

The case for private prisons

Will Tanner

February 2013

Summary

The Government made two major announcements on prisons at the end of 2012: the effective abolition of whole prison contracting to private companies and the decision not to introduce local pay in the prison system.

Instead the Government will pursue a “new approach” limiting competition to rehabilitation and ancillary services. It will introduce an “efficiency benchmark” for public sector prisons. It will maintain national pay scales in prisons.

The evidence shows that the Government’s new approach is mistaken. The Ministry of Justice rates prison performance under four headings (“domains”). New *Reform* analysis of this data shows superior performance by the private sector against comparable public sector prisons:

- > Resource management and operational effectiveness: 12 out of 12 privately managed prisons are better than comparable public sector prisons
- > Decency: 7 out of 12 privately managed prisons are better than comparable public sector prisons
- > Reducing re-offending: 7 out of 12 privately managed prisons are better than comparable public sector prisons.
- > Public protection: 5 out of 12 privately managed prisons are better than comparable public sector prisons

Reform has also conducted new research into reoffending rates by prison, which also show superior private sector performance:

- > 10 out of 12 privately managed prisons have lower reoffending rates among offenders serving 12 months or more than comparable public sector prisons
- > 7 out of 10 privately managed prisons have lower reoffending rates among offenders serving fewer than 12 months, compared to public sector prisons.

Existing research has shown that flexible terms and condition are one of the key reasons why private operators have been able to deliver better performance. Flexible working conditions have resulted in better staff-prisoner relationships, more positive prison environments, higher staff satisfaction and a more diverse workforce.

Existing research has made clear that the threat of competition has itself been a spur for innovation in public sector prisons.

Reform Ideas No 2: The case for private prisons

The evidence therefore suggests that a different approach is needed, based on the following recommendations:

- > Market test all prisons. Market testing has been limited to just 17 of the 131 prisons in the estate.
- > Introduce fixed term contracts for all prisons.
- > Publish comparable cost and performance data for all prisons.
- > Give prisons flexibility over pay and conditions.

The rationale and debate

Successive governments have articulated the principle of contracting in public services.¹ In the prison service, the original impetus for private sector involvement emerged in the mid-1980s, driven by both an internal crisis within the prison system and political desire in Whitehall to open up public services to competitive pressure.²

The principle of contracting in prisons

In 1987, one of the first official proponents of private contracting, the Home Affairs Select Committee, argued that “the state should be the sole provider of a service only when no-one else exists who can provide the same service at less cost or can provide a better service”.³ This commitment to quality of service over a preference for any type of provider has endured: in 1993, the Home Office Minister, Earl Ferrers, argued “it is right to explore all the options which are available to provide the most effective prison care system for the future”, and, a decade later, the Labour-commissioned Carter Review proposed placing “contestability” at the heart of a new National Offender Management Service.⁴ In the first half of this Parliament, the Coalition Government maintained this position; proposing a new presumption in public services in favour of “a range of providers competing to deliver a better service” and setting out key principles for reform through the Open Public Services programme.⁵

The perceived benefits of contracting

In addition to support for contracting *in principle*, private sector management was expected to deliver a number of specific benefits to the prison system:

- > **Quality improvement.** In the late 1980s and early 1990s, the prison system was, in the words of the Home Affairs Select Committee, “blighted by age, severe overcrowding, insanitary conditions and painfully slow progress in modernisation”.⁶ The 1990 Strangeways Riot and the subsequent Woolf Report into the disturbances gave further evidence of the “intolerable” nature of prisons.⁷ Private sector efficiency, management techniques, and focus on capital investment (as opposed to spiralling labour costs) were seen as a means to higher quality and better conditions for prisoners.⁸ By the time of the first tender in 1992, the Government claimed that “these new [privately run] prisons will be operating to standards at a level to which the existing [public sector] prisons can only aspire”.⁹
- > **Cost reduction.** Rapid growth in the prison population in the late 1980s had driven overcrowding, which in turn led to rising revenue costs for existing prisons and demands for new capital spending on new facilities.¹⁰ As the 1988 Green Paper on *Private sector involvement in the remand system* argued, competition would create “a new dimension of urgency and flexibility to the prison building programme” and “a better service than at

¹ For further explanation, see Bassett, D. et al (2011), *Reform Scorecard 2011, Reform*.

² Pozen, D. (2003), ‘Managing a correctional marketplace: Prison privatization in the United States and the United Kingdom’, *Journal of Law and Politics*, 9, pp. 253-284.

³ Home Affairs Select Committee (1987), *Contracted provision for prisons*.

⁴ Carter, P. (2003), *Managing Offenders, Reducing Crime: A New Approach*.

⁵ Cameron, D. (2011), ‘How we will release the grip of state control’, *The Daily Telegraph*, 20 February; HM Government (2011), *Open Public Services White Paper*: “there will be new opportunities for all types of provider to compete to deliver public services and, if successful, to innovate and expand”; HM Government (2012), *Open Public Services 2012*: “to drive better outcomes and value for money, we are extending our commissioning approach in new areas. For example, in prisons we have announced our most ambitious programme of prison competition, including trialling payment by results for the first time.”

⁶ Hansard (1992), House of Lords, Vol. 538, Col. 1096-111, 7 July.

⁷ Woolf, H. (1991), *Prison Disturbances April 1990*.

⁸ In particular, a number of reports from the Adam Smith Institute, notably *Privatizing Prisons: The Moral Case* (1984) and *The Prison Cell* (1987), made the case for private management on the basis of quality. As Alison Liebling has argued, the private sector was “effectively invited to deliver more ‘humane’ or reasonable treatment than the public sector had been achieving throughout the 1980s and early 1990s”: Liebling, A. (2004), *Prisons and their moral performance: A study of values, quality and prison life*.

⁹ Hansard (1992), House of Lords, Vol. 538, Col. 1096-111, 7 July.

¹⁰ See Pozen, D. (2003), ‘Managing a correctional marketplace: Prison privatization in the United States and the United Kingdom’, *Journal of Law and Politics*, 9, pp. 253-284.

present and at lower cost” in service delivery.¹¹

- > **Innovation.** Private providers have also been perceived to be more innovative and flexible than the public sector. In 1992, Ministers argued that the tendering of HMP Wolds showed that the private sector had “new ideas. It has the imagination to look at things afresh, and it has the freedom to consider new procedures and management methods”.¹² This view was endorsed by Her Majesty’s Inspectorate in a 1998 inspection of HMP Buckley Hall, with the Chief Inspector, David Ramsbotham, attributing the prison’s improvements to the flexibility with which the contractor could introduce innovative ideas “free from the bureaucratic restrictions that I wish could be removed from others”.¹³ In addition, proponents argued that contracting could be a force for workforce innovation and modernisation in the face of longstanding obstructionism from the Prison Officers’ Association.¹⁴

Criticism of private sector involvement

The use of contracting in prisons remains one of the most controversial policies in the criminal justice debate. At the time of its introduction (and, indeed, in the two decades since), opposition to private sector involvement in the prison service was focused around three main concerns: state responsibility; gaming; and accountability.

- > **State responsibility.** Much of the opposition to contracting in prisons was centred on the argument that the use of detention and the deprivation of liberty lie exclusively within the jurisdiction of the state, and are thus not suitable for private sector management.¹⁵ In 1993, as Shadow Home Secretary, Tony Blair endorsed such a view: “it is fundamentally wrong in principle that persons sentenced by the state to imprisonment should be deprived of their liberty and kept under lock and key by those not accountable primarily and solely to the state”.¹⁶
- > **Gaming.** Penal reformers also argued that the profit motive incentivises inappropriate, unethical and dangerous provider practices. These included: neglecting difficult or vulnerable (and, therefore, more costly) prisoners; running institutions at a dangerously low cost in order to maximise profits; or failing to train and manage the workforce appropriately, leading to inexperienced or insufficient staff.¹⁷
- > **Accountability.** Contracts with private companies for prison management or construction are subject to commercial confidentiality. This lack of transparency led to concerns that contractors are accountable to their shareholders at the expense of Parliament or the public.

There is therefore a need to unpack these debates and evaluate the evidence from two decades of contracting.

¹¹ Home Office (1988), *Private Sector Involvement in the Remand System*; Hurd, D., in Hansard (1989), Column 277, 1 March.

¹² *Ibid.*

¹³ *The Economist* (1998), ‘Private porridge’, 28 May.

¹⁴ In 2003, Anne Owers, then HM Chief Inspector of Prisons, remarked: “Twenty years ago, the POA ran prisons. . . Their staffing levels could sometimes be ridiculously high”. Cited in Pozen, D. (2003), ‘Managing a correctional marketplace: Prison privatization in the United States and the United Kingdom’, *Journal of Law and Politics*, 9, pp. 253-284. See also, Harding, R. (1997), *Private prisons and public accountability*, pp. 134-36.

¹⁵ Hansard (1992), House of Lords, Vol. 538, Col. 1096-111, 7 July.

¹⁶ Hansard (1993), Vol. 218, Col. 431, 3 February.

¹⁷ *Ibid.*

The development of contracting

It is helpful to step back and look at how contracting in prisons has developed in the UK. The tendering of HMP Wolds in 1992 introduced a mixed economy in the prison estate in England and Wales for the first time. Over the following two decades, prison contracting has developed from an explicit “experiment” into the primary policy mechanism for prison construction, management and system improvement.¹⁸

Between 1992 and 2012, a total of 30 prisons were tendered (see Appendix 1 for a full list). As a result, 14 prisons are now run by private companies on behalf of the state, equivalent to 15.3 per cent of the UK prison population.¹⁹ A further four public sector prisons are managed under Service Level Agreement (SLA) with the National Offender Management Service. Following the Justice Secretary’s announcement in November 2012, there are currently four prisons under tender from the Ministry of Justice, with the successful bidders due to be announced in 2013.²⁰ The UK now has the second largest market for prisons in the world, with the largest number of private prisons in Europe and the highest proportion of prisoners in contracted institutions worldwide.²¹

While prison contracting has been the favoured policy tool of successive administrations, its development has proved exceptionally uneven. As a recent paper from the Institute for Government documents, the history of contracting can be split into four periods:²²

- > **1980-1990: Gathering momentum.** This period is characterised by growing political support for prison contracting following influential reports from the Adam Smith Institute and the Home Affairs Select Committee. The end of the decade saw the Home Office conduct a series of feasibility studies into the practicality of prison contracting for remand prisons.
- > **1990-1998: Introducing competition.** The Criminal Justice Bill 1990 introduced legislation for contracted remand prisons, but amendments ensured the 1991 Act applied to all prisons. By 1994, four contracted prisons had opened, with the public sector barred from bidding. In 1994, the introduction of PFI extended the role of the private sector into construction, and the Home Office began a programme of market testing in the public sector estate. Following the 1997 General Election, the Labour Party reversed its previous opposition to contracting and announced that market testing would continue.
- > **1998-2010: Moving back and forth between public and private.** This period was characterised by oscillation between public and private prison management. Between 1998 and 2003, two contracted prisons were returned to the public sector and a further market testing exercise saw the Prison Service outbid private sector bidders, partly due to active participation from the Prison Officers’ Association. In 2003, the Carter Review recommended extending competition and enshrining a purchaser-provider split in a new National Offender Management Service. However, NOMS did not fulfil this promise and it was not until the launch of Prison Competition Phase 1 that competition regained momentum.
- > **2010-October 2012: Deepening and expanding competition.** In the first half of this Parliament, the Coalition Government extended and accelerated prison contracting. In 2011, the then Justice Secretary, Ken Clarke, announced the competition for eight further prisons and in 2012 HMP Birmingham became the first existing public prison to be transferred to contracted management. In addition, the Coalition’s “Rehabilitation Revolution” led to new

¹⁸ Private sector involvement in custodial provision was originally framed explicitly as “an experiment”. In 1987, the Home Affairs Select Committee proposed the use of private management in remand institutions as “an experiment”; Home Affairs Select Committee (1987), *Contracted provision for prisons*. Similarly, some have called contracted prison management “the penal experiment of the century”; James. et al (1997), *Privatizing Prisons: Rhetoric and Reality*, p. 3.

¹⁹ See Howard League for Penal Affairs (2013), *Weekly prison watch: Latest prison figures – week ended 11 January 2013*.

²⁰ Ministry of Justice (2012), “Next steps for prison competition”, News Release, 9 November 2012.

²¹ Prison Reform Trust (2012), *Bromley Briefings Prisons Factfile*.

²² Panchamia, N. (2012), *Competition in prisons*, Institute for Government.

Reform Ideas No 2: The case for private prisons

forms of contracting, including payment by results contracts in prison management and related rehabilitative services.

To these four periods might be added a further period, following a number of recent Government announcements:

- > **October 2012 – present: Retreat from competition.** In November 2012, the new Justice Secretary, Chris Grayling, announced the suspension of three prison tenders, which will be returned to the public sector, and the return of HMP Wolds to the public sector. In January 2013, the Government announced details of “a new approach” to competition based around rehabilitative and ancillary services and the construction of new prison capacity, including a possible new 2,000 place super-prison and four new houseblocks at existing prisons.

Table 1: A brief history of competition in prisons in England and Wales

	Development	Impact
1987	Home Affairs Select Committee report, <i>Contracted provision for prisons</i>	Committee recommends inviting private sector companies to bid to run remand prisons as “an experiment”.
1988	Home Office Green Paper, <i>Private Sector Involvement in the Remand System</i>	Government proposes “a new kind of partnership between the public and private sectors” in the management of remand centres and escort services.
1991	Woolf Report into the Strangeways disturbances and prison conditions	Report describes prison conditions as “intolerable” and calls for a variety of reforms to regimes and accountability mechanisms.
1991	Criminal Justice Act 1991	Legislative framework introduced for competition in offender services, including any prison, rather than just remand centres. ²³ Extended in 1993 to include existing establishments.
1991	HMP Wolds, a remand prison, becomes the first prison in Europe to be competitively tendered	Group 4 wins contract after the public sector is barred from bidding. HMP Wolds opens in 1992.
1992	Private Finance Initiative (PFI) introduced	New prison contracts extended to include design, construction, financing and management of prisons.
1997	Home Affairs Select Committee report, <i>The Management of the Prison Service (Public and Private)</i>	Private sector prisons found to be cheaper, with higher purposeful activity and greater time out of cells. Committee recommends “the continued expansion of the private sector if the full benefits of competition are to be obtained”.
1997	The new Government abandons previous opposition to competition	The new Home Secretary, Jack Straw, adopts PFI and, in 1998, announces that all new prisons will be privately built and run.
2000	Laming Review final report, <i>Modernising the management of the prison service</i>	Recommended the introduction of Service Level Agreements for all public sector prisons on the “basis of private sector contracts”.
2000	Two prisons returned to public sector management	Public sector prisons made subject to Service Level Agreements, with similar performance requirements as PFI contracts, for the first time.

²³ The Criminal Justice Bill 1990 originally only included provisions for remand and escort services to be contracted to the private sector. However, an amendment introduced at the committee stage of the bill extended the principle of competition to facilities for sentenced prisoners as well. See Jones, T. and T. Newburn (2007), *Policy transfer and criminal justice: Exploring US influence over British Crime Control Policy*, pp. 41-44.

Reform Ideas No 2: The case for private prisons

2003	Carter Review final report, <i>Managing Offenders, Reducing Crime</i>	Lord Carter recommends “greater use of competition from private and voluntary providers” and fixed-term, contested contracts for all prisons.
2004	National Offender Management Service (NOMS) established	NOMS takes on responsibility for managing all prisons, including a purchaser-provider split between commissioning and provider arms.
2009	Prison Competition Phase 1 launched	Major acceleration of competition, including contested contracts for eight prisons.
2010	HMP Peterborough Social Impact Bond launched	Introduces “payment by results” element to offender services, financed through an innovative social financing model, although limited to through-the-gate, rather than custodial, services.
2010	Coalition Government sets out proposals for a “rehabilitation revolution”	Includes major programme of competition and a commitment to payment by results based on reducing reoffending.
2011	Ministry of Justice strategy document, <i>Competition Strategy for Offender Services</i>	Government announced a new “guiding principle” for offender services applying competition to <i>all</i> services “not bound to the public sector by statute”.
2011	HMP Doncaster becomes the first prison to be run on a “payment by results” basis	Over four years, 10 per cent of the contract value is dependent on achieving a 5 per cent reduction in reoffending among short term prisoners.
2012	HMP Birmingham becomes the first prison to be transferred from the public to the private sector	Prison staff transferred to G4S, which took on both management and ownership of the prison (full privatisation).
2012	“Next steps” for prison competition and the rehabilitation revolution announced	The new Justice Secretary, Chris Grayling, announces the effective end of competition in prison management in favour of a “new approach” based on contracting out ancillary and rehabilitation services and an “efficiency benchmark” for public sector prisons.

The impact of contracting

The introduction of prison contracting was intended to bring three key benefits to the prison system in England and Wales: quality improvement, cost reduction and innovation. This section evaluates the evidence against each of these objectives.

Quality improvement and the performance of contracted prisons

The measurement and comparison of prison performance is problematic, given heterogeneity within the prison estate and differences in performance criteria across regions and institutions. These differences are especially acute between publicly and privately operated prisons, given that the latter are generally newly built and contracts are subject to commercial confidentiality.

In 2009, the Ministry of Justice established the Prison Ratings System (PRS) “to create a single, transparent system that enables the performance of both public and private prisons to be measured”, which was eventually published in 2012.²⁴ The PRS distils a wide variety of uniform Key Performance Indicators (KPIs) into four “domains” focused on aspects of prison performance: public protection; decency; reducing reoffending; and resource management and operational effectiveness.²⁵ These domains correlate to the mission of the Prison Service, which aims to hold prisoners safely, reduce the risk of reoffending and provide safe and well-ordered establishments. Prisons are scored for individual domains and the overarching PRS performance band on an ascending quality scale of 1 (Overall performance is of serious concern) to 4 (Exceptional performance). As shown below, *Reform* analysis of these data reveals:

- > **Resource Management and Operational Effectiveness:** All 12 contracted prisons outperformed the public sector comparator average against this measure, which aggregates KPIs on value for money, resource management, order and control and staff motivation.
- > **Decency:** 7 out of 12 contracted prisons outperformed the public sector comparator average on this measure, which incorporates KPIs on the quality, safety and decency of conditions and offender experience.
- > **Reducing Reoffending:** 7 out of 12 contracted prisons delivered better outcomes than the average public sector comparator score on this measure, which includes KPIs on drug treatment, resettlement, needs assessment and behavioural treatment.
- > **Public Protection:** A total of 5 out of 12 privately managed institutions outperformed the public sector comparator average on this measure, which aggregates KPIs on security, risk management and parole.
- > **PRS Band:** Half of the privately managed prisons are delivering “exceptional performance” (PRS Band 4), while the remaining half is “meeting the majority of targets” (PRS Band 3). This compares to less than a quarter (23 per cent) of public sector comparator prisons achieving “exceptional performance”.

²⁴ Ministry of Justice (2012), *Prison Ratings System: Technical Note*, p. 3.

²⁵ *Ibid.*, p. 5.

Reform Ideas No 2: The case for private prisons

Table 2: Performance of publicly and privately operated prisons, 2012
Source: Ministry of Justice (2012), *Prison Annual Performance Ratings, 2011-12*.

Establishment	PRS band	Public protection	Reducing re-offending	Decency	Resource management and operational effectiveness
Comparator group: Other Local, Modern Buildings (PRS group 3)					
Dovegate	4.00	3.50	3.08	3.14	3.00
Forest Bank	4.00	3.50	3.48	2.83	3.14
Peterborough – Male	3.00	2.00	2.67	3.29	3.29
Category public sector average	3.09	3.10	3.06	2.78	2.70
Comparator group: Other Local and YO, Modern Buildings (PRS group 4)					
Altcourse	4.00	3.38	3.19	3.14	3.00
Doncaster	3.00	2.75	3.29	2.77	3.21
Parc	4.00	3.50	3.09	2.67	3.29
Category public sector average²⁶	3.09	3.10	3.06	2.78	2.70
Comparator group: Category B Training (PRS group 5)					
Lowdham Grange	4.00	3.25	3.05	3.17	3.29
Rye Hill	3.00	2.75	3.23	2.64	3.29
Category public sector average	3.50	3.25	3.29	3.14	2.86
Comparator group: Category C Good Control (PRS group 6)					
Wolds	4.00	3.00	3.40	2.84	3.29
Category public sector average	3.30	3.14	3.10	3.09	2.87
Comparator group: Female local (PRS group 10)					
Bronze field	3.00	2.50	2.67	2.92	3.29
Peterborough – Female	3.00	2.00	2.71	2.85	3.29
Category public sector average	3.00	3.10	3.08	2.84	2.20
Comparator group: Male Juvenile (PRS group 13)					
Ashfield	3.00	2.50	3.47	2.89	3.14
Category public sector average	3.20	3.27	2.98	2.98	2.66

Note: Data for the three most recently opened contracted prisons (HMP Thameside, HMP Oakwood and HMP Birmingham) are not included due to their opening during or at the end of the measurement period.

Reoffending rates

In addition to operational performance measures included in the Prison Ratings System, the Ministry of Justice publishes reoffending rates for each prison on an annual basis. As with the PRS and cost ratings, these reoffending rates, while not directly comparable between specific prisons, can be segmented into comparator groups for analysis. Analysis of the 2012 figures reveals that:

> **Longer term sentences.** For offenders serving sentences of 12 months or more, 10 of the

²⁶ Note that, as there are no public sector prisons within the “Other Local and YO, Modern Buildings” comparator group, “Other Local, Modern Buildings” has been used as a proxy public sector comparator.

Reform Ideas No 2: The case for private prisons

12 private prisons outperform their public sector comparator average. In some contracted prisons, rates of recidivism are over 10 per cent lower than in comparable public sector institutions. However, in the two worse performing contracted establishment, Peterborough Female and Wolds, recidivism rates are over 5 per cent higher than the comparator average.

- > **Short term sentences.** For prisoners on sentences of fewer than 12 months, 7 of the 10 comparable contracted prisons have lower reoffending rates than the comparator public sector average. Two contracted prisons, Dovegate and Bronzefield, have reoffending rates of 6 per cent less than the public sector comparator, although in two others, Wolds and Ashfield, prisoners are 10 per cent more likely to reoffend.

Table 3: Reoffending rates in publicly and privately operated prisons, 2010 cohort

Source: Ministry of Justice (2012), *Reoffending rates for individual prisons in England and Wales*.

	Short term sentences	12 months or more
Comparator group: Other Local, Modern Buildings (PRS group 3)		
Dovegate	56.88	38.71
Forest Bank	60.49	43.14
Peterborough – Male	57.89	42.47
Public sector average	62.33	49.32
Comparator group: Other Local and YO, Modern Buildings (PRS group 4)		
Altcourse	60.43	40.31
Doncaster	60.31	46.32
Parc	62.34	45.32
Public sector average²⁷	62.33	49.32
Comparator group: Category B Training (PRS group 5)		
Lowdham Grange	N/A	33.9
Rye Hill	N/A	31.71
Public sector average	N/A	35.48
Comparator group: Category C Good Control (PRS group 6)		
Wolds	63.04	41.83
Public sector average	52.84	35.86
Comparator group: Female local (PRS group 10)		
Bronzefield	54.38	22.40
Peterborough – Female	57.59	38.18
Public sector average	60.23	33.18
Comparator group: Male Juvenile (PRS group 13)		
Ashfield	78.13	57.14
Public sector average	68.87	63.75

Note: There is no short term reoffending data available for HMP Lowdham Grange and HMP Rye Hill.

²⁷ Note that, as there are no public sector prisons within the “Other Local and YO, Modern Buildings” comparator group, “Other Local, Modern Buildings” has been used as a proxy public sector comparator.

This recent evidence is supported by evidence from previous studies. During the late 1990s, the Home Office commissioned a series of benchmark reviews of comparative cost and performance in publicly and privately operated institutions. These studies compared contracted prisons against comparable public institutions, using a common set of indicators, such as number of escapes, level of assaults, and time spent out of cells. These reviews found that, against comparable public sector institutions, contracted prisons had:

- > **Longer time out of cells.** In 1997-8, one study found that contracted prisons provided between 0.6 and 1.6 hours more out of cells per weekday than public sector. Similar levels were reported a year later.
- > **Higher levels of purposeful activity.** The reviews revealed that contracted prisons delivered 20 to 33 per cent more purposeful activity for prisoners, equivalent to more than 5 hours in each institution.
- > **More flexible visiting hours.** In 1999, contracted prisons were found to have more flexible visiting hours for prisoners. One contracted prison, HMP Wolds, had more than double the number of daily visiting hours than the nearest public sector comparator.
- > **Fewer escapes.** All contracted prisons had fewer or an equivalent number of escapes than public comparators.
- > **Higher numbers of assaults.** All three contracted prisons had levels of assault of between two and three times that of the public sector comparator average.²⁸ These fell in the second year of operation, and subsequent Home Office studies found performance mixed against public sector comparators.²⁹

In 1997, a Home Affairs Select Committee review of contracted prisons reiterated these themes, arguing that, aside from some “teething problems” around assault rates, private performance was “at least as good as that of publicly run prisons and in some areas better”.³⁰ In 2003, a National Audit Office review of PFI prisons came to similar conclusions, but found significant variation within both publicly and privately managed prison sectors, with the best contracted prisons outperforming public sector comparators and the worst among the poorest-performing in the estate.³¹

Cost reduction and efficiency

The introduction of contracting was also intended to reduce cost and improve value for money in the prisons system. Following a major cost review of public and contracted prisons by Coopers & Lybrand in 1994, the Home Office continued to measure cost until 1998, controlled for the various differences in prison size, design, programme and population.³²

As shown in Table 4 below, these studies found that privately run establishments offered an operational cost saving per prisoner of between 11 and 15 per cent compared to similar public sector prisons throughout the 1990s, although some academics have pointed out that the

²⁸ Home Affairs Select Committee (1997), *The management of the prison service (Public and private)*.

²⁹ Woodbridge, J. (1999), *Review of comparative costs and performance of privately and publicly operated prisons, 1997-98*, Home Office; Park, I. (2000), *Review of comparative costs and performance of privately and publicly operated prisons, 1998-99*, Home Office.

³⁰ Home Affairs Select Committee (1997), *The management of the prison service (Public and private)*.

³¹ National Audit Office (2003), *The operational performance of PFI prisons*.

³² Variations in prison size, age, design, and prisoner population make direct comparisons between different prisons problematic. To counter these difficulties, Coopers & Lybrand matched contracted prisons with public prisons of similar size and prisoner cohort, and controlled for further differences to ensure as accurate a comparison as possible. This methodology has been consistently applied over a number of years, although the comparators have been adapted to mirror changes in prison contracts and functions. In addition, the studies estimated three different cost measures for each prison; cost per prisoner, cost per baseline Certified Normal Accommodation (CNA) place (i.e. cost per certified place), and cost per in-use CNA place (i.e. cost per total in-use places).

relative saving *per place* falls considerably towards the end of the period due to greater levels of overcrowding in privately run institutions.³³

Table 4: Cost savings through privately-operated prisons, 1994-97

Sources: Coopers & Lybrand (1996), *Review of Comparative Costs and Performance of Privately and Publicly Operated Prisons*; Woodbridge, J. (1997), *Review of comparative costs and performance of privately and publicly operated prisons, 1996-97*, Home Office; Woodbridge, J. (1999), *Review of comparative costs and performance of privately and publicly operated prisons, 1997-98*, Home Office; Park, I. (2000), *Review of comparative costs and performance of privately and publicly operated prisons, 1998-99*, Home Office.

	1994-95	1995-96	1996-97	1997-98
Cost per prisoner	13 per cent	11 per cent	15 per cent	11 per cent
Cost per certified place	18 per cent	16 per cent	8 per cent	2 per cent
Cost per in-use certified place	22 per cent	17 per cent	13 per cent	1 per cent

There has been no formal comparison of publicly and privately prison costs since 1998. However the transfer of HMP Birmingham from public sector to private sector management, in the first contract of its kind, provides more recent evidence. Although no quality impact assessments have yet been completed, official cost figures for 2011-12 enable a direct cost comparison to be made between the previous public management and the private sector contract under G4S. In the six months since taking over from the public sector, G4S reduced resource expenditure by just under 35 per cent on the previous public sector running cost, equivalent to £8 million a year, or over £11,000 per prisoner.³⁴

Raising the game

There is now significant evidence that prison contracting and the threat of competition has forced the public sector to lift its game in prison management.

Improving public prison management

In particular, several studies have found strong evidence of a “contestability effect” or “outsider effect” brought about by the use of market testing and direct competition in the early 1990s. In 1997, a major evaluation of HMP Wolds found that “the threat of market testing acted as a powerful spur to innovation in the public sector”.³⁵ Similarly, in 2003, the National Audit Office (NAO) argued that “competition has been important within the prison system for improving both management and conditions for prisoners. The success with PFI prisons at a time when the Private Finance Initiative was faltering in other sectors was critical for sustaining a competitive market for the benefit of the Prison Service.”³⁶

Separately, several studies have found evidence of what one criminologist, Richard Harding, has termed “cross fertilisation”; or the adoption of private sector ideas and practices by public sector prisons.³⁷ In the UK in particular, Harding found that the high quality standards mandated in the HMP Wolds contract had the effect of raising minimum standards in the Prison Service by “a quantum leap”.³⁸ Indeed, the NAO has argued that:

³³ There is considerable debate as to the appropriate measure for cost comparison. Advocates of contracting argue that these costs are an underestimate as the studies do not account for some taxes paid by private firms or for the full cost of public sector pensions. Meanwhile, critics arguing that contractors submitted loss-making early bids, so-called “lowballing”, in order to gain a foothold in the market, and contractors deliver minimal additional value once overcrowding is taken into account.

³⁴ Ministry of Justice (2012), *Cost per place and cost per prisoner by individual prison establishment, 2011-12. Reform analysis.*

³⁵ Bottomley, A. et al. (1997), *Monitoring and evaluation at Wolds remand prison and comparisons with public sector prisons, in particular HMP Woodhill.*

³⁶ National Audit Office (2003), *The operational performance of PFI prisons.*

³⁷ Harding, R. (2001), ‘Private Prisons’, *Crime and Justice*, No. 28.

³⁸ Cited in Sturgess, G. et al (2007), *Competitive edge: Does contestability work?*, Serco Institute.

“The use of the PFI has brought innovation, mainly in the recruitment and deployment of staff and use of new technology; however, there appears little difference in terms of the daily routines of prisons. A key innovation by the private sector has been in promoting a more constructive staff/prisoner relationship. PCOs are encouraged to treat prisoners in a more positive manner, for example through the use of first names and mentoring schemes. The senior management of the Prison Service has been able to use the success of the private sector in nurturing better staff/prisoner relationships to encourage their own staff to adopt a similar approach.”³⁹

The threat of competition for staff

There is also strong anecdotal evidence of a positive “outsider effect” from prison officers and governors within the public sector. A series of interviews with 90 senior managers in both the public and private sector, conducted by Liebling and Crewe of Cambridge University, revealed considerable “pragmatic acceptance” of the benefits of competition in spite of respondents’ early scepticism or moral opposition.⁴⁰ In particular, interviewees highlighted how competition had forced the public sector to improve quality and reduce costs:

“I think [privatisation has] been really helpful in raising our game, and it’s been a wake-up call in terms of suddenly realising that...this may not be a job for life, that we’ve actually got to deliver and if we don’t there’s people over there who will do it instead, and I think that’s generally been good.” (Senior Manager 65)

More significantly, however, a number of interviewees directly attributed improved standards to the impact of competition. One interviewee argued explicitly that it was necessary to create a culture of improvement in the public sector:

“I don’t think the improvements we’ve seen in the Prison Service in delivery and outputs would have happened without the threat of privatisation, and without the reality of privatisation, because we wouldn’t have done it ourselves. We wouldn’t have had the motivation, there would’ve been no incentive.” (Senior Manager 18)

These interviews echo the views of Derek Lewis, the Director General of the Prison Service between 1993 and 1995, who said that “much, perhaps most, of the progress achieved in the public sector in the last ten years would not have been possible without the threat of credible competition from the private sector”.⁴¹

The threat of competition has been viewed as especially important in terms of forcing the powerful Prison Officers’ Association (POA) to accept reform and modernisation. In 2006, the former Chief Executive of the National Offender Management Service, Martin Narey, recounted a time that he told the POA that if HMP Dartmoor was not transformed in six months it would be put out to competitive tender:⁴²

“In the case of Dartmoor, and at many other prisons before and since, we were able to obtain radically improved value for money while at the same time driving up standards of care and introducing new and innovative working practices. Improvements which might have taken years to drive through were achieved in twenty-six weeks.”

39 National Audit Office (2003), *The operational performance of PFI prisons*.

40 Crewe, B. and A. Liebling (2012), ‘Insider views of private sector competition’, in Heylar-Cardwell, V. (Ed.) (2012), *Delivering justice: The role of the public, private and voluntary sectors in prisons and probation*.

41 Cited in Sturgess, G. (2011), ‘The sources of benefit in prison contracting’, in Heylar-Cardwell, V. (Ed.) (2012), *Delivering justice: The role of the public, private and voluntary sectors in prisons and probation*.

42 Cited in *Ibid.*

Reducing costs in the public sector estate

The role of competition in driving higher standards and innovation is also visible in terms of public sector efficiency. The Home Office benchmark reviews revealed that by the late 1990s, the cost of public prisons was falling towards that of contracted establishments. In 1997, the Home Affairs Select Committee found that the cost differential between public and private providers was falling at a rate of 2.5 per cent a year, having reduced by 8 per cent since 1992, with efficiency gains “clearly spurred by competition from the private sector”, according to one leading academic.⁴³ In 2000, the introduction of more flexible staffing arrangements modelled on private sector practice enabled the public sector to ostensibly overtake the private sector on cost, with two previously contracted prisons, HMP Buckley Hall and HMP Blackenhurst, returned to the public sector after an open tender.⁴⁴

In 2003, the NAO suggested that a similar system effect has resulted from the introduction of Design, Construct, Manage and Finance (DCMF) contracts under PFI, arguing that DCMF providers “have generated an alternative market which, through market testing, has reduced costs and acted as an incentive to improve prison performance”.⁴⁵ This reinforces evidence from the sector that, while private bids for PFI contracts were initially on average 17 per cent lower than the public sector, costs fell by 38 per cent in three years due to competition.⁴⁶ In 2005, the Home Office estimated that the competitive PFI process had achieved savings of 8.5 per cent among public sector bidders and 6 per cent among private contractors.⁴⁷

The NAO had previously found that the use of the private sector in prison design and construction reduced delivery times by up to 45 per cent and significantly cut construction costs.⁴⁸

Speed of action in the event of poor performance

There is evidence to suggest that contracted prisons enable a more rapid response to, and correction of, poor performance than in the traditional public sector estate. In 2002, for example, the contracted HMP/YOI Ashfield accrued 6,362 penalty points against its contract after recording high numbers of assaults and inadequate staffing levels.⁴⁹ The then HM Chief Inspector of Prisons, Anne Owers, described her April 2002 inspection report of the prison as “the most depressing report I have issued”.⁵⁰ However, following a period of nine months during which the Director was replaced by a prison service leadership team, contracted management was resumed and in September 2003 HM Inspectorate of Prisons found that the prison “had made so much progress that it bore comparison with some of the best-performing young offender institutions we have inspected”.⁵¹

By contrast, HMP Dartmoor, managed by HMP Service, has been subject to repeated interventions from Whitehall over the last decade to address poor performance, with only limited success. In 2001, HM Chief Inspector of Prisons argued that Dartmoor was a “lesson in how negative cultures can take hold, or re-establish themselves, if a prison does not have a positive vision, reinforced by strong management structures, both locally and centrally”.⁵² After

43 Home Affairs Select Committee (1997), *The management of the prison service (Public and private)*; Liebling, A. (2004), *Prisons and their moral performance: A study of values, quality and prison life*.

44 National Audit Office (2003), *The operational performance of PFI prisons*.

45 Ibid.

46 Sturgess, G. et al. (2007), *Competitive edge: Does contestability work?*, Serco Institute.

47 It should be noted that there is some disagreement as to the origin of these figures, although it is suggested that the estimates were made for the 2004 Efficiency Review: Sturgess, G. and B. Smith (2006), *Designing public sector markets: The custodial sector as a case study*, Serco Institute, p. 6. It is notable, however, that concerns have been raised regarding the flexibility of PFI contracts to changing service and policy demands, especially given their 20-25 year lifespan, and the cost of amending contracts in light of changing government policy, often undermining any initial cost savings.

48 National Audit Office (1997), *The PFI Contracts for Bridgend and Fazakerly Prisons*, HC 253.

49 For a full timeline of the events leading up to the prison service's intervention at HMP/YOI Ashfield, see National Audit Office (2003), *The Operational Performance of PFI Prisons*, Appendix 2.

50 HM Inspectorate of Prisons (2003), *Report on a full unannounced inspection of HM Prison/Young Offender Institution Ashfield, 22-26 September*.

51 Ibid.

52 HM Inspectorate of Prisons (2001), *Report on an unannounced follow-up inspection of HM Prison Dartmoor, 17-21 September 2001*.

Reform Ideas No 2: The case for private prisons

15 months of intensive internal changes and external pressure, the Inspectorate noted only a “prison on the move, but not yet totally convinced about the direction of travel” and it was not until the next inspection, five years after the initial damning assessment, that Dartmoor was found to have been “transformed”.⁵³ In 2008, staff at HMP Dartmoor passed a vote of no confidence in the Governor following accusations of bullying and poor management.⁵⁴

Why do these differences arise?

While all prisons in England and Wales are commissioned by the National Offender Management Service (NOMS) on behalf of the Ministry of Justice, there are distinct systems for the management, accountability, workforce and internal cultures of publicly and privately operated prisons in England and Wales. The table below sets out key differences between the two sectors:

Table 4: Differences between publicly and privately operated prisons

	Public sector prisons	Contracted prisons
Budget	Annual budget allocation from the Ministry of Justice ⁵⁵	Budget determined within contract, typically over 15-25 year period. ⁵⁶
	Minimal budget flexibility ⁵⁷	Autonomy over budget decisions within terms of contract ⁵⁸
	Efficiency targets used to incentivise savings ⁵⁹	Contractors make profit from any surplus against contract cost ⁶⁰
Accountability	Financially accountable to NOMS ⁶¹	Responsible for own financial performance, although subject to financial oversight from on-site controller ⁶²
	Accountability for institutional performance to NOMS Regional Deputy Director of Custody ⁶³	Accountable for institutional performance to Ministry of Justice through on-site controller (a Governor-grade civil servant) and the commissioning authority, NOMS ⁶⁴ (This also applies to public sector prisons managed under a Service Level Agreement)
	Her Majesty's Prison Service accountable for provider performance to the Secretary of State and Parliament (through Select Committees) ⁶⁵	Contractor accountable for provider performance to the Secretary of State and Parliament (through Select Committees) ⁶⁶
	Subject to Freedom of Information requests ⁶⁷	Not subject to Freedom of Information requests ⁶⁸

53 HM Inspectorate of Prisons (2003), *Report on a full announced inspection of HM Prison Dartmoor, 17-21 February 2003*; HM Inspectorate of Prisons (2006), *Report on an unannounced short follow-up inspection of HM Prison Dartmoor, 13-14 February 2006*.

54 BBC News (2008), 'Dartmoor prison staff "bullied"', 19 March.

55 Ministry of Justice (2012), *NOMS commissioning intentions for 2013-14: Discussion document*.

56 National Audit Office (2003), *The Operational Performance of PFI Prisons*.

57 Ibid.

58 Justice Select Committee (2009), *The role of the prison officer*.

59 Ministry of Justice (2012), *National Offender Management Service Business Plan 2012-13*.

60 Prison Reform Trust (2005), *Private punishment: Who profits?*

61 Ministry of Justice (2012), *How the National Offender Management Service works*.

62 National Audit Office (2003), *The Operational Performance of PFI Prisons*.

63 Ministry of Justice (2012), *How the National Offender Management Service works*.

64 Prison Reform Trust (2005), *Private punishment: Who profits?*

65 Ministry of Justice (2012), *How the National Offender Management Service works*.

66 Ministry of Justice (2012), *NOMS commissioning intentions for 2013-14: Discussion document*.

67 Ministry of Justice website (2012), 'How to make an FOI request', www.justice.gov.uk/information-access-rights/foi-requests. Accessed January 2013.

68 Justice Select Committee (2012), *Post-legislative scrutiny of the Freedom of Information Act 2000*, 'Written evidence from the Prison Reform Trust'.

Reform Ideas No 2: The case for private prisons

	Subject to inspections from HM Inspectorate of Prisons and statutory performance reporting	Subject to inspections from HM Inspectorate of Prisons and statutory performance reporting
	Local oversight provided by an Independent Monitoring Board (IMB)	Local oversight provided by an Independent Monitoring Board (IMB)
Staff pay and conditions	Must adhere to nationally agreed pay and conditions ⁶⁹	Full freedom over pay and conditions ⁷⁰
	Locality Pay Allowances to account for regional relative wage disparity ⁷¹	Freedom to vary pay by locality according to local market ⁷²
Staff qualifications	Prison Officers complete 8-week training plus a Custodial Care NVQ ⁷³	PCO training is the responsibility of providers, although most favour a nine-week training course and a variety of further qualification options for staff ⁷⁴
	Prison Officers subject to a variety of regulations, including the Competency & Qualities Framework (CQF) and National Occupational Standards (NOS) ⁷⁵	Autonomy over workforce recruitment, development and management ⁷⁶
Prisoner regime	National Incentives and Earned Privileges Scheme for all public prisons ⁷⁷	Freedom to adapt privileges and incentives for prisoners according to institution and cohort
	Prison Officers have power of constable, including of arrest and use of batons ⁷⁸	Prison Custody Officers (PCO) have no special powers or functions ⁷⁹

These differences are important for understanding the differing performance and quality of public and contracted prisons and the distinctive cultures within them.

Workforce flexibility

The most significant difference between public and privately operated prisons is the degree of flexibility around the use and terms and conditions of the prison workforce. The public sector workforce is governed by uniform pay and remuneration terms and staffing regulations (with some exceptions), while private contractors have relative autonomy to vary wages according to labour demand and local market conditions and to alter staffing levels. Accordingly, there are a number of key disparities between the two sectors:

Pay and conditions

The majority of savings in contracted prisons are achieved through reduced personnel costs, which typically make up at least two-thirds of prison expenditure. Without the rigid framework of national pay-bargaining, private sector contractors have been able to vary wages by locality and reduce basic salaries to remove cost. Historically, this has resulted in significant wage disparity between public and private prison employees: in 2004, it was estimated that the average basic salary for a Prison Officer in a public prison was 43 per cent higher than that of a privately employed Prison Custody Officer, rising to 60 per cent including pensions and other

69 Prison Service Pay Review Body (2012), *Eleventh report on England and Wales 2012*.

70 National Audit Office (2003), *The Operational Performance of PFI Prisons*.

71 Prison Service Pay Review Body (2012), *Report on local pay in England and Wales*.

72 *Prison Privatisation Report International (2004)*, No. 65.

73 HM Prison Service website (2012), 'Becoming a prison officer – prison officer training', www.justice.gov.uk/jobs/prisons/on-offer/prison-officer/prison-officer-training. Accessed January 2013.

74 For example, Sodexo Justice Services recently announced a new nine-week training course assured by the industry quality standard Skillsmark at HM Prison Addiewell in Scotland.

75 Ibid.

76 Ibid.

77 HM Prison Service (2009), *Incentives and earned privileges*.

78 House of Commons (2005), Standing Committee on the Drugs Bill, 1 February.

79 Ministry of Justice, Prison Service Order 4695.

benefits.⁸⁰ However, there is evidence that public sector wages are falling into line with the private sector and in 2012 the Prison Service Pay Review Body reported starting salary bands of broad similarity between the public and private sectors.⁸¹ Private sector staff have generally been found to work longer hours (at an average of two hours extra a week) and with fewer holiday days than publicly operated prisons.⁸²

Staffing levels

Approximately half of private sector staff savings come from lower pay and conditions, the remainder from more flexible staffing arrangements.⁸³ As a number of studies have found, contracted prisons are able to reduce staffing levels through a combination of more effective design (facilitated by the modern nature of contracted prisons), use of technology and regime innovations (such as direct supervision).⁸⁴ The lower levels of staffing in privately operated prisons have led to criticism, however. In particular, a recent comparative study of private and public sector regimes found that some privately managed prisons were hampered in their duties by tighter staffing levels, affecting prison culture and increasing risks of violence.⁸⁵

Recruitment and retention

There is significantly higher job mobility and employee turnover among private prison staff compared to public sector staff. In 2006, the Prison Service Pay Review Body found that turnover among Prison Custody Officers in the private sector was 27 per cent, compared to 6-8 per cent in the public sector, although there was significant variation between institutions.⁸⁶ As *Reform* has previously shown, some leading contracted prisons have reduced staff turnover to as little as 7-8 per cent.⁸⁷ According to the latest estimates, the average length of service for a prison officer is 11.4 years, compared to 3.8 years for Prison Custody Officers (in privately operated prisons).⁸⁸ High levels of turnover in privately operated prisons have led to criticism from penal reform groups and academics, who argue that it leads to inexperienced staff and poor cultures within prisons.⁸⁹ In 2002, for example, HMP Ashfield was put into “special measures” after turnover rates exceeding 65 per cent led to serious concerns by the then HM Chief Inspector of Prisons, Anne Owers.⁹⁰

It is notable, however, that staff in privately operated prisons have higher levels of job satisfaction and greater levels of commitment to work among private uniformed staff.⁹¹

Age and gender profile

In addition to structural distinctions around pay, conditions and staffing, privately operated prisons are characterised by markedly different age and gender profiles among staff. In its first year of operation, for example, 30 per cent of staff at HMP Wolds were female, compared to an

80 Prison Service Pay Review Body (2004), *Privately managed custodial services*.

81 Prison Service Pay Review Body (2012), *Eleventh report on England and Wales*. Private sector starting salaries ranged from £15,800 to £20,600 per annum. By contrast, the NOMS proposed starting salary ranged between £16,000 and £23,499 for 39-hour week, an 18.8 per cent decrease to enhance the competitiveness of public sector bids in prison tenders.

82 Ibid.

83 Park, I. (2000), *Review of comparative costs and performance of privately and publicly operated prisons, 1998-99*, Home Office. Cited in Sturgess, G. (2012), ‘The sources of benefit in prison contracting’; Heylar-Cardwell, V. (Ed.) (2012), *Delivering justice: The role of the public, private and voluntary sectors in prisons and probation*.

84 Direct supervision is a practice developed in the United States in the 1970s under which prison officers would spend greater time supervising and monitoring inmate behaviour on prison landings and social areas, rather than managing the prison largely or completely from a control room. Technological changes, such as the use of CCTV and electronic security for doors, have also improved productivity and reduced staffing levels.

85 Liebling, A. et al. (2011), *Values, practices and outcomes in public and private sector corrections*, Economic and Social Research Council.

86 These figures may be influenced by a number of factors, including the age profile and previous length of service of officers and the age and stability of the prison. Newer establishments typically have significantly lower staff retention rates due to initial instability and the lack of mentoring procedures in place for new staff. In addition, younger or less experienced workers are more mobile in their employment: Prison Service Pay Review Body (2006), *Fifth report on England and Wales*.

87 Tanner, W. (2012), *Innovative custody at HM Prison Lowdham Grange*, More for less website, *Reform*.

88 Hansard (2009), C356w, 23 February.

89 For example, James, A. K. (1997), *Privatizing prisons: Rhetoric and reality*.

90 HM Inspectorate of Prisons (2003), *Report on a full unannounced inspection of HM Prison/Young Offender Institution Ashfield, 22-26 September*.

91 Crewe, B. et al (2011), ‘Staff culture, use of authority and prisoner quality of life in public and private sector prisons’, *Australian & New Zealand Journal of Criminology*, Vol. 44, No. 94

average 3 per cent in the public sector.⁹² In addition, privately operated prisons typically have a much younger age profile, given higher levels of turnover and shorter length of service.⁹³ Importantly, a number of academics have argued that the pioneering use of female prison officers in the private sector has had a beneficial effect on prisoner behaviour and prison culture.⁹⁴

Staff culture and relationships with prisoners

The introduction of flexible working conditions and innovative staffing levels by the private sector has resulted in markedly different internal cultures and staff-prisoner relationships in the prison sector. In particular, privately run prisons outperform public sector prisons in terms of staff attitudes and levels of fairness and respect towards prisoners.⁹⁵ In 2003, the National Audit Office argued: “a key innovation by the private sector has been in promoting a more constructive staff/prisoner relationship. PCOs are encouraged to treat prisoners in a more positive manner, for example through the use of first names and mentoring schemes.”⁹⁶ This evidence is supported by significant differences in the role fulfilled by private and public prison staff. In contrast to public sector Prison Officers, PCOs operate without power of arrest or the use of batons, and in staff surveys convey more positive attitudes towards prisoners.⁹⁷

Similarly, recently published comparative research of seven public and private prisons over a 30 month-period found that staff in privately run prisons tend to have more respectful and courteous relationships with prisoners, more positive staff cultures and more caring attitudes towards work than their public sector counterparts, who tend to stress safety and control measures more regularly.⁹⁸ However the impact of this benign culture on prison quality of life was found to be mixed between institutions: two privately run prisons in the study showed significant weaknesses in safety metrics, such as ‘policing and control’ and ‘organisation and consistency’, while in two further prisons ‘positive culture’ combined with better trained staff had resulted in a “humane, predictable and purposeful” environment.⁹⁹ The authors conclude that “what appears to be positive staff ethos [that typifies privately run institutions] may result in negative prisoner experiences” and that there is a degree of trade-off between positive staff-prisoner relationships and prison safety in prison operations.¹⁰⁰

Contracting

The process of contracting itself has been a key government lever in driving improvement in prisons.¹⁰¹ As surveys of prison managers in both sectors (and those who have experienced contracted and direct line management in both) reveal that commercial process of identifying contract demands and focusing prison leaders on desired outcomes has resulted in better institutional management and more effective response to incidents.

For example, prisons managed under a contract or SLA tend to involve far greater levels of managerial autonomy and a clearer focus on institutional outcomes as a result of the

92 Sturgess, G. (2012), ‘The sources of benefit in prison contracting’, in Heylar-Cardwell, V. (Ed.) (2012), *Delivering justice: The role of the public, private and voluntary sectors in prisons and probation*.

93 Prison Service Pay Review Body (2012), *Eleventh report on England and Wales*.

94 Sturgess, G. (2008), ‘Using contracting and competition to improve prison performance’, Speech to the International Corrections and Prisons Association Conference, Prague, 26 October: “It is broadly recognised that the introduction of a significantly larger proportion of women into male prisons has made a major contribution to ‘normalising’ the prison environment. Group 4 had not set out to bring about a revolution in the gender balance in prison management, but that is what its recruitment policy brought about.”

95 See, for example, Shefer, G. and A. Liebling (2008), ‘Prison privatization: In search of a business-like atmosphere?’, *Criminology & Criminal Justice*, Vol, 8, No. 3.

96 National Audit Office (2003), *The Operational Performance of PFI Prisons*.

97 In particular, public sector uniformed staff score highly in authority metrics and have less positive attitudes towards prisoners than private uniformed staff; Crewe, B. et al (2011), ‘Staff culture, use of authority and prisoner quality of life in public and private sector prisons’, *Australian & New Zealand Journal of Criminology*, Vol. 44, No. 1.

98 Liebling, A. et al (2011), *Values, Practices and Outcomes in Public and Private Sector Corrections*, Economic and Social Research Council.

99 Ibid.

100 Crewe, B. et al (2011), ‘Staff culture, use of authority and prisoner quality of life in public and private sector prisons’, *Australian and New Zealand Journal of Criminology*, Vol. 44, No. 1.

101 For example, National Audit Office (2003), *The Operational Performance of PFI Prisons*; Carter, P. (2003), *Managing offenders, reducing crime: A new approach*.

Reform Ideas No 2: The case for private prisons

“contractual shield” against incessant intervention from the Prison Service.¹⁰² Moreover, greater autonomy tends to breed better and more responsive decision-making within the prison itself. In 1999, the then Chief Inspector of Prisons, David Ramsbotham, described: “[in contract prisons] management response to appeals from the director for help, or support, is instant, not subject to labyrinthine public sector bureaucratic procedures.”¹⁰³

In addition, contracted prisons are subject to significant day-to-day oversight of performance through the presence of an on-site controller, a governor-grade civil servant responsible for monitoring contractual and financial performance and ensuring the fair and lawful treatment of prisoners. In the event of poor performance against defined KPIs, including assaults, drug use and prisoner escapes, controllers are able to act quickly to resolve the situation and deduct financial penalties against the contractor where necessary.¹⁰⁴ In non-SLA publicly operated prisons, by contrast, governors are accountable to a NOMS Regional Deputy Director of Custody, limiting the degree of immediate accountability and inhibiting swift and effective intervention in the event of a serious incident.¹⁰⁵ There is no system of penalties in the event of poor performance in the public sector, and in fact the threat of competition has been one of few ways by which central government has been able to drive meaningful reform.¹⁰⁶

Moreover, the lack of on-site accountability in the public sector has meant that non-SLA public prisons have been able to engage in exactly the type of “gaming” behaviours that early critics of contracting feared from the private sector. In 2009, two public sector prisons, HMP Wandsworth and HMP Pentonville, were found to have transferred prisoners between them in order to subvert inspections from Her Majesty’s Inspectorate of Prisons. An official investigation found that the prisons had transferred the most difficult or vulnerable prisoners immediately before inspections in order to gain more favourable ratings, a practice denounced as “completely pointless, irresponsible and potentially dangerous” by the then Chief Inspector.¹⁰⁷

The Government’s “new approach” to competition

On 8 November 2012, the new Justice Secretary, Chris Grayling, set out a “new approach” to competition in the prison system, consisting of two essential reforms. Firstly, whole prison contracting will be replaced by a hybrid prison model, by which core custodial functions will continue to be provided by the public sector and ancillary and rehabilitation services will be contracted out to private and charitable providers on a payment by results basis. Secondly, an “efficiency benchmark” will be applied to publicly operated prisons in order to reduce costs for those core services retained within the public sector, coming into effect in April 2013.¹⁰⁸ The Ministry of Justice has made clear that this new approach represents the end of whole prison contracting.¹⁰⁹

The scope and scale of the new ancillary contracts is as yet unclear. However, an internal Ministry of Justice memo in November confirmed that “front line prison officer work” has been safeguarded from competition.¹¹⁰ Given the fact that prison officer grades account for over 70 per cent of the prison service workforce, which itself constitutes 72 per cent of total prison operational costs, it seems unlikely that the scale of new contracts will be significant.¹¹¹

¹⁰² Reddington, E. (2004), *Good people, good practice*, Serco Institute.

¹⁰³ Cited in Sturgess, G. (2011), ‘The sources of benefit in prison contracting’, in Heylar-Cardwell, V. (Ed.) (2012), *Delivering justice: The role of the public, private and voluntary sectors in prisons and probation*.

¹⁰⁴ For example, National Audit Office (2003), *The Operational Performance of PFI Prisons*.

¹⁰⁵ Ministry of Justice (2012), *How the National Offender Management Service works*.

¹⁰⁶ See page 10, “Raising the game”.

¹⁰⁷ Travis, A. (2009), “Prison governors face sack over scandal of swapped inmates”, 20 October, *The Guardian*.

¹⁰⁸ Ministry of Justice (2012), *Staff Intranet Q&A*. Released internally in conjunction with the Ministerial Announcement on “Next steps for prison competition”.

¹⁰⁹ *Ibid.* “If this approach is successful there will be no requirement for individual competitions on a prison by prison basis in the future.”

¹¹⁰ *Ibid.*

¹¹¹ Prison Service Pay Review Body (2012), *Eleventh report on England and Wales*: In 2011, 25,146 of the total 34,354 prison employees were Prison Officer grade; Justice Select Committee (2009), *The role of the prison officer*: “Of the Prison Service budget, 72% goes on staff”.

This model of public-private partnership bears some resemblance to the French model of semi-private prisons, or *gestion mixte*, developed under what was known as “Programme 13,000” in the late 1980s. Under this hybrid model, non-custodial functions, such as facilities management and resettlement services, are provided by the private sector, but the workforce, including prison officers, is employed directly by the state. Although data on the success of the “institutions 13,000” is limited, there is some evidence to suggest that these hybrid prisons are in fact more costly than comparable public sector prisons. As Table 6 below shows, the French Court of Auditors found in 2006 that hybrid prisons were between 8 and 33 per cent more expensive than comparable public prisons between 1999 and 2003.¹¹²

Table 5: Cost comparison between public and hybrid prisons in France, 1999 – 2003, € (2006 prices)

Source: Cour des Comptes (2006), *Garde et réinsertion – La gestion des prisons, Rapport public thématique, France*.

	1999	2000	2001	2002	2003
Daily costs in hybrid prisons	53.81	60.17	N/A	56.41	53.27
Daily costs in comparable public prisons	43.73	45.12	N/A	52.00	45.83
Difference (per cent)	23.05	33.36	N/A	8.48	16.23

These findings support the evidence from the UK that the majority of savings to be found within the prison estate derive from more flexible workforce practices and less generous pay and conditions. The Government’s new approach, however, specifically shields the public sector prison workforce from meaningful reform.

In December, the Chancellor further reduced the ability of prisons to make savings through the workforce by rejecting the introduction of local market-facing pay in the prison service. This decision was made in spite of the Government’s support for market-facing pay in other parts of the public sector, such as schools, and the successful introduction of local pay in HM Courts and Tribunals Service.

Conclusion and recommendations

This paper shows that contracting in the prison service has worked. Private contractors outperform comparable public sector prisons on both cost and quality, delivering better value for money for the taxpayer. In addition, the vast majority of contracted prisons have lower reoffending rates than similar public sector prisons for both long and short term prisoners; a key Government objective.

Meanwhile, workforce flexibilities introduced by the private sector demonstrate the value of local pay and conditions in prisons. Market facing pay and adaptable staffing arrangements have not only reduced cost considerably but also improved staff-prisoner relationships and internal cultures within prisons. As *Reform* has previously argued, the ability to adapt pay and workforce management is critical to successful service transformation.¹¹³

Yet the Government has abandoned prison contracting and opposed the introduction of local pay in the prison service. In its place, the Government has proposed a hybrid model which insulates the most important and expensive aspect of a prison – the officer workforce – from reform.

This paper therefore makes several recommendations to Government:

- > **Market test all prisons:** Competitive pressure has driven up quality and driven down cost, but market testing has been limited to just 17 of the 131 prisons in the estate. Market testing every prison would ensure far greater competition than the proposed efficiency benchmark and opens the market to new providers.
- > **Introduce fixed term contracts:** The current system of direct management from NOMS prevents meaningful accountability against a set of key indicators over a set period. All prisons, public and private, should be made subject to fixed term contracts or Service Level Agreements that are competed at the end of each term.
- > **Create a level playing field on transparency:** The introduction of fixed term contracts would allow all prisons to be measured against a set of uniform indicators, making direct comparison of cost and quality more meaningful. This information should be published regularly in order to allow competitive pressure between prisons to drive up quality and reduce cost. All providers should be subject to the Freedom of Information Act for activities directly related to prison management.¹¹⁴
- > **Give prisons flexibility over pay and conditions:** The Government should follow the example of Her Majesty's Courts and Tribunals Service and introduce local pay decision-making in prisons. Governors would take on responsibility for deciding staffing arrangements, pay and conditions for staff and performance-related pay. This would mean the end of national pay bargaining.

¹¹³ See, for example, Bassett, D. (2011), *Reformers and wreckers, Reform*.

¹¹⁴ In fact, private contractors already respond to FOI requests made through NOMS and the Ministry of Justice. However, this should be formalised in order to give consistency.

Reform Ideas No 2: The case for private prisons

Appendix 1: History of competitive tenders for prison management, England and Wales

Sources: Various.

Year of opening	Prison	Category	Successful contractor	Type of contract
1992	HMP The Wolds	Cat B Local	Group 4 (G4S)	Managed
1993	HMP Blackenhurst	Cat B Local	UKDS (Sodexo)	Managed
1994	HMP & YOI Doncaster	Cat B Local	Premier (Serco)	Managed
1994	HMP Buckley Hall	Cat C	Group 4 (G4S)	Managed
1994	HMP Manchester	Core Local	Prison Service	Managed (following refurbishment)
1997	HMP Altcourse	Cat B Local	Group 4 (G4S)	Design, Construct, Manage, Finance (PFI)
1997	HMP & YOI Parc	Cat B Local	Securicor (G4S)	Design, Construct, Manage, Finance (PFI)
1998	HMP Lowdham Grange	Cat B Training	Premier (Serco)	Design, Construct, Manage, Finance (PFI)
1999	HMP & YOI Ashfield	Juvenile/YO	Premier (Serco)	Design, Construct, Manage, Finance (PFI)
2000	HMP Forest Bank	Cat B Local	UKDS (Sodexo)	Design, Construct, Manage, Finance (PFI)
2000	HMP Buckley Hall	Cat C	Prison Service	Service Level Agreement
2001	HMP Blackenhurst	Cat B Local	Prison Service	Service Level Agreement
2001	HMP Dovegate	Cat B Local	Premier (Serco)	Design, Construct, Manage, Finance (PFI)
2001	HMP Rye Hill	Cat B Training	Group 4 (G4S)	Design, Construct, Manage, Finance (PFI)
2001	HMP Brixton	Cat B Local	N/A	Failed tender, no bidders
2003	HMP Manchester	Cat A	Prison Service	Service Level Agreement
2004	HMP & YOI Bronzefield	Cat B Female	Kalyx (Sodexo)	Design, Construct, Manage, Finance (PFI)
2005	HMP & YOI Peterborough	Cat B Local	Kalyx (Sodexo)	Design, Construct, Manage, Finance (PFI)
2005	HMP Elmley, Standford Hill & Swaleside Cluster	Various	Prison Service	Service Level Agreement
2010	HMP Maghull	Cat B Local	N/A	Tender withdrawn
2010	HMP Belmarsh West (now HMP Thameside)	Cat B Local	Serco	Design, Construct, Manage, Finance (PFI)
2012	HMP Featherstone 2	Cat B Local	G4S	Managed

Reform Ideas No 2: The case for private prisons

2012	HMP Birmingham	Cat B Local	G4S	Managed, transfer from public sector
2012	HMP Oakwood	Cat C	G4S	Managed
2012	HMP Coldingley	Cat C	N/A	Failed tender, returned to public sector
2012	HMP Durham	Cat B Local	N/A	Failed tender, returned to public sector
2012	HMP Onley	Cat B Local	N/A	Failed tender, returned to public sector
2014	HMP Castington & Acklington (Northumberland)	Cat C Training	Ongoing	Managed, transfer from public sector
2014	HMP Moorland, Hatfield & Lindholme Cluster	Various	Ongoing	Managed, transfer from public sector
2014	HMP Wolds	Cat C	Prison Service	Service Level Agreement, transfer from G4S

Reform Ideas No 2: The case for private prisons

Appendix 2: Reoffending rates of contracted prisons in England and Wales, short and long term sentences, 2007-10, percentage

Source: Ministry of Justice (2012), Reoffending rates for individual prisons in England and Wales, 2007-10.

	2007		2008		2009		2010		Percentage point change, 2007-10	
	Short term sentences	12 months or more	Short term sentences	12 months or more	Short term sentences	12 months or more	Short term sentences	12 months or more	Short term sentences	12 months or more
PRs Comparator Group 3: Other Local, Modern Buildings										
Dovegate	N/A	42.62	N/A	30.12	60.29	36.96	56.88	38.71	N/A	-3.91
Forest Bank	66.89	47.56	63.28	44.10	62.56	41.57	60.49	43.14	-6.4	-4.42
Peterborough – Male	61.27	43.39	62.55	41.96	58.65	36.92	57.89	42.47	-3.38	-0.92
Public sector average	67.89	44.15	64.28	43.91	62.51	44.31	62.33	49.32	-5.56	5.17
PRs Comparator Group 4: Other Local and YO, Modern Buildings										
Altcourse	64.56	34.68	64.71	39.35	61.69	42.86	60.43	40.31	-4.13	5.63
Doncaster	65.67	44.59	64.47	40.86	65.03	42.08	60.31	46.32	-5.36	1.73
Parc	66.55	49.13	61.48	48.66	61.65	45.44	62.34	45.32	-4.21	-3.81
Public sector average	67.89	44.15	64.28	43.91	62.51	44.31	62.33	49.32	-5.56	5.17
PRs Comparator Group 5: Category B Training										
Lowdham Grange	N/A	34.04	N/A	38.10	N/A	36.00	N/A	33.90	N/A	-0.14
Rye Hill	N/A	34.21	N/A	18.75	N/A	20.00	N/A	31.71	N/A	-2.5
Public sector average	N/A	30.19	N/A	39.29	N/A	27.54	N/A	35.48	N/A	5.29
PRs Comparator Group 6: Category C Good Control										
Wolds	N/A	34.19	66.07	32.69	52.17	36.92	63.04	41.83	N/A	7.64
Public sector average	N/A	36.96	61.13	37.85	56.04	35.59	52.84	35.86	N/A	-1.1

Reform Ideas No 2: The case for private prisons

PRS Comparator Group 10: Female local										
Bronzefield	62.16	25.00	63.31	37.50	59.79	30.86	54.38	22.40	-7.78	-2.6
Peterborough – Female	N/A	N/A	N/A	N/A	N/A	N/A	57.59	38.18	N/A	N/A
Public sector average	66.84	35.24	66.98	31.99	61.17	35.49	60.23	33.18	-6.61	-2.06
PRS Comparator Group 13: Male Juvenile										
Ashfield	66.18	64.44	78.13	72.50	65.00	54.72	78.13	57.14	11.95	-7.3
Public sector average	69.46	49.69	78.95	56.22	74.04	64.71	68.87	63.75	-0.59	14.06

References

- Adam Smith Institute (1984) *Privatizing Prisons: The Moral Case*.
- Adam Smith Institute (1987), *The Prison Cell*.
- Bassett, D. et al (2011), *Reform Scorecard 2011, Reform*.
- Bassett, D. et al (2011), *Reformers and wreckers, Reform*.
- BBC News (2008), 'Dartmoor prison staff "bullied"', 19 March.
- Bottomley, A. et al (1997), *Monitoring and evaluation at Wolds remand prison and comparisons with public sector prisons, in particular HMP Woodhill*.
- Cameron, D. (2011), 'How we will release the grip of state control', *The Daily Telegraph*, 20 February.
- Carter, P. (2003), *Managing Offenders, Reducing Crime: A New Approach*.
- Cour des Comptes (2006), *Garde et réinsertion – La gestion des prisons*, Rapport public thématique, France.
- Crewe, B. et al (2011), 'Staff culture, use of authority and prisoner quality of life in public and private sector prisons', *Australian & New Zealand Journal of Criminology*, Vol. 44, No. 94.
- Hansard (1989), Column 277, 1 March.
- Hansard (1992), Vol. 538, Col. 1096-111, 7 July.
- Hansard (1993), Vol. 218, Col. 431, 3 February.
- Hansard (2009), C356w, 23 February.
- Harding, R. (1997), *Private prisons and public accountability*.
- Harding, R. (2001), 'Private Prisons', *Crime and Justice*, No. 28.
- Heylar-Cardwell, V. (Ed.) (2012), *Delivering justice: The role of the public, private and voluntary sectors in prisons and probation*.
- HM Government (2011), *Open Public Services White Paper*.
- HM Government (2012), *Open Public Services 2012*.
- HM Inspectorate of Prisons (2001), *Report on an unannounced follow-up inspection of HM Prison Dartmoor, 17-21 September 2001*.
- HM Inspectorate of Prisons (2003), *Report on a full unannounced inspection of HM Prison/Young Offender Institution Ashfield, 22-26 September*.
- HM Inspectorate of Prisons (2003), *Report on a full announced inspection of HM Prison Dartmoor, 17-21 February 2003*.
- HM Inspectorate of Prisons (2006), *Report on an unannounced short follow-up inspection of HM Prison Dartmoor, 13-14 February 2006*.
- Home Affairs Select Committee (1987), *Contracted provision for prisons*.
- Howard League for Penal Affairs (2013), *Weekly prison watch: Latest prison figures – week ended 11 January 2013*.
- Home Affairs Select Committee (1997), *The management of the prison service (Public and private)*.
- HM Prison Service (2009), *Incentives and earned privileges*.
- HM Prison Service website (2012), 'Becoming a prison officer – prison officer training', accessed January 2013.
- Home Office (1988), *Private Sector Involvement in the Remand System*.
- House of Commons (2005), Standing Committee on the Drugs Bill, 1 February.
- James, A. K. et al (1997), *Privatizing Prisons: Rhetoric and Reality*.
- Jones, T. and T. Newburn (2007), *Policy transfer and criminal justice: Exploring US influence over British Crime Control Policy*.
- Justice Select Committee (2009), *The role of the prison officer*.
- Justice Select Committee (2012), *Post-legislative scrutiny of the Freedom of Information Act 2000*, 'Written evidence from the Prison Reform Trust'.

Reform Ideas No 2: The case for private prisons

- Liebling, A. (2004), *Prisons and their moral performance: A study of values, quality and prison life*.
- Liebling, A. et al (2011), *Values, practices and outcomes in public and private sector corrections*, Economic and Social Research Council.
- Ministry of Justice (2012), *Cost per place and cost per prisoner by individual prison establishment, 2011-12*. Reform analysis.
- Ministry of Justice (2012), *How the National Offender Management Service works*.
- Ministry of Justice website (2012), 'How to make an FOI request, accessed January 2013.
- Ministry of Justice (2012), *National Offender Management Service Business Plan 2012-13*.
- Ministry of Justice (2012), *NOMS commissioning intentions for 2013-14: Discussion document*.
- Ministry of Justice (2012), *Prison Ratings System: Technical Note*.
- Ministry of Justice (2012), "Next steps for prison competition", News Release, 9 November 2012.
- Ministry of Justice (2012), *Staff Intranet Q&A*.
- Ministry of Justice, Prison Service Order 4695.
- National Audit Office (1997), *The PFI Contracts for Bridgend and Fazakerly Prisons*, HC 253.
- National Audit Office (2003), *The operational performance of PFI prisons*.
- Panchamia, N. (2012), *Competition in prisons*, Institute for Government.
- Park, I. (2000), *Review of comparative costs and performance of privately and publicly operated prisons, 1998-99*, Home Office.
- Pozen, D. (2003), 'Managing a correctional marketplace: Prison privatization in the United States and the United Kingdom', *Journal of Law and Politics*, 9.
- Prison Reform Trust (2005), *Private punishment: Who profits?*
- Prison Reform Trust (2012), *Bromley Briefings Prisons Factfile*.
- Prison Privatisation Report International* (2004), No. 65.
- Prison Service Pay Review Body (2004), *Privately managed custodial services*.
- Prison Service Pay Review Body (2006), *Fifth report on England and Wales*.
- Prison Service Pay Review Body (2012), *Eleventh report on England and Wales 2012*.
- Prison Service Pay Review Body (2012), *Report on local pay in England and Wales*.
- Reddington, E. (2004), *Good people, good practice*, Serco Institute.
- Shefer, G. and A. Liebling (2008), 'Prison privatization: In search of a business-like atmosphere?', *Criminology & Criminal Justice*, Vol, 8, No. 3.
- Sturgess, G. and B. Smith (2006), *Designing public sector markets: The custodial sector as a case study*, Serco Institute.
- Sturgess, G. et al (2007), *Competitive edge: Does contestability work?*, Serco Institute.
- Sturgess, G. (2008), 'Using contracting and competition to improve prison performance', Speech to the International Corrections and Prisons Association Conference, Prague, 26 October.
- Sturgess, G. (2012), 'The sources of benefit in prison contracting', in Heylar-Cardwell, V. (Ed.) (2012), *Delivering justice: The role of the public, private and voluntary sectors in prisons and probation*.
- Tanner, W. (2012), *Innovative custody at HM Prison Lowdham Grange*, More for less website, Reform.
- The Economist* (1998), 'Private porridge', 28 May.
- Travis, A. (2009), "Prison governors face sack over scandal of swapped inmates", 20 October, *The Guardian*.
- Woodbridge, J. (1999), *Review of comparative costs and performance of privately and publicly operated prisons, 1997-98*, Home Office.
- Woolf, H. (1991), *Prison Disturbances April 1990*.