



# CRIMINAL NEGLIGENCE

## Reforming the Ministry of Justice

By Tim Ambler

DISCUSSION PAPER

### EXECUTIVE SUMMARY

- The Ministry of Justice (MoJ) has responsibility for a number of functions that are currently performed inefficiently and represent poor value for taxpayer money;
- There are more civil servants working for the Ministry of Justice than there are prison inmates in England and Wales;
- Blair-era reforms should be continued to their logical conclusion, namely the complete separation of the judiciary and the executive;
  - The roles of Lord Chancellor and Justice Secretary should be separated, with the former ceasing to be part of government, while remaining in the House of Lords and a member of parliamentary committees dealing with judicial matters, such as its share of the Consolidated Fund;
  - New judges should be nominated by parliament, not government and parliament should ensure the judiciary's share of the Consolidated Fund is adequate;
  - The MoJ's courtroom elements should be transferred to the judiciary, with the associated MoJ staff thereby becoming public rather than civil servants;
- By moving (over a period of ten years) to the Scandinavian model of criminal justice, the vast majority of prisons could be closed and their prisoners could become trainees for their return to law-abiding society;
  - Rehabilitation would take priority over punishment but the latter would remain in the form of removing liberty by means of electronic tagging;
  - Trainees would be allocated to trainers in small groups;
  - Transition should be managed in waves by a small transition team;
  - Remaining traditional prisons should be prepared for the new vision with greater resources funded by the savings in shifting earlier cohorts to the new regime;
- Other MoJ functions (such as the Office of the Public Guardian) should be privatised or transferred away from the department;
- Without its two main roles of supporting the judiciary and managing the prisons and probate services, the 6,330 core MoJ staff should be reduced to 800;
- Taken together, the recommendations in this report would reduce the civil servant headcount by 87,781;
  - Some 28,172 of the reduction, however, would simply be reclassification as public servants.

**Tim Ambler MA (Oxon), MSc (MIT)** is a Senior Fellow at the Adam Smith Institute, previously Senior Fellow, London Business School.

**ABOUT THIS SERIES**

The UK government plans to reduce the civil service headcount by nearly 20%. We believe that deeper savings—bringing lower costs and greater efficiency—are easily possible. Whitehall has grown far more than 20% in the last seven years alone; and we have found most departments to be a confused clutter of overlapping functions and agencies. This series aims to cut through that clutter to suggest nimbler, lighter structures.

Whitehall departments have two functions: to manage policy and to provide services. We believe that services (such as passport provision) should be provided by executive agencies, without being swamped by the core department staff. We also believe that the cores could work, more effectively, with a fraction of their staff.

Deep staff reductions can be managed through natural turnover, early retirement, pausing non-essential recruitment and other methods. The result would be a slimmer, more focused civil service, better services for users and substantial savings for taxpayers.

The Ministry of Justice (MoJ) cost taxpayers £10 billion in 2020/21.<sup>1</sup> In rather a neat balance, its 79,395 civil servants were keeping 79,092<sup>2</sup> inmates in the 117 prisons of England and Wales.<sup>3</sup> By February 2022, however, the prisoner count was comfortably exceeded by the payroll staff count, at 88,527.<sup>4</sup> This was made up from the core department, five executive agencies and seven executive non-departmental public bodies (ENDPBs), as shown in the table below.

One might ask whether we really need to incarcerate so many people, and employ so many people to do so, or whether there are more productive possibilities for those 150,000+ individuals. And more generally, one might ask whether the government should be in the business of dispensing justice at all, which is what the judiciary is for. Can we even trust the government in this role when it so often breaks the law itself? In other words, is the MoJ really necessary?

BODY	TYPE	FULL-TIME EQUIVALENT STAFF
Ministry of Justice	Ministerial Department	6,330
Criminal Injuries Compensation Authority	Executive Agency	298
HM Courts and Tribunals Service	Executive Agency	17,146
Legal Aid Agency	Executive Agency	1,110
Her Majesty's Prison & Probation Service	Executive Agency	59,420
The Office of the Public Guardian	Executive Agency	1,559
Children and Family Court Advisory and Support Services	ENDPB	2,113
Criminal Cases Review Commission	ENDPB	92
Judicial Appointments Commission	ENDPB	96
Legal Services Board	ENDPB	37
Parole Board	ENDPB	179
Youth Justice Board for England and Wales	ENDPB	101
Independent Monitoring Authority	ENDPB	46
<b>Total</b>		<b>88,527</b>

## CONSTITUTIONAL ISSUES

Until about 20 years ago, the Lord Chancellor had roles in all three branches of the state: legislative (albeit in the House of Lords), executive (being a member of government) and judicial. Tony Blair made a valiant effort to separate them but

<sup>1</sup> Ministry of Justice, Annual Reports and Accounts 2020-21: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041825/moj-annual-report-and-accounts-2020-21-accessible-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041825/moj-annual-report-and-accounts-2020-21-accessible-version.pdf)

<sup>2</sup> Gov.uk, 'Prison Population Figures 2021': <https://www.gov.uk/government/statistics/prison-population-figures-2021>

<sup>3</sup> Prison Guide, 'Prisons UK - List of all UK Prisons' 2021: <https://prisonguide.co.uk/prisons-uk/>

<sup>4</sup> Ministry of Justice, MOJ headcount and payroll data for February 2022: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1073136/moj-headcount-and-payroll-data-february-2022.csv/preview](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073136/moj-headcount-and-payroll-data-february-2022.csv/preview)

only partially succeeded. The Lord Chancellor, an office now combined with Justice Secretary, no longer needs to be a lawyer and most of the high-level judicial responsibilities have been transferred to the Lord Chief Justice.

Nor did Blair reform matters lower down. If the judges are not part of government, why should the courts be? Or judicial appointments? The need for the judiciary to be fully independent of government is part of Blair's Constitutional Reform Act 2005<sup>5</sup>, but he left a muddle. For example, the Lord Chancellor has to take an oath including the words "I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible." But the Lord Chancellor is also Justice Secretary and a member of the Cabinet which, in the opinion of many, fails to provide adequate court resources. It's about as sensible as selling a tennis court to one family and the right to play on it to another.

A fine example of the current state of play is that the "Judicial Office (JO) is an office of the Ministry of Justice (MOJ) [i.e. it reports to the Permanent Secretary and, maybe, the Justice Secretary], staffed by civil servants, supports the judiciary across the courts of England and Wales and the non-devolved tribunals across the UK, and reports to the Lord Chief Justice and Senior President of Tribunals."<sup>6</sup>

Also: "We are answerable not to Ministers but instead, through our Chief Executive, to the Lord Chief Justice of England & Wales and the Senior President of Tribunals as we help them to fulfil their responsibilities to the judiciary."<sup>7</sup>

New judges are nominated (to the Queen) by the Prime Minister; however, their funding lies genuinely independent of government. Their income is drawn from the "Consolidated Fund" which receives all taxation on behalf of the Queen. Parliament then distributes it, as laid down by the Exchequer and Audit Departments Act 1866, to government and, separately, the judiciary.

Blair's reforms should be continued to their logical conclusion, namely the complete separation of the judiciary and the executive. The judiciary should report to parliament, not the executive (government). The nomination of judges and all other judiciary matters currently with the Prime Minister or other ministers should transfer to committees of parliament, to whom the Lord Chief Justice should provide full reports and accounts annually. The last Lord Chief Justice's annual report<sup>8</sup> did not contain a single £ sign.

<sup>5</sup> Legislation.gov.uk, 'Constitutional Reform Act 2005': <https://www.legislation.gov.uk/ukpga/2005/4/contents>

<sup>6</sup> Gov.uk, 'About us - Judicial Office': <https://www.gov.uk/government/organisations/judicial-office/about>

<sup>7</sup> Courts and Tribunals Judiciary, 'Related Offices and Bodies: Judicial Office', 2022: <https://www.judiciary.uk/related-offices-and-bodies/judicial-office/>

<sup>8</sup> Judiciary of England and Wales, 'The Lord Chief Justice's Report 2021': <https://www.judiciary.uk/wp-content/uploads/2021/11/Lord-Chief-Justice-Annual-Report-2021.pdf>

The roles of Lord Chancellor and Justice Secretary should be separated, with the former ceasing to be part of government but in the House of Lords and a member of parliamentary committees dealing with judicial matters, such as its share of the Consolidated Fund. To protect the independence of non-governmental recipients, the Consolidated Fund accounting function should be transferred from HM Treasury to a small team seconded from the National Audit Office reporting to the Lord Chancellor.

The Judicial Office, the six ENDPBs and three of the Executive Agencies (the Criminal Injuries Compensation Authority, HM Courts and Tribunals Service and the Legal Aid Agency), should transfer from the MoJ to the judiciary. Thus 21,172 of the MoJ staff would become public, rather than civil, servants.

## THE PRISON SERVICE

The other main concern of the MoJ is the prison service. Prison is intended to punish, isolate and rehabilitate inmates until they can emerge as positive law-abiding members of society.<sup>9</sup> Yet, according to the Prime Minister in 2016, “46% of all prisoners will re-offend within a year of release. 60% of short-sentenced prisoners will reoffend within the same period.”<sup>10</sup> These rates have been fairly stable for decades but they exclude crime not detected or not successfully prosecuted, so are probably underestimates — the reoffending figure in 2020 was 38.6%<sup>11</sup> but the level of detection had also fallen.

The UK prison population this July was 80,819, some 97.6% of capacity.<sup>12</sup> As a percentage of population it is about double that of Germany, Ireland and Scandinavia though not far above the rest of Western Europe.<sup>13</sup> In March 2020, prison service staff numbered 33,884.<sup>14</sup> That represents a decline over the decade,<sup>15</sup> due partly to experienced officers leaving and recruits not staying. Full prisons and too

<sup>9</sup> Stop the Crime, ‘Purpose of Prisons’ 2009: <http://www.stoptheaca.org/purpose.html>

<sup>10</sup> Full Fact, ‘Prisons: re-offending, costs and conditions’, 2016: <https://fullfact.org/crime/state-prisons-England-Wales/>

<sup>11</sup> Gov.uk, ‘Proven reoffending statistics: April to June 2020’: <https://www.gov.uk/government/statistics/proven-reoffending-statistics-april-to-june-2020/proven-reoffending-statistics-april-to-june-2020>

<sup>12</sup> Gov.uk, ‘Population and Capacity Briefing for Friday 15th July 2022’: [https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment\\_data%2Ffile%2F1090930%2Fprison-pop-15-jul-2022.ods&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F1090930%2Fprison-pop-15-jul-2022.ods&wdOrigin=BROWSELINK)

<sup>13</sup> World Prison Brief, ‘World Prison Population List (thirteenth edition)’, 2021: [https://www.prisonstudies.org/sites/default/files/resources/downloads/world\\_prison\\_population\\_list\\_13th\\_edition.pdf](https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_13th_edition.pdf)

<sup>14</sup> Gov.uk, ‘Her Majesty’s Prison and Probation Service workforce quarterly: September 2021’: <https://www.gov.uk/government/statistics/her-majestys-prison-and-probation-service-workforce-quarterly-september-2021>

<sup>15</sup> Inside Time, ‘Increase in prison staff numbers...or not?’, 2018: <https://insidetime.org/increase-in-prison-staff-numbers-or-not/>

few experienced officers means that staff training and prisoner rehabilitation are compromised.<sup>16</sup>

The cost of prison is £44,640 per person<sup>17</sup> p.a. plus another £18,573 for his share of a warder, i.e. £63,213. Adding in the foregone taxes on a prisoner's potential earnings outside, the full cost of incarceration is about £70,000 per prisoner per year. There are other costs too, such as the loss to employers who are desperate for workers, and the wider consequences of prisoners passing on criminal attitudes and techniques in jail. Prisons, in effect, are our universities of crime; much like other universities in terms of students learning and forming life-long relationships, but more expensive.

The effects on prisoners' families also add to the costs. As one study put it in 2019: "Children of prisoners are at risk of significantly worse outcomes...these include, amongst others, an increased risk of future offending, mental health issues, and poor educational attainment... parental imprisonment is associated with a fivefold increase in exposure to other adverse childhood experiences."<sup>18</sup>

Imprisonment is costly, ineffective and inhumane. We should look to other solutions.

### **AN ALTERNATIVE VISION**

In 2016, the MoJ produced a White Paper on prison reform, but it was thin,<sup>19</sup> and overtaken by the 2017 election. Though subsequent Justice Secretaries have expressed the need for prison reform, little has happened. Weekend sentences have been tried,<sup>20</sup> with the aim of allowing people to preserve their jobs and family relationships; but they have not caught on, probably because the large weekend influx makes life difficult for prison staff who also have families and need weekends off.

The prison problem is large, and reform will take time, but we should at least have some guiding vision. That vision might well be based on the Scandinavian model with its emphasis on rehabilitation and enhancing social and employability skills. Norway sees far fewer prisoners returning to prison after release. It has a two-year reoffending rate of just 20%: far lower than the UK's and one of the lowest in the world.<sup>21</sup> Sweden has been *closing* prisons in recent years. Finland has prisons that

<sup>16</sup> HM Inspectorate of Prisons, 'HM Chief Inspector of Prisons for England and Wales Annual report 2020-21': [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1003082/hmip-annual-report-accounts-2020-21.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003082/hmip-annual-report-accounts-2020-21.pdf)

<sup>17</sup> Ministry of Justice, 'Costs per place and costs per prisoner by individual prison', October 2020: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/929417/costs-prison-place-costs-prisoner-2019-2020-summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/929417/costs-prison-place-costs-prisoner-2019-2020-summary.pdf)

<sup>18</sup> Kincaid, S., Roberts, M., Prof. Kane, E., 'Children of Prisoners, Fixing a Broken System', 2019: <https://www.nicco.org.uk/userfiles/downloads/5c90a6395f6d8-children-of-prisoners-full-report-web-version.pdf>

<sup>19</sup> House of Commons Library, 'Prison Reform: Recent Developments, 2017: <https://commonslibrary.parliament.uk/research-briefings/cbp-8019/>

<sup>20</sup> Hinsliff, G., 2004, 'Weekend prison experiment starts', The Guardian: <https://www.theguardian.com/politics/2004/jan/25/ukcrime.prisonsandprobation>

<sup>21</sup> Bright Blue, 'The sad irony of prisons in the UK', January 2021: <http://www.brightblue.org.uk/the-sad-irony-of-prisons-in-the-uk/>

are truly open and prison populations are also declining as a result.<sup>22</sup> The secret is that inmates do not really leave society. They stay at home, or in hostels, and keep their jobs or learn useful skills.

The vision is to regard those prisoners who do not seriously threaten the public as trainees, and probation officers as trainers. Most could live at home or in supervised hostels. They would be expected to contribute to housekeeping, as would those remaining in prison, but living conditions would be more civilised. The ten percent or so of prisons that would need to remain to protect the public would be competitively privatised on five year management contracts, supervised by the Home Office. Rehabilitation, again, would be the key success measure.

Electronic tagging would play a key punishment role. Back in 2006, the National Audit Office (NAO) reported “Electronic monitoring represents value for money, providing a cost-effective alternative to custody for offenders who do not pose a risk to the public. However, to ensure that a curfew is effective, it is essential that the contractors and criminal justice agencies work together to ensure that offenders are always tagged promptly and that any breaches of their curfew are dealt with quickly.”<sup>23</sup>

Unfortunately, by June 2022, the NAO had to report that “HM Prison & Probation Service (HMPPS) has not managed to transform the system for electronically tagging offenders as it intended and has lost £98 million trying to do so.”<sup>24</sup> In other words, there is nothing wrong with the concept, just with HMPPS. It is technologically simple enough to confine tagged trainees to places and times decided by the trainers.

Key to the vision is that it is local rather than national because the aim is to re-unite offenders within their law-abiding local communities. Accordingly, the trainer teams should report to local authorities rather than Whitehall. More specifically, they should work closely with adult social care. Trainees should wear their normal clothes and be indistinguishable, so far as possible, from other locals: experience with community service shows that observable differences like the “vests of shame” advocated by some politicians to humiliate their wearers<sup>25</sup> are counterproductive: we are seeking to re-build self-confidence, not shame.

If trainees were allocated to trainers in groups of (say) 12, around 6,000 trainers would be needed for the current population, plus (say) 1000 managers. That would be a headcount saving of 52,420 (or 59,420 civil servants since the training service would be staffed by public, not civil, servants).

<sup>22</sup> Moore, N., No Bars, No Chains, No Locks: How Finland is Reimagining Incarceration', 2021: <https://pulitzercenter.org/stories/no-bars-no-chains-no-locks-how-finland-reimagining-incarceration>

<sup>23</sup> National Audit Office, 'The Electronic Monitoring of Adult Offenders, 2006: <https://www.nao.org.uk/press-release/the-electronic-monitoring-of-adult-offenders-2/>

<sup>24</sup> National Audit Office, 'Electronic Monitoring - a progress update', 2022: <https://www.nao.org.uk/press-release/electronic-monitoring-a-progress-update/>

<sup>25</sup> The Mirror, 'Criminals Serving Community Service Will Have to Wear Orange Bibs, says Jack Straw', 2012: <https://www.mirror.co.uk/news/uk-news/criminals-serving-community-service-will-have-to-wear-362665>

The role of HM Penal Inspectors would be little changed: they would stay independent of the executive, setting or approving the conditions of reduced liberty and inspection.

## **TRANSITION**

The first step would be the creation of the transition task force within the MoJ, ideally with secondees from Scandinavian governments with experience of similar changes. The next would be training the first cohort of trainers until those now in open prisons could be released into their care. The remaining traditional prisoners should be prepared for the new vision with greater resources funded by the savings in shifting earlier cohorts to the new regime and the focus shifted to re-socialisation.

Each wave would be followed by another. There is no basis for forecasting how long the transition would take, Scandinavian experience apart, but it would not be quick. It might be ten years or longer; but it took 200 years to get us where we are today. Getting it right is more important than speed.

## **OTHER BODIES**

### **OFFICE OF THE PUBLIC GUARDIAN**

The role of the Office of the Public Guardian (OPG 1,559 staff) “is registering powers of attorneys, supervising court-appointed deputies and guardians and investigating concerns.”<sup>26</sup> It is tempting to regard that as part of the judiciary but it is not really dispensing justice. The closest parallel is the service one would get from a firm of solicitors. According to its 2019/20 annual report, the OPG had a revenue of £79 million but only a £557,000 deficit; so it nearly broke even. In 2020/21, the deficit deteriorated to £19 million but most of that was probably due to Covid. Registering powers of attorney forms far the largest part of its business.

OPG aims to digitise much, if not most, of its offering and this should make it profitable, i.e. privatisable. Failing that, it should become a stand-alone not-for-profit corporation. Either way, the MoJ headcount should be reduced by 1,559 according to the February payroll figures.

### **INDEPENDENT MONITORING AUTHORITY**

The obscurely named Independent Monitoring Authority (IMA, 46 staff) “makes sure the rights of EU and EEA EFTA citizens and their family members living in the UK and Gibraltar as at the 31 December 2020 are upheld following the departure of the UK from the EU.”<sup>27</sup> The reciprocal rights of UK citizens to remain in the EU are far more complicated and country-by-country — not EU (or EEA,

<sup>26</sup> Office of the Public Guardian, Annual Reports and Account 2020-21: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1004590/opg-annual-report-and-accounts-2020-to-2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004590/opg-annual-report-and-accounts-2020-to-2021.pdf)

<sup>27</sup> Independent Monitoring Authority for the Citizens’ Right Agreements Annual Report, 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1082509/ima-annual-report-2021-web.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1082509/ima-annual-report-2021-web.pdf)



Efta) as a whole.<sup>28</sup> This looks like a poor piece of negotiation but it seems best to leave it alone for now, apart from transferring the unit to the Home Office, where it naturally belongs, alongside other settler management units such as Windrush and successful asylum seekers.

## MINISTRY OF JUSTICE CORE

The question remains what the core 6,330 staff do. The MoJ's March 2020 six objectives are:<sup>29</sup>

1. Reform sentencing and probation to protect the public from harm
2. Transform the prison estate so it is decent, safe and has the right capacity
3. Reduce reoffending to turn people's lives around for good
4. Provide access to justice that best meets people's needs today
5. Create a modern, transparent and efficient courts and tribunals system
6. Foster a flourishing legal services sector that contributes to the economy

Not covered in the list are sentencing guidelines and any statutory changes needed, which are matters for the executive, not the judiciary. The stated objectives, however, are all optimistic and devoid of measurement so one cannot assess progress if, indeed, there has been any or if there is likely to be.

The probation objective was, arguably, progressed by the (220-page) February 2021 Probation Reform Programme.<sup>30</sup> The hard truth is that the document lacks ambition: expecting radical reform to flow from it strains credibility.

Objective 2 is just wishful thinking. For example, the Public Accounts Committee reported that despite promises to create 10,000 new-for-old prison places by 2020, "just 206 new places had been delivered, and prisoners continued to be held in unsafe, crowded conditions that did not meet their needs."<sup>31</sup>

Prison conditions and the scant resources devoted to rehabilitation make Objective 3 equally unrealistic.

Access to justice (Objective 4) should be primarily a matter for the judiciary and those who provide the judiciary's resources, yet MoJ confusingly involves itself in

<sup>28</sup> Reland, J., 'UK Citizens in the EU: what you need to know, UK in a Changing Europe, 2021: <https://ukandeu.ac.uk/explainers/uk-citizens-in-the-eu-what-you-need-to-know/#:~:text=The%20rights%20of%20UK%20citizens%20to%20live%2C%20work,and%20the%20national%20rules%20of%20EU%20member%20states>.

<sup>29</sup> Ministry of Justice, Annual report and Accounts 2020-21: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1041825/moj-annual-report-and-accounts-2020-21-accessible-version.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1041825/moj-annual-report-and-accounts-2020-21-accessible-version.pdf)

<sup>30</sup> HM Prison and Probation Service, 'The Target Operating Model for probation services in England and Wales: Probation Reform Programme', 2021: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1061047/MOJ7350\\_HMPPS\\_Probation\\_Reform\\_Programme\\_TOM\\_Accessible\\_English\\_LR.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061047/MOJ7350_HMPPS_Probation_Reform_Programme_TOM_Accessible_English_LR.pdf)

<sup>31</sup> House of Commons Library, 'The Prison Estate', 2021: <https://commonslibrary.parliament.uk/research-briefings/sn05646/>

the judiciary's pensions, recruitment and retention issues.<sup>32</sup> And there is little the MoJ can do about speeding access to justice because responsibility for the dismal delays is spread across several departments:

- The judiciary: “over the last 10 years a wholly inadequate number of Judges have been appointed. This problem was already apparent when I retired in 2015 and has only got worse.”<sup>33</sup> See above: new judges should be nominated by parliament not government and parliament should ensure the judiciary's share of the Consolidated Fund is adequate
- The MoJ: the courts' operating efficiency
- The Crown Prosecution Service (Advocate General's Department)
- 43 police forces<sup>34</sup>
- Barristers' and their juniors' availability

On Objective 5, responsibility for the courts should be transferred to the judiciary who may be able to figure out what a “transparent” court looks like.

Objective 6 is just nonsense.

The bottom line of all this is that the MoJ is trying to make work where none need exist. Apart from the prison transition team, agreeing sentencing guidelines and dealing with legislative matters, which might occupy 800 staff at most, the remaining staff will, if the recommendations above are implemented, be available for more gainful work elsewhere, i.e. 5,530 staff should be saved.

## RECOMMENDATIONS

- The roles of Lord Chancellor and Justice Secretary should be separated, with the former ceasing to be part of government, while remaining in the House of Lords and a member of parliamentary committees dealing with judicial matters, such as its share of the Consolidated Fund. To protect the independence of non-governmental recipients, the Consolidated Fund accounting function should be transferred from HM Treasury to a small team seconded from the National Audit Office reporting to the Lord Chancellor.
- The Lord Chief Justice's annual report and accounts to parliament should cover all aspects of the judiciary.
- New judges should be nominated by parliament not government and parliament should ensure the judiciary's share of the Consolidated Fund is adequate.
- The judicial elements within the MoJ, namely Judicial Office, the seven END-PBs and three of the Executive Agencies (the Criminal Injuries Compensation

<sup>32</sup> Ministry of Justice, Outcome Delivery Plan 2021-22: <https://www.gov.uk/government/publications/ministry-of-justice-outcome-delivery-plan/ministry-of-justice-outcome-delivery-plan-2021-22#a-executive-summary>

<sup>33</sup> Personal email from a retired senior judge.

<sup>34</sup> Home Office, 'Police workforce, England and Wales: 31st March 2021': <https://www.gov.uk/government/statistics/police-workforce-england-and-wales-31-march-2021/police-workforce-england-and-wales-31-march-2021>

Authority, HM Courts and Tribunals Service and the Legal Aid Agency) should transfer to the judiciary and thus 21,218 of the MoJ staff would cease being civil servants.

- By moving (over ten years) to the Scandinavian model, the vast majority of prisons could be closed and their prisoners could become trainees for their return to law-abiding society. Rehabilitation would take priority over punishment but the latter would remain in the form of removing liberty by means of electronic tagging.
- Trainees would be allocated to trainers in groups of about 12 so for a population of the current size 6,000 trainers plus 1,000 managers would be needed. That would be a headcount saving of 52,420 (or 59,420 civil servants since the training service would be staffed by public, not civil, servants).
- To emphasise that trainees are returning to *local* society, trainers should be managed by local government, not Whitehall, and integrated with adult social care.
- Transition should be managed in waves by a small transition team. The remaining traditional prisons should be prepared for the new vision with greater resources funded by the savings in shifting earlier cohorts to the new regime.
- The Office of the Public Guardian aims to digitise much, if not most, of its offering and this should make it profitable, i.e. privatisable. Failing that it should become a stand-alone not-for-profit corporation. Either way, the MoJ headcount should be reduced by 1,559 according to the February payroll figures.
- The Independent Monitoring Authority should be transferred to the Home Office, where it naturally belongs anyway, alongside other settler management units such as Windrush and successful asylum seekers.
- Without its two main roles, supporting the judiciary and managing the prisons and probate services, the 6,330 core staff should be reduced to 800. With its arm's length bodies also shrinking to zero, the MoJ will be too small to justify a seat at the Cabinet table. The residual MoJ 846 staff should rejoin the Home Office and the ministry cease to exist.
- Using recent payroll figures, on this basis the civil servant headcount would reduce by 87,781. Some 28,172 of the reduction, however, would simply be reclassification as public servants.