HOUSE OF COMMONS

Justice Committee

Oral evidence: Ministry of Justice Annual Report and Accounts 2015-16 and related matters, HC 623

Tuesday 18 October 2016

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Watch the meeting

Members present: Robert Neill (Chair); Alberto Costa; Mr David Hanson; Victoria Prentis; Marie Rimmer

Questions Q1 - 113

Witnesses

Richard Heaton, Permanent Secretary, Ministry of Justice, and Mike Driver, Chief Financial Officer, Ministry of Justice.

Examination of witness

Witnesses: Richard Heaton, Permanent Secretary, Ministry of Justice, and Mike Driver, Chief Financial Officer, Ministry of Justice.

Q1 **Chair:** Good morning, Mr Heaton and Mr Driver. Thank you very much for coming to give evidence to us. It is not the first time in your case, Mr Heaton, but welcome for the first time since your appointment, Mr Driver.

Mike Driver: Thank you very much.

Chair: I am just going to ask colleagues to go through the usual declarations of interest. I am a non-practising barrister but have a consultancy to a legal firm.

Victoria Prentis: I am a non-practising barrister, but I worked for many years for the Treasury Solicitor's Department, including the Prison Service, and I have come across Mr Heaton in the course of my work.

Q2 **Chair:** There are no other declarations that are relevant to our proceedings. If any colleagues join us, I will ask them to make declarations as they arrive.

It has been a year of a lot of change, Mr Heaton, has it not? You have a complete new team of Ministers. That happens sometimes, we know, in politics, but there have also been a lot of changes in your senior leadership team. How has that affected the work of the Department?

Richard Heaton: There have been three changes in my team of six directors general over the course of about six months. I think that is what you are referring to.

Chair: Yes, that is right.

Richard Heaton: With each of them there is a different story; there is no particular pattern. One of them stepped down from the job Mr Driver now has, after seven years. One of them resigned from her post as chief executive of the Courts Service, but we had an excellent interim and we have just appointed a successor. The other one moved, in a horizontal move, to a post in the Cabinet Office. We took them in our stride.

Q3 **Chair:** It seems to me that there is a worry, very often in government, of a habitual shifting of Ministers that you cannot help, but the frequent shifting around of officials tends to undermine the corporate knowledge of a Department, and this is a Department with a lot of challenges. Do you think it is desirable to have that level of change?

Richard Heaton: No. Ideally, you would not go through a change of three in a team of six over six months, but, as I say, we had pretty good interim and contingency measures. We had plenty of continuity, both at official and non-executive level, so we managed through it. We took the advantages as well; we took the opportunities.

Q4 **Chair:** What are the things you have done to ensure that continuity and, if you like, sufficient knowledge in continuity?

Richard Heaton: For example, on the finance side, sparing Mr Driver's blushes, he has an excellent team below him, including those sitting behind him now. On the HMCTS side, the resigning chief executive had done brilliantly to put in place a very high-class team. So her deputy or head of change stepped up into the role of interim chief executive, and he and his successor then inherited a very good top team of executives running everything from digital to property. You manage these things through building resilience and succession plans.

Q5 **Chair:** Okay; understood. Against that background, from your point of view, as the permanent secretary, where do you see the main challenges that you have coming up this year and what are the steps you are taking, at the official level, to deal with them?

Richard Heaton: The first one—and it is not just because this is a hearing on the annual report—is our finances. You know that last year we had a challenging tail end of a spending settlement. We did not meet the numbers. We needed a reserve claim. We go into this current year not yet in a position to say, with accuracy, how we are going to meet the allocations for the remaining years of the spending round, which is why I was not able to share with you our spending plans in detail. In fact, the subject we talk about most in my executive committee is improving our finances and bearing down on the gap between our allocation and our projected spend. That is not quite dominating, but that is the largest thing, as officials, we are dealing with.

Then the second and third things would be our two major reform programmes: prison safety and reform, and courts reform. Those are, by any measures, very large both capital and revenue expenditure programmes. They require lots of very good programme management, excellent delivery and they are occupying a lot of our time. Those would be the three big ones, for me.

Q6 **Chair:** You were very courteous in telling us that that information would not be available and I am grateful to you for that. Precisely why? Why was it that information could not be made available?

Richard Heaton: The basic reason is that, as of right now, let alone the point at which we published our annual report, we were not able to marry up our allocations under the spending round with our projected spend. There was a gap. I could have written to you some months ago and given you some numbers, and then I would have had to recirculate them every six weeks. I just wanted to bottom down what we are calling our medium-term finance plan, so that we can see bottom up where the expenditure is in the Department, what we can absolutely bank, where the forecasts are inaccurate and whether we need to do more work. By the spring I will be in a position to say, with a much greater degree of confidence, "These are our spending numbers; these are our plans," but I did not want to share numbers that felt flaky, if I am honest.

Q7 **Chair:** Is it because of potential changes—changes in the ministerial team and changes in priorities?

Richard Heaton: To some degree, although you will have seen, from your hearing with my Secretary of State, that there is quite a lot of continuity in our big change programmes. The courts reform programme that the Secretary of State and the Lord Chief Justice announced is, broadly speaking, a programme we were working on. The prison reform programme has a lot of continuity from the programme that we had started under the previous Secretary of State. So there is quite a lot of continuity, but, yes, inevitably a new ministerial team will have different emphases and different priorities and we are working with them to work those out.

The prioritisation point is quite important, because one way, really, to mess up is to try and do absolutely everything at once. We are quite keen, with the Secretary of State, to stage our changes, if we can, so that we can apply capacity and capability correctly.

Q8 **Chair:** I understand there are challenges for Departments, and any major Government reshuffle makes changes as well. But looking at other Departments that have been in the same situation—DCLG, DEFRA, FCO—they have not found themselves unable to provide the information. I am just wondering why the MOJ should be an outlier.

Richard Heaton: As I say, we did not take the decision by looking at our peer group. I would like to have published the plans on this occasion, particularly because of our experience last year and over the last spending round, where we were always chasing our allocation and seeking reserve claims. I just wanted to get ourselves on to a decent footing. I do not think many Departments do the medium-term financial plan, bottom-up work that we are doing at the moment. It is a one-off exercise. I would not expect to do it more than once in Parliament.

Mike Driver: Just adding to that, one of the priorities of the Department, picking up on the point Richard made about the financial position of the organisation, is to create a situation of financial sustainability for the Ministry of Justice. The medium-term financial plan, which is a very bottom-up approach to developing that position, is still being tested. We are testing many of the assumptions still. As Richard says, if we produced a set of numbers now, I am sure that within six weeks they would all change. We would like to give you something for which you can hold us far more to account, rather than something that is constantly changing.

Q9 **Chair:** Last year we did have, frankly, going back to the old Harold Wilson phrase, a stop-go approach to financial controls within the Department in that either there was an emergency brake being put on or it was being lifted. Mr Heaton, everybody agreed that was not satisfactory.

Richard Heaton: I still make no apology for having done it, but we needed to do it at the time. It was not sustainable; you are right.

Q10 **Chair:** It is not the way to do it going forward, is it?

Richard Heaton: It is not the way to do it—not long term, no.

Mike Driver: Financial controls, for any organisation that is spending £10 billion, are very important. Whether we go into the level of detail that we have done in the past is a different matter.

Q11 **Chair:** You prefer not to, perhaps.

Mike Driver: I would like to have controls to help us to deliver the outcomes that we are trying to deliver as an organisation. What we have done with the financial controls, which in many respects still exist within the organisation though, is to repatriate them back to budget managers. They are the people who hold budgetary responsibility. We have set a framework within which we expect people to operate and I expect them to be audited on the outcomes that they achieve and the value for money that they achieve with the budgets that they have.

Q12 **Chair:** You have made a number of changes to financial controls since you have been there.

Mike Driver: We have adjusted them so that they are a less centralised, less bureaucratic process and they allow people to deliver their business.

Q13 **Chair:** That is how you characterise what you have found and you have taken steps to improve that.

Mike Driver: Not just me but as an executive committee, under Richard's leadership, we have done that.

Richard Heaton: Mr Driver should take a bit more credit than he is giving himself. It is not just a question of controls from the centre; it is a culture of budget discipline in every budget manager. It sounds very technical and dry, but I want every person who holds a budget to have a licence to operate, whereby they understand what it is—you know the point.

Q14 **Chair:** That is something where, clearly, an issue was identified and you are saying that you now do work on it.

Mike Driver: We are introducing a system at the moment, for all of the senior civil servants and budget holders within the Department, to go through some specific training so that I am able to take confirmation that they are capable of being a budget holder within the organisation.

Q15 **Chair:** That is something that was not there in the past but is now being introduced.

Mike Driver: Not to the same extent.

Q16 **Chair:** That is helpful. Just to be clear then, Mr Heaton, against that background and the explanation, you are proposing to make the plans available. Was it the spring you were talking about?

Richard Heaton: I would have thought April. I do not want to overpromise, so April.

Q17 **Chair:** April. Perhaps you can keep us up to date on that information.

Richard Heaton: Of course.

Q18 **Victoria Prentis:** You have partially answered this already but it would be really helpful for the Committee for you to take us through, briefly, more or less in order, what you think the problems were. Why was it so difficult to meet the departmental spending limit? Why was the DEL so hard to reach?

Richard Heaton: Mr Driver can come in but I will start. The SR13, which was the one-year spending round, which set the budgets for 2015-2016, was pretty challenging for us. It came on the back of the good news, at least from the Treasury's point of view, which is that we had taken something like 30% out of our spend over the previous Parliament. We had taken vast amounts of spend out of our operations and back office. SR13 was very challenging.

Q19 **Victoria Prentis:** Was that actual taking out spend, or was that projected?

Richard Heaton: No, that was actual; so £900 million out of prisons, for example. To meet that final challenging spending settlement, what you saw was that we baked in the optimistic end of all our assumptions. Some of the assumptions went against us on, for example, fee recovery. There were some changes to the volumes of our business, so lots of high-end criminal cases and sexual abuse cases in both the criminal and the family courts, which led to greater calls on special Children's Act legal aid cases. High-end criminal cases are more expensive to administer in the Crown court as well. A number of things just went against us—a number of assumptions went against us. The culture and the climate was such that we had to meet a very challenging settlement. To make the numbers meet, we opted for the most optimistic assumptions; that is a broad way of putting it.

Q20 **Victoria Prentis:** That is very helpful. Then we had the situation of £93 million of departmental expenditure limit and then £493 million of the supplementary money went unspent. Did you calculate wrongly in asking for the extra?

Richard Heaton: No. I would say two things. First of all, we sought a reserve claim, as you say, of £400-and-something million from the Treasury. You only get one chance to do it, so we gave our best forecast of what we needed and agreed that with the Treasury. From my point of view, from a cash control point of view, we more or less came in on the nail—more or less. The £93 million, which appears as an underspend, is largely due to changes in how we depreciated our estate. It is a technical matter and Mr Driver might be able to help me.

Mike Driver: Yes, it was. In total, if you look at the figures, our forecast for resource was that we would spend, at the supplementary estimate, about £7.3 billion. We spent £7.2 billion—the £93 million underspend. That is roughly 1% of the budget—fractionally over 1%. It is probably worth noting that, had we overspent by 1%, the Public Accounts Committee would not be particularly amused with us, with an Excess Vote, having made a claim against the reserve. So there was some prudence in the way in which the estimate was calculated. The majority of that money, as the Permanent Secretary says, is as a result of the ways in which our depreciation was calculated. We were making some quite significant adjustments to the way in which our estate was dealt with and the depreciation of the estate. The majority of that £93 million is what is called non-cash, so it is depreciation. The money that we drew down for front-line services was fractionally overspent during that period, so we did not damage the way in which the Department delivered its business as a result.

The other £493 million that you talked about is to do with annually managed expenditure. That was primarily to do with some very significant volatile areas of our expenditure, including the way in which pensions are operated within the organisation and different property leases are dealt with. The claim against the reserve was made before we had the detail of how much we would spend in those areas. We were at the very prudent end of the scale when the supplementary claim was made, and, as we move through this year, we have learned quite significant lessons from that and we would be far less prudent this year.

Q21 **Victoria Prentis:** I accept your answer, which was obviously a full one, but these are enormous sums of money. There have been suggestions that some of the cost overruns were caused by inadequate modelling, for example, of court and prison demand, and civil fee income, which you mentioned, Permanent Secretary. Can anything be done to improve that modelling going forward, because it is very hard for us, as a Committee, to hold you to account in any way when these figures are so fluid?

Richard Heaton: You mentioned two areas of modelling. Let me take the second one—the fees one. When we put up fees we projected a future volume, which did not materialise, so something was unsatisfactory. We have had independent analytical consultants in to do a report on our modelling, to see what went wrong. They said that there are two great uncertainties. One I do not think we can control very well, which is that human behaviour is not very predictable on the back of things like fee increases, as opposed to price increases in the supermarkets. There just are not very many comparators, so you are dealing with something that is inherently uncertain; it is difficult to predict. Secondly, the quality of our data from cases going through the courts was not good enough. The underlying algorithms, they said, for all our models, were fine.

We are working to improve the granular data: when cases go through the civil claims, how many days do they take; how many documents are associated; what is the relationship between the overall litigation cost and the fee? We are seeking to improve that data. That is the first thing. Then, as we get better and more experienced at adjusting fees, we will have more comparators and the human behaviour will be more predictable. Those are the two areas we are hoping to work on. As I say, we did take a bit of a hit because our assumptions were not borne out.

Q22 **Victoria Prentis:** What about court and prison demand modelling?

Richard Heaton: We forecast, to the extent you can forecast, volumes in the criminal justice system. We work with the Home Office and other agencies to try and predict charging behaviour or to try to map charging behaviour through to flows into the courts and into prisons. We think we know pretty well what the patterns are, but it is very difficult to predict the future volumes on violent cases or sex cases. It is very difficult. There is an inherent uncertainty there. We have certain levers that we can adjust in response to fluctuations in demand. We can put up or down the Crown court sitting days and so on, but fundamentally we are dealing with behaviour in society that is quite difficult to predict.

Mike Driver: Trying to answer the point about forecasting more widely, lots of what we do, as the permanent secretary has said, is very demand-led—areas that are quite volatile. If you take, for example, legal aid, some aspects of our operational performance, some of our change activities, are quite volatile. It would be fair to describe the techniques that we were using within the Ministry of Justice to do some aspects of our forecasting as slightly rustic. We put in place some systems to help improve the forecasting that we have. We are doing a lot more range forecasting; we are looking at uncertainty far more. We are doing simulation modelling around our financial forecasts far more than was the case previously.

I also think—and this comes back to my point about budget training and targets—there was a bit too little ownership, across the organisation, for the forecasts. It was seen as something that finance was responsible for, rather than something that the business was responsible for. So we are trying to change the culture in that area. The training that we are setting, as I set out earlier, will help, but we are also proposing to set forecasting targets for each of our budget holders as well, because our ambition, as with every other Government Department, would be to be able to forecast within 1% of our budget.

Q23 **Victoria Prentis:** I think we would all benefit from hearing a little more about what the emergency spending controls meant in practice. One area that this Committee would definitely like to know about is the seeming rift that was caused between the MOJ and the Inspectorate of Prisons, which obviously we heard about through an exchange of correspondence and from the inspectors. Could you talk generally about emergency spending controls and what you have learned from the experience of implementing them?

Richard Heaton: You are right: there was an unwelcome rift between ourselves and the much-valued inspectors. Indra Morris and I gave evidence to this Committee on the back of that exchange. When I came in as permanent secretary 14 months ago, and when it became clear just how far away from balancing our books we were, we reached for spending controls not because they are the state-of-the-art measure for bearing down on discretionary spend, but because we had to do something very quickly and we had to send a signal to the organisation that there was no money. So they were necessarily a bit rough and a bit brutal. They required—this is the bit that rubbed for budget holders such as Mr Hardwick—budget holders to submit to us weekly their areas of discretionary spend for approval. There was quite a lot of bureaucracy and monitoring from the centre. It was probably felt by the arm's length bodies that there was a breakdown of trust. It was not a great moment in our relationship.

There is a report from the National Audit Office on arm's length bodies; there was a survey of arm's length bodies, and our arm's length bodies did not like us at that particular moment. I hope that those relationships have been rebuilt. Generally, we have good relationships with our arm's length bodies, and, as Mr Driver said, we have kept the controls in place. We still require people not to discretionary spend on expensive conferences unless they have to, but we have delegated authority to improve it to a more appropriate level. The controls are there but the process we hope we have lifted. I do not make any apology for putting them in place a year ago because we had to do something.

Q24 **Victoria Prentis:** Are there any plans to put more in place in the future—not at the moment?

Richard Heaton: No. We hope to do it through the culture of really smart budget management.

Q25 **Victoria Prentis:** Changing the culture, yes. As to the protocols between the MOJ and the inspectors that we heard a lot about during the spat with Mr Hardwick, the inspector, earlier this year, has any progress been made on putting them in place?

Richard Heaton: All the arm's length bodies have it. The inspectorates are under preparation, and if you give me a moment I can tell you—

Q26 **Victoria Prentis:** We have not seen anything so far and we were promised.

Richard Heaton: I do not think we have missed the deadline or the target, but I will let you know just as soon as I can.

Chair: If you could, that would be helpful.

Q27 **Victoria Prentis:** Thank you. That is probably all from me, except for one final question. Do you view spending priorities as holding back the prison reform? Do you think they will hold back the current prisoner reform agenda with the position that we are in at the moment? You said, when you came in 14 months ago, that you were concerned by the state of spend in the Department. Do you feel now that the Government should be restrained by budgetary matters generally, on prison reform?

Richard Heaton: I would not want to argue that bearing down on public expenditure should cease to be a thing in our area, as in anywhere else, but two things on prisons. First of all, a very welcome part of our spending settlement was a large capital sum to invest in new prisons. That will be a large part of the prison reform proposals when they are outlined very shortly. The second thing to say is that we did take a lot of money out of the running costs of prisons over the last Parliament and there is an argument that, in some areas, investing a bit more money in staffing levels, where appropriate, would be a sensible use of public resources. That is a conversation that we are having with the Treasury at the moment.

Mike Driver: Adding to that, it has been a difficult year for us financially, as we attempt to balance our budget through 2016-2017. Where we can, we are still trying to find additional funding for prisons; the £10 million that was previously announced, for example, to help in terms of staffing levels and the provision of body-worn cameras was an example of that. We see it as a priority, within the Department, to make sure that we fund these areas.

Q28 **Mr Hanson:** Could we just look at some of the areas of contract management, which is obviously a big part of the role of the Department, in terms of some of its relationships with suppliers generally? There have been a range of issues mentioned in the annual report but I want to visit, first of all, where we are with electronic tagging. Obviously, there was a bit of a disaster area with G4S and Serco. There has been the cancellation of those contracts and there is ongoing legal activity.

Then the Department engaged in a contract with Steatite for satellite tagging, which again itself was, as I understand it, terminated in February, during the time of this year. That is an example of how contract management is difficult. I just want to get to the bottom of where we currently are in relation to G4S and Serco and what is happening there, and, secondly, why was the Steatite contract cancelled, and what is now happening with electronic tagging, in terms of the supply of material, as an example of some of the bigger issues we will talk about in a moment?

Richard Heaton: Thank you for the acknowledgement that this is difficult stuff, but, to use a cliché, we have reset this programme. Let me try and explain where we are.

Let me take Steatite first. The contract with Steatite was for them to develop state-of-the-art bespoke tags for us. We became unhappy with the length of time that was taking and the prospects of a viable product emerging. So when Mr Raab put a statement to Parliament in February, he announced the ending of the Steatite contract and, instead, us going back to the market to any providers who were capable of providing off-the-shelf-tags for us. We think it is more profitable and more useful to be able to take from existing providers who provide tags for all sorts of other customers, both radio frequency tagging and GPS tagging. We think that supply will meet our demand better than requiring a company to tailor- make tags for us. That is a fundamental change of approach.

The contract that will emerge will have a procured contract for the supply of off-the-shelf tags. Capita remain, however, the contractor for monitoring and field services. Airbus remains our contractor for monitoring and software appliance. The third tier will be the contract I have just described, where we are going to market. The fourth tier of the contract will be an existing contract with Telefónica for the telephony network.

It is a tower approach. We are not putting all our eggs into one basket. We rely on those four contracts to be integrated by ourselves and we will have the service-integrated function. That is a fundamentally different approach from simply asking two big companies to provide the entire tagging apparatus. That is the result of the reset.

Q29 **Mr Hanson:** Just so I am clear again, there was a £23 million contract with Steatite, which was cancelled in February. What were the reasons? You have said that they were not performing. What were the specific reasons for the cancellation of that contract?

Richard Heaton: They were not meeting our timescales, which were challenging for these tags, and we were not satisfied that the progress would lead to a decent product.

Q30 **Mr Hanson:** In your annual report we have a loss of £3.9 million, plus £5.2 million, in what is termed "fruitless payments arising from the decision to terminate a contract with a third party." Were those payments made to Steatite?

Mike Driver: Yes.

Q31 **Mr Hanson:** In general terms, in terms of your contract management, how much money has been "wasted" on either G4S and Serco, or payments to the cancelled contract with Steatite, over the period of the accounts in the last year and potentially in previous years?

Mike Driver: I can give you those numbers. Page 69 of our accounts, which deals with losses and special payments, shows that we made a payment of £3.9 million to terminate the contract. That was to Steatite. There were various small contractual payments, which made up a significant figure of £5.2 million. The total amount that was incurred as a result of terminating the contract was £9.1 million.

Q32 **Mr Hanson:** How much of the £23 million contract, therefore, was actually expended on services?

Mike Driver: £9.1 million was treated as a constructive loss. That was money that had been spent where we had decided not to pursue the full roll-out of the contract.

Q33 **Mr Hanson:** Action was taken in that case, but it leads to the wider issue of how you are managing contracts within the Department. I suppose it is the perennial problem of what expertise there is for people in Departments to manage big, complex contracts with performance outcomes. Obviously, it has not been done on G4S and Serco with the tagging of deceased people. When I was in the Ministry of Justice we had people with their wrong legs tagged; we had false legs tagged by G4S and people walking about. There are all sorts of contract problems like that. I accept that it is complex. Given the changes that you have apparently reported in your annual report of a new commercial and governance committee and so on, how are they going to improve the management of those large contracts?

Richard Heaton: The G4S/Serco tagging episode was a pretty low moment. The Department has done quite a lot—a huge amount—since then to improve our capability. It seems we spent almost the whole of last year building up and looking at the commercial function. For example, we have an excellent new head of commercial function reporting to Mr Driver, responsible for the entire commercial operation across the Department. We have many more senior civil servants engaged in commercial work than we did before. We have a specialist commercial team in Leeds, instead of relying on expensive contractors down in London.

We have improved governance, which Mr Driver chairs. This has been an area where we have come a long way from the low-water mark of the tagging fiasco. If you asked me to score us on a maturity matrix, I would say we are probably 2.5 out of 5, and I would like to be 4.5 out of 5. Again, as in the finances, we have some way to go, but this is not an area where we are anywhere close to where we were when we had the tagging fiasco, I would say.

Mike Driver: Building on that, going back to your point about electronic monitoring and linking it to the second question you have asked, we have done four things. First of all, we have improved leadership and culture in the organisation. We have brought in significant numbers of people from other parts of the civil service and from the private sector to support us. We have also, in my opinion, become more outward looking across Government. We are welcoming support from the Cabinet Office and the Complex Transactions Team in the Cabinet Office and the IPA. If you look at what is happening with electronic monitoring at the moment, the contracts are operating effectively at the moment. The NAO, PAC, Cabinet Office and Treasury have all recognised the significant progress made since electronic monitoring hit across all our contract management areas. So there is an area of improvement there.

Secondly, on skills and resourcing, we are building up our skills. If you take the Electronic Monitoring Team, we use no consultants or contractors on that team at all. This is all in-house now, with very skilled and capable people leading that work. We have looked at roles and structures across the organisation, so we have improved our governance. As the permanent secretary says, I now chair a regular meeting, looking at all our commercial and contract management risks and issues.

We have also improved our information. We have invested in turning on aspects of the management information tools that we had but that we were not using particularly effectively as an organisation. We are making progress across the board. I agree with the permanent secretary's observation that there is still a long way to go, but we are a much stronger organisation now than we were, say, 12 months ago.

Q34 **Mr Hanson:** Just before I leave the tagging issue, you are currently buying tags from G4S and Serco, in terms of equipment, and you have spent around £30 million doing that. How long is that going to continue?

Mike Driver: We are continuing to get tags from G4S at the moment, although the monitoring and field services are delivered by Capita. We are in the process of the early stages of contracting for new tags. We expect that contract to be signed in the spring, with a new provider. We are engaged with four potential providers at the moment.

Q35 **Mr Hanson:** If I summarise what you have said, it was difficult and challenging, there was poor performance, but you have intervened and managed that. You are now telling the Committee that, with regard to the type of concerns that the Public Accounts Committee identified about lack of commercial ability, focus among senior staff, successful contract management, you believe that the Contract Governance Committee, under Mr Driver as Chair, is in a better place to manage those risks than before.

Richard Heaton: In a better place, but I am by no means complacent. For example, an area we need to do better at is forecasting, category by category, when the big contract renewals or new contracts will be needed, so that we are not in a position of having to contract in a hurry. I do not think we are as good as we could be on that. I do not think we are universally good on allocating business owners to all our contracts. We are pretty good at the major ones. I absolutely do not want to sit here and sound complacent. This was an area of weakness for the Department; it is an area where we are getting better.

Q36 **Mr Hanson:** You have said in your annual report that you have reviewed all the "gold-list" contracts from 2014, which are over £10 million a year. What issues have arisen out of that review that the Committee would be interested in?

Mike Driver: We go through the gold contracts, as you say, on a regular basis. We have 99 gold contracts at the moment. We have introduced a system where we have a senior responsible person for each contract and we have an attestation system that exists, which we check. We check the management information of all those contracts. We confirm that we have proper contract management in place through all those contracts. The value of them is £2.8 billion a year, so this is a significant part of our organisation's expenditure. At the moment, I could not highlight any particular issues that have come up.

We had a review, for example, of Medway, and I must say that what we found, looking at Medway, was that some of the management information was showing a much greener view of the world than the media might have shown it.

Q37 **Mr Hanson:** As part of the discussions again, you have promised the Public Accounts Committee that you would look at structuring big projects in such a way that suppliers do not have too large a market share. Could you, again, indicate to the Committee how that is working out in practice, because we still have, effectively now, a large risk with Capita managing the electronic tagging project, and there are a number of other large companies who have quite a significant market share of the business? What steps are you taking to diversify the MOJ's contract base?

Richard Heaton: I will start. Capita is quite a good example. You are right—we have a dependency on Capita for electronic monitoring—but, under the contract model I described, it is only one of the five tiers. They are responsible for monitoring and field services, but they will not be responsible for providing the tags. So that is quite a good example of diversification. I had another example in mind, but it has temporarily gone.

Mike Driver: I would have said that we are diversifying well, if you take the work that we are doing on prison foods, using one major supplier but using a significant number of small and medium-sized organisations to provide the food that we need. If you take prisoner escorting, we have two organisations. With private prisons, we have three organisations. I would say that our approach to diversification is quite good. Although you may challenge us on transforming rehabilitation later on in this meeting, we have significant numbers of organisations operating in that space as well.

Q38 **Mr Hanson:** I have one final question on this, as I have the floor. If I were, as a Member of Parliament, to write to you about these issues, you would currently have a 90% target of responding to me within 15 working days, and, yet, the performance targets in your own reports say that you have not met those by any stretch of the imagination. You are on 64% for the responses to Members of Parliament. What steps are you taking to ensure that, if I did write to you on these issues, the performance would be in line with other Government Departments, and much better, because 64% on a 90% target, on what is only over 4,000 letters, is not very good?

Richard Heaton: It is not great and I apologise for it not being as good as it should be.

On a couple of quite important housekeeping matters such as our response to FOI requests, parliamentary correspondence, and PQs is another one, we have regarded those as baseline competence issues. We have had, for example, indicators in all the ministerial offices, all the private offices, showing the real-time scorings for each office. We brought FOI to my executive committee for a solid period, week after week for several months, until we had got that cracked. We do take these things seriously and I apologise that we are below the target, but we are very conscious to the extent we are below the target.

Mr Hanson: I will just flag that up, Chair, because it is 64% on a 90% target.

Q39 **Chair:** When I arrived as a Minister at the Department of Communities and Local Government, we had very poor performance in relation to correspondence and answering parliamentary questions. We had one senior official tasked, as a project manager, with improving it and one Minister tasked with oversight. Have you done something like that?

Richard Heaton: I hope, when our next report is published, you will see a better number than 64%. I do not know what the current number is, but certainly the head of private office was tasked with leading a—

Q40 **Mr Hanson:** It is 64% on the MOJ headquarters, on a correspondence of 4,000. For example, with regard to the Official Solicitor and Public Trustee, only 20 letters were sent by Members of Parliament, but on a 90% target you only achieved 45%, on 20 letters. Within that, that seems to be, as a small issue in a wider picture, an important issue you might want to focus on.

Richard Heaton: I will take that away certainly.

Q41 **Marie Rimmer:** You have had a tough time and the MOJ has described it as a very challenging target that you have to meet: first, 15% by 2019-2020, which is based on your 2015-2016 baseline; it is 15% on that; and, secondly, halving administration costs by £570 million to £285 million by 2019-2020. However, the Government have pledged £1.3 billion towards modernising the prison estate, which would bring forward estimated savings of £80 million, and then investment in the courts of digitising, which is targeted to bring these savings. None the less, you have this targeted 15% against the baseline of 2015-2016, on top of similar cuts that you have gone through already. How are you planning to identify and deliver these savings?

Richard Heaton: You will see more detail when I am able to write to you, along the lines I described earlier, with our year-by-year plans for delivering the business and meeting our spending targets. They are ambitious savings. We will get there by a combination of cutting our own costs, increasing where we can, where it is sensible, our fee income, and by some policy intervention such as courts reform, which deliver savings over the longer term.

As I say, at the moment our plans and our allocations do not meet, which is why we are doing this work on our immediate financial plan to try to close the gap. But those are the areas. It is a combination of efficiency and policy choices, better targeted spend and prioritisation. Those are the areas we are looking at to close the gap, but at the moment we have not closed it.

Q42 **Marie Rimmer:** Can you give us assurances that you will not be salami slicing across all your arm's length bodies to achieve this? I am all in favour of passing budget responsibility down. In local government we are doing something similar, and it brings about responsibilities and initiatives as well to achieve them. How can you give us assurances, or can you give us assurances, that you will not be just salami slicing, the easy way of doing things, passing it on?

Richard Heaton: We have good, fruitful conversations with all our arm's length bodies. Everyone understands that we are all in this challenging time together and that we all must find ways of cutting our budget. We have very good conversations with our arm's length bodies and it leads to different savings numbers body by body, which shows that we are not simply salami slicing. There will always be financial pressure, but we will always have an intelligent conversation to try to reach a settlement that works for that body.

Mike Driver: This goes back to the point the permanent secretary was making about the medium-term financial plan. That is a bottom-up look at every assumption that we make that underpins our financial position. It is fair to say that through to 2020-2021, the year beyond the spending review, which is where we have planned to at the moment, the financial position of the organisation is challenging. Our ambition is to re-prioritise spend rather than salami slice. If we start salami slicing, that is just a very lazy way of doing financial management. Our ambition is to go far beyond that so that, based on productivity, unit costing and priorities for the organisation, we can determine how much money is required by each part of the organisation. That is not to say that each party is not going to have to become more efficient, but there is a difference, in my view, between efficiency and economy, which is where salami slicing comes in.

Q43 **Marie Rimmer:** You plan to halve your administration by 2019-2020. How challenging is this and what steps are you planning to achieve this?

Richard Heaton: It is challenging. Like all our spending challenges, this one is challenging. We will get there by a combination of workforce reductions, where we can do that; transferring contractual reliance into civil service reliance, where that is cheaper and better, which it often is; by reducing our reliance on expensive central London property; by getting better deals from our contractors; by renegotiating contracts; and, in particular, by getting a better deal out of our technology. It is all the things you would expect to find from a Department radically reducing its cost base without affecting the frontline. You will see further detail when we give you our plans in April, but those are the broad headings.

Mike Driver: Could I add to that, though, with some numbers? In 2015-2016 we spent £570 million on administration. The current forecast that I am working to for 2016-2017 is that we will spend £503 million on administration. That is a £67 million reduction in the year, which is driven by the things that the permanent secretary has talked about.

We are also doing a review of our administration expenditure, so I would use the term "overheads" rather than "administration". It is fair to say that, across quite a complicated organisation such as the MOJ, people have used slightly different methodologies for determining what administration is. We are working through a piece of work at the moment to make sure that we have consistency of administration. That may mean that some administration funding, with agreement from the Treasury, is reclassified as programme. It does not mean that we are not going to have to make savings, but it means that at least we are reducing expenditure in the right areas and for the right reasons.

Q44 **Marie Rimmer:** Do you have any idea of the staffing level reductions that you need to make?

Richard Heaton: We have already released, this autumn, 700 staff through voluntary exit from the organisation, both from headquarters and the Legal Aid Agency. I do not have a precise number for where the headcount number needs to be at the end of our spending period, but we are talking several hundred of non-front-line posts.

Q45 **Marie Rimmer:** You do not have a figure in mind.

Richard Heaton: Not a precise figure, no.

Q46 **Marie Rimmer:** What impacts will halving the administration costs have on service delivery? It is an ambitious change in programme. I know we talk about overheads or back office, but there is a need for that support to deliver the front-line services. What impact do you think this is going to have? Do you think there is a resilience? You are planning on actual resilience to deliver the services, maybe somewhat differently.

Richard Heaton: I think we should emerge with a Department that is more resilient and better able to support the frontline. For example, at the moment we have quite a disparate Department, with lots of different business units, all with their own collection of corporate functions. If you salami-sliced all those, you would lead to very small corporate functions, weakly supporting businesses. We are interested in bringing together those corporate functions, where they make sense, so that each part of the Department is supported by a resilient set of high-class, professional, corporate services functions, whether it is finance, technology or estates. That is the model we are moving towards. If we get this right—and I am confident we will get it right—it will lead to greater resilience rather than greater reliance on flimsy support units.

Q47 **Marie Rimmer:** When do you expect to have reduced your reliance on the central London property, and have you any idea what this will look like? What plans do you have?

Richard Heaton: Our headquarters are currently in a very expensive building opposite St. James's Park tube. We expect to be co-tenanting that with other public bodies, some of whom have moved in and some of whom are making plans to move in. We will share the cost better, so there will be much better utilisation of that space. We, in turn, will make greater use of space that is available to us in our own nationwide estate. For example, we have a series of commuter hubs, where people can work in the back office of a court or a prison establishment building. That has proved very popular and very effective. It is very good for efficiency and for work/life balance. It is just a good thing. That helps us reduce the number of desks we need in central London. That is the best example.

Another example would be, as I said earlier, that we are quite keen on functions that do not need to be in London being in other parts of the country where property is, frankly, cheaper. Our commercial team in Leeds is a brilliant commercial team and they manage all sorts of contracts for us. They are not in London. It is a better quality of life, there is less commuting, the labour is more favourable for us, and so it is thoroughly a good thing. We do not need our contract team to be in central London.

Q48 **Chair:** The Government have the freehold of the Department's headquarters in St. James's Park, I understand.

Richard Heaton: It is a PFI arrangement. I am not sure who the freeholder is. It is leasehold.

Q49 **Chair:** How long is on the lease?

Mike Driver: I do not know. We can give you the details.

Q50 **Chair:** It is the usual sort of commercial lease.

Mike Driver: Yes.

Q51 **Marie Rimmer:** Thank you very much. You have challenges, but you sound to me as if you are going about it the right way.

Mike Driver: I hope so.

Marie Rimmer: I wish you every success and we will be here to ask you about it.

Q52 **Chair:** You have talked about the fundamental review of the way MOJ operates. What is the timeline for that?

Richard Heaton: The MOJ transformation programme, which is what we are calling it, will roll out over the course of this spending round. It is already delivering products and outcomes right now, but it will continue, I imagine, for at least another 18 months to two years.

Q53 **Chair:** Does that include the way in which some of the major spending agencies operate? For example, are you going to have a fundamental review of the way NOMS and the Legal Aid Agency operate?

Richard Heaton: No, not in the scope of that programme. We are quite keen to focus programmes and not have them compendious. We are looking at how NOMS operates and how the Legal Aid Agency operates.

I am sorry; let me start that answer again. In some respects, the answer to your question is yes. For example, the explanation I gave about bringing corporate functions together extends to NOMS corporate functions. Very shortly, the NOMS corporate functions will be co-housed with other corporate functions in the Department and NOMS will not have a full suite of separate, independent corporate functions. To that extent, we are trying to bring the Department together so that it relies on each other's moving parts more effectively than currently; it does not have so much duplication, so much confusion and so much waste. The move towards a central-run Department certainly includes NOMS and the Legal Aid Agency, yes.

Q54 **Alberto Costa:** Can I just go back to the question about workforce reductions that you mentioned. In answer to Mrs Rimmer, you said that you will be releasing 700 staff through voluntary exit. I did not quite catch whether you meant agency staff as well. Did you mention agency staff?

Richard Heaton: No, I did not. I meant civil servants.

Q55 **Alberto Costa:** Okay. Could I ask if you would be willing to supply the Committee with the full-time equivalent members of staff that the MOJ currently employs, as well as the numbers of agency staff, as of today's date, so that we can look at this again in the months to come and compare and contrast?

Richard Heaton: Yes.

Q56 **Alberto Costa:** My experience of working in Government, Mr Heaton, as a Government lawyer, is that reductions are often made in full-time equivalent staff, but an increase in agency staff is often brought in to compensate for that. I would like to have your assurance that that will not be happening.

Richard Heaton: Certainly. I can write to you with the figures. In several areas that we have been working on, we have been trying to engineer precisely the reverse. We are now employing more technologists and fewer contractors on IT and digital. We have more of our contract management for the transforming rehabilitation contracts done in-house, rather than relying on contractual workforce. In Mr Driver's areas, we are releasing the services of a consultancy firm that has been helping us in management accounting. There is nothing wrong with using contractors where, strategically, it makes sense to use contractors, but where it is cheaper, more effective and better for the organisation to have in-house skills, then that is what we should prefer. I want strategically to use contractors rather than randomly, but I will certainly supply you with the figures so that you can hold us to account in future.

Alberto Costa: Thank you.

Chair: Can you perhaps remind members of your interests?

Q57 **Alberto Costa:** Of course, yes. I should have declared this at the outset. I am a practising Scottish and English solicitor as well.

Could I just turn to the issue of efficiency in the criminal justice system, in particular planned court closures? You are proposing, as a Department, over 86 more court closures up until 2019. What effect will this have on "waiting times"?

Richard Heaton: The court closures are part of a pretty comprehensive courts and tribunals reform programme, which is the subject of the Lord Chancellor and Lord Chief Justice's joint statement. It is certainly not all about court closures and it is certainly not all about efficiency: it is about providing a service that is better for victims and witnesses, and court users. The idea is that there will be many fewer court hearings which are unnecessary court hearings, fewer preliminary hearings, fewer adjournments, things done in a way that is better for the court user. Fundamentally, we are setting out to make life better and easier for court users, rather than for visiting greater waiting times on court users, who get a pretty miserable experience at the moment. You will expect to see a better service, not a worse one, as a result of the court closures, which in turn are part of a wider reform programme.

Q58 **Alberto Costa:** Having practised as a solicitor, as I mentioned a moment ago, I look forward to seeing, in fact, the quality difference that we get from the Courts Service. Is there a maximum acceptable travel time for witnesses, victims and justice professionals such as solicitors and barristers, to have to travel to attend a hearing?

Richard Heaton: I do not think we use a benchmark figure for those purposes. I may be wrong. Was that the question: do we have a maximum travel time?

Q59 **Alberto Costa:** Yes. Is there a maximum acceptable time? If I recall, Chair, in earlier evidence there was. The previous Minister made—

Victoria Prentis: An hour.

Alberto Costa: An hour, yes. Are you not aware of that?

Chair: The evidence from the previous Minister was that about an hour was regarded as an acceptable figure.

Richard Heaton: I clearly defer to that. I do not, off the top of my head, have a benchmark figure.

Q60 **Chair:** I am concerned that the Minister gave a figure that the permanent secretary is not aware of.

Richard Heaton: That may be the case. I would obviously defer to what the Minister said.

Q61 **Alberto Costa:** Could you find out what the Minister did, in fact, say to this Committee?

Richard Heaton: Certainly.

Q62 **Alberto Costa:** We will check that. Could you confirm whether or not the MOJ has a policy on that?

Richard Heaton: Yes, certainly.

Q63 **Alberto Costa:** Could I just turn to what the previous Parliamentary Under-Secretary of State for Courts and Legal Aid said, my colleague Shailesh Vara MP? He stated that closing these courts will raise £40 million for reinvestment and save £27 million a year. You have written off much of the value of the 86 courts earmarked for disposal and, indeed, of Holloway prison. Where does this leave your estimate of total receipts on disposal?

Richard Heaton: It certainly remains the case that income or capital generated from court sales is an important part of the funding mechanism for our reform programme. What the current status of the 86 courts is I do not know, off the top of my head. We may have it behind us. It is £300 million, I am told.

Q64 **Alberto Costa:** £300 million.

Richard Heaton: From the 86 court buildings.

Q65 **Alberto Costa:** Will this leave a shortfall in your capital spending plans?

Richard Heaton: We are watching it very carefully. No, it should not do. It depends, clearly, on the property market, and that is inherently volatile. We have hired a specialist estates director to make sure that we get the maximum possible dividend from the court closures and the receipts. We are not anticipating a hit on our capital receipts.

Mike Driver: Our capital is split into three chunks, in many respects. We have capital for the ongoing maintenance of our estate; we have capital for prison building, which we touched upon earlier; and then we have capital for courts. There is quite a significant amount of capital from sales, which is going to have to be reinvested both into the building programmes themselves and into the resource funding for reforms. In total, nearly £500 billion from sales of prisons and courts will be reinvested into the programme.

It is fair to say, rather like the rest of our financial position as an organisation, that the capital is going to be stretched through the next few years and it is going to be very important, as we work through this with the Treasury, to make sure that we have the money in the right years and that we are selling at the correct value rather than selling too early in some cases, to get best benefit for the taxpayer.

Q66 **Alberto Costa:** On that point, a handful of courts in the south-east and London represent, as far as I understand, most of the sale value across the courts to be closed.

Mike Driver: About £150 million.

Q67 **Alberto Costa:** Is that not risky?

Mike Driver: In what respect?

Q68 **Alberto Costa:** In respect that so much of the court disposal is concentrated in that area.

Mike Driver: It is relatively few buildings, in total. They are high net worth buildings on the estate.

Q69 **Chair:** This is the area where commercial property value is going to be most specifically hit by the Brexit decision. Clearly, that makes your proposals extremely vulnerable, does it not?

Mike Driver: There is some vulnerability. I am not an expert on property values in London, which is why we have engaged—

Q70 **Chair:** You only have to read a newspaper, Mr Driver.

Mike Driver: I accept that, but there is also an issue at the moment that, with the value of the pound, inward investment into property is quite a positive issue. There are arguments both ways. What we are not going to do, though, is have a fire sale on selling our properties in London.

Q71 **Chair:** Are you going to be doing a revision then of what you think is realistically achievable from the disposal programme?

Richard Heaton: We are watching that very closely. The early disposals have been rather positive and we have exceeded our forecasts. We are watching it. I do not think it makes sense to do a single revaluation, for the volatility reasons that both Mr Driver and I have mentioned. We are watching this very closely with the Treasury, because there is a dependency on a volatile market.

Q72 **Chair:** That is the point: it is volatile. Ministers, previously, when they have come to us, have stressed that, for example, with the prison rebuilding programme as well, the disposal of the old Victorian sites was an important part of funding that, although we want to know if that is still sustainably fundable in a changing environment over which none of us has a direct control.

Mike Driver: Could I come back to one point about the volatility? We talked earlier about our forecasts, historically, being at the optimistic end. What we have done, in terms of our assumptions on sales of property, is to build in about a 20% optimism bias, so we are at least operating within a range rather than at a spot rate.

Q73 **Chair:** Can I just raise one other thing on this topic, before we leave it, and that is the increase in delays in the Crown court? If you look at the situation in the Crown court, the backlogs there increased by 34% between March 2013 and September 2015, and waiting time for a Crown court hearing has increased by 35% since September 2013. That is 99 days to 134 days. That is well over four months now, waiting for a case to come on at the Crown court and significant variations across the country. One of the key things that was seen as an achievement by the Courts Service, in the past, has been reducing the waiting list for Crown court cases. What has gone wrong here?

Richard Heaton: Broadly speaking, the story is that the case mix coming into the courts has been more serious and more difficult, in particular more sex cases, and they take longer to prepare. That is the fundamental thing. The recent figures are more encouraging than that. We have two things that we are trying to improve on; one is the number of cases waiting to come through, what you might call backlog, although more accurately the head of work. The other is the length of time for a case to come on. Tentatively and cautiously, both of those indicators are looking better, so they are nudging in the right direction. The big bulge, as I have said, is because of the case mix. The number of low level cases coming into the Crown court is dropping—robbery cases. The number of high level cases, in particular the sex cases, has gone up. That is the bulge that a number of public agencies, ourselves included, are trying to deal with.

Q74 **Mr Hanson:** Could we look at transforming rehabilitation, which is obviously, again, another major project management issue that was commenced by former Secretary of States and former permanent secretaries, but which is still ongoing. We have seen some press coverage and that is linked also to the recent HM Inspectorate of Prisons and Probation report. I just want to touch on a couple of those issues.

First of all, in relation to the companies themselves, we have some apparent public concern about the viability and financial support available for the contracts that have been awarded as part of the £3.7 billion. What is your understanding of the sustainability of the income levels for those companies that have taken on responsibilities on behalf of the Government?

Richard Heaton: First of all, we are aware of the concerns and we share the concerns about the viability, the financial reward structures of the contracts, the income levels and so on. We are particularly concerned, if it is the case, that our contracting parties do not feel confident they can deliver the contracts. That is, obviously, a huge concern to us. We are talking to all of our community rehabilitation companies, because we are doing a review, as we had always planned to do, of how the contracts are working at this particular point. Pretty much everything is within scope, including the charging levels, the fee levels and the reward mechanisms within the contracts. We want the contracts to work well for us and for the companies.

What has happened—it is relevant to my last point—broadly speaking, is that the case mix, again, was not what some people had been expecting. In particular, the number of serious cases, which tend to go to the National Probation Service, has increased. The number of lower level cases, such as robbery and drugs cases, has tended to decrease. So the volumes going to the CRC companies have been lower than they or we collectively had projected. That is the fundamental point.

Because of that, we are not seeing coming through the sorts of investment in transformation that we had hoped for. The contracts are not failing, but they are not quite on all four cylinders right at the moment, which is why we are reviewing how they are working with the CRCs to see, within the cost envelope, if we can restructure the reward mechanisms to make them work better.

Q75 **Mr Hanson:** What does that mean, in practice, in relation to the number of offenders, for example? If you are saying that the offender levels are dropping in the areas where the rehabilitation companies have most scope to work, what does that mean? Does that mean you are going to be transferring more serious offenders to them? What does that mean in terms of outcome?

Richard Heaton: Parliament decided that the serious cases would not go to the CRCs, so there is no plan to remove serious rape cases to the CRCs. That, I do not think, is the answer. Volumes have gone against us, or gone against the CRCs, which has caused us to re-look at the contracts and how they are working, to make sure that they are sustainable for the whole life of the contract. We do not want to be contracting with parties who are finding these contracts unsustainable or unreliable and are therefore fragile.

Q76 **Mr Hanson:** When do you expect to conclude the negotiations on the contracts?

Richard Heaton: Within the next few weeks.

Q77 **Mr Hanson:** What, in public discourse, will there be about the outcome of those discussions? What will we know? What will Parliament know about the outcome of those discussions, because, obviously, if there are serious concerns about the financial viability, what assurances can you give to Parliament that the companies that come out of this discussion will have a viable future?

Richard Heaton: I cannot predict quite what we will share, but I am absolutely confident we will be able to share, in broad terms, what we have agreed with the companies.

There is one point that I know you have not mentioned directly, Mr Hanson, but the press coverage has; it is sometimes said that we somehow provided the wrong assumptions or the wrong guarantees about volumes. That is not how the negotiations worked, it is not how the contracts are structured. We offered a flat-line assumption for certain crime levels, but that was not a guarantee. Obviously, we could not possibly guarantee to contracting parties that they would benefit from certain levels of criminal offending; we would not have done that. But the flat-line assumption turns out to have been—

Q78 **Mr Hanson:** Are you able to share with the Committee what the gap is between what companies were expecting in financial return and what the Ministry of Justice has paid?

Richard Heaton: I can certainly share with you the graphs that show the projected volumes with the actual volumes of crime.

Q79 **Mr Hanson:** Those figures are in press coverage, in terms of the numbers that were projected and the fall as well that we have in the last 12 months. I am interested in what that means in financial terms, in relation to the contracts for the companies. Is that commercially confidential or is that information you could share?

Mike Driver: Can we consider that? It may be commercially confidential because we are potentially going to go into contract renegotiations.

Q80 **Mr David Hanson:** I suppose the point I am making is that at the end of the day, as a result of that fall in workload for the community rehabilitation companies, there has been a saving in some terms to the MOJ. We are interested in what that saving is and what you have done with it.

Mike Driver: It is not insignificant. We are still paying around £500 million a year to CRCs at the moment, so it is not an insignificant sum of money. One of the things I would add—

Q81 **Mr Hanson:** Let me rephrase it again; what were you expecting to pay to CRCs?

Mike Driver: I do not know that figure off the top of my head, but we might—

Q82 **Mr Hanson:** If the caseload has fallen, the amount of investment CRCs are getting, which is the fundamental problem that they have, will be significantly less or less than what they were expecting. Therefore, there is a portion of money that is not going—

Mike Driver: The maths on this are quite complicated because of the way in which the payment structure operates between the initial payments made, the sustainment payments that are made, and the way in which the WAV bandings operate. I would be prepared to come back to you with some details on that, if it would be helpful.

Q83 **Chair:** That would be extremely helpful, Mr Driver. Of course it is possible, although normally we put matters in the public domain, if there are matters that are generally confidential, that they can be expressly given to us as such.

Mike Driver: That is helpful. Thank you.

Q84 **Mr Hanson:** Given all of that and given the concern that is present from the companies themselves, we also have in parallel the concern from the HM Inspectorate, who has indicated that as far as she is concerned there is no divisible outcome to the improvements that were potentially going to be realised by the changes. What would your comments be to that?

Richard Heaton: On the positive side—this came out in the annual report as well—performance levels have, broadly speaking, held up, and this is a system that has been fundamentally changed. So that is a positive. Forty-five thousand offenders are receiving probation services for the first time. That is the less-than-a-year sentenced cohort. Those are two positives that have come out of the programme, but you are right to say and the inspector is right to say, with respect, that the transformation we have been hoping for has not yet happened. We do not know, yet, whether the contracts will have had an effect on reoffending. We are expecting some figures next month, which may give us an early indication of whether the reoffending level has come down as a result of the CRC contract mechanism. This was supposed to be a transformation programme. We want to try to re-engineer the contracts to kick-start the transformation element.

Q85 **Mr Hanson:** What are your measures of success? I know you were not the permanent secretary then and the Secretary of State has changed, but what are the measures of success for the transforming rehabilitation programme and how is the MOJ going to judge its success against those measures?

Richard Heaton: The main payment-by-result measure is reoffending. Although that is important, if we were starting from scratch, we would probably look for some more immediate, near-term interim measures. We are probably going to be looking at that as part of the contract review, because it is a slightly distant, arm's length measure to have a single measure for reoffending, and then you are trying to work out the cause and effect. So we would be looking at interim measures. I am particularly interested in innovation; I am particularly interested in joint partnership working with agencies such as housing authorities, housing associations and other parts of the public sector that are responsible for the wellbeing of people on release and resettlement of offenders.

Q86 **Mr Hanson:** On that point, for example, then, the HM Inspectorate said: "Little evidence of anticipated creativity or innovation in new services is being delivered by CRCs." What is the step change between what your aspirations are and where we are now, according to the HM Inspectorate?

Richard Heaton: What would affect that, I suspect, would be that they would say we need to recover the finances so that there is money to invest, with confidence, in innovation. I suspect that is probably what is at the heart of that. But you are right—we have not yet seen the innovation we were hoping for, and, so far, that has been disappointing.

Mike Driver: One of the things that has been demonstrated is that many of the CRCs are spending much more on fixed costs than was originally anticipated and far less on their variable costs. It is difficult to be innovative when you are tied down to such high levels of fixed cost.

Q87 **Mr Hanson:** I suppose the acid test is: is it better than it was?

Richard Heaton: It is certainly too early to say it is much better.

Q88 **Mr Hanson:** Why did we have all the change, just for the benefit of the Committee? Why did we go all through all the change in relation to splitting off serious offenders and restructuring dramatically what was the National Probation Service and delivered locally, when, at the moment, there does not appear to be any change, there are still negotiations on funding and there is concern about the private sector providers? I just want to know: is it going to be better?

Richard Heaton: It is early days; that is the first thing to say. If we get the contracts re-engineered, there is still optimism that transformation will follow. Why did we do this? As the Committee will know, the policy reasons included the desire to get the "Through the Gate" cohort, let us say, the short-term offenders, into probation services for the first time. That has happened. It is early days.

Secondly, there was the desire to get the payment-by-results mechanism to incentivise contractors to do innovative things to produce an outcome that is beneficial and to introduce competition into the market.

There are policy reasons for making this change. As I say, it is early days. I would not want to write off TR as a model quite yet. It is still early. The contracts have not quite worked in the way that we had been hoping. We are hoping to recalibrate them, but I would not want the Committee to think that we have abandoned the TR model, because that would be quite wrong.

Mike Driver: We are also only 18 months in to contracts that run until 2022, so we are at a fairly early stage of this.

Q89 **Mr Hanson:** They run to 2022 if they are viable for the—

Mike Driver: I accept that, but this is not just a contractual relationship, I would argue. This is a market that we have created and so what we are trying to do in getting that market to operate effectively is more than just a contract management relationship.

Richard Heaton: Finally, I would not want the Committee to think that I am saying that all the CRC companies are uninnovative and plodding. There are some great examples of really interesting things happening, and the inspector's report on Wales highlighted some really good practice between the CRCs, the Police Service and the Prison Service. Good things are happening; it is just that, nationwide, the story is not yet optimistic.

Q90 **Mr Hanson:** The NAO and the Public Accounts Committee also had some concerns about the IT system that is backing up the operation of this. I know, from my own personal experience, that the IT system has been very difficult over many years. At the moment, given that you paid £23 million, I understand, in compensation as a result of poor IT performance, I wonder where we are with that.

Richard Heaton: That particular problem has been sorted. It was a problem about providing a data gateway that worked. That, I think, has been sorted, but you are right that probation is a very mobile workforce. They are required to do things in courts, probation centres and out of the office, and you need decent mobile IT. We see that in the National Probation Service as well as CRCs. The particular problem of the data gateway that you mentioned has been fixed.

Mike Driver: Although it is not in full use yet. It is still in testing with two of the CRCs.

Q91 **Chair:** Transforming rehabilitation is a very grand, eloquent title, and it was badged up as this major, major political initiative, which was going to have great consequences in reducing intractable reoffending. You can understand why, if the best we can say about it is what we have had so far, people are going to be concerned that there a risk of a car crash coming down the road. How are you going to prevent that?

Richard Heaton: I do not want to indulge in political badging, but we do not want to write this programme off and there is a danger we talk up its weaknesses. We are determined to use the contract review thing to make the contracts work better.

Q92 **Chair:** But it is clearly creating some practical issues—

Richard Heaton: Yes, it is.

Q93 **Chair:**—which I am conscious that you are working with, but we would be wrong to think that this is sailing along smoothly at all, would we not?

Richard Heaton: If you had asked me for my top five rather than top three things, this would have been on it probably.

Chair: That is very helpful to have.

Q94 **Mr Hanson:** Just before I finish, can I look at the issues of Brexit? We had a discussion with the Secretary of State and we are now ourselves looking at what the implications are of Brexit generally. I would just welcome your assessment of the challenges for the MOJ, in relation to the decision by the people and by the Government to move towards Brexit within the next two years. From our point of view, we think there are issues to do with prisoner transfer agreements, international human rights law, the overseas issues with Jersey, Guernsey, Isle of Man and the Crown dependency issues there. We are just interested in what scoping work is being done by the Department to come to a conclusion on those challenges.

Richard Heaton: Quite a lot. First of all, can I just complete your list? I agree with all your list. In addition, I would add the network of treaties and other arrangements that allow civil and family cases to be enforced—judgments to be enforced across Europe and beyond. That would be on my list. The treaty arrangements allowing choice of law to be enforced would be on my list. Generally speaking, a related issue is doing what we can—there is quite a lot we can do—to help the legal services market establish and promote itself as a global force in Europe and beyond.

It is quite a big package of things for the MOJ. It does not put us quite in the legal departments like DEFRA, where your entire business model is turned upside down, but nevertheless we have a pretty solid Brexit workload. We have a policy director in the Department who is chairing a Brexit board for us. We are working hard with the Brexit Department, to make sure that their understanding of what we think we need out of exit negotiations is understood and shared within Government.

Another area for the list is on the possible volume changes of some Brexit scenarios. Depending on what happens, there could be volume changes coming to some of our tribunals such as social security and immigration. We are mindful of the volume consequences as well, so we are beginning to model that. We are working with the central Departments, Brexit Departments and the International Trade Department, to make sure we are sharing models, where that is appropriate. We are working with the Home Office; we have a shared interest in criminal law enforcement, policing and arrest warrants and so on. So there is quite a lot of work.

Q95 **Mr Hanson:** I do not want to put you on the spot politically, but the question is: within the timeframe that potentially is being looked at for Brexit, is there sufficient time for the Department to make the adjustments required in terms of its approaches and the planning presumptions that you have talked about on all those issues?

Richard Heaton: Yes, I think so. If you think of our earlier conversation about volatile volumes, that is something we can cope with and we have modelled for anyway. There is nothing new in that, in a sense, so, yes, to that bit. We are pretty sure that we and the Brexit Department understand each other in terms of our requirements for civil enforcement, mutual legal assistance and choice of law. I do not see any problem with getting that agenda clarified and sorted. I do not think I want to comment on what is achievable within what timeframe as far as the negotiations themselves are concerned, but we can get our house in order in the time available.

Q96 **Mr Hanson:** I am just presuming that if, for example, as appears to be the case, the Government are seeking to have a Brexit two years from March, by triggering Article 50—if that were the case—what would happen, in that period of time, to the pressures on the Prison Service through a prisoner transfer agreement? What would happen in that time in relation to the Crown dependencies and their needs? Is there sufficient time for you to renegotiate, just for example—as one example—the prisoner transfer agreements that are currently in place between now and March 2019?

Richard Heaton: I am confident that we can play our part within the time available, yes.

Q97 **Alberto Costa:** Just on that, I have a particular interest in legal services regulation. You mentioned the legal services market, ensuring that it is still able to promote itself in Europe and elsewhere. Specifically, on the recognition of professional qualifications, do you have any member of staff that is up to speed with the Legal Services Act 2007, as it applies to the eight or so legal regulators? If so, is that person liaising with, for example, the Law Society of England and Wales, or, indeed, the Law Society of Scotland, which, although at first blush the MOJ does not have a direct remit for it, given that the MOJ will be liaising with the other UK Departments on Brexit, when it comes to recognition of professional qualification, may have a direct impact on the devolved areas?

Richard Heaton: Yes and yes. Yes, we have the official, and, yes, they are talking to the Law Society, the Bar Council, the Institute of Legal Executives and the umbrella body for the general counsel in FTSE firms. Yes, we are engaging. The engagement with Scotland will probably be through the Scottish Government, rather than directly with the Scottish Law Society, but, yes, we are mindful of the UK dimension of a lot of this, although, as you say, our primary focus is on the England and Wales picture.

Q98 **Alberto Costa:** Would you welcome direct involvement from the Law Society of Scotland with your Department, if they wanted to contact you, if they felt the need to go directly to the UK MOJ on this matter?

Richard Heaton: I do not want to tread on anyone's toes, but if they approached us I am sure we would be responsive.

Q99 **Chair:** The other point on that was, of course, for very many vulnerable people the issue of enforcement of family judgments—things like maintenance—is critical. At the moment, that is done through, in effect, a single EU regulation. Practitioners in the family field are already concerned about this. What steps is the Department taking now, to make sure that that is clearly drawn to the attention of those doing the negotiations?

Richard Heaton: As I mentioned to Mr Hanson, there is civil, family, insolvency and intellectual property. There are several areas. Family is particularly stark, because it is the one with the greatest social consequences.

Chair: Precisely.

Richard Heaton: Pursuing child enforcement and so on is an essential part of a social, global, connected Europe. So, yes, we are very mindful of that.

Q100 **Chair:** The risk of not having a system to enforce those at the end of a period will be very great indeed.

Richard Heaton: Yes, that is absolutely on the list.

Chair: That is very helpful. There are one or two other questions before we finish.

Q101 **Alberto Costa:** You will know that the National Audit Office produced a comparative study of Government Departments' oversight of their arm's length bodies in July 2016. Forty-two per cent of your Department's arm's length bodies were not clear, or only partially clear, about what your Department's objectives were in relation to their area of work. What have you done to address this as the permanent secretary, and when will you produce an accountability systems statement?

Richard Heaton: I mentioned this report earlier in the hearing and that survey—

Alberto Costa: Forgive me, I came in late.

Richard Heaton: I confess to being disappointed by that survey. In all the answers, we are bottom of the small number of comparative Departments. The survey was taken at a time when we were visiting all our arm's length bodies with our emergency controls, so relationships were a bit strained for reasons I have explained. It was disappointing because I genuinely do not think that reflects their view of the Department or our relationship with them.

We do an awful lot with our arm's length bodies. We work with them; we trust them. We have their chief executives to my executive committee, every now and then, to share their thoughts on how it is going, share their successes and let us know what is on their mind. We invite them all to senior civil servants' conferences. They are very welcome within the Ministry of Justice and we like to think that we are doing things together as a justice family. We have a strong relationship. I think we steward them proportionately and well. Our director general for sponsorship is the Whitehall champion for arm's length body sponsorship. So, genuinely, I think we have a much better picture than is portrayed in those woeful figures.

Mike Driver: On your point about the accountability systems statement, we will produce that with our annual report and accounts, which we hope to publish in June.

Q102 **Alberto Costa:** Thank you. I have a final question. Forgive me if it has been asked before. It is about major projects. Your Department's major project portfolio is the Government's, apparently, third largest in number and sixth largest in value. Projects include electronic tagging procurement, the future information technology sourcing programme, which I understand aims to upgrade your Department's IT systems, as well as modernising courts—the HMCTS programme.

The Infrastructure and Projects Authority's annual report on major projects for 2015-2016 rates many of these 16 ongoing projects as amber or red, meaning a medium or high risk, respectively, of failing to deliver. The three aforementioned projects that I have stated are all rated, as I say, red or amber. Has your Department bitten off more than it can chew?

Mike Driver: We touched on this briefly earlier, when we were talking about the plan. What we are doing at the moment, particularly around our investment areas, is looking at our priorities to make sure that we have the right people working on the right projects, with the right skills and capabilities to do so. What we have done is to invest quite significantly in our portfolio management function within the organisation. We now have a fellow who works with us, who has joined us from the Cabinet Office, from the IPA itself, to lead the portfolio management function. We have improved our governance in this area, with the introduction of the Investment Committee, which looks at each of our portfolios and gates those portfolios to ensure that the investment that we place with them is going to get us the value for money that we are looking for from each of these areas.

In terms of the approach that we are taking more widely to the portfolio, it is fair to say that it is challenging, but I do believe, at the moment, that it is an achievable portfolio. We work very closely with the IPA as we review each of the different portfolios. At the moment there is risk, and there is always going to be risk, but this is quite manageable.

Q103 **Alberto Costa:** In answer to my question, is it, no, your Department has not bitten off more than it can chew?

Mike Driver: It is both yes and no, if you can have both of those things. We have a significant investment challenge as an organisation. In terms of our major project portfolio, that is deliverable. As with many organisations, though, that is almost the part of the iceberg above the water. There is still lots of other change going on within the organisation. What we do need to do, as an organisation, is to make sure that we prioritise and, where necessary, stop some of those things so that we can focus time, energy and resource on the most important things that the Department is trying to pursue.

Q104 **Chair:** Mr Heaton, when we were discussing transforming rehabilitation, you, very fairly, offered up the thought that if you had five issues for the Department that would be one of them. It would be wrong of me to let you go without asking what the other four are.

Richard Heaton: Our financial position would be the first one; then prison safety and reform, and we see them as twin bedfellows; the courts reform programme, which is a big, multi-year programme, requiring lots of investment; transforming rehab; I think capability in the Department. I know the areas where I want us to be more capable and in most areas I am pretty confident we are getting there, but I would like to be more capable on commercial, more capable on digital and technology, and even stronger on project leadership and project management. Capability and the people health of the organisation would be my fifth.

Q105 **Chair:** In terms of the people, there was a concern, in a civil service survey in 2015, as I am sure you picked up, about identifying senior leadership as a particular concern. Confidence around their management chain was down to about 44%. Is there any particular reason why that was the case? I appreciate it may be a snapshot in time.

Richard Heaton: That was in 2015. I cannot put my finger on what that would be. It could have been something in time. I do not know whether those numbers include the Prison Service or the Courts Service, but there could be something local going on. In a distributed organisation the leadership can be remote. It is always a challenge for people like me to lead a distributed organisation, so I cannot put my finger on what it would say.

Q106 **Chair:** You talked about the people dimension as being important; that is morale. That is part of it, is it not?

Richard Heaton: It is, yes; absolutely.

Q107 **Chair:** The overall engagement levels were below the civil service average at the NPS, the Prison Service, the Probation Service and the Legal Aid Agency.

Richard Heaton: Those are some very well-run agencies. We have some very effective public service leaders in each of those.

Q108 **Chair:** The interesting thing is that does not seem to feed through, does it, to some of the staff?

Richard Heaton: It could be a dislocation. If you are in the Prison Service, you are not familiar with the Ministry of Justice. You have this dimension in an historic organisation with a quite new Department attached as its parent body. You sometimes get that dissociation.

Q109 **Chair:** You promised to give us the timeframe, before you left, on the protocols.

Richard Heaton: If it was the protocol about how we do delegated recruitment—

Q110 **Chair:** It is financial matters and recruitment, if you remember. You gave evidence to us on the previous occasion, after there had been the issue with the chief inspector.

Richard Heaton: I had mistaken the question for being the memorandum of understanding between the Department and the arm's length body. If it was the protocol, setting out the way in which delegation works, then that was sent in April and has been established.

Q111 **Chair:** What about the memorandum of understanding with the arm's length bodies?

Richard Heaton: I need to get back to you on that.

Q112 **Chair:** That would be very helpful. Finally, is there any news on the Charlie Taylor review?

Richard Heaton: No news that I can share at the moment. I am sorry.

Q113 **Chair:** With Ministers?

Richard Heaton: To come.

Chair: Okay. Thank you very much, Mr Heaton and Mr Driver, for your time and evidence. This session is concluded.