



Justice Committee

Oral evidence: [Ministry of Justice Annual Report and Accounts 2013–14 and related matters](#), HC 658

Tuesday 28 October 2014

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Members present: Sir Alan Beith (Chair); Jeremy Corbyn; John Howell; Mr Elfyn Llwyd; and John McDonnell

Questions 1-96

Witnesses: **Dame Ursula Brennan**, Permanent Secretary, Ministry of Justice, **Craig Watkins**, Director of Finance and Planning, Ministry of Justice, and **Michael Spurr**, Chief Executive, National Offenders Management Service, gave evidence.

Q1 Chair: Good morning Dame Ursula, Mr Spurr and Mr Watkins. Thank you for coming in front of us this morning to talk about the Department's finances and some issues that arise from them. Since the spending review in 2010 you have had to find £1.2 billion of resource expenditure limit savings, with a further £0.7 billion in 2014-15 and then £0.5 billion in the following year. Are you on target to deliver those savings?

Dame Ursula Brennan: Yes; we are on target.

Q2 Chair: If so, given that you have to cut relatively more in the coming two years than you have been cutting in the previous years, how can you ensure that front-line services are not negatively affected?

Dame Ursula Brennan: It is a significant amount of saving that we have to make. It is true across the public service that significant savings are being made. Clearly when you are looking at savings on that scale, doing your best to ensure that you do not impact front-line services is absolutely one of the things that we have sought to do.

When we looked at making savings across the spending review period, obviously the first place that we looked is to be able to make efficiency savings. A large percentage of our savings have come from efficiency savings. That includes things like closing courts that are not being used. It has come from taking a grip on our management structure and the layers of management in places like the courts, and benchmarking the way we run

prisons. It has come from things like going through our contracts and renewing our IT contracts in a way that saves us large amounts of money. Of course, we have also made savings in other areas where we have actually had to change the scope of some of the services that we have to do. Our aim, going forward, is to continue down the path of continuing to seek efficiency savings. Some of the savings that we have already made will roll forward and deliver us results in future years. We will continue to look at the best ways that we can deliver the requirement to reduce public spending, which is laid upon us and the whole of the public service.

Q3 Chair: Does Mr Spurr have anything to add? You deliver front-line services.

Michael Spurr: As the Permanent Secretary said, it has been very difficult. We have, and are, delivering the savings. You asked what it is going to be like going forward. I am optimistic about that. I think we are at our most difficult point at the moment in delivering those savings. That is because while we had very good plans to be able to deliver the savings we were hit by external events, and specifically in my world the increase in the prison population last autumn. That certainly impacted and created much more pressure than we had anticipated and, combined with that, required us to have more staff than we had planned for. The difficulties in recruiting those staff, particularly in the south-east, have created significant pressure for us. I think that pressure was at its height through the end of last year and into the summer of this year, and it is beginning to recede as we are able to recruit the staff that we need. We are on track to deliver our savings. Our savings are predicated on getting staff numbers up to the benchmark levels. If we get up to those levels, we will be better off in delivering services but will still deliver the savings that we said we would deliver.

Q4 Chair: You had an underspend of £152 million, which I think was the result of delaying estate maintenance, and there was some underspending on the criminal justice programme. Why were decisions made that led to that underspend?

Craig Watkins: It is important to realise that the majority of the underspend, about £113 million, is due to depreciation. The value of our estate has gone down because of the property market. The remainder was around additional income that we got within HMCTS that we had not planned for and it reflected workload levels in that.

Q5 Chair: Can you just explain to a layman how depreciation reduces departmental expenditure?

Craig Watkins: The way that Treasury rules work, depreciation, which is to account for the decreasing value of our assets, is included within our resource budget.

Dame Ursula Brennan: It is effectively a cost to us.

Craig Watkins: It is effectively a cost to us. Those levels were set at the beginning of the SR10 period, back in 2011, and they reflected the property market at the time. The fact

that the value of our estate has gone down because of movements in the property market means that it shows a top level underspend. That is driving the larger element of the figure.

There were some delays in estate maintenance, and there was some spend that slipped over into the following year. That represents the fact that those programmes are dynamic. At the end of the year there may be slippages from one year to the next.

Q6 Chair: Do you have to give that money back to the Treasury or can you carry it forward?

Craig Watkins: No; the money goes back to the Treasury.

Q7 Chair: When we wrote to you earlier in the year about the 2013-14 reserve claim of £213 million for NOMS, you said that this was due to “additional pressures” on the Department’s budget. Mr Spurr has talked about those additional pressures. There have been regular large reserve claims in recent years. Is that an endemic problem in your Department?

Craig Watkins: No. The various reserve claims that we have represent different things. For instance, there were a couple of large sums which were due to us paying off the residual cases in the pre-tariff scheme that we had in criminal injuries compensation. They were very old cases of children who had been injured or assaulted when they were very young, and we have to wait until they reach adulthood to be able to settle the claim. We had funding from Treasury to be able to do that as the last of those claims came through.

We also had assistance from Treasury in terms of modernisation funding. By its nature the Department is a Department that requires investors to save money in order to make the transition to deliver savings in terms of reducing staff numbers, investing in IT or modernising the estate. Treasury as part of our SR10 deal agreed to support us on that, as they have with other Departments.

There is then the additional pressure within prisons, which relates to the cost of prisons that were built in the previous spending review period and whose running costs were not built into our settlement. That has been rectified going forward, with Treasury supporting us on those elements.

Q8 Chair: When you look at the figures, the reserve claim is well on the way to the total of the savings that you have achieved. Doesn’t it rather take the gilt off your achievement when you have a reserve claim almost as big as the savings you are claiming?

Dame Ursula Brennan: As our Finance Director explained, there are some elements in the MOJ’s budget, including things like criminal injuries compensation, and the special deal that was done around building those prisons, which have been kept separate from our accounts. When you are calculating savings across a Department, of course there are costs and savings. Our income can go up or it can come down; you end up with a figure that says how much we have saved. If you look at the reserve claim, it is a sequence of rather technical issues. What it is not is us running out of money on running our services. That is

why we are confident about being on track in what we are doing and why we think that the savings we have made are real savings.

Q9 John McDonnell: Turning to the disaster that was Shared Services, I do not want to go over all the history but your Minister got a pretty good mauling in July in the debate. You have brought in Steria for the in-house programme with regard to those back-up services. You lost £56.3 million. Now you have gone to the Cabinet Office/Steria programme, using the same company again, to try to find a solution. What lessons have you learned from that exercise, and how can that be avoided in the future? Could you tell us what progress there is now in terms of time scales? Also, what impact is there on staffing?

Dame Ursula Brennan: There are several questions there. First, I should say that in the previous scheme Steria was one of the companies, but there were a number of companies associated with that scheme. It was not simply Steria in the original scheme.

Q10 John McDonnell: But it is still the same company being used for this other solution.

Dame Ursula Brennan: One of the companies is indeed a partner in the Cabinet Office Shared—

Q11 John McDonnell: Steria.

Dame Ursula Brennan: Exactly. Steria is a company that was in both, but it was not purely Steria before and it is not purely Steria now.

Q12 John McDonnell: They were implicated in a loss of £56.3 million and we are still using them.

Dame Ursula Brennan: They were one of the companies associated with the programme, which we cancelled. When you say that they were implicated in the loss, they were one of the companies providing services in that programme. That was a complex programme and Ministers have been over the history of that story. It was a complicated programme where the first phases went successfully; the remaining phases did not and we had to terminate it.

You ask what lessons were learned. At the time we were launching the programme there was not available the cross-Whitehall scheme that is now available to us. We were attempting to make some changes where constraints around the contracts that we had entered into and constraints around the technology that we were using led us down a path that turned out to be more complex than we were able to deliver. At the time there was not a simpler solution available. There is a simpler solution available now, and that is why we are now joining up with the Cabinet Office-led scheme, which is part of the cross-Government approach to bringing all of this work together and doing it in larger groupings across Government.

We have learned a lot of lessons, and indeed lessons have been learned across Government, about the complexity of those schemes. Those lessons have led to the cross-Whitehall scheme that is now being developed. Since then we have also had the major review of our own approach to contracting, which we undertook in the weight of the electronic monitoring problems. We have completely overhauled our contract management arrangements. Indeed, we have overhauled them so that even the National Audit Office say the way we have set about that has the potential to be really transformational in terms of the way we are now approaching contract management. Yes, we have learned lessons. We have taken a root and branch approach to reviewing how we contract for complex programmes of this sort, and we have moved to take advantage of a simpler approach that simply was not available at the time when we made those first judgments.

Q13 John McDonnell: So a cross-Government programme is less complex than individual departmental programmes.

Dame Ursula Brennan: It is less complex. It is partly to do with the way that the technology is going to be delivered.

Q14 John McDonnell: What are the staff implications?

Dame Ursula Brennan: The staffing implications are that at the moment we have staff ourselves in a variety of locations. We have made arrangements in terms of what will happen to those staff in terms of protection. They transfer under TUPE arrangements and will have 12 months of job security when they transfer across, when we sign a contract with the new company. As we join, we are a big customer, so we expand the user base, if you like, of the company. Clearly the joint venture between Steria and the Cabinet Office will look at the size of the staffing it needs, and where it needs staffing in the light of the work that it is undertaking.

Q15 John McDonnell: How many job losses are predicted at the end of the 12 months?

Dame Ursula Brennan: I cannot predict what the new joint venture will do in terms of staffing. The company have confirmed that they are going to close some relatively small sites in Cardiff, Leeds and Sheffield.

Q16 John McDonnell: I have one further point. In the debate, the Minister addressed the issue of offshoring. He said then that, in his view and that of the Secretary of State, such a proposal—for offshoring—should not be supported. Is that still the case?

Dame Ursula Brennan: The Justice Secretary has made his view about offshoring very clear. There is no requirement for us to take a decision about offshoring for MOJ business at present and the Secretary of State has made his judgment on that very clear.

John McDonnell: Sorry, I am confused by that.

Chair: We may come back to issues about contract management later. Mr Howell, you might like to go on from your supplementary point to the next thing you were going to ask about.

Q17 John Howell: Possibly. I am a relatively new member of this Committee, so forgive the naivety of the question. You started off with a Shared Service system that was internal to the MOJ. You have now moved to one that is both internal and external. Is that right?

Craig Watkins: What the Shared Services programme was set up to do back in March 2010 was to bring together disparate systems that we had in the MOJ, which were a legacy of its creation from different parts of Government. The first two phases were successfully completed. In the third phase, we were looking to bring together a single financial system and HR system within the Department. We are currently merging our two major systems before we move on to the Shared Service offer that the Cabinet Office have in place.

Q18 John Howell: I am aware of, and have helped set up, a Shared Service system that was entirely internal to the organisation. There are lots of advantages in doing that, in stripping out the back office functions and things. The real advantage comes from being able to do that with other organisations outside your own.

Craig Watkins: Yes.

Dame Ursula Brennan: The joint venture between the Cabinet Office and Steria is bringing together a number of Government Departments. We will be joining that existing, currently operating, joint venture.

Q19 John Howell: It is pleasing to see a small improvement in the overall staff survey results relating to leadership and managing change, particularly given your emphasis on that last year. However, these do not appear to have had any impact on NOMS or MOJ HQ morale. Why not?

Michael Spurr: I can address NOMS. We are going through the biggest change programme. In this instance it is Prison Service and NOMS headquarters. It is not probation. In this staff survey it will be the National Probation Service, but up until now they were not direct MOJ employees; they were employees of trusts. It is Prison Service and headquarters. The vast majority of staff responding are Prison Service staff going through a major change programme with the closure of 16 prisons, changing terms and conditions, effectively freezing pay, even on top of the civil service pay freezes, for the majority of prison officers and reducing numbers.

I would argue that we have spent an awful lot of time maintaining leadership and engagement. The fact that we have taken our trades unions with us, that 70% of the staff accepted the new terms and conditions, and that we have worked in partnership with trades unions is a significant achievement, but the reality is that staff feel a lot of pressure. That is reflected in their staff engagement survey returns. It ended up with 48% positive. That is still

10% above where we were in 2009. It is down from the height that we had but it is still 10% above where we were in 2009.

I expect that figure to reduce in the next staff engagement survey responses. I do not want it to, but the reality of what people feel at the moment is an awful lot of pressure. If that was not reflected in the staff engagement survey, people would not be telling the truth. I expect that figure to be more difficult for us. That will be the reality of where we are, but, as I said earlier, I think we are at the position now where we have been through some real difficulty and are beginning to pull out of that.

Q20 John Howell: In relation to the MOJ altogether, the NOMS staff satisfaction result is lower. Is that due to the Transforming Rehabilitation reforms and the prison benchmarking?

Michael Spurr: It is not about the Transforming Rehabilitation reforms specifically, because that is predominantly probation, and probation staff have not responded to that survey up until now. They will this year and I suspect there will be a response in this year's survey that will reflect the fact that a lot of probation staff themselves have not yet bought into the major reforms in probation.

The nature of work in prisons is different from most civil service work. The survey is a standard survey across the civil service. Generally, big Departments and big delivery Departments have lower rates of engagement than wider, more policy-faced civil service Departments. I have been proud of the fact that we have increased our staff engagement in prisons from 38%. When we got up to 51% that was fantastically positive. That has happened over the last three years. It has gone down by three percentage points. I expect it to go down this year. I hope it does not, but I expect it to go down. We are working harder than ever though to ensure that we continue to engage staff through this very difficult process.

Q21 John Howell: There has been a reduction this year in satisfaction with workload and resources. How much of a role do budget cuts and job losses have to play in accounting for those scores?

Michael Spurr: Significantly. The reality is that there are fewer staff, and we are expecting them to work and deliver the work that was there before, predominantly. They have to work in new ways with fewer of them around, and people feel that pressure. Inevitably, therefore, that gets reflected in a staff survey. It is not where it was before. With benchmarking in prisons, it is important to say that we are implementing systems that are working somewhere. We have taken the best systems and said that we want them to work everywhere. That is one of the things that gives me confidence. In prisons that have managed to have the resources they need, we are getting good outcomes and that is reflected in some positive inspection outcomes where we have benchmarked and have the right staff in place. Where we don't have that, people feel under pressure and it is not surprising that that is reflected in a staff survey that asks how people feel. If you look at responses to, "How do you feel about your pay and your levels of work?" when their pay has stayed static, or in real terms—they would argue—has gone down and their work has increased, people do not feel great about it. That is an honest response to where they are.

Q22 John McDonnell: On contract management, in 2013-14 G4S and Serco agreed to pay back about £180 million to the Department, with regard to electronic monitoring services dating back to 2005. What supervision was there of those contracts? Why wasn't this identified sooner?

Dame Ursula Brennan: We acknowledged, in relation to the G4S and Serco problems, that we did not have the level of scrutiny of live contracts that we needed once they were up and running. We have accepted and recognised that in the approach we were taking. These contracts had been around for a very long time. They had been negotiated by people many years ago, back in the Home Office days. They were created and set up. They then became standard order of business, and it is true that we reduced the level of scrutiny that we put on those contracts because we had reached a stage of thinking that this was now ongoing business and that it was working smoothly.

It turned out, and we now have those companies referred to police investigation, that there was something seriously wrong going on. We immediately looked at, first, all our other big and complex contracts and then worked our way through all our contracts altogether to see whether the same problem was arising elsewhere. The answer was that we did have problems in relation to prisoner escorts but not in relation to the rest of our contracting.

The problem in relation to electronic monitoring is an example of where the service was not something we ran ourselves. Much of Government contracting consists of the Government doing something itself in-house and then deciding to outsource it, a bit like Shared Services. When that happens, you have a lot of knowledge on the Government side of the house about what the service is. In relation to electronic monitoring, it was a service that we had never done ourselves. It was a new creation created by the companies. We realised that we should have had more scrutiny, transparency and in-depth analysis and ability to understand what was happening there. The lessons we have learned about that are the things that have taken us to this completely root and branch review of our contract management arrangements.

Q23 John McDonnell: You did the review of contract management. You put in your annual report some fairly stiff targets to be met by December this year. What progress is there on that? Can you also identify where you have addressed the skills gaps that you were concerned about?

Dame Ursula Brennan: In relation to the steps that we undertook, we are on track with the things that we planned to do. The things that we planned to do came under a number of headings. The first of them was about absolute clarity and accountability in a complex Government Department of being really clear who is responsible for what in relation to each contract. That is one of the very first things we did, and we have done that.

A second thing is that we have been working our way through the rest of them, starting with the biggest and most complex contracts, to review the size and nature of the contract management resource we need, whether it is in the negotiating phase or in the live running phase. In order to do that, we had to have a big increase in the number of staff we engage in

relation to contract management and an up-skilling of the technical skills that people have in relation to contract management.

Q24 John McDonnell: Does that account for the increase in consultancies? It has doubled.

Dame Ursula Brennan: Some of the increase in consultancy was actually investigating the G4S and Serco problem, and we got that money back. It shows as an increase in consultancy spend, but a large chunk of that is part of the £180 million we naturally charged the companies for the cost to us of investigating that and putting it right. Yes, there is consultancy work, because in some places, while we recruit people in the market—it is sometimes difficult to get people in the market because of lack of competitiveness in our pay rates—we have to fill some of the gaps with people we have brought in as contractors and consultants.

What we have been doing in terms of skilling is an approach that has both breadth and depth. In terms of breadth we have made every single member of the senior civil service attend a one-day commercial masterclass so that absolutely everybody has some basic understanding about commercial. For the people who are commercial experts we are on a programme to have people qualified by the appropriate institute—the Chartered Institute of Purchasing and Supply—so that we are increasing the number of people who have the appropriate levels of training in that organisation.

Q25 John McDonnell: When you were before the Public Accounts Committee you said that if you did not have the resources to outsource a programme you would not outsource it. Are there any examples where you have pulled back from outsourcing?

Dame Ursula Brennan: There are examples where what we have done is to look at whether we have enough resource in place and shifted resource to enable us to do it. That has sometimes meant that we have juggled the speed with which we are progressing with other change. In order to do a major contract you need contract and commercial experts, but you also need lawyers and accountants. You need economists to do value for money expertise. You need policy and operational experts. What we have done is to look at our portfolio and say that across that breadth of expertise, if we do not have the right expertise in place at the time we need it, we juggle the speed with which we move things down the pipeline to make sure that we have the resource available.

Q26 John McDonnell: Are there any examples where you have said to the Secretary of State, “We do not have the resource to outsource this. Therefore we shouldn’t”?

Dame Ursula Brennan: I do not think it would be a matter of, “We do not have the resource to outsource something.” We have certainly had conversations with him about change programmes, where we have said, “We can’t do that now; that will have to come later.”

Q27 John McDonnell: So you have pulled away from other programmes to enable outsourcing to take place.

Dame Ursula Brennan: We have had the kind of discussions where we say, “We would like to make this change but we cannot afford to do it this year,” or “We can’t afford to do it at this point.” Yes, certainly.

Q28 Mr Llwyd: As we know, there have been delays in the announcement of the preferred bidders for the CRC contracts. What was the reason for those delays? Given the very tight timetable, how have you made sure that you performed sufficient due diligence on all the bids?

Dame Ursula Brennan: There is not a delay in announcing preferred bidder. We are on track on announcing preferred bidder.

Q29 Mr Llwyd: When is it to be announced?

Dame Ursula Brennan: We will announce it as soon as we are ready. We are engaged in the process now, but we are not delayed.

Q30 Mr Llwyd: The impression given is that there was a delay for several weeks.

Dame Ursula Brennan: The process to get you to the conclusion of a major contract of this sort has a number of steps. When you are negotiating with suppliers you can change the order in which you do some things. You can have a phase where you say, “We will close that down” and then in the next phase have a wider debate. One of the things we have done, in discussion with the suppliers, is decide at which point we want to engage in negotiation—at an earlier stage or at a later stage. All we have been doing is moving around some of the negotiations we do with the suppliers to a timetable that remains on track. It is not off track. We have just done some of the steps in a slightly different order.

Mr Llwyd: I think I understand it; I hope I do anyway.

John McDonnell: This is Yes Minister.

Dame Ursula Brennan: When you are discussing with suppliers, there are lots of different stages at which you—

Q31 John McDonnell: So a delay is just an adjustment of the timetable.

Dame Ursula Brennan: No; genuinely it is not a delay. What I am saying is that in the stages—

John McDonnell: It sounds like First Great Western.

Dame Ursula Brennan: In the stages that you go through, you provide information to suppliers and then they come back and ask you a load of questions. The next phase is when you say, “Now give us your offers.” You then have a conversation around that. When you have a preferred bidder stage, you can announce preferred bidder but you could still have a lot of conversation and discussion about the detail after that, or you can shift it around and do that beforehand. One of the things we have done is move things around because we want to nail down more of the detail before we announce preferred bidder, but our overall timetable is not off track. We are quite confident about that.

Q32 Mr Llwyd: On the crucial due diligence point, are you happy that you are doing that?

Dame Ursula Brennan: Yes. I am absolutely happy about that. One of the lessons we have absolutely taken in relation to contract management is not just the need to invest in contract management capability after you have awarded the contract, but really being clear about the steps you have to go through before awarding a contract. That is something that we have taken incredibly seriously. We have made sure that all the resource in the Department is geared towards that. It is our top priority so it has had all the resource it needed, and we have been happy to buy in resource in order to give us assurance about the things that we were doing. Yes, we are confident about that.

Q33 Mr Llwyd: I do not know whether you were aware, but there were some leaks from high up within the MOJ that several knowledgeable people were saying that the TR scheme would never be off the ground before the end of March.

Dame Ursula Brennan: I have no idea who would have said that, but it is certainly not—

Q34 Mr Llwyd: With great respect, perhaps you should investigate. This is a core matter for you.

Dame Ursula Brennan: It is absolutely a core matter for us, yes.

Q35 Mr Llwyd: I just give you that hint. You might like to investigate further within the Department. Have there been further modifications to the payment by results model during the latest stage of the competition? If so, do any of them impact on the MOJ’s plans for the six-month bedding-in process prior to the implementation of the Offender Rehabilitation Act 2014? Finally, how much flexibility will you have to alter the payment mechanism if required?

Dame Ursula Brennan: There are several questions there. I might ask Mr Spurr to comment on the Offender Rehabilitation Act. In relation to the payment mechanism, we have set out in a lot of detail how the payment mechanism is due to work in our contractual negotiations. Of course, these are complex contracts and things may happen in the real world after we have let the contract that would require us to be able to make changes. There are powers for us to be able to respond if the need arises, if some

significant thing happens in relation to rehabilitation. The contract has appropriate clauses in it that enable both parties to come back and change the basis for the payments if that should be necessary.

Q36 Mr Llwyd: My first question was whether there have been any further modifications to the payment-by-results model during the last stage of the competition.

Dame Ursula Brennan: No. We have not changed what we set out in the contract in terms of negotiating the payment-by-results mechanism.

Michael Spurr: The basic tenor of the contract is that there is a significant service payment for delivery of the services and then an element that is paid for by results on the basis of reducing reoffending. One of the things that we are looking at in the first phase, before we sign contracts and transfer responsibility, is the volume of offenders that will go to the CRCs, to make sure that those are in line with our assumptions. They broadly are. It is also the volume areas within the payment mechanism that will determine how much somebody will get on a service level and how much in payment by results. We have not changed at all the tenor and the principles of how we are operating through this process.

Q37 Mr Llwyd: In our report we concluded that in the absence of further information it was not possible to assess whether the reforms would provide the value for money suggested by the Department, particularly in the short term. What assurances can you give that the reforms will deliver value for money, including in relation to the level of compensation payable to providers through no-fault termination clauses if the CRC contracts were cancelled?

Dame Ursula Brennan: There are two separate issues there and, if I may, I will take them separately. In relation to value for money, it comes in two ways in this contract. One is through the efficiency with which the services are provided. The second is the reduction in reoffending for which we make a payment by results. If the providers achieve a significant reduction in reoffending, it will produce savings across the whole of the criminal justice system, which will far outweigh the payments that we will make by way of payment by results. At the moment it seems to us that we have very good grounds for believing we will get those reductions in reoffending, but if we do not get them we do not pay for them. That is how the payment-by-results mechanism guarantees that we get value for money; we do not pay for something that we don't get. The efficiency in delivering the service enables the companies to invest in activity that will reduce reoffending and deliver us payment by results.

The termination clause that we have in our planned contracts for these services is based on standard Government contracting approaches. The Treasury has some standard modules for Government contracts, and they include arrangements where you need to pay for termination. You pay for termination in order to avoid several things: first, that the bidders price risk into the contract. If the bidders thought that you could just walk away from the contract the day after you had signed it, they would not be willing to pay so much for the contract and would price it accordingly.

The second thing is that one of the things we have learned from looking at other contracts is that we want a vibrant market which would include third-sector providers. Third-sector providers need some kind of guarantee that we are not going to enter into a contract with them that causes them to incur costs in terms of setting up systems and recruiting and training staff, and then just walk away at whim the day after we have signed it. Of course, built into the contract there are provisions for it to be terminated if there are problems or faults, or if the supplier goes into default. All of that is absolutely standard. What we are talking about here is if, having signed the contract, we wished just for policy reasons to step away from it. We have negotiated a figure and an approach to the way that sum is done which gives us the guarantee that we get value for money and we are not charged for the risk, and gives companies the assurance that they are not investing money that they will lose because their supplier could simply walk away.

Q38 Mr Llwyd: We have heard from witnesses who are not ideologically opposed to the introduction of this form of competition and who said, first, that financially it is a hugely challenging and risky exercise. As I understand it, 30% of your budget is in effect committed to this particular exercise. Secondly, given the time line involved, at best it is extremely ambitious to get all the things ready for the off, as it were. Many commentators who, unlike myself, are not ideologically opposed to this are saying it is hugely optimistic to try to introduce it in the coming weeks, and that therefore there is a patent risk.

Dame Ursula Brennan: I want to comment on a couple of those things. It is not 30% of the MOJ's budget tied up in this contract. That is the first thing.

Q39 Mr Llwyd: How much is it?

Michael Spurr: It is about 30% of the probation budget, which is less than half the MOJ budget, and the amount going into contracts will be half that, so it is significantly below the 30% figure.

Dame Ursula Brennan: It is obviously the case that when you enter into a contract you constrain your resources. I acknowledge that, but it is not remotely at that kind of level of impact on our budget overall. The other thing I would say about that is that it has been for a very long time that professionals in probation have felt that they wanted to work with prisoners who have the shortest sentences. The truth is that that is the area where there is the highest propensity to reoffend.

Q40 Mr Llwyd: Could I intervene very briefly? Why not allow them to do so?

Dame Ursula Brennan: The problem is that the cost of providing a service to that group of people requires investment that no Government has been able to find until now. The programme that we are entering into, where we have reorganised the way that probation is delivered and have produced this regime with a fee for service and payments by results, enables us to recycle some savings from the efficiency of the delivery of the service into investing in the thing that will deliver the real long-term reduction in the Department's

budget. Therefore, from our point of view, this is an investment in the future; it is an investment in making a real change in levels of reoffending.

In terms of the risk, and the pace at which the programme is going, we have spent a lot of time and effort, and indeed quite a lot of money, on assurance around the programme. Within our own Department it has been, as I said, very clearly the top priority. We have been really clear about that. Where it has been necessary, we have moved people to come and work on the programme. We have developed a scrutiny and an assurance regime within the Department so that at each step of the way we have assured ourselves that it is safe to proceed.

We have paid for assurance that we have taken from external companies to come and scrutinise what we were doing, and to look at it from all sorts of different angles to make sure that what we were doing made sense and that it was financially, legally and contractually sound and deliverable. The Cabinet Office has the Major Projects Authority, which provides its own level of scrutiny. We have gone through all those levels of scrutiny and each time we have come up to the step that says “Are we content and safe to proceed?” we have been given the green light to proceed. We have been content to proceed.

Q41 Chair: What are the indicators that you used in this process?

Dame Ursula Brennan: We look at indicators across a range of things. In terms of indicators, clearly one thing is around the contract itself. Is it a contract that is affordable? Is it value for money? Is it legally sound? What are the risks when it plays out over a number of years as part of the service is contracted and part of it remains in-house? How might that play out? One of the things we have done is an exercise to see what the pressures within the system might be and to make sure that the structure we have will withstand that and still deliver what we want it to deliver. There is a whole set of things around our confidence that this contractual structure will work.

There is a set of things around whether we have the right people in the right places to manage the service as we are going forward. Clearly there is a whole raft of legal issues. Are we in the right shape to proceed operationally on the ground? We have looked at it from a whole range of angles, I would say.

Q42 Mr Llwyd: What is your policy on whistleblowers? Are you confident that your staff will feel able to raise their concerns about the impact of these policy decisions?

Dame Ursula Brennan: We have a policy on whistleblowers; we have an arrangement which includes the fairly standard things in relation to whistleblowers. People can obviously raise issues with their line manager, but if they are concerned about that, there is a route for people to raise issues either with someone outside their own line management chain, with me, if they need to, and we also have a non-executive director who is one of our whistleblowing cadre. We put this information on our website so that if staff think, “I really don’t want to raise this for whatever reason with someone who is in my line management chain,” it is perfectly possible for them to raise it with someone who is completely independent as a non-executive director so that they can get it investigated. If

somebody raises an issue like that, we make sure that it is properly investigated. Again, it is investigated by people who have no connection with whoever the individual is and the business area where they operate. We have just been refreshing our whistleblowing policy to make sure that it is up to date.

Q43 Mr Llwyd: Do you understand the concern of many of us about the magical day in November when people were assigned to CRCs or to the service, depending on what they were doing on that day? Hopefully they were not on holiday. Do you understand that it is difficult for people like myself to get my head around the problem where you have junior members being assigned jobs like risk management with offenders, which is volatile at the best of times? Junior people are now actually doing this work and some of the senior probation service people have gone, not by their own decision, over to the CRCs, and they are now waiting for juniors to tell them about risk management and so on. It is a topsy-turvy world, and don't tell me that there are no risks involved.

Dame Ursula Brennan: If I may, I will make a preliminary comment and then my colleague will say something in more detail. Whenever there is a change in this kind of structure, where you split organisations or when you are changing the way that work is done, you have to have a structure for allocating people. In general, the structure that is followed across Government—I have seen this many times in previous organisations when there is a change in the way that a service is delivered—is that you look at dividing the staff on the basis of the work that they do. That was the approach that we followed in relation to the Community Rehabilitation Companies and the National Probation Service.

When you do that, of course there are people who would prefer to have been in the other place. I am afraid that is something that happens. If you are a public servant, this is one of the things that happen when we change the way public services are delivered. There was a formal process for deciding how we split those two areas. It was based on the way that the workflow was going to operate between the National Probation Service and the CRCs.

Q44 Mr Llwyd: I reiterate my point. I have spoken with several people in the service in south Wales very recently. I am not just sounding off without some evidential base. There is a great deal of concern that people who are inexperienced are now going to be undertaking risk evaluation, which is crucial in any system of this kind, and reporting to more senior people who will not be doing it. I am sorry, but that does not make sense to me.

Michael Spurr: What the Permanent Secretary says is absolutely right. The split was done on the basis of the work that people did prior to the split.

Q45 Mr Llwyd: On the day in November.

Michael Spurr: Not on the day, no—on what were the main tasks that people did over the previous year or more in terms of where they had been assigned to work. I think when you talk about junior and more senior staff, what you are really talking about is the split between probation service officers and probation officers. Probation service officers often

worked in courts under probation trusts and provided reports to courts; they did that work and in some trusts probation officers did it. We will standardise how that is done under the National Probation Service in the future.

A point that is sometimes made is that it may well be that a more experienced probation officer has moved to a community rehabilitation company and under the nature of the new arrangements will not have the ability to go straight to a court and ask for breach. A request to do that in the future will go through the National Probation Service. It might go through a member of staff who was a colleague previously and may be less experienced, but they will have the skills to be able to make that judgment. At the point of transition I absolutely understand, because I have talked to lots of staff, how that might feel: “This is devaluing. I previously did that directly.” But it is in the nature of splitting the organisation. In part of the discussion about how those organisations will be created, and indeed in part of the debate in Parliament, there was a strong view, which I recognise, that it should be the public service organisation that makes and provides the advice to the court and makes the decisions on breach.

Q46 Chair: This Committee expressed that view.

Michael Spurr: Indeed. That is why we have separated people. At this moment it is not about not trusting the experienced probation officer who previously did that; that officer is now working in a different organisation that in a few months’ time will move to a different provider, and in a few years’ time will be managed by that provider and not part of the public service. We have made that split. I absolutely do not accept that the people who are on the National Probation Service side, and who will provide the advice to courts, are not able. Indeed, they have far more probation officers as opposed to probation service officers compared with the CRCs because that is how the work split occurred. I hope that is helpful.

Q47 Mr Llwyd: In following up the Government’s response to our report on TR, we asked for further assurances about our key recommendations about public safety, which stem from splitting the service. How can the public and this Committee have confidence in the progress of reforms in the absence of transparency of information to allow external scrutiny?

Dame Ursula Brennan: When you say “absence of information”, what about?

Mr Llwyd: We have difficulty extracting from the MOJ precisely what is happening. Unfortunately the Secretary of State has declined to come before us in the past month. He does not meet with unions and so on, so we are rather in the dark about a potentially very dangerous situation. That is what I mean.

Q48 John McDonnell: Could I supplement that? The background to this is that we were assured at the very beginning that there would be testing. The Secretary of State wrote to us setting out in some detail the various criteria, as you have done today. The Chair of the Committee then wrote to the Secretary of State saying, “Could we have information about the

testing that has taken place in assessing the safety of the programme?” As Members of this Committee we are here to scrutinise, and one of the key issues is public safety, as it is with regard to our role as constituency MPs. We are simply asking for information with regard to how the testgates have been implemented and what results they have demonstrated. We then get the response from the Secretary of State that the provision of this information would “be detrimental to the overall integrity and effectiveness of the testing process”. How can we judge if the system is safe if you will not publish the results of the tests?

Dame Ursula Brennan: In relation to the Secretary of State, I know that there were two aspects that you asked him about. One was in relation to the contract and one was in relation to that information about testing. It is really difficult when you are going through a major change programme. I know that there is a very live debate about this question, and it has occurred in a number of other areas across the public service, about the assessments that are made about risks associated with programmes.

One of the things that we have tried to do across Government in the last few years is to get much more tough-edged and in-depth scrutiny about the risks associated with programmes. The judgment has been taken that releasing that information in real time is not likely to be conducive to honest appraisal of risks around programmes. That is the reason why, for instance, the Major Projects Authority risk rating of programmes is released in detail, but it is released a period after the event.

I am afraid it is human nature. If people are engaged in the kind of debate where every time anybody writes something down there will be an immediate argument about precisely what they said, it tempts people to write things that are less hard edged than they would otherwise be. The approach that we have taken—it is an approach that applies across Government—is to have a really rigorous testing process but to release that information and make it public later in the process, with a time lag so that it is possible to have a safe space for dialogue with Ministers in the intervening period.

In relation to the safety of the processes more generally, we set out a lot of detail about how the National Probation Service/CRC relationship was intended to work. One of the opportunities we have taken is to increase the effort that we put into risk management of the probation caseload right up front. That is one of the features of the new regime that we are operating.

Q49 John McDonnell: This means that what you are saying is, “We will reveal, warts and all, after the event when it is too late.” This is not just justice denied; this is accountability denied. I find the whole process, when we are dealing with public safety, almost unbelievable. I think it is extremely dangerous. It means that all public accountability of the programme now literally breaks down on the basis of confidentiality and secrecy.

Chair: That is a statement rather than a question. It is a conclusion which Members might draw from what you said.

Dame Ursula Brennan: As I said, in relation to assessments around major change programmes of this sort we have taken a view—it is a view that we have taken across Government—that publicising the risk assessments that we undertake at the stages that we

take them is not helpful. The thing that we said very clearly is that we have the independent assessments that the Cabinet Office conducts, and we do not proceed if that is not satisfied. The assurance is that there is a process that operates and provides that assurance, but we do not talk about it in live real time as we are proceeding. We publish all sorts of information about the performance of the system, and statistics about the performance of the system, but we do not publish that analysis in real time.

Q50 Jeremy Corbyn: Who decided this policy? Why does it apply across Government? Is there some sort of general Cabinet Office decision on this? I agree with Mr McDonnell's point. It seems to me like it is concealment from the public.

Dame Ursula Brennan: The policy in relation to publicising the Major Projects Authority's programme assessments is one that was decided across Government some time ago. It has been operating now for a couple of years.

Q51 Jeremy Corbyn: By whom?

Dame Ursula Brennan: It will have been a debate that was led by the Cabinet Office.

Q52 Jeremy Corbyn: Who made the decision?

Dame Ursula Brennan: I do not know whether it was literally a Cabinet decision, but it will have been a decision taken by Ministers.

Q53 Jeremy Corbyn: Do you know which Ministers and when?

Dame Ursula Brennan: No, I do not, in all honesty. As I say, this policy has now been operating for some time in terms of the publishing of this project information. We publish a lot more information than we ever have done around projects, but the decision was taken to publish it with a time lag, and that was taken quite some time ago.

Q54 Chair: I am going to move on to the £45.8 million that the Department seems to have lost on the cancellation of court construction projects which were not considered to be value for money. What have you learned from that?

Craig Watkins: These were projects that were originally initiated many years ago, prior to the creation of the Courts and Tribunals Service as it is as an organisation and prior to the creation of the Ministry of Justice. They were initiated at a time when the financial context was very different and also when the operational needs of the Courts Service at that point were different from what we now think they will be going forward. The Department has absolutely done the right thing in terms of the HMCTS board, rigorously reviewing all the projects that they had and making the decision that these were no longer value for money

for the taxpayer. It means that there is a loss in terms of some of the work that was done on those projects, but it is the right thing to stop them before we go any further.

In terms of what we have learned, at the time those projects were initiated decisions were able to be taken by organisations and by agencies, effectively without the oversight of the Department. Major commitments could be made by agencies. That is now different. Any project of that nature now has to go through departmental governance, up through the executive team and through our assurance directorate. There has been a sea change around that.

What we are doing through our change work and through the portfolio that we have set up is to ensure that as far as possible, and it is not always possible, we are anticipating operational needs in the future and where an organisation might be going. Inevitably that will change in the future, but it is to try to anticipate where we will really need these projects. As I said, the context was very different when they were initiated.

Q55 Chair: Do you think that the legal aid changes, placing as they do different responsibilities on the courts to deal with people who are not legally aided or legally advised, may change the requirements on the court estate and staffing? Have you built that in in any way?

Dame Ursula Brennan: In relation to legal aid and represented parties, there always were unrepresented parties. Indeed, in the year before we launched the big legal aid changes in something like 64% of cases in the family court and the civil court, one of the parties was not legally aided. There has always been that provision where there has been a mix of legally aided and not. That has always been there.

In terms of what the demands are going to be on the courts, clearly changes in the numbers of unrepresented litigants is one factor we think about in terms of how the courts operate. Bigger factors are the extent to which we can do business online; for instance, enabling people who have a motoring offence to plead guilty online stops them being obliged to turn up in a magistrates court and do their business. It is those kinds of changes—the ability to do much more business online and thinking about where we need to be doing business. Some things need to be done in a courtroom with a witness-box and the ability for defendants to be held behind a screen. Other things just need to be transacted in a room somewhere. As part of our strategy for the future of the courts we are looking at all the changes that might impact on the way that legal business is conducted.

Q56 Chair: You are doing this at the same time as developing the common platform for data.

Dame Ursula Brennan: Yes.

Q57 Chair: Are these things really going to be successfully integrated with each other?

Dame Ursula Brennan: The common platform programme, which is an IT programme, is now integrated into a wider programme—the HMCTS reform programme for courts and tribunals. That now encompasses technology change and looks at our estate. It looks at working practices for our own staff, and indeed for the judiciary. It covers the entire piece and we have now brought all those together under a single programme.

Q58 Chair: There are consultations going on about amalgamating court areas, not courts, in the magistrates court system. Are you assuming a very significant saving from the outcome of that process?

Dame Ursula Brennan: We have made savings and we continue to make savings from looking at our courts. We have lots of places where we are occupying several buildings in a particular town.

Q59 Chair: I am not talking about the court changes. I am talking about reducing the number of authorities managing the court system by amalgamating areas. That is the subject of current consultations.

Dame Ursula Brennan: In the work that we are doing in relation to magistrates, one of the things we are looking at is the changing demands on the justice system in terms of the nature of the volume of crime falling and the different types of crime that are operating. I do not think that that particular change is a significant contributor to savings.

Q60 Chair: The consultation documents about these amalgamations say that they do not affect the number of courthouses there will be, and they assume no further change in the courts. They do not rule out further change; they assume no further change, but a reduction in administrative costs. I am simply trying to establish whether you expect to make significant savings from this.

Dame Ursula Brennan: I do not think that particular piece of change is a major cost saver. It is more to do with having a logical structure for the way that magistrates are grouped together in families, as it were.

Craig Watkins: There will be a variety of work under way to look at how we can reduce administration costs in the courts, but I am not aware that that is a significant contributor to them.

Q61 John McDonnell: I turn to court interpreters. It is a good job you don't need an interpreter, isn't it, on the performance so far? The target for Capita now after the disaster of the last couple of years is 98%. When do you think that Capita will achieve that target? I believe they are up to about 94.5% now. What are you going to put in place to make sure they hit the target?

Dame Ursula Brennan: They are consistently performing at 95% now. The level of complaints has dropped and is now very small. The number of off-contract bookings, where the company are not able to supply the interpreter themselves, has also fallen very substantially. One of the things that we have recently been doing is appointing some independent assessors to carry out an independent review of quality standards around the contract. In other words, we are continuing to work on looking at how we can continue to improve, because there has been a huge improvement in something that started off in a really difficult place. This is a contract which is now much closer to where it needs to be and is saving us a lot of money.

Q62 John McDonnell: There was going to be a review of the tiering system brought forward to ensure that we got the right professional standards.

Dame Ursula Brennan: I think that is part of the same thing.

Q63 John McDonnell: Wasn't that meant to be by the end of this year? Is that on course?

Dame Ursula Brennan: Yes, that is due to complete this year.

Q64 John McDonnell: Is it by December?

Dame Ursula Brennan: Yes.

Q65 John McDonnell: That will address the tiering system and you will then adjust accordingly.

Dame Ursula Brennan: Yes.

Q66 Jeremy Corbyn: You mentioned independent assessors to assess the work of Capita. How much do they cost and who pays for them?

Dame Ursula Brennan: I cannot tell you that, I am afraid. We can let you have an answer on that.

Q67 Jeremy Corbyn: My point is that, if they require independent assessors because of their less than satisfactory performance, surely that should be charged to Capita and not to the taxpayer?

Dame Ursula Brennan: I am not sure that this is wholly about a less than satisfactory performance. One of the things that we now do across all our contracts is consciously

invest money in ensuring that we are getting exactly what we need on a risk-based approach. We factor that into the costing of the contracts that we make going forward.

Q68 Jeremy Corbyn: A note from you on the costing of that, and where it is charged to, would be very helpful.

Dame Ursula Brennan: We will do that.

Craig Watkins: It is worth noting that we continue to apply service credits to Capita while they are not reaching the performance target.

Q69 Chair: There is a bit of history around the HM Courts Service trust statement. In 2011-12, the NAO issued the document with a disclaimer. The Committee raised this, both in a report in 2012 and in an estimates day debate in March 2013. What progress has been made on removing the qualifications on the HMCTS trust statement in 2013-14?

Dame Ursula Brennan: This is quite a technical matter so I will ask my Finance Director to deal with it.

Craig Watkins: We have been putting a lot of effort and work into the trust statement since its introduction. It is absolutely fair to say that performance was not great initially in terms of the quality of the information that we had. We had a significantly improved opinion for the 2012-13 statement, which left us with two qualifications. One was around being able to verify the opening balances from the creation of the trust statement; the other was the performance of the PentiP system around the recording of fixed penalty notices and being able to reconcile that. We have put in a lot of effort, working with the Home Office on PentiP and also in terms of the remaining other qualification.

The NAO are yet to opine on their audit. The discussions to date are that they see that there have been significant improvements, and we would hope that that is reflected in the opinion that they formally give. We are looking to lay the statement in November. As I say, we would hope that outlines how we have made improvements and hopefully look to be able to reduce the qualifications further.

Q70 Chair: Do you think it will be published before Christmas?

Craig Watkins: Yes.

Q71 Chair: This is all about things like accounting for fines.

Craig Watkins: Yes. When the systems were originally set up they did not anticipate the fact that there would need to be an accounting of that in the way that was then introduced by Treasury.

Q72 Mr Llwyd: I declare an interest. I have practised legally aided work both as a solicitor and a member of the Bar, and I might do so again in the future, if there is anything left of it. How did the Department decide that the appropriate time for the recent consultation on crime duty contracts would be three weeks, particularly given that the consultation was on two reports that contain detailed quantitative analysis and also financial modelling?

Dame Ursula Brennan: The question was about two reports that we had not previously put in the public domain. The reason that we kept the recent consultation we did quite brief, at three weeks, is that, from memory, the judge giving the judicial review said that those documents had now been in the public domain, as a result of the judicial review, for quite some time, so it would not be necessary to do a major re-consultation. It was words to that effect. That led us to think that it was a reasonable approach to take.

Q73 Mr Llwyd: You are referring to the Otterburn report and the KPMG report.

Dame Ursula Brennan: That is correct; yes.

Q74 Mr Llwyd: Published in February 2014.

Dame Ursula Brennan: Yes.

Q75 Mr Llwyd: What about the earlier PA Consulting report which should have been disclosed and was available to you in August 2013? Why has that only just come to light? Crucially, why did it not form part of the recent consultation?

Dame Ursula Brennan: I do not think it is quite right to say that it has only just come to light. What happened was that, in relation to the consultation around these issues, we had a range of information that we used in order to determine the policy on which we wished to consult. The PA Consulting report was not used as part of the policy decision that was made. When we were saying what information we used in order to reach a conclusion, that was not part of it so we did not publish it. We have now published it.

Q76 Mr Llwyd: I can say it has only recently come to light. It is only within the last few weeks anyway.

Dame Ursula Brennan: As I said, when you say “come to light”, we published it recently, because possibly people asked about it. The reason we had not published it before was that we said: “Here is a set of changes we want to make. This is the information that we have based it on.” We did not base it on the PA Consulting report so we did not publish it then.

Q77 Mr Llwyd: We are nit-picking here. We are spinning around a few words. It has only just been made public, hasn’t it?

Dame Ursula Brennan: That is correct, yes.

Q78 Mr Llwyd: Good; I am there now. The report concludes that only the top 25% of criminal law firms, in terms of profitability, can survive another 8.75% cut in fees. Furthermore, in its response to the recent consultation Otterburn questioned your interpretation of its report and the financial viability of the contracts for firms. Do you believe that in the long term the reforms will be sustainable?

Dame Ursula Brennan: Yes, we believe that in the long term the reforms will be sustainable. Otterburn were asked to do a piece of work as part of the modelling work that we did, and that was used by KPMG in their analysis. In addition to doing that work for us, Otterburn went on and made some other comments, about their opinions about legal aid and legal aid crime firms and so on. KPMG and the MOJ did not agree with that. We looked at the analysis that underpinned it and we did not think that it was justified. In other words, Otterburn did a piece of work that we asked them to do. They also went on and made a number of statements, as people are entitled to do, but we did not think those statements were underpinned by evidence. We worked with KPMG and we did our own analysis. Yes, we do think that the reforms will be sustainable.

Q79 Mr Llwyd: Do you think so across the piece—in rural areas as well, in other words? Have you thought about the rural/urban divide on this one?

Dame Ursula Brennan: Yes, indeed we have. We have done a lot of analysis around this. I recognise that there is a really difficult and contentious issue in relation to legal aid and to crime firms. The truth is that this is a really difficult market. Crime is falling. At the moment there is a supply of a large number of firms which, even when crime is falling, let alone the savings that we have to make, makes it difficult for firms to make the kind of profits that they were making in the past. I recognise how difficult this is for the firms concerned, but we have done analysis and we have looked at different types of area, rural and urban, and we believe that our proposals will be sustainable.

Q80 Mr Llwyd: You refer to profits made in the past. I am certainly not here as a trade union representative for lawyers, but they did not have a real terms increase in legal aid fees for about 10 years.

Dame Ursula Brennan: Indeed, I recognise that.

Q81 Mr Llwyd: There was not a nirvana; it was not a wonderful place to be. Most people I know who do legal aid work already do it as a vocation rather than a profit-making exercise.

Dame Ursula Brennan: All I can say is that we have had to look in a variety of places to make savings in this Department. One of the areas where we spend a lot of money is legal aid. We believe, tough though it is, that these reforms are viable going forwards. We have

had to make very tough savings in the public service part of our business, and I am afraid we have to look to our suppliers to do the same.

Q82 John McDonnell: On the PA Consulting report, how could that not be relevant to the decision that is being made? It clearly indicates that a number of firms will not survive and will go to the wall, so there will be a narrowing of the range of advice that could be provided. How could that not be relevant? Why did you take the decision only late in the day to publish that report, particularly in light of the fact that earlier in the year we had lawyers marching and protesting with effigies of the Secretary of State? There were then changes as a result of that and delays in implementation. There was then a court judgment about your refusal to release certain reports. Then you still sit on this one and only release it late in the day, when it is directly relevant to a decision-making process.

Chair: Do you have anything to add to your earlier answer?

Dame Ursula Brennan: I am afraid there probably isn't anything I can add. We have done lots of analysis at different times and in different ways. The analysis that led us to the conclusions that we reached was the analysis based on the work of Otterburn and KPMG.

Q83 John McDonnell: Were you deliberately refusing to look at the PA Consulting report?

Dame Ursula Brennan: No, it was not a matter of deliberately refusing to look at it. When you are deciding on a policy you can conduct lots of different analysis. In the end, the detailed analysis that we conducted around Otterburn and KPMG was the analysis that we used to reach that decision.

Q84 John McDonnell: But this is telling you directly that only the top 25% of criminal law firms can survive the cut in fees. Was that not relevant?

Chair: I think we have been around this course once already.

John McDonnell: It is just unbelievable.

Chair: Order.

Dame Ursula Brennan: There isn't anything further that I can add. The analysis we did more recently with Otterburn and KPMG is the analysis that we have used as the modelling for the changes.

Q85 John McDonnell: So you refused to take into account anything that contradicted your line of approach.

Dame Ursula Brennan: No. It is not a matter of refusing to take it into account. It is simply that we moved on and we did different analysis. The changes in legal aid that we are making now are based on the modelling—

Q86 John McDonnell: You did not like the answers it gave you.

Dame Ursula Brennan: That is not correct.

Chair: Order. Mr Llwyd.

Q87 Mr Llwyd: What is the current time scale for the commencement of the new crime duty contracts? If the risks as we perceive them actually bring forward advice deserts, will there be reconsideration in due course?

Dame Ursula Brennan: Sorry, could you repeat the last bit?

Q88 Mr Llwyd: The first bit was, what is the current time scale for the commencement of the new crime duty contracts? Secondly, we believe that there is a huge risk that there will be advice deserts, not least because of what PA Consulting and others say. If that happens, what contingency plans will you have?

Dame Ursula Brennan: I am trying to remind myself what the timing is for the launch of the crime competition. I do not want to tell you that off the top of my head because I am at risk of telling you the wrong answer. I simply cannot recall the precise timing of the next steps on that and I will have to write to you.

Q89 Chair: Could you let us have that as soon as you can?

Dame Ursula Brennan: Absolutely. In relation to the question of advice deserts, as it were, obviously one of the things that we do is analysis beforehand, and then we do monitoring afterwards. In relation to any kind of area where we are doing contracting, if we find that there is a problem in a particular part of the country, there are things we can do to address that. Sometimes that includes taking the contract off someone if the contract is not working. We have the Public Defender Service, which enables us, if necessary, to step into a breach in an area where a service is not being provided. There is a range of things that are open to us if we find that a problem is starting to occur in a particular area. The main thing we do is the analysis beforehand of the bids that people make to assure ourselves that the company that is bidding to take on the work is in a good state to be able to do it and to be able to do it sustainably. It is partly to enable an assurance that the market is sustainable that we have gone for this competition, which we expect to reduce the number of providers.

Q90 Chair: Will it not be necessary to have a very careful watch on the operation of contracts from the beginning because, in some cases, firms will have indicated that they will make a service available in some part of a very large geographical area but that promise has to be carried out for there to be any accessibility at all?

Dame Ursula Brennan: That is absolutely true. This is a service where, because of the way it operates, the Legal Aid Agency is in day-to-day contact with providers all the time. It is now and it will be in the future. Spotting whether there are emerging problems on that is something that the contract management team in the Legal Aid Agency will be able to do very swiftly. As I say, the bidders who are bidding for the contracts have to be able to say how they are going to be able to provide a service, and to demonstrate to us that they can do it in a sustainable way and what their approach is going to be to making that sustainable. Clearly if a contract commits to do something and then does not deliver, there are penalties and remedies available, as well as the ability for us to make alternative arrangements.

Q91 John Howell: At the time of the abolition of the Administrative Justice and Tribunals Council, one of the main concerns of the Committee was that the MOJ would no longer have access to suitably independent advice and user input in order to ensure that the administrative justice system continued to function effectively. Does the Administrative Justice Forum have a sufficiently independent and influential voice to fulfil this role?

Dame Ursula Brennan: The independence part is guaranteed by the independent chair, Jodi Berg, who is completely independent from us. The membership of the new Administrative Justice Forum goes across the range of people who have an interest in the system. One of the things that they have been doing is having round-table events, where they get people together and say, “What are the issues that you want us to address in the Administrative Justice Forum?” An example of something that came out of that was in relation to social security tribunals, where work is being done at the moment to try to improve the quality of the decision making that goes on in the Department for Work and Pensions by giving a more detailed reason for the judgment. We try to get a feedback loop so that, if the judge who is giving the decision gives reasons for the decision, the body that made the decision in the first place can learn from that and improve the quality of its decision making. That is an example of the kind of thing that the Administrative Justice Forum has been looking at—that concept of feedback mechanisms. They have been addressing a range of issues and signposting people so that they understand their way through the system more clearly.

Q92 John Howell: Are Ministers engaging fully with the AJF?

Dame Ursula Brennan: I am trying to see if I can tell you what ministerial engagement there has been with Jodi Berg herself. I would probably need to come back to you to say when she last met a Minister. Certainly we, at official level, are very close to the work of the Administrative Justice Forum, and we brief Ministers.

Jodi Berg met the Secretary of State when she was first appointed. Shailesh Vara is our Minister responsible for this area of business. He is shortly to meet Jodi Berg. He is the person who would expect to have occasional meetings to keep in touch with her on the progress she is making.

Q93 John Howell: I appreciate that you say the AJF is doing all this work, but are they being consulted on relevant policy and legislative proposals as standard?

Dame Ursula Brennan: In terms of formal consultation, the Administrative Justice Forum would be in the same position as others, except that they would have the advantage of having officials who actually attend and would be able to explain matters to them. I genuinely do not think that there is any problem about having a really good dialogue in the Administrative Justice Forum. As I say, the fact of these round tables bringing together people who have a real interest in this area of business does mean that it is something which is genuinely trying to raise the quality of the business that is done in this area.

Q94 John Howell: Does the AJF need more resources?

Dame Ursula Brennan: I am not aware that there is a problem about resources for the AJF. One of the things we attempt to do is to run all our bodies without extravagant resource. I absolutely have not heard any suggestion that their work is being impeded by a lack of resource.

Q95 John Howell: Does that extend to funds in order to commission research?

Dame Ursula Brennan: They are not, I think, a body that commissions research. As I said, what they have done—

Q96 John Howell: But should they?

Dame Ursula Brennan: The way that they are doing it is by getting together the people who have an interest in the area and identifying the issues. Effectively what we do is to say, “What are the issues that concern people about administrative justice?” Then it is a combination of the judiciary, HMCTS and policy who say, “What can we do about that?” That is why we are working our way through the list of things they have said they want to address—signposting people through the organisation, finding ways of making sure that people understand how they can get things resolved in a proportionate manner and trying to resolve disputes more quickly and so on. Jodi Berg is very focused on making the administrative justice system work better. To the best of my knowledge, she has a good relationship with the judiciary and with the officials who are supporting her on this.

Chair: Dame Ursula, Mr Spurr and Mr Watkins, thank you very much indeed for your help this morning.