

# Public Accounts Committee

## Oral evidence: Investigation into Changes to Community Rehabilitation Company Contracts, HC 897

Wednesday 17 January 2018

Ordered by the House of Commons to be published on 17 January 2018.

Watch the meeting

Members present: Sir Geoffrey Clifton-Brown (Chair); Martyn Day; Chris Evans; Caroline Flint; Gillian Keegan; Shabana Mahmood; Nigel Mills; Layla Moran; Gareth Snell.

Sir Amyas Morse, Comptroller and Auditor General; Adrian Jenner, Director of Parliamentary Relations, National Audit Office; Oliver Lodge, Director, National Audit Office; and Richard Brown, Alternate Treasury Officer of Accounts, HM Treasury, were in attendance.

Questions 1-116

### Witnesses

I: Richard Heaton, Permanent Secretary, Ministry of Justice, and Michael Spurr, Chief Executive, HM Prison and Probation Service.

## Examination of witnesses

Witnesses: Richard Heaton, Permanent Secretary, Ministry of Justice, and Michael Spurr, Chief Executive, HM Prison and Probation Service.

**Chair:** Good afternoon, everybody. Welcome to this Public Accounts Committee hearing into the National Audit Office Report on changes to community rehabilitation company contracts. I welcome in particular our two witnesses: Richard Heaton, the accounting officer at the Ministry of Justice, and Michael Spurr, chief executive of Her Majesty's Prison and Probation Service. Welcome to both of you. Before we go any further, one Committee member wishes to make a declaration of interest.

**Chris Evans:** Yes, Chair. My sister is a probation officer with Working Links, one of the community rehabilitation companies, based in Cardiff.

Q1 **Chair:** Thank you for that. Our hashtag today is #probation and we are broadcasting. The NAO Report looks at the recent deal to bail out the owners of 21 community rehabilitation companies created through the transforming rehabilitation reforms. We last considered reform of the probation service in July 2016, although the reforms were originally introduced in 2014. Our Report at that time concluded that the much-vaunted rehabilitation revolution had not been delivered, and called for urgent action to address some significant issues, not least the commercial difficulties that were the subject of the NAO's investigation.

The NAO Report raises a number of interesting questions, but perhaps the biggest is about the extent to which those changes, which were a long time coming, have actually addressed the underlying issue and provided a sustainable footing going forward. I have introduced the witnesses. We will be asking them what progress they have made in addressing these issues, why they chose to bail out the contractors and how they intend to improve performance.

Mr Heaton, you will not be surprised that, before we start on CRCs, we want to ask a few questions about a matter that is causing a lot of concern in a lot of constituencies: the whole business of Carillion going into liquidation. Before we start on that, perhaps it would be useful if you gave us a summary of the major contracts your Ministry is involved in with Carillion and what effect that might have on those services.

**Richard Heaton:** Certainly, Chair. Our major exposure to Carillion is that they were the facilities management providers for half of our public prisons—broadly speaking, the ones south of Birmingham—under a contract that was negotiated in 2014 and let in January 2015. Those services are now being provided through the official receiver. We have another exposure to Carillion in a slightly different way: a handful—a very small number—of our courts have FM services provided by Carillion as part of a joint venture private finance initiative. That is a slightly lesser



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exposure. The major exposure is through the prisons FM contract. There is a very small exposure through the legal aid helpline: Carillion is a very small bit player in signposting telephone inquiries to the Legal Aid Agency.

The big one is prisons. Services under that contract continue through the official receiver at the moment. We are in conversations with the official receiver about the medium-term future for the provision of those contracts. As you would expect, we have been working on various contingencies for precisely this scenario, and we are in near-final discussions with the official receiver as to what shape of service delivery that contract should take at present.

- Q2 **Chair:** We read in the press today that one subsidiary company—Paragon—has stopped providing services to one prison. Those services are critical to the safety of prisons and to the continuity and stability of our whole Prison Service. What steps are you taking with the receiver to make sure that these vital services are uninterrupted?

**Richard Heaton:** Our absolute priority is business continuity and provision of services. As far as I know—Mr Spurr will correct me—in each of our prisons covered by the Carillion contract, vital services are being maintained.

**Michael Spurr:** That's right. Carillion staff are continuing to work. We have been working with subcontractors where they are providing services to us to make sure that we are able to maintain a proper and adequate service in prisons. We have got clear plans to take forward the services and we are in discussion with the official receiver about how we move forward with this.

- Q3 **Chair:** But given that 55 prisons are affected, and we have already heard about this one, it would be interesting to know what is actually happening in that case.

**Michael Spurr:** I haven't got information on the one that was talked about today. I suspect that that is about subcontractors rather than Carillion staff. We have staff on site in all of our establishments. We also have some of our directly employed staff who we can deploy, should we need to do so, to make sure that prisons are able to continue while the urgent work we are doing with the official receiver moves forward.

- Q4 **Chair:** Are you confident that your discussions with the receiver are going to produce an uninterrupted service or do you need to have further contingencies?

**Richard Heaton:** No, we are confident that this will be sorted. Before we leave the subject—if we are going to leave the subject—I would pay tribute to the hundreds of Carillion staff who are working and who turned up to work in our prisons despite the uncertainty. Many of them are familiar to us because, of course, they were civil servants until privatisation in 2015.

- Q5 **Chair:** Given that this is not an unexpected event after the profits warning last July, have you been taking any steps since then, or did you take any



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before then to try to anticipate this?

**Richard Heaton:** There are two things. First, service delivery had its problems and we were taking steps to manage that. It wasn't an easy contract for Carillion, and the services we were getting weren't perfect, so we were working very hard to manage the contract. We were also doing some very careful contingency planning for precisely this scenario, under various options—bringing it in-house, finding a new owner for it and so on. So we have been working very hard to ensure both business continuity and a settled, stable future for the contract.

Q6 **Chair:** I suppose that therefore brings us on to the next question. What is the thinking in the longer term, in terms of getting away from this whole Carillion issue? Once you have got it out of the official receiver's hand, what is your longer term thinking about this?

**Richard Heaton:** I am a tiny bit reluctant to speculate on the scenario that is likely to emerge, simply because we haven't had consultations with our trade unions, which we would certainly need to have, and the official receiver is the person who would sign off what would be delivered. So I am a little bit reluctant to give a headline to a particular outcome, because that hasn't been negotiated with the unions and it may not be the one that the official receiver blesses, but we have a fairly clear solution in mind.

Q7 **Chair:** The particular interest to this Committee is how much this is all likely to cost the taxpayer.

**Richard Heaton:** Unknown at this stage. We will obviously continue to pay for services. The official receiver will invoice us for the services that Carillion were providing—that is obvious. There may be some additional costs—dislocation costs or the costs of stabilising the service—but I can't put a finger on it at this stage.

Q8 **Chair:** Are there any steps you have taken to try to minimise that additional cost?

**Richard Heaton:** We've been working hard to make sure that the invoices we were getting from Carillion and from the official receiver are correct and accurate. So, yes. We have been working with the supply chain, and obviously we have been working closely with the Treasury to make sure that any economies of scale can be derived through the overall solution.

**Chair:** Thank you for that. Caroline Flint.

Q9 **Caroline Flint:** Mr Heaton, you were obviously aware of the profit warnings. Was there a discussion in the Department about that in particular? You swayed there into discussing overall delivery, but was there discussion about what that might mean for the company? Was there an investigation initiated within the Department to explore further what risks that put to the services they were providing?

**Richard Heaton:** Yes, in two ways. First, the immediate presenting factor was that the contract in some way was not being delivered satisfactorily, so we have been working hard with Carillion as a provider. But then, yes,



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we were aware of the growing worrying signs coming from Carillion, which is why we stepped up our efforts on contingencies. So we knew that this was a possibility.

- Q10 **Shabana Mahmood:** Mr Heaton, you said in your last answer but one that the service was already in a position where it wasn't perfect and that you were working to get it up to scratch in various prisons. What sort of assessment have you made about the prisons where the service was not perfect and about their experience of, or propensity for, riots or serious disorder? What assessment have you made about any further reductions in services and the risk that that might pose to order within the prison estate?

**Richard Heaton:** Mr Spurr has greater operational knowledge, but clearly the degree to which a prison is maintained and cleaned, the toilets are repaired and so on is a causative factor in unrest in prisons—there is a clear relationship between them.

**Michael Spurr:** As you know, prison performance has been difficult in recent years: violence and vandalism in prisons have increased. That has put additional pressure on those who were providing facilities management and repair work.

The contract was focused on maintenance and preventive maintenance, but we have had to significantly increase the amount of hours spent on reactive maintenance to deal with vandalism. One of the issues with the contract was that we had not made enough allowance for the need for reactive maintenance rather than preventive maintenance. We were addressing that and recognising that we needed more people on site to deal with those issues, because it was leading to cells coming offline for too long when things were wrong and to issues with getting basic jobs done in establishments. That has been referenced by the chief inspector of prisons. That was a key issue for us across facilities management with this contract and with the wider contract in the north with Amey.

Carillion had particular issues in its southern establishments about having enough staff to be able to deliver the services that we expected from them. We were working with them to address that—setting out our requirements and looking at what we needed to do in the contractual arrangements we had got to improve that service, and we were doing that right through from the summer last year. Yes, we were also putting contingency plans in place on the basis that this contract was not working as we wanted it to work. We recognise absolutely that we have to make this work because it is such a key part of how we run our prisons.

- Q11 **Shabana Mahmood:** That is precisely why I asked the question. You have said that that is a key part of making sure that the prison environment does not lend itself to disorder or riots. You know that I represent a constituency with a prison. We have had experience of riots and serious disorder, but that is not unique to my constituency—it has happened across the prison estate. You already had a contract that was in trouble; I appreciate that you were taking steps to fix some of those



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issues. Now that that company has gone kaput, is the risk of riots and serious disorder therefore increased, and are you sure that you are able to manage it?

**Richard Heaton:** My answer to that question would be no: the risk does not increase. In many ways, we will find it easier. It depends on how we end up running the service. If, for example, we had it closer in and there were not quite so many contractual relationships involved, we would probably find it easier in many respects to have a direct management input into the maintenance of prisons, which would probably reduce the risk rather than increase it.

Q12 **Chair:** In your opening remarks, Mr Heaton, you referred to the two PFI contracts for facilities management in courts. Is there likely to be any problem with those two special purpose vehicles?

**Richard Heaton:** No—as far as we know, no problems.

Q13 **Chair:** So there should be complete continuity for those courts.

**Richard Heaton:** I believe so.

Q14 **Chair:** I suppose this is a general question, and it may be too early, but has this whole incident had any effect on your thinking about how you let these private sector contracts?

**Richard Heaton:** No. I don't want to speculate on the long-term future and I certainly have not discussed that subject yet with the new ministerial team. This was a difficult outsourcing; it was a first-generation outsourcing, which as the Committee well knows is always the most difficult one, especially if you outsource something as complicated as facilities management across a very widespread historical estate. You have to get the asset inventory right. It is a very difficult thing to get off the ground. If we chose to do it again, the next one might be easier because it would be a second generation, but we have not had those discussions.

Q15 **Chair:** The final thing to say on this subject is that if the financial situation suddenly involved a much greater financial contingency, would you keep the Committee informed?

**Richard Heaton:** I will undertake to do that, certainly.

Q16 **Chair:** That is very kind, thank you.

While we have got you, can I raise one other general issue, which is of concern to the Committee: the release of Mr John Worboys? Very briefly, what is your take on his release, in relation to the probation service? Are you likely to pursue that matter by judicial review or not?

**Richard Heaton:** Mr Worboys served the tariff period of an indeterminate public protection sentence. Having served that portion, he became eligible for parole consideration on a risk basis as to whether he would be released. The Parole Board made a decision. The Parole Board is independent of Government. I was not party to that decision, nor were any of my officials. There was some speculation over the weekend about



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whether we—the Lord Chancellor—would seek a review, but I cannot give any news as to whether we will or we won't, so it remains a possibility.

- Q17 **Caroline Flint:** I understand, and I might be wrong, that he served the minimum amount of time expected, but—without getting into the decision of the Parole Board—I am more concerned about victims being considered by the Ministry of Justice and the probation service. Having listened to an interview with the chair of the Parole Board, there seem to be responsibilities for the probation service, Mr Spurr, in contacting victims, as well as responsibilities for the Parole Board. So why did the probation service appear to fail to put victims of John Worboys first and foremost in their considerations if they knew that this parole review was under way?

**Michael Spurr:** The responsibility for victim contact is with the national probation service, not with the Parole Board. I do not think it is fair or right to say that the probation service failed. I absolutely understand the concern that a lot of victims have raised about how they found out about what was happening with Mr Worboys, but the statutory system provides an opportunity for victims to be part of the victim contact scheme. Some of Mr Worboys' victims had opted into that scheme, and some had not opted into that scheme. Those who had opted into the scheme were informed by their chosen means of information. Some had asked to be informed by telephone, some by email, and some by letter, and all those victims were informed on the day that we were advised by the Parole Board of the outcome of Mr Worboys' hearing.

If you inform, as we did, those individuals, there would have been some other victims who were not part of that contact scheme who would have heard of the outcome through other means or through the media. Indeed, for those who had chosen to be informed by letter, the moment that we had notified other people by telephone or by email of the outcome, there is the possibility that that comes into the public domain.

There is an issue about whether or not there are better ways in which we can inform victims. I think the Lord Chancellor—the Secretary of State for Justice—has indicated that there should be a review of what has occurred, but I think, from my own investigations into this, that we have met our responsibilities in that sense. That does not mean to say that we could not do more, and I think the review should look at that.

In terms of the opportunity to present a victim statement before the Parole Board, my understanding is that those who were part of the contact scheme were contacted, and some people who did not join that contact scheme until later—

- Q18 **Caroline Flint:** Are you saying that people would be informed only if they had signed up to the victim contact scheme? I am asking a serious question here. Are you saying that you have to be part of the victim contact scheme to be informed of an outcome of a Parole Board? I am just trying to get clarity on that, Mr Spurr.



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**Michael Spurr:** All victims are contacted following a conviction, and are offered the opportunity to be part of the scheme. Some victims choose not to be, and then may decide that the best way that they want to deal with the issue is to draw a line under it for them as well as they can.

- Q19 **Caroline Flint:** That does not really answer my question. I understand what you are saying here, but clearly you had a list of victims you dealt with at the time of the conviction. Are you saying that to be informed of any post-conviction proceedings, such as a parole review, you have to be on the victim contact scheme?

**Michael Spurr:** Yes. We would not contact—

- Q20 **Caroline Flint:** So that is what you're saying?

**Michael Spurr:** Yes, and I should say that there are some victims who will say that they do not want to be informed. That is a very clear position, and we would respect their right not to be informed. There are some who do not respond, and we follow that up and make sure that they understand that they can join the victim contact scheme.

- Q21 **Caroline Flint:** Are you saying categorically to us today that all those victims who have come forward and described their distress at not being informed about Mr Worboys's release had indicated that they did not want to be informed?

**Michael Spurr:** I am saying that, from what I have seen, we have informed those who asked to be informed. I do not know the victims who are saying that they were not informed. We would happily and properly look at a concern from a victim who said, "I haven't been informed and I thought I would have been." I don't believe that anyone who opted into the scheme was not informed. There will be victims who were not in the scheme who may well have heard, and that is something we need to look at. But the requirement—

- Q22 **Caroline Flint:** Does it always have to take a crisis for services of Government to review their procedures to make them better, particularly for victims? Always when there is a crisis, it is like, "We have got to review it." Why does it have to be that way?

**Michael Spurr:** There is a very clear provision. Victim liaison officers work with victims all the time—they are very sensitive to victim issues. Of course they would be—their full-time role is to work and support and provide information to victims.

- Q23 **Caroline Flint:** I am not talking about those people. I am talking about the process of a very serious criminal and, despite his eight years in prison or whatever it is, there continue to be questions about how many crimes he carried out. Given the nature of this individual and the crimes he committed, there was not enough discussion at the top of your organisation and, for that matter, the Parole Board—I do not know where the Ministry of Justice fits into this—about ensuring that, as much as possible, sensitivity and victims are put at the front of everybody's considerations. That discussion does not seem to have taken place.



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**Michael Spurr:** The Justice Secretary has said we should look at how victims are involved—I absolutely recognise that, given the concern—but I will repeat: victims had all been contacted about whether they wished to be part of the victim contact scheme, and those who were part of the victim contact scheme were contacted in the way they asked to be contacted about what happened to Mr Worboys. People did what we believe was the right thing to do for victims.

That may not be enough, and if it was enough I absolutely regret that—I obviously feel for anyone who is going through trauma with this. But for absolute clarity, as far as I am aware—and I have looked at that—the information the probation service received from the Parole Board was passed to those victims who were part of the victim contact scheme. We had contacted all victims to check whether they wanted to be part of the victim contact scheme—the national probation service had done that. We should look at whether we can do more, because we should always be asking, “Can we do more?” and a case like this does cause you to look at that again, given the distress that has been caused to some people.

Q24 **Chair:** I understand the sensitivity of this matter. We have spent quite a long time on it. Mr Heaton, you have heard the Committee’s concerns. In your review, will it be possible for individual Members of Parliament and members of the public to make representations to you?

**Richard Heaton:** I am sure it will be. The terms of reference and the way we are going to go about it will be announced by the Lord Chancellor, so I will defer to him, but I am absolutely sure that Members of Parliament will be able to make representations.

Q25 **Chair:** That is very helpful indeed.

We will move on to Community Rehabilitation Company contracts, which is what we asked you to come and talk about today, and you are, very kindly, going to do that. I will start with a general question. We have been given information that would indicate that you are planning to let further CRC contracts in prisons. Is there any likelihood of that or not?

**Richard Heaton:** To let further?

**Chair:** CRC contracts—further work for CRCs in prisons. Is there any likelihood of that?

**Richard Heaton:** I don’t recognise that.

**Michael Spurr:** We have been discussing with CRC providers the work that they are providing and the particular performance of CRC providers. We have said that we want to discuss with them these contracts and how they are operating. We have looked at whether we might want to specify additional services. We are not talking about letting new contracts—

Q26 **Chair:** Right. So it is additional services. Are you prepared to tell us what sort of additional services you are looking at, or is that still commercial in confidence?



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**Richard Heaton:** It is really in the future—I am so sorry that I missed the original question. On the negotiations with the CRCs about how these contracts work, and what is included and what is not included, we have not come to the end of that story. We will talk about one chapter today, but you are right that there is a further story to be told—a further chapter—in which the contracts may change further. I am afraid that bit is in the future.

Q27 **Chair:** We may draw that out in questioning as we go along. You promised a rehabilitation revolution in this area, and considerable reforms were introduced to the probation services in 2014. There were still considerable problems when the NAO last reported on this in 2016 and you went through a whole contract change in 2017. Are you confident that you have got to where you want to be now, or are there still problems to be overcome?

**Richard Heaton:** I don't think where we have got to feels like an end state. We have still got some way to go. The last time we discussed this with the Committee, the PAC visited one of our prisons—I can't remember which—and we talked about the emerging discrepancy between volumes predicted at the time of the contract and the volumes as it turned out. We told the Committee then that we had work to do to stabilise the contracts in the light of those volume shifts. That is essentially what we have been doing. Have we reached the finished state? Probably not. I refer to my last answer. It is almost certain that we will be talking to the CRCs again about how we can further stabilise or improve how the contracts work. They are not great for the CRCs, which are not making any money out of them, and they are not great for us, so there is some way to go.

Q28 **Chair:** Just a last general question from me. Has the whole process frozen out the third sector and the charitable sector in particular? We want to preserve the diversity of provision in this area. Hasn't this saga actually driven that out?

**Richard Heaton:** I will give an impressionist answer, and then maybe Mr Spurr will come in. It depends on the CRC. Some CRCs have rather good and creative relationships with the third sector. Indeed, one CRC is a joint venture with a third sector organisation. My very general answer is that the story depends nationally.

**Michael Spurr:** I think that's right. The make-up of CRC providers is various, and it includes some third sector and not-for-profit organisations as part of the mix. It includes a mutual, which involves third-sector partners. Then there is a range of providers—I think this is what you were getting at, Chair—to the main CRC companies, and many have said that the nature of the way this has worked out has meant that they feel more squeezed. Smaller third-sector providers in particular feel that they have been unable to participate to the degree that they would have wanted to. Although we did a lot of work originally around ensuring that there were diverse supply chains to encourage the use of a wide range of smaller third-sector providers, one of the consequences of having less funding



than the CRC providers had anticipated is that they have used the smaller providers much less than they had anticipated doing in the first place.

- Q29 **Chair:** It's rather a shame, given that a lot of good voluntary work is being done in prisons and has been going on for a long, long time—many decades—to suddenly drive all that away. Is that something that you as chief executive are concerned about?

**Michael Spurr:** Yes. It's an interesting consequence of a policy that has got a really good point to it. At its heart, it was meant to expand supervision to 40,000 prisoners who are serving short sentences and who did not previously get statutory support on release. A lot of those individuals received some form of support from a whole range of really good third-sector charitable organisations. The move to provide statutory support means that everyone will get something. I think that is a very positive thing, but that means that many people in the third sector who have been funded, for example, by charitable trusts, withdraw from the provision, because it is now statutory provision.

The consequence of having that statutory provision with less funding than the providers anticipated is that, potentially in some places, the richness of what is being provided is not as it was previously. There is variation in that. The loss of some long-standing third-sector charitable providers has been of concern. That is one of the reasons why we have to ensure we have got contracts that deliver in practical terms what we expect. As you know, there is a lot in these contracts that is focused on a payment-by-results outcome, but we have got a short-term position at the minute.

- Q30 **Chair:** We will come on to that a little later. Since you raised this whole issue of short-term offenders and the difficulty of providing a service to them—because they are in and out of prison and have got to be released and so on—hasn't that unnecessarily complicated the whole issue? Given that they have got a 60% recidivism rate, it has really not helped the whole thing, has it?

**Michael Spurr:** In one sense, that was the whole point. These offenders live chaotic lives and have high levels of reoffending. They drive the reoffending rate across the country. They have always had high levels of reoffending. When they had no statutory support, they had high levels of reoffending. The prize of being able to work effectively with that group and to support them to reoffend less or, ideally, to stop reoffending at all, was what the transforming rehabilitation reforms were about. Yes, they have complicated a lot of things, but they were actually an attempt to address an issue that has presented for a long time but no one has been able to address for many years. This is not a new phenomenon: individuals who come to prison for very short periods have by far the highest rates of reoffending.

- Q31 **Chair:** But the question is: is it working? Is it within the CRCs' control, or are there other agencies, such as housing, health and education, that the CRCs, the probation service or whoever ought to be working more closely with in order to drive an improvement and drive out reoffending?



**Michael Spurr:** It is absolutely the case that to prevent reoffending you need a multiplicity of support. Some of that support comes from services in the community that are not delivered by the CRCs, including health and housing in particular, some of the treatment services and health services for drug users and so on. I do not think CRCs could ever have done all this alone, but the idea, which was a good one, was to give responsibility to an organisation that worked with these people in custody and once they had left custody, and could marshal support from other services and work innovatively with the other service groups in order to support those individuals. That was one of the main aims of the reform programme. I do not think everything is within the control of the CRCs, but that is—

Q32 **Chair:** I will ask one very short question and then hand over to Mr Evans. Has it worked? Has the reoffending rate, which at 60% was very high, come down since these short-term prisoners were brought into the system?

**Michael Spurr:** It is too early to say. The first set of data relating to the time since the CRCs have had responsibility—the binary data looking at whether a person reoffended or not—shows an overall 2.1% fall in reoffending for the whole cohort. On that binary measure, 13 of the 21 CRCs show that they had a statistically significant reduction in reoffending. There is some evidence that that appears to be working positively, but we are waiting for the end of this month, when we will get the frequency measure, which will show how many offences are committed by those who reoffend. The interim data on that was not as good. We are waiting for that data, which will be published later this month. There is some positive news in terms of the binary measure, but there is concern about those who are reoffending, because the interim data indicates that they are reoffending more often.

**Chair:** I sense some frustration among Committee members, so I am going to bring Mr Evans in.

Q33 **Chris Evans:** Mr Heaton, I want to start with quite an easy one. Since you introduced transforming rehabilitation, there has been a lot of disruption in the Ministry of Justice. We have another new Justice Secretary—the sixth in eight years—and the entire ministerial team, with one exception, was wiped out last week in the reshuffle. Do you think that level of disruption has hindered the delivery of this programme?

**Richard Heaton:** On that narrow question, no. Clearly, ministerial appointments are a matter for the Prime Minister, not me, but I think you will find that, in terms of what the Department is trying to do, there is some continuity from Lord Chancellor to Lord Chancellor. Each of the last three Lord Chancellors has spoken in broadly similar terms about prison safety and security and about rehabilitation. Each Lord Chancellor has recognised that these contracts are not working and need to be corrected. Each Lord Chancellor has recognised the need to invest in courts to provide courts and tribunals for a modern age. Actually, there is more continuity than you might think. Clearly, Departments with an



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uninterrupted tenure find life easier and disruption is sometimes difficult, but I do not think that has disrupted this programme.

- Q34 **Chris Evans:** Okay. In July 2017, the then Secretary of State for Justice said that the probation system had encountered “unforeseen challenges”. What were the unforeseen challenges that led to the Ministry adjusting the CEC contracts?

**Richard Heaton:** The first and obvious one was the number of starting cases—those sent from courts to probation—going to the National Probation Service, which are the serious offences, was higher than we were expecting, and the number that came down to the CRC, which are at the lower end, was slightly lower than expected. That was the first thing in the appreciable shift in volumes.

The second thing was that, when we contracted with the CRCs, we made a working assumption about the amount of flexibility they had in their cost base. If they had reduced volumes, we assumed that they could bring down their costs more flexibly than actually turned out to be the case. That was the second volume change, as it were.

The third was that courts, when they sentenced offenders to non-custodial options, tended to impose fewer specialist programmes. Those programmes paid more than ordinary disposals under these contracts. Again, that accounted for an unexpected drop in the volumes and the remuneration going to those companies. Those are the three factors that went against the assumptions contained in the contract.

- Q35 **Chris Evans:** All three of those are based around assumptions you made. First, you said that the cases going to courts were higher, and those to the CRCs lower, than expected. You then said that there was an assumption that they could flexibly bring their costs down. What was the basis for those assumptions when the contracts were let?

**Richard Heaton:** On the first of those, we didn’t purport to give a definitive forecast. In a very open way, we drew a flat line and said that, in order to cost these contracts, a working assumption is that the volumes will remain the same. It was for all parties, including the CRCs, to test the contracts and to say they didn’t think it was right and to model it differently. It was not quite a forecast, but it was a working-level assumption for cost purposes. It contained no guarantee from us, and we didn’t set our stall by it as being an analytical forecast.

On the flexibility of costs, we took as our baseline how the probation trusts were arranged. That was, broadly speaking, how we concluded that we thought 80% of their cost base was likely to be either flexible or semi-flexible. In fact, it turned out that, of that 80%, a good 50% was more towards the fixed end. That was a difference between the CRCs business model and the ones from the probation trusts. We used our best endeavours, and it was assured that the probation trusts was a decent starting point, but it turned out not to be an accurate forecast of the CRC volumes.



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As to the drop-off in the number of specialist orders imposed by the courts, that is a more interesting one and it goes to sentencing behaviour in courts. There are many different reasons for that, which we can go into. Many of them were discussed in the very good piece that you will have seen from Danny Shaw on the BBC website last night. That is to do with courts disposing of cases more quickly, lack of confidence in some areas—all sorts of factors, some of which we are working hard to correct.

**Q36 Chris Evans:** Can you just clarify: you said there was a lack of confidence in some areas, but in what areas did they lack confidence when it came to sentencing?

**Richard Heaton:** I'm not sure I can give you specifics, but in some types of disposals, courts appear to be less inclined to impose them than they were and more inclined to impose an ordinary or easy disposal, such as a suspended sentence.

**Q37 Chris Evans:** Did the courts lack confidence in some CRCs? That is what I was driving at.

**Richard Heaton:** There's a bit of a thing at the moment: everyone knows the CRC contracts are not working as anticipated—they are working very well in some areas, don't get me wrong. It would be good for all of us if we get through this period and put the CRCs on to a period of stability, so there would be greater confidence in what they are doing. There would then be a virtuous circle, and we would get the courts to pass a greater range of innovative sentences and disposals.

We are encouraging that through development with the National Probation Service—the courts' advisers on probation—of a smart sentencing tool and so on. We want to get the courts back into a position where they have full confidence in the range of services not only being delivered by the organisations but in the actual substance of the treatment programmes themselves.

**Q38 Chris Evans:** Do you think they have that confidence now?

**Richard Heaton:** It's not as high as we would like.

**Q39 Chris Evans:** Why is that?

**Richard Heaton:** I don't have any specific research to offer you. In some areas, it may be an anecdotal thing. In some areas, it may be a perception. In some areas, it may be the courts spotting that breaches do not appear to be coming back to them as often as they would expect. It is not all evidence-based. Some of it is intuitive. We are talking to the sentencers through the probation and sentencing forums, which meet nationally and regionally, to try to work out exactly what is going on, but certainly there seems to be a degree of confidence missing.

**Q40 Chris Evans:** What actions are being taken to improve confidence of the courts in CRCs?

**Richard Heaton:** Part of it is this work to get these contracts working better, so that there is more money to invest and more demonstrable



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successful programmes with investment behind them and more innovation. That has not happened because the contracts are not working financially for these companies. That really will help.

As I say, we are working on a smarter sentencing tool. Her Majesty's inspectorate of probation wrote very favourably about the national probation service's pre-sentence report. That will help, if those reports offer the courts a range of disposals. We are working very hard on the NPS level and talking to sentencers and of course CRCs to try to improve the situation.

- Q41 Chair:** Mr Heaton, your Ministry has underestimated almost every metric right from the start of this whole affair in 2014, in most cases by a considerable extent. The amount of activity, the number of cases taken on, and the fixed costs: almost every estimate has been way under what it should have been. How can we have any confidence that the reforms to the contracts that you now intend to implement will actually work?

**Richard Heaton:** Some of the divergences are not as great as you suggest. For example, for the cases going to the CRC, we projected, with the caveat I mentioned earlier, 80%, and in fact it is 77%, so it is not as wildly different as you suggest. The point of these contract changes was to make it a bit more of a vanilla payment mechanism—less dependent on particular interventions and particular indicators, and more of a fee for service. There is a greater emphasis on fee for service and a smaller emphasis on payment by results, to make this a more financially predictable model, so that CRCs can invest with greater confidence. That will help to make this less of a volatile game.

- Q42 Chris Evans:** Last time, you will remember, the Report of September 2016 focused on a lack of performance data on rehabilitation services. The recommendation to the Committee was that it be reliable. Do you believe now that performance data is reliable?

**Richard Heaton:** Yes, in broad terms, I think I do. From the CRCs, you mean?

**Chair:** Yes.

**Richard Heaton:** Again, Mr Spurr holds these companies to account and can give chapter and verse, but we have improved the data we have got from them. We are holding them to account on a more data-rich and nuanced level.

**Michael Spurr:** Yes, the data is better and clearer. The performance is not where we want it to be. I don't want to make any bones about that; it clearly isn't. Some of that is about the service funding position that the CRCs are in. When we have been looking at this in terms of contracting, the issue about fixed, variable and partly variable costs became very important because that was genuinely wrong. It is worth having a word on that, to make sure members of the Committee fully appreciate it.

As the NAO made clear, we did not say that 80% or 70% of costs were completely fixed. It was about how straightforward and over what time

you could adjust your costs. Variable costs were classed as costs that could be adjusted quickly within three months, with partly variable taking between three and 12 months, and fixed costs over 12 months. When we did the due diligence originally, what came back was predominantly that staff costs, which in one sense are obviously partly variable—you can reduce your number of staff—were placed in the partly variable box, so adjustable within three to 12 months. In practical reality, as the volumes have changed, staff adjustments cannot be done within that period, and all the evidence in practice has proved that they are beyond 12 months, rather than less than 12 months. Making that adjustment was right. It is the right adjustment to make on the facts before us, which is why we have made those adjustments to the contracts.

You talked initially about us bailing them out. I don't think this is bailing anybody out. It is about adjusting a set of first-generation contracts with the facts that were before us. That is what the NAO found in its Report: that there was a clear rationale of why we made these changes to the contract.

- Q43 **Chris Evans:** Why is performance so woeful, then? Most CRCs have achieved eight of the 24 targets, which is 33%. Paragraph 1.11 of the Report states that performance against one measure "lacked available data". Why are you not performing?

**Michael Spurr:** Again, I have given some of the explanation for that. The performance is variable; it varies among CRCs. As the Report makes clear, some CRCs are performing much better than others. Of the measures, eight are being hit on average across the piece, but nine are just being missed not by a great deal—we call that amber—and they do not require our formal intervention to force an improvement plan. The others are being missed and we have implemented a range of improvement plans requiring CRCs to demonstrate how they will improve on those processes to hit those targets.

There have been 67 separate improvement plans, of which 38 have been discharged and 29 are still live, where we are holding the CRCs to account to improve their performance. We have had some success in that: South Yorkshire, which had a very poor inspection report and was not hitting targets, recently had an improved inspection report and was hitting targets. We are working with the CRCs, to improve. We have to accept that some of performance issues were because they were not investing to the extent that they had anticipated. That is why we had to address a fundamental issue in the contracts.

- Q44 **Chair:** Let's disseminate that because there are several parts. At least one of those targets that you talked about has not been met by any of the CRC companies. Surely, it is wrong to have a target that is not possible. I believe it is do with housing, which is not really in the control of the CRC. Do these targets really need looking at to make sure that they are more fit for purpose?



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**Michael Spurr:** Yes. Again, we should remember that the targets are for managing the contracts at this stage. The main driver in these contracts is to reduce reoffending, which is not driven by the targets themselves, but by the payment-by-results mechanism, which plays in if reoffending reduces. The targets are more process-based.

A housing target is in there, and you are right that there is an issue of how much emphasis to place on the individual provider to galvanise others and to work with others to achieve housing outcomes, and of how reliant we are on others. That is a perfectly legitimate thing for us to keep under review. You want to incentivise them to work in this way—in a sensible way that gets the right outcomes and does not have unintended consequences.

**Richard Heaton:** I am trying to get chapter and verse; it is a reasonable observation to say that these contracts were very complicated. If one were starting again, one probably would make them less complicated. I have a feeling that the contracts changes that we made to these complicated contracts included the removal of some of the service level requirements, in order to simplify them. Certainly, if the gist is that they were too complicated and there were too many targets, you are probably right.

- Q45 **Chair:** Another basic way of improving a business is through ICT, but we are told that the CRCs are not making any profits, therefore they are not able to invest in their ICT services. That not only affects their productivity, but presumably it affects the accuracy of your data. For example, the ICT infrastructure and, in NOMS, the case management system put added pressure on the already hard-pressed staff. Is it not fairly basic that you should provide them with enough money to be able to invest in ICT systems?

**Michael Spurr:** It is certainly the case that we had anticipated investment in IT from the providers. There was a delay in providing what we call the strategic partner gateway, which is the mechanism by which the providers can gain access to Ministry of Justice data. We had initially anticipated providing that by June 2015. We were not able to do that, but it has been in place since the autumn of 2016.

The companies have not linked into that gateway and put in their own systems to link to the Justice systems. Some are now in a position to do that; three have decided that they will not do that and will just use our systems. You are right; again it comes back to the point about how much investment the companies have felt able to make in this area, and frankly also the difficulty of setting up the IT systems to work in what is a complicated area. That has taken longer. It took longer on our part to provide the gateway and it has taken longer on the providers' part to get their systems into the right shape to be able to link. That has been a frustration and you are quite right to identify it.

- Q46 **Chair:** There are two important aspects to this ICT. One is the data itself, because it is important that each party knows what the data is, as Mr Evans has referred to, but the other is making the system efficient. Given

that, how confident are you that your contract changes will address the system, and in what sort of timescale?

**Michael Spurr:** The contract changes address the imbalance we found in the way we had been assessing the fixed and variable costs. That is important, because it affects how we pay on fee for service. The balance between fixed and variable cost does not mean that that changes when we are paying fee for service; if volumes go down, we still pay less, but it is a less steep reduction than it was previously, for example. We are not paying the companies a cheque for £278 million for this change. That is the projected amount that it would cost us over the life of the contract, to 2022. We have made that adjustment to make sure that the income the CRC providers are receiving more accurately reflects their costs, and appropriate costs.

Our expectation is that that has put them in a more stable position, which enables them to make some of the investment they were previously planning to make. But that will be determined by where they are in terms of their expectations on income increasingly from the payment-by-results part of the contract, which is an increasing percentage as the contracts continue through to 2022. The later the contract goes, the higher a proportion of their income it is.

Q47 **Chair:** You have still not really answered my question. On what timescale are these ICT problems likely to be resolved? Will we still be sitting here in 2022 at the end of the contract and find they are not resolved? It is in everybody's interest that they should be resolved.

**Richard Heaton:** You are absolutely right, Chair. As Mr Spurr said, our delay—hands up to this bit—in implementing the gateway to our system lasted about a year. Our system was finally offered and the gateway was open to the companies in September 2016. We have since lent the CRCs a group of my digital and project management people, who are working with them to make sure that they can build their systems to interface with ours. I would venture to put an estimate of months on that work being completed, but I am waiting for a signal from behind.

**Michael Spurr:** At the moment, the first CRC to switch over and move onto our system is planned for April of this year, subject to testing, et cetera. As I say, the expectation is that a number of providers will in this calendar year move over to the system. Three are reconsidering whether they want to do that or look at alternatives ways of linking to the data. That is where we are at the moment. I cannot give you more of a timescale than that, except that the first CRC has indicated it wants to switch over in April 2018, subject to testing.

Q48 **Chair:** If the first one has switched over, why aren't the others? Why don't you know when the others are likely to follow?

**Michael Spurr:** In one sense, it is a matter for them how they link to the data. We have made that option available to them. They can use our systems directly or they can use their own systems. If they want to use their own systems, they have to be compatible so we can switch data



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across. That must be a business choice for the individual CRCs, so I cannot say, "When are they going to do it?" and hold them to that. It is a business choice that they are making. Some, at the moment, are choosing to use our systems rather than their own systems, and they have access to our systems.

- Q49 **Chair:** I think in managing a contract their systems would have to be compatible with yours. I do not want to pursue the matter any longer now, but I will ask Mr Heaton if we can have a note on when this is likely to happen so we do not come and revisit the problem in a year's time and find that very little progress has been made.

**Richard Heaton:** Absolutely.

**Chair:** Thank you very much.

- Q50 **Chris Evans:** Mr Spurr, you would agree that through-the-gate services are absolutely vital in cutting reoffending rates?

**Michael Spurr:** Yes. Through-the-gate services are really important in terms of—

- Q51 **Chris Evans:** The most concerning part of the Report looking at reoffending is paragraph 1.10, which says that most CRCs "are struggling financially and most have 'invested little'...beyond minimum contractual expectations." What comment do you have on that?

**Michael Spurr:** The last time I was here I was asked about that, and we are in the same position. That is one of the areas where we have been most concerned. It has been rightly identified by the chief inspector of probation and it was identified within our own reviews of the work that was going on with CRCs.

It is variable. Some CRCs have invested quite a lot in through-the-gate; others have invested less. It is an area where we want to see more support being provided. It is in this area in particular where most flexibility was given to the CRCs, because if they are successful with through-the-gate services with the 40,000 cases they are taking on, that is where they will most effectively reduce reoffending and where they will gain most benefit from the payment-by-results mechanism.

The expectation at the start of the contracts was that that is where the investment would take place. It hasn't, and we are looking at whether we need to specify more in that area to make sure that minimum levels are delivered.

- Q52 **Chris Evans:** Our report last September said that you should be disseminating more examples of what works and what doesn't. Have you taken that advice on board?

**Michael Spurr:** Again, the difficulty there for us is that, yes, we share good practice, and we have mechanisms and forums for sharing good practice across providers, but it is the responsibility of individual providers to determine their own models. Part of the whole aim of these reforms



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was to enable flexibility, different approaches and innovation. So yes, we try to share practice, and we have engagement with providers, who are themselves open to sharing practice, but they are responsible for their own models and how they deliver their services.

- Q53 **Chris Evans:** But the report said that a lot of the problem here is that, for many of the partners outside the control of NOMS and the Probation Service—the police, the health service, education—those links aren't being made. What can be done to improve those links?

**Michael Spurr:** Again, those links are really important. We are doing more with the National Probation Service to act as the conduit of links, for example, certainly with sentences and the police. I have created a whole provider forum to talk about how we are engaging across the whole sector and with other partners.

I feel I am being a bit repetitious here, but equally they haven't had the funding they expected; it is one of the areas where you don't have to engage with others, and therefore it doesn't get funded, when other things that must be done get funded with greater priority. We have been looking to promote and encourage CRCs to look outwards and work with other partners, on the basis that I believe that that will help them, in terms of their overall outcomes for reoffending. I think most people recognise that that is the case.

We have done work to encourage that. Again, we will look, in terms of the contracts going forward, at what more we choose to specify and require. At the moment, the contracts are very light on specification because they were geared towards flexibility and freedom and were based on a payment-by-results mechanism.

- Q54 **Chair:** Can I ask you about this business of overpayments to the CRCs? The MOJ has identified £9 million from the CRCs under the terms of the contract. This question may be for you, Mr Heaton, because apparently, as per paragraph 1.7 on page 18 of the Report: "The Ministry has not decided whether it will collect all or part of the £9 million due to 'wider commercial considerations.'"

**Richard Heaton:** That refers to a reconciliation of the payments towards the end of the year.

- Q55 **Chair:** Yes.

**Richard Heaton:** The reason we have reserved our position on it is, as I have said, because the conversations with the CRCs continue, and that it may well be part of an overall negotiation with the CRCs about further adjusting the contracts. So, rather than playing it now and taking the money out of the CRCs, which could lead to further deterioration, we will keep it on the balance for when we have the wider conversation.

**Michael Spurr:** As the NAO makes clear, we have done one of three things in these areas. We have taken service credits—taking money back off the CRCs where they have failed to deliver—or we have accepted that there have been some issues beyond their control, and in some cases



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waived a service credit we could have called upon, but with clear reasons why we have done so. In other cases, we have negotiated with them, rather than taking the service credit, requiring them to invest the money to improve the service, with very specific additionality.

We have not determined yet what to do with the £9 million—whether to take it or to invest it. That is a discussion we will want to have, but we have reserved our right to be able to take that £9 million, should we choose to do so.

**Q56 Chair:** You could dangle it as a carrot to improve the ICT services, for a start.

**Michael Spurr:** That is the type of engagement that we are having or will have with the CRCs as we go into further commercial discussion later this month.

**Q57 Chair:** Before we get off this section of the Report, can I go back to the targets that we were talking about, Mr Spurr? You clearly accept that even on the existing targets, whatever their merits, the performance against targets is getting worse. Figure 4 on page 19 shows that. We have already got from you that you are going to review these targets, but does that tend to indicate that the overall performance by the CRCs is getting worse?

**Michael Spurr:** We rationalised these targets in July, moving from 17 requirements to 12 requirements. Overall performance against targets is actually improving. Quality of work, as assessed by both ourselves and the chief inspector of probation, is not where we want it to be. Even though I can say that performance against the targets is going in the right direction, there are still significant issues about quality of work. We have been engaging with the CRCs, taking into account the findings from the chief inspector's inspections and our own assurance work and concentrating on both targets and quality. The chief inspector will be inspecting each individual CRC over the next 12 months, rather than looking at regional areas. We are working through with them what the expectations are and how we want to see quality of work improving. The answer is that, in terms of targets, it is improving, but that is not all of the outcomes we are looking for. We want to see improved quality, and we are working with the CRCs to achieve that.

**Q58 Shabana Mahmood:** Can I take you both back to the earlier discussion on assessment of volume of activity, which is where these contracts have started to run into trouble? Mr Spurr, you gave a lengthy answer explaining some of the reasons why the numbers are so off. For the benefit of anybody who does not have the Report in front of them, in 2015-16 there was a between 8% and 34% lower level of activity than anticipated, and in 2017-18—the part of that year for which numbers are available—it is a massive discrepancy, of between 16% and 48%. Your reasons seemed to have all been foreseeable, because they all relate to matters that are within the purview of the Ministry. Why were they not in fact foreseen?



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**Michael Spurr:** The contracts recognised that there would be volume change. The whole weighted average volume is around recognising that there need to be different bands to reflect the fact there will be changes in activity and volume change.

Q59 **Shabana Mahmood:** What was the volume change just before they were inspected?

**Michael Spurr:** The expectation was movement of, on average, around 2%

**Shabana Mahmood:** Which you are very far away from.

**Michael Spurr:** Yes. The extent of the change in activity, particularly towards activities that are less well paid to the provider—the activities, effectively, where the expectation was that they would earn income from the payment-by-results element, rather than the fee-for-service element. For accredited programmes, it is a fee for service—it is a lot of money up front for the fee for service. For a rehabilitation order or a through-the-gate order, it is much less up-front payment, and much more on the payment-by-results model. Within the contracts, we deliberately accepted, and the providers accepted, that they were taking on some volume risk. The extent of the change is greater than we anticipated.

Q60 **Shabana Mahmood:** I appreciate that the extent is greater than anticipated and that there are reasons for that, including behaviour of the courts, for example. Although courts have discretion, we limit that discretion by way of sentencing guidelines. The point I return to is that all the matters that have resulted in a greater than anticipated volume of change were within your purview as a Ministry. All the experts at the Ministry should have seen it coming. You should not have anticipated a 2% variation when, in fact, it was perfectly possible for you to foresee what in fact happened, which was a between 8% and 34% variation.

**Michael Spurr:** We clearly didn't see that.

Q61 **Shabana Mahmood:** You didn't, and I am trying to work out why.

**Michael Spurr:** We deliberately gave all the information that we had available to all of the providers. The data lab was set up so that what information was there was completely transparent.

For the contracts we went in, we did not actually project volumes; we simply said, "This is what the historical data has shown. This is how we are proposing to run the contracts. Here is the data." The extent of change—particularly the switch from community sentences, and the fact that over the last few years we have ended up with many more serious offences coming before the courts—was greater than we had anticipated. Yes, you could say, "You should have anticipated it better." I cannot disagree with that. But that is where we got to. But not only did we not anticipate that; neither did the providers, who had the same data.

**Richard Heaton:** It is a really reasonable challenge, and it is a searching one for us. What should we have anticipated on, for example, the greater



use of fines by courts? Fines is a perfectly good disposal, and for some people it is an excellent disposal. For somebody who is well off, it should probably be used more than it is at the moment. Should we have anticipated that fines were going to increase in popularity? Possibly. Should we have anticipated, for example, that the pressure, which we are party to, to increase the flow through courts increases the number of quick disposals and tends to mitigate against a disposal that requires a pre-sentencing report? Probably, we should have anticipated more than we did, but, as Mr Spurr has told you, we didn't—certainly, we didn't bring that sort of prediction into this contracting mechanism.

- Q62 Chair:** Figure 3 on page 17 shows that the situation will be even worse next year. If this trend continues, how are the CRCs supposed to operate? Ms Mahmood quoted the 8% to 34%, and next year the equivalent figure is a 29% to 48% reduction, against your original prediction of 2%. The situation is even worse.

**Richard Heaton:** Yes, but it will be mitigated by the changes that we have put in place, which promote some of the lower-level work up the—sorry for the jargon—weighted annual volume range. So you pay more for a lesser activity. That is basically the contractual mechanism we have put in place. So we are mitigating against this continuous trend—if this trend continues. But we hope it won't continue, for the reasons I gave an hour ago. I hope, working with the sentencers, we will begin to revive the use of this sort of intervention.

- Q63 Chair:** Do you believe, Mr Heaton, that the changes you have put in place reflect the change in activity by the courts? It is obviously considerable.

**Richard Heaton:** They are certainly mitigating it; they are certainly mitigating the volatility that otherwise was brought to bear on these contracts.

- Q64 Shabana Mahmood:** I am going to push you a bit further on this. While your answer is given in an eminently reasonable tone and seems fair enough, it is fair to challenge further. I want to explore the case load increasing by 20%, which you have both mentioned. It is covered in the Report as being as a result of the policy decision to statutorily provide rehabilitation for everybody who has been sentenced to 12 months or less. It was eminently foreseeable, and I will tell you why.

As a constituency MP, I could tell you for nothing—I am no expert in this area—that four times a month in my advice surgery I see people who fall into this category. They are the hardest to help, and they have chaotic lives—all the things you said in your answers about an hour ago. I could have told you that for free. Your Department does not appear to have anticipated that level of change, and I am worried that all of this expertise and basic common sense appears to desert officials in the Department at the point at which you come to negotiate contracts. Why does that happen?

**Richard Heaton:** That bit, if I may say so, is not right. The new cohort coming into operation for the first time was anticipated and costed for.



**Michael Spurr:** On the case load increase, it was clear right from the outset, and the providers knew that they would have a higher case load, because they were taking on 40,000 short-sentence prisoners who were not on the system before. So community orders have reduced, and suspended sentence orders have gone up, but providers have also got a higher case load because of the people coming out of prison.

Those individuals—the through-the-gate services—are the ones that are least paid on the fee for service. That is the one where we pay less money up front, because the expectation is that, if they are successful with that group, they will gain income from the payment by results. They expected that. What they did not expect was the reduction in community sentences and, specifically, the change in activity requirements on those community sentences, from activities that got greater income to ones that got less income on the contracts.

- Q65 **Shabana Mahmood:** My point is that this is an ecosystem of types of prisoner, sorts of things we can expect from those prisoners and the behaviour of the courts. This is the bread and butter of your Department and of the sorts of organisations that are providing these services—the CRCs and those in the voluntary sector and the charitable sector. You do not have to have delved into this area very much to work out where some of the pressure points are. I am concerned that, time and again—we had this conversation when we talked about electronic monitoring—the expertise that should be inherent in the operational capacity of the Ministry seems to desert officials at the point at which contracts are negotiated. You would agree that that is simply not good enough.

**Michael Spurr:** This demonstrates the complexity of trying to deliver service contracts like this. The first-generation contracts, which we are adjusting, reflect that complexity. I said that I cannot argue with the fact that the volume changes are much greater than anyone—us and those who were going to deliver the services—anticipated. That demonstrates the degree of volatility that there can be in a system where you are reliant on demand being determined by others.

- Q66 **Shabana Mahmood:** Is this even the right kind of model for this kind of service? When it goes wrong, very vulnerable and/or dangerous people will be living in communities like the one I represent. Should we even be pursuing this kind of model when the risks to the public and their safety if things go wrong—unfortunately, they frequently do—are so high?

**Michael Spurr:** Again, I go back to the point that 40,000 people are being supervised to some degree now who received no supervision previously. It was innovative to do something like this and to bring this cohort of people under some form of supervision. It is still early, in the sense that we have had one set of binary reoffending results but we are waiting for the frequency results. It is too early to call whether this has been successful. It demonstrates that there is a lot of complexity in the system, but we should not lose sight of the fact that the policy has provided for more support than these individuals had previously.



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**Q67 Shabana Mahmood:** On that exact point, we had this exchange last time we met, when we discussed electronic monitoring. I remember it well. We then discussed the innovation of piloting things before you roll out innovative new systems that are designed to make bad things better. Why not pilot this? I put the same question to you on electronic monitoring. Why not pilot it before you roll it out? The consequences of failure for the communities we represent are very great indeed.

**Richard Heaton:** We are getting into political decisions taken during the 2010-15 coalition Government. The Justice Committee will, as it happens, be taking a really thorough look at the way this arrangement works and its merits, but our job at the moment is to make it work and to make these contracts deliver as best we can.

**Q68 Shabana Mahmood:** As the head of the Department, is it your assessment that if this had been piloted we would not be having this discussion?

**Richard Heaton:** We might have learned some things from pilots.

**Shabana Mahmood:** We would have learned some things from pilots.

**Q69 Chair:** And we would be in a better position today. Surely that is a lesson to be learned. You were so far adrift on the projections of work activity, and you have been behind the curve on fixed costs and a number of other metrics. Surely, if you had piloted it, a lot of these things would have been ironed out much earlier on.

**Richard Heaton:** We might well have learned from pilots. At the same time, we would not have been able to deliver to the 2013 to 2015 timetable that we had, and we would not have been able to deliver the through-the-gate benefits that started to come as soon as the project went live.

**Michael Spurr:** There is one other point worth mentioning. I can absolutely see benefit from pilots, of course, and some PBR pilots were taking place prior to this, but there was a sentencing change in this. Piloting a sentencing change so that an individual in one part of the country is required to have supervision on release and an individual in another part of the country is not would need to be carefully worked through. That was certainly a consideration at the time. We have changed short prison sentences, and those are difficult to change for one person and not for another.

**Q70 Shabana Mahmood:** One of my colleagues wants to come in, but on that point again, before we move on, there was no practical bar to having a pilot that could have accounted for what happens when you don't have statutory rehabilitation and what happens when you do. Has there ever been a pilot that you have learned nothing from, Mr Spurr?

**Michael Spurr:** I was simply giving you a consideration. I think I said that pilots could benefit—

**Shabana Mahmood:** Fair enough.



- Q71 Caroline Flint:** I just happen to have in front of me the Ministry of Justice official statistics for HMP Doncaster, which was, along with Peterborough, a location for one of the early pilots. I think the criticism, Mr Spurr and Mr Heaton, was that even though there were these pilots, they were pretty short term. But the result for HMP Doncaster, which we do have, is that the “cohort 2 re-conviction rate for offenders released from HMP Doncaster was 3.3 percentage points lower than the 2009 baseline”, and a successful outcome was achieving “the 5.0 percentage point threshold”, so already in that early pilot—these pilots have been criticised—it was showing that, in that situation, Serco wasn’t even meeting the threshold then. Why didn’t you pause and allow more time to consider where you were going, which might have taken in other scenarios, such as potential down-the-road changes in sentencing guidelines, as my colleague pointed out? Don’t tell me you weren’t there so you can’t answer.

**Michael Spurr:** I wasn’t going to say that. The Doncaster pilot and the Peterborough pilot were a different mechanism completely. They did not involve a statutory requirement for the under-12-month group. The decision was taken to want to go to scale on addressing the under-12-month group of offenders. The way to do that, it was determined, was to address it through the community model rather than the prison model. That is why we proceeded with the transforming rehabilitation reforms; that was the policy direction. There was some learning from the Doncaster pilot. Actually, that pilot was set on a very different basis. Effectively, Serco put some of their income at risk in terms of whether, in addition to delivering the services of the prison, they would be able to effect a change outside. There was some learning from that, which we tried to take account of, but it was a different approach from the approach that we have taken on the community side, where the ambition was to address the whole of the under-12-month group, as I described earlier.

- Q72 Caroline Flint:** But in this Committee before, Mr Spurr, we have had quite a wide-ranging discussion about taking on the challenge of servicing a group of people for whom there had not been service before. That doesn’t mean I am suggesting they should not be there, but given it was failing in relation to this cohort group, in terms of custodial, wouldn’t you think to yourself, “Should we not try to get that better?”? The whole debate about people exiting prison and making sure they don’t reoffend is a massive issue in and of itself. Wouldn’t you have done better to make sure that that improved before you took on a challenge with so many unknowns, in relation to how you would service the cohort group of short-term offenders?

**Michael Spurr:** You make a valid point about pilots and whether you should learn from them. The ambition was to move forward fast to deliver a substantial change across the country.

- Q73 Caroline Flint:** Were you over-ambitious?

**Michael Spurr:** Others will have to judge that.

- Q74 Caroline Flint:** Mr Heaton, do you think it was over-ambitious—the way in which decisions were made to further extend a project that had not



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actually met the requirements in terms of its initial focus in relation to prisons and challenging reoffending?

**Richard Heaton:** As I said, it did deliver probation services for the first time for that huge cohort with under-12-month sentences.

Q75 **Caroline Flint:** Was it over-ambitious?

**Richard Heaton:** The timescale was pretty brave—

**Caroline Flint:** Or foolish.

**Richard Heaton:** And some of the innovative stuff that was going on in places like Peterborough on the social impact bond—frankly, it would have been nice to have seen that come through to fruition. The line was taken that it was best to embed that innovation into the CRCs' practices and allow them to take it on and innovate it. That allowed some really interesting innovation to disappear slightly from sight, so that might be regrettable, but I don't think I am going to come down on one side or the other and say it was over-ambitious, because that is for others to judge.

Q76 **Shabana Mahmood:** I want to explore the decision to start putting money in. Some might characterise it as a bail-out—a taxpayer handout to these companies to keep them afloat while you renegotiated the contract. First, are you completely certain that the problems in relation to the CRCs—the reason why they ran into financial difficulty—related simply to issues of volume of work and the challenges that the type of work was producing, and is not attributable in any way to incompetence on the part of the CRCs or other issues relating just to poor performance? Are you absolutely certain that those were not factors in the financial difficulties that we saw come to pass?

**Richard Heaton:** There are two things. First, we would not have put money into these businesses had we not thought, and got good assurance, that these were good businesses that were not going to fall over, so that is one end of the spectrum. Can I say that each of these CRCs was 100% brilliant and competent at everything? No, of course I can't, but the driving factors that led us to get round the table to get these contracts sorted out were the ones that we discussed. I can give you a complete assurance about that. It was not: "Oh my God, we've got mediocre companies—we'd better bail them out." It was: "We've got a contractual structure that's not working for us or for them. Contractual performances at bare minimum levels are not good enough for us. That's why we've got to renegotiate." I give you my assurance that that was the decision-making matrix.

**Michael Spurr:** I would just add to that what I said before. We have identified poor performance and addressed that with the companies where the chief inspector identified poor performance. It would be remiss of me to say everything is fine other than addressing the financial and volume issue, but you would expect that in a new service that has been delivered with a range of different providers. You do not expect everybody to be performing well—that is not the real world. However, there was, and is,



undoubtedly a disconnect with the way we had allocated those costs. It would be inappropriate not to recognise and address that. That would not be operating the contracts in good faith. We did significant due diligence to make sure that we were properly addressing a very real disconnect, in the way I have just described.

- Q77 **Shabana Mahmood:** Given the picture, which we discussed at the beginning of the hearing, in relation to Carillion, and the general debate we are having about outsourcing and the many mistakes and issues related to it, I am sure you would understand that there might be a concern among the public that this is a handout—a bail-out—without any clear lines of expectation about how there will be an improvement in the service. You kept them going without really getting much bang for your buck in return. What would you say to assure members of the public that that is not the case?

**Richard Heaton:** Two things. First, even if we spent all the money that we might spend under this contractual variation—so even if the entire NAO number of £342 million is spent over the lifetime of the contract—we will still be spending less than we had originally budgeted for. The public entrusted me with money to spend on probation, and even at the end of this process I will be spending less, so it is reasonable to put some of that windfall saving back into these contracts to try to make them work properly.

- Q78 **Chair:** What are you getting for this extra money?

**Richard Heaton:** Well, it is a detailed contract, and we have 12 performance indicators rather than 17. We will require them to deliver exactly what they were delivering before, but we will pay them slightly more for the lower-costed items.

**Sir Amyas Morse:** Forgive me. Just to be clear, though, Mr Heaton, the reason you'd be spending less is because there is less volume going through the system. Isn't that right?

**Richard Heaton:** That is partly right.

**Sir Amyas Morse:** So you are spending less because you are doing less. I am just making sure that we understand what you are saying.

**Richard Heaton:** Yes, fair enough.

**Michael Spurr:** I might just say, we are doing different things to those that we anticipated. The companies would say they are not doing less, they are just doing things that are not paid, and not weighted for as much income, as other things. They are doing more rehabilitation orders and fewer accredited programme requirements from the courts.

My response would be that I have got a responsibility to run an effective service for the public. There comes a point where you have got to look at what that service is costing in reality, and what we are providing in income terms. There was a very clear disconnect, which we had to address. I



would absolutely defend it as a proper value-for-money decision to invest in these contracts now. We still only pay relating to volume. We are not giving a cheque to the companies of £270-odd million. We have adjusted the mechanism so that it reflects more accurately what their real costs are in adjusting when the activities that they are required to deliver change.

- Q79 **Chair:** Paragraph 3.3 of the NAO Report makes it clear that the changes assigned to the contracts from August 2017 are projecting an additional £278 million going into these contracts. Yet, following the changes you have made, how has the total forecast loss for the CRCs changed from £443 million? You are paying them more but they are actually losing more. How do the two things actually add up?

**Michael Spurr:** I do not think they are losing more. There are a number of CRCs still projecting losses. Their outcome will depend in the end on what their results are on payment by results. What this has done is stabilise their current levels of income, so they can plan better on the current fee-for-service income, but the overall determination of what their profit or loss will be will be on payment-by-results outcomes.

**Chair:** We will come on to that in a minute.

- Q80 **Caroline Flint:** You seem to be paying more for their fixed costs, which is their admin. What I don't quite understand is this: you tried to explain earlier how you had to do adjustments, in terms of 20% originally for fixed-term costs to 77%, and you said that was because you had not really worked through how fair they were, and that staffing was under the semi-variable. You have moved more of that to the fixed costs.

I would like to ask whether you could provide this Committee with a breakdown of each CRC, on what their fixed costs are. I would be interested to know how that is working out. The variation on these companies in terms of their fixed costs, if I recall, goes from something like 44% to 99%. I am finding it quite hard, given all the benefits we are told of in these sorts of contracts, to know how you can have a service company in this sector having fixed costs of nearly 100%.

Could you provide the Committee, if not today, with some breakdown of the CRC accounts, as to what they are determining their fixed costs are? Are you reassured that maybe some of these bills for their fixed costs are not going back to the parent company to deal with any debts that they have got there, which may create, as my colleague has said, a Carillion-type result?

**Chair:** I think the NAO Report, at figure 5, does give you that information.

**Caroline Flint:** But it does not give us a detailed breakdown of what is in those costs, and that is what we need to know.

**Richard Heaton:** We can certainly write to you and we will take advice on how much detail it is right to share, but I will share as much as I am advised I can, I can promise you that. I just take issue with one thing: it is not right to say fixed costs are—I think you described them as admin. Fixed costs in these cases are people on the ground doing probation.

**Q81 Caroline Flint:** Well, there are premises and there are—

**Richard Heaton:** But 70% of it—or a large part—is staff: literally probation staff on the ground.

**Q82 Caroline Flint:** What is it you did not know when you assigned it 20%? Miraculously, as we now know, you have assigned it 77%.

**Richard Heaton:** We thought probation officers on the ground could be more rapidly moved off a piece of work than, I think, turned out to be the case.

**Michael Spurr:** As I was trying to explain—obviously poorly—before, what were classed as fixed costs were costs that you have for more than 12 months if you want to change them.

**Caroline Flint:** I understand that.

**Michael Spurr:** The reality is making staffing adjustments to address the changes in volume and activity, in practical terms, has been more difficult to do within the nine-month period than we had initially anticipated, and we have looked at that very carefully with external due diligence. The variation reflects, actually, differences between urban provision and more rural provision, where you might have a change in activity but you still need an officer. Even if your activity is reduced quite a lot, you cannot take the officer away, for example. When we looked at the assumptions originally, at the bid time, and they came from probation trusts, etc., we had assumed that you could make those adjustments over nine months. In reality it takes longer than that to adjust.

**Q83 Caroline Flint:** Can I give you an example of some figures that I have got here, about the fixed costs and the high admin costs of some of these CRCs? Cheshire & Greater Manchester CRC, which is Interserve-owned, set out the following in their 2016 accounts: turnover £29.5 million; admin expenses £16.5 million; cost of sales, which included delivery and staffing, £18 million. I would suggest that is quite a high level of administrative costs, and I just wonder whether you are looking into that—about whether or not those admin costs, which may play into these contracts that we are subsidising through the taxpayer, are possibly going back to the parent company. Are you concerned about that? Is it a case of dealing with possibly debt-laden companies to offset their problems through these contracts?

**Michael Spurr:** I do not believe that to be the case.

**Q84 Caroline Flint:** You compare it with Sodexo, to be fair—the other point of view on this. Its admin costs seem to be quite reasonable. It is operating with much tighter gross margins than some of these other CRCs.

**Michael Spurr:** The models for individual CRCs vary considerably. The investment that individual companies have made vary considerably. The projected losses vary considerably as a result of that. We have done due diligence, as I say, going through this work with external support to look at that, so I am confident we have done this properly.



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Q85 **Caroline Flint:** Interserve has had two profit warnings.

**Michael Spurr:** I am aware.

Q86 **Caroline Flint:** And its shares are now about 67p—less than a tenth of where they were in 2014 when the group bought an office cleaning business. It is worth less than £100 million now, potentially in the Carillion orbit.

Q87 **Richard Heaton:** I don't think it would be right for me to speculate on the viability of—

Q88 **Chair:** We have got to be very careful with market-sensitive information.

Q89 **Caroline Flint:** That was published in the *FT* in October.

**Richard Heaton:** We have an open-book relationship with each of these suppliers. We see all their figures. We have external auditors looking at them and helping us. I cannot give you chapter and verse on what counts as admin for the two companies you mentioned, but I am confident we are not paying for parent companies' head office staff under the guise of probation. I am sure that is not happening, but I will look into the two cases you have mentioned.

Q90 **Shabana Mahmood:** I'd like to return to our earlier line of questioning around money being put into the system in order to keep these companies going and expectations around levels of service. I am not sure we entirely established that there is a clear transparent relationship between the two. I want to ask particularly about the issue around service credits. The contract allows the Ministry to deduct credits if necessary. In fact, the Ministry has allowed CRCs to reinvest £3.3 million back into services, has waived £2.2 million and has only applied £2 million of the £7.7 million that was due as service credits. My question is: where is the hard-hitting penalty for poor performance under these contracts?

**Richard Heaton:** I will give a general answer. We use all the contractual levels we've got. We are an experienced contractual party and that includes penalties and service credits. It is not in our interests to simply run a contract in a macho way that leads a contracting party to fall over. That is in nobody's interest. We are robust and rigorous in using the contractual penalties available to us. We waive some; we do not waive others. That is what all contracting parties do. I am pretty confident in the way that we have used the penalties available to us.

Q91 **Shabana Mahmood:** I do not think you have to run a contract in a macho way in order to respond to a finding by the HM Chief Inspector of Probation that CRCs are not generally producing good-quality work.

**Richard Heaton:** We impose penalties and we collect them. Not in all cases, but we impose penalties and contractual credits.

Q92 **Shabana Mahmood:** You have only applied £2 million of the £7.7 million that was due. They are producing work that is not of good quality, leaving aside all the issues about the baselines that got us into the mess



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around volumes of work. There is not much innovation and the chief inspector says it is not very good-quality work. I am surprised you are not pressing your advantage a bit more and realising your full rights under the contract to deduct more service credits. How bad do they have to be before you press your advantage further?

**Michael Spurr:** I don't think it's reasonable to do that without taking account of the whole position, which is what we have been trying to do in a measured way. There is no question we can and have taken service credits. The position of the market, as we have described, has led us to see very clearly that effectively the companies have been running with less funding than they should have had to enable them to run their services. My interest is not about maintaining companies; it is about maintaining the best quality service I can for the public. It would not be proper or right not to recognise our responsibility to make sure those services are being delivered. Where we identify we are not providing the income to cover costs, we should adjust that. If you are doing that, we have to look at how we might improve the service. The contracts themselves are very light on overall quality and performance, because they are effectively payment-by-results contracts, which were deliberately specified light. So where we have used the opportunity within the contract mechanism and the service credit mechanism, we have said, "We want to see improvement here and we expect you to put some more effort, work and resource into here and to see some improvements." Outside the contractual requirements, that is what we have done. I would say that that is the prudent and proper thing to do to deliver the best services we can for the public.

Q93 **Shabana Mahmood:** Mr Spurr, honestly, I appreciate where you are coming from but it feels like it is a one-way street. Everything you have described basically places all of the risk and the issues at the foot of the taxpayer and I am questioning whether you are applying enough pressure on the CRCs. You appear to have just decided that you got this wrong at the beginning when you failed to get the volumes of work correctly baselined and now you are just going to keep paying out.

**Michael Spurr:** But many of the CRCs, as the NAO Report makes clear, are projecting losses. So they are still projecting losses and we are, rightly, as the Comptroller and Auditor General said, paying much less than we had anticipated paying because the activity is different to what we had anticipated. It is right that we don't pay for activity that we anticipated that we are not getting, but we have got to be able to be fair and realistic about what the costs that are being incurred are, to make sure that we are still delivering an acceptable service to the public—

Q94 **Shabana Mahmood:** We have already established that the reason you are paying less is in fact because of volumes of work rather than—

**Michael Spurr:** But CRCs have very clearly taken some of that volume risk because that is one of the reasons that they are projecting losses at the moment.

Q95 **Shabana Mahmood:** They are also commercial organisations capable of



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doing their own sums and knowing what kind of relationships and risks they are getting into.

**Richard Heaton:** In the negotiations with the CRCs last year, we were absolutely not a pushover. It was not a question of us turning up and then writing a cheque. It was a tough negotiation where we expected them to carry a lot of the risk they contracted for. As Mr Spurr says, they continue to be loss-making in many cases. We were absolutely in the business of keeping services—no more no less. We were not in the business of giving them a 5% profit margin or anything like that.

Q96 **Shabana Mahmood:** I might gently say, Mr Heaton, if you want to demonstrate that you are not a pushover—this is something I am sure the Committee will discuss—you might want to have a clearer, more transparent line of relationship between money going in and outcomes coming out that is measurable and transparent, and where we can all see that you are not a pushover. That might be a matter the Committee might wish to consider.

If I could move on, I know you have already discussed fixed costs in some detail with my colleague Ms Flint. I just wanted to explore the issue. You made the decision to apply the average on the fixed costs, at 77%, which is obviously very significantly different to the 20% that was initially thought to be the right figure, but the NAO Report says at page 27 that: “The increase in the Ministry’s maximum projected payments”—based on the 77% fixed costs—“to CRCs was greater than forecast losses for seven out of 21 CRCs, and lower than forecast losses for 14 CRCs”. To the extent that this might be characterised—fairly or unfairly—as a bailout, for some of these CRCs, it is a bit of a botched bailout, because they are not getting the money that they need in order to cover their forecast losses. What would you have to say to that?

**Michael Spurr:** That is because it isn’t a bailout. It was a genuine attempt to address a very clear imbalance in what we were paying against costs that the CRCs were incurring. That is why I have said right from the outset that, however it is described by others, it is not a bailout. As you say, if it were going to be, we wouldn’t have ended up in this position. We applied the 77% very carefully. It has to be consistent because it affects the payment model on fee-for-service. That is applied across the whole sector evenly and we took very clear external and legal advice about how we would apply this to ensure that what we were doing was appropriately safeguarding taxpayers money and was what we are legally permitted to do to address a genuine and real imbalance that we discovered in these contracts.

Q97 **Shabana Mahmood:** We can have a point of disagreement between us on whether or not this is a bailout. I know exactly what my constituents will think about that. What are you going to do about the CRCs for whom this additional money doesn’t cover the losses that they are going to make? You are in the same bad position you were in at the outset, which is that some of these companies probably just are not viable on this contractual basis.



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**Richard Heaton:** As I said, we are proper, tough commercial players. They have parent guarantees. We are not simply going to pour money in because they demonstrate they are loss-making. That is their business. We will do what we have to do to keep public services going under these contracts.

Q98 **Caroline Flint:** But if they are making losses, how can you be sure that the quality of what they provide to reduce offending, which is more than anything meant to be the badge of honour of this transformation, will work?

**Richard Heaton:** There is another round of this to come, as I have said, and we will go through the same exercise. We do not want to pay more taxpayers' money than we have to, but on the other hand, we want services to continue under these contracts or a variation of these contracts. That is for the next round. Their profitability is not actually our concern. It is a question of whether they are likely to have the money to invest in these services, how strong the parent guarantee is and so on. We will go through a similar exercise before we achieve stability.

Q99 **Chair:** When will that happen? When is the next round?

**Richard Heaton:** As Mr Spurr has said, a key date for us is when the payment-by-results reoffending numbers come out later this month. There may well be conversations following those, but I do not want to pre-empt what the numbers may be, because I don't know.

Q100 **Shabana Mahmood:** I am sure the Committee will have something to say about how you might approach the next round of discussions with the CRCs and demonstrate that you are not in fact a push-over Department. Lastly, at the outset of these contracts, there was a hope that there would be some innovation about the way that we have this rehabilitation revolution. This is a question to Mr Spurr, because of your operational knowledge. You intimated in some of your answers earlier that there was some good practice. Could you outline for the Committee the top three truly innovative, never-seen-before, not-just-pure-common-sense innovations that have been stumbled upon in the world of rehabilitation by the CRCs that, but for this model, you would never have been able to stimulate?

**Michael Spurr:** It is a bit unfair to ask me to do it in that way. There are different models being applied by the CRCs. A number of them are operating with very different approaches that were not being delivered previously by probation trusts—for example, engaging with those who are on short-term offences much more actively in the community, rather than bringing them to offices. You might say that that is common sense rather than wonderfully innovative, but it was not happening to the degree that it has been happening in some of these companies at the minute. They are working with people and with a much wider range of other providers. We talked about through-the-gate being an issue of third sector providers, but it is the opposite in the community. A number of providers have handed over direct engagement, using mentors and others to work with offenders in the community. I did not come with a list of the top three wonderful

things, but there are examples of positive work going on by a number of different providers. Their focus, though, as we have been saying, has been on making the system work. They would say that they have not been able to do as much as they would want to in those service delivery models.

**Q101 Shabana Mahmood:** Mr Spurr, I obviously do not want to be unfair. If there are some good examples, perhaps you could make sure that the Committee is provided with those in writing. What I have often seen in my seven-and-a-bit years as an MP is pure common sense and better partnership working dressed up in posh management-speak gobbledegook, as if it were something that only highly-paid experts could have come up with. I am concerned to make sure that that does not happen in an area that I happen to care a lot about and that we get at the end of the process something genuine, substantive and real that will make a difference to the lives of the offender population who come back and live in the communities that we represent.

**Michael Spurr:** I appreciate that.

**Q102 Chair:** Can I take you to figures 7 and 8? Clearly a substantial number of these CRCs are currently losing money. In figure 8, we see that the change to payment by results is going to involve a change from 6% to 28% of their total remuneration, going from £32 million to £112 million. Will that payment by results be a sufficient incentive to actually improve the position of those CRCs that are currently making losses?

**Michael Spurr:** That is the key question we will need to discuss with the companies once we have the outcome of the frequency results at the end of this month. That is why that is a very critical date. As I quite openly said previously, the interim results on frequency were not great. To understand that, we did not really have previous data with under-12-month cases, because those cases weren't previously under supervision, so it is very new.

At the time, the view, which I shared, as did most people across the sector, was that we should look at both the binary measure—did somebody reoffend or not—but also take account of not just giving up on an individual if they reoffend, because we want to minimise the level of reoffending and reduce the number of victims in that way. That figure will be really important, and we will have to see what the outcome is and what that means in terms of potential future profits or loss with companies, and then engage with them commercially about what that means in relation to these contracts.

**Q103 Chair:** But in terms of the overall performance of the CRCs, you said earlier that the overall rate of reoffending is coming down, but actually the latest data shows, if you look at paragraph 3.8 of the Report, that offences per offender is going up.

**Michael Spurr:** That is the frequency measure.

**Q104 Chair:** Yes, but for some individuals, that is not good news at all. For the rest of us, having those serial reoffenders is not good news.



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**Michael Spurr:** It may be something about a harder cohort of individuals who are actually in the system and committing more offences. We have seen some of that with young people at that level as well. There is an issue about what we do to address that. It is obviously good that fewer people are committing offences than previously, but if those who are committing offences are a harder cohort, it sets a whole range of issues about how we deal with that. It is absolutely right that that will be a key issue for us to work through with the CRC contracts.

Q105 **Chair:** But the metric, as I understand it, is that you don't pay for two years, until you know the results of their reoffending. Might that not be unfair on some of the CRCs for precisely the reasons you have just said: some reoffenders may be significantly more difficult than others, and it may be that some CRCs have a higher percentage of those serial reoffenders?

**Michael Spurr:** We would have to look at that. On the cohorts that we looked at, we looked at what the cohort in a particular area was in 2011, and we will compare outcomes against those cohorts. There are control mechanisms for changes in characteristics, but you are effectively right that there is some risk that goes with that. We were aiming to avoid companies not investing in people who looked to be too difficult to work with. People who are difficult to work with can potentially create the most harm to communities, so we want to incentivise companies to work with those individuals as well.

As I said before, payment by results at this scale is an innovative policy. We are looking at the outcomes and how it drives behaviour. As we get the outcomes at the end of January, the next few months will be very important, in terms of where we go forward once we see that.

Q106 **Chair:** And the next review will depend on those outcomes in January?

**Michael Spurr:** Yes.

Q107 **Chair:** So when would be an appropriate time for us to expect you to produce a report of any sort on that review? Will the information be in the public domain?

**Richard Heaton:** Yes, it certainly will be.

Q108 **Chair:** If you are going to review it in January, would it be fair to say that we should perhaps have another look at this matter in March or April of next year?

**Richard Heaton:** Of next year?

Q109 **Chair:** Yes. You are reviewing it in January this year.

**Richard Heaton:** Yes, exactly.

Q110 **Chair:** And how long will that review take?

**Michael Spurr:** The results will be published later this month. We will go into commercial discussions with all of the providers. We will want to do



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that fairly quickly once the results are out, to understand what this means for them. We will then need to determine the right way forward for the contracts and what more we will want to do, depending on where the results are, and we will want to engage with our Ministers about that. That will take some time.

We have stabilised the current position on addressing the imbalance between fixed and variable costs. The payment by results comes in increasingly over the life of this contract, so we will be engaging in this actively over the next six months for certain, to make sure that we continue to deliver the right services for the public.

**Chair:** I think what we will do is request the Comptroller and Auditor General to keep in contact with you about this, and perhaps report to us when an appropriate moment to re-examine this is. It is a serious matter if we don't get this right. I will come on to that issue in a minute, but I want to bring in others first.

**Q111 Caroline Flint:** I wanted to ask about the pension situation, because again it is linked to the liability—whether it falls on the companies or on Government. My understanding is that when the contracts were let, transferring staff retained membership of the Local Government Pension Scheme. Usually all companies are required to make provision for pension liabilities, which is usually covered by a bond or indemnity purchased by the incoming employer. I understand that, in the current case, for pension purposes, transferring employees are treated as if they were employed by the Secretary of State. That was presented as a value-for-money measure as it obviated the need for the CRC to meet the cost of a bond. Given what we have heard during the course of this session, that a number of these CRCs are, despite changes to the contract, losing money and profits—

**Chair:** We are going to have to keep it fairly short, because we have a vote coming up.

**Caroline Flint:** Okay. Perhaps you could write to us on this. What I want to know is whether you have discussed what the problems would be if, for example, some of these companies went bust and therefore the Secretary of State and the Government had to take on responsibility for the pensions of these individuals.

**Richard Heaton:** I will write to you on that.

**Chair:** Very kind. We have several questions, so quick fire.

**Q112 Nigel Mills:** When these contracts were originally tendered, was there competitive bidding for all the areas, or was there just one bidder?

**Richard Heaton:** I think in almost all the areas—

**Michael Spurr:** There was competitive bidding in all the areas.

**Q113 Nigel Mills:** Did any of the losing bidders identify that perhaps these contracts were not quite as lucrative as the winning ones hoped and bid



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on a different basis?

**Michael Spurr:** I have not discussed with the losing bidders their view of the contracts.

Q114 **Nigel Mills:** But you saw the bids. Presumably there was a reason why they didn't win. Was it because they wanted a higher price or wanted to do things a different way?

**Michael Spurr:** We evaluated the bids on the basis of the quality of the bid and the price—on the quality of the bid, because effectively we had set what the price was through the fee-for-service and volume mechanisms and through the payment-by-results mechanisms. So it was primarily around the quality of the bids that we were evaluating.

**Oliver Lodge:** Just to come in on that, five of the 21 CRCs were left with one compliant bid after contractual bidding terms had been enforced.

**Chair:** Thank you very much for that helpful clarification.

Q115 **Nigel Mills:** The reason why I was asking is that the risk of fundamentally rewriting the contract after you have let it is that, if you had let it on that basis in the first place, you might have had different bidders or different winners.

**Richard Heaton:** You are absolutely right. Apart from anything else, we have to abide by procurement rules which do not allow us to rip it up and start again. So everything we have done so far has been very carefully navigating through European procurement rules, as you would expect.

Q116 **Chris Evans:** Given your reluctance to allow CRCs to fail, is an outcome-based contract really the right model for providing these critical probation services? That is, very quickly, to the both of you.

**Richard Heaton:** We have got contingencies for any scenario, CRC failing or not, so the survival of these companies is not the thing driving us; it is the public services that are driving us, or taxpayer value. Is this the right model? I genuinely think that is a political question.

**Chair:** On that question mark, we will call an end to these proceedings, but I thank you both very much for dealing with what is a very important service to all of us, the public and those who have to go through the criminal justice system. We look forward with great interest to seeing how your reforms work, if they do. We will not hesitate to call you back if we feel that they are not working. Thank you both very much.

**Richard Heaton:** Thank you, Chair.

**Michael Spurr:** Thank you.