

# **Privatised Prisons and Detention Centres in Scotland:**

## **An Independent Report**

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# **Privatised Prisons and Detention Centres in Scotland : An Independent Report**

**Phil Taylor and Christine Cooper**

## **Preface**

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

The authors accept that the conditions in much of the prison estate in Scotland are inhumane and outdated, particularly in terms of overcrowding and the practice of 'slopping out'.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

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

## **Aim**

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

## **Objectives**

- To investigate the accounting and costing methodologies employed by Pricewaterhouse Coopers (PwC) and to scrutinise the recommendations made in their report, which appear to have been accepted without question or qualification by both the Scottish Prison Service in their Estates Review and the Scottish Executive.

- To examine the available evidence of the performance and practice of Scotland's only privately run prison, HMP Kilmarnock, since it opened in March 1999. It would seem incontrovertible that the operational experience of Kilmarnock is particularly important in order to establish the credibility of the proposed extension to privatisation. If Kilmarnock is judged to have been an overwhelming success, then the case for privatisation is correspondingly strengthened. Conversely, if major problems are identified in Kilmarnock experience, then the case for privatisation is seriously undermined. Given that the PwC Report and Estates Review focus almost exclusively on financial and cost considerations, we contend that all the significant issues highlighted in the HM Chief Inspectors' Reports of 2000 and 2001 should be given full consideration.
- To relate the evidence from Kilmarnock to the arguments advanced in favour of privatisation in the Estates Review. In so doing evidence will be presented from the broader experience of privatised prisons and more general conclusions drawn.
- To review the record of the company responsible for operating HMP Kilmarnock, Premier Prison Services, and to examine the practice of the parent company of one of the major partners involved in PPS, Wackenhut Corrections Corporation (WCC). An assessment of Wackenhut's prison operations will provide valuable contextual and background information which can further inform judgements regarding the viability of the prison privatisation project as a whole.
- As an ancillary but related objective, to examine the role of Wackenhut in its provision of detention services for immigration authorities in the United States and Australia. Again this forms necessary background research for establishing the credibility of Premier Detention Services in relation to the operation of Dungavel Detention Centre on the site of a former Scottish Prison Service (SPS) establishment. While it is acknowledged that Dungavel is the responsibility, not of the SPS, but of the Home Office, it raises important and related issues concerning privatisation and incarceration.

### **A Note on Sources**

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

### **Organisation of the Report**

Consistent with the aims and objectives outlined above the report is organised into the following Sections.

**Section 1** : Introduction, Context and Background

**Section 2** : Analysis of PricewaterhouseCoopers Report, A Financial Review of Scottish Prison Service Estates Review

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

**Section 4** : Relating the Kilmarnock evidence both to the case for privatisation contained in the Estates Review and more general evidence concerning privatisation

**Section 5** : Review of the record of Wackenhut Corrections Corporation and its subsidiaries, including Premier Prisons Services

**Section 6** : Wackenhut and detention centres

**Section 7** : Conclusions

## **Section 1 Introduction, Context and Background**

### **1.1 Recent Political Context**

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

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

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

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

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

In Scotland a similar change took place.

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

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

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

## ***1.2 The Case Against Privatisation***

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

The basis of the moral case against privatisation is rooted in the very logic of privatisation itself, where a private company bids for a contract on the grounds that it can construct, manage and run a prison more cost-effectively than the state. At the same time, a private company is promising to its shareholders that it can deliver a profit on this

contract. The consequences of both these sets of pressures, it is argued, are lower pay rates for privatised prison staff, which can contribute to low morale, higher turnover and a poorer calibre of recruit. The pressure to make a profit leads also to lower staffing levels and the cutting back of service provision, particularly in relation to care, rehabilitation and programmes designed to challenge offending behaviour, and which in turn can even lead to neglect, and even the abuse, of inmates. As is demonstrated (Section 5), through the prism of the Wackenhut case study in the US, all of these problems have emerged to varying degrees.

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

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

*'While arrests and convictions are steadily on the rise, profits are to be made – profits from crime. Get in on the ground floor of this booming industry now. Leading industry analysts will give expert forecasts on future growth potential for the private prison industry and how to make the most of investments today...as they share their insights on how to capitalize on a new era of opportunities...'*  
(Invitation to a World Research Group Conference, Dallas, December 1996)

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

Over the last decade, there has been a proliferation of global conferences and symposia at which those with a 'vested interest' in privatisation share experiences on how profit margins can be maximised and costs reduced. These events either focus specifically on prison privatisation or more generally on the opportunities opening up through governments' use of PFI/PPP or similar initiatives. Examining the list of participants at, and the agendas of, conferences such as the 2<sup>nd</sup> Annual Public-Private Partnership/Private Finance Initiative Global Summit (The Global Government-Industry Forum on

International Developments in PPP/PFI) in Dublin in October 2001, it is easy to see the coming together of the ‘vested interests’ : private operators, accountants, government agencies, consultancies, construction companies. The Dublin event sponsors included the accounting firms KPMG and PricewaterhouseCoopers, and speakers included Paul Boateng (formerly UK prisons’ minister) who, it was anticipated, would speak on the positive experience of UK prison privatisation (PPRI, August 2001). In this context, it is disingenuous of the Estates Review to refer to PricewaterhouseCoopers as ‘independent accountants’. The briefest scrutiny of the proceedings of these conferences reveals the interconnectedness of those with vested interests in the privatisation of prisons.

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

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

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

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

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

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

The source of profits for companies operating private prisons and detention centres can lie not just in the government revenues they receive. In the United States Wackenhut provides cheap labour for corporations. For example, in Austin Texas, a company which initially produced circuit boards closed down only to re-open within one of Wackenhut’s

prisons. Prisoners now work in this factory producing goods for companies including IBM and Microsoft (<http://greenleft.org.au/back/2001/>).

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

### *1.3 The Scale of Scotland's Proposed Prison Privatisation in Context*

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

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

Without being explicitly stated, an assumption underlies both reports that privatisation is the sole route being pursued by governments across the world. However, this is not the case. For example, in the Netherlands, where the prisoner population has grown from 4,000 to 14,000 in the last 15 years, the government, having examined the record of privatisation in the UK, Australia and the United States, decided that the policy was unsuitable. In addition, there are now many instances where failed private correctional facilities have been taken back into the public sector. Even in the heavily privatised state

of Victoria in Australia, Deer Park women's prison has reverted to state's hands because of the concerns about the management of Corrections Corporation of Australia. In California, Governor Gray Davis recently announced that the state was ending its experiment with privately operated prisons (Los Angeles Times, 15 March 2002).

## **Section 2 Analysis of the PricewaterhouseCoopers Report, A Financial Review of Scottish Prison Service Estates Review and the SPS Estates Review**

### **2.1 PricewaterhouseCoopers : Methodology**

There have been few, if any, UK studies of the type undertaken by PricewaterhouseCoopers (PwC) for the Estates Review. In terms of evaluating PwC's methodology it would be useful to draw upon the experience of the US which has a longer history of privatised prisons. The United States General Accounting Office<sup>1</sup> undertook an evaluation of various methodologies which had been used to compare the operational costs and/or the quality of service of comparable private and public prisons. It concluded that (p 13) *'The best approach for evaluating operational costs is to study existing comparable facilities, not hypothetical facilities'*. The approach taken by PwC is to study hypothetical facilities. The costings in the PwC report are simply *estimates of building* a hypothetical 700 cell prison. It would be entirely possible to come up with totally different figures by using other equally plausible (perhaps more plausible) assumptions. The US General Accounting Office report stated that *'this type of hypothetical comparison does not allow for consideration of any unanticipated changes in components such as staffing levels, other expenses, rate of occupied bed space, or many other factors that could affect actual costs. Changes in any single assumption, or set of assumptions, for the hypothetical institutions could change the size or even the direction of the differences in the comparative operational costs'* (p 7 - 8).

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

Aside from the serious methodological flaw of looking at a hypothetical prison, the PwC report does *not* deal with the costing implications of the current Scottish Executive proposals to build three new private prisons and close two prisons<sup>2</sup>. *Therefore, any cost*

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

<sup>2</sup>Proposals in the prison estates review include the closure of Peterhead and Low Moss, at Bishopbriggs, near Glasgow, and the reduction in size of Barlinnie, Scotland's largest jail, by almost half.

*comparisons made by the Scottish Executive should be treated with disdain.* The SPS Estates Review Terms of Reference states (p.2) that ‘The Scottish Executive considers it important that debate takes place against a background of *established cost* and *factual material* (authors’ emphasis). To that end an independent firm of accountants, PricewaterhouseCoopers, working on behalf of the Scottish Executive Justice Department and hence the Scottish Ministers, has verified the costings’. *The fact is that the PwC costings are not established costs. They are guesstimates.*

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

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

### ***2.1.1 Neutrality***

PricewaterhouseCoopers are acting as consultants for the Scottish Executive. Upfront (1.1) they assert that their brief was to ‘undertake a financial review to *support investment decisions* (authors’ emphasis) that form part of the SPS Estates Review’. The report is therefore non-neutral<sup>3</sup>

### ***2.1.2 Non-comparability between the three options***

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

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

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<sup>3</sup>It would be in the public interest for the Scottish Executive to reveal the fee paid to Pricewaterhouse Coopers.

In each case the report is based upon a supposedly comparable new 700 place prison. The report gestures towards an understanding that each of these options is identical except for the cost. *This is absolutely not the case.*

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

- **Building design.** The private building specification is based on HMP Kilmarnock even though there appear to be problems with this design, not least that it may be possible to see from one hall to another<sup>4</sup>. In the event of a riot, this would be an extremely serious flaw. The public/public costings are based on a different quality design.
- **Operations.** Built into the public/public costings are significant benefits to the prison service and population. For example it is anticipated that a prison of 700 cells would be regarded as a hub prison for medical services and that the area will reflect this requirement. There is no mention of such provision in the PPP costings.
- **Staffing.** The public/public case is based upon a reasonable mix of experienced and new staff. This is not the case for the PPP proposal. Clearly staffing is a major issue. It is unclear, aside from a determination to bring in reduced pay and flexible working conditions that the PPP costings have taken the issue of staffing seriously. For example, would the PPP contract specify that the new prison should have extra staff in the first six months of operations in the same way that the costing of the public option indicates?

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

- **Building Damage By Inmates.** The potential costs involved in building damage by inmates that makes either cells or whole wings being uninhabitable. It is not at all clear that the PPP costings include such risks. Indeed in the event of a riot in a private prison it is guaranteed that the public sector would have to take over and bear the costs.
- **Demand for Places Higher Than Anticipated.** The SPS costings include a provision for 25% additional places over and above normal operating capacity. It is clear that this risk would naturally be assumed by SPS and the PPP option will be unable/unwilling to cater for a sudden demand for higher prison places. In fact the SPS Estates Review's terms of reference specifically states in 'The Ideal Estate' model that design capacity should be adequate for

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<sup>4</sup>Derek Turner in an interview (22 February 2002) with the authors reported on a conversation he had with a senior prison governor who had visited Kilmarnock. She is said to have commented that she 'couldn't believe the fact that the way the wings are built you could look on to each other, so the prisoners could see what was happening in another wing'.

overall numbers and categories of prisoners (*including contingencies*).

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

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

### **2.1.3 Labour and Buildings**

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

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

The PwC report further states that (p 32)

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

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

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

work. Indeed the public sector should ensure that contracts are drawn up to ensure that their risk is minimised.

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

#### ***2.1.4 Window Dressing the Accounts***

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

#### ***2.1.5 Concerns Regarding PwC Figures***

It is impossible to query the PwC costings in detail because their report doesn’t give enough background information. But their costings for the public/public option approximately assumes a smoothed cash flow cost per prisoner of almost **£47,000** per annum<sup>5</sup>. This is significantly higher than the cost of a SPS prison place at present (certainly doubled). This figure is even more unbelievable given that it would be reasonable to suggest that a newly built prison would be cheaper to run. It certainly looks from this perspective that the projected public sector costings have been grossly inflated.

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

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

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

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<sup>5</sup>The figure cited as ‘NPV Per Prisoner Place Per Annum’ is perhaps more difficult to understand.

Kilmarnock their very low staffing levels would mean that help would be required from Barlinnie. Arguably, Barlinnie has the appropriate staffing levels to deal with such risks whereas the private sector doesn't.

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

### ***2.1.6 Private Company Costings and the Trojan Horse***

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

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

## ***2.2 Financial Commentary on 'SPS Estates Review'***

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

### ***2.2.1 Labour and Buildings***

The Estates Review makes a lengthy case for the impossibility of the public sector building three new prisons. When discussing the public sector build, the review states (p

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

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

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

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

### ***2.2.2 SPS Performance targets***

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

- 1 The Estates Review doesn’t mention the Chief Inspector’s Reports on Prisons which are an important means of accountability! Indeed it could be argued that the claim made in the review (p 23 ) that

‘the performance measurement system which underpins the contract, means that the Prison Services have considerably more information about the day to day operations of the private build, private operate prisons than public sector prisons. In the other SPS prisons, the performance measurement system lags considerably behind the Kilmarnock model’

is factually inaccurate. It is clearly beyond belief that the SPS know more about what is going on in a privatised prison through a few performance measures than what is going on in its own prisons. If this is the case then perhaps the senior management at SPS should undergo further training.

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

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

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

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

Has the Scottish Executive not imagined the possibility of misreporting?

- 3 It is well known that KPIs have a tendency of becoming the ‘tail that wags the dog’. It is well known that once performance measures are in place they produce unexpected consequences. For example, school league tables have encouraged some schools to concentrate on brighter pupils and not to put candidates in for exams unless they are expected to pass. In short performance indicators are a very poor gauges of performance.
- 4 Perhaps most importantly there is no KPI relating to the rehabilitation of offenders.
- 5 There is a fundamental flaw in the review (p 23) in the understanding of performance indicators and penalties. The review states that

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

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

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

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

- The methodology of the PwC report in comparing a hypothetical prisons is flawed
- The PwC report is non-neutral (or biased) in the sense that the accounting firm was paid by the Scottish Executive to ‘support investment decisions that form part of the SPS Estates Review’ (PwC report, 1.1)
- The hypothetical prisons in the PwC report are NOT comparable since they each are of a different quality and face different risks.
- Both the PwC report and the Estates Review are more concerned with *MONEY* (i.e costs, narrowly-defined) than with a broad social definition of value for money.
- Both the PwC report and the Estates Review are based on the assumption that lower staff levels in prisons are a *good thing*.

- The cost case for private/private has not been made. The PwC costings are that the cost per prisoner place per year (in March 2001 prices) is approximately £25,897 per year. This is more or less the same as the cost to keep a prisoner in a public Scottish prison for one year.
- The PwC costings for the public/public offering while not detailed enough for detailed evaluation appear to be grossly inflated.
- The use of Performance Indicators WILL NOT provide an adequate level of accountability.
- There is scant mention of the HM Inspector of Prison's reports on the very serious problems at Kilmarnock in either the PwC report or the Estates Review. Both reports implicitly assumed that there were no such problems. This is a remarkable omission especially since the HM Inspector of Prison's reports are in the public domain. This is now considered in more detail.

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

#### ***3.1 References to Kilmarnock in the PwC Report and Estates Review***

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

The Estates Review process, it is claimed, has been 'a thorough and time-consuming exercise' lasting from December 1999 to March 2002. However, again, it is remarkable how few references there are to the actual performance of Kilmarnock prison. At the very least one would have expected summary reviews of the HM Chief Inspector's Reports of Kilmarnock conducted in 2000 and 2001 to have been included in the Estates Review. Where references are made they either are largely factual statements (e.g. p.4, p.5) that Kilmarnock is run privately by Premier Prison Service and houses 9% of Scotland's prison population, or they re-iterate and even amplify the PwC report's use of Kilmarnock as a cost model. The exception to this is found in only two paragraphs which are worth quoting in full.

*'The SPS has been aware for some years of the need to reduce running costs. However, in 1999, the opening of the new privately managed prison at Kilmarnock provided the SPS Board with hard evidence about the differences in costs between the private and the public sectors. The Board has been able to monitor first-hand the ability of the private sector to deliver effective prison services. The reality is that the private sector is able to deliver as effective a service, with fewer staff, at far less cost. In fact, the nature of the detailed contract performance measures means that if anything the Board is able to demonstrate with more certainty the high quality of the service being provided by Kilmarnock than within any of its prisons.'* (Paragraph 101, p.26)

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

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

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

### **3.2 HM Inspectorate of Prisons Report on HM Prison Kilmarnock 2000**

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

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

#### **3.2.1 Failing to Address Offending Behaviour**

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

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

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

Difficulties were encountered in relation to both social work provision and education. Notwithstanding the obvious commitment of the social work team, the 'main unsettling

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

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

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

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

### ***3.2.2. Staffing Levels and HR Issues***

There are repeated references to the problems generated by low staffing levels. In the report's introduction reference is made to the fact that *'some members of staff expressed anxieties about the staffing levels in the residential Wings'* (Para. 1.7, p.3). That there might be a connection between staffing levels and violence is suggested in a related footnote; the HM Chief Inspector commented, *'We subsequently learned that there had been four serious assaults on staff during the whole of 1999-2000, which was higher than*

*in any other prison in Scotland'* (p.3). Recording the perceptions of staff these concerns were re-iterated.

*'Staffing levels on the Wings were regarded by staff of all grades as being too low, particularly as there could be occasions when staff were left on their own and this led to fears about personal safety. Staff were also unhappy about the shift pattern, though this was about to be changed – to the fourth system since the prison became operational. Concern was also expressed about the length of the shifts without any breaks and only a few minutes to eat the lunch that was provided by the prison'* (Para.9.50, p.86).

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

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

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

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

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

*'There was, however, no authentic definition of competence other than at an arbitrary level set by the STO. There were no systems in place that would measure to what extent the training delivered was transferred into the operational*

*setting, nor was there any evidence that Supervisors were competent to carry out the necessary arrangements’ (para. 9.39, p.83).*

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

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

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

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

### **3.2.3 Inadequate Facilities**

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

### **3.2.4 Other Concerns**

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

### **3.2.5 Summary**

Even a cursory examination of the HM Inspectorate of Prisons Report on HM Prison Kilmarnock 2000 casts considerable doubt on the optimistic interpretation of the

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

### **3.3 HM Prisons Inspectorate Intermediate Inspection HM Prison Kilmarnock 2001**

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

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

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

*'In our view this highlights a dichotomy when operating to a detailed contract specification. At the time of the previous inspection, operating to an agreed specification had been thought to provide clarity of purpose. On this occasion, however, it seemed that the contract was more of a mixed blessing with management also describing it as being "restrictive and flexible at times". It was*

*also pointed out several times that “running a contract was not necessarily the same as running a prison”. (para. 2.3, p.2)*

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

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

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

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

### ***3.3.1 Failing to Address Offending Behaviour***

As mentioned in the introduction to this section the Inspectorate were concerned that, with the exception of an additional social worker post, additional resources had not been provided to deal with offending behaviour. Further, while a number of interventions had been developed to address offending behaviour they were not yet fully accredited or approved by the SPS, and prisoners complained about the access and waiting times. While Kilmarnock had now developed a co-ordinated drugs plan, *‘when compared to action plans developed by other SPS prisons there appeared to be a number of gaps, particularly in relation to timescales, measures and resources’* (para.2.17, p.5).

One newly-detected and serious failing lay in the prison's inability to ensure prisoners received full exposure to programmes to deal with their offending behaviour. This arose out of an issue relating to 'unauthorised absences from work'. It is instructive to quote from the relevant paragraph in the report.

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

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

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

### **3.3.2 Staffing Levels and HR Issues**

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

influential HRM textbook states that *'with push factors the problem is dissatisfaction with work or the organisation, leading to unwanted turnover'* (Torrington et al, 2002, p.215).

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

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

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

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

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

One difficulty related to low staffing and which was mentioned in the 2000 Report was made more explicit in the Intermediate Inspection. Time off in lieu was an issue for staff who had accumulated high amounts, presumably through working large amounts of overtime. *'One member of staff to whom we spoke had accumulated 200 hours but foresaw little prospect of getting the time back in the medium term due to the expected staff transfers to a new PPS prison in Uttoxeter'* (para.4.7, p.10-11).

Nor had most of the concerns expressed in 2000 regarding inadequate training provision been alleviated by the time of the Intermediate Inspection. For example, *'there was still a lack of training for the Sentence Planning Officers, who were now delivering many tasks which were previously the responsibility of the Personnel Officer'* (para.15.2.20, p.23). In addition, the Inspectorate concluded that it was questionable whether Line Managers were in a position to become more actively involved in the addressing the training needs of staff because of their *'lack of appropriate training to date'* (para. 15.2.45, p.30)

### **3.3.3 Inadequate Facilities**

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

### **3.3.4 Other Concerns**

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

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

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

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

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

This observation is important for a number of reasons. Firstly, despite the extensive use of CCTV, which the Inspectorate in 2000 believed was contributing positively to safety,

the level of violence had increased between the two reports. Secondly, there appeared to be discrepancies in the reporting of assaults. In the Performance Measures for Kilmarnock Prison (only made public in March 2002) a 'Serious Injury Assault' against staff incurred 50 performance points, as compared to 20 for a 'Minor Injury Assault'. Consequently it is in the interest of PPS to have assaults deemed as minor rather than serious as the latter incur greater financial penalties. Interview evidence confirmed that serious assaults had been downgraded to minor status.

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

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

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

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

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

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

### 3.3.5 Summary

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

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

*'I said to them, I am no manning expert but you have to pay your staff more and I'm not necessarily talking about a massive increase here. Maybe if you had about another twenty people, depending on how you rostered it, then you might be there. But twenty people at £13,000 is kind of eating into the profit margins.'*  
(Interview, Clive Fairweather, 28 February 2002)

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

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

### 3.4 Evidence from Additional Sources

The evidence in this section comes from various sources as follows.

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

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

#### **3.4.1 Levels of Staffing, Safety and Security**

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

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

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

This is corroborated by the second staff member, who contests that while *'there has never been enough staff in the prison'* it has *'become worse than ever and we feel that urgent action has to be taken'*. It is his/her belief that *'the only reason that no staff have been seriously injured is because of the good will of the prisoners'*. One again specific details are presented.

*'The staff of HMP Kilmarnock are put in dangerous positions every day. Each House Block is meant to run with 10 staff. 8 staff for the four wings and 2 rover staff. In my opinion this is still not enough staff but a lot of the time each House Block runs with only six or seven staff, which is inexcusable. Staff are also frequently ordered to unlock 60-80 prisoners with only one member of staff being on a wing. On the occasions where two staff are present on a wing, one person is often taken off the wing to rover prisoners to Health Care and Visits. All these incidents are avoidable but happen frequently, and is only down to lack of staff'.*

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

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

*'Shift systems within the prison are very demanding and also in a lot of cases are illegal.<sup>6</sup> Staff in the House Block areas regularly work nine or ten days in a row. Most of the staff within the establishment never get a break while working between nine and twelve hours shifts'.*

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

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

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

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

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

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<sup>6</sup> This implies breaches of the European Council Directive No. 93/104/EC of 23 November concerning certain aspects of the organisation of working time; 'The Working Time Directive'.

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

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

### **3.4.2 Misreporting, Falsification and the Impact of the Contract**

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

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

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

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

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

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

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

*'On my next day back at work I was confronted by a Senior Nurse who had been informed of everything that I had told the Investigations Officer, despite the fact that the members of staff who could have verified these incidents were off on holiday or sick during this time. I was then informed by the Investigations Officer*

*that he has concluded the investigation – despite the fact that he has not verified my concerns from other members of staff’.*

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

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

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

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

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

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

In short, there is a fundamental conflict between operating to contract and running a prison which delivers effective strategies for dealing with offending behaviour.

### **3.5 The HM Chief Inspector of Prisons in Scotland**

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

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

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

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

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

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

*‘It is extremely difficult in a private prison to get straight talking. Everything is talked up – they wouldn’t say that something is bad, they would say that it was not as good as it could be. It’s always spoken in upbeat, business terms, and cutting through the rhetoric is quite difficult. I have had difficulty in seeing all the information’ (Interview, 28 February 2002).*

There is no question that these are fundamental criticisms of the Kilmarnock experience specifically, and of private prisons in general. They come from a long-serving Chief Inspector of considerable experience and integrity who, at the outset, bore no prejudice against privatisation. Yet, Clive Fairweather's informed views, transformed through his engagement with Kilmarnock, appear to have been discounted by the Estates Review and the Scottish Executive.

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

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

### ***4.1 Substitution of CCTV surveillance for staff***

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

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

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

*'Staffing therefore remained a central issue for staff from the time Wolds opened and its significance was reflected in the considerable attempts management made to deal with the difficulties experienced by rearranging shift systems additional*

*staff, some on a part-time basis. The contract for operating Wolds stated that “the Contractor shall maintain sufficient Staff to carry out the provision of the Agreement, including the provision of cover for annual and sick leave and other emergencies (s. 18.8, Sch. 1, Contract Ref: HOPU/91/RCU/02)” Our evidence suggests, however, that there is room to question whether staffing levels were, indeed “sufficient” (p.80).*

#### **4.2 Driving Down Labour Costs and the Consequences**

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

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

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

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

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

*‘SPS is aware of the need constantly to review its pay and conditions of service package to ensure that it is compatible with the delivery of a value for money service to the public. On pay only one of the elements (salary level) is open for SPS to change – both NI and pensions being fixed. SPS has two bands for prison officers. In the lower band prison officer average pay is around £16k excluding NI and pension. The average pay for the major proportion of prison officers, who are in the higher band is around £23k excluding NI and pension. In the face of competition, SPS is seeking to reduce the number of officers employed in the higher band and lower the average pay of prison officers but not cut anyone’s actual cash pay. Progress will however be slow’.* (para. 79, p.27)

In other words, the SPS wishes to see experienced and skilled staff within the prison service, diluted by new staff coming in on lower pay rates. From a perspective of cost, and cost only, this might be seen to provide value for money. From the point of view of delivering a quality service with untold benefits related to dealing with offending behaviour and rehabilitation, and which derive from the tacit knowledge accumulated by prison officers over many years, this would be a serious problem. It should be remembered that 91% of staff at Kilmarnock in 2000 had never before worked in a prison.

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

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

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

Derek Turner of the Prison Officers Association (Scotland) expressed the same concern.

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

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

#### ***4.3 Fraudulent Base for Asserting that Competition Exists***

One of the justifications advanced by the Estates Review, but with greater vigour by the Scottish Executive, for this imperative to reduce labour costs, is that a competitive environment now exists. Several references are made e.g. to the necessity to 'match the competition' (Estates Review, para.102, p.26) or to 'SPS staff costs [which] are markedly higher than those of its competitors' (Scottish Executive, para. 74. P.26). Leaving aside the use of the plural in the last example, which is clearly inaccurate given that there is only *one* competitor in the Scottish context, there is a fundamental objection to the way in which the term 'competition' has been used. The assumption is that somehow this competition is natural and inevitable. Yet this is not a competition, which has arisen through a free market in the provision of prison services, but rather one which has developed as the result of a political decision. The Conservative government established the basis of this competition by deciding to build a private prison in Kilmarnock. As such it is an artificially created 'competition' and one which could be removed if the political will existed to do so. Nor is it true competition in any practical sense. As we have argued above (Section 2), it is not possible to directly compare Kilmarnock's 500-place prison with the extensive and diverse range of services provided by the Prison Estate in Scotland.<sup>7</sup> Yet it is on this fraudulent basis that the term competition is being used to attack the pay and conditions of staff and reduce staffing levels.

#### ***4.4 An Attack on the Prison Officers Association (Scotland)***

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

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<sup>7</sup> The assumption that the private sector provides effective competition is highly questionable. The proposed merger acquisition of Wackenhut Correction Corporation by Group 4 brings together two of the main players in the UK (and global) market, narrowing the basis of competition.

motives. The following sections are worth quoting and are followed by several points of criticism.

*'The private sector say that they operate local recruitment and pay regional market rates for all grades of staff required to deliver the service. As a result of this strategy, the operators tend to obtain competitive pay rates for prisoner custody officers (broadly equivalent to SPS officers in the lower pay band). In the case of Kilmarnock, for example, the pay scales begin at the same rate as for SPS new recruits and the operators say that some staff who started at £12.5k when the prison opened are now being paid around £14k – individual pay depends on length of service. Pay etc. is determined through joint negotiating committees involving the operator's staff unions for a norm of 45 hours per week including breaks (which compares with 37 hours excluding breaks in SPS). All members of staff in Kilmarnock are able to join a union, which is recognised by management'.* (para. 80, p. 27)

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

- The Scottish Executive omits important facts. While six-week basic training is comparable at Kilmarnock to SPS standards, new recruits at Kilmarnock do not receive a staged introduction to the demanding roles of a PCO through gaining experience on escorting or gate duties. *'New recruits at Kilmarnock go straight into the halls'* without gaining important experience (Malcolm McLennan interview). In addition, both HM Inspectors Reports have identified significant weaknesses in training provision at Kilmarnock.
- The very high levels of staff turnover at Kilmarnock suggests that proportion of experienced staff in projected private prisons will continue to be problematic. The high turnover of staff at Kilmarnock – a common feature of the privatised prison sector - demonstrates the absurdity of the statement that companies cannot afford terms and conditions that do not attract and retain staff. It fails also to acknowledge the profit-making imperative of private prisons, whereby upward pressures on pay threaten profit levels.
- The Scottish Executive is proposing to use privatisation as a way to undermine and even break up national pay bargaining, through its advocacy of 'local recruitment' and 'regional pay rates'. It should be re-iterated that these 'competitive' pay rates are proving inadequate to ensure acceptable levels of staff retention at Kilmarnock. Moreover, the move to local pay determination suggests the erosion of the SPS as a truly *national* service.

- The assertion that most employers tailor their terms and conditions to the local labour markets in which they operate, and that therefore prisons should follow suit, is disingenuous. What comparisons are being made here? Local pay determination certainly does not apply to other comparable uniformed services - the police, the fire service – or to many other public sector workers – teachers etc. Assuming prison officers fall into a category of workers who should have their pay determined locally should be seen as an attack on the integrity and professionalism of the existing national service.
- The account of the process of pay negotiations is inaccurate. The truth is that Premier Prison Services does not recognise any independent trade union at Kilmarnock. Pay negotiations are conducted through a Works Council, established and sustained by PPS. The Works Council, therefore, can not be considered an independent body. There are no ‘staff unions’, other than the PPS’s possible endorsement of the PSU. In fact, the PPS appear to be hostile to independent unions and the POAS. *‘The first time we went down to try to recruit they [PPS] threatened to call the police and have us removed’* (Derek Turner interview). The Scottish Executive’s approval of the way pay negotiations are conducted at Kilmarnock suggest the adoption of an anti-union, anti-POAS strategy for the proposed private prisons.
- The Scottish Executive suggests that PPS’s negotiation of a norm of a 45-hour week (including breaks) at Kilmarnock is somehow preferable to the 37-hour week (excluding breaks) agreed by the POAS and the SPS. The Scottish Executive fails to acknowledge the evidence from the HMCI’s reports that staff at Kilmarnock are unable to take agreed breaks. In this respect, flexibility would certainly seem to suggest an intensification of work.
- Evidently the opportunities for advancement and progression both in terms of pay and grading are inferior at Kilmarnock. This would appear to act as a disincentive for staff to remain in service for the lengths of service seen throughout the PPS and which are incalculably beneficial for the quality of the service. In fact, the Scottish Executive is explicitly endorsing inferior pay and conditions when it admits that these are ‘less generous’ than in the public sector.
- The assertion that all companies operating in the privatised prison sector are reputable is questionable as the evidence presented below on Wackenhut (Section 5) alleges.
- Despite Scottish Executive assurances that there will be no compulsory redundancies, that TUPE implications will not arise and that there will be no cuts in cash pay (para. 96, p.30) it is conceded that there will be voluntary redundancies. The closure of Peterhead will inevitably create problems for staff who do not wish to be transferred to geographically distant establishments. Further, assurances that there will be no cut in cash pay contradicts the stated strategic objective of reducing labour costs.

## **4.5 Summary**

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

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

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

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

### **5.1 Wackenhut and UK Privatised Prisons**

#### **5.1.1 Complex Ownership Structure**

The ownership structures of companies involved in prison privatisation are often complex, leading to difficulties in establishing exact lines of demarcation and areas responsibility (see PPRI, November 2001). Premier Prison Services (PPS), which operates HMP Kilmarnock, is one of a plethora of companies owned in the UK by the Premier Custodial Group Ltd, the UK's largest private prison service operator. Premier Custodial Group Ltd. is itself owned 50% each by Wackenhut Corrections Corporation (the second largest US private prison operator in the US) and Serco PLC. 57% of Wackenhut Corrections Corporation is owned by the US security firm, Wackenhut Corporation. Therefore, behind Kilmarnock's prison lies an ownership chain with strong links to the Wackenhut Corporation of the US.

The list of companies owned by Premier Custodial Group is quite bewildering and, apart from PPS, includes the following : Premier Training Services Ltd. (manages Hassockfield Secure Training Centre); Premier Geografix Ltd. (manufactures and leases electronic tagging equipment); Premier Monitoring Services Ltd. (electronic monitoring services to the Home Office); Premier Custodial Investments Ltd. (holding company); Lowdham Grange Prison Services Ltd. (design, construction, management and finance of HMP Lowdham Grange); Pucklechurch Custodial (Holdings) Ltd. (holding company); Pucklechurch Custodial Services Ltd. (design, construction, management and finance of HMP and YOI Ashfield); Medomsley Holdings Ltd. (holding company); Medomsley Training Services Ltd. (design, construction, management and finance of Hassockfield Secure Training Centre); Moreton Prison (Holdings) Ltd. (holding company); Moreton Prison Services Ltd. (design, construction, management and finance of HMP Dovegate); Kilmarnock Prison (Holdings) Ltd. (holding company); Kilmarnock Prison Services Ltd. (design, construction, management and finance of HMP Kilmarnock) (PPRI, November 2001).

### ***5.1.2 Cashing In On Crime***

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

### ***5.1.3 Wackenhut's Global Operations***

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

However, faced with a declining crime rate, battered stocks and bad publicity, Wackenhut Corrections shifted their focus in the US to drug treatment and rehabilitation to boost revenue and their image. Wackenhut Corrections continues to grow despite riots at its facilities and allegations of sexual and physical misconduct by its guards. WCC shares, which in 2001 were well below their 1996 high of nearly \$45, rose from a low of about \$9 a share in January 2001 to \$14.50 in early June 2001. The company was

inducted into the Russell Index of the nations top 3,000 companies for the first time on July 1. Some commentators believe that difficulties encountered in the US have encouraged WCC to extend its international operations.

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

#### **5.1.4 Doncaster**

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

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

Despite this record the Home Office renewed Premier Prison Services' contract to run Doncaster, following a tendering process, which itself was surrounded in controversy. PPS won the contract although the independent assessors commissioned by the Home Office rated an in-house bid from the Prison Service as 'operationally' superior to that of Premier Prison Services. The assessors stated that *there 'appears to be the lack of an overall strategy to the regime'* proposed by Premier that leads to a *'failure to address satisfactorily numeracy, literacy and key and basic skills.'* A spokesperson for the Prison Officers' Association said that the bidding process was 'a complete and utter sham' and that,

*'if the Home Secretary has chosen Premier with such stinging criticism from his own advisers, how can we have any confidence in the future of Britain's prisons?'*  
(Prison Officers' Association Spokesperson)

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

#### **5.1.4 Marchington**

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

#### **5.1.5 Acquisition of Wackenhut by Group 4**

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

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

#### **5.2 Wackenhut's Record in Running Privatised Prisons in the United States**

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

### 5.2.1 *New Mexico*

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

On 17 June 1999, Payne and Price, were distributing laundry and one of them yelled out to a prison guard to unlock Garcia's cell. When the guard opened the cell, both men allegedly ran into Garcia's cell and stabbed him with homemade knives. The guard later admitted that she shouldn't have opened Garcia's cell door at the direction of an inmate, but claimed she had been poorly trained and had to 'short-cut a lot of things', because of the severe staff shortage on the day of the murder, the lawsuit claims. (Albuquerque Journal, 19 June 01)

However, what focused attention on Santa Rosa was the murder on 31.8.99 of a guard, Ralph Garcia, following a riot in which an inmate also died. A 500-page legislative report called for a near-total overhaul of Wackenhut operations. Wackenhut was faulted for its building design, poor amenities and for inadequate staffing, inexperienced supervisors, low pay (Garcia himself had been on \$7.98 an hour), high turnover, heavy overtime and a lack of knowledge about the gang culture of the inmates. Low pay, particularly, was highlighted by one of the report's authors, consultant Jerry O'Brien.

*'Faced with the prospect of working in a prison or a Wal-Mart for \$8.50 an hour, many would judge the sales job better, despite the importance of the criminal justice system.'*

Internal company documents and witnesses revealed that a chief guard had warned company executives that this penny-pinching and understaffing was 'a death sentence' for guards sent alone to cell blocks. It is recorded that a company executive responded just two weeks before Garcia was murdered,

*'Better to lose one guard than two'* (Gregory Palast, The Observer, 3.9.200)

In February 2002, a former corrections officer at Hobbs confirmed that he and other guards did beat inmates and tried to cover up the incidents at the request of an assistant warden in 1998 (Albuquerque Journal, 21 February 2002).

Wackenhut is also being sued by nine American Indian inmates of Lea County Correctional Facility, who contend that they are being denied religious freedom, and are being discriminated against on the basis of race. The nine inmates claim that after they formed a self-help group in 1998, Warden Joseph Williams began to dismantle the programmes and activities they had set up. They also claim their religious ceremonies were interrupted or stopped on several occasions, and that some of their religious items, including a ceremonial drum and eagle feathers, were confiscated. Prison authorities failed to respond to their complaints, 'so that the abuses and racial harassment continued unabated', the lawsuit claimed (The Santa Fe New Mexican, 17 February 2001)

### 5.2.2 Texas

Wackenhut's prisons in Texas have long been plagued by profound problems. In 1998 Travis County Community Justice Centre was found, in a state audit, to have barely the minimum number of guards required by contract, largely because pay rates were appallingly low - Wackenhut started its guards on \$6.50 an hour. A notice of default was filed and Wackenhut was fined \$625,000.

However, it was the biggest prison sex scandal in state history (also at Travis County) which gave the Wackenhut jail its notoriety. Twelve former guards were indicted in December 1999 on charges of sexually assaulting or harassing 16 female inmates at the Travis County Community Justice Centre in 1998 and 1999. Some of the inmates' alleged accounts are quite horrific. One former inmate, in an interview with the American-Statesman, said sex was routinely traded for shampoo and underwear. She said she was doped up on psychiatric medication late one night when a guard entered her cell and raped her. Over the next three months, she said, guards hit her to keep her from reporting the crime. Only after she appeared in court heavily bruised and emaciated did an investigation begin. In the meantime, she tried to kill herself twice. (James McNair, Miami Herald, 16 April 00)

*'Some of these were outright rapes. I've been practicing law for about 30 years and I've never heard of anything like this in the state - or county-run jails. This is pretty much off the charts.'* (Ron Weddington, Austin lawyer representing rape victim)

However, Travis County is not the only Wackenhut jail in Texas where allegations of sexual harassment have been made against guards. Worst of all was the treatment of inmates at Coke County Juvenile Justice Center. Opened in 1994 with 200 beds, it was to be a place where disturbed girls as young as 12 would benefit from a number of innovative programmes of education, rehabilitation and care. According to a 1999 lawsuit filed by Dallas lawyer Penny Raney, the girls were forced to live in sub-human conditions.

*'The girls were made to live in an environment in which offensive sexual contact, deviant sexual intercourse and statutory rape were frequent, and which resulted in a hostile, permissive sexual environment, and where residents were physically*

*injured to the point of being hospitalized with broken bones.'* (Lawsuit against Wackenhut, Miami Herald, 16 April 00)

The state filed criminal charges of sexual misconduct against two guards, who both pled guilty. Eventually further claims against Wackenhut were settled in mediation for the sum of \$1.5 million, awarded to the abused inmates (Corrections Professional, 27 July 01). A previous suit Raney filed against Wackenhut was settled out of court, although tragically the former inmate she represented killed herself the day the settlement was signed. These abuses of inmates by Wackenhut staff became the subject of a the prime-time CBS News show, '60 Minutes II' aired on 9 May 2000.

### **5.2.3 Florida**

In Fort Lauderdale, five guards at a Wackenhut work-release facility were fired or punished in summer 1999 for having sex with inmates. More recently further controversy in Florida has surrounded Wackenhut's operation of the South Bay Correctional Facility in Palm Beach County. Inmates at the prison allege that the state has failed to institute administrative rules for the facility, leaving Wackenhut personnel free to administer 'cruel and unusual punishment, without due process of law' (Broward Business Daily, 21 June 01). Ten separate petitions for writs of habeas corpus were filed by inmates in Palm Beach Court on 30 May 2001.

The prisoners' allegations centre on two incidents at the prison in January 2001. In the first, the prisoners claim that Wackenhut guards, led by a shift captain, assaulted a group of three prisoners who refused to be relocated within the prison without a due process hearing. In the second, the prisoners allege that prison officials subjected a wing of 40 inmates to a full day of solitary confinement in retaliation for a fight between two prisoners which the inmates themselves quelled. Public Defenders who are representing the inmates say that their goal is to restrict what they call Wackenhut's indiscriminate use of solitary confinement at South Bay. Palm Beach County Public Defender, Ken Johnson, says that solitary confinement is used 'whenever, wherever and indefinitely.'

### **5.2.4 Louisiana**

On 5 April 2000, Wackenhut agreed to surrender control of its 15-month-old juvenile prison in Jena, after the U.S. Justice Department named Wackenhut in a lawsuit seeking to protect imprisoned boys from harm at the hands of guards and fellow inmates. The government accused Wackenhut of beating boys, throwing tear gas indoors, spraying them in the face with pepper spray, and not providing them with adequate education and counseling. One incident highlighted the regime at the institution. In March 1999 Judge Mark Doherty had ordered a 17-year old boy – a shotgun victim - removed from the prison. The boy wrote the following in testimony,

*'A Sgt. came to me and said to put shirt in pants, and I told him that I couldn't and he...put me to the ground and told me to lay face down on the ground. And I told the Sgt. that I couldn't that I have on a (colostomy) bag, and he went put me*

*on the ground. He came with his knee in my stomach'. (The Pulse of America – TIME.com <http://www.time.com/time/reports/mississippi/jena.html> )*

The nurse at the prison's infirmary later noted that 5 to 6 inches of the body's intestines were in the colostomy bag.

One of the Justice Department's consultants, Nancy K. Ray wrote that Jena's difficulties stemmed largely from operating problems. In Jena's first 13 months, more than 600 people 'drifted through 180 positions', including 125 who were fired in 1999, a gross turnover rate of more than 300%. Ray also observed that recreation and rehabilitative programmes were 'grossly inadequate'. Almost every boy she interviewed, many with psychiatric disabilities or IQs lower than 70, complained about the lack of basic staples such as underwear, socks, shoes, bedsheets, or a lock to protect what they owned. Shortages often led to fights. Reviewing infirmary logs from 28 November 1999 to 20 January 2000, Ray found more than 100 incidents of 'serious traumatic physical injuries', including five sexual assaults. During this period, eight children tried to kill or harm themselves.

Allegations of physical and sexual abuse against minors were also revealed in a TV documentary (CBS, '60 Minutes II', 9 May 2000). A former inmate who worked as a clerk at the facility said in the broadcast that he watched security officers having sex with youths and smoking marijuana with them. When he worked as a clerk, the inmate stated, he was ordered to shred documents containing complaints against the Jena staff.

### **5.2.5 Arkansas**

Wackenhut had operated the Grimes Unit for men and the McPherson Unit for women in Newport since January 1996 but in July 2001 the Arkansas state prison board 'decided it would be in the best interests of the state, based on the director's recommendations, to take control of the management responsibilities' (The Arkansas Democrat-Gazette, 1 July 01). The decision to terminate Wackenhut's involvement in private prisons came after serious complaints by the authorities into the way that Wackenhut had been operating the two Newport prisons.

Arkansas' state Board of Correction and Community Punishment unleashed a 'barrage of complaints' regarding serious staffing shortages, unsanitary living conditions, poor maintenance and a lack of educational and substance-abuse programmes for inmates (The Arkansas Democrat-Gazette, 21 October 00). Mary Parker, Chairman of the Board, stated after a visit to the McPherson Unit, 'It was not pretty...It's the closest I've been in a long time to being appalled.' Max Mobley, the State Department's Deputy Director for Health and Correctional Programmes, was equally horrified following a surprise visit to the Grimes' Unit when he found 'Just inmates sitting on their beds talking', with no evidence of remedial and educational programmes. Mobley had long-standing concerns regarding Wackenhut's treatment of inmates, when he discovered in 1998 that 70% of women at McPherson were taking some kind of psychotropic medication, drugs designed for those with mental problems. By comparison, when the state was housing women at

McPherson's predecessor, the Tucker Unit, only 7-9% were on these types of medication at any one time.

### **5.3 *A Brief History of a Controversial Company***

Much of the information in this section comes from an article, which appeared in SPY Magazine in September 1992, *Inside the Shadow CIA*, by John Connolly.

Founded in 1954 by George Wackenhut, a former FBI agent, Wacknehut Corporation was originally called Special Agent Investigators Inc. George Wackenhut had two personal attributes that were instrumental in the company's growth. First, he got along exceptionally well with important politicians, including Florida governor, Claude Kirk, who hired him to combat organized crime in the state. He was friends with Senator George Smathers, an intimate of John F. Kennedy, who provided Wackenhut with his first big break, when the senator's law firm helped the company find a loophole in the Pinkerton Law. This was a federal statute that had made it a crime for an employee of a private detective agency to do work for the government. Smather's firm set up a wholly owned subsidiary of Wackenhut that provided only guards, not detectives. Shortly afterwards Wackenhut received multi-million dollar contracts from the government to guard Cape Canaveral and the Nevada nuclear bomb test site, the first of many extremely lucrative federal contracts that have sustained the company to this day.

#### **5.3.1 *Spying on 'Dissidents'***

The second thing that helped make George Wackenhut successful was that he was, and remains, a hard-line, right-winger. He profited from his beliefs by building up dossiers on Americans suspected of being Communists, or merely left-leaning 'subversives and sympathisers', as Wackenhut put it, and selling the information to interested parties. According to Frank Donner, author of the *Age of Surveillance*, the Wackenhut Corporation updated its files after the McCartyism hysteria had ebbed, adding the names of anti-war protesters and civil rights demonstrators to its lists of 'derogatory types'.

By 1965 Wackenhut was boasting to potential investors that the company maintained files on 2.5 million 'suspected' dissidents. In 1966, after acquiring the private files of Karl Barslaag, a former staff member of the House Committee on Un-American Activities, Wackenhut was claiming he maintained files on 4 million Americans. In 1975, after Congress investigated companies that had private files, Wackenhut gave its files to the now-defunct anti-Communist Church League of America of Wheaton, Illinois, although Wackenhut reserved the right to use them for its clients.

#### **5.3.2 *Wackenhut's Special Relationship with the United States Government***

The relationship between Wackenhut and the federal government has always been close. According to Connolly, when it comes to security matters, Wackenhut in many respects *is* the government. In 1991, a third of Wackenhut's revenues came from the federal government, and another large chunk from companies that themselves work for the

government. At the time of the SPY article in 1992, Wackenhut was the largest single company supplying security to U.S. embassies overseas. Several of the 13 embassies it guarded have been in 'important hotbeds of espionage', such as Chile, Greece and El Salvador. It also guards nearly all the most strategic government facilities in the United States, including the Alaskan oil pipeline, the Hanford nuclear-waste facility, the Savannah River plutonium plant and the Strategic Petroleum Reserve.

Wackenhut's close relationship with the federal government also involves shared personnel. While early boards of directors included such prominent extreme right figures as Captain Eddie Rickenbacker, General Mark Clark and Ralph E. Davis, a leader of the white supremacist John Birch Society, recent board members have included much of the USA's former national security directorate; former FBI director Clarence Kelley; former Defense Secretary and ex-CIA Deputy Director, Frank Carlucci; former Defense Intelligence Agency Director, General Joseph Carroll; former U.S. Secret Service Director, James J. Rowley; former Marine Commandment, P.X. Kelley; former Chairman of President George Bush's (senior) Foreign Intelligence Advisory Board; former CIA Deputy Director, Admiral Bobby Ray Inman. Before his appointment as Reagan's CIA Director, William Casey had been Wackenhut's outside legal counsel.

### **5.3.3 Wackenhut and the CIA**

Thus, several CIA operatives have become Wackenhut executives upon retirement, but some claim that the relationship between the Agency and Wackenhut has been even closer. SPY magazine claimed to have spoken to numerous experts, including current and former CIA agents, Drug Enforcement Agency agents and former Wackenhut executives and employees, all of whom have said that

*'...in the mid 1970s, after the Senate Intelligence Committee's revelations of the CIA's covert and sometimes illegal overseas operations, the agency and Wackenhut grew very, very close'* (SPY Magazine, September 1992).

SPY Magazine's sources confirmed that Wackenhut's longstanding relationship with the CIA deepened from the late 1970s into the 1980s. SPY cites the evidence of Bruce Berckmans, who was assigned to the CIA station in Mexico City and left the agency in January 1975 to become a Wackenhut international operations vice president. Berckmans, who left Wackenhut in 1981, told SPY that he had seen a formal proposal George Wackenhut submitted to the CIA to allow the agency to use Wackenhut offices throughout the world as fronts for CIA activities. Canadian Prime Minister, Pierre Trudeau, was said to have rebuffed Wackenhut's attempt in the 1980s to purchase a weapons propellant manufacturer in Quebec with the comment, *'We got rid of the CIA – we don't want them back.'* Phillip Agee, the former CIA agent who wrote an expose of the agency in 1975, told SPY,

*'I don't have the slightest doubt that the CIA and Wackenhut overlap'*. (Phillip Agee, quoted in SPY Magazine, September 1992)

Testimony also comes from William Corbett, a terrorism expert, who worked for the CIA for 18 years.

*'For years Wackenhut has been involved with the CIA and other intelligence organizations, including the Drugs Enforcement Administration. Wackenhut would allow the CIA to occupy positions within the company [in order to carry out] clandestine operations'* (William Corbett, Spy Magazine, 1992).

He also claimed that Wackenhut would supply intelligence agencies with information, and that it was compensated for this 'in a quid pro quo' arrangement with government contracts worth billions of dollars over the years. Retired FBI agent William Hinshaw alleged in SPY about Wackenhut's ease in snaring lucrative governmental contracts as being governments' way of 'pay[ing] Wackenhut for their clandestine help. It is know throughout the industry that if you want a dirty job done, call Wackenhut'.

SPY magazine uncovered considerable evidence that Wackenhut acted on behalf of the CIA in fighting Communist influence in Central America, during the 1980s when Reagan was President and the CIA Director was former Wackenhut lawyer, William Casey.

#### **5.3.4 Questionable Minority Contracting**

In 1981 Berckmans joined with other senior Wackenhut executives to form the company's Special Projects Division. It is claimed that the SPD entered a joint venture with the Cabazons, a small native American tribe, whose administrator was John Nicholas, a former CIA agent. Together, it is alleged, they pursued a scheme to convert the Californian reservation into an arms factory, manufacturing explosives, poison gas and biological weapons. Then, by virtue of the tribe's status as a sovereign nation, it is alleged that the aim was to export the weapons to the contras. (SPY Magazine, September 1992; American Federation of Teachers AFL-CIO, Center on Privatization, <http://www.org/privatization/profiles/wackenhut.html>)

#### **5.3.5 Surveillance of Environmental Activist**

In the 1990s Wackenhut was hired by Alyeska, an oil consortium that controls the oil flow from Alaska, to investigate environmental activist, Charles Hamel. Mr. Hamel was a whistle blower who released damaging information about Aleyska's environmental practices. Wackenhut was the subject of Congressional hearings and fined \$10,000 by the state of Virginia for its role in the investigation.

#### **5.4 Summary**

Given Wacknhut's widely acknowledged record in running private prisons in the UK, the US and elsewhere, the decision by the (then) Home Secretary to endorse Wackenhut's contracts is astonishing. That Wackenhut have been given further contracts in the UK brought a strong reaction from those with first-hand experience of Wackenhut's operations. On the news that the Home Office had approved Wackenhut's operation of a

youth detention centre in Bristol, New Mexico's prison watchdog, Senator Cisco McSorley commented, *'That's bordering on the bizarre'* (The Observer, 3 September 2000). Yet Wackenhut is one of the private prison operators described by the Scottish Executive as *'reputable'*. In neither the Estates Review, nor the Scottish Executive, document, is there any suggestion that one of the parent companies of PPS has anything other than an unblemished record. If the privatisation proposals are implemented then the Scottish Executive and the SPS would presumably welcome tenders from the Group4/Wackenhut merged organisation. The evidence presented in this section provides further strong evidence that the privatised prison option should not be pursued. More than this, given the evidence from the United States and the problematic nature of Wackenhut as a company, there is an equally strong case that all prison establishments, operated by Wackenhut and its subsidiaries in Scotland and the UK, should be returned to the public sector as a matter of urgency.

## **Section 6 Wackenhut and Detention Centres**

It is equally astonishing that Jack Straw awarded the Dungavel contract to Premier Custodial Group. On September 3<sup>rd</sup> 2001 this Wackenhut subsidiary commenced operation of Scotland's first detention center for asylum seekers at Dungavel, near Strathaven, on the border of Ayrshire/South Lanarkshire. The Dungavel detention center is being run by the PCG subsidiary Premier Detention Services (PDS).

### ***6.1 Nature of the Contact Between the Home Office and Premier Detention Services***

The Home Office has signed a contract with PDS where the latter will operate Dungavel for five years, providing all the services for the management of the centre. Wackenhut claim that the contract will generate revenues of around \$30 million over the five years. The Dungavel centre opened in two stages, the first in September 2001, which will house up to 90 adults and the second later in the year, accommodating 60 detainees in a euphemistically titled 'family centre'. This is no 'open' reception centre. Inmates are locked up and are effectively incarcerated in a building surrounded by twenty-foot high fences, topped with razor wire.

The Home Office claims that it allows detention as a last resort in cases where it is necessary *'to establish the identity or basis of a claim'*, where the immigration authorities believe the subject may breach the terms on which they have been admitted or where they are awaiting deportation.

### ***6.2 Asylum Seekers Have Committed No Crime***

It has to be remembered that the asylum seekers incarcerated at Dungavel, are held as if they are criminals, although they have committed no crime. The decision to detain asylum seekers is taken, therefore, solely on the *presumption* by the immigration services that they might breach terms of admission. Human rights advocates have long campaigned against detention centres on the grounds that the incarceration of asylum seekers represents a fundamental breach of human rights.

*'It is a fundamental breach of human rights to detain people whose only "crime" is to seek protection from persecution.'* Sally Daghlian, Chief Executive of the Scottish Refugee Council (Herald [Glasgow] 25 May 2001)

*'These detention centres are being described as "hotels" by the Home Office which designates inmates not as prisoners but as "guests". But it is a strange hotel that denies its guests the right to leave or even move buildings without an escort of private security guards. In some of these "hotels" children are denied an education and locked up for twenty-four hours a day. In which hotels do guests regularly attempt suicide? How many hotel guests claim that they have been beaten and brutalised by staff? Or denied the right to communicate with the outside world?'*

*'It is not emotive to describe these detention centres as "concentration camps". People are imprisoned in them not because they have committed a specific crime, but because they belong to a social group who have committed no offence – save that of being a foreigner. To justify their imprisonment is to follow the logic of fascism.'* (Aamer Anwar, Sunday Herald, 26 August 2001)

*'These vulnerable people have committed no crime, only to flee persecution, yet they are being imprisoned on Scottish soil for no crime. That is the reality of asylum policy in the UK today'* (Robina Qureshi, Director Positive Action in Housing, 17 March 2002)

The establishment of Scotland's first detention centre is an abuse of the human rights of asylum seekers. It criminalises and degrades people who have fled tyranny and oppression, many of whom have been deeply traumatised by the horrors inflicted on them and their families. Rather than finding refuge and freedom, these imprisoned asylum seekers now face a further denial of their right to freedom from oppression.

Evidence is now emerging of the inhumane treatment of asylum seekers in Dungavel by PDS. Firstly, there is the case of Vanessa Garzova, who is the 20-month old daughter of Dusan and Agata Garza, a Slovakian family, with two other children. They are being threatened with imminent removal from Scotland. They came to the UK after being persecuted by racist gangs in Slovakia. Agata gave birth to her youngest child two months prematurely after being attacked by racist skinheads and as a consequence, Vanessa was injured in the womb and has since developed cognitive problems. Vanessa was receiving medical treatment at the Royal Victoria Infirmary in Newcastle at the time the family was removed to Dungavel. Vanessa has now missed two hospital appointments and concern is growing for her medical well-being. Joan Moon and her husband befriended the Garzova family in Newcastle through the church they attended. Mrs Moon is prepared to offer bail so that the family can be released, yet the family remains imprisoned at Dungavel. According to Joan Moon, 'Since being imprisoned the family look pale and withdrawn' (NCADC, <http://www.ncadc.org.uk/>)

Incarceration at Dungavel is creating serious problems for already vulnerable asylum seekers. Dotun Adeosun, a 31-year economics graduate from Nigeria, is still on suicide watch in isolation from other refugees. Human rights groups are joining forces to highlight Dotun's case and to prevent the UK committing a human rights atrocity by deporting Dotun to Nigeria, where he is adamant he faces torture and persecution.

On 17 March 2002 when local support groups gathered outside Dungavel to express solidarity with those detained, Premier Detention Services denied refugees the right to look out of windows. Filmed by a BBC new team, and broadcast on Newsnight (26 March 2002), PDS guards are seen to physically remove refugees from Dungavel's windows. The Home Office later confirmed that one refugee was also put into isolation after he had tried to look out of the windows to wave to people on the outside. A message was later passed by refugees to supporters,

*'On Sunday during the demonstration we are looking out the window, we are waving and we are saying we love you. And security are using physical force to move people away from the window and they took some people to isolation and locked them up. You don't have any rights – that shows how much of a prison Dungavel can be'.*

The nature of the contracts signed by the private companies running the detention centres (PDS, Group 4) with the Home Office has been exposed in the wake of the fire at Yarls Wood detention centre, where no sprinkler system was fitted. The priority is to detain refugees and asylum seekers as cheaply as possible even if that mean compromising safety. On the 19 February 2002, the Home Office revealed that sprinklers had not been fitted at any of the other detention centres at Oakington (near Cambridge), Harmondsworth (near Heathrow) and also at Dungavel. Nor have these devices been fitted in older buildings converted to hold immigration detainees (Campsfield House, Tinsley House, Lindholme and Haslar).

### **6.3 The Oakington Ruling**

The case for the closure of Dungavel is now irrefutable. On 7 September 2001 a landmark legal ruling by Mr. Justice Collins determined that the regime at Oakington Immigration Reception Centre, Cambridgeshire, amounted to illegal imprisonment under the Human Rights Act. Collins' ruling that four Iraqi Kurds had been unlawfully held established that it is legally unacceptable on human rights grounds to detain someone for administrative reasons. While Collins states that his ruling applies only to those detained on administrative grounds, and does not extend to those held in detention centres elsewhere in the UK, it is evident that those held at Dungavel, like those at Oakington, have committed no crime and are therefore being illegally detained under the Human Rights Act.

#### **6.4 Detention Centres in the United States**

Evidence from the United States, and the way that detention centres have been run, strengthens the case for the closure of Dungavel. Wackenhut runs a 200-bed detention centre, on behalf of the US Immigration and Naturalization Service (INS), in Jamaica, Queens (New York) where asylum seekers who arrive without 'proper documentation' are held. WCC has a 5-year, \$49m contract with the INS. Recently religious leaders from Queens toured the Jamaica facility and raised concerns about the conditions in which the asylum seekers were being detained.

*'The Jamaica detention centre is an unmarked structure of brown brick with video cameras perched on each corner. Slots 2 inches wide ventilate the centre, which has only a few windows atop one wall...Detainees live in open rooms of 20-30 beds, with communal showers and partially enclosed toilets. Men and women are housed in separate rooms. They eat food brought to them on trays, talk to their lawyers, play Ping-Pong, watch TV, sleep and bathe in the same locked area. There are few books in any language. Detainees get one hour of "outdoor recreation" a day in a small courtyard. Visits with family and friends happen in guarded rooms through Plexiglass booths with telephones.'* (Newsday, New York [Queens Edition], 3.6.01)

Reports have emerged which have been highly critical of Wackenhut's treatment of asylum seekers and, in interviews, inmates past and present portray a world filled with idleness and uncertainty. Philip Sesay a 54- year old refugee from Sierra Leone watched as his traumatized cell mate stuffed six tablets of pain-killers in his mouth, jumped from the adjoining bunk bed screaming 'Let me die' and then saw security guards and a nurse drag the detainee away in handcuffs. 'It's like a hell here. Humiliating' said Sesay.

*'They talk to you like a dog, no respect, no consideration for you. Only difference here than in my country there are no beatings [here].'* (Jean Pierre Kamwa from the Cameroon, a former detainee now granted asylum, Daily News, New York 16.2.01)

*'They tell me we send you to a place like hotel for approximately seven days. But this is not a hotel, it is more like prison, but much worse. At least in prison you have a sentence. In prison you can move around, go to library...you can get fresh air.'* (Oleskly Galushaka, from the Ukraine, who has been at Wackenhut for two years fighting his deportation order, Daily News op cit)

Other reports tell of grown men scrawling words on the walls with their own faeces, and of people staging hunger strikes. They also tell stories of detainees trying unsuccessfully to take their own lives by hanging with threadbare sheets or swallowing liquid detergent.

One detainee, Amin Al-Torfi, who had fled from Albasra in southern Iraq, after his father, two brothers and an uncle were captured, tortured and killed for their Shiite beliefs and opposition to Saddam Hussein's regime, described his experiences in Jamaica.

*'I arrived expecting it would be a refugee camp where I would be free to come and go while applying for asylum. Instead it was a prison. I couldn't believe it. I thought my eyes were seeing wrong. It was very sad, silent and hopeless.'*  
(Quoted in Newsday, op cit)

## **6.5 Australia**

All of Australia's detention centres for asylum seekers are run by Australasian Correctional Management (ACM), a subsidiary of Wackenhut Corporation. In a documentary screened on SBS in 2000, George Wackenhut welcomed Australia's policies favouring privatized prisons and detention centres, saying *'[Australia is] really starting to punish people, as they should have done along'*, adding, 'This year we are going to make US\$400 million'.

In February 2001 the Australian government ordered an inquiry into claims that employees of ACM attempted to cover up the rape of a 12-year old boy at a detention centre for immigrants. Two nurses from the Woomera Detention Centre told the authorities that management deliberately suppressed evidence of an attack on the 12-year old boy by his father and that other inmates had sex with the boy in return for cigarettes. Also there had been abuse of other children (Scotland on Sunday, 10 December 2000).

One ACM worker has described the company's Woomera Immigration Detention Centre, built on the site of a former missile testing range west of Sydney, as 'like a concentration camp'. Complete with razor wire, barbed wire, steel fences and patrolling officers, the comparison is easy to make. The detainees are treated as criminals and dehumanized. They are assigned numbers corresponding to the prefix of the boat they arrived on, such as 'Don 27' or 'Rap 180'. Conditions such as these drove inmates to stage, in August 1999, a desperate protest at Woomera, waving signs saying 'save us from ACM' (<http://greenleft.org.au/back/2001/>). Other detainees are used as cheap labour by ACM. According to reports in the Sydney Morning Herald, inmates work in kitchens and clean toilets, often working for 12 hours a week in return for a \$15 or \$20 phone card.

However, towards the end of 2001 and in 2002, protests by asylum seekers at Woomera exploded both against government policy and against conditions. In early March 2002 a group of detainees dug their graves in the desert earth of their secure compound, and then climbed into them, insisting they would stay in them until they were released or died. Five other detainees sewed their lips up and 120 went on hunger strike in a repeat of the wave of protests in January when 250 refugees went on a 15-day hunger strike, some sewed their lips together, others drank detergent and some tried to hang themselves. (Guardian, 8 March 2002).

These desperate actions have been precipitated by regimes implemented by the Wackenhut subsidiary, ACM according to Ray Hartigan, formerly of the St. Vincent de Paul Society and currently a member of the Woomera Lawyers Group. Having entered Woomera 30 times over two years for eight hours at a time Hartigan witnessed terrible human rights abuses. According to Hartigan,

*'When a detainee is being placed in a cell for punishment, it can take four minutes by vehicle to travel from the living quarters to the cell. But it is not uncommon for the journey to take two hours. They are driven around in circles and believe they are being taken miles from their friends in the camp. Frequent random searches, head counts and sleep deprivation were part of the "culture" of ACM. When a detainee goes on a hunger strike and hasn't eaten for days, they are placed in a room with the air conditioner on. When you have no food inside you, your body heat drops, making you much more susceptible to the cold, so that makes life very uncomfortable'* (Sunday Herald Sun, 10 March 2002).

Hartigan was impressed by the guards when he visited the camp two years earlier, but the situation had deteriorated.

*'ACM takes teenagers off the dole queues in places like Fort Augusta, trains them for two and a half days and pays them \$1000 a week. They do as they are told because the money is good and they don't want to go back on the dole. But it doesn't make for a well-run camp'* (Sunday Herald Sun, 10 March 2002).

## **6.6 Summary**

Asylum seekers are being incarcerated at Dungavel Detention Centre as if they are criminals, despite the fact that they have committed no crime. On human rights grounds there is no case for the detention of asylum seekers in these establishments, which do not even provide basic levels of safety. The case for Dungavel's closure is only strengthened by the emergence of evidence from within of the treatment of refugees by PDS who have fled oppression and persecution. The experience of centres run by Wackenhut in Australia and the United States paints a graphic and disturbing picture of regimes that are that Wackenhut and its subsidiaries operate. Dungavel must be closed immediately.

## **Section 7 Conclusions**

- No case has been made *in terms of cost* for the proposed prison privatisation programme in Scotland.
- The *actual* performance of HMP Kilmarnock has fatally undermined the case for prison privatisation, as evidence demonstrates serious problems in several fundamental areas. These problems are not accidental but emanate from the very nature of prison privatisation as a wide range of evidence has shown.
- The Scottish Executive, therefore, should not pursue the privatisation option. Further, there is a powerful case that Kilmarnock should be restored forthwith to the public sector.
- For many reasons, but principally because it operates as a prison despite the fact its asylum seeker inmates have committed no crime, Dungavel Detention Centre should be closed immediately.

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