **Greater Manchester Police Authority**
  DBFO 17 new police facilities including four divisional headquarters, five sub-divisional headquarters, one traffic headquarters and seven deployment stations. Total value is £81.5m NPV, capital costs of about £38m. Contractor: Equion plc (John Laign plc). Advisers: Ernst & Young (financial), Eversheds (legal).

- **Kent Police Authority**
  Design, build, finance and fitting out of new police facilities at Chatham, Gillingham and Rochester to include office and administration accommodation, custody facilities for up to 40 detainees, interview

- **Metropolitan Police Firearms**
  Firearms and Public Order Training Facility at Gravesend. Capital value £30m, signed April 2001. Contractor: Equion plc (John Laign plc)

- **Metropolitan Police Authority**
  New police stations at Bromley and Lewisham and divisional headquarters at Deptford and Brockley, plus support services. Total value £120m. Contractor: Equion plc (John Laign Plc).

- **Metropolitan Police Authority**
  C3i, a new command, control communication and information service, IT and communications services, radio, network services and information systems. Sole bidder: C3iM, which comprises Serco, PRC Litton (command and control provider), NTL (communications), Ericsson (telephony) and KPMG (change management). NB: This was originally a PFI project but was terminated and is continuing under a traditional procurement route.

- **National Crime Squad IT Infrastructure**
  Provision of a wide range of information systems-based services.

- **Nottingham Police Authority**
  Replacement traffic wing and vehicle services. Capital value: £40 million. Contractor: Vensons/MIM. Advisers are PricewaterhouseCoopers (financial) Eversheds (legal).

- **Dorset**

**Scotland**

- **Strathclyde Police Force Training Centre**

**National**

- **Public Safety Radio Communications Project – BT Airwave**
  £2.5bn.
Public sector employment in the criminal justice system is nearly 315,000 (see Table 5.1) although the total number of jobs will exceed 325,000 because some of the data is supplied in full time equivalents.

### Table 5.1: Employment in the Criminal Justice System

<table>
<thead>
<tr>
<th>Service</th>
<th>Male</th>
<th>Female</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Magistrates Court staff</td>
<td></td>
<td></td>
<td>10,570</td>
</tr>
<tr>
<td>Court Service (FTE)**</td>
<td></td>
<td></td>
<td>10,040</td>
</tr>
<tr>
<td>Police</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Police Officers (FTE)</td>
<td>104,053</td>
<td>21,466</td>
<td>125,519</td>
</tr>
<tr>
<td>Civilians</td>
<td>21,277</td>
<td>37,422</td>
<td>54,588</td>
</tr>
<tr>
<td>Traffic Wardens</td>
<td>1,377</td>
<td>1,225</td>
<td>2,516</td>
</tr>
<tr>
<td>Crown Prosecution Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lawyers******</td>
<td>1,897</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administration</td>
<td></td>
<td>4,030</td>
<td></td>
</tr>
<tr>
<td>Probation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Probation Officers</td>
<td>3,283</td>
<td>4,237</td>
<td>7,519</td>
</tr>
<tr>
<td>Other staff</td>
<td></td>
<td></td>
<td>7,973</td>
</tr>
<tr>
<td>Judiciary</td>
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<td></td>
<td></td>
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<tr>
<td>Lord Justices &amp; High Court</td>
<td></td>
<td></td>
<td>137</td>
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<tr>
<td>Circuit/District Judges and Recorders</td>
<td></td>
<td></td>
<td>3,028</td>
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<tr>
<td>Prison Service</td>
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<td>43,845</td>
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<td>Government Departments</td>
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<tr>
<td>Home Office (FTE)</td>
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<td>12,609</td>
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<td>Lord Chancellor’s Department</td>
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<td></td>
</tr>
<tr>
<td><strong>Total Public Sector</strong></td>
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<td></td>
<td><strong>284,271</strong></td>
</tr>
<tr>
<td><strong>Private Industry</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Security guards and related occupations******</td>
<td></td>
<td></td>
<td>162,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>446,271</strong></td>
</tr>
</tbody>
</table>

Source:
* at 1 April 1999
** at 31 March 2001 Court Service Annual Report 2000-01
*** at March 2001
**** at 31 December 1999
***** at 1 April 2000
****** 1994 estimate by Policy Studies Institute
******* 31 December 2000
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- Metropolitan Police Authority (2001) *Funding of C3i Report No 10, 10 May* (London)
- National Audit Office (1999), *Examining the Value for Money of Deals under the Private Finance Initiative* HC 739, August (Stationery Office: London)
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- Sussex Police Authority (2000) *Centralised Custody PFI Project* (Lewes)
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Dear Ms Grahame,

I am grateful for the invitation to give evidence to the Justice 1 Committee on the issue of Community Penalties related to the consultation on the future of the prison estate. I am sorry that I am not able to give evidence in person.

I have prepared a brief written statement which is attached. In order to keep this submission very brief, I addressed what I take to be the central issue with respect to community penalties. The projected figures used in the review assume that the rise in the prison population over the next ten years will be relatively modest because of the additional community penalties recently made available to the court. My evidence suggests that this assumption may be misleading and that in order to produce a slow down in the growth of the prison population, the issue of sentencing discretion should be considered.

My paper reviews the available research evidence and is intended to present a rational and objective analysis. However I should declare a range of interests for the benefit of the committee.

Board member of SACRO
Academic representative Scottish Consortium on Crime and Criminal Justice
Director of the Centre for Sentencing Research University of Strathclyde
Member of the team which has developed the Sentencing Information System for the High Court of Justiciary 1993-continuing.

Yours faithfully,

Professor Neil Hutton
Centre for Sentencing Research
University of Strathclyde
Written evidence for the Justice 1 committee review of the Prison Estate paper.

Professor Neil Hutton
Director Centre for Sentencing Research
University of Strathclyde

Introduction
The Review makes projections of increases in the prison population based on statistical projections of past practices. This is a cautious approach based on solid evidence. In the foreword the Minister of Justice admits that prison is not the answer for many less serious offenders and this is reiterated in paragraph 17 of the review which states the view of the Scottish Executive that prison should only be used for the most serious crimes and offenders. The figures used for the projections are closer to the lower realistic estimates than the higher estimates. This is based on the assumption that the increased range of community penalties made available by Parliament will restrict the growth of the prison population.

Is this assumption justifiable?
The executive’s policy of simply providing a wider range of community based sentencing options for the courts, welcome though these are, may not produce a significant reduction in the use of custody. This has not happened in the past in the UK. Courts in England and Wales over the last twenty years have had the widest range of community based sentencing options available in western jurisdictions, yet the rate of imprisonment has steadily increased. There have been a range of efforts made in Scotland over the last fifteen years, to ensure that the courts have confidence that community punishments will be effectively enforced and sufficiently punitive, most notably the introduction of national standards for criminal justice social work with offenders. The use of community penalties by the courts has slowly increased over the period, but the rate of imprisonment has increased more quickly. The provision of legislation which enables courts to use community sanctions carries no guarantees about how these sanctions will be allocated by the courts.

Some of the policy aims might be as follows:
To ensure that judges (sheriffs in particular) use short prison sentences less frequently.
To ensure that community penalties are used as a direct replacement for imprisonment and not instead of a fine
To ensure that re-conviction after one community penalty does not immediately result in a custodial sentence. Repeat community penalties should be the norm.

Sentencing Policy
Scholars of sentencing are broadly agreed that it is the sentencing practices of the courts which has the most significant impact on prison populations. This
appears to be accepted by the Executive in para 14 of the review. It is unlikely that the Executive will be successful in reducing the prison population without taking a significantly new approach to sentencing practices.

Currently sheriffs exercise very wide discretion in their sentencing and there is no tradition of developing and implementing any sentencing policy. It may be that Parliament would want to consider the options for introducing some sort of mechanism for implementing policy. Sheriffs are politically independent, but their job is to implement the law, and it would be quite legitimate for Parliament to introduce a greater element of structure to sentencing although this would undoubtedly be restricted by some sections of the legal profession. There is an extensive research literature on sentencing reforms adopted in a range of jurisdictions across the world designed to structure judicial discretion. The debate is often polarised as a choice between judicial discretion or politically imposed guidelines. This is inaccurate and misleading. The balance between rules and discretion varies considerably. Scotland currently relies very heavily on discretion and a move to introduce greater rationality and consistency to sentencing, need only structure discretion rather than remove it altogether. However any reform proposals with a hope of success would require extensive research and consultation. It is unlikely that this work could be achieved quickly.

Sheriffs could be encouraged to take this into their own hands and develop their own strategy for ensuring a greater degree of consistency and shared sense of purpose in sentencing. Of course there is no guarantee that the aims produce by the sentencers would mesh with the wishes of the executive. The High Court has a Sentencing Information System which offers judges some support in their efforts to pursue consistency in sentencing. This was instigated by the judiciary so there is a recent precedent within this jurisdiction for judges to take responsibility rather than leave matters to Parliament.

Conclusions

The best available evidence suggests that the reductions in the prison population which underpin the projected figures used in the review document are unlikely to be realised by legislation giving the courts the powers to use additional community penalties. The likely larger numbers of prisoners may require additional prison building or continue the overcrowding which will hinder the SPS in their pursuit of correctional excellence and ultimately fail to ensure the maximum level of harm reduction and community safety for the taxpayer’s money.

The implementation of a rational and cost effective penal policy requires the support of the judiciary. This will require political will, delicate negotiations and much hard work from a wide range of stakeholders.
Dear Ms. Grahame

Re: HMP Kilmarnock Contract

I refer to my letter of 7th May 2002.

I am pleased to inform you that I am able to comply with your request that current members of the Justice 1 Committee be allowed to view in private the full contract. I note and accept your offer that Committee members will be bound by the terms of the Code of Conduct and will not further disclose that information which remains outside the public domain. I would wish to agree how this might take place; I assume it has been done before. I would be grateful therefore if you would advise me of the practicalities so that KPSL and SPS can facilitate the viewing.

I apologise once again for the length of time it has taken to arrive at this position, but I am sure you will appreciate the necessity of consulting fully with shareholders and legal and financial advisors.

Yours sincerely

Elaine Bailey
Managing Director
Privatised Prisons and Detention Centres in Scotland:

An Independent Report

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Privatised Prisons and Detention Centres in Scotland : An Independent Report

Phil Taylor and Christine Cooper

Preface

The preparation of this report has been stimulated by the simultaneous publication (21 March 2002) of the long-awaited Scottish Prison Service Estates Review and Pricewaterhouse Coopers’ Report, the Financial Review of Scottish Prison Service Estates Review. This document centres on a critical assessment of both these reports and on the accompanying Scottish Executive document, Consultation on the Future of the Scottish Prison Estate. This assessment has been informed by the authors’ research into the rationale for, and the operation of, privatised prisons. While reference is made to the experience of prison privatisation more generally, the specific focus is upon developments within the Scottish context. However, before outlining the aims and objectives of this report it is necessary to make an important point of clarification.

The authors accept that the conditions in much of the prison estate in Scotland are inhumane and outdated, particularly in terms of overcrowding and the practice of ‘slopping out’. That Scotland’s prisons still retain these practices reflects decades of under-investment and a political unwillingness to reform conditions. The authors’ principal conclusion is not that Scotland’s prisons do not require a fundamental and radical review, but that the proposals of the Scottish Executive and Estates Review to extend the privatisation programme are fundamentally flawed. Our principal conclusion is that if these proposals are implemented conditions in Scotland’s prisons will be made worse in many significant respects, particularly in relation to the strategic aims of challenging offending behaviour and promoting rehabilitation.

The principal aim and objectives of the report are as follows:

Aim

• To critically examine the evidence justifying the extension of the private prison programme in Scotland, as recommended by the Scottish Prison Service and the Scottish Executive.

Objectives

• To investigate the accounting and costing methodologies employed by Pricewaterhouse Coopers (PwC) and to scrutinise the recommendations made in their report, which appear to have been accepted without question or qualification by both the Scottish Prison Service in their Estates Review and the Scottish Executive.
To examine the available evidence of the performance and practice of Scotland’s only privately run prison, HMP Kilmarnock, since it opened in March 1999. It would seem incontrovertible that the operational experience of Kilmarnock is particularly important in order to establish the credibility of the proposed extension to privatisation. If Kilmarnock is judged to have been an overwhelming success, then the case for privatisation is correspondingly strengthened. Conversely, if major problems are identified in Kilmarnock experience, then the case for privatisation is seriously undermined. Given that the PwC Report and Estates Review focus almost exclusively on financial and cost considerations, we contend that all the significant issues highlighted in the HM Chief Inspectors’ Reports of 2000 and 2001 should be given full consideration.

To relate the evidence from Kilmarnock to the arguments advanced in favour of privatisation in the Estates Review. In so doing evidence will be presented from the broader experience of privatised prisons and more general conclusions drawn.

To review the record of the company responsible for operating HMP Kilmarnock, Premier Prison Services, and to examine the practice of the parent company of one of the major partners involved in PPS, Wackenhut Corrections Corporation (WCC). An assessment of Wackenhut’s prison operations will provide valuable contextual and background information which can further inform judgements regarding the viability of the prison privatisation project as a whole.

As an ancillary but related objective, to examine the role of Wackenhut in its provision of detention services for immigration authorities in the United States and Australia. Again this forms necessary background research for establishing the credibility of Premier Detention Services in relation to the operation of Dungavel Detention Centre on the site of a former Scottish Prison Service (SPS) establishment. While it is acknowledged that Dungavel is the responsibility, not of the SPS, but of the Home Office, it raises important and related issues concerning privatisation and incarceration.

A Note on Sources

Much important evidence has come from documents in the public domain - in Scotland, the UK as a whole, and the United States. Data from these sources has been supplemented by evidence from interviews conducted with key informants in Scotland, and additional relevant documentation. Extensive searches of international news databases (principally LexisNexis) yielded valuable data on the experience in the United States. Some insights were gained from a review of the limited academic literature. A full list of references and bibliography is given in Appendix 1.

Organisation of the Report

Consistent with the aims and objectives outlined above the report is organised into the following Sections.
Section 1: Introduction, Context and Background

1.1 Recent Political Context

It is necessary, firstly, to place the growth of private prisons in the UK, and their proposed extension in Scotland, in the recent political context. In 1996, Jack Straw, then the Shadow Home Secretary argued that it was

‘morally unacceptable for the private sector to undertake the incarceration of those whom the state has decided need to be imprisoned...almost all people believe that this is one area where a free market does not exist’ (Speech to the Prison Officers Association, 21 May 1996).

This unequivocal position was reinforced in a pre-election claim when Straw expressed his determination to bring back into the public sector those private prison projects initiated by the Conservative Government,

‘We shall certainly make no new [contracts] and, within the existing budget, shall take back into public service privatised prisons as soon as contractually possible’ (Prison Privatisation Report International [PPRI], May 1997).

However, within a week of the 1997 General Election and taking office, the new Home Secretary had decided to ‘sign those contracts’ for privately financed jails which were ‘in the pipeline’. A month later, he had renewed one private prison contract and had signed contracts for two further establishments. One year after New Labour came to power, Straw told the Prison Officers’ Association Conference that all new prisons in England and Wales would be privately built and run, and that his promise that private prisons would be transferred to the public sector no longer stood.
In Scotland a similar change took place.

‘We wrote to every Scottish Labour MP – obviously before the Parliament was constituted in Scotland and all of them, to a person, was firmly opposed to the private prison concept. Mr. Blair as opposition leader wrote to us [the Prisoner Officers Association Scotland] to say that it was a morally repugnant idea and that he would resist it strongly’ (Derek Turner interview, 22 February 2002).

After the 1997 General Election, and prior to devolution in 1999, Henry McLeish as Minister of State and Scottish Office Minister for Devolution, Home Affairs and Local Government, informed the Prison Officers Association Scotland (POAS) that it was not possible to cancel the Kilmarnock prison contract because the penalty clauses would be too severe, but that ‘there will be no more private prisons in Scotland’. However, the main change in political commitment appears to have come in 1999 following the institution of the Scottish Parliament, and the adoption of the Private Finance Initiative (PFI) and later the Public Private Partnership (PPP) and, more recently and markedly, following the election of Jack McConnell as First Minister.

Given the extension of prison privatisation across the UK and the scale of the proposed privatisation project in Scotland – three new prisons accounting for 2,200 prisoner places – it is reasonable to ask a straightforward question. If the privatisation of prisons was ‘morally unacceptable’ or ‘repugnant’ to Jack Straw, Tony Blair and new Labour politicians five years ago, then why is it no longer so? In discarding fundamental moral objections to private prisons, the new Labour Westminster governments and the Scottish Executive have performed an astonishing volte face. It is remarkable also, that in the statements by Jim Wallace which have accompanied the publication of the Estates Review, and in the Estates Review itself, there is no acknowledgement that the proposed privatisation of prisons might be ethically or logistically problematic, despite considerable evidence to the contrary.

1.2 The Case Against Privatisation

Straw and Blair’s erstwhile moral opposition to private prisons simply reflected the widespread evidence and informed views of prison reformers, academics, civil rights groups and trade unions with greater experience of privatised prisons operating in the United States. That, as we demonstrate below, serious problems have emerged in the operation of UK’s private prisons, comes as no surprise when the longer record of privatisation of US prisons is considered. While a full review of the evidence lies beyond this report it is necessary to summarise in brief some of the objections to privatisation in principle.

The basis of the moral case against privatisation is rooted in the very logic of privatisation itself, where a private company bids for a contract on the grounds that it can construct, manage and run a prison more cost-effectively than the state. At the same time, a private company is promising to its shareholders that it can deliver a profit on this
contract. The consequences of both these sets of pressures, it is argued, are lower pay rates for privatised prison staff, which can contribute to low morale, higher turnover and a poorer calibre of recruit. The pressure to make a profit leads also to lower staffing levels and the cutting back of service provision, particularly in relation to care, rehabilitation and programmes designed to challenge offending behaviour, and which in turn can even lead to neglect, and even the abuse, of inmates. As is demonstrated (Section 5), through the prism of the Wackenhut case study in the US, all of these problems have emerged to varying degrees.

It has been estimated (see Ken Silverstein, Prison Legal News, June 1997) that to be profitable private prison firms must ensure that prisons are not only built but also filled. Industry experts state that a 90-95% capacity rate is needed to guarantee the rates of return required to attract investors. In short, private prisons have a vested interest in crime, criminality and the existence of large and growing prison populations. A related and fundamental concern is that, logically, private prison operators have no incentive for reducing existing prison populations and therefore strategies for tackling recidivism will be de-prioritised. Jenni Gainsborough of the American Civil Liberties Union has emphasised the ‘basic philosophical problem when you begin turning over the administration of prisons to people who have a vested interest in keeping people locked up’.

Ethical concerns raised by the prospect of making profits out of a societal problem are hardly assuaged by the evidence which has emerged from the industry conventions on privatisation.

‘While arrests and convictions are steadily on the rise, profits are to be made – profits from crime. Get in on the ground floor of this booming industry now. Leading industry analysts will give expert forecasts on future growth potential for the private prison industry and how to make the most of investments today... as they share their insights on how to capitalize on a new era of opportunities...’

(Invitation to a World Research Group Conference, Dallas, December 1996)

Extracts such as these provide strong evidence that the privatisation of prisons and related services is very much about creating new markets for big business. At this Dallas convention presentations on investment opportunities and the evaluation of risks and rewards were given by executives from many private operators including Wackenhut, the parent organisation of one the companies currently operating HMP Kilmarnock (PPRI, February 1997).

Over the last decade, there has been a proliferation of global conferences and symposia at which those with a ‘vested interest’ in privatisation share experiences on how profit margins can be maximised and costs reduced. These events either focus specifically on prison privatisation or more generally on the opportunities opening up through governments’ use of PFI/PPP or similar initiatives. Examining the list of participants at, and the agendas of, conferences such as the 2nd Annual Public-Private Partnership/Private Finance Initiative Global Summit (The Global Government-Industry Forum on
International Developments in PPP/PFI) in Dublin in October 2001, it is easy to see the coming together of the ‘vested interests’: private operators, accountants, government agencies, consultancies, construction companies. The Dublin event sponsors included the accounting firms KPMG and PricewaterhouseCoopers, and speakers included Paul Boateng (formerly UK prisons’ minister) who, it was anticipated, would speak on the positive experience of UK prison privatisation (PPRI, August 2001). In this context, it is disingenuous of the Estates Review to refer to PricewaterhouseCoopers as ‘independent accountants’. The briefest scrutiny of the proceedings of these conferences reveals the interconnectedness of those with vested interests in the privatisation of prisons.

The experience of privatised prisons in the United States has led many experts to condemn the entire project.

‘When you try to operate prisons with a profit motive, corner-cutting occurs to save money, whether in hiring, training, pay or programs promised but not delivered.’ (Professor Ira Robbins, American University, Washington College of Law)

In the UK experts have raised similar concerns regarding private prisons. Drummond Hunter of the Howard League for Penal Reform has argued that the profit motive and the needs of shareholders should not be involved in the running of prisons.

‘We have grave concerns about private prisons, to put it mildly. It seems that the only way they can make a profit is to cut down on services. You cannot make a profit and keep a high ratio of staff to inmates.’ (Drummond Hunter, Scotland on Sunday, 10.12.00)

But despite the adverse impact on staffing levels and rehabilitation programmes, there is much evidence to show that private prisons are a false economy. The General Accounting Office of the US Federal Government analysed five studies comparing the operational costs and quality of service in public and private prisons. Its conclusions seriously undermined the claims made for the benefits of private prisons (US General Accounting Office GAO/GGD-96-158 – see Section 2 below). Judith Greene, an independent analyst based in New York who has studied private prisons for many years has concluded more recently,

‘For more than 15 years, private-prison marketing was built on sweeping assertions that they could deliver higher quality services at a lower price than public correctional agencies. But the evidence to date does not support either end of the claim’. (Washington Post, 18.2.01)

The source of profits for companies operating private prisons and detention centres can lie not just in the government revenues they receive. In the United States Wackenhut provides cheap labour for corporations. For example, in Austin Texas, a company which initially produced circuit boards closed down only to re-open within one of Wackenhut’s
prisons. Prisoners now work in this factory producing goods for companies including IBM and Microsoft (http://greenleft.org.au/back/2001/).

For all the reasons outlined above there is a powerful ethical, humane and practical case against prison privatisation. At a most fundamental level is the argument that it is simply immoral for profits to be made out of what society has deemed to be criminal behaviour worthy of incarceration. Until recently this was a case shared by both UK Ministers and Scottish Executive Ministers. However, in the Estates Review no reference is made to this critical evidence or to the widespread concerns regarding privatisation.

1.3 The Scale of Scotland’s Proposed Prison Privatisation in Context

Taking into consideration the refurbishment of existing facilities and the planning of new houseblocks the Estates Review calculates that 2,200 places would still be required, and that these should be delivered under the ‘private build and operate’ option. These would be provided through three ‘closed secure prisons’ of the optimum operating level of around 700 prisoner places each. If we add these 2,200 prisoner places to the exiting 548 places at the Premier Prison Service run Kilmarnock prison, this gives a proposed total of 2,748 prisoner places in privatised prisons in Scotland on completion. Although the Estates Review includes high and low projected prison populations for the year 2010-11, the report settles on an estimate of a ‘total level of demand based on the 7,200 long-term projection’ (Estates Review: 12). Under the existing proposals this would mean that 38.2% of Scotland’s prison population would be placed in privatised prisons.

It is important to try to place these figures in comparative contexts. Scotland’s only private prison, Kilmarnock, currently provides 9% of Scotland’s prison population, compared to a UK-wide figure of 8% in private prisons. While the United States has the largest number of prisons in the world, these accommodate only 3% of adult prisoners (Business and Industry, June 2001). Estimates for Australia suggest a privatised prison population of above 20% although there are marked variations between different states (e.g. Victoria 45%). Although the comparative data we have is not comprehensive it appears that the Estates Review proposals, if implemented, will lead to Scotland having the highest proportion of prisoners in privately run establishments of any country in the world. This may change as a result of the prison service’s decision in England and Wales to introduce privately-run ‘super jails’. For now, though, based on specific proposals Scotland would top the world private prisons’ league. It is a serious omission that in both the PwC Report and in the Estates Review no reference has been made to this nor any attempt made to place in a wider context such a momentous recommendation.

Without being explicitly stated, an assumption underlies both reports that privatisation is the sole route being pursued by governments across the world. However, this is not the case. For example, in the Netherlands, where the prisoner population has grown from 4,000 to 14,000 in the last 15 years, the government, having examined the record of privatisation in the UK, Australia and the United States, decided that the policy was unsuitable. In addition, there are now many instances where failed private correctional facilities have been taken back into the public sector. Even in the heavily privatised state
of Victoria in Australia, Deer Park women’s prison has reverted to state’s hands because of the concerns about the management of Corrections Corporation of Australia. In California, Governor Gray Davis recently announced that the state was ending its experiment with privately operated prisons (Los Angeles Times, 15 March 2002).


2.1 PricewaterhouseCoopers: Methodology

There have been few, if any, UK studies of the type undertaken by PricewaterhouseCoopers (PwC) for the Estates Review. In terms of evaluating PwC’s methodology it would be useful to draw upon the experience of the US which has a longer history of privatised prisons. The United States General Accounting Office1 undertook an evaluation of various methodologies which had been used to compare the operational costs and/or the quality of service of comparable private and public prisons. It concluded that (p 13) ‘The best approach for evaluating operational costs is to study existing comparable facilities, not hypothetical facilities’. The approach taken by PwC is to study hypothetical facilities. The costings in the PwC report are simply estimates of building a hypothetical 700 cell prison. It would be entirely possible to come up with totally different figures by using other equally plausible (perhaps more plausible) assumptions. The US General Accounting Office report stated that ‘this type of hypothetical comparison does not allow for consideration of any unanticipated changes in components such as staffing levels, other expenses, rate of occupied bed space, or many other factors that could affect actual costs. Changes in any single assumption, or set of assumptions, for the hypothetical institutions could change the size or even the direction of the differences in the comparative operational costs’ (p 7-8).

Even without detailed costings it seems as if PwC have fallen into this trap. The PwC costings seem to assume that the Scottish Executive will pay the private prison company for 700 places for the next 25 years. If the prison population falls the private initiative could well end up being very costly since the unit cost per prisoner will rise pro rata. In assessing the PPP private build/private operate option PwC base their costings on places provided (rather than actually used). This may be because private prison contracts are based upon full occupancy for 25 years.

Aside from the serious methodological flaw of looking at a hypothetical prison, the PwC report does not deal with the costing implications of the current Scottish Executive proposals to build three new private prisons and close two prisons2. Therefore, any cost

1United States General Accounting Office, ‘Report to the Subcommittee on Crime, Committee of the Judiciary, House of Representatives: Private and Public Prisons Studies Comparing Operational Costs and/or Quality of Service’, GAO/GGD-96-158

2Proposals in the prison estates review include the closure of Peterhead and Low Moss, at Bishopbriggs, near Glasgow, and the reduction in size of Barlinnie, Scotland’s largest jail, by almost half.
comparisons made by the Scottish Executive should be treated with disdain. The SPS Estates Review Terms of Reference states (p.2) that ‘The Scottish Executive considers it important that debate takes place against a background of established cost and factual material (authors’ emphasis). To that end an independent firm of accountants, PricewaterhouseCoopers, working on behalf of the Scottish Executive Justice Department and hence the Scottish Ministers, has verified the costings’. The fact is that the PwC costings are not established costs. They are guesstimates.

A perhaps more serious flaw in PwC’s methodology concerns the fact that while comparative costs are important to government, costs should not be the only factors considered by policy makers in deciding the direction or extent of prison privatisation (GAO, 1996). The PwC report is almost silent on the issue of quality. There appears to be an inbuilt assumption in the PwC report that the quality of Kilmarnock prison is at least as good as public Scottish prisons. The PwC report states that (1.3, p 5) the ‘issue is not one of whether private sector companies can provide services to SPS since this already happens in SPS prisons’. This perhaps carefully worded statement goes to the heart of the issue. While it is certainly the case that we already have a privatised prison in Scotland, this prison has not proved itself to be able to give comparable service and quality as the public sector (see Section 3).

Therefore, aside from costing considerations the PwC report does not take into account wider issues such as the quality of prison provision, rehabilitation and so on. This means that it does not deal with essential (probably quantifiable) concerns. For example the privatisation of prisons creates a clear conflict of interest between society which would like to see the rehabilitation of offenders and a declining prison population and private prison corporations whose profit driven interests would be served best by a growing prison population. The PwC report’s concern (1.2) with ‘value for money’ is thus a very narrow definition. It does not make any attempt to deal with the wider social costs/benefits of privatisation nor the quality of prisoner care and rehabilitation.

2.1.1 Neutrality

PricewaterhouseCoopers are acting as consultants for the Scottish Executive. Upfront (1.1) they assert that their brief was to ‘undertake a financial review to support investment decisions (authors’ emphasis) that form part of the SPS Estates Review’. The report is therefore non-neutral⁴.

2.1.2 Non-comparability between the three options

The guesstimated cost savings highlighted by the PwC report are based on a supposed comparison with three scenarios. These are:

- PSC option (public build/public operate)
- PPP (private build/public operate)
- PPP (private build/private operate)

⁴It would be in the public interest for the Scottish Executive to reveal the fee paid to Pricewaterhouse Coopers.
In each case the report is based upon a supposedly comparable new 700 place prison. The report gestures towards an understanding that each of these options is identical except for the cost. *This is absolutely not the case.*

Each of these options has significant *quality and risk* differences. The quality differences come in three main areas:

- **Building design.** The private building specification is based on HMP Kilmarnock even though there appear to be problems with this design, not least that it may be possible to see from one hall to another. In the event of a riot, this would be an extremely serious flaw. The public/public costings are based on a different quality design.

- **Operations.** Built into the public/public costings are significant benefits to the prison service and population. For example it is anticipated that a prison of 700 cells would be regarded as a hub prison for medical services and that the area will reflect this requirement. There is no mention of such provision in the PPP costings.

- **Staffing.** The public/public case is based upon a reasonable mix of experienced and new staff. This is not the case for the PPP proposal. Clearly staffing is a major issue. It is unclear, aside from a determination to bring in reduced pay and flexible working conditions that the PPP costings have taken the issue of staffing seriously. For example, would the PPP contract specify that the new prison should have extra staff in the first six months of operations in the same way that the costing of the public option indicates?

The main risk differences are that the wholly public sector costings include such things as:

- **Building Damage By Inmates.** The potential costs involved in building damage by inmates that makes either cells or whole wings being uninhabitable. It is not at all clear that the PPP costings include such risks. Indeed in the event of a riot in a private prison it is guaranteed that the public sector would have to take over and bear the costs.

- **Demand for Places Higher Than Anticipated.** The SPS costings include a provision for 25% additional places over and above normal operating capacity. It is clear that this risk would naturally be assumed by SPS and the PPP option will be unable/unwilling to cater for a sudden demand for higher prison places. In fact the SPS Estates Review’s terms of reference specifically states in ‘The Ideal Estate’ model that design capacity should be adequate for...
overall numbers and categories of prisoners (including contingencies).

- **Facilities Inadequate for Future Needs - Different Operational Requirements.** Included in the public/public costings is an assessment of the risk that the design/layout of the prison will need to change over the 25-year operational period. This risk element does not form part of the PPP costings.

The questions of risk and quality therefore go to the heart of the debate surrounding which is the best option for Scotland. The possibility of significant risk transfer from the public to the private sector is always overplayed in privatisation debates. The fact is that the government will always have to step in if there is a serious problem with an essential public service even if it is in the hands of the private sector.

### 2.1.3 Labour and Buildings

The two major assumptions in terms of cost savings in the PwC report are that it is desirable to cut back on labour costs and building costs. Or at least that prison design should be driven by the need to reduce staffing levels. The PwC report states that the potential cost savings from the private build/public operate scenario are based upon two key elements.

- ‘that radical changes could be made to SPS working practices, including pay, conditions of employment and culture’ (4.6.2)
- that SPS building design would be rather different from the public build/public operate case.

The PwC report further states that (p 32)

> ‘The private sector prison model involves significantly reduced staff levels compared with the public sector. The reduced staffing levels are achieved mainly by the adoption of different and more flexible working practices together with the use of new technology, and modern design approaches.... The success of the PPP Private Build Private Operate prison projects has demonstrated the need for the operational practices to be the driver of effective prison design. However, the need for flexible working practices is an essential element of these models’.

While it is certainly the case that private sector prisons operate with fewer staff, a further concern is that they operate with very high levels of inexperienced (albeit cheaper) staff. The US General Accounting Office (1996) report on the costings and quality differences between public and private prisons is quite clear on the problems this can create. It states that ‘Inexperienced staff could also have a negative impact on some measures of quality’.

The PwC report assumes (eg 4.6.1) that building a private prison would be less risky than public build because the private sector ‘ensures efficient control of time and costs during the building work’. This might be based upon past experience but there is no reason for the public sector not to also ensure efficient control of time and costs during the building
work. Indeed the public sector should ensure that contracts are drawn up to ensure that their risk is minimised.

The PwC report also states (eg 4.6.1) that the private sector and SPS have had difficulties in the development of an agreed SPS design of new house blocks. Yet no details are given of the issues involved. It could be that since SPS has far greater experience of running prisons than the private sector and that since the final risk of prisons lie with the government, they SPS understands the complexities involved. Cutting back on labour, introducing too many cheap (less experienced and skilled staff) and placing prisoners into poorly designed prisons is bound to have a knock on effect in terms of rehabilitation, prisoner and staff safety and other social costs. Yet these are not considered as important enough to take up space in the PwC report.

2.1.4 Window Dressing the Accounts

For ‘political’ reasons (wholly outside of the concerns of our justice system), it seems that the Scottish Executive is determined not to have new prisons on its ‘balance sheet’. To privatise prisons for this (accounting window dressing) reason is disgraceful.

2.1.5 Concerns Regarding PwC Figures

It is impossible to query the PwC costings in detail because their report doesn’t give enough background information. But their costings for the public/public option approximately assumes a smoothed cash flow cost per prisoner of almost £47,000 per annum. This is significantly higher than the cost of a SPS prison place at present (certainly doubled). This figure is even more unbelievable given that it would be reasonable to suggest that a newly built prison would be cheaper to run. It certainly looks from this perspective that the projected public sector costings have been grossly inflated.

It could perhaps be argued that the public/public option costs are so high because of the construction of new buildings. However, the costings without building capital and development costs under the public/public scheme would be approximately £40,606. From any reasonable perspective this figure is ridiculously high.

The PwC private build private operate option is approximately equivalent to £25,897 (in March 2001 £s) per prisoner per year. This private/private figure is more or less the same as the cost to keep a prisoner in a public prison.

Given the quality and risk differences between the public and private sector, it is hard to be convinced that the private/private option represents good value for money. The PwC report states that the Kilmarnock contract has achieved exceptional value for money against earlier HMPS contracts (our emphasis). While it might be the case that the Kilmarnock contract was less costly than other PPPs, the real question here should be how Kilmarnock compares with other similar SPS prisons given that SPS still bears the brunt of many of the risks associated with Kilmarnock. For example if there was a riot at

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5The figure cited as ‘NPV Per Prisoner Place Per Annum’ is perhaps more difficult to understand.
Kilmarnock their very low staffing levels would mean that help would be required from Barlinnie. Arguably, Barlinnie has the appropriate staffing levels to deal with such risks whereas the private sector doesn’t.

The accounting literature in New Public Sector Financial Management has highlighted two significant concerns with PPPs. The first is that PPPs pass significant costs onto the next generation. In the case of prisons, when the 25-year contracts end, the next generation will be faced with going through this whole scenario again. At the very least this means that the public/public costings should reduced by the replacement value of the prison at the end of 25 years. The second concern is that PPP’s contracting and monitoring costs are frequently left out of the picture. As far as we can see the costings for the PPP option do not include contracting costs between Scottish Executive and private prison companies; nor additional monitoring costs (i.e. use of controller etc.).

2.1.6 Private Company Costings and the Trojan Horse

From the foregoing it is argued that PwC and the Scottish Executive have bought too easily into the claims of private prison companies. The US GAO states that (p 12), ‘in the initial years of managing a prison, a private firm may choose to bill for its services at rates below costs to obtain or extend a contract. As time goes by, however, to remain a viable business entity, the contractor’s cost-recovery practices would have to change’. In section 2.2 below it will be argued that an assumption made by both the Scottish Executive and PwC is that SPS is unable to design and manage the building of a prison. Moreover, there are difficulties in the private build public operate option. Once the private sector has taken the expertise from the state prison service, private companies will be able to charge more or less what they want. The Scottish Executive is treading a very dangerous path by ceding expertise in the building and running of prisons to the private sector.

Again drawing from the experience in the US, which has a much longer history of privatised prisons than the UK, it seems as if the cost differences between private and public prisons are very small in both directions. For example in Louisiana, a study showed that the average inmate costs per day for the two private facilities studied were $23.75 and $23.34, respectively, and the comparable daily operational costs for the public facility studied were $23.55 per inmate (GAO, 1996).

2.2 Financial Commentary on ‘SPS Estates Review’

The Estates Review has been going on for 15 months and has come up with concrete proposals. Yet the PwC report does not deal with costings of the specific proposals contained in the review.

2.2.1 Labour and Buildings

The Estates Review makes a lengthy case for the impossibility of the public sector building three new prisons. When discussing the public sector build, the review states (p
25) that the public sector tends to ‘over specify requirements’. Another way of putting this is to say that the public sector has higher standards in terms of its opinion about the quality of prison accommodation than the private (for profit) sector. The lack of faith in the SPS portrayed by the Scottish Executive in this review means that the Executive is willing to totally hand over the skill of designing prisons to the private sector. The building of three desperately needed new prisons for Scotland is a question of political will. We should have more confidence in SPS. It is likely in any case that experienced members of SPS will be hired by the private sector. Thus there will be a transfer of experience from the public to the private sector (without compensating transfer fees). The assertions in the review that SPS is bound to revise its building plans before completion could also be avoided with the correct political will.

Mirroring the PwC report, the Estates Review makes the totally ludicrous assumption that it would be a good thing to run prisons with less staff. The Estates Review asserts (p 26, 101) that ‘the reality is that the private sector is able to deliver as effective a service, with fewer staff, at far less cost’. This is simply untrue on two counts: costs and quality. The PwC costings in fact show that at March 2001 prices the cost of a private place is almost £26,000. This is approximately the same as a public sector cost and yet the public sector has more risks and better rehabilitation quality than the private sector.

It might be the case that the staffing levels of SPS are 25% higher than in the private prisons, but this means that private prisons are understaffed. Indeed our research would suggest that Kilmarnock is dangerously short of staff (see Sections 3 and 4). If there are significant problems in Kilmarnock, officers from Barlinnie would be required to step in. Thus it could be argued that a prudent prison service would build in an extra number of staff so that it could cope safely with all contingencies.

It is simply not true to argue that the salaries of SPS staff are ‘above market rates’ (p 42) (see Section 4).

2.2.2 SPS Performance targets

The SPS Estates Review makes claims surrounding its performance targets or Key Performance Indicators (KPIs). These are a means for individual prisons to provide accountability information to the wider world. The review states that (p 4) SPS ‘must...be more open and accountable for our performance across all aspects of our work’. We have several important concerns here.

1 The Estates Review doesn’t mention the Chief Inspector’s Reports on Prisons which are an important means of accountability! Indeed it could be argued that the claim made in the review (p 23) that ‘the performance measurement system which underpins the contract, means that the Prison Services have considerably more information about the day to day operations of the private build, private operate prisons than public sector prisons. In the other SPS prisons, the performance measurement system lags considerably behind the Kilmarnock model’
is factually inaccurate. It is clearly beyond belief that the SPS know more about what is going on in a privatised prison through a few performance measures than what is going on in its own prisons. If this is the case then perhaps the senior management at SPS should undergo further training.

In fact, even a cursory reading of the Kilmarnock Inspector of Prison Report (see Section 3) would demonstrate that Kilmarnock fails to meet at least three of the five main action points for SPS to achieve ‘Correctional Excellence’. Given this, it is certainly surprising that the Scottish Executive would give so much time and attention to the PPP option. The fact that they keep promoting this option drives towards the conclusion that cost is the over riding factor.

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<tr>
<th>Action Point</th>
<th>Does Kilmarnock achieve it?</th>
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<tr>
<td>Scotland’s prisons can fairly be viewed as leaders in correctional service</td>
<td>No</td>
</tr>
<tr>
<td>The prison estate is fit for the purposes of the 21st century.</td>
<td>Perhaps not, given that it is possible to see from one Hall to another. Other accommodation and structural problems</td>
</tr>
<tr>
<td>Scotland’s prisons are acknowledged as providing the highest standards of service delivery across their full range of activity</td>
<td>No</td>
</tr>
<tr>
<td>Scottish prisons’ staff will be respected by the nation for their professionalism, their wide range of skills and the difficult job they do on behalf of society</td>
<td>No, too many staff at Kilmarnock are inexperienced and lack the resources to challenge offending behaviour.</td>
</tr>
<tr>
<td>In the necessary pursuit of demonstrating value for money to the taxpayer, public sector costs will be competitive.</td>
<td>To be decided.</td>
</tr>
</tbody>
</table>

2 We have direct evidence from both the Chief Inspector of Prisons and the Scottish Prison Officers Association that Kilmarnock had misreported on the KPI relating to ‘a number of serious assaults on staff’ (see Section 3). This was because there is a clause in the contract which means that fines are levied on the owners of Kilmarnock for failure to meet this target. Despite the concerns of the Chief Inspector of Scottish Prisons and the head of the SPOA, the review states (p23)

‘Failure to provide a prisoner place as defined in the contract means that the contractor is not paid for that place. The main elements of the daily prisoner routine are monitored and failure to meet agreed performance standards results in a reduction of payments made to the contractor’.

Has the Scottish Executive not imagined the possibility of misreporting?
It is well known that KPIs have a tendency of becoming the ‘tail that wags the dog’. It is well known that once performance measures are in place they produce unexpected consequences. For example, school league tables have encouraged some schools to concentrate on brighter pupils and not to put candidates in for exams unless they are expected to pass. In short performance indicators are a very poor gauges of performance.

Perhaps most importantly there is no KPI relating to the rehabilitation of offenders.

There is a fundamental flaw in the review (p 23) in the understanding of performance indicators and penalties. The review states that

‘Often, prison industries are closed to release staff to escort prisoners. In a private build, private operate prison, this would result in a loss of revenue to the contractor’.

The Kilmarnock experience refutes this assertion. Faced with the above dilemma, a private prison would avoid the fine by allowing a prison officer to be taken away from normal duties and leaving inadequate staffing levels. This may be described as ‘a more flexible use of staff’ but it is certainly not ‘maintaining acceptable security standards’ (see p23, no 88).

Again if we look to the US for guidance we will find that it emphasises the need for multiple approaches to the measurement of performance. The US General Accounting Office (1996, p 13) states that ‘there is more than one way to objectively measure or compare prison security, safety, order, and various other dimensions that constitute quality of service. In this regard, it is important to use multiple indicators or data sources to provide cross-checks’.

2.3 Summary of main points to be taken from PwC report and the Estates Review

• The methodology of the PwC report in comparing a hypothetical prisons is flawed

• The PwC report is non-neutral (or biased) in the sense that the accounting firm was paid by the Scottish Executive to ‘support investment decisions that form part of the SPS Estates Review’ (PwC report, 1.1)

• The hypothetical prisons in the PwC report are NOT comparable since they each are of a different quality and face different risks.

• Both the PwC report and the Estates Review are more concerned with MONEY (i.e costs, narrowly-defined) than with a broad social definition of value for money.

• Both the PwC report and the Estates Review are based on the assumption that lower staff levels in prisons are a good thing.
• The cost case for private/private has not been made. The PwC costings are that the cost per prisoner place per year (in March 2001 prices) is approximately £25,897 per year. This is more or less the same as the cost to keep a prisoner in a public Scottish prison for one year.

• The PwC costings for the public/public offering while not detailed enough for detailed evaluation appear to be grossly inflated.

• The use of Performance Indicators WILL NOT provide an adequate level of accountability.

• There is scant mention of the HM Inspector of Prison’s reports on the very serious problems at Kilmarnock in either the PwC report or the Estates Review. Both reports implicitly assumed that there were no such problems. This is a remarkable omission especially since the HM Inspector of Prison’s reports are in the public domain. This is now considered in more detail.

Section 3 Examination of the performance and practice of HM Prison, Kilmarnock since it opened in March 1999

3.1 References to Kilmarnock in the PwC Report and Estates Review

As stated in the objectives it would seem incontrovertible that the operational experience of Scotland’s only private prison, HMP Kilmarnock is particularly important in order to establish the credibility of the proposed dramatic extension of private prison provision in Scotland. However, one of the striking features of the PwC Report is that it makes no mention of how Kilmarnock has actually performed. References to Kilmarnock are brief and relate to ‘building specifications’ (p.4), ‘location costs’ (p.4), ‘new prison build’ (p.15) and ‘the layout and operations’ (p.18) using Kilmarnock as a price comparator. On one occasion (p.19) PwC appear to adopt the model of a ‘flexible staffing system’ which operates at Kilmarnock and to apply this to the proposed costing of the three proposed private prisons. In other words, PwC have looked at Kilmarnock purely in order to inform the financial and costing exercise necessary to justify the proposal for the chosen ‘private build, private operate’ option.

The Estates Review process, it is claimed, has been ‘a thorough and time-consuming exercise’ lasting from December 1999 to March 2002. However, again, it is remarkable how few references there are to the actual performance of Kilmarnock prison. At the very least one would have expected summary reviews of the HM Chief Inspector’s Reports of Kilmarnock conducted in 2000 and 2001 to have been included in the Estates Review. Where references are made they either are largely factual statements (e.g. p.4, p.5) that Kilmarnock is run privately by Premier Prison Service and houses 9% of Scotland’s prison population, or they reiterate and even amplify the PwC report’s use of Kilmarnock as a cost model. The exception to this is found in only two paragraphs which are worth quoting in full.
‘The SPS has been aware for some years of the need to reduce running costs. However, in 1999, the opening of the new privately managed prison at Kilmarnock provided the SPS Board with hard evidence about the differences in costs between the private and the public sectors. The Board has been able to monitor first-hand the ability of the private sector to deliver effective prison services. The reality is that the private sector is able to deliver as effective a service, with fewer staff, at far less cost. In fact, the nature of the detailed contract performance measures means that if anything the Board is able to demonstrate with more certainty the high quality of the service being provided by Kilmarnock than within any of its prisons.’ (Paragraph 101, p.26)

‘In any extension of private sector custodial provision, SPS would take the opportunity to align the service delivery standards of its own establishments and those delivered through contract by private operators. It has been recognised by HM Chief Inspector of Prisons that Kilmarnock can deliver not only effective services, but can often be innovative. For example, this resulted in the formal recognition of twelve items of best practice in the formal inspection report (March 2001). This compared to eight at Edinburgh and four at Greenock, both of which had inspections during the same period.’ (Paragraph 182, p.44)

While Para. 101 again is mainly concerned with costs it does mention the high quality of service. Under a section heading ‘Best Practice and Benchmarking’ Para. 182 is more explicit in its praise of Kilmarnock’s innovative performance and highlights the HM Inspector’s Report’s identification of examples of best practice. The problem here is that this is a highly selective, if not disingenuous, citation from the HM Inspector’s Reports on Kilmarnock. Even though as Clive Fairweather has commented, the 2000 Report gave Kilmarnock the ‘benefit of the doubt’ since the recently-opened prison had to be given time to overcome teething troubles, a number of concerns on important operational issues were expressed.

The Intermediate Inspection of 2001 reveals that the Inspectorate team uncovered several profound problems which overshadowed the more optimistic tone of the earlier report. Equally important is the fact that a number of these difficulties appear to be rooted in the nature and logic of privatisation itself. The Estates Review appears to have disregarded the critical content of these reports in order to present their privatisation proposals in the best possible light. It is acknowledged that one of the important aspects of the role of the Prisons Inspectorate is that it is intended to provide ‘greater impartiality and independence of outlook’. In choosing to ignore the critical content of the Inspectorate’s Reports on Kilmarnock, the Estates Review appears to be compromising that impartiality and independence of outlook. It is necessary to do what the PwC Report and the Estates Review have failed to do and examine the actual record of Scotland’s only private prison. We look firstly at the two reports from the HM Prisons Inspectorate.
3.2 HM Inspectorate of Prisons Report on HM Prison Kilmarnock 2000

While the HM Inspectorate of Prison Report on HM Prison Kilmarnock 2000 (HMIRK 2000) comments favourably on the safety, security, cleanliness and decency of the prison, and on the positive attitude of the staff, several areas of concern are raised in some detail, notably in relation to staffing levels and the prison’s failure to ‘address offending behaviour’ (Para. 1.3, p.9). Given the importance of this last point it is questionable whether HMP Kilmarnock in 2000 was wholly meeting the objectives outlined in its Vision Statement as follows,

“Our aim is to maintain secure custody and good order within a safe and humane environment where prisoners’ offending behaviour can be challenged and meaningful opportunities provided to change attitudes and lifestyles, both during custody and after release from prison’.

3.2.1 Failing to Address Offending Behaviour

In its General Assessment, the Inspectorate reported, ‘The main aspect of the operation of this new prison that requires to be addressed relates to challenging offending behaviour’ (Para. 13.11, p.100). Sections 6.15 to 6.21 of the Report reveal shortcomings in the development of prisoner sentence planning procedures. For example, the sentence plans ‘were not consistently filled in nor did they contain targets agreed with the prisoners and typically contained only the prisoner’s work allocation and/or educational provision’ (Para. 6.16, p.35). Only limited information was contained in prisoners’ sentence plans, and from a sample of records that were checked, the review papers did not appear to initiate any follow-up or action plan. ‘In essence, this meant that these activities were not fully integrated and opportunities for professionals to work collaboratively to the benefit of the prisoner were limited’ (Para. 6.18, p.36). For remand prisoners the Inspectorate could find ‘no evidence’ of Custody Plans, nor ‘did there appear to be many opportunities that remand prisoners could access’ (Para. 6.21, p. 36). Addressing this was a matter of priority. The Inspectorate concluded that, while it was commendable that proposals were being considered to remedy the gaps in the current Sentence Management structure,

‘...we suggest that the issue regarding the integration and delivery of services should be pursued as a matter of priority so that prisoners’ offending behaviour can be appropriately challenged through an effective sentence and development plan’ (Para. 6.22, p.36)

Further, in terms of offending behaviour programmes, although formal provision was in place, there were waiting lists for particular courses for Long Term Prisoners (Para. 6.25, p.37) and there were no programmes specifically designed for the short-term prisoner group. In addition, Kilmarnock was failing to fulfil its obligations in relation to programmes for remand prisoners (Para. 6.28, p.38).

Difficulties were encountered in relation to both social work provision and education. Notwithstanding the obvious commitment of the social work team, the ‘main unsettling
factor was the restriction on the existing services caused by the level of resourcing’ (Para. 6.36, p. 40). In part this resulted from ‘very cramped accommodation’, but more substantially from ‘staffing levels’ which meant that the normal waiting time to see a social worker was three days (Para. 6.38, p.40). The Inspectorate also found that the social work team was not ‘involved in group work or programme delivery’ (Para. 6.39, p.40). Low staffing levels were responsible for a major failing in social work provision; ‘…there were other areas where there would normally be a social work role but the demands placed on them meant that there was not the capacity to deliver – e.g. induction, work with families, pre-releases (excluding statutory cases), sentence planning, and only limited involvement in suicide risk management’. As a consequence, the Inspectorate recommended a review of the entire work of the unit (Para. 6.44, p.42). While resourcing was less of an identifiable problem in terms of educational provision, and staff attitudes were good, the Inspectorate concluded that the curriculum needed to be changed in order to meet the needs of the students (Para. 6.70, p.47).

In terms of drugs misuse Kilmarnock had failed to implement ‘a strategic approach in addressing this problem’ (Para. 4.13, p.15). The Prison Drugs Strategy Group was too narrow and had failed to include individuals with a professional background specifically in drugs work (Para. 4.15, p.16). Further, low staffing levels in the Wings was contributing to the failure to develop a ‘proactive approach to challenging drug use’ (Para. 4.19, p.17). Yet, again resourcing difficulties were highlighted. ‘If the campaign to reduce drug use is to be successful, greater consideration should be given to how Prison Custody Officers (PCOs) might be resourced to be more actively involved in delivering the establishment’s drug strategy’ (Para. 4.19, p.17)

The HMIRK 2000 also reports prisoner perceptions. Prisoners were highly critical of sentence planning and that programmes were insufficient to meet prisoners’ needs (Para. 10.8, p.90). Detoxification facilities were described as very poor, and that while there was praise for the work done by the Drug’s Counsellor, it was said that having only one such member of staff was insufficient for addressing this problem. Other concerns are raised by prisoner responses to a questionnaire circulated prior to the Inspectorate’s visit. Only 48% of those questioned reported that they had been helped to address their offending behaviour at HMP Kilmarnock (p.117).

In sum, the HMIRK 2000 contains much that is critical of the prison in relation to the crucial area of addressing offending behaviour. Two common themes underlying this failure were the lack of resources and low staffing levels.

3.2.2. Staffing Levels and HR Issues

There are repeated references to the problems generated by low staffing levels. In the report’s introduction reference is made to the fact that ‘some members of staff expressed anxieties about the staffing levels in the residential Wings’ (Para. 1.7, p.3). That there might be a connection between staffing levels and violence is suggested in a related footnote; the HM Chief Inspector commented, ‘We subsequently learned that there had been four serious assaults on staff during the whole of 1999-2000, which was higher than
‘Staffing levels on the Wings were regarded by staff of all grades as being too low, particularly as there could be occasions when staff were left on their own and this led to fears about personal safety. Staff were also unhappy about the shift pattern, though this was about to be changed – to the fourth system since the prison became operational. Concern was also expressed about the length of the shifts without any breaks and only a few minutes to eat the lunch that was provided by the prison’ (Para. 9.50, p. 86).

In addition, prisoners believed that staffing levels were a problem.

‘Some concerns were expressed about staffing levels in the Wings as it was felt that they were not always able to cope with what they were asked to do, especially on those occasions when there was only one PCO available’ (Para. 10.3, p. 89).

With inadequate staffing levels, considerable pressure is placed upon existing staff to carry out all the tasks assigned to them, and undermines, as we have seen, efforts to challenge offending behaviour. Lean staffing, which many regard as a direct consequence of prison privatisation manifested itself not only in a lack of personnel on the Wings, shift patterns (especially in the Communications Room para. 3.4) and a failure to take meal breaks, but also in evidence over time off in lieu. Most staff claimed that time off in lieu levels were high and that it was difficult to get time off (Para. 9.51, p. 86). In this report it is difficult to fully assess the impact of lean staffing, but it in all likelihood it was one of the principal factors underlying staff turnover. While percentage figures are not given, the report states that between March 1999 and January 2000, a total of 87 staff from every area of the prison had resigned, of whom 45 were on probation. Concerns were raised at the impact this turnover was having on particularly small departments (Para. 9.18, p. 79).

The consequences of a contract which prioritised costs and which led to lean staffing was also responsible for one of the more serious complaints raised by staff. ‘It was claimed also that staff were constantly being put under pressure to meet deadlines and targets in order to satisfy the terms and conditions of the contract’ (para. 9.47, p. 86). Again this may have contributed to the high turnover and the feelings of the majority of staff in the exit interviews, that ‘they felt unsuited to the prison environment’ (para. 9.18, p. 79).

While the Inspectorate was confident that the six-week recruitment-training package appeared comprehensive and consistent with recruit training elsewhere in the SPS, a number of serious deficiencies were identified.

‘There was, however, no authentic definition of competence other than at an arbitrary level set by the STO. There were no systems in place that would measure to what extent the training delivered was transferred into the operational
setting, nor was there any evidence that Supervisors were competent to carry out the necessary arrangements’ (para. 9.39, p.83).

Moreover, there was no evidence of any evaluation for the proposed training strategy, and it was difficult to see how the single Staff Training Officer would be able to accomplish this given the range and volume of training required (para. 9.40, p.84). It is hardly surprising, then, that ‘staff training was the subject of much criticism’.

‘Some staff felt that their initial training was good but the majority were of the view that it was too short, that it did not cover issues in sufficient depth and that they had to find their feet by being “on the job”. (para. 9.52, p.86)

For the Inspectorate, clearly mindful of the high attrition rate, ‘developing training in the prison will, therefore, be a significant challenge over the coming year’ (para. 9.40, p.84).

It should be noted that Premier Prison Services, the prison operator, does not recognise any trade union and conducts the relationship between staff and management through a Works Council. It is difficult to see how the Works Council, a body dependent on PPS for its existence and funded by it, can fulfil the claim that it enables staff to possess ‘some bargaining power’ (para. 9.30, p.81). Many of the staffing and HR issues outlined above were clearly not being resolved through this body. Moreover, the Inspectorate found that one issue that remained to be addressed ‘was disparity in pay between staff at different PPS operated prisons’ (para. 9.31, p.82).

3.2.3 Inadequate Facilities

The Inspectorate recommended that the facilities for staff were in need of considerable improvement. Also, many facilities, including the Communications Room were cramped and inadequate. Although the operation of the health centre was impressive its accommodation was cramped and claustrophobic and ‘appeared to suffer from a number of fundamental design shortcomings that were impacting adversely on a number of areas’ (para.8.65, p.74)

3.2.4 Other Concerns

Two remaining issues are worthy of mention. Firstly, there was the concern expressed at the ‘high proportion of those “threatening suicide”’, which the Inspectorate believed might be an indication of some prisoners manipulating a caring system for their own self-interest. Secondly, there was concern at the ‘high number of adjudications – i.e. over 3,000 since the prison opened and 14 on one of the days we observed and twice the level for a comparative establishment, Perth.

3.2.5 Summary

Even a cursory examination of the HM Inspectorate of Prisons Report on HM Prison Kilmarnock 2000 casts considerable doubt on the optimistic interpretation of the
operation and performance of Scotland’s first privately operated prison. Of course, there were many positive features highlighted in the report, but at the same time there is sufficient evidence to demonstrate that HMP Kilmarnock was failing to fully address offending behaviour and to implement successfully strategies for rehabilitation, largely through the failure to commit sufficient resources. Evidently emerging problems were related to staffing levels, to high turnover and inadequate training. In some instances the built environment was proving problematic. Shared concerns were expressed by prisoners and staff alike. However, the Estates Review does not even suggest that these actual and potential difficulties had emerged in the first year of Kilmarnock’s operation. According to Clive Fairweather, though, it was important to give Kilmarnock ‘the benefit of the doubt’, although ‘we felt that the jury was out on crime prevention’, addressing offending behaviour and rehabilitation (Interview, 28 February 2002). The HM Inspectorate made a series of specific recommendations aimed at correcting what they hoped would be only teething problems as the prison bedded in. However, it is clear from the an examination of the Intermediate Inspection Report of 2001, that many of the major problems identified had not been resolved and some had emerged more distinctly.

3.3 HM Prisons Inspectorate Intermediate Inspection HM Prison Kilmarnock 2001

This Intermediate Report is far more explicit in its identification of profound problems at HMP Kilmarnock. It is worth quoting fully from the introductory paragraphs in the general assessment section.

‘Last year’s formal inspection concluded with the observation that delivery of a range of regime options to address offending behaviour and tackle drug misuse were among the major issues to be addressed in order for the prison to contribute more effectively to crime reduction. We also stated that if sufficient resources were put in place, Scotland’s first privately managed prison could expect to present further challenges to other SPS establishments. Nevertheless, on this latest occasion, we found that with the exception of an additional social worker post, additional resources had not been provided’ (para. 2.1, p.2)

‘It became clear during the course of this inspection that priority was being given to delivering the contract as specified. Additional work, which might be necessary and appropriate and would contribute to more effective delivery of the contract, could not be undertaken if this meant that some other elements specified in the contract would not be delivered. Similarly, if there was a shift in existing demand, or if new demands arose, these could not be addressed without either changes to the contract being negotiated or additional resources being provided’. (para. 2.2, p.2)

‘In our view this highlights a dichotomy when operating to a detailed contract specification. At the time of the previous inspection, operating to an agreed specification had been thought to provide clarity of purpose. On this occasion, however, it seemed that the contract was more of a mixed blessing with management also describing it as being “restrictive and flexible at times”. It was
also pointed out several times that “running a contract was not necessarily the same as running a prison”. (para. 2.3, p.2)

‘We were surprised to find that although the prison had been operational for two years, the necessary regime performance measures have still not been agreed. The prevented full, objective assessments of performance in regime delivery. We noted, however, that while worksheds were full, a large numbers of prisoners were not engaged in purposeful activity, the regime timetable was not being followed and a number of prisoners were seen to be asleep in the sheds’. (para. 2.4, p.2)

Of enormous significance here is the observation that the nature of the contract between the SPS and Kilmarnock prison, an essential and integral aspect of the privatisation process, is the source of many of the operational problems encountered at Kilmarnock. The requirement of PPS to abide by the terms of the contract, for fear of invoking penalties, is prohibiting the commitment of resources to areas deemed necessary for improvement in the 2000 Report. Therefore, the commitment of resources to tackling offending behaviour and, relatedly, the provision of satisfactory staffing levels are being adversely affected by the existence of a detailed contract.

A further critical point relates to the Intermediate Report’s revelation that although the prison had been operational for two years, the necessary performance measures have still not been agreed. This calls into serious question the validity of the claim made in the Estates Review, that the ‘The Board has been able to monitor first-hand the ability of the private sector to deliver effective prison services’. The Estates Review is being less that truthful when it further claims that the evidence from Kilmarnock proves that ‘the private sector is able to deliver as effective a service, with fewer staff, at far less cost. In fact, the nature of the detailed contract performance measures means that if anything the Board is able to demonstrate with more certainty the high quality of the service being provided by Kilmarnock than within any of its prisons.’ How can this be so when the necessary performance measures have not been agreed?

In the remainder of this section we will present more detailed evidence from the Intermediate Inspection of 2001.

3.3.1 Failing to Address Offending Behaviour

As mentioned in the introduction to this section the Inspectorate were concerned that, with the exception of an additional social worker post, additional resources had not been provided to deal with offending behaviour. Further, while a number of interventions had been developed to address offending behaviour they were not yet fully accredited or approved by the SPS, and prisoners complained about the access and waiting times. While Kilmarnock had now developed a co-ordinated drugs plan, ‘when compared to action plans developed by other SPS prisons there appeared to be a number of gaps, particularly in relation to timescales, measures and resources’ (para.2.17, p.5).
One newly-detected and serious failing lay in the prison’s inability to ensure prisoners received full exposure to programmes to deal with their offending behaviour. This arose out of an issue relating to ‘unauthorised absences from work’. It is instructive to quote from the relevant paragraph in the report.

“We were told that prisoners were allowed two unauthorised absences from work each week, which would not affect their wages. However, if a prisoner wanted to attend an offending behaviour programme, visit the gym or take a daytime visit or attend education, then any more than two of these activities would be classed as unauthorised absence, which meant in effect they could either earn high wages or address offending behaviour or maintain family contact. They felt that they had to choose between assisting their families financially or trying to do something about why they had come to prison in the first place. Since most of them come from deprived areas, the chance to assist their families financially left them with no choice but to work’ (para.5.2, p.12)

In effect, prisoners are being given little incentive to attend classes and programmes geared to rehabilitation. Given what we know about low staffing levels (see 3.2.2 and 3.3.2) might it be the case that this is the reason for the inflexibility? Transferring prisoners from work areas to offending behaviour programmes, education classes or the gym during the course of the day might well be placing excessive demands on already-stretched staffing levels in the halls and in the workshops? Whatever the reason, the regime at Kilmarnock is disincentivising prisoners from attending valuable programmes for tackling offending behaviour.

Concerns raised in 2000 about the effectiveness of the detox programme were repeated in 2001 (para. 5.6, p.13). Demand for counselling services had not decreased and the problem of inadequate resources remained (para. 15.2.21, p.24). Operational constraints and the requirements of the contract were cited as the reasons why the 4-hour sessions in the morning educational programme had not been reduced to improve the quality of the student experience (para. 6.70.4, p.26). Again the suspicion here is that the contractual requirements are, in effect, a euphemism for the lack of sufficient staff to permit operational flexibilities.

**3.3.2 Staffing Levels and HR Issues**

Once again the HM Inspectorate were impressed by the attitude of staff, and their flexibility, but discovered serious problems in relation to staff turnover, which they were able to quantify. They found the ‘staff turnover rate at Kilmarnock – 32% in the last year (94/295) was significantly higher than any other Scottish prison (e.g. Barlinnie – 9% (55/605), Greenock – 11% (20/185), Edinburgh – 11% (52/477),’ (para. 2.5, p.3) It is widely acknowledged in the Human Resource Management literature that high turnover rates are frequently a symptom of profound organisational problems. As we know from the results of the ‘exit’ interviews cited in the 2000 Report it is not the attraction of rival employers (i.e. pull factors) that is largely causing staff to leave Kilmarnock, but rather the perceived unsuitability of the prison environment. An
influential HRM textbook states that ‘with push factors the problem is dissatisfaction with work or the organisation, leading to unwanted turnover’ (Torrington et al, 2002, p.215).

This was clearly seen to be the case at Kilmarnock. Not only are high attrition rates costly in organisational terms, but in a prison context can have serious consequences for the quality of service delivered. High turnover leads to undersaffing, dilutes the existing pool of experienced staff and reduces the accumulated stock of tacit knowledge, which is so vital for relating sensitively with prisoners over a range of complex issues. There appeared to be concrete evidence that high staff turnover was impacting adversely on staff’s ability to give guidance to prisoners; ‘the high turnover within the Residential Wings meant that there were considerable numbers of staff who were not familiar with the content’ of the guidance pack (para. 15.2.18, p.22). In turn, high attrition places greater pressure on the longer serving staff, particularly in circumstances where lean staffing is in place.

All of the problems associated with high turnover of staff turnover were at the time of the report likely to be exacerbated by the fact that, ‘more of the experienced staff were also expected to leave shortly on promotion for a new Premier Prison Service prison in England’, where rates of pay were higher than at Kilmarnock (para. 2.5, p.3).

Where the 2000 Report was relatively circumspect, the Intermediate Inspection of 2001 is emphatic in its identification of low staffing levels.

‘Staffing levels in the houseblocks continued to be a concern. It was often the case that single officers were supervising large numbers of prisoners, due to the competing pressures of demands for escorts and other out of wing activities. ‘A’ wing, in particular, which houses LTPs, seemed to be a particularly difficult place to work. With the current staffing levels, it did not, in our opinion, feel a particularly safe environment for either prisoners or staff’. (para.2.8, p.3)

These concerns were amplified in discussions the Inspectorate held with the staff, who stated that, ‘On occasion, residential staff were left on their own, which led to concerns about personal safety’ (para. 4.5, p.10). And while some improvements had emerged in relation to staff shift patterns and there was now greater continuity of staffing in the houseblocks, staff ‘still felt somewhat vulnerable in some areas where prisoners were particularly recalcitrant’. Moreover, it was reported that at times of ‘staffing difficulty’ staffing levels were reduced to below the agreed level in the segregation unit (para. 15.2.2, p.19)

One difficulty related to low staffing and which was mentioned in the 2000 Report was made more explicit in the Intermediate Inspection. Time off in lieu was an issue for staff who had accumulated high amounts, presumably through working large amounts of overtime. ‘One member of staff to whom we spoke had accumulated 200 hours but foresaw little prospect of getting the time back in the medium term due to the expected staff transfers to a new PPS prison in Uttoxeter’ (para.4.7, p.10-11).
Nor had most of the concerns expressed in 2000 regarding inadequate training provision been alleviated by the time of the Intermediate Inspection. For example, ‘there was still a lack of training for the Sentence Planning Officers, who were now delivering many tasks which were previously the responsibility of the Personnel Officer’ (para. 15.2.20, p.23). In addition, the Inspectorate concluded that it was questionable whether Line Managers were in a position to become more actively involved in the addressing the training needs of staff because of their ‘lack of appropriate training to date’ (para. 15.2.45, p.30).

### 3.3.3 Inadequate Facilities

Although slightly better facilities for staff had now been provided, most staff said they rarely had the time to use them as a consequence of low staffing levels. The Inspectorate concluded, ‘We still think that the staff deserve better’ (para. 2.14, p.4).

### 3.3.4 Other Concerns

The 2000 Report had expressed concern at the high numbers of prisoners threatening suicide. This apprehension was more fully expressed one year later.

‘Compared to other SPS establishments, there was a high number of acts of deliberate self-harm. We were told that this was a manipulative tactic used by some individuals to avoid being transferred to HMP Low Moss, but on checking incident reports we found only nine out of 124 incidents were specifically attributed to this.’ (para. 2.10, p.4)

This is most significant for it reveals that Kilmarnock is suggesting that the PPS attempted to conceal the true cause of these incidents. If only a minority of these incidents result from prisoner manipulation, then it suggests that the causes lie elsewhere, and can be attributed to aspects of the regime’s functioning. It also strongly suggests that because penalties against PPS are invoked for incidents of self-harm the private operator has the incentive of downplaying actual incidents are attributing them to prisoner misbehaviour rather than other causes. In any event, the level of self harm at Kilmarnock was a cause for concern.

Another area highlighted by the Intermediate Report was the level of violence against staff.

‘The number of assaults on staff was high although none had been classified as serious. A review of a sample of incident reports highlighted a number of possible discrepancies, which we noted were being further investigated by SPS HQ’ (para. 2.7, p.3)

This observation is important for a number of reasons. Firstly, despite the extensive use of CCTV, which the Inspectorate in 2000 believed was contributing positively to safety,
the level of violence had increased between the two reports. Secondly, there appeared to be discrepancies in the reporting of assaults. In the Performance Measures for Kilmarnock Prison (only made public in March 2002) a ‘Serious Injury Assault’ against staff incurred 50 performance points, as compared to 20 for a ‘Minor Injury Assault’. Consequently it is in the interest of PPS to have assaults deemed as minor rather than serious as the latter incur greater financial penalties. Interview evidence confirmed that serious assaults had been downgraded to minor status.

‘We started to try to get hard evidence on our visits...we started to compare Kilmarnock against four or five other prisons. And the thing that stood out from these Key Performance Indicators was that we discovered that they had thirty assaults on staff but none of them was classified as serious. What we found was that they were using the same reporting system to report to Premier Headquarters as they were to the Scottish Prison Service. So you were lucky if you got a paragraph on the incident. There was no follow-up to say what the injuries were. [We did some digging] and that’s when we found the one where the bloke had an injury to his arm, a broken arm’ (Interview Malcom Maclennan, 28 February 2002)

‘Probably another four when we looked at them I would classify as serious. There was the guy that went into a cell and had his hand broken with a chair. Things like that. Probably four or five which should have been classified as serious’ (Interview, Clive Fairweather, 28 February 2002)

These examples calls into question the claim that monitoring the contract through KPIs delivers a transparent and accountable mechanism for ensuring that the private prison is run to agreed specifications. That private prisons have a vested, financial interest in reducing or downgrading the recording of incidents that might incur penalties must surely be a cause for considerable concern and further contributes to the case against the extension of private prisons in Scotland.

Two final issues raised in the Intermediate Inspection are of significance and cast further doubt on claims that Kilmarnock has proved to be a successful model. Firstly, while prisoners reported that relations with staff were ‘reasonably good’,

‘there was an indication that they had deteriorated over the last year with more staff being described as “aggressive” and “unhelpful”. The mixture of under-21s and adults was not seen as helpful. Adult prisoners were of the view that under-21 Remands required a more assertive and firm approach, which unfortunately reflected in staff attitudes towards adults’ (para. 5.20, p.14)

Secondly, ‘the number of misconduct reports also continued to be high – over 5,000 in the past year, whereas HMP Perth, which has a similar size and prisoner mix, had only one third of that number over the same period’ (para. 2.9, p.4). In this important area it appears that Kilmarnock compares unfavourably with prisons in the public sector.
3.3.5 Summary

The Inspectorate make a most significant comment (para. 2.21, p. 6). It would certainly appear that Kilmarnock ‘with its considerably lower staffing levels, is cheaper to run than most public sector prisons, though by how much depends on the way that figures are presented and interpreted’. In the first place, the Inspectorate are casting doubt on the more optimistic costing claims made for Kilmarnock. Secondly, to the extent that Kilmarnock is cheaper, this is attributable to ‘considerably lower staffing levels’. In other words, the assumed competitive advantage at Kilmarnock derives from the reduction of labour costs. Yet, as both the HM Chief Inspectors Reports indicate these lower staffing levels appear to underlie many of the serious concerns regarding the operation of the prison: the safety of staff and prisoners alike, fewer resources committed to rehabilitation activities, staff turnover, adverse consequences for programmes designed to challenge offending behaviour.

That lean staffing was the cause of many of the operating difficulties was reinforced by the HM Chief Inspector in an interview with the authors of this report when he recalled comments that he had made to Kilmarnock’s operators at the time of the 2001 inspection.

‘I said to them, I am no manning expert but you have to pay your staff more and I’m not necessarily talking about a massive increase here. Maybe if you had about another twenty people, depending on how you rostered it, then you might be there. But twenty people at £13,000 is kind of eating into the profit margins.’

(Interview, Clive Fairweather, 28 February 2002)

In a nutshell this is the problem. Increasing staffing levels in order to provide increased security for staff and prisoners, to commit more human resources to programmes to challenge offending behaviour and to overcome the rigidities of operating to a tightly-defined contract is rational from the point of view of running a prison that is humane, decent, safe and seeks to prioritise rehabilitation. Increasing staffing levels, however, clashes with the imperative of a private operator to make profits and satisfy shareholders.

We find it incredible that none of these concerns, which are rooted in the very nature of privatisation and the contractual relationship between the SPS and PPS at Kilmarnock, are even hinted at in the Estates Review. In fact, the HM Inspectorate’s critique of the contract is quite fundamental and reflects a change of change of position since the 2000 inspection: ‘There were clear signs, however, that operating to an agreed, detailed contract, while initially providing clarity of purpose was proving to be more onerous and restrictive than perhaps had been anticipated’ (para. 2.19, p. 6). It is difficult to escape the conclusion that the Estates Review and the Scottish Executive are consciously choosing not to reveal unpalatable truths concerning the actual operating practice of HM Prison Kilmarnock.

3.4 Evidence from Additional Sources

The evidence in this section comes from various sources as follows.
• A letter sent to the HM Chief Inspector of Prison by Alex Neil, MSP, following a visit to Kilmarnock prison made by members of the Justice 1, Committee of the Scottish Parliament.
• A report written by Harry Conaghan of the Aberlour Trust, following following a visit to Kilmarnock as a member of the Intermediate Inspection team.
• Two letters written to Alex Neil in February 2002 by current members of staff at Kilmarnock.
• Two letters written by a member of nursing staff at Kilmarnock by a member of nursing staff between 1999-2001. In order to maintain confidentiality the recipients of these letters are not disclosed here.

The evidence from these additional sources confirms many of the central concerns raised in the HM Chief Inspectors Reports and, if anything, paints an even more disturbing picture of practices at HMP Kilmarnock. In the interests of clarity the evidence has been presented thematically under the following headings.

3.4.1 Levels of Staffing, Safety and Security

Following a visit to Kilmarnock during the third week of February 2002 Alex Neil MSP stated that it was his view and that of the Convenor of the Justice 1 Committee of the Scottish Parliament, Christine Grahame, MSP, that they ‘were very much concerned about the levels of staffing in the prison as well as the numbers of apparently inexperienced officers working in the front line with the prisoners’.

This is confirmed by the testimony contained in letters to Alex Neil by two members of staff. The first, who has worked in the prison for some time expresses worries about ‘the state we are in’ and insists that an investigation is urgently carried out ‘before it is too late’. He/she claims the following practices occur.

‘Staff shortages occur on a day to day basis throughout the prison. Staff regularly phone in sick due to stress and a general “couldn’t care less attitude”. Only last Monday staff levels, first thing in the morning were 5 in HB1 and 4 in HB2. There should be at least 10 in each Houseblock. Staff coming off night shift are often asked to work on and double shift working is common. Bowhouse staff are sent to Premier Prison establishments in England to cover shortages on a regular basis. Management of staff is shocking, staff turnover is horrendous and most staff have no experience...Security standards have been relaxed, search procedures of visitors and staff is a joke as there is not usually enough staff to perform these duties...’

This is corroborated by the second staff member, who contests that while ‘there has never been enough staff in the prison’ it has ‘become worse than ever and we feel that urgent action has to be taken’. It is his/her belief that ‘the only reason that no staff have been seriously injured is because of the good will of the prisoners’. One again specific details are presented.
‘The staff of HMP Kilmarnock are put in dangerous positions every day. Each House Block is meant to run with 10 staff. 8 staff for the four wings and 2 rover staff. In my opinion this is still not enough staff but a lot of the time each House Block runs with only six or seven staff, which is inexcusable. Staff are also frequently ordered to unlock 60-80 prisoners with only one member of staff being on a wing. On the occasions where two staff are present on a wing, one person is often taken off the wing to rover prisoners to Health Care and Visits. All these incidents are avoidable but happen frequently, and is only down to lack of staff’.

‘When staff object or refuse to open wings alone, they are pressurised by Management. There is quite a lot of staff relatively new to the Prison and they feel that their jobs are under threat if they do not comply’.

‘On the subject of cameras monitoring the workshops and wings. I know for a fact that that there is not enough staff to monitor all the cameras. There are two members of staff in this area to answer telephones, operate electronic doors, communicate with radio users and deal with all alarms. It is not surprising that staff have no time to monitor wings or work sheds’.

‘Shift systems within the prison are very demanding and also in a lot of cases are illegal. Staff in the House Block areas regularly work nine or ten days in a row. Most of the staff within the establishment never get a break while working between nine and twelve hours shifts’.

Malcolm McLennan, an HM Inspector and ex-Deputy Controller at Kilmarnock supplied evidence of comparative staffing levels and how lean the staffing is at Kilmarnock.

‘The ratio is approximately two officers for sixty prisoners. In Barlinnie you would be looking at three, maybe four’ (Interview, 28 February 2002).

Harry Conaghan of the Aberlour Trust, and an ex-prisoner, further confirmed these insiders’ claims.

‘…a large amount of prisoners hang about the hall (‘A’ Wing) all day unlocked and are not employed anywhere in the prison. This wing is unsafe for both prisoners and staff. (Apparently this wing has only one member of staff there for long periods during the day. One member of staff who worked in another area of the prison told us he would walk out of the prison if he was told to work there). This area was a particularly stressful part of the prison to work in’.

Conaghan repeated other concerns relating to the consequences of low staffing – the failure to deliver effective programmes to deal with offending behaviour, the inadequacy of staff training, insufficient human resources in the education unit leading to work

overload, the high levels of self harm. ‘The morale of staff is low; the amount of assaults on staff is also high’. He concluded,

‘Overall HMP Kilmarnock is a place of containment – very little offending behaviour is actually being addressed. In addition it is full of drugs; it is the prisoners who really “run the jail”. If work contracts ever run dry, current levels of staff would be unable to cope with the inevitable acts of violence and unrest that would follow’.

3.4.2 Misreporting, Falsification and the Impact of the Contract

Serious allegations are also made that the contract, and the way that it is operated at Kilmarnock leads to misreporting and falsification of records. It is claimed in the first letter from a staff member that this happens, firstly, over search procedures.

‘Security standards have been relaxed, search procedures and visitors and staff is a joke as there is not usually enough staff to perform these duties and search records are falsified in order to keep up appearances’.

The authors have in their possession a copy of a letter from a member of nursing staff to his/her elected representative, who reports deeply disturbing management practices and more than one example of the prison’s efforts to escape penalty points.

‘…a prisoner attempted to strangle me and I was informed that this was not be recorded as an assault as it would cost Premier £7,000 in penalty points and therefore it was recorded as an obstruction’.

A series of concerns, that managers were not ‘providing an acceptable level of care’, drove this individual to approach the Director, following a lack of response by line management. Eventually the evidence of malpractice in relation to several incidents was given in writing to the Investigations Officer. The issues that this individual felt had to be addressed were as follows,

‘…crucial paperwork being “misfiled” following a prisoners death, nursing staff giving injections to Custody Officers without even a phone call to the Medical Officer, Nursing Staff overriding other nursing staff during emergency situations to the detriment of the prisoners, and drug errors not being reported or recorded’

and concrete detail is presented to back-up each of these allegations. Assurances were given by the Investigations Officer that Health Care Management would not be informed of the identity of the complainant. However,

‘On my next day back at work I was confronted by a Senior Nurse who had been informed of everything that I had told the Investigations Officer, despite the fact that the members of staff who could have verified these incidents were off on holiday or sick during this time. I was then informed by the Investigations Officer
that he has concluded the investigation – despite the fact that he has not verified my concerns from other members of staff’.

There is no reason to doubt the integrity of the complainant and the truth of these claims, summarised here, which form only a small part of a longer catalogue of reported instances of malpractice. It seems that the contract and the attendant penalty points system is inducing widespread practices of non-reporting, under-reporting and deliberate concealment of bad practice. Associated with this, in this case, there appears to be the failure of management to investigate claims thoroughly and confidentially. Once again, it calls into question the Estates Review’s belief that the system of KPIs and a detailed contract leads to transparency and an effective system of monitoring performance at Kilmarnock private prison.

One unintended consequence of the contract at Kilmarnock was seen as a principal cause of understaffing by one of the staff.

‘When Premier Prisons planned the staffing for Kilmarnock prison they based the staffing on a prison which did not need to carry out any escorts, as they concluded that there was also a Court and Escort Group operating in Scotland which as you aware there is not. They also planned the staffing based on a long-term prison, not a prison, which would have to cope with remand, and short-term prisoners, which accounts to a lot more prisoners going to and returning from the courts. The reason Premier is 40 staff above the number needed stated in the contract is because they did not determine properly the number of staff needed to run such an establishment’

This discrepancy, not alluded to in the PwC or Estates Review reports, further exposes the difficulties associated with calculating costings on the basis of hypothetical prisons as opposed to the actual practice and performance of operating prisons.

The final comment in this section comes from Harry Conaghan, who summarised his perception of the operation of the contract following his visit as part of the Intermediate Inspection team in March 2001.

‘The management at Kilmarnock seem very protective of the prison and keen to blame everything on the ‘Contract’. They seem to have tunnel vision so far as this is concerned: although they are restrained by the ‘Contract’ I do not see this as an excuse for not progressing further with drug and offending behaviour programmes…’

In short, there is a fundamental conflict between operating to contract and running a prison which delivers effective strategies for dealing with offending behaviour.
3.5 The HM Chief Inspector of Prisons in Scotland

The final additional evidence comes from the HM Chief Inspector of Prisons for Scotland, Clive Fairweather. It should be emphasised that the HMCI has never, in principle, been ideologically opposed to private prisons and that, in his own words, he tried to do his best for Kilmarnock as he ‘would for every prison to try and say “here’s the best picture”’. However, the experience of Kilmarnock has forced him to change his perceptions and become openly critical of private prisons.

In an interview with the Sunday Herald (14 October 2001) the HMCI stated that Kilmarnock was ‘weak’ in helping prisoners reduce their offending behaviour and staff turnover was so high that the regime lacked sufficient ‘residual experience’ to challenge serious criminal behaviour.

‘Running a private prison is about making a profit, which is not necessarily the same thing as running a good prison. Prisons should be about reducing future offending and therefore reducing the number of future victims of crime. Anyone who is serious about the correctional or “rehabilitation” agenda surely has to look at where the experience and expertise currently lies – and concentrate on outcomes rather than pure costs. Locking up a prisoner might get him or her off the streets, but it’s a waste of time and taxpayers’ money if, while they are inside, some effort is not made to persuade them not to re-offend once they are released’.

‘It has taken me a long time to make up my mind about private prisons in Scotland. The private sector may be currently more suited to containing prisoners in decent conditions where rehabilitating or challenging individuals is less of a priority, such as with remands or with pettier offenders. Prisons are not just about buildings, locks and keys and prison staff are not just “turn-keys”. You need experienced professionals…91% of staff at Kilmarnock have not worked in a prison before’.

‘Profit-driven private prisons would minimise the number of staff and pay them less. Staff at Kilmarnock have told me they love their jobs but will not be there in two years time because they cannot afford to stay. The solution is not dogmatic, or purely financial, but what’s best for the public in crime prevention terms. I see the problem here as parallel with using mercenaries and proper soldiers’.

One other problem that the HMCI identified was the difficulty in obtaining honest and accurate accounts of Kilmarnock’s performance, notwithstanding the existence of KPIs.

‘It is extremely difficult in a private prison to get straight talking. Everything is talked up – they wouldn’t say that something is bad, they would say that it was not as good as it could be. It’s always spoken in upbeat, business terms, and cutting through the rhetoric is quite difficult. I have had difficulty in seeing all the information’ (Interview, 28 February 2002).
There is no question that these are fundamental criticisms of the Kilmarnock experience specifically, and of private prisons in general. They come from a long-serving Chief Inspector of considerable experience and integrity who, at the outset, bore no prejudice against privatisation. Yet, Clive Fairweather’s informed views, transformed through his engagement with Kilmarnock, appear to have been discounted by the Estates Review and the Scottish Executive.

Section 4 Relating the Kilmarnock Evidence to the Case for Privatisation in the Estates Review and General Evidence Concerning Privatisation

In this section the evidence from Kilmarnock is related to the arguments for privatisation advanced in the Estates Review. Consideration is also given to additional detail presented in the Scottish Executive’s document, ‘Consultation on the Future of the Scottish Prison Estate’. The main focus here will be on the issues of labour costs and the labour flexibilities which the Scottish Executive claim will be one of the benefits, if not the principle benefit, from choosing the ‘private build, private operate’ option.

4.1 Substitution of CCTV surveillance for staff

The Estates Review makes a number of indirect references to this, e.g. ‘It was assumed that the new prison would have up to date technology and also that the use of staffing would be even more flexible than at present within our existing SPS operated establishments’ (para.74, p.19). CCTV is one of the cost-saving innovations, which is seen as enabling reduced staffing levels. Yet this up to date technology, in the form of CCTV is far from being as unproblematic as the Estates Review suggests. The HM Chief Inspector’s Intermediate Report cast doubts on the ability of CCTV to deliver a secure prison environment in significant areas. On a recent visit to Kilmarnock, Alex Neil MSP discovered that parts of the metal-working shop were unobservable by the CCTV.

Moreover, staffing levels were so low that insufficient members of staff were in place to monitor effectively the equipment. Most importantly, the substitution of surveillance is no guarantee of safety as the evidence from Kilmarnock, and as we shall see (Section 5) from the United States, demonstrates. If the accompaniment to CCTV is flexible staffing then the experience at Kilmarnock is hardly encouraging. If flexibility means double shift working, considerable overtime, high turnover and existing staff levels stretched beyond safety levels this is hardly a desirable model on which to operate three new private prisons.

Evidence from Wolds prison in England, the first private prison in Europe and run by Group 4, reinforces concerns regarding staffing levels in private prisons. James et al (1997) in their study ‘Privatising Prisons’ concluded,

‘Staffing therefore remained a central issue for staff from the time Wolds opened and its significance was reflected in the considerable attempts management made to deal with the difficulties experienced by rearranging shift systems additional
staff, some on a part-time basis. The contract for operating Wolds stated that “the Contractor shall maintain sufficient Staff to carry out the provision of the Agreement, including the provision of cover for annual and sick leave and other emergencies (s. 18.8, Sch. 1, Contract Ref: HOPU/91/RCU/02)” Our evidence suggests, however, that there is room to question whether staffing levels were, indeed “sufficient” (p.80).

4.2 Driving Down Labour Costs and the Consequences
Both the Estates Review and the Scottish Executive make explicit that one of the principle objectives of prison privatisation is the reduction of labour costs. The cost of staff ‘is the single largest element’ (para. 74, p.26). Consider the following statements.

‘SPS is also used to adopting traditional staffing practices which are difficult to change quickly. As a result, SPS tends to require more staff than the private sector to perform the same service – estimated to be around 25% lower than in the public sector’ (Estates Review, para. 104, p.26)

‘More important perhaps is that, even after these changes, staffing levels are estimated to be around 25% lower than the public sector. Contrary to views by opponents of privately managed prisons that staffing levels are unacceptable, the SPS fully evaluated and accepted the robustness of the operator’s staffing proposals and experience to date has reinforced SPS judgement that the levels of deployment work well’ (Scottish Executive, para.77. p.27)

In the first of these citations there is a blatant untruth, as the private sector do not currently perform the same service as the public sector. It is not possible to compare one privatised prison of 500 places at Kilmarnock with the complex and diverse range of services provided by the SPS. Further, the last sentence of the second paragraph is particularly important. It is an assertion, with no evidence presented to substantiate the claim. It simply ignores all the evidence presented above from Kilmarnock, which contradicts the claim that ‘levels of deployment work well’.

Savings on labour costs, will be delivered not just by a reduction in the absolute numbers of staff, but by a radical change in the skills/experience mix of staff.

‘SPS is aware of the need constantly to review its pay and conditions of service package to ensure that it is compatible with the delivery of a value for money service to the public. On pay only one of the elements (salary level) is open for SPS to change – both NI and pensions being fixed. SPS has two bands for prison officers. In the lower band prison officer average pay is around £16k excluding NI and pension. The average pay for the major proportion of prison officers, who are in the higher band is around £23k excluding NI and pension. In the face of competition, SPS is seeking to reduce the number of officers employed in the higher band and lower the average pay of prison officers but not cut anyone’s actual cash pay. Progress will however be slow’. (para. 79, p.27)
In other words, the SPS wishes to see experienced and skilled staff within the prison service, diluted by new staff coming in on lower pay rates. From a perspective of cost, and cost only, this might be seen to provide value for money. From the point of view of delivering a quality service with untold benefits related to dealing with offending behaviour and rehabilitation, and which derive from the tacit knowledge accumulated by prison officers over many years, this would be a serious problem. It should be remembered that 91% of staff at Kilmarnock in 2000 had never before worked in a prison.

For Clive Fairweather and for Derek Turner maintaining staffing levels and existing levels of experience are fundamentally important. The HM Chief Inspector makes the point in relation to Peterhead.

‘If you take somewhere like Peterhead where they deliver a very professional sex offender treatment programme, it is delivered by officers in uniform who have been trained by psychologists to do it and they do it effectively. Now the whole staff needs to be trained and experienced. Come the night time and the weekend – and we have seen this in other sex offender jails in England – if all the staff haven’t bought into the programme and the training and you have staff without experience saying ‘you filthy beast you’ to the offenders, then all that we have done during the day is destroyed at night. So you have got to have people in uniform, who buy into the whole business of trying to change people. And a lot of work in prisons is not done by the psychologist it is done by the role model prison officer. And that’s a terribly esoteric point to out over, but it’s fundamental. I’ve seen a lot of this important work that goes on in the galleries. I don’t think that many of these people [who work in a private prison] have either got the time or the experience to do this. They’ll do some of the work, but I’m not sure that they are ever going to be in a position to do that sort of work. They’ll do what their contract requires them and they’ll leave at the end of the shift, having worked a hard shift. They will have had every little bit screwed out of them for that time, whereas in the public sector there is fat. But that fat in the public sector and the experience of the people who have pensions and so on allows them to be there to do what is a service as opposed to a contract (authors’ emphasis)...with private prisons the whole thing becomes very taut. There needs to be an element of extra staff in every prison, you need to have people to ensure safety as well, but in Kilmarnock they have cut it to the bone, because they have got to make a profit’. (Interview, 28 February 2002).

Experienced and, by definition, more expensive staff add incalculable value to the service. Flexible and cheaper inexperienced staff, the proportion of which the Scottish Executive is intent on increasing, simply can not provide the same quality of service, particularly if rehabilitation and challenging re-offending behaviour are priorities.

Derek Turner of the Prison Officers Association (Scotland) expressed the same concern.
‘Now, we are not in the business of warehousing prisoners. We want to try and change their offending behaviour and have introduced such things as skills training, aggression management, various other life skills training, sex offender programmes, increased contact with families. The effectiveness of all these are threatened if staff are unskilled, inexperienced and working to a private contract’. (Interview, 22 February 2002)

The Scottish Executive asserts. ‘Arguments have been led by opponents of the concept that privately managed prisons are not tackling the issue of recidivism as well as the public sector. There is no evidence for this’. (para. 85, p.28). The evidence presented above on Kilmarnock and throughout this report indicates that this is simply not the case.

4.3 Fraudulent Base for Asserting that Competition Exists

One of the justifications advanced by the Estates Review, but with greater vigour by the Scottish Executive, for this imperative to reduce labour costs, is that a competitive environment now exists. Several references are made e.g. to the necessity to ‘match the competition’ (Estates Review, para.102, p.26) or to ‘SPS staff costs [which] are markedly higher than those of its competitors’ (Scottish Executive, para. 74. P.26). Leaving aside the use of the plural in the last example, which is clearly inaccurate given that there is only one competitor in the Scottish context, there is a fundamental objection to the way in which the term ‘competition’ has been used. The assumption is that somehow this competition is natural and inevitable. Yet this is not a competition, which has arisen through a free market in the provision of prison services, but rather one which has developed as the result of a political decision. The Conservative government established the basis of this competition by deciding to build a private prison in Kilmarnock. As such it is an artificially created ‘competition’ and one which could be removed if the political will existed to do so. Nor is it true competition in any practical sense. As we have argued above (Section 2), it is not possible to directly compare Kilmarnock’s 500-place prison with the extensive and diverse range of services provided by the Prison Estate in Scotland. Yet it is on this fraudulent basis that the term competition is being used to attack the pay and conditions of staff and reduce staffing levels.

4.4 An Attack on the Prison Officers Association (Scotland)

As we have seen there are explicit assumptions in the Estates Review and the Scottish Executive document that traditional staffing practices and pay and working conditions of SPS are a ‘bad thing’ and that Kilmarnock is a model of lean, better practice. Of course, this interpretation disregards the incalculable benefits that derive from a highly committed and experienced SPS staff enjoying staffing levels that enable a quality service to be delivered, and the profound problems identified at Kilmarnock. From the point of view of the POAS the Scottish Executive document reveals some disturbing

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7 The assumption that the private sector provides effective competition is highly questionable. The proposed merger acquisition of Wackenhut Correction Corporation by Group 4 brings together two of the main players in the UK (and global) market, narrowing the basis of competition.
motive. The following sections are worth quoting and are followed by several points of criticism.

‘The private sector say that they operate local recruitment and pay regional market rates for all grades of staff required to deliver the service. As a result of this strategy, the operators tend to obtain competitive pay rates for prisoner custody officers (broadly equivalent to SPS officers in the lower pay band). In the case of Kilmarnock, for example, the pay scales begin at the same rate as for SPS new recruits and the operators say that some staff who started at £12.5k when the prison opened are now being paid around £14k – individual pay depends on length of service. Pay etc. is determined through joint negotiating committees involving the operator’s staff unions for a norm of 45 hours per week including breaks (which compares with 37 hours excluding breaks in SPS). All members of staff in Kilmarnock are able to join a union, which is recognised by management’.

(para. 80, p. 27)

‘The private prison operators have regional pay systems and tailor their terms and conditions to the local labour markets in which they operate, as do most other employers. Some of their terms and conditions are less generous than the public sector. But companies in the sector are reputable and cannot afford terms and conditions that do not attract and retain competent staff’ (para.74, p.26).

- The Scottish Executive omits important facts. While six-week basic training is comparable at Kilmarnock to SPS standards, new recruits at Kilmarnock do not receive a staged introduction to the demanding roles of a PCO through gaining experience on escorting or gate duties. ‘New recruits at Kilmarnock go straight into the halls’ without gaining important experience (Malcolm McLennan interview). In addition, both HM Inspectors Reports have identified significant weaknesses in training provision at Kilmarnock.

- The very high levels of staff turnover at Kilmarnock suggests that proportion of experienced staff in projected private prisons will continue to be problematic. The high turnover of staff at Kilmarnock – a common feature of the privatised prison sector - demonstrates the absurdity of the statement that companies cannot afford terms and conditions that do not attract and retain staff. It fails also to acknowledge the profit-making imperative of private prisons, whereby upward pressures on pay threaten profit levels.

- The Scottish Executive is proposing to use privatisation as a way to undermine and even break up national pay bargaining, through its advocacy of ‘local recruitment’ and ‘regional pay rates’. It should be re-iterated that these ‘competitive’ pay rates are proving inadequate to ensure acceptable levels of staff retention at Kilmarnock. Moreover, the move to local pay determination suggests the erosion of the SPS as a truly national service.
• The assertion that most employers tailor their terms and conditions to the local labour markets in which they operate, and that therefore prisons should follow suit, is disingenuous. What comparisons are being made here? Local pay determination certainly does not apply to other comparable uniformed services - the police, the fire service – or to many other public sector workers – teachers etc. Assuming prison officers fall into a category of workers who should have their pay determined locally should be seen as an attack on the integrity and professionalism of the existing national service.

• The account of the process of pay negotiations is inaccurate. The truth is that Premier Prison Services does not recognise any independent trade union at Kilmarnock. Pay negotiations are conducted through a Works Council, established and sustained by PPS. The Works Council, therefore, can not be considered an independent body. There are no ‘staff unions’, other than the PPS’s possible endorsement of the PSU. In fact, the PPS appear to be hostile to independent unions and the POAS. ‘The first time we went down to try to recruit they [PPS] threatened to call the police and have us removed’ (Derek Turner interview). The Scottish Executive’s approval of the way pay negotiations are conducted at Kilmarnock suggest the adoption of an anti-union, anti-POAS strategy for the proposed private prisons.

• The Scottish Executive suggests that PPS’s negotiation of a norm of a 45-hour week (including breaks) at Kilmarnock is somehow preferable to the 37-hour week (excluding breaks) agreed by the POAS and the SPS. The Scottish Executive fails to acknowledge the evidence from the HMCI’s reports that staff at Kilmarnock are unable to take agreed breaks. In this respect, flexibility would certainly seem to suggest an intensification of work.

• Evidently the opportunities for advancement and progression both in terms of pay and grading are inferior at Kilmarnock. This would appear to act as a disincentive for staff to remain in service for the lengths of service seen throughout the PPS and which are incalculably beneficial for the quality of the service. In fact, the Scottish Executive is explicitly endorsing inferior pay and conditions when it admits that these are ‘less generous’ than in the public sector.

• The assertion that all companies operating in the privatised prison sector are reputable is questionable as the evidence presented below on Wackenhut (Section 5) alleges.

• Despite Scottish Executive assurances that there will be no compulsory redundancies, that TUPE implications will not arise and that there will be no cuts in cash pay (para. 96, p.30) it is conceded that there will be voluntary redundancies. The closure of Peterhead will inevitably create problems for staff who do not wish to be transferred to geographically distant establishments. Further, assurances that there will be no cut in cash pay contradicts the stated strategic objective of reducing labour costs.
4.5 Summary

It is difficult to escape the conclusion that the Scottish Executive is pursuing an agenda designed to undermine the POAS. Nowhere does the Scottish Executive make clear how it sees the future relationship between the SPS and POAS. It is proposing an attack on the existing system of bargaining with the POAS, ushering in inferior pay and conditions, which will erode the provision of a quality service. What the Scottish Executive seem to wish are lower pay and inferior conditions of service in a non-unionised private sector which, in turn, will drag down those in what remains of the public sector. In the process, much of the ‘fat’ in the public sector that Clive Fairweather referred to as essential to the provision of a safe and quality prison service will be lost. The POAS, which has played an important role in improving conditions for its members, performs many other additional roles that go unrecognised. For example, the importance of the POAS in providing a safe environment for its members should be emphasised.

‘We are proactive in the areas of health and safety. We are more conscious of doing risk assessments now under the Health and Safety legislation, to determine whether a safe working environment is being provided. And our staff are rightly becoming more proactive and saying they will only open up certain prisoners if they have a certain number of staff there to assist, whereas in the private prisons I don’t think they are doing the same risk assessments even though they may say they are doing them’ (Derek Turner interview)

In very many ways the prison officers union is an effective safety guard for ensuring that satisfactory working conditions are maintained. The Estates Review and the Scottish Executive proposals threaten to remove this essential protection.

Section 5  Review of the Record of Wackenhut Corrections Corporation and its Subsidiaries

5.1 Wackenhut and UK Privatised Prisons

5.1.1 Complex Ownership Structure

The ownership structures of companies involved in prison privatisation are often complex, leading to difficulties in establishing exact lines of demarcation and areas responsibility (see PPRI, November 2001). Premier Prison Services (PPS), which operates HMP Kilmarnock, is one of a plethora of companies owned in the UK by the Premier Custodial Group Ltd, the UK’s largest private prison service operator. Premier Custodial Group Ltd. is itself owned 50% each by Wackenhut Corrections Corporation (the second largest US private prison operator in the US) and Serco PLC. 57% of Wackenhut Corrections Corporation is owned by the US security firm, Wackenhut Corporation. Therefore, behind Kilmarnock’s prison lies an ownership chain with strong links to the Wackenhut Corporation of the US.
The list of companies owned by Premier Custodial Group is quite bewildering and, apart from PPS, includes the following: Premier Training Services Ltd. (manages Hassockfield Secure Training Centre); Premier Geografix Ltd. (manufactures and leases electronic tagging equipment); Premier Monitoring Services Ltd. (electronic monitoring services to the Home Office); Premier Custodial Investments Ltd. (holding company); Lowdham Grange Prison Services Ltd. (design, construction, management and finance of HMP Lowdham Grange); Pucklechurch Custodial (Holdings) Ltd. (holding company); Pucklechurch Custodial Services Ltd. (design, construction, management and finance of HMP and YOI Ashfield); Medomsley Holdings Ltd. (holding company); Medomsley Training Services Ltd. (design, construction, management and finance of Hassockfield Secure Training Centre); Moreton Prison (Holdings) Ltd. (holding company); Moreton Prison Services Ltd. (design, construction, management and finance of HMP Dovegate); Kilmarnock Prison (Holdings) Ltd. (holding company); Kilmarnock Prison Services Ltd. (design, construction, management and finance of HMP Kilmarnock) (PPRI, November 2001).

5.1.2 Cashing In On Crime

Premier Custodial Group had a pre-tax profit of £12.4 million for the period 28 September 1999 to 31 December 2000, on revenues of £160.9 million. Wackenhut Corrections Corporation reported (2.8.01) second quarter 2001 revenues of $141.7 million, an increase of 5.9% when compared to the second quarter of 2000.

5.1.3 Wackenhut’s Global Operations

Wackenhut Corrections Corporation is headquartered in Coral Gables, Florida. The Chairman of Wackenhut Corrections and Wackenhut Corporation is George R. Wackenhut, the Vice-Chairman and CEO is George C. Zoley and President, COO and Director is Wayne H. Calabrese. As of 22 March 2001, George Wackenhut owned 12,107,530 shares compared to 268,000 owned by Zoley and 103,334 by Calabrese (South Florida Business Journal, 13.7.01). Wackenhut Corrections was founded in 1984 as a division of the Wackenhut Corporation to build and run prisons. Wackenhut Corrections won its first two contracts in Colorado and New York to operate minimum/medium security facilities. In 1994 Wackenhut Corrections went public selling its shares on NASDAQ. Wackenhut Corrections’ close relationship with its parent corporation along with strong governmental connections enabled the company to become the second largest developer and manager of privatized corrections and detention facilities in the US. In 1996 Wackenhut Corrections shifted its listing from NASDAQ to the New York Stock Exchange to gain greater access to capital.

However, faced with a declining crime rate, battered stocks and bad publicity, Wackenhut Corrections shifted their focus in the US to drug treatment and rehabilitation to boost revenue and their image. Wackenhut Corrections continues to grow despite riots at its facilities and allegations of sexual and physical misconduct by its guards. WCC shares, which in 2001 were well below their 1996 high of nearly $45, rose from a low of about $9 a share in January 2001 to $14.50 in early June 2001. The company was
inducted into the Russell Index of the nations top 3,000 companies for the first time on July 1. Some commentators believe that difficulties encountered in the US have encouraged WCC to extend its international operations.

Wackenhut Corrections Corporation is now a world leader in the privatized ‘correctional management, medical and mental health rehabilitation services industry.’ WCC offers government agencies ‘a turnkey approach to the development of new correctional and mental health institutions that includes design, construction, financing and operations’. WCC, directly and through its subsidiaries and partnerships, have contracts/awards to manage 56 correctional, detention and mental health facilities representing 39,000 beds in North America, Europe, Australia, South Africa and New Zealand. WCC also provides prisoner transportation services, electronic monitoring for home detainees and correctional health care facilities. The first prison operated in the UK was Doncaster.

5.1.4 Doncaster

Controversy has always surrounded Wackenhut’s UK operations. The company’s first UK venture, Doncaster private prison, which opened in 1994 was immediately dubbed ‘Doncatraz’, because of its state-of-the-art surveillance facilities and its low staffing levels (Scotland on Sunday, 10 December 2000). In the first year of Wackenhut’s operation, two prisoners committed suicide. Although the company promised British officials that the prisons would be ‘self-improved’ between 1994 and 1995 Doncaster had the highest number of attempted suicides in all of Britain’s prisons (AFT Center on Privatization, http://www.aft.org/privatization/profiles/wackenhut.html).

In 1996-1997, 1997-1998 and 1998-1999, the prison recorded 288, 599 and 479 cases of self-harm respectively, the worst record of any prison in England and Wales. Four prisoners committed suicide in 1998. One of these prisoners, Michael Arliss, hanged himself with a bed sheet tied to bars in his cell on 23 March 1998, after watching a film with other prisoners. The Chamber, a rented film, featured a man facing execution in an American prison after failing to clear his name for a murder he did not commit. During the inquest, the Coroner, Mr. Stanley Hooper, told the director of the prison, Mr. Kevin Rogers, that he was ‘...somewhat concerned about the fact that entertainment relating to long term prisoners awaiting execution and being sent to their deaths is being shown to prison inmates.’ A second prisoner, 33-year old John Standeven, committed suicide while on a 15-minute watch.

Despite this record the Home Office renewed Premier Prison Services’ contract to run Doncaster, following a tendering process, which itself was surrounded in controversy. PPS won the contract although the independent assessors commissioned by the Home Office rated an in-house bid from the Prison Service as ‘operationally’ superior to that of Premier Prison Services. The assessors stated that there ‘appears to be the lack of an overall strategy to the regime’ proposed by Premier that leads to a ‘failure to address satisfactorily numeracy, literacy and key and basic skills.’ A spokesperson for the Prison Officers’ Association said that the bidding process was ‘a complete and utter sham’ and that,
'if the Home Secretary has chosen Premier with such stinging criticism from his own advisers, how can we have any confidence in the future of Britain’s prisons?’
(Prison Officers’ Association Spokesperson)

In addition to Doncaster, Wackenhut, through its subsidiary Premier Custodial Group, currently operates four custodial contracts for the Prison Services of England, Wales and Scotland; a Secure Training Centre for the Home Office; two prisoner escorting and court custody contracts for the Prisoner Escort and Custody Service of the Home Office and manages two of the four contract areas for the Electronic Monitoring of Offenders in England and Wales.

5.1.4 Marchington

Critics have highlighted a worrying development in the United Kingdom – the awarding of extremely long contracts to Wackenhut’s subsidiaries and other privatized companies. In August 2001 Premier Custodial Group opened the HM Prison and Therapeutic Community, Dovegate, in Marchington, Staffordshire, an 800-bed adult male prison which is expected to generate over $900 million for Wackenhut over the life of a 25-year contract.

5.1.5 Acquisition of Wackenhut by Group 4

In early March 2002 Group 4 announced that Wackenhut Corporation was being sold for $573 million to the Danish company, Group 4 Falck. It seems certain that the merger will proceed, despite objections from Wackenhut shareholders who claim that the deal will enrich George C. Wackenhut and insiders while short-changing ordinary shareholders (Palm Beach Business Review, 14 March 2002).

Clearly this merger has major implications for the private prison market. In the UK it brings together the two largest players to create an extremely large company capable of exercising greater influence in the lobbying and tendering processes and further narrowing the basis for competition. It also calls into question another aspect of the privatisation process. ‘It is concerning when a company is handed a 25-year contract for a prison only to be taken over three years later. This could have implications for negotiations between staff and their employers’ (Derek Turner, Evening Times, 11 March 2002). In the medium term it will make no difference to the ways in which Wackenhut operates its subsidiaries, particularly in the United States, where there is considerable evidence, according to various sources, of serious operating problems.

5.2 Wackenhut’s Record in Running Privatised Prisons in the United States

After a decade as a leading operator of privatised prisons, Wackenhut Corrections Corporation’s reputation was severely damaged following a series of scandals in five states.
5.2.1 New Mexico

According to press reports, at least four inmates have died in Wackenhut prisons in Santa Rosa and Hobbs since they opened in 1998. Three were stabbed to death and one beaten with a laundry bag filled with stones. The relatives of one of the murdered men, Richard Garcia, have now filed a wrongful death lawsuit against Wackenhut. Garcia was in an isolation cell on 17 June 1999, when a guard opened the door to his cell in administrative segregation, allegedly allowing two inmates to enter and stab him 50 times in the back, chest, head, face and arms, officials said at the time of the murder. According to the lawsuit, Wackenhut prison officials knew that the two men, Paul Payne and John Price, who attacked Garcia were violent offenders with a history of armed attacks on other prisoners. Paul Payne had been transferred out of a Utah prison system for killing an inmate. Despite both men’s violent histories, they were appointed as ‘trustees’ in the administrative segregation unit.

On 17 June 1999, Payne and Price, were distributing laundry and one of them yelled out to a prison guard to unlock Garcia’s cell. When the guard opened the cell, both men allegedly ran into Garcia’s cell and stabbed him with homemade knives. The guard later admitted that she shouldn’t have opened Garcia’s cell door at the direction of an inmate, but claimed she had been poorly trained and had to ‘short-cut a lot of things’, because of the severe staff shortage on the day of the murder, the lawsuit claims. (Albuquerque Journal, 19 June 01)

However, what focused attention on Santa Rosa was the murder on 31.8.99 of a guard, Ralph Garcia, following a riot in which an inmate also died. A 500-page legislative report called for a near-total overhaul of Wackenhut operations. Wackenhut was faulted for its building design, poor amenities and for inadequate staffing, inexperienced supervisors, low pay (Garcia himself had been on $7.98 an hour), high turnover, heavy overtime and a lack of knowledge about the gang culture of the inmates. Low pay, particularly, was highlighted by one of the report’s authors, consultant Jerry O’Brien.

‘Faced with the prospect of working in a prison or a Wal-Mart for $8.50 an hour, many would judge the sales job better, despite the importance of the criminal justice system.’

Internal company documents and witnesses revealed that a chief guard had warned company executives that this penny-pinching and understaffing was ‘a death sentence’ for guards sent alone to cell blocks. It is recorded that a company executive responded just two weeks before Garcia was murdered,

‘Better to lose one guard than two’ (Gregory Palast, The Observer, 3.9.200)

In February 2002, a former corrections officer at Hobbs confirmed that he and other guards did beat inmates and tried to cover up the incidents at the request of an assistant warden in 1998 (Albuquerque Journal, 21 February 2002).
Wackenhut is also being sued by nine American Indian inmates of Lea County Correctional Facility, who contend that they are being denied religious freedom, and are being discriminated against on the basis of race. The nine inmates claim that after they formed a self-help group in 1998, Warden Joseph Williams began to dismantle the programmes and activities they had set up. They also claim their religious ceremonies were interrupted or stooped on several occasions, and that some of their religious items, including a ceremonial drum and eagle feathers, were confiscated. Prison authorities failed to respond to their complaints, ‘so that the abuses and racial harassment continued unabated’, the lawsuit claimed (The Santa Fe New Mexican, 17 February 2001)

5.2.2 Texas

Wackenhut’s prisons in Texas have long been plagued by profound problems. In 1998 Travis County Community Justice Centre was found, in a state audit, to have barely the minimum number of guards required by contract, largely because pay rates were appallingly low - Wackenhut started its guards on $6.50 an hour. A notice of default was filed and Wackenhut was fined $625,000.

However, it was the biggest prison sex scandal in state history (also at Travis County) which gave the Wackenhut jail its notoriety. Twelve former guards were indicted in December 1999 on charges of sexually assaulting or harassing 16 female inmates at the Travis County Community Justice Centre in 1998 and 1999. Some of the inmates’ alleged accounts are quite horrific. One former inmate, in an interview with the American-Statesman, said sex was routinely traded for shampoo and underwear. She said she was doped up on psychiatric medication late one night when a guard entered her cell and raped her. Over the next three months, she said, guards hit her to keep her from reporting the crime. Only after she appeared in court heavily bruised and emaciated did an investigation begin. In the meantime, she tried to kill herself twice. (James McNair, Miami Herald, 16 April 00)

‘Some of these were outright rapes. I’ve been practicing law for about 30 years and I’ve never heard of anything like this in the state – or county-run jails. This is pretty much off the charts.’ (Ron Weddington, Austin lawyer representing rape victim)

However, Travis County is not the only Wackenhut jail in Texas where allegations of sexual harassment have been made against guards. Worst of all was the treatment of inmates at Coke County Juvenile Justice Center. Opened in 1994 with 200 beds, it was to be a place where disturbed girls as young as 12 would benefit from a number of innovative programmes of education, rehabilitation and care. According to a 1999 lawsuit filed by Dallas lawyer Penny Raney, the girls were forced to live in sub-human conditions.

‘The girls were made to live in an environment in which offensive sexual contact, deviant sexual intercourse and statutory rape were frequent, and which resulted in a hostile, permissive sexual environment, and where residents were physically
injured to the point of being hospitalized with broken bones.’ (Lawsuit against Wackenhut, Miami Herald, 16 April 00)

The state filed criminal charges of sexual misconduct against two guards, who both pled guilty. Eventually further claims against Wackenhut were settled in mediation for the sum of $1.5 million, awarded to the abused inmates (Corrections Professional, 27 July 01). A previous suit Raney filed against Wackenhut was settled out of court, although tragically the former inmate she represented killed herself the day the settlement was signed. These abuses of inmates by Wackenhut staff became the subject of a the prime-time CBS News show, ‘60 Minutes II’ aired on 9 May 2000.

5.2.3 Florida

In Fort Lauderdale, five guards at a Wackenhut work-release facility were fired or punished in summer 1999 for having sex with inmates. More recently further controversy in Florida has surrounded Wackenhut’s operation of the South Bay Correctional Facility in Palm Beach County. Inmates at the prison allege that the state has failed to institute administrative rules for the facility, leaving Wackenhut personnel free to administer ‘cruel and unusual punishment, without due process of law’ (Broward Business Daily, 21 June 01). Ten separate petitions for writs of habeas corpus were filed by inmates in Palm Beach Court on 30 May 2001.

The prisoners’ allegations centre on two incidents at the prison in January 2001. In the first, the prisoners claim that Wackenhut guards, led by a shift captain, assaulted a group of three prisoners who refused to be relocated within the prison without a due process hearing. In the second, the prisoners allege that prison officials subjected a wing of 40 inmates to a full day of solitary confinement in retaliation for a fight between two prisoners which the inmates themselves quelled. Public Defenders who are representing the inmates say that their goal is to restrict what they call Wackenhut’s indiscriminate use of solitary confinement at South Bay. Palm Beach County Public Defender, Ken Johnson, says that solitary confinement is used ‘whenever, wherever and indefinitely.’

5.2.4 Louisiana

On 5 April 2000, Wackenhut agreed to surrender control of its 15-month-old juvenile prison in Jena, after the U.S. Justice Department named Wackenhut in a lawsuit seeking to protect imprisoned boys from harm at the hands of guards and fellow inmates. The government accused Wackenhut of beating boys, throwing tear gas indoors, spraying them in the face with pepper spray, and not providing them with adequate education and counseling. One incident highlighted the regime at the institution. In March 1999 Judge Mark Doherty had ordered a 17-year old boy – a shotgun victim - removed from the prison. The boy wrote the following in testimony,

‘A Sgt. came to me and said to put shirt in pants, and I told him that I couldn’t and he…put me to the ground and told me to lay face down on the ground. And I told the Sgt. that I couldn’t that I have on a (colostomy) bag, and he went put me
The nurse at the prison’s infirmary later noted that 5 to 6 inches of the body’s intestines were in the colostomy bag.

One of the Justice Department’s consultants, Nancy K. Ray wrote that Jena’s difficulties stemmed largely from operating problems. In Jena’s first 13 months, more than 600 people ‘drifted through 180 positions’, including 125 who were fired in 1999, a gross turnover rate of more than 300%. Ray also observed that recreation and rehabilitative programmes were ‘grossly inadequate’. Almost everybody she interviewed, many with psychiatric disabilities or IQs lower than 70, complained about the lack of basic staples such as underwear, socks, shoes, bedsheets, or a lock to protect what they owned. Shortages often led to fights. Reviewing infirmary logs from 28 November 1999 to 20 January 2000, Ray found more than 100 incidents of ‘serious traumatic physical injuries’, including five sexual assaults. During this period, eight children tried to kill or harm themselves.

Allegations of physical and sexual abuse against minors were also revealed in a TV documentary (CBS, ‘60 Minutes II’, 9 May 2000). A former inmate who worked as a clerk at the facility said in the broadcast that he watched security officers having sex with youths and smoking marijuana with them. When he worked as a clerk, the inmate stated, he was ordered to shred documents containing complaints against the Jena staff.

5.2.5 Arkansas

Wackenhut had operated the Grimes Unit for men and the McPherson Unit for women in Newport since January 1996 but in July 2001 the Arkansas state prison board ‘decided it would be in the best interests of the state, based on the director’s recommendations, to take control of the management responsibilities’ (The Arkansas Democrat-Gazette, 1 July 01). The decision to terminate Wackenhut’s involvement in private prisons came after serious complaints by the authorities into the way that Wackenhut had been operating the two Newport prisons.

Arkansas’ state Board of Correction and Community Punishment unleashed a ‘barrage of complaints’ regarding serious staffing shortages, unsanitary living conditions, poor maintenance and a lack of educational and substance-abuse programmes for inmates (The Arkansas Democrat-Gazette, 21 October 00). Mary Parker, Chairman of the Board, stated after a visit to the McPherson Unit, ‘It was not pretty…It’s the closest I’ve been in a long time to being appalled.’ Max Mobley, the State Department’s Deputy Director for Health and Correctional Programmes, was equally horrified following a surprise visit to the Grimes’ Unit when he found ‘Just inmates sitting on their beds talking’, with no evidence of remedial and educational programmes. Mobley had long-standing concerns regarding Wackenhut’s treatment of inmates, when he discovered in 1998 that 70% of women at McPherson were taking some kind of psychotropic medication, drugs designed for those with mental problems. By comparison, when the state was housing women at
McPherson’s predecessor, the Tucker Unit, only 7-9% were on these types of medication at any one time.

5.3 A Brief History of a Controversial Company

Much of the information in this section comes from an article, which appeared in SPY Magazine in September 1992, Inside the Shadow CIA, by John Connolly.

Founded in 1954 by George Wackenhut, a former FBI agent, Wackenhut Corporation was originally called Special Agent Investigators Inc. George Wackenhut had two personal attributes that were instrumental in the company’s growth. First, he got along exceptionally well with important politicians, including Florida governor, Claude Kirk, who hired him to combat organized crime in the state. He was friends with Senator George Smathers, an intimate of John F. Kennedy, who provided Wackenhut with his first big break, when the senator’s law firm helped the company find a loophole in the Pinkerton Law. This was a federal statute that had made it a crime for an employee of a private detective agency to do work for the government. Smather’s firm set up a wholly owned subsidiary of Wackenhut that provided only guards, not detectives. Shortly afterwards Wackenhut received multi-million dollar contracts from the government to guard Cape Canaveral and the Nevada nuclear bomb test site, the first of many extremely lucrative federal contracts that have sustained the company to this day.

5.3.1 Spying on ‘Dissidents’

The second thing that helped make George Wackenhut successful was that he was, and remains, a hard-line, right-winger. He profited from his beliefs by building up dossiers on Americans suspected of being Communists, or merely left-leaning ‘subversives and sympathisers’, as Wackenhut put it, and selling the information to interested parties. According to Frank Donner, author of the Age of Surveillance, the Wackenhut Corporation updated its files after the McCarthyism hysteria had ebbed, adding the names of anti-war protesters and civil rights demonstrators to its lists of ‘derogatory types’.

By 1965 Wackenhut was boasting to potential investors that the company maintained files on 2.5 million ‘suspected’ dissidents. In 1966, after acquiring the private files of Karl Barslaag, a former staff member of the House Committee on Un-American Activities, Wackenhut was claiming he maintained files on 4 million Americans. In 1975, after Congress investigated companies that had private files, Wackenhut gave its files to the now-defunct anti-Communist Church League of America of Wheaton, Illinois, although Wackenhut reserved the right to use them for its clients.

5.3.2 Wackenhut’s Special Relationship with the United States Government

The relationship between Wackenhut and the federal government has always been close. According to Connolly, when it comes to security matters, Wackenhut in many respects is the government. In 1991, a third of Wackenhut’s revenues came from the federal government, and another large chunk from companies that themselves work for the
government. At the time of the SPY article in 1992, Wackenhut was the largest single company supplying security to U.S. embassies overseas. Several of the 13 embassies it guarded have been in ‘important hotbeds of espionage’, such as Chile, Greece and El Salvador. It also guards nearly all the most strategic government facilities in the United States, including the Alaskan oil pipeline, the Hanford nuclear-waste facility, the Savannah River plutonium plant and the Strategic Petroleum Reserve.

Wackenhut’s close relationship with the federal government also involves shared personnel. While early boards of directors included such prominent extreme right figures as Captain Eddie Rickenbacker, General Mark Clark and Ralph E. Davis, a leader of the white supremacist John Birch Society, recent board members have included much of the USA’s former national security directorate; former FBI director Clarence Kelley; former Defense Secretary and ex-CIA Deputy Director, Frank Carlucci; former Defense Intelligence Agency Director, General Joseph Carroll; former U.S. Secret Service Director, James J. Rowley; former Marine Commandment, P.X. Kelley; former Chairman of President George Bush’s (senior) Foreign Intelligence Advisory Board; former CIA Deputy Director, Admiral Bobby Ray Inman. Before his appointment as Reagan’s CIA Director, William Casey had been Wackenhut’s outside legal counsel.

5.3.3 Wackenhut and the CIA

Thus, several CIA operatives have become Wackenhut executives upon retirement, but some claim that the relationship between the Agency and Wackenhut has been even closer. SPY magazine claimed to have spoken to numerous experts, including current and former CIA agents, Drug Enforcement Agency agents and former Wackenhut executives and employees, all of whom have said that

‘...in the mid 1970s, after the Senate Intelligence Committee’s revelations of the CIA’s covert and sometimes illegal overseas operations, the agency and Wackenhut grew very, very close’ (SPY Magazine, September 1992).

SPY Magazine’s sources confirmed that Wackenhut’s longstanding relationship with the CIA deepened from the late 1970s into the 1980s. SPY cites the evidence of Bruce Berckmans, who was assigned to the CIA station in Mexico City and left the agency in January 1975 to become a Wackenhut international operations vice president. Berckmans, who left Wackenhut in 1981, told SPY that he had seen a formal proposal George Wackenhut submitted to the CIA to allow the agency to use Wackenhut offices throughout the world as fronts for CIA activities. Canadian Prime Minister, Pierre Trudeau, was said to have rebuffed Wackenhut’s attempt in the 1980s to purchase a weapons propellant manufacturer in Quebec with the comment, ‘We got rid of the CIA – we don’t want them back.’ Phillip Agee, the former CIA agent who wrote an expose of the agency in 1975, told SPY,

‘I don’t have the slightest doubt that the CIA and Wackenhut overlap’. (Phillip Agee, quoted in SPY Magazine, September 1992)
Testimony also comes from William Corbett, a terrorism expert, who worked for the CIA for 18 years.

‘For years Wackenhut has been involved with the CIA and other intelligence organizations, including the Drugs Enforcement Administration. Wackenhut would allow the CIA to occupy positions within the company [in order to carry out] clandestine operations’ (William Corbett, Spy Magazine, 1992).

He also claimed that Wackenhut would supply intelligence agencies with information, and that it was compensated for this ‘in a quid pro quo’ arrangement with government contracts worth billions of dollars over the years. Retired FBI agent William Hinshaw alleged in SPY about Wackenhut’s ease in snaring lucrative governmental contracts as being governments’ way of ‘pay[ing] Wackenhut for their clandestine help. It is know throughout the industry that if you want a dirty job done, call Wackenhut’.

SPY magazine uncovered considerable evidence that Wackenhut acted on behalf of the CIA in fighting Communist influence in Central America, during the 1980s when Reagan was President and the CIA Director was former Wackenhut lawyer, William Casey.

5.3.4 Questionable Minority Contracting

In 1981 Berckmans joined with other senior Wackenhut executives to form the company’s Special Projects Division. It is claimed that the SPD entered a joint venture with the Cabazons, a small native American tribe, whose administrator was John Nicholas, a former CIA agent. Together, it is alleged, they pursued a scheme to convert the Californian reservation into an arms factory, manufacturing explosives, poison gas and biological weapons. Then, by virtue of the tribe’s status as a sovereign nation, it is alleged that the aim was to export the weapons to the contras. (SPY Magazine, September 1992; American Federation of Teachers AFL-CIO, Center on Privatization, http://www.org/privatization/profiles/wackenhut.html)

5.3.5 Surveillance of Environmental Activist

In the 1990s Wackenhut was hired by Alyeska, an oil consortium that controls the oil flow from Alaska, to investigate environmental activist, Charles Hamel. Mr. Hamel was a whistle blower who released damaging information about Alyeska’s environmental practices. Wackenhut was the subject of Congressional hearings and fined $10,000 by the state of Virginia for its role in the investigation.

5.4 Summary

Given Wacknhut’s widely acknowledged record in running private prisons in the UK, the US and elsewhere, the decision by the (then) Home Secretary to endorse Wackenhut’s contracts is astonishing. That Wackenhut have been given further contracts in the UK brought a strong reaction from those with first-hand experience of Wackenhut’s operations. On the news that the Home Office had approved Wackenhut’s operation of a
youth detention centre in Bristol, New Mexico’s prison watchdog, Senator Cisco McSorley commented, ‘That’s bordering on the bizarre’ (The Observer, 3 September 2000). Yet Wackenhut is one of the private prison operators described by the Scottish Executive as ‘reputable’. In neither the Estates Review, nor the Scottish Executive, document, is there any suggestion that one of the parent companies of PPS has anything other than an unblemished record. If the privatisation proposals are implemented then the Scottish Executive and the SPS would presumably welcome tenders from the Group4/Wackenhut merged organisation. The evidence presented in this section provides further strong evidence that the privatised prison option should not be pursued. More than this, given the evidence from the United States and the problematic nature of Wackenhut as a company, there is an equally strong case that all prison establishments, operated by Wackenhut and its subsidiaries in Scotland and the UK, should be returned to the public sector as a matter or urgency.

Section 6 Wackenhut and Detention Centres

It is equally astonishing that Jack Straw awarded the Dungavel contract to Premier Custodial Group. On September 3rd 2001 this Wackenhut subsidiary commenced operation of Scotland’s first detention center for asylum seekers at Dungavel, near Strathaven, on the border of Ayrshire/South Lanarkshire. The Dungavel detention center is being run by the PCG subsidiary Premier Detention Services (PDS).

6.1 Nature of the Contact Between the Home Office and Premier Detention Services

The Home Office has signed a contract with PDS where the latter will operate Dungavel for five years, providing all the services for the management of the centre. Wackenhut claim that the contract will generate revenues of around $30 million over the five years. The Dungavel centre opened in two stages, the first in September 2001, which will house up to 90 adults and the second later in the year, accommodating 60 detainees in a euphemistically titled ‘family centre’. This is no ‘open’ reception centre. Inmates are locked up and are effectively incarcerated in a building surrounded by twenty-foot high fences, topped with razor wire.

The Home Office claims that it allows detention as a last resort in cases where it is necessary ‘to establish the identity or basis of a claim’, where the immigration authorities believe the subject may breach the terms on which they have been admitted or where they are awaiting deportation.

6.2 Asylum Seekers Have Committed No Crime

It has to be remembered that the asylum seekers incarcerated at Dungavel, are held as if they are criminals, although they have committed no crime. The decision to detain asylum seekers is taken, therefore, solely on the presumption by the immigration services that they might breach terms of admission. Human rights advocates have long campaigned against detention centres on the grounds that the incarceration of asylum seekers represents a fundamental breach of human rights.
‘It is a fundamental breach of human rights to detain people whose only “crime” is to seek protection from persecution.’ Sally Daghlian, Chief Executive of the Scottish Refugee Council (Herald [Glasgow] 25 May 2001)

‘These detention centres are being described as “hotels” by the Home Office which designates inmates not as prisoners but as “guests”. But it is a strange hotel that denies its guests the right to leave or even move buildings without an escort of private security guards. In some of these “hotels” children are denied an education and locked up for twenty-four hours a day. In which hotels do guests regularly attempt suicide? How many hotel guests claim that they have been beaten and brutalised by staff? Or denied the right to communicate with the outside world?’

‘It is not emotive to describe these detention centres as “concentration camps”. People are imprisoned in them not because they have committed a specific crime, but because they belong to a social group who have committed no offence – save that of being a foreigner. To justify their imprisonment is to follow the logic of fascism.’ (Aamer Anwar, Sunday Herald, 26 August 2001)

‘These vulnerable people have committed no crime, only to flee persecution, yet they are being imprisoned on Scottish soil for no crime. That is the reality of asylum policy in the UK today’ (Robina Qureshi, Director Positive Action in Housing, 17 March 2002)

The establishment of Scotland’s first detention centre is an abuse of the human rights of asylum seekers. It criminalises and degrades people who have fled tyranny and oppression, many of whom have been deeply traumatised by the horrors inflicted on them and their families. Rather than finding refuge and freedom, these imprisoned asylum seekers now face a further denial of their right to freedom from oppression.

Evidence is now emerging of the inhumane treatment of asylum seekers in Dungavel by PDS. Firstly, there is the case of Vanessa Garzova, who is the 20-month old daughter of Dusan and Agata Garza, a Slovakian family, with two other children. They are being threatened with imminent removal from Scotland. They came to the UK after being persecuted by racist gangs in Slovakia. Agata gave birth to her youngest child two months prematurely after being attacked by racist skinheads and as a consequence, Vanessa was injured in the womb and has since developed cognitive problems. Vanessa was receiving medical treatment at the Royal Victoria Infirmary in Newcastle at the time the family was removed to Dungavel. Vanessa has now missed two hospital appointments and concern is growing for her medical well-being. Joan Moon and her husband befriended the Garzova family in Newcastle through the church they attended. Mrs Moon is prepared to offer bail so that the family can be released, yet the family remains imprisoned at Dungavel. According to Joan Moon, ‘Since being imprisoned the family look pale and withdrawn’ (NCADC, http://www.ncadc.org.uk/)
Incarceration at Dungavel is creating serious problems for already vulnerable asylum seekers. Dotun Adeosun, a 31-year economics graduate from Nigeria, is still on suicide watch in isolation from other refugees. Human rights groups are joining forces to highlight Dotun’s case and to prevent the UK committing a human rights atrocity by deporting Dotun to Nigeria, where he is adamant he faces torture and persecution.

On 17 March 2002 when local support groups gathered outside Dungavel to express solidarity with those detained, Premier Detention Services denied refugees the right to look out of windows. Filmed by a BBC new team, and broadcast on Newsnight (26 March 2002), PDS guards are seen to physically remove refugees from Dungavel’s windows. The Home Office later confirmed that one refugee was also put into isolation after he had tried to look out of the windows to wave to people on the outside. A message was later passed by refugees to supporters,

‘On Sunday during the demonstration we are looking out the window, we are waving and we are saying we love you. And security are using physical force to move people away from the window and they took some people to isolation and locked them up. You don’t have any rights – that shows how much of a prison Dungavel can be’.

The nature of the contracts signed by the private companies running the detention centres (PDS, Group 4) with the Home Office has been exposed in the wake of the fire at Yarls Wood detention centre, where no sprinkler system was fitted. The priority is to detain refugees and asylum seekers as cheaply as possible even if that mean compromising safety. On the 19 February 2002, the Home Office revealed that sprinklers had not been fitted at any of the other detention centres at Oakington (near Cambridge), Harmondsworth (near Heathrow) and also at Dungavel. Nor have these devices been fitted in older buildings converted to hold immigration detainees (Campsfield House, Tinsley House, Lindholme and Haslar).

6.3 The Oakington Ruling

The case for the closure of Dungavel is now irrefutable. On 7 September 2001 a landmark legal ruling by Mr. Justice Collins determined that the regime at Oakington Immigration Reception Centre, Cambridgeshire, amounted to illegal imprisonment under the Human Rights Act. Collins’ ruling that four Iraqi Kurds had been unlawfully held established that it is legally unacceptable on human rights grounds to detain someone for administrative reasons. While Collins states that his ruling applies only to those detained on administrative grounds, and does not extend to those held in detention centres elsewhere in the UK, it is evident that those held at Dungavel, like those at Oakington, have committed no crime and are therefore being illegally detained under the Human Rights Act.
6.4 Detention Centres in the United States

Evidence from the United States, and the way that detention centres have been run, strengthens the case for the closure of Dungavel. Wackenhut runs a 200-bed detention centre, on behalf of the US Immigration and Naturalization Service (INS), in Jamaica, Queens (New York) where asylum seekers who arrive without ‘proper documentation’ are held. WCC has a 5-year, $49m contract with the INS. Recently religious leaders from Queens toured the Jamaica facility and raised concerns about the conditions in which the asylum seekers were being detained.

‘The Jamaica detention centre is an unmarked structure of brown brick with video cameras perched on each corner. Slots 2 inches wide ventilate the centre, which has only a few windows atop one wall…Detainees live in open rooms of 20-30 beds, with communal showers and partially enclosed toilets. Men and women are housed in separate rooms. They eat food brought to them on trays, talk to their lawyers, play Ping-Pong, watch TV, sleep and bathe in the same locked area. There are few books in any language. Detainees get one hour of “outdoor recreation” a day in a small courtyard. Visits with family and friends happen in guarded rooms through Plexiglass booths with telephones.’ (Newsday, New York [Queens Edition], 3.6.01)

Reports have emerged which have been highly critical of Wackenhut’s treatment of asylum seekers and, in interviews, inmates past and present portray a world filled with idleness and uncertainty. Philip Sesay a 54-year old refugee from Sierra Leone watched as his traumatized cell mate stuffed six tablets of pain-killers in his mouth, jumped from the adjoining bunk bed screaming ‘Let me die’ and then saw security guards and a nurse drag the detainee away in handcuffs. ‘It’s like a hell here. Humiliating’ said Sesay.

‘They talk to you like a dog, no respect, no consideration for you. Only difference here than in my country there are no beatings [here].’ (Jean Pierre Kamwa from the Cameroon, a former detainee now granted asylum, Daily News, New York 16.2.01)

‘They tell me we send you to a place like hotel for approximately seven days. But this is not a hotel, it is more like prison, but much worse. At least in prison you have a sentence. In prison you can move around, go to library…you can get fresh air.’ (Oleskly Galushaka, from the Ukraine, who has been at Wackenhut for two years fighting his deportation order, Daily News op cit)

Other reports tell of grown men scrawling words on the walls with their own faeces, and of people staging hunger strikes. They also tell stories of detainees trying unsuccessfully to take their own lives by hanging with threadbare sheets or swallowing liquid detergent.

One detainee, Amin Al-Torfi, who had fled from Albasra in southern Iraq, after his father, two brothers and an uncle were captured, tortured and killed for their Shiite beliefs and opposition to Saddam Hussein’s regime, described his experiences in Jamaica.
‘I arrived expecting it would be a refugee camp where I would be free to come and go while applying for asylum. Instead it was a prison. I couldn’t believe it. I thought my eyes were seeing wrong. It was very sad, silent and hopeless.’
(Quoted in Newsday, op cit)

6.5 Australia

All of Australia’s detention centres for asylum seekers are run by Australasian Correctional Management (ACM), a subsidiary of Wackenhut Corporation. In a documentary screened on SBS in 2000, George Wackenhut welcomed Australia’s policies favouring privatized prisons and detention centres, saying ‘[Australia is] really starting to punish people, as they should have done along’, adding, ‘This year we are going to make US$400 million’.

In February 2001 the Australian government ordered an inquiry into claims that employees of ACM attempted to cover up the rape of a 12-year old boy at a detention centre for immigrants. Two nurses from the Woomera Detention Centre told the authorities that management deliberately suppressed evidence of an attack on the 12-year old boy by his father and that other inmates had sex with the boy in return for cigarettes. Also there had been abuse of other children (Scotland on Sunday, 10 December 2000).

One ACM worker has described the company’s Woomera Immigration Detention Centre, built on the site of a former missile testing range west of Sydney, as ‘like a concentration camp’. Complete with razor wire, barbed wire, steel fences and patrolling officers, the comparison is easy to make. The detainees are treated as criminals and dehumanized. They are assigned numbers corresponding to the prefix of the boat they arrived on, such as ‘Don 27’ or ‘Rap 180’. Conditions such as these drove inmates to stage, in August 1999, a desperate protest at Woomera, waving signs saying ‘save us from ACM’ (http://greenleft.org.au/back/2001/). Other detainees are used as cheap labour by ACM. According to reports in the Sydney Morning Herald, inmates work in kitchens and clean toilets, often working for 12 hours a week in return for a $15 or $20 phone card.

However, towards the end of 2001 and in 2002, protests by asylum seekers at Woomera exploded both against government policy and against conditions. In early March 2002 a group of detainees dug their graves in the desert earth of their secure compound, and then climbed into them, insisting they would stay in them until they were released or died. Five other detainees sewed their lips up and 120 went on hunger strike in a repeat of the wave of protests in January when 250 refugees went on a 15-day hunger strike, some sewed their lips together, others drank detergent and some tried to hang themselves. (Guardian, 8 March 2002).

These desperate actions have been precipitated by regimes implemented by the Wackenhut subsidiary, ACM according to Ray Hartigan, formerly of the St. Vincent de Paul Society and currently a member of the Woomera Lawyers Group. Having entered Woomera 30 times over two years for eight hours at a time Hartigan witnessed terrible human rights abuses. According to Hartigan,
'When a detainee is being placed in a cell for punishment, it can take four minutes by vehicle to travel from the living quarters to the cell. But it is not uncommon for the journey to take two hours. They are driven around in circles and believe they are being taken miles from their friends in the camp. Frequent random searches, head counts and sleep deprivation were part of the “culture” of ACM. When a detainee goes on a hunger strike and hasn’t eaten for days, they are placed in a room with the air conditioner on. When you have no food inside you, your body heat drops, making you much more susceptible to the cold, so that makes life very uncomfortable’ (Sunday Herald Sun, 10 March 2002).

Hartigan was impressed by the guards when he visited the camp two years earlier, but the situation had deteriorated.

‘ACM takes teenagers off the dole queues in places like Fort Augusta, trains them for two and a half days and pays them $1000 a week. They do as they are told because the money is good and they don’t want to go back on the dole. But it doesn’t make for a well-run camp’ (Sunday Herald Sun, 10 March 2002).

6.6 Summary

Asylum seekers are being incarcerated at Dungavel Detention Centre as if they are criminals, despite the fact that they have committed no crime. On human rights grounds there is no case for the detention of asylum seekers in these establishments, which do not even provide basic levels of safety. The case for Dungavel’s closure is only strengthened by the emergence of evidence from within of the treatment of refugees by PDS who have fled oppression and persecution. The experience of centres run by Wackenhut in Australia and the United States paints a graphic and disturbing picture of regimes that are that Wackenhut and its subsidiaries operate. Dungavel must be closed immediately.

Section 7 Conclusions

• No case has been made in terms of cost for the proposed prison privatisation programme in Scotland.

• The actual performance of HMP Kilmarnock has fatally undermined the case for prison privatisation, as evidence demonstrates serious problems in several fundamental areas. These problems are not accidental but emanate from the very nature of prison privatisation as a wide range of evidence has shown.

• The Scottish Executive, therefore, should not pursue the privatisation option. Further, there is a powerful case that Kilmarnock should be restored forthwith to the public sector.

• For many reasons, but principally because it operates as a prison despite the fact its asylum seeker inmates have committed no crime, Dungavel Detention Centre should be closed immediately.
References and Bibliography

1) Government and Related Documents


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1.5 The Scottish Prison Service Estates Review (20 March 2002)

1.6 The Scottish Executive’s Consultation on the Future of the Scottish Prison Estate

1.7 United States General Accounting Office, Report to the Subcommittee on Crime, Committee on the Judiciary, House of Representatives, Private and Public Prisons – Studies Comparing Operational Costs and/or Quality of Service (August 1996)

2) Interviews

2.1 Clive Fairweather OBE, HM Chief Inspector of Prisons (28 February 2002)

2.2 Derek Turner, General Secretary of the Prison Officers’ Association (Scotland) (22 February 2002)

2.3 Malcolm McLennan, Inspector (28 February 2002)

3) Documents

3.1 Letter from employee at HM Prison Kilmarnock to Alex Neil (MSP) (25 February 2002)

3.2 Letter from employee at HM Prison Kilmarnock to Alex Neil (MSP) (25 February 2002)

3.3 Inspection Report of HM Prison Kilmarnock by Harry Conaghan, Aberlour Trust (March 2001)

3.4 Letters by nurse to elected representative

4) Other Reports

Academic and Other References


Justice 1 Committee

Prison Estates Review

The Howard League For Penal Reform in Scotland
Response to the consultation document on the Scottish Prison Estate:

1. PRINCIPLES
The Howard League for Penal Reform in Scotland believes that we should be working to obviate all unnecessary imprisonment. It is disturbing to note that, with the general crime rate continuing to fall, and courts being encouraged to make more and better use of non-custodial options, the prison population is still projected to rise by around 15% over the next decade. We do not accept that this should be the case. We also note that, contrary to the popular myth of a ‘soft’ legal system of lenient judges, average sentences have increased by 40% since 1980. The vast majority of prisoners are serving short sentences for less serious offences (82% of sentences are currently for less than 6 months) and most of these offenders do not require to be held in conditions of stringent security. For those who do require to be imprisoned in order to protect the public: rehabilitation programmes should be maximised and reducing re-offending should be a first priority in imprisonment, and within this context, humane conditions should be provided.

Simply building new and more private prisons, however cheaply, will not meet these standards and will not, therefore, provide good value for money.

2. GENERAL PROBLEMS WITH PRIVATISATION OF PRISONS
Given these principles, we wish to draw attention to the following:

2.1 Privatisation and prison population projections
An increase in the prison estate makes sense only where government means to accept an increase in the prison population. This is NOT acceptable - we continue to imprison people we don't need to; it is contrary to human rights; it is not moral; and it is not cost effective. For example, it costs approximately £27,000 per annum to keep someone in prison whereas a Drug Treatment and Testing Order costs approximately £7,000 per annum. Prison numbers could be substantially reduced with safety by abolishing the use of imprisonment for short terms and for less serious offenders in need of treatment.

2.2 Performance of private prisons – and Kilmarnock in particular:
The consultation document is based on an assumption that privately managed prisons operate successfully. Following HMCIP’s recent report on Kilmarnock, areas of concern in Scotland’s only private prison include:
- availability and quality of programmes to reduce reoffending
- staffing levels
- numbers of attacks on custody officers
- prisoner on prisoner violence
- number of fire-raising incidents
- number of deaths in custody
- provision of programmes to tackle drug misuse
Low staff:prisoner ratios and the inexperience of many of the custody officers are crucially related to all these issues.
2.3 The economics of private prisons and the problem of accountability
Research in the USA indicates that in that country a ‘corrections-commercial complex’ now exists as a consequence of privatisation. This means that the political economy of imprisonment is more than passing - it has become an industry. Far from a vision of the State being free to hire and fire contractors in the event of unsatisfactory performance or a reduction in demand, the outcome in the USA is one of a high level of State dependency on a small number of near-monopoly providers where companies come together to create giant cartels. This has produced a situation where the providers equate to a ‘sub-governmental system’, that is, where governmental and private experts interact regularly and in private, allegedly in the public interest. All of this raises issues of the most basic kind for accountability and political control as well as of ethical propriety and financial management.

2.4 Legality and liability
There are a number of immediately practical ways in which issues of accountability become more complicated under a delegated arrangement. The complexity of private prisons has been shown (in the USA) to create a vast new terra incognita where government agencies have specifically sought to argue in court that they are not liable in cases of complaint brought by detainees held by private contractors. There are a number of issues to do with, for example, the segregation or transfer of ‘difficult’ prisoners, or where the duty of care resides in cases of suicide, in which problems of dispersed liability have arisen. We wonder what legal problems might be raised under ECHR.

2.5 Public sector responsibility
We believe that, since the incarceration of offenders is determined by the state, the responsibility for managing prisons should remain in the public sector. This is not just a matter of cost.

3. DETAILED OBJECTIONS SPECIFIC TO THIS REVIEW AND ITS PROPOSALS
For the record, we also wish to dissent from underlying assumptions in the consultation document and - principles aside - we do not believe that the analyses provide satisfactory grounds for a decision to create 3 new private prisons.

3.1 Cost analyses
In general, insufficient information is provided to assess the validity of the costs produced. Specific points arising, though, are as follows:
- The costs and time-scales developed for the Public Sector Comparator (PSC) and the ‘private build/public sector manage’ model seem to be based on the assumption that the SPS would not buy in expertise to assist in briefing, planning, design and project management. In view of the SPS’s stated lack of experience of large-scale projects, this would not be reasonable; a project run or directed by inexperienced personnel would undoubtedly have disproportionately high costs and time-scale, thus giving an exaggerated and distorted picture.
- Further, we do not accept that there are insurmountable obstacles attached to the concept of private build/public sector manage.
- Finally, in view of the doubts being raised about staffing levels and management at Kilmarnock, we believe that in the ‘private prison/private manage’ model, costs should have been examined with staffing and prisoner programme availability matching the level of provision in the rest of the SPS estate.

3.2 Improvements in existing prisons:
The viability of making improvements in existing prisons should be re-assessed.
4. **PETERHEAD**
We believe that Peterhead, with its excellent STOP programme for sexual offenders, should remain open. There are already gaps in the availability of this programme and we believe that dispersal of the existing successful programmes at Peterhead would a) increase these gaps, and b) dilute the effectiveness of the programme.

**CONCLUSIONS:**
In conclusion, we believe:
that the number of prison places should not be increased as described in the review. The projections are based on penal expansionist assumptions. The Executive should concentrate on policy and legislative changes to reduce the prison population, including rapidly increasing the availability and use of non-custodial measures;
that, within prisons, programmes tailored to reduce recidivism and provided by skilled staff should be a first priority;
that the long-term economic problems and liability issues associated with privatisation of prisons should be examined;
that the management of prisons should lie in the public sector;
that, in any event, the basis for the cost comparisons in the consultation document is not satisfactory.