

HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

JUSTICE COMMITTEE

**CRIME REDUCTION POLICIES: A CO-ORDINATED APPROACH? FOCUSING
ON THE GOVERNMENT'S TRANSFORMING REHABILITATION REFORMS**

WEDNESDAY 4 DECEMBER 2013

RT HON CHRIS GRAYLING MP and JEREMY WRIGHT MP

Evidence heard in Public

Questions 178 - 270

Oral Evidence

Taken before the Justice Committee

on Wednesday 4 December 2013

Members present:

Sir Alan Beith (Chair)
 Rehman Chishti
 Mr Christopher Chope
 Jeremy Corbyn
 Nick de Bois
 Gareth Johnson
 Mr Elfyn Llwyd
 Andy McDonald
 John McDonnell

Examination of Witnesses

Witnesses: **Rt Hon Chris Grayling MP**, Lord Chancellor and Secretary of State for Justice, and **Jeremy Wright MP**, Parliamentary Under-Secretary of State for Justice, Minister of State for Prisons and Rehabilitation, gave evidence.

Chair: Ministers, good morning and welcome to both of you. As you know, the Committee was working on revisiting its previous report on justice reinvestment and the extent to which it had or had not been implemented. During this time, transforming rehabilitation and the proposed probation changes came up, and we decided that within that framework we should do some interim work on the probation changes, on which we may well issue an interim report. It is to assist us with that that you have kindly come to us today. I ask Jeremy Corbyn to open the questioning.

Q178 Jeremy Corbyn: Good morning, and thank you for coming to the Committee. Why have you adopted a big bang approach to this rather than a phased-in system?

Chris Grayling: This is not a big bang approach; it is an evolution, not revolution. The changes will take place over a period of at least a year, which will allow bedding in across the country. For example, the transition to inclusion of the under-12-month group builds up over an extensive period of time. Over the first six months, only offenders in the very low thousands are involved, so there is plenty of time for that new system to bed in.

If your question is why we are not doing it in one place alone, looking at the nature of the challenge that we face in Britain today, the crime figures—including the British crime survey—have been showing fewer first-time entrants into the criminal justice system. Increasingly, the problem with crime in this country is about reoffending. My judgment, which was shared, if not implemented, by the last Government, is that the exclusion from supervision or any kind of support of the 45,000 people who leave prison each year is a threat to our society in terms of victims of crime and levels of crime in the future; and it is also unfair on that group. On Monday I sat with a group of them in Wormwood Scrubs and was given quite a hard time about what would happen to them when they were released. One man in particular said to me, “I’m going to be released in three months’ time. I do not know what’s

going to happen to me after I leave. There's going to be no supervision; I'll have £46 in my pocket; and heaven alone knows what's going to happen to me next." I believe it is a huge failing in our society that we do not provide any kind of supervision, guidance or resettlement strategy for those offenders. They are the ones most likely to reoffend. You could say, "Let's do a little bit in one place and a little bit in another." What you are saying is, "We will wait years more before we do anything about this problem," and I think that would be a mistake.

Q179 Jeremy Corbyn: But you are claiming to achieve 40% efficiency savings on this. Can you honestly say that is going to happen? Are you confident in the companies that are engaged in doing this?

Chris Grayling: I am confident that we can bring down cost. We have a system that is more bureaucratic than it should be. This Committee itself has identified the fact that not enough probation staff time is spent working with offenders. It is far too little; it is a minority, according to your report in 2011. Across both the last Government and this one we have extensive experience of the private sector helping to bring down cost. This is not purely about the private sector. We are trying to weld together the strengths of the public, private and voluntary sectors. The voluntary sector has enormous skills to bring to bear on this. Skills that we have started to see through the creation of our Justice Data Lab have genuinely reduced offending in the cohorts of people that they have been working with. It is about bringing down costs but not the delivery of substantial savings. Most of the reduction in cost is being reinvested in supporting that under-12-month group to try to deal with a problem that was not deemed to be affordable by the last Government.

Q180 Jeremy Corbyn: Are you suggesting there are not enormous skills in the probation service at present?

Chris Grayling: If there were not enormous skills in the probation service at present, we would be taking a different approach, but all those skills, particularly in terms of front-line reoffending, are part of the new package, either as part of the national probation service or as teams of people who will move into the new community rehabilitation companies. We are not throwing away the existing skills but bringing two extra dimensions to what we are doing: the ability to create a more efficient system so that we can afford to support the under-12-month group, and the kind of mentoring and support skills that all of us have probably seen in the voluntary sector, which can make a huge difference. I would like to see more former offenders who have gone straight to act as mentors for the younger offender who has yet to do so, based on the approach: "I've been there; I've been through it; there's a better way." I am sure you have seen it in your constituency, Mr Corbyn; I have seen it in many places around the country. I want to capture more of that for the rehabilitation of offenders more generally.

Q181 Jeremy Corbyn: Have you measured much the effect of mentoring?

Chris Grayling: Most recently, the experience in Peterborough is proving to be very good. We are not dictating a model, but the Peterborough pilot is the closest to what I think most providers will adopt. That has shown a very substantial decline in reconviction rates. A comparator between the cohort who have been through the Peterborough pilot and a comparable group of prisoners elsewhere who have not shows a gap well in excess of 20% in reconviction events post-release. If we can build on that and get that elsewhere, that is enormously important.

Q182 Jeremy Corbyn: Are you confident that this quite complicated interrelationship between your Ministry, the probation service, private sector providers and the voluntary sector could not break down through lack of communication?

Chris Grayling: There is no reason why it should. Let me pass it to Jeremy to say a bit about that.

Jeremy Wright: I do not think it is as complicated as it sounds. The first interaction is between the Ministry of Justice and those who are going to be running the community rehabilitation companies. That is a contractual relationship, and we will need to make sure we monitor it effectively. You may want to come back to that in later questions.

In terms of the interrelationship between the national probation service, which is the public sector bit, and the community rehabilitation companies, we will expect good communication between the two, and there will have to be from both perspectives. The national probation service will want to have good communication with the CRCs, and vice versa; it is in the interests of both that they should. Just to make sure, in the CRCs' contracts, there will be a requirement that they engage with the national probation service, particularly on the most important subject which is change in risk profile. If somebody is moving from being a low to medium-risk offender to a high-risk offender, we must make sure that the national probation service receive the information they require in order to make a second, third or fourth—whatever it may be—risk assessment so they can determine whether that person has become high risk, and, if they have, to take over the management of that individual.

That relationship is crucial, but we think it can work effectively. It is not the case now that necessarily the same individual deals with an offender when they are medium risk and high risk, and that the offender manager is the same individual and the person who determines breach. There are already interactions between individuals, and it is important that they continue. The Secretary of State has made it very clear in the past that one of the things we think can help with those interactions is the co-location of people who work for the CRCs and those who work for the national probation service. We think that is a good model to facilitate just that kind of interaction.

Chris Grayling: On that front, I see two key relationships for the national probation service. I see an increasingly close working relationship with the police, to the point where, in the end, it would not surprise me if we were to see national probation service teams co-located with police teams to provide a really effective approach to integrated offender management of the most serious offenders.

The other point, which we will expect to happen and will be a requirement, is that the risk assessment of somebody who is a low-risk prisoner and who might be recategorised will be carried out by a small team of national probation service staff, who will be co-located. It is not a question of it being in a different building with processes lasting two or three days. They are sitting over there. A couple of national probation service people will be responsible for returns to court, recall notices, carrying out new assessments and deciding whether there needs to be a change to the monitoring arrangements. That is fundamental. What I do not want are people in a different town trying to talk to each other. There will need to be co-location of a small number of national probation service staff with the CRCs, and it will be their job to be the interface effectively with the enforcement part of the system—the recalls to court—and the assessment of risk to decide whether somebody needs much closer supervision, multi-agency supervision or whatever.

Q183 Chair: Has that operational design been tested in any way? Do you have any model that you are working from?

Chris Grayling: A lot of testing is taking place now in the trusts, and it will be worked on very carefully.

Perhaps I may run through for the Committee how the next year is designed to work. We are now going through a pretty rapid process of assigning staff. Leaving aside legal

structures, the assignment of staff is taking people who currently work in the same office and reorganising them into two separate teams. One of those teams will subsequently move into the employ of the community rehabilitation company's new provider. The aim is to have those two teams in place by April and to have started the process of migrating cases so they are properly allocated across those two groups, but without an absolute requirement to do so by 1 April, because we need to take it carefully and do it over a period of time. We need to make sure public safety is guaranteed. If a particular offender is in the wrong group but there is a good reason for them staying with the current offender manager, they will do so.

Over the course of the rest of next year, there will be an extensive period of dry running in the public sector, under the leadership of NOMS, with us having plenty of time to iron out issues that arise and make sure that the process of interaction between the two teams, for example on risk management, works effectively long before we ever move ownership of the CRC out of the public sector.

The aim is to road-test this very thoroughly and to learn lessons. We are doing early testing now but, through the whole of next year, we will be doing very careful testing. We are making modifications as necessary so that we have a system that is fit for purpose to move on to new control in about a year's time.

Q184 Andy McDonald: Can I start by asking questions about the risk register? We have asked for sight of it, and at this moment you are not agreeing to disclose it to us. I am wondering how you expect us to be able to do our job without having sight of that crucial document.

Chris Grayling: It has never been the habit of any Government to make public risk registers. It is worth saying what a risk register is. It is simply a group of civil servants who at the start of a project sit down and work out everything that could possibly go wrong so that they take appropriate steps to make sure it does not. If you produce a risk register, it is a whole litany of potential disasters in the making, not ones that are likely to happen but ones we are working to make sure do not happen. This applies to every project in the public sector, whether it is a big IT or organisational change project. It is not a true reflection of the nature of the project; it is more a reference point to make sure we have thought of everything that could go wrong and have taken the steps to make sure it does not. It has never been the custom and practice of Governments to publish that. It is not a document on which you can base a true assessment of the state of a project. It is an internal working tool, and I think it should remain such.

Q185 Andy McDonald: I am disappointed, but I will move on. *The Guardian* suggested that the risk register assessed at 51% to 80% the risk that the reforms would fail to deliver the proposed level of savings. If that is right, how have you persuaded the Treasury to approve the programme?

Chris Grayling: The fact that the Treasury has approved the programme would suggest that *The Guardian's* story was not right.

Q186 Andy McDonald: So it is not 51% to 80%.

Chris Grayling: This is my point about risk registers. A group of people in a room saying, "What are the risks to the project? If we don't do this, that could happen," is not necessarily a reflection of the project. The project is being well run by a good team in my Department; it has been looked at very carefully by the Treasury, which has given its approval to go to the next stage and has accepted the business case. Mr McDonald, as you will know from the experience of your own party in Government, the Treasury is quite assiduous in looking at things that are laid before it. The fact that it has approved the outline business case

for the project suggests that the kind of things being highlighted as risks are not substantial ones and do not exist beyond the theory at the start of a project.

Q187 Andy McDonald: You told us in February that you expected the programme to make small savings. Are you in a better position to provide us with an estimate of the size of the savings, and do you have any projections for cost savings over the next decade?

Chris Grayling: There is a very small overall saving of low percentage points in the envelope, but this is not a savings exercise. As to the position we are in, if you look at the budget challenges that lie ahead for my Department and the whole of Government, to make significant changes to the cost base of our criminal justice system in future, the way to do it is by bringing down the rate of reoffending. In the end, if we are going to have fewer prisons and fewer people in prison, in our courts and being arrested and put in police stations, there are only two ways you can do it. One is by letting criminals off, for which I do not think there is a lot of support in Westminster. The other is by working to bring down reoffending. As I said at the start of my remarks, the big problem we have today is increasingly not about new people committing crimes for the first time; it is about the same people going round and round the system.

The focus of what we are trying to do is to use the resource we have to invest in better and more innovative approaches to rehabilitation, particularly with a view to target that 12-month group who are by far the most likely reoffenders. This is not a money-saving exercise. When we come to the tendering process, the number one criterion will be about the quality of bids. I am not interested in selling to the lowest common denominator but in the best strategy to deliver real improvements in rehabilitation which will bring down all the pressures on the system and help our society.

Q188 Andy McDonald: How can we be expected to scrutinise the potential of the proposed reforms in terms of value for money if you are not going to share with us the projections for the likely reduction in reoffending rates?

Chris Grayling: In part, you are asking me to anticipate the tendering process. I cannot judge. I am looking to providers to come forward with credible, innovative plans to bring down reoffending. As part of the process, they will demonstrate how much they hope to achieve and how much money they intend to put at risk to do so. I cannot second-guess that. Therefore, I have no figures to offer you that will say this is exactly what it will look like. I am telling you that I have a budget to bring down reoffending over the next few years, and this has to take place within that budget. I am looking to spend that budget on the best quality options.

Q189 Andy McDonald: Are you reinvesting the £450 million that you are saving from the benchmarking in the prisons arena? Is that going back in?

Chris Grayling: No. The prison savings are part of the departmental savings.

Q190 Andy McDonald: But it is not funding this programme.

Chris Grayling: No. This is basically spending the money that we already spend on rehabilitation.

Q191 Gareth Johnson: Can I ask how you see the work dividing up between the new CRCs and the national probation service? We know that the national probation service will look after the higher-risk offenders and the CRCs will look after the rest, but what sort of proportion of the overall work do you expect each to cover, because obviously that will be important in terms of where the funding goes and flows?

Jeremy Wright: The exact breakdown depends on the individual risk assessments made by the national probation service, as I know you appreciate. You and I discussed it in the Committee over the last week and a half. The individual assessments will be made by the national probation service. They will determine whether someone is a high, medium or low-risk offender, so we cannot be precise about the exact proportions. The best guess is that it is about 70/30; that is, 70 for the CRCs and 30 for the NPS. The balance between them will change, because some people's risk profile, as we know and have always accepted, will also change, so people will move in the direction of the NPS. The crucial point is that the decision will be taken in each individual case by the NPS, when they make an initial assessment, either during the period of custody or at the point of sentence.

Q192 Gareth Johnson: In response to a question from Mr Corbyn, Minister, you made it very clear that you felt it was important that when an offender moves from the CRCs to the national probation service, because they have been deemed to be a higher risk than was previously thought, information about that offender should also flow so that people know what they are dealing with. What do you anticipate will happen with funding? Will the national probation service take over the whole of the budget for that, or will it be a proportion? How will it be established?

Jeremy Wright: The information will have to flow in order for that subsequent risk assessment to take place. If somebody's risk profile is changing, we expect the CRC to send the case to the NPS for a further risk assessment to take place. In order for that risk assessment to be done properly, a good deal of information will have to go too, to enable the NPS office to make that assessment. Information transfer is absolutely important, but it is quite important at that point rather than at a later one.

In terms of funding, we have to make sure that the NPS has the necessary funding to look after those it will have initially assessed as high risk, but also those who may later be assessed as high risk. We will make sure that happens. We will not be expecting the national probation service to look after anybody for whom it doesn't have funding.

Q193 Chair: As to the point Mr Johnson raised, when we were briefed by officials last week we got the pretty clear impression that 30/70 was looking less likely and things might be moving towards a 50/50 split. Are you still confident of that 30/70 split?

Jeremy Wright: I suspect there is a distinction to be made between the funding split and the number of people split. It may be that the funding split is not 70/30. It is difficult to be precise about the people split, because to some degree we have to wait and see how people are assessed by the NPS at the beginning of the process, but we believe it is crucial that we have the necessary funding for the NPS to do the job they are being asked to do, and we will make sure they have that.

Chris Grayling: I do not expect it to be 50/50, nor do I expect the funding split to be 70/30. The more intensive supervision required for some of the high-risk offenders means that the cost of supervising them is higher per offender than for those who are low risk.

Q194 Gareth Johnson: What do you know about spare capacity in the existing probation service? It has been suggested by some that the probation service as is could take on more supervision under the current structure of offenders, particularly short-term prisoners, within the current funding arrangements. Do you see any evidence that there is spare capacity to do that within the probation service as it is at the moment, or do you maintain that you would have to change the existing structures in order to cover that?

Chris Grayling: The last Government looked at doing precisely this in 2010, having set up the probation trusts, and reached the view that it was unaffordable on the current basis.

It is worth saying that the change is not simply about the cost of supervision; it is also about generating additional freedoms, which are difficult to achieve within the public sector.

Let me give you a practical example of what I mean by that. If I were running one of the community rehabilitation companies, one of the first things I would do is set up housing provision. I would do that either by creating some form of housing association or, more likely, enter into long-term lease arrangements with landlords to ensure I had a supply of housing available for people coming out of prison, at least for a period of time while you bedded them down. Going back to the guys I spoke to at Wormwood Scrubs on Monday and other people I have spoken to in prisons over the months, one of the most common refrains is that nobody does anything about housing. I sat with a probation officer who said, "I am supervising somebody who is sofa-surfing at the moment." One of the first things I would do is try to find a way of doing that.

Given public sector constraints and Treasury rules, it is much more difficult to do something like that within the public sector. I am hoping that the freedom the CRCs enjoy will enable them to take rapid decisions like that, free from public sector process, that can deliver a better all-round package, so it is both about driving efficiency through the current system but also freeing up innovative opportunities that are not necessarily there at the moment.

Q195 Rehman Chishti: I very much welcome the reforms as a way of reducing reoffending. Can I touch on the specific issue of the transition from trusts to new entities and seek clarification on that? How do you respond to the concerns of both the Probation Association and the Probation Chiefs Association that the speed at which they are expected to make these transitions feels extremely risky and challenging?

Chris Grayling: I do not think that is right. Every time you put a group of people through change it causes challenge and uncertainty, and that is unavoidable. We are doing our best to make sure that we take the process through as smoothly as possible. We have had some constraints on our ability to communicate plans in detail because of the negotiations that took place with the unions. We went as far as we felt we could in trying to take the unions with us. We worked very hard over an extended period to try to reach agreement with them on transitional arrangements. In the end, they decided they could not reach agreement with us, which is a shame because things like the quite generous voluntary redundancy package we were going to offer to back-office staff, who will lose their roles in the new set-up, will now not be available because we cannot do it without union agreement. It is a bizarre situation where the unions are blocking a quite generous redundancy package for their own members.

In terms of the process, it is true that we are doing a very rapid transition of people, and I think that is right. One or two people in the probation service have said to you it is quite rushed. People in senior positions in the probation service have said to me they just want to get on with it from the point of view of staff; they want to know where they stand and end the uncertainty.

Having gone the extra mile with the unions and done our best, our goal now is to get people into their new roles as quickly as possible so that uncertainty is not there, but operationally there is then a very long period of bedding down and transition. It is not about saying the whole thing has to be done by 1 April. We do not have to have migrated all the case load, and have all the systems finally in place, by 1 April. We have got the rest of next year to dry-run, test and modify and the rest, but the starting point needs to be just two groups of people sitting in the same buildings having reorganised themselves into different teams. I do not think that doing that over a six-month period is unduly ambitious. It is right and proper for smart management of the staff so they have some certainty. It would not be right to say that everything has to be done by 1 April. That really would be a risk, but we are not doing

that. We have got the whole of the rest of next year to make sure we have made all the adjustments with the case load. In some cases, it will be very easy to migrate case load between the two organisations, and that happens at the moment. Cases are already passed from one person to another depending on the level of risk, but, if it turns out there is a strong relationship between a particular offender and a particular offender manager which means it is unwise in public safety terms to move that person around, we do not need to; they can stay there for the rest of next year. We can make modifications in the plans for an extended period for those individual cases where there is a public safety issue. We are not going to compromise public safety.

The whole thing is designed to be an evolution, not a revolution, so the transition to the full new arrangements will take place in the public sector. The transition to the new world will take place over a period of time, with the gradual build-up of the new cohorts, and the staff who are looking after offenders in the public sector will be the staff who are looking after offenders under the CRCs when they have new ownership—and change will come only over a period of time.

Q196 Rehman Chishti: Thank you for that. Linked to that, can you clarify what steps you have taken to ensure that trusts have sufficient capacity to manage change at such a pace while maintaining business as usual?

Jeremy Wright: The “business as usual” point is crucial, because we do expect trusts to look after offenders for whom they are responsible efficiently and effectively over the next few months, but every trust has an implementation plan to get to the point on 1 April where we want to see that transfer of people the Secretary of State has described. They are not being asked to do it alone. We are also providing as much support as we can from the centre to enable them to do that, and keeping close track of how things are going in each trust so that, if there are problems, we can identify them and assist with them. The costs of transition are being met by us, not by the trusts. It is achievable. It is very important that we do stay in close touch with trust management so that it is given the support it needs, but that is exactly what we are doing. For the reasons that have just been explained, we are very confident that the people transfer can be done within the time scale.

There was concern that we were asking everyone to do everything by 1 April. That is not the case, and we have made that clear. The co-operation between the MOJ and the transition team and trusts has in most cases been very good. We have had a good degree of dialogue with trusts, and they are getting on with this. Therefore, I think we can be reasonably confident that it will go as we expect.

Chris Grayling: We have added in some very relevant external expertise. For example, the team working with the trusts on the people transition is the same one that worked on the establishment of the clinical commissioning groups earlier this year. Whatever your view may be about the health service reforms—I know there are political disagreements on that—I believe that almost everyone in their own areas will have seen a fairly smooth transition from the PCTs to the CCGs in terms of the transition of people and the recruitment of new staff.

Q197 Jeremy Corbyn: Where are you living?

Chris Grayling: It has been very smooth in Surrey and in other areas. We have used the expertise that managed the people transition to those new organisations to help us in this particular transition.

Chair: If I were to make a comment—I should not encourage it because we proceed by questions—it would be that in that process it is NHS England that has been slow to get into

position and create the necessary structures. Some lessons might need to be learned from that in relation to the national probation service.

Q198 Mr Llwyd: Why was it not possible to come to an agreement with the unions regarding staff transfer?

Chris Grayling: We did reach a point where effectively we had reached agreement with the unions.

Q199 Mr Llwyd: When was that?

Chris Grayling: About three or four weeks ago. They came back at the last minute with a series of wholly unrealistic demands. For example, they wanted a redundancy package to be there in perpetuity, if I remember rightly. They took us to a point where we could not agree. I think we have produced a voluntary redundancy package for staff that is much more generous than exists in the current arrangements for probation trusts. It was a disappointment, but you can only deal with the world as it is.

Q200 Mr Llwyd: For the record, on 20 November, the unions, Probation Association and MOJ were unable to reach an agreement, as you have said, but what is said to me—I accept it—is that on the last available day for negotiation new information was presented by a senior MOJ official which would have caused significant detriment to members. This prevented the NNC from debating the substantive framework agreement which was on the table. Would you like to comment on that? It is slightly different from what you have just said.

Jeremy Wright: That is different from our understanding. It is worth making the point that this is a process of negotiation that has taken an extremely long time. On several occasions, we extended that period of time for negotiation because we thought it was important to do everything we possibly could to reach an agreement. Of course it would have been better to reach an agreement, but it simply was not possible. We did reach agreement across a whole range of different subjects, but we did not reach final agreement and, as the Secretary of State explained, that has had consequences.

Q201 Mr Llwyd: I do not recognise the length of time that you are talking about. The whole thing has been rushed through anyway. There has not been a long time from the genesis of these ideas.

Chris Grayling: We began the negotiations with the unions in June, possibly even as early as May, and they continued until November. It does not seem to me like a rushed negotiation.

Q202 Mr Llwyd: That is not a great deal of time when people's futures are in the balance.

Jeremy Wright: To be clear, that is negotiation about the process for transferring members of staff either to the NPS or CRC. That is a six-month negotiation on that issue.

Chris Grayling: How long do you think it should have taken?

Q203 Mr Llwyd: It is not for me to say, but what I do know is that you are rushing this through and it is going to fail. Are you in a position to meet with the unions yourselves? Are you prepared to, even at this 11th hour?

Chris Grayling: I would be delighted if the unions wanted to come back and accept the redundancy package for their members, but you say that the Department produced new stuff on the last day. Can you tell us what that was?

Q204 Mr Llwyd: It was on 20 November.

Chris Grayling: But can you tell us what it was?

Chair: We ask the questions here.

Q205 Mr Llwyd: It was a significant extra matter. It is on the record for 20 November, so we can find out.

Chris Grayling: We have no knowledge of producing material new information. You have just said that we did, but do you know what it was?

Q206 Mr Llwyd: With respect, if you met the unions they would tell you directly. I am not speaking for the unions; I am trying to evaluate where we are currently. If you were prepared to meet them, they would tell you directly. People were at that meeting. You and I were not there. You would like to know. Ask them.

Chris Grayling: We have had extensive discussions with the union over the months, both as Ministers and officials, and you have just produced something but do not appear to know what it was.

Q207 Mr Llwyd: Well, no because you have been told about this; letters have gone to the MOJ about this breakdown on 20 November. It is not new.

Chris Grayling: Mr Llwyd, we have done as much as we can to reach agreement. We have reached a package which I think is pretty generous. I know that many of those involved in the negotiations would like to have concluded an agreement on the basis of what we have offered. It is a very strange position to be in. We have made a very generous offer of voluntary redundancy to employees. There will be some changes; there would have been even if we were not going ahead with these reforms because of the need to streamline back-office operations. We are in a very strange position where it is not possible for us to offer more generous redundancy terms to people, who will probably lose their jobs anyway, because the unions are stopping us from doing so.

Q208 Mr Llwyd: I repeat the question: would you be prepared to meet the unions to discuss these outstanding issues one final time?

Chris Grayling: We have said that our doors will remain open to the unions right the way through the next few months. I hope they will decide in the end that the voluntary redundancy offer available to their members is one they can accept, because it is a very strange position to be in.

Q209 Mr Llwyd: Would you be willing to halt the reassignment process until we as a Committee have reported on this subject, and we plan to do so in January?

Chris Grayling: No, I am afraid not.

Jeremy Wright: With or without final agreement on all points which we were seeking, it is probably worth highlighting that, in terms of the transfer of staff that will take place on 1 April, that will happen under their existing terms and conditions. It will have no effect on their pension entitlements, and there will be no compulsory redundancies, so everybody will have a place one side of the line or the other. I would not want the impression to be given that agreement has not been reached and, therefore, there are no settlement terms available to staff which they might find acceptable. We have tried to present that as a fair package for staff, even though we have not been able to get agreement across all issues.

Chris Grayling: Mr Llwyd, it would be totally unfair to halt a reassignment process that is now well under way, creating extra uncertainty for staff. I want to move as quickly as

possible to what is initially only an internal reorganisation so that people have certainty about what job they are doing and what their role is going to be over the next year. My keenness to move on quickly with the people assignment, as requested by many trust chiefs, is to ensure that people have certainty about their roles. It would be unfair to staff suddenly to say, "We'll call a halt and delay things," when many of them have already been told where they are likely to be assigned to.

Q210 Mr Llwyd: In terms of certainty, do you anticipate any redundancies in the process?

Chris Grayling: It is inevitable that over the next year or two there will be some redundancies, particularly in support staff. That is why we are seeking to put in place a very generous voluntary redundancy scheme that offers better terms than those currently available to most staff in most trusts. It is a matter of regret to me that at the moment we cannot offer that.

Q211 Chair: Can I turn to what would happen, when the system has been introduced, if a number of areas had not been the subject of satisfactory bids and you had not felt able to go ahead in certain areas? Our understanding from discussions is that at that point the public sector would continue to provide the service, because the people who had been moved into the team which was intended to be taken over by a private company would still be there and would carry out the work, but that it would not be possible to introduce the scheme for people who had been in custody for less than 12 months, if that were the situation.

Chris Grayling: We will publish shortly the list of organisations that have put forward their names as potential bidders at the PQQ stage. We have had expressions of interest from 35 lead groups representing more than 50 organisations. That is a very good mix of private and voluntary sector, often in partnership. We have had more than 800 organisations express an interest in being involved at tier 2 level, and we have a very good geographic spread of interest.

This is not an eventuality I expect to happen, but what is currently happening within the public sector would have to continue if there was not a transfer to be made. NOMS and that organisation would have to take a long, hard look at the time as to whether it was viable for them to take on the under-12-month group.

Q212 Chair: As we understand it, there are two possibilities in that situation. It is, after all, not unusual for the bidding process to have to be stopped in an area. We have all been through rail franchises and all of these problems. We have to plan for it. It is not quite clear to us whether, if that happens and one part of the country is not ready with suitable bids, the whole scheme for prisoners with sentences of under 12 months just does not roll out at all, or whether in the area affected it does not happen.

Jeremy Wright: There are two issues here. One is how the additional provision for the under-12-month group would be funded. We have always been clear that the most feasible way to fund this is to carry out a process of competition, releasing savings through which that extra funding can be found. If you have not contracted with other providers, you have not released those savings. Therefore, there is a financial challenge.

The second issue is an operational one. If you start in some parts of the country with mandatory supervision and additional licence for the under-12-month group of offenders, but not in other parts of the country, there are difficulties for the courts. If you start someone with a process of additional licence and supervision in one part of the country and they choose to move, or they move for any other reason, you have a practical difficulty. We see formidable practical challenges in having a situation where one part of the country is running this system

and another part of the country is not. You end up with something of a postcode lottery in sentencing, which is undesirable for a range of reasons.

Q213 Chair: Have you decided which way you would want to go in those circumstances?

Jeremy Wright: As the Secretary of State has made clear, we simply do not believe that is going to arise; we think that we have a strong market.

Q214 Chair: You have made it clear that you do not think it will arise, and obviously you do not want it to arise because of the challenges it would present. Does it mean that you as Ministers have got too strong an incentive to accept bids that might not be as good as you had hoped they would be?

Chris Grayling: The first thing to say is that the main focus is not price but quality.

Q215 Chair: I was talking about quality.

Chris Grayling: Clearly, the bids have to deliver within a cost envelope for us. In terms of the overall package, it is theoretically possible for the public sector to take a view that it will fund the provision for the under-12-month group, and for there to be a roll-out of this that does not happen at exactly the same time. If we had a two-month delay in one contracting area, given the fact that the cohorts take some months to build up because they have to be applied going forward rather than going back, a slightly staggered transition is a possibility.

If you ask whether it is possible for the public sector to keep managing part of the system over the long term, the answer is theoretically yes, but there is a funding implication in doing so because you cannot simply have a sentence available to the court in one county and not in another.

Q216 Chair: What have you learned from the work programme and the interpretation and translation services, both of which had problems—very severe ones in the latter case—in the contracting process?

Chris Grayling: If I may talk first about the work programme, it is now generating very real and positive results, so I am a strong defender of the approach that we took. The lessons we have learned, which we are trying to bed into this, include that one of the complaints from the voluntary sector early on was that they went through a very tough process of talking to potential bidders, particularly the smaller organisations that did not have the critical mass to bid in their own right. They found the process of talking to lots of other bidders and filling in a whole range of separate forms and having different contractual arrangements for each of them extremely complicated.

One of the things we have done is to say that there will be standard templates for contracts with subcontractors; the passing of risk down the supply chain will have complete transparency; and there will be single processes to tie together subcontractors and prime contractors. One of the things that I did not do, which I have done very clearly with this—when you see the list of organisations that have come forward at the PQQ stage you will see this has borne fruit—is to say very clearly to the market that I am strongly attracted by partnership at prime contractor level between the private and voluntary sector, not simply prime and subcontractors. I am not saying it is inappropriate in all circumstances to have prime and subcontractors, but the strengths of a genuine partnership are there and great, and I want to see those very much at the heart of this.

Q217 Chair: I am going to explore that a little further in a moment. Before we come to that, can I establish what would constitute corporate renewal? I refer to those companies which you think might not be suitable to undertake bids in this area unless they have what you call corporate renewal.

Chris Grayling: You put me in a difficult position, because, as you know, this is an area of great legal sensitivity and it is a matter that the Government—we, the Cabinet Office and Treasury—are looking at enormously carefully. It is an area where I would fully expect to give evidence to this Committee in the future, but I need to be quite circumspect, for legal reasons, about how much I can say now. Suffice to say that one of my objectives in what we do as part of this is to make sure that the Department has a broad supply base. One of the reasons I am very pleased at the number of very credible organisations that have come forward to seek to work with us in this area is that it gives me a very strong opportunity to broaden our supply base.

Q218 Chair: *The Sunday Times* reported on Sunday that there was a panel operated by the Cabinet Office, with businessmen and senior civil servants on it, which was carrying out this process. Is that the process that you are referring to?

Chris Grayling: It will certainly be the case that Government non-exec directors play an important role, as you will know from my own Department on the issues that have arisen over electronic monitoring. I have asked our lead non-exec director, Tim Breedon, who is the former chief executive of Legal & General, to lead a review of our contract management to make sure that it is absolutely fit for purpose. That very important work is being done at the moment. The Cabinet Office will use the Government's non-exec directors as an important part of assessing the fitness to work with Government, so that part is true; but in terms of the exact process, how that will work is not fully defined.

Q219 Chair: But you can see our difficulty, surely, in not knowing what it is that would constitute a clean bill of health for companies which have been either found or indeed have admitted to overcharging the Department in the past.

Chris Grayling: Equally, Sir Alan, you understand that from my point of view I have to be very circumspect in what I say for legal reasons, because I do not want to expose the taxpayer to risk. I have to be cautious. At an appropriate moment, I will very happily give evidence to this Committee. I am circumscribed in what I can say by the criminal investigation taking place at the moment. Suffice to say I understand absolutely where you are coming from. Please believe me when I say that I understand that, and this is very important, but I am also very encouraged by the fact that I have a very wide range of organisations that have offered their services to do this work.

Q220 Nick de Bois: It sounded like you were encouraged by the variety and quality of the bids, in particular the co-providers and co-partnership. Can I press you on what proportion of those submitting PQQs includes voluntary sector organisations and mutuals as prime providers or co-providers?

Chris Grayling: Again, I am in a difficult position here. Because it is part of a commercial contracting process I am legally constrained in how much information I can give about the organisations. Suffice to say that a mix of organisations has come forward. We have got private sector organisations and voluntary sector organisations. There are some very good and substantial voluntary sector organisations in this area. We have also got a number of areas where staff teams have come forward to express a desire to bid.

Q221 Nick de Bois: Those are staff teams within the service at the moment.

Chris Grayling: They are within existing trusts, so effectively it would be management buy-outs and mutuals. The Cabinet Office has been providing advice to those groups. In some cases, they have formed partnerships with third parties; in some cases, they have put forward their names in their own right.

As I look down the list, a good proportion of the most substantial and attractive potential partners has come forward as partnerships rather than simply bidders in their own right. We will publish the list shortly, and it will become apparent. The moment we can make that list publicly available, I will provide a copy to you, Sir Alan, and all the Committee members. I hope that when you see that detailed list you will share my view that we have a good mix of organisations that have put forward their names.

Q222 Nick de Bois: Thank you for that. I am going to press you a little further before we talk about the principles of risk-sharing and partnership, which I would like to clarify with you. Are you able at this stage to share with us whether any of the prime providers, be they co-partnerships or not, are proposing to use social finance to provide the backing to enable them to participate in the competition? Have you looked at their pre-qualification tenders? Have they indicated whether there is a level of social finance in there?

Chris Grayling: I have not looked at the pre-qualification documents, and I would not normally be involved in the process until the final results are presented. At the moment, my officials are doing the assessment and the pre-qualification questionnaires. We have made quite a substantial effort to make sure that social finance investors have the opportunity to be involved. We have held a number of events involving social finance investors so they are available, but at the moment I am not able to share with you what the individual consortiums have chosen to do financially.

On the voluntary sector front, we have had very positive responses about the level of engagement they have had. We have made a real effort to give them an opportunity to be involved, because we need them to be. I am very clear that we need the best of the public, private and voluntary sectors. The voluntary sector has unique skills in this area, and it needs to be in the final mix when we deliver what I hope will be a transformation of the rehabilitation of offenders.

Q223 Nick de Bois: To go off on a slight tangent—it is a pet subject of mine—will you be able to share or publish any information about those in the voluntary sector who chose not to bid because they found it too complex a process? Did you achieve your objective of simplifying the process to encourage the third sector? I spoke to you about this when we last met. A lot of people are put off doing that, and we lose a lot of talent in that way.

Chris Grayling: A lot of that will be at the tier 2 rather than tier 1 level. Looking down the list of those who have put forward their names, there is nobody obvious who is missing.

Q224 Nick de Bois: Can I talk to you about the disproportionate level of risk passing down the supply chain to tier 2 suppliers? Are we talking about financial or offender risk, or both?

Chris Grayling: We are talking about financial risk. Sir Alan, you asked me about the work programme. This is a very different set-up from the work programme, in that the work programme moves very quickly over a three-year period to being 100% payment by results. You need to look at this contract rather differently. There is a block requirement, which is the majority, where you simply cannot apply the black box approach and give complete freedom. There is a requirement for delivery of orders of the court, and that is really the majority of the work. Of the remaining fee, which is the discretionary part where the freedom to innovate

lies, a proportion will be at risk, but in overall cash flow terms—I hope this will be of benefit to the voluntary sector in its involvement—this is much less demanding than the work programme because of the requirement to deliver orders of the court where we and they do not have flexibility.

Q225 Nick de Bois: Is that going to be different in a relationship that is a partnership or second tier? You can govern more by contract and second tiers and hopefully it can be supported, but if you go into partnership there will still be potential for a junior partner and senior partner. I understand your aims and you are absolutely right, but in practice the bigger company may be able to wield the big stick. Is it really fair to try to pass down a level of risk, first to two-tier suppliers at all; and, secondly, how are you going to be able to gauge the level of risk, and whether you run a risk if they have unfairly distributed that risk? There is a lot of risk here, but I think you get my point.

Chris Grayling: I do. There is a lot of noise around the work programme about voluntary sector organisations being used as bid candy and the rest. That was not true. By the time I left my employment role, 15 months after starting the work programme, there had been a tiny amount of change in the voluntary sector base involved in the work programme; it was a handful of organisations. Well over 100,000 people were being looked after in the voluntary sector, which was doing some really big pieces of work. Just one example is the Papworth Trust managing the work programme over two or three counties; there are big charities like the Salvation Army. The voluntary sector was playing a very strong and important role.

One or two people said to me, “We signed up to a tougher deal than we should have done.” With the best will in the world, we did our best to say to those voluntary organisations at the start, “If you are mistreated by your prime contractors, we have the contractual power to chuck them out.” At the time I left, which was 15 months later, I had had no formal complaints whatsoever by any voluntary sector group about a prime contractor and its commercial behaviour. To make trebly sure that it is impossible for somebody to say, “We’ve got only a little bit of risk but you’re going to have a lot of risk,” any subcontract with the passing of risk down the chain will need to be transparent. We will need to have sight of that so we can take action if inappropriate treatment is happening.

Q226 Nick de Bois: That is good, and we will talk about that a little later under another section. The key driver here is going to be the assumption of risk by a second-tier provider. We are entering into a very long contract with them. We will talk about the means and measures at your disposal to review it, but you are taking on quite a responsibility if you think you will be able to tell from a bid whether, as you have described before, some of these voluntary sector bodies need to get more commercial, and whether they have entered into an agreement with a senior partner or prime contractor and even have the knowledge that they can deliver. I think your words were that the voluntary sector needs to get a little more commercial. Are you satisfied that they will have done?

Chris Grayling: I think so. If, for example, we have a partnership between a private and voluntary sector organisation that is managing the core CRC and they have a subcontractor providing a form of support for a particular group of offenders, it is not unreasonable for there to be a performance-related element in their contract. What I would not tolerate is a situation where an organisation is simply passing all the risk to small subcontractors. That would be unacceptable. We will have full visibility of that. That would have a material impact on our willingness to grant a contract; and, if it was done at a later date, it would certainly call into question our willingness to retain the main contractor in its position.

Jeremy Wright: Can I make one quick point on partnerships? You are right that there is something materially different about a partnership arrangement compared with a second-tier subcontractor. One thing that applies to both, which we have been keen to encourage, is that those in the voluntary sector who are contemplating going into these arrangements should have access to as much advice as we can give them about what sort of arrangements it is and is not sensible for them to enter into. We are grateful for the work that the Cabinet Office has done in this regard. It does a great deal of work with the voluntary sector and has been closely engaged in the development of this particular programme.

In the end, we cannot stop a voluntary sector organisation making a bad deal. We have to accept that they have a free choice; they can enter into a partnership as they see fit, but we very much want them to do so with their eyes open, and to understand the legal and financial consequences of doing so. I know that a lot of the work that the Cabinet Office is doing is designed to make sure they have that information.

Q227 John McDonnell: Can I just focus on risk? The nature of this service is that there is more than just the financial risk. If things go wrong, there is risk to the public and the staff themselves. I have been looking at the evidence presented to the Committee so far. Witness after witness has come forward to raise concerns about the risk as a result of the pace of reform. The quote from the Probation Chiefs Association is that, “The Government would be taking unnecessary risks with public protection.” Just to get it on the record, your own risk assessment based on BRAG—black, red, amber and green—is that a score of 20 indicates significant detrimental effect and has roughly an 80% chance of occurring. They list a whole range of potential risks which have hit the 20 mark, which means there is an 80% chance of occurring. One of them, which is really worrying, is a risk of an unacceptable drop in operational performance during the programme, leading to delivery failure and reputational damage. That means the general public could be put at risk. You seem to have made light of your own Department’s internal assessment. You have described it as a reference point only. Combined with your own Department’s assessment and the witness information provided to the Committee by senior staff members and those with expertise, what measures have you taken to mitigate the chance of risk to the general public?

Chris Grayling: The risk register is designed to identify potential risks so that the operational team can make sure they do not happen. If you were sitting down at the start of a project like this you would say, “We have to make sure that, in delivering these transitions business as usual is not damaged.” If we do not get that right, there is a risk that business as usual will be damaged. The purpose of that exercise is to make sure that business as usual is not damaged, and the way in which we have addressed that is to put in place additional support, alongside the trust management. I talked about inclusion of the team who worked on transition to the new structures in the health service to make sure that resource and people support is available so there is a smooth transition and it does not damage business as usual. We would not be doing our job if we were not saying at the start of the process, “What are the things that could go wrong, and how do we best make sure they don’t?” That is just good management practice, and that is all the risk register is. In terms of timing—

Q228 John McDonnell: What are the scores now under the BRAG process? Have you addressed the original concern?

Chris Grayling: It is not about scores. I will look you in the eye and say I have seen no evidence; I have not been provided with any warnings by my team that business as usual will not continue. I have had discussions with probation chiefs. The Minister sits regularly with both probation chiefs and those involved. I believe that this transition is happening in a way that is right for staff.

Q229 John McDonnell: You might, but what about your officials advising you? Have your officials revisited the BRAG scores, and have they been reduced as a result of the measures you say you have put in place?

Chris Grayling: If you are talking about today and whether the risks have changed since the risk register was first drawn, yes.

Q230 John McDonnell: By how much? What are the scores now?

Chris Grayling: Mr McDonnell, I am not prepared to publish a theoretical, internal working document of the kind that the Government have never published, which is simply a reference point for the internal team to say, "Are we doing our job properly?" Our judgment is that this process is taking place in a way that is designed to do everything we can to protect public safety and business as usual. The first phase of the transition is purely about the reorganisation of people. We have said very clearly that, for example, the transition of case load needs to take place over a period of time to make sure we do everything we can to protect the public, but public protection is also about moving as quickly as we can to support the under-12-month group, because they are the biggest risk to the public today.

Q231 John McDonnell: To follow the logic of this, first your officials have advised you that there is an 80% risk of failure with regard to public protection.

Chris Grayling: They have not advised me of that.

Q232 John McDonnell: They have, because a 20 score under BRAG means there is a risk of an unacceptable drop in operational performance leading to delivery failure. Delivery failure puts people at risk. Secondly, you are saying that you have put measures in place to mitigate that, but you are not saying whether or not your internal assessment, or any assessment, has confirmed independently that that risk has been reduced, are you?

Chris Grayling: Mr McDonnell, as I have said to you, at no point has any official come to me and said, "If you go ahead with this, there is an 80% chance of the public being put in danger."

Q233 John McDonnell: They have; they have said there will be delivery failure. What is delivery failure in that sense? It is the protection of the public, is it not?

Jeremy Wright: The point, I think, is that the risk register sets out what would happen if you did nothing about this risk. What percentage chance is there of it happening?

Q234 John McDonnell: All I am asking is: what have you done to mitigate the risk? Has that risk been independently assessed as being reduced as a result?

Jeremy Wright: The first assessment is not an independent one.

Q235 John McDonnell: It is a departmental one. Have your departmental officials advised you that this score of 20 has been reduced as a result of your measures?

Chris Grayling: Two things—

Q236 Chair: As a matter of interest, do you formally revisit the risk register at some point in the process and rescore it?

Chris Grayling: It is a living document.

Jeremy Wright: We keep the risks involved under review all the time.

Q237 John McDonnell: Tell us whether it has gone down.

Jeremy Wright: What we are not going to do, for the reasons we have discussed, is start to put figures or risk ratings on things.

Q238 John McDonnell: You have done; you did at the beginning. Why can you not do it now?

Jeremy Wright: You are talking about a document that was leaked. We are not going to publish a risk register, for reasons we have discussed, and that applies to updated risk registers as much as to original ones.

John McDonnell: But the general public will be put at risk. This is extraordinary.

Q239 Chair: The Minister has made the position clear, and they are not going to publish whatever revised assessment is made, but we are entitled to ask, and are asking you: what have you done to mitigate that risk?

Jeremy Wright: I was about to come to that and say that, in relation to risk, at every stage of the project, we have to make sure we do everything we can to smooth the transition process.

Q240 John McDonnell: But how do you know whether it is working? You have repeated this time and time again. How do you know and prove to us that what you have put in place is working, or will work?

Jeremy Wright: We can describe to you the way in which we intend to manage the transition.

John McDonnell: Yes, but—

Chair: Order. You have asked a question and the Minister is entitled to answer it.

Jeremy Wright: If you give me just a minute, I will try to put it in a different way. The explanation we have tried to give is how we intend to manage the transition process. It is not—this was where we started the questioning—a big bang, which we all accept would be inherently risky. If you expected everything to be done by 1 April, clearly that would be unwise. That is not what we are proposing. We are saying that there should be a transfer of people to one side of the line or the other, either the NPS or the CRC, by 1 April. There is then a much longer period of time to enable case load transfer to be finalised and for us to test the seals, if you like, to make sure the system is working as it should while both halves are still in public ownership. We think that is a responsible way to address precisely the point you are making, which is whether or not there are risks involved in transfer.

But the point the Secretary of State was making is also important. There are risks in not making the transfer. If we continue the way we are, offences will continue to be committed by those who have been in trouble before, and there will be no supervision for the group of offenders who receive sentences of 12 months or less. That in itself is not a scenario without risk.

The final point, which I know you will recognise, is that there is not an absence of risk of further offending in the system now. We already have serious further offending in the system as it stands. That is not the result of probation officers not doing their very best to avoid it, but it happens. It is important to recognise that we do not start from a base point where there is no serious further offending and the system never works badly or goes wrong. That is not the position. The system sometimes does go wrong now and there is further serious offending. Neither the Secretary of State nor I will promise you that that will not be the case after these changes, too, because sometimes those things are unavoidable, and it is not because people are not doing their best to avoid it. That is also an important point to make.

Q241 Jeremy Corbyn: You know there is a risk involved; you are handing over a whole load of services to private contractors; you tell us that the problem is diminishing, yet you will not publish any evidence to back up what you have just said, so how can we believe it?

Chris Grayling: Let's look at where, in practical terms, the risks really lie. The first is if we stopped supervising offenders during the transition process. That is not happening. We have been very clear about it to trust chiefs. Our probation officers are continuing to do a professional job with the people they are supervising. The second would be that we made an inappropriately hurried transition of case load. I have been very clear in setting the policy very early on. We will not do that; we will migrate people over an extended period. A lot will transition immediately where there is no risk in doing so. Where there is an identified problem in moving somebody from one case manager to another, we will delay that and wait to an appropriate moment, or they can stay there over a very extended period of transition if necessary.

The third point would be if we did a sudden transition from one organisation to another, so a different group of people took over the job one day from the ones doing it the previous day. We have planned the transition and whole reform in a way that that does not happen. We are migrating a team of people who are already bedded in in the public sector, who have made the transition to the new arrangements within the public sector and who will continue to look after the same offenders the day after ownership changes as the day before. It will be an evolution, not a revolution. The fourth is the transition of information within the new system. We have specified that the same systems for risk assessment and case management will be used by everybody in the probation service.

Finally, we ensure that senior management teams are sufficiently equipped to manage the transition. As you know from your own work, Sir Alan, you have identified that the probation service has quite a lot of capacity that is not focused on working directly with offenders. We have put in place additional resource, through the expertise of the team who worked on the health service transition that I described, to make sure there is additional resource to help the trusts with the transition.

Q242 Nick de Bois: I want to continue the point about mitigating the risk post-implementation—it is worth talking about. You are giving a seven to 10-year contract, which is absolutely right to get the best value and also the advantage of the learning cycle, but it also means that you could get into a lot of problems as well. Not focusing now on the financial position, can you explain to me a little about what steps you will be taking to assess the likely quality of the prospective providers' offers at the procurement stage, bearing in mind this long cycle? I am intrigued about how you will monitor the quality of the services delivered by these providers so that they are successful. What level of intervention will there be? I suppose we would need to explore, if there is a failure regime, what steps to take.

Chris Grayling: Let me start with the principle and ask Jeremy to fill in some of the detail. As far as we can, we are trying to get to a situation where we have operational independence in the delivery of rehabilitation services in the front line so we have a system that is nimble and flexible. There are, however, two bits that need to go alongside that. The first is a contractual requirement to fulfil the orders of the court, which is why this is different from the work programme. That is a requirement and we will need to ensure there is the ability to deliver a quality service in that respect.

As to the second piece, we will expect the providers to set out a minimum level of intervention that they will provide for every offender, because we could not accept a situation where they decide to work with only some offenders and not the rest. The payment structure will be designed in a way that mitigates against that, particularly the fact we have decided to

move away from having simply a binary measure of success and have a mix of both a binary measure—whether or not they reoffend—and, alongside that, how many crimes the cohort of people you are working with commit. Therefore, you cannot just ignore the prolific offender in the corner on the basis that they are likely to reoffend anyway.

Q243 Nick de Bois: Cherry picking.

Chris Grayling: Absolutely. There has to be a minimum level of intervention with each individual.

The third piece is where freedom of flexibility comes in. We are looking for a smart, innovative approach. That is not subject to a mechanical assessment; it will be down to a quality-based assessment at the time.

Q244 Nick de Bois: Presumably, you will be judging it on outcome.

Chris Grayling: We are not setting a path which says, “This is how you do it.” We are saying, “You will have as much operational freedom as we can give you in the confines and nature of what we are doing, but, in return, part of your reward will depend on your success in bringing down both levels of reoffending and the crimes committed by the cohort you are working with.”

Q245 Nick de Bois: When you are intervening to monitor progress, how will allowing innovation to flourish, which I welcome, be subject to what is potentially a rather bureaucratic review system of whether they are meeting their contractual obligations? How are you going to reconcile the two?

Chris Grayling: The aim is to make sure that we contractually bind them to fulfil the orders of the court and to achieve their minimum intervention levels, but not the rest. The rest is determined by the payment-by-results principle. If you do not do it, you will not be paid that block of money.

Jeremy Wright: The only other thing to bear in mind is that not only will there be an audit process here—they are expected to have their own audit processes, which we will want to look at—but there is also the opportunity for us to audit. On top of that, Her Majesty’s Inspectorate of Probation will be entitled to inspect the activities of all those who are conducting rehabilitation, so that does not depend on the sector from which those groups come; they will inspect everybody. They will be entitled to do that, and we will want them to do that. That will be another mechanism by which we can make sure that quality is maintained. As we have made very clear throughout, this is not about finding the cheapest bid it is about finding the best one, and we want to make sure, as part of our contract management process and independent scrutiny, that people maintain those levels of quality.

Q246 Nick de Bois: Can I paint a scenario for you that you might come across? I will be interested to know how you might deal with this during the lifetime of a contract. Co-partnerships are an excellent way forward. After a number of years, we could end up with a situation where, regardless of whatever the partnership agreement is, one partner does not want to work with the other, which could undermine the viability of what they are trying to achieve. Are you able to impose an ultimate sanction so that it does not matter that one part of the partnership has broken down and, as far as you are concerned, the relationship will have to be broken down and put out to tender, or have you provided any process, first, to try to bind the partners together, if they can be, but, secondly, to take steps to mitigate what could be a rather messy situation?

Chris Grayling: The ultimate fallback point would be that, if a provider ran into very serious difficulties, we would take control of the set-up in that area through the national

probation service and then relet it. I am very clear that material changes to the delivery structure need to be signed off by us, and that includes subcontractors. It does not preclude a change to the supply chain but it does preclude a change to the supply chain without explanation. That prevents a big organisation from dumping a small one for no reason, having behaved inappropriately. We intend to import the same principles that we have in the Merlin standard for the work programme, which, for want of a better way of putting it, says that, if the big guy duffs up the little guy, we can duff up the big guy. We will have mechanisms in place to say, “If you make a material change to your structure and supply chain, you have to tell us first.” If it is wholly unreasonable, ultimately, we will have power to withdraw the contract.

Q247 Nick de Bois: I am not sitting on your side of the fence so I do not know how Government Departments work, but to me that sounds terrific. But in practice I can almost hear myself saying, “Is it really clear when the relationship has broken down?” Who will be making the decision, or will you find yourself in a situation where MPs will be saying to you, “We think this relationship has broken down; there is evidence it has broken down, and there is a problem here,” and yet I suspect the instincts of the contracting body—yourselves—will be to try to keep it going for as long as possible, because the last thing you will want is change, not for face-saving but for the upheaval it will cause. Where will the responsibility lie for deciding that a contract has broken down? Is it at ministerial level?

Jeremy Wright: There are two different scenarios here. One is that the partnership or arrangement is not working as it should. We should pick that up through contract management, and they would be failing to perform as they should. In the end, if they are not performing as they should, that will be reflected in reoffending rates and the success payments that they do or do not get. We have to manage inadequate performance through the contractual arrangements. If, on the other hand, this is a more substantial failing for two partners to continue to work together, presumably at least one of those partners will want to extricate themselves from that arrangement. In those circumstances, what the Secretary of State has described would apply. They would have to come to us and say, “We don’t think this partnership is working any more,” and the remaining partner would need to find another way of delivering the contract.

Q248 Nick de Bois: You would have to give your approval for that.

Jeremy Wright: Yes.

Q249 Nick de Bois: So, the final question is: if they were not coming to you and you felt it necessary, are you empowered? Would you use the ultimate sanction of dissolving the partnership or the contract?

Jeremy Wright: We can end the contract, if we need to.

Chris Grayling: You talk about reluctance. In the early days of the work programme my life would have been easier if I had had the opportunity to terminate a contract. If I had identified a case of clearly inappropriate commercial behaviour, I would have terminated the contract, for two reasons. First, it would be the right thing to do, but also it would send a strong message to everybody else that we meant business in that situation. At no point, in the end, did anybody ever come to me with a formal complaint and so I could not do that; but if we had a situation where a big organisation formed a partnership with a smaller one, bid and won the contract and then said to the smaller organisation, “On your bike,” I would have absolutely no compunction about terminating the contract immediately and reletting it.

Q250 Mr Chope: I think we all agree that the objective of reducing reoffending is fundamental to this, but concern is being expressed that we have not got sufficient incentives within the payment mechanism to bring about that reduction in reoffending. Have you reached conclusions yet about the proportion of the payment that will be incentive-related?

Chris Grayling: It will be determined by the bids. The variables in the bid process will be, on the one hand, the quality of the proposition, and, on the other hand, the amount of money the individuals are willing to put at risk, but in these contracts you should not expect to see the same level of payment-by-results element as you might see in a welfare-to-work contract, for two reasons. The first is that a block of the money is not really available under the black box approach because it is fulfilling the orders of the court, so that proportion, which is well over half the money, is the cost of doing what the court tells you to do. Therefore, the ability of the individual organisation to adapt and innovate around that is more circumscribed.

The other part is that this is an immature market. In the case of welfare to work, there was 15 years' experience of what did and did not work. In this area, there is experience out there of what does and does not work, particularly in the voluntary sector, but we expect the willingness of organisations to take risk to increase as knowledge increases. One of the things we will build into the contracting is effectively a ratchet mechanism whereby the amount at risk increases over time. That will help some of the voluntary sector organisations become established as well so they have time to build up the learning. We will stretch more as time goes by, but this is a newer area of activity than welfare to work and, because of the orders of the court, you will not expect to see the same level of risk taken as in the work programme, for example, but we will stretch people as time goes by.

Q251 Mr Chope: In Doncaster and Peterborough, the range is between 5% and 10%. Would you expect a higher range related to achievement of results?

Chris Grayling: We will see in the tendering process, but certainly that would be my hope and expectation.

Q252 Mr Chope: How soon after starting an operation will a provider be expected to be delivering on payment by results?

Chris Grayling: It takes about six months from the start to build a cohort sufficiently to begin the payment-by-results approach. Therefore, the payment-by-results element comes in about six months after commencement of the contract. The reason for that is that legally we cannot apply it retrospectively. We cannot say to someone who is currently in jail, "Something different will happen to you when you come out because of the reforms we are putting in place." It will build up. As to the under-12-month group, when we commence the provisions in the Offender Rehabilitation Bill, people who are taken to court and convicted of a crime will be required to take the 12-month supervision period. At that point, the cohort will start to build up. As soon as the cohort is substantial enough to build payment by results properly, the full mechanism will begin, and we estimate that it will be about six months.

Q253 Chair: Is that a national or contract-by-contract decision?

Chris Grayling: It is a national decision to commence the Bill.

Q254 Chair: But commencing the Bill and beginning to do payment by results are parts of the same timetable, are they?

Chris Grayling: They are part of the same timetable. If there is a grey area around the edges—it is evolution, not revolution—and a small number of under-12-month offenders come into the system before the contract process begins, that does not particularly matter

because it is only a small number. It would matter if it was all 45,000 who were released every year. It is not the absolute starting line when the gun is fired, but, from the moment we commence the Bill and the contracts, there is a period of build-up to a point where there is a cohort big enough to begin payment by results, and we estimate that is about six months after the contract has started.

Q255 Chair: What is your current estimate of when that will be?

Chris Grayling: The early to middle part of 2015.

Q256 Mr Chope: Surely, after the contract starts, you will have these people who are still in prison and then they will be released.

Chris Grayling: Yes.

Q257 Mr Chope: They have got a 12-month period.

Chris Grayling: Yes.

Q258 Mr Chope: You are going to judge whether or not they reoffend after that 12-month period has expired aren't you, or not?

Chris Grayling: Yes.

Q259 Mr Chope: That means it will be a lot longer for each individual prisoner under a contract than six months.

Chris Grayling: If you look at the pattern, from day one of the contract if the two are exactly synchronised, it takes a period of up to six months to build up to the point where you have, for example, 1,000 offenders to work with. We then measure over the year or so that follows whether they have reoffended and the number of reconviction events, and we will then be able to get a picture of whether the reoffending rate has changed.

Q260 Mr Chope: Will there be a payment mechanism to incentivise partnership work?

Chris Grayling: Not specifically. The contracting framework encourages it. We will make it a condition of contract. In terms of the delivery of orders of the court, the statutory bodies and partnerships have an obligation to take part in it, and there will be contractual obligations.

Q261 Mr Chope: How will you ensure that the existing non-statutory partnerships are not damaged by this system?

Jeremy Wright: It is probably worth saying that I think that the expectation will be that those who are delivering these contracts will want to work in those partnerships where they are effective. Why wouldn't they? Their objective here is to reduce reoffending. We all understand that there are many things you have to do if you want to succeed in turning someone away from crime. Where these partnerships are effective locally, there is no reason to believe that rehabilitation providers will not recognise that there are effective ways of doing that and participate fully in them. What incentivises participation by effective local partnerships, which are non-statutory—because the statutory ones will be required to participate by contract—is that they are all after the same objective, which is the reduction of reoffending. If it is an effective way of doing it, they will take it.

Chris Grayling: Let me explain how I see that working in a very practical way. About a year ago, I went to Holloway and spoke to people working in the drug treatment unit. One of their frustrations was that, if they started work on an offender's drug problem in the prison,

at the point of release, there was no mechanism to require them to continue that work in the community. It is a crazy situation. There are two parts to solving that. One is the mandatory period of supervision we are putting in place through the Offender Rehabilitation Bill. The other part is to have a smart provider. The man or woman who meets the offender at the gate and will be working with them should already have, if they have got this right, a close relationship with the local NHS, have worked out who is coming out and when, and made sure that the rehab course can continue in a way that means the individual is much less likely to reoffend. That is the kind of facilitation of a smooth process that is really important to this.

I have not really touched on the resettlement approach. This is also designed to create a proper through-the-gate service in a way that has not been there before. With the creation of resettlement prisons and geographic links between the place of detention in the last few months and the place of release, and the ability of the providers to start planning for release and be ready for it, precisely that kind of situation can arise. When they have a strong relationship with the local NHS, they say, “We’ve got someone coming out of prison next week. We need them to carry on in rehab,” and can have that fixed up in advance. That plugs a gap in the system which at the moment leads straight to reoffending.

Q262 Mr Chope: Can you explain how this new system is going to work with foreign national prisoners, because an increasing number of them are short-term prisoners? In my view, when they are released it would be better if they went back to their home countries. If they do go back to their home countries, how will you be able to assess whether or not they are reoffending, and will there be any incentives for the contractors to return these people, or persuade them to go back to their home countries?

Jeremy Wright: There are a couple of things to say. First, where you have a foreign national offender—we would both hope that there would be an order for deportation in the majority of cases—the objective is that, when they finish their sentence, they are returned to their home country, so for those people we would not be engaging in long-term rehabilitation work.

Secondly, in relation to the return of foreign national offenders to their home countries and being able to engage with the immigration authorities in making sure we keep track of where they are, there is a real advantage in what we are proposing. At the moment, as you will appreciate, those sentenced to 12 months or less come out without any period of licence or supervision and it is much harder to keep track of where they are than under our proposals where, for a period of 12 months after release, somebody will be responsible for keeping track of them and supervising them. Therefore, knowing where they are is a big advantage in being able to move them out of the country.

Our instincts are exactly the same as yours. We would like to make sure that all foreign national offenders return to their own countries as soon as possible. I would go further than that and say we would like to return more of them during the currency of their sentence, which is why we pursue prisoner transfer agreements of a compulsory nature to make sure, where we possibly can, that people are transferred before they are released.

Q263 Mr Chope: Will the potential contractors be incentivised to facilitate early deportation?

Jeremy Wright: We have to be clear about what a contractor could or could not sensibly do. I do not think we want to pass the responsibility of getting foreign national offenders out of the country from the immigration authorities to our rehabilitation contractors. That would be unreasonable. But there is a real advantage in the corporate effort to remove foreign national offenders in enabling us to keep track of those individuals receiving short sentences more effectively. That is undoubtedly what rehabilitation providers will do, and we

will want to make sure that they are given every encouragement to work with the immigration authorities to achieve that.

Q264 Mr Chope: If somebody is released from prison and goes back to Romania, for example, how will anybody know for certain whether they have gone back, and, if they have gone back, whether they will not come back to our country again through another entrance? How will they monitor them when they are in Romania?

Jeremy Wright: That is the function of the deportation orders. We rely on our colleagues in the Home Office to make those orders in the expectation that what they mean is that someone goes back to Romania and does not come back again. In those circumstances, they would not be a continuing responsibility of the rehabilitation provider.

Q265 Mr Chope: But where there is not a deportation order and they just leave voluntarily, is the contractor going to be penalised or incentivised if he cannot track where they are?

Jeremy Wright: The Offender Rehabilitation Bill, which is going through at the moment—it completed Committee stage yesterday—includes a requirement for anyone subject to supervision to seek the permission of their supervisor before they move. If you are proposing to go back to Romania, you would be obliged to seek the permission of your supervisor before you were able to do that. If the supervisor denied that permission, you would be in trouble if you went.

Q266 Chair: Why would the supervisor do that?

Jeremy Wright: There are two different scenarios. Either this is someone who is leaving to go to Romania permanently, in which case we absolutely would not stand in their way, but, as I understood Mr Chope's question, he was asking what would happen if they went for a period and intended to come back. In those circumstances, we would expect that individual to seek the permission of their supervisor, which may well not be forthcoming, if they wanted to leave the country for a period, assuming they were subject to a period of supervision.

Chris Grayling: If they did that, they would be in breach and subject to recall.

Q267 Jeremy Corbyn: Would the risk also be assessed in Romania or any other country referred to, or would they simply be sent there?

Jeremy Wright: In which situation? In a deportation order case?

Jeremy Corbyn: Yes.

Jeremy Wright: In a deportation order case, of course a risk assessment is always done at the beginning of the process.

Q268 Jeremy Corbyn: Would that be passed on to the Romanians?

Jeremy Wright: Yes. If we have information about an offender, as I understand it, as a matter of routine we pass that on to the Romanian authorities so that they know what they are getting.

Q269 Mr Llwyd: A few moments ago, Secretary of State, you asked me about the significant detriments to union members and the new information at the meeting on 20 November. I have seen a memorandum of the meeting, which was attended by Mark Taylor, an MOJ official. Before that day, he had not seen any documents passing between probation workers and the MOJ. He provided new information, changed the appeal process for staff

who were unhappy, said there would be no continuity of service, and also said, “If you change role, then you lose continuity of service.” Not surprisingly, it was a deal-breaker.

Chris Grayling: I am afraid that is not our understanding of the discussions that took place. What happened at that meeting was that, having reached what we thought was an agreement on the appeal process, the unions asked for a further, fourth, condition for appeal, which was so broad-ranging it was something we could not possibly sign up to. That was the reason we were not able to reach agreement that day.

Q270 Chair: This is not a negotiating meeting, but I think Mr Llwyd needed the opportunity to indicate that there was a piece of information upon which he based his previous question. You have had the opportunity to reply to it, and also to respond to his request that you should be ready to see the union again.

Chris Grayling: It remains a hope to me that we will reach agreement with the unions, because I want to provide the staff with a better voluntary redundancy package. The Department’s door will be open to the unions right the way through until April and beyond, and at any point we will be happy to sit down with them and, hopefully, reach agreement on a package which would be good for staff.

Chair: Secretary of State and Mr Wright, thank you very much indeed. That ends the public session, but the Committee will remain for a short time in private session.