

The limitations of delivery

We are sleepwalking into an existential crisis for the UK—on the rule of law. Fifteen years on from the creation of the Ministry of Justice, **Roger Smith** sets out why



Antonia Romero is a very modern civil servant. She is the Ministry of Justice's Permanent Secretary. This is a post long in tradition. Within its forerunner, the Lord Chancellor's Office, the holder was a lawyer until 1998. By contrast, Ms Romero is an economist. She is the first woman in the post. And, in the modern way, she is a regular tweeter—revealing a personalised take on the institutional obligations of her office. She recently noted the 15th anniversary of the creation of the Ministry of Justice, now 'a major delivery department with a mission to protect the public, reduce reoffending and provide swift access to justice'.

Let's have a look at two separate aspects of the ministry's role as a 'major delivery department'—its effectiveness in fact and its desirability in principle. The truth is that the Ministry of Justice was cobbled together with a slice of former Home Office responsibilities added to those of the Department for Constitutional Affairs (the immediate successor to the Lord Chancellor's Department) to give it a bit of financial welly. Without prisons and probation, it was feared that the department would have little weight around the cabinet table. And, indeed, would be unworthy of the evident merits of Tony Blair's friend Lord Falconer as its head.

The debates at the time may seem old history. But, right at the beginning, there

was some unease—expressed in one version by Conservative MP Oliver Heald: 'The Opposition have repeatedly said that to put prisons and the courts into a single person's hands is potentially a recipe for constitutional crisis ... The Lord Chancellor has a constitutional duty to uphold and protect the independence of the judges and the rule of law. However, it is now his Department that poses a threat to the judiciary.' The aspect of the crisis that he was particularly concerned about was the push and pull of prison sentencing.

Since 2010, the political leadership of the ministry has been, to put it at its best, uneven. Ken Clarke was clearly at the end of his long Parliamentary career and had held offices of state that clearly interested him much more. Of Chris Grayling, Liz Truss and Michael Gove little is probably best said. Their time might be best illustrated by the privatisation of the Probation Service from 2014 and its renationalisation in 2020. On this, let us quote no less an authority than *The Sun*: 'Probation U-Turn: Probation Services will be renationalised after bosses slammed 'irredeemably flawed' system,' (15 May 2019, [bit.ly/3wZl0wz](https://www.sundaily.co.uk/story/Probation-U-Turn-Probation-Services-will-be-renationalised-after-bosses-slammed-irredeemably-flawed-system-20190515)). The urbane then Minister of Justice, David Gauke, announced: 'I believe that bringing responsibility for delivery of all offender management within the NPS will remove some of the complexities that have caused challenges in the current model of

delivery.' And, thereby, Chris Grayling's great initiative expired. Everyone said it was a bad idea: it was.

As a delivery department, the Ministry of Justice doesn't. Everywhere you look, delivery is an issue for Ms Romero's department. An obvious issue for prisoners is the link between offending and mental health. The National Audit Office has been scathing. Its 2017 report said: 'Government does not know how many people in prison have a mental illness, how much it is spending on mental health in prisons or whether it is achieving its objectives. It is therefore hard to see how government can be achieving value for money in its efforts to improve the mental health and well-being of prisoners.' Any number of subsequent reports repeat the case. The Commons Justice Committee reported last year: 'Provision is still not adequate,' (NAO, 'Mental health in prisons', 26 June 2017, see bit.ly/3wImHxV).

And back in home territory for lawyers, it is much the same. Both branches of the legal profession are involved in disputes over legal aid. Court hearings and prosecution delays have hit record levels. These are due to the impact of Covid (beyond the responsibility of government) but also ill-advised cuts to court and judicial costs (very much the consequence of its policies). The wheeze of flogging off courts to pay for an expensive digital programme of uneven utility has been ruthlessly exposed.

None of these delivery issues for her department is Ms Romero's personal responsibility. She was elsewhere when most of the relevant decisions were taken. Ministers must take the major burden. Governments from 2010 put more weight on the perceived benefits of austerity than the advantages of good governance.

But there is a bigger issue here. The Ministry of Justice has manifestly not been very good at delivery. But should it really be in that business at all? Had Trollope turned his attention from the clergy to the law, then the old Lord Chancellor's Department might have provided a good backdrop for a novel or two. But, the Lord Chancellor's major function was to provide, as it was put, 'a hinge' between different parts of the constitution. It is a very unfashionable thought, but perhaps we need a Ministry of Justice that focuses precisely on that.

So maybe we should give prisons and probation back to the Home Office. We should refocus the Ministry of Justice on the constitution. On a whole series of issues, we are sleepwalking into an existential crisis for the UK—on the rule of law; Scottish secession; an unsustainable House of Lords; the courts and justice. Ms Romero could lead delivery on new thinking to avoid the gathering storms. Someone certainly should.

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