



Ministry
of Justice

Chief Property Officer
Andy Mills


www.justice.gov.uk

Rt Hon Philip Dunne MP
Chair Environmental Audit Committee
House of Commons
London
SW1A 0AA

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Dear Chair

The Ministry of Justice: Environmental Sustainability; Third Report of Session 2017-19

In my last note to the previous chair of the Environmental Audit Committee (EAC), I committed to providing a further update on our work to address recommendations made during the Committee's Inquiry into Environmental Sustainability in the Ministry of Justice. This follows on from our initial response in March 2018 and a further update provided during the Net Zero Inquiry in September 2019.

I am pleased to report that we are making significant strides in embedding environmental sustainability across the Ministry, and it now has a far higher profile. We have completed ten of the Committee's previous recommendations, and we are progressing the remaining areas. Progress against each recommendation is summarised at **Annex A**, and further detail is provided at **Annex B**.

A notable success has been the impact of our low or zero carbon projects, which have helped to reduce our carbon emissions by 44% since 2010. We are also taking steps to ensure that we maintain the necessary pace in cutting emissions over the coming years by commissioning a study to map the Ministry's pathway to net-zero carbon. We will continue to balance the welcome increased focus on carbon with other important issues such as biodiversity and resource efficiency.

Our commercial function is also making progress to not only include greater visibility of social and environmental issues within future procurement decisions but to also drive wider economic benefit into those communities within which we work and operate.

As you might expect, the COVID-19 pandemic has had some impact on our work. Indeed, I had hope to write to the committee with this update earlier in the year but this too has been delayed by our response to the pandemic. We aim to minimise the long-term impact of delivery delays and maximise the potential upside that adapting to the restrictions has presented. We have also constructively engaged with Defra and BEIS in relation to the 2025 Greening Government Commitments and are developing ambitious plans to meet the new targets when formally introduced.

I hope this provides a helpful update on activity within the Ministry and would be happy to meet and discuss our progress if you felt this would be of benefit.

Yours sincerely



ANDY MILLS
Chief Property Officer and Senior Sustainability Champion

Annex A

Summary table of progress against each recommendation made in the Environmental Audit Committee's Inquiry into Sustainability in the Ministry of Justice 2018

Position	Key	Number
	Complete	10
	Good Progress	3
	Moderate Progress	3
	Little Progress	0

Ref	Area	Performance
1	Reducing domestic flights	
2	Ultra-Low Emission Vehicles	
3	Sustainability in contracts beyond the Government Buying Standards (GBS)	
4	Carbon and waste targets	
5	Assessing environmental impacts of policy, guidance for policy makers, publishing environmental costs and benefits, mitigation	
6	Publish analysis of environmental justice cases, review variable cap	
7	Publishing sustainability policies	
8	Making better use of Low and Zero Carbon (LZC) financial incentives, implementing LZC technologies including maximising funding	
9	Building Research Establishment Environmental Assessment Method (BREEAM): assess more projects, publish performance	
10	HMCTS disposals and maintenance of historic estate	
11	Individual prison targets, addressing expired Prison Service Instructions, publishing energy benchmarking, supporting governors, performance monitoring	
12	Site of Special Scientific Interest (SSSI) Condition Improvement Plan	
13	SSSI monitoring, Senior Sustainability Board (SSB) oversight, staff and contractor accountability	
14	Leadership, governance, oversight and staffing	
15	Overheating in prisons, participation in cross-government groups	
16	Contractor oversight and governance, KPIs in contracts, performance monitoring	

Annex B

Progress updates against each recommendation further to the formal Government response¹ provided in March 2018.

- 1) Increasing numbers of domestic flights are not in line with the Ministry's environmental commitments. We welcome the Ministry's commitment to review its authorisation processes for domestic flights. It should set out, in its response to this Report, the outcome of the review and how it intends to reverse the upward trend in flights (COMPLETE).**

During 2019-20 we reduced our flights by 12% compared to the previous year having updated our booking platform, promoted digital alternatives and engaged with key stakeholders in the organisation. Recognising that emissions from domestic flights are less than 0.1% of the Ministry's overall carbon emissions, we will continue to explore digital solutions, wherever this is possible without jeopardising the quality of, or access to our essential services. The Ministry provides services in Scotland, Northern Ireland and the UK's other islands; all flights taken are either to 'hard to reach' locations or would otherwise incur over 6 hours travel for a return rail journey.

Looking at how the Ministry has adapted its working practices during the pandemic, we are also reviewing how we can secure long term environmental benefits associated with increased digitalisation, reducing travel where possible, and ensuring the size, shape and location of our estate reflects the current and future needs of the organisation.

- 2) Only two out of the Ministry's 1,483 vehicles are ultra-low emission vehicles. Significant improvement is needed to meet the Government's aspirations in this area. The Ministry should set out in its response to this report how it will improve the uptake of low emission vehicles in its purchasing, leasing and rental arrangements to meet the Budget target of 25% of its fleet to be ultra-low emission vehicles by 2022. (GOOD PROGRESS)**

Since March 2020, the Ministry's car fleet has reduced from 575 to 533 as progress is made on our strategy to reduce our reliance on a large owned fleet in favour of daily hire and public transport.

As of September 2020, the Ministry had 49 ULEVs in its car fleet (9% compliant), with a further 52 due to be delivered before the end of the current financial year, taking its compliance rate to 19%. The Ministry is committed to meeting the 25% ULEV car target by the 2022 deadline, which equates to 133 cars from a fleet of 533 in-scope vehicles. Our Transport Unit plans to procure a further 134 vehicles by the end of December 2021 (although this may be delayed due to COVID-19) making us 34% compliant.

The Transport Unit assesses each new vehicle application to ensure that wherever possible zero emissions or ULEV are bought. Alternatives are only provided where there is an operational requirement, or where using a low or no emissions vehicle does not demonstrate best value for the taxpayer. Currently there are no suitable car-derived-vans, vans and larger vehicles affordably available to add to our fleet.

Progress on fleet will be hampered by the insourcing of the National Probation Service which will see an overall increase in the size of our fleet. However, we aim to ensure that our fleet is managed in accordance with the wider fleet going forward; and we are developing a robust pipeline of projects to support the commitment for 100% of central Government cars to be ULEV by 2030, if not sooner.

¹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmenvaud/982/982.pdf>

- 3) Whereas the Ministry expressed confidence over sustainability in its contracts, we have not seen any evidence that this is the case for the vast majority of its contracts. We expect the Ministry in its response to set out how sustainability is embedded in the 785 contracts which the Government Buying Standards do not apply to, providing us with an overview of the standards that apply to these contracts. (MODERATE PROGRESS)**

Since the EAC reports, the Ministry has reviewed all contracts and:

- updated its terms and conditions of contracts to include sustainability clauses for new contracts, so that they are compliant with the Government Buying Standards;
- developed and published our sustainability approach for inclusion into our contract management procedures; and
- improved our contract classification and contract pipeline to support future planning and risk mitigation.

In addition, the Ministry now requires all major Business Cases (SOBC, OBC and FBC) to include a sustainability assessment, and introduced a sustainability keyholder. All change projects also require an environmental impact assessment to be undertaken and included within the approval process.

In response to the Cabinet Office's Social Value consultation, the Ministry's Chief Commercial Officer is working with its Investment Committee to agree a more formal and robust bid evaluation target for inclusion in tenders and award criteria for all new contracts that fall outside of the scope of existing terms and frameworks.

- 4) The Ministry's Government Greening Commitments on carbon and waste for 2019–20 lack ambition. We would like to know why the Department for Business, Energy and Industrial Strategy (BEIS) and the Department for Food, Environment and Rural Affairs (Defra) allowed the Ministry to set such easy targets. We recommend that the Ministry review and publish a set of ambitious targets for 2019–20 alongside its response to this report. (COMPLETE)**

A more ambitious greenhouse gas emissions reduction target of 38% was agreed with BEIS for 2020. The Ministry reduced emissions by 41% by 31 March 2020, and reduced its waste to landfill to 3%. We are currently developing, in consultation with Defra and BEIS, stretching new reduction targets to 2025 that are in line with wider Government commitments, such as Net Zero Carbon, and the Clean Growth Strategy. The Ministry also plans to publish a Waste Strategy and Net Zero Carbon Strategy by the end of the year.

- 5) We are concerned that the Ministry does not routinely assess the environmental impacts of its new policies. We agree with the Ministry that its guidance for policy makers on environmental sustainability is lacking. It needs to improve this as a key area. We recommend that the Ministry include a "green check" criterion in its impact assessments to ensure it has considered all possible environmental impacts, including the long-term and less visible impacts. We recommend it publishes the environmental costs and benefits of its new policies annually, and demonstrates which actions it will undertake to mitigate the environmental costs of each new policy. (MODERATE PROGRESS)**

In addition to the tools to help policy makers understand the environmental impacts of new policies referenced in our previous response, the Ministry has further considered how it can more effectively assess the environmental impact of its policies. It has developed a set of screening questions to help identify policies which might have a significant environmental impact; and has produced guidance to support policy makers in assessing these impacts.

Most recently, the Ministry has agreed that addressing the potential environmental impacts of new policies will be part of a new environmental framework used to update the Ministry's Executive Committee on embedding environmental sustainability in all we do. MoJ remains committed to publishing the costs and benefits of its new policies annually and intends to issue its return in its 2020/21 Annual Report and Accounts.

- 6) The fixed cost cap on environmental justice cases was introduced after criticism from the Aarhus Convention Compliance Committee. It was replaced by the Ministry without a proper impact assessment or any attempt to address the concerns raised during an overwhelmingly negative consultation. The number of environmental justice cases being brought since then has fallen. In the face of such a flawed policy development process, the onus should be on the Ministry to demonstrate that the variable cap is not having a "chilling effect" and harming environmental justice. We recommend the Ministry of Justice publish an annual analysis of the number of cases on environmental justice that have been brought forward per month. It should review the variable cap two years from the date it was introduced. Unless the Ministry can demonstrate that the variable cap is not having a chilling effect on environmental justice, it should reinstate the fixed cap. (GOOD PROGRESS)**

We have said that we will formally review the ECPR when we have sufficient data to do so, but the timing of this is uncertain given the COVID-19 pandemic. Our findings, once reviewed, will be published.

- 7) It is important that all Government departments are seen to be acting in a sustainable way. We expect the Ministry of Justice to publish all its sustainability strategies by April 2018 to increase transparency over its guidance and objectives. (COMPLETE)**

All extant strategies have been published as has the new policies regarding Consumer Single Use Plastics and Sustainable Procurement. The Ministry has also published its Climate Change Adaptation Strategy and Action Plan, which sets out plans to deliver a comprehensive study of the climate risks and resilience for the Ministry's property portfolio.

- 8) We question why the Ministry has not implemented more renewable energy technologies, such as solar panels or biomass boilers, which have the potential to reduce its carbon footprint even further. Cost savings could also be achieved, and the Ministry should make more use of available funding support such as the ongoing Renewable Heat Incentive. We recommend the Ministry assess within the next two months how it will implement renewable energy technologies, including in new prisons, and how it will maximise funding for the uptake of renewable technologies. (GOOD PROGRESS)**

We have made significant progress in increasing our generation of renewable energy, despite the higher risks and costs associated with installing renewable energy technology within a custodial environment.

- We purchased nearly 2300 solar panels between 2019-20 for installation this year (subject to COVID-19 restrictions);
- We are specifically focusing on developing solutions to decarbonise heating supplies, including at prisons which are not currently connected to the gas network;
- We are surveying 100 prisons this year to identify further opportunities for renewable energy generation;
- We are exploring different finance models to enable further uptake, along with MoD and Cabinet Office;

- We are working closely with BEIS to maximise funding opportunities and innovation, and are an active participant in its Modern Energy Partners programme.
 - We are also ensuring our new prison and houseblock designs incorporate renewable energy technology; and
 - Renewable energy generation is a key aspect of our developing Net Zero Carbon plans.
- 9) We are concerned that the Ministry did not collect BREEAM certificates for 64% of its refurbishment and new build projects since 2010, and that 14 projects did not meet the required standard of excellent. The Ministry already faces difficulties, having an old estate and the particular challenges associated with prison management. Not knowing the condition of its estate could lead the Ministry to make decisions that do not maximise environmental and economic returns. We recommend the Ministry routinely assess all its projects, and publishes annually the rating of its new building projects and refurbishment projects. Where it fails to meet the expected standards of 'excellent', it should set out how it will ensure compliance with BREEAM and what costs it has incurred to rectify the situation. (COMPLETE)**

We have retrospectively obtained BREEAM certificates, where possible, for projects that did not currently hold them at the time of the Committee's 2018 Inquiry. This comprises 70 certificates for new builds (70% Excellent rated), and eight certificates for refurbishments (100% Very Good or Excellent rated). This detail was published in the Ministry's 2017-18 Annual Report and Accounts. A number of constraints arising from the nature of our estate, including security considerations and listed building status, limited our ability to deliver Excellent rated new builds in some cases.

From March 2018 to March 2019, 23 new build projects were registered with BRE, and one new build final certificate was obtained (rated Excellent). From April 2019 to date, we have received nine interim design certificates, all of which were rated Excellent. We have also received one final refurbishment certificate, which was rated Very Good. Five additional projects were registered with BRE.

Since the 2018 Inquiry, the Ministry has strengthened its BREEAM arrangements. We have published a new BREEAM policy on the GOV.UK website which commits the Ministry to reviewing options for meeting Outstanding for new builds and Excellent for refurbishment projects over £500,000. We have also introduced a process for tracking BREEAM certification through the project lifecycle, developed guidance for project managers to support policy delivery, and provided training to key project sponsors.

- 10) We are concerned that the Ministry does not know which of its court and tribunal estate fall in conservation areas and that it does not monitor the condition of its sold courts and tribunals. Derelict buildings pose risks to society and impact negatively on high streets and town centres, and local authorities which are already stretched for finances, have had to step in to rectify the situation. We found gaps in the governance arrangements in the disposal programme for courts and tribunals. We recommend that HM Courts and Tribunals Service (HMCTS) publish a list of which courts and tribunals it sold off have become dilapidated and how it will support local authorities in dealing with these buildings, including whether it will provide financial support. We further recommend HMCTS report to us how it has improved oversight over the maintenance and disposal of historic assets on its court and tribunals estate, including what measures it has set up and reporting systems it has developed to ensure that historic assets are managed sustainably. (COMPLETE)**

We are unable to publish a list of which sold courts and tribunals have since become dilapidated. HMCTS does not inspect or monitor buildings after disposal as they are the responsibility of the new owner/occupier. A purchaser's ability to meet heritage guidance, and their track record of performance, is taken into full consideration by HMCTS before sale.

We are establishing a rolling programme of specialist conservation surveys for heritage sites to ensure timely upkeep of listed and other heritage buildings we own. We also explicitly incorporated the principle that important historic buildings are properly protected and maintained into our Estates Strategy.

11) While we recognise that each prison faces unique challenges, we would like to know why the Ministry has not set sustainability targets for each prison and what incentives prison governors have to achieve high sustainability performance. We are particularly concerned about the expired prison service instructions which should have provided guidance to governors on how to deal with hazardous waste and packaging waste. This includes the sustainable development policy, introduced in September 2003 and marked as expired in September 2004; the disposal of hazardous waste, introduced in February 2007 and expired in August 2008; and the Reporting on packaging waste from February 2010 and expired in December 2010. We recommend that the Ministry publish the results of its benchmarking exercise on energy usage, including a comparative analysis across its estate, and develop targets for each prison. It should tell us how it will support prison governors to meet sustainability targets and how it will monitor performance. (COMPLETE)

We have carried out benchmarking of the energy, carbon, and water performance of our custodial estate, which we have used to give Governors insight into best practice expectations and how they are performing compared to their counterparts in properties of similar age, size and style. We provide data to Governors via quarterly monthly facilities management (FM) dashboards, including individual improvement targets for each prison. The new Sustainable Operations Policy Framework, replacing the previous Prison Service Instructions, was published in March 2019. We also raise awareness through appropriate channels such as the HMPPS Senior Leaders Bulletin and quarterly Sustainability Forums. In addition, the HMPPS Leadership Team are made aware of this work and have expressed their full support for the actions taken.

12) While we recognise that the Ministry has improved the status of three of its ten Sites of Specific Scientific Interest (SSSIs), eight of them are still in an unfavourable condition. We urge the Ministry to set out in its response to this report a plan that will lead to 50% of its SSSIs being in a favourable condition by 2020, and a long-term plan for the rest. (COMPLETE)

All but one Ministry-owned SSSI are now in Recovering or Favourable condition, and six sites are now in a Favourable condition meaning the 50% target has been met. A funded plan has been agreed to put the remaining site into Recovering condition and is scheduled for completion later this year. All of these sites have an extended Phase 1 habitat, and a Site Management Agreement (with Natural England approval) has been implemented.

More generally, the Ministry is very clear about the importance of halting the decline in biodiversity and welcomes the Committee's inquiry into biodiversity and ecosystems. The Ministry has identified baselining biodiversity across its estate as a priority, which is included in its Departmental Delivery Plan for 2020. We will use this as a basis to develop plans to improve biodiversity across the entire estate, and beyond SSSIs, in the coming years.

13) Given the importance of managing SSSIs properly, we support the Ministry's plan to improve oversight and governance of SSSIs. We recommend it publishes its guidance on the management of its SSSIs, and develops a clear documentation system so it can track the performance of each site over time. It should report to us how its Senior Estates Board has overseen the management and review of the condition of each SSSI, and what interventions it

has undertaken to ensure that staff and contractors are held accountable for the management of the sites. (COMPLETE)

In addition to the update provided above, and its previous response to the Committee, the Ministry has also published its Biodiversity Policy and Biennial Ecology Update. The SSSI Management Plan continues to be used to track condition of all sites and associated actions. Progress in improving the condition of MoJ's SSSI is reported to our Senior Sustainability Board (SSB) by our Lead Ecologist. Specifically, MoJ's SSSB was used as a platform to highlight the one remaining SSSI which was not in a Recovering condition, which led to a plan and funding being agreed to improve its condition by the end of this year.

More senior engagement is now in place within the Prison Service in respect of SSSI condition, and Regional Estate Managers are involved in agreeing Site Management Agreements (SMA) and any associated work. All SSSI SMAs will be audited and reviewed by the end of 2020/21, in conjunction with Natural England, to ensure best available knowledge is incorporated.

14) Neither we nor the NAO saw much evidence that the Ministry's Sustainability Champion was taking a proactive approach or demonstrating leadership in this aspect of his role. We support the changes in the Ministry's oversight and governance structure, and the fact that the Minister will have direct insight into the Ministry's environmental sustainability performance. We recommend that the Ministry explain to us in its response how it has implemented the changes in its governance structure and demonstrate how it improved oversight of sustainability matters in its key plans and documents, including how it has staffed its sustainability team to deal with a set of challenges across its estate. (COMPLETE)

MoJ's current Sustainability Champion chairs MoJ's Senior Sustainability Board which is the main forum for holding different parts of the organisation to account for their performance. The Champion has quadrupled the amount of capital investment for Sustainability in 2021/20 compared to the previous year, and continues to increase the size of the Sustainability Team with four new team members joining within the last 6 weeks, and approval for a further senior manager to be recruited before Christmas. In addition, a full time Sustainability Director role will be introduced to the same timescale.

The Sustainability Champion continues to use their role to elevate the importance of Sustainability across the organisation. Sustainability is now embedded in MoJ's Keyholder process, which means all business cases over £10million are scrutinised on the extent to which they have appropriately considered sustainability. Sustainability is now also included in the Permanent Secretary's annual Governance Statement, in MoJ's Assurance Framework, and in Financial Delegation letters.

From this year the Investment Committee will have oversight of how different parts of the organisation are investing in sustainability to deliver improved value for the taxpayer. And the Executive Committee ensures responsibility for sustainability is formally shared across the Ministry with all CEOs and Director Generals having agreed clear sustainability priorities for their business areas.

Finally, to track progress across key areas, MoJ has also included a number of Sustainability deliverables in its Departmental Delivery Plan covering Greening Government targets, Net Zero Carbon, Biodiversity and Embedding.

15) Overheating has been identified as a major risk from climate change. We are concerned by the Ministry's lack of participation in cross-governmental groups tackling this issue. Overheating in prisons is a serious issue, as evidenced by the 497 complaints the Ministry received in 2016–17, and has implications for health and security. We are pleased to see that the Ministry has followed our previous recommendations and is sitting on the Domestic Adaptation Board. We recommend the Ministry of Justice report to us in its response how it will engage in the

**relevant cross-government working groups on estate management and sustainability.
(COMPLETE)**

MoJ continues to regularly engage with cross-Government sustainability groups, covering a broad range of issues including the Climate Change Risk Assessment workshops and steering groups. MoJ is also an integral member of the Office of Government Property-chaired Government Property Sustainability Board.

MoJ has recently published its Climate Change Adaptation Strategy following collaboration with Defra, and plans to carry out a comprehensive study of the climate risks and resilience for our properties this year.

In our previous response to the Committee, we reported that there had been 497 prisoner complaints regarding overheating during 2016-17. The number of complaints has reduced each year since then as follows:

- 2017-18: 334 complaints;
- 2018-19: 263 complaints;
- 2019-20: 240 complaints.

We will continue to monitor this position.

We also are continuing to actively avoid overheating in new and existing prisons by:

- improving our use of insulating materials;
- incorporating more natural ventilation, shading and natural cooling;
- future proofing our estate, including Climate Change Scenario modelling for new and future prison designs across the 60-year asset life span to ensure the cells are still compliant with CIBSE TM59 and as part of BREEAM 2018 new construction certification.

16) The Ministry should improve its oversight and governance arrangements of contractors' performance and agree that sustainability should be embedded more in its contracts. We recommend it incorporates environmental KPIs in all its contracts, and set up a robust monitoring system to measure performance. It should develop clear terms of reference of its oversight groups. This is all the more important following the collapse of Carillion, who managed approximately 50 prison service sites. (MODERATE PROGRESS)

We have published our Sustainable Procurement Policy, alongside establishing sustainability clauses into contracts, updated our procurement policy to include sustainability as one of the key requirements for suppliers to include in their bid documentation, and identifying key contracts with a large environmental impact. We have worked with the contracts teams to ensure sustainability is included in all major Business Cases (SOBC, OBC and FBC) and change plans. All KPIs and Management Information for new contracts have been reviewed to ensure that environmental sustainability elements are both targeted and measured. Revised commercial governance arrangements have been introduced across the Ministry with new Commercial Oversight Groups, and a new approach to pro-actively monitor and report upon the financial sustainability of our suppliers, including key SMEs, has been implemented. Environmental improvement proposals are now being delivered by suppliers for change projects. Lastly, we have introduced specific environmental targets in certain areas, such as fleet, catering or lighting, with achievements logged through the business reporting line.

Going forward, we will continue to build upon and improve on our existing successes in this area. We are currently developing a sustainability matrix in our Business Balance Scorecards, initially focusing on our Gold Contracts. Commercial colleagues are also working with the Sustainability Team to continue embedding the Sustainable Procurement Policy requirements across the Ministry.

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