Treasury Minutes on the Sixth to the Ninth and the Twelfth Reports from the Committee of Public Accounts Session 2009-10

Presented to Parliament by the Exchequer Secretary to the Treasury by Command of Her Majesty
March 2010

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6th Report	BIS:	Train to Gain: developing the skills of the workforce
7th Report	DH:	Young peoples sexual health: the National Chlamydia Screening programme
8th Report	DFID:	Aid to Malawi
9th Report	MOJ:	The procurement of legal aid in England and Wales by the Legal Services Commission
12th Report	HMT:	Maintaining financial stability across the United Kingdom's banking system

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TREASURY MINUTES DATED 25 MARCH ON THE SIXTH TO THE NINTH AND THE TWELFTH REPORTS FROM THE COMMITTEE OF PUBLIC ACCOUNTS SESSION 2009-10

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Sixth Report

Department for Business, Innovation and Skills (BIS)

Train to Gain: developing the skills of the workforce

1. Train to Gain has delivered a substantial expansion of training that is flexible and meets employers' needs. By July 2009, people had achieved 1.4 million qualifications and around 200,000 employers had staff involved in training through the programme. Most learners have benefited and some employers have seen business benefits.

2. However, the Committee found that there have been serious weaknesses in the way the programme has been managed by the Learning and Skills Council (LSC), an executive Non-Departmental Public Body of the Department for Business, Innovation and Skills (the Department). Under-spend in the first two years, resulted in the programme failing to sufficiently expand demand for, and supply of, training. Over-ambitious targets were set. In year three, eligibility for training was widened which, together with the recession, increased the attractiveness of the programme for employers. At the same time training providers were still being pressed to increase training activity. These factors led to a swing from under-spend to overspend, resulting in the current position where too much training is in the pipeline and employers with new requirements are being turned away.

3. The Committee considered that three common failings in public sector programmes are responsible for this situation:

- initially high targets that was not based on evidence of what is achievable;
- action to address under-performance that takes insufficient account of trends in demand and capacity and economic factors, such as recession, and
- poor, untimely management information, making it difficult to identify and respond to problems quickly.

4. The Committee considered that for Train to Gain, the priority is to bring expenditure under control while minimising damage to training providers and the demand for training. The Department and the LSC should focus expenditure on training with the most benefits, in sectors with the highest needs, and with providers who provide good quality training. The Skills Funding Agency, which is to take over the LSC's responsibility for Train to Gain in April 2010, should address these issues in the future running of Train to Gain and in their management of other demand-led training programmes, such as Skills Accounts.

5. On the basis of a report from the Comptroller and Auditor General, the Committee examined the Department and the LSC on how Train to Gain could be better managed by focusing on the areas where it has been most effective, looking at the demand and spending of the programme; how the Department and the LSC can increase the effectiveness of training; and how the programme's efficiency can be improved.

PAC Conclusion (1): Train to Gain has supported more than 1.4 million learners, but mistakes in its management have compromised the value for money of the programme. Train to Gain has given impetus to training providers to substantially improve access to workplace training that meets employers' and employees' needs. Its innovative character cannot, however, excuse weaknesses in the management of the programme. Rather it demands strong and effective management from the outset. The Committee does not expect perfection, but concluded that the Department and the Learning and Skills Council had not managed the programme to a standard that could reasonably have been expected.

6. The Department partially agrees with the Committee's conclusion regarding the management of the programme. The Learning and Skills Council (LSC) recognises that in hindsight a different management solution might have been better. The LSC management through regional structures allowed it to be very responsive to local needs and therefore effective at stimulating demand, which was the initial challenge. However, regional management was less suited to rationing on a national scale and the structure and processes were quickly changed when the demand for Train to Gain exceeded funding over a short period.

7. This was a management reaction to a rapid market change that was hard to predict in advance. The LSC has learnt from this and the new Skills Funding Agency has a different and centralised management control regime while still keeping the demand led element.

8. The scheme does demonstrate good value for money. Independent evaluation shows that Train to Gain is providing real business benefits for employers. Train to Gain learners, value above all, getting qualifications, which are transferable and nationally recognised. Train to Gain is not just paying for training that would have happened anyway, but is providing training that employers would not have done, and it has reached out to employers, who do not normally train. The level of participation, and the achievement gained, demonstrates the responsiveness of the provider base and willingness for employers to participate. The actual cost of delivery was as planned and compared with other modes of publicly funded learning, demonstrates good value for money.

9. By July 2009, Train to Gain had enabled people to undertake more than 1.4 million qualifications. By October 2009, this had increased to 1.54 million qualifications and demand continues to exceed supply. For the 2008-09 academic year, success rates have increased to 73.4%. It has demonstrated real business benefits. 66% of employers reported improved long-term competitiveness and 61% an increase in productivity. The programme has been instrumental in focusing support on those who need it most. 75% of employers engaged by skills brokers are hard to reach compared to a target of 51%. From a learner perspective, of those that had completed a course, 34% gained promotion and 34% received a pay rise. The social benefits are also important. 91% of learners felt they had gained skills that would look good to future employers and 86% felt more confident in their ability to learn.

10. Any overall conclusion about value for money of the Train to Gain programme must take into account the long-term benefits of training to the UK economy. 5% of the current workforce has been associated with the Train to Gain programme. Based on external advice from the Institute of Fiscal Studies, a one percentage point increase in the proportion of employees trained is associated with an increase in productivity of 0.6%, worth around £6 billion to the UK economy. The value of boosting skill levels to the economy and to individuals by improving their employment rate was stressed throughout *Skills for Growth*[1].

PAC Conclusion (2): Extensive pilots showed that rapid growth would be challenging, but the Department set unrealistically high targets for the first two years. Even though the pilots indicated it would be difficult to expand the programme quickly, the Department's targets for the first two years overestimated demand from employers and the capacity of training providers to meet demand. Before it implements future programmes, the Department should require evidence that targets are based on a proper analysis of pilot work, especially where the intention is to create new demand.

11. The Department does not agree with the Committee's conclusion that the targets for the first two years were unrealistic. The fact that demand for TTG support is now running ahead of the programme's capacity to supply demonstrates that the targets were not unrealistic. Train to Gain has given impetus to training organisations to substantially improve access to workplace training that meets employers' and employees' needs. This is in line with the principles of the Leitch Review of Skills[2] that concluded that by delivering training in the workplace, training would be more responsive to employers' needs.

1 Skills for Growth: The National skills Strategy (November 2009)

2 Leitch Review of Skills: Prosperity for all in the Global economy-world class skills (December 2006)

12. The targets were stretching. However, Train to Gain was designed to work in a very different way from traditional college based provision. It was important to signal from the outset the level of commitment and funding being invested by the Department in order to send strong signals to the sector to bring about a cultural change to respond to the skills needs of employers.

13. Lessons were learnt from the *Employer Training Pilot* evaluation. However, the pilots were limited. Any future demand led scheme will be able to build on the experience gained through implementing Train to Gain. Train to Gain was breaking new ground. Therefore, it was very difficult to predict take up. The Department is now in a much better place to be able to forecast future demand.

PAC Conclusion (3): By year three the programme was starting to take off and extensions to eligibility, combined with the effects of the recession, created more demand for Train to Gain than could be afforded. Having encouraged providers to expand rapidly, it was too late to avoid overspending in 2008-09, and the LSC was forced to slam on the brakes for the current year. Many providers have to run down the capacity they built up, thereby jeopardising their capability to participate in Train to Gain. The Department should require the LSC and the new Skills Funding Agency to develop effective systems and practices for managing demand, and to avoid entering into open-ended commitments with providers.

14. The Department accepts the Committee's recommendation that the LSC and the new Skills Funding Agency must have effective systems and practices for managing demand in changed economic circumstances. These have been devised and implemented. Demand for the programme exceeded supply rather suddenly, in part due to the recession, in part due to increased policy flexibilities designed to increase demand, and also to respond to the recession. The LSC effectively managed the unexpected demand to ensure the overall budget was not overspent through reprioritising marketing and capacity building budgets to fund more starts and by taking steps to compensate for a structure, where decisions were made regionally.

PAC Conclusion (4): Sub-contracted providers have had the least attention from the LSC, though there is greater risk of fraud. The LSC relies on training providers it contracts with directly to manage the risk of fraud in their sub-contractors and it is unacceptable that until recently the LSC had no information on the identity of the sub-contractors. The LSC should strengthen its oversight of sub-contracting by improving its information on sub-contractors and monitoring how prime contractors are managing the risks of fraud.

15. The Department accepts the Committee's recommendation and measures will be put in place to maintain a register of sub-contractors. The LSC will be imposing Minimum Levels of Performance (MLP) standards this year to Train to Gain suppliers as planned. While any fraud loss is unacceptable, the incidence of losses to fraud is very small in relation to the size of the programme, although it is accepted that sub-contractors represent a higher risk.

16. As is common practice across Government, the LSC's approach to sub contracting was to put the onus on the lead contractor to manage quality. Responsibilities of lead contractors are clearly laid out in contract terms and conditions as well as in LSC funding compliance documents. The LSC have successfully monitored this process through regular audits of learner files including those of sub-contractors.

PAC Conclusion (5): Too many providers have been achieving low success rates for their learners. In 2006-07, 26 of the largest 100 providers achieved less than 65% success. Now that capacity is well established, the LSC should begin removing providers with low success rates from the programme except where they can demonstrate clear capacity to improve and have an action plan in place.

17. The Department accepts the Committee's recommendation. In order to allow a reasonable time for colleges and training organisations to develop and refine approaches to this new programme, it was not intended that the normal performance standard – MLP – would be applied to Train to Gain until the 2010-11 academic year. However, the vast majority of colleges and training organisations already achieve more than the MLP of 65%. In the future, where provision falls below the minimum standard, funding will be withdrawn. Where all provision is below the threshold, contracts will be withdrawn altogether from a college or training organisation.

PAC Conclusion (6): There is scope to increase further the benefits that Train to Gain has delivered for employers and learners. Most learners have benefited from training and some employers have seen business benefits. The LSC has considerable, valuable information on success rates and the employer and learner-evaluated benefits of specific courses and qualifications. It should use this information to focus Train to Gain on training that adds the most value.

18. The Department agrees with the Committee's conclusion that there is scope for the LSC to use the information it has on success rates, and employer/learner evaluated benefits to increase the benefits further. As successive evaluation surveys have shown, Train to Gain delivers important benefits for both employers and learners and a great majority of participants have given positive ratings for the programme. The LSC is progressively introducing performance management thresholds, which will continue to drive up success rates in the programme. This is a strong platform, from which the Department is committed, to keep improving the programme.

PAC Conclusion (7): Around half of employers whose employees received training say they would have arranged similar training without public subsidy. As a priority, the Department and the LSC should identify how they will maximise the extent to which the programme creates additional training, including by reinforcing the focus on employers who provide little or no training of their staff.

19. The Department partly accepts the Committee's recommendation. Although approximately 50% of employers say that they would have arranged similar training without public subsidy, that does not demonstrate that they would in practice have arranged training of similar quality for the same range of participants leading to the same valuable, nationally recognised qualifications. In all those ways, Train to Gain can secure additional public funds – even in employers, who are already committed to training.

20. There was very little basic skills or level 2 activity in the work place before Train to Gain started. The programme has had a powerful impact in promoting expansion of work-based training for people, who in the past were often excluded from training. It is now important to ensure that employers invest and state funding is directed to those who require it the most. 75% of employers engaged by skills brokers are hard to reach in terms of their engagement with training, compared with a target of 51%, demonstrating the programme's success in reaching out to employers who would not otherwise train.

PAC Conclusion (8): Skills brokers have provided useful business advice to employers but recruited fewer learners than expected. Though brokers have helped the focus on employers who do not generally train their staff, they are not recruiting enough learners to justify their cost of £112 million by March 2009. Now that demand for training is high and the LSC has had to scale back activity, the Department should reduce the size and scope of the brokerage service or refocus its activities.

21. The Government accepts the Committee's recommendation that the skills brokerage service needs to be refocused and can confirm that work has begun on this. This will move away from a focus on driving up demand and consolidate the progress made when skills brokerage was integrated into Business Link in April 2009.

PAC Conclusion (9): At precisely the same time as the Committee's hearing on Train to Gain, the Government was announcing a new national Skills Strategy in the House of Commons. This unfortunate timing was a discourtesy to the Committee, giving members no time to consider possible questions to the witnesses about changes in the strategy that would have an impact on Train to Gain. The Government should make strenuous efforts to avoid making announcements of such direct relevance at the time of a Select Committee hearing. It should seek to make such announcements at least several days, and normally no less than a week, before the relevant hearing.

22. The Government's decision to publish the national *Skills Strategy* together with other key documents including *Higher Ambitions*[3] and the *Skills Investment Strategy*[4] at a point that coincided with the Committee's hearing was to ensure that strategies were available before prorogation, and no discourtesy was intended. The Government acknowledges the Committee's concern and the need to avoid a recurrence.

3 Higher Ambitions: the future of universities in a knowledge economy (November 2009)

4 Skills Investment Strategy 2010-11 (November 2009)

Seventh Report

Department of Health (DH)

Young people's sexual health: the National Chlamydia Screening Programme

1. Chlamydia is the most commonly diagnosed bacterial sexually transmitted infection and the prevalence of this infection is increasing, especially in young people under the age of 25. The infection is often symptomless, but if left untreated can lead to serious health problems including infertility in women. In 2003, the Department of Health (the Department) launched the National Chlamydia Screening Programme (the Programme), which is overseen by the Health Protection Agency (the Agency) and delivered locally by the 152 Primary Care Trusts (PCTs) in England. The Programme aims to identify, treat and control the infection in young people aged under 25.

2. Since the Programme's launch an estimated £100 million has been spent, however the Department does not yet know what effect this has had on reducing the prevalence of the infection. During the financial year 2007-08, five years after the Programme was launched, only 5% of 15 to 24 year-olds were tested, against a target of 15%. The Department introduced a new requirement for PCTs to test 17% of their 15-24 year-old population, which drove the testing rate up to around 16% in 2008-09. The Programme has not yet reached the level of activity where models predict that the prevalence of chlamydia will be significantly reduced. As a result, more young people than necessary are still being infected and potential savings to the NHS in treating the consequences of chlamydia infection have been lost.

3. The Department missed an opportunity to refine the Programme and to improve its cost-effectiveness, during the lengthy rollout. The Department needs to make this Programme a national response to a national problem. The Department should identify the most cost-effective local delivery strategies, establish regional or national commissioning arrangements, increase testing numbers and measure the Programme's impact on the prevalence of chlamydia. By improving efficiency, economies estimated at £40 million per year could be made by 2010-11.

4. On the basis of a report from the Comptroller and Auditor General, the Committee examined the Department and the Agency about the delivery of the Programme, improving the efficiency of services and the Department's approach to managing a national initiative in a devolved National Health Service.

PAC Conclusion (1): The costs of testing vary significantly between PCTs. The Health Protection Agency should, by April 2010, complete its costing review and publish its results. The Department should require PCTs to review their costs against the findings of the review and report the results to Strategic Health Authorities by July 2010. Where costs are significantly higher than the Agency's estimate of an appropriate achievable cost per test, Strategic Health Authorities should seek explanation from the individual PCT and require a cost improvement plan to be implemented within twelve months.

5. The Department agrees with the recommendation to publish the Agency's costing review. *Guidance for commissioners on the cost of providing chlamydia screening in primary care and the community: a review of costs in practice in England in 2009* was published in January 2010. This guidance will help commissioners to plan budget allocations and agree fair local pricing with providers.

6. The average cost per chlamydia screening episode (including follow up of positive clients, local programme coordination and overheads) was found to be £45. This average cost was across several different funding streams (block contracts with sexual and reproductive health services, General Practice and pharmacy Local Enhanced Service (LES) agreements, laboratory contracts, Chlamydia Screening Offices (CSO) support, and third sector provider contracts). The Agency estimates that a cost of £33 per screening episode should be achievable as screening volumes increase, chlamydia screening is better integrated in all community sexual health patient pathways, sexual health provider networks develop, and regions move to collaborative procurement.

7. A framework for the ongoing economic evaluation of the programme is now in place and further work is required to confirm and refine the cost estimates already mentioned. While PCTs will be encouraged to monitor both their costs per testing episode and their costs per infection detected, the Department does not agree with the recommendation that it should be required to do this. The cost of chlamydia screening forms part of overall PCT expenditure and to follow this recommendation would require a disproportionate level of scrutiny and monitoring. The Department does not agree that this would be the best use of resources. However, PCTs now have access to The Department is aware that some Special Health Authorities are already taking this recommendation forward with their PCTs.

PAC Conclusion (2): PCTs' localised procurement and commissioning of the equipment and services needed to run Chlamydia testing programmes is inefficient. As a matter of priority the Department should:

(a) establish, as soon as practical, national or regional arrangements for the procurement of testing kits, patient record forms, laboratory processing of samples and other standardised, high volume goods and services;

(b) evaluate the case for a national website from which young people can request testing services, with a national brand identity;

(c) review the number of separate Chlamydia Screening Offices currently in place (91 for 152 PCTs), with the aim of cutting the administrative costs of the Programme; and

(d) require the Agency to complete its plans for a model contract for chlamydia screening in GP practices and pharmacies, and provide PCTs with guidance, including indicative payment rates, by April 2010.

8. The Department agrees with all elements of this recommendation. The Department also agrees that there is further scope for collaborative commissioning arrangements within the programme and this was a key finding regarding reducing costs from the Agency's Costing Review. The Agency's estimate that a cost of £33 per test is achievable is partly dependent on the development of regional collaborative procurement.

9. Following the publication of *Necessity – Not Nicety*, in May 2009, the NHS is setting up across the country Commercial Support Units (CSUs) to provide commercial support and advice to NHS organisations. The NHS will be set up at a regional SHA level and will be required to provide services from 1 April 2010. However, some CSUs have already begun to operate.

10. CSUs can provide collaborative procurement support and advice to Commissioners for the Programme at the regional level. CSUs will have the expertise to ensure the service and equipment being procured across the region is consistent, therefore leading to better patient outcomes and value for money. By combining the purchasing arrangements at a regional level, the NHS is able to secure cost benefits and achieve economies of scale. CSUs are also better able to coordinate, at a regional level, other services such as joint marketing programmes and IT support. The Department is already seeing some examples of collaborative commissioning across the country from which lessons can be learnt.

11. The current Programme website[5] provides information on the location of local chlamydia screening services. Searches can be undertaken using postcode or by clicking on the region in which the young person lives or wishes to be tested. This link will take the individual to their local on-line test request ordering service, which is available in most PCTs. The Department and the Agency are committed to investigating the feasibility of a single national point for requesting an actual test kit by post. This work will consider the possible impact such a service may have on the drive to embed chlamydia screening in core health services, its accessibility and acceptability and the feasibility of funding arrangements for such a service. It will also consider links to other elements of sexual health care such as contraceptive advice and provision and health promotion.

5 www.chlamydiascreening.nhs.uk

12. The Department has always recognised that there are economies of scale from PCTs working together to commission local programmes and this point has been made in all relevant communications to the NHS. However, the objective of the proposed review will be more far-reaching and will aim to review the actual function and structure of the CSO. It will aim to identify functions, which may be able to be undertaken regionally or by sub-regional collaboration thus reducing duplicated administrative costs in every CSO/PCT. Coordination and strong leadership will be necessary at regional level to manage procurement and the integration of chlamydia screening with other sexual health functions. The Department plans to start piloting this work with at least two regions over the coming year.

13. The Agency is producing guidance on the development of specifications for the commissioning of chlamydia screening in General Practice and Community Pharmacy. This guidance will be published by April 2010.

14. Primary care commissioning decisions outside of the national contractual arrangements are for PCTs to make, in consultation with providers. PCTs already have support for improving their commissioning decisions through the World Class Commissioning Programme. Publishing information about cost-effective ways to provide screening programmes will further assist PCTs in obtaining the best value for local decisions. The costing guidance produced by the Agency includes costings, which PCTs can then use to inform local discussions with contractors on the contract price.

PAC Conclusion (3): The Department does not have a mechanism in place to measure the Programme's impact on the level of infection. The Department should develop a business plan with a clear timeframe for measuring the Programme's impact on chlamydia and related health complications. This should specify a trajectory for the reduction in chlamydia prevalence, which the Department expects the Programme to deliver.

15. The Department accepts this recommendation. The Department and the Agency have already begun work to agree a comprehensive monitoring and evaluation framework for the Programme, building on the existing framework. The framework will contain clear primary and secondary objectives, a timescale for implementation and a set of agreed outputs.

16. The Agency will begin the implementation of a population-based prevalence survey at selected 'sentinel' sites throughout England in 2010-11 (and report progress in mid 2011). At a local level, programme monitoring will use a composite indicator, combining coverage, test positivity and partner notification rates that have been correlated with an expected impact on prevalence. Mathematical modelling is being used to suggest a plausible fall in chlamydia prevalence that might be expected given current knowledge, available data, and likely programme coverage, which is due to report mid 2010.

17. The Agency will continue to monitor changes in rates of chlamydia related complications. In particular, age-specific frequency of pelvic inflammatory disease diagnoses at a sample of primary care sites and of ectopic pregnancies in hospital care. The potential of available data sources to monitor chlamydia-related complications in newborn infants and of data-linkage studies to estimate the proportion of specific diseases attributable to chlamydia is also being investigated. This is due to report late 2010.

18. Over the next few years a substantial improvement in the monitoring of chlamydia testing coverage is expected. This will include the introduction of a structured chlamydia testing and diagnosis data set to be reported to the Agency by laboratories from 2011. This will provide more complete data on activity for all age groups and testing sites. Meanwhile, from May 2010, data from three sources will be collated to give a complete picture of chlamydia testing. These are: the new reporting system from GUM clinics (GUMCAD), the Programme reporting system, and aggregated data from laboratories on all testing done outside GUM clinics and the Programme.

PAC Conclusion (4): Although the Programme instructs health professionals to advise young people on safer sex when they are tested for chlamydia, not all of those tested say they are receiving such advice. The Agency should provide renewed guidance to all those delivering testing to remind them of the importance of providing advice alongside testing.

19. The Department agrees with this recommendation. The Agency will ensure that any documentation it produces to both health professionals and young people is explicit about the crucial role of advice about safer sex and preventing acquisition, re-infection or transmission of infection. Repeated infection is thought likely to increase the risk of developing reproductive health complications. Therefore, it is imperative that all young people, including those infected, are encouraged to protect themselves from future infection.

20. The Agency has consistently emphasised engagement of core services through the different guidance produced, at national and regional workshops, and through the on-going regional support from the team of regional facilitators. As a result, the proportion of tests undertaken in core services is increasing, so that more young people will be in contact with a health care professional, who is able to reinforce the safe sex message.

21. The Agency is also currently working on a revised *Patient Information Leaflet* that will reinforce the safer sex message and will be available in April 2010. Individual contact with a healthcare professional is not possible with postal testing, so a copy of the new leaflet will be sent out with each postal testing pack.

22. In addition, the national sexual health campaign *Sex. Worth talking about* is underway including a strand on chlamydia testing, which encourages young people to accept a test when offered. This is reinforcing the safer sex message by highlighting the need to use condoms in the TV, radio and print advertising. The campaign is also embracing the opportunities offered by social media, for example: *Facebook*. This work has been described by a commentator as a "successful viral campaign: a campaign that has grown on the digital equivalent of word-of-mouth" and has achieved over 42,000 fans in the first two weeks.

PAC Conclusion (5): During the five years that the Programme was rolled out, the Department did not exploit opportunities to learn lessons, particularly around how costs might be reduced. The introduction of the Vital Signs target in 2008 required a step-change in PCTs' activities, which magnified existing inefficiencies. For key forthcoming strategies, such as that for autism, the Department should demonstrate that it has learned lessons from the chlamydia programme by:

(a) establishing regional and national structures where appropriate, to support the most efficient commissioning arrangements, and

(b) setting out how it intends to evaluate the cost effectiveness of these new strategies, with defined milestones and success criteria.

23. The Department agrees this recommendation. It should be noted that from the beginning of the Programme, the national structure included a central team to support implementation and service development for the phased introduction of the programme. In 2006, the central team was expanded to include a regional facilitator for every region to support ongoing development. The Department acknowledges that formal evaluation of some of the early work was not undertaken. The Departments National Support Team (NST) for Sexual health, in consultation with the regional facilitators, in their work with PCTs, supports robust planning and commissioning for chlamydia screening within the broader context of the sexual health agenda.

24. The Department published *Rewarding and fulfilling lives: The strategy for adults with autism in England* in March 2010. The strategy looks at how the public sector provides the support and services that people with autism need to live independently. It was developed by the Department, working alongside other Government Departments, and with advice from an established external reference group. Responses from an earlier consultation exercise to gather the views of people with autism, their families, carers and professionals also influenced the final publication. The strategy is to be supported by an annual delivery plan to address the actions needed to be taken nationally, regionally and locally to secure implementation, including timelines and milestones.

25. The Department will also lead on the consultation for statutory guidance to health and social care bodies to support the strategy delivery. The strategy encourages joint working and understanding between Local Government, education, health services and voluntary sector organisations to develop, deliver and monitor relevant assessment and support services for adults with autism.

26. More generally, PCTs are responsible for assessing the needs of their local population and commissioning services to meet those needs. Where appropriate, they work with other commissioners and other partners to deliver services of high quality and good value for money.

27. In December 2007, the Department published *World Class Commissioning: Vision*, which sets out a vision for world class commissioning in the NHS. It also sets out the competencies PCTs need in order to achieve world class commissioning. This framework supports the NHS to improve its commissioning capabilities and an annual assurance process is in place to monitor PCTs' progress. Delivering efficiency and productivity are key elements of world class commissioning. Nationally and regionally, PCTs are offered support and development opportunities to improve key areas of capability.

Eighth Report

Department for International Development (DFID)

Aid to Malawi

1. The overall aim of the Department for International Development (the Department) is to reduce poverty in poorer countries. Malawi is one of the poorest countries in the world with a population of 13.1 million and 40% below the local poverty line. The Department provided £312 million to Malawi between 2003-04 and 2007-08, rising to a planned £80 million by 2010-11. The Department has contributed to progress in Malawi's development since 2003, such as reduced hunger and substantially improved capacity in the health system. The Department's programme complies with many internationally agreed good practices.

2. Malawi has few industries, very limited financial and economic resources, and is one of the most densely occupied countries in Africa. Poor harvests and famine have dominated the lives of ordinary people. It has inadequate infrastructure such as roads, utilities, schools and hospitals – particularly in rural areas, where 88% of the population live.

3. The Department is the largest bilateral donor providing important funding to Malawi's budget and key support to health, education, governance and agriculture. A priority for the Department is to work with government and other donors to strengthen governance and audit capacity. DFID Malawi already exceeds the Department's target to spend 5% of budget support funds on accountability. The Department recognises that more can be done to strengthen impact and value for money and is already taking significant steps to ensure this.

4. On the basis of a report by the Comptroller and Auditor General, the Committee examined whether the Department has made good choices in Malawi, whether it has the information it needs to improve implementation of the programme it helps to fund, and whether it is driving improved outcomes.

PAC Conclusion (1): In a heavily aid-dependent economy, sustainability of progress is a key issue. The Department has, for example, funded the Government of Malawi's subsidy of fertiliser and seeds in order to address hunger. The Department accepts that this is not a long-term solution to food sufficiency, but neither it nor the Government of Malawi has an evident strategy for an exit from subsidies. The Department should.

(a) Set out the criteria which would trigger withdrawal of its contribution to the subsidy, and

(b) Work with the Government of Malawi to define a clear exit strategy through which farmers no longer depend on subsidies, releasing resources to assist structural change in agriculture.

5. The Department agrees with the Committee's conclusion that medium and long-term strategies for agriculture are important. However, the *Input Subsidy Programme* has radically improved food security across Malawi by providing affordable fertiliser and seeds. Around eight million people, over half the population, benefit from the subsidy and the country has achieved a food surplus for the past four years, after many years of food shortages. The *Input Subsidy Programme* is a necessary, medium term solution to Malawi's food security needs. Independent analysis confirms the economic benefit from the programme exceeds the cost and that the Department's support has increased the programme's value for money.

6. Subsidies have been critical in achieving Malawi's recent progress on food security. The Government of Malawi's objective is to ensure that the country produces sufficient food to feed its population. Given the nature of poverty and agriculture in Malawi (a poor, largely rural population farming small plots with poor soil, one short rainy season and very limited access to credit), the government has chosen to do this through subsidising better quality seeds and fertiliser, which increase the size of harvest from each plot. DFID Malawi is supporting complementary interventions, for example: to increase poor households' access to banking and insurance services, and to develop the private sector.

7. The Government is also looking into commercial agricultural opportunities. But it is hard to envisage poor smallholder farmers coping without some form of support like subsidies in the short to medium term. With advocacy from the Department and other partners, the Government has agreed to develop a medium term agricultural subsidy strategy during 2010. DFID Malawi will be encouraging the Government to ensure its strategy is consistent with sustainable agricultural development and Malawi's constrained resources.

8. The Department's decision to support the agricultural input subsidy with financial aid, and to engage with the Malawian Government to shape how the subsidy is implemented, was taken in 2006. It was a key step to implement the strategy set out in DFID's Malawi's *Country Plan*. The decision was based on a thorough business case, which identified both the strategic and economic rationale for the intervention. In the short term, criteria which would trigger withdrawal from the subsidy are: any serious breaches of the Department's *Partnership Principles*; evidence of serious corruption or serious mismanagement of funds; and evidence that the programme was not achieving results or was no longer cost effective.

PAC Conclusion (2): Much of the Department's programme is routed through the Government of Malawi's systems, which makes the quality of Malawian governance a key issue. Despite a relatively high level of Department funding, key elements of governance are not yet strong enough. State Audit coverage is increasing, but to only 80% of public spending and four of 28 aspects of public financial management are still assessed to be at the lowest level. The Department should, in concert with other donors, assess and close these capacity gaps as a priority, if it is to continue support through Government of Malawi systems.

9. The Department agrees with the Committee's conclusion that working with the government of Malawi and other donors to assess and close capacity gaps, is a priority. The quality of Malawian governance has improved considerably since 2004 – from 57% (2005) governance targets[6] fully or partially achieved to 82% (2009). Whilst four of the 28 aspects of public financial management were assessed to be at the lowest level (a D score in the *2008 Public Expenditure Financial Assessment*), this represents a significant improvement on 21 D scores in 2005. The Department is working with others to ensure that these capacity gaps are carefully assessed and that programmes are put in place to improve governance, including audit capacity.

10. In all countries, when drawing up a *Country Plan*, all country offices are required to do a *Country Governance Analysis* to assess the quality of governance and to undertake a *Fiduciary Risk Assessment* (FRA), when they either provide or are considering providing financial aid to that government. These assessments ensure that the Department systematically assesses capacity gaps and uses this assessment to inform its overall development strategy, as well as specific governance-related programmes.

11. In Malawi, the Department is working hard to strengthen governance and audit capacity and has exceeded the Department's target to spend 5% of budget support funds on accountability. Specifically, the Department provides financial support to key institutions including the Anti-Corruption Bureau, Parliament, the National Audit Office (NAO), the Electoral Commission, the media, and the civil society.

PAC Conclusion (3): The Department achieved only 60% of the targets it set itself in Malawi, and acknowledges that these targets were not fit for purpose. The Department plans to revise its targets to identify relevant outcomes and outputs over which it has significance influence, and to define minimum levels of performance that represent value for money, along with the potential for better performance. The Department should make sure that these new targets set the required level of performance at a level that would represent real improvement and would be robust to external challenge. It should hold its Malawi operation to account for its performance against these targets.

6 Budget Support Performance Assessment Framework

12. The Department partially agrees with the Committee's conclusion. The Department sets stretching targets, which are aligned with the goals countries set for themselves in their own frameworks. In Malawi, 75% of country plan targets were achieved, 61% within the timetable, and a further 14% within the subsequent year. The DFID Malawi Country Plan Results Framework has already been strengthened. A new framework introduced in September 2009 has 28 outcome and output indicators (down from 73 in October 2007), indicators are more proportionate to spend and importance, and focus more on outcomes and less on process.

13. The Department uses a portfolio quality index that covers performance towards targets in all projects and programme and is weighted by budget. DFID Malawi's portfolio quality improved significantly from 54% (March 2005) to 76% (October 2009). This compares well to the Department's overall target of 75%, agreed as part of the Comprehensive Spending Review (CSR).

14. The Department has prioritised strengthening performance frameworks and economic appraisals for all its interventions. The Department introduced a new format logical framework to strengthen programme design quality by explicitly requiring indicators, targets, and baselines for each output and outcome. The Department issued new guidance on economic appraisals, training for all economists, and produced good practice examples. The Department is currently testing how, in practice, it can define minimum levels of performance that represent value for money for all projects and programmes.

15. DFID Malawi has made good progress towards the Committee's recommendation to strengthen the quality of targets. All DFID Malawi programmes now use the new logical framework format with clearly defined programme objectives, outcome and output indicators. All new programme proposals now have stronger economic appraisals, which are more explicit about the minimum level of performance that needs to be achieved to represent value for money.

PAC Conclusion (4): The Department has invested in improved data in Malawi, but data on the results of many of the programmes it funds remains weak or of questionable reliability. The Department needs to work with the Government of Malawi to get routine management information on service delivery—much of which exists at local levels, but is not collated.

16. The Department agrees with the Committee's conclusion that more can be done to strengthen Malawian government data and DFID Malawi is working with the Malawian government to address this. However, DFID Malawi does already have information that it is using to track need, efficiency and programme results, including government, civil society, academic studies, and field visits by the Department's staff.

17. The Department has taken steps to strengthen its work in this area. In Malawi, the UK was the largest contributor to the 2008 census and is part-funding the *Integrated Household Survey and the Demographic and Health Survey*, which will improve data on service delivery. In addition, the Department is providing support to the Government of Malawi through the *Performance, Evidence & Accountability* programme (2007-11). This will fund reviews of the *Malawi Growth and Development Strategy, Public Expenditure Tracking Surveys* and a *Community Based Monitoring* programme. The *Community Based Monitoring* programme will use community scorecards to monitor service delivery. It has been launched in eight pilot districts and will be scaled up to all 28 districts by 2011.

18. The Department has also taken steps globally to strengthen statistics in developing countries. For example: the Department is providing £50 million over four years to strengthen statistical capacity through the Statistics for Results Facility. Additionally, the Department is working with the International Monetary Fund (IMF) to set up a £5 million project, the *Enhanced Data Dissemination Initiative for Africa*, to improve macroeconomic, financial and monetary statistics. The Department is providing £5 million over five years to improve the collation and dissemination of Millennium Development Goals (MDG) indicators, working at both the country and the international level, in various countries, including seven in Africa.

PAC Conclusion (5): The Department provided only isolated examples of measures relating to the efficiency of the government services it funds. Such measures are largely absent from its monitoring frameworks. When challenged to report on the performance of its programmes it reverted too often to general statements about the amounts of money it had spent and unsurprising assurances that these disbursements had had some effect. The Department should reflect efficiency indicators in its management and accountability processes of its programme in Malawi, and the indicators should cover the bulk of its programme spend.

19. The Department agrees with the Committee's conclusion that there is scope to strengthen monitoring and analysis of efficiency indicators. However, the Department has substantial evidence of the impact the Department's programmes have achieved in Malawi. For example: since 2003, DFID Malawi has built 2,500 classrooms, which have helped 300,000 children into school, and DFID Malawi's funding for improved health services has helped save the lives of 40,000 children and 3,200 pregnant women since 2004. The Department also has some information about the efficiency with which these results were delivered. For example: the unit cost of the Department-funded classroom construction was $91 per square metre compared to an average of $119 in five other African countries.

20. In Malawi, the Department has taken steps to integrate efficiency indicators into its monitoring frameworks. For example, the new £11 million *Banja La Mtsogolo family planning* programme will monitor the unit costs of protecting women with contraception. In the health sector, the firm commissioned to provide procurement oversight will analyse unit cost of drugs; and evaluations already underway are analysing value for money and identifying metrics to be integrated into the monitoring framework for the new health sector programme.

21. Across all its programmes, the Department recognises that tracking the efficiency with which it is delivering results is important and is working to strengthen this. The Department has produced sets of good practice indicators to use in logical frameworks in the Education, Health, Water and Sanitation, Environment, Food & Agriculture and Governance and Conflict sectors to strengthen the quality. The Department is strengthening the quality of economic appraisals, which underpin spending decisions for all projects and programmes. Stronger economic appraisals will enable project managers to identify the costs and outputs, which will be particularly important in delivering efficiency and incorporate these into their performance frameworks.

PAC Conclusion (6): There are several instances in the health and agriculture sectors where the Department has tolerated, and indeed supported Malawian policies or practices it does not believe are the most cost-effective. Clearly there are limits to the pressure that the Department can bring to bear on sovereign governments to spend money wisely. But the Department should make full use of the influence gained through its large contributions to Malawi to make sure risks to value for money are addressed. In practice this will require quicker or more robust responses to variance from agreed plans and to emerging results. DFID Malawi should put in place explicit strategies for securing changes needed to secure cost-effective development.

22. The Department's staff meets regularly with Malawian Government Ministers and officials on issues of policy and practice, to ensure UK aid resources are used as effectively and efficiently as possible. The Department agrees that, in areas it prioritises, it is important to identify the changes required and sets out a strategy for securing them. DFID Malawi played a key role in helping the Health Ministry to develop the *Essential Health Package*, drawing on internationally recognised good practice for cost effectiveness. Furthermore, senior Health Ministry officials believe that the *Emergency Human Resources Programme* probably would not have happened without the Department's support. This has doubled the number of doctors and nurses graduating in Malawi since 2004, and directly tackles the major human resources shortage identified.

23. Given the real capacity constraints facing the governments the Department works with, it is important that reforms are prioritised and sequenced. When establishing the strategy that will deliver the most sustainable progress towards the MDGs in any country, the Department assesses the government's commitment to

poverty reduction including by assessing the government's policies, spending plans and plans to reform. The Department makes a realistic assessment of the government's plans against the backdrop of political, institutional and capacity constraints.

PAC Conclusion (7): The Government of Malawi procured excess fertiliser despite an agreement with the Department to limit the scale of its agricultural subsidy programme in two successive years. Weak or slow Departmental response in such cases weakens its ability to influence the Government. The Department should put in place contingency plans to deal with any breaches of agreements, and act on them.

24. The Department agrees that early responses to breaches of agreements are vital to maximise the Department's influence over the Government's position. The Department's policy Partnerships for Poverty reduction: rethinking conditionality and related guidance provide a clear framework for assessing and acting on any breaches of the three Partnership Commitments or any specific conditions relating to a particular aid agreement. Guidance emphasises the importance of ongoing monitoring to identify possible areas of concern as early as possible so as to raise them early with the partner government.

25. In the case of over-procurement of fertiliser by the government of Malawi, these procedures were followed to good effect. A Government Logistics Unit (LGU), that the Department had funded, alerted the Department and other donors to a deviation between fertiliser purchase and the agreed cap. As a result, the Department persuaded the Malawian Government to hold back most of the surplus fertiliser for this year's programme. This means the 2009-10 programme bought just 77,000 tonnes and stayed within the agreed limit of 160,000 tonnes.

26. The Department also changed its funding for the *Input Subsidy Programme*. Subsequently, the Department pulled out of funding buy-back and transport incentives, and switched funding to increase provision of subsidised seeds. An input, which independent analysis showed to be highly cost effective, with an estimated £3.57 return for every £1 invested.

27. The Department does not agree that it should put in place specific contingency plans for all possible breaches of the partnership commitments or specific conditions relating to individual aid programmes. This would absorb a disproportionate amount of resource and many of the plans would be nugatory. However, at a strategic level, scenario and contingency planning form an important part of the *Country Planning* process during which a wide range of future possibilities are considered.

PAC Conclusion (8): Staff cuts in Malawi and throughout the Department constrain the effective management of aid. The Treasury has decreased the Department's administrative budget, as it has for other departments, but unusually also greatly increased its programme budget. It has distanced itself from the staffing consequences, insisting that these decisions are for the Department. The Department needs to raise its game to give assurance of cost-effective aid management, which will require more work at the sharp end, not less.

(a) The Department should measure better the added value of its staff on the ground, and assess its staffing resources in view of the scale of the risks and ambition of its objectives.

(b) The Treasury should reflect that information in setting running cost limits for the Department so that the result is cost-effective overseas aid.

28. The Department disagrees with the Committee's conclusion that staff cuts have constrained the effective management of aid. Within country programmes, the Department takes a rigorous approach to choosing the number of sectors and programmes it works in, as well as the type of aid instruments used, ensuring that the overall portfolio can be effectively managed by its staff. The Department also works closely with other donors to agree a division of labour, which ensures that collectively donors provide high quality aid and technical

support. This ensures that the Department can focus on maximising its impact in a defined set of sectors and programmes in each country. The Department has also narrowed the focus of its bilateral country programme, closing eight country offices since March 2008.

29. The Department is currently carrying out a strengthened approach to *Strategic Workforce Planning*. This will help ensure the Department has the right numbers and mix of staff and skills now and in future, and that resources are focused in the areas where they are most needed. Furthermore, the Department is reviewing its country office business models, including making assessments of the staff resources and skills required to support effective management of large scale programmes.

30. The Treasury agrees with the Committee that the Department should consider staffing implications in delivering cost-effective overseas aid and supports the *Strategic Workforce Planning* exercise the Department is carrying out. For CSR07, Treasury Ministers agreed that the costs of the Department's staff overseas working on frontline delivery would be paid out of a capped allocation within the programme budget. The programme budget has grown over the CSR period, and the capped allocation has also grown at an annual real growth rate, over the CSR, of about 1%. The level of the administrative budget, which is subject to a 5% cross-Whitehall annual saving target, does not affect front line staffing decisions for overseas programmes, such as that in Malawi. All staffing decisions, both in the UK and overseas, remain a matter for the Department.

Ninth Report

Ministry of Justice (MOJ)

The procurement of legal aid in England and Wales by the Legal Services Commission

1. The Legal Services Commission (the Commission), a Non-Departmental Public Body of the Ministry of Justice (the Department) spends £2.1 billion a year on buying civil and criminal legal aid, mainly from solicitors and barristers, and a further £125 million on administration. Whilst it has successfully arrested the increase in legal aid spending in the last five years, the Committee found it is an organisation with poor financial management and internal controls and deficient management information. These weaknesses resulted in the Commission having its annual accounts qualified for 2008-09. The Committee found confusion and uncertainty about the respective roles of the two organisations, which had led to duplication of effort on some issues and a lack of clarity about who should be responsible for others.

2. It is important the Commission knows it is paying the right price for legal aid and the effects its policies are having on the sustainability of providers. However, the Committee found that the Commission does not know enough about the costs and profitability of firms to know if it has set its fees at an appropriate level.

3. The Commission has been responsible for implementing significant reforms to legal aid, which were recommended by Lord Carter of Coles in 2006. However, the Committee found that constant changes in the Commission's staff at senior level, has been costly and disruptive, and poor planning of the changes has meant that reforms have often been delayed, have not always kept to their timetable and have not been properly evaluated to assess their impact.

4. On the basis of two reports by the Comptroller and Auditor General: his report on the qualification of the accounts of the Legal Services Commission for 2008-09, and his value for money evaluation of the procurement of criminal legal aid, the Committee examined the procurement and administration of legal aid in England and Wales.

PAC Conclusion (1): There is a lack of clarity in the respective roles of the Ministry of Justice and the Legal Services Commission, leading to uncertainty and duplication. This relationship is currently subject to an independent review. Irrespective of the outcome, the Department needs in future to perform a sponsor role in which its oversight and interventions are proportionate to the risk of spending and activities in respect of legal aid. This needs to be reflected, as a matter of urgency, in the framework document, policy responsibilities, and performance management regime with which the Department governs the Commission.

5. The Department agrees with the Committee's conclusion. Sir Ian Magee's report, following his independent review of the delivery of legal aid, was published on 3 March 2010. Sir Ian's key recommendations are focused on strengthening the organisational structure in place for the delivery of legal aid services, to improve performance and strengthen the relationship between the Department and the Commission. Sir Ian's report recommends actions to simplify governance and accountability arrangements and to streamline policy development and decision-making processes between the Department and the Commission.

6. The report makes clear that the Department's sponsorship role is key to making this relationship successful and makes some specific recommendations for strengthening this sponsorship role. These include a revised *Framework Agreement*, which clarifies decision-making processes, gives greater weight to respective financial accountability and management responsibilities, and sets out mechanisms through which urgent problems may be escalated. The Department accepts Sir Ian's recommendations. Work has begun on a revised *Framework Agreement* and this will be published by the end of July 2010.

7. Sir Ian's report also includes options for structural change, which includes the restructuring of the Commission to become an agency of the Department. The Department will be taking this option forward and will introduce legislation as soon as Parliamentary time allows. The Department is confident that this change in status will embed a new and stronger relationship between the Department and the Commission and provide for much tighter financial control and management of legal aid spend. Sir Ian's recommendations will be taken forward in parallel with a move to agency status.

PAC Conclusion (2): The Commission has failed to get a grip of its financial management and weak internal controls led to its accounts being qualified in 2008-09 because of an estimated £25 million of overpayments to solicitors. As a priority, the Commission and the Department should ensure that effective financial management becomes a priority at the most senior level, and should put in place measures to respond more rapidly to emerging financial risks. These measures need to be in place as it moves to making more payments electronically.

8. The Department and the Commission agree with the Committee's conclusion. The Commission, with the support of the Department, is focused on strengthening its financial management and internal controls, so that it pays providers only what is due for work done on behalf of eligible clients. It has taken steps to reinforce its financial controls in relation to processing legal aid applications and bills, including pre-payment checks, as well as increasing its post-payment audit activity. As a result, by the end of February 2010, the Commission had recovered £3.7 million arising from providers claiming for payments in excess of those to which they were contractually entitled during 2008-09. Improved financial controls will be in place for the start of the new financial year, 2010-2011.

9. A wider programme of work is under way, with the support of Ernst & Young, who were appointed following a competitive process, to strengthen financial management within the Commission and to improve the arrangements for accounting for fund expenditure, including work in progress and debts. The Commission's Chief Executive and the Department's Director General, Finance, are jointly overseeing this work and will keep the Corporate Management Board informed. In addition, the Commission will be strengthened by the appointment of a new Finance Director who will be a member of the Commission's executive team and will attend all Commission Board meetings. The Finance Director will also lead the programme to improve financial management skills across the Commission.

10. The Commission is reviewing all of its current and future change projects, including the plans for more electronic working, to check that they incorporate the appropriate level of financial stewardship and enable the Commission to account effectively for its use of public money. This work will be undertaken in phases over the period to the end of September 2010.

PAC Conclusion (3): The Commission was unable to account for the significant variation in profits from criminal legal aid work reported by solicitors. Having been requested to abandon its proposals for Best Value Tendering, the Commission should set a timeframe to gather much more coherent information on the costs and profits of firms providing legal aid so that it can set prices which reflect good value for money for the taxpayer while ensuring the sustainability of the service.

11. The Department and the Commission agree with the Committee's conclusion. The announcement, in December 2009, that Best Value Tendering (BVT) in the current form would not proceed does not mean that the Department has abandoned competitive tendering as the best means to deliver legal aid in a sustainable way, whilst ensuring value for money for the taxpayer. Ministers were persuaded by the Law Society and a number of criminal legal aid firms that the original proposals simply would not have achieved Lord Carter's aim of higher volumes of work being done more efficiently in a restructured market. The Department is looking again at competitive procurement and plans to outline new more ambitious proposals by the end of March 2010.

12. The Commission did gather economic data to underpin the phased implementation of BVT with assistance from independent professional consultants. In addition, the Commission is using its current tender contract process to gather financial information from those firms, who are applying for contracts. These two sets of information, when taken with the work to introduce competition, will improve the Commission's and Department's understanding of the profitability of the provider base in the transition to a restructured market.

13. The Department's decision to change course on BVT followed discussions with a number of solicitors and with the Law Society. As the new proposals are being shaped, the Department and the Commission will continue to talk to the Law Society, individual solicitors and firms, as well any chambers that wish to be involved.

PAC Conclusion (4): The Committee is concerned that the increasing use of solicitors to conduct work in the Crown Court is threatening the long term future of the junior criminal bar and may be affecting the quality of advocacy being provided in the Crown Court. The Commission needs to guarantee the quality of the legal aid services it purchases. As a matter of urgency it needs to finalise how it will measure the quality of advocacy in the Crown Court. It also needs to produce a robust plan for how it will deploy peer review more strategically for solicitors.

14. The Department and the Commission partially accept the Committee's conclusion. The Government's policy objective is to safeguard the quality of advocacy in the Crown Court, while at the same time maximising the opportunities for innovation and competition arising from recent reforms, including the Legal Services Act 2007. There is no objective evidence of any decline in the quality of advocacy in the Crown Court, whether that is provided by a Higher Courts Advocate (HCA) or a barrister. However, it is essential that Crown Court defendants and the taxpayer can be confident that advocates possess the right level of skills and experience.

15. The Department and the Commission therefore need to ensure the purchase of good quality, value for money advocacy services, irrespective of whether they are delivered by HCAs or barristers, employed or self-employed. Quality assurance will have to apply equally to all, with the aim of ensuring consistent good quality in advocacy across the legal professions.

16. Members of the judiciary, the Crown Prosecution Service, the Bar Council, the Law Society and the regulators of the legal profession have worked with the Commission and Department over the last three years to identify standards of competence across the range of criminal advocacy. They have considered ways in which those standards can be assessed, undertaking a comprehensive joint data survey with the Bar Council and follow-up focus groups, as well as pilot research with help from judges and many practicing advocates. The Department and the Commission are clear that the responsibility for assuring quality of legal services, including advocacy, should sit with the regulators overseen by the Legal Services Board. At the same time, the Commission, as the largest single funder of these services, has a key role in setting standards by which they are commissioned.

17. A Joint Advocacy Group (JAG), made up of the legal profession's main regulatory bodies, has been established to take this work forward, including consideration of assessment methods and design of the scheme. The JAG, which first met in November 2009, has jointly undertaken to develop and administer a final single quality assurance scheme to cover all arms of the advocacy profession.

18. On 15 February 2010, the Commission published a discussion paper setting out proposals for minimum advocacy standards. This paper also includes a summary of findings from the research commissioned from the Centre for Professional Legal Studies at Cardiff University Law School. As part of the Project Board for this programme of work, the Commission will continue to support the JAG with their planned delivery of a quality assurance scheme for criminal defence advocacy by July 2011.

19. In 2009-10, the Commission moved to a risk based approach to the use of a peer review, the Commission's preferred method of measuring the quality of solicitors' work. This is used to target those providers, where there would appear to be a risk to the Legal Aid Fund and will continue to be used in respect of both existing services and new areas of development.

PAC Conclusion (5): Everybody is entitled to free legal aid if they are held by the police, but only about half of people take this up. The Commission should develop a mechanism for collecting the views of legal aid users on the service provided and properly investigate the reasons why people do not currently take up legal aid. It should also evaluate the wider impact of low take-up of legal advice on the criminal justice system, and the potential financial consequences of improving access to it.

20. The Department and the Commission agree with the Committee's conclusion. Recent studies indicate that the proportion of people taking up police station advice and assistance may have increased over recent years. Research undertaken by the Home Office in 1998 and more recently by the Legal Services Research Centre (LSRC) in 2008 showed that 40% and 54% respectively of people held in police stations took up their right to advice.

21. However, the LSRC's study is based on a relatively small number of cases. Accordingly, further investigations into representation at police stations will be undertaken by examining 10,000 custody cases. The research will be published by the end of 2010 and will include an assessment of the reasons why some defendants choose not to seek advice in the police station. There is little evidence as to what effect receiving advice has on the future conduct of cases. The LSRC is therefore evaluating the wider impact of the current take-up of legal advice at the police station on the disposal of cases in court. In particular, the research will look at whether improved liaison between the police, CPS and defence solicitors in the police station could help to deal with cases more quickly and efficiently in court.

22. The Department and the Commission are clear that increased take-up of legal advice in police stations would not be affordable without fundamental changes to the way that such advice is provided. However, a more ambitious programme of competitive tendering should ensure the provision of this advice service at the best possible value for money.

PAC Conclusion (6): Although the Department and the Commission launched a separate system for paying the most expensive Crown Court cases in 2001, eight years later they still do not know whether this system gives value for money. As they seek to make further savings from the legal aid budget, the Department and the Commission should prioritise making savings in these most expensive cases. By July 2010, they should complete an evaluation of past cases to determine at what value it is most efficient to administer cases separately through a contract, and when it would provide better value for money to handle cases using existing graduated fee schemes. They should then set the threshold for using contracts at the value, which optimises value for money.

23. The Department and the Commission agree with the Committee's conclusion. The current system for dealing with Very High Cost Criminal Cases (VHCCs) does deliver significant savings over the previous system, where costs were assessed after the event. The comparable spend on VHCC cases that went to a full trial of over 40 days, reduced from £152 million in 2003-04 to an estimated £88 million in 2008-09, excluding the additional £20 million on terrorism cases.

24. The Department and the Commission recognise that further savings might be made by changing the threshold for contracting so that cases move out of the VHCC system into the graduated fees system that currently governs payments to advocates in those cases due to last for 40 days or less at trial. The Commission recently consulted on a new scheme for dealing with VHCCs, including an option, included at Ministers' request, to increase the graduated fees system to deal with cases due to last up to 60 days. It will respond to that consultation in conjunction with the response to the Department's consultation on options for reducing the costs of the Advocate's Graduated Fee Scheme. This latter consultation has been extended and will now close on 1 April 2010.

PAC Conclusion (7): While the Committee accepts that specialist skills need to be properly remunerated we were concerned to find that some barristers, notably Queen's Counsel, can earn up to £1 million a year from publicly funded criminal legal aid cases. The Commission should consider introducing an earnings cap for all individual solicitors and barristers.

25. The Department and the Commission agree with the Committee's conclusion. Neither the Department, nor the Commission, believe that it is appropriate that individual advocates should receive criminal legal aid payments from public funds of the order of up to £1 million a year. Criminal advocates will also receive income from prosecution work and privately funded cases. The contracting of VHCCs was introduced gradually between 2001 and 2004. However, a proportion of payments are still being made under the previous system, where costs were assessed after the event 'ex post facto'. These tend to be the more expensive and lengthy cases. This is illustrated by the fact that 56% of the total legal aid payments made to the ten highest earning criminal barristers in 2008-09, were from cases paid under the old arrangements.

26. Once the reforms have been fully implemented, and those legacy payments cease, top earnings are likely to fall well short of £1 million per year. The Department and the Commission will continue to bear down on costs, particularly in the current economic climate, through the continuing reform programme.

27. Neither the Department, nor the Commission, control the earnings of individual solicitors within a firm and the total legal aid payments made to individual firms depend on the volume of work they undertake. It is, therefore, difficult to justify limiting the volume of work, and consequent earnings, of individual firms. However, the Department and the Commission will consider further the practicalities of introducing an earnings cap and make a decision by July 2010.

PAC Conclusion (8): The Commission has struggled to recruit and retain the right skills on its senior team where the high turnover of staff has been disruptive and expensive. The Commission should define the skills it needs, in particular at a time when it has to make significant administrative savings, and set out how it will maintain its skills at this level.

28. The Department and the Commission agree with the Committee's conclusion. Over the past year, the Commission has made a number of senior appointments with the necessary skills. The Commission also planned short-term appointments for a number of senior roles to bring in the skills that it needed for a limited period. Once the objectives of the roles had been fulfilled, the post holders were released. The Commission identified that it did not have the skills necessary to transform itself in to a commissioning organisation and therefore undertook to change the senior leadership to provide the correct skills.

29. Following publication of the *Magee Review* and the announcement of the forthcoming move to Agency status, the Chief Executive stood down to allow for new leadership during a time of change for the Commission. An interim Chief Executive has been appointed to lead the organisation through to becoming an Executive Agency.

PAC Conclusion (9): The Commission lacks a clear strategic direction, reflected in its poor management of the changes to legal aid detailed by Lord Carter. The Department and the Commission need to adopt a more coherent approach to introducing change. The Department must commit that all future reforms should have a clear timetable, should be fully piloted and evaluated, and that these evaluations are timely and consider the impact of reforms on suppliers, as well as identifying any financial impacts of the change.

30. The Department and the Commission partially agree with the Committee's conclusion. The implementation of the post-Carter changes followed the timetable set out in *Legal Aid Reform: The Way Ahead*, published in November 2006. The Litigators' Graduated Fee Scheme and the Police Station fixed fees were implemented

in January 2008, just three months after the programmed date. The Appeal Court's judgement in November 2007 meant that Phase Two of the family fees could not be introduced until a revised unified civil contract had been tendered. Following the introduction of each of these changes, the Commission has commenced, and in most cases already completed, post implementation reviews to inform future policy development. All Commission projects incorporate post implementation reviews as part of established business practice, and will continue to do so.

31. The Department and the Commission are committed to piloting policy proposals, where it is appropriate and feasible to do so. However, it is not possible to give an undertaking to pilot all proposals, particularly where they may be pressing reasons for more immediate change.

PAC Conclusion (10): The Committee was disappointed, given the serious nature of the issues discussed at this hearing, that the Ministry of Justice was not represented by its Accounting Officer. Our expectation is that Departmental Accounting Officers will appear in person to account for their spending before the Committee of Public Accounts, and in future the Committee will only consider inviting an alternative witness where a very clear cases can be made.

32. It is a well-understood principle that the Committee decides, in consultation with the National Audit Office (NAO), who is best placed to attend Committee hearings.

33. On the occasion referred to by the Committee, the Departmental Accounting Officer suggested that the most appropriate witnesses would be the Commission's Accounting Officer and Chief Executive, the Executive Director for Commissioning at the Commission, and the Department's Director-General for Access to Justice. This was accepted and agreed by the Committee and it was on this basis that the Departmental Accounting Officer did not attend the Committee's hearing.

34. The Department will continue to work with the Clerk of the Committee to ensure that witnesses, who appear at Committee hearings on behalf of the Department, are the most appropriate to assist the Committee in reaching its conclusions. The Departmental Accounting Officer is always happy to attend the Committee's hearings, when the Committee concludes that, on the grounds of direct accountability, he is the most appropriate person.

Twelfth Report

HM Treasury (HMT)

Maintaining financial stability across the United Kingdom's banking system

1. In 2007, financial institutions across the world began to encounter difficulties raising the funds needed to keep their operations going, leading to a crisis of confidence in the banking system. In response, the Government has intervened to support the UK financial system. The complexity of the problems across the financial sector and the speed with which events unfolded presented the Treasury and the other Tripartite Authorities with a formidable challenge. There have been no disorderly failures of UK banks, and no retail depositor in a bank operating in the UK has lost money from their deposit. Ultimately, success will be linked closely with sentiments and events in world markets. To date, a range of indicators, including benchmark interest rates for wholesale funding, bank share prices and the perceived risk of defaults, have stabilised and improved.

2. The scale of the support provided by the taxpayer to maintain financial stability is unprecedented in modern times. The purchase of shares in and loans made to the banking sector will, by the end of March 2010, result in a net cash outlay of around £117 billion. The Treasury has also provided guarantees of up to £250 billion of borrowing by banks to strengthen liquidity in the banking system, and has, through the Asset Protection Scheme, protected over £280 billion of assets held by the Royal Bank of Scotland (RBS).

3. The final cost of the schemes to the taxpayer, if any, remains uncertain and will not be known for a number of years. The priority now is to get the best value for taxpayer from the huge sums of public money invested in the banks.

4. In considering interventions, the Treasury sought the advice of external experts. The terms it agreed with its investment bank advisers included the use of retainers for extended periods; and allowed for the potential payment of success fees at the Treasury's discretion. An indemnity provided the Bank of England as lender of last resort by the Treasury was not notified to the Committee's Chairman in contravention of Parliamentary convention, due to the exceptional risk to financial stability.

5. On the basis of a report by the Comptroller and Auditor General, the Committee examined the Treasury on the action it was taking to ensure that the taxpayer and wider economy are protected; its capacity to manage the programme of measures; and accountability to Parliament.

PAC Conclusion (1): Lending commitments to businesses are not being met and the Treasury appeared unable to tell us why. We remain unclear whether the decline in lending is a result of reduced demand, a fall in the availability of funds for banks to lend, or a combination of these and other factors. The Treasury needs to understand fully the causes of the decline in lending when framing future policy response and should, with the Bank of England, commission additional analysis to discover why the banks are not meeting the lending targets agreed as a condition of receiving taxpayer support.

6. As outlined in the 2009 Pre-Budget Report, the subdued level of lending in the economy reflects a combination of demand and supply factors. These include:

- a reappraisal of risk by lenders, borrowers and investors following the crisis;
- uncertainty about the economic recovery;
- restructuring by financial institutions and a move to more conservative loan exposures;

- larger firms are substituting funding from the capital markets for bank lending – based on the Bank of England *Trends in Lending data*, total funds raised in the bond and equity markets for 2009 was £50 billion, compared to £7 billion in 2008 and £2 billion in 2007; and

- high levels of repayments and delivering by businesses – repayments were £20 billion greater than the level of new lending between March and December 2009.

7. The aim of the lending agreements is to boost confidence that the banks are open for business and ensure that the supply of credit supports recovering demand from creditworthy borrowers, and not to permit the banks to return to the irresponsible lending practices of the pre-crisis period. The Treasury continues to work with the Bank of England to gain a better understanding of the levels of lending. It will assess performance against the lending commitments and provide a report in the Budget.

PAC Conclusion (2): The Treasury has only limited sanctions available to it to encourage RBS and Lloyds Banking Group to meet what are described as legally binding lending commitments. Further lending commitments are likely to be put in place from early 2010 and the Treasury, armed with a better understanding of changes to lending patterns, should use the time available to devise effective and enforceable sanctions if the banks continue to fall short of their commitments.

8. The Treasury does not agree that that the sanctions available to it are limited. The lending commitments are legally binding. If the Treasury judges that either RBS or Lloyds Banking Group fail to meet their lending agreements despite there being sufficient creditworthy demand then the lending commitments deed poll includes a significant sanction: the provision to withdraw extended access to the Credit Guarantee Scheme for future years. The Department is considering the content of the lending commitments and the sanctions available for the upcoming year, and will report in due course.

PAC Conclusion (3): The taxpayer continues to have hundreds of billions of pounds at stake although the Treasury believes it could make a profit when it sells the taxpayers' interest in the banks. If a profit is to be made, careful risk management over a number of years and sound judgements on the timing of sales will be crucial. The Treasury and United Kingdom Financial Investments should ensure that the many lessons learned from our past reports on privatisation's and other asset sales are taken on board when the sales processes are designed and executed.

9. The Treasury agrees that careful judgement will be required when selling the taxpayers' interest in the banks, in which it has a shareholding. UK Financial Investments (UKFI) was established to manage the Government's investments at arm's length and on a commercial basis. As indicated in the *UKFI Strategy: Market Investments and Annual Report and Accounts 2009-10*, UKFI is considering a range of relevant UK and international precedent transactions, both public and private sector, to inform its disposal strategy.

PAC Conclusion (4): Obtaining good prices for the shareholdings will be important, but true success in disposing of the banks will depend just as much on the enhancement of competition in the banking sector. The Treasury assured us that fostering competition would be uppermost in its mind when discharging its responsibilities with respect to the banking sector. The Treasury, working with UK Financial Investments, the organisation set up to manage its shareholding, should establish clear criteria to enable it to assess how well its investment strategy balances its financial and economic objectives.

10. The Treasury agrees with the importance of promoting competition within the banking sector. Consistent with this, UKFI's overarching objective in disposing of the Government's investments is to protect and create value for the taxpayer, but while doing so, also to pay due regard to financial stability and to promote competition. The Treasury acknowledges the desirability of establishing clear criteria where possible in this area and will work with UKFI to consider the potential options for doing so.

PAC Conclusion (5): Despite additional staff to deal with the financial crisis, the Treasury has been extremely stretched to deal with the full range of its responsibilities, making it very reliant on external advice. For the future, the Treasury should examine whether its own expertise and capacity is sufficient for the tasks it faces and ensure these skills are properly focused on core areas of responsibility carrying greatest risk.

11. The speed and unprecedented nature of events made it necessary to obtain a high level of specialist skills and expertise at short notice to complement the Treasury's own policy, economics and public finance skills. It would be inappropriate for the department to maintain this additional and expensive skill set on a standing basis. The Treasury is now looking at how to develop and maintain in house some of the additional skills and capability necessary to complement its existing skill set, which has been considerably expanded in working with third party advisers through the financial crisis.

PAC Conclusion (6): By agreeing to terms permitting the use of success fees with its investment banking advisers in a situation where no success criteria could be specified, the Treasury risks accepting City bonus practices that are wholly unacceptable in the public sector. Where it does decide to use external advice, the Treasury should now press ahead with its proposed framework arrangements for recruiting advisers on terms that will avoid the need to pay expensive retainers for periods of a year or more and remove the use of success fees in situation where no success criteria have been specified

12. The Treasury already has in place framework or panel arrangements for accounting and legal advice and is working to put arrangements in place for corporate finance advice during the course of this year.

13. The Treasury believes that different payment terms are appropriate in different circumstances and will continue to act accordingly when putting arrangements in place with its advisers. The Treasury has learnt market and commercial lessons from recent experience and has improved its capability to procure intelligently. Future commercial agreements will reflect this, including a range of different incentivisation arrangements to derive best value in each individual case.

PAC Conclusion (7): Complex arrangements have been put in place to manage the Treasury's responsibilities for financial stability. Much will be expected of two new operations, United Kingdom Financial Investments and the Asset Protection Agency. While the creation of expert bodies with clear objectives can help protect the taxpayer, the Treasury should ensure that it does not lose sight of its own responsibilities to ensure good value for money. This will be particularly important when the taxpayers' shareholdings are sold and we expect to hold the Treasury to account, alongside UK Financial Investments, for the outcome of any sales.

14. The Treasury agrees that ultimately it remains accountable for the divestment of its interest in the banking sector. The Treasury remains committed to achieving good value for money for the taxpayer and recognises its responsibility for achieving this.

15. UKFI's remit is to design and execute a disposal of Government's shareholdings in banking institutions, and this is reflected in their financial sector expertise. Within that remit, UKFI is responsible for assessing value for money for the taxpayer while the Treasury has a role to assure itself that UKFI operates effectively, in line with its agreed objectives and its best-practice governance framework. The Chancellor and Accounting Officer are required to make the final decision on any disposal of shares, and will need to be satisfied of the value for money of any proposals made by UKFI. The Treasury is mindful of its wider responsibility for value for money and continues to work closely with UKFI to ensure that this is delivered.

16. The Asset Protection Agency (APA), staffed by financial sector experts, has been set up as an executive agency of the Department to operate the Asset Protection Scheme (APS) effectively and efficiently on HM

Treasury's behalf. The APA's main responsibilities are to ensure that the institution participating in the APS complies with the terms and conditions, to forecast potential future payouts under the Scheme, to verify losses and recoveries on covered assets and advise the Treasury on any payments to be made under the Scheme. A carefully constructed governance framework should give the Treasury clear visibility of the APA's management, while the APA's own internal controls are designed to deliver value for money for the taxpayer.

PAC Conclusion (8): Expected losses for the taxpayer have fallen sharply in only nine months but inevitable uncertainties still surround these estimates. The Treasury should continue to publish regular estimates of the likely net gain or loss arising from the taxpayers' support for the banks in the Budget and the Pre-Budget Report. In addition, greater transparency would be achieved if the key assumptions were also made public, along with the range of outcomes rather than just the single number set out in the recent Pre-Budget Report.

17. The Treasury agrees with the Committee that it is important to be transparent over the net gains or losses expected to arise from the Government's interventions in the financial sector. The 2009 Pre-Budget Report included information on expected losses. Details of the arrangements entered into are available on the Treasury website.[7] The Treasury expects to continue publishing regular estimates of the potential net gain or loss arising from its interventions at Budget and Pre-Budget Report.

18. The Treasury will examine ways in which further transparency can be achieved, subject to constraints such as on the disclosure of commercially sensitive information. The Treasury must also report gains or losses in line with the reporting standards of the National Accounts and Office of National Statistics.

19. Additionally, Section 231 of the Banking Act 2009 requires the Treasury to prepare six-monthly reports about any arrangements entered into which involve or may require reliance on payments from the Consolidated Fund. The Treasury has published the period from 1 April to 30 September 2009, and also a separate report, not required by the Banking Act, covering pre-April 2009 spending and commitments.

PAC Conclusion (9): There can be no excuse for flouting Parliamentary procedure. It is unacceptable that the Treasury did not notify us of an £18 billion indemnity covering part of the emergency liquidity assistance provided by the Bank of England to RBS and HBOS. In future, and only in very exceptional circumstances, when highly sensitive matters needs to be disclosed, as a minimum we expect departments to provide the Chairman of this Committee with a full oral briefing. The Comptroller and Auditor General must also be present to advise the Chairman on what course of action to take, having had access to the underlying documentation detailing the contingent liability. An agreed confidential record will be kept on any notification made in this way.

20. The Treasury agrees that it is important that the normal disciplines of parliamentary reporting are respected wherever possible. In any future highly sensitive cases, The Chairman of the PAC and the Treasury Committee will be briefed orally. A secure confidential record of the meeting will be kept and the Comptroller and Auditor General will be kept informed.

7 http://www.hm-treasury.gov.uk/prebud_pbr09_repindex.htm

PAC Conclusion (10): Financial stability in the banking sector has been maintained at a huge price borne in large part by the taxpayer. In such circumstances it is not acceptable that the National Audit Office, the taxpayers auditor, has not been able to scrutinise directly the actions of the Financial Services Authority and the Bank of England. Following our report on the nationalisation of Northern Rock, we welcome the announcement that the Financial Services Authority is to appoint the Comptroller and Auditor General to be its auditor. We urge the Treasury to direct, by legislation if necessary, the Bank of England to do the same.

21. The Treasury recognise, in principle, the powerful case for public audit of public money to assure Parliament that its supply of funds has been used as intended. The Treasury will consider further how far it is possible to extend this principle.

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