



House of Commons

Children, Schools and Families  
Committee

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# Policy and delivery: the National Curriculum tests delivery failure in 2008

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**Sixth Report of Session 2008–09**

*Report, together with formal minutes, oral and  
written evidence*

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## The Children, Schools and Families Committee

The Children, Schools and Families Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Department for Children, Schools and Families and its associated public bodies.

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The following member was also a member of the committee during the inquiry.

Mr John Heppell MP (*Labour, Nottingham East*)

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## Summary

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In 2008, the Qualifications and Curriculum Authority (QCA) and its contractor, ETS Europe, failed to deliver Key Stage 2 and Key Stage 3 National Curriculum tests on time. Although the majority of scripts had been marked by the deadline for delivery of 8 July, a significant minority were outstanding, resulting in considerable disruption for many schools and children.

On 7 July 2008, Lord Sutherland of Houndwood was appointed by both the regulator, Ofqual, and the Department for Children, Schools and Families (DCSF) to chair an inquiry into the causes of the delivery failure. On the same day, this Committee started taking evidence on what happened during the 2008 testing cycle. During our inquiry, we took evidence from all the major parties, including both written and oral evidence from the contractor, ETS Europe in September 2008. Shortly thereafter, ETS withdrew its personnel and resources from the UK as a result of its contract with QCA being terminated and it announced that it would not be taking part in Lord Sutherland's inquiry. Lord Sutherland was, however, able to rely on the evidence we had already taken from ETS and documentary evidence available from QCA.

The Report of the Sutherland Inquiry, published on 16 December 2008, set out clearly the sequence of events leading up to the missed deadline for delivery of the National Curriculum tests in 2008 and made a series of recommendations. We have endorsed Lord Sutherland's work. Our inquiry has had a rather different focus and we have considered more widely than did Lord Sutherland the role of the Department in the events leading up to the delivery failure.

We have concluded that the Government should revisit the conduct of its relationships with its delivery agencies. Whilst acknowledging the difficulty of establishing the appropriate dividing line between policy and delivery, we believe that DCSF has involved itself too much in the detail of delivery, placing undue constraints on the executive decision-making abilities of its agency, QCA. We recommend that the leadership of government agencies should be more prepared to stand up to the Government when it considers that directions from the Government to the agency are unreasonable or incapable of performance.

We have also considered the role of DCSF observers on various boards and committees of non-departmental public bodies generally and QCA in particular. We have no objection in principle to the presence of such observers within a public body. However, in the case of QCA, we are concerned about the undue influence which appears to have been wielded by observers in terms of 'negotiating' formal advice from QCA to ministers and in seeking to influence QCA's decision-making. We consider that the role of departmental observers should be clarified and appropriate safeguards put in place to assure transparency and prevent inappropriate interference.

We recommend unequivocally that there should be no place for departmental observers within an independent regulator. The independence of the new regulator, Ofqual, should be put beyond question and that requires the relationship between DCSF and Ofqual to be

conducted on a formal and transparent basis. The presence of CSF observers on Ofqual's Board would, in this context, be totally inappropriate.

Finally, we welcome the abolition of mandatory national testing at Key Stage 3 as a means of reducing the burden of testing on English school pupils; but warn against the unduly hasty introduction of single-level tests. There are considerable logistical complexities involved in delivering single-level tests twice each year and we recommend that the Government satisfies itself that the logistical arrangements are robust before introducing these tests as a replacement for the current testing regime. We also recommend that any significant future reform of National Curriculum testing must include an evaluation of on-screen marking.

# 1 The inquiries into the 2008 test delivery failure

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1. As a result of a procurement process which started in 2006, the Qualifications and Curriculum Authority (QCA) appointed ETS Global BV (ETS) as the new supplier of test operation services from 2008. Over the five-year contract term, ETS would be responsible for the administration of all national testing in England at Key Stages 1, 2 and 3 and Year 7 progress tests. This would include responsibility for the external marking of the Key Stage 2 and 3 tests and the Year 7 progress tests.<sup>1</sup>

2. The parent company of the ETS division to which this contract was awarded is a US non-profit organisation with long experience in test administration and which was, in 2008, responsible for managing 50 million examinations in 180 different countries.<sup>2</sup> Despite this vast experience, the 2008 National Curriculum testing cycle was not delivered in its entirety on time. A significant minority of test papers at Key Stage 2 and 3 were not marked and returned to schools in time for the deadline of 8 July and some schools and pupils were still awaiting their test results in the following Autumn Term.<sup>3</sup> Members of this Committee are even aware of some cases where results were still outstanding in the spring term of 2009.<sup>4</sup>

3. The inevitability of ETS's failure to deliver on time did not, it seems, become apparent to the QCA until the week beginning 23 June 2008. By the beginning of the following week, senior officials and Ministers at DCSF had been notified and, on 4 July, the QCA issued a press release advising of the delay in publication of Key Stage 2 and 3 results.<sup>5</sup> On that same day, both Ofqual, the regulator with responsibility for overseeing National Curriculum tests, and DCSF declared their intention to set up an independent inquiry into what went wrong. On 7 July, it was announced that Lord Sutherland of Houndwood would chair the inquiry and report to both Ofqual and DCSF.<sup>6</sup>

4. Well before the announcement of the Sutherland Inquiry, members of this Committee had been aware that there were significant concerns about the 2008 testing cycle and were already alert to the serious problems with markers.<sup>7</sup> We were, therefore, able to start taking oral evidence on the delivery failures on 7 July, when the then Minister for Schools and Learners, the Rt Hon Jim Knight MP appeared before the Committee; and we started to receive written evidence from concerned individuals and schools from mid-July.<sup>8</sup>

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1 [http://www.qca.org.uk/qca\\_9788.aspx](http://www.qca.org.uk/qca_9788.aspx)

2 Ev 8

3 Report of the Sutherland Inquiry, para 1.4

4 Q 237

5 Q 26; Q 104; Q 144; Qq 346–349; Qq 379–380; <http://testsandexams.qca.org.uk/18339.aspx>

6 <http://www.ofqual.gov.uk/1717.aspx>; [http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn\\_id=2008\\_0142](http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0142)

7 Q 192-193

8 Oral evidence of Rt Hon Jim Knight MP given during an oral evidence session on a separate inquiry into the National Curriculum, published as HC 651-iii. The full transcript is printed as part of the Committee's Fourth Report of Session 2008-09, HC 344-II.

5. The very next week, on 14 and 16 July respectively, we took oral evidence from both Dr Ken Boston, then Chief Executive of the QCA, and the Secretary of State, the Rt Hon Ed Balls MP.<sup>9</sup> As the summer break for both Parliament and schools approached, it became apparent that a significant number of schools and children would remain without their test results. Unusually, we took the decision to sit during recess in order to take evidence from both ETS and Ofqual on 10 September. This would be the only formal, public occasion on which ETS gave evidence in relation to what went wrong with test delivery in 2008, and Lord Sutherland has acknowledged the timeliness and usefulness of our work in this respect when he thanked us:

...for focusing on the report and on the issues so promptly in July, as you did. I think you were the first above the line, making very important questions plain and putting them into the public arena. I found that a good starting point for me. I recognise that the Committee's work has been integral throughout the sad period since June or July, when things started to go wrong. The sessions you held before the school holidays were very important. You picked out a number of major issues, and I was able to build on that in the evidence I asked for and in some of the cross-examinations that I carried out.<sup>10</sup>

6. We then suspended our inquiries pending Lord Sutherland's investigation into the details of the 2008 testing cycle. He published his Report on 16 December 2008 and it amounted to a very thorough investigation of the sequence of events leading up to the missed deadline on 8 July 2008. In his Report, Lord Sutherland identified a large number of factors which contributed to the failure in 2008 and he cited this complexity when he gave evidence to us on 26 January 2009.<sup>11</sup> It has not been the role of this Committee's inquiries to examine the day-to-day management of test delivery at the level of detail considered by Lord Sutherland. **We endorse the work carried out by Lord Sutherland in exposing the detail of the many factors contributing to the failures in the delivery of the 2008 National Curriculum tests.**

7. Nevertheless, it is unfortunate that Lord Sutherland was eventually unable to take formal evidence from ETS. Because the contractor was a US organisation and likely to withdraw personnel and resources from the UK, time was of the essence in commencing formal inquiries. Lord Sutherland stated in the Introduction to his Report:

In conducting my Inquiry, I launched a call for written evidence and interviewed individuals from key organisations. I should say at the outset of this report that ETS declined to submit documentary evidence to the Inquiry. It has nonetheless been possible to do a thorough investigation drawing particularly on extensive materials submitted by QCA.<sup>12</sup>

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9 Oral evidence of the Secretary of State given during an oral evidence session on a separate inquiry into Public Expenditure, published as HC 835-ii. The full transcript is printed as part of the Committee's First Report of Session 2008-09, HC 46.

10 Q 237

11 Q 237

12 Report of the Sutherland Inquiry, p2

From the point of view of demonstrable fairness, it was regrettable that ETS had withdrawn its resources from this country and chose not to engage with Lord Sutherland's inquiry, although we understand that there was an exchange of correspondence between the inquiry and ETS in December shortly before publication of the Report.<sup>13</sup> It was clear from Lord Sutherland's report that he had relied heavily on the evidence this Committee took from ETS in September 2008, since ETS submitted neither written nor oral evidence to his inquiry.<sup>14</sup> Nevertheless, Lord Sutherland considered that he was able to produce a fair report given the access he had to QCA documentation and exchanges of correspondence between the parties.<sup>15</sup> He told us that:

I have no doubt that there was adequate evidence available to me to make the judgments that I believe are definitive about the role of ETS in this report.

[ETS] believed at one point, in view of something that it said to your Committee ... that there was an embargo on it in some way. I spoke to the QCA chief executive, and he wrote to ETS to make it plain that there was no such embargo. That is point one. Point two: we extended the period available to it to submit evidence. Point three: it chose not to do so. Point four: the evidence was available to us, through the QCA documentation—we had all the exchanges of correspondence and contracts and so on, so I believe I had adequate evidence.<sup>16</sup>

**8. This inquiry provides a good illustration of how a select committee can use its authority and powers in a timely manner to investigate problematic incidents as soon as they arise. Our swift action in this matter has enabled us to put on the public record both written and oral evidence from a party to the incident, ETS, which was not available by the time the official inquiry was fully operational. The Sutherland Inquiry was then able to rely on the evidence we had secured when it became clear that ETS would not engage with the process.**

9. In carrying out his inquiries, Lord Sutherland was given separate, but related, terms of reference from both Ofqual and DCSF.<sup>17</sup> Dr Boston expressed concern that, by issuing parallel terms of reference to Lord Sutherland, DCSF effectively closed down avenues of inquiry which should legitimately have been within Ofqual's terms of reference to his Inquiry, namely what he saw as DCSF's active role in the 2008 test delivery failure.<sup>18</sup> Dr Ken Boston has argued that, in issuing its own terms of reference, the Department acted to prevent Lord Sutherland inquiring into the way it set up the framework of policies and other decisions within which QCA was required to work.<sup>19</sup> This framework included the terms of the annual remit letter from DCSF, which is accepted by QCA and which sets out what the Government expects QCA to achieve each year.

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13 Letter to the Inquiry from Dr Philip Tabbiner (ETS), 1 December 2008, referenced in the Report of the Sutherland Inquiry

14 Report of the Sutherland Inquiry, paras 3.43, 3.68, 3.74, 4.101, 5.20, 5.34, 5.89, 5.126, 5.142, 5.173

15 Q 244

16 Q 244

17 Report of the Sutherland Inquiry, Annex C and D

18 Q 311

19 Q 311

10. It is indeed the case that the terms of reference issued to Lord Sutherland by DCSF mention DCSF's active role in the delivery failure only in terms of the appropriateness of its arrangements to monitor the QCA's delivery against its remit. The terms of reference went on to specify that Lord Sutherland could interview "appropriate people" from QCA, ETS Europe, Ofqual, DCSF and others.<sup>20</sup> It is certainly not obvious from the terms of reference that Lord Sutherland was mandated to inquire into QCA's remit letter and related instructions from DCSF. Nevertheless, the Secretary of State told us at the time the Inquiry was set up that:

Nothing is out of bounds for Lord Sutherland. He can look at the whole process, and I am very happy for him to look at whether the original remit was properly specified.<sup>21</sup>

In addition, Lord Sutherland has said that his terms of reference gave him:

...ample scope and every opportunity to examine the processes, roles and responsibilities of all of the key players: not only QCA and ETS, but also Ministers and officials at the DCSF.<sup>22</sup>

**11. It is not clear to us that the DCSF having issued parallel terms of reference prevented Ofqual asking Lord Sutherland to inquire into the DCSF's role, had Ofqual considered that appropriate. Lord Sutherland chose not to consider the Department's role beyond its oversight of the particular circumstances of the delivery of the National Curriculum tests in 2008. However, this Committee is able to go further than he did and comment in more general terms on the line between policy and execution.**

12. Specifically, we will consider whether there was anything in the way the Department set up the framework within which QCA was required to operate which led to an increased risk of delivery failure. We will also consider the role of departmental observers and the implications for QCA decision-making and the independence of the new regulator, Ofqual. We develop these themes in more detail below.

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20 Report of the Sutherland Inquiry, Annex D

21 Q 139

22 Q 360, Secretary of State quoting a statement of Lord Sutherland given to the Press Association

## 2 Delegation of responsibility from DCSF to QCA

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13. The Government insisted that QCA manages the testing system on behalf of and at arm's length from DCSF. Both the Secretary of State and the Minister for Schools and Learners emphasised at different times that they thought it would be inappropriate for ministers to be involved in the administration of the testing process. They thought that to do otherwise may lead to suspicion that they might be influencing results on the basis of which the Government's record in education is judged.<sup>23</sup> The Secretary of State explained to us the lines of responsibility and accountability within the testing system:

It is Ministers who are accountable to Parliament, directly and through the Select Committee, for the operation of our schools system, including the testing regime, so in the end the accountability comes to Ministers. ...

... We are accountable for the funding of the regime and the way that it operates. We ask a non-departmental public body, the QCA, to deliver the tests on our behalf at arm's length from us. The QCA then contracts independently of Ministers with the people who do the practical delivery of the tests. So the accountability is as follows: ETS is accountable to the QCA for the delivery of its contract; the QCA is accountable to us and more widely for ensuring that that contract is effectively delivered; and I am accountable for ensuring that the QCA fulfils its responsibilities and for the overall operation of the regime. ...<sup>24</sup>

14. Lord Sutherland also gave us his view of the responsibilities of DCSF and QCA:

The DCSF set the policy, and it provides the resources—that is its responsibility. It has to ensure that delivery is possible, which means it must have an appropriate mechanism. It believed it had, and on the basis of the two or three previous years it did have, because delivery was made. Below that, we come to QCA, which has a set of responsibilities, and so on, down the system it goes.

In my understanding, the DCSF is responsible for policy, resource and setting up the overall mechanism. The kind of mechanism that is set up relates to how well it might work.<sup>25</sup>

15. An important part of the framework set by DCSF within which QCA had to work is to be found in the remit letter, issued by DCSF and accepted by QCA in March each year.<sup>26</sup> This letter covers the areas for which QCA will assume responsibility and sets out the funding to be made available. In fact, the letter itself does not go into great detail. The letter

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23 Q 193; Q 364

24 Q 118

25 Q 251

26 The remit letter for 2007-08 is at [http://www.qca.org.uk/libraryAssets/media/Alan\\_Johnson\\_27\\_03\\_2007\\_-\\_Remit\\_ltr.pdf](http://www.qca.org.uk/libraryAssets/media/Alan_Johnson_27_03_2007_-_Remit_ltr.pdf); the remit letter for 2008-09 is at [http://www.qca.org.uk/libraryAssets/media/Ed\\_Balls\\_to\\_Sir\\_Anthony\\_Greener\\_12032008.pdf](http://www.qca.org.uk/libraryAssets/media/Ed_Balls_to_Sir_Anthony_Greener_12032008.pdf).

sent by the Secretary of State in March 2008 specifies in relation to National Curriculum tests only that they:

...are delivered successfully in May 2008, with an improvement in key metrics over 2007, such as quality of marking, reduction in number of lost scripts, and an improved service to schools. Secure timely preparation for 2009 delivery.<sup>27</sup>

16. The significance of the remit letter can perhaps be viewed in terms of its symbolic nature: it is the point at which QCA formally agrees to work within the framework of formal and informal instructions set out by DCSF for the next year. The Department maintains that, as a result of the issue and acceptance of the remit letter on an annual basis, responsibility for the matters contained in it passes from DCSF to QCA (although accountability is arguably a different issue).<sup>28</sup> Lord Sutherland noted the prevalence of the model of central government delegating delivery responsibilities to non-departmental public bodies and agencies. He also noted that the model of delegation is “predicated on the sponsor department’s confidence in the NDPB’s capacity and capability to deliver what is asked in the remit letter”.<sup>29</sup>

17. The remit letter, then, is intended to demarcate the responsibilities of DCSF and QCA. However, there did appear to be some confusion in relation to the degree to which QCA is separate from DCSF in the context of policy execution. At one point, the Secretary of State told us that:

... Ministers are accountable to Parliament for the overall delivery of our schools policy, including the national testing regime. It is my responsibility to ensure that that happens, and I do so in an arm’s-length way through an independent body, the QCA, which contracts with ETS.<sup>30</sup>

However, he later told us that:

... the QCA is a non-departmental public body. It is not independent; it reports to Ministers, who are then accountable to Parliament for the national curriculum and the delivery of tests.

Ken Boston was not an independent decision maker or commentator on Government policy.<sup>31</sup>

18. Similar inconsistencies were expressed by Dr Ken Boston. In the context of a discussion about the level of Government control over the details of the testing system, he said that:

The QCA’s problem has been that it is not at arm’s length—to use the Government’s term—yet it can end up carrying the blame for a whole set of decisions over which it had no control.<sup>32</sup>

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27 [http://www.qca.org.uk/libraryAssets/media/Ed\\_Balls\\_to\\_Sir\\_Anthony\\_Greener\\_12032008.pdf](http://www.qca.org.uk/libraryAssets/media/Ed_Balls_to_Sir_Anthony_Greener_12032008.pdf)

28 Q 364

29 Report of the Sutherland Inquiry, para 3.104

30 Q 126

31 Q 364

On the other hand, in the context of test delivery he later stated that “Ministers were not getting involved in the detail of it at all”.<sup>33</sup>

19. Although we do not wish to make too much of these apparent inconsistencies—they are, perhaps, explicable in context—it does highlight the broader issue of the extent to which DCSF did, in fact, have a hand in the details of the management of the testing system.

20. Ken Boston has emphasised the many areas over which the Government had and retained control:

... the Government, through the DCSF, determine the nature of the tests to be procured, the pupils who are to be tested, which subjects they are to be tested in, how and when they are to be tested and how much money has to be spent on testing. The interval between the date of the test and the date for results—the eight weeks’ interval—is set by the Government. They also determine whether the tests are marked manually or onscreen; which results data are collected and how they are collected; the form in which the data are required; and how the results are returned to schools. In those core elements of test development and delivery, neither the QCA nor the supplier has any discretion—decisions are made by the Government alone. The development and the delivery of these tests are not at arm’s length from the Government; the Ministers and the officials are at arm’s length only from the detail of the test questions, and from the marking and level setting.<sup>34</sup>

Many of the details to which Dr Boston referred in this passage were not set out explicitly in the remit letter. This highlights the fact that the framework within which QCA is required to operate is actually a complex series of formal and informal, written and oral instructions and policies issued by DCSF over a period of time and not in one letter in March each year.<sup>35</sup>

21. Questions arise where the remit offered to QCA appears to be incapable of performance, the budget appears unreasonable or both. Lord Sutherland expressed the view in his evidence to us that it was always open to the leadership of QCA to resign if they thought that the offer from DCSF was unreasonable and its performance likely impossible.<sup>36</sup> The fact was that they did not do so. Lord Sutherland later conceded that resignation would be a “nuclear option” and that alternatives would be public statements or a letter from QCA to DCSF stating that the QCA was being asked to do too much. However, he found no evidence of such a letter.<sup>37</sup>

22. Dr Boston himself told us that he had come to regret not resigning in 2006 on the basis that he thought the remit could not be achieved.<sup>38</sup> He said that decisions made by

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32 Q 326

33 Q 332

34 Q 311

35 There is also a Memorandum of Understanding between the former Department for Education and Skills and QCA, but this does not appear to have been updated since the creation of DCSF; [http://www.qca.org.uk/qca\\_4979.aspx](http://www.qca.org.uk/qca_4979.aspx)

36 Q 300

37 Q 301

38 Q 325

ministers and officials in 2006 had a “marked impact” on the failure in 2008.<sup>39</sup> We asked him why, when delivery of National Curriculum tests had failed in 2004 and come close to failure in subsequent years, he did not raise the matter publicly when he failed to make any progress with ministers. He told us:

That is a good question, and it is one that I have asked myself. I have frequently spoken publicly about different approaches to testing and the problems with this particular approach and how it was administered. I have also pressed privately for reform with Ministers and officials—there is no question about that. Over the past few months I have asked myself why I did not resign in 2006. At that point it was clear to me that I was not going to get Government buy-in to necessary reform. I continued through 2007 and 2008 to run an organisation that was faced with close to an impossible task, which I had seen go belly up in 2004 and had the prospect of doing so again. Probably my greatest regret in all of this is that I was not more honest with myself at that time and did not simply say, “It can’t be done.”<sup>40</sup>

23. We are reminded of a report of our predecessor committee on Individual Learning Accounts (ILA) which detailed the “considerable shortcomings” of another contractor in the delivery of the ILA scheme, as well as the failings of the Department for Education and Skills itself.<sup>41</sup> In that case, the Department retained “even the smallest details of policy design” and missed an opportunity to transfer to the private contractor fuller responsibility for the management of the scheme. As a result, it was unclear who was responsible, the Department or the contractor, for specific outcomes of the ILA project. The Committee concluded:

We do not under-estimate the difficulty of getting right the balance between policy and delivery, but we question whether the DfES could have been bolder and given Capita a wider brief to deliver the desired outcomes of the ILA project.<sup>42</sup>

The relationship between DCSF, QCA and ETS is, of course, quite different from the relationship between the DfES and the contractor in the ILA case. However, there is a broader principle here which is that, if Government is to sub-contract certain projects, it must not attempt to micro-manage the details of that project, for example, by over-specifying the means by which it wishes to see delivery made or through the mechanism of observers. The role of departmental observers within QCA will be considered in greater detail below (paragraphs 28 to 35), but they have essentially acted as mediators of information flowing between DCSF and QCA.

**24. We maintain the view of our predecessor Committee, that the difficulty of establishing the correct dividing line between policy and execution should not be underestimated. However, we are concerned that DCSF appears to be specifying in considerable detail the ways in which it wishes to see its policies executed. The DCSF**

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39 Q 311

40 Q 325

41 Education and Skills Committee, *Individual Learning Accounts*, Third Report of Session 2001–02, HC 561-I, p3

42 *Ibid.*, para 155

achieves this both formally, through the QCA's remit letter, and informally, through regular contact with its agency and through the mechanism of observers.

25. We agree with the Secretary of State that he is accountable for ensuring that the QCA fulfils its responsibilities for the overall operation of the testing regime. However, he is also accountable for the policies and other decisions of his Department, including the terms of the QCA's remit letter; and he is responsible for ensuring that the directions issued by DCSF are capable of being carried out by the organisations tasked with their execution.

26. If significant areas of Government policy are to continue to be delivered by non-departmental public bodies and other agencies, the leadership of those bodies should be prepared to demonstrate their professionalism by challenging the Government if they consider that the impossible is being asked of them. Appropriate mechanisms should be put in place to allow them to make such a challenge. We recognise that this should never be used as a means to hold the Government to ransom or to impede the execution of legitimate public policy. Nevertheless, there needs to be a formal and transparent dialogue between the Department and its agencies.

27. In anticipation of new legislation, the QCA's regulatory function has already been split from its core activities and hived off to the regulator, Ofqual, which is still technically part of QCA but is operating largely as if it were already independent. If the Apprenticeships, Skills, Children and Learning Bill is passed, what remains of the QCA will be transformed into the Qualifications and Curriculum Development Agency (QCDA). The Director General of the Schools Directorate at DCSF has told us that the Government intends for Ofqual to be entirely independent, whereas QCDA will be "significantly less" independent and is being established specifically as "a delivery agency of Government".<sup>43</sup>

28. In the light of the repeated problems we have identified, we consider that DCSF should, in an updated Memorandum of Understanding or equivalent with each public body, set out more clearly how it will conduct its relationships with those bodies. We urge the Government to adopt a far less prescriptive approach when issuing instructions to the new Qualifications and Curriculum Development Agency. If it is considered appropriate that policy should be executed by an agency rather than by the Department itself, the potential benefits of such an arrangement are significantly diluted if the Government fails to trust the expertise and experience of the professionals chosen to run such agencies. It is clear that micro-management from the Department would introduce a degree of confusion into the lines of responsibility and accountability, as previously happened in the case of Individual Learning Accounts, investigated by our predecessor Committee, and the mistake has been repeated with arrangements for the delivery of National Curriculum tests.

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43 Uncorrected transcript of evidence taken before the Children, Schools and Families Committee on 8 July 2009, HC 353-vi, (2008-09) Q 489

## 3 The role of DCSF observers

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### QCA and DCSF Observers

29. One aspect of the constant process of instruction and negotiation between DCSF and QCA is the position of DCSF observers on various boards and committees of the QCA. In evidence to Lord Sutherland, QCA described the role of a DCSF observer in the context of the procurement process as “someone who could contribute to discussions and comment on the process, but was not someone who had a voting right in terms of evaluating the potential suppliers”.<sup>44</sup> Lord Sutherland concluded in his report that, although DCSF viewed QCA as a “trusted delivery partner”, it nevertheless had observers monitoring the QCA at various levels of the organisation, including at operational meetings between QCA and ETS.<sup>45</sup>

30. As we have stated, it is not our intention in this Report to rehearse the detail of what happened in the particular case of the test delivery in 2008, which Lord Sutherland has already addressed admirably. However, there is a more general point about observers which we wish to make here. On crucial issues which would go to the credibility of the testing system, Dr Ken Boston was unambiguous, that the Government did not interfere with QCA’s operations:

I make it absolutely clear to you that in my time as Chief Executive of the QCA I have never had any interference from any Minister or any Government official to do with the nature of the paper, the quality of the marking, the standard that should be set, or the figure that should be reached in terms of performance, and if I had I would be the first person to declare that publicly.<sup>46</sup>

31. However, Dr Boston was highly critical of the role of DCSF observers within the QCA generally, stating that they undermined its authority:

By reducing the formality of the relationship between the two organisations—the Government and the QCA—it leads to negotiated compromises from time to time, which erode public accountability. The role of observers on boards and committees has been to take part in discussions, to provide advice to Ministers separately from the QCA and to relay ministerial feedback. It is in that third area where the problem arises. Observers typically advise in committees and boards that Ministers would be “minded to” or “not minded to” agree with this or that proposal or “content to” or “not content to” agree to a particular recommendation, or even that, “If I put that idea to the Minister it would be laughed out of court.” Now certainly, prior consultation with the DCSF is important to inform subsequent decisions by the QCA on what advice it should offer Ministers, but too often boards such as that of the QCA are put into a position where it is expected that they will seek to negotiate

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44 Report of the Sutherland Inquiry, para 2.45

45 Report of the Sutherland Inquiry, para 3.105

46 Q 15

that advice in advance. I think that is a pernicious process that compromises integrity and independence...<sup>47</sup>

32. This relationship between DCSF and QCA, mediated by DCSF observers, paints a picture of a Government which is not keeping delivery of national testing at arm's length, but is in constant dialogue with its delivery agency in relation to the method of delivery. Indeed, Lord Sutherland told us that:

I believe there is so much [delegation of responsibility for delivery to government agencies] now that it is time to pause and say, "Have we got the best possible arrangement that allows such an allegedly arms-length delivery?". It sounds grand, but the arm is a real thing and messages move up and down. It is happening across Government.<sup>48</sup>

33. The Secretary of State assured us that the role of observers was to ensure an appropriate flow of information between the Department and QCA. Observers were not deployed in order to influence decisions of the QCA, but to furnish it with policy information relevant to the decisions it was taking. In the other direction, observers could relay to the Department any concerns they might have about the service delivery (although Lord Sutherland considered that, in the case of the 2008 testing cycle, they had not done this effectively).<sup>49</sup> The Secretary of State pointed to the presence of a Treasury observer on the Bank of England Monetary Policy Committee as another example of where observers were used without any allegations of undue influence.<sup>50</sup>

34. Lord Sutherland did not question the legitimacy of delegating responsibility for national testing and other issues from DCSF to QCA, quite the contrary; but he did consider that the role of DCSF observers on QCA's operational, programme and corporate boards was not entirely clear. He therefore recommended that their role be clarified on a case-by-case basis.<sup>51</sup>

**35. We have some serious concerns in relation to the role of observers and question whether, in many cases, they are necessary. In appropriate cases, departmental observers may perform a useful function in helping ministers remain accountable for policy delivery in a meaningful manner. However, formal advice to ministers from a public body should not be negotiated through departmental observers; nor should observers exert undue influence over the decision-making of a public body.**

**36. We concur with Lord Sutherland's recommendation, accepted by Government, that the role of departmental observers should be clarified. We believe that the Memorandum of Understanding or equivalent between DCSF and its non-departmental public bodies should, in each case, set out clearly the appropriate role for departmental observers so that the public can be reassured that observers are not acting inappropriately to influence the work and decisions of public bodies.**

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47 Q 311

48 Q 254

49 Q 421; Report of the Sutherland Inquiry paras 4.143–4.146

50 Q 418

51 Report of the Sutherland Inquiry, para 3.144

## Ofqual and DCSF observers

37. The Office of the Qualifications and Examinations Regulator, Ofqual, was established on 8 April 2008. Prior to that, the regulatory function had been carried out by QCA in addition to its other duties.<sup>52</sup> Ken Boston has pointed out the objection to this arrangement:

I support absolutely the notion of a regulatory authority reporting to Parliament rather than to Ministers. That has always been a difficulty with the QCA: it is responsible for maintaining the assessment standard, the height of the hurdle, yet reports at the same time to the Ministers who want to drive up the performance standard—the number of people who leap the hurdle. There is a real inconsistency there.<sup>53</sup>

38. The Apprenticeships, Skills, Children and Learning Bill will, if passed, establish Ofqual as an independent regulator reporting to Parliament. In the meantime, Ofqual remains technically part of QCA, and QCA has set up a new governance structure in order to allow Ofqual some independence under the current statutory framework. Nevertheless, Lord Sutherland recommended that, ahead of legislation, Ofqual's reporting arrangements should be clarified.<sup>54</sup>

39. In relation to the National Curriculum tests in 2008, the role of Ofqual was to oversee delivery of the tests rather than to monitor the contract.<sup>55</sup> According to Isabel Nisbet, Ofqual's Chief Executive, Ofqual's responsibility was to:

... make sure that our regulatory requirements were met. They are that the levels are properly set; the standards are properly made; the quality of the marking is good; and the tests are delivered in a way that meets the standards of previous years.<sup>56</sup>

40. Lord Sutherland expressed the view that the relationship between this Committee and Ofqual would become an important aspect of the regulator's duty to report to Parliament.<sup>57</sup> He considered that many of the problems of the current arrangements could be overcome with the establishment of a properly independent regulator with appropriate powers and resources.<sup>58</sup> He thought that Ofqual should, in future, be consulted on the nature and details of the contract for delivery of National Curriculum test results awarded by QCA. This would enable Ofqual to ensure, for example, that the contractual requirement to provide the kind of information Ofqual needs for quality assurance is built into the contract from the start.<sup>59</sup>

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52 Q 172

53 Q 317

54 Report of the Sutherland Inquiry, paras 6.107–6.110

55 Q 179

56 Q 178

57 Q 237

58 Q 254

59 Q 265

41. However, doubts have been expressed about the prospects for Ofqual's independence, both now and once it has been established as a statutory body. Dr Boston warned that the presence of DCSF observers on the Board of Ofqual could seriously compromise the de facto independence of the regulator. He referred to three functions of departmental observers: the provision of specialist expertise; the provision of separate advice to ministers; and speaking on behalf of ministers. He considered that the first function could be achieved by direct consultation between Ofqual and DCSF and that the second and third were quite inappropriate in the context of an independent regulator reporting to Parliament.<sup>60</sup>

42. Dr Boston recognised that a good exchange of information between DCSF and Ofqual was necessary but thought that the presence of observers on Ofqual's Board may lead to the relationship becoming "too cosy" and would adversely affect both the regulator's true independence and its strict accountability to Parliament alone.<sup>61</sup> He illustrated his point with the example of how DCSF observers worked with QCA. Given that formal advice from QCA to ministers is made public in due course and other correspondence is potentially available under Freedom of Information rules, DCSF officials liked to see draft correspondence and often sought to negotiate its terms so that it could be made acceptable to both ministers and the public. Dr Boston considered that such practices would be wholly unacceptable if applied to an independent regulator.<sup>62</sup> He stated that:

Ofqual will not be seen as conspicuously and unquestionably separate from Government so long as it has it accepts DCSF observers on its Board and committees. The public and the Parliament need to be absolutely certain that Ministers are being told what they need to know, not what they or their officials might want to hear.<sup>63</sup>

**43. We expressed our concerns in relation to the potential for departmental observers to exert undue influence on the advice from and decision-making of public bodies. Whilst we are content that such observers should continue to have a role within bodies such as QCA with appropriate safeguards, we are opposed to the presence of departmental observers in the context of an independent regulator. The independence of Ofqual should be put beyond question and that requires contact between DCSF and Ofqual to be put on a much more formal footing than is suggested by the presence of observers on Ofqual's Board.**

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60 Ev 76

61 Q 353

62 Ev 76

63 Ev 77

## 4 National Curriculum test delivery post-ETS

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44. The Committee stated in its Report on *Testing and Assessment* of May 2008 that children in England were tested too much and too often.<sup>64</sup> We heard evidence that English school pupils were amongst the most tested in the world and that the national test burden was displacing real learning and deep understanding of a subject.<sup>65</sup> We found significant evidence that, due to the high-stakes nature of national tests, some schools were teaching to the test and narrowing the taught curriculum in an effort to maximise performance and improve standings in school performance tables which were based on test results.<sup>66</sup>

45. The Government maintained that the amount of time spent by pupils actually taking exams was very limited, but this missed the point that the burden of testing is felt by pupils and teachers more in terms of the amount of time and effort spent in preparation than in sitting the tests themselves.<sup>67</sup> The Government's view, set out in its Response to our Report, was that there was no necessity for national testing to result in teaching to the test and narrowing of the curriculum and that the Government did not support excessive time spent on test preparation.<sup>68</sup> This ignored the strong evidence that we received, from Ofsted amongst others, to the effect that these practices were both widespread and damaging.<sup>69</sup>

46. Nevertheless, the demise of the QCA's contract with ETS, which was terminated in August 2008 as a result of the delivery failure, provided the Government with an opportunity to address our concerns that there was too much national testing.<sup>70</sup> On 14 October 2008, the Secretary of State made an oral Statement in the House to announce the abolition of Key Stage 3 tests as a compulsory component of the national testing regime.<sup>71</sup> The Secretary of State said that:

In my statement [to the House on 22 July 2008], I ... made it clear that the current testing and assessment regime is not set in stone. I know that some hon. Members were disappointed that I was unable to go further at that time, but it was important that we evaluated the case for change before making decisions. Over the summer, we have been able to study the Select Committee's report on testing and assessment, which was debated in the House last week. ...

...I take seriously the concerns raised by the Select Committee, teachers and parents. Testing, assessment and accountability must encourage and reward the best teaching

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64 Children, Schools and Families Committee, *Testing and Assessment*, Third Report of Session 2007–08, HC 169-I

65 Ibid. paras 141–149

66 Ibid. para 130

67 Ibid, paras 148–149

68 Children, Schools and Families Committee, *Testing and Assessment: Government and Ofsted Responses to the Committee's Third Report of Session 2007–08*, Fifth Special Report of Session 2007–08, HC 1003, para 15

69 Children, Schools and Families Committee, *Testing and Assessment*, Third Report of Session 2007–08, HC 169-I, para 130

70 [http://www.qca.org.uk/qca\\_19029.aspx](http://www.qca.org.uk/qca_19029.aspx)

71 HC Deb, 14 Oct 2008, Col 677

so that it properly supports pupils in their learning and development. Schools should be judged fairly on how they support the progress and well-being of every child. ...

Having looked hard at the current testing regime, we do not believe that the three principles that I have set out [the provision of information to parents, teachers and the public for various purposes] justify the key stage 3 testing arrangements in their current form.<sup>72</sup>

We welcomed the abolition of mandatory Key Stage 3 testing, believing that a reduction in the burden of testing would give teachers greater freedom to offer children a balanced education.<sup>73</sup>

**47. In line with our recommendations in our Report on *Testing and Assessment* of May 2008, we welcomed the abolition of mandatory national testing at Key Stage 3 when it was announced in October 2008 and we remain convinced that the decision to reduce the burden of national testing was a good one.**

48. However, the logistics of National Curriculum test delivery remain complex, even after the abolition of Key Stage 3 testing. As Dr Ken Boston told us, the history of delivery of national tests is not a happy one:

We failed in 2004 when Key Stage 3 was late. We were within hours of failing in 2005, even though we had extended the Key Stage 3 results date. In 2006 and 2007 we were fine. In 2008 the whole thing collapsed again. The enterprise, the whole archaic nature of this thing, is incredible, and we are persisting with it for 2009. Lord Sutherland has made recommendations about end-to-end testing which simply cannot be met for 2009. Key Stage 3 is not being run this year but that does not halve the risk. It simply means that there will potentially be more markers who will be able to do Key Stage 2.<sup>74</sup>

Nor are we encouraged by the progress of the Government's pilot study into 'single-level tests', which are intended as a possible replacement for the current 'end of Key Stage' testing regime. Single-level tests are based on the concept of testing when ready, with the pupil being tested at a set level to establish whether or not he or she has achieved that standard. Children would work their way through each level in turn and would be entered for single-level tests by their teacher once the teacher considers that they are ready for the relevant level.

49. If single-level tests were to be rolled out to replace the current testing regime, pupils would sit a number of tests over the course of a Key Stage rather than taking a single set of tests at the end of the Key Stage. Tests would be made available to schools twice each year and would be externally marked. In making the transition from end of Key Stage tests to single-level tests, there is the potential for a significant increase in the testing burden, with attendant logistical complexities.

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72 HC Deb, 14 Oct 2008, Col 677

73 Children, Schools & Families Committee Press Notice, 14 October 2008, [http://www.parliament.uk/parliamentary\\_committees/csf/csfpn141008a.cfm](http://www.parliament.uk/parliamentary_committees/csf/csfpn141008a.cfm)

74 Q 321

50. We repeat our warning, set out in our Report on *Testing and Assessment*, that new tests should not be introduced nationally with undue haste.<sup>75</sup> We are concerned that, if single-level tests are rolled out as a replacement for end of Key Stage testing, there is potential for significant complexity in the logistical arrangements for sending out, marking and returning a large number of single-level test scripts twice each year. Evidence from the pilot studies so far is not encouraging and demonstrates that there remain serious problems to be overcome. We remind the Government that we are opposed to an increase in the burden of national testing generally; and we warn that the Government must be quite sure that the logistical arrangements for single-level tests are robust before they are rolled out nationally.

51. Ken Boston told us that test administration has made significant progress in recent years, a view which is, perhaps, surprising given the regularity with which there have been near misses and outright failures in National Curriculum test delivery. However, he argues strongly in favour of a move towards on-screen marking as the obvious means of increasing the reliability of test delivery whilst, at the same time, improving the validity and reliability of marking.<sup>76</sup> He pointed to the successful use of on-screen marking of GCSE and A Level scripts by Awarding Bodies as evidence that such a system could improve the marking of National Curriculum tests.<sup>77</sup>

52. What clearly does not work, as Lord Sutherland has pointed out, is a hybrid system such as that used by ETS in 2008 whereby scripts are marked manually but many different data points for each script are entered into a database manually to capture question-level data.<sup>78</sup> Even leaving aside the particular problems with the systems developed by ETS (identified in Chapter 5 of Lord Sutherland's report), manual marking coupled with manual data entry into a database is an extremely labour-intensive process, ill-suited to the pressured environment in which markers must deliver results within very tight time limits.

53. We have heard a significant amount of argument between Dr Boston on the one hand and DCSF on the other about who has and has not recommended on-screen marking over the years.<sup>79</sup> Dr Boston told us that, from 2004, DCSF "declined to accept QCA advice to introduce on-screen marking" on the basis that it should first be demonstrated in a pilot study that the results would be the same or better than those resulting from manual marking. Dr Boston argued that such a trial would have had no value as on-screen marking could not be judged on the degree to which it replicated the "inferior process" of manual marking. He considered that the results would inevitably have been different, but not necessarily worse.<sup>80</sup>

54. The Secretary of State, on the other hand, said that:

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75 Children, Schools and Families Committee, *Testing and Assessment*, Third Report of Session 2007–08, HC 169-I, para 198

76 Q 23

77 Q 8; Q 330

78 Report of the Sutherland Inquiry, paras 5.104–5.110. Question-level data gives information about how particular questions were answered, either by individual pupils or by groups of pupils. Schools can use this data to check, for example, that teachers are covering the curriculum effectively.

79 Qq 322, 330, 350, 360, 367, 419, 420; Ev 74

80 Ev 74

While it is true that Dr. Boston was clearly in favour of onscreen marking, it was the QCA itself that decided on the basis of trials that were carried out in 2005 not to proceed. Indeed, in his statement about the onscreen marking trials conducted during the 2005 test cycle, it was Mr. David Gee [then Managing Director of the National Assessment Agency, a division of QCA] who said publicly, “Following analysis, I have concluded that it is inappropriate to introduce onscreen marking for either maths at Key Stage 2 or English at Key Stage 3 in 2006.”<sup>81</sup>

Dr Boston replied that:

It is wrong for the Secretary of State to claim that the QCA itself decided not to proceed with onscreen marking. We were told by ministers and officials that it was not an option. The final stumbling block was the Government requirement that whole scripts be returned to schools at the same time as the results, as in the past. ...

The purpose of the letter signed by David Gee on 3 November 2005 was to resolve uncertainty for 2006, and to paper over what would otherwise have been a very public rift between the QCA and Government. With the benefit of hindsight, we negotiated for far too long; I should have stood our ground and put QCA advice publicly and in writing.<sup>82</sup>

55. What matters now is how the testing system is reformed in the future and what safeguards are necessary to ensure that testing failures do not recur. Lord Sutherland has made a series of recommendations in his report, including a recommendation that “online marking” should be piloted. He points to the potential of both enhanced quality of marking and greater security for scripts.<sup>83</sup> In addition, we believe that on-screen marking is a viable way to capture electronically question-level data for diagnostic purposes. We noted in our Report on *Testing and Assessment* the benefits to teaching and learning of question-level data on test results, and would consider the routine provision of such data to be a valuable step forwards.<sup>84</sup>

**56. We remain concerned about the consequences attached to high-stakes testing. We consider that, if children are to sit national tests, they should derive the maximum benefit from that experience. We noted in our Report on *Testing and Assessment* the benefit of receiving question-level data for diagnostic purposes and consider this to be a valuable step forwards. However, it seems to us that separating the marking process from data capture risks a repeat of the delivery problems experienced in 2008 and must surely lead to an increase in opportunity for human error. We believe that any significant future reform of National Curriculum testing must include an evaluation of on-screen marking from which question-level data can automatically be derived.**

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81 Q 360

82 Ev 74

83 Report of the Sutherland Inquiry, para 5.232

84 Children, Schools and Families Committee, *Testing and Assessment*, Third Report of Session 2007–08, HC 169-I, para 125

## 5 Conclusion

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57. In this Report, we have not sought to revisit the intricate details of how the delivery of National Curriculum tests in 2008 failed. Lord Sutherland has carried out a meticulous inquiry into those details and we endorse his report as an excellent account of events. Our inquiries, however, have taken a rather different approach and we have considered the delivery failure in the broader context of how Government has set up the framework for delivery of its testing policies.

58. A common theme has run through our inquiries: that of the independence of the public bodies involved in test delivery. We have concluded that, by interfering too much in the detail of policy delivery, the DCSF increased the likelihood of its failure. DCSF observers may have a legitimate role within QCA, but we consider that that role becomes illegitimate if observers seek to negotiate the terms of the “advice” issued by QCA to ministers, or to exert undue influence over QCA decision-making.

59. In terms of the independence of Ofqual, we believe that the presence of observers on its Board is totally unacceptable. Ofqual must be, and be seen to be, independent, otherwise the legitimacy of the testing system itself might be cast into doubt. This Committee will be monitoring the work of Ofqual on an ongoing basis and we will be taking a particular interest in how it guards and exercises its independence.

## Conclusions and recommendations

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### The inquiries into the 2008 test delivery failure

1. We endorse the work carried out by Lord Sutherland in exposing the detail of the many factors contributing to the failures in the delivery of the 2008 National Curriculum tests (Paragraph 6)
2. This inquiry provides a good illustration of how a select committee can use its authority and powers in a timely manner to investigate problematic incidents as soon as they arise. Our swift action in this matter has enabled us to put on the public record both written and oral evidence from a party to the incident, ETS, which was not available by the time the official inquiry was fully operational. The Sutherland Inquiry was then able to rely on the evidence we had secured when it became clear that ETS would not engage with the process. (Paragraph 8)
3. It is not clear to us that the DCSF having issued parallel terms of reference prevented Ofqual asking Lord Sutherland to inquire into the DCSF's role, had Ofqual considered that appropriate. Lord Sutherland chose not to consider the Department's role beyond its oversight of the particular circumstances of the delivery of the National Curriculum tests in 2008. However, this Committee is able to go further than he did and comment in more general terms on the line between policy and execution. (Paragraph 11)

### Delegation of responsibility from DCSF to QCA

4. We maintain the view of our predecessor Committee, that the difficulty of establishing the correct dividing line between policy and execution should not be underestimated. However, we are concerned that DCSF appears to be specifying in considerable detail the ways in which it wishes to see its policies executed. The DCSF achieves this both formally, through the QCA's remit letter, and informally, through regular contact with its agency and through the mechanism of observers. (Paragraph 24)
5. We agree with the Secretary of State that he is accountable for ensuring that the QCA fulfils its responsibilities for the overall operation of the testing regime. However, he is also accountable for the policies and other decisions of his Department, including the terms of the QCA's remit letter; and he is responsible for ensuring that the directions issued by DCSF are capable of being carried out by the organisations tasked with their execution. (Paragraph 25)
6. If significant areas of Government policy are to continue to be delivered by non-departmental public bodies and other agencies, the leadership of those bodies should be prepared to demonstrate their professionalism by challenging the Government if they consider that the impossible is being asked of them. Appropriate mechanisms should be put in place to allow them to make such a challenge. We recognise that this should never be used as a means to hold the Government to ransom or to impede the

execution of legitimate public policy. Nevertheless, there needs to be a formal and transparent dialogue between the Department and its agencies. (Paragraph 26)

7. In the light of the repeated problems we have identified, we consider that DCSF should, in an updated Memorandum of Understanding or equivalent with each public body, set out more clearly how it will conduct its relationships with those bodies. We urge the Government to adopt a far less prescriptive approach when issuing instructions to the new Qualifications and Curriculum Development Agency. If it is considered appropriate that policy should be executed by an agency rather than by the Department itself, the potential benefits of such an arrangement are significantly diluted if the Government fails to trust the expertise and experience of the professionals chosen to run such agencies. It is clear that micro-management from the Department would introduce a degree of confusion into the lines of responsibility and accountability, as previously happened in the case of Individual Learning Accounts, investigated by our predecessor Committee, and the mistake has been repeated with arrangements for the delivery of National Curriculum tests. (Paragraph 28)

### QCA and DCSF observers

8. We have some serious concerns in relation to the role of observers and question whether, in many cases, they are necessary. In appropriate cases, departmental observers may perform a useful function in helping ministers remain accountable for policy delivery in a meaningful manner. However, formal advice to ministers from a public body should not be negotiated through departmental observers; nor should observers exert undue influence over the decision-making of a public body. (Paragraph 35)
9. We concur with Lord Sutherland's recommendation, accepted by Government, that the role of departmental observers should be clarified. We believe that the Memorandum of Understanding or equivalent between DCSF and its non-departmental public bodies should, in each case, set out clearly the appropriate role for departmental observers so that the public can be reassured that observers are not acting inappropriately to influence the work and decisions of public bodies. (Paragraph 36)

### Ofqual and DCSF observers

10. We expressed our concerns in relation to the potential for departmental observers to exert undue influence on the advice from and decision-making of public bodies. Whilst we are content that such observers should continue to have a role within bodies such as QCA with appropriate safeguards, we are opposed to the presence of departmental observers in the context of an independent regulator. The independence of Ofqual should be put beyond question and that requires contact between DCSF and Ofqual to be put on a much more formal footing than is suggested by the presence of observers on Ofqual's Board. (Paragraph 43)

## National Curriculum test delivery post-ETS

11. In line with our recommendations in our Report on Testing and Assessment of May 2008, we welcomed the abolition of mandatory national testing at Key Stage 3 when it was announced in October 2008 and we remain convinced that the decision to reduce the burden of national testing was a good one. (Paragraph 47)
12. We repeat our warning, set out in our Report on Testing and Assessment, that new tests should not be introduced nationally with undue haste. We are concerned that, if single-level tests are rolled out as a replacement for end of Key Stage testing, there is potential for significant complexity in the logistical arrangements for sending out, marking and returning a large number of single-level test scripts twice each year. Evidence from the pilot studies so far is not encouraging and demonstrates that there remain serious problems to be overcome. We remind the Government that we are opposed to an increase in the burden of national testing generally; and we warn that the Government must be quite sure that the logistical arrangements for single-level tests are robust before they are rolled out nationally. (Paragraph 50)
13. We remain concerned about the consequences attached to high-stakes testing. We consider that, if children are to sit national tests, they should derive the maximum benefit from that experience. We noted in our Report on Testing and Assessment the benefit of receiving question-level data for diagnostic purposes and consider this to be a valuable step forwards. However, it seems to us that separating the marking process from data capture risks a repeat of the delivery problems experienced in 2008 and must surely lead to an increase in opportunity for human error. We believe that any significant future reform of National Curriculum testing must include an evaluation of on-screen marking from which question-level data can automatically be derived. (Paragraph 56)

# Formal Minutes

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**Wednesday 15 July 2009**

Members present:

Mr Barry Sheerman, in the Chair

Annette Brooke  
Mr David Chaytor  
Paul Holmes

Fiona Mactaggart  
Mr Graham Stuart  
Derek Twigg

Draft Report (Policy and delivery: the National Curriculum tests delivery failure in 2008), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 59 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Sixth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

Written evidence was ordered to be reported to the House for placing in the Library and Parliamentary Archives.

[Adjourned till Monday 20 July at 3.30pm]

## Witnesses

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| <b>Monday 14 July 2008</b>  | <i>Page</i> |
| <b>Dr Ken Boston AO</b> , Chief Executive, Qualifications and Curriculum Authority (QCA).   | Ev 1        |
| <b>Wednesday 10 September 2008</b>  |             |
| <b>Dr Philip Tabbiner</b> , Director and Chairman of the Supervisory Board, ETS Global; and <b>Andrew Latham</b> , Vice President, ETS Europe.  | Ev 9        |
| <b>Isabel Nisbet</b> , Chief Executive, and <b>Kathleen Tattersall OBE</b> , Chair, Ofqual.   | Ev 21       |
| <b>Monday 26 January 2009</b>   |             |
| <b>Lord Sutherland of Houndwood KT</b>  | Ev 34       |
| <b>Wednesday 22 April 2009</b>  |             |
| <b>Dr Ken Boston AO</b> , former Chief Executive, Qualifications and Curriculum Authority.  | Ev 49       |
| <b>Wednesday 20 May 2009</b>  |             |
| <b>Rt Hon Ed Balls MP</b> , Secretary of State for Children, Schools and Families; <b>Rt Hon Jim Knight MP</b> , Minister for Schools and Learners; and <b>David Bell</b> , Permanent Secretary, Department for Children, Schools and Families. | Ev 61       |

## List of written evidence

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|   |  |              |
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| 1 | Letter to the Chairman submitted by Dr Ken Boston, Chief Executive, Qualifications and Curriculum Authority                                      | Ev 7         |
| 2 | ETS  | Ev 8         |
| 3 | Ofqual   | Ev 31        |
| 4 | Lord Sutherland  | Ev 47        |
| 5 | Letter to the Chairman from Dr Ken Boston AO   | Ev 48: Ev 73 |
| 6 | Letter to Lord Sutherland from the Rt Hon Jim Knight MP, Minister for Schools and Learners, Department for Children, Schools and Families (DCSF) | Ev 77        |
| 7 | Letter to the Chairman from the Rt Hon Jim Knight MP, Minister for Schools and Learners, DCSF  | Ev 78: Ev 79 |
| 8 | Letter to the Rt Hon Jim Knight MO, Minister for Schools and Learners, DCSF, from Lord Sutherland  | Ev 78        |

## List of unprinted evidence

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The following memoranda have been reported to the House, but to save printing costs they have not been printed and copies have been placed in the House of Commons Library, where they may be inspected by Members. Other copies are in the Parliamentary Archives, and are available to the public for inspection. Requests for inspection should be addressed to The Parliamentary Archives, Houses of Parliament, London SW1A 0PW (tel. 020 7219 3074). Opening hours are from 9.30 am to 5.00 pm on Mondays to Fridays.

Alan Bowles

Dorothy Nelson

Norma Powell

Martin Fitzwilliam

Joan Lynch

John Atkinson

Christina Evison

Jenny Blackemore

Susan Harr

Stephen Mason

Hugh Evans

Association of School and College Leaders

Tony Roberts, Lancashire National Association of Head Teachers

Cherry Edwards

Adrian Mitchell

David Chaloner

# List of Reports from the Committee during the current Parliament

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The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2008–09

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# Oral evidence

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## Taken before the Children, Schools and Families Committee on Monday 14 July 2008

Members present:

Mr Barry Sheerman, in the Chair

Annette Brooke  
Mr Douglas Carswell  
Mr David Chaytor  
Paul Holmes

Fiona Mactaggart  
Mr Andy Slaughter  
Mr Graham Stuart  
Lynda Waltho

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*Witness:* **Dr Ken Boston AO**, Chief Executive, Qualifications and Curriculum Authority (QCA), gave evidence.

**Q1 Chairman:** May I welcome Dr Ken Boston, chief executive of the Qualifications and Curriculum Authority, to our deliberations. We are glad he could appear before us at short notice. He knows only too well why we want to speak to him. I have said to Dr Boston that he will have an opportunity to say a few words to get us started, but Dr Boston, the reason why we have called you before the Committee is that you will know better than most people all the stories that have been running around in the education sector and outside the education sector about the delay in the key stage test results. It was quite hard to find out by this Monday morning what was truth and what was fiction, and you are the man to tell us, so that is what we are here for, but do please make an opening statement.

**Dr Boston:** Thanks, Chairman. Let me begin by saying I make it clear to this Committee as I have to pupils, schools, parents and Ministers that I apologise for the failure of our contractor to have the Key Stage test results available on 8 July and I share their frustration at this quite unacceptable outcome. Lord Sutherland will establish the causes of the failure, which was foreshadowed by a number of problems in delivery. Among them were problems with marker recruitment and retention, markers being given wrong information about the location of their training and the time of it, delay in getting papers to markers, unmarked scripts being returned to schools, data entry requirements impacting on the rate of marking, inadequate call centre capacity, and slow and unpredictable data feeds. I want to assure you that we have responded immediately to every one of those signals and have done everything possible operationally and within the terms of the contract to ensure that Educational Testing Service (ETS) would deliver to schools. Since the start of the test cycle in September last year, we have met weekly with ETS and, since 1 May, daily with ETS to review risks. We have held ETS accountable for meeting service levels under the contract, and we have monitored it closely. We have escalated problems to the highest levels of ETS, including bringing the vice president to London. We have co-located 70 of our staff to ETS offices. They have been providing technical support, developing communications with

schools and markers, establishing emergency marking centres, supporting call centres, managing and recruiting the data entry senders and supporting the management of scripts. In other words, we have pushed to the absolute limit our capacity under the contract to advise, support and warn. The current position is that in Key Stage 2, the marking is now 100% complete.<sup>1</sup> The results will be published on the website tomorrow to download and print. Data entry has been slower than marking. The volume of results entered as of midnight last night was English 94.4%, maths 97.3% and science 97.3%. The Key Stage 3 maths and science are substantially complete, but there is still marking to be done in English. The majority of results will be posted on Friday. The schools that do not receive their English results then will have them posted as they become available. I assure the Committee that we are exploring all possible commercial and legal avenues to ensure that suitable action is taken for the failure. We have a recovery plan in place, and we need to attend urgently to the issue of ensuring that the system will deliver in 2009.

**Q2 Chairman:** What will be the latest date for all the results to be out?

**Dr Boston:** It is difficult to be entirely precise on that. We have predicted dates before and got it wrong. I think that it could be well into the holidays before some of those English results are available.

**Q3 Chairman:** That would be mainly the English results?

**Dr Boston:** Yes. At the moment we have maths and science substantially complete. We think that they will be out on Friday.

**Q4 Chairman:** So this is a mess, but the results will come out. Will they come out reliably and to a standard that you can swear by?

**Dr Boston:** I do not believe that there is any reason at the moment to have doubts about the quality of the marking, despite the stories and fears that are abroad. The people who have marked the papers are

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<sup>1</sup> See supplementary evidence submitted by Dr Ken Boston; Ev 7

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the people who have always marked the papers. The papers have been developed in England by people who know the English curriculum, English standards and English schools. The mark schemes have been developed by those people. The people who are marking this year are largely the same as those who marked last year—teachers and retired teachers. The company which failed in this contract has been responsible for logistics. The training of the markers has been done by team leaders and senior experienced markers, who are also people who have done the job before. The programme that was put in place by ETS to benchmark quality this year is superior to the one used in the past. In the past, self-selected scripts were examined by senior markers during the run-up to the start of marking. If the senior marker ticked them off, the person began marking. There were some more self-selected scripts given to senior markers once the marking was two-thirds through. With this current contract, we requested that great attention be given to improved quality. There is a data bank of 80 scripts. They are live scripts that have been standardised by markers. At five stages during the marking process, markers are required to access a batch of four and mark them. That is a common standard for all markers. If they have drifted from the mark they are brought back into line by their team leaders or senior examiners. If they cannot be brought back to the mark, they are taken off quickly. The quality of training has been very sound and the quality assurance—the benchmark processing—is superior to what we have had before.

**Q5 Chairman:** Who supervised all that quality?

**Dr Boston:** The training was done by the senior examiners, who are experienced English markers, and the marks for those benchmarks were determined by those examiners. The logistics, the delivery, the distribution of papers, the gathering of results, the data feeds, were part of the contract. The actual detail and quality of the work was not. The final thing is that if there are problems with quality, they will be dealt with this year just as they have been dealt with in the past. In English, particularly at Key Stage 3, we know that a higher proportion of papers are returned for review than in other subjects, because English is a more difficult paper to mark—the mark scheme is not as precise, and the capacity for variation between markers is greater. Those papers will be marked in exactly the same way. If there is a quality problem, it is most unlikely to be greater than in previous years, but if there is one, it will be dealt with by the usual process.

**Q6 Chairman:** Whatever you say, people will blame the Qualifications and Curriculum Authority, because you hired those people who have failed. Is that not what they will say?

**Dr Boston:** Certainly, the QCA conducted the procurement process at the end of the previous period. The procurement had to be done again according to the new rules. The process took place over a period of almost 12 months. It followed, at every step of the way, the requirements and

regulations. It was reviewed by the Office of Government Commerce on two occasions and got “green”, which is the highest rating for the process. This company was selected with the highest rating on the various criteria that were identified. This is a very big company with a lot of experience. It passed financial due diligence, which was conducted for us by PricewaterhouseCoopers. References were checked out for it with organisations such as the California State Board of Education, with which it had done, and continues to do, major assessment programmes. This company has a very good track record. Its failure here is something that we certainly did not predict.

**Q7 Lynda Waltho:** I am wondering about the IT. We have significant information to suggest that changes to IT, in terms of marking, were introduced. A system such as this was surely piloted. Was there no indication that there could be problems?

**Dr Boston:** Certainly, the system was piloted extensively after the contract was awarded. During the awarding of the contract there was a competitive dialogue process, whereby the specifications for the IT and other things were refined in discussion with the people who were technically bidding for it. However, despite the pilot, since the system was scaled up there have been some significant problems. Marking has been going faster than it is possible to process the data and set levels against them. There have been issues that we need to get to the bottom of, and that clearly is a matter that Lord Sutherland and we, from the legal point of view, will be pursuing closely.

**Q8 Lynda Waltho:** Do you think that the IT system may have been overly ambitious?

**Dr Boston:** I think the problem, frankly, was that it was not ambitious enough. The decisions about how marking would be done this year were made prior to the procurement. Decisions about what data would be sought and how they would be presented were decisions of Government and were also made before the procurement was made, in 2006. We have come a long way in recent years in the general qualifications, the use of technology, and the use of on-screen marking, which is rapid, high quality, reliable and secure. Over half the GCSEs at the moment are marked on screen. Many of the A-levels are marked on screen. None of the key stage tests are yet marked on screen. Although the paper is marked manually, we have asked the marker then to go to a computer and key in on computer the item-level marks—the question-level marks—which has slowed the process, to a degree and, to a degree, introduced the capacity for error. Next year one of the things we have to address is resolving that issue of slowness, but it is very clear that in the immediate term we need to move as quickly as possible to using on-screen marking for key stage tests: fast, reliable, accurate, secure—all the benefits we have demonstrated at the general qualifications level.

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**Q9 Mr Carswell:** There has been a cock-up. It has affected tens of thousands of people. It has undermined confidence in national testing and the reliability of the end product. Is it your fault? Should the Minister take responsibility, or neither? Is the quango chief yet again going to pass the buck?

**Dr Boston:** The issue is complex. There have been, potentially, problems in decisions made a couple of years ago; there have been, potentially, problems in the QCA and in its division, the National Assessment Agency. There have been, potentially, significant problems in ETS. Lord Sutherland has been appointed to sort that out, and I believe he will.

**Q10 Mr Carswell:** Can we see a copy of your contract, please?

**Dr Boston:** I do not have my contract with me.

**Q11 Mr Carswell:** Could we see it?

**Dr Boston:** Chairman, is that a reasonable requirement for this Committee?

**Chairman:** Members of the Committee have the ability to ask you questions, Dr Boston.

**Mr Carswell:** And I believe the Clerk of the Committee contacted your office beforehand to ask for a copy.

**Dr Boston:** Well, I am not aware of that contact, but my remuneration and so on is in the public record.

**Q12 Mr Carswell:** Sure, but the terms of the contract that would allow this Committee to hold you to account for how you do your job—can we see a copy, please?

**Dr Boston:** I am prepared to make available a copy of the contract.<sup>2</sup>

**Q13 Mr Carswell:** Could we see that after this meeting?

**Dr Boston:** Not immediately after this meeting; I do not happen to carry it around with me.

**Q14 Mr Carswell:** Just as well, perhaps. Mr Brown has rightly said that your successor needs to be appointed only after confirmation hearings by this Committee. Given what has happened and given what some people would say is the need for proper accountability of the QCA and its head, would you welcome that? Do you think it is right that your successor should be appointed only after confirmation hearings, and perhaps that this Committee should have the power to issue P45s when the QCA does not quite get things right?

**Dr Boston:** I have not given that issue any thought at all. I welcomed the decision to have this Committee have confirmation hearings, but I cannot say it is an issue that has exercised me.

**Q15 Mr Carswell:** One final thing, if I may. I believe you gave us evidence saying that you are a fan of the idea of national testing. Does not this whole episode suggest that the idea of state-run national testing is wrong—that government by unaccountable quango

is inevitably going to be incompetent government; that we should not have a quango running national testing?

**Dr Boston:** I would have thought that you would rather have a body that is at arm's distance from government running testing, than government themselves. I think one of the issues with the QCA has been that there are certain functions it performs that need to be further distant from government. That is why I welcome the establishment of Ofqual, which is the regulatory side. I make it absolutely clear to you that in my time as Chief Executive of the QCA I have never had any interference from any Minister or any government official to do with the nature of the paper, the quality of the marking, the standard that should be set, or the figure that should be reached in terms of performance, and if I had I would be the first person to declare that publicly.

**Q16 Chairman:** Before I move on to Annette, a couple of times you mentioned the Sutherland inquiry. I take it that you are not holding any knowledge back from the Committee that you are saving for a future occasion.

**Dr Boston:** Absolutely not.

**Chairman:** Just as long as that is clear.

**Dr Boston:** I am in a position where I must be cautious about what is said with regard to putting the commercial and legal side of the issue at risk. As I implied, we are in a strong position contractually, and we will seek remedies as a consequence of the failure. I am holding nothing back from the Committee.

**Q17 Annette Brooke:** Could you tell us more about the late recruitment of markers? In your first statement you told us that people are employed who always mark the papers. Why have people been receiving phone calls until quite recently asking them to go and mark?

**Dr Boston:** I understand that there have been shortages in some subjects. They were partly caused by people who had previously accepted positions dropping out and deciding not to continue, and therefore contact was made with other markers. Similarly, as part of the support that I mentioned, when we found in May and June that difficulties were emerging that could put the system at risk and that needed addressing, we strongly advised ETS to set up two marking centres and it agreed. We needed to recruit additional people into those marking centres. Subsequently, there are seven such centres established around the country. We have recruited people to go into those, and they also distribute papers to people who mark at home. In an effort to avoid the problem that has arisen, we put an enormous effort into getting more markers in, to concentrate and improve the rate of marking so that the deadlines had a chance of being met. That has not been sufficient.

**Q18 Annette Brooke:** You told us that the quality of training was sound and as per usual. How can those late recruits have had the full training that they would normally have had?

<sup>2</sup> Supplied in confidence. Not printed.

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**Dr Boston:** They do not start without the full training and without achieving a standardisation process. They are given no live scripts until they have been provided with some training.

**Q19 Annette Brooke:** Some training. Is that full training?

**Dr Boston:** Yes—full training.

**Q20 Annette Brooke:** Could you tell us where the shortages have been? Have they been at particular key stages or subjects, or right across the board?

**Dr Boston:** It has been pretty well across the board. The most acute problem has been in English.

**Q21 Annette Brooke:** Why?

**Dr Boston:** I think that people find marking English more challenging than marking subjects where the mark scheme has perhaps less room for discretion and interpretation. We have difficulty getting markers.

**Q22 Annette Brooke:** Are they paid enough?

**Dr Boston:** The rates vary from subject to subject, but most markers would make £750 to £1,000 or £2,000 from a marking season. People keep coming back to do it. It may be that there is a need to increase payment. The greater benefit is to make the marking experience—I was going to say more enjoyable, but perhaps I should say more professionally rewarding. That will come when more and more markers work on-screen, because we do not seem to have the same problems with the general qualifications in attracting markets as we do with the key stage tests.

**Q23 Mr Chaytor:** Dr Boston, when you first came before the Committee some years ago, you famously described the English assessment system as a cottage industry. To what extent have the characteristics of that cottage industry contributed to the problems over the past few weeks?

**Dr Boston:** In the years since I made that comment, we have seen tremendous change in a whole host of things in respect of general qualifications, including better administration in the exams offices at schools. No longer in any of the tests or examinations are bundles of scripts left on doorsteps or at post office counters unaccounted for; they are barcoded, traced and tracked. We know the whereabouts of parcels. However, we have not advanced with the marking process of the key stage tests beyond manual marking. We now have a situation in which people mark manually and then enter the scripts on computer. The standard scripts that are done in five batches come on computer. The technology is there. There is only a sample of 40,000 of single-level tests that we are trialling in December this year, but that will be safe and secure on-screen delivery and on-screen marking. We must move quickly into the use of that technology with the tests. It will not be next year. We will not be able to scale up the key stage tests to on-screen marking for next year. We cannot have a repeat of what happened this year. We shall either need more time next year or to find some

alternative. In fact, that last time that we had a fully successful round with key stage tests was in 2003. In 2004, we were late with Key Stage 3, which was a problem. In 2005, 2006 and 2007, we delivered because we kept Key Stage 3 English late, in mid-August. This year, we tried to bring back Key Stage 3, including English, to July and the result was that we failed not only Key Stage 3, but Key Stage 2. We really need to look at how the tests are delivered and administered, and we need rapid reform.

**Q24 Mr Chaytor:** To what extent is the underlying issue not only this year's delays, but the problem that has occurred in recent years that you have described of the sheer volume of assessment that children in English schools experience? Is online marking the solution, or will it merely gloss over a deeper problem caused by the volume of assessment that takes place?

**Dr Boston:** I have given evidence on that to the Committee before, and the alternative to which I referred at one point was single-level tests to confirm teacher assessment. In the longer term, that seems to be a productive direction in which to go. The teachers come to a judgment about the level that a child is at; at the moment, £150 million is being spent through the strategies in training teachers in the assessment of pupil performance. To then use the single-level test to confirm whether the child has, in fact, reached that level of performance seems a sensible way forward. The alternative, which is to continue with full cohort testing, is perfectly feasible, even given the short time frames, and even given that we are only talking of a matter of nine weeks for Key Stage 3, but to do it, we have to use technology.

**Q25 Mr Chaytor:** You referred earlier to the weekly meetings. The problem was identified publicly during the week beginning 30 June. For how long had the weekly meetings taken place before then?

**Dr Boston:** Since September there has been a fortnightly programme board meeting, chaired by the managing director of the NAA and attended by the very senior people from ETS. There has been a weekly meeting since September—it is run by the programme director in NAA, who reports to the managing director—attended by opposite numbers in ETS and in other agencies that are involved; we have other contractors apart from ETS, setting the papers and so on. As I said, from 1 May we have met daily with senior people in the organisation, operationally, to look at risk across the board in communications, help desk, delivery, training, market recruitment and retention, and so on. It has been very hands on.

**Q26 Mr Chaytor:** So if the weekly meetings have been taking place since September, at some point well before 1 May it must have become obvious that the programme was in difficulties. Did something happen on 29 June?

**Dr Boston:** It was always obvious that it was a very challenging programme. Our concern was to identify the risks and mitigate them right through that process, which we were doing. I make the point, as I

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did in my introduction, that we were not there actually managing the thing. Our capacity is to advise, support and warn. ETS has a contractual obligation to inform us when it has reached an assessment that it is not going to meet a key milestone, and 8 July was a key milestone. We challenged ETS on many occasions throughout—particularly the past two months—on that issue. It was only on 26 June that we got a formal, written response from ETS, that it was not going to make it. We subsequently directed ETS, on 27 June, that it was required to make it.

**Q27 Mr Chaytor:** The question is, if the NAA representatives had been meeting ETS since last September, why did the NAA not report to you that there was a serious problem here? Why was there no regular performance monitoring from ETS?

**Dr Boston:** There was regular performance monitoring right through that, identifying problems and mitigating them. We picked the problems off one by one. Certainly there was an enormous number of issues, but some of them were small and all of them were addressed. When we found, as we got into the latter weeks, that the volume of calls that were going to come to call centres was greatly underestimated, we immediately stepped in. We set up another call centre, which we funded through the NAA, to assist ETS. We put additional resources into the call centres at Watford and in Northern Ireland, to assist ETS to handle calls. We stepped in and found a backlog of 10,000 e-mails, which were responded to, finally, by NAA people rolling up their sleeves and getting on with it.

**Q28 Chairman:** So this was 10,000 e-mails to ETS that were not dealt with, and the NAA staff—the staff of your wholly owned subsidiary—had to pick that up?

**Dr Boston:** We stepped in and made it happen.

**Q29 Chairman:** So was the wrong decision made about the contractor, in retrospect? I know you have all sorts of difficulties. The word on the street is that you did have a UK-based supplier which had much more grasp of the technology, but you went for a much cheaper option.

**Dr Boston:** No, it was not a cheaper option—well, it was the lowest cost option, but it was not picked on those grounds. There were, finally, three bidders, from a field that started at six and went quickly back to five. On the key criteria of capacity to do the job, this company was clearly up there with any of them. On understanding and delivery of the contract, and on innovation in technology, it had a high reputation. It ticked all the boxes and, in aggregate, came out well ahead of any competitor. On that basis, following that process, we made the right decision. It was subject to all the public scrutiny required, including very close scrutiny by the QCA board. Observers from the Department were present right through the procurement process and were able to advise Ministers that our recommendation should be endorsed. Of course, the decision was our board's recommendation. It was clearly, on its merits, the

decision to make. However, when we look now at the late results ahead of us, something has clearly gone wrong. It is clear that we not only need to deal with the problem confronting us at the moment, but ensure that it never happens again, and get this running for next year. The clock is ticking, and the development of these tests is a two and a quarter year cycle. The development of the tests for 2009 is well under way, which is one reason why the transfer online would be very difficult at this stage.

**Q30 Mr Stuart:** It seems to have come as a surprise to you that ETS failed, yet the whole examinations community has been saying for months that the contract was underpriced and that difficulties were expected. How come you were the only people who did not seem to anticipate the outcome?

**Dr Boston:** I think we were more closely aware of the problems that were emerging than the rest of the community. We were dealing with them. We were in there working weekly and then daily with ETS—

**Q31 Mr Stuart:** Do you think it is acceptable to notify Ministers as late as they were notified of the fact that it would not be delivered?

**Dr Boston:** It became clear, as I said, on the 26th, when contractually ETS had to tell us formally whether they were going to make it or not. It was clear at that point that they were not. In recent weeks up till then, we had had doubts about Key Stage 3 English in particular, but we were doing everything that we could to ameliorate them and were reasonably certain that we would assist ETS to overcome those problems.

**Q32 Mr Stuart:** So when did you, as the head of the QCA, first think that the deadline was not going to be met?

**Dr Boston:** When I was formally told by ETS on 26 June. But, as I said before, our folk had repeatedly challenged and pushed in the weeks before that, saying, “Are you really going to make it?” The constant assertion from ETS was, “Yes.” From our examination, the remedies that we were putting in place were working. The 10,000 e-mails, for example, were solved. The call centre problem was solved. Enough markers were brought together to do the job.

**Q33 Mr Stuart:** Did the previous board bid for the contract?

**Dr Boston:** The previous board?

**Q34 Mr Stuart:** The board that had previously been doing these examinations. Did it bid?

**Dr Boston:** Yes, it did.

**Q35 Mr Stuart:** That was Edexcel, wasn't it?

**Dr Boston:** Yes.

**Q36 Mr Stuart:** And did it bid?

**Dr Boston:** Yes.

**Q37 Mr Stuart:** Why did so many of the boards not bid?

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**Dr Boston:** I really cannot speculate on that. They may not have thought that they had the capacity, or—

**Q38 Mr Stuart:** Dr Boston, how can you not speculate? They wrote to you and told you why they were not bidding, did they not?

**Dr Boston:** Why they didn't bid?

**Mr Stuart:** They wrote to you and told you why they were not bidding.

**Dr Boston:** I'm not sure what you are referring to.

**Q39 Mr Stuart:** I am referring to letters sent to you by other boards explaining why major boards in this country did not bid for the contract. They wrote to and explained precisely why they were not bidding for the contract.

**Dr Boston:** Well, I'm sorry, I—

**Q40 Mr Stuart:** Is that not true?

**Dr Boston:** I do not have that information at my fingertips. If those letters were sent, presumably that was back in 2006. I am afraid that I would need to go back to my files to confirm whether that happened.

**Q41 Mr Stuart:** But that is the source of it, and the truth is that many of the largest boards did not bid for the contract, because in the belief of many of the most experienced and capable boards in this country, it was badly drawn up and badly briefed. They did not bid, and you therefore ended up with ETS, which you said had complete capacity to deliver, and it turns out that it had anything but.

**Dr Boston:** We ended up with five very solid bidders, which went through the process. Three were selected from the five, all of which were still in the ring. Three were selected from the five for the last part of the process. We had five very active—

**Q42 Mr Stuart:** Is it not disappointing that major boards did not bid for this contract, and is that not because they believed that it was poorly drawn up, it over-specified what was to be done and it did not recognise their professionalism, and that failure at the original contract or briefing stage may well have contributed to the current fiasco?

**Dr Boston:** I am not able to comment on that without going back and looking at my files and correspondence from several years ago, but we were very confident that we had contributed to building a better market for this than had existed previously.

**Q43 Mr Stuart:** So was that the thinking? Was it desired to bring in new external contractors? Was it the desire to bring ETS from the United States because you thought it could do a better job, bring better technology and raise testing standards?

**Dr Boston:** No, it was simply that the contract that we had with the previous organisation had finished and we were obliged to call for tenders again. We were very anxious to ensure that there was a genuine market, that there was real competition. I do not believe we have ever had a position before where, in

letting a contract, we have had five major active players. We certainly did not when the previous contract was let.

**Q44 Mr Stuart:** Is it true that the parameters of consistency, which I understand is a key requirement for testers, were relaxed to allow ETS to recruit the examiners it required?

**Dr Boston:** No.

**Q45 Paul Holmes:** In your opening comments, you observed that there had not been a satisfactory round of testing in SATs from 2003 onwards, so against that background, when you were bringing in a brand-new contractor, why did you also bring forward the date of the SATs to July? Is that not heaping the bonfire?

**Dr Boston:** We believed we had a better solution than we had had previously and that that date would be met. In the competitive dialogue process, we talked through with all three final bidders the requirement that in the first year it was still manual marking, but with electronic marker capture. Everyone realised that that potentially increased the strain over online marking, but those who went through to the final bid convinced us that they could do it and had solutions to do it.

**Q46 Paul Holmes:** Obviously, as we have heard, there is some concern about the role of the QCA, the contract it put out and so on, but assuming that the inquiry finds that ETS has a lot to answer for—you were very critical of ETS in your opening comments—what are the penalty clauses on ETS? I asked the Minister that a few days ago, and he was suitably vague. You put 70 staff in to help sort it out. You set up an extra call centre. You answered 10,000 e-mails. Surely all that money immediately comes back, but what are the penalty clauses beyond that?

**Dr Boston:** There are very significant penalty clauses and service credits, as they are called, where money is paid back to us for services that are not delivered. I want to be very cautious here, because there are various options, one of which is termination for failure to deliver, and that has very, very significant financial consequences. We are not at that point. We are at the point where we are considering how to deal with the current situation and how to move ahead on a more secure basis next year. As I said, we are in a strong position with the contract, and large sums of money are potentially at risk here.

**Q47 Paul Holmes:** When I was first elected in 2001, one of the first inquiries I took part in with this Committee or its predecessor related to the ILA scandal. Over the years, it seems that large companies such as Capita, EDS and, in this case, ETS mess up on delivery of programmes such as ILAs and programmes for the Department for Work and Pensions, but—

**Chairman:** Individual Learning Accounts.

**Paul Holmes:** Yes. But nothing seems to happen. The argument that I have heard—and your partner over at ETS said it—is that ETS is one of the largest players in the field. Capita is the largest player in the

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field. There are not many firms that you can approach for such contracts, so do they have the Government over a barrel? Even though they mess up on different schemes, you cannot penalise them that much or cut them out of the market, because they are the only players out there.

**Dr Boston:** I think there is a risk of severe reputational damage in relation to a failure at this level. Any large company is concerned with that. That probably is as significant as the financial penalties, which could run into the tens of millions. International companies obviously seek to operate with footprints in various regions of the world. The experience at this stage in England is clearly unsatisfactory.

**Q48 Paul Holmes:** Last question. If there were significant financial penalties, would they be at a level to hurt the company? We have heard that some companies write into the contract a penalty clause, knowing that they cannot meet all the targets that they promised. They build a penalty clause into the profit margin, so that they still make a profit, despite the penalty.

**Dr Boston:** I do not believe that this contract is costed on that basis. We went through it line by line as part of the procurement process, arguing the detail of every piece of work that was contracted. I do not think there is fat in this system that would allow for that sort of penalty and for profits still to be made.

**Q49 Chairman:** Dr Boston, we are coming to the end of the session, and another one is following this. With your hand on your heart, can you tell us as a Committee that, albeit with the delay, these results will come out and will be of a standard of which you can justifiably be proud to show to parents and students?

**Dr Boston:** Yes, there will be, as in all years, a proportion of them that require review. That is a normal element of the process. They will be dealt with. All the evidence that we have at the moment is that the marking is as secure now as it has ever been in previous years.

**Q50 Chairman:** You said in so many words to this Committee that you blame not the Secretary of State, yourselves, the NAA or Ofqual, but the private sector companies' shortcomings. That is what you have told this Committee.

**Dr Boston:** Well, if that is the impression, let me make it clear that there are three parties to this arrangement. There is the Government who in 2006—not in 2008—determined what they wanted from the tests and how they wanted the tests conducted. We are commissioned to deliver that; we do it through contractors. We, too, may well have made mistakes—done things that have caused problems or not done things that might have avoided problems. When I say “we” I mean the QCA and the NAA, which are a part. ETS may also have made some very significant mistakes. It is the body that failed to meet the deadline that it was contractually committed to meet, and that it was paid to meet. I believe that two things will happen now. Lord Sutherland’s review will be a very thorough examination of those three components. In the dealings between ourselves and ETS, there may well be litigation that runs alongside. There is more about the cause of this to be found than I am able to account to you in this session.

**Q51 Chairman:** Douglas Carswell has asked me about the contract. How soon can the Committee see it?

**Dr Boston:** I could have a copy couriered across to you in an hour.

**Chairman:** Thank you. Dr Boston. Thank you for appearing at such short notice before the Committee.

**Dr Boston:** Thank you.

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**Letter to the Chairman submitted by Dr Ken Boston, Chief Executive,  
Qualifications and Curriculum Authority (QCA)**

In my evidence to the Select Committee yesterday I said that marking was 100% complete in all Key Stage 2 subjects. No further Key Stage 2 scripts were held by ETS.

It has since come to light that a small number of wrongly assigned unmarked scripts had not been collected by ETS from markers to whom they had been sent. ETS has been directed to retrieve the scripts immediately and to mark them urgently. Today we have identified 384 Key Stage 2 unmarked scripts that have since been logged with marking panels for completion. This material represents less than 0.02% of the 1.7 million Key Stage 2 scripts for the National Curriculum tests 2008 cycle. While in percentage terms this is small, I do not under-estimate the impact even this small number has on schools, pupils and parents. We have called the schools that contacted us to explain the situation.

I regret that the information I gave to the Committee did not take account of this small number of scripts remaining in some schools.

July 2008

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**Wednesday 10 September 2008**

Members present:

Mr Barry Sheerman, in the Chair

Mr Douglas Carswell  
Mr David Chaytor  
Paul Holmes  
Fiona Mactaggart

Mr Andrew Pelling  
Mr Andy Slaughter  
Lynda Waltho

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**Memorandum submitted by ETS**

**EXECUTIVE SUMMARY**

There is no question that ETS experienced some operational and technical issues that aggravated the process of marking this year's national curriculum tests in England early on—and for those we take full responsibility. These issues were exacerbated by program changes required by NAA, long delays by NAA on key project decisions and layering on of additional project deliverables. Despite all these challenges, marking quality was maintained.

**INTRODUCTION AND OVERVIEW**

ETS welcomes the opportunity to appear before the Children, Schools and Families Select Committee. Our most important stakeholders are the millions of English pupils, teachers, schools and parents who depended on ETS and QCA to deliver a well-run testing programme. They have been let down, and we take this opportunity to repeat our apology to them.

I am a director and the chairman of the Supervisory Board of ETS Europe, the ETS entity responsible for delivery of the 2008 national assessment tests. In May 2008, I was given a mandate from ETS President Kurt Landgraf to investigate ETS and NAA issues affecting the safe delivery of the testing program.

ETS desires to provide full cooperation to this Committee and to Lord Sutherland's independent inquiry. We remain bound by confidentiality obligations under the original contract with QCA and under the August settlement agreement. We have requested but not yet received permission from QCA to provide full information to the Sutherland inquiry and the documentary evidence requested by this Committee. We are hopeful that both this Committee and Lord Sutherland will be able to prevail upon QCA to give its consent.

For the same reasons, we have made limited comment in the public domain. You should not take our silence as agreement with what has been said about us, but as our commitment to our contractual obligations.

ETS is a non-profit organisation that administers more than 50 million exams to exceptionally high standards in all of the 180 countries we operate in. We bid this contract because helping pupils learn and teachers teach is our mission, not profit. We took it because we believed our expertise could improve educational measurement in England. We invented large-scale standardised assessment 60 years ago, we pioneered computer-based testing, we originated online marking and created the largest Internet-based testing network in the world, and in all that time, we never asked for early release from a standardised achievement contract.

We worked closely with the NAA throughout the project and, whilst we have not achieved everything we should have, together we have made real progress in the quality of the marking and the detailed database of results provided to schools and students.

**QUALITY OF MARKING**

We are aware that the Committee is particularly interested in quality and we would like to dispel questions over this year's marking. We can confirm that the quality of markers in 2008 was in fact even higher than in previous years. We introduced a more rigorous method of certifying markers to ensure adherence to the marking scheme and constantly monitored quality during marking. Early on we eliminated hundreds of markers who could not meet the required NAA standards.

The training that we offered was delivered by the same senior markers as in previous years. We also used the same pool of teachers and retired teachers as in previous years. We used the same criteria for screening new applicants as in previous years, and in addition all markers were recruited according to NAA guidelines. The ongoing marker reviews are being managed by the NAA and are being carried out by the same markers we recruited to mark the tests originally.

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 SHARED RESPONSIBILITY WITH THE NAA

There is no question that ETS experienced some operational and technical difficulties that hindered our ability to deliver test results on time and we have not shied away from taking responsibilities for these. For example, some school allocations were split, which meant that a school was given to two separate markers. In these cases one of the markers would be unable to view their allocation online. There were also instances in which scripts were wrongly allocated, so one marker would be able to view a school online, for which they did not have scripts, and another marker would receive scripts they could not view online so were unable to enter marks online.

At the same time, NAA also shares significant responsibility for the delivery failure. Through a combination of the NAA making changes to the contract—against our advice, delaying critical decision-making and layering on additional responsibilities, we ended up with a much more complex and challenging task. Thus, I cannot point to just one or two things that contributed to the marking not being completed on schedule. It was, in fact, that the cumulative interaction of ETS and NAA created a compounding effect.

For example, the solution we presented in the bidding process and the contract we signed called for training about 5,000 experienced markers online instead of face-to-face. The online training was one of the innovations we were led to believe was pivotal in our being selected. In March 2008, just two months before marking was to begin, the NAA mandated that we should revert to face-to-face training for all 10,000 markers requiring us to find meeting venues, print and ship materials to those venues, co-ordinate marker invitations, travel schedules, costly overnight accommodations—all at the last moment. Not only did this specifically impact future delivery milestones, but it also prohibited markers from going online and accessing training materials early. This caused frustrations for markers because they had to understand how to use the entire system in a shortened time period.

Additionally, we were not supplied with critical information on operational failures experienced by previous suppliers that could have informed our decisions. For example:

- We were not made aware that recruitment of Key Stage 3 English markers has been a historical problem and that we would face difficulties identifying markers.
- When the NAA set milestones, it indicated that the previous supplier had accomplished similar deadlines when in fact this was not the case. For example we were told 100% of results had been returned on time, when, as this Committee well knows, suppliers had historically had problems achieving this.

Our view is that the NAA changes to the agreed program, the long delays by NAA in reaching decisions and the layering on by NAA of additional tasks, combined with ETS operational and technical issues, and compounded each other and we believe this lies at the heart of the delivery issues.

## CONCLUSION

As I stated before, we accept responsibility for all of ETS's operational and technical issues that affected the experience of markers and the return of results to schools. And, notwithstanding the challenges presented by the NAA, I honestly believe we introduced more quality improvement measures into the assessment than ever before with the result that students, parents and schools got good quality scores. Once more I reiterate my apology and welcome this opportunity to answer your questions.

*Dr Philip S Tabbiner*  
Director and Chairman of the Supervisory Board

*September 2008*

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*Witnesses: Dr Philip Tabbiner*, Director and Chairman of the Supervisory Board, ETS Global and **Andrew Latham**, Vice President, ETS Europe, gave evidence.

**Q52 Chairman:** May I welcome Dr Tabbiner and Andrew Latham to our proceedings? We are very grateful that you are able to appear before the Committee at this time of year. A certain Clerk who has an association with the Committee said that if this is a precedent, it might be a dangerous one—under my chairmanship, this is the first time that we have met in the recess. There are two reasons why we are meeting today. First, this is a very important issue. What happened in July disappointed many parents and students, and many people feel very strongly that we should run an efficient and effective testing and assessment system. It seemed to us that to wait until October or November to have this

session would have been inappropriate. Also, we have had Ministers and the Qualifications and Curriculum Authority in front of the Committee, but we have not had the other side of the discussion, so this is a chance to show that the Committee believes in fair balance. Dr Tabbiner, on that note I am going to ask you to say a few words about what went wrong.

**Dr Tabbiner:** ETS welcomes the opportunity to appear before the Children, Schools and Families Select Committee. The reason we have not commented in detail in the public domain on this year's national curriculum tests is our confidentiality agreement with the QCA. It is

disappointing for us that we have been unable to cooperate with Lord Sutherland's inquiry to date for that reason. ETS is a not-for-profit organisation that administers more than 50 million exams to exceptionally high standards in 180 countries. We bid for this contract because we believe that helping pupils learn and teachers teach is our mission. Our mission is not to generate profits. We believe that we introduced more quality improvement measures through the quality control aspects in this year's assessment than ever before, with the result that parents, pupils and schools received good quality results. We would like to apologise for not delivering 100% of the marks to schools by the required deadline. There is no question that we experienced some operational and technical difficulties, which hindered our ability to deliver 100% of the test results on time. We have not shied away from taking responsibility for these issues. We cannot point to just one or two factors that contributed to the marks not being completed on schedule. It was, in fact, the combination of ETS's and the National Assessment Agency or QCA's operational difficulties that created a compounding effect and the missing of the dates. ETS worked in close, transparent partnership with the NAA, which guided the ETS throughout the process. Through a combination of the NAA making changes to the contract and delaying critical decision making and the layering on of additional responsibilities, we ended up with a much more complex and challenging undertaking—much more so than we had originally envisioned or contracted for. Once more, I reiterate my apology on behalf of ETS for the delays in returning results to schools. I welcome the opportunity to be with you today and to answer your questions.

**Q53 Chairman:** Thank you, Dr Tabbiner. Has every student at Key Stage 2 and Key Stage 3 now received their results?

**Dr Tabbiner:** No, not every student has. There are still marks under way, and we still are data entering those that are being marked by the NAA.

**Q54 Chairman:** These should have been out originally by 8 July?

**Dr Tabbiner:** That is correct.

**Q55 Chairman:** When can every student in the land expect to get all their results?

**Dr Tabbiner:** As of now, we are no longer responsible for the marking or for the reviews cycle in cycle 1. Our role is data entering the marks as they come from unmarked scripts. At this point in time, that aspect is in the hands of the NAA.

**Q56 Chairman:** It has been an extraordinary, drawn-out process this year for one reason or the other, has it not?

**Dr Tabbiner:** That is correct.

**Q57 Chairman:** Even standing on the sidelines, do you know when the last result will be out?

**Dr Tabbiner:** At this point in time, I do not have the answer for you as to when—

**Q58 Chairman:** You do not know. Andrew, you do not know either?

**Andrew Latham:** No. I know that we have returned to the schools all the materials that we had in the warehouse, but if, for example, a school discovers that some of the test papers are unmarked when it opens them up, the test papers would come back, so we do not know exactly when they will be finished.

**Q59 Chairman:** Are we talking about large numbers or about 1% or 2%? What are we talking about?

**Andrew Latham:** We are talking about very small numbers like 1% or 2%.

**Chairman:** For those 1% or 2%, it is not very encouraging.

**Andrew Latham:** Absolutely.

**Q60 Chairman:** Okay. Let us drill down into what you have said. Are you saying, Dr Tabbiner, that you had glitches with the technology? From the very full letter that you sent to the Committee, it seems that there were technical problems that you did not foresee.

**Dr Tabbiner:** I would call them operational more than technical, just to put the point on it. It was more the nature of operational technology, as well as the interactions with the NAA, that created knock-on effects, or operational circumstances, and that created issues for us. For example, we had significant delays in terms of the response from the NAA as to whether we could conduct online training, which is what we had originally contracted for, and we were required to do face-to-face training. That created operational issues around venues and having training materials for all the trainers done in a very compressed period.

**Q61 Chairman:** So you are saying that the NAA and the QCA substantially changed the contract after you had signed it.

**Dr Tabbiner:** That is correct.

**Q62 Chairman:** With your agreement?

**Dr Tabbiner:** One of the issues as I looked at our side of the operation was that we were quite amenable to changes. In a number of instances, we put forward change orders, which was the required process under the contract. But we also made a number of changes on the fly, as we might have been asked to do in the course of a day's or a week's work under the process, for which we did not go through the rigorous process of seeking a change order.

**Q63 Chairman:** Standing on the sidelines, as members of the Committee felt we were, we got the impression—we all know about your formidable reputation in other parts of the world, including North America and beyond—that when you arrived in this country, the people who took you on thought that you would bring your whole operation from the United States and transplant a bit of it over here. The word that seems to have come out is that you did not do that and that you started a brand-new

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company here. You therefore ran into a lot of difficulties because you were almost a start-up company. Is that true?

**Dr Tabbiner:** It is important to recognise what has happened in the creation of this agreement. As you often have when you get a five-year agreement, you then begin to pursue the course of that agreement. This agreement was, in very large measure, a supply agreement, and that is the part we fulfilled—fulfilling a standardised test that was already created and using methodologies that were, in general, already accepted and dictated. We were then filling in certain supply elements—certain systems, delivery logistics and the accumulation and implementation of quality control—rather than fully developing the standardised methods that would be in the test. In that light, we used some people whom we already had, as well as building up staff locally. We also applied a significant amount of resources during the heightened period of the May, June and July time frame, when we ran into significant delays.

**Q64 Chairman:** Was there any element of that where you were working in a rather different culture from the one you are used to working in and where some local knowledge was missing on issues such as how many qualified markers there might be in a pool to do your marking at a time when there was an awful lot of marking to be done?

**Dr Tabbiner:** We have the good fortune to be working in 180 countries with many different cultures. We do standardised testing in Serbia, Egypt and Korea, so we have experience of many different cultures. The other thing that I would say in the context of how we approached our agreement with the QCA and the NAA relates to the issue of complete transparency. We looked to them to give us guidance and direction on some of the issues that might be encountered. In many instances, when we would implement efforts to resolve an issue, it was only later that the NAA would point out what had traditionally happened. We found that some of the useful information or data that would have helped to inform early decisions was not shared with us.

**Q65 Chairman:** Dr Tabbiner, looking at your date of arrival, it sounds a little bit like you came in when things started going wrong. You came over when things were in trouble.

**Dr Tabbiner:** I arrived in mid-May.

**Q66 Chairman:** May I switch to Andrew Latham who has been involved in the operation rather longer? When did you first think that things were going wrong?

**Andrew Latham:** We knew that we had challenges as far back as December, when we were pilot testing the marking solution. From that time on, we worked very closely with the NAA to try to address the issues that we saw arising.

**Q67 Chairman:** Was that before the NAA asked for any changes in the contract?

**Andrew Latham:** No. We talked about changes to the contract. The example that Dr Tabbiner used was moving to a face-to-face training model, but many other changes were asked for, such as the marking pilot test itself. In the contract that had been signed, we had said that we would do a small-scale pilot with focus groups of about 25 people or so just to demonstrate that the model worked. In fact, the NAA insisted on a very complex pilot with more than 800 different markers.

**Chairman:** We will drill down into a couple of those issues in a moment, but let us carry on looking at what happened.

**Q68 Mr Chaytor:** Dr Tabbiner, is this the first time that ETS has had to withdraw from a contract before its completion?

**Dr Tabbiner:** This is the first time that we have asked to withdraw from a standardised achievement contract, yes.

**Q69 Mr Chaytor:** Have you been asked to withdraw from a contract? Is this the first time that you have asked to withdraw? Have you previously been asked to withdraw?

**Dr Tabbiner:** No, we have not.

**Q70 Mr Chaytor:** There has been no previous experience such as this, in which the whole project has got into such difficulties that the contract was terminated?

**Dr Tabbiner:** That is correct.

**Q71 Mr Chaytor:** In your written statement to the Committee, you repeat the acceptance that there were technical and operational difficulties. Just now, you said that the difficulties were more operational than technical. You give two examples of work from schools being allocated to two different markers, or some markers not being able to access online the work of their students. Could you list all the operational difficulties of which you are aware, for which you or your company accepts responsibility?

**Dr Tabbiner:** One of the things that I would identify is that as you look back over a contract and you examine some of the issues that arose from the delays, we can say that if we had moved on into cycle 2, we would have made modifications to try to deal with some of the technical issues. For example, we had set up a process for the marker allocations. We did not bundle up the materials that were to go to the markers until such time as each mark was standardised, then we submitted the materials. In retrospect, that cost us some time. In a future year, we would pre-bundle the materials and they would be ready for standardisation. That is just an illustration. Another fact is that we had designed the systems in a way in which the schools had to fill in the student register. If a school did not fill in the register, the system was designed without a default for it, and there was an absence or a block that was left empty. When teachers went to enter the marks and they ran into that block, they had to call the helpdesk to deal with a registry issue rather than an online issue. In retrospect, that is something that we

would have made adjustments for, knowing that schools, in some instances, would not necessarily fill in all the data points. The next point concerns the return of materials. Markers were asked to put the marked scripts on the top of the box, which they did. We took them to be 100% marked scripts and returned the boxes, as appropriate, to schools. Later, we found that, in some instances, there were unmarked scripts in those boxes, which schools later returned to us. In a future circumstance, we would do a 100% visual inspection of the scripts.

**Q72 Mr Chaytor:** Should those operational difficulties not have been identified in the pilot scheme that was carried out last December?

**Dr Tabbiner:** We intended to do an end-to-end pilot run, but we were refused the opportunity to do that. All we were allowed to do was a small pilot on logistics with the schools in only 25 schools.

**Q73 Mr Chaytor:** Andrew's response just a moment ago was that one of the NAA's decisions was to extend the scale of the pilot, not to reduce it. Can you clarify that?

**Andrew Latham:** Sure; I was talking about the marking pilot in which we were supposed to demonstrate that the elements of our solution that were new this year were effective, such as having the markers actually enter their marks online or having the markers be trained online, which was totally separate from the logistics pilot.

**Q74 Mr Chaytor:** Okay. So the marking pilot took place last December and, if I can put this to Andrew, from your point of view was that completed successfully?

**Andrew Latham:** The marking pilot—yes.

**Q75 Mr Chaytor:** But when was the logistics pilot completed?

**Andrew Latham:** We never conducted a full scale logistics pilot in the end. We did a small scale logistics pilot where we sent some packages to a couple of dozen schools and said, "Does this packaging look right; does it work; are the instructions clear?" It was that level of pilot.

**Q76 Mr Chaytor:** So in retrospect should there have been a full scale logistics pilot?

**Andrew Latham:** Absolutely.

**Q77 Mr Chaytor:** But that was not specified in the contract.

**Andrew Latham:** No.

**Dr Tabbiner:** But we desired to do it and were refused the opportunity.

**Q78 Mr Chaytor:** Right. So you asked the NAA to do it.

**Dr Tabbiner:** If we could do it.

**Q79 Mr Chaytor:** If you could do it—for permission to do it. They refused for what reason—lack of time?

**Dr Tabbiner:** They asked us to do the small 25-school logistics pilot.

**Q80 Mr Chaytor:** Which you did?

**Dr Tabbiner:** Yes.

**Q81 Mr Chaytor:** Okay; and when was that done?

**Andrew Latham:** In February or March, I believe.

**Q82 Mr Chaytor:** Again, in retrospect, given that tests take place in the early summer, was February or March not too late to have completed the logistics pilot, whatever the size of the logistics pilot?

**Dr Tabbiner:** A number of facets of the contract were dictated for certain timing, but because of delays regarding the design of the online training and the design of contracts with teachers, we ran into severe delays. We lost three to five months, depending on how you look at that, in the cycle as a result of the NAA procrastinating around decisions, online training and the contracts for markers.

**Q83 Mr Chaytor:** In respect of the online training, then, you have said that there was a request to change the contract. Did the original contract not specify online training?

**Dr Tabbiner:** It did.

**Q84 Mr Chaytor:** Is that not a fairly major contractual change? Could you simply have refused to change the contract in that way?

**Dr Tabbiner:** You have raised a valid point. One of the things that I would say from our side—I would point to this as a responsibility of ours—is that we were too amenable to change without saying, "No, we won't do that." This is a classic example of that. By the time we were told not to do the training online—to do face-to-face training—we realised that the time frame meant that we would have to drive with complete focus and vigour to the goal of 8 July.

**Andrew Latham:** But I would add to that that we were very clear in cautioning that we felt that to make such a move would greatly increase the risk and was therefore not advisable.

**Q85 Mr Chaytor:** You have referred to a delay of maybe three to five months because of the change from online training to face-to-face training. When were you told it had to be face-to-face training? What was the time scale?

**Dr Tabbiner:** March.

**Q86 Mr Chaytor:** And when should the training have taken place?

**Dr Tabbiner:** May. The training still took place in May, but for us the rush was to find venues and staff, to obtain the materials, to conduct the training efficiently and to get the markers in place.

**Q87 Mr Chaytor:** So if you were told that the training had to change from online to face-to-face in March, did you then not point out to the NAA that this would result in a delay of three to five months and that the tests were supposed to be completed and reported by July? I do not understand the time scale there.

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**Andrew Latham:** We were worried that this was going to come to pass, so from January we had been advising, “Please don’t do this, because we really believe that the online is the way to go, and that you will greatly increase the risk if you do.” We assumed that that was what they were eventually going to do in March and that that was the decision they were going to come to, so we were trying frantically behind the scenes to line up venues and recruit trainers and others in that eventuality.

**Q88 Mr Chaytor:** Yes, but contractually you could have refused to have carried out face-to-face training and stuck with the online training.

**Dr Tabbiner:** Contractually, we could have used the change order mechanism, which is the way you deal with alterations from the original contract.

**Q89 Mr Chaytor:** This is my final question. Had the contract continued into next year—the next cycle—which of the operational problems would have been the most difficult to resolve, or do you think that they could all have been equally resolved in year two?

**Dr Tabbiner:** We certainly categorised and looked at process changes for cycle 2. The challenge that we would have faced is the lack of timely decision making. If it were said, “What you did in cycle 1, we want you to do in cycle 2,” it would be reasonable to capture those changes and successfully embed them in the design and planning. But the endemic amount of decision making and the challenges of timely decision making made it very difficult for me to believe that there was a probability that we would see success in cycles 2, 3, 4 and 5, which is why I said, “We either completely re-craft this contract, or you let us out.”

**Q90 Mr Chaytor:** When did you say, “We either completely re-craft the contract”?

**Dr Tabbiner:** Approximately mid-June. I cannot give you the specific date, but it was mid-June.

**Q91 Mr Chaytor:** Finally, at what point did you alert the NAA to your feeling that you would not be able to meet the July deadline, because of its request to change from online to face-to-face training? When did you first alert it to the fact that you felt you would not meet the deadline?

**Dr Tabbiner:** As I mentioned earlier, from the beginning we purposefully operated in a completely transparent fashion. The NAA had staff embedded in our organisation in Watford on a day-to-day basis. They had early morning briefings and meetings throughout the day, and they received all the management information that we saw, all the data that we saw and all the results day by day throughout this process, so we operated as if there were no divide between the two organisations in the context of ongoing and daily operations. When we knew data, they knew data; when we saw them, they saw them. So, it was not so much a point in time where we would say, “There are concerns”; we

identified specific concerns on decisions that were being made around implications, but the NAA was fully briefed and fully aware throughout the process.

**Q92 Paul Holmes:** Can I just clarify from what you said that you clearly asked the NAA to terminate your contract, rather than the NAA telling you that the contract was terminated?

**Dr Tabbiner:** I asked that we would mutually exit this contract, yes.

**Q93 Paul Holmes:** And you asked that in June?

**Dr Tabbiner:** I did.

**Q94 Paul Holmes:** So when Ministers and Ken Boston came before the Committee in July and I specifically asked them what the penalty clauses were for the company and so forth and they said, “That’s all ongoing,” and did not give an answer, they already knew that the contract was going to be terminated?

**Dr Tabbiner:** I cannot speak to the fact as to whether Ken Boston knew the contract would be terminated at that point; what I can tell you is that in my discussions with the NAA managing director, I said, “We either have to renegotiate the contract or we need to end this, because what we are operating under is not the contract we signed and contracted for.”

**Q95 Paul Holmes:** We can assume that Ken Boston and Ministers knew that but did not tell us when we asked them the question in July. In all the material that you have submitted, including the statement dated today, you emphasise your massive experience, that you started maths assessment 60 years ago, that you are very experienced, that you won the contract on quality and that the contract, as you have just said, was for delivery, logistics and quality control. We will talk about the quality later, but the delivery and logistics collapsed. How is it that such an experienced and qualified company oversaw that collapse? Are you saying that it is all down to the NAA changing criteria, contracts and requirements, or is some of it your fault?

**Dr Tabbiner:** Clearly, I would want you to leave today’s meeting with the view that we share responsibility. I am not here to place blame on anyone—it is for this Committee to determine the predominance of blame and who holds it. We are clearly responsible for activities and misses on the logistics and operational fronts.

**Q96 Paul Holmes:** On the logistics front, you seem to be saying that that is because the NAA would not let you run a full pilot, so was that its fault or your fault?

**Dr Tabbiner:** As I said in my opening statement, it is near-on impossible to pull out single factors and say, “That was the causative factor.” You have a confluence of issues that create a knock-on effect through a process, which had a dead end of 8 July. When you have that compounding effect of decisions and actions against a fixed time frame, you then spin out of control at that 8 July time frame with those compounding effects. Clearly, we have

responsibilities, and clearly there were shortcomings in how we dealt with them and responded to some of the issues on the table.

**Q97 Paul Holmes:** You said in the written statement that you thought you were taking over an existing body of qualified markers and that, in fact, you had not been told that there were problems in recruiting markers. Why had you not done the groundwork? Why had you not done a press search and found that, in every year since 2003, there had been problems and that delays and targets had not been met? Why did you not know that?

**Dr Tabbiner:** We did due diligence, but I submit that we probably did not do a sufficient amount. At the same time, during the tendering process and dealing with the NAA, when we outlined the fact that we wanted to use the online training method, we got into dialogues about some of the issues that had existed in the past. We were assured that issues, such as marker availability, were no longer problematic or would have been dealt with in large measure by some of the other programmes that we had put in place.

**Q98 Paul Holmes:** Again, I want to be clear. You continued to use the online training as planned for 5,000 experienced markers, but you said that the NAA insisted that you do face-to-face training for the 5,000 new or less experienced markers. Is that so?

**Andrew Latham:** No. The original plan was for the new inexperienced markers to attend face-to-face training, while the experienced markers in maths and science would be trained online. What happened was that the NAA asked us in March to make it optional and allow everyone to decide whether to do face-to-face or online training. We said that that could not be done, because it would double the cost and double the risk. We said that matters had to be decided one way or the other. The decision was to go with face-to-face training.

**Q99 Paul Holmes:** For the whole 10,000?

**Andrew Latham:** For the whole 10,000.

**Q100 Paul Holmes:** Dr Tabbiner, you have said that you put resources into the whole thing in May, June and July, when it became apparent that problems were emerging. Ken Boston said in July that when he started to look into things, the QCA found, for example, 10,000 e-mails that had not been answered and that that they were dealt with only because the NAA put in 70 members of its staff. Did you clear the backlog or did the NAA clear the backlog?

**Dr Tabbiner:** Frankly, the backlog in helpdesk e-mails and issues was not completely dealt with until such time as it was clear that the marking by markers at their home locations was over. We increased the helpdesk capability substantially. Originally, we had one helpdesk location, and we doubled the staff there. We added a second location and then a third location in Watford. We added a fourth location of folks in the US who just did outbound calling—calls to markers. We then added a fifth location that did nothing but e-mail responses 24 hours a day, seven days a week. We threw huge resources at the

helpdesk and then broadly at the whole project. The frank answer is that the helpdesk questions—the backlog—were not completely dissipated until such time as markers had finished their work at their home locations. The volume dropped off by virtue of lack of calls.

**Q101 Paul Holmes:** As for Ken Boston's apparent claim in the minutes of the meeting on 14 July that the 70 staff whom the NAA put in cleared it, are you saying that you put in a greater proportion of the effort that was made or an equal proportion?

**Dr Tabbiner:** A greater proportion. From the overall contract, we expected to have about 60 staff involved in running the project. At its height, we had more than 400 staff.

**Q102 Paul Holmes:** How can such an experienced company—which you keep emphasising that you are—have made such a miscalculation in that you thought 60 staff would do, but you needed 400 in the end?

**Andrew Latham:** The decision-making delays and losing five months in the cycle mean, in effect, that we should not have had to deliver the results until November. To catch up that kind of distance, we had to be prepared to put a significant amount of additional resources into play.

**Q103 Paul Holmes:** So, you are back to saying that the most significant factor behind all the problems was a five-month decision-making delay, which was the responsibility of QCA and NAA.

**Dr Tabbiner:** That is certainly one illustration. Other illustrations compounded the impact.

**Q104 Paul Holmes:** Finally, at exactly what point did you realise that you would not meet the 8 July deadline?

**Dr Tabbiner:** We recognised that, and informed the QCA late on 25 June.

**Q105 Chairman:** Can we just clear up one thing that came out of that? You came to the UK in what month?

**Dr Tabbiner:** Mid-May. I took over responsibility for the NAA as a part of my role as director and chairman of the Supervisory Board of ETS, the global subsidiary.

**Q106 Chairman:** So you were in charge of the relationship with the NAA?

**Dr Tabbiner:** That is correct.

**Q107 Chairman:** Andrew, you were here the whole time?

**Andrew Latham:** That is right.

**Q108 Chairman:** At what level were you talking? Who were you talking to on a daily and weekly basis in the QCA and the NAA? What sort of people? Andrew first.

**Andrew Latham:** On a daily basis, I would deal with my counterpart at NAA, the project director, who is at a level below the managing director.

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**Q109 Chairman:** Okay. Who was that?

**Andrew Latham:** His name is David Barrett.

**Q110 Chairman:** When you arrived, Philip, everyone must have said, “Wow! The boss is coming from America.” Who were you talking to?

**Dr Tabbiner:** Most of my interactions were with David Gee, who is the managing director of the NAA.

**Chairman:** Thank you for that. Fiona.

**Q111 Fiona Mactaggart:** I am interested that you have described the problems that you faced as being largely operational, rather than technical. However, when I speak to markers, I hear tales of really frustrating technical problems, such as not being able to enter marks and not being able to get the right screen for the scripts. I do not want this issue to be avoided, because it seems to me that it cannot be anyone else’s fault—it is your technology, which you developed. So will you tell us about the extent to which those matters were part of the problem and why they were so bad?

**Dr Tabbiner:** Certainly I can fully appreciate markers’ frustrations and the issues that they faced. One of the distinct advantages of trying to do the online training was giving markers the opportunity to work with the system and practice with it before having to go into it with the marking process. The markers did not have that opportunity, which created issues. As I said earlier, there were also technical issues. I know from the helpdesk calls and the e-mails that we received that those issues really frustrated markers. As they had to standardise and then conduct their quality assessments every 80 scripts, they would run into situations where the pupil data did not match the registry data, which would create a freeze. Then they would have to call the helpdesk, for which, as we have already discussed, there was a very heavy backlog, which they may not have been able to get through. That might have driven them to trying to circumvent the problem or to making their own work-throughs, which was not something that a marker was really able to do. So it was a very frustrating process if a marker hit a stop point in the programme. Programmes such as this one are designed with fairly rigid decisions or criteria. In cycle 1 you try to look for the exceptions or break points to the rule and make adaptations for cycle 2. That problem was compounded by our not being able to provide the online training that we would have liked to have provided, and also by some of the mismatches on the attendance register that created the hit points for teachers.

**Q112 Fiona Mactaggart:** Presumably you were told why they wanted markers to have the option of face-to-face training. What was the reason that you were given?

**Andrew Latham:** The concern was that markers would not like online training and therefore would not participate in the process. They were afraid that too many people would not sign up.

**Q113 Fiona Mactaggart:** You are putting a lot of weight on that decision causing some of the problems. I am prepared to accept that it probably did cause quite a number of these problems. I am wondering how hard you pushed back, if you see what I mean. Did you make clear to the QCA the consequences of doing that? If not, why not? Very often, for people who do not understand the technology, it is not their job to understand the technology and therefore the consequences in terms of the operational aspects, the technology and the potential for frozen screens, and so on. That is what you know; they do not need to know that, because that is not their job. Unless you push back and say, “These are the consequences that we foresee,” the QCA is likely to think, “Oh well, this will be nice.”

**Andrew Latham:** I did not push back hard enough. I certainly made it clear that I did not think that that was the right move and that it increased risks. If I had known the consequences—I underestimated how negative they would be—we would not have proceeded.

**Q114 Fiona Mactaggart:** How did you make your views known?

**Andrew Latham:** Through conversations and e-mails.

**Dr Tabbiner:** There were a number of other circumstances regarding, for example, data feeds. We had set times when we were supposed to download the data over to the QCA for it to look at as we got closer and closer to the 8 July date. There were prescribed dates. But there was a point in June when, outside those prescribed dates, the QCA demanded that we do a data run every single evening. It took our data staff from approximately 8 pm through to the morning to do it, clean it and make it available for observation. I formally stated that that was an issue and that it could and would severely damage our ability to hit the prescribed data runs for 4, 5, 6, 7 and 8 July. The answer was, “Do it.”

**Q115 Fiona Mactaggart:** Was that subject to the formal change process that you discussed with us?

**Dr Tabbiner:** In that instance, I said to the QCA that we would be willing to do it—that it would have to pay. It agreed. But I also informed it of the potential risks that it would create.

**Q116 Fiona Mactaggart:** Ken Boston told us that it was your fault—that is in the general summary of his evidence. You say that specific changes that the QCA made contributed significantly to your failure to deliver on time. We have heard of the change to the training, and we have now heard of the extra data runs that you had to provide. What other specific changes were made that compromised your ability to deliver on time?

**Dr Tabbiner:** On the attendance register, the whole plan and outline was that schools were required to fill in “Absent” or “Present” for every student. As the time came to inform the schools, the QCA did not allow us to say that they were “required” to put it in that way, rather that it would be “preferred”. That

may seem like a simple change, a simple difference, but if schools took a default and did not put in the student register, that had a very significant impact in terms of the data running. It had an impact on the helpdesk, because teachers ran into problems in marking and would then call the helpdesk, but the helpdesk was not designed to handle attendance register—it was designed to handle other technical issues. So that is another illustration of some of the changes and issues that we faced that had significant knock-on effects for the project.

**Q117 Fiona Mactaggart:** Would it be possible for you to provide the Committee with a list of dates when things were changed?

**Dr Tabbiner:** Just to clarify, are you referring to dates when things were changed or dates that were different?

**Q118 Fiona Mactaggart:** Dates when it was agreed—sometimes informally and sometimes formally—that there would be changes to the agreements that you had achieved in the initial contract about the way you did things regarding, for example, the additional data run and the change in the training. I would be interested in seeing a list of the changes that in your view had an impact on your ability to deliver. I realise that that will take you time, but you must have it somewhere.

**Dr Tabbiner:** There are certainly large-measure changes that are categorisable. As I mentioned earlier, by virtue of the co-mingling of staff and of having people working together in a transparent fashion on a day-by-day basis, one of the distinct disadvantages—this was my observation coming into this in May—is that an ongoing dialogue develops over the course of many months of working together, so change can happen in a fairly straightforward, ubiquitous manner, which makes it more difficult to characterise and demonstrate. However, the answer is yes on large-measure changes.

**Q119 Chairman:** Fiona is only asking for the significant ones. Can you supply that list?

**Dr Tabbiner:** Yes, we can.<sup>3</sup>

**Q120 Fiona Mactaggart:** I am hearing that the level of engagement actually caused some of the problems. The level of embedding of staff caused problems, you suggest, because the accountability went back to different places and therefore got slightly muddled—I think that that is what you are telling me. This is not an uncommon arrangement in such contracts for public service issues. Are you suggesting that it would be wrong, in future, for a government agency or department to expect an operational contract from a private company to work in such a way, with seconded staff and a more intimate relationship than you might have had elsewhere?

**Dr Tabbiner:** It is not my role to opine as to what the Government should or should not do.

**Q121 Fiona Mactaggart:** No, we will decide. I am just interested in what your view is.

**Dr Tabbiner:** What I can say in this situation—I am not qualified to answer more broadly than this—is that with regard to us, rather than the Government, we needed to recognise that it was a supplier-buyer relationship, where we were providing supply, and that notwithstanding the co-mingling and ongoing dialogues and relations, we needed to say, “Right, that’s a change order, and we have to have it signed off and dealt with in that manner.” That is how I propose that it would be best handled in future.

**Q122 Fiona Mactaggart:** So you are basically saying that the suppliers need to have more clear procedures themselves, as a routine, in order to deal with this relationship?

**Dr Tabbiner:** Correct.

**Q123 Fiona Mactaggart:** I suppose the thing that I find most concerning about your evidence is the suggestion that the NAA withheld vital operational information, such as the availability of markers. From our point of view, that is an important issue of public accountability. I would like you to be very specific about what that information was, why you did not know it, and what you believe the NAA’s duty was to inform you of those matters.

**Dr Tabbiner:** The issue that I would use as an illustration is the number of markers who provide marks for Key Stage 3 English. We found that after signing the contract on the understanding that that was not going to be a problematic group, it was in fact problematic. It was later stated that that is an historical fact.

**Q124 Fiona Mactaggart:** All you need to do is read *The Times Educational Supplement* to know that. You do not have to be a detective.

**Dr Tabbiner:** We also found that same issue regarding the attendance register in schools. As I have said, we were not allowed to say, “You must fill in the attendance register,” but only to say that that would be preferred. We later found that that was a documented relationship issue, and that in previous contractor experiences with a different system it was handled by using a postcard system later in the cycle. That information was not known to us at the front end of this contract. All that damaged the time frame, and in some instances it damaged relations with markers and markers’ view of our capabilities.

**Q125 Lynda Waltho:** I am particularly concerned about IT. At our meeting on 14 July, I asked Ken Boston whether the IT was overly ambitious, because it was my experience, having spoken to markers, that they felt that that was a very great difficulty. He said that he thought it was not ambitious enough. Indeed, he said that although there was a pilot, once it was upscaled, that is really when it hit the fan, so to speak. Scripts were marked in hard copy, with data entered electronically, rather than being marked on screen, which is what we mostly have with GCSEs and A-levels. An organisation such as yours, with operations in more

<sup>3</sup> Supplied in confidence. Not printed.

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than 180 countries, presumably has this level of engagement across many markers. Whose decision was it to have a split between hand marking and data entry? Was that specified in the contract, or was it completely up to you how you delivered things?

**Dr Tabbiner:** No, that was specified in the contract. The request for proposal was online training with hard-copy marking and then entry by teachers. That is what we bid for, and that is what was set up.

**Q126 Lynda Waltho:** Do you do that elsewhere?

**Dr Tabbiner:** We certainly do paper-and-pencil testing in other tests in other countries.

**Andrew Latham:** As part of the contract, we were asked to prepare two innovation cases for future innovations that the QCA would want to introduce: one was for a full online marking solution, where the papers are scanned in and everything is marked online; the second was for delivering the tests via computer. The intent was that these innovation cases would be implemented during the five-year course of the contract. When we began exploring those cases with the QCA over the summer and talking about a timeline for when we could implement them in 2007, it said, "Hold off on the innovation cases. We're not going to proceed any further with those at this point." That was in the fall of 2007.

**Q127 Lynda Waltho:** So had the relationship worked a little better and things had worked out better, how would you have developed the system for the next cycle? Where would you make your innovations?

**Dr Tabbiner:** One of the things that we do is capture the exceptions that were asked for throughout the process and then make adaptations because of those exceptions. We saw that we had to make exceptions to handle the pupil register, so, in cycle 2 we would have adapted the technology to make a decision in the absence of a notation that the pupil had taken the test. Later, we also had to do split allocations with markers, which was mentioned earlier. Some markers were not able to access information online, because they had a split allocation with another marker. We would have adapted the system to allow two markers to enter results from one school in a certain subject.

**Q128 Lynda Waltho:** Have you ever had such a catastrophic breakdown, as appears to have happened here, in any other country or system?

**Dr Tabbiner:** As I said earlier, this was such that we felt that this was a contract that we had to withdraw from, and we made that case clear.

**Q129 Lynda Waltho:** And the changes to the contract? Have you ever experienced that under any other system?

**Dr Tabbiner:** To my knowledge, this is a significant change in the way the contract was originally let. All contracts have some adaptation, but the nature, tone and tenor of this was beyond that which I had seen previously.

**Lynda Waltho:** Thanks very much.

**Q130 Mr Carswell:** I may touch on one or two points that you have touched on before, but I want to be absolutely clear. In your view, was there a significant difference between the contract that you signed and the contract that you ended up being asked to deliver?

**Dr Tabbiner:** Absolutely.

**Q131 Mr Carswell:** Had the NAA and QCA known what they wanted straight up, would that difference have been avoided?

**Dr Tabbiner:** Had they known what we ended up working through, the contract would have been different, and it would have been a completely different outline.

**Q132 Chairman:** Do you agree with that Andrew? You have been here throughout the whole cycle.

**Andrew Latham:** One point of evidence I can point to is that we went through a nine to 12-month procurement process, where we would go back and forth designing the contract and exactly what the solution would be. Within the first six months or so of winning the contract, five significant change orders were put to us saying, "Could you examine this change?" I remember thinking at the time, "Why didn't this come out during the previous nine to 12 months?"

**Q133 Mr Carswell:** So the client not being clear in their mind would be the way some people might characterise things, and you would not disagree with that.

**Andrew Latham:** I would not disagree that what was wanted evolved over time.

**Q134 Mr Carswell:** Just one thing I may have missed: why did you ask to be released from the contract with the QCA?

**Dr Tabbiner:** It was very clear to me that the contract was not what we were operating under. As I mentioned earlier, we are a not-for-profit organisation. The cost burden of this contract in cycle 1—and the fact that it was not going to be different in cycles 2, 3, 4 and 5—was such that it was prohibitive for us.

**Q135 Mr Carswell:** Apparently, you have repaid a substantial amount of the fee for your services in 2008. How much?

**Dr Tabbiner:** The settlement agreement was £19.5 million.

**Q136 Mr Carswell:** That is paid back?

**Dr Tabbiner:** That is what we paid as a settlement agreement.

**Q137 Mr Carswell:** Do you have a view of the conduct of the QCA and its head, Ken Boston? Are they up to the job?

**Dr Tabbiner:** That, I would submit, is for someone else to consider.

**Q138 Mr Carswell:** Given your experience around the world—in Egypt, Korea and wherever—do you have a view about the process and how we need to change the process to avoid this sort of public policy procurement failure? Do other countries have a better process of public procurement contracts? If so, what is it that they do differently?

**Dr Tabbiner:** I was not here during the procurement process. I know that it was lengthy, involved and complex. I do not believe that it is the procurement process, but the implementation of a contract. If a contract is implemented as written, in large measure, things will go much more effectively.

**Q139 Mr Carswell:** Were you always clear—I do not mean as individuals but as a company—as to who was working with whom, where the reporting lines were, and who had oversight on each side of the fence? Was that always clear?

**Dr Tabbiner:** Certainly, from a contractual and operational view it was very clear who the relationship management person was, and who the next and the third escalation points were. From a functional group beneath Andy, there were straight relationships from our team to folks at QCA or NAA.

**Q140 Mr Carswell:** Do you think that they were always quite so clear as to who was in charge on their side of the fence?

**Dr Tabbiner:** When you say “on their side of the fence”, do you mean our staff?

**Mr Carswell:** No, the QCA and the NAA people.

**Dr Tabbiner:** I know that there were times when it was very clear and we got good feedback. There were times when we had more than one person responding on a specific item with a differing view, giving us differing directions.

**Q141 Mr Carswell:** Being quite a new Member of the House of Commons, I am quite surprised at how remote this whole process is from any elected, democratically accountable Minister. That personally surprises me. Does it surprise you?

**Dr Tabbiner:** When you say this process, do you mean the procurement process?

**Mr Carswell:** Yes, and the management and oversight of it.

**Dr Tabbiner:** It is for the Government to determine how it should best be operated in the public trust.

**Q142 Chairman:** Just on that point, as you have been giving evidence, it strikes me that, as grown-ups, we all know that with vast contracts such as this, stretching over five years and costing £156 million of taxpayers’ money, there is bound to be both give and take. You were two teams working together. This could have worked out absolutely fantastically, could it not? Day to day, you have to have an embedded relationship in something this complex. You seemed to know quite late on, Dr Tabbiner, that things were going wrong. You say that you arrived in May. You decided—you did not make it clear at what level—that you were going to withdraw from

the contract in June. You must have been pretty worried to come over in May and realise what was happening.

**Dr Tabbiner:** I would submit that part of the reason why I was asked to take on this project was that we saw some of the risks and we were aware of them. They asked for me to have oversight and to come in and provide my perspective.

**Q143 Chairman:** So how early on after you arrived in May did you meet Ken Boston?

**Dr Tabbiner:** I did not meet Ken Boston until mid-July.

**Q144 Chairman:** Mid-July? Surely, if things were going as wrong as you say they were, you would have been banging the desk and saying, “I need to speak to them.”

**Dr Tabbiner:** I spoke with David Gee. That was the person whom I interacted with on a high-frequency basis.

**Q145 Chairman:** You never thought that a £156 million contract to your organisation—whether it is not-for-profit or not—was so important that you should have gone to see Ken Boston.

**Dr Tabbiner:** It was very clear that the escalation of the contract called for the interactions with David Gee, and that is the pursuit that I had.

**Q146 Chairman:** Andrew, you never thought that that was necessary—that really going for the top on this would have been advisable.

**Andrew Latham:** No. I felt that my responsibility was to inform my counterparts at NAA. I had some interactions with David Gee as well, and then some to escalate the issue within my organisation, so that Phil and my chief executive officer and others were very closely apprised of what was going on.

**Q147 Chairman:** We will turn to the future, then. Some things you have said worry me, in the sense that schools are schools. In your business you must know that schools are inefficient—sometimes. They can be average, brilliant, sometimes awful, but they will fill in the forms and do things. That is your business and you should have anticipated that. You should have known about the markers issue, but if the decision to move from online training to face-to-face training was so crucial, you should have gone to the top and said, “Come on: this changes the whole nature of the contract and will end with serious consequences.” At what stage did you say that—really robustly? Surely you should have done. Andrew, you were here.

**Andrew Latham:** I reiterate what I said earlier. When the decision was being made, I advised, “I really think this is the wrong move and increases risk,” but, in fairness, I did not anticipate how badly it would impact us. I underestimated the negative impact.

**Q148 Chairman:** Someone on the NAA must have said to you, “Look guys, this has got to change.” Who was it? Who said it?

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**Andrew Latham:** I believe that the decision was probably made by David Gee, working with David Barrett. Based on the pilot test, they made the decision: “We feel people won’t like online training, therefore you have to make it optional.”

**Dr Tabbiner:** The other thing is that from our interactions with, and feedback from, David Gee and David Barrett, it was very clear that they were in communication with people up-line from them and with Ministers, because they were certainly asking us for data and information going to meetings. So we were of the view that the information we were passing on in a very transparent way was being used and harnessed throughout their organisation, much as we were escalating issues in ours.

**Q149 Chairman:** But I wanted to get back to you on the heart of the problem, which seems to be markers and marking. I have listened to every word of your evidence, and something seriously went wrong with markers and marking. You were already pretty stretched in looking for qualified markers, especially in English, so did someone in the NAA suspect that a new online marking system with which markers were unfamiliar would deter even more markers from trying to do the job?

**Dr Tabbiner:** Clearly, the heart of the whole contract is markers and marking; that is the essence of the kernel of everything that we had to do and everything that the QCA was concerned about. But there is no doubt that there were times when we thought an assertive approach would have been good, but that was not necessarily a shared view. I can appreciate that aspect, too, because we did not want to be off-putting, so we also reflected on the NAA’s historical views about how best to approach schools, markers and circumstances.

**Q150 Chairman:** But, Dr Tabbiner, you are professional managers, and it seems to me that at some stage something went wrong with your professional management. Otherwise, explain to me why you have walked away from this contract—on quite generous terms, it seems to me, from looking at the figures—with the Government and the QCA. You have not robustly said, “Look, we were unfairly treated, we shouldn’t give an inch.” You have made big financial concessions to walk away from this contract.

**Dr Tabbiner:** Looking at contracts and ending contracts is a business-related decision, and as I said earlier, I looked at the losses that we were facing in cycle 1 and could see only continuing losses in cycles 2, 3, 4 and 5. This year we have lost £50 million as a result of this contract. We are a not-for-profit organisation: we have no shareholders and we are not traded on a public stock exchange. We are not in a position to absorb £50 million losses per annum, so for us it was a business decision and that was the most expeditious one.

**Chairman:** Thank you.

**Q151 Paul Holmes:** We have established that there were three parts to the contract—delivery, logistics and quality control—and that delivery and logistics,

whoever’s fault it was, was a shambles and went belly up, but you are saying that quality control is better this year than it has ever been. You say in the written statement, “We can confirm that the quality of markers in 2008 was . . . higher than in previous years. We introduced a more rigorous method of certifying markers”. Do you stand by that?

**Dr Tabbiner:** Yes, I do. The marker pool and the work that the markers did and the effort they put forward was very good and we appreciated their perseverance through some very challenging and difficult times. I would also point to the quality control measures that we put in place. At the end of their training, markers had to go online and standardise, and then every 80 scripts that they entered, they were called on to do a qualification check and it was determined whether they could continue or not, so every 80 scripts a quality control step was introduced into the process.

**Q152 Fiona Mactaggart:** How many failed that step?

**Andrew Latham:** Four hundred and five—about 4%.

**Q153 Fiona Mactaggart:** Out of how many markers?

**Andrew Latham:** About 10,000.

**Q154 Paul Holmes:** The National Association of Head Teachers sent round yesterday a summary of the hundreds of e-mails and phone calls it has had from head teachers during the summer period. I have here 30 edited highlights, of which I shall read just three or four. A Barnsley school says the quality of the marking is “abysmal”. A Rochdale school says there were 30 marking mistakes out of 56 pupils’ papers. The markers were “unable to apply the marking criteria accurately”. Weak candidates were given the same marks as strong candidates; that is a Yorkshire school. Warrington’s primary strategy managers recommended that all their English papers be returned. The quality of marking is “very low, sending 24 papers back, marking shows a complete lack of understanding of marking scheme”; that is Northants. There are also comments from Nottinghamshire—it just goes on and on and on. How do we square what the head teachers are saying now they have the papers back and what you are saying? You have said the quality is better than ever and the head teachers say it is worse then ever.

**Dr Tabbiner:** All I am able to tell you is that we put in quality control steps throughout this process. There was one immediately after training, so that everyone had to standardise, and then every 80 scripts there was a stop and check as to how folks were doing vis-à-vis a quality standard that was applied to every one.

**Andrew Latham:** I would like to point out a significant difference from the past model of quality control whereby the markers self-selected their own scripts up front. They would send a set at the very beginning and they would send a self-selected script at the very end. They would send them to their own individual team leader, who would evaluate them on an individual basis, whereas we were using a national standard, an objective set of scripts that were marked by the most senior leadership in advance, so

everyone was being evaluated against the same standard and if you did not meet that standard, you were not allowed to go on. It was much stricter than has ever been used in the past.

**Q155 Paul Holmes:** But was that not in effect what has always happened? I was a teacher for a long time and marked exam scripts for a long time. You always had the team leader, an experienced examiner, who produced sample scripts and you all marked them blind and then compared what you had done. Why is what you have done any different?

**Andrew Latham:** No, my understanding of the model that was used in the past for the NCTs was that the markers themselves would select the ones that they wanted to send in and then they would send them in to their team leader. It was not the team leader who was selecting them.

**Q156 Paul Holmes:** Well, perhaps I am thinking of the old days when they used to get together face to face and do it round a table over two days. There is a huge discrepancy between what head teachers are telling the NAHT and what you are saying about the quality. How will we establish what the truth is?

**Andrew Latham:** That is what the reviews process is for. If teachers or head teachers feel that the marks are not accurate, they send them in for the reviews process—to be re-evaluated.

**Q157 Chairman:** Is a larger number of papers than normal coming back for review?

**Andrew Latham:** I do not know the answer to that because that is something that the NAA—*[Interruption.]* Yes, we are no longer doing the reviews.

**Q158 Paul Holmes:** Looking ahead to the next year, someone else now has the contract just for one year while the Government rethink the whole thing. Will they use the same systems that you have set up—IT systems, delivery, logistics—or will they start all over again?

**Dr Tabbiner:** They are not going to be using the IT systems we have set up.

**Q159 Paul Holmes:** Is that because you, under the contract, are saying, “You’re not using our system,” or because they have said, “This system’s not working. We’ll start again”?

**Dr Tabbiner:** I have no idea what they have said to the NAA.

**Q160 Chairman:** But Dr Tabbiner, others have told the Committee that you offered them the technology and the stuff that you pioneered this year and they did not want it.

**Dr Tabbiner:** When you say “they”, do you mean the other company?

**Chairman:** No; the QCA and the NAA. You offered them the kind of technology and intellectual property that you developed over this first year, at a price, and the QCA and NAA were not interested in that.

**Dr Tabbiner:** That is correct.

**Q161 Paul Holmes:** What parting advice would you offer to the new one-year contractor so that they avoid the shambles that you say was imposed on you by the QCA and NAA?

**Dr Tabbiner:** I think, given the timetable that they now face, that having a crisp, well-detailed end-to-end project lined up and well documented is the only way they are going to be successful at this juncture.

**Q162 Mr Chaytor:** In terms of the number of scripts and the value of the contract is this the largest contract that ETS has taken on board outside North America?

**Dr Tabbiner:** Outside North America I believe that to be the case, yes.

**Q163 Mr Chaytor:** And within North America how does it compare to other contracts?

**Dr Tabbiner:** It is not our largest contract.

**Q164 Mr Chaytor:** Do you think there are problems in terms of the size and scale of the assessments that we have? Is there something intrinsic about the sheer volume of assessments and scripts that we are trying to manage in one contract?

**Dr Tabbiner:** No, I do not think so.

**Q165 Chairman:** Dr Tabbiner, you are in a sense an outsider, coming from the United States, with all this experience, of, I think, 80 countries—I think Lynda over-egged it a bit when she said 180; it is 80, is it not?

**Dr Tabbiner:** It is 180.

**Chairman:** A hundred and eighty?

**Dr Tabbiner:** That is correct.

**Chairman:** Well, with all that experience, tell us—as someone who has come to our country and whose contract has gone wrong, you have something of an overview, from 180 countries; you have looked at the way we administer tests, and the way we test and assess: have you any general feeling about the kind of testing and assessment regime that we run in this country?

**Dr Tabbiner:** Well, first I would point out that at ETS we develop and live by standardised testing each and every day, so I tell you straight out we are proponents of standardised testing. I would also say that for the future of the tests we have, I think online marking—not just online training—would be a very viable way in which to do this volume and to have a higher level of success and lower risks in the transit of materials and the training of individuals.

**Q166 Chairman:** That is interesting; but when you look at us, compared to the 179 countries you work in, do we test and assess too much?

**Dr Tabbiner:** That is really a public policy and educational decision.

**Q167 Chairman:** But you are an outsider; you are a very experienced educationist. You have amazing experience in the education world. Do you think you can go to a system where you have too much testing

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and assessment, so that in a sense you teach to the test and drive away from access to a broad curriculum?

**Dr Tabbiner:** We are large supporters not only of testing at a summative level, at the end, but also of formative testing, which is testing throughout the process.

**Q168 Chairman:** So you do not think we test too much.

**Dr Tabbiner:** No.

**Q169 Chairman:** Lastly, do we have to have the sort of bureaucracy we have had this year and for many years? This is not company-specific. Could not the tests be delivered locally? Could we have a national test administered in schools where the teachers know the pupils? The tests can be set nationally; why not mark them in the schools? Why do we have to have an environmental disaster of all these scripts running around the country? Would not it be better to do it locally, administered nationally, in a lighter way?

**Dr Tabbiner:** We certainly, as I said, believe in the use of formative testing through process, but we also believe in the value of summative testing, so I submit

to you that from a public policy or educational policy perspective the Government have to determine which suits the needs that they have got.

**Q170 Chairman:** But that does not answer the question whether this could be done locally. We could still have both kinds of tests but they could be delivered and dealt with much more locally, could not they?

**Dr Tabbiner:** You could certainly use a standardised test and deliver it on a local basis, and then accumulate it up from there.

**Q171 Chairman:** What do you think, Andrew?

**Andrew Latham:** Are you talking about the marking of the assessment, because it is delivered at a local level in that sense? It certainly is a viable model and can be done. Of course, what you lose if you do that is the concerns about national comparability of a purely objective set of markers marking the assessments.

**Dr Tabbiner:** But if you then roll it up and it gets marked online, I think that you accommodate that.

**Chairman:** Right. We have had a very good session. Thank you very much for your full, frank answers to our questions. We look forward to keeping in touch with you as we write up your report.

**Dr Tabbiner:** Thank you very much for your time.

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*Witnesses:* Isabel Nisbet, Chief Executive, and Kathleen Tattersall OBE, Chair, Ofqual, gave evidence.

**Q172 Chairman:** May I welcome Kathleen Tattersall and Isabel Nisbet of Ofqual to our proceedings? You are not as unfamiliar to the Committee system as the previous witnesses, so we do not have to ride you through the process. However, Kathleen, I will give you a chance to say a few words to open the session. You have been sitting here, listening to the proceedings, and, knowing your background and that of Isabel, I know that you will have looked at every bit of evidence that we have had in this inquiry already, so you will be well primed. Kathleen, may I ask you to say a few words to open the session?

**Kathleen Tattersall:** Thank you very much, Chair, for inviting Ofqual to give evidence today. As you know, we are the new regulator for examinations and tests in England. In our interim form—that is, before the legislation governing us is passed—we are part of QCA. We began our operations on 8 April 2008, with myself as the chair and Isabel as the acting chief executive. Before Ofqual came into being, regulation was undertaken by the regulation and standards division of QCA and Isabel was the director of that division. This summer, we have monitored both the national curriculum tests and the A-level and GCSE examinations. We have had a very successful summer with A-levels and GCSEs. Sadly, that was not the case with the national curriculum tests, where there have been some very well documented problems. We share this Committee's disappointment that the delivery problems were such that many students are still waiting for results, as was said earlier. It is unacceptable that pupils and schools did not receive those results in the time scale

that was laid down. However, I must say, as an evidence-based regulator, that there were many processes in the national curriculum tests this year that were successfully delivered. You heard about some of them earlier. They included the delivery of the test papers themselves, the printing and delivery of 10 million of those papers to schools and the administration of the tests by the schools themselves. So the pupils at that point had had a good experience. I think that it is also important to note that the plans that were in place for controlling the quality of marking were better than in previous years. However, the marking process is the heart of testing and examinations. Communications with schools and markers and the data entry processes all went badly wrong. We have set up an independent inquiry, as you know, led by Lord Sutherland. He will be looking at the whole of the processes, including our actions as the regulator. The DCSF has also asked Lord Sutherland to report to it on areas outside our remit. We are continuing to monitor the national curriculum tests and NAA's management of the review process. However, from the processes that we have observed so far, we believe that the quality of marking is as good as in previous years. We will, of course, be looking carefully at the reviews. Going forward, the priority is to regain the confidence of teachers, pupils and the public in national curriculum tests. To do that, we will be looking carefully at the 2009 series and monitoring it carefully to ensure that pupils get what they deserve. We want to ensure, as far as we can, that the problems that have been experienced this year do not recur in 2009. Thank you, Chair.

**Q173 Chairman:** Thank you, Kathleen, but you have not said anything about what went wrong. You heard the evidence that was given to the Committee just now and you know about the evidence from the QCA. Who do you think made things go wrong? Was it an inefficient contractor or too much interference from the NAA and the QCA?

**Kathleen Tattersall:** The evidence that we have all heard today is the first time that I have heard ETS give its side of the story, so there is clearly something there to be absorbed. But from my point of view not only as chairman of Ofqual, but previously as the chief executive of a very large awarding body—the AQA—I know that at the heart of any testing and examination process are the communications with markers, the management of those markers and the management of the scripts. In terms of the problems that we experienced, the way in which markers were managed and dealt with throughout the marking process was very much at the forefront. It is difficult to recruit markers, and you always have to be acutely aware that these are professional people who want to do a good, professional job, but that they are doing that job over and above the job that they hold as teachers, so you have to treat them in a very professional manner. Some of the stories that we have heard would suggest that markers were very upset by the way in which they were treated, so that is one of the aspects. There are also the basic logistics—the movement of scripts from schools to the markers concerned. Again, there was some evidence that the scripts in particular subjects did not make it to the markers of that subject and had to be redirected. There was also evidence that some scripts did not make it at all to markers. I would have thought that one of the basic requirements of any system of assessment and examination is that there is a checking process to ensure that everything is out with the markers. So the logistics around script movement—getting the scripts back to the warehouse and checked for marking—and the handling of markers are at the heart of the problems. But I would emphasise what I said in my statement, which was that as far as the training of markers was concerned—regardless of what was said about whether it should be online or face to face—what we observed was very good, and that has led us to the view that the quality of the marking should be okay.

**Q174 Chairman:** But Kathleen, with great respect, you were the chief executive of the AQA and you heard representatives of a similar organisation giving evidence to the Committee just now, saying that they had signed a contract and that that contract was quite dramatically altered, which made it difficult for them to deliver on the basis that they thought they were going to deliver, particularly in terms of the training of the markers. Was it your experience as the chief executive of a major examination board that that is normal? Would the QCA or the NAA dramatically change the nature of a contract after you had signed it, when you were actually running the operation? Did that happen to AQA?

**Kathleen Tattersall:** The examination system is slightly different. Certainly, the awarding bodies do not operate under the same contractual arrangement with a local education authority as ETS did. In terms of the contract, the events that were described happened before I joined Ofqual, but my colleague Isabel might be able to throw a bit more light on the issue.

**Q175 Chairman:** If that contract had been changed dramatically, would you not have been shocked?

**Kathleen Tattersall:** I would not expect a major part of the requirements to be changed unless it was clear that the process was not working as it should do, in which case it would be very foolish to continue with whatever was there in the contract. There would need to be in place a fallback system to enable all the processes to go forward. If online training caused a problem—with your permission, Mr Sheerman, I shall ask Isabel to talk about that—there would have been no point in persisting with it because we might well lose the very people whom we wanted to retain in the marking system. Throughout an examination cycle, including the awarding bodies as well as the national curriculum tests, things do go wrong and one has to be fairly nimble footed to change tack to accommodate that. Things do not always go as smoothly as we plan. As for online testing, I would rather Isabel commented on that.

**Isabel Nisbet:** In February 2008, Ofqual, the regulatory part of QCA, attended a meeting with the NAA and ETS when they reported back on a pilot that they had been doing on different aspects of quality assurance.

**Q176 Chairman:** What date was that?

**Isabel Nisbet:** It was 21 February 2008. On that occasion, one of the things reported back on was the online trials of the online training of markers. The response of the markers to that was poor. The conclusion at the meeting was that it would be better to give them the option of face-to-face training. The regulatory part of QCA and I agreed with that judgment. The reaction to the online training was not good. In addition, the regulator was not responsible for the detailed scrutiny of the contract, but we were monitoring how everything was going overall. A lot of things that went wrong later were not about training, but about parcels not being checked before they were sent out, for example. I should say that, as regulator, we had great difficulty getting good data on where all the scripts were.

**Q177 Chairman:** Who was responsible for the details of the contract, if you were not?

**Isabel Nisbet:** The contract was between the NAA and ETS. We were not supervising the contractual aspects. Our duty, as set out in our regulatory framework, was to look at the quality and to make sure that the tests were delivered in a way that would command confidence.

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**Chairman:** Thank you for those opening responses.

**Q178 Mr Pelling:** I shall ask some basic parameter questions. What was the role of the regulator in the actual procurement of the contract with ETS?

**Kathleen Tattersall:** The procurement process was long before Ofqual came into existence. Again, I ask Isabel to comment on that.

**Isabel Nisbet:** As regulator, my part of QCA did not have any formal part in the contractual process. The proprieties of the contracting were overseen by the Office of Government Commerce, which reported on it several times. Our responsibility was to make sure that our regulatory requirements were met. They are that the levels are properly set; the standards are properly made; the quality of the marking is good; and the tests are delivered in a way that meets the standards of previous years. Clearly, a lot of the things in the contract were to do with that, but the actual contracting was not overseen by us.

**Q179 Mr Pelling:** I presume that, if the processes of the procurement were so limited, there would have been no oversight role for the regulator.

**Isabel Nisbet:** It is fair to say we oversaw the whole delivery of the tests, but we were not monitoring the contract. We were not a contract checker. Our requirements are set out in our regulatory publications, and those are the issues that we were checking against, not the terms of a contract.

**Kathleen Tattersall:** It should be said that our regulatory role was in respect of NAA. That is where our regulation falls. NAA managed the contract with ETS. That is the line of accountability.

**Q180 Mr Pelling:** When did you, as regulator, become aware of the problems with the testing cycle in 2008?

**Kathleen Tattersall:** The testing cycle itself is clearly between May and June: students take the tests in May and the marking follows. Certainly at a fairly early stage in that process, towards the end of May, we were very aware that there were problems that were likely to slow down the marking process: getting the scripts to the correct markers, getting on with the marking, and getting the scripts back. At the time that all those concerns were raised, we had assurances that the date of delivery of results back to schools was not in question—that it would be met—but by the beginning of June we were very concerned about the resources required to deliver the tests on time. Isabel wrote to David Gee—I think it was on 3 June—about the delivery of tests, and as a result NAA made available more resources to back up the ETS operation. If you go back to earlier points in the cycle, when we expressed concerns about communication with markers and the resources available—this is going back to January 2008—again, NAA put in a lot more back-up to help the ETS. So we played a role as a regulator. So NAA was very responsive to many of the concerns that we had. In answer to your specific question, it was around the beginning of June that we were really voicing those concerns, and indeed by 16 June, when we

wrote to the Department, it was clear that we had real concerns that we were not going to meet the deadline.

**Q181 Mr Pelling:** So what do you feel are the most significant causes of the delay in delivering the results? I have heard some clear differences in nuance between you and the earlier witnesses.

**Kathleen Tattersall:** Yes. I only today heard ETS speaking directly about this, and I do not particularly wish to comment on that or get involved. From our point of view, the marking was slower than it ought to have been, scripts did not move around as quickly or efficiently in the system as they ought to have, and the checking of the marking did not appear to be as efficient as we would have wished. Isabel may be able to add some other points from her detailed operational side, but that is my view as the chair and as someone who has been involved in examinations.

**Isabel Nisbet:** One other factor is that the complicated nature and the logistics of what the markers were being asked to do on the system was just too heavy a load to bear. They were having to enter every item separately—millions and millions of items—and that system was too complicated and too burdensome for them. I know that that is a conclusion that NAA has also come to. Expecting markers to make an entry for every single question, every single item, on a system that they found quite difficult to work with just imploded. That is one of the major burdens on the system.

**Q182 Mr Pelling:** So the emphasis on good quality training is important?

**Isabel Nisbet:** Yes.

**Q183 Mr Pelling:** You stated that you had concerns back in February. Do you feel that there should have been earlier intervention on the contract, as you were aware in February—having looked at the pilot with the online approach—that the training process was in trouble?

**Isabel Nisbet:** I think that what we concluded was that even at that late stage NAA was right to ask for the option of face-to-face training. I do understand that that would have meant setting up a lot of things quite quickly and that it would have been a risk, but the other risk would have been the roll-out of the effects of the pilot, when a lot of the markers were not reacting well to the online training. What they were being trained to do was quite burdensome, and, with hindsight, one lesson for the future is that item-level entry is not really practicable.

**Q184 Mr Pelling:** The timetable for training, in terms of altering the approach and putting proper training in place, was likely to have been a three-month run-in, rather than one month, which is something that we heard earlier. Is that correct?

**Isabel Nisbet:** Yes, I cannot speak for the details, but I could certainly look into that further and come back to the Committee if you would like us to look at that.<sup>4</sup>

**Q185 Mr Pelling:** We would be grateful for that. So the QCA is blameless in all this, is that right?

**Kathleen Tattersall:** I really find it very difficult to answer that question, which is one of the reasons we have asked for an independent inquiry.

**Chairman:** This is an independent inquiry.

**Kathleen Tattersall:** Sorry, Chair. I do appreciate that and I appreciate the authority of this Committee, but in terms of who did what, it is somewhat difficult to unravel the process. There are questions that we would ask regarding who did what and when, and what our own role was in that. As to whether anybody comes out of this blameless, it is quite possible that there will be some responsibility borne by all the parties concerned, because everybody had a responsibility for different aspects of what went on, both in terms of the contract and the management of the ETS. NAA—part of QCA—is responsible for that management. For our part, regarding the regulation that we applied, what we want to know and what we want an independent person to judge us on, and you may yourselves make this judgment, is: whether we asked the right questions at the right time; whether we evaluated in a proper manner the answers that we had; and, lying behind that, whether the management systems for giving us all the information were appropriate for the task. That in itself might be one of the problems.

**Q186 Mr Pelling:** Do you have a view on whether the degree of change that was required within the contract is something that is experienced elsewhere, internationally?

**Kathleen Tattersall:** That is something that I cannot comment on; I am sorry.

**Q187 Mr Pelling:** To the extent that you feel that the NAA would have had a more hands-on role in this process, do you think that it is inevitable that if there is culpability, the NAA is going to carry more culpability than the QCA?

**Kathleen Tattersall:** The NAA is the body that was responsible for the management of the contract. In terms of the response to our regulation, as I indicated earlier, the NAA put in an enormous amount of resource to back up the ETS to deliver the contract. That was at an early stage, as well as later in the process. From our point of view, the NAA has done all it can to avoid the problems that happened in June and July. Clearly, what it did was not enough to prevent the problems becoming manifest, but it was very responsive to the problems that we highlighted and it put in the resource where it could.

**Q188 Chairman:** Okay. A cynical outsider might say, “The NAA would do that, wouldn’t they?” Everybody was surprised when a new player from America, with no experience of the UK, was given

the contract by NAA. NAA was responsible for the contract and the word on the street was that it was made at a much lower price than any of the other bidders. Indeed, we heard—astonishingly—that the American team lost £50 million on the contract this year. The NAA appointed these people and quite soon worried about whether they could deliver, so it is not surprising that it put a lot of support in early. The two things cannot be separated, can they?

**Kathleen Tattersall:** ETS has a very good reputation internationally—I have to say that. Certainly, it was an organisation that I was aware of as a chief executive and it has enormous experience: not just in the states but, as it made clear in its evidence, across the world. So I rather suspect that it was somewhat of a surprise that, in this particular contract, things began to go wrong. Again, however, it may be that Isabel, from an operational perspective, has a better idea than I have about the answer to that question.

**Isabel Nisbet:** The first year of a new contract for any organisation is a heightened risk, and it was made explicit between us and NAA that we would expect them to take extra care in the first year of a new contract to ensure that it went well. If that meant outposting people to get the right results for pupils, then that was the right thing to do. There were similar problems, tensions and high risks in the first years of other contracts in history.

**Q189 Lynda Waltho:** You quite rightly said earlier, Isabel, that the regulator does not have a direct role in procurement. However, Ken Boston did say that there is a role to advise, support and warn. I am wondering why—perhaps you have some ideas on this—the regulator waited until February 2008 to advise, support and warn that markers would not like online training, and also why they did not advise, support and warn about how difficult it was to recruit markers in particular areas. Why do you think that that advice did not come sooner, rather than later?

**Isabel Nisbet:** There had been regular exchanges between the regulator and NAA about aspects of the tests. Those exchanges did not start in February; they go on right through the year, including exchanges about aspects of the tests to do with markers. There was a clear set of pilot exercises that NAA, with our agreement, had asked ETS to conduct, about the quality of marking. There were a number of things that ETS was trying out. One of them was this online training of markers. That issue came to its culmination in February, but it had been going on for several months before. It was the report of that pilot scheme that was presented to the meeting in February, which I referred to. So things had been going on before February. I was surprised to hear this morning that our guests from ETS were surprised at the issues around recruitment of markers because, rather like Mr Chaytor, I felt that that was a well-known background fact about the system.

**Q190 Lynda Waltho:** It just feels all a bit muddy to me, Chairman. For something so important, there just seems to have been a very big delay in knowing

<sup>4</sup> See Ev 31

and agreeing the basis of a contract in which online training and marking was presumably specified, and then realising that the markers were not going to like it. It just seems to me rather unprofessional or even irresponsible that there was such a gap. I am finding it hard to absorb that. With all of these conversations and e-mails that were happening before, do you think that they were at a level that was almost unnoticed, and therefore the concern was not going up the chain to the people who really should know? I just cannot work out why there was such a gap.

**Chairman:** It does all seem a bit messy, Isabel, does it not?

**Isabel Nisbet:** Yes, I think that there are issues about the number of layers in this system and whether they are really working well. In what was my division, I had a team of five people looking at national curriculum tests. They had day-to-day exchanges with the NAA, whom we regulate against these documents. Now, if there were concerns coming up, they would report those up the line. We monitored risks, as we do in Ofqual, and there would be a time when we would take a judgment that this matter is really so seriously wrong that I need to raise it with David Gee, for example, and there were several occasions when I did that. However, I understand what you are saying and we are learning lessons from this situation, too.

**Chairman:** What we are getting the feeling of is that it was all a bit cosy. When we did the Building Schools for the Future inquiry, in a previous Committee, we learned one real lesson: if you are going to build a decent school, you need a good client. So it is all very well to blame the operator—the person who is building the house—but if you are not a good client, you do not know what you want, you do not set the parameters and you do not do all that well, then you can end up in a bit of a mess. I hope that when you contribute to this whole evaluation, you will not spare the client as well as the operator.

**Q191 Mr Slaughter:** Do I understand that you are saying that you are too remote from the procurement process to answer questions about ETS's employment and performance?

**Kathleen Tattersall:** I do not think that it would be right for the regulator to be part of the procurement process itself. It would be proper for the regulator to have expectations of the nature of the services that would be required in any given contract, but it would not be right for us to be part of the actual procurement process. As Isabel said, the OGC oversees that process.

**Q192 Mr Slaughter:** In terms of commenting now and helping us to understand what went wrong, is it reasonable for us to be asking you such questions?

**Kathleen Tattersall:** We find it very difficult to comment on the procurement process for the reasons that we have given. In terms of what we can comment on, it is the aspects of the tests that we have regulated. As I said to Mr Pelling, the regulation falls on the NAA. As Isabel said, there are several layers

here: the deliverer, the body managing the deliverer and the regulator. We have to think very carefully as to whether that enables us to regulate effectively. Let me compare it with what happens in awarding bodies. Awarding bodies might have contracts for some aspects of their work, but the heart of what happens there—the marking process, the training of the markers, the taking of the scripts and getting the results back to the schools—is undertaken by the body that is regulated by Ofqual. There are some lessons that we need to think about, such as what the process of regulation should be in national curriculum tests.

**Q193 Mr Slaughter:** And who is policing whom.

**Kathleen Tattersall:** Yes, exactly.

**Q194 Mr Slaughter:** We will be coming on to quality, which you will have more to say about. While we are on the operational side, you heard—I am afraid that I missed part of the ETS session—that the changes in the contract, post-letting, were so great that it was unable to cope. I am not entirely sure whether that was simply the process of change in a short time, or that the requirements were so onerous that it was not resourced or equipped to do that. Can you comment on that at all? Can you say whether you think that is right and whether that is the main explanation, and even if it is, do you think that the contract was under-resourced for what ETS was originally asked to do, or whether it was the right sort of contractor and had the capability to do what was asked?

**Kathleen Tattersall:** If I can answer the last part of that first. As a huge organisation, as we know ETS to be, with a great reputation in America and elsewhere in the world, I would have thought that it was the sort of organisation that could manage a contract of this size.

**Q195 Mr Slaughter:** That seems to be an important point: all the things that went wrong, ETS was capable of getting right.

**Kathleen Tattersall:** I would have thought that any experienced organisation dealing with examinations and tests should, to use an earlier phrase, be nimble-footed enough to accommodate changes. No examination series goes to plan. Things go wrong and they go wrong at the last minute. You have to put in all the resources at your disposal to get things right in order to meet the deadlines. In my own experience, I have been there. You have 48 hours before publication and you put in everything in order for people to get their results.

**Q196 Mr Slaughter:** So unless it was out of character, what happened? Is it because it was under-resourced or because it was asked to do something that it was not prepared to do under the terms of this contract?

**Isabel Nisbet:** I cannot speak for the changes to the contract because the regulator was not involved in those processes. What I can say is that a lot of basic things did not work, not just about markers but about systems, management information, the fact that it has been so difficult to know where all these

scripts are, even to today, and the fact that the communication was so poor. I would make a judgment that those were systemic things that went wrong throughout. They are not all a matter of resource.

**Q197 Mr Slaughter:** But they do not just happen.

*Isabel Nisbet:* No.

**Q198 Mr Slaughter:** What we are trying to get to is this: whose fault is it?

*Isabel Nisbet:* I cannot say that those were all the result of contract changes. I have no evidence for that. I cannot comment on those. If you ask whether the problems of data, not opening parcels and poor communication with the markers were because of lack of resources, that might have contributed to them. All I know, as a past member of the executive of the QCA, is that the rigour of the procurement process, which I was not involved in, was of a very high quality and was overseen by the OGC.

**Q199 Mr Chaytor:** Can I come back to the meeting of 21 February, when the results of the pilots for online marking were reported? It is agreed by both sides—ETS and the NAA—that that was a key moment when the decision was taken to scrap the online training and move to face-to-face training. ETS's whole defence seems to hinge on the fact that it was told by the NAA to scrap the online training and that lost it between three and five months in the whole process. It did not explain to us earlier this morning that the reason why it was told that was the poor response of markers to the online training. At the meeting of 21 February, did ETS point out that it would cause huge delay to the project if online training was scrapped in favour of face-to-face training? Did either you, as the then head of the regulation and standards division, or the NAA make any comment on that in terms of the likely impact on meeting the 8 July deadline?

*Isabel Nisbet:* The answer to that, Mr Chaytor, is "Not to my memory." I was at that meeting and it was a presentation by ETS of the results of the pilot. There was some discussion with the NAA and ourselves, and then we as a regulator went away to decide what we thought about it. There were some other things as well as that point about the online training of markers. I do not recall that being said, but we will go back now and check the records to see whether there is anything I can say to—

**Q200 Mr Chaytor:** Okay; and do you recall any subsequent occasion when ETS was absolutely specific about the scale of the delay that would be caused if online training was replaced by face-to-face training?

*Isabel Nisbet:* I have just been passed a note. In fact, ETS was not at the particular meeting that I was talking about. I am sorry—I misled the Committee. It was the NAA reporting what it had said to the NAA, so it was a meeting largely with members of staff of the NAA and us.

**Q201 Mr Chaytor:** But you were present or some staff from the regulation and standards division were present?

*Isabel Nisbet:* Yes, we were. If you ask me whether the NAA reported to us that ETS had said that this would lead to a long delay, I do not recall that, but I will check.<sup>5</sup>

**Q202 Mr Chaytor:** My next question is, did you or your representatives or the NAA ask what would be the time implications of scrapping the initial plans for online training and suddenly moving to face-to-face training, given we are talking about—

*Isabel Nisbet:* I do not recall that we did.

**Q203 Mr Chaytor:** Can I ask about the regulation and standards division? The functions of Ofqual are essentially the same as the functions of the division. It has just been taken out of the QCA and made more independent. I am interested in the relationship between the regulation and standards division and the NAA, because in terms of Ofqual, you have been in existence only since April 2008, but the work of the division has been going on for a number of years and the NAA has been formally in existence since April 2004. What is the exact relationship between what are essentially two divisions of the QCA over the last four years and particularly in terms of considering the standards implications of the processing or the progression of particular contracts? At what point, as the head of the regulation and standards division, were you able to say to the NAA, "We think there are standards implications in the way this contract is being implemented"?

*Isabel Nisbet:* When regulation was passed to the QCA, there was a framework that was set out, that we regulated the NAA as if it were an awarding body, but within the QCA; so on particular issues of standards, like, for example, the level setting, what would happen is that there would be a lot of discussions between my staff and the NAA about the technical parts of level setting. The NAA would make a proposal to Ken Boston, then I and my staff would come in afterwards and say what we thought about it from the point of view of the regulatory division, and then an overriding QCA decision would be made, Ken having listened to the advice from my people and from the NAA. The difference now, with Ofqual, is that we are doing the same functions, but with quite different governance and accountability; so now that does not happen that I report to Kathleen and we make our separate judgments and communicate them separately.

**Q204 Mr Chaytor:** In terms of the standards implications of quality of marking, would you have been expected to report your concerns about that to the chief executive of the QCA? If you had concerns about marking or the training of markers, would that have been an issue for you?

<sup>5</sup> See Ev 31

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**Isabel Nisbet:** Yes. I would first of all normally have notified David Gee if things were escalated to me from the team. I did that on several occasions on different matters, and they took action each time. If I felt it was getting more serious than that, the next step would be for me to raise it at the top of the QCA.

**Q205 Mr Chaytor:** But coming back to the timeline and the 21 February meeting when you gave a report back of the concerns about the online training of markers, you said you wrote to David Gee on 3 June about the delays. There is a long time between 21 February and 3 June. Was it not until 3 June that you were seriously concerned about the possible delays because of what you had seen in respect of the training of markers?

**Isabel Nisbet:** There were other exchanges with the NAA from the regulator about issues including, for example, some of the communications issues with markers, which we wrote to the NAA about in January. Also there were some aspects about the load that the data system for marking was having to bear. As a result of each of our interventions the NAA did things: for example it put some extra resource in on the communications side in January, and did some load testing that we had asked for. So in each case there was an exchange when something happened. What happened in June was that after the young people had sat the tests and there had been reported delays in getting to mark them there began to be accumulated reports of things going wrong. As the chairman said, in mid-June we took the view that there was overall now on balance a high risk that the results would not be delivered on time. That is when we did ask Ministers.

**Q206 Chairman:** Just to nail this down, can we have a list of the number of interventions you made, and when you made them?

**Isabel Nisbet:** Yes, we can send that.<sup>6</sup>

**Q207 Chairman:** Because what is worrying me, as someone who is listening to both lots of evidence, is that there were reports in the press that things were not going well quite early on. You as regulator, we would have thought, would have been on the case.

**Isabel Nisbet:** Yes.

**Q208 Chairman:** It seems that it is in the May–June period that suddenly everybody realises it is all going to hell in a handcart—Dr Tabbiner flying over in May, and by June saying, “We want to walk away from this contract.” You as regulator should surely have known that by then.

**Kathleen Tattersall:** In answer to Mr Chaytor’s question about what happened between February and June and your request for a list of the exchanges, you will find that there were almost weekly exchanges about problems, but that those problems were isolated problems that we dealt with. It was not something that sat around and suddenly appeared again in June. Things were being handled on a day by day basis by Isabel and her staff and there were

lots of exchanges of e-mails about particular issues and the responses to those particular issues. It was not as if there was a great big hole and a great big silence at that point. I think that the importance of late May and June is that we were now in the period when the pupils had taken the papers and it was getting to the marking period, and the getting of the scripts to markers, and so on. That is when things began to escalate, and the problems really did begin to pile up. Earlier, we heard the reference to the helpdesk and the number of e-mails that were being received about particular problems.

**Q209 Mr Chaytor:** How long did it take to conduct the face-to-face training of all markers? Presumably, it did not start until well after 21 February.

**Isabel Nisbet:** I do not know the answer to that, but I can provide it to the Committee.<sup>7</sup>

**Q210 Mr Chaytor:** That seems an incredibly short time scale, given that markers were being trained only after 21 February for a set of assessments that had to be done and dusted by July.

**Kathleen Tattersall:** Can I just make a general point, although the note that is being passed to Isabel might have the answer? Generally, when we talk about training the markers, we are actually talking about training them on the live scripts, as well as any preparation that might be done for that; it is the point when markers are standardised, when they are there with live scripts and they know what the standard is. It is not as though the training had to take place at the end of February; there is a longer period than that to regroup your resources and look at how a different system might work. But Isabel has an answer that has been given to her, which might very well contradict what I have just said.

**Isabel Nisbet:** Not at all. I am advised that the bulk of the training was in early May. My own staff attended 18 of the meetings—a lot of them were on different subjects and happened concurrently. There was one day per session, so markers would go to a one-day session. A lot of that was at weekends, and we observed 18 of those meetings.

**Kathleen Tattersall:** If I can just draw on my previous experience, Isabel has just confirmed that when you get all your markers together—Mr Holmes has been a marker, so I think he will understand what I am saying—you get the scripts in and you get all your markers organised into groups with senior markers. They go through a session of marking the scripts against the mark scheme and they have a discussion about the mark scheme. They come away from that able to understand and apply the mark scheme. As was described earlier, you then have an exercise on the process of the marking, which enables you to be sure that the markers are keeping to the standard. In the three months, or whatever it was, between the stopping of the online marking and the point where markers were being standardised, it was possible for the alternative arrangements to be put into place.

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<sup>6</sup> See Ev 32

<sup>7</sup> See Ev 31

**Q211 Mr Chaytor:** There is an issue about the training involving the standardisation of marking, but was there not also an issue about the training dealing with the new software? Isabel, you expressed concern about the sheer volume of input that was required and you indicated that the software was over-ambitious.

*Isabel Nisbet:* Yes.

**Q212 Mr Chaytor:** So when was that training done? At what point were markers trained in the handling of what you consider to be over-ambitious software? Was that done in early May as well?

*Isabel Nisbet:* I believe it was at the same time, but I will check on that and come back to the Committee.<sup>8</sup>

**Q213 Mr Chaytor:** Finally, with the benefit of hindsight, do you think that Ofqual should have issued a warning notice earlier than it did about the potential danger of not meeting the deadlines?

*Kathleen Tattersall:* If I may, I will answer that. Up to the point where the pupils took the tests, things went relatively smoothly—there might have been problems, but they were addressed. So we are talking about the approximately six-week period from the point where the pupils have taken the test to the point where results come out. It is about three weeks into that period that the concerns that we expressed begin to manifest themselves. That was an appropriate time for us to begin to say what we did; it would have been quite inappropriate to make a prejudgment at the very beginning of the marking process that things were going to go wrong, because we did not have the evidence at that point. It is when we have the evidence that the scripts are not getting to the markers and that the markers are bogged down by the itemised material that they have to record that we begin to say, “Are we going to make 8 July?” At the beginning, we were being given assurances that we would, but by the end of May, beginning of June, we began to ask, as we did of David Gee, “Are we going to make that date?” We got some further assurances, but we were sufficiently worried to put in place an accountability meeting with the NAA on, I think, 3 July, which I chaired. That was an indication of the seriousness with which we were taking things. In June, we made those noises to the NAA and to the Department, and unfortunately our fears proved to be well founded. However, we were given assurances that the deadline would be met. It was a much later stage when other people began saying, “No, it is not going to be met.”

**Q214 Mr Chaytor:** Was it the triumph of hope over experience, given everything that you had observed over the previous few months with the operation of ETS?

*Kathleen Tattersall:* This is a situation in which some things were good. We observed some things that were good, and in spite of what has been said about the organisation of the training, the training itself was good. We were also impressed by their online benchmarking and the standardisation of the

marking. We were very comfortable with some things, but on the question of hope over experience, when we began to observe what was happening with the slowness of the marking and with the movement of the scripts, our experience said, “We are really concerned that we are not going to meet that date.”

**Q215 Paul Holmes:** These test results are crucial for schools. Teachers get their performance-related pay—“professional pay” or whatever it is called these days—on the basis of results. Schools can be praised or threatened with closure on the basis of results. Ofsted, when it turns up to inspect, has number-crunched all this and come along with preconceptions on the basis of these results. Are you confident that the results are accurate this year, or, as even ETS claims, better than in previous years?

*Kathleen Tattersall:* We have said that we believe that the quality of marking is at least as good as in previous years. That is our current position. The judgment is based on the training, which we have mentioned, on the level-setting, all of which was observed by Ofqual staff, and on a realisation that the markers themselves are not new people, but people who have been in the system for quite some time. New people will, of course, join the system, but, generally speaking, we are talking about people who have marked before. We are very aware that teachers are making other statements. I have had meetings with various teaching unions. I am aware of the great concerns that schools have, and I very much sympathise with them. However, we, as Ofqual, have to distinguish the difference between the quality of the marking and the quality of everything that surrounded it, which is what we are trying to do. We will monitor very closely the review process, which began in July, because those schools that had their papers and results back at that point would have put in their request for a review. Schools that are getting them back still have the time to do so, too. We will look at what goes on, and we will be very interested to know the proportion of level changes, because it might lead us to a different view. However, we want to keep ourselves to the evidence, and, at the moment, the evidence is that the quality of marking is at least as good as last year.

**Q216 Paul Holmes:** But why are you so confident, when the delivery and the logistics were a shambles; when the training got off to such a bad start; when there were lots of stories in the educational press about experienced markers resigning, saying, “I’m not having any part of this”; when people had to be recruited at the last minute in the summer—after 8 July, when everything should have been done and dusted and they were dragging people in to catch up on the backlog; and when unmarked papers are still turning up? It beggars belief that the quality will be as good as in previous years.

*Kathleen Tattersall:* As I have said, we are trying to draw a fine line between all those surrounding problems, which caused a lot of anguish for teachers and others who were handling the situation, and the quality of the work by people who were in the system. Those people in the system, whether they

<sup>8</sup> See Ev 31

were recruited later or at the normal time prior to the taking of the tests, will have received the same quality training. Our belief is that that quality training and the systems to weed out markers who did not continue to meet the national standard, namely the benchmarking exercises, are of good quality and will have assured the system that the markers who mark are good markers and that the marking should be trusted. We might find problems at the review stage. If there are, clearly Ofqual will look at them, and we are open to revising our judgment, if we have to.

**Q217 Paul Holmes:** We have a non-scientific sample from the National Association of Head Teachers. Of 26 reading papers, 22 were marked incorrectly; all English papers were wrongly levelled; 14 out of 29 papers were returned; and so on. Is there a qualitative assessment at that stage to show whether more complaints and more papers are being returned than at the equivalent period in previous years?

**Kathleen Tattersall:** My understanding at the moment is that we are not in a situation in which more papers are requested for review, but I would have to ask Isabel for the detail.

**Isabel Nisbet:** I am advised that normally in previous years about 1% of the papers come back with requests for review. So far, it looks like being a bit above that, but we will not know until about a couple of weeks down the line, because all the September ones are coming in now. The NAA has set up a new database. We have asked for weekly reports on the outcomes of the reviews, particularly the changes, and we expect to see them this week.

**Q218 Paul Holmes:** So there appears to be an increase already.

**Isabel Nisbet:** A slight increase, yes.

**Q219 Paul Holmes:** But a number of the heads in the NAHT report said that the new system this year discourages schools from sending as many papers back. Under a new system that discourages sending papers back, there have been more than previously.

**Kathleen Tattersall:** I understand that from my meeting with the NAHT, and we have raised the issue with the NAA. All “artificial barriers” to requesting reviews have been removed, so the NAA responded to that.

**Q220 Lynda Waltho:** All that has happened so far clearly has implications for you, as a regulator. Once you are on a statutory footing, what might you be able to do to avoid a similar situation next year or in subsequent years? What have you learned? Obviously, I understand that we have to wait for Sutherland, but how you can avoid such problems in the future? What could be your role?

**Kathleen Tattersall:** If I can answer first, perhaps Isabel can then come in with some of the detail. I hope—this is regardless of whether the legislation is in place—that we can look at how we manage the regulation of the NAA in a more systematic way from next year. Isabel referred earlier to treating the NAA as an awarding body. I think that we have to

do that by working with the NAA as we do with the awarding bodies in GCSE, A-level and vocational areas to identify the risks and agree between us the management of those risks, and we also need to consider the systems underpinning the delivery of the examinations. If we consider the documentation that Isabel held up earlier—the codes of practice and so on—the emphasis is very much on the quality of the test, the quality of the marking and so on. We have to broaden that, and we do not need legislation to do so. We need to do that anyway, regardless of when the legislation comes through. As a regulator, we expect to have greater powers to direct an awarding body to take a particular course of action in the interests of maintaining standards, and in the interests of the pupils and the students who do the tests and the examinations. At the moment, we do not have those powers and my expectation, as chair, is that we would be given powers of that kind, so that we could exercise them in the interests of pupils and students.

**Lynda Waltho:** Thank you.

**Isabel Nisbet:** We have not waited for anything, but we have already asked for extra resources from the Department to beef up our resources for looking at the next year of the NAA’s management of the tests. It will clearly be a new contract, probably for one year. There is risk there, and we need to have people to look at the systems. The other thing is that at the end of July I put in place weekly accountability meetings, which I chair with the NAA, to keep track of exactly where things are moving, and I propose to continue those for the foreseeable future. That is an escalation. That is not a normal regulation, but these are not normal times, and so we will be continuing with that.

**Q221 Chairman:** Kathleen and Isabel, when did you make the decision to call in Lord Sutherland to conduct an inquiry?

**Kathleen Tattersall:** It was following my meeting on 3 July with the NAA, when it was apparent that the 8 July date was in great jeopardy. It seemed to me that given the importance of the tests to pupils—and also to teachers, schools and parents—that this was an issue that was so serious that we needed to try to bottom out all the issues, including our own role. As a new independent regulator, we want to learn from the experiences of this year and be able to apply ourselves in the future in ways that will be very effective in all regards. So we felt it best not to have just an internal inquiry about what had gone wrong, but to call in an independent person of standing—Lord Sutherland—to take evidence and to reach an objective judgment as to where the balance of responsibility lay for particular parts of the process going wrong. We also asked him to say—as part of the brief—whether Ofqual had acted in a timely manner. Did Ofqual ask the right questions? Did it evaluate the answers in the right way? Could Ofqual have done more? That was why we did that, and that was the timing.

**Q222 Chairman:** What were your communications with the ministerial team, before you made that judgment?

**Kathleen Tattersall:** Before we made that judgment, we did not have any communications with the ministerial team. Clearly we informed Ministers, because we have always taken the view that there should be no surprises, and it would be wrong for us to do something so momentous that it became a surprise in the public domain without alerting people. But we were very conscious that that was our decision and that we were going ahead with it.

**Isabel Nisbet:** I certainly told officials that that was what we had decided. As the Committee may know, after we had made that decision Ministers decided that they too would like to ask Lord Sutherland to report some conclusions to them and so, with Lord Sutherland's agreement, the approach taken was a single inquiry with two reports.

**Q223 Chairman:** There was communication with the Department, which would have informed Ministers. So Ministers knew what you were doing.

**Isabel Nisbet:** Yes.

**Q224 Chairman:** And they decided to join you.

**Isabel Nisbet:** Yes.

**Q225 Chairman:** I take it that Sutherland is getting his teeth into it already. Is he not constrained by the evidence that we had from the contractor, the ETS, that it is still constrained by the contract and is not fully liberated to frankly discuss with Lord Sutherland what really happened?

**Kathleen Tattersall:** It was the first that I had heard of that, today, and I was really alarmed. It seems to me that in order to get a complete picture, Lord Sutherland—and the Committee—needs to have the evidence from all parties. I hope that whatever the restrictions are, they will be lifted to enable ETS to give evidence.

**Q226 Chairman:** There are great threats and opportunities around now for you, as a regulator. Were you conscious that when you, the new independent regulator, asked Sutherland to have a look at this that from the outside, a lot of people might see the QCA, the NAA and yourselves as being a bit cosy? You have shared roles with the QCA—Isabel certainly has. It does look a bit cosy. Although you are only a shadow regulator in one sense, because the legislation has not yet been made to make you absolutely official, the first thing that you have done as a tough, independent regulator is ask somebody else to be independent.

**Kathleen Tattersall:** In a strange way, that absolutely demonstrates our total independence. As a regulator that is quite separate from the QCA and the NAA, we believe that something quite serious has gone wrong, and that we might be part of it, in terms of whether we asked the right questions, timing and so on. Bringing someone in to look at what went wrong demonstrates that we have the courage of our own convictions. There needs to be objectivity in considering the totality of the evidence, and we need

to be inquired into, too. That demonstrates a strength on our part, because we are willing to subject ourselves to public scrutiny as well as having others subjected to that public scrutiny.

**Q227 Chairman:** You did not think that this Committee had the ability to do that?

**Kathleen Tattersall:** At the time that we set up the inquiry, there was no suggestion that there was also going to be a Committee inquiry about this.

**Q228 Chairman:** You must have known that the Select Committee on Children, Schools and Families was bound to investigate.

**Kathleen Tattersall:** I am very pleased that this Committee is looking at the issue, but I still think that it was right and proper for us, as the regulator, to ask a person of such standing as Lord Sutherland, from outside the system, to look at the issues and to report to us.

**Q229 Chairman:** Kathleen, Lord Sutherland might be outside the system, but he does not have the powers that we have as a Select Committee.

**Kathleen Tattersall:** Indeed not.

**Q230 Chairman:** Indeed, people can give evidence to us in a free and frank way here, that they cannot give to him. You will know that, because the legal basis of our relationship with the witnesses is different.

**Kathleen Tattersall:** Yes, I understand that completely, but I think that asking Lord Sutherland to look at the issues and report to the Ofqual committee gives us a good basis to go forward, in terms of ensuring that our regulatory authority and actions are effective in the future.

**Q231 Chairman:** So you will be taking the report from this Committee and from Lord Sutherland very seriously indeed?

**Kathleen Tattersall:** Indeed.

**Q232 Chairman:** Well, when we come to discuss the legislation that puts your organisation into a formal context, after the Queen's Speech, the threat and the opportunity are that if your actions and reports are seen to be robust and independent, it will be a lot easier to vote for the legislation.

**Kathleen Tattersall:** We hope that what we have demonstrated so far is that we are robust and independent. Indeed, I do not think that we would be talking about the national curriculum test in this way, were we not in ourselves so robust and independent.

**Q233 Chairman:** But Kathleen, if we look at the record, your opening remarks were very diplomatic about the NAA. If there is not a proper and robust evaluation of not only what the contractor did, but how the NAA and QCA operated as clients—were they too interfering, did they get it wrong, was there something flawed in the process of choosing the contractor?—you know as well as this Committee that you will be dogged by a question mark over your independence as a regulator.

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**Kathleen Tattersall:** I fully appreciate that. That is why we want to really get to the bottom of where responsibility lies for what has happened in the 2008 national curriculum tests. We are taking this failure very seriously, and we want to investigate that in the manner that we have indicated and to place the Ofqual committee in a position to act. If that involves taking up issues with the NAA and the QCA, we will do so in a very independent manner.

**Q234 Chairman:** Even if that includes robust criticism of colleagues you have worked with for many years?

**Kathleen Tattersall:** Even if that includes robust criticism, yes.

**Q235 Chairman:** Right. When can we expect the Sutherland report?

**Kathleen Tattersall:** We are going to receive an interim report in October and I would expect the publication to be some time after that—perhaps about November.

**Isabel Nisbet:** Lord Sutherland is reporting orally to the Ofqual committee in mid-October. So far, until he sees all the written evidence that has come in, he has not committed himself to a final date, but I think that it will be within a few weeks after that.

**Q236 Chairman:** Time is of the essence.

**Kathleen Tattersall:** Absolutely. We really want to impact on the 2009 tests, and the report should provide us with a basis on which to do that.

**Chairman:** This has been a very good session. We will go away and decide whether we will have any more sessions, and indeed, whether Lord Sutherland will come to the Committee. We look forward to meeting you again soon.

**Kathleen Tattersall:** Thank you all very much indeed.

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### Supplementary memorandum submitted by Ofqual

On the further points required:

*Timetable for the marker training and the impact that the face-to-face rather than online had on the timetable*

Marker training has had a fairly fixed cascade for several years, culminating in the majority of markers being trained during the first two weekends in May. For 2008, the earliest formal schedule of which Ofqual had sight of is from mid-November 2007. It clearly indicates that the final marker training meetings were scheduled for 10 and 17 May 2008.

Whether switching to a new online training model, or remaining with the established face-to-face model ETS would have been aware of the need to meet the dates outlined in this schedule, and indeed in the *Proof of Concept Pilot—Design document* (May 2007), section ix details the ETS contingency “in the event the pilot proves it does not validate the acceptance criteria” would be a series of face-to-face training sessions.

*How long did it take to conduct the face-to face training of all markers?*

As in previous years the majority of face-to-face training sessions take place on a single day, for 2008 either the 10th May (for key stage 3 markers) or the 17th May (for key stage 2 markers). The vast majority of markers (around 5,000 per key stage) are trained on these days at a variety of training locations around the country (around 50 different venues in total). This is the culmination of a five month cascade where by the Marking Programme Leader develops the training materials with her deputies (meeting 1, 2 and 3), who then train the senior markers (meeting 4 and 5), who then train team leaders (meeting 6 and 7) who then train markers (meeting 8).

Supervising markers (seniors and team leaders) get two days of training. One day of training on the mark scheme, and the second day of training for their role as supervisors. All training days usually run from 9.30 until 16.30/17.00.

*Did the NAA reported to us that ETS had said that the change from online to face-to-face training would lead to a long delay?*

At the meeting with NAA on 19 Feb 2008, the regulator was given reassurances to the opposite at the meeting with NAA to discuss the results of the proof of concept pilot, and as early as January, NAA had assured us that venues were already being sourced as a contingency in line with the steps detailed in section xi of the *Proof of Concept—Design document*.

*At what point were markers trained in the handling of what we considered to be over-ambitious software? Was that done in early May as well?*

Markers were supposed to have completed an online training module before they arrived for their face-to-face training in May. As this was to be conducted from home, this wasn't something we could observe, though we have heard reports that markers had considerable problems with this system. There also seemed to be no effective method of confirming exactly who had and who hadn't completed this module before markers attended their face-to-face training.

The training module did not go live in time for supervising markers to have experienced the system, meaning they were unable to answer queries on the system at the training meetings in May. Any queries on the system had to be answered by ETS representatives, who weren't always present at the training meetings. This left the majority of our observers unconvinced that markers had been given enough training on the new ETS software systems.

*Also for clarification*

Markers entered "question level data" rather than "item level data" onto the OMC system.

Q206—number of interventions

The Regulation & Standards Division of QCA had no formal involvement in the process of awarding the test operations contract for 2008–12, although Ofqual's Acting Chief Executive, Isabel Nisbet, was a member of the QCA Executive at the time the contract was awarded. From the summer of 2007, the National Curriculum Assessments monitoring team ("NCA monitoring") was invited to comment on planned changes which set out the ways in which markers were to be supervised and quality assured. NCA monitoring raised some concerns at that early stage with NAA.

On 2 November 2007, NCA monitoring provided feedback to NAA on marker training for the marking pilot which said that communications in the broadest sense gave rise for concern. For example, how contacts with markers were managed; ease of access for venues.

ETS carried out a "proof of concept pilot", examining the effect on the quality of marking of four new approaches to on-line standardisation and quality assurance. In February 2008, NCA monitoring, together with the Director of Regulation & Standards, Isabel Nisbet, attended two presentations on the outcomes of the pilot. On 21 February, Isabel Nisbet wrote to the Director of NAA (David Gee) expressing the regulator's support for the four approaches which had been trialled, but conveying two "significant concerns". The first was a systems-based concern that the volume of marker use at key points in the marking process might compromise the ability of ETS to operate effectively. This was to be tested through load testing and NCA Monitoring asked to be kept informed of the outcomes. The second concern was that the delays experienced in delivering the pilot and its report could indicate that the resources being assigned by ETS [were] insufficient to meet the required deadlines and standards of quality.

David Gee replied on 6 March, agreeing to provide updates on load testing and sharing the regulator's concerns about the management of the pilot, but commenting that it was managed by a different team in ETS than would be involved in the 2008 operational cycle. On 21 April, in response to a further request from the NCA monitoring team for an update on load testing, David Gee wrote that significant work was done by ETS over the previous six weeks, and concluded that the data would provide assurances that preparation is well in hand.

In April 2008 Ofqual was set up within QCA. On 28 April Kathleen Tattersall, newly-appointed Chair of Ofqual, had an introductory meeting with Ed Balls, Secretary of State for Children, Schools and Families. In a general overview of the issues facing Ofqual over the summer period, Kathleen Tattersall mentioned, among other things, the heightened risk of there being a new contractor responsible for the delivery of the National Curriculum tests.

The NCA monitoring team observed a sample of the ETS marker training events and, following a training session on 10 May 2008, reported concerns to NAA about attendance of markers and the rigour of their selection. During May, conversations with markers alerted the team to delays in the delivery of scripts for marking and to problems in communications with ETS.

On 3 June 2008, Isabel Nisbet wrote to David Gee to seek reassurance from NAA that marking of National Curriculum tests will be completed and the scripts returned to schools by the deadline of Tuesday 8 July 2008. Specific reassurances were sought about aspects of marking, communications and administration on marker training. The letter also informed NAA that Ofqual would hold a formal accountability meeting, chaired by Kathleen Tattersall, with NAA on 3 July. The decision that Ofqual's chair should chair the meeting with NAA was made on the basis of risk.

David Gee replied on 11 June addressing each of the specific questions raised in Ofqual's letter of 3 June. His letter stated that the NAA was heavily focused on ensuring the delivery of results to schools by 8 July. Despite a number of challenges created by inadequacies in the ETS delivery process system David Gee had extensive reassurances that this would be achieved. However, in order to reduce any risks further he dedicated significant additional NAA resource to support ETS in meeting its contractual obligations.

On 11 June, the NCA monitoring team took up a long-standing invitation to visit the distribution centre in Dewsbury. Following that meeting the NCA team raised concerns with NAA about the apparent absence of control processes in the management of scripts.

In mid-June, DCSF asked Ofqual for a short briefing note to show to Jim Knight, Minister of State for Schools and Learners, before a Ministerial meeting with NAA about test delivery. Ofqual's note stated that it was our clear impression at that time that there is a high risk that all schools will not receive their results by 8 July as a result of marking not being completed and problems with the ETS marking and distribution systems. The note went on to report problems with preparations for the following week's level setting meetings because of insufficient marks on the ETS data system.

On 2 July 2008, David Gee wrote to Isabel Nisbet notifying Ofqual that NAA would be in breach of one requirement of the Code of Practice because some schools would not receive all their data by the published date.

The accountability meeting took place on 3 July. Following the meeting, Kathleen Tattersall decided that Ofqual should set up an independent inquiry into the regulation and delivery of the 2008 tests, and on 4 July she wrote to the Secretary of State informing him of that decision. Her letter also gave some reassurance about the quality of the marking of the tests:

“While results will be delayed and I cannot predict the volume of reviews that schools will request this year, from the processes we have observed, the quality of marking is at least as good as previous years and justifies issuing the results.”

On 4 July, NCA monitoring requested from NAA details of the marking panels that ETS needed to set up to complete the marking process and also details of the quality assurance arrangements for these panels. Visits were made to marking panels on 16 July.

Starting on 25 July 2008, Ofqual has held weekly regulatory meetings with NAA (observed by DCSF) to monitor progress in identifying and marking unmarked scripts and in the review processes. Those meetings continue. A problem, particularly in the earlier meetings, was the difficulty of obtaining a precise estimate of the total number of unmarked scripts and assurance that they had all been identified and were being dealt with.

On 28 July, NAA announced that it would take over from ETS the management of the review process in 2008. Ofqual publicly welcomed that announcement.

On 30 July, Isabel Nisbet wrote to David Gee expressing concerns about the adequacy of ETS's resources and quality assurance for marking the remaining unmarked scripts and asking NAA about their intentions regarding deadlines and charges for reviews. David Gee replied on all these points on 8 August.

Concerns about data on the system were particularly relevant to the publication of Key Stages 2 and 3 data. These must be produced to the standards set out in the Office of National Statistics Code of Practice and free from any political interference. DCSF's Head of Profession for Statistics (Malcolm Britton) twice wrote to Ofqual seeking advice for him to consider when deciding whether to publish results for Key Stages 2 and 3 at national and local authority level.

Ofqual's replies focused largely on what evidence was available on the quality of marking and the confidence that could be placed in the outcomes. The advice sent on 4 August (about the Key Stage 3 results) included:

“Ofqual recognises that the confidence of teachers, parents, pupils and the wider public has been damaged by the problems in delivering this year's national curriculum tests...[T]he credibility of results published at this time will no doubt be challenged. However, in providing advice to inform your decision on publication, Ofqual needs to consider whether there is hard evidence to call into question the quality of the figures which you are considering publishing this year, compared with previous years, to the extent that would justify a decision not to publish or require publication with significant reservations. ... [F]rom the processes that we have observed to date, there is no evidence of widespread problems with the quality of the marks at Key Stage 3 that would justify withholding publication of the provisional results at national level.”

Similar advice had been sent out on 28 July in relation to the Key Stage 2 results.

*September 2008*

**Monday 26 January 2009**

Members present:

Mr Barry Sheerman, in the Chair

Annette Brooke  
Mr David Chaytor

Mr John Heppell  
Mr Graham Stuart

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*Witness:* **Lord Sutherland of Houndwood KT**, gave evidence.

**Chairman:** Lord Sutherland, it is a pleasure to have you here in front of our Committee. You know the rules, as you are a Member of the House of Lords, and in that wonderful group of people in this country who do not have to appear before the Committee.

**Lord Sutherland:** Nobody told me that.

**Chairman:** I think one of your colleagues at one stage had a rather interesting relationship with Gwyneth Dunwoody, when he was advising on blue-skies approaches in No.10, and refused to appear before her Committee. It is a pleasure for us that you have agreed to appear before our Committee, and for someone who has known you and your work in education for quite some time—I think we first met when you were Vice-Chancellor of London University—

**Lord Sutherland:** That is right. That was a while ago.

**Q237 Chairman:** It is a while ago. You know why we are here. We have been looking at the mess that occurred last summer. Indeed, I have to recount to you a story that I picked up in the first week of term after the Christmas holidays at Almondbury High School in my constituency, where I went, as one does in one's constituency, merely to see how the school was getting on. Out of the blue, they said, "We're still waiting for our last level 3 SATs tests to come back." I wanted to make sure that that was absolutely accurate, so I rang them this morning, and they said, "Mr Sheerman, you won't believe this: the last 12 scripts arrived this morning." Now, there is quite a long gap between today and the date that we all know they should have arrived in July. So, there we are: I just mention that as a little bit of background. Lord Sutherland, we know what this is about. It is to find out what went wrong and prevent it happening again. Would you like to say what you found in your inquiry?

**Lord Sutherland:** If I could make a short opening statement, I would then be interested in taking questions and perhaps even having a discussion. There are important things to work out.

**Chairman:** I do not think we can have discussions in this Committee. *Hansard* does not take kindly to it.

**Lord Sutherland:** Thank you, Chairman, for inviting me, and also for focusing on the report and on the issues so promptly in July, as you did. I think you were the first above the line, making very important questions plain and putting them into the public arena. I found that a good starting point for me. I

recognise that the Committee's work has been integral throughout the sad period since June or July, when things started to go wrong. The sessions you held before the school holidays were very important. You picked out a number of major issues, and I was able to build on that in the evidence I asked for and in some of the cross-examinations that I carried out. I share what is evident: you, like me, were hugely disappointed in the treatment of teachers, pupils, markers, parents and school governing bodies, and what they had to put up with. I had direct evidence of this in a number of schools and from talking to head teachers of my own acquaintance. They were badly let down this summer, and there is no excuse for it in the end. I hope that my report has been instructive in providing a description and an analysis of what went wrong, finding the problems that were encountered in the delivery. I hope too that there are messages for the future. This is not simply a matter of looking backwards. As you will have read, I identified a number of contributory factors—there were very many of them, in fact, which was part of the difficulty. Had there been just one issue, one would have identified that fairly quickly and dealt with it in the report. But, in the end, one of the key questions that remains with me, and one of the key causes of the difficulty, was the lack of end-to-end testing of the system. That was a major failure on the part of the Educational Testing Service, and a primary cause, because if you do not test the system end to end, you do not anticipate problems that you could have anticipated—you would know that a difficulty there will have repercussions further down the line. ETS failed pupils, schools, markers and teachers, and it has primary, but not sole, responsibility for what went wrong. There were a number of significant management failings within the Qualifications and Curriculum Authority, particularly in its management of risk, and no doubt we will talk about that in due course. As I suggested, it is not simply a backward-looking report: I hope that it looks forward. I made a number of recommendations, 19 in all, if I counted correctly, and I wanted to take a constructive and forward-looking approach. There are some specific recommendations that I regard as especially important to improve the system for the future. First, there must be full end-to-end testing of the system, not just checking that the individual bits work within themselves, but that when you link them up, they run as a single operation that does not have the hitches we discovered last year. Secondly, I

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believe that forms of modernising the test delivery process should be put in place, and I dare say that we will look at that in your questions. We will have an important opportunity to legislate for the regulation of tests on the same statutory footing as the regulation of exams in the forthcoming children, skills and learning Bill. I hope that we make the most of that opportunity. Taken as a whole, those three key recommendations, and the others that stem from them, give the Department for Children, Schools and Families, QCA and Ofqual a clear direction for the future. I know that the Committee has taken a great interest in establishing the quality of the tests and the results. I recognise that that is fundamental, and it is important that you continue to do so: you are a continuing body—my job is officially done. I believe, however, that the independent regulator, Ofqual, performs a vital role in that respect. I believe that the relationship between Ofqual and you is an important marker for the future, and it will be a critical way for it to report to Parliament. It has the role of overseeing the tests to ensure that “pupils get the marks their work deserves”. Many people have asked whether they can trust the 2008 results—it is a question that I have asked. Fundamentally, Ofqual has to determine that, and I believe that a report is forthcoming. It is important that it is an evidence-based report—I anticipate that it will be. An important part of the evidence, for example, will look at the outcome of the reviews process, which is not yet complete—you alluded, Chairman, to some of the implications of that in your opening remarks. It must look, too, at the content of test questions and mark schemes, marker training—that is an important part of quality in the system—and, as I said, the outcome of the reviews process, which is not yet complete. Ofqual has expertise in all those areas and, more importantly, it has the responsibility to consider that. Having said that the question of quality is one that has to be finally decided in relation to last year, there are two elements to that, which I came across in preparing the report and which I would like to share with you and comment on later. First, the national curriculum test markers are a small constituency of dedicated professionals—they are often teachers or retired teachers. I want to pay tribute to them, because despite the difficulties that they faced—and they were severe and significant at times—they persevered to mark 9.8 million scripts to the best of their ability in increasingly problematic contexts. We have relied on these same people in previous years, and I have no doubt that we will continue to do this year and perhaps into the future. They need to be properly supported—and they were not this year—and that is fundamental to the quality of what goes on. I also believe, more than that, that they need to be consulted about the delivery of the test system and how it can be modernised and the quality improved. They have the experience—many of them over a number of years—that would be highly relevant to ensuring that the best quality is identified and continues into the future. If markers find it difficult to access training—some of them did, and that is itemised in the report; or if they find it difficult

to receive support, as the lines that were meant to be available to them were not always functioning properly; or if they are rushed in their marking because of poor administration and scripts arriving late in the day or at the wrong time, that can affect quality severely. I want to stress for the future that paying attention to the role, support and, indeed, wisdom that markers have about the system is important. The recommendations that I have made focus on delivery issues—that was the job that I had to do—but they are also pertinent to ensuring the quality of test results in future. One element of that—and I have referred to it already—is ensuring that Ofqual has adequate powers to carry out its task, and that is a matter for legislation. That is slowly being floated offshore. The process began last April, and it will be complete when the Bill that we all anticipate will be introduced goes through Parliament. Equally, I stress the importance of having the voice of the marking community available to those administering and running the system. If we put those in place, there will be significant practical steps forward. That is as much as I want to say at the moment, and I am happy to pick up questions and comments.

**Q238 Chairman:** Lord Sutherland, thank you for your introductory remarks. Can I open the questioning by saying that we hoped this would be a session with you for an hour or so—perhaps an hour and a half—and a session with Ken Boston? At first, we were given an indication that he, too, would appear before the Committee today, but he found he was unable to do so. As you know, he tendered his resignation, and it was not accepted, but he is currently on what I suppose most of us would regard these days as gardening leave, and he is not available to the Committee. Does that surprise you?

**Lord Sutherland:** I do not know if “surprise” is the word, but it disappoints me and I hope he will be available. I am sure there is quite a lot you could learn in a process such as this that would help the development of the system in future.

**Q239 Chairman:** It does slightly open up a problem. When you were asked to look into this matter, it was the Secretary of State who did so. Do you think it would have been a better arrangement, even if he had initiated it, if your report came back to this Committee?

**Lord Sutherland:** The first approach I had was from Ofqual. Immediately thereafter, I was also approached by the Department. I pointed out something that I am sure that it already knew—that nobody wanted two reports and it would be sensible to have one. However, I had a reporting line to Ofqual which, from within the old QCA, properly realised that there was something which would benefit from external scrutiny. That is why it got in touch with me.

**Q240 Chairman:** Do you think any of the characters who played a significant part in last summer’s drama have been badly treated?

**Lord Sutherland:** Not to my knowledge.

**Q241 Chairman:** Well, some of us have always respected Ken Boston as a highly qualified and wise person at the head of QCA. As I read your report, and reflected on the evidence that had already been given to the Committee, I did wonder sometimes why he had been suspended from his role. Here is a talented man, presumably still drawing his salary. However, as you said in your report's introductory remarks, the breakdown in the summer was a multi-faceted, multi-causal problem. I will ask you again: do you think it is absolutely necessary that Ken Boston should carry the can on this?

**Lord Sutherland:** In a sense, we have all been preempted on that, because he resigned when he read the report. The QCA board, for its own reasons, which I am not directly aware of, decided it should be suspension rather than resignation. He made the judgment—it is much to his credit and honour that, if he felt responsible as a public servant, he should stand aside.

**Q242 Chairman:** He is rather an old-fashioned, honourable gentleman, is he not?

**Lord Sutherland:** Yes, I have high regard for Ken Boston and what he has done.

**Q243 Chairman:** Your report, as I read it, surprised me, in the sense that the number of failures are surprising. It is like a road accident: it seems like a very simple thing, but when you analyse it, there are probably 10 different causes of the most simple accident. However, this one did look like something of an accident waiting to happen. The feeling we got when we took evidence from other parties, was that people totally over-estimated the capacity of the new company to fulfil the function. Did you get the same feeling as us that people here in the UK, who were part of the process of drawing up and awarding the contract, thought that this rather large and globally active company was going to come with all its resources and knowledge and take on this contract? However, it started a new company as an offshoot with no experience and hardly any personnel. Was that not something of a surprise to you?

**Lord Sutherland:** It is easy to be dazzled by expertise that is well presented. No doubt, ETS made a very good presentation and went through the long-due process—an iterative process—of putting in a tender for this work. It is evident, however, that it was not up to it. I say that quite explicitly: it did not deliver on the contract that it signed, and therefore it did not keep the promises that it had made.

**Q244 Chairman:** Why do you think that it decided that it could not give evidence to you?

**Lord Sutherland:** You would have to ask it, but let us hang on to that, as it is an important question. I have no doubt that there was adequate evidence available to me to make the judgments that I believe are definitive about the role of ETS in this report. It believed at one point, in view of something that it said to your Committee—you were aware of this—that there was an embargo on it in some way. I spoke

to the QCA chief executive, and he wrote to ETS to make it plain that there was no such embargo. That is point one. Point two: we extended the period available to it to submit evidence. Point three: it chose not to do so. Point four: the evidence was available to us, through the QCA documentation—we had all the exchanges of correspondence and contracts and so on, so I believe I had adequate evidence.

**Q245 Chairman:** Is there not a danger, Lord Sutherland? I do not believe in conspiracy theories—and I know that you chair a Committee similar to ours in the House of Lords—but if you were sitting in my place with my colleagues, you would see that, first, we cannot get Ken Boston back to talk to Committee. Secondly, we cannot get the company after this time, after due reflection and after things have settled back. Those are two important sources of evidence for our inquiry, which is separate from yours, with a slightly different focus, and their absence sits rather oddly when you are trying to get to the truth of the matter.

**Lord Sutherland:** I did not know the position over Ken Boston before you told me just now. Putting these two things together does not occur to me as an obvious thing to do, but perhaps you have background information that I do not have. As for the ETS thing, in the end, the company cut its losses and left, repaying, I have to say, significant sums of money. It accepted that it was not delivering, to the tune of nearly £25 million. For an American company, that is a big acceptance. It accepted that. I suppose, in its position, it thought, "We are a long way away." Head office said, "Oh, just pull up the drawbridge; we've had enough." However, I did have a later correspondence when my conclusions were evident, and I wanted to be sure that the senior official within ETS was aware how critical some of my conclusions were. I wrote to him, giving him that information—not sending advance copies or anything, but just saying, "This is what we are going to say about ETS". I had a very interesting and discursive letter in response. There were one or two helpful details—he could put numbers, facts and so on, in place—but there was no response of the kind that would lead me to go back to square one and start again.

**Q246 Chairman:** Have we had a sight of that letter?

**Lord Sutherland:** I have no idea.

**Q247 Chairman:** Could we have sight of it?

**Lord Sutherland:** All the materials are deposited with DCSF. I am sure you know the routes to obtain information of that kind. I have not kept any of these documents. They are the last thing I want lying around my flat, I have to say.

**Q248 Chairman:** So it is available. Lord Sutherland, you can see me smiling, but I do want to ask you a more difficult question to conclude my opening questions. In a sense, when a government set up an inquiry, sometimes it is set up to take the heat out of the situation and to take the focus off the Secretary

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of State and the Government, who might be seen as responsible for the debacle of last summer. As you said, a lot of people were hurt and upset by that process. Do you feel at all that you were used by the Government to help them to evade accountability for their role in this mess?

**Lord Sutherland:** I will say straight out, if they thought they were going to do that with me, they got the wrong man. The report is firm—as you say, it contains many criticisms, including comments on procedures that relate to links in the Qualifications and Curriculum Authority and the Department for Children, Schools and Families. That is firm and clear. I have to say that there was no attempt to interfere with the processes, and I made it plain at the outset, that if there were any such attempts I would go to the press immediately, and I think they believed me.

**Q249 Chairman:** I was asking you a slightly different question, Lord Sutherland, from the one that you answered. If you look at what was going on in the Department and in QCA at the time that we are discussing, this was not a ship that was changing course: this was a ship where the engine was being changed during the voyage. Perhaps a navigational system was being changed, to use the analogy or push it a little too far. At the time, if you were Ken Boston sitting there as captain of the QCA ship, with all these fundamental changes going through—there was no legislation, but there were shadow authorities, totally changing the nature of the QCA, changing its role, splitting it up, shadow this, shadow that—was that not rather difficult for the leadership and the captain of the ship in QCA, having all that going on as well as a major new contract that had been arrived at only recently?

**Lord Sutherland:** It is a big job—no doubt about that. On the other hand, in a position like that, you need to be a big leader to carry it through. You get a remit letter each year, and if at some point you say, “I do not have the resource or the capacity to do all of that,” that is the time to say it. However, if someone accepts the remit and goes with it, the expectation is that you believe you can deliver this year.

**Chairman:** Okay, let us open up the questions to colleagues, or they will be very unhappy. Stuart.

**Mr Stuart:** Or Graham, even.

**Chairman:** I am terribly sorry—Graham Stuart—it is because I was talking to a Scot.

**Q250 Mr Stuart:** Two Scottish Christian names in a row. Lord Sutherland, who do you believe is ultimately responsible for delivering proper exam results across the country?

**Lord Sutherland:** In the end, it is the Department and the Secretary of State. Below them, they have an arrangement where they issue a remit and resource for QCA, as it currently is, to deliver that.

**Q251 Mr Stuart:** Do you think that your report is explicit enough about that? I try to imagine a lay person reading it and being clear about it. In it, as you laid out the various organisations, the DCSF

sounded like just one more player rather than the top of the pyramid and the driving force behind the very structures that you were describing. Do you think that is a fair criticism of your report?

**Lord Sutherland:** I hope that I am clear on that. The DCSF set the policy, and it provides the resources—that is its responsibility. It has to ensure that delivery is possible, which means it must have an appropriate mechanism. It believed it had, and on the basis of the two or three previous years it did have, because delivery was made. Below that, we come to QCA, which has a set of responsibilities, and so on, down the system it goes. In my understanding, the DCSF is responsible for policy, resource and setting up the overall mechanism. The kind of mechanism that is set up relates to how well it might work.

**Q252 Mr Stuart:** Defining the Department’s responsibilities in that way is very convenient for Ministers who wish to push responsibility away; they could say they did it in the best odds. One could take issue with the point you just made about the previous three years. There was a failure in 2005, there were difficulties in 2006–07. It made it a rather peculiar situation in that it might have looked like it was working, but it was only just. It made it rather a peculiar decision by the QCA to take such a monumental risk for 2008.

**Lord Sutherland:** You mean to do it at all?

**Q253 Mr Stuart:** Yes, and particularly to do it in the way they did. Did you manage to find out to what extent that was being driven by Ministers, being driven by the Department? On the face of it, it is hard to see why the QCA would want to enter into such a high-risk strategy if they were not being pushed by someone else who was going to be able to commission an independent report and push the responsibility away afterwards.

**Lord Sutherland:** You have to ask QCA why they accepted the remit they were given and they did. You have to ask why and what differences there were that year. I do—

**Q254 Mr Stuart:** I wondered whether you did, because you did the inquiry.

**Lord Sutherland:** I do genuinely believe that they thought that in ETS they had a winner. The external signs were justification for the view they took. I am critical of some aspects of that but they believed that they had a winner and that they could build on the previous experience of Edexcel. There was adequate handover and coaching arrangements and so on in place. Are you questioning the very idea of there being an arms-length arrangement with anybody? Most of Government is doing this now and I will put in brackets—this is not in the Report; it is a point I am making to you—I believe there is so much of that now that it is time to pause and say, “Have we got the best possible arrangement that allows such an allegedly arms-length delivery?”. It sounds grand, but the arm is a real thing and messages move up and down. It is happening across Government. There are choices such as whether you use the private sector to deliver Government policy or not. I would be

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surprised if it was not necessary in a whole range of areas, but that is a good reason to review how well it is working. That has been done in this particular case. One of the things that they had started doing and which it is important we hang on to is the process of setting up an independent regulator, which was desperately needed—this is one of the complications. If that regulator is given the powers and the resources to do the job, many of the difficulties could be avoided.

**Q255 Mr Stuart:** You have put your finger on the exact issue, which is that there is this tendency to use the private sector. The question is whether it is appropriate in a democracy and for Ministers accountable to Parliament. In a democracy you are supposed to be able to identify those you can vote for who in turn take responsibility for what goes well or goes badly. When they find it convenient to have arms-length organisations doing the critical bits, Ministers can wash their hands of it. I do not know whether you intended that Ed Balls should be able to use your report to wash his hands of responsibility for last year's fiasco. It took a long time and a lot of parliamentary effort to get him to say the word "sorry".

**Lord Sutherland:** I understand that he has said sorry. I am not in constant communication with him. This is not a close relationship, you should be aware of that.

**Mr Stuart:** Fine.

**Lord Sutherland:** It is about how you run your country. You have opened up a big issue and, I warn you, I am a philosopher and we could go on a long time on this. If the Government is going to run the country using private agencies—this has been the track for 20 years—it is not good enough to say that in this particular case it is an excuse. It is a much bigger issue. You are right, however, that you have to watch very carefully. I had the Secretary of State in to give formal evidence. He did give formal evidence and he was asked the same hard questions as everyone else. I had one of the other Ministers in to do the same, and the permanent secretary, so it was a formal process of review, including evidence from those individuals. I hear the words you use: I hope nobody is washing their hands of anything, because the critical thing is to get it right next year and the years after.

**Q256 Mr Stuart:** One further question, taking you back to your evidence a little while ago to the Chairman on the subject of ETS not giving evidence. The way you told that slightly differed from what we have heard, or at least is a simpler version. ETS said they did write. It took some time in the light of the closing date of your inquiry for QCA to respond. In fact they said that, in the meantime, because they were asking for permission to give evidence to your inquiry, they wrote to ask you to give them an extension of the period. You refused to extend the period, QCA took ages to come back to them and by the time collectively everyone came back to them to give evidence they said they had given up—wrapped it up. They were paying millions of pounds in

compensation and they were not prepared to play any more. Is it not fair to say, therefore, that the version of events you gave just now is perhaps an over-simplification or do you think there is no merit in ETS's arguments?

**Lord Sutherland:** I can tell you on the point on which I have direct evidence that I did not refuse an extension. They were offered an extension and that is on the record. The extension was quite adequate in terms of the seriousness of the matter. This was a £156 million contract. We had difficulty getting in touch with them—they had left their offices in this country and were in the States. Getting the individual who would take responsibility was not always easy, but they were given an extension—I can tell you that for sure.

**Q257 Mr Chaytor:** May I ask about the procurement process, which I was fascinated to discover from your report was called Project Tornado? Somebody in the QCA had a sense of humour, I must say. You conclude, Lord Sutherland, that the procurement procedure was sound, but then you go on to list a whole series of criticisms of the procedure, many of which seemed very substantial to most members of the Committee. So, are you absolutely confident, in the light of all the criticisms you make, that the procurement procedure was sound?

**Lord Sutherland:** That is a point on which I could have been clearer. The procurement procedure was sound in this very clear respect: that they followed to the letter the procedures laid down by the Office of Government Commerce. They went through that process, and I have seen how they took evidence and how they made their judgments. They made the judgments first on the basis of capability, without looking at the question of how much it was going to cost. All that side was correct. What I then go on to say, and I think this is a message for how these things are done, is that there is additional due diligence which I believe should have been carried out—I think others have made that point as well—but it is not required. I want to make it plain again that the job that PricewaterhouseCoopers did in due diligence was exactly what they were asked to do within the Government's procedures and guidelines, which was to look at financial stability and whether it was a viable company, and so on. But there were clearly reputational issues that were not discovered and should have been. That I regarded as outside the formal procurement process. I did not want them coming back saying, "Of course you said so on and so on, but we followed all the rules." Well, they did. I did put this to the board of QCA: if you were offering a company a contract of this size, would you not have done a bit more checking on the reputation of the body? They did not, and that was a failure.

**Q258 Mr Chaytor:** In light of what you just said, would it not be more accurate to say that the adherence to the procedure was sound or complete, but the procedure itself had significant deficiencies, which you just referred to?

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**Lord Sutherland:** That is a distinction I recognise. The procedure was there; they followed it right through. It is a procedure that is laid down for every government contract.

**Q259 Mr Chaytor:** But in terms of your recommendations, based on the findings, you are actually recommending that certain changes are made to the procedure.

**Lord Sutherland:** Yes, other things should have been done. I accept that.

**Q260 Chairman:** So who should have googled ETS? Should it have been PricewaterhouseCoopers or should it have been QCA? Because, as someone said to us, you only have to google to get all that press comment that was already there.

**Lord Sutherland:** PricewaterhouseCoopers did what they were asked to do. They performed according to contract, which everyone had. So I would not lay the blame there. So I think it should have been QCA, and I did put it to their board.

**Q261 Mr Chaytor:** On the role of PricewaterhouseCoopers, your report says that they were asked to do the following tests. They produced the Dun & Bradstreet rating for each company, they examined the last three years' published financial statements, and then they did a review of press information over the past 12 months. That is the key flaw, because, had they carried out a review of press information over the last three years, the same period for which they published the financial statements, that would have highlighted a number of press reports in serious publications in the United States and, I think, in the UK, that would have given a different picture. Is it conceivable that a large multinational management consultancy such as PWC would not have known of the activities of ETS in the United States, and its track record prior to the 12 months for which it did the review of press information? I would find that remarkable.

**Lord Sutherland:** I have two things to say on that. PWC is a professional body—it had a job to do and it did it. There are two constraints on how much testing you carry out and how far back you look. One constraint is the 12-month period and that was given to them, and the other is that you look at contracts worth more than £20 million a year, and that was also given to them.<sup>1</sup> Within those constraints, PWC did what it was asked to do and so I would say that it delivered on its contract. The question is why, if we were dealing with such an important company, was more not known about it in the system, including in QCA and by those who would be working with it. Indeed, I would have thought—this is the point of your question—that they would have had some international contacts whom they could have asked, but they did not, and that is a severe failure. When you go back to where blame lies it is not simply ETS, it is the checking.

**Q262 Mr Chaytor:** Is it absolutely clear that not a single person in the Department for Children, Schools and Families, QCA, National Assessment Agency or Ofqual went on to their computer and googled ETS?

**Lord Sutherland:** I cannot vouch for what several thousand people did or did not do.

**Q263 Mr Chaytor:** There is no evidence that anybody did that?

**Lord Sutherland:** No, and that is my criticism: not that nobody did it but that there were people responsible who should have done it.

**Q264 Mr Chaytor:** In your findings and recommendations, some of your criticisms are specific to QCA or the DCSF observers and so on, and others are expressed passively, with more reluctance to attribute responsibility: "Such-and-such a process should have been carried out", for example. Is that conscious or just how the report is written? Sometimes you are very clear as to who was at fault and at other times less so, as if you do not wish to point the finger of blame.

**Lord Sutherland:** The main driver of the report was to produce an analysis of what went wrong. Sometimes it was very clear from that analysis who should have done what, and sometimes it was a question of, "What was the arrangement operating between NAA and QCA?" That is an uncertain area, and interestingly, given that you suggest that perhaps my report has not been tough enough, NAA no longer exists. That is recognition that the structure there was wrong or uncertain. That is why sometimes you could not say that it was person X in NAA or person X within the broader context of QCA. Do not forget that Ofqual was not a separate body most of the time, and was only a quasi-separate body from 1 April 2008. I would have to see specific examples, but that is probably why occasionally the criticism is passive.

**Q265 Mr Chaytor:** Regarding the problems that were identified in the early stage of the procurement process, could you remind the Committee what your recommendations for change are, and whose responsibility it should be to flag up problems? There were capacity problems: ETS said that it could manage with 60 staff, which was a vast underestimate.

**Lord Sutherland:** You have to go a bit down the line that says who is awarding the contract. The contract and its award is recommended by QCA. QCA is on the front line in deciding who gets the contract. The question then becomes, what tests might it or should it have carried out that it did not? And is there anything else that should have been done further up or down the system? I have made some specific recommendations on that. One of those recommendations is that I believe that Ofqual should in future be consulted. It is not its job to award the contract, but it should be consulted on the nature and the details of it. The reason for that is that Ofqual needs to have certain kinds of information if it is to carry out its quality assurance processes, and

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<sup>1</sup> See Ev 47

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it was evident that it was not receiving that information. Unless that is built into the contract from the start, there will be difficulties. That is an example of why Ofqual should be consulted when the details are being prepared. I do not believe that the presence of DCSF observers on various committees is as clearly based as it should be. Perhaps there is an assumption that if a DCSF observer is there and does not say stop, everything must be all right. We will be told that that is not the role of DCSF observers. Experience probably varies from one committee to another because there are a lot of them around. However, if somebody from the DCSF or the Office of Government Commerce procurement agency is present, their role must be made clear.

**Q266 Mr Chaytor:** Are you confident that the structural changes to the QCA and the establishment of Ofqual as a separate body will resolve such procedural difficulties in future contracts?

**Lord Sutherland:** It is the right direction, but it is a tight run this year. In the longer term, I hope that the structural changes will have an impact on future contracts. I hope that how scrutiny should be allocated is much clearer in the future.

**Q267 Mr Chaytor:** Finally, in terms of reputation and the track record of checks, you do not recommend that procedure should change to require a longer period for the press review: it remains as a review over the last 12 months. Would it not be a sensible change to the procurement procedure to make it a press review over the previous three years?

**Lord Sutherland:** It certainly would be a sensible procedure. It is the experience of my working life that when you lay something out very clearly and put it under the nose of those responsible, you are able to scrutinise whether they have taken good account of it. They claim that they are going to.

**Q268 Chairman:** But Lord Sutherland, on the procurement question, there was gossip going around when this all started that the QCA had taken the lowest tender and that it was cheaper to take on this new company. From what I have heard in this Chair, I do not believe that. I think that it was based more on a desire to not be too reliant on one supplier. There are not many competitors in this area. You might have picked up on this in the report and I might have missed it, but I got the feeling that it was not about the price. There were very few players in the area and the QCA wanted a diversity of supply. As you know, there has recently been controversy over education maintenance allowances. A different company is having trouble delivering those on time. What is it called? Liberata. Sorry, I could not remember the name.

**Lord Sutherland:** That happens to me sometimes.

**Chairman:** Is it not interesting that, again, there is a great reliance on the company? In an inquiry on individual learning accounts that we conducted many years ago when I was first Chairman, we learned lessons relevant to all procurement and all

contracts. I may have missed this in your report, but what is the general advice that you give? In this case it seems that there is a lot of reliance on the company. If you want a diversity of contracts, you cannot afford for one of the small number of contractors that offer the service to not be in business.

**Lord Sutherland:** There are real issues that this case has helped to illuminate. You and I will remember the Student Loans Company, which went disastrously wrong a number of years ago. Its headquarters was in Glasgow. There are any number of examples, such as the Child Support Agency. This issue comes back to Mr Stuart's question over the way in which contracts are awarded and whether this is a good principle to follow. I have no doubt that you need the reassurance that there is a good market with customers who will compete with each other. There must be choice in case a company proves not to be adequate. To reaffirm the point that you make about, I have looked in detail at the process, and all the evidence I have—and it is strong evidence—suggests that the procurement process marked the companies on abilities and skills first, before opening the envelope containing the bid cost. ETS came out No. 1 on all the indicators and was also the cheapest—I am convinced that that was not a factor, I agree with your judgement on that.

**Q269 Mr Heppell:** I am fascinated by the fact that the difference seems to be so great between what the contractor and the QCA believed to be happening. ETS were saying that they needed 60 staff, yet at one stage were employing about 400 staff. A lot of the pilot tests went wrong, but there did not seem to be any communication that that had happened. As you said, end-to-end testing of the system seemed to disappear altogether. I think that ETS told us that the original contract was for online training, but the QCA say that that was not quite what it had said. That makes me wonder—it does not reflect well on the QCA whatever way we look at it. They drew the contract very badly in the first place—with so many ambiguities and holes in it that it was not going to stand up—or was it the case that they changed their mind about it as well?. I wonder about the online testing—going through it and identifying that it had not worked very well, suggesting that they do something else instead—because, obviously, enormous disruption and extra costs are caused for the contractor when this happens during a contract. Am I getting the sense of this right?

**Lord Sutherland:** I think there was a misunderstanding. Whether you use the word "genuine" or not—whatever that may mean—about online training of markers, ETS believed that that was the form that the training would take. The QCA rightly say that the contract did not say that that was the form it would take—it said that they would be interested in looking at a proposal that was properly piloted and showed that online training of markers would work. There was a pilot and it was not judged to be adequate. There was a disagreement—not only did ETS say that they thought there would be online training of markers, they did not have a reserve plan either. They could not have deduced from the

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contract that there certainly would be online training of markers. They did not have a plan B and they rushed around setting up eye-to-eye, face-to-face training sessions, which went badly wrong. If you look at the evidence from markers, they were appalled at how they were being treated. People turning up in Manchester were told that their training was in Birmingham; people were not given the right date or adequate notice of when the training session would take place. ETS would say that there was an ambiguity, but the glass is running against them considering their other delivery failures. Whether or not there were other ambiguities, there is a very strong case for looking at online marking. That is a different ball game and I am persuaded that it would produce a wide range of benefits—we might come back to that. There was a specific ambiguity—they said that they looked at it in detail, but I do not believe that that is sustainable.

**Q270 Mr Heppell:** You mentioned the fact that there was an assessment of each of the bidders before the bids were actually opened. It would surprise me—as we told them that—if we had had the facts in front of us. Is it not the case that the bids should have been reassessed as soon as they were opened? They must have thought to themselves that the low cost did not match with the services they were saying they could provide. Did that not ring some warning bells?

**Lord Sutherland:** You made the point that the original estimate by ETS was that 60 staff would be allocated—they ended up needing hundreds in addition to that. That came out of the QCA and NAA's pockets; they both had to supply the support in many cases.<sup>2</sup> Certainly, that is one of the probings that did not take place and, at that stage—you are right—it should have been a warning signal, leading to the question, if that is the cost, have they really got their numbers right?

**Q271 Mr Heppell:** I am a little intrigued as to what reputational issues there actually are, because you seem to be saying that they did an assessment of all the people and so on. What other things would they have been looking for if they went online and, perhaps, searched for ETS? Are we in danger of talking about gossip? That is my worry.

**Lord Sutherland:** That is where it takes a bit of probing. It could just be gossip, but if they have publicly failed to deliver on contract in previous years—I am not talking 1920 here, but earlier, within the current period, of five, six or seven years—that is one of the questions that you would then ask, if you had done that probing, to improve their delivery and performance. Some scathing comments were published in reputable journals and newspapers in the States that may or may not have been justified, but again those were sufficient to make you want to ask questions. I do not know of any major company that would not have done that kind of probing if they were bringing on board a relatively early, completely new player into the game.

**Q272 Mr Heppell:** But you are saying that we do that with every Government contract. Am I not right? Did you not just say that that is the normal procedure and PricewaterhouseCoopers did not go beyond that because it did not need to?

**Lord Sutherland:** That is right: 12 months and £20 million.<sup>3</sup>

**Q273 Mr Heppell:** Every other company outside, you are saying, would go further, but the Government's procuring policy does not?

**Lord Sutherland:** I know of companies that do that kind of probing, whether by telephone or googling. If you google first, you will get the press cuttings and then you say, "Ah, yeah, that's so and so—no, no." But that is a serious report. Perhaps we need to inquire further. That is what was not done.

**Q274 Mr Heppell:** And you have a recommendation that that should be changed and become part of Government—

**Lord Sutherland:** I have laid out the facts and sensible people like yourself can hang on to them and push them on this.

**Q275 Mr Heppell:** But could that not have been one of your recommendations? If this is the fact and all government procurement works under the same system, should it not be changed?

**Lord Sutherland:** If you are asking whether we recommended that it should be lower than £20 million and before 12 months, there is a general recommendation that they should probe further into the companies that they are dealing with.<sup>4</sup>

**Chairman:** Thank you, John.

**Q276 Annette Brooke:** Referring back to your earlier comment, Lord Sutherland, I think that one of our Committee's advisers described this as an accident or a disaster waiting to happen, given the problems in 2005, which made it difficult to meet the deadlines for 2006–07. Why on earth, when changing the contractor, did we decide to make it even harder and to change the goalposts so significantly in terms of the timetable?

**Lord Sutherland:** That is a perfectly fair, appropriate and penetrating question, and it is the right one to ask. Why so many changes and why was the company not probed? If you have complete confidence in the company, perhaps you would do that.

**Q277 Annette Brooke:** Right. It also seemed that there was not enough time allocated. Is that QCA or is it ETS not demanding enough time?

**Lord Sutherland:** For?

**Annette Brooke:** For picking up from the previous contractor and then picking up this year.

**Lord Sutherland:** I do not believe that that is so. I believe that there was a long run-in period. The process of preparing to award the contract was taking place in autumn 2006, which means that the

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<sup>2</sup> See Ev 47

<sup>3</sup> See Ev 47

<sup>4</sup> See Ev 47

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companies bidding for it were thinking about these things in 2006. The contract was awarded at the beginning of 2007. That gave 19 months before the actual delivery. That should be adequate.

**Q278 Annette Brooke:** Right. So the time is there, but presumably things did not happen. So what sort of things did not happen during that period?

**Lord Sutherland:** I think this is one of the difficulties. There were, clearly, late deliveries on the pilots for training markers, for example. There were requests to ETS for an outline of the details of the project and whether testing had been carried out. Again, that was not delivered on time, or in good time, as it should have been. There was a whole series of events like that. ETS was being questioned, and indeed money was held back for late delivery of some of the details in June 2007, a year before the disaster happened. All those were warning bells, which is why I am allocating significant responsibility to those administering the contract.

**Q279 Annette Brooke:** Did the DCSF know that there were problems in 2007?

**Lord Sutherland:** Those responsible—the National Assessment Authority of the QCA, which was responsible for withholding cash, for example, and did—certainly knew. In part, they had a responsibility, if they thought the issue to be serious, to refer it upstairs—or escalate it: a piece of civil service jargon that I have learned to say. If they think it is going to cause major problems, they have a responsibility to refer it upstairs. The essence of much of the difficulty was that each problem in itself seemed to be manageable, but not when you strung them all together—that, and that, and that, was a problem. If you are late in delivering here, there will be a consequence further down the line, and that was just not taken on board. So, the management of the contract in the QCA fell down.

**Q280 Annette Brooke:** Should there have been an individual responsible for having an overview? Surely there was such a person?

**Lord Sutherland:** There was—the chief executive and the board of the QCA. That was their job.

**Q281 Annette Brooke:** That was their job. Given that you have told us there was plenty of time for a handover, do you think it necessary in the future to be more specific about the timetable—X should happen after so many months, and so on? We cannot say it is just a matter of time here, because so much did not seem to take place on time.

**Lord Sutherland:** That clearly was part of the contract, and there were target dates, which is why, for example, the money was withheld in June 2007. That was an early warning shot. There is more than that and it has to be laid out. Clear dates have to be specified in the contract, so that those monitoring and managing the system know when lines are being crossed and when there are potential failures.

**Q282 Annette Brooke:** Should there be a named person responsible for the monitoring, so that it is not just with the chief executive? Should it be clear, with someone allocated the job of monitoring such a timetable?

**Lord Sutherland:** My understanding was that that was the responsibility given to the NAA, which is effectively a division within QCA. You are quite right, the Secretary of State, the permanent secretary and the director of QCA cannot have every detail constantly in front of them, so the responsibility was there.<sup>5</sup>

**Q283 Chairman:** I am looking at some notes and, actually, the National Curriculum Assessment monitoring team—NCA monitoring—was doing the monitoring. From the account that I have here, it was constantly monitoring. A lady called Isabel Nisbet is, very early on, flagging up “significant concerns”—on 21 February—or “two concerns”. She and her team seem to have been going at it all the time, but were being rebuffed by NAA.

**Lord Sutherland:** The group you are referring to became Ofqual and were expanded.

**Chairman:** Yes.

**Lord Sutherland:** Ofqual and the NAA had their system within the structure—you referred to it in your own evidence-taking as a fairly “cosy” relationship, which can cut various ways—but they existed within the same organisation, the QCA. The lines of arm’s-length—dare I say—accountability were not apparent at that time in the way that they should be. Isabel Nisbet flagged up—we have given the evidence about that—a number of points. There are two aspects, one of which is that she did not always get the evidence from NAA that she wanted—

**Chairman:** They refused to give it on occasions.

**Lord Sutherland:** I wanted to say in relation to the question of Annette Brooke that, additional to the points we discussed about contracts, I would want built into a contract the management information necessary if such monitoring is to be carried out. Ofqual in the future will know that the management information it needs will be presented on such and such a date and it will be of this kind and this quality. That is a very important point about contracts in the future. That is one aspect. The second aspect is that very often, Ofqual then—the nascent Ofqual, pre-Ofqual—was passing the messages back to the NAA, whereas in the future the right thing to do is pass them directly to the director.<sup>6</sup> I have even suggested that, in the legislation, Ofqual in the future should have a responsibility to report to the DCSF and to this Committee if it feels things are going awry and if the “We’re not co-operating” attitude seems to be breaking out.

**Q284 Chairman:** May I push you a bit further? What was happening with the NAA? As I read this evidence, it seems that the NAA is a problem, a

<sup>5</sup> *Note by witness:* The responsibility was assigned to the NAA.

<sup>6</sup> *Note by witness:* The reference to “director” should be to the QCA Chief Executive.

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blockage; it refuses to co-operate and give answers to questions. Has it gone native? What has gone wrong? Did it get too close to ETS?

**Lord Sutherland:** Essentially, the status of the NAA was ambiguous. It looks like a separate organisation that awards a contract. The NAA is not in a position to award a contract; it is not a legal entity. It is effectively a division of the QCA, and divisions within these organisations often do not have the high profile that the NAA had. Of course, if you are basically saying, “NAA, if it’s your job, get on with it,” the wisdom begins to accumulate with the NAA and does not move out into the wider organisation.

**Q285 Chairman:** It gets its own culture?

**Lord Sutherland:** Yes, the wisdom does not move out into the wider organisation in the way that the wider organisation needs if it is to carry out its own scrutiny in the light of its own responsibilities. I think the issue was the ambiguity. Perhaps the position should have been made plainer to the individuals involved. I am not sure whether ETS realised that the NAA was not a separate organisation. I am not sure about it going native. The difficulty was that it was used to fixing things. If there was a problem, it had a person who knew, and they would go and fix it. There were just too many things to fix this time round. If there was a problem, it tended to take the view, which is very admirable in some ways, “What are we going to do to sort it out?”, rather than go shouting at the next stage up the line. There is something admirable in that, but when it gets this big, you have real problems.

**Chairman:** People in this Committee, I know, believe that there were some extremely good people working in these organisations who did their best even though things went wrong.

**Lord Sutherland:** Yes.

**Q286 Mr Stuart:** Could you give us a quick insight into what has happened to the people in the NAA? As you said, it was a division, but it had its own chief executive, so perhaps it was the fact that it was in an ambiguous position that made it all the more defensive culturally to try to assert itself. What has happened to the chief executive of the NAA and other leading people in it?<sup>7</sup>

**Lord Sutherland:** I understand he has been suspended, and I do not know the outcome of the QCA board deliberation on that. He and Ken Boston were the two who were suspended.

**Chairman:** Can we move on? David, you will take us through risk management.

**Q287 Mr Chaytor:** Do you think that if the system had been tested end to end, all or most of the problems could have been avoided? Is that the key flaw, the key missing piece?

**Lord Sutherland:** It would have been a very different position. There may be other difficulties, but this was right at the centre of the problem. What happened in autumn 2007 would inevitably affect what comes

later. We have not checked how that happens. You do not troubleshoot in advance. It was too late when the problems appeared down the line.

**Q288 Mr Chaytor:** So end-to-end testing should be part of any future contract?

**Lord Sutherland:** That is absolutely fundamental.

**Q289 Mr Chaytor:** In terms of the delays in reporting or flagging up the problems that were identified over many months, where does the key responsibility lie? Can you put your finger on one issue or is it a collective failure?

**Lord Sutherland:** I have recommended that there should be a thorough look at the risk-management processes in all these organisations: the DCSF, the QCA and any body to which this is contracted. It would have been within the NAA, because that was an extra step on the way, and the more steps you have, the less sharp some of these problems appear further up the system. Do not forget: the QCA has a huge remit and this is just one element of it.

**Q290 Mr Chaytor:** May I just pick you up on that. Under the section of the chapter on risk management entitled “Analysis and Findings”, you do not make any reference to the DCSF and risk management, and nor do you make any recommendation about the DCSF in the two specific recommendations. That interested me, because you commented on the DCSF substantially, but you seem to have let them off the hook when it comes to drawing things together and making recommendations for change.

**Lord Sutherland:** Let us be clear, the fundamental role in this context of risk management lies with QCA. They have to deliver, with their chosen contractor, whatever the mechanisms they put into place. The role of the DCSF is, from their position, to be sure that there will be an outcome, but that is not the detail of risk management and dealing with individual problems. An issue should not go up to the Department unless it really is major, but the problems were not being escalated to the Department. It asked all the right questions but was given reassurances from QCA, which was given reassurances from NAA, which was given reassurances from ETS. When you are that far from the action, if you have had three bodies who are apparently dealing with it, it is very difficult to do otherwise.

**Q291 Mr Chaytor:** You draw attention to the lack of challenge of the DCSF observers on the supervisory board for the project, but you do not make an explicit recommendation as to how that problem could be dealt with in the future.

**Lord Sutherland:** Yes, there are two things there. One is that the role of observers is not a generic one—it varies according to seniority and which committee they are on and so forth. I recommend that that should be reviewed and I have put that firmly to the Department in relation to this evidence. This is perhaps going beyond, but I believe that a model to look at would be for each observer to have a set of

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<sup>7</sup> Note by witness: David Gee (NAA Managing Director)

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desk instructions as to what their job is, as observer on that group. That would be good management without necessarily becoming over-bureaucratic. The observer needs to know, "Am I just watching? Am I taking part in the decisions? Am I required to pass up the line, and if so, what? Because one up from me will not like it if every time there is a minor niggle I race to the office." A very clear desk instruction is needed.

**Q292 Mr Chaytor:** Should that be a specific recommendation?

**Lord Sutherland:** There might be better ways of doing it, but it is now on the record, and if somebody asks me how we should deal with observers, that is the kind of response I would give them as a way of doing it. The role of observers caused a long confusion. The QCA and Ken Boston had some beliefs about what they were doing and where they were. I am sure that you have been on committees where there are observers. Do you know what they are doing? Unless you have the desk instructions too, it is not evident that you can assume how much of what you say automatically goes back to base, and how much does not.

**Q293 Mr Chaytor:** Given your earlier comment about the ultimate Secretary of State responsibility, is there nothing at all in respect of the risk management procedures within the Department other than this particular point about a clearer brief for observers on external committees that needs to be changed? Are you confident that the existing risk management procedures within the Department are adequate?

**Lord Sutherland:** I have said in the report that the DCSF should, at points, have challenged. I itemised some of these places in the report. Eventually the Minister of State asked good and pertinent questions, to which he did not initially get adequate answers, so he called in people. Some of the challenging could have been done by the DCSF prior to it reaching that level.

**Chairman:** Annette, you are going to look at the quality of markers and marking.

**Q294 Annette Brooke:** I think it is the same process. I want to look at the markers, follow through to the quality and then look at whether the children get the correct results. It is important that they all interrelate, the last one being the most important matter. You said quite a bit about markers in your opening address but there were clearly lots of rumours abounding: for example, 18-year-olds being brought in to mark. In fact it was not necessarily the usual band that got the marking and I heard of people who were asked so late and were asked to go to the other end of the country for training that they thought it was not worth it for the money. Did we therefore have a dedicated band of markers with previous experience?

**Lord Sutherland:** We had a very large number of markers who did, as far as I could see, a good job, as they have done in the past. Because of the failure of the administrative arrangements, there were some

new to the game who did not have the training they ought to have had. Sadly, alongside that, they did not have adequate resources and support—someone they could telephone and automatically get the right kind of discussion and answer. There were real failings there, therefore. Because of the timing of some of this, there was a cultural problem—ETS did not know the significance of a bank holiday weekend. The significance is that that is when many school teachers have some time to do some marking. Unless they deliver the scripts in time for that, they are behind and the individuals will be back in the classroom in another week's time. It is a very practical point, but the acculturation did not take place and so people were being pressed to take on marking. Someone would say, "I agreed to mark, provided I got it by 20 May," or whatever it was, "and it is now 28 May and I have lower sixth, or primary A, or year 12," or whatever, "waiting for me on Monday morning." They were put under that pressure. That can be resolved. How far was it resolved last year? You raise the specific point of 18-year-olds and so on, and there are a lot of rumours about. When I saw that I asked, "What evidence do we have about who did the marking?" The first point of evidence is the ETS charts of who was doing the marking. There was no difficulty there. QCA looked at these in great detail and said, "We do not see any evidence of someone who is not an appropriate person doing the marking and being listed and getting paid for it." That is the evidence. You will have to assess this. Some of the evidence from ETS was not as strong as it should be. I would not say the same of QCA because by that time they were deeply worried and they would have carried out a check like that very rigorously. The question is whether they had adequate evidence and paperwork. They believe they did; that is the only evidence I have, and I share it with you for what it is worth. We now have to wait for Ofqual's report on what happened in the system and what the reviews were, in other words, the referring back of papers that teachers and head teachers thought had not been adequately marked. They will say, as they have said every year, "There are problems," or "You didn't get this one right," or "This group of children are better"—or in some cases—"worse than this". We will have to await the outcome of that. I agree that this is a fundamental problem that we have to pay close attention to when that report comes out.

**Q295 Annette Brooke:** I seem to recollect that, in answer to one of my questions, Ken Boston said that every marker had received adequate training. I do not have that evidence in front of me, so I say that with some caution. I am absolutely sure, however, that he said that to me. It is clear, though, from early evidence that not every marker had the training that they should have.

**Lord Sutherland:** The arrangements were so disrupted and disruptive of the lives of individuals that I would be very surprised if the quality of training of the year before was replicated this year. This was for the reason I have already given of

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people not being notified of the right place to go and not having the support online that they reasonably had hoped for.

**Q296 Annette Brooke:** Again, it is the degree: you could make the claim that every marker had had training, but it might not have been the same quality.  
**Lord Sutherland:** That may be so.

**Q297 Annette Brooke:** I also seem to recollect that Ofqual said at a very early stage that they did not have any concerns about the quality of the marking. Perhaps because it was a relatively new organisation, it seemed a rather premature statement.

**Lord Sutherland:** I remember that being said—it was said to this Committee, was it not?

**Chairman:** It was.

**Lord Sutherland:** When I read your evidence I thought, “Careful, what are the words there?” As I remember, the words were, “We had no evidence that the standards would be lower than previous years.” There is an interesting episode of “Yes, Minister” in which the words “We have no evidence” are analysed in great detail. However, as a result of the reviews, they have gone back to look at whether that is true.

**Q298 Annette Brooke:** Finally, in this section, I am sure that you took evidence from schools and the media. We had the impression that the schools were totally dissatisfied with the results, not only because they had gaps, but because they were not in line with teachers’ assessments. Would you say that from what you have seen there were concerns about the quality of marking?

**Lord Sutherland:** There are concerns. One piece of evidence that there are concerns is that a much higher percentage of papers have been referred back this year. I think that it is over 5%, whereas it was under 2% in previous years. That is a big shift, which is not surprising in view of the noise that there has been. There is discontent out there, but having said that, you have to wait for the analysis of the evidence. I confronted one group of head teachers, with whom I have regular meetings for other reasons, and asked what it was like for them. They are all primary school heads in very difficult schools in difficult areas, here and in Walsall, and to my surprise, one of them just said, “No problems: all the results were in, we were fine; no referrals, and they’re okay.” So there are different stories about in the system. I had to challenge the head in question and ask “Are you sure?” and she said, “That’s what happened in our school.” There was a group from probably eight schools there at the time and there was a variety, and that is why it is so essential to have evidence. That is also why I have proposed, and indeed recommended, that in future there should be access to stakeholder or user panels, which should be set up in advance, so that as the system unrolls through the year, the Department or QCA or this Committee does not have a sudden explosion of things happening on the internet or on our website, set up by TES or the BBC. There should be a mechanism for having groups to whom reference can be made, whom we can ask to tell us the reality. I am

quite convinced that that can be done and that it would be a helpful way of dealing with the pressure, which I wholly understand. Our grandchildren will be going through it very soon. Lots of folks have good reason to feel strongly about it.

**Chairman:** We are coming to the end of the sitting, but we are going to cover a few more topics. Graham will take us through corporate governance.

**Q299 Mr Stuart:** I shall try to gallop through this quickly. We have touched on it already, but to what extent do you think that the relocation of QCA to Coventry and, at the same time, the loss of its regulatory function to Ofqual contributed to QCA taking its eye off the ball at board level?

**Lord Sutherland:** I have thought carefully about that, because I heard what was said. In the end, if you run an organisation like that—going back to a point I have made—you get a remit letter and a resource allocation that you will argue about and discuss, and those two have to line up, and you either sign off on it or you do not. You might think that too much is being asked of you. I have moved organisations and it is a big issue, especially if relocation of staff is involved, but if you accept that it is doable then you have not just sent a message, you have made a commitment. I understand that there are additional pressures that we all suffer from, and if this building had to be relocated for six months, we would all be under pressure in the same way, but if you have signed up to it, that is a different matter.

**Q300 Mr Stuart:** So you think it is a meeting of equals? It all depends on the culture, does it not? The Ministry might want something to happen and an individual might think that it will cause difficulties and say, “I don’t think we should do this, Minister,” and the Minister might say, “Well, I’ve thought about it and I think you should.” Are you saying that they really are in a position to say “No, I’m not doing it”?

**Lord Sutherland:** You can make a public statement. The evident one is to say “Well in that case, I’m not going to continue in this job.” When I was head of the inspectorate, that was always an option open to me. If there had been pressure on me from Ministers that was unacceptable and unsustainable, that was an option. The similar one I made this time was that if there was any pressure I would go to the press, and I would.

**Q301 Mr Stuart:** That comes back to the heart of this responsibility issue which we started with. If we rely on the fact that people will resign their job every time they are pushed by Ministers to do something that they should not do, we will not have many people left in public service. The last thing I would do is suggest that people involved in public service are anything other than people of great integrity and genuine commitment. The reality is that people do not routinely resign. Again, to suggest that it is their fault for agreeing to it is to get it completely the wrong way round. Did the Ministry push this hard? Short of Ken Boston saying, “I resign,” which looks

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prima donna-ish over such a thing—well, I do not know. I am just trying to tease out whether you got it the wrong way round.

**Lord Sutherland:** I hear what you say. There is no doubt that that would be the nuclear option that we should never rely on—but it is there. There are ways in which you can make a clear and straightforward point about this. Ken made his claims about the organisation before and how well it would operate and how well it would not, but I did not even see a letter back from QCA saying, “You have asked us to do all of this; it is too much.”

**Q302 Mr Stuart:** Fair enough. You have said that you welcome Ofqual being put on a statutory footing, yet you also say in your report that it was reactive rather than proactive in its scrutiny. Do you think that Ofqual was created too hastily and without proper thought to the consequences?

**Lord Sutherland:** It is always a problem that if you are going to do something new, you will do it in the middle of something else. If it had not done it last April, it would be doing it now when it was waiting for the outcome of your response to my report or whatever. That is always a difficulty. I have seen some legislation going through in other areas where I have wondered about setting up shadow organisations and appointing chief executives and so on. All that has been done elsewhere. It is not as if it is unique. The sooner it got on with it the better.

**Q303 Mr Stuart:** Do you think that being on a statutory footing will make it a better organisation?

**Lord Sutherland:** Yes, it will give it powers and if it does not use them it will rightly be excoriated.

**Q304 Mr Stuart:** One more question, if I may. An issue that I do not think we have touched on directly is that your report is comprehensive in setting out what was done, what was not done, by whom and when, but it is less consistent in setting out why something happened or was not done. Can you explain why your report is not more consistent about explaining the reasons behind the failures?

**Lord Sutherland:** The reasons why people do things are many and various. I remember how once in a senate meeting when I was a junior lecturer my professor of philosophy tried to explain to the vice-chancellor the difference between a reason and a motive, a matter on which there is extensive literature in philosophy. He failed. The mistake he made was to assume that everything is done on rational grounds. It is not. People have motives and emotions that move them. They are sometimes in entrenched positions. Sometimes they feel threatened. There are all sorts of reasons. You would need a better amateur psychologist than I am to chance putting that sort of judgment in a report of this kind.

**Q305 Chairman:** As a former chief inspector—

**Lord Sutherland:** I knew I should not have mentioned that.

**Chairman:** That was between 1992 and 1994. This pertains particularly to this inquiry. We now have the power to interview the applicant for the job of chief inspector, the head of Ofqual and so on. How do you react to that power of a parliamentary committee?

**Lord Sutherland:** We are in the Wilson room, and this is a Harold Wilson-like comment. I remember back in 1979, when Norman St John-Stevas proposed that there should be select committees with real powers, I said to somebody, “That is going to change the way in which the House of Commons works.” I am glad to say that it has. I think it is very important that this Committee has a range of powers. This is a pattern that seems to work very well in the USA. I do not see why it should not work well here.

**Q306 Chairman:** So you would have applied for the job if you had known that you would have to face us?

**Lord Sutherland:** That is a different question.

**Chairman:** The present chief inspector says she would not have applied for the job if she had known that she was going to be interviewed by this Committee, so that was a slightly mischievous question.

**Lord Sutherland:** I was interviewed for the principalship at King’s College many years ago; there was a student on the committee. I was interviewed for University of London; there was a student on the committee. Having a student on the committee often means that it is like holding it in public, which is the issue here. I had no objections to that.

**Chairman:** Let us look at the future of national testing. David.

**Q307 Mr Chaytor:** Looking forward to 2010, there is a question mark over the shape of the tests. There will be no Key Stage 3 tests in 2009 or 2010. Do you think it wise for the Government to proceed with a testing system at a higher level of intensity than the current one? If the pilots for the single level tests are given the go-ahead we will have tests twice a year and every 10 and 11-year-old will be sitting them. Is that a sensible way to proceed?

**Lord Sutherland:** That is outside the report.

**Q308 Mr Chaytor:** Are there any lessons to be learned from your inquiry that might inform future policy about the way Key Stage 2 is assessed?

**Chairman:** We are trying to get value for our money, you see; with all your experience we thought we would throw a few other questions at you.

**Lord Sutherland:** Complexity is always an issue. First, if you make the system more complex there are additional risks of things slipping up to guard against. Secondly, there is a group of able people looking at this at the moment. One will read, with fascination, what they have to say. Thirdly, I believe it is important to have some sort of national testing system. One of the difficulties of the current one, apart from its intensity, is that it tries to satisfy too many different things. What is the point of national testing? One is that it lets parents know whether or not their children are meeting a certain standard that

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is regarded as, at least, acceptable throughout the nation. Having that in place is important, whatever form it takes. Another is that it ensures that if there is a failure in reaching national standards, it is not because of the particular way a school or a local authority carries out its procedures. That has to be checked as well. Also, people do not make enough of the point that national testing is a way of deciding whether Government policies and expenditure are delivering the goods. They pin their policies and expenditure to meeting certain targets which are not just for the teachers but for the system that they are planning and funding. I would want any system that develops to take account of those three very important tests—or checks—on what our national testing system should do.

**Q309 Mr Chaytor:** Do you think, though, given your support for the principle of a national testing system, that each of the functions you described can be adequately represented by a single form of test? Or is the logic of your remarks that there should be different forms of test to fulfil the requirements of each function?

**Lord Sutherland:** I am not in a position to go as far as that yet, because I am still thinking about it. I am reassured, however, to know that people who are more expert on this than I am are considering it. I will test what they say against those principles, but yes, that is a possibility. All teachers assess the children in front of them, if they are good teachers, so assessment goes on. The issue is that if it is pedagogically important, is it important in relation to these national criteria?

**Q310 Chairman:** Did you have the moment, when you were in the middle of this inquiry, that I did when I looked at all this? There were 9.5 million scripts whizzing around the country—an environmental disaster, let alone anything about education. There was a vast contract worth tens of millions and people coming from all over the country to be trained in centres. You can have a national testing system delivered locally. It seems to me that you can have a system, where the testing and questions are done by a perfectly respectable group of people, which is administered and marked locally. Is that not a possibility?

**Lord Sutherland:** I think there are a lot of options. I was reassured by various decisions taken this year that the magnitude of the task has been reduced. There is no Key Stage 3 for a start. That will be very significant considering the timescale we have for this year. In reducing the magnitude of what is going on, I think this is a trend in the right direction. There are different ways of doing it. This is not really all that relevant but I will say it anyway. I chair the Associated Board of the Royal Schools of Music. A primary core function that they carry out worldwide is to set standards for musical performance. Now, if you can do it for that, across the world, it must be possible to check across the country whether our children can read, count, spell and write. However, the current system has had such difficulties that I would be surprised if there were not significant changes.

**Chairman:** In the words of quite a well-known 20th-century philosopher, I think we shall pursue that intimation, with interest. That was a good session. Thank you, Lord Sutherland.

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#### Supplementary memorandum submitted by Lord Sutherland

Thank you for inviting me to participate in your inquiry into the National Curriculum tests by providing evidence on 26 January 2009. I am writing to clarify two points from the evidence which I gave.

In answer to question 270, I indicated that the costs for increasing ETS staff capacity were incurred by the QCA. In fact, it is generally the case that ETS incurred the costs for its additional staff—this will have accounted for part of its reported loss on the project (as described to your committee on 10 September 2008 by Dr Philip Tabbiner, Senior Vice President, ETS). In addition, QCA incurred a smaller proportion of costs relating to an increase in the number of its own staff and temporary staff assigned to the project. The QCA Chief Executive indicated that the additional costs incurred by QCA were around £580,000 which is detailed on page 54 of my report.

In answer to questions 261, 272 and 275, I would like to clarify that the parameters I referred to were set by the QCA. They were not set by the Office of Government Commerce, PricewaterhouseCoopers or another body. The parameters set were:

- the Pre-Qualification Questionnaire (first stage of procurement) asked for details of previous contracts worth more than £20 million a year (this is detailed on page 25 of my report); and
- the press review commissioned from PwC as part of financial due diligence covered a period of 12 months (this is detailed on page 28 of my report).

My report recommends that more extensive and additional checks are made in the future in relation to potential suppliers' knowledge, capacity, experience and track record.

11 February 2009

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**Wednesday 22 April 2009**

Members present:

Mr Barry Sheerman, in the Chair

Annette Brooke  
Mr David Chaytor  
Mr John Heppell  
Paul Holmes  
Fiona Mactaggart

Mr Andrew Pelling  
Mr Graham Stuart  
Mr Edward Timpson  
Derek Twigg

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**Letter to the Chairman from Dr Ken Boston AO**

As you are aware, I resigned as Chief Executive of the QCA on 12 December 2008. On 31 March 2009 the QCA Board was given Government approval to accept the resignation. During the interval of more than three months I was under so-called “suspension”. With the belated acceptance of the resignation, the public silence imposed by that particular form of house arrest is over. I now hope again to contribute constructively to the national discussion of issues relating to curriculum, assessment, qualifications and skills, although regrettably from outside the system rather than from within.

There is however one matter which I believe it is proper to raise first with the Select Committee, rather than in the media.

In his prepared statement to the House of Commons on the release of the Sutherland Report on 16 December 2008—and in his answers to Michael Gove and David Laws—the Secretary of State for Children, Schools and Families set out to demonstrate (1) that I had been complacent in my management of the delivery of the key stage tests; and (2) that I had repeatedly been pressed for answers by Ministers on numerous occasions, the most recent being 17 June 2008, and had given them strong reassurances that the tests were on track. He drew heavily on paragraphs 4.92 and 4.93 of the Sutherland Report (page 77) and on paragraph 4.137 (page 85). The Secretary of State and the Schools Minister, Jim Knight again relied extensively on these three paragraphs in their evidence to the Select Committee on Children, Schools and Families on 4 February 2009.

Paragraph 4.92 quotes evidence given to Lord Sutherland by Jim Knight, who says that he met with me and David Gee, the head of the NAA (the assessment division of QCA) on 17 June. Knight’s evidence implies that I was complacent and disengaged at the meeting, and left everything to David Gee. Paragraph 4.93 refers to DCSF’s notes of the meeting, at which I am alleged to have been present.

This is fiction. I was not at the meeting Jim Knight arranged with David Gee, nor had I been asked to attend. The DCSF note of the meeting does not in fact list me as one of the attendees. Further, there was no meeting between Jim Knight, David Gee and me, on any date during the period covered by the events into which Lord Sutherland was asked to inquire.

Paragraph 4.137 (page 85) is about the escalation of risk by QCA to DCSF during the test delivery period up to the time of the failure, which became apparent on 25 June. It was quoted in full by the Secretary of State in the House of Commons, and again two months later in his evidence to the Select Committee and reads as follows:

“In practice what happened in 2008 was that DCSF observers escalated their own assessment of risks to the DCSF ministers on a number of occasions. On this basis, ministers usually pressed QCA’s Chief Executive for answers. At this point, because information was not being escalated within QCA effectively, ministers were given strong reassurances by QCA that all was on track. As late as 17 June when the Schools Minister met QCA’s Chief Executive and NAA’s Managing Director, they provided reassurances.”

This too is fiction. Not only was I not present at 17 June meeting, but until the delivery failure at the end of June I had had only two meetings with the DCSF Ministers in 2008. David Gee was present at neither of them. On 18 March the QCA Chairman, Sir Anthony Greener and I met with Ed Balls and Jim Knight—at QCA request—to discuss the future of the QCA. The national curriculum tests were mentioned only briefly and in passing, and no specific delivery issues were raised by Ministers. On 2 June, the Chairman and I met with Ed Balls and Jim Knight on a range of matters, including the tests: as I advised Lord Sutherland, I did indeed on that occasion reassure the Secretary of State that earlier problems with marker recruitment, marker training and the distribution of scripts had been overcome, and I did so on the basis of evidence which I believed to be sound.

I was not asked to meet directly with the Schools Minister in the months leading up to the delivery failure at the end of June, including the critical marking period in the final eight weeks. Nor was I being “pressed” by Ministers for answers on the telephone or by email. There was a flurry of meetings once the delivery failure occurred (2, 3, 24 July and 6, 14 August), but these meetings were about recovering from the failure process, conducting the review of scripts returned by schools because of problems with marking, concluding

the contract with ETS and tendering for a new supplier for 2009. They were not about the causes of the delivery failure and the events leading up to it, which were the matters on which Jim Knight was asked to give evidence, and on which Lord Sutherland reported.

During the test delivery period, QCA was of course closely monitoring the blogs and the many reports in the media about problems with ETS, and working around the clock to resolve every issue which arose. We were in close contact with DCSF officials, who were also monitoring the situation. Many of the problems were successfully addressed by ETS, but some quite major ones could not be resolved. Many allegations proved to be false, such as the assertion that ETS was employing a first year undergraduate to mark Key Stage 2 papers: he had in fact been employed by a school to assist in the review of marked returned scripts.

The flawed evidence on which paragraphs 4.92, 4.93 and 4.137 of the Sutherland Report is based has been used to portray me as complacent, disengaged, and constantly beleaguered by Ministers with questions I was unable to answer. This is far from the truth; it was not corrected by Ministers or DCSF officials at draft report stage; and it has been used by Ministers to my serious disadvantage.

All this had no bearing on my decision to resign. Clearly however, the record should not be allowed to stand. The Secretary of State and the Schools Minister owe an explanation to Lord Sutherland, to the House of Commons, to the Select Committee, and to me. And the explanation cannot be that Jim Knight was simply mistaken about the date on which he thought he met with David Gee and me, because there was no other meeting with which it could reasonably have been confused; nor that there were occasions other than 2 June when I was pressed by Ministers for answers, because that is simply not true.

15 April 2009

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*Witness:* **Dr Ken Boston**, AO, former Chief Executive, Qualifications and Curriculum Authority, gave evidence.

**Q311 Chairman:** Can I welcome Dr Ken Boston to our proceedings. Ken, we have been waiting a long time to have evidence from you. Your interpretation of your contract of employment was that when you were under suspension you could not appear before the Committee. One member of the Committee may ask you a question about that. You will know that we broke all previous records by holding a meeting of this Committee in the summer recess last year, such was the urgency and importance, we thought, of the tests situation at that time. So you know it is of concern to this Committee. You know that we have in a sense wrapped the issue up with the problems that we faced with education maintenance allowances, which are totally separate and not part of your remit at all. But there were two systems, both of which seemed to fail. Independent companies that were hired to do a job did not seem to be able to deliver satisfactorily. We hope that this evidence session will allow us to come to some conclusions and to write up our report, so there is a lot hanging on this meeting because we have been waiting for such a long time. This is the only Committee that actually got evidence from the American company that failed to deliver. That company did not give evidence to the Sutherland inquiry, but it did give evidence to us, so we have a particular responsibility in this matter. Ken, we have known you for a long time in your role. We have had a valued relationship with you, so we start on that basis, but our job today is to find out what went wrong and why it went wrong. As with all witnesses, I am going to ask you if you want to make an opening statement.

**Dr Boston:** Thanks, Barry. I would like to make an opening statement, which touches on three things. I think it might be a useful start. One is the letter that I sent to the Select Committee.<sup>8</sup> The second is the

terms of reference for Sutherland, because I think there is a lot to learn from that. Thirdly, I have a couple of points about the role of observers on the QCA, which I think has some lessons for Ofqual. Let me begin by saying, in relation to the letter, that I have resigned and I am not seeking to mitigate that in any way. Even if Lord Sutherland had been able to get to all the causes of the failure, and he was not able to get to all the causes because of his terms of reference, I would still have resigned because of my part in it. So let there be no question that what I have to say is attempting to go back over that ground. The letter I sent to you sets out what I think are two major flaws in the evidence—quite incorrect and unsound evidence—which has been used against me. At 2 o'clock this morning on the radio I heard that the Department had in fact put out a statement saying that Jim Knight had corrected this evidence some time ago. I was not aware of that, but I think any correction raises more questions than it answers. The whole point of my letter is the last sentence, which seeks an explanation as to why paragraphs 4.92, 4.93 and 4.137 in the Sutherland report are without foundation. There is no fact to them, and yet they were used against me, to my disadvantage, in the House of Commons and in this Committee. I want an explanation for that, and the explanation cannot be simply that Jim Knight was mistaken about the date on which he thought he met with David Gee and me, because, as my letter sets out, there was no other meeting with which it could possibly have been confused. Secondly, there were no occasions—other than the occasion on 2 June—when I was pressed by Ministers for answers. You will recall that in the House of Commons there was some banter about what “usually pressed” means, and the Secretary of State clearly used it to mean “pressed on several occasions”. There was one. I want to know why the document was so flawed; why

<sup>8</sup> See Ev 48

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the flaw was not discovered sooner; why the DCSF official, who took the notes of the meeting, did not draw the mistake immediately to the Minister's attention when the transcript of the evidence came in a few days later from Sutherland, when the error must have been clearly there; and why evidence given on 14 October last year was not corrected, to my knowledge, until 2 am this morning. I think that reasons are required, and an explanation is needed as to what that is all about. And what does Lord Sutherland think? He was given, in good faith, false evidence, which he had published. If I were him, I would be furious, and I would be seeking an explanation. On the second point, on the issue of the terms of reference of the Sutherland report, I believe that one of the lessons that we have learned—because we need to look ahead—is that Lord Sutherland should have been given a remit to examine the role of all three partners involved in the development and the delivery, which are the Government, the QCA, and the contractor, ETS. His inquiry, as we know, was restricted to the QCA and ETS alone. Yet the Government, through the DCSF, determine the nature of the tests to be procured, the pupils who are to be tested, which subjects they are to be tested in, how and when they are to be tested and how much money has to be spent on testing. The interval between the date of the test and the date for results—the eight weeks' interval—is set by the Government. They also determine whether the tests are marked manually or onscreen; which results data are collected and how they are collected; the form in which the data are required; and how the results are returned to schools. In those core elements of test development and delivery, neither the QCA nor the supplier has any discretion—decisions are made by the Government alone. The development and the delivery of these tests are not at arm's length from the Government; the Ministers and the officials are at arm's length only from the detail of the test questions, and from the marking and level setting. I believe that the failure in the delivery of the Key Stage tests in 2008 presented Ofqual with its first opportunity to establish itself as a truly independent regulatory authority. If the Government had genuinely wanted Ofqual to assume such a role, and to get to all the root causes of the failure, it would have asked Ofqual to establish terms of reference for Lord Sutherland which encompass the role of all three partners in test development and delivery. Consistent with Government rhetoric, it should have been beyond question that Ofqual, with Sutherland as its agent, would account to Parliament through the Select Committee, not to the Secretary of State, and report on the roles of all three partners in the delivery failure. I think that in giving Lord Sutherland specific terms of reference to look at the QCA management of the ETS contract, which inevitably would have been the critical part of any Ofqual inquiry, and in asking Lord Sutherland to report to him—not Ofqual—on that matter, the Secretary of State narrowed, not broadened, the scope of the inquiry. His intervention put a protective fence around the DCSF and Ministers, focused the

spotlight on the QCA and ETS, prevented some major causes of the failure from being identified and compromised the independence of Ofqual and its capacity to determine its own affairs. No doubt the Government wanted to avoid any risk of a public inquiry into the purpose and use of the Key Stage tests. But I think that Ofqual should have been trusted, on that point, as a regulatory authority rather than a body for policy review. It is beyond question that it could have been relied upon to give Lord Sutherland terms of reference which focused broadly on the programme. I have no doubt that decisions made by Ministers and officials in 2006 had a marked impact on the failure in 2008, most notably staying with manual marking rather than moving to the phased introduction of onscreen marking, as with GCSEs and GCEs. Four years after it was recommended to Ministers by me and others in the QCA, onscreen marking has become one of Lord Sutherland's principal recommendations. The further contributory factor, of course, was the question level data being captured in the marking of the 2008 tests—Lord Sutherland's references to several thousand clicks being required for each bundle of papers, you know. My final point, briefly, is that I think the appointment of DCSF observers to the QCA board, and other QCA bodies, has undercut the authority of the QCA and will undercut the authority of Ofqual if we are not careful. By reducing the formality of the relationship between the two organisations—the Government and the QCA—it leads to negotiated compromises from time to time, which erode public accountability. The role of observers on boards and committees has been to take part in discussions, to provide advice to Ministers separately from the QCA and to relay ministerial feedback. It is in that third area where the problem arises. Observers typically advise in committees and boards that Ministers would be “minded to” or “not minded to” agree with this or that proposal or “content to” or “not content to” agree to a particular recommendation, or even that, “If I put that idea to the Minister it would be laughed out of court.” Now certainly, prior consultation with the DCSF is important to inform subsequent decisions by the QCA on what advice it should offer Ministers, but too often boards such as that of the QCA are put into a position where it is expected that they will seek to negotiate that advice in advance. I think that is a pernicious process that compromises integrity and independence, and if we are not careful, in relation to Ofqual, it will cause real difficulties there. I do not think that for Ofqual the runes are propitious at all. The reality of true independence for Ofqual will need to be asserted, defended and won. QCA, from time to time, has been seen as far too independent, and that is one reason why its wings are being clipped as the QCDA. The greatest risk for Ofqual at the moment is of being cynically outmanoeuvred by Government. I think we have to be very careful about that.

**Q312 Chairman:** That is a very powerful survey of how you see the situation, and we will now start some questioning, but can we just clear one thing up.

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You talked about Jim Knight's response. We have given you a copy of a letter received by the Committee—I am not sure whether you saw it; from what you said, you did not.<sup>9</sup> Jim Knight admitted that he had made an error in evidence given to Lord Sutherland; his letter is dated 9 February. Then you have Lord Sutherland's reply, saying that he did not think that that made much difference to his report. I just thought that we should clear that up before we go on to the substance.

**Dr Boston:** This is the first time, Mr Chairman, that I have seen this letter. I think that it is disgraceful that, if I was misrepresented by a Minister in evidence in a public report, I have not been contacted by the Minister.

**Q313 Chairman:** So you have never seen this letter?

**Dr Boston:** No, I have not. I have not been given any information on this at all. I think that is outrageous. If as, just glancing through, I see in the last paragraph on the first page, the Minister is confusing it with a meeting that took place on 2 July, and if that meeting is the subject of paragraph 4.92, that is also wrong. The Minister knew on 26 June that there was a failure. The meeting on 2 July was put together at his request to talk about where we would go from there, with regard to releasing the results. It was the first meeting I had with the Minister along with David Gee, and others were present.

**Q314 Chairman:** That was with Jim Knight?

**Dr Boston:** Yes, with Jim Knight. We had before us a set of data from ETS that was absolute nonsense. It showed very clearly that it was going to fail, but even from ETS we were getting some confusing signals. The president of ETS in America sent an e-mail the next day, 3 July, as you might recall from the evidence in Sutherland, saying that he thought that they were still going to make it. All the evidence we were getting from the ETS people locally was that they were not. Jim Knight knew on the previous Friday that this was not going to succeed. The meeting on 2 July was to sort out where to go from there. Therefore, that was in my view beyond the terms of reference of Sutherland. Sutherland was looking at the reasons why failure occurred and the whole run-up to the failure. At that point, on 2 July, failure was evident and known. The key argument we had at that meeting, which was very intense, was whether to release the results. Jim Knight asked me for formal advice on delaying the results day by a week, and I refused to give that advice. My advice was that the results available on 8 July should be published, and as events turned out, 93.5% of Key Stage 2 results and 85% of Key Stage 3 results were available on the results day of 8 July. A large number of schools, a minority, would still not have got results for all three subjects at the one time, but my argument was that letting the results go out would at least allow the majority of schools to have results, rather than penalising the whole lot so that they would not be able to complete their evidence. The Minister stuck with the decision that the results

should be delayed, and I agreed to provide him with advice on the length of that delay. That is in fact another element of the Sutherland report that is wrong. It reports—I do not recall the exact words—that I advised the Minister to extend the date, but I did not. My advice to the Minister was to stick with the date, and when he asked how long it should be extended if he insisted on doing so, I gave him the figure of a week. I remember the 2 July meeting very well. It is beyond the terms of reference of Sutherland, and the description of it—it was quite an intense meeting—has no relationship to the characterisation of my performance or behaviour in the meeting which is set out in paragraph 4.92.

**Q315 Chairman:** Can I take you back. On the one hand, the Committee wants to find out what went wrong. You, as the QCA, hired this American company, and all of us agree that it failed to deliver in the way we anticipated it should, in terms of our hopes for the students taking the exams. Before I bring you back to that, let us be clear that you are very angry about how your role in this has been characterised by the Government.

**Dr Boston:** Yes.

**Q316 Chairman:** That is very clear, and I understand that and you have had three or four months to think about it. On the other hand, would not the Ministers say to us that they had asked the QCA to hire an independent company to provide value for money and deliver the test results but that did not happen? Whatever we say about which Minister met you and when, the fact is that the QCA hired these people and they failed to deliver. What do you say to that?

**Dr Boston:** I say that is exactly true. That is why I resigned. I was managing an organisation that had a difficult task ahead of it—we can talk about aspects of that—but it failed and I resigned. What I resent is evidence against me being sexed up in a report by Lord Sutherland, on the basis of false evidence given by Ministers, to characterise me as something I am not. I failed to deliver and I resigned. That is it.

**Q317 Chairman:** In terms of the broader brush, though, in your introductory remarks you suggested that there was something much deeper at the heart of the problem, and that is that the QCA has been abolished—we now have two organisations—and the Ofqual that is emerging is weaker than it should be.

**Dr Boston:** We were first advised of the changes being made to the QCA by Ed Balls on 19 September 2007—that he wanted us to split. I support absolutely the notion of a regulatory authority reporting to Parliament rather than to Ministers. That has always been a difficulty with the QCA: it is responsible for maintaining the assessment standard, the height of the hurdle, yet reports at the same time to the Ministers who want to drive up the performance standard—the number of people who leap the hurdle. There is a real inconsistency there. In my view, and this was my view way back in 2003 and 2004, it would have been much better either to have hived off the operating arm, the National

<sup>9</sup> See Ev 77

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Assessment Agency arm, to an awarding body, or to have set it up as a separate authority, or even to have abolished it and given an awarding body that function and the contract, and put the whole of the rest of the QCA, including its regulatory side and its curriculum side, in a statutory authority that reported to Parliament and not to Ministers. That would have been a better solution. Regarding the notion of now taking the statutory authority role of the QCA away, there has been agitation there, and that became very clear in the meeting we had with Ed Balls and Jim Knight about the future of the QCA on 18 March. One of the great sources of agitation has been the way in which I have played my role and allowed other senior people to play their roles, including particularly perhaps Mick Waters, the Director of Curriculum. The QCA was set up as a statutory authority under the 1997 Act not to be a critic of government but to be a constructive participant in educational discussion nationally, and I have seen it lead part of that discussion. I have seen how it has not been bound by a set of speeches that were basically constructed around the Government press releases of the day, and how it has never publicly criticised Government but has been prepared to shoot the breeze about other ways of doing things. Notably I, and Mick in particular, have done that on curriculum and indeed on changes to assessment and modernisation. Now, the QCDA—the big debate has been about the right role of the word “authority” rather than “agency”—will not have that capacity. It will be virtually an arm of the Department, and my personal view is, why not incorporate it within the Department? What use is it going to be as a body that is at arm’s length in one sense but not able to do anything in terms of having a public role?

**Q318 Chairman:** This is the last question from me. In your view, the terms of reference of the Sutherland inquiry were too narrow and excluded looking at the Department’s role in all this.

**Dr Boston:** Yes.

**Chairman:** But what about the overall independent scrutiny of Sutherland? Sutherland, as you know, is, like you, a highly respected person in the educational world. Do you not believe that he made a fair appraisal and did a fair job, given his limited remit?

**Dr Boston:** I think he did a very fair job, and I have said that on the public record several times. I think that it was a very good report, but he was able to look at the role of only two of the participants, not all three, and he was fed some information that was wrong. If I were him, I would be furious that it was wrong, given that he had given two opportunities through the process for it to be corrected. It now stands on the record erroneously. If I had been the inquirer, I would be very angry about that.

**Q319 Chairman:** You had a good and quite harmonious relationship with the ministerial team for five or six years.

**Dr Boston:** Yes, indeed.

**Chairman:** So the relationship between the Department and the QCA is something that you have thought about and reflected on since. I am trying to tease out when the unhappiness that you had about that relationship and the changes that were mooted in the QCA emerged. I am trying to ask you whether these are the words of a bitter man who feels that he has been wronged and is picking a fight with the Government, or have you had these views for some time?

**Dr Boston:** I have had them since the decision to set up Ofqual, which I strongly support, but I have had real concerns about the related decision to dismantle the QCA. The meeting on 18 March was very tense. I was not the only one involved; the chairman and another board member from the QCA were also present. It was very clear that the Secretary of State and the Minister thought that we were handling our job in the wrong way. It has been difficult from then on. In fact, in the whole run up to the test delivery series to the end of June, I had only two meetings with Ministers—in the entire year—as my letter says, one of which did not even cover anything about the national curriculum tests. When I go back through my diaries for previous years, that is very much at odds with the previous pattern; during the crucial last eight or 10 weeks I would have met with Ministers four or five times in previous years.

**Chairman:** It is certainly true that when you gave evidence to our inquiry on testing and assessment you shared some of your concerns at that time. Can we hold that for a moment David.

**Q320 Mr Chaytor:** There are two separate issues here. One is the relationship between yourself and the QCA and Ministers in the context of the appropriate degree of independence for the QCA and its successor bodies. The other is the responsibility for the events that led to the failure of ETS to deliver the tests on time by 8 July. You are trying to conflate the two and to suggest that there was a hidden agenda that led the Sutherland inquiry to focus only on your responsibility in not delivering the contract to time. In retrospect, do you not accept that there was a responsibility on the QCA and the NAA, as the agency directly responsible for supervising the contract, to inform the Government at an earlier stage of the scale of the risk that you had identified? You said in your evidence last year, and you say again in your letter,<sup>10</sup> that there had been weekly meetings from September with ETS and daily meetings from the beginning of May. Surely that is exceptional—if there was no problem or if the problems were being dealt with, why was there a need to have daily meetings from 1 May?

**Dr Boston:** No, that was not exceptional. That was in fact the plan, and it was very good management and was similar to previous years. The daily meetings in the final few weeks are the norm. It was not because there was any particular crisis. As I have said in evidence before, right up until late May and the start of June there were some problems with

<sup>10</sup> See Ev 48

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getting papers out to markers. There were problems with distribution and return. They were fixed, and by 6 June 50% of the marking had been done. We were on target, just as we had been in previous years. The signs then were very good. It was not until, in my case, 25 June that it became clear that we were not going to make this.

**Q321 Mr Chaytor:** Given the scale of the problems described by yourself and by Sutherland and acknowledged by ETS in its evidence to the Committee, it seems incredible that as late as 24 June there could have been a general acceptance that the target date of 8 July was going to be met. You refer, for example—I have the transcript of your evidence last year—to this backlog of 10,000 e-mails that ETS had not responded to. This led to an identification of the support provided by the NAA. This is exceptional, is it not? Which organisation, operating normally, has a backlog of 10,000 e-mails?

**Dr Boston:** Yes. The Department was fully aware that that was the backlog, fully aware that we were coping with it, fully aware that we had put in resources to deal with it. It was a problem, and we were working to fix it. In fact, the backlog was removed. It is not a matter of the Department not being aware of issues from day to day. The contact we had through the NAA and elsewhere was very close. Department observers attended the meetings we were having with ETS and others. The broader question is that every year this has been a high-wire act. It is to do with the extraordinarily large scope of the job, done manually, and packed into eight weeks. We failed in 2004 when Key Stage 3 was late. We were within hours of failing in 2005, even though we had extended the Key Stage 3 results date. In 2006 and 2007 we were fine. In 2008 the whole thing collapsed again. The enterprise, the whole archaic nature of this thing, is incredible, and we are persisting with it for 2009. Lord Sutherland has made recommendations about end-to-end testing which simply cannot be met for 2009. Key Stage 3 is not being run this year but that does not halve the risk. It simply means that there will potentially be more markers who will be able to do Key Stage 2. In the general qualifications where the major awarding bodies have applied technology, are doing onscreen marking, producing valid and reliable results and identifying aberrant marking quickly and delivering a top-quality product securely, an enormous achievement has been made. Key Stage 2 and Key Stage 3 is still the cottage industry it was in 2002. The only change is that papers are now no longer left on doorsteps and post office counters—they are barcoded and tracked. That is the only change that has occurred in this period.

**Q322 Mr Chaytor:** You said earlier to the Chairman that you had recommended four years ago that onscreen marking should become the norm for Key Stage 2 and Key Stage 3. What was the Minister's response to that recommendation?

**Dr Boston:** There was extensive discussion with Ministers and officials particularly over a long period of time about introducing onscreen marking.

We wanted to introduce onscreen marking for security, better quality and greater validity of results. The Department was pushing continually for a trial that would have had some papers marked manually and some marked onscreen and, provided that the results were the same, onscreen marking would be gradually phased in. The whole point is that the results would not be the same because the onscreen results would be better. I do not know whether that would make the league tables look better or worse, but the one thing you can absolutely bank on is that you will get a different, better and more valid result with a process that identifies aberrant marking and other errors early, does item level data collection automatically and eliminates all that manual stuff. You will get much better results, but they will be different. The compelling argument, finally, behind closed doors where all of this was thrashed out was, "Well, it's too risky—the results might look different."

**Q323 Mr Chaytor:** Can I ask also about the role of the DCSF observers, because your argument is that they were involved with the NAA and the delivery of the contract at every stage? They were present at the weekly meetings from September. They were present at the daily meetings from 1 May. Why did they not report to Ministers earlier the scale of the risk and the likelihood of failure?

**Dr Boston:** I cannot answer that. I don't know. But it is true that they were present at every level, including board level. They were aware fully of decisions being made and in fact were participating and contributing to that. The ETS contract was not even signed by the QCA chairman until we had the then Secretary of State's approval for it to be signed. She was being briefed by officials on, presumably, where this whole thing was heading throughout. I am not objecting to that, nor am I absolving the QCA from responsibility. It was the management agent. I am not saying that we should not have taken the rap on this. It happened on our watch, but it cannot be said that it came out of the blue or that the warning signs of continued briefings were not making it apparent when difficulties arose.

**Q324 Paul Holmes:** I have two questions. First, in the letter that you sent to the Committee on 15 April<sup>11</sup> you say, "I was not asked to meet directly with the Schools Minister in the months leading up to the delivery failure." We have already talked a bit about that. Why were you not asking to meet the Minister? Why had you not spotted that problems were emerging? You have just said that it did not become apparent until 26 June. How come you did not spot that at an earlier stage?

**Dr Boston:** We were certainly spotting the problems and dealing with them. As I said in my evidence to Lord Sutherland, it is a fraught process. There are difficulties the whole time. Our approach was to roll up our sleeves and get on with solving it, rather than running round telling people that there was a problem. If I had had a meeting with Jim Knight

<sup>11</sup> See Ev 48

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every week for the last eight weeks in the run-up to the closure, it would not have made him accountable for the tests. It was still my accountability. It would not have helped simply to put problems on his desk. Our objective was to keep him and his people briefed, but solving the problems and addressing them and bringing the tests in. We have done that year on year on year, except in 2004 and 2008. It has worked before. Our anticipation was that it would work again, but the risks in this are so high. Sutherland is critical of the QCA board having the tests at an amber risk on its risk register for 14 months. Amber means that likelihood is possible and the impact would be very high. I cannot see these tests ever having a risk rating less than amber. They could always fail, given the eight weeks in which the delivery occurs when they are done manually. And the impact when they fail is—well, we saw it in 2008.

**Q325 Paul Holmes:** We will come back to the lines of accountability in a minute. Given that you are saying that it is always on a knife edge because of the sheer volume of tests and the short time scales, why were you not banging alarm drums much earlier, both last year and the year before, and the year before for that matter? Both you and I were at an educational seminar—this was in the early stages of the development of diplomas. When we were chatting, you said you were worried about what was happening with the development of diplomas, and that you thought the Government were being too complacent and that there was not enough feed through from those people developing diplomas to the schools and employers. You asked me to urge the Committee to look at that. I think you also talked to the Chairman separately and probably to other people. The Committee looked at the matter at that stage, and it did gee the Government up to get their act together a bit more. In that case you were really on the ball. Because you were not getting the response that you wanted from the Government, you used the Committee to try and push things along. If you were very much on the ball in the early stages regarding concerns about diplomas, why if year after year the marking was such a problem were you not banging the drum year after year? If you were not getting anywhere with the Ministers, why did you not raise the matter more widely?

**Dr Boston:** That is a good question, and it is one that I have asked myself. I have frequently spoken publicly about different approaches to testing and the problems with this particular approach and how it was administered. I have also pressed privately for reform with Ministers and officials—there is no question about that. Over the past few months I have asked myself why I did not resign in 2006. At that point it was clear to me that I was not going to get Government buy-in to necessary reform. I continued through 2007 and 2008 to run an organisation that was faced with close to an impossible task, which I had seen go belly up in 2004 and had the prospect of doing so again. Probably my greatest regret in all of this is that I was not more honest with myself at that time and did not simply say, “It can’t be done.”

**Q326 Paul Holmes:** Is there a wider institutionalised problem about lines of accountability in general between the Government and different arms of business that are being hived off? For example, in this case a private company, ETS, was brought in, and it was a disaster. We had a similar thing some years ago with the delivery of individual learning accounts and Capita and so on. We get private companies, and the Ministers say, “It’s up to them now—don’t ask us about it, ask them.” The companies say that it is commercial confidentiality and it all collapses and is a disaster. That seems to happen over and over again. My second point concerns quangos, whether it be the QCA or NAA or whatever. We have seen the Learning and Skills Council make a total disaster of sixth-form funding allocations and of funding for college buildings. However, the Minister keeps saying, “It’s nothing to do with us, you’ll have to ask them.” Have we got an institutional problem, which has developed over the last 10, 15 or 20 years, about what the lines of accountability are between the Government and the private sector and quangos, who are delivering things further down the system?

**Dr Boston:** Yes, I think we do. From my experience, I certainly think that there is a problem. Looking forward, that is a critical reason why Ofqual must be completely separate from Government and report to Parliament through the Select Committee. The QCA’s problem has been that it is not at arm’s length—to use the Government’s term—yet it can end up carrying the blame for a whole set of decisions over which it had no control. In my statement I pointed out all the things to do with national testing that the Government determine, and it is virtually everything except what the standard is and responsibility for the marking. If one goes further, and looks at awarding bodies, one sees that the delivery relationship works effectively because awarding bodies are quite remote. They do not work with Government even on a contractual basis. They deliver a public service and are funded through schools to deliver that service, and it works. Distance, with Ofqual, is going to be critical. If it does not get that distance, there will be a problem. As I said, I believe that Ofqual was made to stumble at its first hurdle. That is not an auspicious sign for the future of independent regulation.

**Q327 Mr Stuart:** As you have described it, the system effectively has been specified by Government—they are the architects of the system in almost all its components, except for the content of the exams and the style of the marking. We have a constitutional system, where Ministers are always responsible. You said that if you had met every week with the Schools Minister, he would not have been accountable—you would have still felt accountable. To follow up the last question, do you feel that the constitutional convention of Ministers being ultimately responsible for delivery, particularly when the system is not genuinely independent, has failed to be honoured in this instance?

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**Dr Boston:** Yes, I do. There comes a point where you have to accept your accountability. From my own point of view, I accept the accountability and I accept the responsibility. On matters of detail, I was not at fault, because I was not doing those detailed things, but I was responsible for the management of the people who were delivering them and for the overall result. It would seem to me that a time does come with all Ministers—over my career, I have worked with more than 40 Ministers—when a Minister has to accept accountability and go.

**Q328 Mr Stuart:** The evidence that Sutherland quotes, particularly paragraph 4.137, says: “In practice in 2008 what happened was that DCSF observers escalated their own assessment of risks to the DCSF ministers on a number of occasions. On this basis, ministers usually pressed the QCA Chief Executive for answers.” Is that an accurate account of what happened?

**Dr Boston:** No, it is totally false. I was pressed, if asking a question is being pressed, by Ministers—Ed Balls and Jim Knight—on 2 June, at the start of a meeting, as the first agenda item in a meeting that covered a series of agenda items. I am aware that in the House of Commons two Members sought clarification of what “usually pressed” was, and the Secretary of State referred to that as meaning “frequent pressing”—those were not his exact words, but that was the clear implication.

**Q329 Mr Stuart:** So Ministers’ role in the system was to ensure, the Schools Minister told Sutherland, that “the reality clearly is that some of these tasks that they are doing are so mission-critical that we need alongside that arrangement to be satisfied for ourselves that things are going well.” That was the responsibility on Ministers. Is it your evidence to us that they falsely maintained to the House of Commons that they had carried out that duty when in fact they had not done so?

**Dr Boston:** I am not certain about that, because I am not privy to the amount and detail of briefing that Ministers were given by DCSF observers at our own meetings. I cannot really comment on that. Presumably, the briefings were sound. That is why I find it so curious, for example, that the senior DCSF official who took the note of the meeting of David Gee and Knight on 17 June did not draw the Minister’s attention to this mistake a few days later when the transcripts came back from Sutherland. The relationships between Ministers and DCSF officials over this I cannot fathom.

**Q330 Mr Stuart:** I know that it was a complex set of circumstances that led to the failure of delivery. However, do you believe that if the Government had accepted your advice and brought in phased onscreen marking rather than manual marking the deadlines would have been met?

**Dr Boston:** I am certain of it. The evidence for that is what we see with the awarding bodies and the general qualifications. There is no question that these tests could be delivered effectively and well

within eight weeks using technology, giving us much more valid and reliable results than we get at the moment.

**Q331 Mr Stuart:** So the chief author of this failure, in your opinion, was the Department, because of the specification that it set for the way that these tests were to be assessed. And, in the evidence to the Sutherland inquiry, the Department failed to accept that responsibility.

**Dr Boston:** I certainly believe that, if we had been successful in introducing onscreen marking several years ago, 2008 would not have happened.

**Q332 Chairman:** I have just listened to your replies to Paul Holmes and Graham Stuart. Are you not trying to have it both ways? On the one hand, you are complaining that the record is not straight and that you hardly ever saw Jim Knight or Ed Balls. In other words, you were left alone to get on with the job. On the other hand, you are saying that there should have been greater ministerial responsibility, because when everything went wrong Ministers should have said, “Hands up, it’s all our fault, because of decisions that we made, or failed to make, some years ago.” So let us get this straight. You are complaining: you said that Jim Knight made a mistake, saying that you were at a meeting that you were not at. It seems to me that someone could interpret what happened as the Government saying, “Get on with the job, Ken. Hire someone to do this job. You are responsible. You’re a good guy and you’ve got a good reputation, so get on with it.” Actually, Ministers do not really get involved until everything seems to be going wrong. That is true, is it not?

**Dr Boston:** Yes, that is certainly true. Ministers were not getting involved in the detail of it at all. Look, I don’t think I am trying to have it both ways. I have very clearly fallen on my sword over this. I have taken responsibility, taken accountability, and that is the end of it.

**Q333 Chairman:** But I am talking about the ministerial responsibility, Ken. On the one hand, you are saying that the Ministers were never there, because they left you to get on with the job, and now you are saying, “But we need clearer . . .”, and we need Ministers to stand up and say that they got it all wrong.

**Dr Boston:** If I had met weekly with Jim Knight, I think that this problem would still have emerged. I am not saying that his failure to meet regularly was the cause of what happened. I take your point. However, I certainly do not think that I am, in any way, trying to diminish, reduce or explain away my own responsibility. I was foolish enough to continue running an organisation doing this high-wire act, when I knew fundamentally that it was deeply flawed and that the only way that I could have made it secure was to get ministerial agreement to do so several years ago.

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**Q334 Fiona Mactaggart:** When did you first learn of the public account by Jim Knight that was wrong, and what attempt did you make to correct it? Was it the letter that you wrote a few days ago to our Chairman?<sup>12</sup>

**Dr Boston:** Yes.

**Q335 Fiona Mactaggart:** Why?

**Dr Boston:** I believed that I was unable to do anything prior to that. Let me say that I first became aware of this error—the flawed evidence—on 11 December, when I had a pre-release copy of the Sutherland report to read in the Department, and these three paragraphs just stood out as absolutely flawed. I resigned the following day. I would have resigned even if those three paragraphs had not been there. On the following Monday, 15 December, the day before the Sutherland report was released, I was then suspended by the QCA board at the proposal of the DCSF permanent secretary. I have contested that suspension, or reserved a right to contest it, because I believe that I simply should have been put on gardening leave, rather than receiving some sort of ill-defined suspension. I certainly was astonished to be suspended before the report had even come out and before anyone had even read it. Once that suspension had occurred, I received a letter setting out what a suspension meant. The letter did not explicitly state, “You can’t speak to the Select Committee or write to newspapers,” but that would clearly have been inconsistent with the spirit of the letter, which set out that I was not to contact the QCA or do a host of other things. I simply felt that the proper thing was not to make a media issue or anything else out of it, but to come back to the Select Committee in due course when the suspension was lifted and deal with the issue in the forum in which the faulty evidence was used against me. That was my decision.

**Q336 Fiona Mactaggart:** So the correction that Jim Knight made in February to Lord Sutherland and to this Committee was not because you raised any query; it was just done by him.<sup>13</sup>

**Dr Boston:** I am uncertain about that. The QCA board had to set up a panel to conduct a review in light of the Sutherland report, and that panel met on 14 January. On that date, I gave the panel, in a confidential meeting, an account of my performance, as well as an analysis of it in relation to the Sutherland report. The QCA panel, and subsequently the QCA board, then became aware that I had not been at that meeting.<sup>14</sup> The panel then contacted the Department to obtain a copy of the note of the meeting, which confirmed that I was not in fact present and had not made a contribution. It seems clear to me that that action, and the QCA board getting on to the case with the DCSF, must have led to this letter being written.<sup>15</sup> As I have said, I have been totally unaware of this letter until today,

and of the fact that there had been a statement until 2 o’clock this morning. I think, in all fairness and decency, that I should have been given at least this letter and an explanation as to why I was so misrepresented.

**Q337 Fiona Mactaggart:** That is a reasonable request, but one of the things that you have alleged in your evidence to the Committee today is that Ministers—in the phrase you used—“sexed up” the issue. I am slightly tempted to use the same phrase to describe the way that you have dealt with it, because you have made much of the “fiction” of Ministers. But as you now know—I am quite prepared to accept that you did not know this when you started—Ministers had made a correction to the Committee and to Lord Sutherland. I am concerned that, although you have raised some serious issues before the Committee, they might be designed to, if you like, divert the attention from the very substantial criticisms of your role in the Sutherland report.

**Dr Boston:** Let me say this: if there has been an edge to my remarks, there is a reason for it. I gave evidence to Sutherland on 18 September 2008. On 24 September, which was six days after I gave evidence, three weeks before Balls and Knight gave evidence and nearly three months before the Sutherland report was published, which was certainly before Sutherland had even put pen to paper, the permanent secretary sought to negotiate my early resignation on the grounds that the Sutherland report would be bad for me. The Ministers had not even given their evidence. The permanent secretary said to me on that date that he wanted me out of the job before March 2009. I engaged an employment lawyer who wrote to the permanent secretary. I made it clear that my intention was to remain in post until the end of the contract and that I would be willing to consider departure only on the basis of the contract being paid out. That was, in fact, the end of the correspondence—once the permanent secretary had replied to Lewis Silkin. The Ministers’ evidence came after that—Knight on the 14 October and Balls on the 15 October. On the 11 December, as I said, for the first time I became aware that there was a problem.<sup>16</sup> I make no allegations or assertions, but it was very clear that, by the time the two Ministers gave their evidence, the skids were under me—or it was proposed to put the skids under me—at Department level. That goes back to the meeting on 18 March and the whole issue of the future of the QCA.

**Q338 Fiona Mactaggart:** So your contention is that this is—I am going to use the word “plot”, but I am not saying that you are saying it is a kind of secret plot—a plot devised well before the failure of the curriculum tests to get rid of you from your role, with the failure of the curriculum tests being used as an excuse.

<sup>12</sup> See Ev 48

<sup>13</sup> See Ev 77

<sup>14</sup> *Note by Witness:* The meeting which took place on 17 June 2008 between David Gee and the Rt Hon Jim Knight MP.

<sup>15</sup> See Ev 77

<sup>16</sup> *Note by Witness:* On the 11 December I read the final pre-release Sutherland Report, and for the first time I became aware that there was a problem.

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**Dr Boston:** I think that I was seen as a troublesome priest, and the failure of the tests was perhaps a catalyst seen to offer an opportunity to allow those events to move forward.

**Q339 Chairman:** When would your contract have run out anyway?

**Dr Boston:** On 30 September 2009.

**Q340 Chairman:** David Bell said that he wanted you out by March 2009?

**Dr Boston:** Before March 2009. His argument was that he would prefer not to have me identified with the delivery of the 2009 tests. He was seeking a resignation before or on the date of Sutherland's report.

**Q341 Fiona Mactaggart:** From this Committee's point of view, we do not need to deal just with a spat, much of which has been properly dealt with by the Sutherland inquiry. While you might contest some things in it, actually much of its account is universally accepted.

**Dr Boston:** I agree.

**Fiona Mactaggart:** It is accurate, powerful and teaches us some lessons that we need to learn. The issue that this Committee needs to focus on is whether it is possible for Ministers to delegate their responsibility for mission critical things. One of the things that you have said about Ofqual is that it is critical that it has a further distance from Ministers. I shall quote another piece of evidence that Jim Knight gave to Sutherland, when he said, "if you looked at it theoretically, you would say that ministers are delegating the scrutiny and challenge function to the Board that we appoint. We have our observer on the Board in the form of a Director General monitoring and taking part in discussions, and then we have regular meetings with the Chair who we also appoint—and that is a major decision for us—and that in many ways ought to be it. But beyond that theory, the reality clearly is that some of these tasks that they are doing are so mission-critical that we need alongside that arrangement to be satisfied for ourselves that things are going well." That is a way of saying that these arm's length bodies, substituting people like yourself, with professional, long-term standing in the field of examinations and assessment, for full ministerial responsibility, just don't work, because people will always turn to Ministers. One of your contestations is that they have not done that enough.

**Dr Boston:** I am sorry. They have not done what enough?

**Fiona Mactaggart:** The public have not pointed the finger sufficiently at Ministers. You are saying that giving Ofqual greater distance from Ministers will assist with this purpose, but Jim's point and this discussion show that that distance will always be a fiction. The public will always require Ministers to be accountable.

**Dr Boston:** Yes. I think that is true. There are occasions when Ministers would be better to push back and stand back from issues and let bodies such as the QCA or Ofqual as the new regulator deal with

it. One problem that has emerged from time to time is that Ministers have almost become arbiters between the regulator on one hand and a body contesting something with a regulator on the other hand. I can think of various examples where that has happened with subject associations and other groups. I think that is a problem for Ministers. They would be far better to stand back and stand well away.

**Q342 Fiona Mactaggart:** But is not that exactly what you are complaining that Jim Knight did? That he did not keep pushing you and pressing you and so on? That he actually did what you are saying Ministers should do?

**Dr Boston:** No, I think I have said twice at this meeting that if I had met with Jim Knight once a week for the critical eight weeks of the delivery, the problem would still have occurred, the failure would still have occurred.

**Fiona Mactaggart:** Absolutely. You said in your evidence to the inquiry that you were unaware of any escalation between 6 and 25 June, which is a critical period.

**Dr Boston:** I am not saying that frequent meetings of that sort, or Jim, could have solved the problem at that point. It was our problem to solve.

**Chairman:** I am sorry but we have to move on. Other people need to ask questions.

**Q343 Derek Twigg:** When I was a junior Minister for a short period before I moved to another Department, we discussed this issue of online marking and the marking system, which you were advocating at that point. As you have outlined, there were difficulties in moving to that system. I will come back to that, as it is one of the key points you have raised today. I want to get one thing clear. Are you accusing Ministers of lying?

**Dr Boston:** No, I am simply saying the evidence in the report is wrong.

**Q344 Derek Twigg:** So, on the basis of the meeting it could be a genuine mistake, but you find it difficult to believe because surely a civil servant should have told the Minister?

**Dr Boston:** I find it difficult to believe because there is no other meeting it could possibly be confused with.

**Q345 Derek Twigg:** That a Minister would actually come to a Committee or submit to an inquiry and tell a blatant lie would be quite amazing, knowing there was no evidence. So it probably was a genuine mistake, on the part of the Minister at least.

**Dr Boston:** Whatever it was, it was wrong.

**Q346 Derek Twigg:** Let us get some dates clear: I am sure it would not have made a great deal of difference to what happened but in order to get it on the record. You used a couple of dates. You said you first became aware of the problem on 25 June and you said that people—presumably in the Department—knew on 26 June. Jim Knight's letter says that "the first time QCA notified Ministers that ETS would not deliver test results on time was 30 June". Which

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is it? On one hand, the Department is saying 30 June and you are saying 26 June. I am not saying it would have made a great deal of difference to what happened but it is useful to have it on the record.

**Dr Boston:** I am quite clear that after we obtained from ETS the formal letter it had to provide us with under the contract, which is called a duty to warn, which we received on 27 June, the director general Jon Coles was briefed on that day.

**Q347 Derek Twigg:** So it is 27 not 26 June now? You said 26 before.

**Dr Boston:** The 26th was the day we wrote to ETS and sent an e-mail saying it had to reply to us in terms of this duty to warn. I understand that there was a telephone conversation with the Department on that day telling it that that had occurred.

**Q348 Derek Twigg:** The 26th or 27th?

**Dr Boston:** The 26th. Then on 27th there was further contact when we had the letter from ETS.

**Q349 Derek Twigg:** So you are clear it was the 26th not the 30th?

**Dr Boston:** Yes.

**Q350 Derek Twigg:** You have rightly and openly set out that you accept responsibility, but actually you want to take someone else with you, for whatever reason that may be. As far as I can tell, based on what you have said, the key point—you will correct me if this is wrong—is that there were always going to be problems with the manual system, although we have had it for God knows how many years and we have not had this situation occur. However, you believe that moving to an online marking system was the key point in terms of trying to solve this problem of uncertainty over delivering these results on time. Am I correct in saying that?

**Dr Boston:** Onscreen marking.

**Derek Twigg:** Onscreen marking, right. You alluded to the point that the Ministers were somewhat reluctant to adopt onscreen marking, on the basis that it was a risk; 2006 seemed to be the key point, and you said you might have resigned at that point. If you do not mind me saying so—again, correct me if I am wrong—there was a slight insinuation that we were more bothered about the results not being as good if we went to the new system, and therefore affecting the league tables and the general Government policy about improving education, than about those technical problems and the risk in moving to the new system. Which was it, in your view?

**Dr Boston:** It certainly was not the case that there was risk in the system; this is proven technology and it is used widely throughout the world for school marking. It is used here extensively, with the general qualifications. It was not the risk. As far as I was concerned, the clear stumbling block finally was the unpredictability of what might happen and the fact that the results would be different. They might be better, or worse, but the one thing that you could be certain of was that they would not be the same.

**Q351 Derek Twigg:** When did you have the final conversation about this issue, in terms of a decision by Ministers? You mentioned 2006 as being a key part for you, and a time when you could have resigned.

**Dr Boston:** I do not have the date of the final decision, but it would have been late summer and certainly before the ETS contract was finally let. I say that because one of the things that we wanted ETS to do, if the delivery had been successful and we had kept ETS on contract, was the phased introduction—potentially—of onscreen marking over a period of time, if we could get ministerial agreement for it. It was actually built into the contract that there would not necessarily be manual marking for five years; manual marking could transform into other forms of delivery. Of course, ETS is a major international player in that field.

**Q352 Derek Twigg:** I just want to confirm that you believe that that was the key to stopping the problem occurring?

**Dr Boston:** The key to avoiding this problem in the future is exactly what Lord Sutherland has recommended: end-to-end testing of systems of onscreen marking.

**Q353 Annette Brooke:** As you have been talking, Ken, I have been reminded of the Foster report regarding the Learning and Skills Council, which found fault with the Department for Innovation, Universities and Skills, as I recall, and also identified complacency and so on in the Department, as well as finding major faults with the LSC and the way that it had handled the capital programme and capital bidding. So it seems to me that the point that you have made this morning is absolutely critical, which is that everything follows on from the very limited terms of reference for the Sutherland inquiry—the very fact that the Government were left out of that inquiry. I think that your evidence has confirmed that. I am not at all clear what these DCSF observers had to do and I cannot see how they got left out of the equation, because I presume that they have been hearing everything that has been going on. Could you give me a little more information on the status of the observers? Do they just sit and listen, and not go and report anything back? I realise that that question is a little difficult for you to answer. None the less, it seems to me that the nub of this issue is that you are accepting your bit of the responsibility, but the Government and the officials have not actually had the questions really asked of them.

**Dr Boston:** Lord Sutherland has also put his finger on this, in that he is calling for clarification of the role of observers. In practice, what happens is that observers are there to represent Ministers and the Department. They take part in discussions. There is an exchange of views and that is very helpful in the main. It is good to have that exchange and to have that interaction. The problem arises, as I have said, when they are conveying ministerial impressions and we get to the point where we are actually negotiating the QCA's advice with them, rather than listening to

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what they have to say, challenging it, pushing it hard and getting everything from them we need so that we can then say, “Well, we will write this advice so that the Ministers know what we think they need to hear, rather than simply what you think they might want to know.” It varies so much from committee to committee and from role to role, and I am quite uncertain what the observers do when they go back to the Departments. Do they sit down and brief Ministers and write notes for them, or do they brief other sections of the Department, which would probably be very helpful? In short, there needs to be clarification of their role. Frankly, although Ofqual has talked about having observers at various levels on its committees, and indeed on its board, my advice would be that it is making a mistake right from the start. We do not want organisations that are distant and apart, but a good exchange of information between them. But we do not want to be too cosy if finally Ofqual has to assert true public independence and accountability to Parliament.

**Q354 Annette Brooke:** That openness, transparency and clarity seem to be really important, and there are lessons to be learned. You have used the terms “sexed-up evidence” and “flawed evidence”, and we can play around with the dates and with who knew what, but you actually go on to say that it was used to portray you as complacent, disengaged and constantly beleaguered by Ministers. If that is the case, it seems to me that the outcome is more serious than playing around with the dates on who said what and when. I would like you to confirm that you feel that, as a consequence of some misinformation being put into the system, you have suffered in the way you described in your letter.

**Dr Boston:** I find the remarks offensive because they are untrue, but I am a resilient old bugger and at the end of the day it does not matter all that much, but it needs to be corrected.

**Q355 Mr Pelling:** You answered Graham Stuart by saying that you felt the Minister should resign. Why do you think he should resign?

**Dr Boston:** Did I say that?

**Mr Pelling:** That was the impression I got, but perhaps you did not.

**Dr Boston:** I did not say that.

**Chairman:** You did not say that in those terms.

**Dr Boston:** I do not have a view on that. People make up their own minds, and I made up mine. Presumably Ministers are also, from time to time, confronted with difficult decisions.

**Q356 Mr Heppell:** I am a little worried. I think that one of my colleagues said that they thought your letter was intended to divert attention away from discussion of what actually happened—I am not sure whether that was its intention, but it certainly has diverted attention from what is relevant. I share Lord Sutherland’s view that it does not really make any difference to what the final result would be. I am not quite sure about your use of emotive language

such as “sexed-up”, because even though you have not said that the Minister lied, just as you did not say that he should resign, there is almost an implication in the things you have said to the Committee that would suggest that. I would like to clear up a couple of things. Are you saying that DCSF observers would report to you as well as to the Department?

**Dr Boston:** No, I do not think that they would report to me at all, or to the QCA. On your first point, I agree, as I have said to the Committee, that had 4.137, 4.92 and 4.93 not been in the Sutherland report, I still would have resigned. There is no question about that. On the other hand, at the end of a 45-year career in education, I do not wish to be portrayed by a Minister as complacent and as unengaged—disengaged—when it is absolutely untrue and unfair and based on absolutely false evidence. I believe that needs correction and it needs correction publicly.

**Q357 Mr Heppell:** I think you are right. I think that you have a right to be annoyed that you never received a copy of the letter that actually did correct that.<sup>17</sup> That was not made public at the time, and I think that is something that most members of the Committee would accept, but I would like to move on beyond that if I may. One of the things you said to us—and it really worries me—was about walking the high wire act and that this is such high risk. I just found it impossible to believe that we need to accept the idea that, just about a week before the thing was to finish, you had not realised that it was going to fail almost completely. You say, “Well, we were looking at things, we were spotting the problems and we were doing things to try to put them right.” But to actually say that you had not recognised that this was going to fail when there was just a week to go—I just cannot believe that. I mean if that is the case, we might as well not have you at all. Part of your role is to identify where there is something wrong and, actually, the idea that the Minister was pestering you—I have had these arguments before. People say to me, “Get in touch with us when you need something,” and I say, “Well, I won’t know if I need something until you tell me when there is something wrong.” So the Minister was not going to pester you until you knew something. Effectively, what you are saying is that it was a week before the thing was finished and you still did not know there was a problem. There must be a system where you could be better informed than that.

**Dr Boston:** We have gone over this in the Sutherland report and in our submission to the Sutherland report and so on. The management information we were getting was poor and it was conflicting. We had the situation where on 3 July, when we knew it had failed on the 25th/26th, the president of ETS America was sending us an e-mail saying, “We are going to make it. We are going to get there by the 8th,” while his local guy was presenting us with data which clearly showed that it was impossible that that was going to be achieved.

<sup>17</sup> See Ev 77

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**Q358 Mr Heppell:** I recognise what you are saying about conflicting stuff, but surely you should have had a system in place that actually spots that something is going wrong?

**Dr Boston:** The series of daily meetings we had on the detail of all of this, given the evidence that we were getting from ETS, indicated that we were on course. You are right to point to what seems—what clearly is—a major problem: that right up until the end of June, 25 June, as the guy running the place, the information that I was getting was that we were going to make it safely.

**Chairman:** We have got to cut you there Ken, because Edward has not had a chance of a question. Sorry, John.

**Q359 Mr Timpson:** I shall try to hold a positive note. It has been a very illuminating session and I think what has come out of it is that from the time that you were aware of failures within the QCA delivery, you have acted—from what I have heard and read—honourably through that process and taken a lot of the flak for the failure of many others, not just yourself. I know that you are also keen to continue to contribute to the educational system, particularly where it comes to qualifications and curriculums and so on. To that end, what advice have you got for the Committee on how the procurement process—for the delivery, for the service provider, for 2010 onwards, of testing—should take place to ensure that we do not end up in this position again?

**Dr Boston:** I would simply say that the key things that we need to look for are to move immediately and sharply into onscreen marking and increasingly into taking the tests by computer, onscreen—working with the tests, delivering the tests—and with the sort of diagnostic feedback that onscreen marking can provide to schools, which is immensely important in shaping their further programmes and interventions. That is the key thing that we should be looking for.

**Chairman:** Ken Boston, we have had a good session. I hope that you feel you have had a fair hearing. I hope that you feel you have been asked some searching questions. I know that you intend to stay in the education sector, making a contribution. This Committee would very much value a considered piece of work if you have the time to do it. Your original comment when you took over the job was that we are still in a cottage industry using quill pens and ink. We have not in those six years moved very far from that, as you said in your evidence today. This Committee would very much like, before this inquiry is finished and we write it up, some piece that is not about what happened but about how you would get us from that cottage industry to the system that you would like. I would also like you to consider that this Committee in its former report said that there was too much testing and assessment, and one small victory we have had is that we do not have quite as much testing and assessment as we had last summer. Thank you very much for your attendance.

**Dr Boston:** Thank you very much, Mr Chairman.

**Wednesday 20 May 2009**

Members present:

Mr Barry Sheerman (Chairman)

Mr John Heppell  
Paul Holmes  
Fiona Mactaggart  
Mr Andy Slaughter

Mr Graham Stuart  
Mr Edward Timpson  
Derek Twigg

*Witnesses:* **Rt hon Ed Balls MP**, Secretary of State for Children, Schools and Families, **Rt hon Jim Knight MP**, Minister for Schools and Learners, and **David Bell**, Permanent Secretary, Department for Children, Schools and Families, gave evidence.

**Q360 Chairman:** I welcome the Secretary of State, the Schools Minister and the Permanent Secretary to what will be a quite brief session. We have two sessions today, both of which are important. Secretary of State, it is customary for you to say something to open up the proceedings.

**Ed Balls:** I will do that. I start by thanking you, Mr Chairman, and the Committee for allowing us to appear before you today, following our discussion in February about the findings of the Sutherland inquiry and in light of Dr Ken Boston's<sup>1</sup> subsequent evidence. I wish to say from the outset that I am very grateful for the public service given by Dr Boston during his time as chief executive of the Qualifications and Curriculum Authority. He made a number of important contributions that we should recognise. I always had good relations with him during our time working together. As Lord Sutherland's report made clear, it is also the case that, while the primary responsibility for the delivery failure in last year's national curriculum tests lay with the contractor, ETS, there was also a failure on the part of the QCA to deliver its remit. Lord Sutherland was clear in his report that QCA demonstrated insufficient oversight of the management and risks associated with the delivery of its biggest contract. I wish to address briefly four issues raised by Dr Boston in his evidence. First, as the Committee knows, the Schools Minister did, in error, conflate two meetings with QCA management in his evidence to Lord Sutherland: a meeting on 17 June at which Dr Boston was not present and a meeting on 2 July when he was. The error was first brought to the attention of the Minister on 6 February after our appearance here. The Schools Minister immediately wrote to you, Mr Chairman, to apologise and to Lord Sutherland. The letter and the reply from Lord Sutherland were placed in the Libraries of both Houses on 12 February. There was no attempt in any way to conceal or to mislead and, importantly, in his reply of 12 February, Lord Sutherland stated that that "clarification does not substantially alter the points that were made" and "does not affect my findings".<sup>2</sup> Secondly, Dr Boston states that, contrary to Lord Sutherland's findings, he was not pressed by Ministers on whether marking was on track. In fact, as I said in the House last month, I personally raised the issue with Dr Boston on a number of occasions: on 19 May when I asked

my office to contact the office of Dr Boston to seek, and get, reassurance that marking was on track; on 2 June at a meeting with Dr Boston; and on 6 June when I wrote to a constituent and said that I had personally asked Dr Boston to write to him, which Dr Boston did on 16 June. It is true that Dr Boston did not attend the meeting on 17 June called at the request of the Schools Minister. Instead, his subordinate, Mr David Gee, did attend and provided similar reassurances to those that I received directly from Dr Boston. Thirdly, Dr Boston expressed concerns that the remit given to Lord Sutherland for his inquiry was too narrow. In his statement on 22 April, Lord Sutherland said, "I believe the terms of reference for my inquiry were drawn up in a way which gave me ample scope and every opportunity to examine the processes, roles and responsibilities of all the key players, and that was not only QCA and ETS, but Ministers and officials at the DCSF. I reject entirely any suggestion that my activities during the course of the inquiry were constrained. I am glad that Ken Boston recognises that my report was fair. I was clear in the report that the prime responsibility lay with ETS, but that there were significant failures in the QCA. I stand by it strongly. I was informed in writing by Jim Knight of the error in his evidence. As I said in my response to his letter, the error did not materially affect any of the key findings in my report." Fourthly and finally, Dr Boston told the Committee that last year's failures could have been avoided if onscreen marking had been used and that Ministers and officials had blocked its introduction in 2006. That is emphatically not correct. While it is true that Dr Boston was clearly in favour of onscreen marking, it was the QCA itself that decided on the basis of trials that were carried out in 2005 not to proceed. Indeed, in his statement about the onscreen marking trials conducted during the 2005 test cycle, it was Mr David Gee who said publicly, "Following analysis, I have concluded that it is inappropriate to introduce onscreen marking for either maths at Key Stage 2 or English at Key Stage 3 in 2006." We have always been clear that last year's failures let down teachers, parents, pupils and markers. We are determined to ensure that that does not happen again. That is why we have acted to ensure that all Lord Sutherland's recommendations are implemented in full. We are very pleased to have the opportunity to come and discuss this again with you today.

<sup>1</sup> See also supplementary evidence to this session from Dr Boston: Ev 73–77

<sup>2</sup> See Ev 77–79

**Q361 Chairman:** Secretary of State, thank you. Can you give us some more background on the relationship that the Department and you had

personally with Ken Boston? Ken Boston was viewed by many people not only as a very competent head of QCA, but someone whose reputation was broader than that. He was a well-liked public servant. People thought that he had come into the QCA at a very delicate time in its history. If you remember, there had been a previous problem with a former Secretary of State and in came Ken Boston as a really rather refreshing force in QCA. He made a lot of friends, so people are asking what went wrong when a leading public servant who had given great service to education in this country falls out of favour and ends up not only being treated in a very strange way by being put into purdah for three or four months, but being very angry about his treatment. What went wrong?

**Ed Balls:** In the 18 months when we worked together, I never had a cross word or difficult exchange with Dr Boston. From the beginning, we worked closely together on issues around standards in the run-up to our announcement on Ofqual, issues around the Williams maths report, which we commissioned at the time, and then through the autumn, in particular, and the establishment of Ofqual. I never had any difficulties with him at all. I had a great deal of respect for the contribution he made. It is certainly the case that there were past times before I was Secretary of State when there were some individual clashes over issues, but there was no policy issue over which there was a clash between me or other Ministers or senior officials in our Department and Dr Boston during those 18 months. It is also true to say that Dr Boston and the QCA were responsible for managing the clearly unsuccessful contract with ETS. There were significant management and oversight errors on that contract—the biggest—which were clearly documented in the Sutherland inquiry, and for which Ken Boston has taken responsibility. The decision to suspend him was taken by the QCA board and not by Ministers, and a final settlement is being reached with Dr Boston. I understand that he is not happy, but it very important for me to set the record straight.

**Q362 Chairman:** But in evidence to this Committee, we got the very strong opinion that it was your arrival at the Department that sparked off some of his discontent. Dr Boston believed that you thought that he was a sort of turbulent priest who wanted too much independence—a more independent role—for the QCA. He specifically mentioned the discussions about splitting the QCA into two new bodies and whether Ofqual would really be independent. He gave this Committee the impression that you were very worried about too much independence and that you did not like him standing up for a more independent QCA and, subsequently, a more independent Ofqual.

**Ed Balls:** That does not accord with my impression of the facts, and I do not think it accords with the evidence that Dr Boston gave to the Committee, in which he clearly said that he supports the establishment of Ofqual as an independent regulator—he thought that that was the right thing

to do. And the new QCDA will be established on the same non-departmental public body basis as the QCA. As I acknowledged, there were past times when there were difficult words between Dr Boston and Secretaries of State over comments that had sometimes been made by Dr Boston's senior staff about aspects of Government policy. But I have to say that no such occasions arose at all while I was Secretary of State, and there was never a point at which I had to call, speak to or meet Dr Boston to disagree with him over policy or the handling of it. But, of course, there was a significant management failure last summer by the QCA.

**Q363 Chairman:** Dr Boston's view was that there was a specific meeting where the future of QCA, QCDA and Ofqual was discussed where he believed that there was a disagreement between you and him.

**Ed Balls:** That meeting was not attended by the Schools Minister; it was attended by the Permanent Secretary and me. I actually think that those who were at that meeting will tell you that the conversation between the Chair of the QCA, Dr Boston and me was amicable and friendly, and that I said that there had not been a moment during my time as Secretary of State when there had been a disagreement. I said that.

**David Bell:** That is absolutely correct. The discussion was about the detail of what was being proposed, and, as the Secretary of State says, Dr Boston was very clear about the value of the new independent regulator. He asked questions and sought clarification over the role of the QCDA, but it would be wrong to characterise that as an aggressive or confrontational meeting.

**Q364 Chairman:** Let us move the personalities to one side and come back to what Ken Boston suggests is a kind of systemic problem. The systemic problem that he seemed to be getting at was that it may have looked as though the QCA was independent, but all the time there were very powerful departmental presences at many of the meetings, and that was crucial. So what he is suggesting, in a sense, is that, up front, it might look as though you were allowing the QCA a high degree of independence, but actually the men and women from the Ministry were at every meeting, reporting back and pretty much keeping control over what his staff were doing.

**Ed Balls:** I understand that, but I feel no need to put the personalities aside, because, as I said, at no point did I have a personality disagreement, clash, angry word or difficult meeting with Ken Boston. Secondly, the Bank of England is independent of the Treasury and reports directly to Parliament. Ofqual, which we are establishing as an independent regulator, reports directly to Parliament, independent of Ministers. However, the QCA is a non-departmental public body. It is not independent; it reports to Ministers, who are then accountable to Parliament for the national curriculum and the delivery of tests. Ken Boston was not an independent decision maker or commentator on Government policy. At no point did he seek to do so when I was Secretary of State, nor did any of his

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staff, although there had been issues in the past. What is clear, though, is that the QCA, on behalf of Ministers, is responsible at arm's length for managing the national curriculum test process. It would have been quite wrong for us to attempt to intervene in the detailed management of those contracts; instead, Ken Boston and his senior team, with management expertise, were paid substantial sums to deliver those tests to that remit. As Lord Sutherland says, although primary responsibility lay with ETS, Dr Boston and his senior staff did not succeed in meeting that remit. We are accountable to Parliament for that failure, but the failure was that of the QCA. That is why Lord Sutherland made the recommendations that he did.

**Q365 Chairman:** It is refreshing to hear you say that Ofqual will be as independent as the Bank of England. That is good news to the Committee. May I take you up on one particular point that you made—a factual one? Rather than it being the decision of the QCA board independently to suspend Ken Boston, we understand that it did so on the recommendation of your Permanent Secretary.

**Ed Balls:** You will need to put that question to the Permanent Secretary and accounting officer. I am happy to say firmly on the record that at no point did I ever seek, directly or indirectly, to make any direction to the QCA board. Those were matters for the QCA board to decide.

**Chairman:** That is a different point. I think that the record will show that you said that the QCA made that decision independently. That is the information that we have.

**Ed Balls:** The QCA board? I did say that.

**David Bell:** Obviously, I am not going to divulge all the details of that confidential board meeting. The decision to suspend the chief executive of the QCA lay with the QCA board.

**Chairman:** Right. Let us leave it there; and we will drill down on it in a moment. Derek, will you open the questions on the Sutherland inquiry?

**Q366 Derek Twigg:** Just to be clear, if I heard you rightly you said that the decision not to go on with onscreen marking was based on the QCA's recommendation.

**Ed Balls:** Yes.

**Q367 Derek Twigg:** We had Ken Boston here; he clearly suggested that Ministers did not go ahead because it would have changed the results. That could have been better or worse, which was a risk that they were not prepared to take. He was very clear on that. You say that the organisation of which he was chief executive made that recommendation. Why do you think that he would come here and not say that?

**Ed Balls:** It is not for me to comment on Ken Boston's evidence or motive. I cannot answer that question. All I can do is tell you the facts. On 27 March 2008, Ken Boston wrote to me, informing me of the way in which the QCA was going to proceed with the marking of the 2008 tests. It proposed online marking capture, online standardisation and

online benchmarking. At no point in all my dealings with Dr Ken Boston did he ever make the case to me for online marking—in writing or verbally. On 3 November 2005, David Gee, a subordinate to Dr Boston, made a public statement entitled "Statement on the use of onscreen marking: the 2006 NCT cycle". He said, "As I confirmed at an earlier NCT board meeting in October, the NEA has received the evidence from Pearson responding to the criteria set out in the reassurance trial. Following analysis, I have concluded that it is inappropriate to introduce onscreen marking for either maths at Key Stage 2 or English at Key Stage 3 in 2006. The primary driver of this decision was the impact on schools, in particular achieving the safe return of the original scripts to schools to time and to budget. I can therefore confirm that we will continue with conventional marking for all key stage subjects in 2006." That was announced by the QCA in 2005. It was the QCA's decision, based on its analysis of the evidence. To my knowledge, there was no ministerial involvement in that statement, but, as I said, since I became Secretary of State in the summer of 2007, at no point did Ken Boston raise with me or put to me the case for moving to online marking.

**Derek Twigg:** At any point?

**Ed Balls:** At any point.

**Jim Knight:** I think that predecessor Ministers had some discussion about onscreen marking.

**Derek Twigg:** I did when I was a Minister.

**Jim Knight:** But there was a very clear statement from David Gee at the QCA that that was its decision.

**Q368 Derek Twigg:** Can we move on to the letter issue? In your letter of 9 February to Lord Sutherland, you stated that the evidence you gave to the inquiry, "was absolutely correct in all but one regard", which was that Ken Boston was not at the meeting, as previously stated, on 17 June.<sup>3</sup> Why did you not copy Ken Boston into that correspondence?

**Ed Balls:** In retrospect, had we known that Ken Boston was going to appear before the Committee and make those points, we would have told the QCA to ensure that he was copied in. At that time, the QCA had suspended Dr Ken Boston. We received a submission from our staff, following, I believe, our appearance before the Select Committee on 4 February, saying that they had seen the error. They brought it to our attention on 5 or 6 of February. We immediately decided that our priority was to tell the Select Committee and Lord Sutherland straight away, and then to ensure that it was in the public domain by placing in both Libraries of the House our letter and Lord Sutherland's response. In our view, it was for the QCA management and board to pass it on to the suspended former chief executive. As I said, in retrospect, had I known, I would have told my office to ring the QCA and say, "You must make sure that this gets to Ken Boston."

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<sup>3</sup> See Ev 77

**Q369 Derek Twigg:** The difficulty is that it was material to him, therefore he was incredulous that he had not been copied in, and it seems strange that he was not.

**Ed Balls:** I understand that, but from our point of view the imperative was that Lord Sutherland's report was in the public domain. We had responded to his recommendations and given evidence to you, and we wanted immediately to ensure that Lord Sutherland and you knew, and that Lord Sutherland's view of it was in the public domain. That is what we did. "In the public domain" meant available to all. In retrospect, I wish that we had also contacted the QCA board and said, "Make sure you get this to Dr Ken Boston," but to be honest, our assumption was that that was what they would do. Our imperative was to make sure that it was made public. Do you want to add anything, Jim?

**Jim Knight:** I think that Ken said in evidence to the Committee that he realised in December that I had made an error, and I regret that he did not tell me then, and I could have corrected things sooner. Equally, I regret that, because we told Sutherland and every member of the Committee, and because it was on the Sutherland website and the QCA knew, we did not directly tell Ken. Naturally, I regret the error. In Ken's evidence to you, it looks like he thought that I was at the meeting on 18 March that was very tense, and I was not. People do make mistakes when recalling meetings. It is unfortunate, and as soon as you know, you need to put the record straight. That is what I did.

**Q370 Derek Twigg:** In retrospect, if you had your time again, would you have sent him a copy of that letter?

**Ed Balls:** It is not clear that it was our responsibility to send it to a suspended member of the QCA board. Certainly, in retrospect we should have ensured, as well as coming to the Select Committee and making things clear in Parliament and in public, that the QCA board sent the letter to Ken. Therefore, I am happy to say—

**Q371 Chairman:** We did not get an answer from the Permanent Secretary when I asked—not a direct answer—if he instructed the QCA to suspend Ken Boston. Let me give you a parallel. Recently the chief executive of the Learning and Skills Council resigned. As you know, there was a problem over capital funding, and he went. Ken Boston's frustration was that you, and certainly the QCA, suspended him for about three and a half to four months, which made him unable to come to this Committee and give evidence. He was in limbo and could not give evidence or speak to anyone, because he was not on gardening leave—he was suspended. We contacted him and said, "Will you come to the Committee?" He said, "I can't, I'm suspended." Added to that, when he eventually comes to the Committee, he finds this letter that he had no knowledge of. So, it does look like a bit of a conspiracy, doesn't it, when David Bell won't really tell us whether he instructed QCA to suspend this man indefinitely?

**Ed Balls:** Let me ask David to answer that in a second, but let me say first of all that the first Ministers knew that there was an error was when Ken Boston's subordinate, who works for him, came to a meeting, which Jim conflated with another meeting—the first we knew about that was on 6 February. We immediately did what we thought was the right thing to do, which was to make sure that Parliament and the Committee knew about it—and Lord Sutherland, who has said that it does not affect his conclusions or findings. Any suggestion that there was any attempt to mislead or conceal is untrue. We immediately made this known to you and then to the general public, by placing it in the Commons Library in February. That we tried to conceal is not true and, secondly, the idea that this was in any sense a deliberate attempt to mislead Lord Sutherland is untrue.

**Q372 Chairman:** Secretary of State, we are not saying that—we accept your explanation that it was unfortunate that Ken Boston never got the letter. However, set in that context, why was he put into suspension for three and a half months and unable to talk to anyone?

**Ed Balls:** That is a different point, entirely unconnected to this particular issue of the report on the 17 June meeting. I think you will find that the Permanent Secretary is happy to answer any questions you want to put to him about the whole process.

**Q373 Chairman:** We never got a straight answer to the last question, Secretary of State, which is why I asked you.

**David Bell:** To be clear, the discussions at that confidential personnel-related board meeting are not for public consumption.

**Q374 Chairman:** It is not confidential when one of the people there gives evidence to the Committee about it.

**David Bell:** It is very clear. The QCA had a confidential board meeting to discuss a significant matter. What I said to you was that it was the decision of the QCA board to suspend Dr Boston.

**Chairman:** Listening to your advice.

**David Bell:** I contributed to the discussion, but I did not say, "You must suspend Dr Boston."

**Q375 Chairman:** But you are the big boss, you are the Permanent Secretary. If you picked up the QCA and expressed an opinion, are you telling me that it is not going to kowtow to you?

**David Bell:** This, in a sense, takes us back to previous discussions that Dr Boston referred to. I made it very clear that the decisions regarding Dr Boston's employment, which include disciplinary matters, rest with the QCA. They do not rest with the Permanent Secretary. That is a matter of fact. Any decisions made by the QCA board are made by the QCA board.

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**Q376 Chairman:** In any other part of the world, in any other business, in any other sector, if you were sitting there making a decision about someone's future, a top member of your personnel, and the big boss was there—come on, Permanent Secretary, we weren't born yesterday—if you were sitting there and you articulated a view, are you telling me that they wouldn't have said, "Yes, sir. That is the Permanent Secretary, you are suspended for three and a half months."

**David Bell:** No, it would have been quite inappropriate for the QCA to have made decisions that were not its own. The QCA board had to make a decision regarding suspension. In fact, I made it very clear in earlier correspondence that any decisions regarding disciplinary matters were for the QCA board, and the QCA board alone.

**Q377 Chairman:** But Ken Boston had offered his resignation. Why didn't you just accept it?

**David Bell:** It was not for me to accept.

**Chairman:** But you were there.

**David Bell:** It was the QCA board's decision not to accept Dr Boston's resignation, not mine. I had no locus in that matter.

**Q378 Chairman:** And you didn't think it strange that taxpayers' money was going to be paying a man for nearly four months for doing nothing.

**David Bell:** Well, we have proper and well-accepted procedures that when you suspend individuals you suspend them on full pay, pending the outcome of a disciplinary investigation. That is what happened with Dr Boston. The QCA suspended him on full pay and then carried out an investigation into his conduct. That is entirely appropriate and you would find that happening in almost all walks of life.

**Chairman:** Derek, sorry, I cut across you.

**Q379 Derek Twigg:** A key part of what Dr Boston said, in terms, was that basically the evidence against him in the report was sexed up. He specifically said that your statement, Secretary of State, was complacent and disengaged, and that he was constantly beleaguered by Ministers with questions he was unable to answer. I think he said that you stated that he, Ken Boston, managed the test delivery process at arm's length from the National Assessment Agency. What is your response to those accusations, in terms of you misquoting him, not putting the correct evidence and trying to blame him for the whole thing?

**Ed Balls:** The remit for delivering the national curriculum tests was a remit from the QCA, of which Ken Boston was the chief executive, and it was managed within the QCA by David Gee, the managing director of the NAA. I think one of Lord Sutherland's points is that ambiguity in the oversight of Ken Boston of the work of David Gee was an issue for the QCA. On 19 May these issues were raised in the House of Commons and I contacted Dr Ken Boston's office to seek reassurance that the marking was on track, and received that reassurance. I had a meeting with Dr Boston on 2 June at which the first agenda item was

marking, because obviously we were concerned with some of the feedback from the marking world. We were told in terms by Dr Boston that any issues around training had been sorted out and that because ETS was doing things in a different way, that was bound to lead to some noise in the system, but things were under control. The Schools Minister became more concerned in the next week or so by reports and therefore asked for a meeting with the QCA, but it was David Gee who attended that meeting and gave the same reassurances. During that period Ministers regularly pressed for reassurances and received them. It was not until 30 June that the QCA position suddenly and substantially changed, and it was on that basis that we moved into a different phase.

**Q380 Derek Twigg:** So you stand by your statement that Ken Boston managed the test delivery process at arm's length from the NAA?

**Ed Balls:** Is that a statement from me or from Ken Boston?

**Derek Twigg:** You said it in your statement on 16 December.

**Ed Balls:** It is certainly the case that one of Lord Sutherland's criticisms of the QCA management is that they treated the NAA as a separate body, when in fact it was part of the management structure of the QCA. Therefore one of Lord Sutherland's criticisms is that Ken Boston did treat the NAA as more arm's length than was in fact the case. But I have to say that from my point of view Ken Boston regularly gave me reassurance, so, far from being at arm's length, he was telling me on regular occasions that things were on track.

**Jim Knight:** Let me just add, in terms of the sequence of things from 30 June through to 2 July, which was the meeting that I got confused about and thought was on 17 June—in terms of describing the character of the meeting—on 30 June there were some phone calls with Jon Coles, the then acting and now full Director General for Schools, when they said there were some problems with their projections that Key Stage 3 would be marked on time, and perhaps some problems with Key Stage 2 English. There are some e-mails that show that through the course of 30 June that situation looked as if it was getting more serious. That is when I asked for the meeting with David and Ken, which Ken said to you he remembers very well and is beyond the terms of reference of Sutherland. I do not think it is at all beyond the terms of reference of Sutherland, because at that meeting, when, incidentally—looking through the notes that my private secretary took of it—David Gee contributed 24 times and Ken just twice, we went through in a lot of detail exactly when the marking might be done. At that point, none of the technical problems that subsequently came to light, which were causing so much difficulty and delay in the delivery of the results, were coming to light; so from 2 July onwards we still had a lot of work to do in understanding the problem. It was in that set of conversations that Ken was distant and

delegated everything to David. That informs the nature of my comments that Ken took exception to when I gave evidence to Lord Sutherland.

**Ed Balls:** It was Jim's comments.

**Q381 Mr Stuart:** Can I momentarily take Mr Bell back to the QCA board meeting on Monday 15 December. Was it held at your behest?

**David Bell:** It was initiated by the chairman of the QCA.

**Q382 Mr Stuart:** And was it held at your behest?

**David Bell:** No. The chairman of the QCA called that meeting.

**Q383 Mr Stuart:** You didn't ask him to do so—you made no contact with him to suggest that should happen?

**David Bell:** No. He decided to hold that meeting.

**Q384 Mr Stuart:** That was obviously his decision to make, but he could have been advised by you.

**David Bell:** He talked to me quite considerably about the run-up to the publication of Sutherland.

**Mr Stuart:** So you did speak to him.

**David Bell:** Of course I spoke to him.

**Mr Stuart:** Okay. So you spoke to him before the meeting, and then the meeting was held, and as he is the chairman—

**David Bell:** I had to speak to him on a number of occasions in the run-up to the Sutherland publication.

**Q385 Mr Stuart:** This of course goes to the heart of some of the issues here—that your Department is all over the QCA, yet the QCA has the responsibility. Was that meeting held when everybody was present, or was it a teleconference?

**David Bell:** It was a teleconference.

**Q386 Mr Stuart:** And you attended?

**David Bell:** I attended along with one of my directors general.

**Q387 Mr Stuart:** Had the rest of the board had the chance to read the Sutherland inquiry at that point?

**David Bell:** This is quite important: the QCA board meeting is a private one—it is a confidential meeting—

**Mr Stuart:** Had they had the chance to read the report?

**David Bell:** If I may say to you, Mr Chairman, I received minutes of the meeting that the QCA said to me were legally confidential.

**Q388 Mr Stuart:** Had they received copies of the report by 15 December? It is nothing to do with confidential minutes, Permanent Secretary.

**Chairman:** Graham, let us get some ground rules. Let the witness give his reply, then you can come in again.

**David Bell:** As a matter of fact, the QCA board did not see an advance copy of the Sutherland report, although a couple of members of the board did. That was again in accordance with the instructions of

Lord Sutherland, who wanted to restrict publication, so the full board had not seen the full report.

**Q389 Mr Stuart:** Thank you. So you had spoken extensively to the chairman. He decided to hold the meeting on the Monday. It was a teleconference that you attended. The other members of the board had not read the report. It was decided to suspend—a rather unusual process—rather than accept the resignation of the chief executive.

**David Bell:** That was the decision of the board.

**Q390 Mr Stuart:** That was of course a decision of the board on which they did not have the full facts—you did and you attended.

**David Bell:** That was the decision of the board.

**Q391 Mr Stuart:** Thank you. I think that makes the position extremely clear. Can I ask the Secretary of State why you intervened when Ofqual was going to conduct the inquiry? Instead you intervened and said that Lord Sutherland should report to you and specified the remit. I think there are two key points; there are nine bullet points, but effectively you said that Lord Sutherland should report to you on how the QCA had discharged its remit from the DCSF and how the QCA had delivered against its formal success measures in relation to Key Stage 2. Apart from a reference to the appropriateness of the DCSF's arrangements to monitor, basically Lord Sutherland was asked by you to report to you, not to Ofqual, and to do so on the basis of what the QCA had done with ETS rather than looking at the broader picture. Is that fair?

**Ed Balls:** No.

**Jim Knight:** No.

**Chairman:** Sorry, who is responding?

**Ed Balls:** I made very clear in my opening statement the view of Lord Sutherland, which is that he felt his remit was very wide and covered the role of the QCA, but also Ministers and DCSF officials. He says he rejects entirely any suggestion that his remit was in any way narrowed. The QCA does not report to Ofqual, it reports to me. I asked Lord Sutherland to look into aspects of this, but Ofqual also has responsibilities for national curriculum tests and standards. Therefore, in those parts of its remit, the Sutherland inquiry reported to Ofqual, and that was entirely appropriate, open, public and fully to the satisfaction of Lord Sutherland.

**Q392 Mr Stuart:** Ken Boston, as you know, gave evidence to us that the remit was constrained. If you read the remit, I think it is quite clear. I am going to move on, if I may.

**Ed Balls:** Mr Chairman?

**Mr Stuart:** I am asking the questions. You answer them. I haven't given you one, Secretary of State. I will come to the next question in a moment.

**Ed Balls:** I don't think this is the way to behave, Mr Chairman.

**Chairman:** Let the witness come back, Graham. I give everyone a fair hearing on this Committee. Secretary of State.

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**Ed Balls:** It is not fair or correct to say that the remit was narrowed. Lord Sutherland in his statement on 22 April says, “I reject entirely any suggestion that my activities during the course of the inquiry were constrained.” He also says he believes the terms of reference were drawn up in a way that “gave me ample scope and every opportunity to examine the processes involved and the responsibilities of all of the key players, not only QCA and ETS but also Ministers and officials at the DCSF.” Those are not my words, they are the words of Lord Sutherland who stands fully by his findings.

**Q393 Mr Stuart:** That is clear, Secretary of State. The point I made was that Ken Boston, who was the head of the QCA, doesn’t agree with that assessment.

**Ed Balls:** Dr Boston doesn’t agree with that assessment but Lord Sutherland does agree—that is his assessment.

**Mr Stuart:** You don’t need to say so for a third time, Secretary of State. We have limited time and I would like to ask another question, if I may.

**Jim Knight:** I would like to say in response to you, Chairman—

**Mr Stuart:** Who is dictating this, the questioners or the witnesses?

**Chairman:** I am, as Chairman. I am going to give a fair crack of the whip to everyone. The Schools Minister wants to come in and then you are back in the questioning.

**Jim Knight:** If I could add, in response to a question from you, Chairman, Ken said, “I think he did a very fair job and I have said on the public record several times I think it is a very good report.” Ken thinks it is a good report and it was a fair job. The person who wrote it says that the remit was wide enough for him to cover the DCSF. He makes a few small criticisms of the DCSF along the way. I think the remit was perfectly wide.

**Q394 Mr Stuart:** Thank you. Ken Boston says that it is a good report, given the limited remit that Lord Sutherland was given. But Lord Sutherland takes a different view, and it was his report, so I think you have that on the record. But this goes to the heart of the issue—about independence, which often runs like a thread through so much of the work of the Department. Why was an official from the Department seconded to the Sutherland team?

**Ed Balls:** Just to be clear, Ofqual is independent of the Department. It reports directly to Parliament. The QCA is a non-departmental public body, as the QCDA will be. They are not independent—they report to Ministers who then report to Parliament—but we set them an annual remit in which they manage certain aspects of their work at arm’s length. In this case it is the delivery of the national curriculum tests.

**Mr Stuart:** Could you answer my question?

**Ed Balls:** It is just as important to correct mistakes. The issue of independence does not arise in the case of the QCA. It is not an independent body.

**Mr Stuart:** I would quite like someone to answer my question.

**David Bell:** This is about—

**Mr Stuart:** It is a simple question: why was an official from the Department seconded to the independent Sutherland inquiry?

**David Bell:** There is a very straightforward answer to that. It is very frequently the case that when independent inquiries are set up, the Departments that have commissioned them draft over officials to carry out such work to support inquiries. That is absolutely straightforward and happens not just in our Department, but right across Government.

**Q395 Mr Stuart:** Right. So when you have an independent inquiry looking into, according to the Secretary of State, an apparently wide remit including the behaviour of the Department, it is appropriate for someone who works in the private office of the Permanent Secretary to be seconded to that independent inquiry to join the secretariat and be part of the drafting team. Is that what you are telling us? It sounds like an episode of “The Thick of It”. You guys would make excellent characters in that show.

**David Bell:** As I have already written to you this morning, Mr Stuart, I pointed out to you that I explained to Lord Sutherland that I thought we had an exceptionally able member of staff who was able to take part in this—

**Mr Stuart:** I bet you did.

**David Bell:** Mr Chairman, I find there is a question of my integrity here. The suggestion is that somehow I put to Lord Sutherland a member of staff who would not—

**Mr Stuart:** From your private office.

**David Bell:** From my private office, who would not be appropriate. The decision to take a member of staff from my private office, given the expertise that they could bring, was Lord Sutherland’s. As I also pointed out to you in my letter this morning, Mr Stuart, the final decisions—the findings and recommendations of an independent inquiry—rest with the person who carries out the inquiry, not a junior member of staff who joins the inquiry secretariat.

**Q396 Mr Stuart:** That would be just as the QCA board was responsible for the decisions which you helped to lead it to come to? The next question, if I may: could you confirm that the member of staff from your private office seconded over to this inquiry played a part in drafting sections of the report?

**David Bell:** I don’t know that, because it is Lord Sutherland’s report. You would have to ask Lord Sutherland that question. The final report is Lord Sutherland’s, not a member of the secretariat’s.

**Q397 Mr Stuart:** I spoke to Lord Sutherland yesterday. He is a man of the utmost integrity. He told me that he took full and total responsibility for the report, that everyone who worked for him produced the report to his requirements and that he had no doubts whatsoever about the efficacy and professionalism of his team. But I put it to you,

Permanent Secretary, that sending someone from your private office to join the drafting team of a supposedly independent inquiry is not appropriate.

**Mr Heppell:** Would that not be the normal process?

**Chairman:** John. What's the problem?

**Mr Heppell:** It just seems to me that in any inquiry people are going to ask for people who have some knowledge to assist them. Is it not normal practice for somebody to be seconded?

**David Bell:** That often happens and I can cite a number of examples when people who have been working in the policy area go over to independent inquiries. This is not just something that happens in the DSCF, it happens regularly across Government. If you appoint independent inquirers to carry out reports, they need secretarial support. It is the responsibility of the person carrying out the inquiry. You have just quoted Lord Sutherland, according to your conversation with him, Mr Stuart, saying that the members of staff concerned behaved with the utmost integrity, and the report and its findings were Lord Sutherland's alone. I am therefore struggling to understand what the problem is if that is the decision Lord Sutherland has come to about the support he received.

**Q398 Mr Stuart:** That may be a problem in itself. I think any outsider would find it odd that someone from the Permanent Secretary's private office could be deputed. Is it possible that she could have written draft sections of the report?

**David Bell:** I don't know. I had no contact with the individual concerned during the process.

**Ed Balls:** Does she work in your private office now?

**David Bell:** She does not work in my private office now and she was physically out of my private office during the time this inquiry was carried out.

**Q399 Mr Stuart:** But she did return to work for your Department after her secondment to Sutherland?

**David Bell:** Of course she did.

**Mr Stuart:** So she worked for you beforehand and she works for you again now.

**David Bell:** She works for the Department, so yes, she works for me ultimately.

**Q400 Mr Stuart:** Permanent Secretary, I am sorry for appearing cynical, but we are trying to get to the truth here. What we have is a person from your private office who was apparently in charge of the recording equipment at the hearings and may have been part of the drafting team, and then, days after Ken Boston gave his evidence, weeks before Ministers gave evidence to the Sutherland inquiry, and months before it was published, you met with Ken Boston and suggested—according to his testimony—that he should resign because the findings were not going to be good for him. Can you explain that meeting and why you took that extraordinary step?

**David Bell:** Just before I answer that question, I think I should say that it was Dr Boston's lawyers who asked me to keep private and confidential all the discussions I had with Dr Boston in September and October. Dr Boston chose in this Committee to

breach that confidentiality. It was entirely appropriate for me, as the principal accounting officer, to talk to Dr Boston about his position, and yes, I did ask him to consider his position. However, when Dr Boston gave testimony to your Committee he said: "The Permanent Secretary spoke to me and I made it clear that I would be willing to consider departure only on the basis of the contract being paid out." In actual fact, that is not quite the case, because when Dr Boston's lawyers wrote to me, they said: "Dr Boston should receive a payment equivalent to 10% of his salary." His lawyers went on to say—

**Mr Stuart:** Chairman, that doesn't answer my question, and I'd rather he answered the question I put, rather than the one he would like me to have put.

**Chairman:** Hang on. Graham, if he doesn't answer the question, you will get another bite, but let him answer first.

**David Bell:** You asked me why I had that conversation, and I am referring to Dr Boston's testimony. Dr Boston's solicitors said on his behalf: "All success measures appended to the remit letter from the Secretary of State have been met, other than in relation to delays over the Key Stage tests." So when Dr Boston said he only asked for his contractual entitlement, that is not the case: he asked for additional payment if he was even to consider early retirement.

**Q401 Mr Stuart:** Why did you say that the inquiry findings were going to be bad for him?

**David Bell:** You didn't have to be a prophet to work out that the inquiry was going to be bad. The other thing I should say is that as the crisis unfolded during July and into early August it became apparent to me that Dr Boston did not have a grip of the detail of the issues. Therefore, I surmised that the inquiry was going to be very difficult for the QCA and for Dr Boston. I had no contact with anyone in the inquiry and I did not know what it was going to say.

**Q402 Mr Stuart:** You did have contact. You said you had contact with the person from your private office who had joined the inquiry team—only on discussing administrative matters relating to the inquiry, but—

**David Bell:** Precisely.

**Q403 Mr Stuart:** But even after the appointment of that person you were in contact with them on administrative matters. That person worked for your private office beforehand and was returning to your Department afterwards, and you were in contact with them during the inquiry. No wonder you were so confident.

**David Bell:** I will give you the administrative contact we had. She said, on Lord Sutherland's behalf, "Can we set up an interview to take your evidence?" My reply was, "Yes, you can, and we will do it on this date." That is the administrative contact we had during the process.

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**Ed Balls:** May I add briefly to that point? David wrote to the Cabinet Secretary on 22 April 2009 and made it quite clear that at the time of the discussion he had in September with Dr Boston, when the discussion with lawyers and the contractual payments arose, there had been no prior discussion at all with Ministers. That was a discussion that David had with Ken in his role as accounting officer. The second thing I would like to say, and this echoes what Lord Sutherland has said on the record and to Mr Stuart, is that in my view our Permanent Secretary and our civil servants have at all times operated with the highest standards of integrity and independence, and the insinuation that somehow there was some kind of complicit co-operation in trying to change the direction of the Sutherland inquiry's findings is absolutely untrue and unfounded in my experience. I think that in this Permanent Secretary we have somebody with the very highest standards of integrity. It is really important for me to put that fact on the record, on behalf of the two Ministers here.

**Q404 Mr Heppell:** Following on from that, and to get this absolutely clear, on whose authority did you approach Ken Boston in September 2008?

**David Bell:** My personal authority.

**Q405 Mr Heppell:** And when was the decision taken? When did you make a decision to seek his retirement?

**David Bell:** I first met Dr Boston to discuss that on 24 September and that led to exchanges between me and the lawyers. I went back to the lawyers and quite explicitly said that it was not my responsibility to initiate any action against Dr Boston. What I was saying to Dr Boston, as principal accounting officer to accounting officer, was, "I think you should consider your position because it has been a very difficult year." So I initiated that.

**Q406 Mr Heppell:** So that was because of the impending report? Was it anything to do with the meeting on 18 March? That was what Ken Boston said in evidence. He said he believed that Ministers had decided to put the skids under him—his words—following the meeting on 18 March.

**David Bell:** At no time did the Secretary of State, the Schools Minister or any other Minister say to me, "You have to have a conversation with Ken Boston, telling him to go." They never said that to me. I had the discussion as the principal accounting officer saying to the accounting officer responsible for the QCA, "You should consider your position." Dr Boston implied to you that he was only prepared to consider his position if his contractual entitlements were met. Actually, Dr Boston was seeking a bonus and some other additional payments before he was prepared to leave. I wrote back and said that it would be completely unacceptable to pay anything other than his contractual entitlement. So Dr Boston was seeking more than his contractual entitlement if he was going to have a negotiation with the QCA board about his future.

**Q407 Mr Heppell:** Do you think, with hindsight—I know that such things are very useful—that it was a good idea to be seeking resignation from Dr Boston before Lord Sutherland had reported and before the Secretary of State and the Minister had even given any evidence at the inquiry? I know that you have partly answered this.

**David Bell:** Yes, I think it was appropriate. The principal accounting officer has to take overall responsibility for relationships with other bodies and other accounting officers, and given that I had seen Dr Boston close up during the crisis and was very concerned about the way he was handling it, I think you would have been astonished if I had had no conversation with him about his future. I saw that and felt that a conversation would be appropriate in the circumstances. Don't forget that Dr Boston was scheduled under his original contract to go in September 2009 anyway, so there was a conversation that would be had in the autumn. I decided to initiate that conversation and say that I thought that in the circumstances he should consider his position, but I was only ever prepared to accept that he would have six months' notice.

**Q408 Mr Heppell:** Just one final thing about something Graham said earlier. Would the minutes of the QCA meeting that suspended Mr Boston not be subject to freedom of information?

**David Bell:** I think you will find that if it was a confidential personnel board meeting they would not be, because you can utilise the arrangements regarding personnel and confidential details in the Freedom of Information Act.

**Q409 Mr Timpson:** Secretary of State, you have used today as an opportunity to clarify a number of matters by referring to correspondence between your Department and Ken Boston.

**Ed Balls:** My statement was clarifying correspondence between the Schools Minister, the Committee and Lord Sutherland. The correspondence that the Permanent Secretary referred to is correspondence that we were not involved in and I have not referred to it in my evidence.

**Q410 Mr Timpson:** But it is coming from your Department and it is being co-ordinated with Ken Boston's involvement in his role in the QCA.

**Ed Balls:** I have never seen any of the letters to which the Permanent Secretary has referred between himself, lawyers and Ken Boston. I did not know of their existence.

**Mr Timpson:** I am not suggesting you have. All I am saying is that you have read that correspondence.

**Ed Balls:** No, I have not seen that correspondence.

**Q411 Mr Timpson:** Perhaps if I put the question to you rather than anticipating where this might go, it might save us a bit of time. One of the periods that has been in dispute—the confusion about who was at what meeting and what happened during that period—is between 19 May when questions were asked in the House about the delivery of the tests

marking and 2 July when, as I think it was said earlier, it seemed to move on to phase two: it was heightened. In order to help the Committee have complete clarification and confidence in the answers that you have given, and in the spirit of transparency, do you not agree that it would be helpful to provide to the Committee the correspondence between yourself, the Schools Minister, your Department and Ken Boston, so that we can be absolutely clear as to what happened during that period?<sup>4</sup>

**Ed Balls:** All the correspondence was submitted to Lord Sutherland. In a sense, we have been through this. Lord Sutherland has seen all this evidence in compiling his report.

**Mr Timpson:** But this Committee hasn't seen it.

**Ed Balls:** The issues around the release of information that was put together for the Sutherland inquiry are matters for Lord Sutherland, and then the normal processes for release. That is not something that we, ministerially, would be involved in. In terms of the particular issues raised, on 19 May this was raised in oral questions. My office spoke to Dr Ken Boston's office to ask for and receive reassurances. I then had a meeting with Ken Boston on 2 June. At that meeting I also raised a constituent's issue. I wrote to my constituent on 6 June. Ken Boston wrote on 16 June. On 17 June the Schools Minister had a meeting with David Gee. On 2 July I had a meeting with Ken Boston and David Gee. All of that is clear and in the public domain, and all the papers that underpin that would have been provided to the inquiry. It is not for me to pre-empt processes around either the release of the papers of the Sutherland inquiry or freedom of information. There are proper processes for that. But those are not processes in which Ministers would ever be involved.

**Q412 Mr Timpson:** Can I go back to the original question—do you agree that it would be helpful to the Committee to have access to all that correspondence in order to clear up the confusion that has run on for months?

**Ed Balls:** I did answer that question, by saying that it is not appropriate for me as Secretary of State to comment on the release of information from an independent inquiry or through freedom of information.

**Mr Timpson:** I am not asking for it from Lord Sutherland. I am asking for it from you.

**Ed Balls:** But all of the papers were provided to the Sutherland inquiry.

**Q413 Mr Timpson:** But we have not seen them, and that is the point I am making. Is there any reason why we cannot see them?

**Ed Balls:** The answer I am giving you is that it is not for Ministers to decide on the release of those papers. It is a matter for the Sutherland inquiry and the freedom of information processes. As far as I am concerned, personally, there is absolutely nothing to hide and everything to gain from full transparency. I am completely relaxed about it. What I do not want

to do is pre-empt the proper processes around the release of information. These are probably questions that you should put to the Permanent Secretary for an FOI point of view or that you should ask Lord Sutherland.

**Q414 Mr Timpson:** Well, can I put on the record a polite request for that information? If I have to go through official channels, can I be given the information by which to do that?

**Ed Balls:** It is not for me to make decisions about the release of those kinds of papers. But we did say to Lord Sutherland that he had to have access to everything in order to do his inquiry, and he did.

**Mr Timpson:** So that is a no.

**Ed Balls:** It is the same answer as I gave you a moment ago. It is not for me to make decisions about the release of information in that way. But as I said, I gave you a very clear answer. From my point of view, full transparency is absolutely fine and the right thing.

**Q415 Chairman:** Lord Sutherland has returned all the documents supplied by the Department, as I understand it.

**David Bell:** Yes, he has. But to reinforce the Secretary of State's point, there are proper procedures regarding policy papers and other papers that go through and flow through a government department. If Ministers are approached, either by parliamentary questions or via freedom of information requests, officials have to consider those questions. They have to be considered under the Secretary of State and by the proper procedures. We don't just put out all the papers on every policy area, because even under the Freedom of Information Act that would be considered inappropriate. But the key point is that Lord Sutherland had access to all the papers that he needed and he drew his conclusions based on all of those papers. That is the most definitive statement of what happened: Lord Sutherland, an independent inquirer, published an independent report.

**Jim Knight:** Incidentally, Edward, the Permanent Secretary was copied into the letter to Michael Gove from Lord Sutherland, where he raised similar sorts of questions. It is a very thorough response from Lord Sutherland which details the places in his report that Michael could go to in order to see the sequence of events, and how all of those questions were properly answered in his inquiry. I would imagine that Michael would be very happy to share that.

**Q416 Mr Timpson:** As we are talking about transparency, and independence seems to have been the theme of this session, can I ask one further question about Ofqual? Can you give assurance that the full independence of Ofqual—you have referred to it as having the same independence as the Bank of England—will mean that there won't be any DCSF observers appointed to Ofqual?

**Ed Balls:** I think that in the end that is a matter for the Ofqual board.

<sup>4</sup> Correspondence published on the QCA website.

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20 May 2009 Rt hon Ed Balls MP, Rt hon Jim Knight MP and David Bell

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**Q417 Mr Timpson:** What is your view?

**Ed Balls:** I am very happy to have the same arrangements as the Bank of England.

**Q418 Mr Timpson:** So, your preferred view is for there not to be DCSF observers on Ofqual?

**Ed Balls:** No, because the Bank of England has an observer from the Treasury.

**Jim Knight:** We have got to be very clear, during the course of the Bill that is going through Parliament, that whether Ofqual invites observers or not is a decision for its board.

**Mr Timpson:** I understand that, I was just using this opportunity to find out your views.

**Ed Balls:** The Bank of England chooses to have a Treasury observer at the monthly meeting of the Monetary Policy Committee, but I don't think that anyone has ever suggested that that in any way compromises the independence of the Bank of England when it comes to making decisions on interest rates.

**Jim Knight:** The reason why a board would sometimes want to make that decision is that Ministers still make policy decisions and there are times when it might be helpful to a board to understand the background to how those policies were arrived at. If it has someone present that it can ask those questions of, that can be helpful to it, but in the end, that is the board's judgment.

**Ed Balls:** That is absolutely how it works in the case of the observer on the Monetary Policy Committee, who will update regularly on aspects of fiscal policy.

**Chairman:** Thank you for that, witnesses. A quick one from Derek.

**Q419 Derek Twigg:** I want to return to the issue of onscreen marking because you made a very unequivocal statement. I reread the evidence that Ken Boston gave during the hearing, in answer to my question. He said, "It certainly was not the case that there was risk in the system; this is proven technology and it is used widely throughout the world for school marking. It is used here extensively, with the general qualifications. It was not a risk." That is completely in contradiction to what you have said. I cannot believe that you have come here and said something that is not true, in any way, but I wondered whether you have evidence from the QCA saying what it recommends. I find it bizarre that you came here and made a statement like that to this Committee.

**Ed Balls:** In my opening statement, I said that while Dr Boston was clearly in favour of onscreen marking, which I understand from reading the testimony to the Committee, the QCA itself decided, on the basis of trials that were carried out in 2005, not to proceed further. That was the QCA decision. It may well be the case that Dr Ken Boston has, at some point, in writing, or to officials in the Department, made the case for onscreen marking since I have been Secretary of State. But what I said was that at no point, to my knowledge, verbally or in writing, did Dr Ken Boston ever make the case to

me for onscreen marking. It was the QCA's decision not to proceed, including in the case of the ETS contract in 2008.

**Q420 Derek Twigg:** So you are saying that Dr Boston and the QCA have completely different views about this?

**Jim Knight:** In his statement, David Gee said that the primary driver of this decision was the impact on schools, and in particular how to achieve the safe return of the original scripts to schools to both time and budget. That was the principal reason why the NAA—which is a division, but as Sutherland says, probably too separate a division, within QCA—made that decision. As I understand, when the contract was procured for ETS it was procured on the basis that it would start with conventional marking, although it would use all the online things that Ed referred to earlier. That was to move it on from the quill pen, cottage industry that Ken likes to describe it as, but some of the problems during the summer were caused by how those online things operated. The contract then left it open to move to onscreen marking over the course of that contract. People recognise that that works perfectly well with other public examinations, but there are issues about the return of scripts to schools, because schools really value that. That was a part of the problems that we had over the summer last year.

**Chairman:** We are running out of time. Paul Holmes.

**Q421 Paul Holmes:** You talked about observers on the Bank of England Monetary Policy Committee and mentioned whether they might be required on Ofqual. You had observers on the QCA. What was their role exactly?

**Ed Balls:** The point that Lord Sutherland makes as a recommendation for the DCSF is that we should be clear about the role of those observers. We must clarify that role, and that is what we have done in discussion with the QCDA. The role of the observers is to ensure a proper flow of information and an understanding of the decision makers at the point of decision. It is not to be involved in or seek to influence those decisions, or to take away accountability for those decisions from the decision maker, which in this case is the QCA board. It would be entirely inappropriate for a DCSF observer to start trying to influence the final decision, but it would be appropriate for them to ensure that the QCA board knew the full facts in advance of that decision. If the observer felt that there were concerns, they could relay them back to the Department. It is about information flow.

**Q422 Paul Holmes:** So were they there to clarify to the QCA what was happening in the Department, or were they there as an early warning to tell you that there were problems coming up regarding the marking of the tests? It is clear that they did not do that.

**Ed Balls:** One of the problems, which the Sutherland inquiry makes very clear, is that the QCA board did not have a discussion that raised those kinds of concerns and risks. It was not the case that we had

observers who observed discussions but did not pass the information on. Those discussions were not really occurring, which is part of the problem about the management of those risks. If the observers saw something that concerned them at the point of decision, of course I would have expected them to tell me.

**Q423 Paul Holmes:** What level are these observers? Are they level three, five, seven?

**Ed Balls:** They are sort of middle-ranking, responsible officials.

**David Bell:** We usually have a director general or a senior-level official on the board. As the Secretary of State said, we have given greater clarity to the role of observers as we accepted the criticism that it was vague. It is exactly as the Secretary of State has said. There is no real difficulty in providing a policy framework for the QCA board to consider at the same time as acting as an early warning back to the Department. That is entirely reasonable and the QCA board has accepted that.

**Jim Knight:** As Lord Sutherland makes clear, there is a problem with scaling up the problems that were happening. I was told throughout June that things were going to be okay. In what became daily notes from officials on how it was going, I was told that the NAA was confident that things were going okay. It said that it was confident that it could deliver results to schools—I am flicking through the correspondence now. That is the information that we were getting, but it is also the information that David Gee, Ken Boston and the board were getting. At the same time, about 40 people were put into the NAA to try to sort the problems out, but it now appears that people at the top of the organisation did not know that.

**Ed Balls:** It would clearly be silly to say that because there is an observer from the Treasury at a meeting of the Monetary Policy Committee every month, the responsibility for making interest rate decisions is therefore really with the Chancellor. The same would apply in the case of the CQA board. Observers have a role to play, but it is really important to be clear about where the accountabilities lie and where the decisions are taken. In this case, it was the QCA board.

**Q424 Paul Holmes:** So you have a fairly senior observer there, a level 3 director general, but they are neither influencing the QCA nor reporting back to you. I am not sure exactly what—

**David Bell:** That is not the case, Mr Holmes—they are reporting back. However, if you are making a specific point about the national curriculum tests and how they were going, it is very clear from Lord Sutherland's report that the board was not being given information about potential problems.

Therefore, it would have been very difficult for an observer on the board to report back something that was not being reported to the board.

**Q425 Mr Stuart:** There would be issues raised about the Bank of England's independence if the Governor of the Bank of England announced that, in his opinion, observers from Government were trying to shape the advice given to Ministers by the Bank of England. That is exactly the allegation being made by Ken Boston in this context.

**David Bell:** That is not true. If you think of the people on the QCA board, they are not sitting there in regular meetings having their decisions or advice shaped by the departmental observer. What the departmental observer would be doing—

**Mr Stuart:** That is what Ken Boston said, though.

**David Bell:** Well, that is Ken Boston's view, but I don't think it accords with the facts.

**Ed Balls:** In any case, Dr Ken Boston was not the chief executive of the QCA at the point at which he made those comments and he never once made any such comment to me at any point in the last 18 months in all the discussions that we ever had. At no point did he ever say to me, "DCSF observers were not playing a proper role." The issue never, ever arose.

**Q426 Chairman:** What lessons have we learned from all this?

**Ed Balls:** We have learned that it is very important that any organisation that has clear responsibilities must also have proper risk management procedures and ways of ensuring that information is escalated up to the decision-making level, and that decision makers are then able to look across the piece at all the facts in assessing risks. On this particular occasion, that did not happen at the level of the QCA's chief executive and board. That was a substantial failure identified by Lord Sutherland, alongside the failure of ETS itself to deliver. There are some lessons for our Department, although Lord Sutherland is very clear that our risk management procedures were effective. However, there is a need for some clarity about the role of the observers. When you are managing big contracts and you have highly paid executives, it is essential that those executives are on top of all the facts at all times, know exactly what is going on and act in a pre-emptive way, not just on individual risks but on the accumulation of risks across the piece. In this case, that did not happen at the senior management and board level of the QCA.

**Chairman:** Thank you for that. That is the end of the evidence session. Permanent Secretary, we have received your letter and we will be in correspondence with you about it.

**Ed Balls:** Thank you very much indeed.

# Written evidence

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## Letter to the Chairman from Dr Ken Boston AO

Thank you for the opportunity to respond to the points raised in evidence given to your Committee on 20 May 2009 by the Secretary of State, the Minister and the Permanent Secretary.

Q360

As the Committee is aware, I became aware of the flaws in paragraphs 4.92, 4.93 and 4.137 in the Sutherland Report on 11 December 2008. Neither the paragraphs nor the flaws had any impact on my decision to resign the following day: they were an unnecessary irritant, but not material to the resignation. I agree with Lord Sutherland that their correction does not affect his findings. What has disturbed me is not so much the flawed evidence itself, but the repeated and quite unnecessary reliance on it by Ed Balls and Jim Knight in the House of Commons and in the Select Committee.

The Secretary of State raised four issues in his opening statement to the Select Committee. My comments are as follows.

### 1. *The 17 June meeting: cock-up or conspiracy?*

Does the evidence that “the Schools Minister did, in error, conflate two meetings” really stand up to scrutiny? I think not.

A note of the meeting between Jim Knight and David Gee on 17 June was taken by a DCSF official. Given the existence of the note, I find it odd—but not impossible—that Jim Knight gave incorrect evidence about the nature and date of the meeting to Lord Sutherland, or was insufficiently briefed to give correct evidence. But—that mistake having been made—surely he and his officials should have discovered the error when invited by Lord Sutherland to check the evidence against the documentation, and corrected it at draft Report stage.

The Secretary of State and the Minister then relied heavily on this incorrect evidence in the House of Commons on 16 December 2008. I found that extraordinary, given the competence of DCSF officials. The job of officials is to protect their ministers; allowing ministers to mislead the House is a hanging offence; given the assiduous manner in which officials attend to matters of detail, this account of events is highly implausible.

Further, between my meeting with the QCA Panel on 14 January, and their letter to me on 30 January, the Panel obtained a copy of the note of the 17 June meeting from the DCSF. The letter of 30 January confirmed that the note did not record me as being present on 17 June. This meant that by 30 January at the latest, DCSF officials were aware not only that paragraphs 4.92 and 4.93 of the Sutherland Report were wrong, but that statements made by the Secretary of State and the Schools Minister in the House of Commons were incorrect.

I cannot believe that DCSF officials did not immediately advise ministers of their error, knowing that ministers were about to appear before the Select Committee. What circumstances led Messrs Balls and Knight to repeat their statements—which their officials knew to be wrong—in the Select Committee on 4 February 2009? Had they not been told of their error? Or did ministers ignore that advice? It is incomprehensible that it was not until two days after his Select Committee appearance that Jim Knight was supposedly informed of the error by officials.

Further, the manner of correction of the error was contemptible. It is not sufficient to have written to Lord Sutherland and to the Chairman of the Select Committee, and to have placed the letters in the libraries of both Houses. It is disgraceful that I should learn of the correction, and be given a copy of the letter of correction, only on the morning of my appearance before the Select Committee on 22 April 2009. I should have received a letter of explanation from both the Secretary of State and the Minister immediately the error was discovered, and so should the QCA. The correction was mean, concealed and shabby.

No explanation has been attempted by ministers of paragraph 4.93 in the Sutherland Report. Lord Sutherland clearly saw and read a note of the meeting on 17 June, which he referenced as a footnote. It evidently lists me as attending the meeting. In late January however, the QCA Panel obtained from DCSF a note of the meeting, which does not list me as attending. What is the explanation? Are there two different notes of the meeting? Or was the note seen by Lord Sutherland subsequently amended to correct the error?

### 2. *“Ministers usually pressed QCA’s Chief Executive for answers”*

The explanation given by the Secretary of State is not consistent with any plain and fair reading of paragraph 4.137 of the Sutherland Report, or with his responses in the Commons to Michael Gove and David Laws. As I said in my letter of 15 April 2009 to the Select Committee “During the test delivery period, QCA was of course closely monitoring the blogs and the many reports in the media about problems with ETS, and working around the clock to resolve every issue which arose. We were in close contact with DCSF officials, who were also monitoring the situation”. Normal ministerial correspondence and telephone

enquiries were properly being referred by DCSF to QCA throughout the test period, as a matter of course: getting his office to contact my office on 19 May, or my answering on 16 June just two of perhaps a hundred items of ministerial correspondence referred to us and answered as a matter of routine during this time, can hardly be construed as the Secretary of State personally and frequently pressing me for answers. During the 2008 test delivery period, I met with Ministers only twice: on 18 March, when the tests were not discussed; and on 2 June, when—as I have previously said to the Select Committee—I gave reassurances on progress to that date, on the basis of evidence I believed to be sound.

Further, I take exception to the spin in the Secretary of State’s statement “It is true that Dr Boston did not attend the meeting on 17 June called at the request of the Schools Minister. Instead, his subordinate, Mr David Gee, did attend”. I did not attend the meeting because I was not asked to attend; I was not aware that Jim Knight had arranged a meeting directly with David Gee and not through my office until David came to me a day or so before to clear the papers he proposed to table at the meeting; I was annoyed that DCSF was again treating the NAA as if it were an independent organization rather than a division of the QCA; and as I had an important and prearranged teleconference at the time of the meeting I was unable to reschedule.

### 3. *The terms of reference for Lord Sutherland*

The Secretary of State has not dealt with the real issue, which is that he himself caused Ofqual to stumble at its first real hurdle.

The 2008 test failure presented Ofqual with the opportunity to establish itself as a truly independent regulator. If Government had wanted Ofqual to exercise real independence, and to get to all the root causes of the failure, it would have allowed Ofqual to establish terms of reference for Lord Sutherland which encompassed the role of all three partners in test development and delivery: Government, QCA and ETS. It should have been beyond question that Ofqual, with Lord Sutherland as its agent, would account to Parliament, not to the Secretary of State, and would do so through the Select Committee.

Instead, the Secretary of State had Lord Sutherland report to him, not Ofqual, on QCA management of the ETS contract, which would otherwise have been a critical part of a comprehensive Ofqual inquiry. He narrowed the potential scope of the inquiry; put a fence around the DCSF; focused the spotlight on QCA and ETS; prevented some of the real causes of the failure from being identified; and compromised the independence of Ofqual. This should be remembered whenever we hear hollow Government rhetoric about Ofqual being an independent regulator. Ed Balls cut off its oxygen at birth.

For example, I refer to the timeline on page 22 of the Sutherland Report, and to the chapter on procurement as a whole. Lord Sutherland’s terms of reference required him to examine the role of QCA and its division the NAA in the procurement process from March 2006, and he did this very thoroughly. The remit he was given however did not allow him to take evidence from former ministers and officials on the role they played in determining the specifications to tender in that year. He did not interview Ruth Kelly and Jacqui Smith on the events up to May 2006, or Alan Johnson and ministers on events after that date; he did not interview present and former DCSF officials on the role they played in relation to deciding precisely what was to be procured; he was not able to interrogate officials on what messages they conveyed to the Procurement Board from ministers; nor was he able to investigate the decisions made by DCSF in 2006 for implementation in 2008 in relation to the maintenance of manual marking while insisting on the introduction of online question-level data capture. In the preface to his questions to me at the Select Committee on 22 April, the former minister Derek Twigg confirmed that ministers had discussed these issues in 2006 and decided against onscreen marking.

In making this point, I am trying to ensure that Ofqual is never again wrong-footed by any government. I am not trying to spread the blame, or criticize Lord Sutherland, or diminish my own accountability for the test failure in 2008. Flawed though it was, I accepted the remit given by ministers in 2006 for 2008, and I do not expect anyone else apart from ETS to take responsibility for the failure. I do not question Lord Sutherland’s findings. It is imperative however that, if Ofqual is to be a truly independent regulator reporting to Parliament, neither it nor its agent should accept terms of reference dictated by Government.

### 4. *The QCA itself decided not to proceed with onscreen marking (!)*

From 2004, ministers and officials declined to accept QCA advice to introduce onscreen marking, on the grounds that it must first be proven by a pilot study that the national results obtained by that method would be the same as (or better than) those obtained by manual marking. Onscreen marking is not novel; it has been proven internationally to be a far more valid and reliable process than manual marking; and it is now widely used by UK awarding bodies for delivery of GCSEs and GCEs. Such a trial would have been worthless: onscreen marking cannot be judged by the extent to which it replicates results obtained by the much inferior process of manual marking. Inevitably the results would have been different, although not necessarily worse.

It is wrong for the Secretary of State to claim that the QCA itself decided not to proceed with onscreen marking. We were told by ministers and officials that it was not an option. The final stumbling block was the Government requirement that whole scripts be returned to schools at the same time as the results, as in the past. Onscreen marking requires that the spines be stripped from the scripts, so that each page can be scanned electronically. It would have been possible to send electronic facsimiles of the scripts or even hard

copies of the separately marked answers to schools by the results date, but not to reassemble and return whole scripts. The fact is that onscreen marking can provide schools with a far richer and more useful analysis of pupil performance than the return of marked scripts, as has been shown by the awarding bodies.

The purpose of the letter signed by David Gee on 3 November 2005 was to resolve uncertainty for 2006, and to paper over what would otherwise have been a very public rift between the QCA and Government. With the benefit of hindsight, we negotiated for far too long: I should have stood our ground and put QCA advice publicly and in writing.

Q361

I did not work closely with Ed Balls. In 2007 I had telephone calls from him on 5 and 19 July; I first met him two months later on 19 September; we met on 23 October, spoke by telephone on 22 November, and met on 13 December. In 2008, I met him on 18 March and 2 June. In more than thirty years of working directly with ministers in five educational jurisdictions, including England, I have never had less contact.

Further, it is not true that there has never been a cross word or difficult exchange: it was only once, but it was memorable. I have been around for many years; I am hardly a shrinking violet; but I left the meeting on 18 March 2008 with the certain knowledge that the Secretary of State had no understanding of what the QCA was for, nor what it had achieved; that he had no respect for the capacity, integrity and dedication of its staff, its Executive and its Board; and that he had no willingness to listen.

Q363

This was the meeting on 18 March 2008. The Chairman and I presented, on behalf of the QCA Board, a case for retaining the name and identity of QCA although, in compliance with the Secretary's wishes, not its regulatory functions. We outlined the risk to ongoing service delivery (including key stage tests, Diplomas, revision of GCSEs and GCEs, and the Qualifications and Credit Framework) arising from Government requirements to relocate to Coventry (with the loss of at least 85 per cent of our staff and at a cost in excess of £60m); from efficiency savings of 30 per cent over three years; and from the splitting of the organization into QCA and Ofqual ahead of the necessary legislation. It was in my view an aggressive and confrontational meeting.

Q 367

The process for marking the 2008 tests was set in stone from the point at which the decision to award the contract to ETS was approved by the then Secretary of State in January 2007. The introduction of onscreen marking, which requires special paper and printing and other technical requirements, involves a run-up of two years. My letter of 28 March 2008 simply reported progress with the 2008 test series.

Qs 368, 369, 370, 371

See above comments on responses to Q360, first issue.

Q 380

The QCA and DCSF officials were in regular contact over the the progress of test delivery, as noted in my comment on Q360, second issue. It is wrong however for the Secretary of State again to say "Ken Boston regularly gave me reassurance" and that "he was telling me on regular occasions that things were on track". I did so once, and once only: on 2 June 2008.

The meeting with Jim Knight on Wednesday 2 July 2008, which I attended with David Gee and others, could not reasonably have been confused with the meeting on 17 June. It had been arranged by the minister because we had been formally notified by ETS on Friday 27 June that they would fail to deliver. It was a meeting to assess the magnitude of the failure and to agree what to do about it.

There is no agreed note of the meeting. We had been monitoring the figures from ETS every few hours for the previous five days; David Gee brought to the meeting the latest figures which had been received within the previous hour. Being the only one familiar at that stage with the latest data, he led us through it. The picture was very confused: as late as the next day, the ETS President emailed QCA to say they would meet the July 8 deadline, when it was clear to us they would not.

The critical issue at this meeting was whether or not to release all available results on July 8, or withhold them all until a later date. Jim Knight asked me to give him formal advice to delay the release of results. I refused, on the grounds that I thought it better not to inconvenience the majority of schools, for which results would be available. He did not accept this advice: on that basis, I agreed to provide advice on the length of the delay, which I did next day in writing. This was a very tense exchange, which is etched in my memory and I am sure in his: I cannot see how it can possibly have been confused with the meeting on 17 June at

which I was not present. Had the results been released as scheduled on 8 July, 93.5 per cent of key stage 2 results and 85.1 per cent of key stage 3 results would have been available to schools, instead of no results being available to any schools at all.

Q391

See my comments on Q360, third issue.

Q396

The “maxwellisation” drafts of the Sutherland Report were emailed to us in Word format, not PDF. They consisted of a series of extracts from the Report, below each of which a response was to be made. The drafts were forwarded by email by me and other recipients to the relevant members of the team which had prepared the QCA documentation and data for Lord Sutherland.

The team began drafting proposed responses in Word format, using the “track changes” facility so that drafts could be shared. This immediately revealed, by name, the authors of the “maxwellisation” drafts, and the authors of subsequent changes. Substantial sections had been drafted by the DCSF official seconded to the Sutherland Inquiry from the Permanent Secretary’s private office. This created a great deal of consternation. My advice to the QCA team was that in preparing a Report such as this it is normal for subordinates to do some of the drafting; that Lord Sutherland would without question take sole responsibility for every word in the entire Report; and that as our job was to prepare a response, rather than edit the drafts, the authorship was irrelevant and should be ignored.

Q400

On 24 September 2008, six days after I had given evidence to Lord Sutherland, three weeks before ministers had given their evidence, and nearly three months before the Sutherland report was published, the Permanent Secretary sought to negotiate and secure my early retirement. My subsequent response was that any negotiation would need to be on the basis of paying out the value of my contract to its conclusion on 30 September 2009. The contractual conditions (Clause 13 of the contract) included a potential bonus of up to 15%. Given the successful delivery by QCA in 2007–08 of such major reforms as the Diplomas, the review of GCSEs and GCEs, the Secondary Curriculum Review, the recognition of employer qualifications, and the Qualifications and Credit Framework—combined with the relocation to Coventry, the establishment of Ofqual and the achievement of the final year of efficiency savings—a bonus of 10% would have seemed reasonable even given the test delivery failure.

Negotiations were never entered into: I had no intention of standing down.

My resignation, on 12 December 2008, was entirely unrelated to the September meeting, and would have taken place without it. I resigned in the light of reading the Sutherland Report, and did so unilaterally under Clause 9 of my contract, without negotiation, without any special non-contractual deal being requested or received, and without requesting any bonus.

Q 406

The Permanent Secretary significantly misrepresents my position. At no time during the discussion on 24 September, or in the subsequent response to it, did I seek any non-contractual bonus or other non-contractual payments. At no time did I seek anything more than the value of the contractual entitlements. And although my contract was with the QCA Board, the details of the contract and variations to it since 2002 had all been approved by the Permanent Secretary or his predecessor.

Q411

I agree that all correspondence should be made available to the Select Committee, including the correspondence relating to Qs 400 and 406.

Q 419, 420

See comments in response to Q360, fourth issue.

Q421-425

The DCSF (and DIUS) observers within QCA have performed three functions: they have provided specialist expertise; they have served the traditional civil service role of providing separate advice to Ministers; and they have spoken on behalf of Ministers.

My view is that Ofqual should not have observers from any Government agency. The first of the above three functions can be achieved by direct consultation with Government departments prior to decision-making; the other two are quite inappropriate for an independent regulator reporting to Parliament.

A particular problem arises when observers see their role as that of speaking for Ministers: typically, in phrases such as “ministers would be minded to” or “not be minded to” agree with a likely proposal, or that “ministers would be content” or “not content” with a particular recommendation. The risk is that independent advice offered to the minister by the regulatory authority is negotiated in advance with DCSF observers, rather than arrived at independently but with the benefit of prior DCSF input. This leads to compromise solutions which erode the independence and public accountability of the regulator.

Ofqual will not be seen as conspicuously and unquestionably separate from Government so long as it has it accepts DCSF observers on its Board and committees. The public and the Parliament need to be absolutely certain that Ministers are being told what they need to know, not what they or their officials might want to hear.

A related problem is that formal QCA advice to ministers is in due course made public, and all other correspondence is available under FOI provisions. Hence DCSF officials like to see potential correspondence in draft, and often seek to negotiate its terms so that it might be acceptable to both ministers and the public. In the interests of good working relationships between organizations, and on many issues, this is perfectly satisfactory, but on the big issues it is not. Regulatory authorities must be prepared to draw lines in the sand, and do so publicly.

In conclusion Barry, since the Secretary of State’s statement in the House of Commons on 16 December, all I have wanted was an opportunity to be heard. I thank the Select Committee for giving me that opportunity, and for testing me and ministers thoroughly on substance and detail. I failed to deliver an important QCA remit, and I resigned accordingly. My expectation was that I would have been allowed an honourable resignation without Government “sinking the boot”, as they say in the Antipodes. I now want to rule off on this latest chapter—the only sad chapter among many happy chapters—of my work in England, which has been so professionally stimulating and personally rewarding.

It has been a privilege to lead the QCA, to serve the cause of education and skills, and to be a participant in current important reforms in the building of human and social capital in the United Kingdom. My wife and I shall continue to live in England for some time. My very best wishes to you and to the Select Committee, and my thanks for your courtesy and fairness.

*June 2009*

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**Letter to Lord Sutherland from the Rt Hon Jim Knight MP, Minister for Schools and Learners,  
Department for Children, Schools and Families**

In giving oral evidence to your Inquiry, I stated that I met Ken Boston and David Gee on 17 June. That statement is quoted in the report of your Inquiry, as follows:

[paragraph 4.137]: “As late as 17 June when the Schools Minister met QCA’s Chief Executive and NAA’s Managing Director, they provided reassurances.”

and

[paragraph 4.92]: We had that meeting on the 17 June with Ken [Boston] and David Gee. I may well have met David Gee before that point but it was the first time I had had a substantial discussion with him about things in great detail. He basically answered all the questions; Ken [Boston] referred everything to him. We went through everything with David [Gee]. He gave me some reassurance about the measures that were being taken to mitigate the loss of time and capacity, in particular the recruitment of marker panels, which seemed a reasonable way of dealing with the problem to me.”

This evidence is absolutely correct in all but one regard. I have now realised that in my account of events, I inadvertently conflated two separate meetings. On 17 June, I met David Gee (Managing Director of the National Assessment Agency (NAA)). Ken Boston was not present at that meeting. My oral evidence to you, quoted at paragraph 4.92 of the Inquiry’s report, accurately reflects the way in which Ken Boston referred questions to David Gee, but at a meeting with both of them which took place on 2 July. Although this does not alter the substance of my evidence, in relation to the points at which we were told of delays to delivery and the fact that in order to receive accurate information I needed to question QCA very closely, it may be helpful if I confirm the sequence of meetings that led to Ministers being informed of delays to the 2009 national curriculum tests.

As the evidence correctly records, on questioning David Gee on 17 June, I was told that ETS were on track to deliver results on 8 July, that there were contingencies in place to mitigate the late delivery of scripts for marking, including marker panels, and that—although Key Stage 3 English would be “a struggle”—results should be released on time.

As your report makes clear, “In practice, the first time QCA notified Ministers that ETS would not deliver test results on time was 30 June 2008.”

It was not until the afternoon of 30 June that the Schools Director General was first informed by David Gee and Ken Boston that there would be a delay to some results. They judged that 90% of school English Key Stage 3 and 95% of school English Key Stage 2 marks would be available on 8 July, and were confident that mathematics and science would be on time, except for a residual concern about a small proportion of Key Stage 3 science scripts.

In a further message to officials later that day these figures were revised to show that there were difficulties in mathematics as well as English and science. At Key Stage 3, NAA expected only 80% of schools to have a full set of results in English by 8 July.

Having been alerted to these serious delivery issues by officials on 30 June, I met both Ken Boston and David Gee at a subsequent meeting on 2 July. It was at this meeting that I questioned David Gee and Ken Boston in detail, with Ken referring questions to David.

I apologise unreservedly for the error in my evidence. There was no intention to mislead you, and the position on attendance at the meeting on 17 June was correctly recorded in the Department’s written evidence to your inquiry. But I believe that it is important to take this opportunity to set the record straight on exactly when those meetings took place and with whom.

I am copying this letter to Barry Sheerman, Chair of the Children, Schools and Families Select Committee.

*9 February 2009*

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**Letter to The Chairman from the Rt Hon Jim Knight MP, Minister for Schools and Learners, DCSF**

Since the Secretary of State and I gave evidence to your committee, it has come to our attention that there is an error in the oral evidence which I gave to Lord Sutherland during his inquiry.

This error is reported in paragraph 4.137, which was quoted by the Secretary of State at your committee last week:

“As late as 17 June when the Schools Minister met QCA’s Chief Executive and NAA’s Managing Director, they provided reassurances.”

I have now realised that in my account of events, I inadvertently conflated two separate meetings. On 17 June, I met David Gee (Managing Director of the National Assessment Agency (NAA)). Ken Boston was not present at that meeting.

I have written to Lord Sutherland explaining the mistake and the accurate series of events, and I attach a copy of my letter to him. As I say in my letter, there was no intention to mislead Lord Sutherland, and the position on attendance at the meeting on 17 June was correctly recorded in the Department’s written evidence to the inquiry. But I believe that it is important to take this opportunity to set the record straight on exactly when those meetings took place and with whom.

I am copying this letter to Lord Sutherland.

*9 February 2009*

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**Letter to the Rt Hon Jim Knight MP, Minister for Schools and Learners, DCSF from Lord Sutherland**

Thank you for your letter of 9 February 2009.

You have explained that in a meeting of 17 June 2008, you met with the National Assessment Agency (NAA) Managing Director David Gee but that the Qualifications and Curriculum Authority (QCA) Chief Executive Dr Ken Boston was not present. You have apologised for conflating your recollection of this meeting with that of a meeting on 2 July 2008 at which both Mr Gee and Dr Boston were present.

As reflected in my report, you had previously made this comment during your interview and had the opportunity to review your transcript. However, I appreciate that you have now provided this clarification and I have asked my secretariat to place a short note on the Inquiry’s website to reflect this.

I agree that your clarification does not substantially alter the points that were made. It remains clear that NAA provided reassurances in the 17 June meeting that test results could be delivered by 8 July 2008 and that contingency measures such as marking panels were in place. It also remains clear that NAA was playing the leading role in managing the tests—with its Managing Director attending a meeting with you alone on 17 June and a joint meeting with the QCA Chief Executive present on 2 July. My report concluded that within the QCA there was a strong emphasis on NAA’s responsibility for the tests and that there was insufficient corporate oversight at QCA Executive and Board level. This is borne out by extensive evidence

detailed throughout my report, for example at paragraphs 3.27, 3.30, 3.65, 3.67, 3.69, 3.95, 3.107–3.112, 4.80–4.88, 4.104–4.106, 4.125–4.135. I am therefore satisfied that your clarification does not affect my findings.

I am copying this letter to the Chairman of the Children, Schools and Families Select Committee.

*12 February 2009*

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**Letter to The Chairman from the Rt Hon Jim Knight MP, Minister for Schools and Learners, DCSF**

I wrote to you on 9 February to inform you that I had written to Lord Sutherland, to correct an error in the oral evidence I gave to him during his inquiry.

Lord Sutherland has now replied to my letter, and has made clear that my clarification of the evidence does not substantially alter the points that were made.

I am placing copies of my letters to you and Lord Sutherland, and Lord Sutherland's reply to me, in the libraries of both Houses.

*12 February 2009*

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