

Reinterpreting agencies in UK central government

On meaning, motive and policymaking

Thesis submitted to the University of Nottingham for the degree of Doctor of Philosophy

December 2013

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Abstract

This thesis is a qualitative and interpretive exploration of continuity and change in the role of executive agencies in UK central government. Its three objectives are: (i) to test the longevity of the semi-autonomous agency model first introduced by Conservative governments after 1988; (ii) to explore the department-agency task division in the policymaking processes supposedly fragmented by this 'agencification'; and (iii) to evaluate the paradigmatic testament of contemporary agency policy and practice in Whitehall. The thesis builds from an extended case study conducted during the 2010 Coalition Government in the Ministry of Justice and three of its agencies – the National Offender Management Service, HM Courts and Tribunals Service, and the Office of the Public Guardian. Social constructivist meta-theory and the application of narrative and discourse analysis together make for an account of interpretive transformation that is theorised by discursive institutionalism.

Substantively, the thesis first describes an asymmetric departure from the 'accountable management' philosophy which the 1988 Next Steps agency programme originally epitomised. Agency meaning is multivocal, but contemporarily converges towards accountability and transparent corporate governance, rather than managerial empowerment, de-politicisation and decentralisation. Secondly, institutional preservation of the policy-delivery work dichotomy is registered, yet found to be a poor descriptor of both historic and contemporary policy processes. Agency staff act as policy initiators and collaborators, contrary to Next Steps' quasi-contractual, principal-agent logic, and further evidencing the departmentalisation of the once arm's-length agency model. Thirdly, and paradigmatically, while no unidirectional trend is found, the thesis adds to the growing literature positing some departure from the former ideological and practical predominance of 'new public management'. In so doing, it also demonstrates the challenges faced by large-*N* population ecology and administrative systems analysis – the favoured methodology in much international agencification scholarship – in accounting for continuity and change in policy, practice and paradigm.

"As politicians know only too well but social scientists too often forget, public policy is made of language. Whether in written or oral form, argument is central in all stages of the policy process."

(Giandomenico Majone,1989)

Acknowledgements

Most social research owes some debt to its participants; in the case of a narrative project such as this, that debt is vast. Against a backdrop of far-reaching state reform, it is remarkable that so many civil servants, with all manner of demanding responsibilities, found the time, energy and enthusiasm contribute to this study. Their generosity is both humbling and a reminder – necessary now more than ever, perhaps – of the inherent value of this historic institution. On the pages that follow are the stories of these officials. Though interpretive license is unavoidable, the hope is that retelling them here gives some voice to a still largely unheard perspective on British governance.

No less importantly, my thanks also go to the management of the Cabinet Office, the Ministry of Justice, and its agencies – the National Offender Management Service, HM Courts and Tribunals Service, and the Office of the Public Guardian. Under much pressure to resource ‘nothing but priorities’, they accommodated my intrusion, agreed without exception to my data requests, and guided the research agenda by their skill and experience. The stories are better for this.

My supervisors, Stephen Cope and Bruce Stafford, were of course invaluable. Their willingness to sponsor an unlikely PhD candidate, their generosity of time and encouragement, and their patience with my (occasional) ‘postmodern episodes’ and (more frequent) last-minute submissions are all enormously appreciated. In addition, at Nottingham, I must thank Amal Treacher Kabesh, Alison Pilnick and Pauline Jas for taking an interest in my work and offering valuable advice; and Alison Haigh for being, undoubtedly, the best administrator. The research was funded by a generous three-year studentship from the Faculty of Social Sciences.

Elsewhere, Sandra Van Thiel and Dvora Yanow both provided valuable pre-publication materials, Francesca Gains offered advice on the research agenda, and Muiris MacCarthaigh proved an encouraging friend and writing partner. At the time of submission, two articles have

resulted from this research (Elston, 2013, forthcoming), and my thanks go to editors and peer-reviewers alike for their help and encouragement. My involvement with the ESRC's 'Shrinking the State' research, and the EGPA Governance of Public Sector Organisations study group, has also been rewarding.

I have been fortunate to study amongst an inspirational PhD cohort. In particular, Phil Archard, Warren Pearce, Kezia Scales and Agnes Bezzina have been critical and sympathetic friends, and provided much joy throughout the process. (I will also miss the cake.) Finally, without the love and support of my parents, Debbie and Steve, my sister, Charlotte, and my girlfriend, Vanessa, it is doubtful that this project would have reached conclusion. Certainly, my story gathering would have been more costly, and their interpretation less rich. The thesis is for them.

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List of Acronyms

ALB	Arm's-length body
CJS	Criminal Justice System
DCA	Department for Constitutional Affairs
DfE	Department for Education
EPA	Enduring Power of Attorney
FTE	Full-Time Equivalent
GDS	Government Digital Service
HMCS	Her Majesty's Courts Service
HMCTS	Her Majesty's Courts and Tribunals Service
HMPS	Her Majesty's Prison Service
HQ	Headquarters
HR	Human Resources
LAA	Legal Aid Agency
LCD	Lord Chancellors Department
LPA	Lasting Power of Attorney
LSC	Legal Services Commission
MoJ	Ministry of Justice
NAO	National Audit Office
NDPB	Non-Departmental Public Body
NICS	Northern Ireland Civil Service
NOMS	National Offender Management Service
NPM	New public management
OPG	Office of the Public Guardian
PbR	Payment by results
PGO	Public Guardianship Office
PTO	Public Trustee Office
QCDA	Qualifications and Curriculum Development Agency
TCSC	Treasury and Civil Service Committee

Chapter 1 – Introduction

State agencies are ubiquitous. Such is their expenditure, public policy reach, and constitutional, political and cultural significance that it is difficult to conceive of government functioning at all effectively without some manner of administrative decentralisation. Although partly testifying to the fragmentation and new interdependencies engendered by the contemporary dispersal of the executive into composite *governance* (Rhodes, 2000), in fact, public agencies long predate the modern, professionalised and democratised state (Flinders, 2008; Wettenhall, 2011). Still, alongside wider trends towards outsourcing and contract-based public service delivery (Aucoin, 1990; Barzelay, 2001; Hood, 1991), delegated governance underwent international expansion and reform during the 1980s and 1990s (Pollitt et al., 2001), bringing new consequences and challenges for public administration which are only now beginning to be understood. Over the last decade, particular progress has been in macro-level analysis of governing systems in Europe and beyond (see contributions in Verhoest et al., 2011). Here, shifting dynamics of structural disaggregation are assessed and compared quantitatively through methods first developed for charting the ‘population ecology’ of industrial sectors (Hannan & Freeman, 1989; Singh & Lumsden, 1990). However, the character and ordinary practices of individual and networked agencies, their street-level deployment of new politico-bureaucratic bargains of autonomy and control, and the impact of ‘agencification’ on wider public policy processes remain largely unaccounted for by these aggregative and abstracting methods. In short, despite their ubiquity, little is known of what it *means* to be a government agency on a day-to-day basis, let alone whether this is changing over time.

Initiated towards the beginning of new public management’s ascendancy, and listed amongst its most characteristic reforms, the UK’s Next Steps programme remains “one of the most quoted emblematic cases of disaggregation” internationally (Talbot & Johnson, 2007, p.54). In the space of a decade, 138 executive agencies were created, directly employing some 60 per cent of

the British civil service (James, 2003, pp.58, 158). Designed to operate entrepreneurially and with considerable delegated authority, while at the same time exposed to new principal-agent-style monitoring (Efficiency Unit, 1988), Next Steps agencies encapsulated the ‘accountable management’ philosophy of *ex-ante* delegation and *ex-post* control that underpinned much late-twentieth-century civil service reform (Drewry & Giddings, 1995; Gray & Jenkins, 1986, 1993). Indeed, for making inroads where previous initiatives had failed, agencification was soon hailed as the UK’s “most ambitious attempt at civil service reform in the twentieth century” (Treasury and Civil Service Committee, 1990, p.v), analogised as the modern-day “equivalent” of the Northcote-Trevelyan reforms that first established modern, meritocratic bureaucracy after the 1850s (Jordan & O’Toole, 1995, p.3). Retrospectively, this level of acclaim renders all the more remarkable the latter-day dearth of attention to Next Steps’ longevity and long-term impact. While few dispute its managerialist origins, little if any research has explored the contemporary character of agencification in Whitehall, nor whether agencies continue to instil the principal-agent bargain of accountable management that inspired the model’s inception a quarter of a century ago.

Public administration has continued a rapid evolution since the Next Steps years, in the UK as internationally, and debate now rages over whether the managerialist paradigm continues in its ideological and practical predominance (Christensen & Lægreid, 2007b; Dunleavy et al., 2006; O’Flynn, 2007; Olsen, 2008). Despite the intimate association with administrative decentralisation, however, studies of agencification have thus far contributed only marginally to analyses of paradigmatic continuity and change, and, again, principally through the large-*N* methodology. Population tracing and surveys of autonomy and control have noted some measure of structural re-aggregation, corroborating claims of ‘post-NPM’ trends towards strengthened central control and larger organisational forms (Christensen & Lægreid, 2007a). However, although providing a ‘top-line’ measure of evolution, essential for comparative administrative science, this manner of system analysis should represent the beginning, not the sum total, of agency studies’ contribution to paradigm tracing. Structural disaggregation was

but the means to effect broader cultural and institutional change under new public management doctrine – it was not an end in itself. Again, therefore, there remains a pressing need to penetrate high-level administrative systems and register the ordinary ideas and practices by which delegated governance is transacted on a day-to-day basis. This thesis offers but a small step in that direction.

Departing from meta-theory which posits the social construction of governance (Bevir & Rhodes, 2005; Wagenaar, 2011; White, 1999; Yanow, 2000), and employing methods associated with the narrative and linguistic ‘turns’ in social science, what follows address two empirical research questions. The first concerns the meaning of ‘executive agency’ in contemporary Whitehall, and the second looks to the post-agencification policymaking process. Both are examined in the context of the Next Steps ‘accountable management’ lineage, but, importantly, the aim is to essay an *inductive* return to agencification, without presupposing the function of this now aged institution. Latterly, the research also attends to a third, more conceptual question concerning the paradigmatic testament of modern agency policy and practice. Overall, the first contention is that the day-to-day performance of ‘agency’ is much more variegated than existing literature recognises, if broadly tending to elaborate the control and accountability aspects of the original accountable management bargain. In terms of public policymaking, moreover, the division of labour between core departments and agencies has been variously constructed since Next Steps, and, despite some recent recentralisations under the Coalition Government, description of a policy-delivery split reflects neither aspiration nor practice in the cases studied. Finally, on paradigmatic stability, the situation is differentiated. As noted, the thesis finds limited evidence for the deregulation and de-politicisation of executive bureaucracy as a public service solution, but rather strengthened accountability and control. In thus attending to the meanings by which delegated governance proceeds on a day-to-day basis, support is found for previous claims of emergent paradigmatic hybridity (Christensen & Lægreid, 2011), albeit in markedly differing terms to much existing, population-focused literature.

1.1 Thesis outline

Following this introduction, the thesis unfolds in three parts. The first deals with preliminary matters of context, theory and methodology. The second contains the empirical presentation, which draws on document analysis and an extensive interview programme in the Ministry of Justice. The third part then addresses the research questions of agency longevity, policymaking and paradigm, before offering wider substantive and methodological implications for the study of administrative decentralisation.

Instigation

Chapter 2 introduces the original Next Steps agency programme and its high-level evolution under the 1997-2010 Labour Government. The main research agenda is formulated, before the internationalisation of agencification as a public management solution, and the managerialist doctrines underpinning this, are both recounted. Latterly, the chapter reviews methodologies adopted in existing international studies of agency longevity and policymaking, noting three limiting tendencies. These are: de-contextualisation, whereby agencies are dislocated from their local policy systems and studied aggregately as administrative systems; deductive empiricism, which makes for the presupposition rather than probing of governance meanings; and ‘snapshot’ research, which focuses on static concept measurement rather than dynamic (inter)organisational processes.

Chapter 3 draws on post-empiricist social philosophy (Berger & Luckmann, 1971; Miller, 2012; Wittgenstein, 1986), discursive institutionalism (Schmidt, 2008, 2010), narratology (Bal, 1985; Feldman et al., 2004; Patterson & Monroe, 1998) and discourse analysis (Fairclough, 2003), to establish a conceptual and theoretical framework. It first translates the constructivist ontology into two modes of comparison, termed ‘synchronic’ and ‘diachronic’ multivocality. The synchronic dimension pertains to coexistent public management meanings in macro (cross-governmental), meso (sector-specific), and micro (organisational) discourse, while diachronic multivocality compares temporally sequenced reconstructions at these three levels. The

chapter then proceeds to theorise the diachronic parameter with insights from discursive institutionalism. Offering a dynamic, agent-centred understanding of social institutions, this frames continuity and change as the product of the ongoing discursive accomplishment of events and ideas. Accordingly, the latter part of the chapter develops a general analytic framework by which such meaning structures can be interpreted and compared, built from concepts of argumentation, narrative voice and discursive differentiation. An empirical strategy for generating the necessary macro, meso and micro-level discourse is also formulated.

Analysis

Individually and in tandem, the five empirical chapters undertake the synchronic and diachronic comparisons. Initiating the analysis at the macro-discursive level, Chapter 4 traces diachronic continuity and change in ‘executive agency’ as a politico-administrative idea, comparing historic discourse from the Next Steps project with recent parliamentary and interview materials about the Public Bodies Reforms initiated in 2010. Combining the general analytical framework with Carstensen’s (2011) model of incremental ideational change, the chapter registers a considerable departure from the precepts of managerialism, civil service empowerment and decentralisation by which agency reform was first constructed. Indeed, in modern Public Bodies discourse, agencies are reinterpreted as a mode of administrative centralisation and politically-proximate governance, which together ensures the model’s constitutional propriety, explicitly in contrast to peripheral, arm’s-length bodies.

This contemporary departmentalisation of the agency idea continues in Chapter 5’s analysis of meso-level (sector-specific) agency discourse. Prefacing the main case study, this begins by outlining key policy and structural developments in the justice sector since the 1980s, including the creation of the Ministry of Justice (MoJ) in 2007. Then, drawing on historical and contemporary discourse, the general analytic framework traces diachronic evolution across justice agencification narratives from the Next Steps era and recent reforms initiated by the Coalition Government. This analysis suggests an accurate initial translation of the core Next

Steps idea, with agency status being framed in terms of de-politicisation, empowerment and contractual politico-administrative relations. However, contemporarily, these managerialist precepts are largely abandoned in accounts of MoJ's austerity-prompted restructure, where fundamental difference is once again asserted between arm's-length bodies and agencies, the latter being simply a corporate governance and transparency solution.

Chapter 6 further descends the synchronic parameter to reach micro-level, organisational discourse. Drawing on the concept of relational organisational identity (Albert & Whetten, 1985; Ashforth & Mael, 1996), it probes the situated construction of 'agency' within stories generated in the National Offender Management Service, HM Courts and Tribunals Service, and the Office of the Public Guardian – the three MoJ agencies. This follows the part-whole dialectic codified by the hermeneutic circle, and makes for three prominent and contextualised renderings of agency as: unfulfilled de-politicisation; constitutional correctness; and sound corporate governance. In this manner, greater interpretive polyphony is registered at the micro level than either meso or micro strata.

Chapter 7 advances the analysis from agency meaning to post-agencification policymaking. It explores narrative evaluations of historic and contemporary policy process restructuring in the areas of offender management, courts and tribunals, and public guardianship, noting both synchronic inter-agency diversity in the definition of 'policy' and the challenges and opportunities of its development, yet intra-MoJ consistency in the common decrimal of traditional policy failure by its isolated, 'ivory tower' design. This communal, historic and deeply symbolic tale of justice policy being 'lobbed over the fence' at aghast operational managers is explored through the concept of organisational folklore (Gabriel, 1991, 2000).

Finally, Chapter 8 concludes the empirical presentation by reconstructing 'team narratives' of contemporary justice policymaking. Co-authored by researcher and researched, these chart the development of five justice policies during the eight-month interview programme, confirming the identities and evaluations narrated in the previous case study chapters, and offering a first

look into the largely closed world of policymaking in a large and (supposedly) agencified Whitehall department.

Conclusions

Drawing on the five empirical presentations and theorised by the discursive institutionalist framework, Chapter 9 systematically appraises the research questions. Regarding agency longevity, it describes an asymmetric evolution from the original ‘accountable management’ philosophy of Next Steps. Contemporary agency meaning is multivocal, but converges towards political accountability and transparent corporate governance, rather than managerial empowerment, de-politicisation and decentralisation. As for policymaking, institutional preservation of the policy-delivery work dichotomy is registered, yet found to be a poor descriptor of both historic and contemporary policy processes. Agency staff exercise a considerable role as policy initiators and collaborators, contrary to Next Steps’ principal-agent logic and further evidencing the claimed departmentalisation of the once arm’s-length model. Paradigmatically, therefore, although no unidirectional trend is found, the data adds to the growing literature positing some departure from new public management’s former predominance. Latterly, Chapter 9 addresses methodological implications for the study of agencies and post-agencification policymaking, returning to the three limiting tendencies noted previously. It also anticipates a new research agenda prompted by the major reinterpretations of ‘agency’ claimed by the thesis.

Chapter 2 – Agencies in Government

2.1 Introduction

The governing implications of new or reconditioned administrative decentralisation, both in terms of the changed character of the central state, and its new capacity for policy delivery, have proven to be as extensive and diverse as the research literature seeking their explication. Theoretical approaches ranging between classical organisational science (Christensen & Lægreid, 2012), rational choice theory (James, 2003), cultural theory (Smullen, 2010) and new institutionalism (Gains, 1999; Pollitt et al., 2004) have provided fruitful explorations of agencification, often in multi-theoretic combination (Verhoest et al., 2010). Nevertheless, while the once expansive output on UK executive agencies has dwindled in the new century, burgeoning interest in the transnational convergence upon the agency solution has prompted greater coordination of research agendas and methodologies, as illustrated by recent edited collections (Bach et al., 2012; Lægreid & Verhoest, 2010; MacCarthaigh & Roness, 2012; Verhoest, et al., 2011). In navigating what is thus an internationalised yet increasingly codified scholarly terrain, this chapter aims not at systematic appraisal of the overall field, but rather at elucidating and contextualising the key questions of post-agencification longevity and policymaking that inspire the present inductive return to the British case. Considering both substantive claims and established methodologies, it is here that the present study's continuities and departures are framed.

The chapter begins by outlining the lineage, design and high-level evolution of the Next Steps endeavour, and the empirical tensions which the thesis is to explore.¹ Thereafter, it situates these within the wider international trend towards agencies and managerialism in government.

¹ Much of this material has been published as Elston (2013).

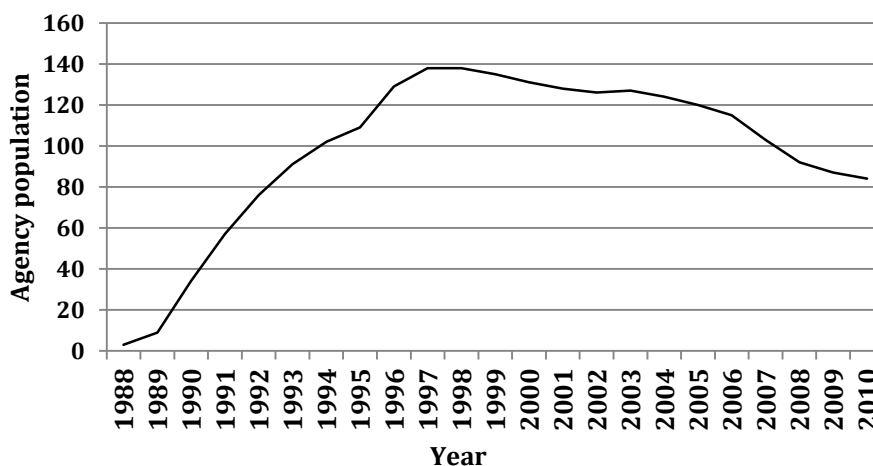
Finally, attention turns to the expanding academic literature on post-agencification longevity and policymaking, and the preponderance of large-*N* methodology.

2.2 Agencies in the UK

2.2.1 Overview

The institutions of UK central government are complex and constantly evolving, extending out concentrically from ministerial and non-ministerial departments to a multitude of organisations including executive agencies, special health authorities, non-departmental public bodies, and public corporations (Flinders, 2008). While many have a statutory basis, executive agencies are a purely administrative arrangement (Hogwood et al., 2001), crafted, reformed and terminated through powers of Crown prerogative (see White & Dunleavy, 2010). Legally synonymous with their departmental sponsors, therefore, agencies are often distinguished from other ‘quangos’, which enjoy formalised arm’s-length status (Pliatzky, 1992). Still, in the UK as internationally, legal status is but a partial indicator of day-to-day organisational autonomy (Flinders, 2008; Lægreid et al., 2006; Verhoest et al., 2004).

Figure 2.1: Executive agency population, 1988-2010



(Source: see Table 2.1, below)

Principal agencification proceeded across 1988-1997 in the ‘Next Steps’ programme. By its end, the total agency population had reached 138 (see Figure 2.1), and, according to James (2003,

p.57), encompassed some 285,000 civil servants – 60 per cent of the total, excluding Northern Ireland. Although the organisation count has since declined, reaching 84 by 2010, employment figures rose in both absolute and proportionate terms to 303,000 (62 per cent).² This complex trajectory of expansion and partial decline forms the backdrop against which the following subsections gradually introduce a contemporary research agenda.

2.2.2 ‘Accountable management’ in government

Intimately associated with the post-1979 Thatcherite agenda, Next Steps nonetheless enjoys longer lineage in the late-twentieth-century drive towards ‘accountable management’. This involves “the delegation to managers of the responsibility for specific resources and the accountability for their use in the pursuit of designated objectives” (Gray & Jenkins, 1986, p.181), and was recommended explicitly in the Fulton Committee’s 1968 review of the civil service. In particular, their suggestion was that government build new “accountable units” in departments, and review the potential of Swedish-style agencification (Fulton Committee, 1968, pp.51-52, 61). Though little progress was made at the time, the so-called super-ministries of the 1970s contained some internal delegation “to accountable units of management” (Prime Minister and Minister for the Civil Service, 1970, p.6), and three agencies were also established (Massey & Pyper, 2005, p.85).

Thereafter, while lacking a coherent Whitehall reform plan, the Thatcher Government sought major changes to the process of government, as well as civil service reductions of 100,000 (Lord President of the Council, 1981). Successive initiatives were “piecemeal” and “evolutionary” (Richards & Smith, 2002, p.101), but included a further push towards accountable management. In particular, the 1982 Financial Management Initiative required that “managers at all levels” had defined objectives and could measure performance against them (Prime Minister and Minister for the Civil Service, 1982, p.5). In practice, though, few delegations emerged alongside

² This calculation uses the same exclusion criteria as James (2003), but its data are not wholly compatible. Due to central reporting inconsistencies, *average* FTE employment figures for 2009-2010 have been collected individually from agency annual reports. Their sum is then compared with the Home Civil Service headcount (again, FTE), which is but a *snapshot* at 31st March 2010.

the proliferation of performance indicators and increased cost-consciousness (Goldsworthy, 1991; Greer & Carter, 1995).

In this manner, the Next Steps development was prompted by frustration “that by 1986-7, despite several years of reform, the civil service still showed little sign of real cultural change” (Greer & Carter, 1995, p.87). As Richards and Smith (2002, p.109) explain, the programme “was not a radical departure from earlier attempts at reform; rather, it was a reaction to, and consolidation of, previous ad hoc attempts at change”. The initiating report, *Improving Management in Government: The Next Steps*, argued that, while service delivery is government’s main task, “senior management is dominated by people whose skills are in policy formulation”, making for its prioritisation over service management (Efficiency Unit, 1988, p.3). Destined to enjoy significant managerial and financial autonomy from departments, task-specific delivery agencies were prescribed as a solution to this policy-delivery imbalance. They would operate at arm’s-length from ministers but within an overall “policy and resources framework”, against which performance would be judged on quasi-contractual terms (Efficiency Unit, 1988, p.9). Thus combining delegation and responsibility, agencification was quite literally the ‘next step’ in the accountable management movement (Gray & Jenkins, 1993; TSCS, 1988b, p.ix).

2.2.3 Implementing Next Steps

According to Hennessy (1990), the draft Next Steps Report was so critical of earlier progress in Thatcher’s civil service reforms that its publication was delayed until after the 1987 general election. Twelve agency candidates were initially named at its release in February 1988, but soon the aspiration was to cover three quarters of the civil service (TCSC, 1988a, p.9). In the new decade, progress was rapid, with 50 agencies operating by 1991 (TCSC, 1991, p.vii). A follow-up investigation identified “fresh ideas, energy, enthusiasm and increased commitment” resulting from agencification, despite continuing over-regulation by departments (Efficiency Unit, 1991, p.12). Latterly, increased delegations were forthcoming under Prime Minister Major (Gains, 2003b, p.9), although a subsequent report reaffirmed earlier concerns with over-

intervention (Trosa, 1994). Finally, in 1997, it was announced that Next Steps was to end in 1998, having achieved a major reconfiguration of Whitehall (Chancellor of the Duchy of Lancaster, 1997).

2.2.4 Agencies under Labour

Despite initial concerns over the potential for 'back-door' privatisation, Next Steps had enjoyed broad cross-party support (Campbell & Wilson, 1995, p.280). Indeed, soon after assuming office, the Labour Government declared:

“All the evidence suggests that in the majority of cases agency status has had a transforming effect on the way in which executive parts of the civil service have carried out the tasks for which they are responsible....”(Chancellor of the Duchy of Lancaster, 1998, p.iv)

After closing the agency programme, Labour turned to performance improvement and interorganisational collaboration (Minister for the Cabinet Office, 1999). In particular, as James (2001b, p.25) explains, the wider 'joined-up' agenda pursued under the rubric of 'Modernising Government' developed partly as a critique of the institutional fragmentation engendered by agencies (see Cabinet Office, 1999a). Thus, by 1999, the new government was arguing:

“An issue for all agencies to consider is whether there is scope for improving performance by cooperation with bodies beyond the agency boundary. ... [Agencies] have a vital role to play in fostering ... growth in cooperative solutions to ... meet needs that are not themselves constrained by bureaucratic boundaries.” (Minister for the Cabinet Office, 1999, pp.v-vi)

In 2002, the last wide-ranging review into agencification extended this argument into a fuller critique of fragmentation, suggesting that, although agencies had been culturally transformative, “in too many cases their work has become disconnected from the increasingly well-defined aims of their Ministers” (Office of Public Services Reform, 2002, pp.3, 11). Accordingly, it was now necessary “to bridge artificial and inhibiting distinctions between policy and service delivery in order to create integrated, unified approaches to delivering outcomes for customers”.

Overall, then, as Schick (2002, p.51) explains, Labour refocused attention onto the operation of whole departments, with agencies conceived as “departmental subdivisions, not independent entities”. This reorientation is epitomised by: the discontinuation of the annual, cross-governmental Next Steps agency reviews; the ending of quinquennial performance appraisal; the decline in framework document maintenance (see Section 2.2.6, below); the adoption of some departmental rather than agency-specific frameworks (Department for Transport, 2009; Department for Work and Pensions, 2008); the advent of departmental Public Service Agreements; and the gradual return to interorganisational shared corporate services (Elston & MacCarthaigh, 2013; Gershon, 2004). Therefore, while retaining a central position in the Whitehall landscape, agencies lost something of their “celebrated identity” (Gains, 2003b, p.17).

2.2.5 Population dynamics

As noted above, by 2010, the UK-wide agency population declined to 84, yet employment rose slightly compared with 1997. This apparent contradiction can be probed further by adopting an ‘organisational ecology’ perspective, which considers member entries and exits within a defined population – a method examined more closely in Section 2.4, below. Using archival data, Table 2.1 subdivides each year’s population movements between four categories derived from official literature and existing research (Cabinet Office, 2006; Massey & Pyper, 2005, p.90). These are: privatisation (by sale or outsourcing); agency merger; departmental reintegration; and miscellaneous (including agency reclassification). All closures are listed according to the dominant direction of transfer (for example, the majority of HM Stationery Office was sold in 1996, so this is classed as a privatisation).³

³ Without an official agency register across 1988-2010, full coverage cannot be guaranteed, but the entries and exits in Table 2.1 are internally consistent.

Table 2.1: UK-wide agency landscape, 1988-2010

Year	Agency Launches ^a	Agency Dissolutions				Total	Net Change	Year-end Total
		Privatised	Merged ^b	Reintegrated	Misc. ^c			
1988	3	-	-	-	-	0	+3	3
1989	6	-	-	-	-	0	+6	9
1990	25	-	-	-	-	0	+25	34
1991	23	-	-	-	-	0	+23	57
1992	19	-	-	-	-	0	+19	76
1993	16	1	-	-	-	1	+15	91
1994	12	-	-	-	1	1	+11	102
1995	14	3	4	-	-	7	+7	109
1996	31	8	1	-	2	11	+20	129
1997	12	3	-	-	-	3	+9	138
1998	4	-	2	1	1	4	0	138
1999	6	-	6	1	2	9	-3	135
2000	5	-	3	6	-	9	-4	131
2001	6	-	4	3	2	9	-3	128
2002	3	-	2	2	1	5	-2	126
2003	10	-	6	1	2	9	+1	127
2004	3	-	2	4	-	6	-3	124
2005	6	-	1	6	3	10	-4	120
2006	5	-	4	5	1	10	-5	115
2007	6	-	8	8	2	18	-12	103
2008	6	-	8	6	3	17	-11	92
2009	3	-	3	4	1	8	-5	87
2010	2	-	-	2	3	5	-3	84
Totals	226	15	54	49	24	142		

^a Includes merged agencies; excludes departments run on 'Next Steps lines' and cases of name change.

^b For merged agencies, all original bodies are listed as closed and a new agency is counted.

^c Includes agencies closed for further disaggregation, those whose functions were dropped from government altogether (without being privatised), and those reclassified.

Sources: the Next Steps annual reviews before 1999 (for example, Chancellor of the Duchy of Lancaster, 1997); departmental and agency annual reports after 1999; and, occasionally, statements in *Hansard*.

Agency launches, 1988-2010

Between 1988 and 1997, Next Steps produced 161 agencies. Nominally, the majority involved new organisational disaggregations, but some functions actually pre-existed in recognisably separate forms (see Talbot, 2004). Latterly, several agencies were also made by small-scale rationalisations of already devolved functions. After Next Steps' close in 1998, 65 further agencies were created. Some involved newly decoupled functions, but, in contrast with the Next Steps programme, over half were from rationalisations – principally, mergers – of the existing population.

Agency closures, 1988-2010

Initially, privatisation was the main dissolution method. Of the 15 such closures during Next Steps, 12 constitute full privatisations and three involved major contracting-out. Since 1997, there have been no direct privatisations, although, as Burnham and Pyper (2008, pp.146-147) demonstrate, some functions formerly undertaken by agencies have, since dissolution, been sold. In addition, 54 closures have been classified as due to agency mergers, 49 as departmental reintegrations, and 24 as miscellaneous. Mostly occurring after 1997, these developments suggest a mixed evolution overall, and this is complicated by the post-1999 devolution settlements to Scotland, Wales and Northern Ireland. Existing work has already demonstrated post-devolution divergence in arm’s-length governance (Flinders, 2008). On this basis, Table 2.2 further disaggregates the UK-wide data by sub-polity. (Appendix I includes separate year-by-year chronologies for each country, and brief commentaries).

Table 2.2: Agency rationalisations by sub-polity, 1988-2010

	Agency Launches	Agency Dissolutions				Agencies in 2010
		Privatised	Merged	Reintegrated	Misc.	
Scotland	20	-	-	6	1	13
Wales	4	-	-	3	-	1
Northern Ireland	28	-	6	7	2	13
Central UK	174	15	48	33	21	57
Whole UK (Total)	226	15	54	49	24	84

As Table 2.2 demonstrates, rationalisation in both Scotland and Wales was predominantly through full de-agencification. In Northern Ireland, a mixture of de-agencification and agency-to-agency mergers occurred. Thus, with these figures removed, UK central government is shown to have pursued mergers (48) over de-agencification (33). Of the mergers, 43 came after 1997, often being rationalised as improving interorganisational ‘join-up’ and collaboration, following Labour’s anti-fragmentation agenda. The formation of the Maritime and Coastguard Agency, for example, exploited “synergies” between the originally separate Coastguard Agency and Marine Safety Agency (Minister for the Cabinet Office, 1999, p.141), while, more recently,

amalgamation of the Pensions Service and Disability and Carers Service enabled “more holistic services” (Disability and Carers Service, 2008, p.4). In this manner, the original task specialisation pursued by Next Steps agencies has been eroded.

Of the 33 departmental reintegrations in UK central government, 24 were in the Ministry of Defence. During the 1990s, this department thoroughly embraced the agency model (Hogwood, 1995), but its population steadily declined thereafter, initially through mergers, but increasingly through reintegrations. From a highpoint of 44 agencies, there were just nine by the end of 2010. An official offered a transaction-cost rationale for this pronounced de-agencification, reporting concern with “the overheads that go with a very decentralised structure”, and a realisation that “the decentralising tendency in the Department went ... too far in the 1990s” (see House of Commons Defence Committee, 2006, p.19). There has been no similarly coherent rollback elsewhere, with most reintegrations occurring before 2001 in similarly low-profile sectors. Therefore, in contrast to Scotland and Wales, de-agencification in Whitehall has, prior to the 2010 Coalition Government, been restricted to one particularly agencified department and some small-scale rationalising in the wake of Next Steps’ rapid initial implementation.

2.2.6 Task division

Next Steps

While organisational ecology offers a high-level, longitudinal analysis of structural change, it says little of delegated responsibilities. Agencification is particularly associated with a division of policymaking and implementation tasks (Drewry & Giddings, 1995; Hyndman & Eden, 2001; Pyper, 1995). Hogwood (1995, p.518) describes this as “at the heart of Next Steps”, while, for James et al. (2011, p.62), it is “a key normative principle underlying the reform”. However, at the time, not only were commentators sceptical about the benefits of such rigid decoupling, but many found scant evidence of its enforcement. Pyper (1995, p.24), for instance, notes a tendency towards chief executives having either a “‘sleeping’ role in policy advice”, where they would contribute ideas when requested, or “a more pro-active role” in departmental processes.

Greer (1994, p.61) divides agencies between those funded with a specific parliamentary vote and those subsumed into departmental financing, noting that the former often have policy responsibilities defined in their framework documents. Similarly, a government review found that “half of agencies have policy functions either resulting from their framework document ... or de facto” (Trosa, 1994, p.3), and, in a wider critique of Next Steps’ alleged radicalism, Hogwood et al. (2001, p.44) observed:

“While many agencies have no direct input into policy issues (and there are few directly concerning them), in a limited number of cases the agency is the main source of policy advice because it is the repository of expertise, and in others the agency has the right to be consulted about any policy proposals affecting them, and to make policy proposals.”

These analyses all pertain to the initial post-agencification period and draw evidence solely from framework documents. However, each undermines Next Steps’ supposed policy-delivery task division. As Page and Elder conclude:

“It is problematic (as well as inaccurate) to accept without at least some qualifications the distinction between policy and operational delivery as underpinning the whole of the reforms in Britain, since many ministries have operational responsibilities and many agencies are involved in policy making.” (1998, p.29)

Post-Next Steps

Against this benchmark, Table 2.3 compares framework documents for 47 of the 58 agencies operating in Whitehall in 2010. Most were authored under Labour but, reflecting the decline in framework maintenance, some predate the 1997 election. Documents are classed by a taxonomy of three hierarchically-ordered groups. This was formed inductively and iteratively through successive readings of the sample, but it remains an academic construct. The first group contains frameworks reporting a significant, regularised policymaking role for agencies. These further subdivide between those leading in policy development and those sharing responsibilities with the sponsor. The Identity and Passport Service represents the former. Its “role extends beyond those normally associated with an executive delivery agency”, so that its chief executive is “the primary source of advice to the Home Secretary on policy issues” (Home

Office, 2009, p.6). The second subset of the first group is illustrated by the National Offender Management Service, which is “fully participative and influential in the process for setting national priorities and strategic policies under which it must operate” (Ministry of Justice, 2008, p.15). The second major category includes agencies whose policy participation is periodic, occurring more explicitly at the discretion of departments. Agencies may be consulted on policy matters, or assist departments in advising ministers. HM Courts Service (2008, p.21), for example, was to be consulted by the Ministry of Justice “on all policy and legislative proposals which it is developing”. Finally, the third major category lists frameworks with no details of a devolved policy role. This is not to say that, in practice, these agencies do not contribute to policymaking. However, there is no framework delegation.

Table 2.3: Devolved policy responsibilities in UK central government framework documents

Agency undertakes significant levels of policy formulation and development work	Agency undertakes periodic policy development work, either assisting the department with the formulation of ministerial policy advice, or being consulted on operational aspects of policy	Agency has no formal policy responsibilities	
Agency leads on policy and/or legislative matters	Agency and department share policy duties (agency may lead in certain areas and/or is a key Ministerial advisor)		
FERA (2009)	Defence Storage and Distribution Agency (2003)	Asset Protection Agency (2009)	Central Office of Information (1998)
Identity and Passport Service (2009)	Defence Support Group (2008)	Department for Work and Pensions (2008) (encompassing Jobcentre Plus and Pension, Disability and Carers Service)	CEFAS (2008)
National Fraud Strategic Authority (2008)	Defence Vetting Agency (2006)	Highways Agency (2009)	Companies House (2009)
National Measurement Office (2010)	Defence Science and Technology Laboratory (2006)	HM Courts Service (2008)	Criminal Records Bureau (2003)
Office of the Public Guardian (2009)	Forest Research (2003)	Planning Inspectorate (1998)	FCO Services (2008)
UK Intellectual Property Office (2008)	MHRA (2004)	Rural Payments Agency (2005)	Forest Enterprise England (2003)
	NOMS (2008)	Service Personnel and Veterans Agency (2007)	Land Registry (2008)
	Ordnance Survey (2004)	Treasury Solicitor's Department (2008)	Met Office (2007)
	Service Children's Education (1996)		Ministry of Defence Police and Guarding Agency (2006)
	Skills Funding Agency (2010)		National Savings and Investments (2009)
	The National Archives (2009)		People, Pay and Pensions Agency (2008)
	UK Border Agency (2009)		Queen Elizabeth II Conference Centre (2003)
	UK Debt Management Office (2005)		The Royal Parks (1993)
	UK Hydrographic Office (2007)		Tribunals Service (2006)
	Valuation Office (2009)		Veterinary Laboratories Agency (1995)
	Veterinary Medicines Directorate (1995)		Wilton Park (2009)

Six framework documents could not be sourced. Moreover, the five agencies in the Motoring and Freight Services Group (Driving Standards Agency; Driver and Vehicle Licensing Agency; Government Car and Despatch Agency; Vehicle Certification Agency; Vehicle and Operator Services Agency) are excluded because this grouped format was incompatible with the analysis.

Table 2.3 includes major departures from Next Steps' prescription. In particular, documents listed in the first two subcategories bear little resemblance to the official model of disaggregated policy and implementation. However, given doubts over the extent to which Next Steps achieved a full separation during the 1990s, the question of an evolving task division is problematic. Still, Labour's 'joined-up government' agenda was partly predicated on a critique of agency fragmentation in the 1990s, and this pertained not simply to horizontal, inter-agency collaboration, but also to vertical detachment of policymaking and operational delivery. As one report from this 'Modernising Government' era argued:

“Whilst organisational and management changes over the past decade have emphasised the separation of policymaking and policy implementation, ‘modernised’ policy making demands that they be re-integrated into a single, seamless, flexible process.” (Cabinet Office, 1999b, p.9)

Labour's 2002 agencification review found similarly that “the gulf between policy and delivery is considered by most to have widened” (Office of Public Services Reform, 2002, p.5). As such, whether or not widely achieved during Next Steps, decoupled policy and delivery was identified and critiqued by Labour.

Illustrations of remedial action to reintegrate policy and implementation are found in restructuring like that in the Department of Transport, which brought together five agencies as the Motoring and Freight Services Group. This operated a single framework, and was intended to “strengthen the role and position of the agencies, ensuring they are fully engaged in shaping as well as delivering policy” (Department for Transport, n.d.). To similar effect, the Department for Constitutional Affairs removed policy work to its agencies in the middle of the decade in order to ensure operationally-informed policymaking (Civil Service Capability Reviews, 2006). More recently, in the trade and industry sector, the National Measurement Office (2010, p.2) was devolved formerly-centralised policy responsibilities, and the Skills Funding Agency was established at “shorter” arm's-length so that it be “actively involved” in policymaking (Department for Business Innovation and Skills, 2010, p.9).

This trend towards “functional reaggregation” (Elston, 2013) under Labour is further evidenced by early Coalition Government developments. Both coalition parties oppose policy activities being undertaken outside of departments (Gash et al., 2010, p.29), and, prior to the 2010 election, Conservative leader David Cameron (2009) argued that quangos – including executive agencies – should be “strictly administrative”. Reflecting the inherited state of devolution, therefore, policy functions have been recentralised since 2010 (Jenkins & Gold, 2011).

2.2.7 Discussion: towards a research agenda

This review of executive agencies began by detailing their accountable management lineage, the design and implementation of Next Steps, and Labour’s subsequent, qualified critique. An organisational ecology then traced structural developments across 1988-2010, and a framework document review probed the contemporary department-agency task division. These materials raise at least two questions about the UK’s agency endeavour, pertaining to continuity and change and post-agencification policymaking. These are elaborated below.

Continuity and change in agencification

Given the decline in UK agencification scholarship over the last decade, the question of continuity and change has received scant attention, and opinions divide as to the nature of post-Next Steps developments. On one side, Talbot and Johnson (2007, p.55) argue that, “from the large-scale disaggregation of the early 1990s policy seems to have almost completely reversed itself, in practice if not in rhetoric”. This analysis extends beyond agencification to other areas of public management that similarly testify to a “seasonal cycle” in reform strategy. Although largely evidenced by anecdote, Talbot and Johnson’s argument has proved influential, prompting Pollitt (2007, p.532) to describe how “the fashion has swung towards and then away from the semi-autonomous agency format”, and Halligan (2007, p.227) to cite “the reversal of the agencification trend internationally, now most apparent in Britain”. The idea of cyclical (de)centralisation is a familiar one in administrative science generally (Pollitt & Bouckaert, 2004, p.81; Wettenhall, 2011), but, in the UK, the maintenance of agency employment figures

and tendency towards mergers rather than de-agencification are somewhat qualifying (see Elston, 2013). Thus, on the other side of the debate, James et al. (2011, pp.62, 67) maintain that there has been only a “modest ‘de-agencification’ trend”, within which the agency model “has stood the test of time”. Though more detailed, this account is again problematic, being largely supported by reference to the original agency proposition and its early development, rather than empirical detail on contemporary implementation. For instance, the authors describe the salience of framework documents, sponsorship, ministerial advisory boards on performance, and separated policy and delivery. Although recognisably the intent of the 1980s-1990s design, it is unclear that agency practice necessarily continues along these lines today, particularly given the decline in framework maintenance, Labour’s increased emphasis on the departmental entity, and the significant reunification of policy and delivery functions, all noted above.

In this light, the population ecology in Section 2.2.5, above, represents but a limited assessment of continuity and change. Next Steps was about more than shuffling organisational boundaries; it aimed at cultural change, redefined politico-bureaucratic relations, and a new bargain of autonomy and control. As such, longitudinal analysis of structures can be a rounded gauge of administrative evolution only if it is assumed, firstly, that Next Steps did originally achieve its cultural and operational aims, and, secondly, that these dynamics were felt equally across a quarter of a century of governance thereafter. Implicitly, these assumptions are adopted in much contemporary literature, which, in broader studies of quangos and public management reform, still describe agencification through the Next Steps imagery of quasi-contractual decentralisation, decoupled policy and operations, and *ex-ante* autonomisation (for example, Drewry, 2011; Flinders & Skelcher, 2012; James, et al., 2011; Pina et al., 2012; Pyper & Burnham, 2011). However, recalling again Labour’s critique and remedial ‘joining-up’ reforms, as well as the non-statutory definition of agencies and the only partial link between formal and operable autonomy, such assumptions are untenable. Rather, as the international research agenda has recognised, agency autonomy and control are matters for ongoing empirical

investigation (Christensen & Lægreid, 2006b; Verhoest, et al., 2004; Verhoest, et al., 2010). It is on this basis that the first empirical research question is formed:

Research Question 1: What does ‘agency status’ mean in contemporary public management in the UK, and has this changed over time?

As Chapter 3 explains, this focus on meaning is of epistemological as well as practical import within an explicitly interpretive and narrative investigation. For now, however, this research question is rationalised on the grounds that, contemporarily, agencies operate in a markedly differing context to that surrounding Next Steps, and, in the intervening period, have been exposed to various critiques and second-generation reforms. In failing to attend fully to the dynamics of contemporary agency practice, existing research is able to form only a very limited opinion on longevity.

Post-agencification policymaking

Little if any work has probed beneath framework documents to analyse emerging dynamics of post-agencification policymaking. Still, although focused on other aspects of the agency endeavour, the two main theoretical accounts of Next Steps offer contrasting perspectives on its likely nature (Gains, 1999; James, 2003). Expanding Dunleavy’s (1991) bureau-shaping model, which offers a rational-choice explanation for senior officials’ detaching of under-valued service management tasks, James (2003) explains Next Steps as the product of such utility-maximising strategies. His contention is that, faced with a heightened political concern for service management, officials sought to ‘bureau-shape’ by designing agencification so that onerous, undervalued tasks would transfer to agencies, and interesting, high-status policy and ministerial work remain within departments. Empirical support for this account is claimed in a variety of quarters, including in a case study, where “neither the agency nor department could cite many cases where [policy] changes had been made in response to comments from the agency” (James, 2003, p.116). Nonetheless, there remain significant problems with the idea that departmental officials designed the agency reforms largely independently of politicians and the core executive

(Marsh et al., 2000). For one, this neglects the fact that Next Steps was a centrally-driven initiative which, following the managerialist concern for political primacy, already advocated separate policy and operations prior to individual departmental implementations (Elston, 2010). Moreover, bureau-shaping fails to explain cases where policy responsibilities were explicitly and formally devolved to agencies; for example, in the case of the Prison Service (HM Prison Service, 1993; Whitmore, 1994).

An alternative account is offered in Gains's (1999, 2003a) examination of department-agency relationships, which adopts policy network theory to examine new actor dependencies forged by agencification. A policy network is a set of "formal institutional and informal linkages between governmental and other actors structured around shared if endlessly negotiated beliefs and interests" (Rhodes, 2006b, p.426). Actors are interdependent – there is power dependency between them – and thus goal achievement depends on exchanging financial, legal, political and informational resources (Rhodes, 2006b, p.431). On this basis, Gains posits that Next Steps redistributed resources between departments and new agencies, and, therein, altered their interdependencies. Departments retained political legitimacy, authority and financial resources, and agencies gained "organisational, informational and administrative resources and ... policy expertise" (Gains, 1999, pp.53, 251). By extension, "agencies became more powerful participants in the policy process because of the knowledge and operational expertise they controlled in relation to operational goals".

James (2003) and Gains (1999) offer clear, if contradictory, perspectives on the post-Next Steps policymaking process, with bureau-shaping predicting an enforced task division between principals and agents, and policy networks positing their base interdependence. However, neither study is addressed to policymaking directly, and, moreover, both accounts are now dated. Accordingly, the second research question for this project is:

Research Question 2: What position do agencies occupy within the policymaking process, and has this changed over time?

In turning to post-agencification policymaking, the question of longevity remains significant. As previously noted, Labour's 'joined-up government' agenda was in part designed to reunify policymaking and delivery, and there is evidence of some functional reaggregation after 1997, even if 1990s framework documents hardly point to full initial decoupling (see Section 2.2.6, above). Moreover, Elder and Page (2000, p.224) suggest that it is actually with maturity that agencies may become more powerful policy actors, since departmental expertise will diminish over time. For this reason, sensitivity to historical transformation is required across both components of the research agenda.

2.3 Agencies internationally

Having established an empirical research agenda based on post-agencification longevity and policymaking, this section considers the international trend towards agencification. Not only does this confirm the salience of these areas in the study of delegated governance generally, but it also situates Next Steps within its paradigmatic context and, in so doing, adds a third element to the investigation in terms of the doctrinal stability of managerialism in government.

2.3.1 An international 'best seller'

Next Steps was not without parallel internationally. Indeed, Pollitt et al. (2001) identify an "agency fever" as having beset many governments around the world since the 1980s, and the burgeoning international and comparative research in this field points to similar contagion within the academy (Christensen & Lægreid, 2006b; Pollitt & Talbot, 2004; Pollitt, et al., 2004; Smullen, 2010; Verhoest, et al., 2010; Verhoest, et al., 2011). This is not to deny the pre-existence of administrative decentralisation in many states (Wettenhall, 2005), nor the diversity of the organisational forms attained since the 1990s (Van Thiel, 2011). On this latter point specifically, Christensen and Lægreid (2006a, p.12) maintain that "what an agency is and what it does varies considerably across national and organizational cultures, legal systems and political systems". Nonetheless, in terms of reform logic, the "combination of an organizational form (the semi-autonomous agency) and a management process (target setting, performance indicators,

feedback) has become an international ‘best seller’” (Pollitt, 2006, p.301), adopted to varying degrees in situations as diverse as Ireland (MacCarthaigh, 2012), the Netherlands (Smullen, 2004), the EU (Barbieri & Edoardo, 2008), Canada (Aucoin, 2006), New Zealand (Boston, 1995), Japan (Nakano, 2004), and Tanzania (Sulle, 2010).

While shared concerns of finance and efficiency partly account for this convergence (Pollitt, et al., 2001, pp.276-277), claims of international “homogenizing pressures” have also been laid (Verhoest, et al., 2010, p.106). Particularly voluble in this new “global conversation” on good governance is the OECD (Pal, 2012, p.xvii), which is often credited with advancing homogenising reforms (Goldfinch, 2009; Pollitt & Bouckaert, 2004). On agencies specifically, its 1995 report, *Governance in Transition*, suggested that:

“Devolving managerial authority is a corner-stone of reforms to improve the performance of the public sector. In essence, reforms under this heading involve giving managers greater flexibility and incentives to achieve results, relaxing traditional central controls on the use of resources. New managerial freedoms are balanced by greater accountability involving specification of targets, performance measurement and reporting of results achieved.” (OECD, 1995, p.29)

This reflects much of the ‘accountable management’ logic underpinning agencification in the UK. However, though often overlooked, the OECD view on administrative reform was more nuanced than outright valorising of a single best-practice solution, as Pal (2012) recently demonstrated. Indeed, prefiguring the organisation’s latter-day disillusionment with agencification (see below), it actually warned in 1995 that agencies risked fragmentation and poor coherence, accountability and operationally-informed policymaking (OECD, 1995, pp.29-32). Nonetheless, sufficiently pervasive was the agency reform logic that academics have codified its doctrinal basis into various pan-national ‘ideal-type’ schemata. Particularly influential is Pollitt et al.’s “tripod model”, based on the three elements of “disaggregation”, “autonomization”, and “contractualization”. As they describe:

“[T]he ideal-type model for modern agencies is: where an organization has been clearly and probably formally separated from any other public organization; where it has some degree of discretion over internal rule setting (e.g. over personnel, finance and other

arrangements); and where it is subjected to some sort of contractual or quasi-contractual arrangements including reporting of its performance.” (Pollitt, et al., 2004, p.42)

This model has been widely cited, although some research adds the separation of policymaking and implementation as a fourth dimension (Verhoest, et al., 2010; Verschuere, 2009; Verschuere & Barbieri, 2009). Again, there is clear reflection of Next Steps’ decentralisation, managerial empowerment and contract-based control. Importantly, though, these models are taken as representing a “vision”, and not necessarily the “realities – and unrealities – behind [this]” (Pollitt, et al., 2004, p.46). A considerable research industry has thus developed to test the empirical prevalence of *ex-ante* de-regulation and *ex-post* control across diverse politico-administrative contexts (see Christensen & Lægreid, 2006b; Verhoest, et al., 2004; Verhoest, et al., 2010).

2.3.2 Paradigmatic basis

Agencification as envisaged by the international tripod model is widely read as a key expression of the broader, paradigmatic shift away from hierarchical, command-and-control styles of government towards leaner, more entrepreneurial and explicitly business-orientated approaches (Barzelay, 2001; Hood, 1991). Though often critical of its assumptions and consequences, the academy has been enthralled by this ‘new public management’ (NPM) for more than two decades. Famously lacking in theoretical and practical coherence, NPM defies close definition. Nonetheless, its doctrines broadly proceed from analogising public service delivery to industrial production, whereupon improvement is sought by market forces, entrepreneurship and de-regulation (Dunleavy & Hood, 1994; Gregory, 2007). To this end, NPM is particularly felt in the private-sector inspiration for the parent-subsidiary model of department-agency contracting (James, 2001a), the pursuit of task-specific organisations (Rones, 2007), the potential decoupling of policymaking and implementation as purchaser and provider (Dollery, 2009; Stewart, 1996), and the (alleged) shift from *ex-post* to *ex-ante* controls (Hoggett, 1996; Pollitt, 2006; Van Thiel & Leeuw, 2002). Indeed, so intimate is the paradigmatic

association that agencification has been cited as the “most frequently adopted and far-reaching” policies of NPM (Moynihan, 2006, p.1029). Moreover, often (dis)credited as an NPM “leader”, in the UK, its Next Steps programme is understood to epitomise managerial reforms in executive government (Barzelay, 2001; Wegrich, 2009).

2.3.3 Agencification and managerialism: a turning tide?

While NPM continues to provide fertile ground for politico-administrative research, scholars are increasingly questioning the security of its doctrines within the new century (Alford & Hughes, 2008; Christensen & Lægreid, 2007b; Dunleavy, et al., 2006; Olsen, 2008; Skelcher, 2000). A split has emerged between research purporting further paradigmatic shift or essential continuity and entrenchment. On the one hand, Dunleavy et al. (2006) identify the “death” of NPM and its substitution by “digital-era governance”, evidenced in part by the second-generation, anti-fragmentation reforms initiated by many governments. Also on the decline side is Pal (2012, p.6), who contends that, with the 2008 financial crisis and increase in state intervention, NPM’s “high tide has passed”. More cautiously, Christensen and Lægreid (2007a, p.11) register a layering of new reforms over enduring managerialist precepts, identifying not a paradigm shift, but “a change of emphasis away from structural devolution, disaggregation and single-purpose organizations”. Furthermore, Lodge and Gill (2011) find very limited evidence of a “post-NPM” condition, while, in the UK specifically, Wegrich’s (2009, p.152) claim is similarly of a deeply embedded managerialism that has been only slightly “attenuated”.

Though by no means exhaustive, this sampling of opinion demonstrates the salience of, and contestability within, the current paradigm debate. Despite offering different interpretations, both Dunleavy et al. (2006) and Christensen and Lægreid (2007a) evidence their claims for NPM’s decline or evolution with developments in agencification. Dunleavy et al. (2006) point to diminishing enthusiasm for agencies both in the UK and internationally. The former can be seen in Labour’s post-Next Steps anti-fragmentation reforms, while the latter is illustrated by the OECD’s modified position on agencification, to wit, following its initial (if qualified) enthusiasm,

the subsequent *Modernising Government* report identified “mounting evidence that OECD countries that have delegated a lot of responsibility to arm's-length bodies are rethinking the challenges this creates” (OECD, 2005, p.118). In this manner, as Smullen (2010, p.19) observes, latter-day OECD discourse essays a marked reinterpretation of agencies as “no longer a central public management solution, but part of some of the problems to be addressed”.

In their more cautious diagnosis of paradigmatic evolution and layering, Christensen and Lægreid (2007a) similarly claim a lessened emphasis on structural disaggregation. As they confirm elsewhere, following NPM’s “highly disaggregated and decentralized apparatus ... many political systems are now trying to ‘rebuild’ the state or at least create more central governance capacity” (Christensen et al., 2007, p.25). Longitudinal work on agency populations has supported this assessment; for example, in noting a trend towards agency mergers similar to that observed in the Next Steps organisational ecology, above (Verhoest, et al., 2011).

2.3.4 Discussion: supplementing the research agenda

In highlighting the international prevalence of agency reform and its paradigmatic association with NPM, this section both confirms the significance of post-agencification longevity and policymaking to the global study of administrative decentralisation, and prompts a third, more conceptual research question to complement these two empirical concerns. Specifically, on the understanding that, as Drewry (2011, p.199) claims, Next Steps became the UK’s “flagship initiative of the NPM era”, the proposed exploration of continuity and change can offer a wider commentary on the long-term stability of managerialist doctrines. Accordingly, the final, supplementary research question is:

Research Question 3: What does an understanding of the evolving meaning and policymaking role of executive agencies suggest about the stability of managerialism in Whitehall?

2.4 Methodological trends in agency research

Having established a research agenda built around post-agencification longevity, policymaking and paradigmatic stability, this final section reviews methodologies favoured in international

research. The first subsection considers large-*N* studies of longevity, and the second looks to the small but growing literature on agency policymaking.

2.4.1 Agency longevity: the preponderance of system analysis

Within the burgeoning international canon on agencification, the most prolific longitudinal work takes the form of system analysis – that is, analysis of evolution within administrative systems as a whole. Implicitly or explicitly, this work often draws on ideas from “population ecology” or “organizational ecology” (Hannan & Freeman, 1977, 1989), for which the unit of analysis is not individual organisations, but collectivities (Peters & Hogwood, 1991). Originating in private sector analyses of firm density and survival in competitive industries (see Carroll et al., 2009), this approach proceeds by defining a population as “all the organizations within a particular boundary that have a common form” (Hannan & Freeman, 1977, p.936). Organisational ecology thus examines rates of member entry, exit and change within the population, and, potentially, the influence of internal group dynamics and external social and environmental forces on these developments (Singh & Lumsden, 1990). Transferred to governmental analysis, the claim is that this approach allows exploration of “the dynamics of change in the public sector” (Peters & Hogwood, 1991, p.83).

The Next Steps chronology presented in Section 2.2.5, above, represents a simple example of organisational ecology, and many published analyses of agency trends adopt a similar population focus without necessarily describing themselves as ‘ecological’ (see examples in Verhoest, et al., 2011). More directly, population ecology has prompted discussion of agency “life cycles”, including “births”, “deaths” and “survival” (MacCarthaigh & Roness, 2012, p.776), and new exploration of the dynamics of agency termination (Adam et al., 2007; Rolland & Roness, 2011). A growing literature is also examining the effect of a variety of organisational and environmental variables on rates of agency formation, modification and termination, including legal classification, performance, national accession to the European Union, and

isomorphism by international NPM reform doctrine (Hajnal, 2012; James et al., 2011; Nakrošis & Budraitis, 2012; Rolland & Roness, 2012).

Administrative systems analysis has advanced the study of agencification considerably, enabling longitudinal and cross-country comparative analysis, and hypothesis-led explanatory research. Able particularly to trace the changing dynamics of bureaucratic fragmentation against the backdrop of NPM's ascendancy and recent qualification, the approach is well suited to the cross-the-board targeting of agencification as a pan-government system redesign. Still, population ecology is not without its problems. In particular, even setting aside the issue of ontological reification (discussed in the next chapter), there are challenges of defining both the population of interest and the nature of life cycle events (Carroll, et al., 2009; MacCarthaigh & Roness, 2012; Peters & Hogwood, 1991). Moreover, by its very nature, the approach is based on a certain amount of abstraction and de-contextualisation. This is critiqued further below.

2.4.2 Post-agencification policymaking: from systems to cases

There is growing interest in the impact of agencification upon public policy processes (Bach, 2010; Bach, et al., 2012; Niklasson & Pierre, 2012; Painter et al., 2010; Verschuere, 2009), although, as Verschuere and Bach (2012, pp.184-185) note, relatively speaking, this aspect of the research agenda is underdeveloped. The largest body of work follows in the manner of administrative system analysis, often being conducted within broader research programmes that seek to probe the empirical prevalence of the autonomy and control dimensions envisaged by ideal-type agency models (Verhoest, et al., 2010; Verhoest, et al., 2011). Understood as “the level of decision making competencies” enjoyed by an agency in the absence of its sponsor (Verhoest, et al., 2004, p.104), multiple dimensions of agency autonomy have been probed, including “policy autonomy”, which pertains to an agency’s decision-making ability regarding:

“the (sub)processes and procedures it has to conduct to produce the externally prescribed good or services; the policy instruments to use to implement the externally set policy and the quantity and quality of the goods or services to be produced; and the target groups and societal objectives and outcomes to be reached by the policy.” (Verhoest, et al., 2004, p.105)

Operationalised through standardised, (cross-)national surveys of agency chief executives, this coordinated methodological endeavour has sought to investigate *de facto* (rather than *de jure*) policy autonomy, offering hypothesis-led explanations according to a range of independent variables, including structural-legal status and organisational task (Bach, 2010; Lægreid, et al., 2006; Painter, et al., 2010), and agency age (Niklasson & Pierre, 2012). In so doing, the policy-delivery dichotomy often associated with NPM agencies has been found a poor descriptor of post-agencification policymaking.

Latterly, concerns have been expressed over the ability of large-*N* surveys of chief executives to capture the complexity and frequent irrationality of the public policy process (Bach & Verhoest, 2012; Elston, 2012), and a small but promising case study literature is emerging. Here, the unit of analysis is neither agency populations nor individual organisations, but rather individual public policies. Through both quantitative (Verschuere, 2009) and qualitative methods (Verschuere & Vancoppenolle, 2012), these studies again seek to test whether the NPM “rhetoric” of a policy-operations split can be found in “reality” by investigating specific political events rather than abstract and generic concepts. Once more, the veracity of the policy-operations split is frequently challenged in this processual work.

2.4.3 Discussion: three methodological tendencies

Fuller methodological discussion is delayed until the next chapter, on the understanding that such questions relate as much to meta-theory as they do to research agenda. For now, however, it is useful to note three tendencies in the burgeoning international work on agency longevity and post-agencification policymaking.

A product of administrative systems analysis, the first tendency is towards de-contextualisation, whereby agencies are studied in dislocation from the day-to-day policy systems and networks in which they operate and are embedded. While important for exploring and comparing the prevalence of NPM-style reforms both within and between countries, this focus on cross-governmental populations necessarily foregrounds the (pseudo-)legal classifications apparently

shared between organisations, while underplaying their day-to-day situation amongst and interaction with local circumstances and contingencies. As such, de-contextualisation makes for a structuralist mode of inquiry where, simply by virtue of their common ‘agency’ designation, a large national security agency is readily compared with a small environmental research body. Though certainly revealing on the nature of NPM reform, such approaches say little about public governance processes – the agencified delivery of national security and environmental research.

The second tendency is towards deductive empiricism. This involves testing the incidence and interrelation of predefined variables (‘etic’ knowledge, in the next chapter’s terminology), whereby complex governance phenomena are to a large degree universalised across particular national systems and even between nation states. This is particularly the case for research into ‘policy autonomy’, given its frequent measurement through the standardised surveys exported to multiple jurisdictions in the recent COBRA project.⁴ Again this is de-contextualising, but, more importantly, it also removes much of the complexity and dynamism inherent to politico-administrative phenomena by assuming that summative indices can distil governing processes to numeric evaluations.

Related to this, the final methodological tendency is towards the investigation of concepts rather than processes. Again within the quantitative literature on agency autonomy, researchers ask chief executives of a given population, “Can the agency develop policy proposals within its own area of responsibility?” (Bach & Verhoest, 2012, p.145). The answer is a snapshot evaluation of a much-contested governance concept (“policy”) which again underplays the dynamism and processual nature of governance and policymaking, and dislocates the investigation of a particular public management reform strategy from day-to-day ‘business as usual’ in heterogeneous governing situations, across which ‘policy proposal’ will likely carry differing, contingent meanings and connotations.

⁴ COBRA: Comparative Public Organisation Data Base for Research and Analysis (see Verhoest et al., 2011).

2.5 Conclusion

In providing a historical and conceptual grounding for the remainder of the thesis, this chapter has covered much ground. It began by charting the origins, design and implementation of the Next Steps programme – a seminal event in twentieth-century civil service reform. To illustrate New Labour's critique and second-generation reforms, an organisational ecology and framework document review then offered a preliminary account of continuity and change in the post-Next Steps period. It was on this basis that the empirical research agenda was established, centred on post-agencification longevity and policymaking. The middle portion of the chapter described the international prevalence and paradigmatic basis of agencification. In so doing, it added a third, conceptual dimension to the empirical investigation, concerning the implications for managerialism's doctrinal stability in executive government. Latterly, the chapter looked to existing methodologies deployed to explore longevity and policymaking in the international agencification canon. Against the noted preponderance of large-*N* population studies, this thesis follows an alternative epistemological and methodological path in seeking to interpret post-agencification longevity and policymaking as ineluctably social endeavours. It is this meta-theoretical agenda that Chapter 3 now elaborates.

Chapter 3 – Interpretivism, Institutions and a Narrative Turn

3.1 Introduction

Having established an agenda for researching post-agencification longevity and policymaking, and the security of its paradigmatic basis in new public management, attention now turns to (meta-)theory and methodology. Against the existing preponderance of epistemological positivism, large-*N* ‘population ecology’ and hypothetico-deductive methods, the chapter formulates an alternative, interpretive logic of inquiry, drawing successively on post-empiricist philosophy (Berger & Luckmann, 1971; Miller, 2012; Wittgenstein, 1986), discursive institutionalism (Schmidt, 2010) and narrative and discourse theory (Fairclough, 2003; Feldman, et al., 2004; Patterson & Monroe, 1998). Thereby assuming the continual, situated and social re-accomplishment of public governance, the manner of its practical and paradigmatic evolution is traced here not through high-level population trends and aggregate realignment on organisational and conceptual variables, but rather through the shifting structures of meaning that continually and discursively enliven agencification. In essence, then, the thesis advances a multilevel comparison of historic and contemporary politico-bureaucratic narrative, which, for its grounding in socio-political context, registers interpretive (in)stability across policy, practice and paradigm.

This epistemological, theoretical and methodological agenda is expounded in three parts below. The first addresses the relation between science and philosophy, the constructivist ontology from which interpretivism proceeds, and its implications for administrative science as regards inductive (‘emic’) concept development and the parameters of ‘synchronic’ and ‘diachronic’ multivocality. Developing this, the second part proceeds to new institutional theory. Built upon core interpretive precepts, especially in defining social institutions as intersubjective constructs

produced in a dialectic between structure and sociological ‘agency’, discursive institutionalism is identified as an inchoate but promising theoretical proposition through which to trace diachronic evolution in agencification. Finally, the third part turns to methodology. A general analytic framework is developed from narrative and discourse theory as an aid to institutional reconstruction. This section also details the “ethnographic sensibility” (Pader, 2006) which guides the empirical work in the Ministry of Justice and its interpretation.

3.2 Interpreting agencification

3.2.1 Science and philosophy

The interrelation of science and philosophy has long been contested. In particular, the eighteenth-century Enlightenment sought to substitute metaphysical reasoning with rational observation and knowledge accumulation (White, 1999; Winch, 1958). Work in the sociology of knowledge has since decried this disciplinary schism, deconstructing scientism as but one mode of inquiry which, for all its advances, remains a thoroughly human endeavour (Kuhn, 1962), and further positing that social research inevitably imbibes epistemological presupposition, whether or not this is purposefully chosen or explicitly rationalised (Burrell & Morgan, 1979; Schwartz-Shea & Yanow, 2012). For instance, particular meta-theories render certain logics of inquiry possible (White, 1999); research methods advance philosophic presupposition in interview structure, concept definition and researcher positionality (Haverland & Yanow, 2012); and knowledge claims presuppose understandings of truth, reliability and causality (Guba & Lincoln, 1982; Sandberg, 2005). Nevertheless, the apparent ineluctability of epistemology does not preclude research design plurality. As Bevir and Rhodes indicate:

“The philosophical analysis underpinning an interpretive approach does not prescribe a particular methodological toolkit for producing data. Instead, it prescribes a particular way of treating data of any type. Proponents ... should treat data in ways consistent with the task of interpreting interpretations.” (2005, p.178)

Research therefore should avoid the “ontological oscillation” (Burrell & Morgan, 1979, p.266) by which incommensurate meta-theoretical assumptions are illogically conflated (Schwartz-Shea &

Yanow, 2012; Wagenaar, 2011). For this reason, philosophy is a conditioning force throughout social research.

3.2.2 Interpretivism

The ontological and epistemological assumptions which comprise the interpretive proposition are built from traditions of phenomenology, hermeneutics and symbolic interactionism (Yanow, 2006). In essence, this body of philosophy asserts the intangibility of social phenomena, the perspectival character of knowledge and observation, and the centrality of interpretation to all facets of human – political, administrative, scholarly – endeavour. Meta-theory of this kind contrasts markedly with the (often implicit, but no less formative) empiricist assumption of a single, unmediated and atheoretical social reality, more or less available for detached, objective observation according to a particular (Enlightenment) mode of physical science (Hawkesworth, 1988). Indeed, while interpretivists recognise the face validity of such a ‘given’ ontology, it is theorised as the cognitive objectification of an otherwise plural, negotiated, and ineluctably human world. As Berger and Luckmann (1971, p.70) contend:

“Social order exists only as a product of human activity. No other ontological status may be ascribed to it without hopelessly obfuscating its empirical manifestations. Both in its genesis (social order is the result of past human activity) and its existence in any instant of time (social order exists only and in so far as human activity continues to produce it) it is a human product.”

As explored below, in largely divorcing the ontologies of humanity and materiality, this constructivist proposition profoundly conditions theorising of both the nature of social reality, and the manner and extent of its knowability.

Constructed social reality

According to Burrell and Morgan (1979, p.260), interpretive social science “rejects any view which attributes to the social world a reality which is independent of the minds of men [sic.]”.

Rather:

“[T]he social world is no more than the subjective construction of individual human beings who, through the development and use of common language and the interactions of everyday life, may create and sustain a social world of intersubjectively shared meaning. The social world is thus of an essentially intangible nature and is in a continuous process of reaffirmation or change.”

A wealth of conceptual and practical implications stem from this return to first principles. For present purposes, three are particularly salient: the (inter)subjective basis of social reality; its ongoing “reaffirmation or change”; and its linguistic transaction and negotiation.

The first implication pertains to the loss of ontological singularity. No longer conceived as independent and ‘out there’, directly or indirectly instantiating transcendental laws and structures, social phenomena are instead local and potentially “multivocal” (Yanow, 1996), invoking and sustaining a plurality of meanings which are humanly generated in historical and social contexts. By extension, unlike the largely structural explanations of social behaviour made in positivist inquiry, social actors are bestowed greater (but not unbridled) sociological ‘agency’ – that is, individual volition and creativity – through which they both inherit and author transmutable social institutions. As Wagenaar aptly summarises, these meaning structures are “hybrid entities, both *of* and *over* individuals” (2011, p.58, original emphasis). Therein, interpretivism does not relegate sociality to base relativism. Rather, according to Burrell and Morgan’s definition, above, it is through individual subjectivities that “*intersubjectively shared meaning*” emerges. This important qualification on an otherwise postmodern proposition is confirmed by Yanow:

“This is what is ‘social’ about ontological constructivism: that it has a shared character, developed in the course of living in common, interacting through the medium of political, cultural, and other artifacts in which the meanings embedded in these artifacts come to be known, tacitly, even when such communication is nonverbal.” (2006, p.14)

Thus, beneath individual, self-reported subjectivities, there lies a deeper, shared, more stable undercurrent of meaning-making, in dialectic with the subjective surface and similarly produced through (collective) human endeavour, but less consciously available. Wagenaar (2011, p.18) formalises this distinction as one between “subjective” and “objective” meaning,

the former representing “reasons, motives, and purposes which are part of the actor’s consciousness”, and the latter shared amongst “the group or community” as “the basic assumptions and conceptualisations that make a particular activity possible”. This objective and *intersubjective* meaning – which remains neither transcendental nor immutable, but rather thoroughly human – is the locus of post-empiricist institutional inquiry, for which the central methodological challenge is registering its implicit and taken-for-granted basis.

Proceeding from this loss of ontological singularity, the second implication of Burrell and Morgan’s definition concerns the “continuous process of reaffirmation or change”, by which shared meaning is understood to sustain and transform. Just as interpretive plurality may register *synchronically* across and within interpretive communities, so too can meaning develop *diachronically* over time. Meaning is never finite, but only reproduced, and even then in a potentially imperfect fashion (Miller, 2012, p.42). Thus, as Heracleous and Hendry (2000, p.1276) affirm, “in the same way as a cultural artifact can mean different things in different cultures”, it is necessary to “consider the temporal context of communicative actions”. This diachronic multivocality is significant when considering the sustenance of public management reforms and paradigms. It forms the focal point of this analysis into continuity and change in agencification, and is discussed further below.

Finally, the third implication of Burrell and Morgan’s definition relates to the central role of communication in the (re-)accomplishment of social phenomena. As they suggested, it is “through the development and use of common language and the interactions of everyday life” that subjective realities are rendered intersubjective. Similarly, in their seminal constructivist treatise, Berger and Luckmann elevate language as “the most important sign system of human society” (1971, pp.51-52). They elaborate:

“The common objectivations of everyday life are maintained primarily by linguistic signification. Everyday life is, above all, life with and by means of the language I share with my fellowmen [sic]. An understanding of language is thus essential for any understanding of the reality of everyday life.”

By extension, language does not simply provide imperfect but workable access to an independent reality, but rather is the material of a large part of that reality (Barinaga, 2009; Heracleous, 2004; Heracleous & Hendry, 2000; White, 1999). This is the basis of the 'linguistic turn' in social science.

Interpretation

The ontological premise that meaning is constructed in situational and temporal context, and can thus register both synchronic (coexistent) and diachronic (temporal) multivocality, prompts the epistemological question of *how* it is constructed – that is, how meaning comes to be known locally if not by structural determination. To interpretivists, the answer is: through interpretation. More specifically, this is taken to be “a referential operation” (Palmer, taken from White, 1999, p.75), whereby an artefact’s meaning registers through reference to its surroundings (Miller, 2012; Torfing, 2005). Thereby deconstructing the object-context and researcher-researched boundaries upon which empiricist social science is partly built, this referential process or “hermeneutic circle” involves a perceptual dialectic in which “the part obtains meaning from the whole and, vice versa, the whole is explained by the individual parts” (Wagenaar, 2011, p.47). This interweaving partly explains both the interpretive eschewal of aggregative, survey methods, which necessarily abstract phenomena from their meaning-giving situations (Bevir, 2011), and the contrasting, pseudo-anthropological aspiration for “thick description” (Geertz, 2000).

The part-whole dialectic of the hermeneutic circle is usefully explicated by the dynamics of linguistic interpretation, this being a principal site of intersubjective meaning-making, as noted above. Thus conceived, language is but a conduit of symbols, words being “connotative” rather than “denotative”, and signifying “concepts ... not objects, facts or reality” (Miller, 2012, p.5). In Wittgenstein’s (1986) terms, discourse makes sense not necessarily by referencing some wider, stable system of essentialist meaning, but through the manner of its situated use – the *performance* of words within a particular “language game”. It is, therefore, only by reference to

context (the hermeneutic ‘whole’) that words (the ‘part’) express meaning (Torfinn, 2005), since it is by that context that words are performed (Wittgenstein, 1986). In particular, as Miller (2012, pp.39-57) explains, such connotation proceeds through the forging of associations – even simply the positing of similarity or difference – between words as symbols and concepts:

“[A]s a self-referential sign system, language is preoccupied with relational markers such as differences, equivalencies and connotations. ... Hence, [in interpretation] there is no closure, no final reading or decoding, just continuous association, deconstruction, and reassembling.” (Miller, 2012, p.42)

Given this potential for reassembling, destructing or invoking new semantic associations within narrative or other forms of communication, it is language-in-use that largely constructs, maintains and changes intersubjective meaning. This is the basis of a discursive approach to institutional analysis, which is developed more fully below.

3.2.3 ‘Emics’ and ‘etics’ in administrative science

The assumption of referentially constructed meaning heavily conditions the manner in which administrative and policy phenomena come to be known interpretively as social – not ‘given’ – accomplishments. Against the existing body of predominantly empiricist agency research described in Chapter 2, it engenders profound methodological realignment. Principally, as Pollitt et al. (2004, p.16) explain, interpretivism assumes that “there is no single thing called an ‘agency’ which can be extracted from reality and studied”, but rather “various competing and shifting perspectives of what agencies are and what they mean”. This problematises the aggregative agency counting performed in large-*N* population ecology. Hannan and Freeman (1989, p.45) remarked in theorising that approach:

“The first assumption is that populations can be defined in such a way that they have a unitary character, which means that the members of the populations have a common standing with respect to the processes of interest.”

Interpretivism undoes this assumed unity, positing that there is at least the possibility of multiple actionable interpretations of ‘agency’ beneath an ostensibly shared institutional label,

even within a single polity or sector of government (synchronically), and certainly over time (diachronically).

In addition, regarding studies of post-agencification policymaking, being no longer available for benchmarking against universal criteria in the manner presupposed by quantitative analysis of administrative systems (Bach, 2010; Verhoest, et al., 2010), interpretive presupposition frames ‘policy autonomy’ instead as a local evaluation made against context-defined reference points, with ‘policy’ and ‘policymaking’ themselves being socially constructed phenomena (Colebatch, 2002, 2006). Detached, or ‘arm’s-length’ investigation of the incidence of policy autonomy across a population proceeds on the basis of the insignificance of these local subtleties and subjectivities, assuming their largely inconsequential mediation of the underlying reality of interorganisational relations. In short, as Verschuere (2007, p.124) testifies, the assumption is that actor perceptions bear close affinity with “real, formal, factual autonomy and control”. It is this transcendentalism – the *fact* of policy autonomy – which interpretivism disavows, instead elevating those formerly dismissed subtleties as rather constitutive of governance itself.

Accordingly, in formulating an overarching interpretive research strategy for investigating continuity and change in agency policy and practice, a prime implication of lost ontological singularity is the challenge to sidestep definitions of academic origin, as operationalised in survey research, and instead probe the disparate ‘lived realities’ of embedded actors who themselves construct and action meaningful understandings of ‘agency’ and ‘policy autonomy’ (see Schwartz-Shea & Yanow, 2012). In anthropological terms, this is an aspiration for registering *emic* knowledge inductively, rather than deductively testing *etic* preconceptions. As Lett (1990, pp.130-131) explains:

“*Emic* constructs are accounts, descriptions, and analyses expressed in terms of the conceptual schemes and categories regarded as meaningful and appropriate by the native members of the culture.... *Etic* constructs are accounts, descriptions, and analyses expressed in terms of the conceptual schemes and categories regarded as meaningful and appropriate by the community of scientific observers.”

In practice, this *etic-emic* classification refers to ideals, rather than being a fully operable division. Researchers can never wholly remove themselves from their endeavours, and nor can research be rendered absolutely inhuman, as the sociology of knowledge testifies. Nonetheless, the distinction provides a useful methodological guide and critical apparatus, indicating particularly the current scholarly tendency to presuppose rather than probe the meaning of agencification. As noted in Chapter 2, the academic (*etic*) assumption in UK literature is that ‘executive agency’ continues to denote decentralised, arm’s-length governance through semi-autonomous, if non-statutory, bodies that reside amongst other members of the British ‘quangocracy’ (Elston, 2013; Flinders, 2008; Flinders & Skelcher, 2012; Gash, et al., 2010; James, et al., 2011). A turn to local, contingent and *emic* meanings, however, might reveal marked and variegated divergence from this original Next Steps policy, and thereby recondition wider understanding of the extent and character of institutional fracture in contemporary British governance.

3.2.4 Synchronic and diachronic multivocality

While duly orientated towards *emic* perspectives, the thesis requires an overarching framework of academic design to assure analytic focus and progression. Drawing on the tenets of constructivism, this is established below as two basic parameters of comparison, built from the previously detailed supposition of synchronic and diachronic multivocality.

The synchronic parameter

In tracing culturally-mediated reinterpretations of the NPM-inspired agency idea across different countries, the promising but thus-far confined interpretive output on agencification has already recognised the possibility of synchronic reinterpretations of what is, ostensibly, the same managerialist concept (Moynihan, 2006; Smullen, 2010). Moreover, Smullen (2004, p.194) also suggests that “even national ideas about agencies are vulnerable to translation at lower levels”, including across different organisations within a polity. It is therefore useful to conceive of public management discourse as focused at three key arenas – the macro, meso and

micro – with each constituting a potential focal point of ‘agency’ meaning-making within an administrative system. Macro discourse is ideational. It conveys high-level, cross-governmental and often innovatory policy ideas, and is likely to be rhetorical in nature, aimed at influencing the public, the media, or public institutions about necessary change. This is the locus of existing interpretive work on cross-national translation (Moynihan, 2006; Smullen, 2010). Meso-level public management discourse, by contrast, is sectoral. It is delimited by policy sector and, though potentially also political, is more confined in scope. Finally, micro discourse is organisational. This level further distils to individual public agencies, and is thus more bureaucratic than political in character, pertaining to local, day-to-day management challenges and opportunities. Both meso and micro levels of discourse have received little or no attention in existing interpretive agency scholarship, following the wider tendency towards system analysis noted in Chapter 2.

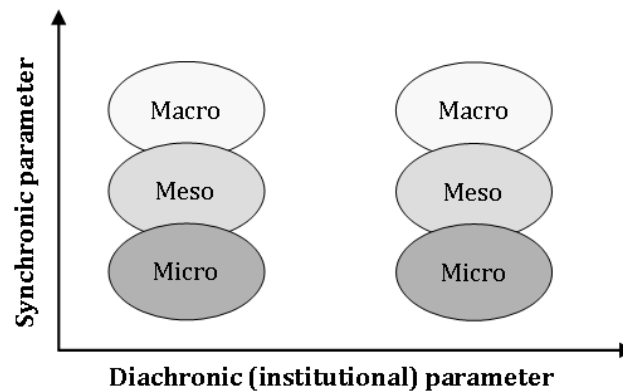
This threefold schema of public management discourse remains an *etic* construct, its macro, meso and micro levels representing a useful heuristic rather than necessarily existing ‘out there’ as clearly divisible sites of meaning-making. Nor do the ideational, sectoral and organisational strata preclude internal variegation – quite the reverse, in fact, particularly at the expansive micro level. Nonetheless, the distinctions are useful for: first, fracturing the philosophically-unsound ontological singularity assumed in much existing research into administrative decentralisation; second, recognising the potential reinterpretation negotiated in transitioning from (macro) policy idea to (micro) policy implementation (Yanow, 1996); and third, providing a focal dimension by which the multileveled complexity of agencified governance can be probed.

The diachronic parameter

Complementing the synchronic parameter, and similarly adumbrated in the previous meta-theoretical exposition, is temporal or ‘diachronic’ multivocality (see Figure 3.1, overleaf). This axis builds particularly on the constructivist supposition that meaning exists only through its continual re-accomplishment (Berger & Luckmann, 1971), and thus must be explored in

different time contexts (Heracleous & Hendry, 2000). The five empirical chapters unfold along both axes to form a multilayered interpretive analysis of historic and contemporary agency discourse. Given the particular research focus on temporal continuity and change, what remains is to develop further the theoretical basis of diachronic multivocality, and then formulate a suitable methodological agenda by which this can be probed.

Figure 3.1: Synchronic and diachronic multivocality



3.3 Discursive institutionalism

3.3.1 New institutionalism

Institutionalist approaches to social and political science have proliferated since the 1980s, largely as a reaction to the overly atomistic explanations of behaviouralism (Rhodes, 2006a; Schmidt, 2008). Disavowing that field's centrepiece of methodological individualism, by which aggregations of individual behaviour explain collective societal and political movements, institutional theories instead presuppose the mid-level cultural constraint of actor agency, whether through incentive structures, historical contingencies or social norms (Ferris & Tang, 1993; Hall & Taylor, 1996; Schmidt, 2010). In these three 'rational choice', 'historical' or 'sociological' modes of analysis, new institutionalism is often deployed to address questions of diachronic continuity and change. However, given the structuralist emphasis on actor constraint as a corrective to foregoing atomistic explanations, accounts are inclined to highlight continuity over transformation (Schmidt, 2010). Specifically, in explanation, dramatic social

and organisational upheavals are often required as instigators of institutional disaggregation and reassembly, thereby favouring a punctuated equilibrium model of stability-shock-stability (Carstensen, 2011).

Searching for less dramatic accounts of institutional reformation, scholars from all three new institutionalisms have latterly turned to ideas and discourse in order to introduce greater sociological agency into explanations (Schmidt, 2008, 2010). Various terms “discursive” (Campbell & Pedersen, 2001; Schmidt, 2008, 2010), “constructivist” (Hay, 2006) or “ideational” institutionalism (Bevir & Rhodes, 2010; Hay, 2001), this fourth branch of new institutionalism adopts the tenets of interpretive meta-theory, if often without direct acknowledgement. The essential proposition is detailed below.

3.3.2 Discursive institutionalism

Redefinition

Discursive institutionalism proceeds from ontological redefinition of institutions (Hay, 2006).

As Campbell and Pedersen (2001, p.9) explain:

“The principal concern ... is in how institutions are constituted, framed, and transformed through the confrontation of new and old discursive structures – that is, systems of symbolic meaning codified in language that influence how actors observe, interpret, and reason in particular social settings.”

This pushes the definition of an institution firmly towards the sociological focus on cultural norms and frames, while, in a constructivist manner, also departs from any essentialist claim that meaning resides independently of actors in a pseudo-materialist fashion. The extent of this realignment is profound, as Schmidt (2010, p.14) describes:

“For the three older neo-institutionalisms, institutions are structures external to agents that constitute rules about acting in the world that serve mainly as constraints – whether by way of rationalist incentives that structure action, historical paths that shape action, or cultural norms that frame action. For [discursive institutionalism], by contrast, institutions are internal to sentient agents, serving both as structures (of thinking and acting) that constrain action and as constructs (of thinking and acting) created and changed by those actors.”

This internalisation and destabilisation of institutions as cognitive yet intersubjective meaning structures that are both authored by and conditioning upon agents makes for an accurate translation of interpretive meta-theory. Thereby offering a more dynamic conception of institutions as inherently transitive (being continually and thus imperfectly re-accomplished through discourse), rather than fixed between cycles of the punctuated equilibrium, this approach claims better attention to endogenous or “post-formative” institutional evolution (Hay, 2006, p.60), addressing the overly structuralist precepts of the three older new institutionalisms, as well as their explanatory tendency towards exogenous-shock models of change (for a critique, see Bell, 2011).

Institutional change

This newly dynamic ontology of institutions as intersubjective meaning-structures makes for their diachronic transformation through subtle and gradual shifts in interpretation. Modelling this process, Schmidt (2008, p.314) distinguishes between subconscious ideational maintenance and purposive discursive change, describing the “background ideational abilities” by which agents reproduce and action institutional schema, and the “foreground discursive abilities”, which allow agents to:

“[T]hink, speak, and act outside their institutions even as they are inside them, to deliberate about institutional rules even as they use them, and to persuade one another to change those institutions or to maintain them.”

This foreground-background division provides the makings of an explanation of institutional change through purposeful transformation of policy and context. However, to remain consistent with the interpretive meta-theory, the distinction should not be treated as absolute. In particular, by positing an underlying level of interpretive fixity over which discursive acts effect transformation, the distinction between maintenance and change risks undoing some of the newfound institutional dynamism of the discursive approach. As Berger and Luckmann (1971, p.169) contend: “the reality of everyday life is ongoingly reaffirmed in the individual’s interaction with others”. Therein, social structure exists only in “the performance of practices”

(Miller, 2012, p.90; see also Heracleous & Hendry, 2000), and thus, whether ‘foreground’ and consciously so, or ‘background’ and subconsciously, institutional preservation or change both require discursive performance. Still, conceptually, the distinction is a useful heuristic for understanding the processes of institutional change which discursive institutionalism posits. It is operationalised in Chapter 9’s account of continuity and change in UK agencies.

In terms of the mechanics of institutional change, this again remains under-theorised within the still inchoate discursive institutionalist school. Schmidt (2010, p.15) observes that a promising avenue for explanation is to follow discourse analysis in examining “how different elements may be added to ideas [over time], thereby bringing about change in ideas incrementally even in time of stability”. Again, this reflects the interpretive conception of relational meaning-making, as codified by the hermeneutic circle. In what follows, a complementary narrative approach is adopted, building upon Miller’s (2012, p.90) previously cited contention that it is by the forging and re-forging of semantic and symbolic associations within story-like texts that “institutions come into being or endure or decay or disappear”.

3.3.3 Application

Although deploying concepts and meta-theory with long lineage in social science, discursive institutionalism remains a relatively recent addition to the new institutionalist canon. Its adoption in this study of historic and contemporary agencification fulfils three key concerns. Firstly, there is the substantive interest in continuity and change, for which new institutionalism is an established analytic framework. Secondly, there is the research’s starting observation that, ostensibly, the Next Steps approach appears to have stood the test of time (in employment figures, cross-governmental deployment, and so forth), and yet now operates in very different politico-administrative surroundings to those at its inception (see Chapter 2). The discursive focus on within-paradigm, endogenous and “post-formative” institutional change (Hay, 2006) is thus apposite for addressing this subtlety and apparent lack of dramatic change. And thirdly, there is the methodological and meta-theoretical commitment to the socially constructed,

discursive ontology of governance. Although arrived at through internal critique of structure-heavy explanations rather than, necessarily, by the epistemological deconstruction characteristic of the wider interpretive turn in public policy, discursive institutionalism translates the constructivist proposition of continual, social and discursively-accomplished meaning into an operable framework for exploring continuity and change.

3.4 Methodology: a narrative turn

Having expounded an epistemological and theoretical basis for researching post-agencification longevity and policymaking, what remains is to develop a suitable methodology. Accordingly, the first subsection below draws on concepts from narrative and discourse theory to construct a three-part analytic framework by which to register meaning and institutional reconstruction in historic and contemporary agency discourse. Thereafter, data requirements for macro, meso and micro discourse are addressed, and the fieldwork introduced.

3.4.1 Narrative analysis: towards a general analytic framework

Narrative analysis has received growing attention in the humanities and social sciences over recent decades (Chase, 2011; Elliott, 2005; Riessman, 2008), and has made tentative inroads into public policy and administration (Czarniawska, 2010; Feldman, et al., 2004; Fischer, 2003; Maynard-Moody & Musheno, 2003; Ospina & Dodge, 2005; Roe, 1994). Underlying this is a broad commitment to the linguistic turn in social science, as well as a more specific acknowledgement of the intimate association between story and society. As Barthes illustratively remarks, “narrative is present in every age, in every place, in every society; it begins with the very history of mankind ... it is simply there, like life itself” (cited in Riessman, 2008, p.4).

Definitions of narrative vary widely, making for a “methodological repertoire” rather than a single, defined technique (Quinn, cited in Riessman, 2012, p.369). Generally, as Chase explains:

“Narrative theorists define narrative as a distinct form of discourse: as meaning making through the shaping or ordering of experience, a way of understanding one’s own or

others' actions, of organising events and objects into a meaningful whole, of connecting and seeing the consequences of actions and events over time." (2011, p.421)

For this communication of "meaning", "understanding" and "consequences", narrative is attractive to interpretive scholarship. Moreover, evoking the referential operation of the hermeneutic circle, the particular attention to the "shaping or ordering", "organising" and "connecting" of disparate elements reflects the field's central axiom that narrative sense generates not simply from the actual content relayed in story – that is, the explicit events and items described – but rather from the interplay of these elements with other, often more implicit devices of form and style. These act as an important conditioning force on the interpretation, assuring that the sum total of this "meaningful whole" is greater than that of the disparate storied events and ideas alone.

Given this concern with interpretive wholeness, a central commitment in narrative analysis is the avoidance of traditional multisource textual disassembly and coding. As Riessman explains, "precisely because they are essential meaning-making structures, narratives must be preserved, not fractured, by investigators, who must respect respondents' ways of constructing meaning and analyze how it is accomplished" (taken from Franzosi, 1998, p.548). Nonetheless, for all this concern with structural preservation, narrative analysis is not myopic. Rather, stories are treated as "cultural artifacts that hold, in compact form, the norms, beliefs, and decision rules that guide actions and choices" (Maynard-Moody & Musheno, 2003, p.30). In other words, through their combination of explicit events and implicit form, narratives are repositories of tacit social institutions.

Three particular aspects of narrative are probed here as a broad-based aid to textual interpretation. These are argumentation, narrative voice, and discursive differentiation. Each is considered below.

Argumentation

Formally, narrative and argumentation are distinct types of discourse. As Fischer (2003, p.181) explains, “Whereas a narrative ties together a story with a beginning, a middle, and an end through the device of a plot, an argument is structured around premises designed to logically lead to conclusions”. In practice, however, “narratives are often constructed in ways that rest – implicitly or explicitly – on arguments”, with stories seeking to promote a certain outcome or conclusion (Fischer, 2003, p.181). As indicated in Chase’s definition, above, stories trace the “consequences” of actions. On this basis, as Miller (2012, p.24) suggests, arguments represent “a particular style of storyline within a narrative”.

Following the general narratological supposition that “what is left out [of a story] is often what the teller takes to be literally unremarkable, so commonplace or obvious that it is not worth remarking on” (Patterson & Monroe, 1998, p.329), narrative approaches to argumentation attend particularly to implicitness within contextualised arguments. To this end, Feldman et al. (2004; also Feldman & Sköldbberg, 2002) have developed an approach which, by examining ‘enthymeme’ as a component of rhetoric, makes explicit the communal, taken-for-granted meanings that underpin argumentation within organisational contexts. Characterised as an incomplete or truncated syllogism (Jasinski, 2001, p.206), enthymeme is an Aristotelian device whereby part of an argument remains latent or unarticulated in such a way that the overall interpretation rests upon listener inference of the missing premise(s). An example is: “John will fail his examination because he hasn’t studied” (taken from Corbett, 1990, p.61). This enthymeme contains one premise (that John hasn’t studied) and a conclusion (that he will fail the examination). The unarticulated connecting premise, which makes sense of the given information and renders the overall argument complete, is: “Anyone who doesn’t study will fail his [sic.] examination”. Box 3.1 compiles this argumentation formally. Following the convention in the rest of the thesis, double underlining indicates the implicit premise.

Box 3.1: Example enthymeme

Truncated syllogism (enthymeme):

[a] Anyone who doesn't study will fail their examination.* **[b]** John hasn't studied. **[c]** Therefore, John will fail his exam.

[*Implicit premise]

Demanding co-productive authoring of latent premise(s) and thereby inhibiting refutation of the substantive claim, enthymeme is a device of “rhetorical persuasion” (Aristotle, cited in Jasinski, 2001, p.205). Moreover, because enthymeme involves “a plausible, likely, or probabilistic inference, rather than a logically binding one” (Feldman, et al., 2004, p.152), the interpretation is guided by “commonplaces – commonly held beliefs that are usually true” (Feldman & Sköldbberg, 2002, p.276). In this manner, not only does enthymeme account for policy and political rhetoric (Morrell & Hewison, 2013), but it also allows registering of the taken-for-granted intersubjectivities – the “ideology” (Feldman & Sköldbberg, 2002, p.286) – informing and enabling meaningful argumentation in particular public management contexts. In other words, enthymeme is predicated upon the implicit but formative social institutions that Wagenaar (2011, p.18) describes as “objective meanings”.

Narrative voice

Narrative “cannot be voiceless” (Patterson & Monroe, 1998, p.316). As Bal (1985, p.100) explains, events “are always presented from within a certain ‘vision’ ... a point of view ... a certain way of seeing things”. Even intentional objectivity is perspectival, being merely “an attempt to present only what is seen or is perceived in some other way” (Bal, 1985, p.100). Different voices can instantiate the characterisations made within stories – the overburdened official; the “personified” government department that acts with its own voice and volition (see Pentland, 1999). Moreover, vocal polarisation can effect “otherization” – that is, the framing of one social group as different from another (Miller, 2012, pp.30-31). Together, then, narrative

voice provides insights on authorial evaluation and socially-meaningful yet often implicit groupings and divisions (Fairclough, 2003, pp.714-715; Pentland, 1999).

Discursive differentiation

As noted above, the registering of sameness or difference is central to the interpretation of connotative meaning within discourse (Miller, 2012; Torfing, 2005; White, 1999). Fairclough (2003, p.88) confirms this in arguing that “the ‘work’ of classification is constantly going on in texts, with entities being either differentiated from one another, put in opposition to one another, or being set up as equivalent to one another”. Meaning thus registers in how “people, objects, [and] organisations ... are differentiated in texts, and how differences between them are collapsed by “texturing” relations of equivalence between them” (Fairclough, 2003, p.88). For example, as well as the divisions implicated through narrative voice (in characterisation and ‘otherisation’), analysts can look to contrastive (‘but’, ‘however’) and additive (‘and’, ‘which’) relations within and between discursive units (see Fairclough, 2003, pp.88-91). Moreover, differentiation need not be explicit; for “when a storyteller describes a situation, one way to uncover meaning is by looking closely at what he or she is implying is its opposite” (Feldman, et al., 2004, p.151). A discussion of good management, for example, serves to define, implicitly, poor management.

In the remainder of the thesis, the narrative functions of argumentation, narrative voice and discursive differentiation are combined as a general analytic framework for registering intersubjective meaning making in documentary and oral texts. They are illustrated systematically in the first data chapter (Chapter 4) and used more freely thereafter.

3.4.2 Data requirements

The synchronic and diachronic comparisons which the thesis is to undertake, aided by the general analytic framework and theorised with discursive institutionalism, require macro, meso and micro discourse of both historic and contemporary origin. As defined previously, macro discourse pertains to cross-governmental politico-administrative ideas. To source this,

documentation surrounding the original Next Steps programme and various parliamentary materials provide ample historic resource, while, contemporarily, the Coalition Government’s similarly high-profile Public Bodies Reforms offer a recent re-articulation of the intent and character of executive agency status, again through documents and parliamentary materials, but now supplemented by Cabinet Office interviews. Meso and micro-level discourse are delimited by policy sectors and individual organisations, respectively. These materials can usefully be gathered in tandem by performing a ‘familial’ case study of a Whitehall department and its agencies. As detailed below, the Ministry of Justice (MoJ) and its three agencies are chosen for this purpose. An extensive interview programme and further document analysis make for the contemporary meso and micro discourse. Historically, published documents are available from the Home Office, former Lord Chancellor’s Department and former Department for Constitutional Affairs, which together had responsibility for the justice system prior to the MoJ’s creation in 2007 (see Chapter 5). Requiring in-depth fieldwork, by definition, no historic micro-level discourse is available (framework documents are treated as sectoral rather than agency discourse). Table 3.1 summarises this mixed-method and multilayered data collection strategy, the synchronic and diachronic comparisons which it enables, and how these unfold across the five empirical chapters.

Table 3.1: Materials for analysis

		Synchronic parameter		
		Macro (Chapter 4)	Meso (Chapter 5)	Micro (Chapters 6-8)
Diachronic parameter	Historic	Next Steps programme documentation	Historic justice sector documentation	-
	Contemporary	Public Bodies programme documentation and Cabinet Office interviews	Ministry of Justice HQ fieldwork	Ministry of Justice HQ and agency fieldwork

3.4.3 Fieldwork

Empirical data generation proceeded minimally in the Cabinet Office and extensively in the MoJ. As the major fieldwork component, the MoJ work is detailed below. The character of the separate Cabinet Office interviews followed the same conversational design.

Case selection

The Ministry of Justice is a large, politically-salient yet relatively new department of state, (in)directly employing some 90,000 staff, and with an annual budget exceeding £8.7bn (Justice Committee, 2012, p.44; MoJ, 2012a, pp.18, 23). Through a complex network of executive agencies and non-departmental public bodies (NDPBs), it delivers civil and post-arrest criminal justice functions, including prison and probation services, court and tribunal administration, legal aid and public guardianship (Gibson, 2008; see also Chapter 5). The MoJ family makes an apt case study for several key reasons. Firstly, unlike Whitehall's other three big delivery departments – defence, social security, and tax (NAO, 2013, p.33) – MoJ remains heavily agencified. Secondly, its core delivery functions have held agency status since the original Next Steps programme, and have been subject to many of the post-Next Steps trends identified in Chapter 2, including formal mergers and inter-agency grouping. Thirdly, all three MoJ agencies operating in the early years of the Coalition Government have, at some point in their histories, had formal policymaking responsibilities devolved alongside their operational remits, although these have recently been curtailed by Ministry's austerity-prompted restructuring (see Civil Service Capability Reviews, 2012). In combination, this makes for an excellent opportunity to probe both the contemporary meaning of agencification, registering diachronic continuity and change against the original Next Steps precepts (Research Question 1), and changing agency involvement in public policymaking (Research Question 2).

Towards an “ethnographic sensibility”

Participant observation is a mainstay of ethnography (Watson, 2011, p.206), but the two are not synonymous. Indeed, ethnography often combines multiple qualitative methods (Yanow, 2000),

and represents not simply a data generation method, but a philosophically-informed research aspiration, as Watson (2011, pp.205-206) explains:

“Ethnography is most usefully defined as a style of social science writing which draws upon the writer’s close observation of and involvement with people in a particular social setting and relates the words spoken and the practices observed or experienced to the overall cultural framework within which they occurred.”

Although resting upon participant observation, Watson’s definition makes a wider point about the interpretive need to relate data points to “the overall cultural framework” in which they are made meaningful, in line with the operation of the hermeneutic circle (see Section 3.2.2, above). As he continues, the ethnographic “outcome” is about “relating the details of the particular events and utterances ... to a cultural whole” (Watson, 2011, p.206). Baszanger and Dodier (2004, p.12) confirm this interpretive intention, writing:

“A study becomes ethnographic when the fieldworker is careful to connect the facts that s/he observes with the specific features of the backdrop against which these facts occur, which are linked to historical and cultural contingencies.”

By this “process of totalization”, the ethnographer “integrates the different observation sequences into a global referential framework” (Baszanger & Dodier, 2004, p.13). This operation mandates the “thick description” (Geertz, 2000) characteristic of interpretive research.

Although some Whitehall ethnographies have emerged in recent years (see Rhodes, 2011; Wilkinson, 2011), the present requirement for discursive rather than observational data, alongside practical considerations of organisational access, led to the eschewal of such an approach here. Still, in the absence of participant observation, it remains appropriate to draw upon the underpinning philosophy of ethnography and some associated research design characteristics. This “ethnographic sensibility” (Pader, 2006) or “ethnographic orientation” (Watson, 2011, p.216) pursues the contextualised elucidation of sensemaking within delimited settings; is open-ended and flexible so as to follow unexpected leads in the field; therein,

elucidates *emic* meanings through loosely-structured, conversational interviews about ordinary – even mundane – day-to-day experiences; combines and interrelates multiple qualitative sources; engages in rich contextual description in a manner enabling part-whole reference; and retains a reflexive orientation to researcher positionality (Guba & Lincoln, 1982; Schwartz-Shea & Yanow, 2012). It is on this basis that the MoJ fieldwork proceeded.

The fieldwork engagement

The MoJ agreed participation three months after the initial request was submitted; separately, each agency consented within several weeks, as did the Cabinet Office. Appendix II details the ethical scrutiny undertaken prior to these negotiations, and the access and consent procedures implemented thereafter. Although there was some overlap, principal work in each agency was undertaken successively, while interviews in the core MoJ and the Cabinet Office proceeded concurrently. The engagement lasted eight months, during which time site visits both to Westminster and various offices around the country were made on several days during most weeks. Agency management contributed to the research agenda, particularly in suggesting current areas of the Coalition’s programme by which MoJ-agency collaboration in the policymaking process could be traced. Therein, as well as general interviews on ‘agency life’ – historic and ongoing restructuring, interorganisational engagement, and priorities and challenges – interviews were sought with departmental and agency officials specifically associated with these policy examples. In all, five areas of engagement were explored across the three agencies, and these form the basis of the ‘team narratives’ retold in Chapter 8.

In order to secure *emic* concept definition and free narrative discourse, the interviews were largely unstructured conversations guided only by the high-level research themes of agencies and policymaking detailed in the project information and consent materials supplied to participants before meetings (see Appendix II). Occasionally, specific topics for discussion were agreed in advance (for instance, with the five policy examples). A minority of email requests for interviews received no response, and four people explicitly refused participation. Many

participants had long experience of the justice sector, although ongoing ‘organisational churn’ meant that some were in new posts or project areas. This multiplied the stories that officials could relate about their work, but also prompted some caution in describing unfamiliar roles.

Opportunities for further research exposure were taken when possible; for example, attendance at a large stakeholder meeting; a tour of a regional office; and a guided explanation of an office wall display. A diary recorded these events. In addition, documentation was collected throughout the fieldwork, and some additional requests were made as follow-ups. This material is enumerated in Appendix III, and includes PowerPoint presentations, organisation charts, corporate governance arrangements, meeting minutes, tendering information for potential contractors, HR policy documents, staff consultation exercises, and monthly issues of the MoJ staff magazine, *Insight*. Some sensitive documentation required special permission for release and is not referenced directly in the analysis. Texts would frequently be examined at meetings, often at the behest of interviewees.

Data profile

In total, 53 formal meetings were held, involving 55 officials of both senior and ‘working-level’ grades (Table 3.2). Several were met on multiple occasions, and eight meetings involved two participants (Table 3.3). Interviews were ‘non-attributable’ (as defined in Appendix II), and all but two were recorded. Several officials requested transcript review rights, which were met. Appendix III lists by organisation the anonymity codes referred to in the analysis.

Table 3.2: Interview participants by organisation and grade

	MoJ					Whitehall	
	Dept.	NOMS	HMCTS	OPG	Misc.	Cabinet Office	Misc. [∞]
Senior Civil Servants	7	4	8	1	3*	1	1
Other grades	10	8	3	5	N/A*	3	1
Total	17	12	11	6	3	4	2
						Total	55

* Not classified as civil servants; [∞] Exploratory interviews with (ex-)civil servants

Table 3.3: Meetings by organisation and type

	MoJ					Whitehall	
	MoJ HQ	NOMS	HMCTS	OPG	Misc.	Cabinet Office	Misc.
Individual interviews	10	11	11	7	1	3	2
Two-person interviews	4	1	-	1	1	1	-
Total	14	12	11	8	2	4	2
						Total	53

Analytic approach

Once the interviews were fully transcribed, these and the documents were subject, first, to high-level thematic analysis, and then to closer textual deconstruction according to the general analytic framework of argumentation, voice and differentiation (described above). Latterly, emergent observations were cross-referenced, in line with the operation of the hermeneutic circle. For example, the three organisational identities registered in Chapter 6 inform and enliven the distinct interpretations of the policymaking process in Chapters 7 and 8.

Writing conventions

Appendix IV details the full transcription conventions used in the empirical presentation. In brief, full-length stories are condensed into ‘narrative summaries’ through selective quotation (italicised) and replacement paraphrasing (non-italicised). This method preserves story and argumentation structure and key textual features (voice, differentiations), while rendering the content more manageable. The summaries are encased within boxes and indexed at the start of the thesis. Single underlining aids cross-referencing between extracts and surrounding commentaries. Where non-narrative extracts are employed as further illustration or contextualisation, these are simply added as regular quotations, either subsumed within the commentary or, for longer passages, separately indented. Where not detrimental to interpretation, quotes have been ‘smoothed’ for ease of reading.

3.5 Conclusion

Across three distinct sections, this chapter has articulated the epistemological, theoretical and methodological base from which the research now proceeds. It began by making the case for philosophic reasoning in social research, before outlining the tenets of constructivism upon which the interpretive endeavour is predicated. This generated two particular implications for the study of agencification, the first pertaining to the need to privilege *emic* over *etic* knowledge, and the second concerning the synchronic and diachronic parameters by which multivocality can register. Accordingly, it is the task of the next five chapters to advance gradually from macro politico-administrative ideas through departmental reform discourse to micro, agency-specific texts. Individually and collectively, this facilitates synchronic and diachronic comparison of *intra-* and *inter-*episode meaning-making in agencification policy and practice.

From philosophical beginnings in interpretive social science, the middle section, above, drew on an emergent branch of new institutionalism to further theorise the temporal, diachronic parameter of multivocality. Based on the ontological redefinition of institutions as intersubjective structures of meaning, Chapter 9 returns to Schmidt's concepts of 'foreground' discourse and 'background' ideas to account for the continuity and change in agency policy and practice indicated by the empirical materials.

Finally, the third section addressed methodology. Firstly, it drew together concepts from narrative and discourse theory into a general analytic framework which is deployed hereafter as an aid to data interpretation. It also elucidated the empirical design of the research, which principally comprises an extended case study in the Ministry of Justice and its three executive agencies. Conducted with an 'ethnographic sensibility', this approach proved conducive to the social practice of storytelling, as Chapters 6-8 demonstrate particularly.

Chapter 4 – Reinterpreting the Agency Idea

4.1 Introduction

Between 1988 and 1997, the Next Steps Team in the Cabinet Office sought to embed agencies across the Whitehall spending departments. Before turning to that process of adoption within the justice sector specifically, this first empirical chapter registers the character of the seminal Next Steps agency idea which provided their inspiration, and traces its own latter-day evolution within macro politico-administrative discourse.¹ Drawing material from the initial agencification programme and the Public Bodies Reforms initiated by the Coalition Government in 2010, this ideational analysis both establishes a historical benchmark against which subsequent comparisons can be made, and advances an initial assessment of diachronic continuity and change. Moreover, by combining Carstensen's (2011) model of the composite political idea with the previously-defined narrative functions of argumentation, narrative voice and discursive differentiation, the referential operation of the hermeneutic circle and the three components of the general analytic framework are illustrated systematically, allowing for their freer deployment in the subsequent meso- and micro-level analyses of justice agencification.

The chapter begins with Carstensen's model of political ideas. This posits a composite, internally-variegated ideational structure, formed from multiple, potentially shifting 'elements of meaning'. Thereafter, separate discourse pertaining to the Next Steps and Public Bodies programmes is examined consecutively. Finally, having registered two distinct ideational configurations, the discussion compares their elemental substructures, noting discontinuity on all three parameters of the general analytic framework. Thus, despite the ostensible continuity implied by the retention of the executive agency label, the Coalition's reforms essay a marked reinterpretation of the original concept, replacing its initial predication on bureaucratic critique,

¹ Much of this chapter is in press as Elston (forthcoming).

managerial empowerment and decentralisation by asserting the constitutional propriety of departmental governance and its enabling of politically-proximate executive operations. This departmentalisation of the once arm's-length agency model prefigures some of the meso- and micro-level evidence offered in subsequent chapters.

4.2 Ideas and ideational change

Carstensen (2011) models political ideas as composite interpretive structures, formed from multiple and potentially shifting “elements of meaning”. Situated within a wider ideational environment, the combination of these internal elements and the external environment promotes particular but transitive sensemaking experiences. For instance, in the 1990s, New Labour’s rendering of the idea of ‘individualisation’ in employment policy was constituted by notions of human capital and personal incentive, which together forged a particular, election-seeking *re*interpretation of the Conservative’s original idea of welfare individualism, but places new emphasis on social responsibility (Carstensen, 2011, pp.607-608). Following the part-whole dialectic of the hermeneutic circle detailed in Chapter 3, Carstensen’s model posits a relational rather than given epistemology, where language represents “a system in which no element can be defined independently of the others” (Laclau, cited in Carstensen, 2011, p.600). Interpretation thus proceeds not simply by summation of substructural elements of meaning, but through their combinative interrelation. Moreover, since composite ideas cannot exist independent of the wider system in which they are rendered, interpretation also rests upon the interrelations between internal substructure and external ideational context.

According to Carstensen’s model, potential avenues for diachronic ideational change include both internal alterations to substructure and external change at the environmental level, albeit with the hermeneutic caveat that neither can be defined without the other. At the idea’s substructure, elements of meaning may be “privileged” or “peripheral”, contributing to a greater or lesser extent to the overall sensemaking, depending on their strength of articulation within discourse (Carstensen, 2011, pp.601-602). Thus, substructural evolution can proceed through

either the changed emphasis of individual elements, or, more radically, the outright substitution of old elements for new (Carstensen, 2011, p.607).

This model of the non-unitary, relational and continually re-accomplished political idea befits the epistemological stance adopted throughout this thesis, and is useful for relating internal variegation to diachronic processes of reinterpretation. Nonetheless, having been subject to limited empirical application, it remains untested and incomplete. In particular, despite the central emphasis on the differentiated weighing of elements of meaning, this remains an abstract concept, it being unclear how to quantitatively register “privileged” and “peripheral” difference, and, qualitatively, how elemental domination or subordination reflects at the discursive surface. Moreover, although elegant and epistemologically consistent, the relational understanding of sensemaking as produced by the interacting substructure and environment again remains abstract, devoid of a clear methodological path for capturing this hermeneutic function. To render the model operable for comparing diachronically separate renderings of the agency idea, therefore, modifications are needed.

Carstensen (2011, p.612) advocates discourse analysis for populating his framework. However, the thesis’ general analytic framework, which draws both on narratology and discourse theory, also makes for a productive method. In particular, by attending to argumentation – the sequential interlinking of separate premises – and its combination with narrative voice and discursive differentiation to forge a meaningful whole, Carstensen’s model of the “relationally constituted” political idea is operationalised. Moreover, as noted in Chapter 3, rhetorical enthymeme makes for discursively emphasised – that is, “privileged” – elements of meaning, while its basis of inference in the intersubjective “ideology” and “commonplace” understandings of an interpretive community (Feldman & Sköldbberg, 2002) instantiates Carstensen’s idea-environment interaction.

On this basis, the remainder of this chapter now applies Carstensen’s model to macro agency reform discourse by attending systematically to argumentation, narrative voice and discursive

differentiation. The analysis begins with the original Next Steps project and then proceeds to the 2010 Public Bodies Reforms.

4.3 The Next Steps programme

Although greeted as a far-reaching administrative reform, the initial articulation of the agency policy was relatively confined, involving the document, *Improving Management in Government: The Next Steps* (Efficiency Unit, 1988), and Thatcher's endorsement to Parliament (Hansard, 18th February 1988). Moreover, although presented as an essay in rational and instrumental policy analysis, the report, completed in March 1987, actually remained unpublished until the following February. Many claims of pre-publication doctoring have been laid, citing Treasury scepticism about financial decentralisation and the ill advisability of releasing a critical review given the impending general election (Haddon, 2012; Lawson, 1992, pp.390-393). Hennessey (1990, p.620) suggests that it was the failure of its main "selling-point" – the de-burdening of ministers – that led to the delay and eventual dilution, although allegations of significant reworking have been refuted by those involved (Jenkins, 2008).

Below, this 35-page Efficiency Unit report is the principal focus. Its original expression of the agency idea is shown to rest upon enthymematic referencing of the Thatcher Government's prevailing managerialist ideology, and adjoining narratives of frontline empowerment and decentralisation.

4.3.1 Argumentation – the managerialist enthymeme

The Next Steps Report's argumentation rests upon two founding syllogisms, relating to problem diagnosis and policy remedy (see Box 4.1 and Box 4.2). The first, diagnostic syllogism is enthymematic, containing two explicit components [labelled #1a and #1c] and one implicit connector [#1b]. Hence, whereas the report explicitly identifies a series of deficiencies in bureaucratic practice, and affirms that management should be improved, the reasoning behind this prescription is left implicit, requiring enthymematic inference to render the overall

argument complete. Box 4.1 collates the three components of this truncated syllogism. The implicit premise is double-underlined, and the explicit material is illustrated.

Box 4.1: Problem diagnosis

Truncated syllogism (enthymeme):

[#1a] Service delivery is being hampered by overly-centralised controls, institutional rigidities and poor local responsibility. **[#1b]** Overly-centralised controls, institutional rigidities and poor local responsibility represent defective management.* **[#1c]** Therefore, management must be improved.

[*Implicit premise]

Illustrations of explicit premises in Efficiency Unit (1988):

[#1a]: *‘There are controls not only on resources and objectives, as there should be in any effective system, but also on the way in which resources can be managed. Recruitment, dismissal, choice of staff, promotion, pay, hours of work, accommodation, grading, organisation of work, the use of IT equipment, are all outside the control of most Civil Service managers at any level.’* (p.5)

[#1c]: *‘The substantial gain we are aiming for is the release of managerial energy.’* (p.16)

The report identifies many practices as antithetical to effective service delivery. The Findings chapter (pp.3-5), for example, lists seven key issues, including the centralised personnel and management controls cited in Box 4.1, and senior officials’ proclivity for policy work rather than “management”. Further evidence is then presented in a ten-page appendix (pp.21-30). This provides for a strong narrative underpinning to the contention that bureaucracy is hampering service delivery – the first component of the syllogism [#1a]. Moreover, the concluding call for improved management capability [#1c] is similarly emphatic: for instance, as well as the aspiration for “the release of managerial energy” (Box 4.1), there is the report’s title, *Improving Management in Government* and its advocacy of “more positive management” (p.8). What is missing from the narrative surface, however, is a similarly explicit connecting premise explaining how the apparently manifold bureaucratic deficiencies represent an issue to which improved management is the solution. This diagnosis requires enthymematic inference of what

constitutes ‘good management’ relative to ‘problematic bureaucracy’ [#1b]. Because centralised controls and diffuse accountability are *so obviously* symptoms of poor management, its explicit establishment is redundant or even banal. That bureaucracy should be remedied with improved management is thus a “commonplace” of the “ideology” of the day, to use Feldman and Sköldberg’s (2002) terminology.

This claim for intersubjectivity is supported by existing research on the institutionalisation of managerialism in the 1980s and 1990s (Clarke & Newman, 1997; Pollitt, 1993). As Clarke and Newman (1997, p.86) suggest, “managerialism can be viewed as an institution: a set of rules of action, shared typifications of the world, shared cognition, which produce regularities of thought and action”. More specifically, Pollitt elaborates: “Managerialism is a set of beliefs and practices, at the core of which burns the seldom-tested assumption that better management will prove an effective solvent for a wider range of economic and social ills” (1993, pp.6-10). What the enthymematic underpinning particularly reveals here is the interconnectivity of this ideational background of shared beliefs and assumptions to the agency idea’s first discursive construction. Latterly, this proves an important contrast with contemporary agency discourse.

Advancing from problem diagnosis to policy remedy, the second of the two structural syllogisms makes the case for agencification. It is firmly connected to the former, diagnostic enthymeme through the restating of its conclusion as the new starting premise [#1c/#2a] – a common device within chained arguments (Feldman, et al., 2004, p.152). The report then discusses extensively the benefits of agencies [#2b], emphasising particularly the managerial freedoms which may be granted within a quasi-contractual framework document, as well as the “personal responsibility” of agency chief executives and the implications for parliamentary accountability (pp.9-11). The recommendation for adoption [#2c] is reinforced through the listing of implementation strategies; for example, by appointing a senior project manager. Together, this makes for a perfect – if dependent – second syllogism (Box 4.2).

Box 4.2: Policy remedy

Perfect syllogism:

[#2a] [Previous conclusion:] Management needs to be improved (because of centralisation, processual rigidities and non-devolved responsibility). **[#2b]** Agencies facilitate relaxed controls, innovation and local responsibility. **[#2c]** Therefore, agencies should be introduced.

Syllogism-to-syllogism interlinking:

[#2a] Previous conclusion (#1c, above)

Illustrations in Efficiency Unit (1988):

[#2b] *‘[O]nce the policy objectives and budgets within the framework are set, the management of the agency should then have as much independence as possible in deciding how those objectives are met. ... The presumption must be that, provided management is operating within the strategic direction set by Ministers, it must be left as free as possible to manage within that framework. To strengthen operational effectiveness, there must be freedom to recruit, pay, grade and structure in the most effective way as the framework becomes sufficiently robust and there is confidence in the capacity of management...’* (p.9)

[#2c] *‘We recommend that “agencies” should be established to carry out the executive functions of government...’* (p.9)

Overall, then, the Next Steps argumentation proceeds in two stages. The first diagnoses the policy problem rhetorically by recourse to managerialist ideology which presupposes the superiority of management over bureaucracy (Box 4.1); and the second prescribes agencies as a policy solution via a perfect syllogism (Box 4.2).

4.3.2 Narrative voice – empowering the frontline

Often, the Next Steps narrative is voiced not by a dissatisfied political or bureaucratic elite, but from the perspective of a self-critical, frustrated and constrained civil service. As well as granting bottom-up legitimacy to the report’s findings and aiding civil service ‘buy-in’, this particular use of narrative voice – the “tellers’ point of view” (Pentland, 1999, p.714) – makes for a wider discourse of empowerment. Specifically, coming as a response to the concerns and

desires of managers themselves, the granting of increased frontline autonomy is framed as emancipatory – it is about ‘*letting* managers manage’ rather than ‘*making* managers manage’, to coin the much-cited NPM tension.

An example of this subjective vocalisation is:

“[T]he management and staff concerned with the delivery of government services (some 95 per cent of the Civil Service) are generally convinced that the developments towards more clearly defined and budgeted management are positive and helpful. The manager of a small local office in the north east said that for the first time in 20 years he felt that he could have an effect on the conditions under which his staff worked and therefore on the results they produced. But this kind of enthusiasm is tempered by frustration at constraints. ... Middle managers in particular feel that their authority is seriously circumscribed both by unnecessary controls and by the intervention of Ministers and senior officials in relatively minor issues. People who had recently resigned from the Civil Service told us that frustration at the lack of genuine responsibility for achieving results was a significant factor in encouraging them to move to jobs outside.” (Efficiency Unit, 1988, p.3)

The underlined words highlight the subjective presentation, and, by implication, the eschewal of an ostensibly ‘objective’ or overtly political tone. The passage begins with a sweeping statement on the attitudes of those whom the report, if implemented, will most affect – the “95 per cent”. It then focuses on “the manager of a small local office” and what “he” considered helpful, before broadening again to identify wide-spread “frustration at constraints”. A division is erected between constrained “middle managers” and interfering “ministers and senior officials”. This disassociates the Efficiency Unit, which was itself based in the core executive, from such top-down dysfunctionality. Thereafter, the closing reference to “people who had recently resigned” implies regret at their disaffection. In this manner, the diagnosis of defective bureaucracy is made on the basis of what the Unit were *told* by the frontline, rather than what it observed for itself. The impression is that there can be no greater assurance of the urgent need for change than from within the (faulty) institution itself.

This privileging of the subjective rather than objective perspective, and its depiction of the reforms’ bottom-up rather than top-down and political initiation, is similarly evident in

Thatcher's presentation of the report to Parliament. In the three extracts cited below, for instance, the prime minister repeatedly distances the report's authoring as explicitly not overseen by ministers, and emphasises that the government's implementation decision comes as a "reply" to civil-service demands:

"[A]s my hon. Friend will see from the report presented to me, a considerable number of people in the civil service want an arrangement that will give them more responsibility." (Hansard, 18th February 1988)

"This is a response to a report not by us, but to us, on improving management in government."

"The whole purpose of this, in response to a report presented to us, is to reply to the desire of many people in the civil service to have more responsibility and the wish of the government to have an organisational arrangement that will increase efficiency and the effective use of resources."

The three extracts establish veracity for the report's findings by emphasising its apolitical authoring. The findings were "presented to me", the prime minister, and thus not influenced by "me"; the report is "not by us, but to us"; and the government's implementation decision is thus a "reply" – acquiescence, even – rather than an edict. This 'othering' (see Miller, 2012, p.30) of the report's ownership rests upon a distinction constructed between politicians ("me", "us") and officials, who "want" and "desire" more responsibility.

Returning to the Next Steps Report itself, in addition to the subjective vocalisation, the absolving of civil servants from direct blame and the promise of corrective reform also contributes to a sense of emancipation. This is revealed in its emotive language:

"[Departments will define] a rigorous policy and resources framework within which the agency management is set free to manage..." (Efficiency Unit, 1988, p.10)

"The FDA [a trade union] confirmed that ATs and HEODs [junior civil servants] were clamouring for management jobs." (p.25)

"A common source of frustration in many local offices is the inadequacy of the service staff feel they are giving." (p.26)

Once again, “inadequacy” – the report’s meta-theme – is diagnosed not by the Efficiency Unit, nor, indeed, by ministers, but by “staff” in “local offices”. Moreover, all three extracts suggest that it is not for want of trying that government is suboptimal; rather, due to factors beyond their control, officials are being constrained. Hence, if management is to be “set free”, the implication is that it is presently constrained; if junior officials are “clamouring” for management positions, these must presently be rationed; and if staff are frustrated at inadequate service, there must be external, inhibiting factors.

This de-blaming of officials is furthered by the narrative personification of government organisations – that is, their establishment as characters with sociological agency and a coherent voice (see Pentland, 1999, p.714). As the following passage demonstrates, this supplies an alternative focal point for apportioning blame:

“The main rule imposed by the Treasury is that there should be no movement of money from non-running costs to running costs. Rules about moving money between different running costs items are generally imposed by departments themselves.” (Efficiency Unit, 1988, p.28)

Again, it is not that officials do not want to improve public service management; rather, inanimate institutions are causing obstructions.

In sum, proposing agencification on the basis of a subjective, bottom-up critique frames the policy as an emancipatory or empowering solution, supplied by a concerned political and bureaucratic elite keen to assist the frustrated and disempowered frontline. While testament, perhaps, to the Efficiency Unit’s eagerness to secure bureaucratic buy-in for its reforms, frontline empowerment is also an acknowledged theme of managerialism (Peters & Savoie, 1994), thus further confirming the paradigmatic basis of the Next Steps proposals.

4.3.3 Differentiation – the decentralisation narrative

The foregoing analysis has identified several paired oppositions within the Next Steps Report. Most broadly, there is the coupling of the policy-remedy syllogisms – a common pairing in policy documents (Fairclough, 2003, p.91). Mapping onto this structural dualism are many

subordinate pairings; for example, the constrained versus empowered frontline, and the dysfunctional versus effective Whitehall (see Table 4.1). Another important opposition originates in the report’s construction of decentralisation. This is explored below.

Table 4.1: Discursive differentiations in Next Steps discourse

	Policy problem	Policy solution
Argumentation	Old, dysfunctional	New, effective
	Poor management	Improved management
	Centralised, inflexible, diffuse responsibility	Decentralised, innovatory, responsible
	Pre-agency	Post-agency
Narrative voice	Constrained frontline	Empowered frontline
Differentiation (see below)	Executive functions in ‘the centre’	Executive functions in ‘the periphery’
	Combined policy and delivery	Separated policy and delivery

In formulating agencification as a mode of decentralisation, the report constructs an opposition between the governing ‘centre’ and arm’s-length ‘periphery’. Its discussion of framework documents illustrates this discursive differentiation:

“The setting of a policy and resources framework is needed not only for agencies but also in situations where the department has to proceed by influence rather than by direct control. It applies therefore to the relationship with any organisation which is providing services for which the department carries some responsibility, whether agency, nationalised industry, local authority, or public body... In any of these relationships the department’s task is to set a framework, tailored to the job to be done... It will also need to ensure that indicators of effective performance are developed and used for regular monitoring. For directly managed agencies, Ministers and civil servants must then stand back from operational details and demonstrate their confidence in the competence of their managers and the robustness of the framework by leaving managers free to manage.” (Efficiency Unit, 1988, pp.10-11)

The underlining in this passage identifies the collapsing of discursive boundaries to form equivalences between new executive agencies and existing forms of arm’s-length governance.

For example, framework documents are necessary “not only” for agencies but “also” for “any” other decentralised situations, “whether ... nationalised industry, local authority or public body”. This constructs a united periphery by positing equivalence through the connective “also”, “whether”, “or” and “any” (see Fairclough, 2003). Facing this decentralised population of public service organisations is the governing centre, whose implication comes through the grouping of “Ministers and civil servants” (as opposed to “*their* managers”), and the personification in “the department’s task”. The centre and periphery are then further separated by the contractual terminology (“framework”, “relationship”, “services”, “indicators” and “monitoring”) and the call for ministers to “stand back” and demonstrate “confidence” in managers. Decentralisation is thereby narrated through an opposition between the centre, being ministers, civil servants, and their departments, and the periphery, comprising agencies, public bodies, and other arm’s-length entities. This represents another point of contrast with the contemporary agency idea.

Complementing this narrative of decentralisation is the question of the policy-delivery task division. As Chapter 2 demonstrated, agencification is widely recognised internationally as an administrative reform that decouples policymaking from operational delivery (see Verhoest, et al., 2010; Verschuere & Bach, 2012). In the case of Next Steps, Thatcher’s endorsement to Parliament identified the report’s first recommendation as removing to departmental agencies “the executive functions of government, as distinct from policy advice” (Hansard, 18th February 1988), and, indeed, Next Steps has since been widely interpreted as driving at this separation (Gains, 1999, p.62). Nonetheless, in spite of Thatcher’s contention and the ubiquity of this interpretation, no such undertaking to divorce policy and operations is articulated explicitly within the report itself. Rather, from the given premises that, firstly, policy and management are different and independent tasks, and, secondly, that agencies are a management solution, it is through enthymematic inference that the notion of the policy-less agency is arrived at. Box 4.3 formalises this logic.

Box 4.3: Policy-management dichotomy

Truncated syllogism (enthymeme):

[#3a] ‘Management’ and ‘policy’ are independent, mutually exclusive tasks. **[#3b]**
 [Previous argumentation:] Agencies are a management solution. **[#3c]** Therefore, agencies are not about policymaking.*

[*Implicit premise]

Illustrations from Efficiency Unit (1988):

[#3a-i] “[A]s one senior Grade 2 told us, that ‘the golden route to the top is through policy not through management’.” (p.3)

[#3a-ii] “There is insufficient focus on the delivery of government services (as opposed to policy and ministerial support), even though 95 per cent of civil servants work in service delivery or executive functions.” (p.21)

Syllogism-to-syllogism interlinking:

[#3b] Previous argumentation (Box 4.1 and Box 4.2, above)

This enthymeme relies upon an overt distinction between policy and implementation as separate categories of work [#3a], and the Report’s principal advocacy of agencies as a management solution [#3b]. It frequently references the classic division between ‘policy’ work and ‘management’ or ‘delivery’; for example, in pointing to the tendency for senior officials and ministers to focus on policymaking. As the illustrations demonstrate, there is also explicit discursive differentiation between these two categories of work: [#3a-i] distinguishes between “policy *not* ... management”, while [#3a-ii] separates “delivery ... *as opposed to* policy”. On this basis, the first component of the Box 4.3 argumentation has a strong discursive basis. Similarly, the subsequent premise that agencies resolve problems of management [#3b] is established by the structural syllogisms of the Next Steps argument (Box 4.1 and Box 4.2, above). As was demonstrated there, the Efficiency Unit’s recommendation rests upon diagnosis of bureaucratic failure and the rhetorical and intersubjective prescription of management improvement as remedy. In combination, this makes for Box 4.3’s inferred conclusion that agencies are not

about policymaking [#3c], since, firstly, they are a management solution [#3b] and, secondly, management is not the same as policy [#3a]. As with the enthymeme in Syllogism #1, audience co-production instils rhetorical emphasis into this component of the agency idea, with the policy-management dualism further reinforcing the decentralisation narrative of the governing 'centre' and its (subordinate) 'periphery'.

4.3.4 Summary: the Next Steps agency idea

In applying the narrative framework to the Next Steps Report, three elements of meaning have been identified as the substructure of the original agency idea according to Carstensen's model. These are: (i) managerialism, implicated enthymematically; (ii) frontline empowerment, evoked through the bottom-up narrative voice; and (iii) decentralisation, asserted by differentiating the governing 'centre' and 'periphery', and their respective 'policy' and 'management' responsibilities. Rhetorically, the foundational, intersubjective presumption of management's superiority over bureaucracy registers as the privileged component. What remains now is to consider whether or not similar ideational foundations underpin the post-Next Steps agency idea.

4.4 The Public Bodies Review

Through various legislative and administrative reforms, the Coalition Government has embarked upon major arm's-length body reform, aimed at enhancing ministerial accountability and reducing costs (Cabinet Office, 2010; Flinders & Skelcher, 2012; Gash, et al., 2010). While there is considerable precedent for British political parties to promise so-called 'quango bonfires' when seeking election (Flinders, 2008, ch.3), the Coalition's post-election follow-through is largely unparalleled. As Flinders and Skelcher (2012, p.327) explain, the reforms represent "a significant departure from previous practice in ... speed, legislative contention, and political and managerial focus". Similarly, the NAO (2012, p.9) conclude that, if fully implemented, the plans will secure "the largest restructuring of public bodies for many decades". A cross-Whitehall review of 904 bodies proposed 496 closures, mergers and other

major restructures (NAO, 2012, p.13), but, significantly, excluded executive agencies on the grounds that they are legally and constitutionally synonymous with their sponsor departments. Furthermore, in seeking to bring functions ‘closer’ to ministers, the reforms have actually led to the creation of new agencies, most notably in the Department for Education. Given their previously accepted interpretation as a mode of arm’s-length governance, residing amongst the governing ‘periphery’ (in the terms adopted above), this new assertion of essential difference between agencies and quangos has prompted some consternation (Committee of Public Accounts, 2012; Flinders & Skelcher, 2012; Rutter et al., 2012). Accordingly, what follows draws upon documentary and interview materials to explore the apparent contemporary reconstruction of the agency idea. First, an enthymematic narrative of constitutional propriety is identified as the reform’s overarching ideational context. This rationalises administrative centralisation as the reinstating of the Westminster ‘default’ of departmental (non-delegated) governance, thereby paving the way for agencies’ relocation to the governing centre. A brief case study of discourse rationalising the new Standards and Testing Agency then probes this ‘departmentalisation’ further.

4.4.1 Argumentation – constitutional propriety

Since 2010, the principle of increasing the accountability and efficiency of public bodies has enjoyed broad political consensus, albeit with some disputes over individual reforms. Indeed, something of a shared narrative has emerged on the problem of the oversized ‘quango state’ and the need for change. Distilled from contributions to parliamentary debate, this bipartisan narrative of constitutional propriety is formalised in Box 4.4.

Box 4.4: The constitutional default

Truncated syllogism (enthymeme):

[#4a] Departmental delivery, overseen by ministers, is the legitimate mode of state administration and the Westminster system default.* **[#4b]** The Public Bodies Reforms are *returning* functions to departments (although these may not have originated in departments in the first place). **[#4c]** Therefore, the reforms represent a return to the constitutional default.*

[*Implicit premises]

Illustrations from Hansard, 14th October 2010:

[#4b-i] *'...we are bringing a host of functions back into departments, such as those of the Child Maintenance and Enforcement Commission and the Renewable Fuels Agency to name but two.'* (Minister's statement)

[#4b-ii] *'...the high point of the unaccountable quango state was under the Major Government...'* (Opposition frontbench question)

[#4b-iii] *'How will the Minister ensure that quangos handed back to the Government do not generate more costly parliamentary questions?'* (Government backbench question)

Illustration from Hansard, 15th December 2011:

[#4b-iv] *'These triennial reviews will ensure that never again will the quango state be allowed to spiral out of control.'*

The argumentation summarised in Box 4.4 is strongly enthymematic, with both the first premise [#4a] and conclusion [#4c] remaining largely implicit, their sense being extrapolated from the explicit middle premise [#4b]. This situation is frequently encountered by Feldman et al. (2004) in their development of this approach. Hence, the syllogism's overall – but implicit – argument that the Public Bodies Reforms reinstate constitutional propriety [#4c] is inferred from the explicit contention that functions are being *returned* to departments. The emphasis on 'returned' is crucial, and can be seen in all four illustrations. In [b-i], the minister speaks of bringing functions "back into departments"; in [b-ii], the opposition spokesperson talks of the "high point of the unaccountable quango state", thereby implying there was also a low point; in [b-iii], the backbencher refers to quangos being "handed back"; and in [b-iv] the minister promises to ensure that "never again" will they proliferate (see Box 4.4). The significance of this literary trope comes from the fact that, in many cases, quangos originated in their independent, arm's-length format, rather than first belonging to a Whitehall department only to be subsequently hived-off. By implication, if not originally established within government, talk of quangos' *return* refers less to chronological reversal than to a return to constitutional

propriety – that is, to the way governance *should* proceed, according to doctrine [#4a]. In other words, it is a matter of principle that state administration belongs in departments overseen by ministers. As such, the reforms are *returning* to this default.

4.4.2 Differentiation – reconstructing ‘the centre’

The narrative of constitutional propriety, identified above, propagates an opposition between appropriate and inappropriate – default and deviant – governance, and the deliberate exclusion of executive agencies from the Coalition’s reforms suggests apparent contentment with this model’s conformity to the principle of departmental administration. Although not a legal redefinition, this discursive positioning of agencies as departmental rather than as arm’s-length contrasts markedly with the Efficiency Unit’s original framing of agencification as a mode of decentralisation and ministerial distancing. As was demonstrated above, agencies were there narrated as part of ‘the periphery’, akin in character, if not constitutionally, to local authorities, nationalised industries and public bodies. The extent of the Coalition’s deviation is evident in both political and bureaucratic discourse pertaining to the current reforms. As the minister explained, first in his opening parliamentary statement:

“I stress that departmental agencies – executive agencies – are not in the review’s scope. They are directly controlled by Ministers who are accountable to Parliament for what they do.” (Hansard, 14th October 2010)

Then, in response to an opposition question:

“I think that [the right hon. Gentleman] confuses the role of executive agencies with the function of a quango. It seems to me perfectly proper that when Members of Parliament inquire about an activity they receive a reply from the executive agency’s chief executive. That does not mean that the agency is not accountable to Parliament through what a Minister says and does.” (Ibid)

And similarly, when questioned in committee:

“[W]e deliberately exclude executive agencies on the basis that those are already accountable. Ministers take responsibility for what executive agencies do.” (Public Administration Select Committee, 2010, ev.12)

All three citations frame agencies as substantively different to arm’s-length bodies, first through individualisation (“they” and “those”) and then on the basis of favourable comparison (“are not”, “confuses”, “does not mean” and “are already”). Complementing this explicit differentiation, the extracts also contain implicit opposition. For example, agencies are described as “directly controlled”, “accountable” and “perfectly proper” – by implication, non-agencies are uncontrollable, unaccountable and improper, following the constitutional narrative.

Away from political discourse, this reframing of agencies as a form of centralised governance resurfaces in the following Cabinet Office interview conversation:

Interviewee: “[T]here is a very clear case through Public Bodies Reforms, and this is what we talk about with accountability for public functions, about there being a [emphasis] very strong centre who sets strategic direction on particular policy areas. So that’s why, in a number of cases, we’re moving things from a public body, either to an agency or in the central department – because the ministers have taken a view that it should, rightly, be a minister who is responsible for the final decision. And so I think that does refer to the nervousness about policymaking arm’s-length bodies, and a lack of accountability. So you’ve actually got bodies that are making policy – at least, they are deciding things that influence citizens’ lives – but they don’t have an elected mandate to do so.

Thomas: Yeah, okay.

I: So I think that does then lead to a direction where you pull more policymaking decisions into the centre....” (Interview_016)

This passage is predicated on a centre-periphery opposition, with the emphatic description of “a very strong centre” (singular) implicating, by extension, a peripheral non-centre. The interviewee populates the former by discursively collapsing department-agency distinctions – “either to an agency, or in the central department”. Furthermore, ministerial responsibility, held in departments, is contrasted with “policymaking arm’s-length bodies”, which lack an “elected mandate”. Agencies, a model favoured by the government, are responsive to ministers (and their mandate), and are thus not at “arm’s length”.

Another official similarly differentiated agencies and public bodies:

I: *“I think it’s just maximising ministerial accountability, and there’s a range of ways in which that is happening. And the agency model is an important part of that, because unlike, for example, an NDPB [a quango], an agency is part of a department; ministers are, I think, held to be more directly involved and responsible and accountable where it happens within that structure, than if it’s a sort of para-statal arm’s-length body – a satellite on the outside.” (Interview_019)*

Here, discursive differentiation is again effected through comparison (“unlike” and “more”), with agencies being identified as “part of a department” and therefore within a minister’s responsibility. This differs from a “para-statal arm’s-length body – a satellite on the outside”. By implication, agencies are neither “outside”, nor “para-statal” and “arm’s-length”, as was later confirmed:

I: *“The dividing line between what’s an agency and where it becomes an NDPB?”*

T: *Yeah?*

I: *I mean, I think they are different beasts. As you say, an agency’s part of a department. I think, as I said, the term ‘arm’s-length body’ is fairly umbrella like and within that there will be a variation in the distance – in the length of the arm – whichever sort of analogy you want to use. I think they are a business unit, of a kind, within a department. They are staffed by civil servants; they are usually headed by a chief executive who is also a civil servant, who has a direct line of accountability not to an independent board but to the minister.*

T: *And that’s a key distinction, is it?*

I: *It is a key distinction. And it’s not a separate entity in any sense.” (Interview_019)*

Despite referencing a gradation of “the length of the arm”, this passage is primarily about differentiating quangos and agencies. They are “different beasts”, the latter being “staffed by civil servants” and headed by a chief executive and with “a direct line of accountability *not* to an independent board *but* to the minister”. As such, agencies are “not a separate entity [to their department] in any sense”.

Table 4.2 summarises the explicit and implicit opposition within the political and bureaucratic discourse reviewed above. Against the background narrative of constitutional propriety, the

suggestion is of the discursive departmentalisation of the agency idea, effected through the collapsing of department-agency distinctions and the forging of new non-equivalence with arm’s-length public bodies.

Table 4.2: Discursive differentiation in Public Bodies discourse

	Agencies	Public Bodies
Argumentation	Default, appropriate	Deviant, inappropriate
Political differentiations	Departmental	Arm’s length
	Controllable	Less controllable
	Accountable to and via minister	Less accountable
	Part of ‘the centre’	Part of ‘the periphery’
Bureaucratic differentiations	Part of ‘the centre’	Part of ‘the periphery’
	Accountable to and via ministers	Accountable to independent boards
	Statal	Para-statal
	Civil service	(Generally) non-civil service

The foregoing analysis has relied on constructions of ‘agency’ within discourse that is more centrally concerned with critiquing so-called quangos. By turning now to the Coalition’s business case for establishing a specific new executive agency, argumentation more fully concerned with the agency idea itself is examined to test whether the observed reinterpretation extends beyond anti-quango rhetoric. Of the seven new agencies announced by the Coalition Government four are in the Department for Education (Elston, 2013, p.67). Its first is examined below.

4.4.3 Establishing the Standards and Testing Agency

The Department for Education (DfE) previously owned 17 public bodies and no executive agencies (Cabinet Office, 2010). Indeed, historically, the education sector has made little use of

the agency model, the only Next Steps agency being the short-lived Teachers' Pensions Agency, established in 1992 but contracted out by 1996 (Chancellor of the Duchy of Lancaster, 1997, p.28). Latterly, reflecting both the central Public Bodies programme and major policy change within the department, the Education Act 2011 returned many formerly-delegated responsibilities to ministers. To deliver this expanded departmental remit, four executive agencies have since been established, employing some 1,350 officials. The Standards and Testing Agency (STA) was the first of these, assuming functions from the Qualifications and Curriculum Development Agency (QCDA) – an abolished quango. The published business case is analysed briefly below.

Following the wider narrative of constitutional propriety, the document asserts strong ministerial ownership for the STA's creation:

"Ministers made it clear that not all functions currently carried out by QCDA will cease. They indicated that statutory assessment ... would continue... [T]he Secretary of State signalled his intention to establish a new Executive Agency, the Standards and Testing Agency, within the Department for Education..." (DfE, 2011, p.1)

This political ownership contrasts with Next Steps' overtly bottom-up, emancipatory voice, which framed agencification as a response to the disempowered and frustrated frontline. Indeed, no reference is made to disaggregation and deregulation from central controls. Rather, the change of status serves to fulfil requirements of ministerial responsibility and accountability:

"Ministers are clear that they are accountable to Parliament for delivery of this important part of the Government's education agenda. Bringing the work into an Agency within DfE provides for that clear line of accountability." (DfE, 2011, p.5)

This extract alludes to the overarching narrative of constitutional propriety, with ministerial accountability being "provide[d] for" by "bringing the work into an agency". Thus, a new inside-outside, centre-periphery dualism is constructed which again relocates agencies to the ministerial side.

This discursive repopulating of the governing centre to include both core departments and agencies is bolstered by the business case's references to corporate integration. For example:

“Delivering the current programme of statutory assessment and testing through an arm’s-length delivery model is considered inefficient and less effective. In particular, as a non-departmental public body (NDPB) QCDA delivered its own corporate services. There are economies of scale to be gained from merging those functions (such as HR, Communications, Finance and IT) with those in the Department to create a single shared services approach for all proposed DfE Executive Agencies...” (DfE, 2011, p.2)

The opposition here is between multiple corporate service centres in arm’s-length bodies, and a single, integrated back office in the department (inclusive of agencies). Thus, not only are agencies laudable for being departmental rather than arm’s length, but their creation also represents an efficiency-enabling consolidation (“merging”, “single”, “all”) through shared corporate services. This multiplicity-to-singularity narrative resonates with the earlier interview discussion of the *single* centre versus the implied, disparate periphery.

The DfE business case makes no reference to managerial independence being assured by the granting of agency status. However, there is a slight challenge to the prevailing departmentalisation trend in its discussion of the chief executive’s autonomy in approving school test standards (DfE, 2011, p.8). It is largely this requirement of impartiality – a relic of the former quango’s statutory independence – that leads to the favouring of agency status over the alternative ‘option’ of full structural integration:

“The development and delivery of tests ... require[s] high levels of public confidence. Giving direct responsibility ... to a Directorate in the Department – as opposed to an Executive Agency – would create reputational risks. The Government could be open to accusations of political interference... [Therefore] although option three – bringing the function in-house – has the same NPV [net present value] as option two, the risk to the statutory assessment and testing system are too significant to make option three the preferred option.” (DfE, 2011, pp.5-6)

In differentiating agencies from “in-house” delivery, this passage re-erects a department-agency distinction. Nonetheless, and crucially, the necessity of independence in quality assurance is rationalised as ensuring technocratic, apolitical decision-making, rather than, as was formerly

the case with Next Steps, to protect against monolithic, government-wide regulation and prescription. Thus, independence is conceived not to 'let the managers manage', but to keep newly-involved ministers in their rightful position in one small area of agency business.

4.4.4 Summary: The Coalition's agency idea

In applying the narrative framework to the 2010 Coalition's reforms, three further elements of meaning have been identified as constituting the contemporary executive agency idea. These are: (iv) constitutional propriety, agencies' conformity with which prompted their exclusion from the cross-governmental quango review; (v) ministerial control, evoked in the reforms' overt, top-down political ownership; and (vi) centralisation, effected through the discursive repositioning of agencies within the governing centre. Implicated through rhetorical enthymeme, constitutional propriety is elevated as a privileged element according to Carstensen's schema.

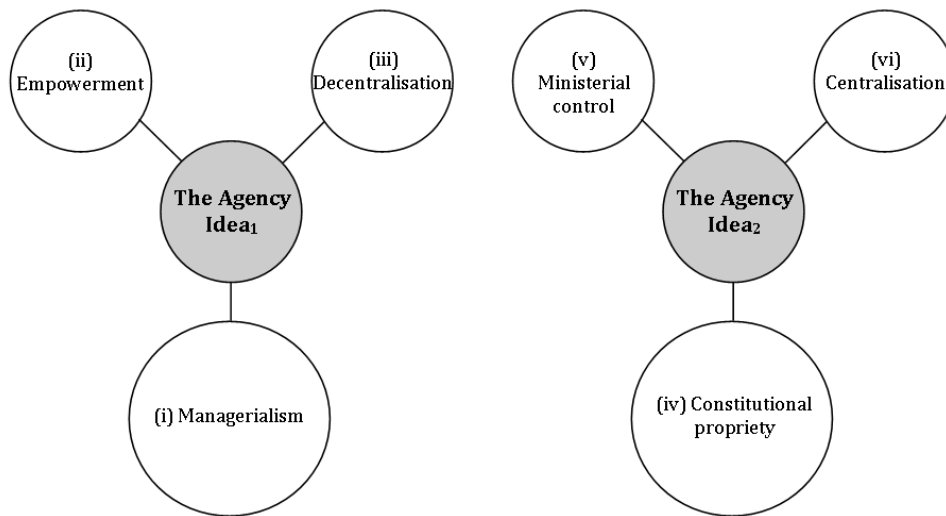
4.5 Discussion: Next Steps and beyond

Illustrating the general analytic framework of argumentation, narrative voice and discursive differentiation, and drawing on Carstensen's (2011) model of incremental ideational change, this chapter explored the evolution of the executive agency concept as a macro politico-administrative idea. It began by demonstrating how, through intertextual and rhetorical reference to wider managerialist ideology, beliefs and assumptions (Clarke & Newman, 1997; Pollitt, 1993), the Next Steps argumentation posited organisational independence as an enabler of public service improvement. Vocally, the call for reform was represented as self-critique from within the civil service itself, making, at least overtly, for the agency solution's framing as operationally empowering or even emancipatory. Moreover, in terms of differentiation, the discourse constructed a foundational division between the governing centre and periphery, with the new agencies conceptually (if not legally) analogous to public bodies, nationalised industries and local authorities, all of which are distanced from ministers by quasi-contractual arrangements.

Latterly, parliamentary and interview discourse associated with the Coalition Government's Public Bodies Reforms was shown to contrast markedly with this original framing of the decentralised, independent agency. In terms of argumentation, contemporary advocacy of the model centres upon an enthymeme of constitutional propriety, whereby non-devolved, departmental governance is accepted intersubjectively as the default and legitimate mode of Westminster-style administration. Therein, vocally, the reforms speak of ministerial rather than managerial empowerment, with agencies better assuring political control commensurate with political accountability. Finally, in terms of the continuing differentiation of the governing centre and periphery, by virtue of their exclusion from the Public Bodies Review and (re)framing as departmental, efficient, controllable and accountable, the Coalition narrates executive agencies as constitutionally-appropriate, centralised administration.

As detailed above, Carstensen's (2011) framework for modelling incremental ideational change proceeds from the ontological assumption that political ideas are composite interpretive structures, lacking in fixity and constructed from multiple, differentially weighed "elements of meaning" (labelled (i)-(vi) below). Populated through narrative methods, this schema enables diachronic comparison of multiple ideational substructures, using rhetorical force to signal what Carstensen terms discursive "privileging". For Next Steps, this registered in the enthymematic presumption of management's superiority over bureaucracy (i), while, for the Coalition, intersubjectivity was forged through the presumption of constitutional propriety in departmentalism (iv). In addition, voice and differentiation identified four further elements of meaning across the two substructures: frontline empowerment (ii), and administrative decentralisation (iii); and ministerial control (v), and centralisation (vi). Following Carstensen, these two configurations are graphed in Figure 4.1, with "privileged" elements denoted by enlarged circles. Most significantly, no substructural element repeats across the two iterations, suggesting considerable interpretive evolution beneath the ostensible continuity of agency name and pseudo-legal status.

Figure 4.1: Diachronic change through elemental substitution



4.6 Conclusion

In demonstrating the intersubjective significance of managerialist ideology to the first rendering of the agency idea, this chapter has reaffirmed the intimate association between first-generation agencification and the NPM paradigm (Massey & Pyper, 2005; Verhoest, et al., 2011). The Efficiency Unit’s diagnosis of the ineffectual Whitehall did not explicitly define good management, nor explain how this remedies traditional bureaucracy; rather, these were taken as obvious or commonplace, to be readily inferred by a culturally-competent audience schooled in “the new orthodoxy” of NPM as an “institution” (Lowndes, 1997, p.51). Conversely, in 2010, protection from monolithic government by deregulation and decentralisation was registered neither implicitly nor explicitly in the analytic framework’s application to contemporary discourse. Rather, such “objective meaning” (Wagenaar, 2011) was identified in the assumption of the constitutional propriety of departmental governance, with laudable executive agencies thereby framed as a centralised mode of governance, under direct control of ministers and located not at the arm’s-length periphery but within the governing centre. Indeed, within this narrative, sole mention of agency independence in the education agency case study concerned the assurance of apolitical decision-making in properly technical matters – less a call for neo-

Next Steps management decentralisation than a further invocation of constitutional propriety, with ministers wishing to assume but not exceed their rightful political control.

This reinterpretation of the once arm's-length agency idea as in fact centralised and ministerially-proximate challenges existing conceptions of the nature of agencified governance, and points to the need for an inductive return to its (supposedly managerialist) character. As explained in Chapter 2, Next Steps instantiated the "tripod" model of "disaggregation", "autonomization" and "contractualization" that was pursued internationally during this period (Pollitt, et al., 2004). All three characteristics propagate a bifurcation between the governing centre and periphery which, crucially, dislocates operational agencies from ministers and ministerial departments. As the foregoing analysis has demonstrated, this reform logic is nowhere to be found within the Coalition's contemporary advocacy of agencies, whose discourse collapses former department-agency distinctions and, in so doing, significantly reconstructs the agency idea. Uncovering the extent to which agencies have practically been so reconceived through re-aggregation, reregulation, and the subordination of former principal-agent contractualism is the task of subsequent chapters. As these will reveal, this macro-level reinterpretation of the *idea* of agencified governance adumbrates many changes narrated at the meso and micro levels of agency *practice*.

Chapter 5 – Agencification in the Justice Sector

5.1 Introduction

The previous chapter initiated the empirical analysis by charting the reformulation of the original agency idea within the 2010 Public Bodies Reforms. The registered discontinuity of meaning and context strengthens the case already argued for an inductive return to agency practice. Specifically, the identification of constitutional propriety, ministerial control and administrative centralisation as key elements of meaning enlivening the contemporary agency idea raises further doubts about the extent to which old Next Steps precepts, and the ideal-type NPM model which they formerly instantiated (Pollitt, et al., 2004), continue to reflect governing practice in the ostensibly still-agencified Whitehall. In short, it is unclear that agencification *means* what it formerly did.

Pursuing a similarly diachronic comparison of historic and modern discourse, but now with greater sensitivity to synchronic multivocality within and between macro and meso material, this chapter delves beneath cross-governmental reform aspirations to trace evolving interpretations of ‘agency’ within the justice sector specifically. Through documentation and interviews, this meso-level analysis instigates the embedded exploration of agencification as a situated, rather than reified, phenomenon – an approach elaborated hereafter through the micro interpretation of administrative stories. Therein, this part-comparative, part-prefatory chapter performs several interrelated functions. First, it historically situates the current Ministry of Justice (MoJ) and its diverse policy responsibilities against a backdrop of post-1979 reform, providing essential context against which to interpret the “cultural whole” (Baszanger & Dodier, 2004) of contemporary governing practice. Second, by exploring three examples of 1990s agencification, the previous ideational analysis is extended to localised adoption, thus elaborating the Next Steps benchmark against which contemporary fieldwork can be read. And

thirdly, in comparing historical and modern agency discourse, previous conclusions on ideational discontinuity are cross-referenced against this chapter's own sector-specific comparisons, thereby advancing the thesis's overall assessment of continuity and change.

The chapter divides into three. Initially, it chronicles modern developments in criminal and civil justice, noting the politicisation of law and order, an increasingly punitive approach to penal policy, the overhaul of administrative justice and public guardianship, and major constitutional reform to politico-judicial relations. Secondly, it turns to 1990s justice agencification, employing the general analytic framework to interpret official accounts of the detachment and autonomisation of HM Prison Service, the Court Service and the Public Trust Office. Although distinct rationales are found between prison and non-prison agencification, the common emphasis on de-politicisation, managerial empowerment and contractualisation complements the central Next Steps idea's elements of meaning registered in Chapter 4. Finally, the third section turns to recent restructuring within the MoJ family, and the creation of the Legal Aid Agency. Stories of these events construct the agency concept through notions of integration, re-politicisation, and corporate governance, thereby further instantiating the contemporary departure from original Next Steps precepts.

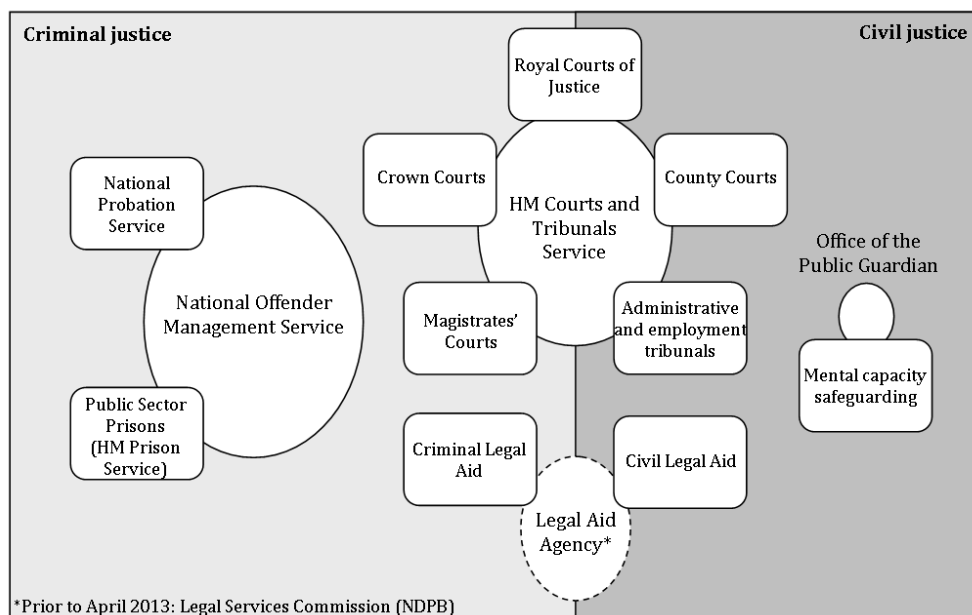
5.2 Locating the justice sector

Established in 2007, MoJ is one of the largest departments in Whitehall, sitting amongst its top four service providers, alongside the Ministry of Defence, the Department for Work and Pensions and HM Revenue and Customs (NAO, 2013, p.33). Of these, it is the only department continuing to rely heavily upon agencies, following Labour's recentralisation of defence support, the Coalition's reunification of social security delivery, and the much earlier abandoning of 'agency-like' working in the tax authorities (Elston, 2013; Talbot & Johnson, 2007). Ministerial responsibility rests with the combined Justice Secretary and Lord Chancellor, the latter being an ancient judicial-political office formerly presiding over the Lord Chancellor's Department until

2003, and latterly the Department for Constitutional Affairs. In May 2007, further reorganisation merged this with parts of the Home Office to form the MoJ.

By 2011-2012, MoJ commanded an annual budget of £8.7bn, a direct and indirect staff of nearly 90,000 FTE, and a national estate second in size only to the military (Justice Committee, 2012, p.44; MoJ, 2012a, pp.18, 23). Policy responsibilities include burials and cremation, freedom of information and human rights, but mainly pertain to the activities of the now four justice agencies (Gibson, 2008). These key delivery responsibilities are usefully introduced by their various contributions to criminal and civil justice in (principally) England and Wales (see Figure 5.1, where circles represent agencies and boxes represent functions). The National Offender Management Service provides criminal justice punishment and rehabilitation; HM Courts and Tribunals Service administers both criminal trials and civil proceedings, which are presided over by the independent judiciary; the Office of the Public Guardian performs civil functions under the Mental Capacity Act 2005; and the new Legal Aid Agency distributes funding for criminal defence and some civil litigation.

Figure 5.1: MoJ agencies by jurisdiction



(Source: author's own)

This jurisdictional split is necessarily a simplification, neglecting the increasing crossover between civil and criminal law (Ward & Akhtar, 2011, pp.5-8), and potentially imparting a falsely *etic* bifurcation onto differential *emic* realities. Nonetheless, it usefully unbundles MoJ's multifarious responsibilities, as well as their long – and until recently independent – histories.

5.2.1 Criminal justice, past and present

Largely through centralisation and consolidation, the criminal justice system has rationalised considerably in recent years, departing from some of the complexity produced by an extended, piecemeal development. Still, it continues to involve “a multiplicity of departments, boards and organisations” (Ward & Akhtar, 2011, p.567), acting to “prevent crime ... convict those who are guilty of crime, and provide appropriate forms of punishment and/or rehabilitation” (Nutley & Davies, 1999, p.47). National responsibilities now divide between the Home Office, overseeing the police; the Attorney General's Office, responsible for the Crown Prosecution Service; and the MoJ, which administers trial, punishment and rehabilitation. The historical development of these latter, post-arrest responsibilities is considered below.

Policy and politics

Crime gained new political salience under Thatcher and Major, with “virtually unprecedented activity in the field of criminal justice and penal policymaking” (Wilson, 2001, pp.124-125). Epitomised by Home Secretary Michael Howard's famous declaration that “prison works”, this feverish activity broke with post-war consensus by pursuing right-wing measures to curb rising crime and placate penal populism (see Raynor & Vanstone, 2007, p.68). Between 1993 and 1998, the prison population expanded by 24,200, reaching upwards of 65,000 (MoJ, 2013b, p.7). Moreover, against a growing Whitehall scepticism about traditional probation (Nutley & Davies, 1999, p.48; Raynor & Vanstone, 2007), efforts were made to strengthen community sentences as a realistic (and economic) prison substitute – a “punishment in the community” strategy that challenged probation's traditional, “welfare-orientated” ethos (Nash & Ryan, 2003, p.162).

Meanwhile, fresh from electoral defeat, the Labour party of the 1990s distanced itself from its “soft on crime” image (Brownlee, 1998; McLaughlin & Muncie, 2000). Blair’s “tough on crime and tough on the causes of crime” rhetoric signalled a new twin emphasis on victim-centred justice and deterrence by punishment, forcing the Conservatives still further down the punitive agenda (Gelsthorpe & Morgan, 2007, p.9). In office, Labour continued the hard-line approach, overseeing increased criminalisation, further police powers and out-of-court penalties, and expanded definitions of, and sanctions against, terrorism (Sanders, 2011, p.15). The prison population rose further, reaching 85,184 by March 2010 (NOMS, 2010, p.73). However, following the wider evidence-based ideal, rehabilitative optimism resurfaced (Nutley & Davies, 1999), instilling new confidence into the Probation Service (Raynor & Vanstone, 2007, pp.68-69).

Pre-Labour managerialism

Managerialism made slower inroads into criminal justice than elsewhere (McLaughlin & Muncie, 2000; Raine & Willson, 1996), partly because of the autonomy and lobbying power of the police and judiciary (Creaton, 2003; Fitzpatrick et al., 2001; Leishman et al., 1995). Nonetheless, it “eventually arrived with a vengeance”, prompting a “veritable avalanche of policy, legislative and structural change” (Painter, 2005, p.307). Thereafter, NPM’s typically incoherent nature (Aucoin, 1990), and the historical circumstance underpinning the criminal justice system, prompted part-contradictory custodial, community and court service reforms.

Local goals had been nationalised into the Prison Commission in 1877 (Watts, 2001, p.19), and continued in a top-down, centralised manner until finally being absorbed into the Home Office in 1963 (Nash & Ryan, 2003, p.157). NPM first appeared in the performance indicators and personnel reforms of the 1980s (Jones, 1993, p.198; Pollitt, et al., 2004, p.135), and then gathered pace through outsourcing and restructures, aided by successive reviews into overcrowding, rioting and escapes (Learmont, 1995; Woodcock, 1994; Woolf, 1991). The Criminal Justice Act 1991 enabled private prisons, first with short-term management contracts,

but soon alongside facility construction agreements, given the rising population (Panchamia, 2012). Moreover, after Woolf's (1991) recommendation of more visible senior leadership, contractual relations between ministers and the director general, and greater local delegation to governors, the Lygo Report advocated agency status to ensure "almost autonomous" operations (1991, p.11). Proving a high-profile test of Next Steps, HM Prison Service (HMPS) became an agency in April 1993, with operational responsibility and some parliamentary accountability transferring to a director general from the private sector, Derek Lewis. Despite an otherwise improving picture, further escapes led the pressurised Home Secretary Howard to dismiss Lewis, as per the terms of Next Steps contractualism (Barker, 1998; Lewis, 1997). Later awarded considerable damages, Lewis was vindicated in the eyes of many, including a junior minister at the time, who all considered Howard to have exploited an untenable policy-delivery distinction in absolving himself from responsibility.

Though admittedly tempered by political interference and NPM-style regulation (Nash & Ryan, 2003, pp.159-160), this prison decentralisation contrasts markedly with developments in probation. Unlike custody, the delivery of community rehabilitation was only fully professionalised after World War II (Nash & Ryan, 2003, p.157), whereupon it retained a devolved character as "a service ... rooted in localities" (Raynor & Vanstone, 2007, p.76). In the 1980s, growth in central funding, concerns over prison demand, and calls to "harness probation work more closely to central policy objectives" (NAO, 1989, p.6) all made for increased Home Office intervention (see Gelsthorpe & Morgan, 2007; Jones, 1993; Nash & Ryan, 2003). For example, the 1984 Statement of National Objectives and Priorities and 1992 National Standards both centralised formerly local strategy (Senior et al., 2008, pp.107-108). Whilst geared towards the same ends of economy and efficiency, therefore, the effect of managerialism on probation differed from HMPS.

The criminal courts occupied a middle ground between prisons and probation. Local Courts of Assizes and Quarter Sessions had been abolished in 1971 with the creation of the consolidated

Crown Court (Ward & Akhtar, 2011, p.261). This new national structure was supported centrally by the Lord Chancellor's Department, expanding considerably its formerly-marginal delivery remit (see Woodhouse, 2001, p.6). Within Next Steps, the Court Service agency was established in 1995 to pursue customer-service improvements (Court Service, 1995c). Meanwhile, first-instance Magistrates' Courts remained independent. As Fitzpatrick et al. describe:

"The picture presented in 1980 was of a large number of courts, each with its own administration and with considerable variations in sentencing policy from one court to another. The effects were fragmentation, inefficiencies and a lack of professionalism and consistency." (2001, p.102)

The possibility of promoting efficiency and standardisation through a national agency was mooted early in the Next Steps programme (Home Office, 1989), but not pursued, given opposition in the magistracy (Ward & Akhtar, 2011, p.263). Nonetheless, administrative duties were consolidated under the new Justices' Chief Executives; performance data proliferated; and a national inspectorate emerged (Fitzpatrick, et al., 2001). Hence, just as NPM represented an affront to probation's traditional ethos, this centralisation of formerly-local justice delivery posed a similar "challenge ... not just to the functioning of the magistrates' courts, but also to their very *raison d'être*" (Fitzpatrick, et al., 2001, p.105).

Labour's managerialism

Labour continued criminal justice managerialism, albeit more cautiously (Painter, 2005; Senior, et al., 2008). Expanding the Court Service agency into HM Courts Service, magistrate administration was finally centralised in 2005, following Auld's (2001) recommendation of closer alignment with the Crown Court. Probation's centralisation also continued apace, culminating in nationalisation in 2001. Again, delivery from a new executive agency was deliberated (Home Office, 1998), but direct Home Office oversight was eventually chosen (Raynor & Vanstone, 2007, p.71). As for prisons, following the Howard-Lewis affair and a manifesto pledge to "take proper ministerial responsibility for the service" (Labour, 1997),

ministers quickly resumed all parliamentary duties. Simultaneously, an internal management report called for “greater awareness of, and sensitivity to, the nature and demands of ministerial responsibility ... at all levels of the agency” (HMPS, 1997, p.7), before the quinquennial review concluded that “a more corporate approach” had usefully modified the originally distant department-agency relationship (Home Office, 1999, p.11). Indeed, latterly, Labour even claimed that: “The Prison Service has, in practice, been a Next Steps Agency in name only for some years” (Home Office, 2004, p.15). This declining autonomy is explored further in Chapter 6.

Alongside the extension, modification and partial reversal of Conservative managerialism, Labour pursued more “joined-up justice” (Senior, et al., 2008, pp.70-71). Initially, full prison-probation amalgamation was considered “a bridge too far” (Home Office, 1998, p.12), but the question arose again after creation of the National Probation Service in 2001, particularly in two seminal reports by Patrick Carter. The first observed that “neither service is sufficiently focused on the management of offenders across the whole of their sentence” (Carter, 2003, p.17). It recommended establishing a National Offender Management Service (NOMS) to combine custodial and community responsibilities and extend mixed-economy commissioning. Formed in 2004 within the Home Office, the original intention for NOMS was that HMPS would lose its “in name only” agency status and become a departmental delivery arm, responding to central tendering alongside private competitors (Home Office, 2004, p.15). In fact, HMPS retained its separate classification (see Chapter 6), while private prison contract management and the National Probation Service were housed within NOMS. As such, the prison-probation merger was incomplete.

This ‘NOMS#1’, as it is retrospectively labelled, continued until 2008, advancing end-to-end offender management but with less contestability than originally envisaged (Interview_014; _024). Prompted by this shortfall and the ongoing prison population crisis, the then ennobled Lord Carter returned to the issue in 2007. His second report recommended super-sized ‘Titan’

prisons and reduced duplication between the NOMS commissioner and HMPS provider (Lord Carter, 2007). Labour's response was a fuller NOMS-HMPS merger, creating a combined commissioner-provider agency – 'NOMS#2' – with responsibilities for both prison and probation (MoJ, 2008). In the remaining Labour years, this pursued contestability, regional service integration and cost reduction, as the global financial crisis loomed larger.

5.2.2 Civil justice, past and present

Civil justice pertains to the non-criminal law, involving "a rag-bag of matters and participants", including businesses, citizens and public institutions (Glenn, 1997, p.160). As Glenn remarks, such diversity precludes accurate description of a civil justice *system*. Accordingly, this subsection adopts a more disaggregated approach to explaining key developments which parallel or intersect with those in criminal justice.

Civil courts

County courts handle most civil litigation, from insolvency proceedings to divorce. First established in 1846, their jurisdiction has since expanded considerably (Glenn, 1997), but always with some national administration (Polden, 1999). With the Courts Act 1971, which formed the consolidated Crown Court, a unified criminal-civil administration was formed (Polden, 1999, pp.196-197). As noted above, this became the Court Service agency during Next Steps, and then HM Courts Service agency in 2005 with the further addition of the magistrates' courts. Civil and criminal business alike was subject to NPM-style consumerism (see *The Law Gazette*, 1992).

Tribunals

Administrative justice pertains to citizen redress against wrongful government decision-making (Le Sueur, 2011). Considered by some to fall within civil justice (Glenn, 1997; Leggatt, 2001) and others to hold its own jurisdictional identity (Cane, 2009), this area has expanded considerably over the twentieth century. Traditionally, adjudication proceeded through tribunals rather than the civil courts. With the nineteenth-century expansion of state

responsibilities, these emerged individually within the bodies they were adjudicating (Cane, 2009), thereby offering more ‘internal’ than ‘external’ redress. By the twentieth century, however, the lack of independence was found wanting, and tribunals were reinterpreted as properly part of the separate judicial branch (Cane, 2009).

Labour contributed most significantly to this “judicialisation” of administrative justice (Cane, 2009, p.47). Upon taking office, the Court Service agency already administered some tribunals, but most were distributed across central government. Tasked with rationalising the system, Andrew Leggatt concluded:

“Tribunals are an alternative to court, not administrative, processes. They will keep the confidence of users only in so far as they are seen to demonstrate similar qualities of independence and impartiality to the courts.” (2001, p.27).

Leggatt thus argued for one overarching legislative and judicial structure, supported by a single agency. Accordingly, the Tribunals Service was established in 2006, consolidating cross-departmental administration, including the existing Appeals Service and Employment Tribunals Service agencies (Tribunals Service, 2006). Thereafter, the Tribunals, Courts and Enforcement Act 2007 legislated for two generic tribunals at first-instance and appellate levels, and extended the judiciary’s constitutional independence to tribunal members (Cane, 2009; Le Sueur, 2011). Latterly, Labour announced the merger of the Tribunals Service and HM Courts Service agencies (HM Treasury, 2010, p.10). This was enacted by the Coalition Government in 2011, which also plans to combine the post of Senior President of Tribunals with the Lord Chief Justice – the head of the regular judiciary (Le Sueur, 2011, p.271). Such a move would further consummate tribunals’ judicialisation.

Legal Aid

Means-tested legal aid – the “fourth pillar of the welfare state” (Robins, 2011, p.9) – is available in both criminal and civil matters, but for clarity is only discussed here. Established in its modern form by the Atlee Government, public funding was initially for criminal defence and

divorce, but has since expanded to include other areas of civil law (Robins, 2011). It was administered by the Law Society until 1988, when an independent Legal Aid Board was created. Thereafter, spiralling expenditure and a lessening emphasis on social welfare led to further reform (Creaton, 2003; Robins, 2011). In 1999, the Legal Services Commission was created as a non-departmental public body (NDPB), aiming for increased join-up and customer-focus, particularly in civil funding (Creaton, 2003). However, the Commission latterly suffered repeat underperformance, and, as Labour left office, the Magee Review (2010) proposed the quango's centralisation as an executive agency. Again, this was enacted by the Coalition (see Section 5.4.2, below).

Public guardianship

The safeguarding and empowerment of those disadvantaged by mental incapacity has grown considerably as a public policy issue in the last twenty years. Formerly, Enduring Powers of Attorney (EPAs) allowed 'donors' to designate substitute decision-makers for financial matters only, with minimal central regulation. Without an arranged EPA, the old Court of Protection appointed 'receivers' – normally relatives or friends, but occasionally government officials (Burns & Bowman, 2003; Committee of Public Accounts, 1994). Growing dissatisfaction with this in the 1990s made a coalition for modernisation. Following Law Commission reports, Labour consultations, and two draft bills, the Mental Capacity Act 2005 was eventually passed, becoming fully operational in 2007 (Bartlett, 2008, pp.38-39). As Hartley-Jones (2011, p.161) explains, its “underlying philosophy ... is to ensure that those who lack capacity are empowered to make as many decisions for themselves as possible and that any decision made, or action taken, on their behalf is made in their best interests”. The Act thus establishes a number of key principles, including decision- and time-specific tests of capacity. It also strengthens the Court of Protection and replaces the system of receivers and EPAs with 'deputies' and Lasting Powers of Attorney (LPAs). Enhancing donor protection, LPAs can pertain to both estates and personal welfare; must be established with a statutory form, where the donor is independently certified as possessing capacity at its creation; and only deployed once registered (Hartley-Jones, 2011;

MoJ, 2010b). The Public Guardian, a new statutory officeholder, registers these deeds, supervises Court-appointed deputies, and investigates allegations of abuse.

Until 2001, Court of Protection and EPA-receiver administration was housed within the Public Trust Office – a division of the Lord Chancellor’s Department also performing the Public Trustee’s executor functions and the banking services of the Court Funds Office (PTO, 1994, pp.2, 4-5). Agency status was granted in 1994, but the first quinquennial review concluded that these disparate functions had failed to coalesce (Chant, 1999). Hence, in 2001, the agency was further disaggregated, the executor and banking functions transferring to the Official Solicitor office and Court Service agency, respectively, while safeguarding became a new Public Guardianship Office agency (Hansard HL, 29th March 2001; Public Guardianship Office, 2001). With the new Mental Capacity Act, this was replaced by the current Office of the Public Guardian in 2007. Court of Protection administration then passed to HM Courts Service in 2009, leaving, overall, a much reduced agency remit since Next Steps, albeit one with exponentially-growing service demand.

5.2.3 Constitutional reform

Tribunal judicialisation, political devolution, House of Lords reform, freedom of information legislation, and the diminution of the office of Lord Chancellor enumerate some of Labour’s constitutional innovations (Bogdanor, 2005; Hazell, 2007; Le Sueur, 2011). These have been read as “a quiet revolution”, advancing the UK towards an increasingly codified constitution (Bogdanor, 2005, p.74). For the MoJ agencies, alterations to politico-judicial relations represented a particularly salient development.

Reforming the office of Lord Chancellor

As cabinet minister, head of the judiciary and speaker of the House of Lords, the Lord Chancellor was long seen as a constitutionally dubious office, plainly subverting the separation of powers (Woodhouse, 2001). Unlike other constitutional reforms, Labour’s decision to remove the legislative and judicial functions was taken neither in public nor through sustained deliberation,

being rather announced in a cabinet reshuffle “in an almost whimsical, accidental way”, as one official mused (Interview_039). This casual dismissal of a near-ancient institution, and the failure to consult over its ramifications, prompted much judicial acrimony and several major political concessions (Constitutional Affairs Committee, 2007; Crook, 2013; Le Sueur, 2004). To many, far from endangering judicial independence, the constitutionally-hybrid Lord Chancellor represented the judicial “champion and guardian in the highest echelons of government” (Cane, 2009, p.106). By virtue of this seat in cabinet, judges were party to court resourcing decisions. Thus, while removing a minister’s right to preside over cases formally reflected the separation of powers, any claim for strengthening judicial independence rested upon a narrow interpretation, unreflective of the extent to which adjudication rests upon its supporting administration (see Purchas, 1994; Woodhouse, 2007; also Lord Chief Justice Phillips in Constitutional Affairs Committee, 2007, ev.27). In making this case, the senior judiciary won important concessions, first codified in a parliamentary ‘Concordat’ (Hansard HL, 26th January 2004), and then legislated in the Constitutional Reform Act 2005. Significantly, as well as reforming judicial appointments and transferring extensive powers to the Lord Chief Justice (who became full head of the judiciary), the Act placed upon the diminished Lord Chancellor a statutory obligation to protect judicial independence (Hazell, 2007, p.17; Woodhouse, 2007). Although the precise nature of this responsibility remained unclear, political-judicial harmony was re-established until early 2007.

Towards a Ministry of Justice

The possibility of establishing a dedicated department for justice was raised at various times during the twentieth century, including in the 1918 Haldane Report and before the 1987 and 1992 general elections (Drewry, 1987; Woodhouse, 2001, pp.207-211). As such, the MoJ’s eventual creation in 2007 was, in some respects, long in the making, although previous discussions envisaged various functional combinations. Labour’s approach was to merge the Home Office’s ‘correctional services’ with the still-fledgling Department for Constitutional Affairs, thereby forming a ‘post-arrest’ justice department (Cabinet Office, 2007; Gibson, 2008).

This decision largely stemmed from the size of the Home Office's challenges in the middle of the decade, which included the expanded terrorist threat and reputational damage suffered after accidental release of foreign national prisoners (Gibson, 2008, p.14). This scandal prompted dismissal of the Home Secretary and his successor's famous denouncement of the department as "not fit for purpose" (BBC, 2006).

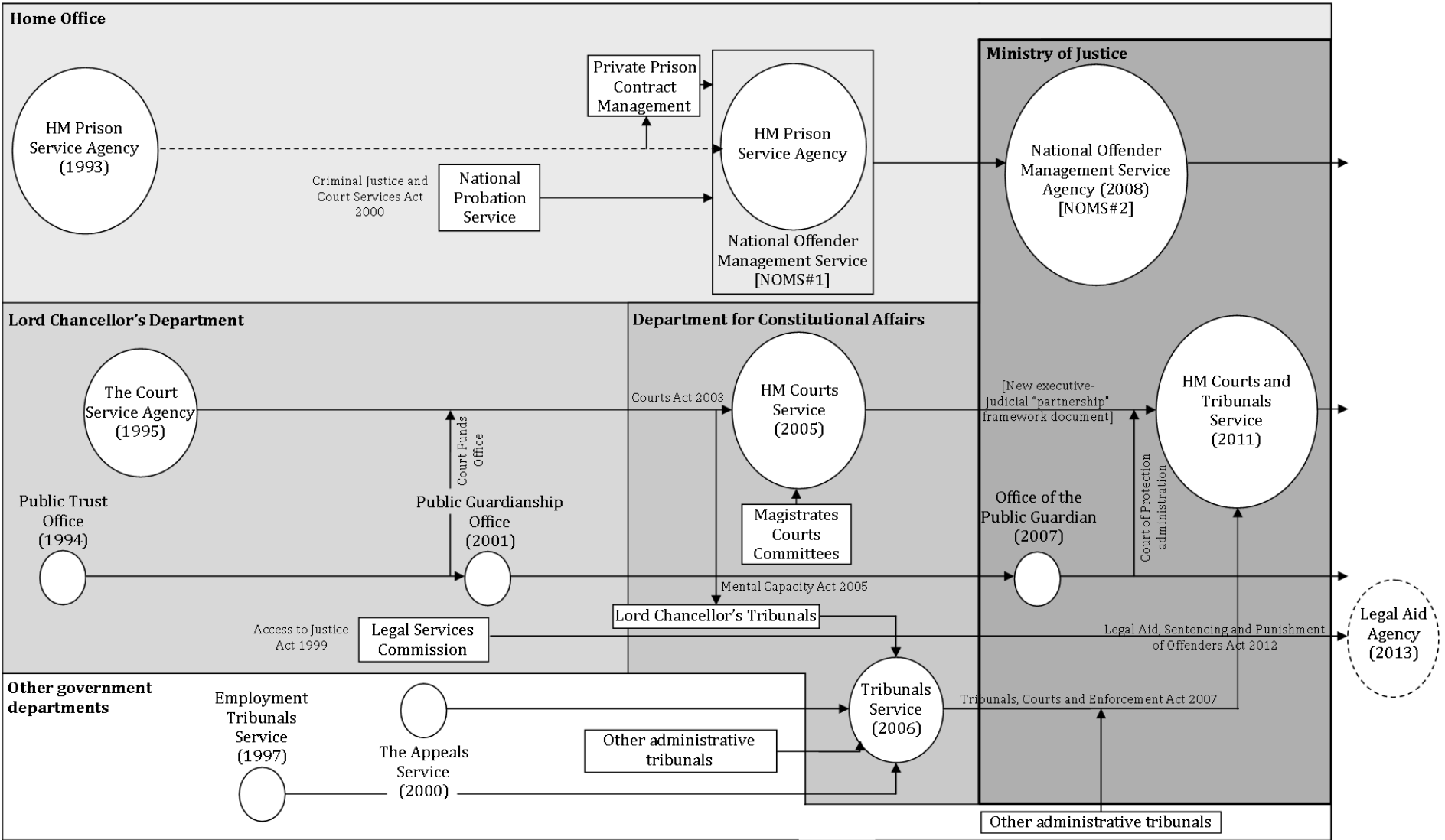
Speculation about a split between national security and justice emerged early in January (Hennessy, 2007), and advanced plans were published in March (Cabinet Office, 2007). Once again, the judiciary were taken by surprise, and an even more public disagreement with the executive ensued. Whereas removal of the Lord Chancellor's judicial responsibilities in 2005 had been significant, the transition to the Department for Constitutional Affairs impacted only minimally upon judicial administration. Ministers continued to oversee a closed portion of public policy, centred upon 'access to justice' – that is, courts and legal aid. Conversely, the MoJ's much broader responsibilities meant that no longer would there be a Secretary of State for whom this was the sole, or even large, concern. Moreover, both executive and judicial branches of government would now vie for a single funding allocation, with the potential for prison population pressures to force court underfunding. Thus, while ministers regarded MoJ as simply a machinery of government change, the judiciary saw another constitutional upheaval and publicly demanded new safeguards (see Constitutional Affairs Committee, 2007).

Resolution was more protracted than in 2003-2004, but eventually resulted in further political concessions. A re-issued framework document established HM Courts Service as a 'partnership' agency of the Lord Chancellor and Lord Chief Justice, bringing the head of the judiciary into resourcing decisions, ensuring their representation at the agency board, and granting the whole judiciary the dual loyalty of all agency officials (HMCS, 2008). This made for complex and constitutionally-unparalleled agency governance that continues today in the amalgamated HM Courts and Tribunals Service (see Lord Chancellor & Secretary of State for Justice, 2011).

5.2.4 Summary

Moj's complex historical lineage is summarised in Figure 5.2, overleaf. The first conclusion to draw from this genealogy pertains to the considerable expansion of Whitehall's responsibilities since the 1990s. Extensive tribunal reform, nationalisation of the Probation Service and magistrates courts' administration, and the greatly increased prison population mean that Whitehall's justice sector is considerably larger now than during Next Steps. Secondly, there is the perennial nature of reform: delayed managerialism left its mark under both the Conservatives and Labour, combining regulation and centralisation with outsourcing and autonomisation. Thirdly, there is the tension between continuity in, and modification of, justice agencification. Officially, all major functions devolved within the Next Steps programme continue today in agency-based delivery, unlike Whitehall's three other direct delivery departments. Nonetheless, beneath this ostensible continuity, both the Howard-Lewis affair and latter-day constitutional reform have reconditioned modern agency practice, de-autonomising HMPS and establishing HMCS as a judicial-executive partnership. The extent to which these modifications make for an *emic* reinterpretation of agency identity is the focus of the next chapter. For now, attention turns to diachronic comparison of meso-level discourse across the period reviewed above.

Figure 5.2: MoJ genealogy



1993-2003 | 2003-2007 | 2007-2012(13) |

Key: Executive agency (date established) New executive agency Other government function

5.3 Next Steps in the justice sector

This section explores official accounts of 1990s justice agencification, employing once more the general analytic framework of argumentation, voice and differentiation (see Chapter 3). While registering some synchronic variation between prison and non-prison reform, whereby ‘agency’ represents either a de-politicisation solution to performance failure or an enabler of justice consumerism, the shared emphasis on decentralisation and management empowerment makes for continuity and elaboration of the central Next Steps precepts.

5.3.1 HM Prison Service

HMPS’s suitability for agency status was initially doubted, given its size, complexity and political salience (Gains, 1999, pp.100-101). Although the first major autonomisation within the justice system, it came five years after Next Steps’ launch, when the Home Office had already devolved the Passport Service and Forensic Science Service. Operationally, the early 1990s proved challenging for HMPS. Serious rioting led to the Woolf Report (1991) and the white paper, *Custody, Care and Justice* (Home Office, 1991, p.3), which navigated “a course for the Prison Service” up to and beyond 2000. Raymond Lygo’s review, *Management of the Prison Service* (1991), quickly followed, identifying agencification as a necessary first step towards achieving the ambitious turnaround. This, and the first framework document, are analysed below.

The Lygo Report

Lygo essays a forceful warning to ministers, formalised in Box 5.1, on probable further failure should the Home Office not relinquish control on HMPS.

Box 5.1: Lygo’s warning

Perfect syllogism:

[#1a] Organisational change requires independence. **[#1b]** HMPS is not independent. **[#1c]** Therefore, presently, organisational change will fail.

Illustrations from Lygo (1991):

[i] “[I]t was very clear that unless [#1a] there was a preparedness on the part of the Home Office to take its hands off the management of the Prison Service in its day to day business [#1b] and allow itself to be constrained by matters of policy only [#1b], then it would not be possible [#1c] to effect the changes which you deem desirable and which have become very clear to me as being necessary... [#1c]” (covering letter)

[ii] “I am convinced that without [#1a] a change in the managerial framework within which the Service operates, the chances of achieving the ambitious agenda set out in the recent White Paper will be significantly diminished [#1c].” (p.2)

[iii] “As others before me have noted, there are a number of fundamental managerial problems [#1b] which need to be addressed if [#1a] the Prison Service is to do more than simply cope on a day by day basis with the demands made on it [#1c].” (p.5)

The first premise in Box 5.1 is an overt statement of causality, linking successful organisational change to managerial independence [#1a]. The association of these two quasi-variables is established by conditionality – “unless”, “then” [i]; “without” [ii]; “if” [iii]. Moreover, the positing of agreement with previous reports (“as others before me have noted” [iii]) both strengthens veracity and anticipates Lygo’s main challenge to ministers concerning previous political failure to act (see below). Thereafter, the second premise establishes HMPS’s present lack of independence [#1b], describing animatedly the problems of over-regulation by stating that the Home Office should “take its hands off” HMPS [i]. As in the main Next Steps Report, this institutional apportioning of blame is reinforced by departmental personification – “on the part of the Home Office” [i]. Finally, the syllogism’s conclusion that, presently, performance turnaround is unlikely [#1c] is the logical product of [#1a] and [#1b]. Reflecting the already-established causality, this warning is expressed in terms of probability, with all three illustrations alluding to likelihood of success – “not be possible” [i]; “chances ... diminished” [ii]; “more than simply cope” [iii]. This constructs a decision point for ministers: do something, or face likely recurrence.

Lygo's warning is couched within a wider critique of previous, unfulfilled reform prescriptions. Frequent reference is made to earlier recommendations – “the common factor in virtually every major report...”; “each of the major reports...” (1991, pp.5, 6). As well as verifying his diagnosis, this prepares Lygo's central challenge to ministers: for, if “successive reports” are in agreement about the need for de-politicisation, the problem becomes less about identifying a suitable reform strategy than understanding why ministers have failed to implement it:

“If the Prison Service is to achieve the direction and unity for which successive reports have called, it must be allowed to operate much more independently.... Why has this not happened in the past despite the recommendations of successive reports? I can only conclude that Home Secretaries and their advisers have not thought it wise to separate Ministers from day to day involvement.... I assume also that there has been a reluctance on the part of the Home Office to envisage a separate Prison Service. Nevertheless, if the deficiencies which I and others have identified are to be remedied, this is the key question which has to be resolved.” (1991, p.8)

This admonishment of ministers epitomises Lygo's overall contention. The first sentence re-invokes the causality of Box 5.1, linking improvement with independence through conditionality (“if”) and necessity (“must”), and establishing a foundation against which ministerial and departmental culpability is levelled, given earlier failures to act. The ministerial challenge then comes explicitly in the rhetorical question. Alongside Lygo's own speculative answers (“I can only conclude...” and “I assume...”), this implies that, had previous advice been heeded, many problems could already have been solved. Finally, and confirming this, Lygo throws down the gauntlet in identifying ministerial hesitancy as the present barrier to performance turnaround. In so doing, decentralisation is prescribed as a non-negotiable given: there is no doubt that HMPS must be separated from the Home Office – the question is how to persuade ministers of the fact.

After this warning and challenge, Lygo turns to the proposed decentralisation. He differentiates between appropriate and excessive autonomisation, stating that his proposals “marry together” the need for “continuing political accountability” with “a greater degree of managerial authority” (1991, p.9). As he continues:

“In my view, the need for accountability probably rules out running the Prison Service as a quango or as a separate authority. Equally, however, the need for greater managerial independence suggests a move away from the present arrangements and towards a much more independent Prison Service, clearly separate from the rest of the Home office but having responsibility to the Home Secretary. In current Civil Service thinking, this would equate to ‘agency status’.”

The interpolation of “equally” and “however” between the first and second sentences, and the contrastive “but” within the penultimate statement, both indicate the balancing of “accountability” and “managerial independence” as potentially opposing organisational properties. Therein, while the explicit distinction between an unaccountable “separate authority” and an executive agency reflects recent anti-quango sentiment, the latter’s definition as still “clearly separate” and “independent” of the Home Office, and the weighing of both options as potential decentralisation and de-politicisation strategies, are commensurate with the Efficiency Unit’s original populating of the governing ‘periphery’ (see Chapter 4). As Lygo later confirms: “the move to ‘agency’ status should mean that staff ... regard themselves and be regarded as the Prison Service rather than Home office staff” (1991, p.22).

Lygo’s interpretation therefore elaborates and extends the Next Steps concept. Indeed, unlike contemporary Public Bodies discourse, so firmly separatist is his understanding of ‘agency’ that, for the complex and politically-charged HMPS, only strengthened departmental oversight and sponsorship will render the generic model appropriate, “preventing the Prison Service [from] becoming isolated and inward-looking, which some have suggested would be a consequence of agency status” (1991, p.12). Thus, although different to quango delivery, outright agencification may induce such independence as to completely detach HMPS, to the detriment of ministerial responsibility and good governance. For this reason, the Next Steps model should be tempered.

Framework Document

Lygo’s recommendation was accepted in 1992, and HMPS became an agency the following year. Containing 74 per cent of Home Office staff (Talbot, 1996, p.5), it was the third largest in Next Steps (Whitmore, 1994, p.4). Against the backdrop of performance failure, Lygo’s ministerial

warning, and Derek Lewis's subsequent dismissal as director general, the first framework document is notable for its master narratives of organisational release, operational de-politicisation and chief executive authorisation.

Lygo had framed agencification as a watershed, writing of "the new Prison Service" and "the new organisation" (1991, pp.20, 21). This replicates in the framework, with its ministerial foreword describing "launching", "new direction", and the "challenges and opportunities" of agency status:

"The challenge is to find ways of improving the quality of service it [HMPS] provides – which means higher standards and better value for money. The opportunity is provided by more autonomy, and the freedom to develop new and imaginative ideas. I know there is a reservoir of talent at all levels in the Service – agency status will provide the means to release it." (HMPS, 1993, p.2)

As well as advancing a classically-NPM politico-bureaucratic "bargain" (Hood, 2001), in which autonomy is exchanged for value-for-money improvements, the minister here evokes a sense of organisational release, analogous to Next Steps' empowerment narrative. There is, for example, talk of "opportunity", "autonomy" and "freedom", and the metaphor of "releas[ing]" "a reservoir of talent". All imply that, previously, officials were constrained. This sense of release is heightened at the foreword's close:

"These are exciting developments. I wish the Director General and his staff every success in taking advantage of the opportunities that lie ahead." (HMPS, 1993, p.2)

The minister distances himself from director general: HMPS staff now report to the latter, and the politician departs with a word of encouragement as they engage with the new "opportunities" of de-politicisation – a further invocation of Next Steps emancipation.

Instantiating this removal of politics from operations is the absence of the Home Office logo and branding throughout the framework document, and the confinement of the first-person ministerial voice to its foreword. Moreover, the presence of two further voices – a personified agency perspective, and the dispassionate, quasi-contractual voice – enhance this department-

agency distancing. The former is found in the “Role and Task” chapter, where bureaucratic (not political) control of prison operations is asserted through first-person ownership – “*our duty*”; “*our vision*”; “*our goals*” (HMPS, 1993, p.4). The latter states dispassionately the authorities and obligations placed upon those party to the new relationship. For example:

“The Home Secretary receives reports from Her Majesty’s Chief Inspector of Prisons on inspections of prison establishments. The Home Secretary will ask the Director General to respond to recommendations on delegated matters.” (HMPS, 1993, p.7)

In specifying future courses of action (“receives”, “will ask”, “respond”) and identifying parties by job titles (“Home Secretary”, “Director General”), this third-person narrative voice enhances the evocation of principal-agent contractualism, compounding the politico-bureaucratic bargain previously expounded in the ministerial foreword.

The framework’s third salient feature is its authorisation of the director general – somewhat prophetic, given Lewis’s subsequent dismissal. This is particularly evident in the apportioning of “delegated” or “non-delegated” responsibilities:

“Members of Parliament will be encouraged to write direct to the Director General on matters for which the Director General has delegated responsibility. ... When a Member of Parliament asks a Parliamentary Question on a delegated matter, the Home Secretary will normally reply to the effect that the Director General will write direct to the Member. ... Parliamentary Questions on non-delegated matters will normally be answered by Ministers, advised by the Director General.” (HMPS, 1993, p.7)

As if delivering responsibilities from ministers to the director general, this differentiation between “delegated” and “non-delegated” matters again reinforces the sense of organisational release, contractualism and de-politicised operations. Notably, responsibility for parliamentary correspondence is not HMPS’s generally, or even that of its communications staff; rather, the agency head himself must fulfil this obligation. This level of specificity illustrates how the framework is less about the department-agency relationship than that between ministers and the appointed, newly-profiled bureaucrat. Although occasionally referencing HMPS as itself a

contractual party, the document mostly anticipates the personal minister-director general relationship:

“The Home Secretary will receive reports from the Director General on the following matters....” (HMPS, 1993, p.6)

“The Annual Report and accounts are submitted by the Director General to the Home Secretary....” (p.8)

“The Prison Service’s Framework Document will be reviewed jointly by the Home Secretary and the Director General.... The Home Secretary, the Permanent Secretary or the Director General may propose amendments.... Any amendments are subject to agreement by the Home Secretary, the Director General, the Treasury....” (p.10)

Of these personalising extracts, the final particularly elevates the director general to a position of authority. S/he will be “jointly” involved in the framework’s review; may propose changes; and must agree unscheduled amendments, alongside the Home Secretary. As such, the agency head is no ordinary official, but is empowered to discuss, debate and agree.

Such was the emphasis on the director general’s post-agencification authority that, prior to the agency’s launch, there was some uncertainty about the continuing need for a junior prisons minister (Lewis, 1997, p.14). This was also raised in a subsequent parliamentary hearing:

Chairman: *“[N]owhere in the documentation ... is there any description of a role for a Prisons Minister: the key players are to be the Home Secretary, the Permanent Secretary and the Chief Executive. What role ... are you expecting to play in the future...?”*

Minister: *“...What it will mean in practice is that I will continue to interest myself in the operational matters of the Prison Service.... I will in fact not make final decisions on those matters which are operational, but I shall certainly keep up-to-date.... I will not be making some of those operational decisions which I formerly had to make. ... I will see similar sorts of papers, only I will not make the final decisions.”* (Home Affairs Committee, 1993, p.11)

The Chairman’s reference to three “key players” points once more to the framework document’s personalised contracting between the Home Secretary and authorised director general, while his questioning of post-agency arrangements reinforces the idea of an organisational watershed. Temporality also features in the minister’s reply, when a before-and-after comparison and

implicit differentiation between “operational” and non-operational matters illustrates the new, de-politicised decision-making arrangements, for which the minister will monitor and observe, but not instruct. Thus, as elsewhere in the Next Steps-era discourse, agencification is interpreted in strongly autonomising and de-politicising terms.

5.3.2 The Court Service

The pre-agency Court Service – a division of the Lord Chancellor’s Department (LCD) – already published an annual report. This subsection considers the last of these prior to agencification, and the folio of documents accompanying the re-launch (Court Service, 1995a, 1995b, 1995c; LCD, 1995). Principally, it examines the framing of ‘agency’ as an enabler of consumerism, the chief executive’s authorisation, and the newly contractual department-agency relationship.

Enabling consumerism

Under Major’s premiership, civil service reform continued apace. The Citizen’s Charter emerged in 1991 to further entrench government consumerism (Prime Minister, 1991), and LCD embraced this, producing a “Courts Charter” that was hailed as “a new dawn in responsiveness to the public” (The Law Gazette, 1992). Accordingly, courts agencification discourse identifies the restructure as advancing this customer-service agenda. Box 5.2 formalises the enthymeme.

Box 5.2: Court consumerism

Truncated syllogism (enthymeme):

[#2a] The Court Service is improving customer service. **[#2b]** Better customer service is enabled by agency freedoms.* **[#2c]** Therefore, agency status will further the consumerist agenda.

[*Implicit premise]

Illustration from final pre-agency annual report:

[i]: *“One of the key challenges identified for the agency has been further to improve the service provided to court users. Work on meeting this challenge started some time ago, and there is evidence in this report of the progress that is being achieved.*

[#2a] ... *The change to agency status will provide the management of the Court Service with the opportunity to concentrate on operational issues. I am confident*

that this, together with the greater freedoms and flexibilities that the change brings, will enable the Court Service to achieve further improvements [#2c].” (LCD, 1995, ministerial foreword)

Illustration from framework document:

[ii]: *“The Court Service has now provided more than twenty years of service to the public and the judiciary [#2a] and I am confident that the current move to agency status will enable it to demonstrate still further improvements in that service [#2c]. ... As an agency, the Court Service will strive to improve the quality of service provided to the public in the courts [#2c].” (Court Service, 1995c, ministerial foreword)*

Box 5.2’s enthymeme contains an explicit first premise and conclusion [#2a/#2c], and implicit connector [#2b]. Both illustrations cite active consumerism [#2a], the first noting the “progress that is being achieved” and the second anticipating the “further improvements” still available. Similarly, the conclusion that agencification will advance this agenda [#2c] is made directly, with both illustrations emphasising the familiar empowering function of agency status – “provide”; “opportunity”; “enable”. As for the implicit connecting premise [#2b], although agencification’s “operational” focus and “freedoms and flexibilities” are cited, the mechanism behind their improvement of customer service remains latent. The requisite reader co-production is rhetorical (Jasinski, 2001) and signals taken-for-granted intersubjectivity (Feldman, et al., 2004). Therefore, as demonstrated with the Next Steps Report in Chapter 4, the benefits of independent management are treated as an unquestionable given.

Authorising the chief executive

Outside of the ministerial foreword, the Court Service framework is vocalised through a contractual third-person. This polarisation between the political foreword and managerial framework-proper once again invokes de-politicised operations, although, unlike HMPS, there is no support from a first-person personified agency. Still, throughout the agencification literature, new chief executive authority is emphasised:

“The move to agency status has meant that responsibility for policy development rests with the Headquarters of the Department, leaving Court Service managers free to concentrate

on the operational management of the courts. The Court Service is now headed by a Chief Executive, rather than an official in LCD HQ, who is directly accountable to the Lord Chancellor.... He now has direct management responsibility, inter alia, for personnel/training and the Court Building Programme/estate management in the Court Service, functions which previously fell to the Principal Establishment and Finance Officer for LCD. ... The post of Chief Executive will be subject to open competition no later than April 1997." (LCD, 1995, p.73)

This extract reiterates several previous ideas. Firstly, agency status is again narrated as an organisational watershed, here through the before-and-after comparison ("now ... rather than"; "now ... which previously") and anticipation ("no later than April 1997"). Secondly, it is framed as empowering; for example, in the claim of "leaving Court Service managers free to concentrate on the operational management". This narrated release ("leaving", "free") mirrors both the emphasis on agencification's enabling function in Box 5.2, above, and Next Steps' empowerment narrative. As for chief executive authorisation, the extract distinguishes between this new role and that of the former, less-empowered "official in LCD HQ" who oversaw both court policy and delivery. In particular, even though this is initially to be the same individual, the role's new, heightened status as a chief executive is established through its singular presentation, as if identifying a particular type of leadership from a range of possibilities ("a Chief Executive"), and the listing of its new competencies ("He now has direct management responsibility..."). This endowment of corporate service autonomy contrasts markedly with contemporary emphasis on inter-agency shared services, discussed below.

There are many further examples of leadership authorisation. As with HMPS, the chief executive will handle parliamentary correspondence (Court Service, 1995c, p.9), and, alongside the Lord Chancellor, will set agency targets:

"[The business plan details how] the Court Service aims to ... meet the key targets set for it for the year by the Lord Chancellor. It also lists the supporting targets which the Chief Executive has himself set...." (LCD, 1995, p.74)

This joint ministerial-bureaucratic ownership, whereby both parties contribute to a hierarchy of target setting, is paralleled in the framework's discussion of expenditure planning:

“The Chief Executive will each year submit to the Lord Chancellor his plans for current and capital expenditure....” (Court Service, 1995c, p.12)

Here, the chief executive owns the agency agenda – they are “*his plans*” that ministers endorse. Indeed, such is the extent of the anticipated delegation that explicit qualification is needed in a small framework appendix:

“[T]he Lord Chancellor will require the Chief Executive to consult the judiciary on a range of issues....” (Court Service, 1995c, p.8)

This mandating of judicial consultation reads as an ex-post qualification of autonomy, testifying to the extent of bureaucratic authorisation elsewhere. Furthermore, regarding judicial relations specifically, and compared with the post-MoJ partnership established in 2008 (see Section 5.2.3, above), this original requirement for consultation is significant for its implication of judicial-agency distance.

Agency contracting

A final prominent discursive feature of the Court Service literature is the contractual framing of the future department-agency relationship, demonstrated by this opening of the financial memorandum:

“All references to the Department should be read as meaning officials acting on behalf of the Lord Chancellor or Permanent Secretary ... as the Department’s Principal Accounting officer. References to the Court Service should be read as meaning officials acting on behalf of the Chief Executive.” (Court Service, 1995b, p.1)

Not only does this passage establish a contractual, party-to-party basis for the relationship (“all references”), but it also attaches powers and interests to particular offices (“*as the Department’s Principal Accounting Officer*”). Moreover, the extract separates “the Department” and “the Court Service” according to reporting lines, thereby elevating the chief executive to comparable status with the Lord Chancellor, both having officials “acting” on their “behalf”. As with HMPS, therefore, Courts Service staff are not LCD staff.

In anticipating the Public Expenditure Survey (PES) process, the financial memorandum then elaborates upon this hierarchical, principal-agency relationship:

“The Department is responsible for the effective functioning of the PES process. Its role is to: determine...; commission...; scrutinise and consider...; advise the Lord Chancellor...; [and] recommend... The Chief Executive is responsible for seeking the resources he needs... The Court Service: submits...; supports...; sets out its priorities and planning assumptions...; provides...; [and] participates...” (Court Service, 1995b, p.2)

The passage again portrays chief executive ownership (“the resources *he* needs...”), and yet the contrasting departmental and agency responsibilities – “determine”, “commission”, “scrutinise and consider”, “advise”, and “recommend”; versus “submits”, “supports”, “sets out”, “provides”, and “participates” – reasserts the Court Service’s contractual subservience. Thus, the LCD, as contractual principal, determines the final outcome; the Court Service (specifically, its chief executive), as agent, “submits” a request.

5.3.3 The Public Trust Office

Given their shared origins within the LCD, there is much continuity across Court Service and Public Trust Office (PTO) discourse. As such, this final brief subsection takes the opportunity of further illustrating this non-prison, consumerist approach to justice agencification by examining the PTO framework document.

Departure

Agencification came when the coalition for modernising public guardianship was emerging (see Section 5.2.2, above). Acknowledging, therefore, the uncertainty about future developments, the framework nonetheless presents agency status as a new beginning, with the minister’s foreword citing PTO’s “future direction” and again closing with good wishes for “the Public Trustee and her staff” (PTO, 1994, p.2). This evokes once more a sense of departure and expectation. Moreover, as previously, departmental-agency distancing is enhanced by the confinement of ministerial voice to the opening foreword, while the contrasting first-person

agency – “*Our approach ... we will*”; “*our customers*” (1994, pp.4, 11) – vocalises the newly devolved ownership.

Enabling consumerism

PTO’s underperformance was a concern during this period (Committee of Public Accounts, 1994). Reflecting its markedly differing operation to the troubled HMPS, however, and following the Court Service model, ‘agency’ is framed as enabling consumerism rather than performance turnaround:

“The establishment of the PTO as an agency will enhance its ability to deliver these services more efficiently and effectively to its clients.” (1994, p.2)

“I am sure that the establishment of the PTO as an agency will provide the right environment to allow it to meet more effectively the needs of its various, and in some cases disadvantaged, customers.” (p.2)

In both extracts, performance improvement is described in terms of citizen benefit, whether “clients” or “customers”. This follows the LCD’s embracing of the Citizen’s Charter programme, noted above. Moreover, agencification is again empowering (“enhance”, “provide”, “allow”) and emancipatory, removing old barriers to service improvement (“*its ability to deliver*”, and “provide the *right environment*”).

Authorisation and personalisation

Another similarity between PTO, HMPS and the Court Service is the personalisation of the agency contract. The chief executive’s “authority” is frequently cited, as is their personal accountability. For example, the assertion that both the chief executive and permanent secretary are “liable” before Parliamentary committees alludes once more to the underlying public service bargain of autonomy in exchange for service improvements – a logic formulated more explicitly in the ministerial foreword:

“[This framework] outlines the managerial freedoms that the Public Trustee possesses in order to run and be accountable for the PTO’s day to day operations. It also sets out the areas in which the performance of the PTO will be monitored.” (1994, p.2)

Again, the bargain is constructed between the newly-empowered chief executive, who is bestowed (“possesses”) with power of independent action (“managerial freedoms”), but in turn gains new responsibilities (“accountable”) and will be audited against these (“monitored”). As with HMPS and the Court Service, this authorisation makes for a personalised framework:

“The Chief Executive will carry out the full range of receivership duties when she is appointed by the Court... She will manage and administer, in their best interests, the property and affairs of those for whom she acts.” (1994, p.5)

“The PTO will aim to lay before both Houses of Parliament the accounts, together with the Chief Executive’s report..” (p.13)

Here, it is not the PTO agency that performs incapacity receivership duties, but rather a single official – “the chief executive”. As such, “she” will personally submit an account with the financial statements – “the Chief Executive’s report”.

5.3.4 Summary

Referencing both the policy histories described above and the Next Steps idea’s elements of meaning registered in Chapter 4, this section sought interpretations of 1990s justice agencification. Occurring prior to the major reconfigurations that rationalised the landscape into its current MoJ-led format, these disaggregations removed functions from the Home Office and former LCD, aiming either for performance turnaround through de-politicisation or advanced consumerism. Both arguments complement the Next Steps belief in managerialist public service improvement, while voice and discursive differentiation similarly extend that central narrative, evoking de-politicised operations, contractual decentralisation and a newly empowered frontline. What remains now is to compare contemporary justice reforms against this Next Steps-era benchmark.

5.4 Restructuring the Ministry of Justice

Upon its formation in May 2007, MoJ reviewed how to craft the disparate Home Office and Department for Constitutional Affairs (DCA) functions into a coherent departmental structure.

The resulting “business model” included five groups: NOMS; Access to Justice; Democracy, Constitution and Law; Criminal Justice; and Corporate Performance (MoJ, 2009). NOMS thus gained dual status as the largest agency and “business group”, while the former DCA’s delivery activities – courts, tribunals, public guardianship, and legal aid – were grouped together under the “Access to Justice” heading. The three additional groups conducted further policy, strategy and sponsorship, and delivered some pan-MoJ corporate services. Thereafter, further “Transforming Justice” reforms launched in 2009, responding to the emerging fiscal tightening. Ten projects included developing alternative sentencing options, downsizing the senior civil service, incentivising local justice agencies to reduce reoffending (a precursor to the Coalition’s Payment-by-Results pilots, see Chapter 8), and expanding cross-departmental shared corporate services (Gash & McCrae, 2010, p.15). However, by 2010, the deteriorating economic situation meant that pre-election planning expanded the (stalled) senior civil service redesign into a more radical “operating model” review (Interview_052).

The efficiency imperative then increased at the Coalition’s Spending Review, which required of MoJ 23 per cent cost reductions, including 33 per cent in administration (HM Treasury, 2010, pp.81, 87). Justice was amongst the last settlements agreed (Interview_053), and, during ongoing Treasury negotiations, the Operating Model Blueprint was finalised. Alongside policies reducing prison and legal aid demand, this would deliver savings through the already-announced court-tribunal merger, the recreation of the Legal Services Commission as a new executive agency, extensive reform within the wider Public Bodies programme (see Chapter 4), and increased inter-group sharing of corporate support and middle-office functions. The Blueprint thus removed IT, HR, procurement and other back-office services from individual agencies, to deliver them thereafter on a pan-MoJ ‘shared service’ basis (Document_13; Civil Service Capability Reviews, 2012). It also made a single Justice Policy Group to undertake the entire policymaking activity of the MoJ family, which, as Chapter 7 explores, had formerly been distributed across the central department and its agencies.

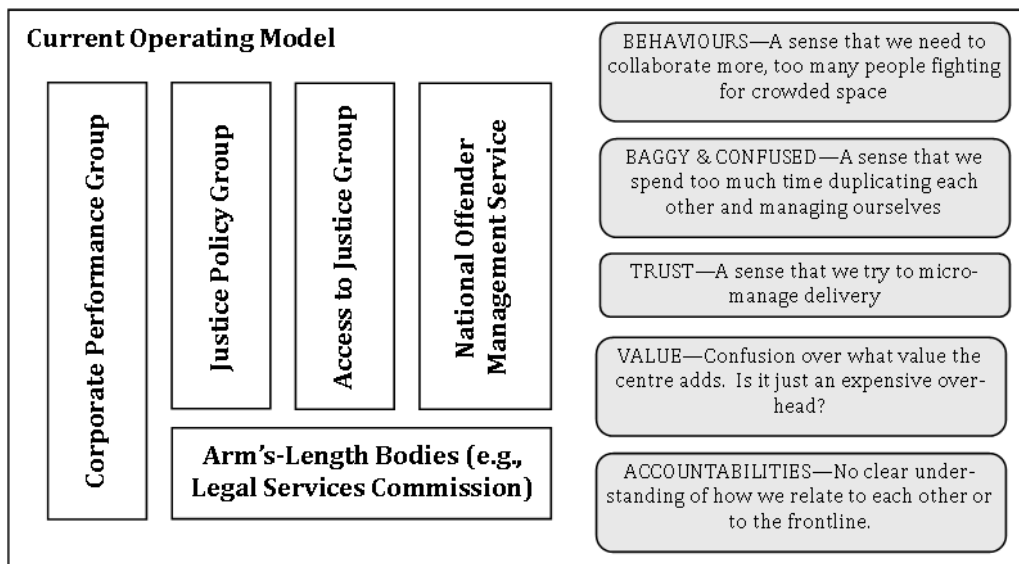
The practical impact of this centralisation and consolidation is recounted in the remainder of the thesis, the fieldwork having been completed during and immediately after the Blueprint’s fast-paced implementation. Complementing the historic analysis above, the remainder of this section probes contemporary reform discourse for additional meso-level renderings of ‘agency’ through MoJ staff interviews and (un)published documentation. Initially, it considers the Operating Model redesign itself, before turning to the new Legal Aid Agency.

5.4.1 Agencies in the MoJ Operating Model Blueprint

The Blueprint

Twenty-one PowerPoint slides codify the Operating Model Blueprint (Document_13). Detailing the overall reform trajectory, these construct an opposition between agencies and arm’s-length bodies, initially through the graphic and text reproduced in Figure 5.3, which distinguishes between the old MoJ’s “direct” and “indirect” delivery mechanisms.

Figure 5.3: The old MoJ



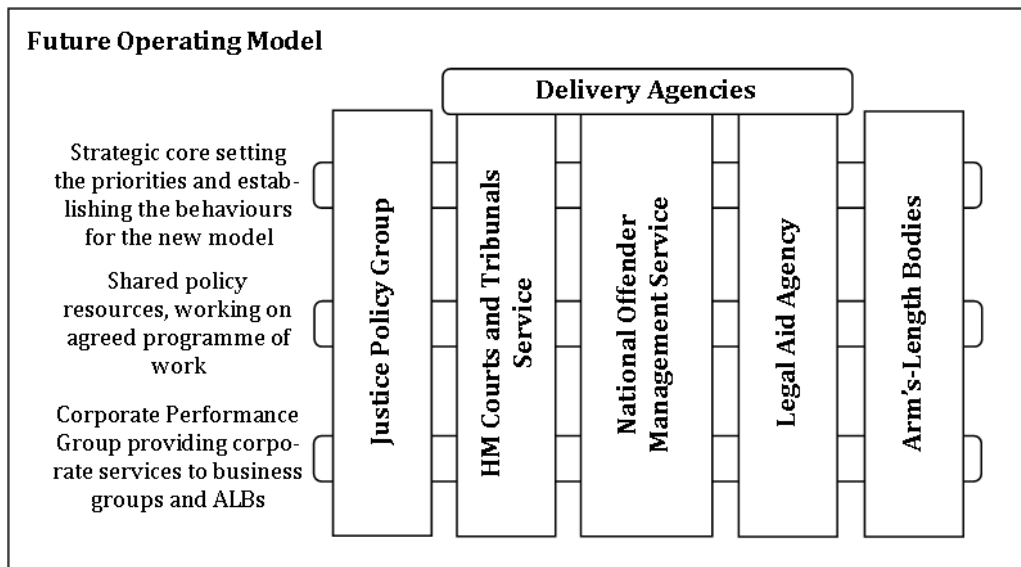
(Adapted from Document_13, p.4)

“Our current operating model is built around five [sic] key business groups. Each group is charged with delivering directly or indirectly (for example, through our arm’s-length bodies) ministerial priorities.” (Document_13, p.4)

Figure 5.3 draws the “current operating model” with one horizontal and four vertical boxes. Therein, NOMS and the three Access to Justice agencies (HM Courts Service, the Tribunals Service, and the Office of the Public Guardian) are depicted alongside *other* departmental units, while the sponsored arm’s-length bodies (including LSC) are externalised by their alternative, cross-cutting geometry. This differentiation parallels the textual dualism of “direct” and “indirect” delivery (cited beneath Figure 5.3), with only the vertical silos – not the horizontal arm’s-length bodies – being implicitly attached to the Ministry’s political nexus. Derived from staff engagement, the five critiques on the right of Figure 5.3 diagnose this incumbent design’s problems, and thus prompt many of the Blueprint’s reforms. In particular, given the inside-outside, agency-quango differentiation, testimony of previous “fighting for crowded space”, “managing *ourselves*”, and “confusion over what value the centre adds” all anticipate the removal of agency sponsorship (see below).

Figure 5.4 reproduces the visual impression of a newly interconnected Moj. Unlike Figure 5.3, it has five columns, with the Legal Aid Agency gaining its own lengthways box next to the other Moj agencies and alongside the remaining arm’s-length bodies.

Figure 5.4: The new Moj



(Adapted from Document_13, p.5)

This redrawing of MoJ-quango relations – from horizontal and detached to vertical and connected – follows the wider Coalition commitment to re-involving ministers and departments in arm’s-length bodies. Thus, the Corporate Performance Group box is replaced by a cross-cutting ribbon that binds together all functions through their new sharing of single support services. Two further ribbons similarly denote the all-encompassing reach of the policy programme and “strategic core”, together making for much more integrated justice operatives.

The remainder of the Blueprint proceeds to detail the new sharing of corporate and policy services, the necessary elimination of inter-group duplication, and the new role of the “strategic core”, which, in a further indication of increased interdependency, has “members ... dispersed throughout the operating model”. Textually, the agency-quango distinction continues. For example, regarding the mandatory shared services, the Blueprint makes clear that “this applies to ALBs [arm’s-length bodies] *as well as* the core department *and* agencies” (Document_013, p.9). Here, the ordering and different connectors (“as well as”; “and”) further implicates an internal-external distinction, albeit one that the Blueprint is subverting in order to release economies of scale. Furthermore, following Figure 5.3’s critiques, a PowerPoint slide on the department’s sponsorship activities describes uncertainty around “what value ... we add through sponsoring our executive agencies”, and proceeds to abolish this practice. In so doing, Next Steps’ principal-agent contractualism, as implemented in 1990s justice agencification, all but disappears. By contrast, however, for arm’s-length bodies, the Blueprint aspires towards strengthened ALB oversight. Overall, then, this makes for a strongly integrative story, albeit one resting upon a foundational agency-quango distinction.

Agency as governance mechanism

Compounding this reinterpretation of agencies as departmental and not arm’s-length, a senior official spoke publicly of their distinct transparency and controllability when compared to quangos:

“You have to understand the difference between an executive NDPB and executive agencies. If you are an executive agency, your primary accountability is to me. I employ you and so you have to tell me everything that is going on and all the systems are geared towards that. So I have full sight of everything that is going on in NOMS and in the Courts Service and the Tribunals Service. In the LSC, I’m not even the employer. I don’t select the chief executive. I don’t select the team. This is at arm’s length. ... [T]hat is why the government think it is wrong ... that it is an NDPB.” (Committee of Public Accounts, 2011, ev.10)

Positing the now familiar argument of agencies’ better accountability, this extract essays both explicit and implicit differentiation with quangos, insisting that “you have to understand the *difference*”, and then contrasting the two models through positive and negative evaluation – “*primary accountability*”, “*tell me everything*”, “*full sight of everything*”; versus “*not even the employer*”, “*don’t select*”, “*wrong*”. Thus, as in the wider Public Bodies Reforms, the “arm’s-length” nature of NDPBs is again opposed by the departmental status of agencies, for which full disclosure is a given.

On a similar understanding of agency-enabled transparency, the Blueprint’s retention of agency status for the large MoJ business groups was rationalised in an interview conversation by the accountability infrastructure that it endows (see Box 5.3, below). Eschewing any reference to the guarding of managerial autonomy, this interpretation accords with the Public Bodies’ reframing of agencification as a departmentally integrated format, and yet, significantly, its argument develops without any reference to unaccountable quangos. Given that in Chapter 4, conversely, this reinterpretation was effected primarily through discourse aimed at denouncing NDPBs, its recurrence here is notable for signalling a commensurate but alternatively derived reframing of the accountability-ensuring agency.

Box 5.3: Agencification for accountability

[T: Why is NOMS an agency and not just a business group?]

I: Good question.* “[T]hings that come to my mind are that you have a more formal board governance structure with non-execs there, which is really helpful, because non-execs can add real value, experience, and maybe having them at the board is not the only way of doing that, but it’s a good way which adds another level of scrutiny. I guess I

would [also] probably say, because their budgets are so big, having to report *their own accounts* is useful; and, along with that, having *Agency Accounting Officers* accountable for the large chunks of money means that there's *more direct accountability*.

*“So I guess there’s two sides: part of it is it gives *responsibility and accountability* to a chief exec and their board structure; but the flip side of it is it gives a bit of insulation to the permanent secretary, who’s running a large department and probably doesn’t want to be the sole person responsible for everything.”* (Interview_018)

[*Hereafter, italicised text is direct quotation; non-italicised text is paraphrasing. This formatting was outlined in Chapter 3. The full style sheet is detailed in Appendix IV]

Box 5.3 narrates ‘agency’ as a format assuring accountability and sound corporate governance. The first paragraph references: “a more formal board *governance* structure”; agency “accounts”; and “more direct *accountability*” through the “Agency Accounting Officer” role. Moreover, “non-exec” involvement “adds another level of *scrutiny*”. For these reasons, agencification ensures “responsibility and accountability”, as the concluding paragraph confirms, while also allowing companioned rather than “sole” responsibility for the permanent secretary – attractive, given MoJ’s budgetary size.

Sponsorship

Given the decentralisation and principal-agent contractualism envisaged by Next Steps, a key component of the traditional agency model has been oversight by a departmental sponsorship unit which considers performance, target setting, and policy relations (Cabinet Office, 2006; James, et al., 2011). Indeed, as noted above, to prevent against full detachment of HMPS, Lygo (1991) saw a strong departmental sponsorship function as vital for its success as an agency. As such, the abandoning of executive agency sponsorship in the MoJ’s 2010 Blueprint represents a significant departure. Box 5.4 elaborates on this decision, drawing again on the contemporary notion of ‘agency’ as itself guaranteeing *intra*-ministry transparency by virtue of its structural indivisibility from the core department.

Box 5.4: Agencies: a mature relationship

I: In deciding not to sponsor agencies, *“they almost forgot about the OPG [Office of the Public Guardian] ... because the whole principle was that if you’ve got a director general being chief exec [and] coming to the [MoJ] board, you don’t need ... a group of people monitoring what NOMS is doing, because NOMS should tell you”,* as should HM Courts and Tribunals Service (HMCTS). *“And if you’ve got the right levels of trust and visibility, then [the permanent secretary] should be able to say to [NOMS chief exec] or to [HMCTS chief exec]: ‘What are you doing? Tell me what you’re doing’, rather than having a group of people asking pointless questions. ...*

“It was probably the right decision; I think we forgot that we had the OPG at a smaller level...” (Interview_018)

Principally, Box 5.4’s differentiation pivots on size, there being the OPG “at a smaller level”, and then the much larger, director-general-led HMCTS and NOMS, which require no sponsorship because their leaders attend the departmental board. This everyday interaction is enlivened by the vocal switch from third-person narrative (“they almost forgot”), through second-person principles (“you don’t need”), to first-person permanent secretary (“Tell me what you’re doing”). This progression, along with personal references to officials’ names (redacted here), normalises agency-department transparency as a conversational matter, thereby reinforcing the closing contention that formal sponsorship was “pointless”, representing, perhaps, the unproductive “managing ourselves” diagnosed in the Blueprint redesign (Figure 5.3, above). The smaller OPG, however, has no board-level representation and thus has latterly been given differentiated treatment, as Box 5.5 explains.

Box 5.5: Sponsoring OPG?

I1: *“We’ve actually just started sponsoring the OPG.... I don’t think it’s quite the same as, maybe, the sponsorship relationships we’d have directly with some of the ALBs, but it’s about the fact that ... they are a small body, and therefore it seems appropriate to perhaps have some of the principles and things that [I2’s] been talking about.”*

I2: *“I think we sort of refer to it as a ‘sponsor-type’ relationship, because it isn’t actually sponsorship, ‘cause we don’t sponsor the EAs. But there’s a fine line, really.”* (Interview_029)

Box 5.5 again differentiates OPG by its size, this explaining its partial reversal of the no-“EA”-sponsorship principle. However, both interviewees emphasise the continuing agency-ALB differentiation, the first remarking that, “I don’t think it’s quite the same”, and the second confirming, “it isn’t actually sponsorship”. Thus, contravening Next Steps’ emphasis on contractualism and the politico-administrative bargain, this new framing of *intra*-departmental agencies (as opposed to external quangos) makes for OPG’s sponsorship representing an anomaly, and only a “‘sponsor-type’ relationship”.

5.4.2 The Legal Aid Agency

Replacing the Legal Services Commission (LSC) in April 2013, the Legal Aid Agency (LAA) provides public funding for criminal defendants and some civil claimants. This reorganisation was incomplete during the fieldwork, and LAA does not feature in subsequent chapters. However, it was central to the Blueprint redesign and provides useful illustration of recent justice agencification. Accordingly, this final subsection considers the business case (MoJ, 2011d) and new framework document (MoJ, 2013a).

The case for change

LSC performance declined under Labour’s final years, and ministers and officials alike perceived the quango as unresponsive to departmental direction. Asked to review governance and delivery, Ian Magee (2010, p.3) identified poor financial transparency and confusion on “who is now calling the shots over policy”. Several options were considered, including reconstitution as an agency, and this was quickly accepted by the outgoing Labour Lord Chancellor and then legislated by the Coalition. The very publication of a supporting business case departs from Next Steps practice. Its two principal arguments centre on organisational performance and political control. The first, formalised in Box 5.6, is that quango isolation contributed to LSC’s decline, and must be reversed.

Box 5.6: Performance improvement

Truncated syllogism (enthymeme):

[#6a] Isolation creates performance failure.* **[#6b]** As a statutory quango, LSC is isolated. **[#6c]** Therefore, to improve performance, LSC must be integrated.

[*Implicit premise]

Illustrations from MoJ (2011d):

[i]: *“The current system ... is unclear and confusing, and is compounded by organisational barriers **[#6b]** between the MoJ and LSC.”* (p.6)

[ii]: *“The MoJ will be able **[#6c]** to operate a standard performance management framework consistent with businesses within its remit and better **[#6c]** align all justice policies ... with other agencies. It will allow a rapid response **[#6c]** to pressures, changes in priorities and new government initiatives....”* (p.6)

[iii]: *“Policy development and policy implementation should be considered in conjunction with sister organisations/agencies in order to ensure wider efficiency and service improvements **[#6c]** through improved resource management across the justice system. It will provide greater opportunity **[#6c]** for efficiency savings through rationalisation ... and through sharing corporate functions with the wider MoJ family.”* (p.7)

Box 5.6 is enthymematic, with an explicit second premise and conclusion [#6b/#6c], but implicit opening [#6a]. Thus, LSC’s prior isolation is established directly by reference to problematic “organisational barriers” [i], and indirectly in anticipating improved integration – “better align[ing] all justice policies” [ii]; policymaking “in conjunction with sister organisations” [iii]. Similarly, the conclusion that centralisation should be pursued [#6c] is conveyed explicitly through positive description – “be able”, “better”, “rapid” [ii]; and “improved”, “greater opportunity” [iii]. Like Next Steps, therefore, agencification represents a solution, but to a fundamentally different problem: organisational isolation, rather than monolithic bureaucratic integration. Thus, whereas the Efficiency Unit’s Report made enthymematic recourse to the benefits of management independence (see Chapter 4), here the business case relies upon intersubjective recognition of the problems of isolation [#6a].

Like the wider Public Bodies Reforms, the LAA business case’s second argument is that agency status will increase ministerial control over, and accountability for, legal aid (Box 5.7).

Box 5.7: Improving control and accountability

Perfect syllogism:

[#7a] Ministers and the MoJ are inevitably perceived as accountable for LSC.

[#7b] Statutory isolation is incommensurate with accountability. **[#7c]** Therefore, LSC must be integrated.

Illustrations from MoJ (2011d):

[i]: *“Whilst the LSC remains an NDPB **[#7b]**, if its Commissioners and Chief Executive choose to operate in an uncooperative manner and contrary to Government policy then it could be difficult for ministers to exert sufficient influence and gain an acceptable level of control which matches the accountability they have and are perceived to have by the public **[#7a]**. Equally the Departmental Accounting Officer needs **[#7b]** direct accountability for the legal aid fund which constitutes 25% of the Ministry’s budget”. (p.4)*

[ii]: *“Preferred option: LSC becomes an executive agency **[#7c]**.” (p.10)*

Box 5.7 is a perfect syllogism. Following the contemporaneous narrative of constitutional propriety that underpinned the Public Bodies Reforms (see Chapter 4), the argument is predicated on the inevitability of ministers’ ultimate accountability for quangos **[#7a]**. The underlying claim of unfairness at their incommensurate level of control **[#7b]** extends to the permanent secretary, who, as “Departmental Accounting Officer”, is responsible for financial legality and propriety. Thus, in positioning agencification as “preferred option” of the business case, the contention is that this assures appropriate control both for ministers and the department **[#7c]**. In other words, agencies have “direct” rather than indirect relationships with ministers and the permanent secretary, being located, in the terms of Chapter 4, within the governing ‘centre’ rather than arm’s-length ‘periphery’.

In this manner, both arguments posit foundational difference between agencies and quangos, with departmentalisation correcting the poor performance and political control associated with

isolation. This reconstruction of the governing centre as inclusive of agencies is bolstered by the business case’s anticipation of new organisational singularity from previous multiplicity, particularly evident in its evaluation of the “do-minimum” economic benchmark of retaining but reforming LSC as an independent quango:

“Weaknesses: The division and duplication between ... LSC and MoJ will continue to cause confusion, continuing the practice of uncollaborative working. ... There is a significant risk that indirect management of this budget could lead to poor risk control... Perception from external stakeholders that nothing has changed and confusion around ‘who calls the shots’ remains. The organisation would remain at arm’s length and issues around accountability and lack of clarity would continue; ministers would have limited direct control. The LSC would remain an outside player within the MoJ...” (MoJ, 2011d, p.9)

In this extract, the idea of old dispersal and new concentration is evoked through differentiating terms (“division”, “confusion”, “uncollaborative”, “indirect” and “outside”) and the implied characterisation of agencies with their antonyms – unity, clarity, collaboration, direct and inside. This makes for the further framing of agencification as integrative, as is confirmed later in references to anticipated “sole accountability”, “direct control” and a “consistent and single legal aid strategy” (MoJ, 2011d, pp.10, 19). In other words, ‘agency’ allows de-isolation through consolidation and organisational singularity.

Framework Document

Primary legislation abolished the LSC quango in 2012, transferring its powers and obligations to the Lord Chancellor. Illustrating key contemporary themes of agencification, and their departure from the 1990s model, the new LAA framework document (MoJ, 2013a) provides a useful empirical conclusion.

The 1990s justice frameworks, reviewed above, evoked operational de-politicisation, chief executive authority and politico-bureaucratic bargaining through vocal polarisation. In 2013, conversely, the LAA framework contains no ministerial foreword and no personified agency voice. Moreover, here, the description of new roles and responsibilities emphasise *intra-*

departmental contracting *between* civil servants, rather than an internal-external politico-administrative bargain:

“This Framework Document sets out the arrangements for the ... Legal Aid Agency, agreed between the Permanent Secretary and the Chief Executive ... with the approval of the Lord Chancellor.” (MoJ, 2013a, p.1)

“Any departure from the provision of the Framework Document must be agreed in writing on a case-by-case basis between the Permanent Secretary and Chief Executive, if appropriate, with the approval of the Lord Chancellor....” (Ibid.)

Both extracts retain the 1990s frameworks’ tone, being prospective (“arrangements for”; “any departure from”) and contractually binding (“must”). Indeed, the wider framework document continues the old, quasi-contractual presentation, with numbered paragraphs and the narration of MoJ and LAA as ostensibly separate, contracting parties. However, whereas, contractual agreement was before largely narrated as between chief executives and politicians directly, here it primarily pertains to “the Permanent Secretary *and* Chief Executive” (the “and” positing their equivalence), and only requires political “approval” thereafter. Unlike Next Steps, therefore, contemporary agencification represents within-department delegation between senior civil servants, following Box 5.4’s discussion of the conversational rather than formal nature of agency accountability. It has no material impact upon ministerial responsibilities, since LAA and MoJ officials are undifferentiated in terms of their *direct* reporting to ministers.

The LAA framework emphasises the statutory independence of the Director of Legal Aid Casework – a post legislated in 2012 to ensure apolitical adjudication of funding requests (MoJ, 2013a, pp.9-10). However, as in the wider Public Bodies discourse (and particularly Chapter 4’s example of the new education testing agency), the framing of agency autonomy is confined to this technical impartiality, without mention of management independence. Indeed, generally, the framework’s emphasis is on organisational integration rather than decentralisation. For instance, within the ostensibly contractual narrative, it is asserted “the Department will set terms and conditions (including all issues to do with pay and remuneration) of employment and

procedures” (MoJ, 2013a, pp.16, 18-21). Moreover, “reflecting the Departmental Operating Model”, corporate functions are to be provided by MoJ Shared Services. This contrasts with the original Next Steps proposals, as well as the Efficiency Unit’s (1991) subsequent advocacy of further corporate delegations and all three 1990s frameworks’ expectation of additional chief executive responsibilities being made available in the months after agencification, including in matters of pay and grading. Therefore, the terms of the MoJ-LAA relationship modify former justice agency practice considerably.

5.5 Discussion

Together, this meso-level discourse from the 1990s and 2010s makes for two different readings of justice agencification. Initially, while some synchronic multivocality was registered between the Home Office’s pursuit of a performance turnaround solution and the LCD’s two consumerist autonomisations, both interpretations cohere with the core Next Steps idea of the managerialist, empowering and decentralised agency. Indeed, this historic discourse concretised the central idea of de-politicised operations: explicitly, through references to personalised public service bargains between ministers and newly-authorized chief executives; and implicitly, through contrasting first-person political and third-person contractual narratives. Moreover, in terms of differentiation, vocal polarisation against the personified HMPS and PTO compounded the construction of ‘agency’ as a decentralised organisational form and cemented the Next Steps bifurcation of the governing centre and periphery. By contrast, after 2010, the LAA’s creation and wider MoJ Blueprint redesign narrate a very different role for agency status. As in the contemporaneous Public Bodies Reforms, agencification is pursued principally to assure political accountability for, and control of, executive operations. Hence, although still representing a public management solution, the Coalition’s reclassification of legal aid delivery is motivated by a desire to improve performance, transparency and political control through eliminating isolation and achieving full departmental integration. In short, agencification is now about re-politicisation and de-autonomisation. Thus, vocally, the LAA’s framework represents

an intra-departmental agreement, rather than a contractual politico-administrative bargain. Moreover, it guarantees independence only in terms of apolitical funding adjudications. Table 5.1 summarises this second diachronic comparison.

Table 5.1: Comparing justice agencification

			Argumentation	Narrative voice	Discursive differentiation
Next Steps	Home Office	HMPS (1991-93)	Performance turnaround by <i>de-politicisation</i>	Ministerial, agency and contractual; polarisation evokes <i>de-politicisation</i>	Department versus <i>decentralised</i> agency
	Lord Chancellor's Department	PTO (1994) Court Service (1995)	Consumerism by <i>autonomisation</i>	Ministerial and contractual; polarisation evokes <i>de-politicisation</i>	
Coalition	Ministry of Justice	LAA (2011-13)	Performance turnaround and improved accountability by <i>de-autonomisation</i>	Contractual; singular, bureaucratic perspective evokes agency as intra-MoJ <i>corporate governance solution</i>	Department and <i>centralised</i> agency versus arm's-length body

5.6 Conclusion

This chapter began by outlining key justice developments since the 1980s, including expanded penal populism, magistrates' courts and probation centralisation, tribunal modernisation, and public guardianship reform. Setting aside the only-recently agencified legal aid operation, these functions – offender management, courts and tribunals administration, and mental incapacity safeguarding – are amongst MoJ's principal responsibilities, and their delivery through NOMS, HMCTS and OPG is explored further in the remaining empirical chapters. Together, they make for a significant department of state, with a large and multifarious remit that carries significant political and social consequences for failure. Moreover, by virtue of its constitutional role as executive partner of the judiciary, the MoJ's court and tribunal functions face governance challenges that are unparalleled across Whitehall.

Against this backdrop, the chapter latterly charted the meso-level reinterpretation of justice agencification since the original Next Steps rollout. Epitomised by initial doubts over the continuing need for a junior prisons minister in the post-agencification Home Office, this first-generation reform was narrated as operational de-politicisation and autonomisation, following closely the Efficiency Unit's central recommendations. By contrast, justice restructuring in the early 2010s reconstructs agency status as an anti-isolation and integrative measure, better assuring operational performance, corporate transparency and political accountability through departmentalisation. Commensurate, therefore, with the ideational reinterpretation registered previously in the Public Bodies Reforms, this contemporary 'agency-as-corporate-governance' construct recurs in some of the *emic* accounts of organisational identity explored in the next chapter.

Chapter 6 – Agency Identity in the Ministry of Justice

6.1 Introduction

Chapter 5 advanced a second comparison of historic and contemporary agency discourse, complementing the foregoing ideational analysis by examining sector-specific developments. Again, this found diachronic discontinuity between Next Steps and Coalition Government restructuring, but notable synchronic consistency within the two reform episodes. Specifically, reflecting the disparate contexts of prisons, courts and public guardianship, their agencification was originally rationalised either for performance turnaround or improved consumerism. Predicated on ministerial distance, chief executive authorisation and contractual accountability, these reform arguments promulgate Next Steps themes of managerialism, empowerment and decentralisation. Conversely, the 2010 MoJ reforms reframed ‘agency’ as assuring not externalisation and de-politicisation, but internal corporate governance and political control, particularly – but not exclusively – when compared to arm’s-length bodies. This contemporary departmentalisation extends and elaborates the Public Bodies Reforms’ reframing of the centralised executive agency, pointing, again, to macro-meso consistency, albeit gathered around a marked reinterpretation. Overall, then, the suggestion thus far is of synchronic consistency beneath diachronic change, with departmental (meso) discourse elaborating transitive (macro) politico-administrative ideas.

The final exploration of agency meaning, below, now considers whether this synchronic macro-meso harmony extends to localised agency practice. Assuming relationally-constituted organisational identity (Ashforth & Mael, 1996), and attending particularly to narrative voice and discursive differentiation, the chapter examines claims of interorganisational similarity and individuality in the contemporary justice agencies – the National Offender Management Service, HM Courts and Tribunals Service, and the Office of the Public Guardian. Not only does this story

something of the *emic* experience of contemporary governance, but it also offers interpretive resources for registering the embedded, situated accomplishment of agency meanings following the ethnographic sensibility and part-whole dialectic of the hermeneutic circle (Baszanger & Dodier, 2004; Watson, 2011; see also Chapter 3).

The first section elaborates the relational basis of organisational identity, and the following three employ this in accounting for ‘agency’ within each delivery body. The closing discussion then undertakes the synchronic and diachronic comparison. While some evidence of contemporary departmentalisation is noted, in line with previous macro- and meso-level interpretations, more profound is the intra-MoJ multivocality whereby ‘agency’ interpretations variously gather around the (unfulfilled) promise of de-politicisation in prisons, constitutional correctness in courts and tribunals, and businesslike corporate governance in public guardianship. This polyphony indicates a differentiated evolution across the macro, meso and micro platforms.

6.2 Relational organisational identity

The chapter proceeds from the hermeneutic assumption that the imposition of sameness or difference is central to meaning-making (Miller, 2012; Torfing, 2005; White, 1999). Following Fairclough’s (2003, p.88) contention of “the continual social process of classification”, this maxim already underpins the general analytic framework, having highlighted, for instance, the reframing and departmentalisation of agencies in the Public Bodies Reforms, effected through reversing former agency-periphery equivalence and agency-centre difference (see Chapter 4). Such comparative classification is similarly worked in identity production. As Cheney and Tompkins (1987, p.5) explain, “identification” is a process that develops and maintains “‘sameness’ or ‘substance’ against a backdrop of change and ‘outside’ elements”. Similarly, for Albert and Whetten (1985, p.267), identity functions by distinguishing “the individual as recognizably different from others (and similar to members of the same class)”. In other words, identity is “relational and comparative” (Tajfel and Turner, in Ashforth & Mael, 1996, p.24).

The subject matter of identity research has latterly expanded from individuals to groups (Brown, 2001). Thus, as Albert and Whetten (1985, p.267) contend, “organizations define who they are by creating or invoking classification schemes and locating themselves within them”. Similarly, Ashforth and Mael suggest:

“Interorganizational comparisons provide the figure-ground contrast for crystallizing and articulating a unique identity. Like any social actor, a given organization is measured against similar referents ... because this enables the perceiver to draw subtle distinctions and thus better assess relative differences.” (1996, p.24)

Relational identity is largely a linguistic accomplishment (Brown, 2001; Cheney & Tompkins, 1987), and previous narrative research has treated organisational stories as “identity performances” (Humphreys & Brown, 2002, p.440). Indeed, according to Cortazzi (2001, p.388), one of narrative’s main functions is “in the formation and maintenance of identity” by allowing “individuals and groups [to] make sense of themselves”. Attending to the imposition and subversion of textual and vocal distinctions, the general analytic framework developed in Chapter 3 can register explicit and implicit claims to interorganisational sameness and difference in stories from the MoJ agencies. In particular, the following attends to ‘horizontal’ comparisons between agencies, and ‘vertical’ comparisons with the core MoJ.

6.3 The National Offender Management Service

6.3.1 Overview

NOMS is MoJ’s largest agency, established in 2008 to oversee 35 NDPB Probation Trusts, commission private prison places, and manage the public custodial estate. In 2011-2012, operating costs were £3.93bn, and directly-managed staff (excluding probation) averaged 45,352 FTE (NOMS, 2012, pp.52, 68). As Chapter 5 explained, NOMS initially formed in 2004 to house the still-fledgling National Probation Service headquarters and sponsor HM Prison Service (HMPS) – a separate agency since 1993, soon at the centre of the Howard-Lewis affair. In 2008, agency status expanded to encompass the whole National Offender Management Service (MoJ, 2008), which has since been informally rebranded as ‘NOMS#2’. This pursued

regional commissioning across 2008-2010, after which the Spending Review prompted development of five restructure options, including outright de-agencification (NAO, 2012b). Retaining but reforming the agency, Coalition ministers endorsed a national and ‘functional’ structure (NAO, 2012c), seeking annual savings of £884m by 2014-15. This third iteration – “NOMS#3” or “NOMS-Mark-2.75”, as it is known (Interview_015; _026) – removed 649 of the previous 2,400 headquarters posts (NAO, 2012c; NOMS, 2012). Central directorates include: Commissioning and Commercial; National Operational Services; Probation and Contracted Services; and Public Sector Prisons, where nine managers oversee the uniformed Prison Service (NOMS, 2011a). Although participating in MoJ shared services, there are also finance, ICT and HR directors. The agency’s headquarters co-locate with other justice functions directly opposite MoJ’s principal Westminster building.

NOMS is undergoing considerable policy reform. Eight public prisons were tendered in 2011-2012 (MoJ, 2011c), and Payment by Results and prisoner employment schemes are advancing a ‘rehabilitation revolution’ (see Chapter 8). Additionally, there remains a sizable ‘business-as-usual’ operation, securing a record prison population of 88,252 in November 2011 (NOMS, 2012). Against this backdrop, the following subsections attend to identity production through interorganisational differentiation and integration. Thereafter, and by way of these identity resources, ‘agency’ is interpreted as both a (largely) unrealised promise of de-politicisation and, minimally, a guardian of HR independence.

6.3.2 Differentiating NOMS

Politics

Below, Box 6.12, Box 6.14 and Box 6.5 all differentiate NOMS by its political salience, referring to “the complicated politics of crime and justice”, the “highly political” Prison Service, and its “very significant political risk” to ministers. Moreover, Box 6.1’s two narratives specifically attribute unrealised agency autonomy and successive reorganisation to politics.

Box 6.1: Politics

[i]:

[T: What's the MoJ-NOMS border? Is it like a quango?]

I: *"It should have been. Agencies, I always thought, were quite arm's length, but, as long as I've been here, it never has been. And it might be a feature of the fact- the nature of the business, because it's very political; ministers are very interested in it. 'Cause the original thought was that ministers wouldn't really have any dealings with agencies; they would deal with the main department, and the agencies would just go off and do whatever, and they'd deliver, and the ministers didn't have to worry. But that's never been the case..."*
(Interview_013)

[ii]:

[T: Why successive reorganisations? Is it politics, changing circumstances-?]

I: *"...I think you're absolutely right; it is a hot topic, politically. We are very fortunate, and I think if the Secretary of State changed, the world would be a really different place. Because of his experience and his approach ... I think he's less bothered about the political fallout – some of the things that happen – than if you had a wet-behind-the-ears minister, who didn't really have that confidence or gravitas or experience." (Interview_015)*

Box 6.1-[i] differentiates “the original thought” of agency independence from its non-realisation. The ‘othering’ of this claim to autonomy as not an agency self-desire but rather an external reform (“I always *thought*...”; “agencies *would* just go off...”) evokes a sense of unfulfilled promise, whereby the inescapability of politics – this “fact” or “nature of the business” – is blamed for usurping the quango affinity that “*should* have been”. Similarly, given penal risk (“things that happen”) and the inevitability of “political fallout”, Box 6.1-[ii] welcomes ministerial experience. Moreover, its description of this particular offender management “world” frames NOMS as internally homogenous, complete and separate from other ‘worlds’. Evoking Goffman’s (1991) famous description of prisons as “total institutions”, the same metaphor is similarly employed below by officials describing the severity of operational disasters “in our bit of the world” (Box 6.2-[i]) and in contrasting NOMS delivery with MoJ’s “policy world” (Box 6.2-[ii]).

As well as high ministerial politics, NOMS provokes internal civil service disputes. For instance, informally, one MoJ official spoke of “the dreaded NOMS”, while agency interviewees affirmed the agency’s “terrible brand and reputation” (Interview_014) and frequent unpopularity “across the department” (Interview_027). Box 6.2 narrates this bureau-politics.

Box 6.2: Bureau-politics

[i]:

I: It’s interesting “*how this organisation has come together – the prisons/probation joining together in what was just a dreadfully painful organisational transition.*” NOMS was “*in conflict, really, with the Prison Service. ... We had a really painful couple of years where the regional structures were emerging and the Prison Service was resistant... And then, of course, the delivery agency turned round and ate it up – ran NOMS. ... [Y]ou still see those moments of conflict and tension... The relationships have all felt like they’ve come from a variety of directions, and have never quite gelled really. ... And it has such pressures; as an organisation, [chief executive] as the leader of it is under so much scrutiny. When things go wrong in our bit of the world, it is the end of the world.” (Interview_020)*

[ii]:

I: Regarding NOMS and MoJ, “*I think they need us, but we definitely need them. And, actually, the organisations work quite well together. I think there’s a healthy tension, there’s a healthy debate. They don’t have an understanding of delivery at all, and what is so interesting is that I’ve got a whole team ... from Treasury, from Probation, from the Home Office ... and they all say [about MoJ]: ‘You, over there in your policy world: you sit and you work through your policy’. They’re so busy over here, because, actually, you’re delivering on the ground with our [Probation] Trusts and our prisons – this is reality. ...*

“You have to talk to each other, because there’s a real danger that both organisations criticise each other, and both organisations are very quick- ‘Oh NOMS, I mean, it’s so slow, it always puts things in its way, it’s negative, it can’t do anything!’ Actually, NOMS can do things, and it delivers very, very well on certain things. We’re not the top policy thinkers, but we shouldn’t have to be, because we’ve got them over there.” (Interview_023)

Box 6.2-[i] stories three acrimonious relationships: first, external “scrutiny” that brings NOMS “such pressures” from MoJ and elsewhere; second, internal prison-probation tension, evident in the “*dreadfully painful organisational transition*” and ongoing “*conflict and tension*”; and, third, commissioner-provider strife, the uniformed Prison Service having been “resistant” to NOMS#1’s creation and, latterly, having “turned round and ate it up – ran NOMS”. Able to effect

such role reversal, the Prison Service is thus personified as powerful and autonomous – a recurring theme below. In a similarly differentiating vein, Box 6.2-[ii] elaborates an MoJ-NOMS, ‘them-and-us’ tension. Its two paragraphs share a common narrative structure, proceeding from descriptions of interorganisational collaboration to conflict. Thus, after identifying a “healthy tension”, the first paragraph expounds overt MoJ critique and NOMS defence. Rhetorically, the allegation of departmental misunderstanding gains credibility from the citation of third parties (Treasury, Home Office), who, with assumed external objectivity, dismiss MoJ’s “policy world” as divorced from delivery, which is “busy”, “on the ground” and “reality”. Naturally more virtuous than their antonyms (idle; in-the-air; surreality), these characteristics assure NOMS’s defence and compound its dis-identification with MoJ. Moreover, this conflation of delivery and realism – “this is reality” – is another identifying trait adopted elsewhere (see Box 6.3 and Box 6.5). Latterly, the second paragraph replicates the foregoing harmony-conflict progression, first asserting the importance of interorganisational communication before again defending against vocalised first-person critique – “Oh NOMS ... it’s so slow, it always puts things in its way, it’s negative...”. Here, the rebuttal’s spontaneity again implies an entrenched bureau-politics.

Risk

Riots, absconding and ‘Category A’ breakouts were recurrent in the 1990s. There has since been a considerable turnaround – “it’s chalk and cheese”, one official observed (Interview_026). Nonetheless, the ever-present threat of “death and destruction” (Interview_026), and NOMS’s active management of this risk, differentiates the agency from the innovation-focused MoJ, as Box 6.3 explains.

Box 6.3: Risk management

[T: So there’s an innovation/business-as-usual divide?]

I: “Yes. ... At the moment, the joint stuff – or the stuff that is owned across the road [in MoJ], with us inputting – is the new government’s agenda. The stuff that we own ...”

predates this government, and could be described as 'business-as-usual'." Day-to-day, my role concerns "management of risk – security, corruption, counterterrorism, escapes, assaults, riots – where across the road will have almost no input whatsoever. But that's the stuff that will lose my [director general] his job; will lose the Secretary of State his job. So there's a really interesting dynamic, actually.... In terms of what's gonna get [ministers] the sack, *it's probably not Payment by Results ... it's escape of Cat A, which we had [recently]. And that stuff has almost no input from across the road whatsoever.*" (Interview_026)

Box 6.3 distinguishes innovation from business-as-usual. Noting irony in MoJ's innovation focus, given the potential of operational failure to prompt resignations and dismissals, the passage evokes once more Box 6.2-[ii]'s NOMS-reality, MoJ-surreality pairings. In particular, driven by ever-present custodial challenges that "predate this government", the agency's business-as-usual is conferred a steadfastness that is divorced from fickle political whim. This is confirmed in the sarcastic qualification, "it's *probably* not Payment by Results [that prompts dismissals]", with the implication being that NOMS's focus is a sensible reflection of its risks, while MoJ's innovation does little to protect ministers from these *real* custodial dangers.

As Chapter 5 explained, the MoJ Blueprint adopted in 2010 mandated shared corporate services. Evaluating this reform, Box 6.4 similarly differentiates NOMS by its risks.

Box 6.4: Risky bread buying

I: NOMS was "ahead of the game" with shared services, but the policy "caused real cultural problems.... [Governors were] used to having the person who orders the bread for their gaol sitting in an office outside, and if the bread doesn't turn up ... they can shout at somebody out there and get it sorted out. ... And the degree of *nervousness* ... when that was taken out of their control [was considerable]." Still, it economised, and cross-MoJ expansion was inevitable.

[T: Do you lose synergy, moving beyond prisons?]

I: Yes. Gaol purchasers "knew exactly what the consequences were of getting the wrong bread. *If you deliver brown bread ... or if ... it hasn't turned up ... or if you deliver thin-sliced ... then there'll be a riot. ... It's that kind of volatile, and the purchasers in the prison knew that and understood that, and they were part of the machine and they realised that. The governor was very nervous that it's somebody in Newport [at the Shared Services Hub] who's pressing a button ... without understanding that you must have them on time,*

it must be thick-sliced, it must be white bread, it must... You can get away with that ... for a hundred and thirty prisons, but if you're ordering the bread for prisons, and courts, and Jobcentres, and airports, ... then you lose that degree of attribution and subtlety...."
(Interview_053)

Box 6.4 recounts the dangers of consolidated purchasing, given penal volatility. This identity differentiation by NOMS's frontline risks is enlivened by listing multiple mistakes that could prompt disorder – “If you deliver ... or if ... or if...”. The reciting tone and repetitious structure (“or if”; “and they”; “it must”) evokes the orderliness of prison regimes, everything being done according to national guideline in order to minimise risk. Unfamiliar to non-operational staff, this *reality* – “nervousness” and constant vigilance – renders shared services problematic for NOMS, thereby differentiating the agency from other, less risky public services.

Pride

The uniformed Prison Service has previously been characterised as powerful (Box 6.2) and risk aware (Box 6.4). Extending this, another official remarked: “Operational people are very, very, fiercely proud of being in the Prison Service. It's Her Majesty's Prison Service!” (Interview_013).

Box 6.5 frames this pride as a differentiating trait.

Box 6.5: Prison Service pride

I: “The reality is: NOMS still represents a very significant political risk. Foul-ups in NOMS ... cost Secretaries of States their job.”

[T: Given that, is it unfair to say probation is the ‘junior partner’?]

I: “I think it is unfair. I think NOMS have got to work very hard to prove that... I experienced a kind of prejudice when I arrived... [T]here were still times ... where senior managers would say to me: ‘Yeah, but you’ve never worked in a gaol. You’ll never really get that. You don’t really understand what it’s really like.’ And the NOMS that I joined – [virtually] every member of the board ... had been a prison officer. They’d all come through the ranks ... so it was, almost, institutional group think. And I think that ... is so deeply engrained – they genuinely believe that unless you’ve actually worked on a landing, you’ll never really get prisons.” That’s why NOMS struggles to “convince the world that they care equally about probation. ...” (Interview_053)

Box 6.5 reaffirms the differentiating traits of risk and politics, before recounting the operational perception that, without frontline experience, “You’ll never *really* get [prisons]” and “[never] *really* understand what it’s *really* like”. This recurrence of Box 6.2’s delivery-realism conflation, and its separation of management from operations, is reinforced by polarising two first-person voices: the non-HMPS narrator (“I arrived”), and the operational official (“You’ll never really...”) with their almost accusatory, othering tone (“You’ve”, “You’ll” and “You”). Similarly invoking this dualism, another official confirmed: “When the organisation wants the operational line to follow, the strategy is to get a governing governor out to lead it, because there is an element of ‘bringing the governors with you” (Interview_020). By extension, NOMS is differentiated by the pride of its operational arm.

Contestability

NOMS#1’s limited success in increasing contestability across 2004-2008 was one factor precipitating the restructure to NOMS#2 (Interview_014; _024). Combining both commissioner and provider roles, this internalisation of contestability is again differentiating, as Box 6.6 explains.

Box 6.6: Internal contestability

I: *“[I]t might seem quite a strange setup that we’ve got, providing services and commissioning services.... Some people might think it looks odd ... you know, ‘How can that operate?’ ... I don’t think that’s necessarily a problem. I’d certainly say this model ... is more successful than NOMS Version 1.... I think that caused a lot of tension....”* That *“might have been culture, and the strength of the prisons, saying: ‘We’re just not gonna abide by this’. ... [Y]ou had NOMS-Version-1 people telling prisons what to do, but they weren’t necessarily ... people who had experience of prisons, and the culture of prisons was: ‘If you’ve never worked in a prison, why don’t you piss off, ‘cause you don’t know what you’re talking about!’ I’m probably overstating the mark.... This NOMS[#3] model might seem odd on paper. Because of the strength of [prisons], you have to have someone overseeing this who can hold these people to account, drive change forward, but also not be- I wouldn’t say ‘bullied’, but is intelligent to manage the public sector prisons....”* (Interview_027)

In rationalising NOMS's "strange setup" as a combined commissioner-provider, Box 6.6 invokes previous differentials of bureau-politics and pride. Proceeding from overt individualisation ("odd"; "How can that operate?"), the official recounts traditional problems in managing the uniformed Service, which is again vocalised with assertive autonomy – "We're just not gonna abide by this". This "tension" and the concluding aspiration for "intelligent" management thus explain the agency's otherwise "odd" combination of commissioning and delivery.

De-autonomisation

Finally, in lamenting the latter-day loss of HMPS's former independence as a "true agency", Box 6.7 posits a historic but now lapsed affinity with the agency model. By extension, this differentiates contemporary NOMS from other, still genuine executive agencies.

Box 6.7: Challenging the "true agency"

I: *"The true agency that the Prison Service was had a whole load of things which it managed directly, like estates, procurement [etc.]. All of those things are now being delivered as a shared service from the department... And, of course, it's the [old] Prison Service Shared Service that's now delivering to the Ministry of Justice, to the Home Office..."* HMPS "was able to set [that] up ... because we didn't have to seek permission. We were an agency. We decided ... actually that was a way to reduce our costs... That's now being shared by everybody ... because the arrangements ... were stronger; because the agency had got good management arrangements; because it was about delivering, whereas, actually, the ethos, inevitably, of a department is about policymaking, not delivery." (Interview_014)

Reminiscently, Box 6.7 narrates growing disassociation with the "true" agency model. The claim of de-autonomisation is effected through transitional narrative, with the historic tone ("we were"; "we decided") lamenting former agency benefits and indicating current NOMS-agency disassociation. Simultaneously, the othering of MoJ ("the department") as having separately coveted NOMS's shared services is reinforced by claims of former individuality and ownership – "we didn't"; "we were an agency"; "we decided"; "our costs". Therefore, while no longer a "true" agency, NOMS remains distinct from MoJ, which is "inevitably" about "policymaking, not delivery".

6.3.3 Integrating NOMS

Given the strength of the identity differentiation essayed above, involving high and low politics, risks, pride, contestability and lost agency independence, contrasting integrative associations, whether ‘vertically’ with MoJ or ‘horizontally’ with other agencies, were limited. Box 6.8 is one example which, narrating a recent departure from agency “theory”, posits newfound department-agency equivalence.

Box 6.8: Briefing ministers

[T: Does NOMS brief ministers?]

I: *“Oh yeah; we spend far too much time with ministers, but we just do it in the same room now. So we don’t have a policy meeting and a delivery meeting.... I’ve got a JPG [Justice Policy Group] counterpart, and the two of us would be sitting in front of the minister, or our equivalent teams would be....”*

[T: So the NOMS designation doesn’t absolve you?]

I: *“Yeah ... in theory, the agency should mean you get on and run the agency. It’s certainly never been the case since I’ve been around... [T]he healthy thing about that is, effectively, we ... show up as MoJ officials, and we’re all part of the Ministry, so we’re doing MoJ-officials-advising-our-ministers’ jobs. The fact that, of course, when we walk away we wear slightly different badges and ... do a different bit of the system- It’s much more just like: ‘The officials from the department are coming to just brief the minister’, which is probably the way it should be.” (Interview_024)*

Describing again the untenable “theory” of de-politicisation, Box 6.8 accompanies this NOMS-agency disassociation with new NOMS-MoJ sameness. Contrary to Box 6.7’s contention of the “inevitable” difference in priorities between department and agency, therefore, the emphasis here on singularity (“*the Ministry*”, “*the department*”, “*our ministers*”, and “*the system*”) and corporate employment (“*MoJ officials*”; “*MoJ-officials-advising-our-ministers’ jobs*”; “*slightly different badges*”) indicates newfound intra-Ministry sameness.

Box 6.9 similarly aspires for new corporate oneness, although notes that barriers to full integration still exist in culture and HR bureaucracy.

Box 6.9: Culture and HR

[i]:

[T: So, culturally, NOMS and MoJ are separate?]

I1: *“Yeah. It’s not as big as it was. It still exists. I laugh, because I’m constantly saying to people: they go ‘MoJ are doing that’, and I go, ‘No, JPG are. You’re MoJ! You’re part of the Ministry of Justice! They’re JPG; they’re not the Ministry of Justice. We’re all the Ministry of Justice’....”*

[T: So NOMS people say they are ‘NOMS’?]

I1: *“Yeah, so: ‘I work for NOMS; I don’t work for the Ministry of Justice’. And, over there, people say: ‘I work for the Ministry of Justice’. But, actually, they work for JPG, and we all work for the Ministry of Justice. It’s definitely getting better.”*

I2: *“It’s all to do with [chief executive] as well. I think [s/he is] much more about working together than previous chief execs, who were quite separated.” (Interview_025)*

[ii]:

I2: *“Actually, it’s practically quite difficult to make that transfer from MoJ to here. The HR function, the payment structures – it’s not an easy transfer as an individual. So you say: ‘Okay, I want to go in to work for NOMS tomorrow’. You won’t just go and work – you have to get security cleared again.”*

[T: Really?]

I2: *“Yeah, it’s incredible.”*

I1: *“Yeah.”*

I2: *“Tedious, long process. So what does that mean? Well, it has an impact on staff’s willingness/ability/flexibility to do that transfer. ...”*

I1: *“It’s annoying when you get a letter saying: ‘Sorry you’re leaving the MoJ’.*

I2: *“Sorry you’re leaving the MoJ, and welcome to NOMS!” [Both laugh] “It’s like: But-!” (Interview_025)*

Box 6.9-[i] describes improving but enduring cultural difference between NOMS and MoJ, illustrated by a story of correcting another official’s misidentification – “We’re all the Ministry of Justice”. Box 6.9-[ii] continues to advocate this corporate, department-agency equivalence,

describing the illogicality of formally exiting and then re-entering the Ministry simply to transfer to NOMS's employ. In particular, the concluding consternation (“But-!”) at the apparent idiocy of receiving a farewell letter illustrates the extent to which Next Steps separatism, and Lygo's (1991) specific call for a differentiated prison identity, are now being tacitly subverted, even if HR bureaucracy is lagging behind. A similar aspiration-practice deficit is encountered again in HMCTS's identity integration, below (see Box 6.24).

6.3.4 Interpreting ‘agency’

Having probed identity differentiation and (limited) integration in NOMS, this final subsection constructs two expressions of ‘agency’ through these resources.

The promise of de-politicisation

Given the uncertainty in 1993 around the retention of a post-agencification prisons minister, the high-profile appointment and dismissal of the first agency director general, and widespread criticism of the Home Secretary's misuse of the agency bargain (see Chapter 5), the issue of de-politicisation was salient in the 1990s. Indeed, the 1997 *Prison Service Review* critiqued a “widespread misconception among managers” that agencification's was intended to bring HMPS “the independence ... it wanted and deserved” (HMPS, 1997, pp.33-34). Officials continue to reference agencification proper in these terms, as testified by the foregoing arguments on unrealised agency promise (Box 6.1; Box 6.8). Illustratively, referring to the Howard-Lewis affair, one manager spontaneously observed: “for a generation ... that was the test of what an agency was” (Interview_020). Opinions divide on NOMS's current performance against this agreed neo-Next Steps benchmark of operational de-politicisation. On the one hand, Box 6.10 suggests that, while agency status generally has “eroded”, ministerial distance endures.

Box 6.10: De-politicisation

I: *[T]here's a huge caseload going on; there' lots of stuff going wrong every day of the week. Agency status means that ministers can almost wash their hands of much of that.... And I think we find, organisationally, that quite okay, actually,” because ministerial involvement “always makes the operational issues more difficult...” [Elaboration] “Maybe*

one of the tensions ... is the extent to which they are comfortable or uncomfortable leaving NOMS to get on with those operational issues. ... Some of the newer ministers – less experienced ministers – are: 'But what do I do?'; 'Well, you don't do anything, Minister. We do that'; 'But what do I do?' ...

"So I think the clarity that we have operational responsibility and decision-making, and will get on with it – I think is actually really clear. And the current situation, in which agency status is being eroded over time, is one in which we're gonna have to face up to at some point...." (Interview_026)

In neo-Next Steps fashion, Box 6.10 distances NOMS and MoJ, whose ministers “wash their hands” and “[leave] NOMS to get on”. Given the inherent risks of prisons (“lots of stuff going wrong every day”), this empowers politicians to be removed from this “huge caseload”. Furthermore, perpetuating the original idea of managerial empowerment, NOMS also benefits from this political dis-involvement – “we find ... that quite okay”; “we ... will get on with it”. Indeed, as the vocalised minister-agency dialogue reveals, ministers sometimes have to be persuaded of agency-gifted autonomy – “You don’t do anything, Minister”. This further evidences the continuing interpretation of ‘agency’ as a de-politicisation promise.

Box 6.11 offers a similar account regarding the framework document.

Box 6.11: “A contract on both sides”

I: *“I’ve probably only picked this up three times in the last year.” NOMS is “consistent with this”, but it’s not “guiding principles.” It’s been used: [i] “when there were some PQs – parliamentary questions – about the relationship between the Secretary of State and NOMS. That was when we lost a Cat A prisoner”, and an MP tried to “pin something on [ministers]”; [ii] “just a couple of times ... in terms of our relationship with MoJ around budget allocations”; and [iii] when “writing the business plan. ...*

“[W]e’d probably only refer to it if we’re in difficulty.... I suspect it’s a bit like any contract. If you were renting a house ... it’s something that needs to happen.” But if “tenant” and “landlord” are happy, “why would you keep referring to the contract? ... If there was a lot of poor interference ... I think we’d start looking at ‘paragraph.5.1.3’, which says where our autonomy is in this area. ... There’s a lot to move forward in our relationships with MoJ colleagues ... but I don’t think there’s anything where we’ve actually said: ‘Hold on a second, we need to go back to the agency framework document...’” [Digression] “I think it’s a contract on both sides....” (Interview_027)

Box 6.11's description of "a contract on both sides", as if between "landlord" and "tenant", is again notable for its consistency with Next Steps and the accountable management bargain (see Chapter 5). Thus, the framework is said to have recently reaffirmed ministers' operational delegation following an escape; and, speculatively, if "poor interference" emerged from "MoJ colleagues", it could similarly re-establish boundaries.

Against this alleged Next Steps continuity, however, other officials, while also readily measuring 'agency' against the promise of de-politicisation, were sceptical that MoJ-NOMS relations met this benchmark. One argued, for example:

"[There's an] interesting question of: 'Does the permanent secretary – do ministers – feel insulated from disasters?' Don't think they do anymore. I can't recall a moment in time in the last few years when anyone's stood up and said: 'That's their fault, not ours.'" (Interview_015)

Contrary to Box 6.10 and Box 6.11, the suggestion here is of a waning of the "their fault, not ours", quasi-contractual dualism underpinning Next Steps (and the Howard-Lewis affair). By extension, to blame NOMS is simply to blame the corporate MoJ. Nonetheless, the spontaneity of this benchmarking against ministerial dislocation further evidences the readiness with which 'agency' is interpreted as *supposedly* about de-politicisation.

Box 6.12 similarly describes the "theoretical principles" of ministerial detachment, before again dismissing this as "a very challenging political thing to expect".

Box 6.12: It's "just pretending"

[T: So apart from employment arrangements, is NOMS 'arm's length'?)

I: *"[T]he theoretical principles there are: it's got some executive devolved accountability, for which it can get on and make operational decisions.... The reality is, in the business we're in, ministers just cannot comfortably sit at an arm's length.... So, this idea that, somehow, the business of prison or probation can be at arm's length from ministers I just think is always a very challenging political thing to expect of the person accountable for it. We operate very close to Policy and ministers. So yes, at the moment, the main purpose that [agency] function serves is to isolate the terms and conditions...."*

“But there is a proper Accounting Officer role as well.” The chief executive’s responsibility “is different to ‘just another department of the Ministry’. So, actually, that does allow some devolved operational accountability ... and that is important, because the business of running prisons, of course, is a big, complicated business...” With shared services, “we’re much more interconnected to the Ministry than ever before.... But when it comes down to operational delivery, that agency status is still there: the Accounting Officer’s still accountable for those risks.... But pretending that it’s at ‘arm’s length’ from ministers is just pretending. ...”

The NHS is a good comparator. *“They have successfully created that separation between Department of Health and ministers, and the NHS, and so ... ministers don’t get held to account for those operational decisions. ...”* The idea was “prisons should have a similar status. But the political reality of what we do has meant that that’s never really translated. ... And the only real reason that that’s the case, I think, is the complicated politics of crime and justice.” (Interview_024)

Setting aside HR independence (to be discussed below), Box 6.12 is significant for recreating a theory-reality distinction in narrating agency status, with the deviation (the “pretending”) again explained by political salience. Thus, whereas Department of Health ministers “successfully” separated themselves from the NHS, the analogous bid to detach offender management “business” is thwarted, and NOMS “operate[s] very close to Policy and ministers”. Still, the chief executive’s Accounting Officer role differentiates the agency from “just another department of the Ministry”. This framing of ‘agency’ as corporate governance – “devolved *accountability*”; “devolved operational *accountability*” – was encountered in Chapter 5’s meso-level analysis of the MoJ restructure and the formation of the Legal Aid Agency. It reappears below in regard to public guardianship delivery (see Section 6.5.4).

Following these more sceptical assessments of de-politicisation, Box 6.13 dismisses the framework document as of minimal import.

Box 6.13: Framework document apathy

[i]:

[T: What does the framework document represent?]

I: “Nothing. It’s a moment in time. ... In my experience, it is a statement of intent that becomes quite a hot potato – a political potato – for that moment in time, because it’s

setting out expectations on both sides. Do people refer to it regularly? No, they don't. ... [D]o we feel like an agency? Not particularly. That's your big question, isn't it? That's where all of this is driving at: 'Do we get treated as an agency?' Not particularly. 'Do ministers see us as an agency?' Not particularly. That's the reality." (Interview_015)

[ii]:

[T: Is the framework important?]

I: *"Only occasionally. There are times when things feel like they get misaligned, and then there'll be a moment where everybody stops and says: 'Let's just try and get our head around this. Is this an Accounting Officer issue that [the chief executive] should be worrying about?' But, in general, it's not a used-all-the-time ... worried-about-which-clause [document]..."* (Interview_024)

Box 6.13-[i] dismisses the framework as "nothing" but a "moment in time". In so doing, the spontaneous self-questioning – "Do we get treated as an agency?" ... "Do ministers see us as an agency?" – points again to the theoretical-practical deficit and the readiness with which agency status is interpreted as an unfulfilled promise of autonomy. Box 6.13-[ii] is comparably sceptical, and yet, following this official's earlier contention about accountability and corporate governance (Box 6.12), proceeds to describe how, "occasionally", the framework determines whether an issue carries Accounting Officer implications.

HR independence

Against this narrative of largely unfulfilled agency promise, NOMS's continuing agency designation was rationalised more positively in terms of HR independence. Already mentioned in Box 6.12 as agencification's "main purpose", Box 6.14 expands upon this enduring – if minimalist – vestige of decentralisation and empowerment.

Box 6.14: HR independence

[i]:

[T: In 2003, de-agencification was proposed.]

I: *"The reason that agency status has been of most importance to the Prison Service – and remains so, actually: the reality is that NOMS is an agency because of the Prison Service,*

rather than any other reason – is because we have been able, as an agency, to form our own terms and conditions and arrangements for operational staff, who are obviously very different to standard civil servants. And because, in particular, prison officers don't have the right to strike ... an ability to be able to operate outside the civil service ... has been important...” Indeed, *“the freedoms around recruitment, pay, and terms and conditions”* are *“the one thing out of agency status that the Prison Service gained most from.”* (Interview_014)

[ii]:

I: *“Agency status is the thing which primarily drives the management of, back then, fifty-odd-thousand employees [in HMPS]... [A]nd that meant that, when NOMS was recreated [in 2008], it was as an executive agency, ‘cause you had to contain the terms and conditions of those fifty-thousand employees. Otherwise you would effectively wash that volume of people back across the rest of ... the Ministry of Justice.... So ‘agency status/not agency status?’ was primarily driven around the terms and conditions...”* (Interview_024)

[iii]:

I: *“There’s a very interesting minutiae detail ...: would ... NOMS be an agency if there wasn’t an equal-pay risk should it be part of the department? We pay our operational staff more than we pay civil service staff in the Ministry. By having an agency, you protect equal pay claims. By not having an agency, you expose massive equal pay claims.”* (Interview_015)

Pursuing Carter’s (2003) aspiration for prison-probation integration, the Home Office had proposed HMPS’s de-agencification (Home Office, 2004, p.15). However, HMPS retained separate classification until 2008, when this transferred to the new NOMS#2 provider-commissioner (see Chapter 5). Box 6.14-[i] explains this by the need for individualised employment arrangements, given HMPS’s special workforce. Evoking once more the narrative of unfulfilled promise, this HR independence is said to represent *“the one thing ... the Prison Service gained most from [agency status]”*. By implication, other aspects of agency were unattainable in this penal context. Box 6.14-[ii] similarly recollects the expansion in 2008 as *“primarily”* driven by *“the terms and conditions”*, again on the basis of NOMS’s workforce differential. However, whereas [i] frames this as *“the one thing”* that proved realisable in a wider agency promise, [ii] positions HR independence as the central tenet of agencification – *“the thing which primarily drives the management of ... employees”*. This suggests considerable

reinterpretation of the Next Steps concept and its 1990s adoption in the justice sector. Similarly, in discussing the 2010 Spending Review, [iii] again identifies HR – specifically, “an equal-pay risk” – as agencification’s only saving grace, thereby compounding the classification’s newly minimalist interpretation.

6.3.5 Summary

This first organisational analysis has registered NOMS identity differentiation through political salience, risk, pride, internal contestability and de-autonomisation. Identity integration, by contrast, was limited to claims of corporate employment. Against this backdrop, agency status has been interpreted both as a (largely unrealised) promise of de-politicisation, and, therein, an ongoing guarantor of HR independence.

6.4 HM Courts and Tribunals Service

6.4.1 Overview

Since 2011, HMCTS has administered the criminal and civil courts in England and Wales, the Lord Chancellor’s administrative tribunals, and the employment tribunals. Gross spend in 2011-12 was £2.00bn, with an average (non-judicial) headcount of 19,704 (HMCTS, 2012, pp.58, 81). As HM Courts Service before it, HMCTS is a judicial-executive “partnership”. The head of the judiciary is party to resourcing decisions, and three judicial members sit on the independently-chaired agency board. Moreover, its framework states: “all staff have a joint responsibility to the Lord Chancellor and Lord Chief Justice” (Lord Chancellor & Secretary of State for Justice, 2011, p.5). Together, this makes for a complex, constitutionally-unparalleled agency.

HMCTS is pursuing major reform, aiming for staff reductions of 2,980 by 2015 (HMCTS, 2012, p.17). It is rationalising an extensive national estate, centralising middle-office processing (Rayner, 2011), outsourcing fine enforcement (Jee, 2013), adopting employment tribunal fees (MoJ, 2011b), and implementing digitisation and other measures in the *Swift and Sure Justice*

white paper (MoJ, 2012b; see Chapter 8). Operations are overseen through seven regionally-based, cross-jurisdictional Delivery Directors, while, in the MoJ main building, alongside a cross-cutting Strategy and Change team and other corporate units, there are two jurisdiction-specific HQ directorates for Crime, and Civil, Family and Tribunals. As with NOMS, the subsections below explore identity differentiation and integration, before considering ‘agency’ as ensuring constitutional correctness.

6.4.2 Differentiating HMCTS

The judicial-executive partnership

References to constitutional uniqueness abounded in the HMCTS fieldwork. As one official advised: “HMCTS is just so different to anything else ... it’s a constitutional hotchpotch” (Interview_035). Box 6.15 similarly evaluates judicial encroachment since 1995 as gradually making for “a very odd” agency.

Box 6.15: Changing relations

I: Judicial relations are “*very interesting*”, having “*developed over the years*”. Originally, the Court Service “*took ‘executive agency’ very seriously, as in: ‘We’re responsible for administration; the judiciary are separate. So you make the decisions, and we’ll run the buildings...’* ... *Certainly, the judges felt that they should, in principle, be in charge..., but they didn’t really want to ... manage an enormous business. But they didn’t like the idea that officials were in charge of it, so it was quite uneasy. And the first chief executive ... was quite emphatic about that separation, and occasionally some of the judges wanted to be on the executive board, and he absolutely refused. ...*”

The next chief executive “*got them much more involved – not on the board, but, certainly, any sort of project that was being set up would have judicial representation.*” Latterly, “*they had the Senior Presiding Judge as the non-exec.*” [Digression] With the advent of MoJ, however, “*the danger*” was seen as: “*if the prison population is too high or too low, you can then start influencing the courts.*” [Digression] This prompted “*the revised framework document, which really brought the judiciary right into the governance arrangements ... [and] I thought: ‘Well, this really doesn’t seem right now – this is now a very odd executive agency. It’s not gonna be accountable – you’ve got a gang of people on here that can’t make executive decisions but will act as if they can.’*” And who do court employees work to – judges or their line manager? “*I thought that was quite odd.*” (Interview_009)

Box 6.15 chronicles a departure from former governance clarity, agencification having initially been taken “very seriously” as imparting a straightforward judicial-executive separation – “*you make the decisions, and we’ll run the buildings*”. Two differentiations are effected: first, between judicial and executive perspectives on rightful administrative ownership of the courts; and, second, between former clarity and current confusion, with temporality established through quantification (“*much more involved*”, “*really brought the judiciary [in]*”). In combination, modern judicial-executive collaboration in the agency’s running distinguishes HMCTS as “odd” compared with both its forebears and other contemporary agencies, for which there are no such doubts over reporting lines and accountability.

Box 6.16 also recounts agency de-normalisation since Next Steps, but counterbalances this against the countervailing regularising of ministerial responsibilities in 2005.

Box 6.16: From “conventional” to constitutional agency

I: Prior to the magistrates joining in 2005, and briefly afterwards, “*the Court Service was just a conventional agency. It had a straightforward obligation ... to ministers. It was like any executive agency of the [Department for Work and Pensions] or anywhere else. Only when ... the Lord Chancellor was abolished*” did judges argue that ministers could no longer fulfil alone the statutory obligation for court resourcing. While the Lord Chancellor headed the judiciary, the resourcing debate could “*take place in the head of that one person... But as soon as the Justice Secretary became just an ordinary cabinet minister, there had to be a mechanism through which the Lord Chief Justice and the Secretary of State for Justice could have their debate ... and there had to be some governance arrangements in which the head of the judiciary was participant. Hence the new framework document that set out those obligations in a new constitutional position.*” (Interview_039)

As previously, Box 6.16 narrates the subversion of an agency norm, the courts having originally been “*just a conventional agency*” and “*like any ... anywhere*”, but latterly becoming differentiated by the “*new constitutional position*”. This is narrated as a counterweight to the diminished responsibilities of the Lord Chancellor, who was rendered “*just an ordinary cabinet minister*” by the Constitutional Reform Act 2005 (see Chapter 5). In combination, this appraisal

of former agency conventionalism and ministerial individuality, and current agency peculiarity but ministerial ordinariness, frames the overall business of court administration as inherently specialised, requiring some departure from governing norms – whether organisational or political – to ensure constitutional correctness.

Officials readily discoursed on the practical implications of this dual judicial-executive ownership, as Box 6.17 illustrates.

Box 6.17: Partnership challenges

[i]:

I: “[W]e’ve had a couple of examples where HMCTS is placed in a very, very awkward situation, because it has two bosses...” For instance, if the “Lord Chancellor asks for advice on X – does somebody in HMCTS say: Well, this is a little bit close to the margins of judicial interest: should I have a chat with them, or am I allowed to have a chat with them?” So a lot happens behind the scenes, and every now and then people get caught out, and that affects trust. So we had one not that long ago where a request was put in for [some data].” You then ask yourself: “Do I tell my judge? Well, yes, absolutely.” [Digression]

It’s difficult having “truly open relationship[s] ... so everybody gets on being as upfront as they can be. ... [I]t makes everybody that much more cautious about who’s talking to who. But I don’t think it would be right to say that everybody, as the framework document suggests, is being massively open and transparent with one another. It just doesn’t work like that.” (Interview_035)

[ii]:

I: “[W]e’ve got a partnership... [I]t’s actually quite a weird thing, actually. I’ve been in a few positions recently where I’ve personally found it quite difficult ... because, on this white paper, which is a political document (obviously, by its very nature): I’m a civil servant and so I will write whatever the minister wants me to write, because that’s how we operate. And then I’m also responsible to the Lord Chief, who won’t want him saying that. So I’ve been in a few meetings, earlier, where I’ve actually almost literally said: ‘With my partnership hat on, looking at the Lord Chief, we can’t write that; however, of course, with my civil service hat on, I know why you want to’. It’s really quite an interesting organisation to be in.” (Interview_046)

Through two statement-example cycles, Box 6.17-[i] regularises the “very awkward situations” arising from HMCTS’s reporting to “two bosses”. The first illustrates day-to-day issues with a

hypothetical situation (“advice on X”) where a conflicted civil servant queries: “this is a bit close ... am I allowed...?”. The second similarly asserts periodic partnership difficulties, evidenced by a specific tale of performance monitoring. Here, normalisation is evoked by first establishing temporarily (“every now and then”) and then specificity (“one [situation] not that long ago”), the implication being that the example is one among many. As previously, vocalisation reverts to the conflicted first-person official (“Do I tell my judge?”), which, alongside suggestion of a trap (“people get *caught out*”) and other interpersonal phrases (“trust”, “everybody”, “who’s talking to who”), further concretises HMCTS’s uniqueness.

Establishing a Whitehall norm of absolute ministerial loyalty (“that’s how we operate”), Box 6.17-[ii] similarly asserts strong HMCTS differentiation, both at the outset and conclusion – “it’s actually quite a *weird* thing”; “quite an *interesting* organisation”. Within these limits, a statement-example pattern personalises the partnership’s challenges with a story of recent white paper development. This involved providing conflicting recommendations, signalled by the different “partnership hat” and “civil service hat”. Compounding the agency’s individuality, this dualism instantiates what another interviewee described as the “schizophrenia” demanded of HMCTS employees (Interview_039).

Operational focus

In more recognisably Next Steps fashion, HMCTS’s identity differentiation against MoJ was also effected through claims for operational focus, as Box 6.18 illustrates.

Box 6.18: Operational intimacy (i)

I: Policy and operations are “*completely different*” roles, given “*who you’re working for ... the way that you operate ... the skills that you need.... [O]n the operational side, if you’re true operational (so you’re out in the field) you’re actually delivering services and you’re making day-to-day decisions on: ‘We need a body there; we’ve gotta do this...’. So that’s true operational work. Whereas, when you’re in an HQ operational role, it’s not really operations.*”

[T: But it’s still different from policy?]

I: *“It’s still different from policy, because you’re taking the policy and you’re looking at it and saying: ‘Okay-’. You can influence the policy and say: ‘Okay, this is what you want to achieve’. So we understand the policy aims, we understand the operational business and the impact of that, and then we have to bridge that gap and either change the policy so that they can still meet their aims, or even, in some circumstances, not meet their aims, but it’s deliverable on the ground. Because, ultimately, if we can’t deliver it, they could come up with any policy in the world, and if we can’t implement it – pointless!”*
(Interview_044)

Box 6.18 posits a foundational distinction between policymaking and “the operational side”, the latter combining both “true” frontline work and “HQ operational role[s]”. This subordination of intra-agency work distinctions beneath that between HMCTS and the “completely different” MoJ is reaffirmed in the second paragraph, which constructs a hierarchical ‘them-and-us’ dualism between policymakers (“*their aims*”; “*they could come up with*”) and the agency (“*we understand the operational business*”; “*we can’t deliver*”; “*we can’t implement*”). Here, HQ-frontline sameness is achieved through their grouping under the repeated personal pronoun “we”, as well as by the distancing of “policy” as something that the agency takes and influences, but does not itself author.

Box 6.19 similarly differentiates HMCTS from MoJ by positing the former’s frontline intimacy.

Box 6.19: Operational intimacy (ii)

[T: Does HMCTS do policymaking?]

I: *“I think we’re probably commenting on policy. ... [T]he definition that’s been put on it before is ‘operational policy’ ... because it points both ways. ... [O]ne of the debates we’ve had is the extent to which we allow our managers ‘in the field’ ... to get involved in commenting on government policy, because, arguably, they’re the people who are dealing with the day-in, day-out.”* [Elaboration] *“Now, I personally think that we, in HQ, have a responsibility to make sure we’re out and about in the courts ... so we know what we’re talking about. ... [I]t’s quite tricky making sure that you’ve got the expertise to actually make sure that the policy being developed by the MoJ actually does make sense.”*
(Interview_035)

Again othering “government policy” as something “developed by the MoJ” and not HMCTS, Box 6.19 continues the department-agency distinction. This differentiation is reinforced by asserting agency identity (“we, in HQ”) and operational ownership (“our managers ‘in the field’”). Paralleling NOMS’s claim to delivery realism (Box 6.2-[ii], above), this frontline intimacy allows HMCTS to act as a reality check on MoJ, ensuring that their policymaking “actually does make sense”. The department’s implied reality-disconnect further differentiates MoJ from the conjoined HQ-frontline agency.

Finally, Box 6.20 further delimits HMCTS by its operational focus, arguing that, despite wider corporate integration with MoJ, delivery is actually more “independent” than it was under Next Steps.

Box 6.20: Operational independence

I: *“I think we are much more integrated than we’ve ever been before, but, interestingly, operationally, I think we’re significantly more independent than we’ve ever been. ... [T]he framework document says, I think, that neither Lord Chief Justice nor the Justice Secretary will interfere in the day-to-day running of the business, ...and that’s exactly the way it is.”* There’s accountability and “a decent degree of challenge” on performance. Nonetheless, “having been in the Court Service as the opening executive agency, operationally, HMCTS is ... not quite independent, but it has significantly less interference from the corporate Ministry in the day-to-day delivery of its business than has ever been the case before.” (Interview_039)

Again reflecting the claimed delivery (not policy) focus, Box 6.20 separates MoJ and HMCTS by the latter’s operational independence, while also effecting differentiation against the ancestral Court Service agency, which, under Next Steps, actually enjoyed less day-to-day autonomy. The nature of this operational independence was explained later in the interview, thus:

“[N]obody ever meddles in the day-to-day delivery of [the] business, [and nor are there] rafts of instructions about what should be a priority and what shouldn’t”.

Rather, evoking neo-Next Steps principal-agent contractualism, the annual business plan gives the “marching orders”, after which the agency is “operationally” free (Interview_039).

6.4.3 Integrating HMCTS

Despite the extensive identity differentiation noted above, HMCTS officials, unlike NOMS, also essay significant identity integration with both MoJ and other justice agencies, principally in tales of the shared response to austerity and economy. For example, Box 6.21 describes a recent trend towards department-agency “homogenisation”.

Box 6.21: “Homogenisation”

[T: Is HMCTS new to this MoJ building?]

I: Yes, “a lot of people are moving in because the numbers have been cut so much, so we’ve got plenty of space.” Many organisations “argued that their independence might be compromised” by co-locating, “and HMCS, I think, was one of them”, saying: “Just by being here, our independence from government is compromised’. I think that’s possibly a luxurious argument from another age, but ... it was probably a principled argument.”

[T: It says ‘MoJ’ outside; if you go into NOMS across the road, it says ‘MoJ’.]

I: “[T]here’s been a lot of that sort of ‘homogenisation’, I suppose you’d call it, going on. It goes on in lots of different areas. Each of the agencies used to have its own web presence, for example, but that’s all gone as well.” (Interview_035)

Referencing redundancies and luxury “from another age”, Box 6.21 situates the 2010 Spending Review as an epoch-defining moment, prompting new intra-MoJ “homogenisation”. The spontaneity of this evaluation (“I suppose you’d call it”), the quantifying description (“a lot”, “all”), and the offering of websites as but one example together suggest a broader reintegration and de-autonomisation trend. Therein, despite its constitutional differentiation, HMCTS is identified amongst its counterpart justice “agencies” by their shared susceptibility to austerity-driven restructuring.

Describing increased intra-Ministry collegiality, Box 6.22 similarly essays new identity integration, now with both compatriot agencies (horizontally) and the core Ministry (vertically).

Box 6.22: Collegiate financing

[i]:

[T: Does agency status still mean what it did with Next Steps?]

I: “I don’t think it does. ... [M]y chief executive ... is a member of the departmental board ... an absolute, equitable member of the Ministry of Justice senior management team. So, when we’re talking about ... savings for next year”, an agency chief executive would have had “bilateral negotiations with the department to say: ‘I need a certain amount of money to run my business, please’”. That’s not the way it happens at all. It’s a collegiate discussion around the departmental table, to say: ‘Okay, we’re all in this together. How are we gonna deliver these savings?’ And it’s deciding choices and options around that table. That’s at odds with the agency/arm’s-length arrangement.” (Interview_053)

[ii]:

I: Increasingly, “the senior finance team ... from all the main spending agencies and the central finance team ... operate ... as the ‘conscience of the business’. We work collegiately, and take off our agency hats and just look across ... at where the opportunities are, where the risks are. I spend as much of my time worrying about NOMS financial issues as they spend worrying about mine.” [Elaboration]

MoJ Finance have “worked hard to develop that group, recognising that ... [you] could end up in a whole series of arguments with individual agencies, who are all arguing their case” to build a court or prison, “because we can’t do both. So I think getting the team to work in a more collegiate, corporate way is kind of taking the heat out of some of that.” (Interview_053)

Box 6.22-[i] identifies modified agency practice in the new equality amongst MoJ’s “senior management team”, and the greater collegiality of intra-MoJ financing. Reflecting the 1990s justice contractualism narrated in Chapter 5, the official here reports how previous funding arrangements involved “bilateral” principal-agent conversations, initiated by chief executives (“I need ... please”). Illustratively, this vocalisation externalises the resource request through first-person narration and the closing civility. Post-austerity financing, by contrast, involves multi-party, pan-MoJ deliberations, with the new collegiality being evoked through descriptions of partnership (“together”; “we”) and singularity (“the departmental table”; “that table”; “these savings”). This continues into [ii], where the same official describes newfound oneness in “the senior finance team” and “the ‘conscience of the business’”. Indeed, under this “more collegiate,

corporate” funding process, officials remove their “agency hats”, and HMCTS and NOMS worry equally about each others’ finances, since meeting the departmental fiscal challenge is a shared, corporate responsibility across the business areas.

Narrating the MoJ Blueprint’s abolition of agency sponsorship, Box 6.23 again posits austerity-prompted corporate oneness.

Box 6.23: Eliminating duplication

[T: So agencies aren’t sponsored?]

I: *“Instead of having an army beavering away on analysing performance data and, as often seemed to be the case, looking to provide elephant traps ... accountability for HMCTS goes direct to the [MoJ] Board.”* Both ministerial and civil-service boards *“have sessions on performance”*. [Elaboration] *“There is a degree of trust”* that the chief executive *“exposes the weaknesses as well as the strengths. If you can accept that – if you can carry that off convincingly – you don’t need armies of people ... [and HMCTS already has] an army of people, as you might imagine, so the idea that the Ministry should also-*

“For the Ministry’s Operating Model, one of our core principles is that we only do things once. We do not – we cannot afford to – duplicate things. And, actually, it’s not just about money; it’s also about clarity. I can remember all sorts of competitive performance analysis ... different sets of figures in the core Ministry and ... the agency... We don’t do any of that...” (Interview_039)

Citing reduced duplication and increased clarity, Box 6.23 argues in favour of abandoning principal-agent contractualism. Rhetorically, the various invocations of unproductive red-tape (“beavering away”; “armies”) are taken – intersubjectivity – as indicators of poor governance and hence areas ripe for reform. Thus, reflecting the “managing ourselves” critique that underpinned MoJ’s 2010 Blueprint redesign (see Chapter 5), the official here scorns MoJ’s duplication of HMCTS’s own “army” of performance analysts, the suggestion being that the department and agency’s *shared* interest in court and tribunal performance improvement is unbecoming of adversarial intra-ministry monitoring. As such, and epitomising the new identity integration, MoJ’s new Operating Model is owned by the united department and agency – “*our core principles*”; “*we only*”; “*we do not*”; “*we cannot afford to*”.

Following the integrative aspiration-practice deficit of culture and HR noted in NOMS (Box 6.9, above), HMCTS's new, austerity-prompted corporacy challenged the enduring organisational infrastructure of old agency separatism, as Box 6.24 demonstrates in regard to the chief executive's continuing Accounting Officer responsibilities but lost corporate service control.

Box 6.24: Shared services

I: Regarding shared services, *“there's some fairly compelling saving.... I think at one point across the MoJ we had nine different payroll systems to cope with. Now, that's not a great use of the overhead, so things like shared services are a bit of a no-brainer... [However, it] causes some real tensions for us as an agency, in terms of: [the chief executive] as Accounting Officer from HMCTS – a good number of [his/her] essential services are not under [his/her] direct remit...”* [Elaboration] *“So it gets into some interesting tensions between the agency Accounting Officer, the agency chief executive, and the department.”* For example, if the Health and Safety Executive “want to hold somebody to account” over a legionella outbreak in a court, *“is that the agency chief executive who's responsible, or is it the Head of Estates in MoJ...? Question mark! ... If the roof blows off a court and we can't deliver ... who do [the Public Accounts Committee] ask for? Do they ask for the head of the agency who's delivering the service, or the head of the roof-fixing department in MoJ ...? It's a real tension....”* (Interview_053)

Citing again the commonly-felt fiscal challenge's necessitating of a united, pan-MoJ response (“we had nine different payroll systems”), Box 6.24 initially defends new cross-ministry shared corporate services, effecting MoJ-HMCTS identity integration through joint ownership (“we”) of a single challenge (“use of *the* overhead”). However, latterly, the official proceeds to the accountability tension that such consolidation measures engender, thereby revoking the established intra-Ministry sameness through new HMCTS individualisation – “real tensions for *us as an agency*”; “[his/her] essential services”; “[his/her] direct remit”. This ongoing department-agency difference is confirmed in the polarisation of personnel – “the agency chief executive” versus “the Head of Estates in MoJ”. Thus, as in NOMS, the implication is of a practical drag on new corporacy stemming from the continuing adherence to outdated agency infrastructure – this time, the Accounting Officer delegation.

6.4.4 Interpreting ‘agency’

Against the identity resources narrated above, this final subsection turns to HMCTS’s agency status directly.

Constitutional correctness

Compared to both contemporary NOMS and OPG, HMCTS’s framework carried unparalleled significance, being referenced above in Box 6.15, Box 6.16, Box 6.17 and Box 6.20. Box 6.25 affirms this importance, ascribing a constitutional, rather than managerial, meaning to the document.

Box 6.25: The judges’ framework (i)

[T: Was the 2008 judicial partnership an easy solution?]

I: *“No, it was an absolute constitutional fudge.”* MoJ was hastily created, *“and it was only when we started thinking: ‘Well, hang on a minute, you can’t really have this situation-’”*. Then, senior judges and *“policy officials lock[ed] themselves in a room and just [came] up with this framework document. And as far as I’m aware, it’s unique; there is no other agency relationship that comes close to the framework document. It just doesn’t exist anywhere else in government.”* [Digression]

[T: But there was a 2005 framework?]

I: *“...I just hadn’t realised that there was a version beforehand.... That [2005] was the relationship between the courts and the DCA, whereas this [2008] became the relationship between the MoJ, and the judiciary, and the courts. I’d forgotten that [old] version, actually, but actually it’s relatively inconsequential. It’s a different type of document, actually; I hadn’t realised it was called ‘the framework document.’”* (Interview_035)

Box 6.25 individualises HMCTS not simply by its dual ownership, but by the enshrining of this in a framework document – “no other agency relationship that comes close to *the* framework document.” Constitutional uniqueness and the framework are thus inseparable, the latter having no pre-partnership existence, being instead “the” single, “unique” example within government. Hence, latterly confronted with the 2005 (pre-partnership) framework, the official

confirms its insignificance: though (surprisingly) sharing the same name, the two versions signal quite different delegations.

Box 6.26, below, similarly reinterprets this onetime staple of managerialist contractualism, emphasising that the framework was never “for the department”.

Box 6.26: The judges’ framework (ii)

[T: The framework document, is it-?]

I: *“A living document? Nah.”* It’s consulted prior to parliamentary hearings, *“or if ever there was gonna be an interesting board meeting where the judiciary- the judiciary would refer to it a lot.”* [Digression] *“[T]he judiciary would raise paragraph.6.1.1a.subsection.2 ... and then we’d go into battle.... Framework document – when was the last time I looked at it? No idea. Don’t look at it. Does it mean anything to the way I work? No.”*

[T: Did you have those contractual conversations with MoJ too?]

I: *“Oh good grief, no. No, no, no. I don’t think the framework document was ever there for the department. I think the framework document was there for the relationship with the judiciary, to put us on this footing.”* When agency headquarters started co-locating with MoJ, *“there were plans afoot to move the [Courts Service] Press Office into the MoJ Press Office. Just co-locate them, okay? ... Members of the board didn’t like it, and the framework document then came into play....”* (Interview_044)

Box 6.26’s contention that the framework was “[never] there for the department” resonates with Box 6.25’s previous elevation of its constitutional rather than managerial role. Just as that official expressed surprise at the existence of a pre-partnership framework, here the interviewee reacts with amazement to the suggestion that it might have governed MoJ-HMCTS relations – “Oh good grief, no”. Reinforcing the point, Box 6.26 closes with a story of (aborted) plans to co-locate press offices. Illustrating the judiciary’s proclivity for contractually quoting framework paragraphs and subsections, they refused permission.

Extending this constitutionalism, Box 6.27 proceeds to explain HMCTS’s agency designation entirely by the need for judicial involvement in the confined, courts portion of MoJ’s much larger remit.

Box 6.27: Constitutional correctness

I: The Lord Chief Justice could deploy the “*nuclear option*” and end the partnership. “*It would not cause some massive constitutional row.... You could go back to an old Lord Chancellor’s Department. I wonder if, in a few years’ time, government might say: ‘D’you know, MoJ doesn’t need to have prisons, in which case take the prisons and NOMS out’. Then it’s only a sponsoring department for courts, essentially ... in which case you don’t need a framework document.*” [Digression]

[T: So the agency boundary enables judicial involvement in courts specifically, rather than the whole MoJ and prisons?]

I: “*Yeah, if you were gonna carry on the courts as a sort of judicial-stroke-administrative run entity, then you have to have agency status. There’s no way otherwise you could do it....*” (Interview_035)

Box 6.27 speculates that, were MoJ to revert to being a courts-only department, the framework would become redundant. This positions agencification as a protective device meeting the post-MoJ necessity of confining judicial oversight of the courts within the newly multifarious justice department. It was accordingly described earlier in the interview that:

“[Upon MoJ’s formation, the Senior Presiding Judge] immediately resigned [from the departmental board] on the basis that you couldn’t have a judge being part of the system which was jointly funding both the prisons and the courts” (Interview_035).

Since then, partnership agency status allowed for the apportioning-off of the courts from the main MoJ, with constitutionally-appropriate judicial representation at this sub-departmental, agency level. By extension, as Box 6.27 continues, were prisons to be once again removed from MoJ’s responsibilities, leaving a much reduced justice department, agencification would become unnecessary, since judges could exercise oversight from this more tightly delimited Ministry board.

Agency apathy

Although a logical outcome of HMCTS’s judicial partnership and the specialist nature of courts administration, this constitutional rationale for agencification is but one interpretation. Several

officials reported more neo-Next Steps ideas about businesslike delivery, one identifying agencies as “an analogy for businesses” (Interview_048) and another reporting that, given HMCTS’s size and complexity, “it’s gotta be run like a business, with a board...” (Interview_043). Still, as Box 6.28 illustrates, more extended narratives display frank apathy for agencification.

Box 6.28: Agency apathy

[i]:

[T: What does ‘agency status’ give?]

I: To “cut to the chase, agency status doesn’t mean much. Whether you call something an agency or not, it’s the view that you, ministers and the permanent secretary have of your relative autonomy within the organisation that matters.” There are two kinds of agency: “the big delivery organisations”, and “very specialised agencies ... which don’t have much political salience...” [Elaboration] For the former, the “[Next Steps] approach, which is that they ought to be run as a business ... stands true. But in terms of the big delivery agencies, there will always be political interest in them, and therefore it’s a matter of where the ministers and where the permanent secretary and where the chief executive ... position that.” (Interview_041)

[ii]:

[T: You said agency status makes no difference to frontline staff. Does it here, in HQ?]

I: “It makes no difference whatsoever.”

[T: The fact that you’ve got an annual report and accounts, the board, etc.?)

I: “Just means extra work for the staff to write. It doesn’t play a part in our everyday life, because we’d still have business plans, whether we were up to a [director general] structure. ... [W]e’d still have our budgets; we’d still have the work we need to do; we’d still have our reporting mechanisms.”

[T: What about the Accounting Officer role?]

I: “It probably means to [the chief executive] ... but, to the majority, I very much question the difference.” (Interview_044)

Both Box 6.28 narratives are sceptical about the difference brought by agency status. Though again benchmarking the classification against neo-Next Steps business practice, [i] attributes

“relative autonomy *within the organisation*” to the understanding between ministers, the permanent secretary and the chief executive, thereby narrating a question of *internal* (“within”) management delegation rather than agency-gifted, *external* decentralisation. This is particularly the case for “the big delivery agencies”, which inevitably command political interest. As another interviewee similarly remarked, after Next Steps, ministers realised that “you can’t transfer away risk of cock-ups”, and are therefore “not prepared, actually, to release the power to the agency and say: ‘Fly free my pretties...’” (Interview_048). Therein, the original agency-as-decentralisation interpretation is undermined.

Box 6.28-[ii] is similarly sceptical, seeing little to differentiate agency and departmental working in terms of business plans, budgets, work and reporting. This resonates with another’s observation that: “I’ve moved so often, from my perspective it’s never made a hive of difference whether I’m in MoJ or HMCTS, except that they offer certain perks in MoJ that you don’t get in HMCTS” (Interview_048). Again, this apathy partly undermines the specialist significance granted the agency classification in the constitutional correctness account, above.

6.4.5 Summary

This second substantive section explored HMCTS’s organisational identity as a constitutionally unique and operationally-focused agency, yet one that is both horizontally and vertically integrated by its shared corporate responsibility for meeting the current fiscal challenge. Latterly, ‘agency’ was affirmed as a protector of constitutional correctness, a business analogy, but also, incommensurately, as of little practical consequence compared to regular directorate working.

6.5 Office of the Public Guardian

6.5.1 Overview

Replacing the former Public Guardianship Office in 2007 as MoJ’s smallest, fee-funded agency, OPG performs regulatory and administrative functions under the Mental Capacity Act 2005 (see

Chapter 5). This allows certain financial and welfare decisions to be made on behalf of those lacking capacity through, for example, injury or dementia (Bartlett, 2008; Hartley-Jones, 2011). The Public Guardian – a statutory officeholder and the OPG’s chief executive – supervises decision-making ‘deputies’ appointed by the Court of Protection. In addition, Lasting Powers of Attorney – a legal deed which must be registered with OPG before use – allow capacitated ‘donors’ to plan future delegations to specified ‘attorneys’. Thus, alongside supervision and safeguarding, major agency tasks include document handling, manual data entry, and registration payment processing.

Since 2007, this work has seen year-on-year growth, with application volumes far exceeding initial assumptions (Interview_003). Media coverage prompted several spikes in demand and performance dips (BBC, 2010; Lewis, 2009), and the year to March 2012 saw a further 17 per cent rise (OPG, 2012a, p.8). By virtue of its manual operation, staff numbers have grown to 631 from a base of 389 (OPG, 2008, p.18; 2013, p.4), necessitating recent relocation from London to larger offices in Nottingham and Birmingham. Given aging IT, however, registration turnaround continued to suffer, and, latterly, a Digital Transformation programme has sought a new, technology-led operating model (see Chapter 8).

With the Midlands relocation, 29 headquarters posts moved to the main MoJ building in Westminster (Interview_007). Moreover, following the MoJ Blueprint, policy responsibilities centralised into JPG in 2011. In 2012, the Public Bodies Reforms abolished the Public Guardian Board – OPG’s statutory advisory and oversight committee – prompting strengthened departmental sponsorship (Interview_029), in contravention of the MoJ’s post-2010 ‘no-agency-sponsorship’ rule (see Chapter 5). Alongside digitisation, this makes for a considerable change agenda, against which the following subsections consider identity differentiation, integration and the framing of agencification as a corporate governance solution.

6.5.2 Differentiating OPG

Size

References to OPG’s relative slightness were recurrent. In describing the inconsistent reach of the Public Bodies Reforms, for instance, Box 6.29 identifies size as pivotal.

Box 6.29: Size and inconsistency

I: Although agencies were excluded from the Public Bodies Review, they are *“actually ... classified as arm’s-length bodies”*. That’s the norm, but, in MoJ, whether or not they are treated so is a *“slight oddity”*, in that *“it depends on how big they are”*. There was no question of: *“Oh, do we need the Courts Service, or the Tribunals Service, or NOMS agencies? But there was a ‘Do we need OPG?’”* In the *“MoJ context”*, an agency is arm’s length if *“it’s smaller or it feels like an NDPB”*, and that is the *“dynamic ... around [OPG]”*. Therefore, *“the department would like to talk about: ‘Ah, agencies’, and think about its big machinery: ‘HM Courts and Tribunals; NOMS. Oh, and there’s OPG as well.’”* (Interview_003)

Explaining both the recent questioning of the agency’s future and its general marginalisation within the justice-dominated MoJ, Box 6.29 individualises OPG by its comparative slightness. Bifurcating words (“actually”, “oddity” and “depends”) establish two levels of normality: the formal classification of agencies as arm’s-length bodies, which the Public Bodies Review subverts; and MoJ’s default position of non-arm’s-length agencies, which OPG subverts. In populating this norm-deviant framework, equivalence is imparted between HMCTS and NOMS as typical justice agencies, firstly through their additive listing (“or”), and then by their collective designation as MoJ’s “big machinery”. Opposing this norm is OPG – the departmental deviant – which retains the “feel” of an arm’s-length body. Polarisation is further assured through: contrastive relation (“But ... ‘do we need OPG?’”); introduction as an afterthought (“Oh, and there’s OPG as well”); and different exclamations of indifference and surprise (“Ah”; “Oh”). In addition, vocally, Box 6.29’s first internal quotation enlivens the Review’s thought process – “there was a ‘Do we need OPG?’”. The singular introduction (“a”) disassociates OPG and MoJ, the question having been asked *about* rather than *by* the agency. Thereafter, the

second internal citation is attributed specifically to “the department” and what it “like[s] to talk about”. Again, this distances OPG from the personified MoJ, not being listed amongst its ‘likes’.

Size also explained OPG’s deviation from the new no-agency-sponsorship principle of the 2010 Blueprint. As one official explained, “if not of a size”, an agency must be sponsored, since its chief executive does not attend the departmental board (Interview_007). Box 6.30 elaborates upon this.

Box 6.30: Size and sponsorship

I: With HMCTS’s merger, Access to Justice group disbanded, “and ... OPG came under the sponsorship of Justice Policy Group, reasserting this quite old Next Steps concept, actually, of: ‘An agency has a sponsor.’” This has the “slight irony that, actually, the stated Operating Model ... says that executive agencies aren’t sponsored. And this comes back to the conception in the Operating Model was: ‘Well, executive agencies are these big things, aren’t they, like Courts and Tribunals, and Legal Services Commission and NOMS?’” Hence, OPG “ended up in this slightly halfway house”, being “neither sponsored with the other NDPBs ... nor ... standing within our own right within the MoJ”. (Interview_003)

Box 6.30 effects norm-deviant opposition through vocal polarisation of MoJ (“agencies are these big things, aren’t they”) and the original Next Step idea (“An agency has a sponsor”). Again ironically, OPG actually follows that traditional model of agency sponsorship, and yet, in the MoJ context, is considered deviant for so doing. Therein, HMCTS “and” NOMS “and” legal aid (additive relations – see Fairclough, 2003) are grouped as “big things”, while small OPG “ended up ... neither” with the quangos “nor” being treated like its formal, unsponsored counterparts. This implied quango affinity (“the *other* NDPBs”) develops the interviewee’s earlier observation that it is mostly NDPBs that support statutory officeholders (the Public Guardian). Moreover, in Box 6.29, this official already identified OPG’s NDPB “feel” as a factor behind its questionable future in the Public Bodies Review. Together, this illustrates how, contra-Next Steps, arm’s-length independence is interpreted as a property of quango rather than agency delivery.

References to size extend to accounts of OPG’s day-to-day challenges. For example, in Box 6.31, slightness is framed as disadvantageous for newly-centralised policymaking.

Box 6.31: Size as disadvantageous

<p>[i]:</p> <p>I: OPG was too small to say ‘no’ to policy centralisation. Conversely, NOMS, as a larger agency, would naturally command more authority, perhaps resulting in a decision of “<i>Okay, we’ll leave it there</i>”. (Interview_007)</p>
<p>[ii]:</p> <p>I: Given the Blueprint’s centralisation of policymaking, “<i>there would need to be a process by which the department organises its priorities for the year ahead.... I don’t think we’ve actually got a formal process around that now, or certainly not that’s <u>visible</u> from our point of view. I dare say it might have been a lot more formal and structured if you happened to be sitting in HMCTS, where they would probably have been an <u>absolutely integral</u> part of deciding what the policy priorities are.</i>” (Interview_005)</p>
<p>[iii]:</p> <p>[T: Did OPG benefit from having devolved policymaking?]</p> <p>I: Yes, because “<i>the problem is ... we’re <u>a small entity</u>. In the pecking order of all the policy that needs to be done within the organisation, I wouldn’t like to say “they get round to us <u>eventually</u>”, but we are small.</i>” Conversely, “<i>when we had it ourselves, it was for us to deal with and it could be a priority.</i>” Had OPG retained Digital Transformation policy, “<i>I have a feeling that ... we’d be a lot further forward than we are</i>”. (Interview_011)</p>

Box 6.31’s initial examples make direct comparisons between OPG and its counterpart agencies: in [i] size explicitly explains why OPG, unlike NOMS, could not retain its own policy function; and in [ii], slightness is implicitly blamed for OPG’s limited planning “visibility” compared to HMCTS. In [iii], without similar references to fellow agencies, size is still cited recurrently, the argument being that, as “a small entity”, MoJ policymakers would “eventually” attend to OPG.

Finally, Box 6.32 argues that slightness is actually advantageous, protecting OPG from the Coalition’s heightened “scrutiny” and “governance”.

Box 6.32: Size as advantageous

I: Coalition projects are being subject to “a lot of scrutiny, a lot of governance”. There is the Cabinet Office’s “*Efficiency and Reform Group*”, for which it is “*business case, business case, business case*”. However, OPG doesn’t experience this to the same degree. “[I]t just doesn’t seem to be quite in the same sort of eye of the same storm”, possibly “because of [its] size”. (Interview_009)

Again, Box 6.32 differentiates OPG by its size, this being said to shield the agency against the increased scrutiny brought by new central controls.

Policy sector

Remit also differentiates OPG, the agency being “quite small, and not very much about justice”, as one official observed (Interview_004). Accordingly, Box 6.33-[i] contextualises the recent policy recentralisation by referencing the wider problem of locating public guardianship within government, while [ii] identifies the risks of de-prioritisation within an alternatively-focused department.

Box 6.33: The justice disconnect

[i]:

I: One reason why OPG formerly had devolved mental capacity policy was “you look around: ‘Well, where else would you put it?’” There’s “no ready home”. Following recentralisation, it now sits alongside JPG’s family policy, but at OPG’s inception, “it would’ve suited the department ... [to go]: ‘They don’t understand mental capacity; it doesn’t fit big under the justice background’”. Neither does it fit particularly under the alternatives – “‘Work and Pensions? Well, not really. Health? Well, not really.’” Indeed, “we even got to Education at one point”. Therefore, “you come back to: ‘Well, the least worst is probably still Moj’.” (Interview_003)

[ii]:

I: After the 2005 legislation, “it was always intended that, as was the way at the time, policy ... going forward would sit out here”. Previously, “it would have been a little backwater – probably half a division’s responsibility, if that – somewhere in the Family Justice Policy Group”. That was “the least uncomfortable fit”. As such, the devolution was “in line with the model at the time” of co-locating policy and operations, but it also reflected “a recognition that there was still gonna be some policy thinking that was required...”. The “risk” of leaving it “back at headquarters”, was that it “would have just

shrunk down so much ... whereas at least having it over here, it could be a decision within the business...". (Interview_005)

Referencing the “least worse” [i] and “least uncomfortable” [ii] options of OPG’s suitable location, both Box 6.33 extracts narrate identity differentiation on the basis of remit. In [i], two perspectives are quoted. The first questions what the best solution is: “you look around: ‘Well, where else would you put it?’”. Introduced with the generalising “you” and proceeding with the naturalising “Well”, this questioning validates the problem of identifying a suitable home. Thereafter, the second, departmental voice opines that its regular officials “don’t understand mental capacity”. This explains the decision to remove policy to the new, specialist agency in 2007 (see Chapter 7). Successive negative descriptions (“They *don’t*”; “it *doesn’t*”; “not really”) and disbelief about the extent of discussion (“we *even* got to Education *at one point*”) all deepen OPG’s sectoral individuality. Similarly, and resonating with Box 6.31’s previous discussion of departmental de-prioritisation, Box 6.33-[ii] warns of the “risk” of policy marginalisation, particularly given previous experience of guardianship policy’s consignment to “a little backwater”. Again, the implication is of MoJ-OPG misaligned by their differing remits.

The corporate imposition

OPG officials characterised “corporate” matters as those extending beyond but impacting upon the agency. Unlike for HMCTS, above, however, narration of these newly felt externalities retained a differentiating, them-and-us dualism, the new corporacy being imposed rather than shared, as Box 6.34 illustrates.

Box 6.34: Corporate imposition

[i]:

I: The Tribunals Service had a spare building and staff in Nottingham. In taking them for the Midlands relocation, OPG was “*being very corporate ... fitting in with other people’s needs, ‘cause obviously it was a big saving to the Tribunals Service not to have to make these people redundant*”, even if their skill set was not ideal. In trying to “*be very corporate, and be very accommodating, and help everyone else’s business case*”, rather than necessarily opting for the best solution for OPG individually, the decision was

taken not as *“a chief executive”* of the agency but as *“a pay band 1 senior civil servant”* of the department. (Interview_009)

[ii]:

[T: When was the decision taken to centralise policy?]

I: *“[W]e talked through some of pros and cons”* late in 2010, *“really in the context of the Department’s Operating Model”*. Then, *“MoJ [were] saying: ‘Right, we’re moving to this operating model where all policy will be done by Policy Group. And we’re gonna reorganise at [director general] level ... and this is how we see executive agencies fitting into that”*. So the *“organisational imperative”* was: *“Right, all policy comes to Policy Group”*. (Interview_003)

[iii]:

I: *“[S]hared services is quite interesting, because you then get to the point where, actually, the department wants you to go onto their shared services thing, but what happens if it actually costs you more? ‘Cause we’re in the position where, actually, to move over to some of the shared services that MoJ do would cost us more than the way we’re doing things at the moment.”* (Interview_011)

Storying OPG’s recent relocation, Box 6.34-[i] identifies “corporate” behaviour as the consideration of pressures and priorities in other MoJ organisations. The concluding distinction between a “senior civil servant” in MoJ and “a chief executive” particularly testifies to the continuing department-agency differentiation that underpins this new corporacy. Similarly, while Box 6.34-[ii] begins by positing integrative collaboration (“we talked through”), latterly, MoJ’s perspective is vocalised separately (“Right, we’re moving... And we’re gonna..., and this is how we see...”), thereby distancing OPG from the wider “organisational imperative” of austerity. Thus, regarding austerity-mandated shared services, Box 6.34-[iii] again polarises the Ministry (“the department”; “their”; “MoJ”) and OPG (“you”; “we’re”; “us”), the former insisting upon their adoption, despite the latter’s protests that, individually, they are more costly. Again, this perpetuates the divisive ‘them and us’ that recent corporacy has elsewhere undone (see HMCTS’s collegial financing, above).

6.5.3 Integrating OPG

As was the case with NOMS, against this extensive identity differentiation, OPG’s integration was limited, being largely horizontal and confined to recognition of the general de-autonomisation trend experienced by all executive agencies. Box 6.35, for example, explains both the changing agency approach in MoJ and wider government, and similar trends within public guardianship specifically.

Box 6.35: Agency “purity”?

[i]:

I: *“Mapping” recent developments against the “original purity of Next Steps ... I think very much then the idea was: ‘Departments do policy, agencies do delivery’”. For instance, the Department of Social Security (DSS) held policymaking in the centre. Now, by contrast, “even if” there is a return to “that purity of ‘policy centre, delivery through agencies’” in MoJ’s new operating model, “the big shift is: ‘No, agencies are still part of the department – the body corporate’”. With shared services, for example, “that’s where the departmental mandate comes out. ... ‘Yes, you’re free to deliver; but you’ll use this IT, you’ll use that HR, you’ll use that procurement’”. Previously, agencies could decide themselves, “so if they didn’t wanna spend twenty million quid using that IT supplier, they spent fifteen million quid using a different IT supplier.” Hence, in terms of evolution, while “you just accept the policy and delivery thing will ping-pong” from centralisation to devolution, “the shapes around that ping-ponging ... might be some of the other interesting factors – the shared services question; the procurement and contracts; the sense of the body corporate.” (Interview_004)*

[ii]:

I: The old Public Guardianship Office (PGO) “was much more at arm’s length”, able to “determine its own terms and conditions, all those kind of things”. However, “over time, PGO as it was, and now OPG, have become more and more part of the parent department”. Therein, “that purer Next Steps separation of the executive agency – that’s narrowed and narrowed and narrowed.” (Interview_003)

Both Box 6.35 narratives suggest a departure from Next Steps. In [i], for example, “original purity” is opposed by a “big shift” towards “the body corporate”. As such, despite ostensible similarity between OPG’s newly re-centralised policymaking and the original Next Steps model, MoJ’s Operating Model Blueprint does not represent a 1990s renaissance, since agencies are no

longer separated. This de-autonomisation trend is said to extend beyond OPG to both MoJ and wider government, thereby identifying this agency with others. Thereafter, regarding public guardianship specifically, Box 6.35-[ii] describes how the arm’s-length separation has “narrowed and narrowed and narrowed” since Next Steps, making the PGO and OPG “more and more part of the parent department”.

Significantly, both Box 6.35 extracts narrate de-autonomisation with implied regret, referencing now-unattainable IT savings [i], citing a negative MoJ rebuke (“*No*, agencies are *still* part of the department”) [i], and using rhetorical repetition of “narrowed” and “more” [ii]. Furthermore, use of the ‘pure’ metaphor is itself skewed towards valorising the past, its antonym (impurity) being naturally unfavourable. Together, this points to a perspectival split between an autonomy-enjoying agency and the departmental ‘powers that be’ – a dualism compounded in Box 6.35-[i] by vocal polarisation, whereby “the departmental mandate” thrice demands shared-service compliance of OPG (“you’ll use...”). Latterly, this vocal conflict is reinforced in the same (two-person) interview, when another official vocalises MoJ’s response to an unusual shared service request with the pontificating denial: “No, thou shalt have [prescribed services only]”. As s/he explains, an agency’s special request might be justified for “some bizarre, individual, idiosyncratic, parochial reason”, but, under the new corporacy of shared services, it is rejected due to the need to meet “most peoples’ needs” (Interview_004). Overall, then, while the narrative is integrative in its associating of OPG with wider agency trends, simultaneously, OPG’s dis-identification with MoJ perpetuates, thus reinforcing the agency’s vertical differentiation.

6.5.4 Interpreting ‘agency’

Against these identity resources, this final subsection situates ‘agency’ as a corporate governance solution for the businesslike OPG. Box 6.36’s description of the framework document initiates this interpretation.

Box 6.36: The framework document

[T: Is it important?]

I: “[H]onestly, framework document is a bit of process.” If you create an agency, it has to have one. It is important initially, and is “*meaningful*” when “*there are significant changes ... but apart from that, no, it’s not a reference document*”. The business plan and annual report are “*the key documents*”.

[T: Some agencies can’t supply a framework document.]

I: If a chief executive can’t, that is a problem, “*because, actually, it’s a statement also of the Accounting Officer’s responsibilities. So, if you’ve got an Accounting Officer, they should at least be able to trace a line of sight to a framework document; if they can’t, there’s a bit of a problem in terms of at least their appointment as an Accounting Officer.*”

[T: Someone said the framework can defend the agency’s remit in sponsor negotiations. Does that happen?]

I: It can be used “*as a protection mechanism in that kind of way*”, but that’s not always helpful. The “*particular dynamic*” for agencies is that “*the chief executive is part of the department. They are an official of the department, of an executive agency. So they’re accountable to ministers and they’re answerable to the ministers and the permanent secretary. But an NDPB chief executive isn’t precisely in those same terms.*” So, although it “*is a potential protection mechanism ... the key principle is: executive agencies – they are part of the parent department, even if the construction creates some other lines of boundaries and accountability, not least in terms of defined accounts, the Accounting Officer responsibility for those resources, being able to account for that and for the delivery to Parliament, quite apart from to the permanent secretary.*” (Interview_003)

Box 6.36’s three paragraphs each posit a different opposition. Effected through contrastive relation (“but”), the first dismisses the framework document as “a bit of process” compared to OPG’s “key documents”. After prompting, the second paragraph identifies its necessity for determining Accounting Officer responsibilities, the absence of a framework being an affront to sound financial governance. Developing this and the contemporary departmentalisation noted in Chapters 4 and 5, the third paragraph departs from the previously established affinity between OPG and NDPBs (Box 6.29, Box 6.30) to differentiate agencies by their departmental location (“But an NDPB...”), this being “the key principle” that subordinates “other lines of boundaries and accountabilities”. The deconstruction of agency individuality and concomitant

elevation of departmentalism is enhanced through unfavourable comparison (“*even if*”) and the listing as an appendage (“*some other*”). Moreover, these subordinated agency characteristics include not the key Next Steps precepts of decentralisation and independence, but rather “defined accounts, the Accounting Officer responsibility”, and Parliamentary reporting.

This emphasis on corporate governance continues in Box 6.37, where both extracts point to accountability mechanisms as the reason for retaining agency status.

Box 6.37: Governance

[i]:

I: MoJ is like a multi-company conglomerate. The question is: “*Well, how do I manage it? Through subsidiaries?*” Although a discrete function, OPG’s size and funding suggest that it might be better managed as an “*associated office*”. This is a real discussion point. However, agency status remains the best option. “*One of the things that drives an agency is the governance structure you put around that*”. This establishes the entity on a “*commercial footing*”, mandating an annual report and accounts, and internal and external audit. If OPG were instead consolidated into the accounts of a larger, sponsoring entity, it would be less transparent. Quasi-commercial governance is mandatory for an agency, but only guidance for associated offices. Therefore, OPG best remain an agency. (Interview_007)

[ii]:

[T: What does agency status mean practically? What’s the difference between an agency and the department?]

I: A lot of people would say “*there is no difference whatsoever*”. Nonetheless, “[*t*]he key one is you have a chief executive who’s an Accounting Officer, so therefore should report directly to the permanent secretary. But then, with some small executive agencies, you get tied up in civil service hierarchy, where they go: ‘Well, actually, your chief exec’s only at this grade, so he may be an Accounting Officer, he may not, but he’s therefore gonna report into someone else within the organisation’. And that muddies it...”. (Interview_011)

Box 6.37-[i] frames OPG as a quasi-commercial entity. Reflecting the uncertainty brought by the Public Bodies Review, which did ask questions about the NDPB-like OPG (see Box 6.29, above), the official then identifies continuing agency status as preferable to “associated office” classification because of its mandating of corporate governance befitting OPG’s businesslike

credentials. Similarly, [ii] rationalises agency status on the basis of intra-ministry governance. As with many earlier narratives, it distinguishes between a norm and OPG's subversion of it, describing how agency reporting lines *should* operate (direct to the permanent secretary), "but" their modification because of OPG's size.

6.5.5 Summary

This section explored OPG's differentiation of size, policy sector, and partial quango affinity. It then considered ongoing horizontal associations with the wider agency population in their shared trend towards de-autonomisation. Finally, 'agency' was explained in terms of securing sound corporate governance.

6.6 Discussion

6.6.1 Theoretical reprise

Inspired by the hermeneutic circle, fieldwork adopting an ethnographic sensibility looks to the part-whole relationships by which situated meanings are inferred (see Chapter 3). As noted previously, the aim is to "integrate sequences of ethnographic observations by relating them to a cultural whole: a global reference which encompasses these observations and within which the different data throw light on each other" (Baszanger & Dodier, 2004, p.13). Practically:

"[T]his means ... 'wrapping up' any specific concerns, say with the nature of managerial work ..., within broader attention to 'the construction of cultural norms, expressions of organizational values, and patterns of workplace behaviour'." (Watson, 2011, p.206, citing Bryman and Bell)

Operationalising this model, the foregoing sections explored the situated accomplishment of agency status – a specific concern or ethnographic 'part' – by attending to the wider 'whole' of relational and narrative organisational identity (Ashforth & Mael, 1996; Humphreys & Brown, 2002). The discussion below summarises and compares this data.

6.6.2 Synchronic comparison

The three empirical presentations considered identity differentiation and integration across NOMS, HMCTS and OPG, attending particularly to ‘horizontal’ and ‘vertical’ comparisons with compatriot agencies and the corporate MoJ, these being “similar referents” (Ashforth & Mael, 1996, p.24) for each agency. Table 6.1 summarises the analysis.

Table 6.1: Comparing agency identities

Agency status	Horizontal and vertical differentiation	Horizontal and vertical integration
NOMS	<i>Against MoJ</i> Extensive: risk, pride	<i>With MoJ</i> Limited: joint ministerial briefings, (aspiration for) one culture
(Unfulfilled) de-politicisation promise		
HR independence	<i>Against (justice) agencies</i> Extensive: politics, risk, pride, contestability, loss of ‘true agency’ independence	<i>With (justice) agencies</i> None
HMCTS	<i>Against MoJ</i> Extensive: operational focus	<i>With MoJ</i> Extensive: corporate responsibility in shared austerity, unnecessary sponsorship
Constitutional protection;		
Apathy	<i>Against (justice) agencies</i> Extensive: judicial partnership	<i>With (justice) agencies</i> Extensive: shared austerity (homogenisation)
OPG	<i>Against MoJ</i> Extensive: policy sector, NDPB qualities, corporate imposition	<i>With MoJ</i> None
Businesslike corporate governance	<i>Against (justice) agencies</i> Extensive: size, policy sector, NDPB-like	<i>With (justice) agencies</i> Limited: common loss of agency ‘purity’

As Table 6.1 indicates, compared against the corporate MoJ and its fellow justice agencies, NOMS’s identity differentiation was extensive and its integration limited. Political salience, risk, service pride, internal contestability and lost ‘true agency’ independence effected considerable individualisation, while departmental integration registered only partially in tales of joint

ministerial briefings and the aspiration for corporate culture. Therein, although agencification continued to be referenced in terms of operational de-politicisation, this represented more an unfulfilled promise than pertinent description of practice. Agencification's affirmative effect was thus minimised as simply protecting HR independence for the distinct 'world' of offender management, as well as enabling Accounting Officer corporate governance.

Like NOMS, OPG registered strong horizontal and vertical identity differentiation, this time through comparisons of size and policy remit, and claims of corporate imposition. Moreover, integration was limited, confined to inter-agency gathering against a wider trend towards de-autonomisation and 'the body corporate'. As such, given OPG's differences with NOMS and HMCTS, and its various quango affinities, agencification simply meant the mandating of a series of useful corporate governance arrangements.

Against these minimalist interpretations, HMCTS offered the most substantive rationale for ongoing agencification, although, ironically, some of its officials also expressed outright apathy over the classification. Extensive differentiation was again effected, now through claims to operational focus and constitutional specialism. Unlike both NOMS and OPG, however, vertical identity integration was also profound, storied in the agency's shared corporate responsibility for MoJ's austerity measures. Therein, while 'agency' was still framed as a mode of separation, this was for constitutional rather than managerial reasons. The organisational boundary and framework document protect the executive-judicial partnership from political domination and, equally, prevent judicial involvement in the MoJ's executive-only matters. However, this agency infrastructure was explicitly not used for NPM-style department-agency contracting.

6.6.3 Diachronic comparison

Next Steps discourse makes for several predictions of contemporary agency identity. Therefore, as well as gauging interpretive evolution by attending to the various affirmative arguments for ongoing agencification, evolution can also be traced in benchmarking contemporary identity performances against those original Next Steps expectations. This proceeds below.

Identity differentiation

If the elements of meaning that originally comprised the Next Steps idea – managerialism, decentralisation and empowerment (see Chapter 4) – were to reproduce in contemporary organisational identity, the expectation would be of agency differentiation against: (i) the governing centre – that is, the MoJ as sponsoring department; (ii) ministers – who contractually authorise chief executives; (iii) policymaking – the role of the centre; and (iv) unitary bureaucracy – the antithesis of delegated management. Regarding (i), as Next Steps predicts, all three modern justice agencies narrate extensive differentiation against their MoJ centre, invoking risk and service pride (NOMS), operational intimacy (HMCTS), or size, policy sector and corporate imposition (OPG). By contrast, only HMCTS told of strong department reassociation in its shared ownership of the MoJ austerity challenge, while NOMS narrated limited departmental integration in (the aspiration for) corporate employment, and OPG registered none (see Table 6.1, above). In terms of (ii), again affirmatively, no OPG official lamented political interference in day-to-day operations, and HMCTS actually claimed increased delivery independence since Next Steps. In the high-profile and risky NOMS, however, aside from the regular ‘caseload’, the promise of de-politicisation was broadly viewed with profound scepticism. As for (iii), both NOMS and HMCTS asserted their frontline rather than policy focus, particularly by claiming agency-gifted delivery realism absent in MoJ. OPG, by contrast, lamented its recent loss of policy remit, given the potential for marginalisation within the otherwise-focused MoJ. Finally, regarding (iv), aside from HR independence, no claim was made for agencification’s ensuring of autonomous and empowered delivery – the rhetorical, enythmematic core of the Next Steps Report.

Identity integration

Turning to the integrative parameter: again, if Next Steps continuity were to be registered here, contemporary identity profiles should include association with: (v) the decentralised governing periphery – opposed by the political centre; and (vi) businesses and business methods – the inspiration for the parent-subsidiary, principal-agent model (James, 2001a). Regarding (v),

NOMS framed such decentralisation as a historic aspiration and unfulfilled promise, ascribing the loss of ‘true agency’ characteristics to inevitable political salience. HMCTS similarly narrated homogenisation and new intra-Ministry collegiality, again repositioning the agency to the governing centre. OPG also lamented reduced agency ‘purity’, noting MoJ’s subversion of the arm’s-length agency norm and narrating a wider, cross-governmental repositioning of agencies as within the departmental ‘body corporate’. Finally, in terms of (vi), sound business management was an aspiration in all three agencies, as it was in the main MoJ Operating Model Blueprint and core Justice Policy Group (see Chapters 5 and 8). Nonetheless, in terms of specific agency-business affinities, rather than describing autonomy and innovation, private sector references largely pertained to corporate governance: specifically, delegated accountability (NOMS), the agency board structure (HMCTS), and the mandating of published accounts and internal and external audit (OPG). Again, therefore, no reference is made to agencification allowing a public service solution based on business autonomisation logic.

Table 6.2 summarises this diachronic comparison of organisational identity.

Table 6.2: The Next Steps benchmark

Next Steps Identity	Differentiation				Integration	
	(i) The Centre	(ii) Ministers	(iii) Policymaking	(iv) Bureaucracy	(v) The Periphery	(vi) Business
NOMS	Yes	No	Yes	No	No	Partial
HMCTS	Partial	Yes	Yes	No	No	Partial
OPG	Yes	Yes	No	No	No	Partial

6.7 Conclusion

Having explored macro- and meso-level discourse in Chapters 4 and 5, noting diachronic discontinuity with Next Steps but broad intra-episode consistency, this chapter has completed the initial trio of analyses by examining micro discourse. Performing the hermeneutic operation of part-whole interpretation by attending to relational organisational identity, its narratives

have retold something of the ‘lived experience’ of contemporary governance, while also allowing systematic location of ‘agency’ against that wider cultural whole. Considerable multivocality has been noted. Affirmatively, ‘agency’ means HR independence, constitutional correctness and corporate governance. More critically, however, a denied promise of de-politicisation and outright apathy were also registered. Together, this synchronic polyphony departs from the inter-episode, macro-meso consistency previously noted between the Public Bodies Reforms and contemporaneous MoJ Blueprint restructuring. This evidences the constructivist presupposition of the multi-sited accomplishment of social and policy phenomena.

In terms of diachronic evolution, some evidence of continuing departmentalisation was noted, particularly in NOMS’s claim to unfulfilled de-politicisation, HMCTS’s partial apathy as to the benefit of agency status compared to directorate working, and OPG’s attribution of its independence to NDPB affinities rather than formal agency status. Nonetheless, the picture is more mixed than at the macro and meso levels. For example, NOMS’s lamenting of the unfulfilled agency promise of de-politicisation retains Next Steps meaning, if only as an aspiration; its HR independence and caseload autonomy recall NPM-style decentralisation, if minimally; HMCTS’s substantive use of ‘agency’ as constitutional protection still signals organisational separation, if no longer on managerial grounds; its considerable day-to-day operational independence is similarly neo-Next Steps; and, finally, both NOMS and OPG’s emphasis on corporate accountability mechanisms also follow something of the managerialist public service bargain, if without the concomitant autonomy and empowerment promised by Thatcher and the Efficiency Unit. This latter suggestion of an uneven, or ‘asymmetric’ departure from the accountable management philosophy that originally underpinned agencification is explored further in Chapter 9.

Chapter 7 – Post-Agencification Policymaking

7.1 Introduction

In a progressive descent through the macro, meso and micro platforms, the three previous chapters explored agency meaning in ideational, sectoral and organisational discourse. Their arguments on diachronic evolution and synchronic variegation are extended in Chapter 9 to advance an overall assessment of continuity and change in agencification policy and practice. For now, however, while retaining the arrived-at focus on the individual justice agencies, attention turns to policymaking. As Chapter 2 demonstrated, Next Steps is widely credited with institutionally separating policy and delivery (Gains, 1999; James, et al., 2011). Nonetheless, the post-agencification policy process received almost no close attention during the 1990s, and nor has it since attracted scholarly effort, despite New Labour’s “functional reaggregation” (Elston, 2013). The remaining two empirical presentations begin to address this lacuna, first by tracing changing agency responsibilities since 1993, and then, in Chapter 8, by probing collaboration in the delivery of the Coalition Government’s justice policy programme.

Departing in methodology from existing international and quantitative literature on agency autonomy (Bach, 2010; Niklasson & Pierre, 2012; Verhoest, et al., 2010), both chapters interpret policy processes as situated, intersubjective negotiations. Rather than manifesting as separable and objective variables, ‘policy’ and ‘policy work’ are understood as contextually-embedded social accomplishments (Colebatch, 2002, 2006). Similarly, being unavailable for benchmarking against fixed, population-wide measures, policy autonomy or interdependence are instead *emic* evaluations made through locally-defined frameworks and discursive institutions. What follows thus continues in the ethnographic sensibility by employing Chapter 6’s relational identity profiles to render meaningful the situated policymaking narratives offered in NOMS, HMCTS and OPG.

Anticipating the subsequent storying of Coalition policy development, this chapter describes the historic evolution of the department-agency task division in offender management, court and tribunal, and public guardianship policymaking, and then considers the impact of the recent MoJ Blueprint redesign. On the latter, Chapter 5 already noted that this austerity-led reorganisation consolidated policymaking into a single Justice Policy Group (JPG) which would provide policy services to the whole MoJ family through multidisciplinary project teams (Document_28; _33). Given the disparate NOMS, HMCTS and OPG histories and identities registered previously, this remodelling of the policy process engendered varying degrees of agency restructuring and differing evaluations of its opportunities and costs. Nonetheless, alongside this synchronic variation, a shared narrative also emerges on the historic causes of policy failure. Termed here the 'bureaulore of failure by isolation', this decries old policymaking for its lack of operational grounding. Invoking tradition, symbolism and communality, it also represents an instance of intersubjective "organisational folklore" (Gabriel, 1991, 2000). Accordingly, the first section, below, expands on the concept and character of folklore, before the following three examine each agency successively. Recounting changing post-agencification policy remits, narrative evaluations of this restructuring, and interpretations of the 2010 centralisation, these substantive sections enable a closing discussion of evaluative diversity but folkloric consistency across MoJ, and prompt the team narratives to be explored in Chapter 8.

7.2 Organisational folklore

A consensual definition of the character and practice of folklore has proven elusive to scholars of literature and anthropology, although frequent reference is made to its oral transmission, antiquity, tradition, collective ownership and authorial anonymity (Ben-Amos, 1971, p.4; Utley, 1961, p.193). Bayard, for instance, suggests: "The primary materials of folklore must be certain categories of creative ideas which have become traditional among the people of any society and which may be recognised as their common property" (taken from Utley, 1961, p.195). In a similar vein, Ben-Amos (1971, p.5) maintains that social context and folklore are inseparable,

the latter not “existing without or apart from a structured group”. Thus conceived, folklore predicates on social ownership, being “the learning of the people”, “the people’s knowledge” and “the lore, erudition, knowledge or teaching of a folk” (Ben-Amos, 1971, p.6, citing Burne, Sokolov and Boggs).

Reflecting this emphasis on communality, folkloric analysis has been applied within the wider turn to narratology in organisation studies (Gabriel, 1991, 2000; Gabriel & Griffiths, 2004).

There, “organisational folklore” (or “lore”) has been defined as:

“[A] range of cultural practices and texts that fulfil three conditions: first, they are richly symbolic; secondly, they are not manufactured or legislated, but emerge spontaneously through informal interactions among participants; and, thirdly, they are not one-offs, but become part of traditions, emulated, reproduced, and re-enacted.” (Gabriel, 2000, p.24)

The inductive research design, ethnographic sensibility and conversational interviews made conditions conducive for relaying such organisational folklore. Across NOMS and HMCTS, a popular tale concerned the historic problem of isolated, operationally-detached policymaking. As demonstrated below, this re-enactment and concentration of communal knowledge, being symbolic, spontaneous, and based in tradition, endows a notably folkloric character to what emerges as a *pan-Moj* ‘bureaulore of failure by isolation’.

7.3 Offender management policymaking

7.3.1 Offender management policymaking, 1993-2010

The original HM Prison Service (HMPS), which was latterly sponsored by and then integrated with the National Offender Management Service (NOMS), was originally rendered unusual by its chief executive’s designation as both operational lead and “principal policy advisor” (HMPS, 1993, p.6). The then permanent secretary explained this deviation from the Next Steps norm by a particular need for delivery realism:

“[I]f I had set up a unit of bright young civil servants at the centre of the Home Office ... we would have seen policy gradually becoming more unrealistic and less soundly based

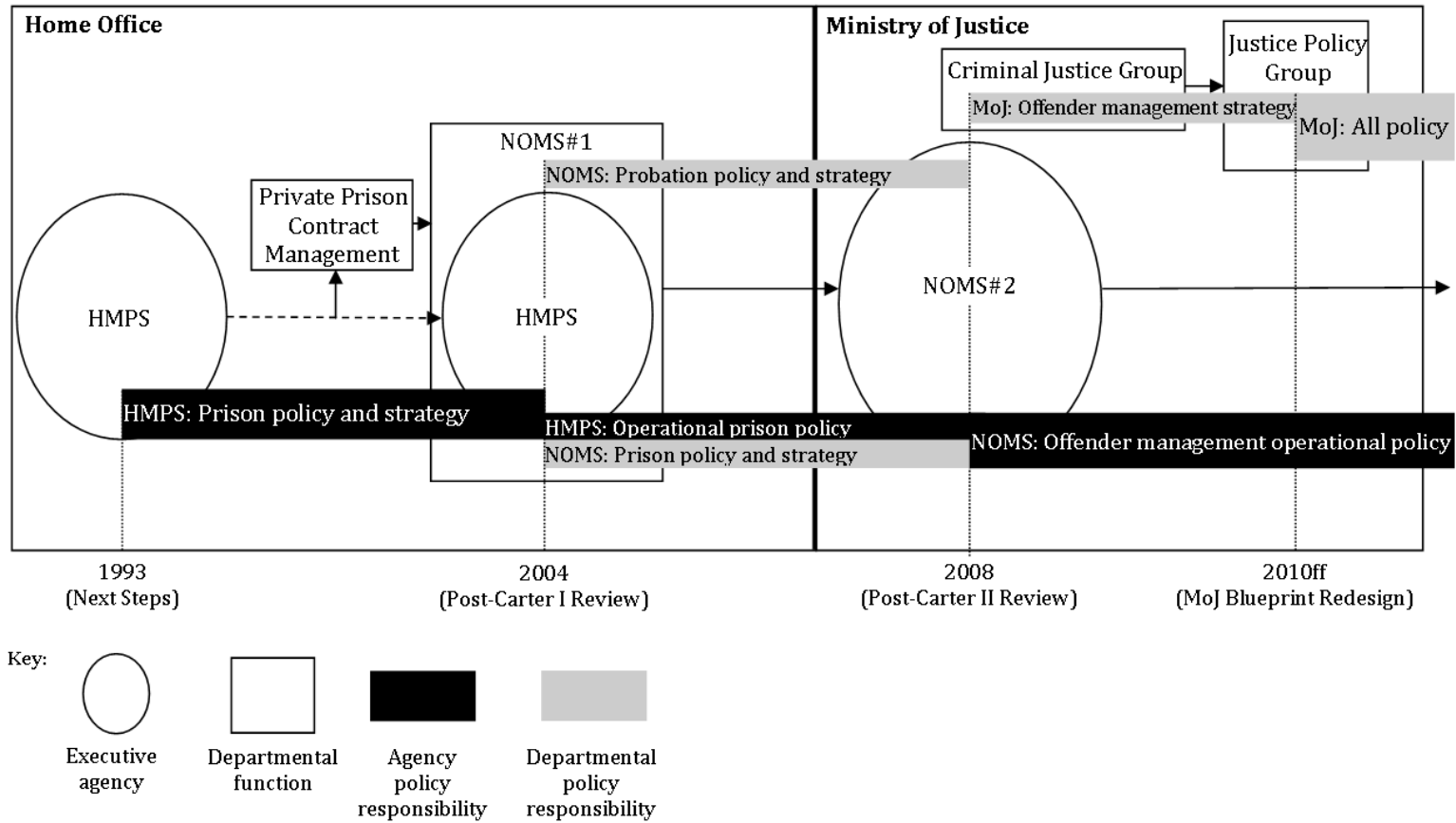
as it ceased to be informed by the hard facts of operational experience.” (Whitmore, 1994, pp.10-11)

Combining policy and delivery roles, therefore, HMPS was originally a relatively “self-sufficient” agency (Interview_026). Indeed, for the emerging penal contestability agenda, it both ran the tendering process and competed for contracts alongside private companies. Latterly, a review considered instilling a formal purchaser-provider split that would remove HMPS’s policy function, although, again, fears over operational detachment precluded centralisation (Home Office, 1999). Nonetheless, by 2003, HMPS did lose its contract-management (see HMPS, 2004, p.14). Thereafter, the first Carter Review proposed increased contestability through establishing NOMS, and, across 2004-2005, further responsibilities were centralised, putting HMPS “on a level playing field with other providers” (Carter, 2003, p.36).

In 2008, following the second Carter Review (Lord Carter, 2007), formerly centralised policy functions were reunited in an “operational policy” directorate of the restructured NOMS#2 commissioner-provider (HMPS, 2008, p.30). Simultaneously, in the inchoate MoJ, a Criminal Justice Group assumed NOMS#1’s strategic responsibilities (Interview_030). According to the NOMS framework document, the new agency was therefore to formulate “additional policies, practices and implementation mechanisms” beneath this strategic level, and, with permission, lead “specific policy and strategy areas”, including international prisoner transfer (MoJ, 2008, pp.9-10). This continued to the 2010 Blueprint redesign, when Criminal Justice Group merged into the pan-MoJ Justice Policy Group (JPG). Unlike HMCTS and OPG (discussed below), NOMS suffered no significant further centralisation at this point, only losing international prisoner transfer policy. As one official reflected, this was because the policy-delivery balance “had already been tested in earlier iterations [of NOMS]” (Interview_024).

Figure 7.1, overleaf, visualises this post-1993 chronology. Black ribbons indicate agency-devolved policymaking.

Figure 7.1: Offender management policymaking, 1993-2012



7.3.2 Pre-2010 restructuring

NOMS officials drew on Chapter 6's identity resources – especially, political salience, risk, pride and contestability – to account for this restructuring of policy responsibilities across 1993-2010, narrating both a growing strategic-operational division and a clash of expertise and competition. Their evaluations are explored below.

Strategy versus policy

The innovation-operations disconnect was first noted in NOMS's claimed risk-management focus (see Box 6.3, Chapter 6). It resurfaces in Box 7.1's account of the gradual distancing of high-level strategy from core penal policymaking.

Box 7.1: Strategy and policy

I: NOMS's current functions *"have always existed in the Prison Service. It's the bit across in MoJ that didn't exist."* Prior to 1993, HMPS *"always had within it some policy groups."* With agencification, *"there was an initial intent on removing these.... That didn't happen. There is a story that the incoming director general ... did not accept that you could run an organisation without both the operational bit and the policy bit intact. ... That's the story. How true that is, I have no idea...."*

So HMPS *"contained its own policy. That went a bit wobbly after the escapes in '93 and '94, and we found ourselves with almost a shadow team in the Home Office.... That then went away ... and it wasn't really until ... NOMS#1"* that a Home Office team *"inevitably had to think about policy. Yet the Prison Service still had its own policy function. ... [T]he bit at the centre was doing not quite policy, but more strategic thinking about the place of the organisation in the system, whereas the Prison Service was doing its hardcore policy on categorisation, prisoner voting rights ... – policy about running prisons."* NOMS#1 also had some probation policy too.

Hence, *"you had this slightly uneasy split ... between some organisational strategy stuff going on about ... what the future should look like, while the Prison Service was left doing its operational policy. That felt unsatisfactory ... because the boundaries weren't entirely [clear].... The current situation is one in which ... policy people in the MoJ [are] doing the high-level, 'What is it that the minister wants?'.... And then it's handed over to us.... That first batch of work – the ... blue-sky stuff – is stuff that we would have done normally in previous incarnations...."* (Interview_026)

With a classically narrative beginning-middle-end structure, Box 7.1's eloquent recounting of role reassignment across 1993-2010 perhaps signals the issue's *emic* salience in NOMS. Overall,

a trend towards increased departmental strategising is identified, but alongside continuing agency autonomy in “hardcore” penal policymaking. Anticipating subsequent accounts, the narrative thrice distinguishes between high-level, futuristic innovation (“the place ... *in the system*”; “what *the future* should look like”; “*blue-sky thinking*”), and more grounded, day-to-day matters (“*hardcore* policy ... about *running* prisons”; “*operational* policy”). The terms of this contrast are metaphorical, depicting strategy as macro-level (“system”, “future”, “blue-sky”), intellectual (“thinking”), and aspirational (“should”), while the agency’s “operational policy” is conferred a tangibility (“hardcore”, “running prisons”) and practicality (“categorisation, prisoner voting rights”). Moreover, it is the modification of this ordinary prison business that constitutes “policy” work, while MoJ’s abstract and futuristic theorising is “not quite policy, but more strategic thinking”.

NOMS’s retained policy – but not strategy – responsibilities are exercised through its Operational Policy Group (see NOMS, 2011b). This cabinet of senior officials convenes monthly to review and issue formal instructions to headquarters and frontline staff on matters as diverse as cell searching procedure and staff maternity leave. “Policy leads” or “policy authors”, located throughout NOMS headquarters, are responsible for instruction maintenance, business case development, internal consultation, and briefing the Operational Policy Group (Interview_021). Once a draft instruction is submitted, the Group reviews “the actual detail ... and whether it stands up, what that would mean in practice for an establishment. ... ‘Would the policy be understood? Are there aspects of the policy that they haven’t thought through properly?’” (Interview_021). The instruction is then issued or returned for modifications.

In terms of this internal, operational policymaking, most instructions adjust business-as-usual practices following legal challenges or inspections. However, “occasionally”, policies are initiated externally by “strategy” change, as Box 7.2 explains.

Box 7.2: From strategy to policy

[T: So a new instruction could follow legislation?]

I: “Yes, because occasionally something starts off in Justice Policy Group as a strategy piece of work, if you like, but at the end of the day it has to be delivered, so that’s when it would transfer over to us. NOMS is about delivering, so we would have to find a policy team within NOMS to take on that work. The National Operational Services drives most – not all – of the policy within NOMS.” (Interview_021)

Box 7.2 again distinguishes between NOMS’s “policy” and MoJ’s “strategy” roles. This internal-external polarisation is enforced by the contention that, “but at the end of the day it has to be delivered”. Here, the contrastive relation (“but”) and allusion to delivery realism (“at end of the day”) differentiates the MoJ’s abstract and political penal innovation from NOMS’s real, tangible “delivering”.

Turning to externally-developed strategy, Box 7.3 offers the first exposition of the pan-MoJ bureaulore, narrating historic policy failure as a product of policymaker isolation.

Box 7.3: Bureaulore (i): “the worst examples”

[T: Prior to 2010, how would MoJ handover policy?]

I: “In some cases – in the worst examples – you would have people in [Criminal Justice Group] ... work on a whole new strategy for, I don’t know, foreign national prisoners or some bit of the system, and then present it to NOMS. And I can remember some examples of us looking at it and saying: ‘This is all very well thought through – it’s a great bit of thinking – but none of it’s being implemented because-’ whatever the ‘because’. It could be there’s no resourcing ... or ... operationally, you couldn’t make those sorts of changes. So the worst examples of that were people working in isolation – doing good work, you know, hiring external, bright strategy consultants to think through some new way of running the system. I remember someone did a reconfiguration of some bit of the system, and by the time it finally got to NOMS for discussion about, ‘Could you implement some of that?’, the answer was ‘Err, no’.” (Interview_024)

In once more separating MoJ’s overtly academic outputs (“well *thought through*”; “a great bit of *thinking*”; “*bright strategy consultants*”) from NOMS’s on-the-ground, prison-landing realism

(“operationally, you couldn’t...”), Box 7.3 perpetuates former distinctions between departmental intellectualism, innovation and “strategy”, and the agency’s hardcore, tangible delivery. Again, therefore, penal policymaking proper is interpreted as business-led work beneath these high-level strategy interventions (see Box 7.1, above). Regarding the pan-Moj bureau, its core contention is that, historically, the distance between strategy and operations caused repeat policy failure. In Box 7.3, such “isolation” is named explicitly, and then illustrated with temporal narrative – “by the time it *finally* got to NOMS...”. Further folkloric qualities then manifest in the indication of collective knowledge (“*I don’t know*, foreign national prisoners”; “*whatever* the ‘because’”) and traditional recurrence (“the worst examples”; “some examples”). These stylistic traits reappear below.

Box 7.4 similarly laments the post-2004 strategy-delivery decoupling, again on the basis of information asymmetry.

Box 7.4: Experiential “clout”

I: “Depending on which side of the fence you sit, you’ll have a different view of the pros and cons [of centralised strategy]. ... I think one of the pros is ... we have to spend, sometimes, a little less time with ministers ... because we can concentrate on getting the business right... The con is, of course, we still have to do that, because what we cannot do is to allow [policymakers] over there, who might be flitting between ... different issues, to ... be influencing and decision-making on issues that we know inside out. ... [I]t’s really difficult if you’re a policymaker remote from the business to have a really good understanding of what’s driving the business, and what it can do and what it can’t do, and what’s been tried before. ... [W]hat we’ve found is that if we’re not [involved], then the policies that come out can be not right.”

“And there’s also a need to give very straight and clear advice to ministers. Not everything that ministers want to happen can happen or is the right thing to happen. If you’re a policymaker, and I say this as having done that job ..., you wanna say ‘yes’ to your minister ... because that’s why you’re there, in some ways. At times you don’t have the weight of evidence, or the clout, to say ‘no’, because you’re not running anything. And sometimes it’s easier when you’re in the operational bit of the business to say to ministers: ‘I know you want that, but ... we’ve been trying that, and we’ve done it in 14 places over the last year’. And it’s sometimes easier to have that conversation with ministers with that operational weight of evidence and clout behind you. So, you almost can’t leave the policymakers alone to have those conversations ... because they do need the operational business view in there at a very early stage to say: ‘This is daft; it’s not gonna work’.” (Interview_026)

Box 7.4 contrasts the advantages and disadvantages of centralised strategic and ministerial responsibilities. Theoretically, in neo-Next Steps logic, this should enable NOMS to “concentrate on getting the business right”. However, in practice, and alluding to the bureaulore of failure by isolation, the constant danger of “daft” policies that are “not right” means that agency disengagement is unrealistic. This argumentation again rests upon opposing knowledge-rich agency officials, who know the “issues ... inside out”, and MoJ policymakers, who are “remote from the business” and, by definition, lack “operational weight of evidence and clout”. This operationally-gifted expertise – familiar from the agency’s claim to delivery-realism noted in Chapter 6 (Box 6.2) – is explored further below.

Contestability meets expertise

Previously, Box 7.4 argued that, by “not running anything”, policymakers were structurally disadvantaged in their ministerial engagements, not having necessary “clout to say ‘no’”. This attachment of expertise to the experience of “running” something resurfaces in accounts of the post-2004 contestability-prompted reorganisations. For example, it is on this basis that Box 7.5 decries the associated loss of HMPS functions to the information-poor NOMS#1 commissioner.

Box 7.5: “Operational knowledge”

[T: NOMS#1 centralised policymaking, ensuring HMPS was on a ‘level playing field’ with competitors.]

I: “*The danger with that was that you ended up having, to some degree, to duplicate, because people were setting up policy who didn’t have, necessarily, the operational knowledge, and ... we [in HMPS] needed people then who had to turn the policy into something that would actually work operationally. So there’s a potential cost...*”

“*One of the areas that went [to NOMS#1] – in my view, a mistake – was population management.” This “requires” both “long-term thinking” and “operational, tactical management of how you’re gonna manage on a day-to-day basis with numbers coming through the courts. The people who did it were primarily operational people ... seconded across to the main bit of NOMS. The rationale was: ‘You can’t have [HMPS] determining who’s going where in the population’. The disadvantage is you’re dislocating it from those who understand the business and know how to do the business. That was the level-playing-field argument!” (Interview_014)*

Citing the “danger”, “potential cost” and “disadvantage” of following the competitive “level-playing-field argument”, Box 7.5 laments HMPS’s loss of policy functions in 2004 on the basis of its informational advantage over the new NOMS#1 commissioner. Dualisms are thereby constructed between: HMPS – its “operational people”, its business understanding, and its need for workable policy; and NOMS#1 – its policy people, its lack of understanding, and its potentially unworkable policies. This information asymmetry is evidenced by, firstly, HMPS’s need to “duplicate” the commissioner’s efforts and “turn the policy into something that would *actually* work”. Intertextually, the reference to duplication reinforces the negative evaluation, this being an inefficiency explicitly disavowed in MoJ’s current, post-austerity Blueprint. Secondly, the example of population management – described by another official as the pressure “[driving] everything in the prison system” (Interview_020) – illustrates more specifically the illogicality of a purchaser-provider design. In particular, reference to the uncontrollability of court demand and need for “long-term” strategising alongside “day-to-day”, “tactical” management together depict a complex, knowledge-reliant activity, for which officials must “understand the business and know how to do the business”. On this basis, the removal of population management to the information-poor NOMS#1 is rendered nonsensical, despite its conformity with purchaser-provider logic.

In 2008, NOMS#1 and HMPS merged into NOMS#2 – a combined commissioner-provider. Box 7.6 once more accounts for this change by the informational advantage of operational experience.

Box 7.6: Business intimacy

I: NOMS#1 was “*an attempt of a much cleaner purchaser-provider split*” and was ineffective. “[O]ne of the problems it had was what I’d call the *‘business intimacy’* with the services it was trying to commission. The purchaser-provider split had created too much *space* from the *theoretical commissioning* of offender services to *the actual reality of what’s required in terms of delivery of those services in the frontline*. So the new ... *more operationally-focused* NOMS[#2] board just allowed a bit more of that *business intimacy*.” (Interview_024)

Pitting “business *intimacy*” against “*theoretical* commissioning”, and thereby denouncing the formerly separate penal commissioner’s lack of delivery-realism (“the *actual reality*”), Box 7.6 again differentiates HMPS and NOMS#1 by their differing experiential and intellectual knowledge. This theory-practice, strategy-policy “space” prompted NOMS#2’s reconditioning as a “more operationally focused” organisation, with decentralised commissioning now enabling greater “intimacy” with correctional services delivery.

7.3.3 Post-Blueprint policymaking

Having explored historic accounts of offender management policymaking, this subsection turns to post-2010 developments. In particular, following the themes traced above, these accounts anticipate a repositioning of knowledge exchange within MoJ-led strategy development, correcting the historic bureaulore of failure by isolation. For example, drawing again on ideas of opposing intellectualism and operational expertise, Box 7.7 explains new MoJ-NOMS engagement by contrasting this with the traditional, dysfunctional relations.

Box 7.7: Bureaulore (ii): the new ideal

I: The Blueprint “drives at a single policy team made up of policy brains and operational people ..., and you flex the levels of people, policy brains being much more necessary at the ministerial stage.... What policy people don’t understand is the difficulty of [delivery]; and implementation people don’t understand the difficulty of policy. And so, unless you create the single team with the learning on both sides, you just go through the same thing every time. What we end up doing is we create policy, and then we have a formal handover point to the agency to implement it; we don’t agree with what’s in the policy; we have this standoff; and ... we just fight about it.”

[**T:** So how should it work now?]

I: “Let’s say ... you’re the policy brain; I’m the implementation person. ... You and I work with a team.... I understand what ministers want, I start to work with you about things that will be sensible in implementation world.... Then we’d work together and we – you and I – agree on what’s going on. We get our chief exec to sign up to it along the way. And then, at some point, it falls into an implementation phase.... Your team reduces ... my team increases.... You see all the challenges I face in implementing it. You go back round, pick up your next policy.... You’re actually much clearer about ... implementation this time round, so you’re not gonna make crazy suggestions about stuff that can’t possibly happen.... I, equally, don’t go back to my world and say: ‘Those policy people ... have no

idea of what's going on. ... It's really nice working with Thomas ... he now understands. I feel I understand the challenges he faces in his ministerial work'. Very simplistic, but you see...? You get better policy. At least, you get policy that can be implemented!

[T: Compared with before?]

I: *"You're the policy person. You work all the policy up. You might come and talk to the director general.... S/he might say: 'I don't agree with that'. You go: 'Oh, okay'. You go back to your ministers; you write the policy. You then ... go: 'Right, director general ... here it is – go away and implement it'. I then go: 'I can't implement this, because X, Y, Z'. We then fight for about three to six months.... In the end, it gets so watered down [that] it's not recognisable.... Ministers have got this rather inflated expectation.... And then we go round that circle again for the next one. Slightly simplistic, Thomas, but you get the point I'm making."* (Interview_015)

Box 7.7 depicts the 2010 Blueprint as modifying interdisciplinary relations between policymaking MoJ and operational NOMS, with the traditional, entrenched mode of policy failure – the bureaulore – prompting the redesign. Thus, with their different professional knowledges, “policy people” and “operational people” (or “implementation people”) previously struggled to collaborate – “we have this standoff ... we just fight about it”. Again, the disciplinary division is of intellectualism (“policy brains”) versus delivery-realism (“sensible in implementation world”), with the recurrence of the offender management “world” metaphor from Chapter 6 reinforcing the distance of policymaking from prison landings. This initial folkloric frequency (“the same thing every time”; “what we end up doing...”; “you go back around...”) anticipates the fuller bureaulore presentation in paragraph three (see below). Thus, with the new Blueprint in 2010, the aspiration is for team singularity (“*we’d work together and we – you and I – agree*”) and new learning across this professional divide (“*You see all the challenges I face...*”), thereby preventing against traditional “*crazy suggestions*”, and making for policy that “*at least ... can be implemented*”.

Reminiscent of the NOMS-MoJ bureau-politics identified in Chapter 6, and confirming the Blueprint’s isolation-to-integration aspiration, Box 7.7’s concluding paragraph offers a particularly strong articulation of the bureaulore, narrating traditional MoJ isolation through

uncooperative task assignment (“You work all the policy up”; “you go back”; “you then”), separate ownership (“what we’re doing”; “your ministers”), and vocal polarisation and miscommunication (“I don’t agree with that’ ... ‘Oh, okay”). This isolation is confirmed in the story of a poorly-received policy presentation to NOMS – “‘here it is’ ... ‘I can’t implement this’”. Again, stylistically, the narrative is folkloric, evoking tradition through generalisation (“‘X, Y, Z’”; “about three to six months”) and claims of cyclicity (“we go round that *circle again* for the *next one*”). Moreover, the casting of the interviewee and interviewer in the roles of operational official and policymaker (“‘nice working with Thomas’”) makes for further generalisation and folkloric symbolism.

Thus conceived, to NOMS, the 2010 Blueprint redesign signals a new era of effective knowledge exchange, as Box 7.8 confirms.

Box 7.8: Multidisciplinary teams

I: “[B]ecause the new MoJ Operating Model is designed in a much leaner and more integrated way, effectively we just create a multidisciplinary team to do policy now. And so, in the same team, you would have the policy person; you would have the delivery person from NOMS, who’s gonna be responsible to implement it.” It’s the NOMS person’s “job to bring the operational expertise ... but in the same room you would have the finance person, the analyst, you may have the procurement person... So, instead of having this big divide between the centre of the department and the agency, we just effectively create a multidisciplinary team and ... what happens is the centre of gravity just shifts from being policy-led to being operationally-led.” (Interview_027)

In identifying a “more integrated” approach as removing “this big divide between the centre of the department and the agency”, Box 7.8 confirms Box 7.7’s commentary of a movement towards more collaborative strategising through team singularity. Hence, as one among the various disciplinary contributors for policymaking, NOMS’s “job” is to “bring the operational expertise”, just as “the policy person”, “the finance person”, “the analyst”, and “the procurement person” each bring their own professional contributions. Somewhat countering the traditional, generalist view of the Whitehall civil servant (see Campbell & Wilson, 1995; Page, 2010), this

new policy-process disciplinarity was the basis of many accounts of justice policymaking, and is explored again below and subsequently in Chapter 8.

Despite this optimism that the new knowledge exchange enabled by the 2010 Blueprint will finally consign to history the bureau of failure by isolation, the political salience of offender management – a key identity differential from Chapter 6 – remains a conditioning force on the exercise of operational expertise, as Box 7.9 illustrates.

Box 7.9: Politics: still inescapable

I: “Policy into operation – in any world – there is to some degree a grey area, and in this world, is a decision about what incentive levels you offer to prisoners an operational issue or a policy issue that ministers would want to be bothered about? The reality is that, although I would argue it’s primarily operational, because of the public-interest argument in it, you can have significant interest from ministers. So, for example, when we wanted to increase the basic rate of pay for unemployed prisoners from £2.50 a week, which it’s been since the early 1990s, that became a political issue, even though, actually, I would argue very strongly that should be something that was in [NOMS’s] remit... £2.50 a week, you would think, would not merit an involvement by ministers or others, but I’m afraid, because we’re in a highly media-interested bit of the world, it can create that.” (Interview_014)

Thrice reusing the penal “world” metaphor, Box 7.9 describes how, in the “media-interested” NOMS, “the reality” is that ministerial (and departmental) interest can extend to any aspect of prison regimes, including those which are minute and “primarily operational”. Illustration comes from the attempt to make a long-overdue increase in prisoner unemployment benefit. Reflecting the macro-strategy, micro-operations metaphorical division noted above (Box 7.1), the official contends, as if in an appeal to logic, that, “you would think”, the triviality of this change should “not merit” MoJ intervention, and yet it nonetheless “became a political issue”. As such, even while the Blueprint ostensibly recognises agency expertise and its proper contribution to multidisciplinary policymaking, the inescapability of political salience can still undermine agency autonomy.

7.3.4 Summary

Drawing particularly on the identity differentials of politics, delivery-realism, and contestability, this section explored the restructuring of offender management policymaking since 1993, and evaluations of the recent Blueprint alterations. While making for distinct tales of post-Next Steps reform in terms of policy-strategy dislocation and a clash of expertise and contestability, the two main presentations of the bureau (Box 7.3, Box 7.7) have notable continuity with HM Courts and Tribunals Service narratives, as the next section illustrates.

7.4 Court and tribunal policymaking

7.4.1 Court and tribunal policymaking, 1995-2010

Though a relatively new agency, HMCTS's lineage extends back to the old Lord Chancellor's Department and the Department for Constitutional Affairs (DCA). Unlike HMPS, the 1995 Court Service agency had a pure delivery remit. A decade later, the inchoate DCA devolved policy responsibilities to the replacement HM Courts Service (HMCS), as well as the new Tribunals Service and outgoing Public Guardianship Office (discussed later), the aim being to ensure that "[policy] proposals are evidence-based and deliverable" (Civil Service Capability Reviews, 2006, p.6). As the then permanent secretary explained, for courts:

"The main element ... was avoiding the duplication of having a separate criminal justice unit within the Department ... so that [instead] both the policy and operational advice comes from the same source...." (Constitutional Affairs Committee, 2006, question 1)

Retrospectively, the irony of this restructuring is that, in 2010, recentralisation was similarly effected in MoJ's Blueprint redesign to minimise duplication.

Despite the purposefulness of the DCA's mid-2000s devolution, only vague references to agency-led policymaking appear in the HMCS (2005) and Tribunals Service (2006) framework documents. Indeed, in Chapter 2's framework document review, the Tribunals Service was classed in the lowest of the three categories of formal agency policy remits. Following MoJ's creation and the 2008 judicial-executive partnership, a "Policy" chapter was inserted for HMCS

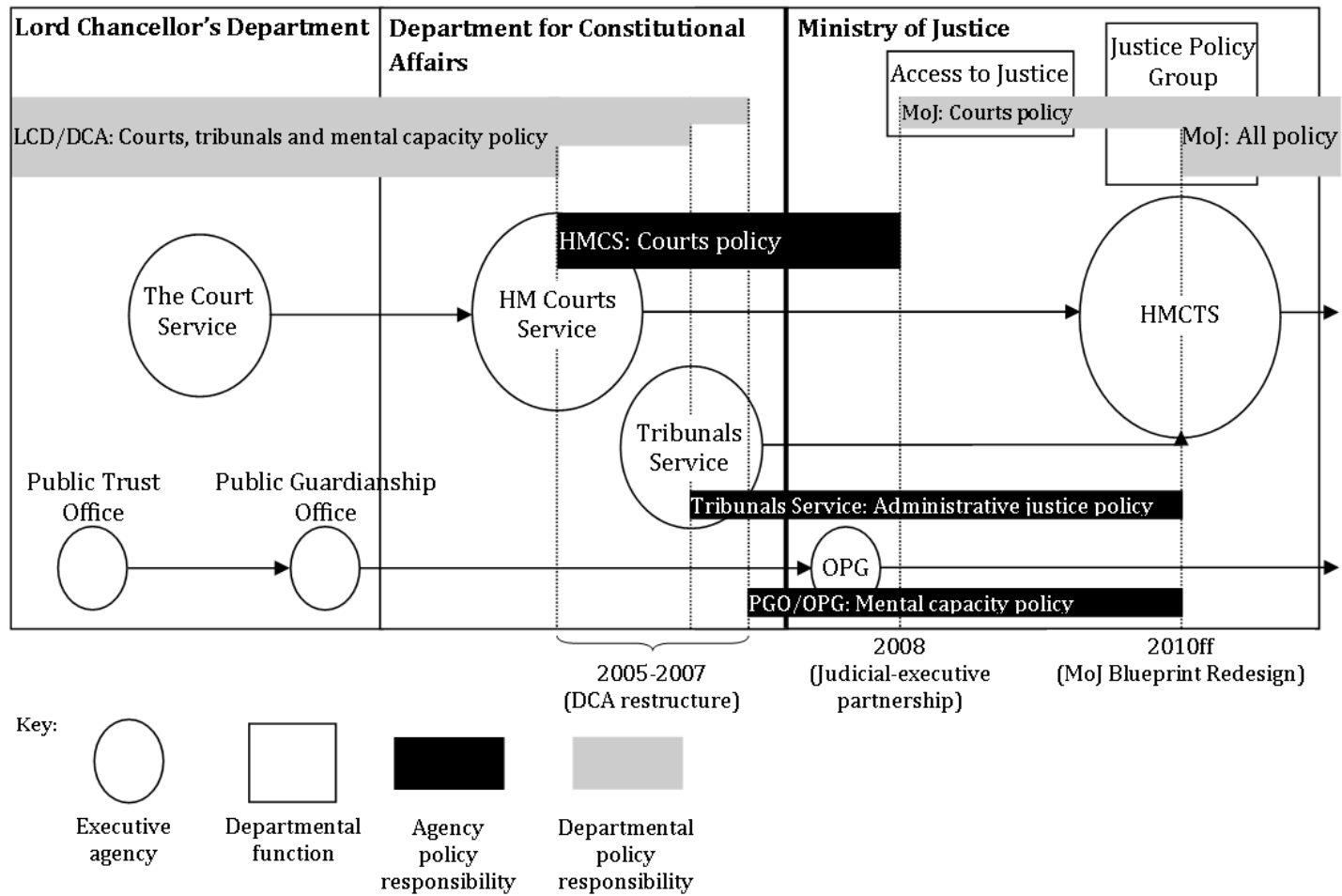
which actually signalled diminishing agency responsibility. This stated that: “the Department consults HMCS on all policy and legislative proposals”, while HMCS develops “policy which is about operational guidance to the courts” (HMCS, 2008, p.21). Thus confined to “operational” matters, this revoked the original DCA devolution, with policy responsibilities transferring to Access to Justice Group in MoJ (Interview_048). The 2010 Blueprint recentralisation therefore involved updating job descriptions rather than further substantial restructure (Interview_039).

After 2006, the Tribunals Service experienced no similar change of governance to the HMCS partnership. It thus retained its devolved responsibilities until the Justice Policy Group (JPG) consolidation, whereupon administrative justice policy was centralised (Interview_041). Overall, this makes for a staged courts-tribunals restructure, with the newly merged HMCTS in 2011 having no formal policy remit, as its framework document confirms:

“[MoJ] develops policies under the direction of ministers. Those developing policy in the Ministry will consult the chief executive on the operational impact of policy changes... The chief executive and board will have no role in the approval of such policies.” (Lord Chancellor & Secretary of State for Justice, 2011, p.12)

Figure 7.2, overleaf, graphs this centralised-devolved-(re)centralised trajectory. The following subsections evaluate this on the basis of HMCTS’s identity profile of operational intimacy, constitutional uniqueness and corporate responsibility (see Chapter 6).

Figure 7.2: Court, tribunal and public guardianship policymaking, 1994-2012



7.4.2 Pre-2010 restructuring

Operational focus meets corporate responsibility

In Chapter 6, vertical MoJ-HMCTS differentiation and integration were simultaneously noted in the agency's claim for operational intimacy but shared ownership of, and corporate responsibility for, the wider austerity challenge. Overall, this made for closer department-agency identification than in either NOMS or OPG, which also readily disassociated with MoJ but without similar counterpoise. Box 7.10's extended account reasserts this composite identity for HMCTS, describing two organisational tensions: the requirement for agency-informed answers to policy questions (differentiation); and the dangers of agency-led policy development for intra-Ministry coordination (integration).

Box 7.10: Bureaulore (iii): the evolution of Next Steps

I: *"[With] Next Steps ... it was very clear that the original proposition was ... to focus on delivery. ... [T]he idea was that, historically, policymakers had made policy, often polishing it to the point at which they believed it was ready for delivery, and then lobbed it over the wall at those who would have to do delivery, which traditionally was the point at which all the weaknesses and problems on deliverability began to emerge. So the idea ... was that agencies would have a more powerful voice. ... [T]hey would be more assertive, more flexible, would have more freedom, and consequently would be in a different bargaining position..."* Initially, "that's pretty much how it was. ... [T]he Court Service was exclusively focused on delivery. It did assert itself in the development of policy that affected the delivery..."

"And then ... the boundaries started to get blurred. ... [A]ll sorts of policy capability developed in the agency." For example, "the DCA's ... general policy capability on criminal justice was in HMCS. So all of the big criminal justice issues, essentially, were being handled in HMCS..."

[T: Quite different to Next Steps.]

I: *"[T]he practical realities of life – even simply who knows what about what – mean that you ask people to do things on the basis of who they are and what they know, not necessarily where the organisational boundary is.*

"The other thing is: there's always a risk if you set up an operational policy capability in an agency and a policy capability in the corporate Ministry, the boundary between those two things is so porous that you find, at least at the margins, both teams of people working on the same stuff, and ... on some occasions ... working in opposition. So you develop a competitive situation, where the policy capability in the agency is at least partly focused on protecting the agency from policy change..."

“When we came to think about bringing the Tribunals Service and the Courts Service together [in 2011], we thought ... we needed to get back much closer to the division of responsibility that Next Steps had envisaged. And we needed to make sure we understood ... the distinction between, if you like, ‘operational policy’, which is designed to deliver efficiency, is designed to work out how you deliver policy, and the ‘pure policy’ work that’s done in support of ministerial aspirations. And so we’ve set ourselves again in that way. We’ve reset the organisation to take the policy capability out.” (Interview_039)

Box 7.10 represents a paragon of narrative form, clearly articulating a beginning (the Next Steps “proposition” of delivery purity), middle (its gradual subversion), and end (its reinstatement). This parallels the centralised-devolved-(re)centralised trajectory graphed in Figure 7.2, above. The five-paragraph division in Box 7.10 highlights the different identity resources informing this progressive argumentation, with the opening three effecting differentiation through claims to agency-specific operational knowledge, and the final two positing integration by observing the risk of devolution to pan-MoJ coordination. Thus, overall, the contention of the first three paragraphs is that the need for operational knowledge – “the practical realities of life” – prompts the commissioning of policy advice according to “who knows what”, rather than “necessarily where the organisational boundary is”. Given the agency’s operational focus, this made for the devolution of DCA’s “general policy capability on criminal justice” to the knowledge-rich HMCS, subverting the original Next Steps intent of delivery purity. (Indeed, as another official observed, under this arrangement HMCS’s policy remit actually extended well beyond its own delivery activities (Interview_009).) However, though solving one problem, this reform prompted duplication and “competitive” working between MoJ and HMCS, as paragraph four describes. In terms of identity, then, this *corporate* concern with the detrimental impact of agency protectionism is integrative, re-associating HMCS and MoJ by their shared concern for intra-MoJ coordination. As the fifth paragraph describes, it is this that prompted the latter-day recentralisation.

Box 7.10 also articulates the ‘bureaulore of failure by isolation’ first encountered in NOMS. This rendering is significant for its framing as a problem which agencification was designed to

resolve, rather than as a post-Next Steps consequence of agency fragmentation. Still, in both defining policy failure as poor workability (“problems on deliverability”) and attributing this to policymaker isolation (“*polishing* it to the point ... *they* believed it was ready”), the argumentation is consistent with previous, NOMS versions of the pan-MoJ lore. Moreover, stylistically, there are similar folkloric references to temporality (“over time”) and antiquity (“historically”, “traditionally”). Finally, the policy-projectile metaphor of successive initiatives being “lobbed ... over the wall” is employed by several other HMCTS officials to depict (somewhat scathingly) the problematic isolation at the heart of the *bureaulore* (see Box 7.12 and Box 7.14-[ii], below).

Recounting changed organisational priorities between the former DCA and replacement MoJ, Box 7.11 similarly invokes HMCTS’s dual identity resources of operational focus yet corporate responsibility, pitting the need to solve the *bureaulore*’s dysfunctionality (paragraph one) against the requirement of departmental coordination (paragraph two).

Box 7.11: *Bureaulore* (iv): changing priorities

[T: How deliberate was DCA’s decentralisation?]

I: “[W]e took the view at the time that policy and operations were together [in terms of corporate synergies], and therefore the agencies should be responsible for both advising ministers on policy and delivering that policy.” In that system, “the people that actually have to deliver the policy are the ones that are advising ministers on it, which means that it’s more likely to be deliverable. Ministers – like all people, they want to have their cake and eat it, but there’s frequently a tension between what’s helpful to ministers in terms of navigating through Parliament, and what’s actually deliverable...” There’s the Child Support Agency, and “all kinds of examples of failed implementations” including the Rural Payments Agency, for which many National Audit Office reports say the policy “was too complex to be delivered. But if you simplify it, it means compromising political objectives, frequently. So the idea of having the policy and the operations together was to avoid that, and was to create that tension within the team. So instead of giving ministers what they want but it’s undeliverable, you actually give something ministers want – as close to what they want as possible – that’s deliverable.” [Digression]

“Now, that was the orthodoxy at the time DCA was running, and it worked quite well... But when MoJ came into being”, the department grew enormously, “and so the view was taken that, with such a bigger policy responsibility, it was more important to look across the policy responsibilities and have the connections across the organisation than it was to

have the connections down through the organisation. Sometimes you'll find this in cycles, 'cause what you do with an organisational change is you try and solve a set of problems', but, in so doing, others are exposed. "So, effectively, we went through the cycle of bringing all the policy teams into the centre and managing those much more across." (Interview_041)

Box 7.11 first explains the DCA's devolution as a response to the (bureaulore) problem of "undeliverable" policy, before then recounting MoJ's subsequent recentralisation as a changed aspiration for horizontal rather than vertical coordination. In this manner, the narrative again essays simultaneous identity differentiation and integration, first positing a need for agency-specific operational expertise, but then empathising with the wider, corporate requirement for coordination. In particular, joint department-agency ownership of this latter-day change of "orthodoxy" is established through claiming singularity ("solve *a set of problems*") and new collaboration ("managing those much more across"). This corporacy contrasts with the first paragraph, which posits department-agency differentiation on the basis of the latter's operational intimacy. Here, the prompt for DCA's devolution is narrated as the inevitable tension between "what's helpful to ministers" and "what's actually deliverable" at the frontline. This further rendering of the bureaulore again problematises policymaker isolation, this time through repetition ("deliverable"; "undeliverable"; "deliverable") and an allusion to departmental intellectualism ("*too complex* to be delivered"), as well as by claiming remedy through removing the "tension" to "the [single] team". Folkloric generalisation reappears in the description of "all kinds of examples of failed implementations" and the reference to the infamous Child Support Agency's performance issues (see Gains, 1999).

Thus far, Box 7.10 and Box 7.11 have conjoined diametric identity claims of differentiation and integration by storying high-level changes in the priorities informing organisational design in DCA and MoJ. By contrast, Box 7.12's narratives drilldown to organisational practice prior to [i] and following [ii] the DCA's devolution. Perhaps unsurprisingly, at this lower level of day-to-day agency business the emphasis is on securing operationally-informed policymaking, thus making

for further vertical differentiation on the basis of frontline, operational focus, but without the integrative counterpoise noted above.

Box 7.12: Bureaulore (v): pre- and post-devolution

[i]:

I: “[W]e used to have the Lord Chancellor’s Department in Selborne House on one side of Victoria Street, and there was the Court Service ... on the other side ... [and] we always used to say: ‘Oh, hang on a sec, Policy are lobbing something over the road again’. And that is how it was viewed. It was never seen that we were, you know, all part of the same team; it was two completely separate bodies, and we would view them with distain, and they would view us with equal distain, ‘cause we wouldn’t implement what they wanted, and there was that physical barrier of Victoria Street, and you’d say: ‘Hang on a sec, something’s being lobbed over at us again’...” (Interview_044)

[ii]:

I: When the DCA devolved policy, “the idea [was] that the people developing the strategy understand what’s happening on the ground, and don’t decide on doing something and don’t give advice to ministers until the experts are saying to them: ‘Actually, mm, that might not wash; this might not fly; we need to look into that; the evidence is a bit different-’. And so, when you do come up with a proposal, it’s been reasonably road-tested. And then when you deliver it, it’s a lot easier, because the people who are saying ‘Right, Agency: now implement this!’ are the people who’ve said upfront, ‘Oh yes, that’s not a bad idea’. And you’ve had the arguments upfront.” (Interview_009)

Box 7.12-[i] analogises the professional ‘them-and-us’ dualism of policy and operational officials with the former physical separation of the Lord Chancellor’s Department and Court Service across Victoria Street in Westminster. The story of “lobbing something over the road again” recalls the projectile metaphor from Box 7.10, above. In terms of the bureaulore, this objectifying of ‘policy’ as something thrown from one organisation and unexpectedly received in another (““Oh, hang on a sec””), makes for a particularly rhetorical and symbolic depiction of department-agency isolation. In comparison, Box 7.12-[ii]’s reference to the bureaulore is more implicit, with this narrative describing the post-devolution benefits to policy-delivery collaboration. Again, the narrator divides between policymaking (“people developing the strategy”) and operations (“what’s happening on the ground”), suggesting their prior distance

and information asymmetry through vocal polarisation – “‘Right, Agency: now implement’; ‘Oh yes’”. Hence, paralleling Box 7.11’s previous favouring of the policy-delivery tension’s removal to the single agency team, this devolution made for “upfront” arguments which ensured that policies were “reasonably road-tested” with agency “experts” before then being put to ministers.

Constitutional correctness

As well as operational focus and corporate responsibility, HMCTS’s identity profile centres on the uniqueness of its judicial-executive partnership (see Chapter 6). On this basis, Box 7.13 further accounts for the loss of agency policy responsibilities after 2008.

Box 7.13: The constitutional necessity

[i]:

I: With the creation of MoJ, “*there was a re-writing of the framework document.... And that gave the judges more of an active role in the governance of HMCS and, of course, the judges are not part of the executive, so it also became appropriate for policy responsibilities to be taken out of HMCS... [T]he framework documents of HMCS and [Tribunals Service] became different at that stage, and because, effectively, the judges were part of the board running HMCS, it wouldn’t have been appropriate for the judges to be accountable for advising ministers on policy.” (Interview_041)*

[ii]:

I: In terms of policymaking, “*you could see this a bit as shuffling deckchairs. ... In many circumstances, it doesn’t really matter much whether it’s in the agency or whether it’s in the core department, as long as it’s only being done once.... When we created HMCTS, one of the reasons that the policy responsibilities all had to be removed was that HMCTS doesn’t belong just to ministers. It belongs to the judiciary as well. ... So there isn’t necessarily a straightforward prescription ... for all agencies, but there is for this one, because the Lord Chief Justice clearly can’t have any responsibility for policy. People who work in this organisation are accountable to him, as they are [to ministers], so it would require just a little bit too much schizophrenia for people, wouldn’t it? And if you think about the governance ..., if some of [HMCTS’s] objectives and plans are about the development of policy, and the board is a mixture of judges and independent people and administrators, the judges, every time there was a policy proposition ... would have to excuse themselves and say: ‘We can’t do policy’. So the logic of that is that HMCTS has to stand slightly aside from other stuff.” (Interview_039)*

Box 7.13-[i] describes how, with the re-writing of the HMCS framework in 2008, it “became appropriate” to remove policymaking to the executive-only MoJ in order to ensure that judges were not involved in providing ministerial advice. As such, while HMCS and the Tribunal Service enjoyed comparable policy devolution under the DCA, they diverged under MoJ. Similarly, Box 7.13-[ii] describes how, with the merger in 2011, the still-devolved administrative justice responsibilities were removed, again to ensure constitutional correctness. Echoing the identity differentiation essayed in Chapter 6, this again distinguishes between the general agency population (“many circumstances”; “all agencies”; “other stuff”), for which, contra-Next Steps, “there isn’t necessarily a straightforward prescription [on policymaking]”, and the inherently specialised HMCTS (“*but ... this one*”).

7.4.3 Post-Blueprint policymaking

Coordination

As described previously, for HMCTS, the Blueprint completed a process of progressive recentralisation since the DCA’s original policy devolution in the mid-2000s. Given the agency’s dual concern over incidence of the bureaulore and assuring department-wide coordination, the new system of integrated policymaking after 2010 was greeted with cautious optimism. For example, Box 7.14 identifies benefits for intra-MoJ coordination and transparency.

Box 7.14: Coordination

[i]:

I: *“I look back and wonder why we ever found it difficult to think about where the dividing line was. We’re very clear now, and one of the reasons we’re clear, I think ... is the governance arrangements that we have within the Ministry ensure that operational people are engaged in policy development, and policy people are engaged in the development of operational policy.... So there’s enough transparency across both agendas, most of the time, for people not feel suspicious about what’s happening on the other side of the border.” (Interview_039)*

[ii]:

I: *“I actually agree with where we’ve got to, which is that we have policy experts whose job it is to work up policy, working for ministers in doing that. They have to do it in*

conjunction with us, because otherwise it's mad – it will come out being the wrong answer. But I don't think executive agencies should be trying to develop their own policy, because the risk of that is it doesn't dovetail with something else that's going on in another bit of the Ministry. So, having a coordinated Policy Plan, which they've got now, and a coordinated way of doing [things], makes sense to me. In reality, the danger is that they don't involve us early enough, or at all, and then they make something that's mad and then they throw it over the fence in the way that had been done for many years.”
(Interview_046)

Both Box 7.14 narratives interpret the 2010 reforms as enhancing intra-MoJ coordination. For [i], this means “transparency across both [MoJ and agency] agendas”, an end to mutual suspicion, and joint engagement of “operational people” and “policy people” in both “policy development” and “operational policy”, as per the NOMS account above (see Box 7.7). Similarly, for [ii], centralisation engenders “a coordinated Policy Plan” and “coordinated way of doing [things]”, thereby preventing against the “risk” that isolated agency working “doesn't dovetail”. Still, [ii] remains cautious that sensible knowledge utilisation should continue to prevent against further incidence of the bureaulore: “otherwise it's mad – it will come out being the wrong answer”. As such, “the danger” of centralisation is newly delayed or minimised HMCTS involvement, and hence recurrence of policies being “throw[n] ... over the fence”. This third incidence of the policy-projectile metaphor (see Box 7.10 and Box 7.12, above) again renders a folkloric quality to the bureaulore by its symbolism, lack of specificity and rooting in tradition (“the way that had been done *for many years*”).

Policy as agreement

In terms of the post-centralisation agency role, Box 7.14-[i] distinguished “policy development” from “operational policy”, with only the latter now being conducted within HMCTS. Box 7.10 already elaborated on this, defining “pure policy” as work “done in support of ministerial aspirations”, and “operational policy” as the delivery of “efficiency” and the calculation of “how you deliver policy”. Analogous distinctions were made by other officials (Interview_046; _048; _051; _054), although often with the qualification that absolute definitions were unattainable.

In a similar manner, Box 7.15 narrates the means by which work is apportioned between HMCTS and MoJ.

Box 7.15: Policy as agreement

[T: How do you know when work is for HMCTS?]

I: “It’s an interesting question, actually, because [JPG officials] and I often have debates about what is and what isn’t ours. I would characterise it as: what we’re working on is policy which has already been agreed, and how that translates operationally. So, we’re not about developing new policy; we’re about taking the policy that’s been developed and agreed by ministers, and putting that into practice. Whereas the JPG teams are actively looking at where we might want to change how we do business and the policies around that, and working through what’s required for that, whether it’s primary legislation, secondary legislation, whatever. Now, that is where I see the line, although I don’t think it’s quite as simple as that. Sometimes, there are perhaps some areas of policy that we can see need for a change, and there would be a dialogue, I think, with JPG.... So a policy idea could come from us, but then it would go to JPG for them to develop it if everyone thought it was a sensible policy to be pursuing. (Interview_042)

Box 7.15 identifies the prompt for a policy’s transfer to HMCTS as the reaching of agreement on what objectives to pursue. Reflecting the Blueprint’s relative newness, as well as the resource constraints that both MoJ and HMCTS presently face, the official first establishes that the precise division of labour is an ongoing issue (“I often have debates”). Thereafter, an opposition is constructed between JPG as the scoping and legislating body that is “actively looking” at areas for change, and HMCTS, which “tak[es] the policy that’s been developed and *agreed* by ministers, and [puts] that into practice”. Primarily focused on delivery, therefore, HMCTS could still make a proposal, but this would “go to JPG for them to develop it if everyone thought it was a sensible policy to be pursuing”. This confirms that the agency’s substantive role – operational policy – only begins once “policy ... has already been agreed”.

This interpretation is implicated in other accounts of HMCTS’s post-centralisation role. As Box 7.16 illustrates, several officials saw their job as persuading JPG to attend to a business-critical

issue on behalf of the agency. By extension, securing agreement for policy work is no longer within HMCTS's gift.

Box 7.16: Persuading

[i]:

I: Centralisation was necessary to avoid MoJ-agency duplication. *“The difficult is then: how do we, as an executive agency, influence the Policy Plan? How do we get the things that are bothering me, because there’s some mad piece of legislation- and I’ve got a meeting at 12 on one of these very issues today...”* [Elaboration] *“So I’m having a discussion with [JPG] saying: ‘You’ve gotta look at this!’ And, actually, the meeting I’m having in a minute is to say: ... ‘I can’t force you to look at this in terms of your policy priorities, but I’m not paying for it anymore.’ ... That will probably make them look at it a bit quicker is my thinking. There are certain other things like that as well where we are trying to influence them ... in order to get them to start doing some of the policy work that we know will help us do our business better.”* (Interview_046)

[ii]:

[T: Since centralisation, is your diary more ‘operational’?]

I: *“... [Q]uite a lot of it is actually working with policy colleagues either to help deliver their new ideas or to persuade them that they ought to have ideas that will help us to deliver more efficiently. So, quite a lot of it is about managing the interface.”*

[T: Is centralisation a challenge?]

I: *“What I’ve had to sacrifice is some benefit in having integrated policy and operations teams to the benefit to the organisation of being able to manage that resource across the whole remit of justice policy. Sometimes that will seem slightly less of a benefit to me if, for example, ministers and [JPG] conclude that criminal justice policy’s the most important thing.... Sometimes that will seem a great benefit to me, because they’ll decide administrative justice ... [is] the most important thing to do. So, there is a trade-off.... But that’s being part of a large organisation; you have to accept that. And part of my job is to persuade people that there’s a business case for doing something in [this] territory....”* (Interview_041)

Reflecting new, post-2010 interdependencies and JPG’s multifarious, pan-MoJ nature, both Box 7.16 narratives identify HMCTS’s role as one of persuading central policymakers to attend to agency priorities. Specifically, [i] anticipates a forthcoming meeting where financial pressure will be put on MoJ in the hope of “mak[ing] them look at it a bit quicker”. Similarly, [ii] suggests

that a significant part of his/her role is to “persuade them [JPG] that they ought to have ideas that will help us”. This linking of policy development to pressing business need – a central theme for OPG, below – illustrates the de-autonomisation that the Blueprint’s centralisation is seen to have engendered. As Box 7.16-[ii] continues, and again invoking HMCTS’s composite integration-differentiation identity, the agency’s “sacrifice” is its loss of “integrated policy and operations teams”, while the “benefit to the organisation” – that is, the whole MoJ – is its management of “that resource across the whole remit of justice policy”. This “trade-off” is a fact of “being *part of* a large organisation”, but necessitates agency efforts to “persuade people that there’s a business case” for certain work streams.

In addition to this persuading role, the new policymaking process and multidisciplinary teams generate central requests for support from HMCTS. In a time of mutual resource constrain, one official recalled “the pain that the team feel” in JPG’s requests of “Let’s have another meeting on this, and we’ll talk about it ad infinitum” (Interview_043). Box 7.17 elaborates this problem of responding to policymakers.

Box 7.17: Responding to JPG

I: *“I think, actually, what you need is a smaller Policy function, because what actually happens is, with a big Policy function- They have slimmed down a lot from where they were, but it’s still big: at Band A level, which are senior people ... there’s like a hundred-odd of them. ... Now, with a hundred ... senior people, and twenty more senior [deputy directors], and five directors, there’s a lot of brainpower there that is trying to come up with things that impact on us. So I spend a lot of my time ... speaking to those policy people who are interested in [courts] to make sure what they’re doing isn’t mad, operationally speaking.” (Interview_046)*

Invoking the characterisation of departmental intellectualism, seen most frequently in NOMS, Box 7.17 contends that the seniority of JPG officials makes for “a lot of brainpower ... trying to come up with things that impact on [HMCTS]”. Therein, rather than simply persuading JPG to attend to critical business issues, it is also the agency’s role to remain aware of that work, ensuring “what they’re doing isn’t mad, operationally speaking”. By extension, a “smaller Policy

function” would make for less of this distraction and, potentially, less risk of bureauore recurrence – that is, policy which, “operationally speaking”, is “mad”.

7.4.4 Summary

This section considered identity-informed evaluations of the centralised-devolved-(re)centralised trajectory of court and tribunal policymaking since 1995. Simultaneous identity association and disassociation with MoJ, largely unique to HMCTS, engendered dual aspirations for dispelling poorly-informed policymaking but assuring pan-MoJ coordination. Therein, though differing in context, four additional presentations of the bureauore of failure by isolation have perpetuated argumentation and folkloric style first encountered in NOMS (Box 7.10, Box 7.11, Box 7.12-[i]-[ii]).

7.5 Public guardianship policymaking

7.5.1 Public guardianship policymaking, 1994-2010

As with court and tribunal responsibilities, public guardianship was formerly overseen by the Lord Chancellor’s Department. This created the original Public Trust Office agency in 1994, which became the Public Guardianship Office in 2001, and was under DCA jurisdiction after 2003. Having securing the Mental Capacity Act, the DCA oversaw preparations for its rollout across 2005-2007. Following its restructuring for agency-led policymaking (Section 7.4.1, above), the outgoing Public Guardianship Office took policy responsibility in April 2007 (see Gearty, 2007), and this remit was then enshrined in the new Office of the Public Guardian’s framework document, established with the Act’s final implementation in October (OPG, 2007). Thereafter, at the 2010 Blueprint redesign, two policy officials transferred to JPG, leaving OPG with a purely operational remit (Interview_003; _006).

This lineage was depicted alongside HMCTS’s in Figure 7.2 (page 201, above). Drawing on Chapter 6’s identity differentials of size and policy sector, the analysis now proceeds in the established manner to evaluate the centralised-devolved-(re)centralised movement.

7.5.2 Pre-2010 restructuring

Business change

In Chapter 6, identity differentiation was registered in OPG’s slightness of size and unusual remit. Stressing the need for business-led policymaking – a central theme in OPG narratives – both Box 7.18 extracts invoke this individuality in recounting the agency’s devolved policy responsibilities across 2007-2011.

Box 7.18: Business critical change

[i]:

[T: Practically, what did devolved policymaking mean?]

I: *“Practically, ... in delivering [our] business, we were able to look at the law, and look at the regulations, and the policy, and go: ‘Well, actually, it’s not working for our customers – we’re trying to deliver this, and that law’s saying that, and that is not working for us or our customers.’ So we were more able to bring together that question of: ‘Right, is the policy wrong? Do we need to change the legislation...?’”* You had to manage the “internal tension” between policy and operations – “we can’t just willy-nilly go: ‘Don’t like that, change that.’ ... [S]o even if the policy responsibility is [with OPG] ..., in making changes, that’s still a question for ministers.” But “particularly in this area, where the stakeholder environment is very broad, and one which doesn’t map brilliantly across the general Ministry of Justice stakeholder environment, for me, that’s where the major positives are in saying: ‘Have policy and delivery close’.” The “normal stakeholder base” for “my policy colleagues in Policy Group” is “barristers, legal profession, [and] all that”. Over there, “a conversation with the care sector isn’t necessarily as meaningful”. (Interview_003)

[ii]:

I: After the first OPG-led public consultation on fees, forms and supervision, “the next set of changes we made was as a result of this” second consultation. In there, Part 1 “is a number of procedural changes just to make it easier for us to do our job.” [Elaboration] Then, in Part 2, “we just asked some questions about “in the longer term ... do you think these might be useful?”” So that consultation combined “a few procedural things, and then a few kind of “for-the-future” types of questions”. (Interview_005)

Box 7.18 frames agency-led policymaking as facilitating necessary business adjustment across 2007-2011 for the still inchoate OPG and Mental Capacity Act. In the case of [i], devolution is characterised as empowering management to respond to emergent, on-the-ground challenges.

Positive framing is assured through the couching of this agency-owned benefit (“we were able”; “not working for us”) within a broader contention on promoting consumerism, it being difficult to challenge the desirability of OPG’s client responsiveness. Extending from this, OPG’s identity differential against MoJ is invoked by distancing the agency’s key stakeholders (the “care sector”) from the legal profession with which the department principally deals. This “normal stakeholder base” makes for less “meaningful” conversations between MoJ and OPG’s specialised “customers”, bolstering the contention of devolution-gifted empowerment. Box 7.18-[ii] confirms this attachment of policy change to business need, describing how one of several public consultations run by OPG itself sought both to “make it easier for us to do our job”, and to gauge client reaction to more strategic, “for-the-future” matters. Overall, the characterisation is of a proactive and autonomous OPG seeking to improve its own services without necessary recourse to the otherwise-focused MoJ.

This association of policy change with continual business improvement was made by several other officials, often with the effect of normalising OPG’s former devolved policy remit as essential to agency operations. For instance, one described how “the idea was that we’d like to get into the habit of collecting these things up and, on an annual basis, having [some secondary legislation]” (Interview_005). Another similarly spoke of how: “You normally think to do two [consultations] a year”, generally “in September, say ... and ... in the May” (Interview_008). Such normalisation continues into Box 7.19, where the narrative distinguishes this regular, business-led policymaking from more unusual (and distracting) international policy work which the agency was obliged to perform during its tenure as lead on mental incapacity issues.

Box 7.19: OPG’s policy agenda, 2007-2011

[T: What was on the agenda after 2007?]

I: *“The first big thing was a bit of a residual thing”* concerning the Mental Health Act 2007. *“We had an input from a policy angle, but because it was DH [Department of Health] policy ... our input was peripheral. ... We also needed to pick up fairly quickly doing a consultation: one, on changing our fees a little bit; secondly, because it became*

apparent that the [LPA] forms [were too complicated]". That was done "*pretty quickly, and then we also consulted on changing our supervision regime*". "*[O]ther things going on*" included work on ratifying the Hague convention on protecting vulnerable adults. That involved "*some work around scoping what that might mean – the pros and cons...*" There was also "*some work around the UN convention on the rights of people with disabilities ... where we had to do some thinking...*"

Other international work included the Council of Europe. "*[An OPG official] ended up ... being the UK's Rep' on the ... committee.... So, again, you're going out there to speak on mental capacity issues, and to negotiate wording around the recommendation. But you're also carrying out with you briefing from all the other policy areas that are also on the agenda for discussion, which is slightly odd, because the meeting takes the better part of a week and some of the items ... were whether there should be a recommendation on missing persons, and whether they can be declared dead ..., which is ... something that's completely outside any jurisdiction of the Public Guardian. But with ... a policy official hat on, you pick that up in the same way as if you were a policy official in the centre...*"

Latterly, an official became committee vice-chair, which involved "*a conversation back here to say: ... 'Does the Department have any issues [with OPG taking this role]?' It didn't, 'but, again, it was a policy chunk of work that we had on that really was the type of thing a policy official should be doing, but it was nothing to do with our role as an agency.'*" A committee conference was "*again ... nothing to do with [OPG]*". It was "*slightly odd, because ... increasingly not only is it the subject area which is nothing to do with [OPG], it's not even part of [his/her] remit ... as a UK policy official.*" (Interview_005)

Chronicling OPG's policy work after 2007, Box 7.19 divides into three paragraphs. The first includes early business priorities; principally, fee changes and the redesign of the Lasting Power of Attorney form. These core public guardianship issues are implicated as 'normal' through their overarching opposition with the later, explicitly "odd" items in the second and third paragraphs. Locally, moreover, normalisation is enhanced through the implied size of the inherited remit ("the first big thing"), the assertion of OPG's ownership ("we also consulted"; "our supervision"), and the linking – again – of policymaking to pressing operational requirements ("it became apparent"; "We also needed to pick up fairly quickly"; "pretty quickly"). Alongside this main, business-critical work, the international agenda is initially narrated as ancillary ("other things going on"; "scoping"; "some work"). However, in paragraph two, it becomes centre stage and is explicitly classified as "odd" for its distance from OPG's core "jurisdiction". This abnormality is confirmed by references to improbability ("ended up"), and the overcoming of an experiential knowledge impairment ("But with ... a policy official hat on,

you pick that up”). The third paragraph furthers this de-normalisation of non-business-critical work. For example, given that MoJ permission was sought before OPG took the international vice-chairmanship, the situation is storied as strange for the otherwise relatively detached, NDPB-like agency. In addition, abnormality is implicated through bifurcating phrases (“slightly odd”; “not only”; “not even”) and a contrastive relation (“*but* it was nothing to do with our role as an agency”). Overall, this makes for a long-range opposition between normal, business-led policymaking on key public guardianship issues, and the “odd” international policy work which the agency also performed before the 2010 Blueprint.

7.5.3 Post-Blueprint policymaking

On the basis of the normality and necessity of OPG’s devolved policymaking, this section explores narratives of the recentralisation as engendering new external dependencies for the agency. Firstly, Box 7.20 weighs the (dis)benefits of centralisation in terms of securing future expeditious policy change.

Box 7.20: Centralisation: the opportunities and risks

[T: What was your reaction to the policy centralisation?]

I: “[T]here were two different reactions.” On the “*opportunity side*”, it was a chance to “*get rid of the policy function*”, which, especially the “*non-OPG stuff*”, was “*starting to just be a bit of an intellectual drain ... The risks around it, from my perspective, were obviously the lack of control ... and whether or not: one, we’d be able to get resource committed to do what we needed to do; and, secondly, that we’d be able to do what we wanted to without a huge amount of interference.*”

Since centralisation, the “*learning curve ... has been to get to the point where I’m thinking: ‘No, well, that is a reasonable challenge back’.* And after having been an embedded policy official of so long, you do start to go *native* and ... look at things too readily from the *operational* perspective, as opposed to taking that step back and saying: ‘Well, actually, what is the wider *strategic* perspective on this?’, and ‘Is there another way of looking at these issues?’ So that is an *advantage.*”

However, “*obviously, the flip side of that is that ... they are, obviously, much closer to ministerial expectations and desires, and less close to operational realities. So there is that disjunct.’* In the agency, “*I’m ... more in-tuned with the actual realities of how quickly you can make changes, what the impact of suddenly doing things in a different way is, that aren’t necessarily gonna swing as well with policy colleagues who are like: ‘Yeah, but the minister wants X, we need to do X!’*” (Interview_005)

Box 7.20 recounts several positives and negatives associated with recentralisation, successively evaluating: an “opportunity” to focus on business priorities; a “risk” in terms of losing control; an “advantage” because of the benefits brought by new external “challenge back” from JPG (paragraph two); and a problem in the tension between “ministerial expectations” and “operational realities” (paragraph three). OPG’s previous policy autonomy is confirmed in references to the old risk of going “native”, the new beneficial “challenge” to the agency’s ideas, and the simultaneous concern with now securing necessary resource “to do what we needed to do” without “interference”. Moreover, information asymmetry is a potential problem, there being distance between the opposing agency (“operational”) and corporate (“strategic”) perspectives, with “policy colleagues” being closer to ministers than “the actual realities” of public guardianship delivery. Similar claims to delivery-realism were encountered in both HMCTS and NOMS, above.

Extending this narrative of post-Blueprint de-autonomisation, Box 7.21’s interprets the recentralisation as a challenge to the agency model itself, given the expectation of continual business improvement.

Box 7.21: A “half-hearted agency”

[T: Is it unusual for agencies to do policy work?]

I: This is “*very much a personal view. If you’re gonna have an agency, have an agency. Don’t have a half-hearted agency, which is almost the situation we’ve got now, where you have an agency that is responsible for delivering something, but that’s it! They’re not responsible for deciding what they deliver, or, to a certain extent, how it gets delivered. They are literally, purely a delivery body, and I’m not sure that’s right, because I’m not sure how you can continuously improve things and continuously change things if you’re not actually in control of the mechanisms for doing that. Especially, as I say, if you’re small, you’re really, really down the pecking order.*”

[T: Is there a danger that, given the main MoJ focus, OPG will fall off the radar?]

I: “*Yeah, yeah. But even if it is on the central radar, given everything that’s going on on legal aid and stuff at the moment, you are still down here somewhere, which means, as an agency, you’re almost hamstrung, because you want to change your policy because you want to be able to deliver better, but in the bigger scheme of departmental things, you’re*”

not important. Whereas, when you owned it yourself, and you could deal with it yourself, it made sure things got done. ... So I don't like half-arsed agencies where they're in control of some things but not others. If we're actually gonna make them an independent body, make them a proper independent body...." Otherwise, "just absorb 'em back in!"
(Interview_011)

Predicated again on the intimate association between business change and policymaking, as well as the OPG identity differentials of size and remit, Box 7.21 distinguishes between proper and “half-hearted” agencies, arguing that recentralisation hampers the ability to “continuously improve”. Suggesting marginalisation within MoJ, the official laments the new loss of control: “when you owned [policy] yourself ... it made sure things got done”. Moreover, strongly evoking the accountable management bargain by which justice agencification was originally narrated (see Chapter 5), the official opines: “I’m not sure how you can continuously improve” if rendered a “hamstrung” agency. Here, agency status is taken as bestowing an expectation for ongoing improvement, and yet, by virtue of the 2010 Blueprint, OPG is now denied its means of betterment. In this manner, ‘policy’ is again defined as business improvement measures.

These evaluations suggest new OPG-MoJ interdependencies, the agency necessarily procuring its policy from the core JPG. As one official explained, they were now “a customer of ... ‘policy colleagues’” (Interview_005). This new commodification – the framing of ‘policy’ as an object to be traded between interdependent parties – was recurrent. For example, JPG’s business plan was described as listing “a certain amount of policy and legal *deliverables*” (Interview_005). In a more positive appraisal of the Blueprint’s restructuring, Box 7.22 expands upon this new process of policy procurement.

Box 7.22: The policy shared service (i)

I: *“If you’ve got policy people [in MoJ], and if you’ve got separate policy people in the OPG, does it make sense to have policy people here, there and everywhere, or does it make sense just to have one group of policy people that will be able to go out to places and deliver policy for them, rather than just having lots and lots of different people, not knowing each other, not knowing the wider scope, and doing their own thing?”*

[T: So it's like delivering a service?]

I: *"That's what JPG is, yeah."*

[T: And there won't be standing teams dedicated to particular areas?]

I: *"There may be. They may specialise in an area, but they won't necessarily work solely on that. ... [O]ne person may take HMCTS work, another one may take OPG work, but they will, essentially, all be one group that's working to different 'customers', if you like."* (Interview_008)

In describing JPG as a pan-MoJ service – “one group of policy people that will ... go out to places and deliver policy for them” – Box 7.22 again commodifies ‘policy’ as the output of a specialised endeavour, to be optimised by the removal of “policy people” from the different business areas and their consolidation into a single professional group. This objectified policy will be “deliver[ed]” to a diverse range of “customers” as, essentially, a shared corporate service, as Box 7.23 confirms.

Box 7.23: The policy shared service (ii)

[T: Now that OPG's policy staff have moved to JPG, who will liaise with stakeholders?]

I: *"Stakeholder management" teams are "staying where they are ... and I think that will always need to be the case, because, while you can have a back-office group writing consultation documents, the stakeholder management has got to be the face of the organisation going out to people, so you couldn't do that as a centralised function."*

[T: Is consultation writing a back-office function in the same sense as HR? A shared service?]

I: *"I mean, it is in that it's a shared service – i.e., it's a shared resource, being that [JPG] will sit on the same floor and write documents for different organisations, but it's not-well, it depends how you view it. I mean, you could view it like that, 'Yeah, it is a shared service', but it's not, in the business sense, the same as shared services."* (Interview_008)

Box 7.23 argues that whereas “writing consultation documents” is a generic professional task to be delivered to “different organisations”, stakeholder engagement is business-specific. While

the former is amenable to centralisation, the latter is not. Thus, again, policy is commodified as an output deliverable to multiple organisations as, essentially, a generic, back-office service.

7.5.4 Summary

This section recounted structural change in public guardianship policymaking since 1994, noting recurrence of HMCTS's centralised-devolved-(re)centralised trajectory, given both agencies' DCA lineage. Narrative evaluations drew on OPG's identity differentials of size and remit to depict devolved capacity as normal for an agency delivering pressing business change in the still-inchoate mental capacity agenda. Hence, with the post-Blueprint de-autonomisation, OPG is now engaged in new interdependencies with MoJ, being obliged procure a policy commodity from JPG.

7.6 Discussion

7.6.1 Synchronic variation

Having explored justice policymaking since Next Steps, this section considers inter-agency variations in both the definition of 'policy' and the opportunities and costs of its centralised or devolved creation (as summarised in Table 7.1, overleaf). The next section then turns to the shared bureaulore.

Table 7.1: Comparing agency policymaking

	Vertical identity profile with MoJ*	'Policy' definition	Policymaking evaluations	
			Pre-Blueprint	Post-Blueprint
NOMS	<i>Differentiation:</i> Politics, risks, delivery-realism, contestability	'Hardcore' offender management issues (not MoJ 'strategy')	<i>Challenges</i> Policymaker isolation	<i>Challenges</i> Continuing political salience
			<i>Opportunities</i> (Limited) ministerial distance	<i>Opportunities</i> Trade of knowledge in multidisciplinary teams
HMCTS	<i>Differentiation:</i> Operational focus, judicial partnership	Options prior to ministerial agreement (not HMCTS 'operational policy')	<i>Challenges</i> Policymaker isolation prior to DCA devolution, pan-MoJ coordination	<i>Challenges</i> Ensuring knowledge exchange, persuading and responding to JPG
			<i>Opportunities</i> Policy-delivery intimacy after DCA devolution	<i>Opportunities</i> Constitutional correctness, intra-MoJ coordination
OPG	<i>Differentiation:</i> Size, policy sector	Business improvement mechanisms	<i>Challenges</i> International distractions, going 'native'	<i>Challenges</i> Resource loss, interference, stakeholder engagement
			<i>Opportunities</i> Business improvement through policy change	<i>Opportunities</i> Operational focus, new JPG challenge

*See Chapter 6, Table 6.1 (page 179).

Defining 'policy'

Reflecting their different operational remits and identity profiles, officials from the three agencies offered varying interpretations of 'policy'. Providing the complex, high-risk penal services of a "total institution" (Goffman, 1991), and thereby working in a separate "world" to other areas of public policy (Interview_014; _015), the NOMS focus was on day-to-day, instruction-guided operations in the national prison and probation system. For this "hardcore" policymaking (Box 7.1), "policy authors" submit instructions to "Operational Policy Group" (Box 7.2), independent of any intellectual, futuristic or abstract strategising in MoJ. Thus, as Figure 7.1 illustrated, despite the post-Next Steps loss of strategic responsibilities, core penal policymaking remains firmly in the agency's remit, albeit with occasional media-prompted political and departmental interest.

For HMCTS officials, “pure policy” is that which supports ministers in options appraisal and agreement (Box 7.10, Box 7.15). After the DCA’s devolution to HMCS and the Tribunals Service, this work has been gradually recentralised and is now solely JPG’s responsibility. Although HMCTS must be involved to ensure effectiveness, it has neither the resource nor, necessarily, the skills-set to be conducting this work itself (Interview_046; _043), and, in any case, is part-owned by the judiciary, who must not be involved in providing ministerial advice (Box 7.13). Thus, the agency develops “operational policy” – that is, efficiency measures and pure-policy translation (Box 7.10, Box 7.14).

Finally, for OPG officials, its devolved policy role stretched from the agency’s inception in 2007 to the Blueprint redesign in 2010-11, thereby covering the formative years of the Mental Capacity Act. Delivering these new yet high-demand safeguarding and empowerment services, many of which are closely prescribed in secondary statute (for example, the LPA form), OPG’s policy autonomy within the otherwise-focused MoJ environment made for rapid response to emerging business need, as well as better appreciation of client speciality (Box 7.18). Policy is thus a tradable commodity that enables business-change, and is now delivered from one organisation to another on a provider-client basis.

Pre-Blueprint challenges and opportunities

Through frequent incidence of the bureaulore, policymaker isolation was narrated as a historic challenge in both NOMS and HMCTS. This is considered further below. In addition, reflecting HMCTS’s composite identity profile, its officials also narrated a challenge to departmental coordination in the old dispersal of policymaking responsibilities (Box 7.10, Box 7.14). For OPG, by contrast, its devolved policy remit across 2007-2011 meant that isolation was never a concern. Rather, it was the distraction of international and peripheral policy issues that proved challenging (Box 7.19).

Regarding pre-Blueprint opportunities, NOMS simply registered a slight lessening of ministerial engagement following the loss of strategy responsibilities. HMCTS, however, enjoyed policy-

delivery proximity, particularly in the lengthier devolution of administrative justice (Box 7.11, Box 7.12-[ii]). Finally, for OPG, its pre-Blueprint devolution was the key enabler of business-led change during the formative years of the agency and its underpinning legislation (Box 7.18, Box 7.21).

Post-Blueprint challenges and opportunities

To both NOMS and HMCTS, the Blueprint represents an opportunity for finally dispelling the bureau of failure by isolation (Box 7.7, Box 7.8, Box 7.14). For HMCTS, moreover, it makes for constitutional correctness with this part-judicial agency, as well as better intra-MoJ coordination (Box 7.13, Box 7.14). The OPG's benefit was its removal of international distractions and increased external scrutiny and "challenge" to its potentially "native" ideas (Box 7.20). As for problems, NOMS narrated its continuing and inescapable political salience (Box 7.9); HMCTS told of the need to ensure agency involvement and influence, while not being distracted by central requests for support (Box 7.16, Box 7.17); and, for the small and less-'justice' OPG, centralisation raised concerns over prioritisation, resourcing, interference and stakeholder engagement (Box 7.20, Box 7.21).

7.6.2 Synchronic consistency – the bureau of failure by isolation

Despite the synchronic variation across 'policy' definitions and the challenges and opportunities of different divisions of labour, the retelling of the bureau across both NOMS and HMCTS marks notable inter-agency consistency. This subsection explores the unifying argumentation and style of this pan-MoJ folkloric, attending to communality, tradition and symbolism.

Communality

Folklore is partly defined by its concentration of communal knowledge (see Section 7.2, above). Indeed, Boggs's definition is of "the lore, erudition, knowledge or teaching of a folk" (cited in Ben-Amos, 1971, p.6). This intersubjectivity reflects in Box 7.24's formalisation of the bureau's argumentation, where the major premise – the requirement for 'deliverable' policy [#24a] – is the latent component of an enthymeme. According to the general analytic

framework derived in Chapter 3, this manner of argumentative structure accounts for some of the bureau's rhetorical persuasion, given the diminished opportunity for substantive refutation (Jasinski, 2001). It also points to the commonplaceness of this story within the particular interpretive community (Feldman, et al., 2004).

Box 7.24: The bureau of failure by isolation

Truncated syllogism (enthymeme):

[#24a] For success, policy must be deliverable.* **[#24b]** Traditionally, policymaker isolation produced undeliverable policy. **[#24c]** Therefore, traditionally, there has been policy failure.*

[*Implicit premise]

As well as enthymeme, folkloric communality was evoked in the vagueness with which bureau events were narrated; for instance, in Box 7.3's careless introduction of examples – “*I don't know, foreign national prisons*”; “*whatever the 'because'*”. This off-the-cuff narration points to an assumption of unnecessary elaboration: the events *clearly* illustrate the intersubjectively agreed elements of bureau, and thus require only half-referencing for their meaning to be understood. Again, therefore, the bureau is a product of communal knowledge.

Tradition

Folklore is both evocative of “tradition” (Utley, 1961), and itself forms part of “traditions”, being “not one-offs, but ... emulated, reproduced and re-enacted” (Gabriel, 2000, p.24). On the second count, the bureau adheres by its incidence across the NOMS and HMCTS data, being retold freely by officials of varying grades and lengths of service. Moreover, on the first count, all bureau presentations chronicle historic episodes of policy failure. Box 7.3, for instance, described “the worst examples” of pre-Blueprint policymaking; Box 7.10 employed words such as “historically”, “traditionally” and “always”; Box 7.12-[i] retold how “we always used to say...”; and Box 7.14-[ii] introduced the policy-projectile metaphor as being “the way that had been

done *for many years*". Associated with this historicism is the idea of cyclicity – the bureau's recurrent and endemic nature, prior to the Blueprint's structural redesign of MoJ and new recognition of operational expertise. Box 7.7, for instance, described how "we go round that circle again for the next one", and Box 7.11 narrated "all kinds of examples of failed implementations". Finally, generalisation also evokes folkloric tradition, as if multiple incidences of the bureau allow for succinct summary of their key characteristics. In this regard, Box 7.7 described "about three to six months" of NOMS-MoJ wrangling over a new policy, and suggests reasons "X, Y, Z" for its non-implementation. Further, Box 7.11 employed the conversational figure, "Ministers ... want to have their cake and eat it", to similarly invoke tradition by generalisation.

Symbolism

The first of Gabriel's (2000, p.24) three defining traits of organisational folklore is that it is "richly symbolic". The main NOMS symbolism was in Box 7.7's casting of the interviewer as a "policy brain" and the interviewee as an "implementation person", allowing a role-play built on hypothetical, post-Blueprint interactions between the two professions ("nice working with Thomas ... he now understands"). In HMCTS, moreover, folkloric symbolism was in the three examples of the policy-projectile metaphor, where the traditional mode of policy arrival is depicted as an initiative's unguided and unexpected traversing over a "wall", "road" or "fence" (Box 7.10, Box 7.12, Box 7.14). These metaphorical barriers, which are themselves deeply symbolic, reflect the wider tendency towards disciplinary or professional identities across the MoJ.

7.7 Conclusion

Developing out of the previous focus on macro, meso and micro meaning, this chapter turned more squarely to agency practice. Against the (supposed) Next Steps separation of policy and delivery work, it has identified early digression in HMPS, major departure in the mid-2000s DCA agencies, and then a return to formal division in the MoJ's 2010 Blueprint, albeit with wide

recognition of the proper and necessary operational contribution in ‘multidisciplinary’ projects. Considerable interpretive differences were registered across NOMS, HMCTS and OPG in terms of definitions of ‘policy’ and understandings of the opportunities and costs of (newly) centralised policymaking. This multivocality, accounted for by the contingencies of history and identity, confirms the great caution needed in collapsing complex governing processes into operable variables suitable for large-*N* system analysis. Nonetheless, the emergent emphasis on policy disciplines – analysis, finance, procurement, policy, operations – was significant across all three agencies, and is explored further in Chapter 8. In addition, synchronic consistency also came in the shared NOMS-HMCTS *bureaulore* – an intersubjective account of historic policy failure that formed the basis of reform arguments in the two largest agencies. Of particular interest is its predication on a firm division of labour between policy and delivery, the *bureaulore* serving to warn of the consequences of failed disciplinary collaboration. This institutional preservation of dichotomous work categories, familiar from the third Next Steps enthymeme (Box 4.3, Chapter 4), but in fact long predating that report, is considered further in Chapter 9.

Chapter 8 – Delivering Justice Policy

8.1 Introduction

The previous analysis of justice policymaking was largely historic and conceptual in orientation, recounting *emic* evaluations of structural change in offender management, courts and tribunals and public guardianship through previously-registered organisational identities. ‘Policy’ and ‘policymaking’ were differentially interpreted across the three agencies, with NOMS describing its still devolved, non-strategic offender management guidelines; HMCTS referencing the MoJ’s securing of ministerial agreement; and OPG citing its lost levers of business improvement (see Chapter 7). In now turning to ongoing governing processes, this final empirical chapter adds to the emergent case study literature on post-agencification policymaking (Verschuere, 2009; Verschuere & Bach, 2012). Retelling ‘team’ narratives from the three agencies and core MoJ, albeit from a second-order, field-researcher perspective, five policies unfolding during the eight-month fieldwork engagement are recounted and their constructions of the department-agency division of labour examined.

The chapter begins by defining team narratives in relation to the individual stories explored previously. It then details the inception of Justice Policy Group and its reconfiguring of policy ‘delivery’ into a newly project- and discipline-based endeavour. The next sections proceed through the NOMS, HMCTS and OPG examples, drawing on the agency identity profiles, before the closing discussion undertakes further comparison of the division of labour and its narration.

8.2 From individual to team narratives

In exploring organisational identity and post-agencification policymaking, the two previous chapters drew upon individual storytelling that was largely unguided in its subject matter. Thus describing a multitude of events, from prison bread buying to changing judicial collaboration, it was only in analysis that these separate narratives were probed for intersubjective constructs,

be they shared identities, definitions or evaluations. However, stories are not simply a product of individual volition, but a potentially collaborative and co-productive mode of sensemaking. The incidence of the enthymematic and folkloric *bureaulore* within and between agencies aptly illustrates this narrative communality (see Chapter 7). As Boyce (1995, p.109) suggests, it is by such intersubjective and “purposive storytelling” that “a group can collectively centre itself on purpose and construct shared meaning”. Moreover, these narrative meanings are not simply evaluative, but actionable, as Pentland (1999, p.717) explains:

“[T]he significance of narrative data lies not just in their richness and near universal availability, but in the fact that they are the same kind of data that organizational members use to plan, enact, interpret, and evaluate their own actions and those of others.”

On this basis, this chapter’s starting premise is that, contextualised by the wider cultural whole of organisational identity and historic contingency, policymaking project teams forge group understandings of their work and that of others through the (re)telling of shared storylines.

In attending to these ‘team’ narratives, the empirical presentation below necessarily departs from the previous, story-by-story analysis. Rather than preserving individual narrative ‘wholes’ to probe the dialectic between storied content and underlying form (see Chapter 3), multiple accounts are interwoven into larger, collective narratives. Though synthetic in themselves, being the field-researcher’s distillation of multi-authored data, the aspiration for preserving and triangulating *emic* ideas, distinctions and evaluations told within project teams, and situating these within the interpretive contexts registered in previous chapters, ensures continued adherence to the guiding “ethnographic sensibility” (Pader, 2006).

The five examples of unfolding policymaking are: in NOMS, Payment by Results commissioning and Working Prisons; in HMCTS, the Criminal Justice System Efficiency Programme and Enforcement Services outsourcing; and in OPG, the Digital Transformation of its public-facing services. These initiatives were selected by agency managers as salient areas of work at the time of the fieldwork, and this was confirmed by the departmental business plan (MoJ, 2011a).

Individual and group interviews were scheduled with relevant agency staff and MoJ policy officials (when available), and a variety of internal and published documentation was collected. Accounts were analysed according to organisation and initiative, and second-order narratives produced through iterative synthesis. Before proceeding to the stories, the next section provides more background to the JPG perspectives retold below.

8.3 Justice Policy Group

As Chapter 5 indicated, one component of MoJ's austerity-prompted restructuring was its consolidation of formerly dispersed policy activity into a single Justice Policy Group (JPG). Following the wider Blueprint aspiration for grouping and sharing services, this merged the Access to Justice, Criminal Justice, and Law, Rights and International groups with previously devolved agency responsibilities. Voluntary departure schemes and an assessment centre competition exercise also downsized the emerging JPG from 600 to 438 FTE, after which its own "Blueprint" was implemented to enable provision of pan-MoJ policy services under the new resource constraint (Document_033). Based on project methodology, generic job descriptions, and multidisciplinary collaboration, the aim was to significantly recondition MoJ's "delivery" of policy work (Interview_049).

The JPG Blueprint emphasises the need for prioritised policy activities according to a clearly-defined ministerial programme; discontinued ancillary or speculative endeavours; and an understanding of when a policy output is "good enough" for purpose (Document_034). Central to this "project management methodology" (Interview_049) is the maintenance of a new MoJ Policy Plan listing all justice policy undertakings (Document_034). Designed to "drive difficult but informed decisions about priorities", including discussions with ministers, the Policy Plan's projects are each assigned a review date, even if the work is likely to retain salience indefinitely (Document_034). Officials are temporarily attached to projects through "flexible resource management" – a consultancy-like approach by which generic professionals move between work according to evolving business need (Interview_045). In this manner, the aim is for a

more structured and businesslike commitment of resources, on the understanding that JPG's central activities produce externalities for other parts of the department – the agencies, MoJ Legal, Analytical Services or Finance.

This reconditioned policymaking rests upon disciplinary rather than subject specialism. As one official explained: “the idea behind it is that everybody in the policy profession should have a core set of skills and, depending on their grade, they're at a certain standard” (Interview_012). Another similarly remarked, “it's very much about being ‘a policy professional’, rather than ‘a criminal justice policy professional’” (Interview_049). This follows the cross-Whitehall Professional Skills for Government agenda, which aligns officials with defined professions – including policy, operational delivery and social research – in order to encourage workforce development (Civil Service, 2010). It also makes for JPG's distinct contribution within the multidisciplinary policymaking process, which, as Chapter 7 recounted, now brings together policy, legal, analytical, financial and operational professionals from across MoJ to deliver specific projects under “one set of governance” (Interview_052).

8.4 NOMS and the Rehabilitation Revolution

The Coalition Agreement commits to sparking a “rehabilitation revolution” in criminal justice (HM Government, 2010, p.23). NOMS's Payment by Results and Working Prisons initiatives are the “flagship” policies in this agenda (Interview_037), and are explored below.

8.4.1 Payment by Results

Overview

Following wider government commitments to results-based outsourcing (HM Government, 2011), most notably in welfare-to-work provision (see DWP, 2011), NOMS is undertaking a series of Payment by Results (PbR) pilots whereby public, private or third sector providers are financially rewarded for securing benchmarked reductions in offender recidivism. The aim is to achieve a step-change in dismantling the criminal justice system's ‘revolving door’, principally by de-regulating the frontline, promoting local partnerships, incentivising proven interventions

and stimulating market innovation (MoJ, 2010a). The pilot programme is testing a variety of models across custodial and community provision, and the expectation is that the approach will expand nationally after 2015. The following retells PbR's development from the JPG and NOMS team perspectives.

JPG Team Narrative

Previously, there was emerging MoJ capacity on results-based commissioning (Interview_030; _031). Localised incentive payment systems had been included in the ten Transforming Justice programmes in 2009 (see Chapter 5), and senior officials commissioned a briefing paper on the implications of the Opposition proposals contained in *Prisons with a Purpose* (Conservative Party, 2008). Thereafter, in its pre-election preparation, MoJ undertook further scoping work on financial implications, and, following the Coalition's formation, high-level meetings with the new ministerial team defined the aspiration still further (Interview_030). Analysts began constructing an economic model by which options and system externalities could be tested under various scenarios, and, over the summer, JPG made its proposition to ministers for a PbR pilot programme, with potential national rollout after 2015 (Interview_030).

Simultaneously, work initiated on a wider consultation paper, *Breaking the Cycle* (MoJ, 2010a). NOMS was involved in both green paper and PbR discussions, but, on the latter, contributions were from the agency board only (Interview_025; _030). Unlike the Working Prisons initiative, which also featured in *Breaking the Cycle* and built upon existing capacity in NOMS's Prison Industries (discussed below), "there was no one in NOMS who had expertise to add to [PbR]", because outcome-based commissioning was "such new territory ... a genuine 'policy inception' model" (Interview_025).

Unusually, JPG's involvement did not end after the consultation exercise. "Normally, you would expect [JPG] to stop at that point, [and] hand that over to NOMS [to deliver]", but the agency "didn't have the expertise and knowledge and the bodies to do this, because this is ... very new for offender management services" (Interview_030). Given the need for expeditious delivery,

the newness of PbR, and the impending launch of the existing local incentive programmes (now couched within a PbR narrative), JPG retained pilot responsibility while NOMS established the structures to assume full responsibility later (Interview_030). To aid implementation, a prison governor was attached to JPG (Interview_031), and there were two “Senior Responsible Owners” – one in JPG and one in NOMS (Interview_036). Moreover, the aspiration was for a project team jointly staffed by JPG and the emergent NOMS capability, but this culture was only partly achieved (Interview_025; _028). Possibly, “buy-in was difficult [because] NOMS think that MoJ sit over there doing their ‘fancy-smancy policy’ and don’t have any operational reality”, and that is “right, in some ways” (Interview_025). As such, although agency management were keen to assume responsibility, those at a working level “didn’t really want it” (Interview_030). Equally, JPG officials were reluctant to devolve a now established programme to the new NOMS team who were “openly admitting to you they’re not absolutely sure that they get all of the detail” (Interview_025).

For a time, ministers were distracted with securing other legislation. When attention returned, there was concern at progress and a desire to expand the pilots’ scale (Interview_030). “If you’re a policy official in JPG, what you’ve got is ministers sitting on this shoulder ... [saying], ‘We want to do more, and faster’, and then you’ve got people, quite rightly, in the agency and elsewhere saying, ‘But hang on a minute, if we move too quickly we risk getting it wrong, we risk destabilising existing regimes’” (Interview_036). On any project, there are a number of necessary “drags”: “you have delivery, you have finance, and just the government approvals process, and the Treasury ... and analytics”, and “these are the people who say: ‘Well, make sure this is measurable’; ‘Have you got the money for this?’; ‘Have you got the approvals for this?’; ‘Is this deliverable?’” (Interview_030). That is all necessary, but “what is needed ... is trust of the different groups – so, analysts need to trust policy that they understand what they’re doing; policy need to trust finance and analysts about what they’re recommending and why” (Interview_028).

Within the PbR approvals process, a “Gateway Review” was conducted by the Cabinet Office’s Major Projects Authority (Interview_025). This was critical of the joint JPG-NOMS pilot governance (Interview_036), and a “Transition Plan” was developed whereby delivery would gradually revert to NOMS. The already-live local incentive pilots transferred first, followed by others “at a sensible point in a procurement process, where we’d gone to the market or where we’d delivered an initial phase” (Interview_030). To smooth the change, some JPG staff transferred to NOMS temporarily or permanently (Interview_028; _036), and the central team produced a “library” so that the agency had all the historical documentation (Interview_025).

Overall, JPG “probably did a lot more delivery stuff than might normally be the responsibility of a policy team” (Interview_025). Properly, “NOMS should have been doing nearly all of this stuff” about designing and procuring services and liaising with bidders (Interview_030). The concern was that, although the project was “in delivery” (Interview_030), NOMS had neither the staff resource nor the experience for this innovatory work. Since transition, JPG’s focus has been national rollout of PbR, but the team also has “a couple of people who are policy support for the pilots ... to ensure that, as we go through the process of negotiating contracts and developing and specifying things, ... there’s still someone there saying, ‘This is what ministers are after...’” (Interview_031).

NOMS Team Narrative

NOMS is experienced in service commissioning, but PbR is “totally different” (Interview_023). It is this government’s “solution” to reducing reoffending (Interview_023), and follows “political rhetoric across government” (Interview_015). The social security Work Programme, for example, is ahead in its delivery, but “justice PbR is different ... it’s harder, and it’s true PbR – we pay by outcomes” (Interview_023). PbR is also about risk transfer to providers, and “that is very challenging for the market” (Interview_033). Given that, and the complexity of justice PbR, NOMS is understandably “further behind everybody else” (Interview_023). The agency has got

“a really serious business to deliver, and we don’t wanna do anything to put that in jeopardy” (Interview_033).

The initial PbR work was led by JPG but “supported” by NOMS (Interview_024). There is “lots of ministerial ambition around it” (Interview_024), and “MoJ had actually got a real brain whose vision this was” (Interview_023). The pilot programme had joint NOMS-JPG Senior Responsible Owners, but the Gateway Review was critical of that and now the divide is cleanly between NOMS’s pilots and MoJ’s strategy (Interview_033). However, even though responsibility has “flipped ... around”, JPG remain “part of that implementation team, because, obviously, they’re gonna see through all the implications of that policy” (Interview_024). That will inform the national rollout, which is clearly “the direction of travel”, notwithstanding these pilots (Interview_025).

The Transition Plan “set out in absolute detail how we were going to transfer over all the tasks and who was accountable for what” (Interview_023). There were also NOMS-MoJ “meetings about how to transition”, but it “happened at pace, ’cause everything seems to happen at pace” (Interview_033). And even after that, PbR is not integrated with the main NOMS operation. The team is “delivering a project” (Interview_033), and this is “new business”, not “current business” (Interview_023).

Four pilots are running and the rest are “in competition” (Interview_023). In the design stage, MoJ “set those high-level principles” of which services to commission and what is “measurable” as an outcome; then, once “that’s agreed, [it] comes over to us” for competition, contract management and launch (Interview_023). Whereas NOMS’s PbR work is proceeding “in the context of ministerial decisions”, and “you’ve got your parameters set”, JPG’s earlier work was about “trying to get ministerial decisions” in the first place (Interview_025). Post-transition, there remains close working, with regular informal collaboration and “a number of formal governance meetings that include everybody” (Interview_023). NOMS “led” the selection of pilot sites, but “with MoJ” alongside, who “recognised, actually, it was for NOMS to make that

final decision” (Interview_023). MoJ still “aspirationally push you” in delivery, which is both “good and frustrating” – PbR is complex, and, rightly, they “push and push and push NOMS ... not to say ‘No!’, but to think, actually, can you do any of this?” (Interview_023).

Previously, ministers discussed PbR with JPG; since the transition to NOMS, “there’s been quite a lot ... about making ourselves more visible to ministers, and them seeing us as being responsible for some of this, rather than doing their business through JPG” (Interview_025). To that end, NOMS officials regularly have both “formal” and “informal” (“but they’re not really ‘informal’”) meetings with ministers, who want speedier delivery (Interview_023). These are interspersed with “sort of ‘five-minute catch-ups’” to ensure that ministers are “taken along the journey” and shown the problems in delivery (Interview_023). The danger, however, is that too much time is spent “managing” ministers rather than actually delivering their priorities.

For each pilot, there is a “virtual team” comprising all the necessary specialisms from across MoJ, including a “representative from Analytical Services”, a “finance person”, “the procurement person”, and “the lawyers” (Interview_033). The team is ‘virtual’ because they’re all based in their different professional units, but each member is on email and attends dialogue meetings with bidders. There are also secondees from frontline prison and probation to “health-check” operational aspects, “foresee things before they come up”, and boost credibility in supplier negotiations (Interview_033). Finally, before issuing the contract, the pilot goes to “keyholder” groups who “literally hold the keys” to the project’s go-ahead (Interview_028). The first MoJ committee has “a finance person, an analyst, a policy lead, a HR person” who identify key risks in their different specialisms (Interview_028). Then, NOMS’s Financial Management Committee will “approve it or make comments”, before it “goes to MoJ Financial Management Committee” and then finally “to Treasury for approval” (Interview_028). NOMS cannot approve the tendering on its own, “because MoJ have to take the final view, prior to Treasury engagement, about whether they can handle the financial risk” (Interview_028). This “massive bureaucracy”

is required not by the financial size of the projects, which is within NOMS's delegation, but because PbR is classed as “novel and contentious” (Interview_028).

8.4.2 Working Prisons

Overview

Also within the Coalition's Rehabilitation Revolution, and similarly anticipated in *Prisons with a Purpose* (Conservative Party, 2008), is the aspiration for increased purposeful activity in prisons through expanded commercial involvement (MoJ, 2010a). The development of this 'Working Prisons' initiative is storied below, again beginning with the JPG perspective.

JPG Team Narrative

There is probably a hundred or more years of prison labour history, but what “our ministers want to see” is “something that is productive and meaningful”, and better represents a normal working week (Interview_038). To achieve this without further investment, the idea is to seek more private businesses contracts. Historically, Prison Industries had negative connotations, businesses struggled to engage with it, and, latterly, “work has fallen away [and] contracts have diminished” (Interview_038). Therefore, in developing Working Prisons and a new brand – One3One Solutions, named after the 131 prison establishments – the aim is to strike a balance between creating a new enterprise while demonstrating it is nonetheless “founded in experience” (Interview_038). This should increase business appeal.

For *Breaking the Cycle* (MoJ, 2010a), NOMS-MoJ collaboration was much greater on Working Prisons than PbR (Interview_025). “There's an established function” delivering prisoner employment in NOMS (Interview_030), and the agency “had much more input ... because we were delivering Prison Industries in NOMS anyway, and they had some expertise to add to it” (Interview_025). For instance, JPG would frequently check on operational points by phoning NOMS (Interview_036), and, although taking the “lead” when preparing advice, JPG would “share” it with “NOMS colleagues in advance” of it going to ministers (Interview_025). Moreover, because *Breaking the Cycle* was written at such pace, “a lot of the time, both sets of

officials went to all of the meetings in order that everyone had a similar understanding of what was being advised and what ministers were saying in response to that” (Interview_025).

There was an external report commissioned to identify potential means of commercial growth (Deloitte, 2011), and a “Business Advisory Group” was also established, chaired by a senior JPG official, but including leaders from industry and NOMS (Interview_038). The JPG Team had a deputy governor seconded to assist with policy development (Interview_031), particularly in regard to thirteen “early adopters” which were testing ideas in establishments (Interview_038). Throughout, direct collaboration with NOMS was crucial, and ranged from joint work on “business models”, to the practicalities of how companies would engage with the new One3One HQ (Interview_038). In terms of the task division, “there’s obviously some areas where work is very squarely in their [NOMS’s] domain”, such as “developing governor’s guidance”, but even then “we’ve had opportunities” to contribute (Interview_038). It happens the other way around too; the teams just agree who does what, even just on the basis of who has capacity at that particular point in time (Interview_038). “Often, submissions to ministers go up jointly” from JPG and NOMS, and, in those situations – “joint pieces of work” – “sharing [and] commenting on drafts” happens “routinely” (Interview_038).

Latterly, the big priority has been to officially launch One3One Solutions at an event in Downing Street. Business leaders were invited, and there was a joint presentation by public and private prison governors (Interview_037). Now that the launch has happened and responsibility is “more squarely” with NOMS, the question is “exactly what do we think we need for policy maintenance for this piece of work going forward?” That is where the Policy Plan and JPG’s Policy Resourcing Team become involved (Interview_038).

NOMS Team Narrative

Prison work is not new. There is some “ancient history” of governors who “tried to demonstrate a Working Prisons model”, but that proved “difficult” and “commercially very risky” (Interview_020). More recently, the emphasis was on offender skills, and work became part of a

“broader regime” – the “seven pathways” to reducing reoffending – and so “wasn't the be-all and end-all” (Interview_020). In “wanting to up-lift the expectations of the population”, governors placed less emphasis on “product-line” types of work (Interview_020). Nonetheless, Prison Industries produced goods for the internal MoJ market – furniture, printing and so forth – and did some external commercial work too (Interview_037). Now, “what we’re seeing ... [is] a change of direction again, where ‘work for the sake of work’ is a good thing” (Interview_020). In essence, “you’ve got a policy ambition from government to significantly increase the working week – so that’s a policy, strategic ambition” (Interview_014). However, “what ministers are saying is: ‘We want more work in prisons, but, actually, it's got to wash its own face; it can't cost us any more money’” (Interview_037). Hence, the aim is to commercialise Prison Industries (Interview_025) and make “this bit of the world” more “business-based” and “outward-looking” (Interview_020).

Initially, in JPG, “there was a very big Policy presence” for this agenda (Interview_037). There was the *Breaking the Cycle* consultation and response, some analysis on current Prison Industry work, an externally-commissioned report, and “quite a lot of issues ... to be resolved with ministers” (Interview_037). Prison Industries are already running, and thus NOMS was “engaging” with JPG, “because the policy is being developed ... at the same time we’re trying to deliver the damn thing” (Interview_014). For a time, NOMS were saying to ministers, “We will appoint a chief executive; we will appoint a chief executive”, but there was “an element of wanting to demonstrate the proposition” before charging ahead (Interview_020). Since then, there has been “a lot of very close working”, particularly in anticipation of the Downing Street launch (Interview_020). NOMS has “almost daily” contact with ministerial advisors (Interview_037), and, with or without ministers in the room, meets with JPG “every other day” on matters ranging from the business “prospectus” to communications and branding (Interview_020). Temporarily, it is a “period of great excitement” where policy activity is “relentless” and “every other submission seems to be about Working Prisons” (Interview_020). Nonetheless, “really, the policy cycle has completed” (Interview_037) and “we’re just at that

stage ... where MoJ are almost finishing up the policy bit and it's all coming to us to deliver" (Interview_020). Unlike PbR, there is no formal transition plan, "partly because they [JPG] haven't got so much into delivery over there – they've not really been doing our business", whereas, for PbR, the pilots were actually being managed from the central policy group (Interview_025). JPG directors are still on the Working Prisons Board, "because part of their responsibility is to check that we remain in line with government objectives" (Interview_025). So the connection remains, but JPG are on "that downward trajectory of responsibility", and the "responsibility and weight of expectation" lies with NOMS (Interview_025).

Securing new business is going to be challenging (Interview_037). NOMS already has "industry experts" for various areas of work (Interview_037), and eight new posts will be created from commercialisation (Interview_020). One3One is "putting support out to governors" in terms of "here's what your prospectus looks like; here's what your risk parameters look like; this is what your pricing strategy should be; this is your code of conduct" (Interview_020). Despite ongoing ministerial interest, the "NOMS line is not to get too distracted by that" – "you forget what you're here to do, actually", which is to deliver the increased work and rehabilitation (Interview_020).

8.4.3 Delivering offender management policy

Full discussion of these narratives is delayed to the comparison, below, but it is apposite for an interim conclusion to elaborate on points resurfacing from previous chapters. Firstly, there is NOMS's identity profile of risk ('destabilising', 'jeopardy') and delivery-realism ('operational reality' versus 'fancy-smancy policy', 'real brain'). Secondly, there is the central distinction between strategy and 'business-as usual', which previously enabled NOMS's definition of 'policy' as non-strategic offender management interventions (see Chapter 7) and here resurfaces in accounts of the agency's confined role in PbR design, its delayed assumption of that innovative pilot programme, and its contrastingly heavy engagement in the Working Prisons initiative. Thirdly, there is the concern with politicisation: that ministerial interest in these high-profile areas might distract from their delivery. Finally, there is the recurrence of the disciplinarity by

which policymaking is negotiated through professional identities. For example, there were the specialist ‘drags’ on PbR’s advancement, the importance of interdisciplinary trust, the ‘virtual teams’ for pilot procurement, and the multidisciplinary ‘keyholder’ groups signing them off. Reflecting the Blueprint reforms which underpinned JPG’s creation, this narrative trait of professional reference continues below.

8.5 HMCTS, efficiency and enforcement

Two policies were traced in HMCTS. The first originated in JPG, but was far into implementation by the fieldwork; the second was entirely agency led. The focus below is thus on agency team narratives.

8.5.1 CJS Efficiency Programme

Overview

To meet MoJ’s Spending Review settlement, its business plan commits to pursuing a range of measures that will “increase the efficiency of the criminal justice system” (MoJ, 2011a, p.13). As one partner in this, HMCTS is collaborating with the Home Office and Attorney General’s Office on the Criminal Justice System (CJS) Efficiency Programme (MoJ, 2011e, 2012b). This includes an effort to better integrate the stages of criminal case administration performed sequentially by different organisations, improving the quality and the timeliness of preparation and progression (MoJ, 2011e; Document_023). Electronic case files will be passed between police, prosecutors, defence practitioners and HMCTS via secure email (see Baksi, 2011; MacGregor, 2012), reducing data re-entry and manual working, and enabling criminal justice organisations “to deliver and manage their planned reduction in spending” (MoJ, 2011e, p.1). This complements other modernisation efforts, including increased video technology across the CJS (Document_023). Latterly, it also featured in a white paper, *Swift and Sure Justice* (MoJ, 2012b).

HMCTS Team Narrative

A key prompt for the CJS Efficiency Programme was the 2010 Spending Review. By historical circumstance, the disparate CJS partners each have their own individual budgets and separate

IT systems, meaning that efficiencies were traditionally sought *within* individual criminal justice organisations, rather than collaboratively (Interview_043). During the Spending Review negotiations, HM Treasury were “very suspicious of the Ministry of Justice”, and “were clearly of the view that there was massive money wasted in the join-up between the departments” (Interview_053). Each CJS partner “committed to what we could do in the silo” (Interview_053), but there was a need to look to the interorganisational “value stream” (Interview_043).

Digitisation was already underway in the Crown Prosecution Service (Interview_054), and there had been a test where, for a “straight-forward, routine case”, seventeen “separate interventions” were required between arrest and sentence, taking eight weeks to complete but involving “no more than 6.5 hours of productive time” (Interview_043). Ministers were also keen on “looking for modern ways of working” (Interview_054), and they routinely “gravitated towards” JPG to initiate that process of options appraisal (Interview_054). Hence, the CJS Efficiency Programme “started off in Policy”, and “started off with: ‘We want to find a more efficient way of doing it; we want to make the system more digital’” (Interview_046). Those were “policy objectives ... so [that work] was led within JPG, with some of the agencies around the table” (Interview_046). However, soon, the “realisation” was that, “actually, this is so operationally driven that it should be owned by HMCTS [and other CJS agencies]”, albeit with JPG “taking an interest and wanting to be involved” (Interview_054). The project had “got to a certain stage ... when actually what this was now about was delivering what they’d agreed”, in which case “that’s no longer policy [work]” (Interview_046). Also, if the “aggressive timetable” for implementation was to be met, the programme “need[ed] to be owned” jointly by the delivery agencies – HMCTS, the police and the Crown Prosecution Service (Interview_054). Hence, “there was a debate” with JPG, and it was “agreed that ... the right place ... was in the operational businesses” (Interview_039).

The three CJS partners established a “programme office” and “Delivery Board” (Interview_046; _047). JPG are represented in those governance arrangements, and MoJ’s central IT department also attend. Indeed, CJS Efficiency is an example of both internal and external “integration”,

involving officials not only from MoJ, but also the Home Office and other departments (Interview_039). The Delivery Board is “now responsible for delivering this programme of work that’s been agreed [in JPG]” (Interview_046). Meanwhile, JPG remain responsible for checking on “benefits realisation ... because they’re interested to know if their policy outcomes have been delivered properly” (Interview_047).

After the transition, JPG initiated the *Swift and Sure Justice* white paper (MoJ, 2012b). The CJS Efficiency Programme features within this broader portfolio, but it “is already quite far advanced in delivering” (Interview_046), and was “going on independently” (Interview_039). The white paper affects both HMCTS and NOMS, and, “with all due credit to ... colleagues in JPG”, the agency has “been absolutely involved” and “really plugged in” (Interview_046). Over six months, there has been significant JPG-HMCTS email traffic and meetings. JPG established “governance” for the project, including “a board” and “working group”, and various HMCTS officials attend and contribute to these (Interview_046). The agency has commented on drafts and represented judicial views; for example, when it was proposed that the white paper could launch from a court, HMCTS vetoed this, on behalf of the judiciary, since these buildings are independent of the executive.

8.5.2 Enforcement contracting

Overview

HMCTS is responsible “enforcing the payment of financial impositions ordered by the courts”, including criminal fines and confiscation orders (HMCTS, 2013b, p.8). It also works with other CJS partners to process out-of-court financial penalties. In 2010-2011, 900,000 offenders were given fines by Crown and Magistrates’ Courts, amounting to nearly £413m (HMCTS, 2013a, p.2). Assuring compliance is challenging, given incomplete information and avoidance efforts by offenders (Interview_044). MoJ has been criticised for its levels of outstanding debt (Committee of Public Accounts, 2011), and various cross-governmental initiatives have sought to improve compliance, including a pilot programme based on behavioural (or ‘nudge’) theory, whereby

personalised text messages are sent to debtors (Haynes et al., 2013). Furthermore, as part of a wider review of HMCTS's "operating model" (HMCTS, 2011, p.7), and following a departmental commitment to "find opportunities to improve effectiveness and value for money" in enforcement activity (MoJ, 2011a, p.14), the agency is looking to work with a private sector provider. Given that national distribution and manual processes are particularly restricting improvements and creating overheads "disproportionate" to fine receipts (Document_031), it is anticipated that this partnering will bring new "commercial experience, innovation and investment in technology" (HMCTS, 2013b, p.8). Thus, as with NOMS PbR, Enforcement contracting advances the Coalition's wider outsourcing and punishment agendas (Document_031).

HMCTS Team Narrative

Despite ongoing work to centralise administrative processes into national business centres, criminal enforcement is still undertaken by some 1,700 staff in courts around the country (Interview_044; Document_031). Although there is a small team within HMCTS's HQ Crime Directorate overseeing this day-to-day operation, the agency's cross-cutting Strategy and Change team is leading the commercial programme (Interview_044; _048). In "embryonic" form, the idea had been mooted in HMCTS for some time (Interview_043), and it is thus "a piece of change which is facilitated by the Coalition agenda" (Interview_039). Essentially, outsourcing is beneficial "because there is a well-developed private sector collection industry which is very effective, which has higher levels of technology than we could afford, and is significantly better at collecting money" (Interview_039). Since "the law in relation to enforcement doesn't change [and] the policy in relation to enforcement doesn't change – just the way that we do it operationally changes", the work is being led by HMCTS (Interview_039). The agency makes submissions to MoJ subcommittees and the main departmental board (Interview_048); for example, "the funding requests ... have to run through TJ [Transforming Justice Committee]" (Interview_039). Thus, although not led from JPG, the project governance is "so integrated ...

that you can argue it doesn't really matter anymore which side of the line it's [developing]" (Interview_039).

HMCTS is to run an "industry day" to gather expressions of interest from prospective bidders (Interview_048; Document_031). It is collaborating with support services in the central MoJ, including analysts and lawyers. Also, the agency decided that, "to facilitate the best use of this contract", some minor primary legislation would be needed (Interview_048). This enables imposition of a collection and pursuit levy on debtors, and also clarifies that enforcement duties are non-judicial, thereby reducing risk of legal challenge to any outsourcing (Document_039). HMCTS approached JPG about the need for a legislative instrument, "they agreed", and then, for the MoJ-wide bid for legislative space, "we gave them the words, but they made the bid on our behalf" (Interview_048). HMCTS itself then conducted the Cabinet Office negotiations, and is now "supporting the bill process" by "send[ing] people to the various stages of the House" (Interview_048). The bill is not owned by the MoJ, and the enforcement aspects are just an addendum. Still, contrary to the official MoJ Blueprint, HMCTS is undertaking this policy-like activity (Interview_048). The danger of insisting that JPG resourced it instead is that they would "go through [their] process to tell you if it's important enough to do it at all", in which case there might be delay or even disagreement (Interview_048). Furthermore, as it stands, although HMCTS formally relinquished all of its enforcement policy capacity when the agency underwent its merger and downsizing, JPG have yet to assign it a space on the Policy Plan (Interview_044). "So the work shifted but the resources didn't", and now, when other, non-outsourcing enforcement questions arise from stakeholders, HMCTS "say, 'I'm sorry, this is policy, this is for JPG'" (Interview_044). As for stakeholders, "they'll say, 'Who [in JPG]?'; and we'll go, 'Ah, you need to speak to JPG about that'" (Interview_044).

8.5.3 Delivering criminal court policy

Several previous HMCTS themes re-emerged in these two narratives. In particular, the division of 'pure' and 'operational' policy, the former involving options appraisal and agreement, and the

latter being operational translation and efficiency design (see Chapter 7), reflects in: the account of JPG's initial ownership of the CJS Efficiency Programme; its speedy transition to the three CJS partners, once post-agreement delivery became the focus; and the leadership of enforcement contracting – an *operational* change – by the agency itself. Moreover, judicial representation is listed amongst HMCTS's contributions to the *Swift and Sure* white paper, while the agency's corporate responsibility is evoked in discussion of MoJ subcommittee integration. Policymaking disciplines are also referenced.

8.6 OPG and Digital Transformation

8.6.1 Digital Transformation

Overview

OPG is modernising its public guardianship services, exploiting digital technology to enhance the accessibility and efficiency of Lasting Power of Attorney (LPA) registration (MoJ, 2012c; OPG, 2012b). Largely a response to ongoing IT failure and growing demand, OPG instigated the programme while it still had devolved responsibility for policymaking, but ministers have subsequently taken increased interest and the project is now part of MoJ's wider "Transforming Justice" portfolio (Interview_009). It also aligns with the Coalition's broader agenda for digital public services. Coordinated from the Cabinet Office's new Government Digital Service (GDS), this has consolidated departmental websites on a single government domain and articulated an aspiration for "digital-by-default" citizen transactions, for which OPG is to be a pilot (GDS, 2012; Lane Fox, 2010). Ultimately, the aim is to establish a completely digital LPA registration. An intermediate step is to develop a part-digital, part-paper system, where clients prepare and submit applications online before printing and signing the paper form and posting this to OPG (MoJ, 2012c). As well as saving on the agency's manual data entry costs and increasing its demand management capability, this "halfway house" (Interview_011) combats the high error rate of wholly paper-based applications. The OPG and JPG team narratives are retold below.

OPG Team Narrative

The starting point for OPG's Digital Transformation is the combination of increasing service demand and aging IT infrastructure. LPA applications have grown dramatically since 2007, encouraged by several episodes of high-profile media coverage (BBC, 2010; Lewis, 2009). OPG struggled to cope with this influx, which was well beyond predictions, and agency performance declined as a result. These "well-charted travails of OPG" (Interview_003) stem particularly from its IT systems, which are "knackered" (Interview_009), "could just fall over" at any time (Interview_005), and are "about to die" (Interview_011). Better IT would mean that OPG could "own" its operating model (Interview_007), and "get on the front foot" in proactive rather than "reactive" management of "market" demand (Interview_003). Indeed, given demographic change and need to avoid costly and complex Court of Protection action, the LPA "is the product that we're trying to make the norm" in the country (Interview_008). Certainly, "a lot of lawyers market this at people" (Interview_009). As such, improving OPG's operating model will meet political aspirations, since Coalition ministers have had their "ear bent by lots of lawyers" about OPG's poor performance (Interview_011), and they are concerned that registration is bureaucratic (Interview_005; _008).

The partnership between OPG and GDS was fortuitous. The agency hoped to digitise anyway, "but ... would have had to do it independently" and, without funding, "it would have really been on the never-never" (Interview_008). Also, the stringent new Cabinet Office embargos on IT contracts were requiring projects to justify expenditure "to the Nth degree", which "people here found ... really frustrating" given the urgency of the change and its obvious service benefits (Interview_009). Thus, OPG itself "made the connections with GDS" in late 2011 – it was "not the department or anybody else" (Interview_011). Then, when GDS and digital-by-default had their formal launch, the Cabinet Office wanted its minister to identify "OPG as being on the, sort of, vanguard", which grew MoJ's interest in the agency and its reforms (Interview_009).

With the Blueprint's centralisation of policymaking into JPG, "all the policy deliverable aspects of Transformation" reverted to MoJ (Interview_006), but OPG retains the relationship with GDS (Interview_011). Prior to the recentralisation, the agency had been "collecting together a range of things that we wanted and needed to do in support of our Transformation, and they now are a list that our policy colleagues have" (Interview_004). In particular, there are "two big policy issues around identity assurance and wet signatures", and whether new primary legislation will be needed to allow for digitisation (Interview_011). JPG are "looking into that on our behalf" (Interview_011). They are also writing the consultation, for which OPG "basically tell[s] them what our policy intention is, what we want to be able to do, and then we work together to get that into the consultation" (Interview_011). Hence, post-centralisation, the agency's role is about ensuring that things "happen to the pace that we need [them] to" (Interview_004). JPG "have a timetable of what they need to deliver us, and when they need to deliver it to us" so that OPG can "do what we need to do" (Interview_011). The agency must be "very clear about holding them to account on that", as it must with GDS and the other contractors (Interview_011). In this regard, "it helps that OPG has funding", and has "made a contribution to the policy resource costs", since this guards against de-prioritisation (Interview_005). Also, the GDS partnership "helps, because that puts us on the government radar and it puts us on the Departmental radar" (Interview_011). The question remains, though, whether future public guardianship issues will receive attention in MoJ post-Transformation (Interview_005).

JPG Team Narrative

Although this is OPG's main priority, clearly necessitated by IT failure and rising demand, the programme is "quite controversial and quite risky", and potentially more problematic than the agency anticipates (Interview_021). JPG has said to OPG, "What is it that you want? Be very clear about what you want!", but, in supplying some of "the legislative changes that they want to support their digital programme", the "responsibility" in the centre is also "to make sure that we look wider than that" at the implications for the original Mental Capacity Act and the MoJ as a whole (Interview_021).

The recent centralisation of policy has not been easy for OPG (Interview_045) and, although an operational necessity, whether or not Digital Transformation features amongst MoJ's wider priorities "[depends] on who you're talking to" (Interview_021). There are lots of elements that have to come together to make it work, including policy, finance, procurement, and analysis, so "you have to think across the department and get the relevant specialisms involved", but not overload them with commissions when there is so much else going on in MoJ (Interview_021). Thus, while OPG have an established relationship with "finance colleagues", liaison "on the legal and analytical side" will be through JPG (Interview_021).

OPG's priority for JPG during the next year is to ensure that the agency has "all the powers they need to then start to rollout their digital programme" (Interview_021). A consultation needs to be produced, but there are some big legal questions around electronic signatures and witnessed signatures, and what existing primary legislation will allow for. Before the consultation can go ahead, therefore, it needs to be confirmed that digitisation is possible, legally (Interview_021). The agency has drafted a commission to MoJ Legal asking for clarification, and JPG has added to that so that just one coordinated submission goes in. Even if "Legal say, 'Yes, it could be possible to do this...'", from a Policy point of view, and thinking of the ramifications, it may be that we might turn around ... and say, 'Well, even though it's possible, we think it's just gonna be too controversial'" (Interview_021). There are "lots of other stakeholders as well as just operations to involve, and that could be challenging in terms of whether OPG get what they want right now", which they do recognise (Interview_021). Over the coming months, therefore, deadlines and priorities may have to be flexible.

8.6.2 Delivering public guardianship policy

Again, the OPG policy narrative reflects previous identity traits and evaluations. In particular, the definition of 'policy' as business change enablers resurfaces here in descriptions of reconfiguring the agency's operating model. Moreover, the post-Blueprint commodification of policy as a tradable object (see Chapter 7) repeats in both OPG's and JPG's accounts of the client-

provider relationship, albeit with the qualification that the agency might not get all ‘they want’. Finally, disciplinarity is again central to the policy process, with JPG describing the ‘specialisms’ involved in the project, and the need to ensure coordinated commissions that reflect wider MoJ priorities.

8.7 Discussion

The five policy examples vary substantially in origin, scope and subject matter, reflecting MoJ’s diverse responsibilities. Individually and collectively, they elaborate identities and evaluations from previous chapters, and offer some insight into the lived realities of contemporary policymaking in a large, politically-salient (and supposedly ‘agencified’) Whitehall department. Moreover, in comparison, they shed light on the narrative construction of key policy events in the post-Blueprint delivery of justice policies. These constructions are explored below.

8.7.1 Constructing team narratives

Agency as recipient, collaborator and initiator

The policy roles of NOMS, HMCTS and OPG vary between recipient, collaborator and initiator. For PbR, NOMS was the *recipient* of a complex and innovative strategy, designed, developed and initially piloted in MoJ. Having neither the experience of outcome-based commissioning nor a ready home for this work, the agency’s input was confined to board-level engagement, and, even after project delivery commenced, JPG’s role remained much larger than might ‘normally’ be the case for a ‘policy group’. With Working Prisons, by contrast, NOMS’s established Prison Industries function and wealth of experience in offender regimes made for more active and ‘working-level’ engagement. In this example, NOMS is a *collaborator*. Similarly, in HMCTS, the CJS Efficiency Programme was initially led by JPG but with agencies ‘around the table’. Moreover, in all three cases, JPG continue to sit on programme delivery boards after formal transition to operational responsibility. Finally, there is the *agency-as-initiator* role. OPG’s Digital Transformation epitomises this, the agency’s responsibility being to hold to account the various providers contributing to its operating model transformation, including JPG and GDS.

Similarly, HMCTS's enforcement programme was framed as 'operational policy', involving the production of efficiencies rather than a change in the law or policy of enforcement. Like OPG, the agency relied on other MoJ specialisms to deliver some project elements, and was subject to MoJ 'governance', but it remained the driver for the project, even in terms of securing a small legislative change.

Collaboration

Collaboration took a variety of forms. In PbR, it was initially confined to senior discussions, but latterly involved close 'working-level' engagement, the aspiration being for the culture of a single team, with a transition plan, document library, and temporary and permanent staff transfers. This level of coordination reflected the extent to which JPG had departed from its regular policymaking role into PbR procurement and commissioning functions that, properly, were 'delivery' matters for an agency. For both Working Prisons and the CJS Efficiency Programme, there was extensive collaboration throughout. Joint ministerial submissions, joint pieces of work, and negotiated task divisions were important in developing One3One Solutions, and the *Swift and Sure Justice* white paper engagement was similarly close. Collaboration in OPG's Digital Transformation was framed more in terms of project 'governance', with JPG having a 'timetable' of requirements and OPG holding the Policy Group to account for their delivery. HMCTS 'integration' was also narrated in terms of governance, but now involving wider MoJ committees and specialisms, rather than JPG. Finally, all five case studies were told with some reference to policy process disciplinarity – analysts, procurement, finance, operational and policy 'professionals'. It is the engagement of all these actors that, according to the MoJ Blueprint, ensures sound policymaking (see Chapter 7).

Transition

The PbR transition to NOMS was planned but contested. The JPG team were concerned about agency readiness, as were some NOMS officials. However, it was the project's undeniable 'delivery' status, the critique of joint JPG-NOMS Senior Responsible Owners, and the wish of

agency management that prompted the transition. In HMCTS, similarly, transfer of the CJS Efficiency Programme was prompted by recognition of its delivery focus, although this decision was not contested. The other three initiatives differ from this policy-transition-delivery schema, largely by virtue of their ongoing operational nature. NOMS was already delivering Prison Industries, and the Downing Street launch simply signalled a diminishing role for JPG. The Enforcement programme is simply an enabler of business process change. And, finally, the policy aspects to OPG's Digital Transformation – the resolution of the legal question, a public consultation and any changes to regulations – represent just one aspect of the wider change programme that will establish a new operating model for the agency.

Table 8.1, overleaf, summarises these three policy narrative constructs – role, collaboration and transition – and their association with previous identity profiles and policy definitions.

Table 8.1: Comparing team narratives

	NOMS		HMCTS		OPG
Identity profile	<i>Differentiation:</i> Politics, risks, delivery realism, contestability		<i>Differentiation:</i> Operational intimacy, judicial partnership <i>Integration:</i> Corporate responsibility		<i>Differentiation:</i> Size, policy sector
'Policy' definition	'Hardcore' offender management (not MoJ 'strategy')		MoJ options for ministerial 'agreement' (not HMCTS 'operational policy')		MoJ business improvement mechanisms
Example	Payment by Results	Working Prisons	CJS Efficiency Programme	Enforcement Contracting	Digital Transformation
Agency as recipient, collaborator or initiator	JPG led scoping and design of PbR in 'Breaking the Cycle' white paper, as well as initial delivery of the pilot programme <i>Agency as recipient</i> contributed at a senior level to PbR design, and has assumed delivery of the pilot programme	JPG led 'Breaking the Cycle' white paper work, and some aspects of policy design <i>Agency as collaborator</i> is already delivering prisoner work through Prison Industries, and contributed to white paper and policy development	JPG led scoping of options and agreement of objectives, and remains on Delivery Board; JPG led 'Swift and Sure' white paper development <i>Agency as collaborator</i> is delivering agreed work with partners; agency represented judiciary in white paper discussions	<i>Agency as initiator</i> envisaged project, developed proposal by liaising with MoJ professional services and committees, and is supporting some bill work	<i>Agency as initiator</i> envisaged digitisation, contacted GDS, and is managing the project JPG providing the policy enablers to digitisation, but within the wider context of MoJ priorities and with concerns about risk and wider impact
Collaboration	JPG provided extensive support in pilot handover process, and is still involved in piloting	JPG involved in delivery discussions and Working Prisons Board Agency attended ministerial briefings and contributed to joint submissions, both at a 'working-level'	JPG still represented on CJS Delivery Board Agency included in JPG governance for 'Swift and Sure' white paper	JPG approved the request for bill work, and made the bid on agency's 'behalf'	JPG and agency produce joint submission to MoJ Legal on aspects requiring clarification
Transition	Contested – prompted by delivery status of pilots, but working-level concern in both agency and JPG at transitioning complex programme to agency	None – Working Prisons amends business-as-usual, and, after the Downing Street launch, JPG responsibility diminished	Negotiated – once agreed, the policy objectives were operational and required speedy delivery	None – an agency-run initiative	Unlikely – JPG providing 'policy deliverables' for larger Transformation programme that is being project-managed from the agency

8.8 Conclusion

This chapter has completed the empirical presentation. Following the macro, meso and micro analyses of identity and history in the previous chapters, it was concerned with ongoing public governance in the MoJ and its three agencies. The attention to JPG perspectives, the focus on team rather than individual narratives, and the newly overt researcher role in their production also differentiates this chapter from those preceding, and yet the material illustrates similar points about NOMS's risks, delivery realism and concern with politicisation; HMCTS's judicial responsibilities and framing of 'operational policy'; and OPG's alertness to MoJ de-prioritisation and interdependence. The policy process disciplinarity identified in Chapter 7 also resurfaced, in both MoJ and agency accounts. Overall, then, the chapter has demonstrated the intimate and integrated working relationships involved in delivering Coalition justice policy, including the strength of agency engagement as policy receivers, collaborators or initiators. In this manner, although the 2010 Blueprint implied something of a return to Next Steps' supposed division of departmental policymaking and agency delivery, from which all the justice agencies had – at varying points – previously digressed, the notion of the policy-less agency remains a simplification.

Chapter 9 – Reinterpreting Agencies: On Meaning, Motive and Policymaking

9.1 Introduction

The five previous chapters have assembled and interpreted a large volume of qualitative data, descending progressively through macro, meso and micro public management discourse. Initially, the focus was on interpreting ‘executive agency’: first, in historic and contemporary constructions of the core political idea; then, in specific reforms to criminal and civil justice in the 1990s and 2010s; and finally, amongst the relational organisational identities of current MoJ agencies. Thereafter, attention turned to post-agencification policymaking. Contextualised by foregoing chapters, and especially the identity profiles established for NOMS, HMCTS and OPG, *emic* evaluations were recounted of former and current restructuring to the justice policymaking process, before five unfolding initiatives were storied as reconstructed ‘team narratives’. Together, the empirical presentations provide diverse narrative data, which this concluding chapter now synthesises. In so doing, three main purposes are served. First, after reprising the discursive institutionalist framework from Chapter 3, the research questions on agency longevity, post-agencification policymaking, and paradigmatic testament are addressed directly. Second, in light of the epistemology advanced across the thesis, and the substantive arguments which this enables, the previously noted methodological tendencies in international agency literature are reconsidered. And finally, the closing discussion anticipates a future research agenda, both in the UK and more widely.

9.2 (Meta-)theoretical reprise

As explained in Chapter 3, discursive institutionalism combines established post-empiricist meta-theory purporting the human and communicative accomplishment of social phenomena, with an institutionalist concern for understanding actions through mid-level cultural and

collective frameworks. No longer conceived as ontologically static and immutable, discursive institutions are dynamic and intangible, manifesting as intersubjective structures of meaning that are inherited, maintained and changed through continual symbolic performance (Campbell & Pedersen, 2001; Schmidt, 2008, 2010). In modelling these mechanisms of institutional production, preservation and change, Schmidt (2008, p.314) distinguishes between “background ideational abilities”, by which agents reproduce and action interpretive schema, and the “foreground discursive abilities” that allow for their critique and deliberation through persuasive discourse. In rendering this foreground-background heuristic operable for tracing the evolution of public management, Chapter 3 followed Miller (2012) in looking to institutional performance via the semantic connections forged in meaningful narrative, here in the combination of argumentation, narrative voice and discursive differentiation. The ensuing empirical presentations drew on this general analytic framework to register “objective” meanings (Wagenaar, 2011, p.18) and their contextually-contingent synchronic and diachronic transformation in macro, meso and micro discourse. The following sections draw together these findings under the three research questions.

9.3 Reinterpreting agencies: on meaning

From data analysed in Chapters 4, 5 and 6, this section attends to the first component of the research agenda:

Research Question 1: What does ‘agency status’ mean in contemporary public management in the UK, and has this changed over time?

As Chapter 2 explained, this attention to agency longevity was motivated by several concerns. Firstly, there is the tension between the overall maintenance of agency employment figures but decline in organisational prevalence. Reflecting the post-Next Steps trend towards mergers and diminished task-specificity, this renders existing literature somewhat dated. Secondly, given this paucity of sustained research interest, a concern with longevity also stems from current disagreement on the state of agencification in the UK. Specifically, while Talbot and Johnson

(2007, p.55) identify an “almost” complete reversal from the 1990s, James et al. (2011, pp.62, 67) posit the underlying preservation of key agency tenets. Thirdly, inspiration is drawn from the evolving context of public administration more widely, including Labour’s ‘joined-up government’ agenda (Cabinet Office, 1999a, 1999b; Office of Public Services Reform, 2002). Again, little attention has been paid to the impact of these latter-day reforms on agencies, which includes “functional reaggregation” of policy and delivery (Elston, 2013) and a refocusing on the departmental entity (Schick, 2002). And finally, there is the concern with population ecology’s suitability for recovering these complex dynamics of continuity and change – a methodological point which is addressed separately below (see Section 9.6).

Mandated thus, the initial empirical chapters traced continuity and change in the meanings by which agencification policy and practice is continually accomplished. Reporting on their results, the first subsection below attends to ‘foreground’ governing narratives told in macro, meso and micro spheres; the second looks to the ‘background’ institutions which these performances invoke, preserve and transform; and the third offers an overall assessment of institutional continuity and change.

9.3.1 Foreground governing narratives

Macro discourse

Drawing on Carstensen’s (2011) model of the composite political idea, Chapter 4 registered historic and contemporary constructions of ‘agency’ in politico-administrative discourse from parliament and the core executive. In terms of the institutionalist framework, its recounting of the bipartisan story underpinning the recent Public Bodies Reforms represents the discursive “foreground” by which agents “deliberate about institutional rules” and “persuade one another to change those institutions or to maintain them” (Schmidt, 2008, p.314). Positing the constitutional propriety of departmental rather than delegated governance, the reform narrative elevated political oversight and control as the Westminster model’s ‘default’ form of governance, informed by doctrine and only subverted in exceptional circumstances that require

technical decision-making or political impartiality. Co-authored by multiple parliamentarians and drawing persuasiveness from the enthymematic claim to the executive's rightful ownership of quangos (Box 4.4), this rhetorical story was high-profile during the early years of the Coalition Government (Committee of Public Accounts, 2012; NAO, 2012; Public Administration Select Committee, 2010), and was retold by MoJ officials.

Meso discourse

After situating the MoJ and its responsibilities against their diverse historical contexts, Chapter 5 descended to meso-level discourse and advanced a second diachronic comparison of historic and contemporary agency reform. Involving a larger but much rationalised justice landscape compared with the Next Steps era, the MoJ story reproduces the wider tale of unaccountable and undesirable arm's-length governance, thus essaying a synchronic – that is, coexistent – elaboration of the core executive's macro departmentalisation of agencies. Essentially, faced with severe financial pressure and the specific underperformance and poor transparency of the costly Legal Services Commission, major organisational redesign, redundancies, and cross-departmental consolidations were instituted, including mandatory shared corporate services and centralised policymaking. Executive agency sponsorship has been discontinued (except in the case of the quango-like OPG), and the Legal Aid Agency was established, with both developments signalling the singularity and collegiality with which the post-austerity 'MoJ family' is interpreted.

Micro discourse

Proceeding from the hermeneutic assumption of relational meaning-making through part-whole dialectics (Torfing, 2005; Wagenaar, 2011), Chapter 6 probed micro-level agency discourse for relational organisational identities in NOMS, HMCTS and OPG, aiming to register their situated accomplishments of 'agency'. Foreground governing narratives were thus told in the 'horizontal' and 'vertical' differentiations and integrations made against other agencies and the

core MoJ, these being the “similar referents” (Ashforth & Mael, 1996, p.24) invoked in identity production.

NOMS’s identity differentiations of political salience, risk, pride, internal contestability and lost agency independence coalesce into an extended narrative of this organisation’s historical trials, tribulations and restructures. Most saliently, the de-politicisation promised by agency status in the 1990s – and explicitly advocated in Lygo’s (1991) review – was soon to be tested in the then Home Secretary’s response to post-agencification crisis. Two decades later, this historic episode of sustained public scrutiny holds continuing significance for NOMS officials. Though performance is now much improved, the inevitable ministerial and ‘bureau’ politics associated with the risk-laden and media-interested offender management ‘world’ makes the prospect of an arm’s-length ministerial relationship unrealistic (or ‘just pretending’). Given this unfulfilled promise, and the increasing departmental integration felt in MoJ shared services and corporacy, NOMS lacks many of the ‘theoretical’ characteristics of the ‘true agency’, while still retaining the corporate governance and HR independence for its uniformed prison officers.

HMCTS’s primary identity differential of constitutionalism makes for a governing narrative similarly steeped in turbulent history. The abolition of the Lord Chancellor’s Department in 2003, the dismantling of the ancient office of Lord Chancellor in 2005, and the subsequent amalgamation with Home Office ‘correctional services’ in 2007 prompted successive episodes of increasingly public disquiet amongst the senior judiciary (see Constitutional Affairs Committee, 2007; Crook, 2013; Le Sueur, 2004). Ministerial placation came first in the 2004 ‘Concordat’ and then in the 2008 revisions to the governance arrangements for HMCS (now HMCTS), by which the senior judiciary were granted positions on the agency’s management board, the Lord Chief Justice became party to court resourcing decisions, and all judges gained the loyalty of agency officials, who have dual answerability to both constitutional branches of government. This renders courts and tribunals delivery an inherently specialised enterprise.

OPG is differentiated by its size and unusual remit within this wider MoJ context of large, politically-salient agencies. The passing of the Mental Capacity Act 2005 made for increased public guardianship activity, with growing interest in, and demand for, Lasting Powers of Attorney. OPG was largely self-reliant in establishing and promoting this important field of public policy, as well as in responding to the unanticipated demand, periodic media coverage, and associated performance challenges. The quango-like agency is now operating increasingly within the wider MoJ ‘corporacy’ of shared services, shared estates, and consolidated ‘policy resource’.

9.3.2 Background agency ideas

Having explored the purposeful aspect of Schmidt’s (2008) foreground-background model at the three levels of discourse, this subsection turns to the more latent elements of institutional creation and preservation – that is, the interpretive resources invoked in the ongoing performance of ‘agency’.

Next Steps institutions

In Chapter 4, the Next Steps Report’s central argumentation proceeded through an enthymeme diagnosing Whitehall’s poor management capability and a perfect syllogism prescribing agencies as remedy (Box 4.1, Box 4.2). Rhetorically, this positioned managerialism as a “privileged” element of meaning according to Carstensen’s (2011) model. Reinforcing this, vocally, the Next Steps narrative was one of empowerment, the report being presented as if a self-authored thesis of desires and frustrations by the civil service, thereby casting the government’s agencification response as emancipatory. In addition, discursive differentiation constructed agencies as a decentralised mode of governance, distanced from ministers and departments at the governing periphery, and akin in character (if not legally) to public bodies, nationalised industries and local authorities. As Hood (1991, p.6) confirms, the Next Steps “creed” was of “ministers in a strictly ‘hands-off’ role”.

Chapter 5's assessment of contemporaneous developments in the then diffuse justice sector similarly identified managerialist argumentation in rationales for disaggregating HMPS, the Court Service and the Public Trust Office. According to Lygo (1991), prison underperformance was partly the result of ministers' failure to remove themselves and the Home Office from operational matters, despite previous recommendations so to do. Therein, the "greater degree of managerial authority" enabled by an "almost autonomous" organisational form would prove transformative, should ministers finally heed this warning (Lygo, 1991, pp.9, 11). Similarly, in the different context of the Lord Chancellor's Department, agency autonomy would advance the emerging consumerist agenda through de-regulation and managerial enterprise. Accordingly, in the framework documents of all three agencies, narrative voice effected de-politicisation by polarising ministerial forewords and contractual or first-person agency perspectives. Indeed, in HMPS, such was the extent of the anticipated delegation that continuing need for a prisons minister was for a time contested (Home Affairs Committee, 1993; Lewis, 1997, p.14). Finally, the Next Steps Report's decentralisation narrative was elaborated through the new politico-bureaucratic bargain constructed in framework documents, whereby chief executive empowerment was explicitly traded for performance improvements and personal accountability (see Hood, 2001).

Beyond Next Steps?

Alternatively, the recent Public Bodies Reforms frame agencification as a constitutionally-appropriate, politically-proximate and departmental mode of governance. Replacing the managerialist argumentation on the necessity of political and organisational detachment, the underpinning enthymeme now centres on the doctrinal primacy of departmentalism. To similar effect, vocally, the post-2010 agencification (for example, in the Department for Education) was actioned at the behest of ministers. There was no suggestion of managerial empowerment, but rather an aspiration for ministerial authority commensurate with public perceptions of their responsibility for NDPBs. Thus, without any change of legal status, agencies were relocated to

the governing centre through discursive differentiation, to sit in opposition to the unaccountable arm's-length periphery.

A similar argument was made in rationalising the new Legal Aid Agency in Chapter 5. Perceived unresponsive and uncontrollable, yet consuming of a quarter of MoJ's budget, this function's recasting as an agency was again narrated as a centralising and consolidating solution that rendered new accountability to a previously wayward enterprise. The reform was empowering to both ministers and departmental officials, and was constructed not as a public service bargain between politicians and the agency chief executive, but as an intra-MoJ delegation between senior civil servants. As in the wider Public Bodies Reforms, therefore, agencification is a conduit for removing executive activity into the departmental centre. And it was not only in comparison to quangos that agency departmentalisation occurred in meso-level MoJ discourse. Within the wider Blueprint redesign, agency sponsorship was abandoned for representing a duplicative form of 'managing ourselves' which MoJ could ill afford, and which in any case poorly reflected the collegiality and common purpose between department and agency in assuring performance improvement and transparency in justice services.

At the micro level, NOMS's organisational narrative of prior failure and ongoing political salience transformed 'agency' from an empowering solution and sign of independence into an unattainable promise that merely enabled HR autonomy and Accounting Officer delegation. More affirmatively, in HMCTS, the history of fraught judicial-executive relations and its prompting of a unique 'partnership' rendered a new interpretation of agency status and the framework document as signalling the constitutional correctness of judicial delimitation from MoJ's multifarious, prison-dominated activities. Finally, in OPG, its individuality of size and remit, as well as its statutory officeholder and other NDPB-like characteristics, followed NOMS in transforming the agency concept into a minimalist interpretation of corporate governance.

Given this institutional creation, narration and transformation, Table 9.1 lists the historic and contemporary background agency ideas, and the foreground stories that interpolate and latterly enable them.

Table 9.1: Reinterpreting ‘agency’ in macro, meso and micro discourse

	Historic ideas	Foreground narratives	Contemporary ideas
Macro discourse	Managerialism, civil service empowerment, decentralisation	The constitutional propriety of departmental and politically-proximate governance	Constitutionalism, political empowerment and accountability, centralisation
Meso discourse	Managerialism, de-politicisation, empowerment but contractual responsibility	Departmental budgetary pressure and consolidation efforts; underperformance and uncontrollability of LSC	Transparency, political and departmental empowerment, corporate governance
Micro discourse	-	The near-impossibility of de-politicising the risky and complex offender management ‘world’	Unfulfilled promise, HR independence, Accounting Officer
	-	The historic confrontation of the judicial and executive branches, and constitutional uniqueness of their new partnership	Constitutional correctness in delimiting judicial interests within the MoJ
	-	The individuality of the small agency, and its public guardianship agenda	Sound corporate governance

9.3.3 Institutional change: ‘accountable management’ or just plain ‘accountable’?

As Table 9.1 indicates, if comparing contemporary fieldwork discourse with former meso and macro precepts, diachronic reinterpretation has proceeded across all three discursive levels. In other words, having been synchronically elaborated in the 1990s justice reforms, the key tenets of managerialism, empowerment and decentralisation all but disappear from contemporary renderings of ‘agency’ in ideational, sectoral and organisational discourse. According to discursive institutionalism and its founding in constructivist meta-theory, these transformations arise at least in part from the ontology of social phenomena as continual re-accomplishments of symbolic performance (Berger & Luckmann, 1971; Miller, 2012). This

reproduction occurs alongside and through other, 'foreground' governing narratives which, in the operation of the part-whole hermeneutic circle, reconfigure agency sensemaking. Thus, stories including constitutional propriety, departmental reform and consolidation, political salience, constitutional uniqueness and de-prioritisation have together allowed for agencies to be talked about in different ways, forging new semantic relations and collapsing old ones. These are, of course, but a snapshot of the complex and extended governing dialogue essayed in the 'corridors of power' since Next Steps. Early in the new century, (trans)national concern with the problems of state fragmentation and its decoupling of policy systems provided narrative resources from which, along similar lines, transformation of former separatist agency logic could perhaps be traced (for example, Cabinet Office, 1999a; Cabinet Office, 1999b; Office of Public Services Reform, 2002; OECD, 2005). As Chapter 2 explained, Schick (2002, p.51) noted New Labour's tendency to treat agencies as "departmental subdivisions, not independent entities", while Gains (2003b, p.14) observed how, after a time, agencies were "reined back into departments". The contention of the present thesis is not, therefore, that agency reinterpretation has been dramatic and reactionary after 2010, but rather that shifting administrative priorities, new political events and challenges, and their narration with varying levels of specificity in ideational, sectoral and organisational discourse has gradually amended the interpretive environment in which 'agency' is accomplished and, therein, transformed its meaning(s).

Doctrinally, the Next Steps programme was not a radical departure in 1988, but an extension of the 'accountable management' philosophy underpinning much of the Thatcher Government's civil service reforms (see Chapter 2). This combines ex-ante de-regulation with ex-post responsibility (Gray & Jenkins, 1986, 1993), and can operate at multiple organisational and interorganisational levels, from within-team delegations to externalised principal-agent contracting. While the interpretive departures essayed above indicate regression from the 'management' side of the 'accountable management' bargain, the affirmative contemporary understandings of 'agency' in Table 9.1 indicate a strengthening of its accountability function.

At the macro level, agency was latterly interpreted as enabling political accountability over bureaucracy; at the meso-level, agency meant improving inter-departmental transparency and securing proper corporate governance; and finally, at the micro-level, agency was similarly cited in terms of the Accounting Officer delegation, financial accounting and open audit requirements in both NOMS and OPG, while it imparts constitutional correctness and clarity over remit in HMCTS. In this manner, if agency status was originally taken to epitomise accountable management in government (Drewry & Giddings, 1995; Gray & Jenkins, 1993; Hyndman & Eden, 2001; TCSC, 1988b), the contemporary interpretation tends towards a depiction of agencies as ‘just plain accountable’. The irony of this asymmetric departure is, perhaps, that the agency development was initially received with scepticism about the future assurance of proper public and parliamentary accountability for the newly devolved executive functions (for example, Evans, 1995). This only heightens the degree to which modern politico-administrative discourse transgresses from early Next Steps precepts.

9.4 Reinterpreting agencies: on policymaking

Turning to Chapters 7 and 8, this section addresses the second part of the research agenda:

Research Question 2: What position do agencies occupy within the policymaking process, and has this changed over time?

In the UK as internationally, agencification is frequently cited as a reform intended to decouple policymaking and operations (Hogwood, 1995; James, et al., 2011; Verhoest, et al., 2010). Doctrinally, this follows the NPM concern with separating “steering” from “rowing” (Osborne & Gaebler, 1992, p.34), achieving greater organisational role purity (Christensen & Lægreid, 2006a, p.12), reasserting political primacy over bureaucracy (Aucoin, 1990) and limiting the provider capture predicted by public choice theory (Dollery, 2009). Although, as demonstrated in Chapter 2, some commentators have long been sceptical about the extent to which Next Steps achieved its decoupling aims in Whitehall (Greer, 1994; Hogwood, et al., 2001; Pyper, 1995), these analyses were confined to framework document reviews during the initial rollout of

agencification, and, moreover, run contrary to Labour's critique of its inherited policy fragmentation (Cabinet Office, 1999b). Furthermore, the two existing but otherwise-focused theoretical accounts of Next Steps, which draw upon bureau-shaping theory (James, 2003) and policy network theory (Gains, 1999, 2003a), offer contradictory expectations of agencies' likely policy role. On this basis, the thesis has explored changing constructions of the department-agency task division since the mid-1990s. The following subsections attend to the policy-delivery distinction as an enduring civil service institution; its false translation as an organisational divide; and the character of austerity-era policymaking in MoJ.

9.4.1 An enduring institution

Chapter 4 identified rhetorical enthymeme not only in the Next Steps Report's diagnosis of Whitehall's poor management, but also in the framing of the post-agencification division of labour. While the document was overt both in distinguishing policy and management as separate civil service tasks, and in prescribing the latter's betterment through agencies, the notion of the policy-less agency is an implicit inference from these given premises (Box 4.3). According to the general analytic framework, the co-productive sensemaking required of an enthymeme makes for a rhetorical presentation (Jasinski, 2001; Morrell & Hewison, 2013), as well as one that rests on the intersubjective understanding of an interpretive community (Feldman & Sköldbberg, 2002; Feldman, et al., 2004). The suggestion is thus that the distinction of policy and management as separate civil service tasks is institutionalised, even if not readily articulated. Indeed, since at least the nineteenth-century Northcote-Trevelyan Report and its differentiation of "intellectual" and "mechanical" work, civil service discourse has invoked a division of labour between policy and its delivery (see Cline, 2008), and the present inductive return to Whitehall agencification points to the institutional preservation and enhancement of this, unlike the evolution claimed for the core 'agency' interpretations, above. In particular, this continuity is achieved through the pan-MoJ storying of the 'bureaulore', and the disciplinary identities with which justice policymaking is narrated.

The bureaulore of failure by isolation

Chapter 7 drew on ideas of “organisational folklore” (Gabriel, 1991, 2000) to interpret a common tale of policy failure across NOMS and HMCTS. The intersubjectivity of this account, and its institutional preservation of the policy-delivery dichotomy, came in its argumentation and folkloric manner. Thus, it was by enthymematic recourse to the necessity of ‘deliverable’ policy that historic failure was explained, again signalling a rhetorical and intersubjective basis for the dualist policy-delivery classification of tasks (Box 7.24). Moreover, given that folklore is partly defined as an expression of group knowledge (Ben-Amos, 1971), the communality, tradition and symbolism of the bureaulore, epitomised, perhaps, by the policy-projectile metaphor, again points to the intersubjectivity of its underpinning dichotomy of policy and delivery tasks.

The disciplinarity of policymaking

Across Chapters 7 and 8, tales of historic and contemporary policymaking made frequent reference to policy disciplines. This reflects the cross-government professionalisation of the civil service, which has included creation of an ‘operational delivery’ discipline (see Civil Service, 2010). Although these professional identities extend beyond ‘policy’ and ‘operations’ to include analysts, procurement specialists, finance ‘colleagues’ and so forth, the dichotomy continued to be narrated as central to the knowledge exchange envisaged in MoJ’s post-Blueprint, ‘multidisciplinary’ policy process. Moreover, within Chapter 8’s team accounts, the transition of policy into delivery was a key narrative event. For example, it was storied as unusual for JPG to undertake the initial pilots for Payment by Results once the consultation exercise was complete, this being a delivery rather than policy task. Similarly, in HMCTS, it was department-agency agreement on the operational nature of the CJS Efficiency Programme that prompted its transition to the partner CJS agencies.

Institutional preservation

Invoking the discursive institutionalist framework, Table 9.2 now explains the preservation of dichotomous work categories as a background idea (the policy-management dichotomy) achieved through ongoing foreground narrative (the bureaulore and disciplinary policymaking). In contrast to the agency institution, therefore, contemporary governance narratives offer resources by which the task division remains salient. As such, this intersubjective heuristic has outlived its Next Steps rendering (as it equally predated it).

Table 9.2: Preserving the dichotomy

Historic ideas	Foreground narratives	Contemporary ideas
Policy and management as separate civil service functions	The bureaulore of failure by isolation; the disciplinary narration of the policy process	Policy and operational delivery as separate civil service functions, supplemented by other disciplines

9.4.2 Narrating the task division

In recounting different evaluations of the post-Next Steps task division, Chapter 7 described the programme of purposeful decentralisation pursued in the former Department for Constitutional Affairs. Instantiating Labour’s wider functional disaggregation, which extended to transport, home affairs and trade and industry during the 2000s (see Chapter 2), this reorganisation removed policy responsibilities to HM Courts Service, the Tribunals Service, and the outgoing Public Guardianship Office, which thereafter engaged in ministerial advice, primary and secondary legislation, international representation, public consultation and ‘policy maintenance’. On one count, this firmly contravenes the Next Steps “philosophy” by which policy is centralised within departments (Jenkins & Gold, 2011, p.14). However, if, as Section 9.3 argued, the interpretive reconstruction of the departmental boundary predates the Coalition Government and was partly enabled by Labour’s ‘joined-up government’ narrative, the reunification policy and delivery within agencies is much less dramatic, representing more of a work reassignment between co-directorates than a mode of principal-agent decentralisation.

Indeed, one official described this manner of reorganisation as just ‘shuffling deckchairs’ (Box 7.13). Moreover, such functional reaggregation might itself reinforce departmentalisation, engendering new interdependencies between ministerial departments and conjoined policy-delivery agencies. On this point, it will be recalled from Chapter 2 that Elder and Page (2000) envisaged that agency maturity might engender new frontline dependencies if operational expertise in departments declined. Chapter 7 adds substance to that prediction.

In addition to charting Next Steps’ policy-delivery digression, Chapter 7 drew on agency identity profiles to interpret ‘policy’ and ‘policy work’ as social constructs (Colebatch, 2002, 2006). Alongside the bureaulore, common narrative devices registered across the three agencies, including the polarisation of MoJ intellectualism and delivery-realism. Nonetheless, overall, the analysis pointed to considerable synchronic variation in definitions of ‘policy’ and the challenges and opportunities of its making. In NOMS, policy was constructed in terms of the agency’s still-devolved frontline offender management interventions, rather than MoJ’s intellectual and system-wide ‘strategy’; in HMCTS, its role involved the post-agreement translation of ‘operational policy’, given the new lack of resource to conduct ‘pure policy’ and the need to preserve the constitutional separation of powers; and in OPG, reflecting the statutory basis of public guardianship services which require consultation and secondary legislation for even simple amendments, ‘policy’ represents its recently lost mechanisms for effecting business improvement. Recognition of the diversity of work types receiving *emic* classification as ‘policy’ is not in itself new; for instance, Page and Jenkins (2005) have already pointed to the many types of work performed by departmental policy officials. Moreover, there is growing international evidence of the important policymaking role played by supposedly managerialist public agencies (Bach, et al., 2012; Verhoest, et al., 2010; Verschuere & Bach, 2012). However, the irrational complexities and contingencies described above point to the danger of collapsing disorderly governance processes into the reified concepts necessary for large-*N* population methodology (see below). Moreover, this international literature focuses narrowly on policymaking pertaining solely to agencies’ own delivery remits (Niklasson &

Pierre, 2012, p.201), whereas both OPG and HMCS's formerly devolved policy responsibilities extended considerably beyond their own operational jurisdictions. Finally, this degree of post-Next Steps transgression from the original decoupling intention has yet to be recognised in the UK literature.

9.4.3 Austerity-era policymaking in the MoJ

Departing from the main thesis, the final empirical presentation in Chapter 8 storied five ongoing justice policy programmes, noting continuity and elaboration of foregoing identity profiles and disciplinarity, as well as considerable agency involvement in policy formulation and development. Indeed, contrary to the neo-Next Steps centralisation implied by MoJ's 2010 Blueprint redesign, NOMS, HMCTS and OPG were characterised as policy initiators and collaborators as well as receivers in the delivery of the Coalition Government's justice reform programme. Undermining the purchaser-provider logic of NPM-style policy-delivery decoupling, this again supports claims of agencies' departmentalisation, the MoJ having instigated a corporate response to its political redirection after May 2010.

Policy disciplinarity was also central to Chapter 8's team stories, being narrated, for example, in regard to project 'drags', 'virtual teams', and 'keyholder groups'. This centrality of professional affiliation bolsters recent claims for reduced generalism in the civil service (Greer & Jarman, 2010), but the area remains under-researched. In particular, further work is needed to understand the advantages and challenges of project-management methodology in governance organisations, and the consequences of replacing subject knowledge with technical disciplinary specialism.

9.5 Agencies: on motive

Having explored both empirical questions posed in Chapter 2, this section draws on the whole data presentation to consider the final, conceptual aspect of the research agenda:

Research Question 3: What does an understanding of the evolving meaning and policymaking role of executive agencies suggest about the stability of managerialism in Whitehall?

As Chapter 2 explained, this concern with the paradigmatic testament of contemporary agency policy and practice develops, firstly, out of Next Steps' instantiating of core NPM precepts, and the empirical interest in tracing continuity and change against that original model. In addition, since the elevation of agency reform as an "international best seller" in the 1980s and 1990s (Pollitt, 2006, p.301), there has been growing interest in the longer-term fate of agencification as an expression of public management doctrine (MacCarthaigh & Roness, 2012; Verhoest, et al., 2011), yet little or no attention to this in the UK. This section duly explores paradigmatic continuity and change, drawing comparisons against the ideal-type 'tripod model' described in Chapter 2.

9.5.1 Continuity and change against the tripod model

According to its authors, the "tripod model" of bureaucratic "disaggregation", "autonomization", and "contractualization" represents "the most fundamental doctrinal building blocks upon which many recent agency reforms have been justified" (Pollitt, et al., 2004, p.42). Against these tenets, there is broad overlap with three of Hood's (1991, pp.4-5) seven doctrines of NPM – "disaggregation of units in the public sector", "hands-on professional management", and "explicit standards and measures of performance". Each element is explored below.

Disaggregation

Being administrative rather than legal entities, Next Steps agencies were always somewhat constrained on this measure of the tripod compared to international agency reforms (Pollitt, et al., 2004, p.36). Nonetheless, as Chapter 4 indicated, the original agencification narrative centred upon such notions of decentralisation and the removal of executive activity to the governing periphery, and recent academic commentaries continue to reference agencies in these terms. Pyper and Burnham (2011, p.196), for instance, describe agencies as only "nominally part of the[ir] department[s]", while Flinders and Skelcher (2012, p.332), critical of the Coalition Government's recent Public Bodies Review, reflect that this "reform agenda is ... built, to a large extent, on a constitutionally dubious distinction between executive agencies and

executive NDPBs which the previous government's own report argued was, for all intents and purposes, meaningless".

The evidence presented in this thesis provides a broad-based challenge to these implicit assumptions of continuity in agency disaggregation, although the situation is differentiated across macro, meso, and micro strata. In the contemporary discourse of both the core executive (Chapter 4) and the MoJ (Chapter 5), fundamental difference is posited between consolidated, politically-proximate and accountable agencies, and the arm's-length governing periphery. Still, the situation is likely to differ across government, as indicated by the mistaken inclusion of agencies in some departmental returns to the central Public Bodies review (NAO, 2012, p.8). In micro justice discourse, the situation is increasingly complex. Following the ideational and sectoral reinterpretations noted above, there were few claims to decentralisation or de-politicisation across the three justice agencies. NOMS partakes in joint ministerial briefings alongside Justice Policy Group officials, as if together performing "MoJ-officials-advising-our-ministers' jobs" (Box 6.8). Similarly, if it were not for HMCTS's partnership, its staff would be like any other civil servants in "writ[ing] whatever the minister wants" in a white paper (Box 6.17). And in OPG, their consolidation as "part of" the department is "the key principle" of the agency model (Box 6.36). Nonetheless, Chapter 6 also compared the horizontal and vertical identity profiles of each justice agency against those anticipated by the Next Steps model. Here it was shown that, as Next Steps predicts, all three essay substantial identity differentiation against the core MoJ, be that on the basis of risk management, operational pride and internal contestability; operational intimacy; or size and policy sector. This confounds the predominant departmentalisation and reaggregation trend, although, significantly, there were few claims to independence rationalised as a public management solution – the core of the Next Steps proposition. Moreover, the synchronic variegation in this micro-level discourse when compared with the unity of the meso and macro spheres might be a product of its status as organisational fieldwork data. Therefore, in the much modernised post-Next Steps Whitehall, further analysis is needed to explore whether identity construction in newly departmentalised

agencies differs from that in regular core directorates which are themselves subject to growing managerial and corporatising reforms, as seen in Justice Policy Group's flexible resource management, Policy Plan, and project methodology (see Chapter 8).

Autonomisation

This dimension of the tripod model refers to the reduced regulation supposedly granted by agency status, designed to enable public sector entrepreneurialism. In Chapter 4, the Next Steps argumentation was indeed shown to rest upon enthymematic prescription of management freedom to remedy Whitehall's troubles. Its intersubjectivity, according to the general analytic framework, reflects NPM's contemporaneous ideological predominance, described elsewhere by Lowndes (1997, p.43) as a "new orthodoxy", Pollitt (1993, p.6) as "a set of beliefs and practices", and Clarke and Newman (1997, p.86) as "an institution" comprising "shared typifications" and "shared cognition". Conversely, in the contemporary Public Bodies discourse, the idea of management autonomy for the sake of improved public services was nowhere to be seen, whether explicitly or implicitly. Moreover, the new Legal Aid Agency's centralisation was actually designed to remedy the former LSC's isolation, which, again through enthymeme, was diagnosed as the *obvious* cause of its underperformance (Box 5.6). This ideological realignment illustrates what Talbot and Johnson (2007, p.53) identify as a wider post-1990s dislodging of the "small is beautiful" ideal in favour of "new big government".

More broadly, like the rest of Whitehall, executive agencies are currently subject to the controls and embargos established by the Coalition Government in its efforts to control the fiscal deficit (see examples in Cabinet Office, 2011). This is part of a wider strengthening of the core executive after 2010, including through the creation of the Efficiency and Reform Group, the Government Digital Service, and the Major Projects Authority (NAO, 2012a). Furthermore, while the MoJ agencies already partake in interorganisational shared services, and have suffered some de-autonomisation as a result, the prospect of cross-governmental consolidation is likely to bring further challenges to the agency model in the coming years (Elston &

MacCarthaigh, 2013). Again, research will need to chart these developments and their impact on established public management infrastructure.

Contractualisation

The contractual basis of agencies is perhaps the area of greatest departure from Next Steps and its codifying of the tripod precepts. MoJ's austerity programme largely abandoned agency sponsorship in favour of collegial delivery. Even before this, however, the previous argument about the *intra*-departmental 'shuffling' of 'deckchairs' in transferring policymaking to agencies similarly undermines the principal-agent contractualism advocated in public choice theories of provider capture. More broadly, after the general decline in framework document maintenance noted in Chapter 2, diminished salience was confirmed in both NOMS and OPG (Box 6.13, Box 6.36). The HMCTS document was frequently cited by officials, but this concerned its enshrining of the judicial-executive partnership and, contrary to the tripod model, was explicitly not a document that was "ever there for the department" (Box 6.26). Similarly, the Legal Aid Agency's framework document followed the wider macro and meso reform narratives of centralisation and consolidation, creating not a public service bargain between ministers and officials, as was the case in the 1990s, but rather an agreement between the senior officials of the department (see Chapter 5). Again, agencification represents neither the decentralisation nor depoliticisation necessary for principal-agent contractualism.

Despite this interpretive shift, the fact remains that agencies continue to require frameworks, and, under the Coalition Government, both NOMS and HMCTS have re-issued documents (Lord Chancellor & Secretary of State for Justice, 2011; MoJ, 2011f). In part, this reflects their necessity for sound corporate governance (Box 6.13, Box 6.36), but, in style, they continue in the contractual manner developed in the initial Next Steps rollout. This ostensible continuity perhaps accounts for some of the stasis assumed in academic commentary. Given this thesis' reading of considerable evolution, however, an alternative account might develop from Atkinson and Coffey's (2011) notion of "documentary realities". Framework documents are

highly conventionalised, epitomising what Finlayson (2007, p.556) terms a “rhetorical genre” – that is, mode of discourse codified by certain structural, stylistic and oratorical conventions upon which they “claim or manifest their authority, demarcating themselves from other kinds of text”. For example, there is the prospective and contractual narrative voice, the pseudo-legal referencing of interrelating ‘parties’, and the paragraph numbering. Such documentary realities are not “transparent representations of organisational routines, decision-making processes, or professional practices”, however, but the means by which organisations “construct particular kinds of representations using literary conventions” (Atkinson & Coffey, 2011, p.79). In short, reproduction of the agency framework document genre some twenty-five years after its inception is a matter of intrigue from the perspective of organisational identity, but is not in itself a sign of stalled public management.

9.5.2 Paradigmatic continuity and change

Benchmarked against the tripod model, then, the contemporary agency policy and practice narrated in the thesis performs badly against all three managerialist components, although greatest departure is from contractualism. Still, as noted above, affirmative interpretations of ‘agency’ gather around its accountability function, indicating an asymmetric departure from the original accountable management philosophy (see Section 9.3.3, above). As well as managerialism, the assurance of accountability and imposition of new forms of bureaucratic control are significant NPM themes (Hoggett, 1996), following the desire for reasserted political primacy over public institutions (Aucoin, 1990). In this manner, the use of agencies as an accountability instrument suggests a potentially differentiated evolution of NPM, whereby its high tide of emancipatory and contractual rhetoric has passed, depositing a watermark of more lasting governing infrastructure – annual reports, business plans, Accounting Officer responsibilities, and the framework document ‘genre’ discussed above. This type of account accords with international claims of doctrinal layering and hybridity (Christensen & Lægreid, 2011). The extent to which it constitutes a paradigm change, however, is a complex matter for another dissertation. Given the contemporary concern with public accountability across the

establishment, especially after the recent MPs expenses, cash-for-honours, phone hacking and tax evasion scandals, this will need to be couched within a broader consideration of social commentary and critique, against which accountability in public governance gathers new meaning compared to 25 years ago.

9.6 Methodological reflections

Public administration has enjoyed something of a reflexive turn in recent years, with scholars paying new attention to the opportunities afforded by post-positivism (Haverland & Yanow, 2012; Hay, 2011; Jun, 2006; Riccucci, 2010; Wagenaar, 2011; White, 1999). Interpretive research on agencification remains inchoate, however, and, despite the paradigm's roots in anthropology and sociology, the few available studies are confined to high-level (trans)national analyses of documented reform ideas (Moynihan, 2006; Smullen, 2004, 2010). In extending this approach from macro ideational discourse to a specific policy sector and three organisations in which 'agency' is accomplished in day-to-day governance, this thesis has sought to elaborate that promising but still confined field. In so doing, it has departed from the three methodological tendencies noted in Chapter 2. These are reconsidered below, after an initial reflection on the overall narrative strategy.

9.6.1 Interpretive and narrative methods

Interpretive research advances not a theoretical agenda but an axiomatically-different meta-theory – a paradigm of social science that propagates distinct knowledge claims and standards (Burrell & Morgan, 1979; Schwartz-Shea & Yanow, 2012). In particular, replacing traditional positivist concerns with internal and external validity, reliability and objectivity are alternative aspirations for credibility, transferability and dependability, compliance with which is sought through, for example, transparency of method and interpretation, depth of field engagement, and 'thick description' (Guba & Lincoln, 1982). Amongst the most significant theoretical and methodological challenges facing interpretive social science is the registering of social and "objective" meanings from individual subjectivities (Wagenaar, 2011). Accordingly, the strategy

in this thesis has been to attend to narrative as a near-pervasive and deeply social mode of communication (Bal, 1985; Pentland, 1999; Riessman, 2008), aided by the general analytic framework of argumentation, voice and differentiation. Together, these components of story make for neither an exhaustive toolkit nor one aimed at ‘objective’ application, but rather represent a mutually-reinforcing aid to registering (some) synchronic and diachronic meaning. Nonetheless, *intersubjectivity* remains a challenge in narratives retold beyond individual storytellers. Thus, although a pragmatic means of understanding something of contemporary governing processes, Chapter 8’s synthesis of team narratives departs from the narratological axiom of preserving individually authored structures, and, in so doing, potentially introduces greater researcher dominance into the constructed policy stories. New research must thus give greater consideration to the communality of narrative form within grouped situations, and how this is to be registered.

9.6.2 Three methodological tendencies: a case for redirection?

De-contextualisation

Regarding the existing, recently burgeoning international agencification canon, the first methodological tendency identified in Chapter 2 is towards de-contextualisation. This is a product of the predominance of administrative system analysis, whereby large-*N* techniques of organisational ecology chart longitudinal evolution in agency populations and their aggregative demographics of autonomy and control. Undoubtedly, studies of administrative decentralisation have advanced considerably under this research paradigm, which affords cross-national comparison and a variety of theoretical models. However, the method has several key limitations, including reification of ‘agency’ and the extraction of organisations from their day-to-day work and the contingent policy systems in which that work is performed.

In cross-governmental analysis, organisations are necessarily conceived as generic members of a wider collectivity readily defined by the shared (pseudo-)legal classification of ‘agency’. This is both homogenising and determinist, collapsing together otherwise diverse and unconnected

governing activities simply by virtue of a shared public management label. It is also insensitive to interpretive diversity, leading to the problematic assumption that a member's addition or subtraction from the overall population carries the same meaning both synchronically and diachronically, with population continuity thus representing a proxy measure for policy and paradigm continuity. In other words, contemporary agencification is assumed to still engender tripod-style disaggregation, autonomisation and contractualisation. As this thesis has shown, the interpretive malleability of public management artefacts – across both synchronic and temporal contexts – renders this assumption untenable. It is only by contextual reading that, for example, modern preservation of HMCTS's agency status can be understood not as ongoing testament to NPM-style contractualism, but as a product of its constitutionally-dangerous proximity to penal delivery. Equally, it is only by situating NOMS within its historical contingencies and *emic* understandings of task and politics, or by reading OPG against its concerns with de-prioritisation, that their operation of 'agency' as a function of corporate governance can be registered. These meanings, which accomplish agencification on a day-to-day basis, are unavailable in abstracting system analysis, and yet are the essence of a public governance system in which agency status is only ever one artefact, and a constructed one at that.

Deductive empiricism

The hypothesis-led testing of *etic* concepts and theories is an enabler of large-*N* system analysis and the explanatory research which dominates agencification scholarship. Its appropriateness for social research is largely a matter for considered epistemological conviction, and it is not the intention here to rehearse the 'paradigm wars' of yesteryear. However, following the previous critique of administrative system analysis, the possibilities of an alternative, inductive and *emic* approach can be identified in relation to the arguments expounded in this thesis. In particular, existing research in the UK has assumed broad continuity in the post-Next Steps period, so that agencies mean departmental detachment (Pyper & Burnham, 2011), contractual performance management (James, et al., 2011), an affinity with other quangos (Flinders & Skelcher, 2012)

and the epitome of NPM (Drewry, 2011). Though consistent with Next Steps precepts, these characterisations are unreflective of the *emic* perspectives which this thesis has – however approximately and provisionally – sought to elucidate. Equally, outside the UK, the internationalisation of the agency research agenda over the last decade has engendered both theoretical and methodological homogenisation (see Chapter 2), including standardised definitions and measures of key concepts such as autonomy and control (Verhoest, et al., 2004). Latterly, concern has grown as to the expediency of this approach for capturing the complexities and contingencies of policy processes (Bach & Verhoest, 2012), and the social constructivist perspective advanced in this thesis bolsters that call for increased qualitative attention to post-agencification policymaking, again on the basis of the interpretive malleability of work defined situationally as ‘policy’, ‘operational policy’ and ‘strategy’.

Concept or process research

The third tendency identified in Chapter 2 is, again, a product of administrative system analysis. Standardised surveys of agency chief executives enable conceptual measurement of ‘policy autonomy’, ‘HR autonomy’ and so forth, but these are snapshot evaluations which instantiate the previous tendencies towards de-contextualisation and *etic* definition. There are many challenges to conducting alternative, process-based research, not least practical constraints of time and access. Nonetheless, if agencified governance is to be studied with new proximity to its day-to-day contexts and contingencies, getting “up close and personal” (Gains, 2011) with public organisations and policy systems is unavoidable. The team stories essayed in Chapter 8 are an early effort in this direction.

9.7 Conclusion: new directions in agency research

The arrival and development of executive agencies in Whitehall was received differentially, with government, parliament and some commentators claiming a civil service revolution (Drewry, 2011; James, 2003; TCSC, 1990), but others positing a far less dramatic process of restructuring (Hogwood, et al., 2001; Talbot, 2004). A broad conclusion of this thesis might be that, whatever

the state of affairs during the early implementation, the long-term evolution has been to diminish the impact of agencification through departmentalisation, resource interdependence, and new emphasis on corporate and political accountability, rather than autonomy and decentralisation. However, as noted previously, agencification was pursued not as an end in itself, but rather as a means of revitalising and modernising the civil service. The extent to which that aspiration was achieved remains an empirical question, and one of considerable import if, as this thesis has argued, agencies' distinctiveness vis-à-vis core departments has declined. Potentially, de-agencification signals not regression, but adaptation. It is this longitudinal perspective that is missing from much existing work in the UK, and yet this is a growing concern of the international scholarly community. As such, there is much to be gained from instigating new efforts to 'catch up' the UK, including fuller understandings of the extent of institutional fracture in contemporary Whitehall, the nature of the post-agencification policymaking process, and the capabilities of the modern civil service.

Beyond the UK, then, there have been considerable advances over the last decade. Arm's-length governance has enjoyed sustained research endeavour, and many empirical and theoretical advances have been claimed. Nonetheless, that research agenda faces its own challenges in accounting for the complex, political and ineluctably social ontology of public governance. In particular, ongoing methodological homogenisation must be viewed with some criticality, particularly for its tendencies towards de-contextualisation, deduction and snapshot evaluation. In so doing, qualitative case studies, ethnographies and other interpretive strategies may be found to offer promising avenues for future exploration. It must never be forgotten that agencies strive to deliver public outcomes in often challenging circumstances and amongst a mass of historical and cultural contingency. By appreciating this governing 'whole', more rounded explanations of agencification as an important but increasingly indivisible component of modern governance may well be forthcoming.

Appendix I – Agency Reform Across the UK and Devolved Administrations

Chapter 2 identified divergence in post-Next Steps agency rationalisation between UK central government and the devolved administrations in Scotland, Wales and Northern Ireland. The three commentaries and four tables below elaborate upon this.

Scotland

Closely paralleling political events, Scotland saw no major rationalisation until 2008. In 2001, the Executive proposed reducing the number of non-departmental bodies by returning functions to either the core government or an executive agency (Scottish Executive, 2001, p.6). Agencies were painted favourably since they allow “a strong emphasis on the delivery of outputs” while remaining “an integral part of the Executive” (Scottish Executive, 2001, pp.18-19). Across 2001-2006, the number of Scottish agencies duly rose to 18. However, with the change of administration in 2007 came renewed concern that Scotland had too many disparate public bodies. A ‘Simplification Programme’ was launched, and agencies were no longer immune to the cull. Indeed, a stated aim was to “[enhance] links between policy development and delivery” by bringing these together in government (Scottish Government, 2009, p.12). Six agencies were reabsorbed in 2008 and 2009, although two new agencies were also designated. By the end of 2010, Scotland had 13 agencies, indicating that the extent of de-agencification remained limited.

Agencies in Scotland

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Launches	1	2	1	3	1	1	0	1	0	0	0	2	1	1	1	2	1	0	1	1	0	20
Reintegrations	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	3	-	6
Misc.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	1
Net Change	+1	+2	+1	+3	+1	+1	0	+1	0	0	0	+2	+1	+1	+1	+2	+1	0	-2	-2	-1	
Total Agencies	1	3	4	7	8	9	9	10	10	10	10	12	13	14	15	17	18	18	16	14	13	

Wales

Wales stood apart during Next Steps, only gaining one agency of its own. Three further Welsh agencies were launched after devolution, though, by 2005, three had also been lost. Despite the rollback in Wales predating that in Scotland, their agency stories display several similarities. In particular, no agency-to-agency mergers have occurred, making de-agencification the dominant reaggregation mechanism. Furthermore, in both countries, the changes occurred against a wider backdrop of ‘quangocracy’ reforms (for details of this in Wales, see Thomas, 2004).

Agencies in Wales

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Launches	1	0	0	0	0	0	0	0	0	1	0	0	2	0	0	0	0	0	0	0	4
Reintegrations	-	-	-	-	-	-	-	-	-	-	-	-	1	1	1	-	-	-	-	-	3
Net Change	+1	0	0	0	0	0	0	0	0	+1	0	0	+1	-1	-1	0	0	0	0	0	
Total Agencies	1	1	1	1	1	1	1	1	1	2	2	2	3	2	1	1	1	1	1	1	1

Northern Ireland

Agencification in Northern Ireland was conditioned by the region’s socio-historical and political particularities, including the existence of a separate civil service (the NICS). By 1998, 25 agencies had been established: three for the UK Government’s Northern Ireland Office; and 22 as part of the NICS (Minister for the Cabinet Office, 1999, p.252). Unlike in Scotland and Wales, net agency reductions began soon after 1999, though the decline was not dramatic. Between 2003 and 2005, the population stabilised at 22, before a second period of reaggregation followed the Review of Public Administration (2006). This came in response to accusations that Northern Ireland was vastly over-administered (Knox & Carmichael, 2006), and resulted in a major rationalisation through a combination of mergers and reintegrations, leaving 13 agencies by the end of 2010.

Agencies in Northern Ireland

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total
Launches	1	2	3	3	0	5	10	0	1	0	0	0	0	1	0	0	0	2	0	0	0	28
Mergers	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4	2	-	-	6
Reintegrations	-	-	-	-	-	-	-	-	-	-	1	-	2	-	-	-	2	-	1	1	-	7
Misc.	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	1	-	-	-	2
Net Change	+1	+2	+3	+3	0	+5	+10	0	+1	0	-1	0	-3	+1	0	0	-2	-3	-3	-1	0	
Total Agencies	1	3	6	9	9	14	24	24	25	25	24	24	21	22	22	22	20	17	14	13	13	

UK central government

Developments in core UK agencies were discussed in Chapter 2. The disaggregated data is presented below.

Agencies in UK central government

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Total	
Launches	3	6	23	18	15	10	11	8	21	11	3	6	4	4	2	6	2	4	4	4	4	5	2	2	174
Privatisations	-	-	-	-	-	1	-	3	8	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	15
Mergers	-	-	-	-	-	-	-	4	1	-	2	6	3	4	2	6	2	1	4	4	6	3	-	-	48
Reintegrations	-	-	-	-	-	-	-	-	-	-	1	1	5	3	-	-	3	5	3	8	2	-	2	-	33
Misc.	-	-	-	-	-	-	1	-	2	-	1	2	-	2	-	2	-	3	1	1	3	1	2	-	21
Net Change	+3	+6	+23	+18	+15	+9	+10	+1	+10	+8	-1	-3	-4	-5	0	-2	-3	-5	-4	-9	-6	-2	-2		
Total Agencies	3	9	32	50	65	74	84	85	95	103	102	99	95	90	90	88	85	80	76	67	61	59	57		

Appendix II – Research Governance

As well as establishing this study's (meta-)theoretical origins, Chapter 3 described the design and implementation of its empirical components. This appendix elaborates upon the specific methodological issues of ethical clearance and participant access.

Ethical clearance

The research was conducted in line with the *Framework for Research Ethics* developed by the UK Economic and Social Research Council and codified in the policies and procedures instituted by the School of Sociology and Social Policy ('the School') and wider University of Nottingham Research Ethics Committee. The overarching aim was to ensure thorough, explicit and ongoing consideration of ethical issues during the project, with an emphasis on participant protection.

Before any approach was made to government, an initial ethical review was conducted using the School's *Research Ethics Checklist*. This addressed matters ranging from participant vulnerability, anonymity and access, to data storage and researcher identity. The checklist was signed by the research supervisor and submitted to the internal examiner and postgraduate research convenor at the first-year doctoral progress review. Thereafter, as access negotiations proceeded (see overleaf), the review was updated and a participant information sheet and consent form developed. These were modified from School templates, and provided the basis for assuring participants' informed consent during the fieldwork.

In bullet-point format, the information sheet gave details of the researcher, supervisor and School research ethics officer; the project aims and the rationale behind participant selection; the permission granted by the case study organisations; the voluntary basis of an individuals' participation, and their likely time commitment; the definition of a 'non-attributable' interview (see below); the request to record and transcribe conversations; and the likely dissemination routes for the research, including to employer organisations. On anonymity specifically, the information sheet said:

“Every effort will be made to ensure the anonymity of participants in the research outputs. Interviews will be held on a ‘non-attributable’ basis; i.e., elicited information and quotations will be cited without precise reference to their source, thus: ‘An official in the policy division commented that...; it emerged from an agency manager that...’. Even so, an absolute guarantee of anonymity cannot be made for all participants, given the uniqueness of some organisational roles and the potential for colleagues to recognise each other’s contribution. The identity of the case organisations will be made explicit in the research outputs.” (Source: Participant Information Sheet)

The interview consent form contained a series of first-person statements summarising the terms of engagement outlined in the information sheet and requiring a ‘yes’/ ‘no’ response from participants to indicate approval. Once access negotiations concluded, the updated checklist, information sheet and this consent form were approved by the School research ethics officer prior to the commencement of the fieldwork.

Access

Initially, the MoJ Secretariat was formally approached about the research project. Towards the end of the three-month deliberation that ensued, the chief executives of the three agencies were contacted, as were senior management in the Cabinet Office. Once agreement was reached, initial interviews were established on a self-select basis with those involved in the access discussions. Thereafter, participants were sought on the basis of ‘snowball’ recommendation or involvement in particular projects or work streams. In all cases, initial contact was by email. This detailed the broad aims of the research, the permission already gained from the MoJ and agency chief executives, and the reasoning behind the particular interview request (for instance, involvement with an example policy, such as PbR or Working Prisons). A one-page briefing on research aims and policy relevance was attached which elaborated on the research focus and its relevance to both the MoJ’s ongoing restructuring and the Coalition Government’s wider administrative reform agenda. If officials agreed to contribute, the participant information sheet and consent form were then supplied electronically before meetings, and discussed and signed at the start of the interview. For those requesting transcript review rights or unrecorded discussions, the declaration was amended accordingly.

Appendix III – Interview and Document Codes

Ministry of Justice

Interview_012	Interview_030	Interview_038	Interview_052
Interview_013	Interview_031/032	Interview_045	
Interview_018	Interview_034	Interview_049	
Interview_029	Interview_036	Interview_050	

National Offender Management Service

Interview_014	Interview_021	Interview_025/037	Interview_028
Interview_015	Interview_023	Interview_026	
Interview_020	Interview_024	Interview_027	

HM Courts and Tribunals Service

Interview_035	Interview_042	Interview_046	Interview_051
Interview_039	Interview_043	Interview_047	Interview_053
Interview_041	Interview_044	Interview_048	Interview_054

Office of the Public Guardian

Interview_003/004	Interview_006	Interview_008	Interview_011
Interview_005/017	Interview_007	Interview_009	

Cabinet Office and miscellaneous

Interview_001	Interview_010	Interview_019	Interview_040
Interview_002	Interview_016	Interview_022	

Documentation

Document_001-004 – OPG consultation papers

Document_005/006 – OPG Digital Transformation papers

Document_007/008 – MoJ Internal Audit papers

Document_009 – Cabinet Office Public Bodies Reforms papers

Document_010 – MoJ Justice Transformed strategy

Document_011 – MoJ Guide for Policymakers

Document_012 – NOMS Operational Policy Group papers

Document_013 – MoJ Target Operating Model Blueprint

Document_014 – Email

Document_015 – Email

Document_016/018/020/029 – MoJ Staff Insight Magazine

Document_017 – MoJ Departmental Governance papers

Document_019 – Hand drawn diagram of Payment by Results economic model

Document_021 – Restricted

Document_022 – Public Guardian Board Stakeholder Meeting papers

Document_023-025 – Criminal Justice System Efficiency Programme papers

Document_026 – Hand drawn diagram of HMCTS strategy

Document_027 – Public Guardian Board Annual Report

Document_028 – MoJ/JPG PowerPoint slides for new staff

Document_030 – Email

Document_031 – HMCTS Enforcement Contracting papers

Document_032 – Email

Document_033/034 – MoJ/JPG Blueprint Staff Consultation

Document_035-038 – MoJ Arm's-Length Bodies Governance documentation

Document_039 – Criminal Enforcement Legislative Changes Impact Assessment

Appendix IV – Transcription Conventions

Boxes

Boxes are used within the thesis to either present formal argumentation, or to delimit narratives or narrative-like passages. For the sake of clarity or conciseness, these ‘narrative summaries’ combine quotation with paraphrasing, which preserves narrative structure, key distinctions and other linguistic features, but reduces length and removes extraneous detail.

Style sheet

Quotations are indicated with double quote marks (“ ”); internal quotations use single quote marks (‘ ’).

Italicised quotations, whether in boxes or indented within the commentary, indicate text treated as data. Italicisation within the regular commentary is for emphasis. To avoid confusion, data quoted within the commentary is not italicised.

Unless otherwise stated, single-underlining within quotations indicates words referenced in the commentaries above and beneath.

In formal and rhetorical argumentation, double-underlining indicates an implicit premise within an enthymeme (see Chapter 3).

A hanging dash (-) indicates trailed off speech, a change of direction, or an interruption.

Ellipses (...) indicate omitted text. Where, for the sake of clarity or conciseness, longer passages are omitted, these are labelled ‘Digression’ or ‘Elaboration’.

Contextual material is contained in square brackets [].

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