



Justice Committee

Oral evidence: Ministry of Justice Report and Accounts 2014–15 and related matters, HC 416

Tuesday 13 October 2015

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Members present: Robert Neill (Chair), Richard Arkless, Alex Chalk, Alberto Costa, Philip Davies

Questions 1 - 145

Witnesses: *Witnesses:* **Richard Heaton**, Permanent Secretary, Ministry of Justice, **Ann Beasley**, Director General, Finance, Ministry of Justice, **Michael Spurr**, Chief Executive, National Offender Management Service, and **Natalie Ceeney**, Chief Executive, HM Courts and Tribunals Service, gave evidence.

Q1 Chair: Mr Heaton, welcome. It is the first time that you appear before the Committee as Permanent Secretary.

Richard Heaton: Before this Committee, that is right, yes.

Q2 Chair: Congratulations.

Richard Heaton: Thank you.

Q3 Chair: You are still First Parliamentary Counsel?

Richard Heaton: No, I moved on.

Q4 Chair: Okay. You have a number of members of your team with you. Do you want to introduce them and say anything by way of preamble?

Richard Heaton: On my left is Michael Spurr, who runs the National Offender Management Service. On my right is Ann Beasley, who is the Director General for Finance and Commercial. On my far right is Natalie Ceeney, who runs the Courts and Tribunals Service.

It is a great pleasure to be here. I am delighted to be heading up the Ministry of Justice at official level. It is a Department where I spent early chunks of my career. Justice and rule of law and access to justice are important things for me, as they are for my Secretary of State, so I look forward to this morning's engagement.

Q5 Chair: Before we ask any questions, let me start by declaring our interests as well and then you will know who the members present are. We are, I am sorry to say, a little bit thin in terms of members of the Committee. That is because all the Labour members have been appointed to various posts on their Front Bench and have had to withdraw from the Committee, and we have not yet had any appointed; so you do have the Conservative team mostly and Mr Arkless from the SNP. I, of course, ought to declare that I am a member of the Bar but not currently practising.

Alex Chalk: I am Alex Chalk. I am a practising member of the Bar.

Alberto Costa: I am a practising English and Scottish solicitor. I am a consultant solicitor to a London law firm and I am also a Scottish Notary Public. I would refer the Committee and its witnesses to my entry in the Register of Members' Financial Interests.

Richard Arkless: I would likewise refer the Committee to my entry in the Register of Financial Interests. I am a non-practising English and Welsh qualified solicitor and a non-practising Scottish solicitor and Scottish Notary Public.

Chair: And Mr Davies is not a lawyer.

Philip Davies: I am not a lawyer; I am a layman.

Q6 Chair: Having welcomed all of you, can you start by just talking us through the process through which you are supporting the ministerial team? You referred, Mr Heaton, to some of the issues that the Secretary of State wished to take forward; and he has appeared before us and set out, very clearly I thought, his sense of direction for the Department. For example, with regard to strategic priorities, can you tell us when we are likely to see publication of the strategic priorities and/or business plan for, let's say, the coming Parliament? Are you going to be adjusting any of the priorities from the previous ministerial team and so forth?

Richard Heaton: As you would expect, we take our strategic cue from the Secretary of State. The Secretary of State's priorities, as he explained to the Committee, are radically rethinking how prisons work, which includes pushing power and accountability down to governors, and it includes putting a strong emphasis on rehabilitation and education in prisons. So prisons are probably his number one thing.

Number one equal is transforming the justice system. The Secretary of State sees, as we see, that the courts and tribunals system still contains the sorts of delays and paper and confusion that wastes public money and infuriates litigants and users of that service. So we want to radically reform courts and tribunals.

We will be introducing a consultation paper on the British Bill of Rights, rethinking the human rights settlement. The Secretary of State has also commissioned us to rethink how the Department looks; how we become a smaller, differently shaped, more nimble Department, better at data, better at commissioning services, less monolithic.

All this stuff comes together at the same time as the spending round, so we are doing a lot of work with the Secretary of State and with his advisers on how we square those things, how we can afford a Department that delivers on his objectives, what devolution on the

prison side looks like, and what our settlement will be in terms of capital and spend from the Treasury in the spending round. All that comes together towards the end of November when the spending round is announced, and that is when, I think, the Committee could expect some strategic publications or announcements from the Department on how we plan to go forward.

Q7 Chair: Going back to my old Department, when I was a Minister we published a business plan as such, as well as a set of strategic priorities. Is that what you are minded to be doing?

Richard Heaton: There will be some sort of comprehensive or universal or single business plan, yes, but I don't think that will happen before the conclusion of the spending round because it would not make much sense.

Q8 Chair: But you would anticipate, once you have the spending round, you would want to encapsulate that and your priorities into it.

Richard Heaton: Absolutely. Apart from anything else, the Department needs to know which direction it is going in and we need to know how people's objectives fit into the overall objectives, so yes.

Q9 Chair: The coalition Government put into place some fairly specific strategic planning processes across Whitehall and various Departments. Are you planning to continue with the same processes at the coalface or are you going to make any changes to that?

Richard Heaton: The current Administration talks of a single departmental plan from each Department, which incorporates both manifesto commitments and what the Department has the money to do from the spending round. That is the single document that all Departments are enjoined to produce from the Cabinet Office, so it is not quite the same as under the coalition Government—it is an evolution.

Q10 Chair: Okay; you are going to move forward. The other thing I am interested in is that there has already been some change in what your Department does and does not do because you have shed some responsibility.

Richard Heaton: We did. The Prime Minister has decided that data protection, the Information Commissioner and responsibility for the National Archives should go to DCMS, if that is what you are referring to.

Chair: Yes.

Richard Heaton: Freedom of information, as a policy subject, goes to the Cabinet Office, as does responsibility for records management across Government.

Q11 Chair: That is exactly right. Is that the extent of changes that you anticipate or have you been asked to work on anything else?

Richard Heaton: I don't think I am anticipating anything else. That is the change this time around.

Q12 Chair: In particular, no changes are proposed to the Crown Dependencies, for example, and their big issues.

Richard Heaton: Not that I have been part of any conversation on, no.

Chair: Okay, good. They would probably be pleased to hear that. Let me move on to the expenditure issues.

Q13 Alex Chalk: Good morning. I wanted to ask about the shape of expenditure. Looking at the last year—it might be over-simplistic but bear with me for a second—a lot of the pain that was taken in terms of expenditure cuts was felt by legal aid. It was something in the order of a 12% cut, but in that context there were some parts of the Department where you see increased spending, certainly sometimes against possibly a lower target. The Criminal Injuries Compensation Authority overspent against its budget by £60 million—31%—in 2014-15. That is in the context of legal aid having been cut really very significantly. How can we justify an overspend on CICA?

Richard Heaton: May I ask my finance colleague to take that question?

Ann Beasley: Strictly speaking, in the end nobody overspent, because within the rules we are allowed to vire money.

Alex Chalk: You are allowed to—?

Ann Beasley: We are allowed to vire money between the different businesses.

Q14 Alex Chalk: What is that word—vire money?

Ann Beasley: Vire money. Against the supplementary estimates you are right, there was an additional expenditure on CICA, but nobody was technically overspent at the end of the year because we were able to move money around within the rules that we have.

In the case of the Criminal Injuries Compensation Authority, the amount of money that we spend each year obviously is a product of the number of people who make claims. It is demand-led—the number of people who make claims and the tariffs that apply. CICA has increased its productivity over the years and has been able to process more cases than previously, and we have taken the opportunities, over a number of years now, to reduce the backlog of cases. When money was available within the Department, we were able to reallocate it to reduce the backlog of cases. So at the end of the year the backlog of cases was some 4,000 or 5,000 less than it had been at the beginning, because these were people who were in live processing, their cases got to the end where they were determined and we were then able to pay them. It was not done without authority; it was done as part of a policy over the last few years to bring down the backlog of cases within the criminal injuries scheme.

Q15 Chair: A virement, of course, is an in-year movement of money from one spending head to another.

Ann Beasley: Yes, sorry.

Q16 Alex Chalk: How can we be confident that if there was a 31% overspend last year, the Department is now on top of that and it is not going to be spiralling out of control in years to come?

Ann Beasley: Because we are dealing with the backlog of cases. The criminal injuries scheme is now funded for the kind of steady state of cases, but over the last few years we have been dealing with a backlog and trying to reduce it. We are now at the point where they are funded for pretty much the amount of cases that will come in in the year and go out at the end of the year.

Q17 Alex Chalk: You say it is under control now.

Ann Beasley: Yes.

Q18 Alex Chalk: Let us move on to another area of overspend. Policy and corporate services spending increased by 18%. That is £139 million in one year. How can you justify that?

Ann Beasley: Corporate services are running a number of change programmes. For example, we have change programmes around the way we run our IT and technology. In the years in which you introduce the change you always have additional cost because you have to fund the costs of the programme and transition costs. So, effectively, you have dual running in a year. As you are trying to move to an improved system, that always costs you more in the years in which you do it.

Q19 Alex Chalk: What has it principally been spent on then—to improve the system and save costs in the long run?

Ann Beasley: Yes. So, for example, if we take technology, we are letting the contracts in a different way. Previously, we had very large contracts by area of business. For example, NOMS had its own IT contracts. We are moving to a contracting where we let it by type of expenditure—for example, data centres or hosting—to take advantage of the way the technology market is set up. That, when it is finally introduced, will significantly reduce the overall running costs of technology across the estate but, in the years in which you do it, it costs you more to introduce the change.

Q20 Alex Chalk: You say it has not been finally introduced.

Richard Heaton: No.

Q21 Alex Chalk: It increased by 18% in one year. What is it going to be like for next year?

Ann Beasley: We are still implementing it. Because it is a massive programme, it takes two or three years to implement, but once it is implemented it will significantly reduce the running costs. Over the life of the programme it will save us money.

Q22 Alex Chalk: When do we start to gain the benefit?

Ann Beasley: We are already gaining some benefits from it because some of the changes have been introduced, but we have not reached the tipping point where the additional costs in-year outweigh the additional benefits. We are probably 18 months away from that tipping point.

Q23 Alex Chalk: There is another area where expenditure has gone up in the Department as legal aid expenditure has come down. Administration expenditure in the Department is

up by £21 million to £556 million. Why have admin costs gone up as well?

Ann Beasley: I don't know the specific detail on the £21 million. Quite often they go up because we take on additional responsibilities. For example, we took on an additional body last year; we took on Cafcass, which is the children and families social services. That was about £120 million. That probably had £20 million-worth of administration costs within it. I can get back to you on the specific detail.

Q24 Alex Chalk: Could you? That would be really helpful. From my point of view, I am concerned to see legal aid taking a big hit of 12% and yet there are these other areas which are going up—CICA, admin and then IT.

Richard Heaton: I hope I can confidently say—so, colleagues, please correct me if I am wrong—that, as in the Department I have come from, there is no standing function of the bureaucracy that is not shrinking, because that is the pressure we have been under for four years. I would be very surprised if the numbers showed that pure admin, like for like, is going up. I would expect, and my experience is, that it is coming down relentlessly, but I don't know if that is Michael or Natalie's experience.

Michael Spurr: If you take the National Offender Management Service, we have reduced costs by 24% over the last Parliament—£898 million savings. Part of that included significant reductions to our above prison or probation trust and now probation delivery expenditure: £92 million saving, 37% reduction in the admin cost, 42% in headcount above prisons or operational services. That is just one example in one part of the Department of taking that type of cost out.

Q25 Alex Chalk: As I say, the position, as I understand it, is that, whereas over the last Parliament administration spending fell from £656 million in 2011-12 to £535 million in 2013-14, since then it has started to tick up again, but I would welcome any clarification on that.

Richard Heaton: We will write to you on that.

Alex Chalk: Please do; thank you.

Q26 Chair: You used a virement to increase spending to CICA. Where was the money vired from? Would there otherwise have been some excess in the budget if that virement had not been made?

Ann Beasley: Quite often, for some expenditure, we hold money in pots at the centre. For example, we had some modernisation funding that was there to support change programmes. We held that at the centre even though we allocate—we said to people they had permission to spend some money. For example, in Michael's case, he was allocated some money for the changes resulting from the probation changes, and at the end of the year we moved that from the central pot into people's budgets. We also had, during the year, what is called a departmental unallocated provision—effectively a contingency. Obviously, we know we can allocate that out at the end of the year. Yes, there were some underspends on some budgets that we were able to utilise and spend by moving it. For example, on the criminal injuries compensation, it is in the

interests of victims to pay their cases as soon as we can, so if we do have an underspend we have taken the opportunity to do that.

Q27 Chair: So you would prioritise the CICA, in effect, for virement, so as to advantage the victim.

Ann Beasley: If we have an underspend, we obviously look at how we are best able to deploy it, and that seemed like a very worthy cause.

Q28 Chair: I understand that and I am sympathetic to ensuring compensation for victims. My only concern, going back to my history both in Government and in local government, was that too ready a use of virements sometimes can breed a culture of fairly lax financial discipline in the people who think that they will be regular recipients of a virement. How do you prevent that?

Richard Heaton: If I can say so, Chair, I agree with that. The current position in-year is challenging, so we are under pressure. I have discouraged virement as a habitual thing, without authority either from me or from Ann, because, exactly as you say, if people vire—to use that terrible word—all the time there is a kind of cultural slackness, so I agree in principle.

Q29 Alberto Costa: Good morning. Mention was made of a reduction in headcount. My question is a general one about staff. Has there been a reduction in headcount generally in respect of permanent members of staff, and has there been an increase in temporary staff, such as agency staff? How are those figures analysed?

Richard Heaton: I am going to start without any figures, just on the balance. Yes, I would expect a reduction in staff of all categories, but the temporary agency side of things has not gone away; we employ a lot of agency staff and the numbers show that. I can expect that to continue. The reason is because there are a number of areas where we do not have immediately the capability to do things we need to do very badly. One of them is building digital services, technology and contract management. This is a civil service story; we do not yet have the capability in-house to do those things without the help of external support, so that is why you find in the numbers quite a large reliance on external contractors. I wish it were otherwise, but I would rather that than have no in-house capability at all and simply rely on external contracted parties—companies, for example.

Q30 Alberto Costa: Can I have clarity? When you say there has been a reduction in headcount, you are excluding temporary staff. Do you mean permanent staff?

Richard Heaton: Okay. Now I am on the numbers. Can you help me on the numbers?

Ann Beasley: At the end of 2013-14 we had just over 82,000 permanent staff, and at the end of 2014-15 we had just over 79,000 staff, so there was a reduction of the order of about 3,000 permanent staff. That was not wholly replaced by temporary staff.

Q31 Alberto Costa: What sort of increase of temporary staff had we seen during the same period?

Ann Beasley: At the end of March 2015 we had just over 4,000 agency workers and interims, most of those being agency workers.

Q32 Alberto Costa: How many temporary staff did you have in the year before that?

Ann Beasley: A not dissimilar number, but I don't have that figure.

Q33 Alberto Costa: Could you provide that figure, please?

Ann Beasley: Certainly.

Q34 Alberto Costa: I should declare that I used to be an employee of the Treasury Solicitor's Department many years ago and it was often the case that the Government talked about reducing headcount while at the same time increasing temporary staff, and it is something I personally witnessed.

Michael Spurr: If we look at the Department in terms of employing staff, the NOMS agency employs 43,000 people—prison and probation. On those we directly employ, separating probation out because they were previously trust employees and they have now come into the agency, so discounting those numbers, I have reduced my headcount by 11,000 people since 2010. That is a real permanent staff reduction—a 24% reduction in headcount. That has not been replaced by agency. We have always had some agency at a relatively low level to support services and administrative grade service, but we do not have agency covering prison officer posts, for example. Those are real headcount reductions that the Department has taken.

Natalie Ceeney: For the courts, which is the second largest area, in 2010 we had 22,000 staff. We are now down to 17,000. That includes agency. Because we know when we digitise many of our services that we won't need as many people, we have been very deliberately recruiting, on pretty low salaries, agency staff where we know that we cannot offer permanent jobs. The total number of staff has gone down from, including agency, 22,000 to 17,000. I do employ 900 agency staff because I think it is a bit dishonest to give permanent jobs when we know that when we introduce digital services those jobs won't exist, and it doesn't cost us any more to do so.

Q35 Chair: I am just interested, against those answers, which I understand, if the number of agency and consultant staff has remained broadly the same from one year to another and you are generally reducing headcount, it is a little surprising, if the numbers are the same, that the spend has gone up by 26% on consultants and some 23% on temporary staff. With regard to the ones you have, if the numbers are about the same, they are costing quite a lot more in the course of one year, are they not?

Ann Beasley: I don't recognise the specific figure.

Q36 Chair: Total consultancy spending in the Department went up from £27 million in 2013-14 to £34 million in 2014-15. That is a 26% increase in that year. On temporary staff, the spend was up from £134 million to £165 million. That is £31 million—a 23% increase. There had been a 107% increase in consultancy the year before. It sounds as if the consultants have got much more expensive if we are having broadly the same number.

Richard Heaton: We think there may be a particular bulge because of the Transforming Rehabilitation programme, which was a large contracting-out requiring contract managers. We think there was a bulge of specialist interim employment to help with that.

Michael Spurr: I was on the TR programme board. There was certainly a significant amount of additional expenditure last year on specific services: legal services, for example; a whole range of consultancy support services for what was a major restructuring of the probation service; the creation of 21 companies; and changing the whole way that pensions operated. That required a significant amount of bought-in services. I don't have the full detail of that, but I know it certainly increased expenditure for that particular year.

Chair: In fairness, you do reference in the annual report the increased pressure on the Transforming Justice programme, but I wonder perhaps, if not today—I appreciate you won't have everything in front of you—you could come back to us with a little more detail, perhaps confirming or otherwise your suspicion about that statement.

Q37 Alberto Costa: Again, contrasting with private business, temporary staff are just that: they are temporary staff. Often, my experience of Government has been that people are classed as temporary staff or agency staff, but in fact they have been working quite a number of years. What I would appreciate, Chair, is statistics for how many of your temporary staff have been with the MOJ for two or more years.

Richard Heaton: We can provide that.

Alberto Costa: Thank you.

Q38 Chair: I would like to move on to another bit of the expenditure, which is the biggest element. It is the outturn expenditure 2014-15 on prisons in particular. We have the background detail, but again we have a situation where 2014-15 shows a £65 million overspend against budget by NOMS.

Michael Spurr: There was not an overspend at all against my budget. As Ann was explaining, there was some expenditure largely to do with the Transforming Rehabilitation programme. The bulk of that expenditure is restructure expenditure that went to the community rehabilitation companies. It was held in the centre of the Department for the duration of the programme, but then, because the community rehabilitation companies were being effectively run through the agency, the expenditure was accounted for within my accounts and that money was transferred from the centre to my accounts; but I did not overspend the budget.

Q39 Richard Arkless: Thank you, Chair; thank you, Mr Spurr. You have helpfully indicated that there were 11,000 posts being reduced from NOMS over the last five years, and we have discussed this overspend.

Michael Spurr: It was not an overspend; it was an actual spend.

Q40 Richard Arkless: We have discussed the reasons why that came to pass. From what you have said, does that mean we cannot live within our budget this year? Is it possible that you can do it next year on the basis of the explanation of the apparent overspend—underspend?

Michael Spurr: That specific transfer was for the TR programme specifically. The money was there in the centre. It was expended through the agency. The money was therefore transferred from the Department to the agency and that is what is shown in the accounts. In terms of the overall position, we did come within budget, last year, from the NOMS agency. That included £149 million of savings achieved last year, which was the final part, the £898 savings we had saved over the last spending review. Effectively, that has been achieved through a range of different things. Primarily, we have reduced the number of prisons we run—16 fewer prisons. We have significantly changed the way we operate prisons, with a benchmarking programme that has ensured that the most efficient operating models we found in the best prisons were applied across all prisons and reduced our total number of staff required across the prison estate. We have also undertaken a range of competition services which have reduced costs, including outsourcing some of our facilities management and some transfers of prisons to the private sector. We reduced our headquarters costs in the way I described earlier; we took £92 million out. We made some initial savings on probation in the first two years of the spending review, but then the money in probation was held and reinvested to expand services under the Transforming Rehabilitation reforms, so we achieved those savings.

This year is very tough. We have allocated operational budgets to prisons that are manageable but tight, and the prison population is about 500 higher than it was this time last year, so that continues to be an issue for us. We are managing but it is against pressures this year that will be very difficult, and we are in negotiation with the Treasury and others around what the demand pressures are that we are facing. That is a constant issue always within our world because we are always, to some degree, dependent on the demand that comes before us. As you will know and as has been recorded—I think I have had conversations with your predecessor Committee—the number of sex offenders coming into prison, for example, was up about 700 in the last 12 months. That was one of the drivers for the increase in the prison population and one we had not anticipated prior to the serious issues that became public and led to a greater number of sex offenders going through the court and coming into custody. So that has been a big factor in what we have been able to do. As I say, to a degree we are demand-led, inevitably.

Q41 Richard Arkless: Thank you. That is very helpful and it helps the Committee contextualise that £65 million figure; so I am very grateful. But you do allude to increased prison numbers and some of them make quite scary reading, particularly Leeds where it is 180% and Swansea where it is 177%. The overcrowding ratio is slightly less for public and private sector prisons, but in your view, how are the increased prison numbers contributing to what we believe are higher suicide rates among prisoners?

Michael Spurr: Crowding levels—overcrowding—have been largely about the same level for about the last 10 years; about 25% of prisoners are held in crowded conditions in a cell designed for one with two people, or in a cell designed for two with three people. That is what we classify as crowded conditions. The overall levels have been much the same and, regrettably, we have not been able to reduce those levels. One of the things I said in the last Parliament was that, given that size of financial challenge, being able to reduce the levels of crowding with that amount of financial challenge was not going to be possible.

To reduce it completely would take about £900 million to provide the places to be able to remove people from crowded conditions.

In terms of suicides, the rate of suicides is higher than anybody would want. It is currently about 0.9 per 1,000 prisoners, or 90 per 100,000. We had the rate, at one point, at about 0.7 and it has been as high as 1.2 in the past, so it is not the worst level but it is higher than any of us would want. As the Prisons and Probation Ombudsman, who investigates every death in custody, himself has said, there is no one clear explanation as to why we had a rise in suicides, particularly from 2013 onwards. The suicides have occurred in a whole range of different prisons, public and private, from those that are crowded to those that are not crowded, from prisons that have had good inspection reports to prisons that have had poor inspection reports.

There are a significant number of individual factors that play in. We have been working very hard to try and understand what it is that particularly had led to that increase post-2013 and we can find no common feature. But there are some key things we do know; we know that we have to put a lot of effort when people come into custody because early days of custody remain a very high risk factor and we put a lot of effort into trying to work with people in those days. We have, though, a range of other risk factors; people who kill themselves in prison generally are older than people appreciate. The largest number that kill themselves are in their 30s to 40s and the second highest number are 40s to 50s. People tend to think about it being younger. It can be with longer-sentence prisoners—people who have just come to a point in their sentence where they feel they do not want to go on any further. So there are a range of factors.

I do not think crowding itself has been a reason why the increase incurred. It is true, though, that over the last few years—again, I have said this to your predecessor Committee and it came out in the Report that your predecessor Committee did and in the Chief Inspector's report last year—given the range of things that we have had to manage over recent years, there has been a lot of pressure on prisons and the climate has been difficult for everybody, staff and prisoners. That may have been a factor. Staff have been having to manage a lot of change. Again, that is more stable than it was, but it is undoubtedly the case that we have been through a very big change period over the last few years, which may have had an impact.

Richard Arkless: Thank you; that is very helpful.

Richard Heaton: May I come in here? First of all, as the Committee will know, there was a report by Lord Harris of Haringey and you should expect a response to that soon. We are looking at that.

Deaths in custody, deaths in prison, are an appalling thing to preside over. I pay tribute to those of Michael's staff whose care and watchfulness prevent suicide. I guess what Michael is describing is a story which is patchy for reasons we are struggling to understand, but I have seen at first hand the quality of the members of staff whose, as I say, care and watchfulness prevent some of this stuff happening. It is to do with the human qualities of staffing as well as anything else.

Q42 Richard Arkless: I think everybody in the Committee would echo those thoughts. Given the cuts and the increasing pressure they are under, it is a testament to what they are doing. One thing that I have noticed is that the Ministry of Defence publishes the number of prisoners on the website rather than in the annual reports. Why is it that the number of prisoners is not seen as one of the key measures by the Ministry of Justice, or would that be an incorrect inference to draw from that publication?

Richard Heaton: A key measure?

Richard Arkless: Yes. They are not published in the annual report, so it appears as if the number of prisoners is not a key measure for the Ministry of Justice. Is it a case of, “Look, we can’t do anything about the numbers that are coming in and there is no point in using that as a benchmark for us”? Why is it not seen? Why are the numbers of prisoners not seen as a key benchmark for the Ministry of Justice?

Richard Heaton: Number of prisoners or number of—

Richard Arkless: Number of prisoners.

Michael Spurr: We publish weekly the number of prisoners and break the number of prisoners down by types and sentence length and so on. It has never been a measure in a sense for the Ministry because the determinant of the number of prisoners is clearly the courts and it is an issue for the courts how many people they send. So we absolutely publish the number of prisoners. We forecast what we think will be the number of prisoners going forward. Those are published forecast projections, given the sentencing framework and trends, of what we think the prison population will be, so it is clearly there as management information that is published. In terms of a measure, it cannot be a measure, for example, for us. We cannot affect, in total, the number of people coming through the courts. That is for others.

Q43 Richard Arkless: I take that point. Why are private sector prisons costing more than public sector prisons at the moment?

Michael Spurr: They don’t in that sense. It depends what prison it is, what type it is. There is variation in prison costs, in both public and private prison costs. Some of the earlier private sector prisons cost more because when those contracts were let, what was expected was to maximise regime and that was paid for in the contract. They were let as, I guess, exemplars of what a really good prison could be and the payments that were made for those contracts in the 1990s reflected that. Later prisons that have been sourced from the private sector had much lower costs than those early contracts. We have reduced those early contract costs, I might add, but they are still higher than some public sector prisons, but equally, some of the newer contracts with private prisons are lower. It depends on the type of population, the type of regime and function we have asked the prison to deliver. You have to compare like with like. I would say at the moment that in terms of running costs there is very little difference now between public and private prisons. One of the ways that we have taken cost out of the public sector is to use, effectively, the outcome of competition to benchmark what would be effective operating costs for all areas of work within prisons and ensure that prisons in the public sector are operating to those efficient operating costs. So there is little difference now, but you will see differences in contracts because they were let at different times and we have bought different things.

Richard Arkless: Thank you, Mr Spurr. I am very grateful.

Q44 Alex Chalk: Going back to the issue of overcrowding and picking up a point that my colleague mentioned, some prisons seem to be bearing a disproportionate load in terms of the overcrowding. You mentioned Leeds, which is running at 180% of capacity, and Swansea at 177%. Why is the load not spread more evenly across the prison estate?

Michael Spurr: The operational capacity of individual prisons—the number of prisoners they can manage safely—is determined on an individual basis by a process where the deputy director responsible for prisons in that region, with the governor, assesses how many prisoners the prison can safely hold against the regime that it is operating with. It is the case that most local prisons have higher rates of crowding. That is because they tend to hold, or they do hold, people who are produced for court, and they have to be able to hold those coming from court. They tend to hold people for shorter periods or on remand, and then people move out to training prisons where, often, the cells may be smaller, where the regime can be fuller and where the crowding has to reflect the different type of facility.

If I give an example of it, if you took cells in Leeds, all of those cells would be able to hold two prisoners, but every cell will not hold two prisoners. A decision will have been made against the regime that is available at Leeds about what can be held safely. In another prison, Whatton, the cells are too small to put two prisoners in a cell so you cannot crowd those cells. They have to be single cells. That is the type of difference that we would be looking at. Most local prisons will have two people in a cell. Many of those cells were designed for one. That reflects why it is different, but each one is looked at individually and the overall rate of crowding is constantly reviewed to make sure that we can manage with the right level of resourcing to manage the number of prisoners in a particular prison.

Q45 Chair: Given that the Secretary of State has indicated that he wishes to devolve a lot more power to governors, measuring the effectiveness of individual prisons is surely more important now. Therefore, what steps will you be putting in place precisely to measure the effectiveness of individual prisons so that you can benchmark?

Michael Spurr: We are working that through with the Secretary of State in detail at the moment and of course that is really important. There are some difficulties with measures. The ultimate measure for all of us is that when people come to prison they serve their sentence, they go out and they are less likely to or do not commit crime; that is the ideal that we want to achieve. Being able to measure an individual prison against a reoffending rate is problematic because a large number of prisoners who come through the system serve relatively short times in prison. The prison system is made up, at any one time, with a large number of people serving long sentences—57% of the prison population is serving more than four years—but actually the throughput of people who come in and out of prison serve relatively short periods. They are serving sentences often of less than two years, many for less than 12 months, and that means time in custody of a matter of months rather than years. Therefore, many of them will spend more time in the community than they will in prison. Under Transforming Rehabilitation reforms, for example, every person who gets a sentence under 12 months will spend a matter of weeks in custody but then have 12 months under supervision in the community. Their supervision in the community will be managed by a community rehabilitation company or by the National Probation Service. So prison is an important part of their sentence but not the whole part.

We are looking, therefore, at other measures than just reoffending as a means of being able to demonstrate whether prisons are effective. The Secretary of State challenged us, rightly, about education levels, for example. Can we demonstrate value added by the time we have somebody in prison? Is that a measure that we can take? We are looking at that as an option. We are looking at other options to be able to demonstrate progress for an individual through a prison and ways in which we can incentivise and ensure that a governor is held to account for how they support and manage an offender during the time they have with them. But, for the reason I have just said, it is not straightforward and we are in detailed work to think about what are better ways to be able to measure that.

Q46 Chair: I understand that. I am sure we will want to revisit it in due course. You bring me neatly on to the section of the annual report about the Transforming Rehabilitation programme. I will quote what it says in the annual report. It says that the Transforming Rehabilitation programme “was working broadly satisfactorily, but with the need for some further refinement in continuing transition to steady state.” Can somebody please put that in English for me?

Michael Spurr: It is a huge change programme that we have just brought into implementation. We have completely reconfigured how probation is delivered in the community. The creation of 21 new companies, the creation of a National Probation Service, has gone pretty well, but anybody who manages any scale of change like that would recognise that you don’t get everything working perfectly on day one or, indeed, in week one or two or three. You have to look at how it works in practice and then make sensible adjustment.

Let me give you some examples of the things that we are having to do. We have created one National Probation Service, but we had previously 35 different probation trusts. Each of them had their own operating practices, so you have a wide variation of operating practice across the country. Each of them had their own terms and conditions, so there were 35 different sets of terms and conditions for staff. Not all of that works well together and we are looking to bring all that into a much more sensible co-ordinated sense.

For the companies, they themselves are going through those types of changes because they want to change the way services are delivered. Many of them, for example, in their bids, wanted to put much more emphasis on mentoring and outside voluntary sector, third sector support and change the way that services were delivered for offenders. They made that clear in their bids, but there is now a process where we are putting that into place, which means changing overstaffing, and that needs to take place.

Chair: Okay.

Michael Spurr: A lot of the join-up between the companies and the National Probation Service, which we had worked through in theory, is now being implemented in practice, and you need to make adjustments, for example, to how we are allocating offenders from court to the various companies or to the NPS. That is work in progress because the contracts only came out in February, so we are only a few months into a major change that is taking place.

Q47 Chair: Put in that way, it makes perfectly good sense, Mr Spurr. You don't have to write the annual report, but a lot of the readers of the annual report do not get the opportunity to ask for the elaboration and explanation that we have, so maybe that is just something for the future in terms of the way it is put together.

Richard Heaton: Next year there will be more plain English.

Q48 Chair: I am sure you are right. The other thing I was going to raise was a quote from the report: "there are ongoing operational and financial risks around volumes of cases allocated to providers, quality and levels of service delivery." What is the nature of those ongoing risks?

Michael Spurr: Inevitably, again, when we were preparing the reforms, we took a whole load of analytical data about what the case mix had been of probation cases in the past. We were alert to the fact that, of course, that can change. We made that very clear to the companies who were bidding to run the services and we built into the contract mechanisms for adjusting volumes if there were changes. That actually has come to pass. In the way that I have just described earlier about prisons, you have a similar impact on community cases. In reality, what has happened since the original bids came in is that, effectively, the number of cases that have been going to the community rehabilitation companies is below that that was originally modelled and the number of cases coming to the National Probation Service is slightly higher. That reflects them taking more serious cases coming through the courts in the way that I have described. All sex offenders, for example, will go to the National Probation Service,¹ and that has been a significant area of increase. There are adjustment mechanisms in the contract to be able to address that and that is what we are doing.

Q49 Chair: That is helpful. I have just had a very helpful response from Mr Selous, your Minister, to some of the issues around the Doncaster pilot, on which we will be reporting to the Committee in detail next week, but can you help me as to whether or not you have negotiated as yet any modifications to the payment-by-results mechanisms in terms of the learning from Doncaster and Peterborough?

Michael Spurr: We have not changed any of the contract payment-by-results mechanisms at this point. We are only a few months into the contract so I would not expect to have.

Q50 Chair: The payment will be, I think, 17, something like that.

Michael Spurr: Yes, that is right.

Chair: Okay.

Ann Beasley: Albeit the learning from Doncaster and Peterborough did inform how we developed the payment-by-results mechanisms for the Transforming Rehabilitation programme.

¹ Note by witness: The vast majority of cases involving a sexual offence are retained by the NPS on grounds of either risk or MAPPA status. There are however circumstances in which a case involves a sexual offence that is not MAPPA eligible and where the offender has been assessed as posing a lower risk of harm that the case may be assigned to the CRC.

Q51 Chair: Perhaps the central thing then is that once we have seen some of the payments and results we can come back. You have obviously made some forecasts as to whether or not the proportion of payment by results is going to be enough of an incentive to encourage innovation. Is there any learning on that so far? Are there any indications?

Michael Spurr: There is certainly innovation. There was innovation in the bids and that is now being put into place. I guess the test will be whether or not the different delivery models that a number of the private sector and third sector partnership organisations bring will be successful, so that is what we won't know until 2017, when we will get the data about whether or not reoffending rates have improved. I have no doubt at all that they are undoubtedly bringing different models. How they are using their staff is different from the way the probation trusts used their staff previously and they are certainly operating with a wider range of third sector partners.

Q52 Chair: One of the models, Sodexo, replaced about 700 probation staff with electronic kiosks, which may or may not work. I am open-minded about that, but was that something that you were specifically aware of when you approved their bid?

Michael Spurr: I don't think it is quite like that, if I may say so, Chair.

Q53 Chair: You tell us how it is, then.

Michael Spurr: Sodexo are looking at and are in consultation with their staff and trade unions about reducing the total number of probation officers, but they are looking to employ a range of different providers to support the work. They are in partnership, for example, with NACRO and are looking for a good deal of work to be done by other providers, not just by probation staff. As part of their bid, they did indicate that they would want to be looking at how they could use technology. They have not deployed that yet, but the link that says it is new technology, you are linked to a call centre and that replaces staff is just not fair or right.

Chair: It is helpful to have that context. It is one of those things where it is useful to get that additional information. I want to move on now to the expenditure plans going forward, so 2015-16 and future years where, as you said, there are ongoing pressures, and I understand that. Mr Costa would like to ask a question on that.

Q54 Alberto Costa: How does the Department intend to achieve its very challenging target of reducing expenditure on policy and corporate services spend by 40%, or £359 million, in one year?

Richard Heaton: We are discussing our spending plans line by line with the Treasury, as you know, as all Departments are. We have set ourselves and the Secretary of State has set us a very challenging target, picking up the theme of earlier questions, which cuts headquarters staff, administration costs and the costs of bureaucracy. We are confident that we can achieve really substantial savings by doing peripheral work less, by having fewer standing armies, by better ways of working, by using outside help where appropriate if that enables us to stand down functions, by looking at where we are based and the technology we use and how we can use less office space—all the things you would expect. It is a very challenging target. We have not inked in the final details of the plan, but, as

you would expect, we want to take costs out of the centre, allowing us to put our resources in the front line and to deliver public services.

Q55 Alberto Costa: When do you think you will be in a position to have inked in the plan, as you put it?

Richard Heaton: We will have the parameters of our spending on 28 November when the Chancellor of the Exchequer announces the spending round results. By then, we need to know how we are going to live within our means over the spending period. I expect that there will be some further planning—some granular planning—to be done in the weeks after that, before we know exactly how years three and four are going to be reached, but by then I would expect to have a pretty good idea of how we are going to meet years one and two. Ann, do you have anything to add on that?

Ann Beasley: I assume you are looking at the table that looks at the plans for 2015-16. Under the line of the policy group, which is the first line, which is reduced by about £25 million, previously, in 2014-15, that included the Transforming Rehabilitation programme, which we would not run from the Justice group in the current year. That is why that specific change is there.

Richard Heaton: That is an adjustment to the baseline rather than any savings.

Ann Beasley: Exactly. Then, obviously, as Richard was saying, going forward, we need to be ambitious for how we will actually take this out, but those plans we are working through at the minute. That is why that specific plan is changed.

Richard Heaton: I beg your pardon. That is an adjustment of the baseline reflecting our saving ambition.

Q56 Alex Chalk: I am just interested to get an idea of the big ticket items that you think are going to make that up. You referred to standing armies. I am not quite sure I understood what that meant. Could you help us with what the key targets are?

Richard Heaton: I am slightly caricaturing, but if you have a group of people doing a function which is of low political importance and they maintain it, then you need to ask yourself whether that can be done by wrapping that function up into a larger team and deleting the people whose time is devoted to doing a subject that receives less political attention than other priorities. That is what I meant by standing armies. It is not a big feature. Big ticket items would be taking money out of our technology services, for example, finding cheaper ways of running IT and, as Ann described earlier, running IT that takes advantage of the modern market, say, of spending less money on big clunky services that do not work and instead buying services that are more suitable to how users use technology these days; so taking money out of technology; taking money out of office space; removing ourselves from expensive buildings and Government property; greater use of digital and smarter contracting. All the techniques have been pioneered in this Department but also from the centre over the last Parliament. Those are all techniques we will be using to further cut costs of—

Q57 Alex Chalk: You have not mentioned headcounts.

Richard Heaton: Absolutely there will be headcount reductions. There are bound to be.

Q58 Alberto Costa: Just taking that forward, there are going to be reductions of 10% in the resource DEL budget. Why is all of this coming out of front-line services and not administrative budgets?

Ann Beasley: The spending review settlement for the current financial year was a 10% reduction. Some of that we will recover through increased income. You will be aware that we have increased some fees in several cases. So some of it will be made up through income. Some of it is ongoing change programmes that will continue to deliver savings, so some of it will include the last implementations of legal aid changes and things like that. Some of it is a continuation of the programme that Michael talked about—benchmarking—where we have reduced the cost of delivering the service in prisons. That has an impact and continues to have an impact in this year. Some of it will come out of central services, so it is a kind of mixture of initiatives that will deliver that 10% reduction.

Q59 Alberto Costa: How will you ensure that the current and future reforms are joined up—that is, that reductions to spending on one part of the criminal justice system will not have an equal or disproportionate effect on another part of the system or the public sector more widely?

Richard Heaton: I am just thinking of an example. We talk to our partners in the justice system a lot about projecting demand and how we are going to meet it. The court is a downstream effect of how the police charge and police behaviour, so we talked to the Home Office about charging patterns.

Natalie Ceeney: The Secretary of State has recently elevated the status of the Criminal Justice Board that he co-chairs with the Home Secretary. The idea is to do exactly that, particularly with criminal justice, because, for example, if I am incredibly efficient in the way we run the courts, then we try a lot more people quickly and we fill up the prisons, ditto with the CPS, so we do need to look at the system as a whole. We have a very strong analytical team within the Ministry of Justice who do look, working with the Home Office, at the system as a whole to understand how changes in one area affect another. The Criminal Justice Board, which is run jointly with two Secretaries of State, is a mechanism for bringing all of those key parties together. In the current Government we have had two of those meetings so far. We are looking at key metrics that we can agree across the criminal justice system so that we can understand those dynamics and see them before they cause unintended consequences.

Q60 Chair: Did the analytical team advise on the risk that cuts to legal aid will increase expenditure on the courts budget because, of course, unrepresented defendants usually take longer to deal with, as any judge will tell us?

Natalie Ceeney: I can comment. They have not increased the court budget or the demands on the court.

Q61 Chair: Really?

Natalie Ceeney: Yes. I know that the previous Committee had a separate evidence session on this and my predecessor gave evidence to that. Some litigant-in-person cases do take longer but some are shorter.

Q62 Chair: When did you last talk to a circuit judge?

Natalie Ceeney: Very frequently.

Q63 Chair: The evidence we have goes rather the other way.

Natalie Ceeney: Actually the evidence we collect statistically suggests there is not a difference post the changes, but some cases do take longer and some are shorter. One of the things we are planning to do within the court reform programme is to look at how we can simplify life for litigants in person. One of the challenges that I inherited as chief exec of the Courts Service is that so many of our forms are written in legalese—

Chair: Absolutely.

Natalie Ceeney: —and you need a legal degree to be able to fill them out. One of our challenges is to turn a lot of our legal system into plain English, because a lot of the problems that litigants in person have we have created for ourselves by making the system so hard to use.

Q64 Chair: Yes. That obviously brings us to a point, does it not? You are quite demand-led in both your big areas of spend: prisons and courts. Ultimately, to meet the savings that unprotected Departments will have to meet, you are going to have to advise your Ministers that they have to do something in policy initiatives to reduce demand, aren't you?

Richard Heaton: I am sure—in fact I know; I can tell you—those are matters that the Secretary of State is interested in. They are all a range of political choices that the Government can make or not make that would influence the law and practice on sentencing, for example. I cannot give you any chapter and verse about the ones that are likely to turn up, but those are certainly in the scope of the conversation.

Q65 Chair: Understood. Are you satisfied that the Department has the capacity to deliver on those sorts of changes?

Richard Heaton: If it is something the Secretary of State asks us to do it will be a priority. We have a strong policy function; we have a good record of turning ideas into acts of Parliament and putting them into effect. Occasionally we are open to criticism that we have done it too rapidly, but no, we have the capacity to do that.

Q66 Alex Chalk: On that point, I understand why you have to remain studiously vague on these things, but it seems to me that one clear way, if you wanted to get into budget very quickly, would be to reduce the prison population. If that was kept within the 75,000-odd limit, what are the figures as to the effect that that would have on the ability of the overall Justice Department to remain within budget? Could that in and of itself solve the problem?

Richard Heaton: A massive driver would be the prison population falling, for whatever reason, or finding ways of segmenting the prison population so that some prisoners can be housed differently and more cheaply, for example.

Q67 Alex Chalk: Just on that point, if it were to get from the 84,000-odd down to 75,000, how much would that save?

Richard Heaton: My mouth is watering. Can we do the numbers?

Ann Beasley: That is 10,000, isn't it, so about £250 million?

Q68 Alex Chalk: That would save £250 million and you have to make an overall saving of?

Ann Beasley: In this current year, in real terms it is £1 billion, but you could not conceivably take 10,000 places out of the system in-year.

Alex Chalk: No. I am just interested to know the proportion that that is affecting the overspend. Thank you. That is what I wanted to clarify.

Chair: Your point about the capacity of the Department leads us on to the next point Mr Costa is going to raise, which is around the governance, the administration and the staffing side of the report.

Q69 Alberto Costa: I should say that none of these questions are designed to embarrass anyone. It is just for clarity, given the challenging times that we live under. I understand that the highest-paid director earns seven times more than the median employee; that is £180,000, the median employee being £26,029. There are eight people, I understand, within the Ministry of Justice group who are paid more than the highest-paid director. What jobs are these people carrying out, Mr Heaton?

Richard Heaton: I am going to try and give you chapter and verse, if I can. The eight people paid more than the highest-paid director are technical roles: interim head of IT and digital; a CLAS security adviser, who is a technical GCHQ security adviser to advise on information assurance; an enterprise architect; programme manager; and four programme directors. They are bespoke roles on particular projects and the four programmes that we discussed; they are people brought in to do specialist jobs for a period of time.

Q70 Alberto Costa: How long is that period of time, given the challenging circumstances your Department faces financially over the coming year or so?

Richard Heaton: On those particular posts, I might have to write to you on them. Broadly speaking, we pay some individuals quite large salaries because we need to recruit the best to do some very, very difficult jobs. On commercial and contract management we are hiring people at salaries that are substantial salaries for the public sector—not in this list, I should say. We would prefer to have them on board if there is an ongoing post because you get more value out of an employee than someone contracted on that basis, but those are the sorts of jobs—enterprise architect for really big, distributed IT system and interim head of IT—where I hope we would be able to move to a permanent employment situation, but I am now looking at the—

Q71 Alberto Costa: If you were to move to a permanent employment situation, would the costs be reduced, and if so, would there be significant reductions?

Richard Heaton: That would depend on the pay negotiation you do with the individual to bring them across.

Q72 Alberto Costa: So your comment that you would have a reduction in permanent salary is not necessarily correct. If they do move towards being permanent employees, we are still looking at the same high salary.

Richard Heaton: Some individuals take a lower salary if they come on to permanent staff because they have security of employment, so sometimes you save—not always, but sometimes.

Q73 Alberto Costa: Will that form part of your plan? If you do recruit any of these, if you make them permanent, will you have as your policy a reduction in the cost to the MOJ year on in as a salary?

Richard Heaton: I would certainly seek to achieve a reduction in salary, but I cannot predict the negotiations in a particular employment situation with a particular individual and the deal that we would strike.

Q74 Alberto Costa: I come from a business. What you can do is set a budget for these particular positions. Will you be doing that and will it be less than what the MOJ is currently paying?

Ann Beasley: If I look at my world, for example—I am responsible for the commercial function—commercial specialists attract a real premium in the private sector. We are looking at recruiting individuals on higher salaries than you would normally pay civil servants in order to lose interims who would be paid even more. So it is part of our strategy to reduce the overall cost of the commercial function. Some of these other roles are time limited, so if you are a programme director of a change programme you might come in for two years to do that role, but we would not want to recruit those individuals permanently because once the change programme is finished we would have no need of them. I think it depends. In IT and digital, we are always looking to recruit people permanently for those sorts of roles, and if we can get the right remuneration package we will do that at lower overall cost, but in other instances, where there are particular specialist skills that we do not need in the long term, then we would not do that.

Richard Heaton: Just to reassure you on bringing people in, we are not in a “sky is the limit” situation. The commercial specialists are described as part of a Government-wide initiative led by the head of the commercial operation in Government in the Cabinet Office, who has Chief Secretary of the Treasury approval to help Departments like us recruit a certain number of people with a salary ceiling. So its constraint and budget is set on our behalf by the centre. Those people are coming into a range of Departments like ours, to do big difficult jobs at a high salary in public service terms, but they are all taking a considerable drop in the salary that they were earning outside because they want to do public service work. The ceiling has been set centrally so we are not in a kind of free-for-all.

Q75 Alberto Costa: Mr Heaton, you will be very familiar with the Clementi review and the Legal Services Act 2007 that came from that, and the legal services regulatory environment, where we have 10 approved regulators for legal services to consumers. In answer to a question that I posed to the Secretary of State, he confirmed that he would be undertaking a review of the Legal Services Act 2007. Can you tell me if a timetable has been set for that, and if so, what is the timescale?

Richard Heaton: I cannot, sitting here, tell you whether a timescale has been set for that review. I remember exactly the conversation. It was about the regulatory architecture and the number of bodies and regulators tripping over each other. I am sure it is a piece of work that is in hand, but off the top of my head I do not think I can give you—sorry, I will have to write to you on that.

Q76 Alberto Costa: You may be surprised to learn but I understand that we have already written to your Department twice. Is that right, Chair?

Chair: We wrote to your Department about a month or so ago about this and we have sent a follow-up. We do not yet seem to have received a response.

Richard Heaton: That might explain why it has not come to my mind.

Q77 Alberto Costa: Could I ask that you identify our letters and make it a priority to respond to this Committee as to when you would expect your Department to review the Legal Services Act 2007?

Richard Heaton: I apologise for what sounds like a discourtesy. So, yes, I will do that.

Q78 Alberto Costa: Following from that, do you have any preliminary views, without prejudging any potential review, that you might like to share with the Committee about the current legal services regulatory environment?

Richard Heaton: If I shared any views they would be out of date and probably inaccurate, so I think I am going to have to decline.

Q79 Alberto Costa: Are you familiar with the legal services regulatory environment as it currently stands?

Richard Heaton: I am.

Q80 Alberto Costa: What are your views of the current regulatory environment—not an out-of-date one but the current regulatory environment?

Richard Heaton: A strong belief in self-regulation; a strong belief in the value of professions which serve the public interest, serve the economy; great for invisible earnings for the country; promote Britain as a legal system to do business; a strong believer therefore, in broadly speaking, the self-regulation that we have at the moment; a strong believer not only in the independent Bar but in the strength and quality and depth of the solicitors' profession. As I say, as to the precise nature of the regulation, I just do not want to be drawn because I think I would probably say something inaccurate or out of date.

Q81 Alberto Costa: I see. Could I refer to a specific organisation created further to the Act, the Office for Legal Complaints specifically, the Legal Ombudsman? You will know, of course, that the former Legal Ombudsman had his function as an accounting officer removed by the previous Permanent Secretary for your own Department. Do you have any comments that you would like to share about that in terms of how that was done and the way in which

the irregularities within the Legal Ombudsman on this matter were only found as a result of an anonymous whistleblower?

Richard Heaton: Yes. The Ministry sponsors a number of arm's length bodies of different shapes and sizes and different distances from the Department. The quality of our assurance and sponsorship was found lacking in this particular case. We cannot, of course, be all over these bodies, man-marking them, person-marking them. We don't have the resources to do that and that would be wasteful, but, just so that the Committee knows and I am sure you are familiar, it turned out that the accounting officer and chief executive of this particular body in question had expenses arrangements agreed with his board that were not approved by the Department and were outside what would normally be approved in the public sector; and there were certain remuneration arrangements for senior staff which were similarly out of kilter with the public sector. Those things should not have happened; they were not fraudulent or wrong in that sense, but they were outside how you do things following the Treasury's guidance on spending public money.

I am delighted in a sense that they came to our attention through a whistleblower. I am a strong believer in whistleblowing legislation and I promote whistleblowing as a means of shining a light on things. In that sense I am pleased that it came to our light through whistleblowing and I am pleased that we were able to act on it swiftly. The accounts report the story fully. My predecessor removed accounting officer status from the chief executive and the accounting officer status remains with one of my Director Generals until we are satisfied that governance has been sorted out in that particular body.

We have then also commissioned a governance review, which will report and we will act on, and you will read the reports in the next annual accounts for the organisation, which are in January, so we have acted on it. Looking back on that episode, I was concerned about the quality of our governance. I have spoken to the team that looks after governance of this myriad of arm's length bodies and I think the improvements that we have put in place since then make us better able to withstand that sort of irregularity. We have a three-tier system and you risk base how much attention you give to a body, what degree of scrutiny and so on and so forth, as you would expect. That is probably an improvement. Probably the Ministry of Justice is good now at arm's length body governance, better than it was and probably better than average in Whitehall. It feels better to me than it has done in some organisations I have been in, where arm's length body governance is a bit hit and miss, but it is fair to say we have learned from this episode. It was not a great one.

I should stress that nothing fraudulent took place, nothing criminal and nothing perhaps that would not have passed muster in lots of organisations, but in the public sector there are rules set by the Treasury, and it is the job of me, as the accounting officer, to make sure that they are adhered to. We learned—no question—from that.

Q82 Alberto Costa: I am slightly concerned—not slightly; I am concerned—that this came about as a result of a whistleblower, and I am somewhat concerned about the response that you have given. There is an irony in this. The legal profession, in particular the solicitors' branch, are obliged to self-report particularly financial irregularities. Without doing so, there are draconian measures that can be imposed by one regulator, for example. Here we have a former Legal Ombudsman, whose role it was to police those providing legal services to consumers, who himself was subject to financial irregularities which only came about as a result of whistleblowing. Do you not think that there might be a need to look into the way in

which the Office for Legal Complaints is structured, to ensure that there is no recurrence of this happening, and perhaps to bring into that particular office the same requirement that other legal professionals—those regulated by that very body—are required to do, namely, to self-report?

Richard Heaton: First of all, I did not mean—I am sorry—to give the impression that I was content that it came to our attention by whistleblowing. I am glad that it came to our attention by whistleblowing. It would have been much better if it had not happened. If it had been self-reported that would have been much better, or if we had picked it up through our governance arrangements. Just to be clear, in relation to a governance review that an external firm is carrying out on our behalf and on behalf of the organisation, I will not put this organisation off special measures until I am absolutely satisfied that its governance is sorted out. We have not passed this over. This is still ongoing and it will not get its accounting officer status and self-governance back until we are satisfied that the lessons learned and the recommendations of the governance review are carried out. It absolutely remains on our radar.

Q83 Alberto Costa: Have you discussed this matter or do you intend to discuss this matter with the representative bodies of legal professionals such as the Law Society?

Richard Heaton: I have not yet. My predecessor did and I had a long discussion with her about the state of this particular episode, but I have not, in the month I have been in post, discussed this matter with the professional bodies.

Q84 Alberto Costa: Can I suggest that you do so?

Richard Heaton: I will certainly accept that suggestion.

Q85 Alberto Costa: You mentioned arm's length bodies and how the MOJ operates. What changes to your control framework have you made to provide more effective oversight of the activities of arm's length bodies?

Richard Heaton: Broadly speaking, the responsibility for control and stewardship of arm's length bodies is with a named individual in the organisation. That group of people is served by a central team responsible for ALB governance. That is the mechanism by which we are absolutely sure that the sponsors of arm's length bodies know the Treasury rules and know the details of good practice and good governance of arm's length bodies. So it is more than simply a performance chat, "How are you doing against your indicators?" It is, "How are you adhering to the rules of public life and public money?" That is the basic mechanism. Do you want to add anything?

Ann Beasley: I was going to add two things. One was that, on the back of what we discovered around the Office of Legal Complaints, we undertook an audit of the remuneration of senior staff in all of our arm's length bodies. We did not find any similar issues. We found issues around making sure that we had up-to-date contracts and things like that, which we are now addressing. So we took the first step to say, "Was this a one-off incident or was it more generic?" On the back of that learning, we have taken the opportunity to produce a checklist for sponsors, to make them clear what they need to do.

We have introduced further training for sponsors, to make sure that they are better equipped to carry out that role.

Q86 Alberto Costa: I am really not convinced by part of those answers. Going back to the specific issue of the Office for Legal Complaints, when a solicitor or a barrister is found to have made a financial irregularity, through no fraud or criminal act, as Mr Heaton reminded the Committee that there was not any fraud in this particular matter, notwithstanding that, the financial repercussions to the lawyer/solicitor can be very severe indeed as a result of a judgment issued by the Legal Ombudsman. In this situation, was there any financial retribution, if I can put it that way, in respect of the individual who had these financial irregularities? Was there any financial penalty, rather?

Richard Heaton: There was recovery and he lost his job. There was a time when there might have been litigation between us, but I don't think that is coming about. He lost his job and the OLC undertook recovery against him.

Q87 Alberto Costa: I understand that the person did not lose their job; the person resigned. Would you like to clarify whether he was asked to leave or whether he resigned?

Ann Beasley: He was dismissed.

Richard Heaton: I must say I thought he was dismissed with notice.

Q88 Alberto Costa: I would like clarification on that.

Richard Heaton: Certainly.

Alberto Costa: Thank you very much, Chair.

Q89 Chair: Thank you, Mr Costa. May I ask one thing on the prisons front? There seems, from the report, to be an ongoing issue about morale within the Prison Service, Mr Spurr. Why is that, do you think? Why is this so intractable?

Michael Spurr: It has been pretty tough, really, over the last few years. We have done a lot of very difficult things. One of the things we did was to change the whole set of terms and conditions for staff, which meant that what we now call closed grades—existing prison officers, experienced prison officers—will have a top rate of pay on the national pay scales at about £29,500. We have restructured our pay and the top rate of pay now at national rate is £24,000. The reality for those staff who are at the top rate is that they have not had pay increases and they have had the same impact of the financial position in terms of pensions and others that other public servants have, and that does not make you feel great about things.

At the same time, we have reduced the number of staff across establishments in the way that I have just described. We have closed 16 prisons, which meant that either staff left the service or were redeployed to other prisons which might be further from their home. At the same time we have had to manage a lot of operational pressures. There has been an increase in violence; we have really been affected by new psychoactive substances—legal highs, as they are wrongly called—which have really been a problem for us in prison. So the operational pressures have increased, the number of staff we have in total has decreased and the terms and conditions for a lot of staff, they feel, are not as good as they

were. All of that, of course, makes it difficult to maintain morale, but when I go around jails it is never as bad as people can sometimes portray it because I have a very professional staff group who care deeply about what they do and are doing a fantastic job, as was mentioned earlier. I am not denying the difficulty, but we should not exaggerate how staff are responding to that. I am immensely proud of the way that they respond and I do go round jails frequently and am on the landings myself talking to them. The reality is never quite as depicted sometimes externally.

Q90 Richard Arkless: What is the sickness rate among prison officers?

Michael Spurr: The current rate is about 9.5 days per year. That has come down from last year's recorded figure of 11 point something. It is higher than I would want, but given the changes that have been going on it is better than it was. Sickness rates among staff in prisons often compared with the wider civil service are not entirely comparable. There are a number of staff who are assaulted. A member of staff is seriously assaulted every day, which is really worrying for me, so there are some legitimate separate reasons why people in prisons end up having to take some sickness leave. The figure is higher than I would want but it has been coming down.

Q91 Alex Chalk: How does that compare across the Department? It is 9.5 per day and the average across the Department was?

Michael Spurr: It is higher. We have the highest rates.

Richard Heaton: It is 7 point something or 6 point something, which is roughly civil service average. It tends to be higher in the operational areas, for the reasons that Michael describes. It is probably a similar figure but slightly lower in the courts.

Natalie Ceeney: Yes. In the courts we are running on about 8.6 days, again for very similar reasons. It is higher than I would like. We have a particular challenge around an ageing workforce, so our demographics are increasing. It is an older workforce with some of the similar strategies, but a workforce doing their utmost to keep the courts running.

Q92 Alex Chalk: So it is 8.6 across the Courts Service.

Natalie Ceeney: At the moment, yes; we are running on 8.6.

Q93 Alex Chalk: What is your target?

Natalie Ceeney: We would all like it to be lower. Both Michael's team and mine are doing work to look at how we can increase wellbeing among our staff, what some of the best practice is in other Government Departments to bring sickness rates down. We are all seeking to reduce that figure.

Q94 Alex Chalk: But there is no target.

Natalie Ceeney: We would all like to be probably near about 7.5, but we are all seeking to bring that figure down.

Richard Heaton: MOJ headquarters is 6.5; the civil service average is 7.4. It is higher in operational areas. Be careful of Departments which demonstrate a very low figure; it just

means they are not doing the returns. We are a compliant Department; 6.4 is below the average.

Q95 Chair: The final thing on the Department is that it is very unusual to have all four non-exec directors replaced in one go, is it not? It does rather lose continuity. Are you satisfied that the arrangements have been done in such a way as to maximise the independent challenge for the Department, because that is part of your responsibility?

Richard Heaton: Indeed. You are absolutely right—we lost a degree of continuity in governance. There was plenty of other continuity, so we have an independent member on the Audit and Risk Committee who remained, for example. With the executives, there was continuity there and so on. There was continuity on the ministerial bench as well, but yes, we took some continuity break on the non-executive side. We now have a team of non-executives who are fiercely independent, very challenging and we will certainly help hold the Department to account. Actually we will do more than that; we will encourage our thinking to be imaginative and creative and help us get to the place we need to get to. It is a range of skills, a range of different sectors, some known to us and some first time in or around government—a strong team.

Q96 Chair: The lead non-exec director post was not advertised in the way that the other three were. Is that usual?

Richard Heaton: The other three were certainly advertised. Sir Theodore was appointed just before I arrived. I am not quite sure what the arrangements were, but as you know, he came on a Secretary of State appointment and the Secretary of State is clear that these are ministerial appointments. Precisely what the process was I am afraid escapes me. It was before I arrived, but certainly the other three were done following—

Q97 Chair: Is there any record of the process at all in the Department?

Richard Heaton: I am sure there must be, but I don't think I need apologise for the fact that it was a Secretary of State recommendation.

Q98 Chair: I do understand that. Are you planning to make any changes to the operation of the non-executive directors and their involvement with your executive team?

Richard Heaton: Sir Theodore joins my Executive Committee, which is unusual, but he joins my Executive Committee at the moment at least once a week. He sits alongside us and helps us work through what we have just been talking about—how to realign the Department to meet the Secretary of State's priorities. The non-executives tend to get involved and are asked to be involved by the Secretary of State on particular matters in quite a lot of depth. That is the style. That is bound to help us in areas where we need external help.

Chair: We will move on to another area of spend, legal aid. There are quite a substantial amount of areas we have to get through, but it is the annual report and it is your chance to do it, so I am sure you will bear with us.

Q99 Alex Chalk: May I turn to LASPO, please? You will be aware that the Justice Committee concluded previously that the Ministry did not carry out adequate research into the legal aid system before implementing the reforms, and that the Ministry responded by

saying that it had established a comprehensive research programme to develop an evidence base on the impact of those reforms. What is the status of that research programme to develop that evidence base?

Richard Heaton: I don't think I am yet in a position to give you an update on the state of research. We have more research than we did before the reforms were implemented, but I don't think I can deliver you the fruits of the research at this stage.

Q100 Alex Chalk: Why can you not give me an update?

Richard Heaton: Let me see what I have.

Q101 Chair: Is that the date you are looking for—autumn 2015?

Richard Heaton: We need to be able to report to you on the research on legal aid shortly. I am just looking in my brief, if I am honest. We are certainly enjoined to do a post-implementation review of LASPO and we have undertaken to do that within three to five years. We are going to do that at the front end of that period rather than the latter end, so we are discussing with Ministers whether to run our formal commitment to do a review with our commitment to this Committee to do a review—whether to run them together. It is quite possible that we will run them together and have a single review of the changes, but that is something we are still discussing with Ministers.

Q102 Chair: Forgive me; perhaps I can just read this out to you. You stated in your response to the PAC Report that you had established a comprehensive research programme to develop an evidence base on the impact of reforms and that this included three pieces of research: a nationally representative survey on the prevalence of civil justice problems; second, a follow-up qualitative survey; and third, a survey of the not-for-profit advice sector. The Ministry stated, apparently, that the research was due in autumn 2015. I am sure you are aware of that, Mr Heaton.

Richard Heaton: I am very sorry. I am going to have to write to you on the status of that research programme. That sounds a wholly inadequate response.

Chair: We look forward to the response.

Q103 Alex Chalk: What has the Ministry done to improve its understanding of the geographic variation in the take-up of civil legal aid, which was highlighted by the NAO's report on the subject?

Richard Heaton: This Committee did a report on legal aid, and in response to the geographical hotspots issue, or lack of hotspots—the advice deserts—we have commissioned three pieces of research on this. Each are due to report later this year on the geographical point. We were also struck by your observations that there was insufficient information on where legal aid is available and we have improved the information available on the gov.uk site. We have also enhanced the assisted digital service to allow individuals to check whether they qualify for legal aid. I am just thinking of the other comments that the Committee made. There was a comment on lack of support for mediation, and we have awarded an additional tendering process for 37 providers on mediation in response to this Committee's report. We discussed litigants in person and the costs associated with that. On your precise point, we have commissioned three pieces of

work which we will report back this year, researching the geographical prevalence of legal aid and the areas where it is arguably not available.

Q104 Alex Chalk: You mentioned mediation and various other topics. One of the things that the Justice Committee Report noted was that 39% of women who are victims of domestic violence were unable to produce the evidence required to qualify for legal aid and expressed concern about the 24-month time limit on evidence of domestic violence. What is the Ministry doing to ensure that people—which is usually women, let us be clear—who are victims of domestic violence are able to access civil legal aid?

Richard Heaton: It has always been a design feature of the legal aid reforms that in some areas legal aid will be available, and one of them is domestic violence. It is absolutely clear on that. It is also really clear that you should not have to provide evidence of domestic violence before accessing legal aid. We changed the law in July. We introduced regulations so that evidence need not be re-examined before a final hearing if a legal aid certificate has already been granted earlier. We have expanded the types of acceptable evidence and made it easier for applicants to obtain such evidence. In private family law cases, where there is a dispute about finances or child contact, if there is evidence of domestic violence or a risk of domestic violence, legal aid will be available. We have improved the procedure for urgent cases for protective injunctions. We are absolutely seized of this. Domestic violence is one of the absolutely clear areas where legal aid must remain available and where the applicant for legal aid must not get caught in bureaucracy or rules that do not work for them.

Q105 Alex Chalk: That is very helpful; thank you. You did touch on mediation and I will just deal with it very quickly. When do you expect mediation numbers to return to the pre-reform level?

Richard Heaton: I hope when the additional tendering process, the additional contracts, bear fruit. Again, it is slightly early days because they were just let this year, but I would expect therefore it to be within the first cycle of those new contracts. So I would expect in the first half of next year.

Q106 Chair: Could your Department not perhaps do more to actively promote mediation? After all, there is the mediation pledge that the Government signed up to. What are you proposing to do about that?

Richard Heaton: We have taken the steps that I have described. We absolutely believe in mediation. We absolutely believe in taking cases out of the courts when they need not be decided by formal adjudication. I am helpfully being given another brief here. The First Stop family mediation campaign, which ran from January to March this year, saw an increase of 340% in visitors to the Family Mediation Council website and a 45% increase in visitors to their “find a mediator” page, so we are supporting that. We are supporting the Family Mediation Task Force. It noted a decrease in referrals to publicly funded family mediation services since April 2013. As I say, we are hoping to turn that around with the new contracts that we have tendered.

Q107 Chair: Will the Department actively encourage, in terms of varying ways of provision that we have talked about, the challenge that you have around the demand side—new and innovative ways of looking at innovation, for example?

Richard Heaton: I would like to accept that challenge; yes, we will.

Chair: You have talked about courts. That probably leads us on conveniently to the last major area of the report's coverage that we can turn to.

Q108 Philip Davies: How much is expected to be raised through the court closure programme?

Natalie Ceeney: We are currently consulting, as you will know, on 91 courts for closure and around just over 30 for consultation. We don't yet know exactly how many will close because we are now going to take the next couple of months to analyse in detail the responses. We estimated if we did close all of those courts it would save around £30 million and we have agreement from the Treasury that we can reinvest that in court modernisation, which is absolutely core to the court strategy. Our overall court modernisation strategy is around—those of you who know the courts will know that we are still very much in the paper era that a lot of the rest of public services left at least a decade ago. What we need to do is invest in digital infrastructure so that we can improve the service that we offer to everyone who uses the courts. The plan is to reinvest all the asset sales that we realise in digital investment in our courts.

Q109 Philip Davies: When you say the saving, what bit is the saving on operational costs and how much is raised in capital income?

Natalie Ceeney: It is a mixture. To be honest, the answer will depend on which courts are actually closed. We are analysing the consultation and no decision has been made. It is a mixture of the value from selling the property but also some of the running costs of the courts. Some of these courts have a big maintenance backlog and some of them are very expensive to maintain. So there are costs of just maintaining the estate.

Q110 Philip Davies: What do you expect that to be?

Natalie Ceeney: We do not know the answer yet because we do not know exactly which courts will close. In the consultations that we have got online we have estimates for each of the sites on the running costs. On the asset sales we are estimating £30 million, but it really will depend on the market value.

Q111 Philip Davies: In the previous round of court closures that you did in the last Parliament, how many of those are still not sold?

Natalie Ceeney: It is a very small number. Most of those that are not sold are either in discussion with a party about sale or are complex because, for example, it might be the court area of a bigger building that includes the police so we cannot sell it, but we have active plans for the small number, which my understanding is around 11, where we are in active discussions either to sell or to reuse that.

Q112 Philip Davies: How much are those 11 costing you each month in—

Natalie Ceeney: Very small amounts. I will have to write to the Committee with details, but small amounts.

Q113 Philip Davies: One of those courts is in my constituency, funnily enough—Keighley magistrates court, which is based in Bingley. If you personally owned that building, and it was incurring thousands of pounds of costs each month, my contention is that you would have sold it by now if it was yours. Given that it is the taxpayer's and it is just as valuable to the taxpayer, why are you not pulling your finger out and doing this? That has been closed now for about four years.

Natalie Ceeney: Personally, I have only been in this job nine months and this is fairly close to the top of my priority list. We are currently raising our own capability about asset disposals. I think it is a fair criticism that we have not been as active in this area as we should have been. What we are doing at the moment is working to secure a commercial partner to get better value for the taxpayer of asset disposals and, frankly, to sell assets more quickly. So I accept the criticism and I am determined that we are going to move much further and faster forward on future asset sales.

Q114 Philip Davies: When you have drawn up this list of courts being closed, what assessment have you made as to the likelihood of them being sold because, clearly, it is completely pointless to close down courts that you have no prospect of selling, for whatever reason it may be? How much weight was given to the likelihood of a sale when drawing up the list?

Natalie Ceeney: That has not been the only consideration.

Q115 Philip Davies: Has it been a consideration at all?

Natalie Ceeney: Yes, it has.

Philip Davies: That is what I am more concerned about.

Natalie Ceeney: Yes, but let me give the considerations we have taken into account. The primary consideration has been access to justice, so we want to make sure that we have courts in the right place that people use. The first consideration we have had in looking at the closure list is how well our courts are used. This costs public money, so quite a massive part of the court budget, around £500 million per year—it is about a third of my overall budget—is spent running and maintaining the courts. We have a £200 million maintenance backlog, so just keeping inadequate courts running costs us a fortune. Our starting point has been, let us look at the courts that are poorly used. We have some courts on the current consultation list that have utilisation rates of 10% or 11%, and that is between the hours of 10 and 4, Monday to Friday, so that is pretty low utilisation. We started from where the courts are that are not used. We have looked at access to justice in terms of travel times, and they are the courts we are consulting on. We haven't started from sale value; we have started from access to justice.

For the courts we are consulting on, we have looked at the costs of running them and the costs we would have to incur to maintain those buildings if we kept them running. That has been a factor in our consideration. As soon as we have analysed all the consultation results, then we will look at the sale value. We did not want to pre-empt a consultation on

access to justice by looking primarily at asset sale values, but we have done enough estimation to believe that we can realise about £30 million through the asset sales.

Q116 Philip Davies: You mentioned that the primary consideration was access to justice. The Minister stressed that over 95% of people will still be within a one-hour car journey of their required court. Now, we can debate the merits of whether a one-hour car journey is a great access to justice. We can all discuss what we think constitutes a reasonable journey for somebody. I would probably say that a one-hour car journey is quite a long journey to get to court personally, but you might have a different perspective. I just wondered what focus there was and how that worked with public transport, because there is a massive difference between a one-hour car journey and how long that same journey may take if you do not have access to a car. I just wondered what the access to justice looked like for people who relied on public transport.

Natalie Ceeney: You are absolutely right to flag that. In every case where we have consulted on the closure of a court we have published a document outlining exactly that. For each court we have talked about, we have talked about access from the court we are proposing to close to where the receiving work will be, by car, train and bus, so that those details are available for every court we are consulting on. But that is exactly why we are consulting, because actually people won't travel from the old court to the new court; they are more likely to travel from somewhere in that constituency or that region, so some travel times will be less and some will be more. In the consultation responses which we are analysing now, we are looking in detail about travel times. We have also been clear in the consultation that we are really open to innovative ideas around, for example, using other civic buildings, or—for some tribunal services now we already use, for example, hotel buildings. Where there are ideas that would reduce travel times we are absolutely up for considering them.

The other thing I would stress is that we are trying to reduce the need for people to physically go to court. Not many people have to go to court, but at the moment people have to go to court partly because we have got pretty lousy digital equipment. For example, we currently require police officers to give up half a day on the beat to go to a court building. The investment in digital that we want to do under court reform will mean that that police officer can stay doing their job and instead can use a video conference to dial in for the half an hour that they need to be in court. We are piloting services for witnesses and victims, allowing them to do pre-recorded evidence, and for civil cases we are again looking at the use of digital technology to mean that people do not have to give up a day's work to go to court but, instead, can give evidence digitally. Our ambition is that it is not just that we are moving the distance of where you go to court, but we are hoping people can use new technology so that they do not have to give up a day's work and go to court in the first place.

Q117 Philip Davies: I appreciate that, but by your own admission that technology is not really up to the required standard as yet, and yet you still close down a lot of courts and you are still closing those courts. It is not as if you are waiting for that technology before you do it; you are putting the cart before the horse, so to speak. I am just interested to know, from your perspective, how far you think it is reasonable and how long you think it is reasonable for somebody to have to go to court for their access to justice or to be a witness, to give

evidence as a witness or whatever. How far and how long do you think it is reasonable to expect somebody to go to court?

Natalie Ceeney: The quick answer is that it already depends across different areas of the country and will continue to do so.

Q118 Philip Davies: It does not depend. I am on about how long you think the maximum should be that somebody should have to spend to go to court. That does not vary from one place to another. How long do you think the maximum should be that somebody should be expected to take to get themselves to court?

Natalie Ceeney: I am going to reiterate but I am going to say something else as well, if you would allow me to answer. It already does depend on different bits of the country. There are rural areas of the UK where already, before I am talking about any court closure programme, distances are in excess of an hour. There are some bits where people expect it to be 15 minutes. We are already dealing with a different geography across different bits of the UK. What I would stress is that in our consultation we are up for innovative ideas that improve access to justice, so we are looking particularly in rural areas of the country, particularly in Wales as well, at the idea of pop-up courts, using civic buildings, using local hotels, where we can use those facilities to improve access to justice. We are actively exploring all the ideas that come in through the consultation; we are really keen to get ideas and we have actively encouraged them in every consultation we have done.

Q119 Chair: There is a lot of sense in your last point, in particular, about using different buildings. Maybe we are too wedded to that. One other final point on the court thing is this. We have an ambitious court reform programme that, clearly, links into a lot of those matters, things such as the common platform and so on. That requires a good deal of up-front investment and you made a speech about that to the Criminal Justice Conference—

Natalie Ceeney: Yes.

Chair:—only two or three weeks or so ago, in which you said that securing the investment over the five years—the £375 million over the five years that is required to implement that court reform programme—was one of the MOJ’s top priorities. Good. What just troubles me a little bit is that we are halfway through the first year of implementation. Have we not secured the funding yet?

Richard Heaton: It is in play during the spending review. It is really as simple as that.

Q120 Chair: In truth, there is a risk in the spending review that the whole of that programme could collapse.

Richard Heaton: This is one of the many finance areas where we are securing funding from the Treasury, but the spending round is tight.

Q121 Chair: It is one of your top bids, I imagine, in effect.

Richard Heaton: It certainly is, both in terms of capital and in terms of resource funding, yes.

Chair: That is very helpful. Thank you very much. Is there anything else, Philip?

Q122 Philip Davies: Not on courts. I have a question on FOIs. Your Department has a lamentable record, if I might say, in dealing with parliamentary questions and freedom of information requests, and answering them in a timely manner. In fact, your Department was hauled before the Procedure Committee not too long ago, in the last Parliament, about parliamentary questions. I just wondered what you were doing to improve your Department's performance in the area.

Richard Heaton: There are two things. You are right: we have been put on special measures by the ICO on timeliness for FOIs and we have made errors on PQs, and neither of those things reflect well on us as a Department. I have made it really clear to the Department, as have my top team, including my colleagues sitting here, that this really goes to the basics. If we cannot get PQs right to a very high degree of accuracy, we jeopardise the trust the Ministers have in us. Putting Ministers up to answer Parliament in a way which turns out to be misleading is a really gross error for a civil service Department, so we take this really, really seriously. It is partly about accuracy and it is partly about timeliness, and it is partly about ownership, so we have absolutely made it clear that, where we have senior sign-off required, for example, for a PQ, that senior person is responsible for the answer, and anyone who chips in with helpful suggestions in the course of that PQ being presented does not move from the fact that that senior owner requires ownership. We have signalled to the Department that we are taking this really, really seriously. That is quality, timeliness and ownership of PQs and FOIs.

On FOIs, as I think you opened, Mr Davies, in my last Department—the Cabinet Office—we also were on special measures and we worked really hard to get ourselves off special measures, to bring ourselves up within the timeliness target set by the ICO. I hope that we will come off special measures very quickly here. If we do not, then we will have to institute the sorts of stuff we did in my last Department, which is having star chambers, unit by unit, on their FOI performance, monthly score sheets, bringing it to the board level, that sort of scrutiny. I do not want to do that because the board has lots and lots of stuff to do, but I cannot afford to let us slip on the basic housekeeping of a Government Department, which is servicing the Act and servicing Parliament.

Q123 Philip Davies: For the parliamentary questions, could you tell me who the answer has to go through before it is actually released to the poor person at the other end waiting for the answer? Who does it go through in your Department?

Richard Heaton: It depends on the sensitivity but, broadly speaking, a member of the senior civil service is responsible for the answer. Depending on the policy area, there could be contributions from different parts of the Department, but a member of the senior civil service has ownership of the answer itself.

Q124 Philip Davies: When your Department came before the Procedure Committee it emerged that this was the sign-off procedure for the parliamentary question and, presumably, maybe for a freedom of information request as well. It started off with a parliamentary branch, then it went to the special advisers, then it went to the head of news, then the deputy head of news, then the press officers, then to the SCS, who cleared the response, then the designated press officer, which is about the fifth press officer who seems to have got their hands on the answer, and then any applicable individuals in the team. There are two things here. If you are wanting to be more timely with your answers, it might be an idea to have it going through fewer people; that is one suggestion I might make. The second one is this.

These are requests for factual information. The facts are the facts. So why on earth does it have to go through all of the head of news, the deputy head of news and press officers before the answer to a factual question is given out?

Richard Heaton: The levels of clearance within the communications part of the Department are not prescribed or set down anywhere and I certainly take your challenge to see if we can streamline that a bit. Answers put out into the public domain have a reputational impact and communications impact, and you expect the communications director of the press offices to be aware of what is going on and to contribute, but I certainly would not expect every member of the press department to get involved in a single answer. Part of what we have observed in some of these PQs, which have been difficult for us, has been exactly as you are describing—too many people getting stuck in, too many e-mail chains going round and round in circles. I am keen for that to be clearer and uncluttered and to have single simple sign-off.

Q125 Philip Davies: The suspicion is, though, that the answer is only going to be given if it is not going to be embarrassing to the Department when it is published. That surely cannot be the right basis for giving an answer to a parliamentary question or a freedom of information request.

Richard Heaton: The absolute principal purpose of answering a PQ is to give the facts plain and simple and unvarnished and, above all, accurate. I am absolutely clear on that.

Q126 Philip Davies: Given that, you think it is appropriate for it to go through all of those news people and press officers before the answer is given out. I do not understand the justification of it if the primary consideration is to give an unvarnished factual answer. The two things do not marry.

Richard Heaton: It depends on the PQ. If the PQ asks for an opinion or a justification of Government policy or there are PQs which go beyond simple black and white facts—without reference to a particular PQ, I find it hard to justify or explain why different people have got involved or have a different interest. But PQs are a statement, among other things, of Government policy; they are a statement of achievements; they are a statement of plans. So they are not all purely factual, I think is all I would say.

Q127 Chair: Okay. Have you done any analysis on how many transactional steps are required to answer a piece of ministerial correspondence in your Department?

Richard Heaton: I have not, no.

Q128 Chair: I just simply say that when I arrived at Communities and Local Government in 2010 we did one and there were 25 separate transactional steps. Maybe it is worth doing.

Richard Heaton: Thank you.

Q129 Chair: We have had a very lengthy session. There are just two short issues that I would like to raise with you. One is that there is a range of providers. Some of the issues which are provided externally are more and more complex and sensitive. What arrangements do you have to deal with provider failure?

Richard Heaton: It depends. Perhaps we can take two examples. Perhaps Michael would like to say something on the contingency arrangements for private provider failure on the prison side. That would be helpful. Do you want to kick off and then I will think of another example?

Michael Spurr: We have normal contractual mechanisms for dealing with poor performance, which includes performance improvement, rectification, service credit penalties and financial penalties. Ultimately, we have step-in rights in all of our contracts. On occasions we have had to use those. So we have got clearer about the need for us to actively manage contracts to make sure we are getting delivery. Part of that management includes use of formal mechanisms which ultimately can result in us taking back direct responsibility for any contract.

Q130 Chair: That is very helpful. Just very quickly, have you used any external legal advice to write the contracts such as specialist contractual lawyers to achieve that?

Michael Spurr: Yes.

Q131 Chair: You have. I am glad to hear it. What is the other example you had?

Richard Heaton: Another example might be the legal aid market, where it goes to the design of how we contract and procure for legal aid services that there has to be resilience and sustainability in the market. You would not expect us to put all our eggs in one particular basket. We hope law firms will not fail. We are designing the contracts to make sure they are sustainable—they will succeed. But you have to build in some resilience to cover eventualities like that.

Q132 Chair: The final thing is that there has been a good deal of publicity today about one topic. NOMS had a trading arm called Just Solutions International Limited. It has now been wound up. It appears to have let one contract.

Richard Heaton: Do you want me to comment on it?

Q133 Chair: Yes. Have you seen the contract, for a start?

Richard Heaton: I know the issue well, yes.

Q134 Chair: Can you tell us precisely what training is intended to be provided to the Saudi prison authorities under this contract?

Richard Heaton: This is a contract which we have bid for and I think we are waiting for the results to see whether it will come into fruition, but on the precise services that would be provided under that contract if it went ahead, Michael?

Michael Spurr: The specific request was for us to undertake, on behalf of Saudi Arabia, a training needs analysis for their prison staff. It is a needs analysis: i.e. what type of training their staff would benefit from in terms of engaging on a relational engagement with prisoners. That is what the effective brief is. It would potentially have led to the opportunity to train some of their staff in how they engage with prisoners.

Q135 Chair: And no more than that.

Michael Spurr: That is what it is, yes.

Q136 Chair: I see. Is that contract in the public domain at all, or is it going to be?

Richard Heaton: I don't think it is now.

Michael Spurr: No, we are still in discussion with the Kingdom of Saudi Arabia around the details of how this, if it is to proceed, will proceed.

Q137 Chair: Would that involve, at any stage, any British personnel and the NOMS employees going and working in prisons in Saudi Arabia?

Michael Spurr: Not working in prisons, no.

Q138 Chair: Or being physically present in prisons in Saudi Arabia, advising?

Richard Heaton: Not advising the running of prisons, no. It is about how training is developed for those who are working in prisons.

Q139 Chair: But that might involve a British presence in Saudi prisons.

Michael Spurr: Not on the training needs analysis—not for that in itself. We would present—

Q140 Chair: I understand not for the analysis, but might—

Michael Spurr: It would have involved some travel to Saudi Arabia as part of that, to understand what the issues were and in terms of how their current arrangements operate.

Q141 Chair: So it is possible that you would have to have the presence of some NOMS employees in Saudi Arabian jails at any rate.

Michael Spurr: It is possible that some NOMS employees would visit Saudi Arabian jails, yes.

Q142 Alberto Costa: That is not working in a Saudi Arabian jail?

Michael Spurr: It is not working in a Saudi Arabian jail in terms of delivering services in a Saudi Arabian jail. As I have just described, what was asked for is a needs analysis of how training could be improved for their staff. That is what was asked for.

Q143 Alberto Costa: I think it would be fair, Chair, to outline to the panel that undoubtedly this will attract media attention, and, of course, as MPs we might well have to comment. So it would be very helpful if we could get more information on this particular contract.

Chair: Yes.

Richard Heaton: As I think the Committee knows, the JSI enterprise, apart from this one endeavour, has been closed down.

Q144 Chair: Was that for commercial reasons or was that a ministerial decision?

Richard Heaton: It was a strong steer from the Secretary of State that we should concentrate on the domestic, secure running of prisons.

Q145 Chair: Thank you. That is very helpful. Perhaps you would take advice and make available such details of the contract as you are able to.

Richard Heaton: Any contract if it proceeds, yes.

Chair: That would be extremely helpful. Ladies and gentlemen, thank you very much. It has been a lengthy session but we have covered a lot of ground. I am sure, on behalf of all of the Committee, we are grateful for your time. You have undertaken to come back on a number of matters and we look forward to that, for which I am grateful. I am sure in various combinations we will see all of you at various points during the course of the Committee's work in this Session and the next ones in this Parliament. Thank you.