

Privatising Justice

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

Commissioned by:

Justice Forum

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.

Written and researched by:

Centre for Public Services

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.psir.org/justice

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Contents

	Page
Abbreviations	3
Executive Summary and Recommendations	5
Introduction	9
Part 1 Mapping PFI in Criminal Justice System	13
Part 2 The savings and efficiency myths of PFI	21
Part 3 Re-financing and PFI contract issues	33
Part 4 Impact on services and users	37
Part 5 The effect on jobs, terms and conditions	43
Part 6 Lack of equity and social justice	49
Part 7 Accountability, consultation and access to information	51
Part 8 Lack of innovation	55
Part 9 Joined up justice in the modernisation agenda	57
Part 10 Companies in the privatisation of the criminal justice system	59
Part 11 Alternatives to the Private Finance Initiative	61
Part 12 Future trends	63
Appendix 1: Mapping PFI in the criminal justice system	65
Appendix 2: Employment in the Criminal Justice System	68
References	inside back cover

Abbreviations

AMO	Association of Magistrates Officers
CCS	Courts Computer System
CRAMS	Case Recording and Management System
EDS	Electronic Data Services
FBC	Full Business Case
FM	Facilities Management
FPSL	Fazakerley Prison Services Ltd
HMP	Her Majesty's Prison
IT	Information Technology
ITN	Invitation to Negotiate
ICT	Information and Communications Technology
KPI	Key Performance Indicator
LCD	Lord Chancellor's Department
MCC	Magistrates Courts Committee
MPA	Metropolitan Police Authority
MPS	Metropolitan Police Service
NAO	National Audit Office
NPV	Net Present Value
OA	Office Automation
OBC	Outline Business Case
OJEC	Official Journal of the European Community
PFI	Private Finance Initiative
POA	Prison Officers Association
PPP	Public Private Partnership
PSC	Public Sector Comparator
SFO	Serious Fraud Office
SPV	Special Vehicle Company
STC	Secure Training Centre
TUPE	Transfer of Undertakings (protection of Employment) Regulations 1981
UKDS	UK Detention Services

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 and licencing 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.

Recommendations

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.

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

The project objectives

This project had four main objectives:

- to identify the scope and scale of PFI projects within the criminal justice system;
- to examine the implications of the increasing privatisation of the criminal justice system particularly for service delivery and users;
- to assess the potential growth of the private sector within the criminal justice system and to discuss the implications;
- to assess the impact of PFI projects on employment.

Methodology

The study researched and analysed PFI databases, contracting information, EC tendering databases, journals and project proposals to map the scope and scale of PFI by geography and function. The research included visits to three of the PFI case studies, meetings with the Justice Forum, and discussions with individual trade unions and branch representatives involved with PFI projects.

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, HMP 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.

Part 1 Mapping PFI in Criminal Justice System

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.

Home Office and Lord Chancellor's Department

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

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

Source: HM Treasury, Budget 2001.

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).

Table 1.2: Home Office PFI projects agreed since May 1997

	<i>Number of contracts</i>
Number of PFI contracts agreed in last five years	21
Number of PPP contracts agreed in last five years	1
Number satisfactorily completed	0
Number where compensation paid for performance failure	11
Number where compensation claimed for performance failure	12

Source: Hansard Written Answer, 19 July 2001.

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.

Courts

'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)

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.'

Spending Review 2000, April 2001 to March 2004,
LCD Departmental Investment Strategy

Court service PFI payments

The Court Service's annual accounts identify the minimum payments under non-cancellable PFI contracts during 2000-2001. The payments cover only three projects (CCS, ARAMIS and the Probate Records Centre), but indicate the level of ring-fenced payments, to which the LCD is committed – see Table 1.5. This illustrates the level of ring-fenced expenditure covering only three PFI projects, two of which are relatively short term information technology projects. PFI building projects financed over 25-35 years will result in a substantial increase in long term financial commitments by all sections of the criminal justice system.

Table 1.3: Signed PFI projects in the Courts Service (January 2002)

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

Source: LCD PFI database, July 2001.

Table 1.4: Expenditure involving Private Finance: Lord Chancellor's Department

	<i>Estimated Outturn 1998/99 (£m)</i>	<i>Estimated Outturn 1999/00 (£m)</i>	<i>Projections 2000/01 (£m)</i>
Estimated gross sponsored capital	78	58	88
Of which, capital spending (by private sector) on PFI Projects	16	15	50
Capital spending by public sector under conventional procurement	62	35	38
Net current payment by public sector under private finance contracts			
Of which, central government	20	28	39
local government	0	0	0

Source: Spending Review 2000, Lord Chancellor's Department.

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

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

Source: Court Service Annual Report, 2001

Police

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 1.6: Summary of Police PFI projects

<i>Police Authority</i>	<i>Capital Value of Project (£m)</i>
Custody Centres	
Cheshire	16
Cleveland	14
Sussex	40
Headquarters	
Cheshire	10
Derbyshire	16
Dorset	15
Thames Valley	16
Police Stations	
Cumbria	9
Greater Manchester	38
Kent	20
Metropolitan Police	30
Other	
Cleveland firearms training	10
Metropolitan Police firearms	30
Nottingham traffic	40
Strathclyde training centre	28
Wiltshire air support	6
Total	338

A Metropolitan Police Authority (MPA) PFI project providing new police stations in Bromley and Lewisham, and sector bases at Deptford and Brockley, includes the provision of a wide range of police support staff such as custody and suspect processing staff, station reception officers, and selected support services including typists, tape summarisers, prisoners property store and the storage of uniforms and special equipment.

Prisons

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)

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

** Capital cost only*

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

Medway	1998	Group 4	40	48
Hassockfield	1999	PPS	40	48
Rainsbrook	1999	Group 4	40	44
Total			120	140

Notes to Tables 1.7 and 1.8

- NPV= Net Present value (Hansard 15 November 2000) and Prison Service Press Releases 5 November 2001 and 10 December 2001.
- Group 4 won the recent retendering exercise for HMP Wolds. It now has a £45m, 10 year contract.
- From 1992, UK Detention Services Ltd held a contract to operate HMP Blakenhurst. The company lost its contract after a market testing exercise in 2000. Since August 2001 the prison has been run by the Prison Service.
- The contract for Doncaster was retendered in 1999 and Premier Prison Services won a further ten year contract.
- Group 4 opened HMP Buckley Hall in 1994. It lost the contract after retendering in 1999. The prison has been run by the Prison Service since June 2000.
- Premier Prison Services is a joint venture between Wackenhut Corrections Corporation (USA) and Serco plc. Premier companies and their subsidiaries now form the Premier Custodial Group Ltd.
- UK Detention Services Ltd is now 100% owned by Sodexho SA of France.
- In 2000 the private sector also bid against the Prison Service for a contract to run HMP Manchester. In January 2001 it was announced that the Prison Service had retained its contract.
- The prison population in England and Wales was 68,302 in November 2001, an increase of over 4,000 in the previous twelve months alone. The Prison Service forecasts a population of up to 83,500 by 2008. Scotland has some 6,000 prisoners.
- As at 31 March 2001 there were 137 prison establishments in England and Wales.
- This list excludes contracts for immigration detention centres, court and police complexes and services such as electronic monitoring and prisoner escort services.
- The Scottish Executive is considering a further two private prisons.

Background to PFI prisons under New Labour

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.

Other Home Office PFI 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

bidder (usually with another bidder in reserve). Detailed negotiations then take place behind closed doors between the PFI consortia and the client, each with teams of consultants and advisers. This process usually takes between 6 – 18 months. Once negotiations are completed a decision is made to award a contract. At this stage, a Full Business Case (FBC) should be prepared, updating the OBC, using the final negotiated figures.

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/Enterprise 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 “PPPs 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 HMPs 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 frailty 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."*

(Cheshire 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).

- annual savings from the co-location of the Administration of Justice Branch Offices of £100,000 per annum (at 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 about 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 bringing 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 2.1: Cost increases in PFI information technology contracts

Contract	Original cost at contract signing (£m)	Current estimated total cost (£m)	Increase (£m)	Percentage increase %
ARAMIS (CSL)	130	180	50	38
LIBRA (ICL)*	183	**319	136	74
CCS (EDS)	25	***107	82	328
Total	338	606	268	79

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

Project	Capital Cost (£m)	PFI Credits (£m)	Difference (£m)
Dorset Police Divisional Headquarters	15.0	24.2	+9.2
Cleveland Custody Centre	13.5	22.7	+9.2
Cheshire Police Authority Headquarters	25.0	38.1	+13.1
Sussex Custody	15.0	34.0	+19.0
Total	68.5	121.0 +	50.5

Source: OBC for Rationalised Custody Facility, Cleveland Police Authority, February 2001: The Dorset Police Authority (Western Division) PFI Project, 4Ps, London 2001.

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

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

Source: Hansard Written Answer, 23 March 2001.

* 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

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

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 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.

Part 3

Re-financing and PFI contract issues

This section examines the re-financing, specifications and monitoring of PFI contracts in the criminal justice system.

Re-negotiating 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.

Re-financing: Once a building has been completed on time, within budget, and is operating satisfactorily, most of the so-called 'risk' of the project has been substantially reduced or eliminated. Because the risk has been reduced financial institutions are usually willing to refinance the project at lower interest rates. This represents a windfall to the PFI consortia, who negotiated and signed a contract based on higher interest rates. Re-financing means that the PFI consortia may increase their profits, because the amount paid by the public sector client remains exactly the same as agreed in the contract.

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).

Re-financing Altcourse Prison

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 refinance 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 3.1: PFI re-financing deals in criminal justice system

<i>Department</i>	<i>No of PFI contracts</i>	<i>Aggregate capital value of PFI contracts £m</i>	<i>No of PFI refinanced</i>	<i>PFI contracts with clawback to share in re-financing</i>	
			<i>No</i>	<i>Capital value</i>	
Home Office (incl Prison Service)	15	986	2	–	–
Lord Chancellor's Department	6	1,835	0	3	108
Scotland	2	n/a	0	n/a	n/a

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.

Part 4 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.

The Chief Inspector of Prisons for England and Wales described Altcourse as the English Prison Service's *"jewel in the crown"* and the *"best local prison ... inspected in my time"*. (HM Prison Altcourse, Report of a Full Inspection 1-10 November 1999, Home Office, April 2000)

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 4.1: ARAMIS financial deductions for poor performance

<i>Financial Year</i>	<i>Total Deductions (£)</i>
1998-99	33,600
1999-00	113,250
2000-01 (to 13.06.01)	1,400
Total	148,250

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 a single PC with a 'emulation' system but staff found that this 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 to 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.

National Probation Service – CRAMS

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-Integrus 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.

Part 5 The effect on jobs, terms and conditions

Examples of employment impact of PFI

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 17.6GHz 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/telephonist 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

redundancy package.

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 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.

Prison Service (England and Wales) employment

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

Type of employment	No of FTE jobs
Administration	5,705
Industrial	2,826
Prison officers	31,127
Specialist	4,187
Total	43,845

Source: Prison Service Annual Report 2001

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

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

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

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. TPremier 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).

Group 4's Court Services Ltd (which runs prisoner escort services) had an average of 1,821 employees as at 31 Dec 1999 (1,643 in 1998).

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.

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.

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

Pay	Prison Service Average Basic Pay	Privately Managed Prison Average Basic Pay	% Difference
P. Officer/P. Custody Officer	£21,450	£14,500	-32.4
Senior Officer/Supervisor	24,536	18,500	-24.6
Operational Support	13,400	12,500	-6.7
Operational Manager	27,935	28,500	+2.0
Function Head	35,685	38,500	+7.9
Director/Governor	51,465	64,000	+24.4
Pension			
Employee Pension Contrib	1.5%	4.5%	
Employer Contribution rates	12-15%	4.0%	
Overall value of pension			(P.Officers) +13.5 (Oper.Support) +10.5
Holidays*			
<i>Starting rate</i>			
Supervisor and below	22 days	20-22 days	+4.5
Manager	30 days	20-23 days	+28.3
Function Head/Director	30 days	23-25 days	+20.0
<i>Maximum rate</i>			
Supervisor and below	30 days	23-27 days	+16.7
Manager	30 days	23-27 days	+16.7
Function Head/Director	30 days	23-27 days	+16.7

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.

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.

- 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 Sodexo, 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.

Accountability, consultation and access to information

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 flexibility

- 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.

Part 8 Lack of innovation

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.

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.

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 in 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 refiled 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

- 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.

Joined up justice and the modernisation agenda

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.

The Metropolitan Police Authority's South East London accommodation PFI project for new operational buildings in Bromley, Lewisham and Sutton is an example. It has taken over five years to get to the point of signing a PFI contract.

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

Negotiations between MPA and Equion continue.

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).

Part 10 Companies in the privatisation of the criminal justice system

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 contracted 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 Sodexo owns UK Detention Services Ltd (UKDS) which, until recently managed Blakenhurst prison and now operates HMP Forest Bank. Sodexo 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. Sodexo is also part of the Enterprise Civic Buildings consortium which was recently chosen as preferred bidder for the Exeter Combined Courts PFI contract. Sodexo 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.

Alternatives to the Private Finance Initiative

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.

Part 12

Future trends

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

local government which cover ICT, financial, human resource and other services could ultimately impact on core court services.

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 there is also likely to be a stark division between a PFI dominated criminal justice system in England and Wales, in contrast to a rather more fragmented pattern of PFI projects in the Scottish criminal justice system.

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

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.

Appendix 1

Mapping PFI projects in the criminal justice system

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

Storage of Probate Records (grants of probate) and the production of copies on request. Contract signed 28 July 1999. Advisers: PricewaterhouseCoopers (lead/financial), Denton Hall (legal). Capital Value: £11m. Contractor: Hays Information Management

■ Humberside Magistrates' Courts

Provision of serviced courthouses at Hull, Beverley and Bridlington. Contract signed 29 March 2000. Capital value: £22m. Advisers: PricewaterhouseCoopers (lead/financial), Nabarro Nathanson (legal) and Servus (technical). Contractor: John Mowlem Co Plc

■ Manchester Magistrates' Court

Provision of a new courthouse. Contract signed 30 March 2001 Capital value: £26m. Advisers: PricewaterhouseCoopers (lead/financial), Denton Wilde Sapte (legal) and Rainey Petrie Johns Ltd (technical). Contractor: Group 4/Carillion Societe General New courthouse to be operational early in 2004.

■ West Mercia Magistrates' Courts

New and/or refurbished serviced courthouses in Kidderminster, Hereford, Worcester and Redditch. Contract signed 28 February 2000. Capital value: £21m. Advisers: PricewaterhouseCoopers (lead/financial), Denton Hall (legal) and Rainey Petrie Design (technical). Contractor: The Law Courts Partnership: Babcock and Brown Properties Ltd (HGB Kyle Stewart, Rentokil Initial) no claw back entitlement to share savings arising from re-financing.

- 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

New courts and serviced accommodation in Cambridge and Ipswich. Preferred bidder: Modern Courts. Advisers: PricewaterhouseCoopers (lead/financial), Denton Hall (legal). Capital Value: £15m.

■ Exeter Combined Courts Service

Serviced accommodation for Crown & County Courts, Probate. Preferred Bidder: Enterprise Civic Buildings – a consortium comprising Alfred McAlpine, Sodexo and Charterhouse. Capital value: £16.75m. Advisers: PricewaterhouseCoopers (lead/financial), Mouchel (technical), Michelmores (legal).

■ 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

Serviced courthouse accommodation in Liverpool, Wirral and Knowsley. Capital value: £26 million. Contractor: Group 4 Carillion Societe General. Advisers: PCW (lead/financial), Denton Wilde Sapte (legal), and Rainey Petrie Johns Ltd (technical).

■ 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); Wragge & 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**

Serviced courthouse accommodation in Bolton and Salford. Status: Planning. Advisers: PricewaterhouseCoopers (lead & financial), Rainey Petrie Johns (technical) and Nabarro Nathanson (legal).

■ **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**

Serviced courthouse accommodation in Gloucester and Cheltenham. Status: Planning. Advisers: KPMG (lead and financial), Citex Bucknall Austin (technical) and Wragge & Co (legal). Capital value: £6.5 million

■ **Cheshire Magistrates' Courts**

Serviced courthouse accommodation in Macclesfield. Status: Planning.

■ **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**

Serviced courthouse accommodation in Gwent. Status: Planning. Advisers: KPMG (financial)

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**

Relocation of HQ and force training centre to a central site. Capital value: £8-10m: Status: Approved pathfinder. Advisers: PricewaterhouseCoopers (financial), Dibb Lupton Alsop (legal), Povall Flood & Wilson (technical).

■ **Cheshire Police Authority**

Rationalisation of the county's custody facilities from 12 to three centres. Capital value: £16m. Status: early stages. Adviser: Grant Thornton (financial).

■ **Cleveland Police Authority:**

DBFO of a central custody facility incorporating associated operational facilities and rationalisation of the remaining custody delivery. Status: advertised 17 May 2001.

■ **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**

Police Authority Divisional HQ Derby. Capital value: £16m. Contractor: Derby SPV Ltd (HBG Construction Midlands Ltd, HBG (FM) Ltd, Bank of Scotland).

■ **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

facilities, identification suite, forensic and other support services. Capital value: £15-20 million. Advisers: Grant Thornton (financial), Nabarro Nathanson (legal). Three bidders shortlisted.

■ **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**

West Dorset Divisional Police HQ. Capital value £15m. Contractor: WS Atkins..

Scotland

■ **Strathclyde Police Force Training Centre**

New training centre centralising in-force training on one site, firearms range and conference facilities: Capital value £27.5m. Contractor: Babcock & Brown Properties with Balfour Beatty and Rentokil Initial. Financing: Hypo Und Vereinsbank. Advisers: PricewaterhouseCoopers (financial), Burness (legal).

National

■ **Public Safety Radio Communications Project – BT Airwave**

£2.5bn.

Appendix 2

Employment in the criminal justice system

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

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

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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