

Justice Committee

Oral evidence: The Work of the Ministry of Justice, HC 418

Wednesday 25 October 2017

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Members present: Robert Neill (Chair); Mrs Kemi Badenoch; Alex Chalk; Bambos Charalambous; David Hanson; John Howell; Gavin Newlands: Victoria Prentis; Ellie Reeves.

Questions 1 - 79

Witnesses

[I](#): Rt Hon David Lidington MP, Lord Chancellor and Secretary of State for Justice; Richard Heaton, Permanent Secretary, Ministry of Justice; and Mike Driver, Chief Financial Officer, Ministry of Justice.

Examination of witnesses

Witnesses: Rt Hon David Lidington MP, Richard Heaton and Mike Driver.

Chair: Good morning, Secretary of State, we are delighted to see you here—and Mr Heaton, Mr Driver. It is the first time that you, Lord Chancellor, and Mr Driver have been to give evidence to our Committee. You are very welcome, and Mr Heaton, welcome back. We are going to go through a number of topics. I will start with the formal business of declarations of interest. I am a non-practising barrister and consultant to a law firm.

Ellie Reeves: I am a non-practising barrister.

Bambos Charalambous: I am a solicitor.

Victoria Prentis: I am a non-practising barrister, married to a practising barrister who also sits as a part-time judge.

Alex Chalk: I am a barrister, married to a barrister.

Chair: Those who are none of those things do not need to feel embarrassed about it.

John Howell: We are not.

Q1 **Chair:** Firmly are not, quite rightly. Mr Lidington, thank you very much. We appreciate your coming along. I had a chance to watch your speech when you were sworn in, and at the opening of the legal year. You made it very clear, both at our party conference and elsewhere, that you have a vision about the way the Department needs to go, in terms of both prison and the justice issues—the Lord Chancellor and courts part of your portfolio. Can you encapsulate and set out the key elements that you want to achieve during your tenure?

Mr Lidington: Thank you, Chair. If I tried to sum up what is a complex brief in a few words, I would put it this way. First, I am acutely conscious of the significance of the oath that I take as Lord Chancellor, distinct from the role of Secretary of State. The commitment to defend and uphold the rule of law and the independence of the judiciary and the courts has to run through everything that I do and seek to do within the Department. As I thought in the last four months about the priorities and direction of the Department, it seemed to me that, while matters such as the transformation of the Ministry of Justice are important, they are a means to try to secure outcomes.

I would describe the outcomes I want to work towards as falling broadly into two areas. First, we need to do everything we can to strengthen and uphold the world-class system of courts and tribunals that we have in this country. That means, yes, ensuring that its reputation for vigorous independence from the Government is maintained; that we have a judiciary that is as expert and well qualified as the bench we see today and which becomes, over time, more representative of the population as a whole; that we have procedures in our courts that are up to date and



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harness the opportunities of modern technology, and are straightforward for litigants to access; and that we work to continue to ensure that legal services remain an important part of this country's economy, and the United Kingdom can remain a destination of choice for international litigants, particularly for the settlement of commercial and business disputes.

Secondly, on prisons and probation, the objective, it seems to me, is not only to ensure that we hold people in custody and supervise people in the community safely and securely—there is a lot of work to be done on that front, which I am sure the Committee will want to come on to—but, critically, that we use that time to try to reduce the likelihood of those men and women reoffending. I do not think anybody can be happy or content with the rates of reoffending that we have today.

None of this work is easy. I am not going to sit here and promise the Committee overnight, instant solutions, because that would be misleading. It will have to involve work with other Government Departments as well, because as soon as you touch on issues such as mental health, housing and skills qualifications, you are into work that not just my Department does but other Departments do as well. The outcome should be a society in which people feel that they are safer and victims feel that justice is given by the courts and the penal system, and where we are able successfully to give offenders a second chance and see them successfully reintegrated in the community.

Q2 Chair: You have set that out very clearly, and we want to raise a number of those points as we go along. Can I go back to the beginning, which is your very clear commitment to the independence and quality of the judiciary and access to the system? To do that you have to have, where appropriate, the proper legal advice, don't you? The previous Lord Chief Justice, Lord Thomas, gave evidence before us only last month. He expressed concern that the reduction in legal aid has led to burdens upon the court, because of the increase in litigants in person and that, for example in relation to private law cases, the number was rising. He used the phrase "deeply worrying," and said that the rise in litigants in person was having an impact on how disputes were handled.

You will also have seen the drop in the use of mediation in family law cases, which is exactly the reverse of what was anticipated when the reductions in legal aid in those areas were imposed. You have inherited the situation, and you have had a chance to take a look at it. Isn't there a real concern that we are at risk of making some false economies? What would you do to answer the points that Lord Thomas raises, and are we looking at perhaps some future review of how the system works?

Mr Lidington: It is important that we have a system of justice that allows people access. I read the Reed judgment in the Unison case, although that was dealing with fees rather than with legal aid, but the point being made by the Supreme Court there about access to justice being a constitutional right is clearly an important one. At the same time,



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I, like any other Minister holding this office, have to bear in mind that the budget is not unlimited; it is finite. I remember one of my predecessors, Lord Falconer, saying, when he held this post, that the then legal aid budget of about £2 billion was unsustainable. It is now £1.6 billion, roughly. It is still about a quarter of my Department's entire expenditure, despite the significant changes in scope that were made by the LASPO arrangements.

What my predecessors pledged to do, and on which I will be making an announcement in the very near future, was to launch the post-legislative review of LASPO. I will be publishing the Government's own post-legislative assessment of how LASPO has worked out in practice, putting into the public domain various facts and figures, and inviting representations on what changes might be made for the future. I want to emphasise that while I fully expect there to be representations from all quarters, making many calls for reforms, and while at this stage I will look at those with an open mind, I will at the same time have to be aware that there are financial limits on what I can do and I will be looking for ways in which we can use what will always be finite resources to the best possible effect.

Q3 Alex Chalk: On that issue of finite resources, taking this in the round, the UK spends every year a little over £800 billion. Your budget is less than 1% of overall spending, yet yours is one of the most important offices of state. Are the financial constraints, or the amounts that we as a nation allocate towards the system—bearing in mind that your less than 1% includes prisons as well—in fact, a sufficient proportion, in a country that has the highest standards of the rule of law?

Mr Lidington: It is a tribute to the professionalism of everybody in the courts and tribunals system and in the prisons and probation system that, despite what are real constraints on resources, they deliver standards of justice as high as those that Mr Chalk rightly describes. Like any spending Minister, I would always welcome being given a crock of gold by the Treasury, but I am conscious too—I sit around the table with Ministers for the Departments of Health, Education, Defence and Work and Pensions—that all, like me, could make the argument, “We could really use some extra money well.” There has to be collective agreement, within the Cabinet, about the appropriate sum, bearing in mind the fact that the country has to pay its way and that there are limits to what taxpayers can be expected to fund.

Q4 Chair: The country, of course, earns a good deal from its legal services, and the quality of the legal services includes the quality provided through publicly funded criminal defence and family work. I see that we have just introduced a new set of changes to Crown court legal aid, which increase, or change, the page count; they take a number of cases out of the graduated fee scheme, as I understand it. Are you aware that that causes real concern to some medium-sized firms of practitioners, the sort of people we see in our provincial towns, who have always worked on the



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basis of an element of cross-subsidy between the large cases that attract the graduated fees and those on fixed fees, often very small sums? Is there a worry? Will you perhaps be prepared to look at that in the context of your review of LASPO, lest you lose good quality people?

Mr Lidington: I am certainly aware of the concerns. The legal professions are nothing if not articulate and frank in making representations when they do not like something that I am doing. That is fine; I make no complaint about that. The decision that was announced yesterday was made after careful thought. What we have done is to reduce the ceiling from £10,000 to £6,000, but beyond the £6,000, people will still be paid on the basis of the hours of work required on a particular case. What yesterday's decision has done, in our view, is to restore the status quo to what the policy intent had been before the Napper judgment interpreted the LGFS rules in a way that the Government never intended they should be interpreted.

Q5 Chair: An instance was brought to my attention of a lawyer who had just billed a case which, on an hourly rate, would have been about £2,500, not fat-cat money by any manner of means. It was that amount because it was a defendant with mental difficulties; they were mentally ill and therefore it needed particular care and attention to go through the paperwork with them, but because of the page count and other matters the case was being paid at a fixed fee of £300. That can hardly be fair in maintaining a proper balance in the system, can it?

Mr Lidington: If there are hard cases that justify a change in the rules, the forthcoming review of LASPO will provide an opportunity for those representations to be made, just as, Chair, your points about the shift that we have seen away from mediation and alternative dispute resolution procedures would quite sensibly be included in that review.

Chair: That is welcome, because, as we all know, it is often said that early legal advice is the gateway into mediation.

Q6 John Howell: I do not think, Lord Chancellor, that you answered the Chair's question on the number of litigants in person. As an example of that, I sat with employment tribunal judges, listening to a case of racial discrimination that was brought by an individual. The case could have been solved in one day. It had been allocated seven days of a judge's time to sit and decide it. That is excessive. Are you going to do anything to sort out that kind of problem?

Mr Lidington: That is something that could be addressed on two counts. First, if we look at it strictly in terms of legal aid, clearly, I do not know whether the individual that Mr Howell talked about would have qualified for legal aid on the basis of the means test, even if scope had been on pre-LASPO lines. People are welcome to make representations, during the forthcoming review, about how they think changes might be made. I heard what Baroness Hale said recently, for example. I am not making a promise, but I am perfectly willing to look at the kind of argument that



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you could save money in the longer term if you had some kind of triaged legal advice up front.

The other aspect is reform of the courts. Again, I do not know the circumstances of the particular case, but one of the advantages of the changes that we are making, for the digital programme in particular, is that they will make certain types of fairly simple litigation much more accessible to individuals. I have been through the programme that is being tested at the moment on small money claims, and everything, down to the language used and the presentation of choices on the screen, is being tested with people who are not lawyers, to ensure that, if they want to take issue with a builder who has messed up their bathroom, they can follow through either to an out-of-court settlement, or to a formal court proceeding with a judge looking at the papers, if they want to do that. To ensure that there is access and that there is justice done, it is not always necessary for there to be formal legal representation.

Q7 John Howell: I am very aware of that, as chairman of the APPG on ADR. I am very aware of the use of ADR in those circumstances, but I have some questions on the courts. The pilot for the modernisation programme for the courts was delayed. I know that this week you have put that back into the frame and set out a timetable, but is that because you have suddenly found a robust, independent evaluation system for it, and where has that come from?

Mr Lidington: This is the flexible operating hours.

John Howell: Yes.

Mr Lidington: We just wanted a detailed evaluation. There have been, as Mr Howell knows, quite a lot of criticisms, particularly from the Bar, about what the impact might be. We wanted to take stock of those. Both my officials and I have talked about that with some of the senior judiciary. We still feel that we should pilot the programme, because until you have a test you cannot understand whether, and to what extent, the fears that have been expressed are justified or not.

We have committed ourselves to publishing an evaluation, a framework and a methodology before we start on the pilots. That way round, everybody—critic or supporter—will be able to see, before we start, exactly what the criteria are by which we intend to assess the outcome, so nobody can say that we have somehow been rigging the judgment in advance. Everything will be explained up front, and we want to get that all sorted to everyone's satisfaction before we engage. We are proposing to start the pilots in February next year. It is a few months later, but, frankly, I think it better to do so having sorted out the evaluation system and published it in advance, rather than put speed to the fore.

Q8 John Howell: The potential that the modernisation programme has for the courts, and for judicial diversity, for example, is enormous. Can I suggest to you that we really need some quick progress?



Mr Lidington: I am all in favour of quick progress, but I would simply say that with my memory of other ambitious IT projects, under various Governments at various times in my years here, I would rather pause a bit and try to get it right than rush ahead and see it all crash after a month. It is about striking the right balance between the two, but from my point of view the sooner we get on with the changes, the better.

We can look at what is actually being tested at the moment. I mentioned the small money claims system, but the online help with fees service has already made it easier for people to apply for help with fees, and we have seen a very big cut in the number of applications that were returned because they were imperfectly filled in. We reckon that by the end of this year about a quarter of pleas will be made online, and we are testing with the public now, before we go live with it, the new systems for probate applications online and for divorce applications, and an appeal tracking system for the tribunal system, because I suspect that every member of the Committee, like me, has had constituents in their surgery trying to find out where their immigration or social security appeal has got to. Having that online and available there, rather than your constituent fruitlessly phoning a helpline that too often is never answered and often gives the reply, "We can't tell you," would be a big improvement.

Q9 **Ellie Reeves:** You touched on the Unison judgment in relation to employment tribunal fees, which made some very important rulings on access to justice and on the discriminatory nature of fees in relation to women. What lessons has the Department learned from the ruling that employment tribunal fees were unlawful?

Mr Lidington: The key lesson I took from the judgment was that fees are, as Lord Reed said, a reasonable way in which to secure a contribution towards the running costs of the Courts and Tribunals Service, but that in setting the level of fees the Government need to have very careful regard to questions of access and affordability. As Ms Reeves will recall, the judgment went into considerable detail about what was and was not, in the view of the Supreme Court, a reasonable sacrifice of spending to be made. The line that stands out in my memory was, "Children still grow and need new shoes or new clothes. This is not something you can simply defer." What I have decided to do, following that report, is to say to the Department that we need to take a step back in our approach to fees, and consider, in the light of the judgment, what our approach to fees should be overall. We still intend to charge fees; it is necessary as a contribution to costs. It is also necessary and sensible as a deterrent to frivolous or vexatious litigation, and that was something the court itself acknowledged in the Reed judgment.

Obviously, the immediate response to the Supreme Court judgment in the Unison case has been to comply with the court, and, as the Committee will know, we announced, a few days ago, the details of the repayment scheme. It was important that we got that sorted out. The



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next step is to think what the new approach to fees should be, in the light of the doctrine that the Supreme Court enunciated.

Q10 Ellie Reeves: Following on from that, are you still intending to have fees for employment tribunal claims?

Mr Lidington: We have not made any announcement or taken a final decision on that, but let me put it this way; there was nothing in the judgment that seemed to me to rule out fees as a matter of principle. In fact, the reverse was true.

Q11 Chair: It is fair to say in relation to the frivolous and vexatious point, Lord Chancellor, that the court was pretty damning at the suggestion that the 70% drop could be taken up by the reduction of frivolous and vexatious claims, so it obviously thought things had gone much too far in that regard.

Mr Lidington: It was a question of getting the balance right, in the court's view.

Q12 Chair: You accept the balance has to change.

Mr Lidington: Yes, completely. We accepted that from day one. The court found that fees were perfectly defensible in principle, but that the Government had got the balance wrong in this case.

Q13 Ellie Reeves: In relation to repaying something like £32 million that was paid in fees, how are you going to ensure that the system in place for getting people their money back is simple to use and effective, given that we are talking about a four-year period, so that no one misses out on getting their fees back?

Mr Lidington: I may ask Richard to chip in on this as well. There have been complicating factors: people who paid through a third party, for example, a trade union; how we ensure, in multiple claims, that money gets back to the individuals concerned; and applications from people who were ordered by the tribunal to reimburse their opponent and what that means. We have set up the refund scheme from scratch, and it will involve a light-touch verification of the applicant's eligibility. We are doing our best to publicise it through the trade unions, through such evidence as we have of people who have paid fees.

Richard Heaton: As the Lord Chancellor said, it is a two-stage thing. We are going to invite 1,000 people involved in simple claims to apply for refunds. We will work with the trade unions, such as Unison, on the more complicated fees, to make sure that we can repay them, as the Lord Chancellor has described. It is a two-stage process that we are putting in place.

Q14 Ellie Reeves: Wouldn't it be better to use tribunal records to write to everyone who has paid fees?

Richard Heaton: That is what we are doing for the first 1,000, yes.



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Q15 **Ellie Reeves:** After that?

Richard Heaton: After that, you have intermediaries, so it is not always possible to tell from the tribunal record who the person is who should be refunded. Most of the intermediaries are trade unions, so we are working with the trade unions on the second tranche of cases.

Q16 **Ellie Reeves:** In terms of the finances within the Department, what adjustments will you now be making to the budget to account for that?

Mike Driver: The cost to us is about £17 million, so we have taken that into account in our in-year forecasts. We will be looking to the Treasury to reimburse us for those amounts, because our original settlement assumed they would be from income, as opposed to the settlements that we received at the spending review. That is a discussion we are having at the moment with the Treasury teams. We are also looking at the OPG, which is another fee issue, and the refund of those within our system.

Q17 **Ellie Reeves:** There is one final thing on employment tribunal fees. Obviously, the introduction of fees led to a significant drop-off of claims to the employment tribunals—around 70%. Has any thought been given to people who did not submit claims in the first place because they could not afford to—for example, people who went through the mandatory ACAS early conciliation process but at the end of that felt they could not submit a claim because the cost was prohibitive? Has any thought been given to how those people could be compensated?

Mr Lidington: That point has been made by Members of Parliament and by others outside Parliament, and we have looked at it, but it is almost impossible to come to an objective assessment of whether somebody was deterred because of a fee level, rather than perhaps deterred because they were persuaded that their case was not likely to succeed. I do not think it would have been easy to draw up criteria that really apportioned justice correctly in that way.

Q18 **Chair:** You accept, Lord Chancellor, the basic premise of the Supreme Court judgment that, essentially, the system and the ability to litigate around employment and other matters is a public good and not simply a transaction between individuals.

Mr Lidington: Yes. It is probably good practice for Ministers to respect all Supreme Court judgments in their entirety.

Chair: You have unanimity there, I suspect.

Q19 **Ellie Reeves:** This question is not on fees but is in relation to small claims. Can you confirm if the Government's intention is still to change the small claims limit for personal injury claims to £5,000 for road traffic accidents and £2,000 for other claims?

Mr Lidington: Yes.

Q20 **Ellie Reeves:** It is still the intention.



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Mr Lidington: Yes.

Q21 **Ellie Reeves:** What assessment has the Department made of the effect that would have on access to justice?

Mr Lidington: We think that the £2,000 limit for non-road traffic accident claims will still make it perfectly possible for people to pursue, for example, industrial injury claims against employers. That is why we are proposing a different ceiling for RTA claims as against non-RTA personal injury claims. The higher level for road traffic accidents is because of the problem that we have with claims for whiplash and head and neck injuries for relatively small sums of damages, which is not something that is seen in other comparable advanced economies. When you talk to people in other countries, they do not have the same pattern. It seems to be something peculiar to our system, and the costs of contesting those claims and perhaps settling out of court, rather than going through the expense and time of a court hearing, lead to an increase in motor insurance premiums for everybody else, so I think it is reasonable. It is comparable to what we are proposing, in terms of procedure rules, for sickness claims for holidaymakers. Where a well-evidenced and persuasive argument has been brought forward by insurers and others that the public as a whole are being harmed because of, frankly, the exploitation of the system by a number of people at the moment, it is right to take this kind of action.

Q22 **Ellie Reeves:** Won't it mean that more people will not be able to get representation when they bring their claims, leading to more litigants in person or people under-settling their claims, for example?

Mr Lidington: I would argue that these are not cases where it ought normally to be necessary to have legal representation. It is not, I suppose, too dissimilar from an insurance claim of some kind. It is the sort of thing where we have a fixed tariff available if you have the evidence to show that you are the victim of a road traffic accident. It should be very straightforward to get the appropriate medical evidence to support such a claim. We just think that they are not so complex. For under £5,000, they are not so complex as to always require a lawyer. There is nothing to stop a claimant from seeking representation, and it is true that they would not be able to claim back their legal costs if they were successful, but, again, for a relatively simple claim, it is a reasonable policy to say that it is the sort of thing where people, for the most part—there will be exceptions—should be able to do it without the need for representation.

Q23 **Ellie Reeves:** When will the legislation come before the House?

Mr Lidington: When we can find a legislative slot. I am in constant conversations with the business managers about opportunities for legislation. It was in the Queen's Speech, so we have a commitment for it in the current Session of Parliament. The priority that has to be given to EU exit legislation, because of the two-year time limit on article 50



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matters, means that other Bills have to be fitted in around the needs of the European legislative programme.

Q24 **Chair:** Will you be publishing an impact assessment to go with that legislation?

Mr Lidington: We will publish an impact assessment in the normal way.

Q25 **Chair:** We will have it in the normal way and will be able to consider it when we look at the legislation.

Mr Lidington: Yes.

Q26 **Gavin Newlands:** Before we move on, can I take you back to your opening remarks, when you referenced the promotion of UK legal services? The GREAT campaign, which I assume you are referencing, is in partnership with the FCO. It is a controversial campaign in Scotland and Northern Ireland. Bodies such as the Law Society of Scotland and many others have real concerns that this focuses solely on English legal services, using a UK resource. You yourself said, in your swearing-in speech, "it will be a priority for me to promote our excellent legal services, both at home and as a major UK export, to maintain London as a competitive hub and ensure people continue to see English law as the law of choice." You are the Lord Chancellor, so that is to be expected to a degree, but in using a UK resource, what can you say to reassure the legal services in Scotland or Northern Ireland that, in the promotion of these services abroad, Scottish and Northern Irish services will be given parity of esteem in that promotion?

Mr Lidington: It is perfectly reasonable, on two grounds, for UK resources to be used in this way. First, UK resources are also used for major promotions for things like the whisky industry, which probably does not bring a huge amount of direct benefit to England, but it is quite right that UK resources are used to promote a premium Scottish product that employs many, many people in Scotland.

Secondly, Scotland, as Mr Newlands knows, has benefited enormously from being a key participant in the strength of United Kingdom legal services as a whole. I cannot remember, offhand, the exact number of figures for people employed in financial services in Edinburgh and other cities in Scotland, but I recall that they are a very significant employer overall. It is true that, for international business, English law tends to be the law of choice when writing contracts. I would argue that the stronger the United Kingdom sector is in terms of legal services, and the more international legal business can be done within the UK, the more that will benefit Scotland, with its own unique legal system, just as it will benefit not just the City of London but cities like Leeds and Manchester, as well as Cardiff and Belfast. Every part of the UK benefits from a thriving, profitable legal services sector.

Q27 **Gavin Newlands:** Just to be clear, there are no reassurances in that respect, but can you give assurances that the Scottish legal profession,



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through the Scottish Government, will be given equal access to the same Foreign and Commonwealth Office resources as the MOJ has to promote Scottish legal services?

Mr Lidington: We certainly promote the legal services of the United Kingdom. If there are particular aspects of that campaign that legal services companies and professions in Scotland would like to be involved with and get support for, they are welcome to come and talk to us about that. I have already said to Michael Matheson, when I phoned him earlier this year, that I could give an unqualified commitment to ensure that the interests of Scottish legal services and the Scottish legal system as a whole were going to be well looked after in the entire context of EU exit negotiations and the future setting of international relationships. I look forward to working very closely with him and the Scottish Government in doing that. The Advocate General, Lord Keen, is also the spokesman in the House of Lords for my Department, so there is a very direct Scottish line into the Ministry of Justice.

Q28 Chair: There is a final topic in this area, before we move on to the question of prisons. Another key part of the reputation of the system depends upon the quality of the judiciary and maintaining that. Both the previous Lord Chief Justice and many other senior members of the judiciary, as you know, Lord Chancellor, have expressed concern about the retention and recruitment of judges, particularly recruitment, in terms of both getting good quality people to apply and delays in filling places. I am told, for example, that in some cases there is about a two-year wait before there can be a competition for, say, a full-time bankruptcy registrar or something similar. That is surely not an acceptable state of affairs, is it?

Mr Lidington: I would be happy to look into that particular concern. In terms of the general question, Chair, it is very important that there is no diminution in quality. I have talked to Lord Kakkar about this, and I know it is something he is absolutely committed to as well.

Chair: Absolutely.

Mr Lidington: That is why my predecessor negotiated with the Treasury and introduced a recruitment and retention allowance for the High Court; there was clear evidence of a particular difficulty there in continuing to attract applicants of the very high calibre that we want to see in the High Court. I remain closely in touch with Lord Kakkar, whose committee of course is independent, to try to make sure that we do everything we can to attract judges of the right calibre.

I have announced a review of judicial pay that the SSRB will be carrying out and will report to the Government on, probably in late spring next year. I have met the chairman, and I have asked them to take a hard look at judicial pay right across the piece. If there are retention and recruitment difficulties that the SSRB identifies, where they say there is solid evidence, obviously we will have to take very careful note.



Q29 Mrs Badenoch: Secretary of State, the Prisons and Courts Bill, in the last Session, contained a clause setting out the purpose of prisons. What effect will the loss of the Bill have on strategic management?

Mr Lidington: While it was disappointing to lose those prison clauses, that was very much due to the pressures of other legislation, particularly on European exit, as I was describing earlier. What I have sought to do since I came into office is to minimise the practical impact of that. I have given a commitment, in particular, to the chief inspector of prisons that we will try to pursue as much as we possibly can of that agenda through administrative means.

We have now established, within the Department, an implementation unit whose task is to follow up and ensure action on inspectors' recommendations. Just in my first few weeks, I was quite startled by the number of inspectorate reports that said, en passant, "We were disappointed to see that 10 out of 20 of the recommendations we made two years ago have not been acted upon." I wanted to have a team who knew it was their job to follow those through, and if, as is sometimes the case, I have to turn around and say, "Sorry, we cannot afford that for the moment," or, "We disagree with the inspectors on this point," there is an onus upon the Department to front up and say why, and make that explanation.

Secondly, the chief inspector called for an urgent notification process, where the Secretary of State, not just the head of the Prison Service, would be alerted and expected to provide an emergency response within 28 days if there was a real problem at a particular prison. That we will have in place and operational by the end of November.

Thirdly, we are discussing a new protocol between HM Prison and Probation Service and the prisons ombudsman, to try to deal with some of the issues that the Bill included as regards the ombudsman. It is slightly complicated by the fact that Nigel Newcomen is stepping down, and we are advertising for a new ombudsman at the moment, but my objective is to have that done by summer next year, and have it operational.

The telephony element of the prisons Bill has been embodied in Esther McVey's private Member's Bill, so that is going through. The key thing that leaves outstanding, in my mind, are the clauses on psychoactive substances. I would be delighted if I can find a legislative vehicle, either if we have an unexpected Government slot available or if a private Member's, or private Peer's, Bill opportunity opens up, to try to take that forward as well.

Q30 Mrs Badenoch: Other than psychoactive substances, you feel that everything that was in the Bill is being covered in one way or another.

Mr Lidington: Obviously, as there is not a prisons Bill, the statutory purpose of the Prison Service drops away, but that would be icing on the



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cake. Yes, it would serve a purpose, because it would impose a discipline and a frame of reference for all Ministers and all officials in my Department. I am not trying to diminish the significance of that, but the outcomes that were intended in the prisons clauses of that Bill can very largely be achieved by other means, and we just have to strain every sinew to do that.

Q31 **Chair:** The objective of the outcomes remains unchanged.

Mr Lidington: Indeed.

Q32 **Alex Chalk:** The England and Wales prison population is about 85,500. If you include Scotland, it is closer to 93,000. By comparison, France is about 70,000, Germany 64,000 and Italy 57,000. Are we imprisoning too many people?

Mr Lidington: I want to see the numbers come down, but it would be wrong to set an arbitrary figure. Obviously, the number that we have in prisons is an aggregate made up of thousands of different sentencing decisions by the courts. When I have looked at the pattern of sentencing, and discussed it with the judges, what keeps being pointed out to me is that the number of people sent into custody for 12 months or less has remained pretty constant. It has actually come down over the last decade. The argument that very large numbers of people are being sent to prison who should be doing community sentences instead is not as strong as it might have looked, say, 20 or 30 years ago.

The big surge in prison population has come from longer-term sentences, people serving four years or more, and in particular a big increase in sentencing for sexual offences. Some of those are historical offences, and some of that is because women in particular are more willing to come forward, and are more likely to be believed by the police and the prosecuting authorities, so we are ending up with more people in prison. It has led to some particular problems; we have a fair number of prisoners now in their 80s behind bars. While I sometimes find myself wondering whether they need the full rigour and security of a prison regime, on the other hand, the offences for which they were convicted are usually historical sex offences, or they are lifers serving time for a serious violent offence, and I cannot argue but that the severity of the sentence is justified by the nature of the offence they committed.

Q33 **Alex Chalk:** Secretary of State, we have a situation where you are saying, no doubt perfectly properly, that you want to bring it down, yet, just in recent times, we have life sentences for causing death by dangerous driving or for careless driving under the influence of drugs, increasing the maximum sentence for animal cruelty, a new offence of causing serious injury through careless driving, increasing the maximum sentence for viewing terrorist material, and so on. How will it be possible to achieve that goal if at the same time the Government are ratcheting up sentences that the courts are required dutifully to apply?



Mr Lidington: There is a difference between increasing the maximum that the courts are permitted to sentence someone to and a ratcheting up of the entire tariff. To take animal cruelty as one example, a very small number of cases—fewer than six cases last year—involved offenders receiving the maximum sentence for animal cruelty, under the current law. That does not suggest that a change in the law, as Michael Gove was proposing, would involve a big increase in the prison population, but it would mean that the courts had additional flexibility to punish the most serious, most heinous offences.

In terms of numbers, I am keen to ensure that we really do have a system of community sentences that commands the confidence of the courts and the general public. The law in England and Wales—Scotland is different—requires the judge, when sentencing, to consider whether there is no alternative to custody, before sending somebody to prison. One of the questions in my mind—I have not really worked out the answer yet and I have work being carried out on it—is why the courts make very little use of the power that they have to set conditions to community orders of some kind. The number of cases where mental health treatment conditions are attached, or behavioural conditions are attached, is very small. I do not think there are any panaceas in this, but one needs to look at that. One needs to look at how we increase the chances, both in what we do when somebody is inside prison and in what we do when somebody is being supervised after release, to ensure that they do not reoffend, so that we get more people off the cycle of reoffending and bring pressure on numbers that way round, too.

Alex Chalk: I could go on, but I am conscious that we are limited on time.

Chair: We may be able to return to it.

Richard Heaton: Could I add one point to the Lord Chancellor's remark about people with mental health problems in prison? The Lord Chancellor is absolutely right that only 1% of community orders have a mental health condition attached to them. We are working closely with the NHS liaison and diversion services, and that should apply in a police station at the point of arrest, as well as at the point of charge, to take them out of the criminal justice system altogether. I just wanted to put that on the record.

Q34 **Chair:** There have to be meaningful facilities to deliver those conditions as well, don't there—available to the sentencer for them to have confidence to use them?

Richard Heaton Indeed. I was putting in a plug for the NHS liaison and diversion services at the PAC only the day before yesterday.

Q35 **Victoria Prentis:** We have to start being quite honest, don't we, about the lack of real alternatives for judges when sentencing? The position is either that the budget is going to have to go up—as Mr Chalk said earlier, it is a very small Government budget comparatively—or the numbers in



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prison are going to have to come down, if you are going to do all the rehabilitative things you want to do.

Mr Lidington: I hold the view that prison should be, as the law says it should, a last resort. Someone should go to prison either because the crime they have committed is so serious that nothing else will do to satisfy the needs of justice and deterrence, particularly justice for victims, or because they have committed a crime and they would be a threat to public safety if they were out in the community. Getting improved regimes in prisons, improved performance by the probation service through the gate and, with supervision and better working between the criminal justice agencies and NHS providers, particularly mental health providers at local level, training providers at local level and the question of how we implement Bob Blackman's Homelessness Reduction Act, in respect of prisoners approaching release, are all very important elements in trying to get the policy right.

Q36 **Victoria Prentis:** I enjoyed your party conference speech enormously, not least the part in which you talked about how, effectively, a judge is sentencing the children of prisoners, and not just sentencing one generation. You also said that you knew where the problems lay and that you, broadly, knew what was needed to fix them. Do you feel you are getting sufficient resource, and back-up from other Departments, to enable you to do that?

Mr Lidington: I always, always welcome more resource but, yes, I think that commitment is there. One of my responsibilities, though, is to remind my colleagues—each of whom is responsible, let us not forget, for a major programme of public service provision, of which prisoners or people on supervision are a small subset—that this is important in the Government's social reform policy as a whole. I think that is understood across the Government.

Q37 **Victoria Prentis:** We were concerned, with the Bill not going ahead, that the priority was not there any more, but you are seeking to reassure us.

Mr Lidington: I will certainly be banging on the table to make sure that is understood.

Q38 **Victoria Prentis:** There are two bits of housekeeping. We are waiting for a response to our predecessor's report on prison reforms. Do you have a date for when the Department is going to get back to us?

Mr Lidington: I do not have an exact date on that one, but perhaps I can write to the Chair after this meeting.

Q39 **Victoria Prentis:** Yes. That would be lovely. Do you have a date for the prison safety strategy?

Mr Lidington: Not yet. I hope we will be able to release it fairly soon.

Q40 **Chair:** That is important, Secretary of State, isn't it, because if safety concerns, coupled with overcrowding, where we already have 10% over



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certified accommodation, are leading to restricted regimes, it is impossible to do the rehabilitative work that you and all of us wish to see take place?

Mr Lidington: Yes.

Chair: I would urge you to ask your officials to do that.

Mr Lidington: We will certainly be doing that, Chair.

Q41 **David Hanson:** On safety, Lord Chancellor, every indicator is going in the wrong direction, isn't it? We have more self-harm, more deaths in custody, more attacks on staff, more attacks prisoner on prisoner and an increase in murders. To what do you attribute that? You have set out some plans in the annual report to try to mitigate those issues. How effective do you expect those to be and what more can you do?

Mr Lidington: Part of the reason for it, as the prisons ombudsman himself identified, is the impact of psychoactive substances. I will not beat around the bush in response to Mr Hanson. The prisons were already under strain. It is no secret that the numbers were going up and my predecessors, in the light of the overall economic situation, were having to make some significant savings to the Department's budget. What made the real difference in terms of safety and security was that, at a time of stress with which they were coping pretty well, psychoactive substances were appearing. Those make men, in particular, more aggressive, more prone to mood swings and more likely to resort to violence. That has been coupled with a trend in our cities towards more gang crime. I have talked to prison governors, who said, "This imposes new pressures on us because we are having to really think hard and plan staff deployment carefully to keep rival gang members apart within prisons, because they just fight if they get the opportunity." Those pressures were there.

Tackling it is partly about management. We have focused on the 26 most difficult prisons for safety, and we have a programme in place to try to bolster the leadership, training and audit there. The Prison Service has reinforced its regional functions, because we recognise that governors can be in a very lonely situation and they need back-up, and sometimes mentoring, from more senior and experienced prison management. We have the 2,500 extra prison officers coming in; we are more than halfway towards achieving that net increase. On top of that, we are starting to—

Q42 **David Hanson:** Is that the end of your ambition? Obviously, there are some people who would say that there has been quite a significant reduction in prison officer numbers over the seven years of this Administration. Now you have indicated you are about halfway through, and the figures are around 1,290 so far and 2,500 by the end of 2018. I just wonder whether or not that prison officer figure is a contributory factor in your assessment, or not, of the challenges that you face.



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Mr Lidington: If you look at the figures overall, there are something like 20,000 prison officers; 2,500 is over 10%. That is not an insignificant number.

Q43 **David Hanson:** What was it in 2010, Secretary of State?

Mr Lidington: I do not have the figure off the top of my head, but I said earlier that there had been a reduction. I am not trying to pretend otherwise. Those 2,500 are making an appreciable difference. The new direct entry and apprenticeship routes that we have established will also help, because they are bringing into the Prison Service people from different experiences, different backgrounds. Sometimes it is a more diverse make-up of the prison officer population than we had previously. Then you need to look as well at things like the body-worn cameras that we are making available; in part, that is a deterrent to any prisoner from trying it on with an assault upon staff. There is also the action that we take against drones, phones and drugs.

Richard Heaton: Can I come in on the 2,500? It was not a number plucked out of thin air. The reason we chose 2,500 is that it is the number that will give us a particular staffing model whereby there would be six prisoners under the care of one prison officer. We observed that it was the human contact between the prison officer who knows the men under his care that was missing before, so we have aimed for a staffing model that gets one officer looking after six prisoners on the wing, to restore that human contact, which gives prisoners someone to talk to, gives them space to reflect and makes them less lonely. It was a very specific staffing model.

Q44 **David Hanson:** We are increasing the number of prison officers over what it was, and many of those prison officers are entering the system new. What are you doing to retain older prison officers? The morale issue has been drawn to our attention as being a particular concern. I just wonder whether we are getting inexperienced officers and experienced prisoners.

Mr Lidington: The number of officers with three years' experience or less has gone up slightly. It is about 27% now; it was 24%, so it has not been a massive increase. The real problem with retention, and with recruitment for that matter, is that, not unexpectedly, it has centred on London and the south-east, because of the broader labour market conditions there. That is why we have deployed extra resource in prisons in London and the south-east that are experiencing those particular difficulties, to try to help them.

Awareness of the difficulties over retention of experienced officers lay behind the pay review body's report earlier this year where, as Mr Hanson knows, the headlines were a 1.7% increase overall. It was a cash increase to deal with the issue of senior prison officers who were at the top of their pay scale already and had not had a rise for several years.



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Q45 **David Hanson:** The Treasury were not too keen on that pay award, were they, in the end?

Mr Lidington: The Treasury accepted it. There was the usual collective discussion—

Q46 **David Hanson:** Who is paying for it now? Is it all within your own budget?

Richard Heaton: We are paying for it. You are right. We did not comply with the Treasury's 1% pay rules and we got a qualification on the agency accounts, but that was a process failure for which we—

Q47 **David Hanson:** The Treasury obviously expected you to have a 1% pay rule—

Mr Lidington: No. The 1.7 is—

Richard Heaton: When you said the Treasury was not happy, I assumed you were talking about our breach of the 1%.

David Hanson: I am.

Richard Heaton: It was a very technical breach. The recent pay settlement, of course, is beyond 1%, so I was talking about the previous year's market supplement.

Mr Lidington: In this year's, we had already budgeted for the 1%—Mike will interrupt me if I am mistaken—and we will find the further 0.7%. I regarded that as important when we have a group of workers who are barred by law from taking industrial action. The quid pro quo is that if you have an independent pay review body it should be the most extraordinary, exceptional circumstances—

Q48 **David Hanson:** What is the cost of the total pay award increase overall?

Mr Lidington: The extra 0.7% is about £11 million. That is my memory of the discussions we had on that.

Mike Driver: Our staff costs, as a Department, are £2.75 billion a year.

Q49 **David Hanson:** It is a small amount in the overall scheme of things, but you will find that extra 0.7% out of existing budgets.

Mike Driver: We were given some additional money by the Treasury, so when we reset our spending review settlement with them at the autumn statement last year, for prison safety and reform they gave us an additional £291 million. That supported the points the Secretary of State has raised about the recruitment of additional prison officers. In terms of annual pay increases as an organisation, we are expected to find the efficiencies to drive that forward.

Q50 **David Hanson:** Can I turn, Chair, if I may, to something else that struck me in the last couple of weeks? I just wanted some clarification of Michael Spurr's announcement to the Prison Governors Association on the



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prison building programme, which we understood was, essentially, decommission old, build new, and pay for new from decommissioned old. We had an indication from Mr Spurr that the prison building programme was on hold. I just wanted some clarification as to where we are.

Mr Lidington: The prison building programme is going ahead. My party's manifesto included a commitment to 10,000 additional prison places. We are moving forward very actively with the planning and preparation for the first two of those prisons.

Q51 **David Hanson:** Is *The Guardian* headline, "Closing ageing prisons on hold for five years as prison numbers soar," wrong?

Mr Lidington: I can speak for the Ministry of Justice, but not for *The Guardian*.

Q52 **David Hanson:** I am interested in some clarity, Lord Chancellor.

Mr Lidington: What Michael was talking about was the fact that the surge that we have seen in the prison population over this summer, when it went up slightly above 86,000, against our previous best forecasts, meant that we have had to keep Rochester and Hindley open when we hoped to have closed them as part of the new-for-old policy.

Q53 **David Hanson:** What is the current—today—five-year budget for the MOJ on new prison build, as a cash figure?

Mr Lidington: It doesn't quite work like that.

David Hanson: It does work like that. We need to know the amount.

Mike Driver: The amount of money we were given in the spending review settlement for new prisons was £1.3 billion. That included completion of HMP Berwyn. That amount of money is still within our financial balance at the moment.

Q54 **David Hanson:** I have seen some figures in a report today, from the National Audit Office, that say it is still on amber in terms of the delivery and there is no budget attached. Could you comment on that?

Mike Driver: The programme is currently amber, as you would expect for a major programme that intends to build multiple prisons. At this stage in its lifecycle, I do not think there should be a surprise in that. In terms of the budgeting and the affordability, we are continuing to discuss our capital plans with the Treasury, but we are in a situation where we were given £1.3 billion to deal with it. There are issues about the years in which that money is available, and we have been switching money between years, as part of the budget settlement process.

Q55 **David Hanson:** What has to be finalised with the Treasury, to ensure that the public and this Committee can have confidence that the building programme that has been announced will be met?



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Mike Driver: On Thursday of this week, in the Department's investment committee, we should be signing off the outline business case for the building of the new prisons. That will be submitted to the Treasury, whose approval we require to start the programme and the actual building itself. As soon as we have that, we will be able to make a formal announcement.

Q56 **David Hanson:** Is that direct Government capital expenditure, is it private finance initiative or is it some other mechanism? What is it?

Mike Driver: We would expect the first builds to be through Government capital.

Q57 **David Hanson:** Is the decommissioning programme still on track, or is that still going to be, as Mr Spurr indicated, on hold?

Mr Lidington: It will depend on the balance of the prison population and places available overall. We want to close those places. Obviously, Berwyn coming on stream will make more places available, so the plan is still to move to close Rochester and Hindley, but it would be irresponsible to do that at a time when the courts are sending us people and we need to have places to put them.

Q58 **David Hanson:** What about the capital investment required in existing prisons, given that the chief inspector of prisons has recently reported on living conditions in prisons across the estate being not to a standard that the public, the prisons inspectorate and, presumably, yourself, Lord Chancellor, would expect?

Mr Lidington: We will give the highest possible priority to that. We have to operate within—

Q59 **David Hanson:** How much in cash terms? What is the investment in that estate?

Mr Lidington: We can send it.

Chair: Perhaps you could write a note.

Mr Lidington: There are pressures on that. There are things that governors would like to do that they probably cannot do. They give priority to security, health and safety matters.

Q60 **David Hanson:** I accept and understand that, Lord Chancellor. What I am trying to clarify is that the chief inspector of prisons has said there are a number of severe concerns, and that is, obviously, a public statement from him, so in a sense, I am trying to seek the Department's response. I accept that you want to try to meet that obligation, but to meet that obligation requires capital expenditure.

Mike Driver: In terms of our two major contracts for maintaining prisons, with Carillion and with Amey, we spend £83 million per year, approximately.



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Q61 David Hanson: I understand that, Mr Driver, but the question is that £83 million still leaves, according to the chief inspector, an underperformance on certain conditions he would expect. I am inquiring as to whether the £83 million you have indicated is being reallocated, through the providers, to improve those conditions, whether you are arguing for more investment, whether you are arguing with the Treasury for more capital investment, or whether or not the chief inspector will do a report in a year's time to say that, despite the £83 million on services, conditions have not improved. I am trying to get some benchmark as to if, when and how that will be improved.

Mr Lidington: The starting point will be to take the inspector's recommendations. Obviously, there was the recent thematic report, but where he is making recommendations in respect of the need for improvements in particular establishments, it becomes the responsibility of the new implementation unit to follow through those recommendations and flag to senior officials and to Ministers the priority that needs to be attached to them. Sometimes, that might be a matter of us talking to the contractors to whom we have a contractual commitment at the moment for that work, and other times it might mean re-prioritising within the overall budget. I have certainly taken seriously the points that he made in his most recent report. Some of what he described looked to me, on the face of it, like things that ought to be being addressed at management level within an individual establishment—

Chair: Graffiti in the cells and so on.

Mr Lidington: Graffiti in cells, that sort of thing, ought to be dealt with as a matter of good practice. I have said, for example, that I want a report and advice on the question about lids on toilets in cells, where the chief inspector said there was a health hazard. The first advice that came to me was that, irrespective of the health and safety arguments, there is a balance of risk to be struck, because if you put in a lid, you provide a potential ligature point as well, so sometimes these things are not straightforward.

Mike Driver: Can I come back on two points? On the facilities management and the work that we are doing to improve the environment in prisons, of course we prioritise. The commercial and the estate teams are in close daily contact with both of our major providers, to ensure that we prioritise our activities. Were we to require relatively small amounts of additional expenditure, we would look to make allocative choice within the organisation.

On your slightly earlier point, which was whether we were going to close prisons any time soon, we have to bear in mind that it takes time to build a new prison. Were we to start building next summer, for example, the first of the prisons that we want to build, it is going to take two years to build it and then probably another year to get it from commissioning right the way through to full population. There is quite a complicated equation that we need to work through, but our ambition is still to close the older



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prisons where we can do less rehabilitation, so that we have the new estate available for taking those actions.

- Q62 **Chair:** The issue is this, isn't it? In local prisons, according to the chief inspector, a restrictive regime equates to people being locked down for about 22 hours a day. That is about 31%, nearly a third of the prison population. Nearly a third cannot access any of that rehabilitation. That cannot be acceptable, can it?

Mr Lidington: No, it cannot be. Moving towards the new offender management model that Richard described will help to take us in the right direction. We have to use every means possible to get into a position where prisoners in those local prisons are spending their time in workshops and in classrooms and not banged up in cells.

Chair: Absolutely.

- Q63 **Alex Chalk:** On new prison building, you called it new for old. Does the MOJ have the resources to afford to build the new prisons without closing the old ones? If the prison population is going to rise, will you actually have the resources to deliver what you say you want to deliver?

Mike Driver: Our assumption at the moment is that we will still have to close some prisons through this period.

- Q64 **Alex Chalk:** You have not closed HMP Berwyn. What happens if it proves impossible to close those old prisons? Does that put the kibosh on your new prison building programme?

Mike Driver: No, I do not think it does. First of all, the building programme is a capital programme, and the running of prisons is a resource issue. What we will have to do is to look first at making allocative choices within our own organisation to manage that resource pressure. If we feel that we are unable to manage that resource pressure, we will open up discussions with the Treasury again.

- Q65 **Alex Chalk:** You can build them, but you might have to go and ask the Treasury for money to run them.

Mike Driver: We will have money to run the new prisons; it is whether or not we have to maintain the old prisons with the running costs associated with them.

Mr Lidington: New prisons, of course, generally have a lower unit cost than the older prisons.

Richard Heaton: You might have the impression that the prison building programme is on hold. That is not the case. We have started developing the two prisons following Berwyn—Wellingborough and Glen Parva.

Chair: They are on stream.

- Q66 **Victoria Prentis:** Various people here have mentioned lockdown, or regime as it is normally known within prisons. One of the things that



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continually worries this Committee is our inability to measure how regimes are really operating, because the Ministry cannot provide us with the figures. I wondered if you, Lord Chancellor, are provided with those sorts of figures, perhaps for the 26 prisons that you are taking a special look at, at the moment. If not, can we resolve this? David Cameron made a very good speech, over two and a half years ago, about the difficulty of quantifying what was happening in prison, among other things. It is a continual problem for us and, presumably, a continual problem for you as well. If you can see the figures, why can't we?

Mr Lidington: It is. I can bring a bit of good news on this; obviously, we collect statistics on purposeful activity within prisons, so we have an idea of how many hours prisoners are spending in cell, as compared with workshops or classrooms. We are very shortly going to launch a new online portal, which we are calling the justice datahub. It will be publicly available and it will show how prisons are performing across all measures. It is a development from Michael Gove's thinking about having almost a prison league table, writing into the prison system the system that applies to schools. The problem with the prison system, of course, is that it is very diverse. In a local prison and a high security prison, different circumstances apply, and you cannot expect them to be doing exactly the same thing.

Q67 **Victoria Prentis:** But regimes are possible to measure.

Mr Lidington: There will be information on regimes in there, and on many other aspects of prison performance. It will be updated as soon as new data are published, and in a format that means you can rank by measure, using the online tool. If the Committee would find it helpful, Chair, I am very happy for officials to come along and perhaps give a demonstration of how to use it.

Victoria Prentis: That would be very helpful.

Chair: We will take you up on that, Lord Chancellor. We are grateful.

Q68 **Victoria Prentis:** Do you think you have the information you need?

Mr Lidington: I have a lot of information, but there are ways in which both I and the prisons Minister are often asking new questions and asking for different information. The fact that we will now have this publicly available will in itself be a discipline, and it will mean that the service has to respond to demand, not just from Ministers but from parliamentarians and others, about the kind of information that it is right to produce. Frankly, my view is that the only thing that should be withheld is stuff that would compromise security or safety in some way.

Richard Heaton: I would say that we are better now than we were a year or two ago on the management information that we have, which enables me, for example, to hold Michael Spurr to account for the running of the Prison Service. We now have a grid; every single prison is listed in terms of staff retention, vacancy rate, violence rate and assessment by the governor of security. That is the instrument by which I



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hold the Prison Service to account. We did not have that a year ago, so it is a bit of a journey, to use a cliché.

Q69 Bambos Charalambous: We have heard that the prison population is going up, but the most recent stats on offender management systems show that the number of people on probation has increased by 7%. How can the probation system, which is lacking resources, support additional offenders?

Mr Lidington: It is not solely a matter of resource. First of all, I want to say that there are many probation officers who are doing an incredibly committed and professional job of work, and we should be willing to salute and appreciate that. At the same time, I am concerned when I see things like the probation inspectorate report on through-the-gate services. That was perhaps the most telling example of a system not delivering in the way that had been hoped when the reforms were instituted. I still think it is right that the previous transforming rehabilitation reforms brought into the supervision arrangements people who had been on a short-term sentence who had previously had no supervision in the community at all.

We did, of course, revisit the question of the community rehabilitation companies and their contracts earlier this year. What became apparent was that the elements of their costs that were fixed were quite a lot higher than either the Ministry or the CRCs themselves had expected when they were set up and when they entered into their contracts with the Department, so we adjusted their contracts earlier this summer to, in effect, recognise that a higher proportion of their costs should be treated as fixed rather than variable. That has injected some stability into the CRCs at an important time for them. We are still comfortably within and below the budgeted MOJ expenditure for CRCs.

Q70 Chair: The amount that was fixed was more than you expected. Can you say how much it was, or what percentage?

Mike Driver: The original assumption in the business case was that 20% of costs would be fixed and 80% would be variable. In fact, those numbers were the other way round.

Q71 Chair: The other way round? That is an enormous variation, isn't it?

Mike Driver: Yes. That is the basis of resetting those contracts, so that injects potential additional money into the supply base, which helps as volumes flex.

Q72 Bambos Charalambous: Did that money come from existing budgets—the additional money?

Mr Lidington: We made provision for £400 million a year for CRCs. The actual outturn in 2016-17 was £394 million. That is after the adjustment that we had made, and we are expecting, in 2017-18, about £373 million,



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so we are well below what we had budgeted we would be spending on CRCs.

Q73 Bambos Charalambous: On that point, the first we knew about it, for me, was reading an article in *Private Eye*. We talk about greater transparency, but we have not had much transparency about how the money has been distributed, until today, or about where it has gone or about the criteria for how it is going to be measured as a success or not. If it was because the contracts were wrong, we need to know that as well.

Mr Lidington: We made a written statement to Parliament at the time that decision was taken and implemented. Clearly, it would not have been right to say anything, ahead of Government agreement, on those changes, and there were also questions of market sensitivity for the companies concerned that we had to bear in mind. We put down a written ministerial statement in Parliament on that day, and I wrote to the Chairman—

Chair: You did.

Mr Lidington: And to Opposition spokesmen, to tell them about it. We are continuing to keep the performance of both CRCs and the national probation service under review. The contracts with the CRCs expire in 2022, so clearly it is not too early, even now, to start to take stock of what we have learned in the past few years, and what should be the future direction of the probation service. It is important that it delivers well.

Cumbria was singled out by the chief inspector, in her most recent report, as a place where CRCs and the NPS were working well together and were well integrated with other locally provided services. She said that was the best example of CRC work she had come across so far. There are other places where, clearly, it is not working anything like as well and we need to find ways in which to drive up performance.

Mike Driver: In terms of the question about additional costs, the resetting of the contracts allows for potential changes in cost to us as an organisation, but those will be driven by volume. Of course, because there is a greater emphasis now on the fixed cost element, if volume increases, that volume will be cheaper on a unit cost basis to us than it would otherwise have been.

Q74 Bambos Charalambous: Do you see a greater role for the involvement of police and crime commissioners in monitoring the contracts?

Mr Lidington: I do not rule it out, as we look at the future development of probation services. One thing that seems clear to me is that, if probation is to work well, it has to have good relationships with other local services, some provided through police and crime commissioners, some provided through local authorities on various levels. It might make sense to look at ways in which one can have a more formal role for PCCs,



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or perhaps for mayors or for local authorities, so I am open-minded on the future. If people want to come to me and propose ways of developing current arrangements for more locally based input of that kind, I am happy to examine those on their merits. I do not want to rule anything in or out at this stage.

Q75 Bambos Charalambous: What structures do you have in place for the MOJ to interact with Her Majesty's inspectorate of probation, the NPS and the CRCs, to address issues that might come up with the probation service and might be raised by the chief inspector?

Mr Lidington: I had the chief inspector in to see me quite early on. I said to her then that she should regard my door as open, and if she wanted to raise concerns with me at any time she should do so. She has since had a meeting with the prisons and probation Minister. I had a meeting, last week, with the CEOs of the CRCs in England and Wales, to hear from them what their concerns were, so I certainly try to do it. What I want to do more of is to visit more probation services around the country as well, and take stock, at local and regional level, of what is going on there. Of course, there are constant conversations going on at official level in the Department as well.

Richard Heaton: Dame Glenys has total access to me, to my staff, to Michael Spurr and to Justin Russell.

Q76 Bambos Charalambous: Your predecessor, in December 2016, said that the Government would set out "more detailed plans" after the transforming rehabilitation review was completed in April. Do we know when those plans are going to be provided?

Mr Lidington: The review that she was referring to is what led to the change in contracts earlier this year. For the reasons I sought to explain earlier, that was not something we could easily talk about in public or publish. I am, as I said, continuing to examine ways in which we can improve performance levels in the probation service, both national and regional. My understanding is that the Committee is going to launch an inquiry into probation. I very much welcome that, because it could be quite an important quarry of evidence and source of recommendations to us.

Chair: Thank you very much for that, Lord Chancellor. We are very much looking forward to engaging with the Department on that, because, clearly, things need to change in the way we approach rehabilitation, to get the outcomes that we all want. Can I allow Mr Chalk one final question before we conclude?

Q77 Alex Chalk: Forgive me, it is a tiny, tiny question about the sentencing code. I think there is cross-party agreement that it would be a really good thing to avoid cases that are of labyrinthine complexity at the moment, and avoid cases ending up in the Court of Appeal when they do not need to. Is the Ministry of Justice still interested, in principle, and how far have you got, in identifying a piece of legislation that might be a



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vehicle to carry that into law?

Mr Lidington: We are talking about the proposals from the Law Commission on consolidation.

Alex Chalk: Exactly.

Mr Lidington: I was attracted to the idea for the reasons Mr Chalk gives. The complicating factor, of course, is that the Law Commission itself says that it would need a paving Bill of some kind in order to make the consolidation Bill possible, and that takes us into the whole area of competition for scarce parliamentary time at the moment. I would like to move that one forward if I can, but I cannot give promises because of the pressures on parliamentary time in this Session.

Q78 **Chair:** But the Government continue to support the principle.

Mr Lidington: In principle, yes.

Q79 **Chair:** That is very helpful. There are some issues around financial matters, Mr Driver and Mr Heaton, which are quite technical. Perhaps we can write to you, in the first instance, and see what responses you are able to help us with.

Richard Heaton: We are at your disposal, yes.

Chair: If you want to come back, we can perhaps do that. We thought it was important to have time with the Secretary of State in particular, and to outline those issues, where you have helpfully supported him, gentlemen, around the factual detail. Lord Chancellor, thank you very much for your time and for your evidence, which is much appreciated. You have been very frank with us, and we are very grateful to you. The session is concluded.