

Public Accounts Committee

Oral evidence: Transforming Courts and Tribunals, HC 976

Wednesday 6 June 2018

Ordered by the House of Commons to be published on 6 June 2018.

[Watch the meeting](#)

Members present: Meg Hillier (Chair); Sir Geoffrey Clifton-Brown; Chris Evans; Gillian Keegan; Shabana Mahmood; Anne Marie Morris.

Sir Amyas Morse, Comptroller and Auditor General, Adrian Jenner, Director of Parliamentary Relations, and Oliver Lodge, Director, National Audit Office, and Adrian Baxter, HM Treasury, were in attendance.

Questions 1–140

Witnesses

[I](#): Richard Miller, Head of Justice, Law Society, Jo Edwards, Chair, Family Law Reform Group, Resolution, and Penelope Gibbs, Founder, Transform Justice.

[II](#): Richard Heaton, Permanent Secretary, Ministry of Justice, Susan Acland-Hood, Chief Executive, HM Courts and Tribunals Service, and Richard Goodman, Change Director and Reform Programme Director, HMCTS.

Report by the Comptroller and Auditor General

Early progress in transforming courts and tribunals (HC 1001)

Examination of witnesses

Witnesses: Richard Miller, Jo Edwards and Penelope Gibbs.

Chair: Welcome to the Public Accounts Committee. We are here today to look at what is happening with Transforming Courts and Tribunals, which is one of the many major programmes that the Ministry of Justice has under way. It is a very ambitious programme that will cost £1.2 billion at the moment, although we are not sure how estimates will go in the future, which is one of the issues we will be looking into. It makes changes on a scale never seen before in our courts and tribunals system. Once complete, the intention is that they will save £265 million a year and, crucially—this is another thing that we are keen to keep an eye on—will ensure that the justice system is simpler and more accessible for all of us.

That is the aim, but we know that there are a lot of problems. It is a two to six-year transformation programme, and there is potentially many a slip twixt cup and lip along the way. It is something that we have looked at before as a Committee and that we will be keeping a close eye on, because we are very concerned about how it may go and what the consequences will be if it goes badly wrong.

To set us up for our conversations with the Ministry and the Courts and Tribunals Service later, we are very pleased to welcome three witnesses who represent the people who work at the sharp end of this and who see the reality of the programme as it is being rolled out now. They have helpfully provided us with some free information about what the problems might be in the future.

From my left to right, I welcome Jo Edwards, who is the chair of the family law reform group at Resolution—welcome to you—Richard Miller, who is the head of the justice team at the Law Society, and Penelope Gibbs, who is the founder of Transform Justice. I will ask Anne Marie Morris to kick off. We look forward to you telling us how it is from your perspective, and then we will put some of those points to our Department witnesses in the next session, which we expect to be in a bit over half an hour.

Q1 Anne Marie Morris: Ms Gibbs, given your role in Transform, what do you see as the greatest opportunity coming out of this reform, and what is the greatest threat?

Penelope Gibbs: The greatest opportunity coming out of this is to have a system where users of the courts—defendants and witnesses in a criminal case, and plaintiffs in a civil case—have a better experience; where there are fewer delays; and where justice is easier to access. The biggest threat is that, in fact, it will not increase access to justice in a genuine sense; that people will be put online when they may be nervous about it; that they will not have the confidence and public legal education to understand what they are doing; and that they may end up not taking a case or, in a



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criminal case, getting a worse outcome, a worse sentence or a criminal record without really knowing what they are doing.

- Q2 **Anne Marie Morris:** Is there any safeguard or something that you would like to see put into the change programme to ensure that it does not do those dreadful things and undermine access to justice?

Penelope Gibbs: As others have called for, there needs to be—dare I say it?—a pause. This is going like an express train. We need evidence and research, and both of those need to be in the public domain. We do not have evidence of the effect that existing video hearings have on criminal justice outcomes, nor do we have modelling for the future—and the same on the civil side. There is no openly advertised research programme. They are doing user testing, but that is totally different from open academic research that looks at things from a behavioural aspect and an outcome aspect.

The danger is that we will end up having spent lots of money and having closed most of the courts, and that the justice outcomes are more people in prison because we have more video hearings, or people getting criminal records because they have gone online and did not really understand what they were doing. We need a pause for reflection and actual research.

- Q3 **Chair:** Do any of you know if this is being done anywhere else in the world? Are there any international comparisons that we ought to be looking at?

Penelope Gibbs: Nothing quite like this has been done in the world. Obviously there was a review done by the Boston Consulting Group that is referred to in the NAO Report, and it would be great if we could all have access to that, because it refers to international examples. I have FOI-ed that report twice. I did it once a year ago and once recently, and those FOIs have been turned down on the basis of it being used for the development of policy.

Jo Edwards: At the weekend, I reread Lord Briggs' very helpful report from July 2016. My recollection from a reread of that report is that he made it clear that this is among the most ambitious of programmes, particularly the move towards the online court, if not the most ambitious that there has been in the world. That must not be lost as a point—the huge scale of the work that faces the MoJ and HMCTS.

- Q4 **Chair:** It's just that we haven't come across anything internationally in particular, so I wondered if you knew. Mr Miller, anything international?

Richard Miller: No—likewise. I think that in the civil courts there are some projects that bear some similarities to what's being tried here; in the criminal courts, I'm not aware of anything remotely similar to what's going on here.

Chair: So it is groundbreaking and world-leading, as the Department might say.

- Q5 **Anne Marie Morris:** Ms Edwards, with your matrimonial law hat on, do



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you see some particular challenges in the changes proposed, given that you are dealing with a lot of very vulnerable individuals in very difficult circumstances wherever they are within the family picture?

Jo Edwards: Yes. That is precisely the point, and you are absolutely right to pick up on that. We do deal with some of the most vulnerable people going through the justice system, including those who may risk having their children taken away from them by the state, those involved in care proceedings, those arguing privately about future arrangements for their children on separation, which are very important to them, and those looking at sometimes very limited assets on divorce. So there are clearly huge challenges.

If I may, I want to start by saying positively that the Resolution position is that of course we are supportive of a modernised justice system, and we can and should continue to be the envy of the world. So there are huge opportunities here, but in terms of challenges—I know that this has been said before, and Penelope has already some of what I was planning to say—our concern is that the court closures are going on now at a significant and very accelerated rate. There were 119 court closures in the last three years, and only 19 in the three years prior to that.

I have looked at some of the stats this morning, and in the family sphere the volume of applications has been hugely going up over the past two years while this programme has been ongoing. For example—I will refer very briefly to my note—in public law children cases over the past two years, there has been a 20% increase in the volume of applications; in private law children cases, a 17% increase; and in financial cases, an 11% increase. But all of that has been against the backdrop of huge swathes of courts around the country being closed.

So we feel that, as Penelope has said, first of all, one needs to stop and take stock. Secondly, we have comments we would like to make and wish to be heard about the extent to which we have felt engaged or not engaged in the programme so far. There have been huge difficulties and—dare I say it?—at points it has felt like lip service has been paid to consultation. I can give a recent example from last week, where four days' notice was given of a four-hour meeting in the middle of the day, which none of our members could get to.

So I think we just need to slow down. We are concerned at the challenges faced where the digitisation side is not as advanced as we would like; I think everybody would acknowledge that. There has been no discussion about what the online court would look like from a family perspective; we have huge concerns about that. Yet all around the country, courts are being closed and access to justice is already being impeded on the ground.

Q6 **Anne Marie Morris:** So what is happening in this interim period? I can see where it was—with courts closing—and where in theory it will be, whatever we think of video, but there is this middle bit. How is that extra demand being catered for?

Jo Edwards: That is the huge question.



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Q7 Chair: Do you know why there has been such a rise in demand? It is really very significant—20% in one case.

Jo Edwards: Who knows? Of course, we must not muddle up difficulties caused by the legal aid cuts five years ago with the court modernisation programme, but I think a lot of the answer will lie in the fact that for the past five years people in family cases have been disproportionately affected by the legal aid cuts. As a result of those cuts, they have not been able to access legal advice at an early stage.

It is not a discussion for today, but obviously there is a legal aid impact assessment ongoing. We would say that it is very important—this does apply to the online programme—that there should at least be early access to even limited legal advice, which can signpost people towards agreements and hopefully keep them away from the courts, which is very much what Resolution is about.

In the meantime, as I was saying, we have undertaken a survey of our members in the past week, which we can share with you to show the huge difficulties that members are experiencing on the ground. I think that half of the people who responded to our survey said that they had had a court local to them close as a result of the recent modernisation programme.

Lots of people spoke of travel times being increased by as much as one or two hours. Those are solicitors with cars—what about the vulnerable people who can only get to places by public transport, with no thought being given to the amount of time that it takes those people? Consider particularly, say, a single mother who has childcare responsibilities, who cannot even leave home until she has dropped her child off at school at 9.30 am, and has to be back by 3 o'clock in the afternoon. According to one of my colleagues in Chichester—there is a lot I would like to say about Chichester if time permits—the court has been massively under threat and there has been fighting, or I ought to say discussion, going on for three years about the future of the provision there. In the meantime, some of the cases are already being shipped off to courts 80 miles away. We are hearing stories of people who just cannot make a half-hour appointment over in Brighton or Hastings when they have childcare responsibilities.

So our predominant concern is access to justice. We very much want the programme to succeed, and we would like to help co-create it. We would like to be involved in discussions and in meaningful engagement over what change may look like, but we need to be reassured that before there are yet more court closures and death by a thousand cuts, we have stabilised things on the ground, there is a clearer direction of travel and we know that there is a proper digitisation programme in place in which we have been involved.

Q8 Anne Marie Morris: Mr Miller, this programme should not only deliver improved access to justice, it should also deliver fair outcomes. Do you have any broader concerns about how the system might adversely impact people with learning disabilities and many others who come into the criminal justice system?



Richard Miller: Yes, we do. We very much share the concerns that Penelope has raised about the impact of handling matters by video link rather than in person. There is a reason why we are all sitting here in this room today. Face-to-face engagement delivers understanding and communication that is lost when you deal with video links. We are not yet satisfied that the alternative methods of handling cases will actually keep justice outcomes and the quality of justice at the heart of the matter.

There is also concern about where the role for legal advice and representation for people is within the new digitised systems. It is all very well saying that people can easily access an online system to bring a claim, but they will still need to know whether they have a valid claim and what evidence they need to produce, whether any defence that is filed is reasonable, or at what sort of level they should settle the case. Those things will require legal advice, but there is a real lack of understanding as to where that legal advice is going to fit into this new matrix. It is going to be vital that it is there somewhere if we are going to see people with valid cases being able to take them effectively and people who have got a grievance, but don't actually have a valid case, having that explained to them so that the system is not clogged up with a lot of cases that should not have been brought in the first place. There are some major concerns there.

Penelope Gibbs: And I think in the criminal context, there is a particular concern about this huge sweep on to online cases. They want to take a lot of cases that are dealt with in the court at the moment through the single justice procedure or in the actual court and put them online. These are criminal cases. They are the lower-level criminal cases—it may be driving, or they use the example of TV licences or something like that—but every case can give you a criminal record, which is problematic throughout your life. No criminal case is minor or unimportant; it all has huge repercussions. In putting those cases online, we really must ensure that the people who are going online, who will often be unrepresented for these lower-level cases, do absolutely understand what the implications of pleading guilty are.

Q9 **Anne Marie Morris:** How might we achieve that?

Penelope Gibbs: Well, I would say it is about research and an open process whereby we can all see what is done, and testing of these online systems to ensure that mistakes are not made. I would use an example of the driving one. There is already a driving online court, whereby if you are speeding or whatever you can go on, plead guilty and pay your fine. But they launched that and there was a terrible problem with it for more than a year because the system said you had to send your paper driving licence somewhere, but it wasn't clear on the form that that was the case. So lots of people paid their money and then were told that it had all been cancelled because they didn't send their paper driving licence. They then had to go through the single justice procedure and pay more because they didn't see that little thing. Sending the paper driving licence was also completely redundant, because by that time, the paper driving licence was not legal.



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So the whole process of the online driving sanction was problematic. I do not know whether they have sorted it out yet, but for at least a year, people were getting confusing advice about the paper driving licence.

- Q10 **Anne Marie Morris:** Given the different types of criminal and civil matters we are talking about, the message I am getting is that the idea of using video will not work for even the simplest crime. If I were to play the devil's advocate, or if I were the Government, which I am not, and said that it has to be capable of being used for something, what could it be used for?

Richard Miller: There are certain cases where video links can work. For example, in criminal cases, our members tell us that after the initial hearing, when they already have the established relationship with the client, if the client is remanded in custody, handling cases via video link from prison is far more effective than physically bringing the prisoner to court. That is a good use of the video technology.

- Q11 **Chair:** Is that for short pre-trial hearings?

Richard Miller: Indeed. Similarly, administrative hearings in civil and family cases, particularly ones where the client does not have to be present, could be dealt with by telephone, video link or online means. That would make the system more efficient. From the lawyer's point of view, for example, they would be able to stay in their office and get on with other work until the case was called. That avoids a lot of waiting time, which is redundant for them and is wasted time. There are some real benefits that could be achieved. Those are the sorts of hearings that really could deliver efficiencies if you moved to the new technological solutions.

Jo Edwards: If I may add this specifically from the family perspective that Richard alluded to, we all accept that we have to be open-minded, particularly given the backdrop that I have described of many people being many miles away from their local court.

There are a lot of cases in family law, whether on the money side or the private law children's side, that involve conciliation. Because those conciliation hearings tend to be successful in reaching agreement, it is very helpful to have to have people physically there in person to hear the advice that they are getting, particularly where there might be one person who is litigating—or they both may be—and they need to hear from the judge.

I had a recent example of that, where a litigant in person—a mum—really had to be persuaded of the benefits of settling on that day. Likewise, final determinations have to be done in person. But I agree that there are interim early hearings—directions hearings, for example—that arguably would be capable of being dealt with online, subject to the right technology having been appropriately and robustly tested first for reliability.

- Q12 **Shabana Mahmood:** I want to test what Mr Miller and Ms Edwards just said about some of the uses that could be made of video and telephone



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conferencing facilities. Who speaks up for the user voice? I should confess that in my previous life, I was a specialist in professional indemnity litigation, acting for a lot of solicitors accused of negligence.

Mr Miller, I was interested that you said that once the lawyer has established a rapport with their client, perhaps you do not have to have the client present. But who is speaking up on behalf of the client? One of the things they learn by going along to those hearings is that perhaps they are not getting the service that they ought to get. How do we safeguard that voice when trying to design the system?

Penelope Gibbs: I would say that I have more concerns in relation to remand than Richard. I think we need to do research into the effect. The person on remand is normally present, but on video link to the court. Already we have an overuse of remand, with a lot of people being remanded and then released by the court on either acquittal or conviction. I have a concern; dare I say, we need to look at testing it out and at research. The judges themselves already seem to think that there is a possibility of unconscious bias in their decision making. That could come into remand, too.

Richard Miller: What I would say is that those hearings are just one of a number of opportunities a client has to see the lawyer in operation. They will very often see them in the police station face to face in the first instance. They will have various meetings with them as the case is going on, to discuss the evidence being served. There will be a series of opportunities where the client can get a feel for whether they are getting a good service from the lawyer.

I accept that if you are handling one of these hearings by a video link, potentially that may limit the ability of the client in that particular circumstance to pick up on some of the nuances. But there are questions in any event over how easily a client is able to judge whether a lawyer is delivering a good quality service. It is more whether the lawyer is engaging with the client and whether the lawyer is responding to requests from the client and providing explanations that are needed, rather than seeing the lawyer on their feet in court, that will give the client the confidence about whether their lawyer is doing a good job for them.

Jo Edwards: If I may, I will briefly add another aspect that we must also not lose sight of and that has been heavily discussed and written about in the family sphere, which is transparency. There has been a lot of complaint, particularly in care proceedings, that members of the public do not understand why these very difficult decisions—draconian decisions, as they may seem—are being made. If there is going to be a move to online, we need to get our heads around how the wider public see the justice system and understand the decisions that are being made, which is of critical importance.

Chair: We have certainly seen some interesting things come from journalists being able to be present at some of those hearings.

Q13 **Shabana Mahmood:** I just want to come back to Ms Gibbs. You



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mentioned unconscious bias, and I want to pick up on that point. One of the things I see in my constituency advice surgeries and my postbag is a lot of complaints that hint toward a bias, particularly against BAME defendants. The Government also commissioned the Lammy review, which had some very stark findings. What do you think the risks are that some of these changes will make it worse, or at least not make it any better?

Penelope Gibbs: I think the risks are particularly to those with mental health problems and learning difficulties, and to those with English as a second language, because obviously, if you have a hearing on video or you are trying to understand something vaguely legal online, that is more difficult with English as a second language. Then there are unrepresented defendants and litigants in person in every sphere. The research Transform Justice did on video hearings seemed to indicate that lawyers were most worried that those groups were negatively affected by being on video. For BAME, again, we need to do more research to see if there is a) prejudice and b) more prejudice if it is on video link. What I know from this research is that it dissuades people from effective participation. They either disconnect and zone out of what is going on in the courtroom or else, because they cannot communicate properly, they get more frustrated and angry.

Q14 **Sir Geoffrey Clifton-Brown:** May I ask a question of all three of you? A lot of your answers have been that you want the transformation paused pending further research. Do you have any research to tell us how other countries throughout the world do this work?

Chair: We discussed that earlier; I think we have covered it.

Jo Edwards: I have to say that I haven't seen any particular research.

Chair: We had an answer to that earlier.

Jo Edwards: It is partly research and partly just robustness of systems and engagement in the systems that we have not seen.

Q15 **Chair:** Perhaps we can take that a slightly different way: are there any other systems that are not online, but legal systems in the world that are a similar adversarial system to ours?

Penelope Gibbs: In Australia they use video hearings quite a lot for criminal proceedings, and they have similar challenges to us. There are a number of academic articles that I can get to the Committee about that. Obviously, because a lot of communities in Australia are incredibly remote, the need for video is very great because the distances are huge. In America I think they use video quite a lot, and there is interesting research on video in immigration hearings, which seems to indicate that those who go on video for their hearings are more likely to be deported than those who are in the physical court.

Richard Miller: A few years ago a pilot was undertaken of video remand hearings in Kent and London, which highlighted a number of very significant concerns about the way those hearings operated, to do with



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both the engagement via video link and the costs and practical and operational issues that arose from those pilots. I think the conclusion was that there were a lot of concerns and issues that would need to be addressed if they were ever to work effectively.

- Q16 **Chair:** That's interesting, because earlier you said that there were not really any examples from around the world, but you have just given us some. Is it just individual academics doing little bits of work but not full studies?

Penelope Gibbs: Basically. There was a 2010 study by the Ministry of Justice about—

- Q17 **Chair:** The Boston Consulting Group one?

Penelope Gibbs: No; that is a separate one. The Boston Consulting Group's was a review of the digital court reform programme. The MoJ did a piece of research in 2010 on police-station-to-court video hearings, and there is some academic research from Australia and from the USA.

Chair: That is very helpful to know.

- Q18 **Shabana Mahmood:** I just want to ask about immigration tribunals, and your perspective on the current stresses and strains and how some of these changes might impact on all of those.

Penelope Gibbs: I am not an expert on immigration. I have talked to people about immigration video hearings and whether they have parallel problems. Their campaigners are certainly very concerned that those who are trying to get bail are nearly always put on video, and that that is problematic. I don't know overall. Presumably, the issue is language.

Chair: Okay, if you don't know, we will perhaps move on to one of the other witnesses who may know more. A number of us are aware from our constituency caseloads of the extraordinary length of time that some of these cases take.

Richard Miller: Similarly, I have feedback from our members that there are real concerns about strains in the system. I don't have anything specific on the impact of video hearings within the tribunals or what that achieves.

Jo Edwards: I have nothing to add, I am afraid.

- Q19 **Chair:** It is interesting; we have just been joined by our colleague, the hon. Member for Chichester. Ms Edwards, you said you didn't want to talk about Chichester, but perhaps you could explain a little bit more. Now is your moment, and it is her moment to make sure that she takes up the cudgels, no doubt, as an effective constituency MP.

Jo Edwards: I know Ms Keegan is aware of and has engaged very helpfully with the Chichester situation. All I wanted to say, briefly, is that I think there are negatives and, more importantly, positives to be drawn from the Chichester experience. The position was that, in July 2015, the Chichester combined court was slated for closure. A local member—



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Edward Cooke, a local solicitor—took up the cause there. He felt very strongly that the case wasn't made out in Chichester, both in terms of utilisation levels within the court, which he thought were higher than portrayed in the statistics put forward, and in terms of the impacts and the distances that I have described already.

Q20 Chair: So that was going to Hastings and Brighton?

Jo Edwards: It was going to Hastings for certain hearings and going to Brighton for certain hearings, which are very distant from Chichester. I know the local area reasonably well as well. It has taken three hard years of engagement on the part of Mr Cooke with HMCTS and the MoJ and the help of his local MP over the Chichester situation.

I heard from him yesterday that, happily, although discussions have been ongoing for some time about the fact that the court will close—it is hanging on by its fingertips a little at the moment—there has also been discussion about what suitable alternative local provision can be provided. As I understand it, that will be in some local council offices.

Hopefully, this is an example, first, of how not to go about a consultation, with the greatest of respect. He and we would say that there has perhaps not been the greatest of transparency around the measures used. Happily, a solution can be found whereby—I don't like the phrase pop-up court—some local provision can be provided on the ground.

I know there is an ongoing discussion at the moment as to whether that will be for a couple of days a week, as had been hoped, or for only a couple of days a month, which I think, frankly, wouldn't be enough, based on what we've been told. If that is possible, and if other court closures are being mooted—we have already said to please stop for now—it shows the importance of engaging with local members about the practicalities.

Q21 Chair: That is really good detail on the Chichester model. I won't ask you to list them, but have you had similar engagement on other courts where there has been good local engagement with HMCTS and there has eventually been some progress?

Jo Edwards: Because Resolution has 6,500 members—users of family courts—all over the country, I know that there has been some good local engagement, and I know that, when the initial consultation came out in 2015, lots of the responses were local rather than national, which is absolutely right. I know that, unfortunately, of the 91 courts that were slated for closure in the initial round, 86 have been confirmed to be closing. I don't know of any successes in the same way as Chichester.

Chair: From the way you are talking, it might be construed that you are saying every court building must stay open. We had evidence in a previous hearing, particularly from MPs, saying, "That building is terrible and needs to close", and that there is a better option down the road in a modern, functional building.



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Jo Edwards: We have to be open-minded. We recognise—I have read all of the statistics—that the court estate had become very big and unwieldy. One does have to look at the practicalities. In addition to thinking about whether it is possible to provide at least a more limited local provision, which we think is important for access to justice reasons, we also say: please reinvest in the estate that is there. We have not seen enough evidence yet of that happening in the courts that remain.

Q22 **Chair:** I will bring in Ms Keegan in a minute, but can I ask about one of the things we looked at that this plays into? It is about the time that the court is being used. Judicial time is obviously absolutely essential. If you have not got a magistrate or a judge there, you cannot continue. Do the three of you have any comments about the efficiency with which existing court buildings are used? One of the arguments for moving into modern buildings is that they can be more effective. The distance thing is obviously an important issue, too. Are there issues there that you think could be improved by this process, and are there risks there? I will start with Ms Edwards.

Jo Edwards: From our perspective, it has not always been entirely clear, as I have said already, how the utilisation figures have been arrived at. I go back to Chichester as an example. As I understand it, in looking at utilisation, no account was taken of cases being transferred to Chichester from Bury St Edmunds, so that was an issue. The only other thing that I can say at the moment is that we can look at it from the other end, to look at what the impact of the closures there have been so far is. Again, coming out of our survey's statistics, 91% of people who responded to us said that financial consent orders are now taking a lot longer to process than was the case previously.

Q23 **Chair:** How many people responded?

Jo Edwards: I think about 200 people responded.¹ We had a four-day window in which to do it. We also have anecdotal evidence from our members around the country.

More concerning is the situation around divorce petitions, because the numbers are decreasing, but there has been a doubling in the amount of time it is taking the Bury St Edmunds divorce centre, which covers about 45% of divorce petitions in the country, to process petitions at the moment. It has gone from about three to six months to get to decree nisi stage. You may say, "So what? What difference does that make?" The problem is that people cannot access financial remedies for all of that time. They are potentially left in a situation where they have to access state benefits for income and housing. It is taking an inordinate amount of time, and I think a lot of that, unfortunately, as I understand it, is due to staff shortages. So where one is looking to move from 16,500 HMCTS staff down to 10,000 by the end of this process, that will make a very significant difference. I appreciate that digitisation will make a difference—of course it will—but we cannot carry on with this rapid pace of change.

Comment [MB]: The precise number of respondents was 168

¹ Note by witness: The precise number of respondents was 168



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Q24 Chair: It is interesting that you have highlighted the potential knock-on effects to the public sector purse, or the taxpayers' purse, of the delays to divorces where the parties have to refer to the state for support.

Richard Miller: We have concerns about the utilisation rates. First of all, we are not exactly clear how they have been calculated. One of the things that is particularly significant is that the utilisation will depend on the available judicial time at a given court. If HMCTS is only providing a judge for 50% of the time, then the utilisation may be 50%, but that is not because that is all the work there is for that court to do. Consolidating the courts will not change the lack of judicial time and will not improve the backlog of cases, so we think that the utilisation rates might be a slightly misconceived measure for determining which courts should close.

We would love to know the other reasons behind the courts chosen for closure. To take two recent examples, Camberwell magistrates court and, in the latest round, Cambridge magistrates court, Cambridge in particular is a very modern court. It is only about 10 years old, fully kitted out with modern technology, so why that one has been slated for closure is completely beyond us. Local practitioners say that the alternatives proposed of going to Huntingdon or Peterborough will be hugely problematic for the users as well, so that makes no sense. Similarly, Camberwell had had a major upgrade only a year or so before it was slated for closure. It just makes no sense to us.

Q25 Chair: Ms Gibbs, does Transform Justice have any views on that?

Penelope Gibbs: I agree with Richard. The utilisation figures are difficult to understand. My understanding is that a lot of the under-utilisation of the court is, as Richard said, because there aren't enough judges and magistrates, not because there aren't cases that it could be used for. It would be expensive, but with more judges we could do that. I would also like to point out that criminal courts are slowing down as well. The last figures for the number of days from first listing to completion in cases at the Crown court has extended from 172 days to 176 days.

Q26 Chair: Where is that from?

Penelope Gibbs: I will give you a reference. I think it is from the latest criminal court statistics from the MoJ.

The other thing about court closures is that failing to appear is a public sector cost. When people fail to appear—when they don't turn up at court—a warrant is taken out for their arrest. The police have to go to their home, they detain them at the police station and then produce them at court the next day, all of which is fantastically expensive for somebody who may have just missed a court appointment. However, there is evidence that, probably due to court closures, the rate of people failing to turn up for their court appointments has increased. There seems to be a reference in a report that it has increased from 14% to 17% of, presumably, defendants in the past year.



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There is a report about Suffolk, which is so far unpublished, where they closed two courts—Lowestoft magistrates and Bury St Edmunds magistrates—leaving only Ipswich for the whole of Suffolk. There is evidence from that report that there are higher rates of people not turning up to court, particularly from those areas where the courts have been closed. Those people may not turn up at court because it is just too difficult for them to do so, but there is a huge public and police cost to those failures to appear.

- Q27 **Chair:** And is witnesses turning up to court a concern? You might not choose to be a witness—you might absent yourself—because you are not compelled to do so.

Penelope Gibbs: Yes. That is a problem, too.

- Q28 **Chair:** Do you have any evidence for that? Ms Gibbs, could you tell us—in writing or by emailing us afterwards—the references for the reports that you have quoted? We will need to reference them.

Penelope Gibbs: Yes.

Richard Miller: One of the real concerns we have about this is that, where public transport is limited, you could end up with defendants and witnesses on the same bus or train. The risk of potential intimidation, or even just fear on the part of people if there is no actual intimidation, is a real concern.

Chair: That is a good point, which, I must confess, I hadn't thought of before now. You are nodding, Ms Edwards, so there is a real issue about witnesses getting there. We have covered this in previous hearings, so we will perhaps not go into it in detail.

- Q29 **Gillian Keegan:** Thank you for bringing up the Chichester example. I think there are a great many lessons that could be taken from Chichester and into other areas. Listening to what you have just said, it seems to me that two and a half of the three years were spent arguing about the data and whether it was right and trying to defend existing positions.

What actually changed and got us the breakthrough in Chichester was looking at the users of the court—not the building—and deciding what services we wanted. We have shared services with councils and shared use of technology with police stations, which is actually much better for many of the users. Is this the model that you are going to try to encourage, going forward, so that you don't have the long distances? Every town and city has a council chamber—more than one in many cases—and they are often not fully utilised. Are you looking at these lessons to make the model of the future more fit for the 21st century?

Jo Edwards: Potentially, yes. One has to be open-minded. I have said already that one has to recognise the need for closures if there are courts that are under-utilised. There is a risk of just focusing on the big towns and cities and forgetting about the big swathes of rural areas in between. I know that, in one of the meetings that Mr Cooke—the member from Chichester—went to with HMCTS, he took along the local bus and train

timetables to show the fallacy in the arguments that were being put forward.

- Q30 Gillian Keegan:** But that goes away if you have people using the council chamber, which is about two yards away from the old courtroom. That goes away completely. You could cut all of this if you just went straight to that answer.

Jo Edwards: Absolutely, provided that there is an adequate amount of provision, obviously. I know that, as I said earlier, how much court time will now be available in Chichester is still very much under discussion at the moment.

Chair: I am going to call an end to the Chichester fest, if that is okay? It is a very interesting and flexible model. Quickly, Mr Miller and Ms Gibbs, is this something that you have come across elsewhere, and do you think that flexible model is something that your members, or the organisations that you represent, could work with?

Richard Miller: The organisation Justice came out with a very interesting report on "What is a court?" a couple of years ago. There are different solutions that will work for different types of hearing. There will be, for example, different needs in terms of security and things like that. Provided those needs are properly addressed, I think that a lot of civic buildings could potentially be used as an alternative. That could well be a more efficient way of using both those buildings and the courts of state generally.

- Q31 Chair:** Ms Gibbs, do you have any particular issues, very quickly?

Penelope Gibbs: I am a big fan of what are deemed pop-up courts as an alternative. I would also say that for these immigration hearings that I talked about, all the detainees are at the camp, such as Campsfield, and all the people are in the court. Why can we not take the court to Campsfield and have a court just on the edge of Campsfield, still open to the public? I think there are other solutions in different areas.

Chair: I think we were talking about wider immigration tribunals, actually. They are at the sharp end, but that is a very small number relative to the volume of immigrants, unfortunately.

- Q32 Anne Marie Morris:** First, if you can, send us a note of the consultations you have actually had, because I suspect we will be told that lots of consultations have taken place and I would like to see what the facts are. Finally, you talk about this attitude of, "Let's put everything on hold." What does "hold" look like? When you are in the middle of a journey and you are in a bit of a mess, what would you do? How could "hold" be delivered?

Jo Edwards: I think part of the problem from Resolution's perspective is that we are still not clear what the journey is or, more importantly, what the destination is. We are fumbling around. There are these consultations from time to time. It would be helpful to know what the destination actually is, what the plan is and what the detail of the plan is, because it



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feels like it is very piecemeal at the moment. If there were clarity about that, we might then be clear about what the realities of pausing, stopping and taking stock are.

Chair: I think you have teed up our next panel very well. I can see the Permanent Secretary sitting behind, thinking he might know what the first question might be.

Jo Edwards: Hopefully no other message is taken away today. It is just about the importance of proper, meaningful engagement. We do want to co-create something potentially really good here. We just need more opportunity to do that.

Richard Miller: From my point of view, it depends on which strand you are looking at. Things such as the digitisation in the civil and family courts are major beneficial projects, on which we would say, "Full steam ahead, please." We really want to get that up and running as soon as possible. Looking at something such as the flexible operating hours pilot, we have said on a number of occasions, "That needs to be paused. You need to go back to the drawing board in terms of what you are trying to test." We started with an idea last April. It was going to start in May, then September and then February. We have no idea actually quite what has happened to it now. But because of decisions made, practical difficulties and operational problems, and because of decisions made at the local level by the local implementation teams, we are not actually sure what this pilot looks like now and if it is anything like what was intended at the outset or will deliver anything useful. That is a good example of where you need to just stop and check, are you actually doing what you expected to do or anything that is going to deliver viable results?

Penelope Gibbs: Can I speak up for public consultation? The citizen has not been asked what they thought about nearly all these proposals. There has been no public consultation nor any plans for public consultation. That is the only proper, open way of consulting about things.

Chair: Thank you all very much for your clarity. You are committed to sending us some information. Please do so as soon as possible, as we want to get cracking on our report. The transcript of this section of the hearing and the next will be up on the website in the next couple of days, courtesy of our colleagues at *Hansard*. It does go up uncorrected. They are very good at their job, but have a look at it just in case and make sure you send us any corrections. Our report will be out—in true civil service language—by the summer. Thank you very much. You are welcome to stay to hear our next panel.

Examination of witnesses

Witnesses: Richard Heaton, Susan Acland-Hood and Richard Goodman.

Chair: Welcome back to the Public Accounts Committee on Wednesday 6



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June 2018. We are continuing our hearing on the progress of Transforming Courts and Tribunals, which is a major MoJ programme. I will not repeat what I said earlier, but we know it is a challenging programme, and one of many. Pretty much nothing in the Ministry of Justice is standing still, so we know it is a big job for the Permanent Secretary. I will introduce the witnesses and then, Permanent Secretary, I have a couple of particular issues I wanted to raise with you before we get into the main hearing. From my left to right we have Richard Goodman, the change director for Her Majesty's Courts and Tribunals Service. I think it is your first time in front of us as a Committee, Mr Goodman.

Richard Goodman: That's correct.

- Q33 **Chair:** A warm welcome to you—well, we will see how warm it is as time goes on. It is warm at this moment. Mr Richard Heaton is the Permanent Secretary at the Ministry of Justice and Susan Acland-Hood is the chief executive of Her Majesty's Courts and Tribunals Service. Welcome back to you two. Mr Heaton, you have just introduced a Bill into the Lords about law reform. Can you give us an idea of the scope of that, and the timetable and pace at which it is expected to progress? I know you cannot predict parliamentary timetables, but what is the aim? What is the plan?

Richard Heaton: Thank you, Chair. It is nice to be here. The contents of the Bill were contained in the Bill that was lost before the election—the Prisons and Courts Bill. It is more limited in scope than that Bill, for reasons that you may understand to do with the parliamentary timetable and the difficulty of getting legislation into this particular Parliament. We expect it to be followed by other pieces of legislation, which in their totality amount to the courts parts of the Prisons and Courts Bill, so as soon as parliamentary time allows it will be followed by other measures. As for the timing of this particular Bill, it has been introduced, as you know. I am not sure whether we have a Second Reading date yet, but it is a reasonably small Bill and its scope is reasonably limited; I would expect it to make reasonable passage.

- Q34 **Chair:** So you have stripped out the more controversial bits to put something through that will get through the current Parliament?

Richard Heaton: No, we hope that this will be followed by other Bills as well. This is some quite important stuff about delegation of functions within the Courts Service, to allow everyday things to be done apart from by traditional office holders and so on. It is useful, important stuff, but it does not contain the criminal justice measures, which we expect to come forward in a different measure as soon as parliamentary time allows.

- Q35 **Chair:** Of course. I was going to ask "When?" but "as soon as parliamentary time allows" lets you off the hook, because one thing I cannot lay at your feet is how Parliament is running at the moment.

Richard Heaton: This particular Parliament.

- Q36 **Chair:** You are lucky; you have come here and there is one thing you are



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not responsible for. I want to move on to another issue: BuzzFeed, which has done some interesting work, has dug out a 36-page internal report from your Department. I think you published a summary as a six-page version, but the full, unredacted version has quite candid comments from the judiciary and others. The title of the report, I believe, was "Unrepresented Defendants: Perceived effects on the Crown Court in England and Wales and indicative volumes in magistrates' courts". Maybe we could give you a lesson in how to write snappy titles, but apart from that it comes up with some very worrying comments about the issues around litigants in person and what impact that is having on courts. I wondered if you wanted to comment on those press reports and tell us what is actually happening in the Department.

Richard Heaton: Very briefly, if I may. First, this is about unrepresented defendants in the criminal courts, not litigants in person in the civil courts. It was a fairly small-scale piece of research that the Department commissioned in, I think, 2015, because at the time of the Legal Aid, Sentencing and Punishment of Offenders Act it was feared that there were consequences for unrepresented defendants in the criminal courts. It is not quite right to say that the 36-page report that you mentioned is the unredacted version. It was certainly a draft version; the Department then moved to a final version, which was much shorter. BuzzFeed have published the 36-page edition; I am not quite sure how they got hold of it, but they have published it.

The ICO has raised some questions of us, which we are doing our best to co-operate with, to get it clear how that document entered the public domain and how it was that we disclosed the shorter one rather than the longer one. There is some investigation going on by the ICO, but I am clear that there was a long version and there was then a short version. We were FOI-ed for the report and the report that we disclosed under FOI was the correct version, namely the short version, but there was also an earlier version kicking around, which somehow got into the public domain.

Q37 **Chair:** So the fact that you had not deleted the first version meant that you were supposed to have released it under FOI, basically?

Richard Heaton: No, I don't think so. We were asked for the report, and by that stage the report was—

Chair: And you gave the final—

Richard Heaton: Indeed.

Q38 **Chair:** Are you concerned? It is a while ago now that you did that work. What is the current position? What are you doing about defendants who are unrepresented?

Richard Heaton: Unrepresented defendants in the criminal courts are not a volume thing—it is a different issue in the civil courts. In relative terms, there are not many unrepresented defendants in the criminal courts. They fall into two categories. There is the unrepresented defendant who does not want to be represented and the one who somehow cannot get legal



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aid, or means-testing or whatever. They are both quite small categories, as the Report and the judicial comments in the leaked report make clear. They present very differently to the courts.

We do not think the problem is getting worse, in fact, in a sense, unrepresented defendants in the criminal and the civil courts have always had a pretty tough time in the courts process, and one of the themes that we might move on to is that court reform will be a better service for people who do not have the privilege of legal representation in the criminal and the civil courts. By and large, I think it is fair to say that unrepresented defendants in the criminal courts are not a big volume issue.

Chair: We will leave that there, because some of that will come out during our hearing.

- Q39 **Shabana Mahmood:** Can I just follow up, Mr Heaton, on the answer that you just gave to the Chair in relation to the Bill that we are expecting? I appreciate that you cannot say anything about parliamentary timetabling—we are all parliamentarians and we do not have a clue either—

Chair: For clarity's sake, I have just found that it is the Courts and Tribunals (Judiciary and Functions of Staff) Bill.

Richard Heaton: That is the snappy little title.

Chair: You are really not good at snappy titles.

Richard Heaton: Parliamentary counsel draft titles, not us, but yes, that is the Bill.

- Q40 **Shabana Mahmood:** From your answer, you clearly expect to bring forward other Bills.

Richard Heaton: Yes.

Shabana Mahmood: I appreciate that you cannot say anything about timings, but could you give us an indication of which topics you expect to follow and roughly in what order?

Richard Heaton: I will be a bit vague, because I do not want to predict which Bills will be introduced in which order, because that is for the business managers, not me. We expect a substantial piece of legislation on criminal procedure—we expect the criminal parts of the Prisons and Courts Bill from the last Session to reappear in some form. There are also provisions on employment tribunals that we would expect to appear in a Bill of some sort. Those are two categories. Is there a third category?

Susan Acland-Hood: There is also the online procedure.

Richard Heaton: The online procedure. There are some quite important provisions that allow a specific rules committee to govern online litigation.

We would expect that to be a third or fourth piece of legislation—I am not saying sequentially. Ideally, we would get them all in.

Chair: Collectively, they make up the equivalent of the previous Bill.

Richard Heaton: Of the courts parts of the previous Bill.

Q41 **Chair:** Is there anything that you will not include?

Richard Heaton: There might be bits and pieces that we have thought twice about that will not reappear, but the substantive parts are in those three headings.

Q42 **Shabana Mahmood:** Could you indicate what that means for the whole of this programme, most of which is dependent on legislation, and how that has an impact on your current modelling of timescales?

Richard Heaton: I will give the broad answer, and then the chief executive might want to come in. The broad answer is that we need legislation to do the best possible version of this programme. The optimum version of court reform requires legislation in all sorts of ways. For example, if we had a specific, dedicated, online rules committee, the civil proceedings online would just work better. There are various workarounds you could do, and you would come up with a slightly suboptimal version of reform, which is not particularly what we want to do. There is an awful lot we can do without legislation—we do not need legislation to allow you to file for divorce online, for example, which we are doing at the moment—but the optimum version of the reform programme would have legislation in each of the areas that I have mentioned. That is the broad answer.

Susan Acland-Hood: That is broadly what I would have said. There are a certain number of things that we cannot do at all without legislation, and one of the examples would be a piece of work to allow people not just to make a plea online, but to take a statutory fixed fine online for the most minor offences. That requires legislation for us to do it at all.

There are certain other things where, as the Permanent Secretary has said, we need legislation to do them in the most thorough and effective way, but we can get a certain way towards the end without legislation. We have done quite a lot of work on our scenario planning to ensure that we really understand where those critical dependencies are. At the moment, the position on legislation is not holding us up. We can make the progress that we want to make.

Q43 **Shabana Mahmood:** Does the scenario planning that you say you have done include measures and testing around access to justice, fairness and some of those wider issues?

Susan Acland-Hood: We are doing that anyway, so that is not particularly about whether we have legislation. We are—

Q44 **Shabana Mahmood:** If you have to pursue something that you have just described as “suboptimal” in terms of delivering all those things, that screams to me that there might be issues about access to justice and



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some of those things that we see as constituency MPs that might be tolerated in the system unless we get full legislation.

Susan Acland-Hood: I would not describe it as suboptimal in that way. It is typically things where we would be able to make slightly less in the way of savings than we had hoped.

Shabana Mahmood: Sorry, say that again.

Susan Acland-Hood: The character of the suboptimality is more about us being able to make less in the way of savings than we had hoped.

Q45 **Shabana Mahmood:** So you see it as a money and resourcing—

Susan Acland-Hood: Principally, yes.

Q46 **Shabana Mahmood:** That's helpful. Can I move on to progress that has already been made with this programme? We are two years into what is now a six-year programme, so we are a third of the way in, and you are just over a third behind on what you needed to have delivered up to this point. Why are we in this position?

Susan Acland-Hood: Your "a third behind" is about 60% of the milestones that we said we were going to deliver at interim state 1, as set out in the NAO Report. I think it's worth remembering that another 25% of the milestones were partially delivered. We tried to be really quite tough with ourselves, so "partially delivered" includes some things where we had made course corrections and shifts and slightly shifted what we were intending to do. Of those, there were only 2% at that point that were materially holding up our progress. So I think to refer to two thirds is a bit harsh. The NAO Report, completely correctly, reports against individual milestones.

The other thing worth saying is that not all those milestones were the same size. One of our milestones was that we wished to have introduced digital services in each of our major jurisdictions that were starting to do work for members of the public. That was just one milestone, and it was one of the ones we met. You can set it against another milestone that we reported as partially met that was about having recruited a certain number of additional staff to help us to do work on our performance measures, where we had not recruited as many as we had said we wanted to, so we reported that as partially met. That is a completely true statement of what had happened against our milestones, but those two things are not of equivalent size, so totting them up does not necessarily give you a completely clear picture.

Q47 **Shabana Mahmood:** I'm not sure I'm going to buy that, Ms Acland-Hood. This programme was originally over four years. You have already increased the amount of time that it is going to take.

Susan Acland-Hood: Yes.

Q48 **Shabana Mahmood:** That's correct. Normally, you get an increase in the timetable and that allows you to ensure that the things that were going



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to be partially completed are fully completed. I don't think it's fair for you to talk up as a win the fact that you have partially completed them. Why not have had, to begin with, better systems that would always have recorded those as partial wins rather than as complete, end-stage—

Susan Acland-Hood: I think that is a completely fair point, and it is something we are looking at for the future. On the four to six year timetable, though, the milestones we set ourselves for interim state 1 that we were reporting against were the milestones for the six-year programme; they weren't milestones—

Q49 **Shabana Mahmood:** So they have already shifted once.

Susan Acland-Hood: Well, the four to six year movement happened before we started. We did not have equivalent milestones for the four-year programme, so I think it's worth talking a little about the four to six year movement. We started with some work looking at how we could do a programme, and we were encouraged and looked internally at, effectively, how we could do it in the most rapid timescale possible. We then had a set of conversations with the Cabinet Office and Treasury, which said, "We think you should look again at this timescale." I think they were completely right to do that. I arrived after all those conversations. If I had arrived and the programme had still been for four years, I would have paused and said it needed expanding. So I think that was a really good decision that was made. It was made not as a consequence of us having started and fallen behind, but as a consequence of us going through a set of scrutiny processes before the programme started. To me, that is the scrutiny process across Government working reasonably well. I welcome what the Cabinet Office and Treasury did to try to put the programme on a better footing.

In terms of how we have done since then, I think the critical thing is that we have started to deliver some really good services that are making a difference for members of the public. I can give a couple of examples of that. We have introduced a new service for divorce that is now available to anyone wanting to divorce their partner in England and Wales.

Chair: We thought you might raise this one.

Shabana Mahmood: I think we know what has been delivered. We discussed that with the previous panel, and we've got evidence in, so we understand that some things—

Chair: We're not knocking the fact that divorce may have gone quite well—that's a funny way of phrasing it—but Ms Mahmood has a few reservations.

Q50 **Shabana Mahmood:** I accept that some progress has been made; we all do. That is clear from the Report and everything else. The point is: have we made the progress that we were supposed to have made up to this point on what is already, even on a six-year timescale, a very, very ambitious programme. Nothing I have seen so far gives me confidence that the fact that you are only 62% of the way through the milestones



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you should have hit at the end of stage 1 means that you are going to be 100% of the way through at the end of year 6. Why do you disagree with me, and how can you give me and this Committee some confidence that what you are saying—that this will be delivered at the end of six years—is 100% correct?

Susan Acland-Hood: I do not want to appear to say that we delivered everything we should have done at the end of interim state 1; we absolutely didn't. All I am saying is the milestones were not of equal size, and the ones that were most critical, which were about getting those digital services out, were delivered and were delivered well. The feedback on them has been really excellent.

Q51 **Shabana Mahmood:** But you are suggesting that I should not be as worried as I am, and I am putting it to you that, actually, I am worried. Nothing you have said so far dissuades me from that concern.

Susan Acland-Hood: In terms of what we have put in place to try to give confidence that we can deliver, the NAO's Report recognises very clearly the work that we have done to improve our governance, to give ourselves more grip and to make sure that we have set up and are running the programme in a way that helps us to grip and deliver. There are still some parts of this programme that I am worried about and that are running behind where I would like them to be. I want to be very clear about that.

Q52 **Shabana Mahmood:** What are those?

Susan Acland-Hood: The critical ones for me are some elements of the crime programme—the common platform—that were running behind. The common platform started life before the rest of HMCTS reform and has been running slower than we want for some time. We took a lot of action last year to try to increase its pace of delivery, and we have increased that significantly. That was recognised by the MPRG, who came and looked at what we were doing in the spring. They have increased their rating of our delivery confidence in recognition of that. What I am worried about is that that continues to be a challenging programme, and we need to increase our pace further in order to deliver everything we are going to need to deliver. I am not complacent about this. There is certainly more that needs to be done, but we have significantly improved our governance, and we have improved the velocity on that challenging part of the programme.

On the civil, family and tribunals side, we have delivered some really good services—not just on divorce. We have civil money claims, we have probate in private beta. We have social security Track Your Appeal and social security Submit Your Appeal in private beta. We have Juror Digital so you can respond to your jury summons online, and we have tax tribunal responses online. All that has been delivered in the last year. That is a significant shift.

We have the first cases going through the common platform in Liverpool. I have been involved in policy in the criminal justice system for a very long time, and we have been talking about the common platform, or something like it, for more than 10 years. We have actual, real cases going through,



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admittedly, a first stage of that, but, still, it is real and it is happening. I am really proud of that.

I am proud of the work that my teams have done, and I want to make sure that it is appropriately celebrated and recognised, without us claiming that everything is perfect, because it definitely isn't. It is a very big and challenging programme, as everyone has recognised, and there are things that we need to continue to work on and develop.

- Q53 **Shabana Mahmood:** I will come to the common platform in just a minute. Everything you are saying today suggests that you are confident that your six-year timeframe is going to be met. Has anything happened in stage 1 that has the capacity to derail that or put it off course? If so, what are you doing to put it right?

Susan Acland-Hood: The first thing is what I have already said about the common platform. We need to increase velocity further in order to meet the timescales that we have set ourselves. The one milestone that was outstanding from interim state 1 that is still outstanding and has the capacity to give us difficulty is bulk scanning and printing. We have a printing service and we have a contract for scanning, but we do not yet have that in operation. There are some other things that we said we were going to do that we have not done, including flexible operating hours. On several of those, we have in fact been trying to listen to feedback and manage, and they are not part of a critical path. In other words, there is not a set of other things in the programme that hang off them, meaning that not having done them by now is fatal; they are just things that we had initially planned to do earlier.

- Q54 **Shabana Mahmood:** What is the specific problem with printing and scanning?

Susan Acland-Hood: Part of the programme involves moving to a situation in which, internally to HMCTS, we operate digitally. We are not proposing to turn off paper services. One of the really important things is if people still want to send us a paper form, we will still accept a paper form. We will also make our paper forms more accessible than they are at the moment, because a lot of them are not well-designed. But we will use a bulk printing and scanning service to allow us to scan in and capture the information on those paper forms so they can be processed, internally to us, as though they came to us digitally, which allows us to operate much more smoothly and effectively. In order to do that, we need to contract for a bulk printing and scanning service. The printing part of that is done. For the scanning part of it, the contract is let but we have not yet started running things through that service. That means that we are using some workarounds for some of the early services. That is not as good as I would have liked it to be, but I am confident that we will bring it back on track.

- Q55 **Shabana Mahmood:** You have said that you are very concerned about the common platform. The Report also highlights some issues with it. What are you specifically going to do in terms of practical steps to get it back on track?



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Susan Acland-Hood: There are three main things that we have done, and I might pass over to Richard in a minute to talk a little bit more about the detail. The first is that when I arrived, the common platform felt a bit semi-detached from the rest of the reform, and it also felt, unlike the rest of the reform programme, like something that was being technology-driven, rather than service-driven. One thing we have done is that we do not have a common platform programme anymore, although we still use the term because people recognise it. We have a crime programme that starts from what we want the end-to-end crime service to look like and that then puts the technology around that, rather than starting from a certain technology.

We have spent quite a lot of time effectively going back around the service design and working with people on it. One of the challenges we have had—I think you have seen it in some of the written evidence you have had—is that we have been asking people to come to lots of events and workshops. In some cases, we have been making quite a lot of demands of our partners to come to those events and workshops. We have had conversations with the Bar Council in particular about trying to ensure we make that manageable for people, because people want engagement, but they want it to be done in a way that they can cope with. We have effectively been ensuring that we have a shared plan with our partners for what the end-to-end system across the whole criminal justice system should look like. We have then been going back over the technology plans to ensure they fit that vision. We are also looking at the business process changes and other changes that would help us make the system better. Not everything is about technology; a lot of it is about ways of working and business process change. That is the first thing.

The second thing is—stop me when I get too technocratic—about improving and strengthening our governance and the boards that go around it. Having moved to a crime programme, we have also moved to a crime programme board. We have refreshed the membership of the board. We have got external challenge on the board. We have used our delivery partner PwC quite heavily in helping us ensure that we are re-founding the programme documentation that sits underneath that. All of that is incredibly dull, but very important, and it helps us ensure we have got the grip and attention that we need.

The original common platform was set up when there was enormous enthusiasm across Government for agile delivery and development. We are still developing in a very agile way. We are still committed to the principle that you start small, you test and you use that to help build, but we also need to ensure we have got clear milestone planning and know when things need to be done by. We are effectively bringing together the agile approach with something that has got some more milestones in it. We did that over the course of last year, and we are tracking against it. We have seen the velocity improve through that.

The third thing is that there is a set of pure tech changes that we have made. We have made some new appointments. We have made some



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changes to what is known as the strategic pipeline, which is effectively the pipe through which new developed technology goes out into the world. We have also looked very hard at our developer pipelines, our testing regimes and the work we are doing to ensure that the things we are building are right first time.

- Q56 **Shabana Mahmood:** As a result of those three steps that you are now taking, has there been any renegotiation of contracts? What has been the impact on costs?

Susan Acland-Hood: One thing we have learned from past programmes is that we are not, in general, dependent on large monolithic contracts for any part of this programme. We work, even with our tech suppliers, through what are described as rainbow teams. They are relatively small contracts. There is a mixture of outcome-focused and resource-focused contracting. We are quite flexible.

- Q57 **Shabana Mahmood:** I am not asking about the size of contracts or your flexibility; I am asking whether you have had to renegotiate any contracts. Has there been any impact on costs?

Susan Acland-Hood: No, because the other thing we did last year was look very hard at scope. We shifted on scope, rather than on cost. We have been trying to hold the cost.

- Q58 **Shabana Mahmood:** That is helpful. In that quite long answer you gave about the practical steps you are taking to get this programme back on track, I did not hear any mention of the police or the CPS. If you are designing a crime system end to end—a dream system that works properly and efficiently—then they are part of that. What is their role? What are you doing to involve them?

Susan Acland-Hood: The whole programme is co-run by me, Giles York of the police, and the head of the CPS, which is Lesley Longstone at the moment. They will be an interim head of the CPS, and they have been involved throughout and are a good partner to all of us in it. The whole thing is run as a tripartite programme. Everything I have described has been agreed together between us. Nothing we are doing is unilaterally acted on. I described the work we were doing on the inception events and working out what the end-to-end crime service model looks like, and that involves not just the police and the CPS, but HMPPS, Legal Aid Agency colleagues and the Youth Justice Board for the youth programme. We've involved criminal defendant representatives. We're involving as many people as we possibly can in that.

- Q59 **Shabana Mahmood:** The picture you paint in your answer is rather rosy and makes it sound like everything is working really well between all of these different partners. The NAO Report has a slightly different tenor to it. In paragraph 2.9, there is an explicit recognition that "there are ongoing challenges in ensuring that all parties align their projects and establish how costs will be shared." I just wonder why there is such a disparity between the spin you put on things and the findings of the NAO Report.



Susan Acland-Hood: I hope I'm not spinning. The common platform programme is genuinely a common programme, and the new crime programme has taken that forward. So it has three SROs, which is unusual, but which we defend as a way of working because it's really important that we have that jointness.

In terms of cost, there certainly are debates that we have in that forum about costs, really in relation to some very specific aspects of the model and—I'm sure you may want to come on to video later—particularly in relation to, for example, changes around video hearings for bail and remand, where there's quite a complicated cost relationship between what happens in the police station, what happens in court and then when people get transported to prison.

What we've done in order to manage that is to set up a group that the NAO Report recognises the existence of and welcomes, which is called the Criminal Justice System Integration Board. It goes beyond those three partners and includes HMPPS, the Legal Aid Agency and the others I have mentioned as well. That group has specifically been doing work on costs and benefits.

What we haven't done yet is to get to a position where everybody has said, "Right, we know exactly what all the costs are and exactly where they fall, and we're now going to get into the business of deciding who's going to pay what for whom." We're still at the stage where we are incrementally testing and working with each other on what the whole business process looks like and what the optimum way of doing things across the system is. Over the last year of doing that, we've taken some people's original estimates of the costs that might fall on their agency down very considerably—in some cases by an order of magnitude. To me, that really demonstrates the value of thinking about the costs together before you get to the place where you are talking about one person paying another person, because as soon as you do that, you rather incentivise people to think of the largest number they can rather than to think about the most efficient process across the system that you can think of.

So I'm not claiming that all of those questions are resolved, but we have a mechanism for working on them, and we've got a costs and benefits group that is doing the work, and it's having a good effect. We absolutely have not resolved every possible question that might come out of that group, but everybody involved knows that we're doing it.

Shabana Mahmood: Okay. This question really does require a very short answer.

Susan Acland-Hood: I'm sorry.

Q60 **Shabana Mahmood:** From the work you've done to date, do the police and the CPS have the capacity to match the pace of development that's required by the MoJ's timetable for delivering this programme?

Susan Acland-Hood: Yes.



- Q61 Shabana Mahmood:** That is helpful. Thank you. Just moving on to oversight, and measuring what is delivered and what has not been delivered, how have you improved the effectiveness of your overall monitoring? Obviously, there are problems highlighted by the NAO Report. What have you done to remedy that situation?

Susan Acland-Hood: I'm going to ask Richard to answer this one; he's been doing the detailed work.

Richard Goodman: On the common platform, in particular, we use a broader range of measures than we used to. We used to just measure the productivity of technology teams. So, that's doubled over the last four quarters, but it's quite a poor measure, because it drives how good people are at coding rather than whether they're producing the thing at the end of it that everybody cares about.

One of the interventions that we've made that the chief executive was describing was driving outcomes around, for example, getting cases through end to end. So what we've done in Liverpool—it's not very many cases; we're talking a few dozen here—is that the first bit of that platform goes right from cradle to grave, from the police through to the CPS, through all the way to the result at the end of the Crown court. That allows us to understand, one, whether it works—and our feedback on that is good—and, two, whether it is worth expanding. So it's a basket of things around whether their software is any good. What's the quality of it like? Is it full of bugs? How do we test it? It's about the productivity of those teams: can they write the code at the sort of pace that we'd expect? And it's about milestones that will come at the end of it, which ultimately boils down to benefit.

It is worth saying for the programme as a whole that one of the lessons that we have learned—from previous work by the National Audit Office and by colleagues in the DWP, HMRC and the Home Office—is to break the programme down into manageable chunks so that we have fewer single points of failure than is sometimes found. For example, we have far fewer big launch events than we would have done, say, five or 10 years ago. The interim states that we described, which sound a bit technocratic, are actually our way of making sure that we keep ourselves honest.

Notwithstanding the percentages attached to that, I think we have learned that we can measure it in a more sophisticated way. It means that we have a regular process of updating the business case between every 12 and 18 months, taking a very clear-eyed view—is this thing worth carrying on with? If it is not, what are the parts that generate value, what are the parts that don't, and what is most useful to the public and/or otherwise? So we assess our performance of that. That is a reasonably long way of saying that we measure it at a number of levels, but that it coalesces at a maximal level with those business cases.

- Q62 Shabana Mahmood:** Do those numbers of levels now amount to an effective measure that will stand up to scrutiny from outside sources and by parliamentarians, and say that you are effectively delivering your



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performance to date? Are you confident about this now?

Richard Goodman: Yes, I am confident that we have got the right measures in place.

Q63 **Shabana Mahmood:** Is anything left to be done?

Richard Goodman: A huge amount is left to be done—

Q64 **Shabana Mahmood:** You are confident, and there is still a huge amount left to be done—

Richard Goodman: I am confident that we have the right measures in place, but what I am not going to say to you is—referring back to your previous evidence about international comparators and the overall challenge of the programme—that I expect everything to come out 100% rosy, 100% of the time, because I have yet to encounter any programme anywhere in which 100% of the things go right 100% of the time—all of it. The litmus test for me is whether we have the right information and indicators to intervene early enough to put things back on track. So the interventions I have made in the common platform programme are about making sure that we change that now, rather than waiting until we get to the point of a business case and until somebody at the end of it gets a case that they cannot handle or a judge cannot process a case properly, and to do that frequently. That is the part that I am most confident about.

Q65 **Chair:** Are you engaging? We heard about engagement with stakeholders who are wanting to get involved with ideas, and consultations are all very well, but are they feeding into the changes you are making?

Richard Goodman: Yes, and that is true not just in the criminal jurisdiction, so—

Q66 **Chair:** They are saying they want to do more. You have just said yes—

Richard Goodman: For example, in family tribunal jurisdictions, we tested 1,400 members of the public, and we have got over 100 judges involved in the depths of projects, though I accept the co-ordination points made by your previous witnesses—that sometimes we have a bit too much engagement, which is perhaps not joined up well enough. So we have got a lot of structures there to bring those people in. Do we have further to go on that front, to broaden that community out? I think that is absolutely a fair criticism, and I don't think that you can do enough of that.

Q67 **Shabana Mahmood:** What does success look like? As you are delivering—or measuring more effectively the delivery of this programme—what is the end measure of success?

Richard Goodman: I suspect Susan will want to have a view on this as well. From my perspective, there are measures around whether we have done this on time, fitted the budget or delivered the benefits that we said, but the real litmus test for me is, is it working better for the public at the end of it? The early evidence from what we have seen is that the investment that we have made in digital services has made things considerably better, as well as making them a lot cheaper. So, of the



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seven public-facing services that we have live digitally, three have user satisfaction rates of over 90%, with the lowest running at just over 70%, and on average the processing time is half as long. It takes us 60% less time—

Chair: I think it is fair to say that they are the easier bits at this point.

- Q68 **Shabana Mahmood:** Moving on to courts, we heard some evidence from the previous panel about two courts in particular, I think Cambridge and Camberwell. Both are now slated for closure, but considerable amounts of money had been spent either modernising the buildings or improving the service by giving them upgrades. What is the rationale behind some of these court closures? How can we be confident that you are getting value for money?

Susan Acland-Hood: I just want to correct one thing: Cambridge is not slated for closure. It is being consulted on—the consultation has closed and we are considering the responses, but no decision has yet been made. I just want to make sure that that is clear.

The argument made was that Camberwell had had some investment in it relatively recently. We work on the basis that, even if we think that a court might be going to close, if there is work that needs doing in order to make it operate effectively as a court, we will do that work. I think that is the right decision to take, because we should not be knowingly running courts in an unacceptable state if we still expect the public to use them.

When we make proposals to close courts, we really try not to do it lightly or without due consideration. We do a lot of work to make sure that we understand the utilisation, the travel time and the likely impact on people. We recently published an overarching consultation document that looks at the principles that we will use for court closure decision making in the future. It set out precisely the criteria that we propose to use and invited people to comment on them. That consultation is also closed but it is still under consideration. We will revert with a final version of that once we have taken on board all the comments we have received.

My starting point—as several of your witnesses said in the last session—is that we cannot assume that the estate should be exactly as it currently is. We have to look critically at—

- Q69 **Shabana Mahmood:** We can take that as read. Ms Acland-Hood, you just said that you have done a consultation on the principles that should inform whether a court is closed or not. However, with all these closures that are happening as we speak or that have happened, would it not have been wiser to have done that consultation and then gone ahead with closures, rather than the other way around?

Susan Acland-Hood: I'm sorry. I should have been clearer about that. We have a set of principles that we use at the moment and that are out there. Those principles do not rely on any form of digital change or improvement. They effectively say, "Working exactly as we are, without

assuming any kind of change, do we need this space in order to do the work of the court?"

The consultation is about what principles we will use in the future when closing courts, when we expect to rely on digital and other change that we are making. The court closures so far were on the old basis. The consultation is about courts that might close on the new basis in the future.

- Q70 **Shabana Mahmood:** From the evidence that we heard from the pre-panel, court closures are running quite fast ahead of proven new procedures being in place. There are some new procedures, but whether they will prove effective in the end is up for debate at this time. Doesn't the fact that the court closures are going ahead completely limit your room for manoeuvre, and is it wise in terms of the access to justice that we need?

Susan Acland-Hood: As I have said, none of the closures we have made so far have been on the basis that we anticipate an effect from digital change in order to justify the closure of the court.

Chair: You said that. We are asking about the future ones.

Shabana Mahmood: It is about the future. I suppose you've got no option other than to go ahead with court closures.

Susan Acland-Hood: The question you asked was about closures we have already announced and made. All of those were done on the basis that, even if we assume no change in future processes, we can demonstrate that the courts are not used well, that we can accommodate the court's work in other courts and that people don't have an unreasonable distance to travel.

- Q71 **Shabana Mahmood:** We heard some stark examples from the pre-panel about the distances that people are having to travel. What kind of feedback have you been given and what kind of research has been done about whether some of the reason that we are seeing, for example, an increase in failures to show at hearings is actually because people are just struggling to get to some of these places, especially with public transport being sub-optimal?

Susan Acland-Hood: I take the question of failures to appear really seriously. We have done some work on that. We looked at failure-to-appear rates and mapped them against the number of sites that have closed in each year. We saw no statistically significant change in failure-to-appear rates in the years of the greatest number of court closures.

We have seen an uptick in failure-to-appear rates in the last year, but we actually did not close many courts in the last year. We think that that is principally driven by the changes made to pre-charge bail, because we know that there is a statistical link between postal requisition and failure-to-appear rates. If you requisition people by post, they are slightly more likely to fail to appear.



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There is a statistically significant link between failure-to-appear rates and postal requisition. We have seen an increase in the last year, and that fits. However, if you look at the years in which we closed the largest number of magistrates court sites, there was no impact on failure-to-appear rates.

- Q72 **Chair:** Have you done any analysis on witnesses who don't choose to come forward or don't appear because they have a long distance to travel?

Susan Acland-Hood: I do not have anything with me on that question.

- Q73 **Chair:** Could you look into that? We heard horrifying testimony of witnesses and perpetrators possibly having to travel on the same remote public transport system to get to the court on time. Is that something that you are aware of?

Susan Acland-Hood: It is certainly something that we have considered as part of the work we've done. To some extent, where you have defendants who are at large and witnesses who are coming, it is extremely difficult to guarantee that they won't meet in a part of the public space whatever you do. If they are coming to court they are highly likely to meet outside. I think that is a very difficult thing to prevent. If you have a defendant who you think is seriously dangerous to a witness, you would hope that they would be in custody, rather than at large.

- Q74 **Shabana Mahmood:** Finally, you referenced the future, and future need, particularly in relation to court closures. Does that incorporate any assessment of demand shocks that might result from Brexit? I am thinking in particular of immigration.

Susan Acland-Hood: Yes; we do quite a lot of work on making sure we understand what our sensitivity to future change is, and we have looked at possible impacts from Brexit, including on the immigration and asylum case load. They depend quite a lot both on what assumptions you make about how we operate the system and about sets of decisions about what the future system will look like; but we are working on that quite closely with the Home Office at the moment.

Chair: I will turn to Mr Chris Evans. I just want to remind people about the time. If you do not need to give a long answer—we will cut you off, so please do not repeat what you have said before. The same goes for Mr Evans. I am sure you will set a great example, Mr Evans.

- Q75 **Chris Evans:** Mr Heaton, this reform is massively ambitious. You have a shorter timescale than any other country that has tried to achieve smaller reforms. Why so confident?

Richard Heaton: As Susan Acland-Hood said, I hope we are not sitting here with undue confidence; this is a really tough programme, which is why incidentally—sparing blushes—we have hired a great SRO and a great programme director to help run it. So we are not over-confident.

One of the lessons we learned from Transforming Rehabilitation and, indeed, from electronic monitoring was the danger of heroic initial



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timescales. I would describe that initial four years as heroic. I came in slightly before Susan Acland-Hood and we shifted four to six. I think if I was still sitting here presiding over a four-year programme, and if someone was telling me to do four years, I would be in the same position as Jonathan Slater, who sought a direction last week. Six years is certainly better than four years. You could set an eight-year timescale, and the danger you then get into is the programme becomes so long it trips up over its own lack of momentum, and people move on, and no one is committed to the programme. I think six years is now a good, reasonable timeframe for a programme of this complexity. As Richard Goodman said, not everything will work in precisely the order in which we have planned it; but I think six years feels like the right timescale.

- Q76 **Chris Evans:** This is amazing. At 1.19 the Report says, "The reforms are ambitious. A third-party review of the programme in 2016 found that, compared with other global programmes, HMCTS's plans had the shortest delivery timetable and largest planned coverage, and the scale of the changes proposed had never been delivered elsewhere." You would have to say the alarm bell is ringing when you read something like that.

Richard Heaton: That's right. That was the Boston Consulting Group, which we commissioned. That was on the four-year programme. That was one of the bits of evidence that went into shifting four to six.

- Q77 **Chris Evans:** Have you learned any lessons from any other countries? Have you done any scaling?

Richard Goodman: You asked a number of questions about international comparisons, and I think there are two helpful things to consider on this front. One is that you are absolutely right that nobody has done this in the combination or scale that we are talking about. What I would say is that lots of the components of what we are doing have been tested elsewhere, albeit in a slightly different context. Other people have looked at digital services for high-volume applications, for example—which is what most civil claims are. We get about 1.9 million a year and only 58,000 hearings at the end of that. The vast majority of that is people wanting to get into the court system to make sure a debt is repaid to them. One of the things we have learned from other Government Departments, as well as internationally, is the importance of trying to compartmentalise what we are doing into manageable chunks. Frankly, if I run into a very significant difficulty, to take an example from one of your previous witnesses, around public family law, and that slows down, that does not mean I cannot carry on doing work in the civil jurisdiction, which might encounter fewer of those difficulties.

The second point I would make around international comparisons is that we have quite a lot of discussions with counterparts—I certainly do—about the way that they run their programmes and how they deal with it. When I was working with Lord Justice Briggs on his report, we looked at, for example, British Columbia, which has looked at small claims resolution, as well as California. One of your previous witnesses was talking about video in New South Wales and digitalisation in Singapore. I have spoken to



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Dutch counterparts, counterparts in New Zealand, counterparts in Australia, as well as other colleagues who are just embarking on this programme.

So yes, we engage internationally. Is it true that we are doing something that is more challenging than elsewhere? Yes, I think it is. We are doing very few things, if any, that are, when you look at them individually, untried or untested anywhere globally.

Q78 Chris Evans: If you are so confident, can you tell me why the Infrastructure and Projects Authority's most recent review concluded that the successful delivery of the programme was in doubt, and that there were major risks or issues in a number of key areas?

Richard Goodman: I think that assessment is accurate. Our delivery confidence has improved over the past year. The IPA's review now puts us at amber. I do not think the risk around a programme of this scale and ambition will ever mean that we can be totally confident that everything will work 100% of the time. We are quite clear-eyed about that. Referring to the answer I gave Ms Mahmood earlier, I am confident we have the right process in place to take a clear view of that at each stage, to understand what is more challenging and less challenging, and to respond to that, in relation to feedback about whether it works for the public and whether it continues to be cost-effective. I do not think looking at the programme as a single monolith helps us do that effectively.

Q79 Chris Evans: I am reading the report, and I can see one red light going off in front of me now. It says that there is an assumption that HM Treasury—

Chair: Can you give a reference, Mr Evans?

Chris Evans: Sorry—it is paragraph 12 on page 7. "The business case projects a funding shortfall of £61 million, assuming that HM Treasury will agree...all previous years' underspends". How can you be confident that they are going to agree those?

Richard Heaton: That is the life of Government Departments with annualised budgeting, particularly with a Treasury that has framework budgeting for a spending period, rather than for five years in advance. The gap referred to by the NAO refers to the fact that £61 million of the projected spend will come in the next spending round, and that has not yet been settled, but that is the game that Government Departments are always in at this stage in the cycle. We will enter into spending round negotiations with the Treasury, and we hope to secure funding for the remaining part of the programme. I am confident that if we are doing well, we will get the funding, but that remains an uncertainty for us.

Q80 Chris Evans: What discussions are taking place with the Treasury—any at all at the moment?

Richard Heaton: The Treasury is a partner on what Susan Acland-Hood called the MPRG—the major projects review group, which is the Treasury-Cabinet Office scrutiny body. It seems like the three of us are in front of



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them every couple of weeks, but it is every six months, I think. They have actually been very helpful. They scrutinise us on deliverables of benefits, on underspends and on our capital, so they probe this programme hard.

The last thing I want to be is a complacent Permanent Secretary presiding over a programme. I have sat in front of this Committee talking about two programmes that were not in a good state three years ago. One of the degrees of assurance I get is the fact that the Treasury and Cabinet Office are all over this programme. As Richard Goodman said, the IPA—a branch of the Cabinet Office—have improved the delivery confidence of the programme from amber-red to amber. That is not information we normally share in real time, but that is the score. That gives me some assurance. I rely on other people's assurance, and they are telling me that the programme is in a better state than it was a year ago.

Q81 Chair: I just want to bring in Oliver Lodge from the National Audit Office.

Oliver Lodge: Just to clarify, I don't think that delivery confidence estimate was on the basis of a full assessment of the programme, so much as an update on a previous assessment. Is that correct?

Susan Acland-Hood: It is, but it was still a recommendation they made. They wouldn't always recommend a change to delivery confidence on the basis of an update. Essentially, they came and did a full review at roughly the same time as you did the majority of your fieldwork in September. They gave us a set of recommendations, and they came back in the spring to see how well we had implemented them. They gave us a very positive assessment of what we had done to strengthen our grip and the way we were running the programme—some of the things I described earlier. They said on the back of that that they wanted to recommend an increase in the delivery confidence to amber. It is not the be all and end all. There are still lots of challenges in the programme, but that is the recommendation they made.

Q82 Chair: No one could sit here and say that there weren't any challenges to the programme.

Richard Heaton: I am not unworried about the programme. I am worried about the programme in all sorts of respects, and I can list them. We have covered most of them. This programme is one of our major deliverables, and it worries me because big programmes ought to worry me.

Q83 Chris Evans: Let's imagine a scenario—something like 2008 happens again, but we don't see it, and all your funding is pulled. What is going to take the highest priority, in terms of the reforms? You still have to do this reform, but what is going to be the highest priority?

Richard Heaton: I suppose it depends on when the notional guillotine comes down.

Q84 Chris Evans: So when you come to the spending round, the Treasury says, "No, we are not carrying the underspend over." You obviously have to prioritise something. What would be your top three priorities in getting through this reform?



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Richard Heaton: I think it would be the ones we could most safely deliver in that scenario. It is a slightly notional scenario.

Richard Goodman: I agree it is a notional scenario. It would be premature for me to give a view on that right now. I say that because, as the Permanent Secretary says, it would depend on what we had learnt about the services that we put out. As the Report highlights, user behaviour in digital justice is comparatively unknown. What we have seen so far in divorce, for example, is that digital uptake is massively ahead of where we expected it to be at this stage and six weeks in. That might not be true in other areas. I think it will depend on a mix of, obviously, what is value for money, what will have the greatest impact for the public and what is financially viable. I do not think I am in a position to take a principled view on that at the moment, and a part of that would be a question of political priorities.

Q85 **Chair:** Given that you will be spending in every year of your annual budgeting, you will have this variation in the year. There will not always be an underspend. There will be a variation, potentially, in your budget. How are you trying to smooth that out, given what you just said about not knowing whether there will be a big uptake or a low uptake, or whether the same things will be there?

Richard Goodman: We have underspent to date. That is correct. We have over-delivered so far on our benefit projection to the tune of £40-odd million. Our regular updates of the process that the Permanent Secretary was describing—the major projects review group—is really our vehicle for going through some of that prioritisation and understanding of what is feasible. We will do that next time at our next interim state in January next year and then again in May 2020. Those are the funding points when we start to crystallise those decisions.

Susan Acland-Hood: Just in answer to the specific question on smoothing between years, there are two things. There are sometimes good value for money decisions that you can make that also smooth between years. Where those exist we will take them, but I am very clear that we should not be taking decisions simply to smooth the profile between years if they are not also good value for money decisions. I would rather go without the conversation with the Treasury about shifting the money to the place where it is best spent than do things that are inherently rational in order to smooth the profile.

Q86 **Chair:** It is easy to say that until the Treasury says it is going to give you less money.

Susan Acland-Hood: It is, but so far my experience of having those conversations with the Treasury has been that if you can give good evidence and show good progress, then you can have a good conversation.

Richard Heaton: I hope the programme finds it helpful that they are part of a wider Ministry of Justice budget. Your first line of defence is that you smooth within the Ministry of Justice.



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Susan Acland-Hood: Yes, we have three lines of defence. We smooth within the programme, within the Ministry and then—

- Q87 **Chris Evans:** But you cannot look at this in isolation. The Ministry of Justice is under huge budget pressures. Are you saying that you would prioritise this programme over the rest of your portfolio, including probation, prisons and court services?

Richard Heaton: We are a balanced Department that has important work to do across all of those areas. No, I do not think I could say one would be prioritised over another. We have got an absolute priority to make sure that prisons are humane, safe and decent, and that includes building new prisons to replace old prisons that are unfit for purpose. That remains a priority.

- Q88 **Chair:** So you are trying to fit a quart into a pint pot. It is one of your many challenges.

Richard Heaton: Indeed. But one of my reflections, if I am honest, about the period where TR went through the Department is that the Department that tries to put all of its eggs into one basket is lopsided. Everyone rushes into the programme and trips over themselves. All of the programmes that are not on that side of the boat get neglected, like monitoring, for example, so having a balance in the portfolio is quite a sensible way of running a Department and having competing priorities. I am not worried about the prisons/courts balance. We will try our best to reform both.

- Q89 **Chair:** There is nothing in the Department that is not going through change. I am trying to think of a small corner of the Ministry of Justice that is steady running. Can you tell me one?

I didn't think Richard Heaton would ever be stumped for words, but there you go.

Richard Heaton: We are modernising everywhere. OPG and legal aid are modernising

Chair: I think your knighthood must be coming at this rate.

Richard Heaton: The budget pressure means that we have to. We cannot stand still and run public services with a diminishing budget, so there is such an incentive on us to reform and get better for that reason alone.

- Q90 **Chair:** You say it with such enthusiasm. Reforming and getting better is very challenging.

Richard Heaton: It is very challenging.

- Q91 **Chair:** There are huge pressures on your budget and this programme is pretty critical and absolutely essential for the Courts and Tribunals Service.

Richard Heaton: We have learnt huge amounts from the experience of TR and EM—Transforming Rehabilitation and electronic monitoring—none of which are failed programmes, but, my God, they took too long, they

were difficult, and they were over-complex. We have learnt huge lessons from those two experiences.

Chair: You have learnt lessons. Okay. Mr Evans can continue on this point.

- Q92 **Chris Evans:** On the scale and pace of the change, are you concerned that if you get one part wrong, it will impact on the rest of the Department?

Richard Heaton: No, I don't think so. Curiously, this programme is not a monolith such that if you get one nut and bolt in the wrong position the whole thing collapses. It is not quite like that. Monolithic programmes—I have mentioned a couple—did have that feature. This is more modular than that, so for a mistake or a missed milestone in delivering a particular service, there are firebreaks. So no, I do not think I would characterise it as threatening the life of the programme, let alone the life of the Department. I do not think I would put it like that.

- Q93 **Chris Evans:** Mr Goodman, perhaps you can help me here. I am looking at paragraph 2.8 on page 26, which says, "The outcome considered 'materially incomplete' relates to HMCTS's plans to have a national system to handle bulk document scanning and printing by September 2017...This impacted on two projects—Social Security and Child Support". Was that a case of something going wrong, which delayed other projects because of it? Can you explain what happened there?

Richard Goodman: It did not delay the project, but it has meant that we have had to use manual workarounds, which are considerably less efficient. What we had wanted to do with social security and child support was that, at the moment we turned on what we call our "submit your appeal" service, which is about being able to appeal online rather than on paper, for people who were going to carry on using the paper channel we could scan that and make HMCTS digital behind. That is not what happened in September 2017. So it did not hold up the project as a whole, and the public have still have got access to that. It is involving some manual workarounds for us, which means we are keeping a cumbersome internal process in place for longer than we had wanted.

- Q94 **Chris Evans:** What was the cost of those delays?

Richard Goodman: The cost around scanning and printing? I don't know. I would have to write.

- Q95 **Chris Evans:** Okay. I want to move on to this great new digital world you are going to create. In particular, I was surprised at a figure you arrived at that 70% of service users will be online in five years. How did you come up with that figure?

Richard Goodman: That is an average figure, so we expect it to be higher and lower in different services. For example, for professional bulk users of civil money claims—utility companies, for instance—we expect that to be 100% digital not long after we start to make that live. For litigants in person, we expect it to be lower in social security and child



support, for instance, and for the most vulnerable population it will be lower than that. It is based on a series of cross-Government benchmarks.

What I will say about digital take-up so far is that it has improved engagement in areas that we were not quite expecting. We have found on "Make a Plea", the online traffic service, that defendant engagement has gone up digitally compared to when we do things by post. So actually we are getting more people engaged earlier in the process and fewer people, therefore, ending up at a backstop hearing at a magistrates court than before. For litigants in person, taking divorce applications, in the past eight weeks since we launched that service more than half of litigant in person digital applications on divorce are now being done digitally, which is considerably far ahead of what we had expected. It is lower in social security and child support, I suspect for reasons outlined to you but also because the first part that we deployed there was a thing that allows you to track your appeal; the thing that allows you to submit your appeal has not gone digital yet.

So the answer is that it is based on a number of Government services. We track it as it goes through. We have got peaks and troughs. Some of those are racing much further ahead of where we had thought. We do not yet have any that are materially under where we expected them to be.

Q96 Chris Evans: But would you agree that user behaviour is different in the justice system? A lot of people do not engage with it on a regular basis, so user behaviour across Government is going to be different. Is that a factor?

Richard Goodman: Without speaking for my civil service colleagues, I strongly suspect from my experience in other Government Departments that if you asked me that question about whether there were parallels with any other Government service I would probably draw breath before agreeing that there are. What we have taken from the Government Digital Service is lots of useful techniques about how we make sure the system works for people—how we really test it and make sure it works for the public—which I think is why we have user satisfaction scores that are quite so high at this stage.

Q97 Chris Evans: Time is ticking on, so I will end with one question. The biggest issue we had was the problems HMRC had moving online, and we have seen that in this. Have you learned any lessons? Are you concerned that you have similar problems, or have they been addressed?

Richard Goodman: Yes, we have learned lessons from HMRC, and I have made a point of employing people from HMRC who have learned those lessons as well as talking to my counterparts. There are two further things, really. One is that HMRC's challenge was slightly different from ours in terms of moving lots of people from telephone engagement to online engagement. On telephony performance in HMCTS, people have not phoned us to do lots of work; basically they have done it on paper, so moving from paper to an online system is a little bit different.



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On assisted digital, it is worth saying that we have an assisted digital service in pilot for face-to-face support for people. It is run by an organisation called Good Things Foundation in the 10 locations where we expect digital literacy to be lowest. It is live in two of our services but we have yet to have a referral to it. We thought very hard about making sure that there is face-to-face support for the most digitally disadvantaged people, but we are not turning off paper yet, either.

Richard Heaton: I just want to make the perhaps obvious point that access to justice at the moment through a paper-based physical environment is not brilliant. There are many people who do not vindicate their rights because it is just too difficult. We hope that the reform will allow people to access justice in an entirely new way, which might improve things, rather than simply be a risk—

Chair: Ms Morris will pick up on some of those points.

Q98 **Gillian Keegan:** One of the key risks of this programme is wider stakeholder engagement. We saw that in Chichester, with three years taken to make a decision. The heart of the problem is that a travel time of a three-hour return trip for a 10-minute hearing is just not acceptable to anyone in the country. You will find that everywhere you go, particularly in rural areas. How are you putting service users at the heart of these reforms?

Susan Acland-Hood: The first thing we are doing is trying to test everything that we are doing with real people, to get their direct feedback.

Q99 **Gillian Keegan:** You can do it just by looking at transport times. We know that the hearings are 10 minutes for a whole load of cases. The facts exist here.

Susan Acland-Hood: Yes, and we look at those transport times. We use real transport times that use real transport services when we consult and when we look at this.

Q100 **Gillian Keegan:** So what is the maximum travel time someone should have for a 10-minute hearing?

Susan Acland-Hood: The first thing I will say is that there are many hearings that last 10 minutes for which there is a proper question to be asked about whether it would be appropriate to offer people the opportunity to have that hearing on video. We see, from the pilot that we have done in the tax tribunal, that when we make that as a completely open offer—"Do you want video, or would you rather come and have a physical hearing?"—plenty of people would prefer to do it on video and not travel.

Q101 **Gillian Keegan:** Let us assume that some don't. What is the maximum travel time for a 10-minute hearing?

Susan Acland-Hood: The consultation that we just put out on the principles for our future service invites people to give suggestions on that. It proposes that you should be able to get to court, have your hearing and

get home in a reasonable day, wherever you are. That is something on which we have invited people's views.

Q102 **Gillian Keegan:** Which people? Whose views?

Susan Acland-Hood: We invited the public's views. It is a public consultation. It has actually just closed, but we have had interest on that that we are considering. The reason I'm not giving you a straight answer is that we are considering that, and we will then set the policy.

Gillian Keegan: Unless you get this right, I anticipate that this programme will last a lot longer.

Q103 **Anne Marie Morris:** With regard to the legal aid reforms, the expectation was that we would end up with more mediation. We didn't. We ended up with more litigants in person. To what extent have you thought through the unintended consequences of a project like this? Any major project has unintended consequences, with legal aid reforms being a case in point. You were supposed to get more mediations, but instead you ended up with more litigants in person. What is your scenario planning or risk planning for this reform?

Chair: I don't want to go down the legal aid route; the point is about the unintended consequences.

Susan Acland-Hood: I will let Richard speak about legal aid, but on the point about our planning for unintended consequences in the programme—

Chair: That is the point Ms Morris is asking about. Legal aid is a side issue.

Susan Acland-Hood: On legal aid, there are two key things. The first is that we spend quite a lot of our time doing what we describe in our team as black-sky thinking, in which we try to work out what things can go wrong, and if they all went wrong at once, what that would mean and how we would manage it. Our business case has in it a set of sensitivity analyses that effectively say what our assumptions being wrong by a certain degree would do to the programme.

More importantly, we are absolutely not in the business of making large-scale change and then hoping it turns out alright. Absolutely everything we are doing is being done by making small-scale change with real people and testing it and learning about their behaviour. What Richard described, in terms of what we are seeing on, for example, digital take-up rates, the business case has some assumptions in it—you have to have some assumptions in your business case at the start—but each time we update the business case we update those assumptions based on what we have learned about behaviour. Everything we are doing is starting with small scale, private—

Q104 **Anne Marie Morris:** Could you give me an example?

Susan Acland-Hood: Yes. I will use divorce; I am sorry, I know I have talked about it a lot. We put the divorce system out into what we call



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private beta last July. The old system is a paper-based form, and we send back about 40% of the paper forms, because people find them really difficult to fill in. To fill in a paper divorce form, you have to know the difference between your domicile and your habitual residence. I shouldn't say this, but I will: that is because the form is written by lawyers.

When we designed the new system we started with users and tried to make sure that every question we asked was something that people could reasonably answer. We used lawyers to make sure that it was still correct.

Q105 Anne Marie Morris: Okay. That means it is user-friendly. I don't see how that is scenario planning for unintended consequences.

Susan Acland-Hood: Let me go a bit further along. With the first version of that that we put out, we found that we had reduced the error rate from 40% to 8%. That is where we got to by last September. Because we were testing at a small scale, with a small number of people, we could then say, "Well, 8% is still too high. We should not have people having their form sent back because they filled it in wrong, rather than because there is a genuine reason why they can't get divorced." The system allows us to find out where people are making errors.

We got it down to 5% before Christmas, but there was a part of the system that was still confusing people. We were asking people to enter a set of details from their marriage certificate, and people were finding that very hard to do. They were finding it harder to do than we anticipated, so we stopped and had a look at how we could do that differently. In January, we introduced a facility that allows them to upload their marriage certificate to the system. Again, we were quite worried about that. We were not sure how many people were going to be able to upload their certificates, but because we were doing it at small scale, the price was relatively low. Since we did that, the error rate—

Q106 Anne Marie Morris: We are short of time. I get what you are saying, but it is not a good example of an unintended consequence.

Susan Acland-Hood: It has been under 1% consistently.

Q107 Anne Marie Morris: That is not an unintended consequence. Have you actually thought through what happens with regard to the prison population when you suddenly ask prisoners and prison officers to be faced with a different scenario? Have you even looked at that?

Susan Acland-Hood: Absolutely. I am sorry you did not find it a good example. The point I was trying to make is that because we start small and we test things with a small group of people, we can see things happening before they have an extensive cost.

Q108 Chair: To take the prisons point, Ms Acland-Hood, prison officers have to sit with prisoners while they give video evidence. A couple of colleagues visited Wormwood Scrubs recently, and I think there were two prison officers for 70 inmates.

Gillian Keegan: There were three floors, four prison officers and 300



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inmates.

Chair: The point is that there are a lot of people. At least one officer would have to sit with somebody during video evidence. Have you thought of those sorts of consequences? Ms Morris is hinting in that direction.

Richard Goodman: I think we have. To take your example, Chair, I was in HMP Durham a few weeks back and saw in action a series of what are in essence new prisoner management techniques being used by the staff there to help facilitate the running of the remand court. Some of that was really basic stuff about behavioural things, such as not having a hearing that is fundamentally futile and involves the prisoner being produced later. That happened in the past because prisoners were not told before they went into the video suite that actually they were in a court and they could not eat or do other things that you would not be allowed to do in a court building. That meant that hearings got terminated too early or multiplied out because people had to be produced later, which was obviously an unintended consequence and defeated the purpose of it. The relationship between the receiving courts in Newcastle, in that case, and HMP Durham allowed us to learn what an effective process for doing that is, which I think both sides now think is more effective.

Q109 **Chair:** Effectively, there are still knock-on costs. We look a lot at cost shunting, and to cost shunt within your own Department would be crazy.

Richard Goodman: I don't think it's crazy, for two reasons. The answer to this is often about process and how we roll things out. We use early adopter areas and pilot areas precisely to test what these unintended consequences are and to understand whether there is a ricochet effect. I can lock people in a room until the nth time and scenario plan around it, but I do not really know what will happen until I test it. But what that does help me do is understand the sorts of things I should be looking for.

On cost shunting, looking at the system in isolation has caused us problems before, for precisely the reasons I have just articulated. One of the issues with using video for remand was that it was causing problems in prison that were considerably more costly than an effectively run video custody suite. That still involves change for the prison, and it still involves an investment cost to build the terminals and to change the staffing rotas and when prisoners are produced, so it is not a cost-neutral exercise, but the benefit today, compared with having to get prisoners on to a PECS van and then back in the afternoon, and having to put someone else—

Q110 **Anne Marie Morris:** But have you costed it?

Susan Acland-Hood: That is the work I was describing earlier to look at the end-to-end costs and benefits. That includes HMPPS, and it looks at the costs. There is a specific strand of that that is focused on video remand. Just to take an example—

Q111 **Anne Marie Morris:** I believe you, but what about the CPS? Have you factored in the additional cost for them?

Susan Acland-Hood: Yes.

Q112 **Anne Marie Morris:** How have you done that?

Susan Acland-Hood: They are part of the same process. That end-to-end cost-benefit process that we are talking about is with the police, HMPPS, the CPS and the Legal Aid Agency. To take a really concrete example, if you look at what happens at the moment, it is true that if you have people being produced in court in the day, they go out of the police station and out of police custody, but if someone comes into the custody suite after about 3.30 in the afternoon, they cannot go into court, because there isn't a court that is going to be run, so they are kept overnight. So there is a question for us that interacts with the question of how long the court day should be. If you run the court day a bit longer, those people can come into court. If you put everyone on video, you have more people in the police station in the day, but you might have fewer overnight. Then, if you run too late, you have the cost of bringing people late to prison.

What we have agreed to do together is to build a model that allows us to look dynamically at that whole system and test exactly where the optimisation point is—exactly where the point is that makes it best for everybody. To me, it is much better that we are doing it together than that we should decide something and then try to work out how much cost that causes and then pay for it. What we want to be doing is looking jointly at what the best proposition is.

Q113 **Anne Marie Morris:** Do you know what worries me most about what I hear? I hear a lot about process and a lot about numbers; I hear very little about people. There is a huge human piece to this. Although we have examples of putting a few prisoners in a room, this is a huge culture change—it's not just something about process—and I'm not hearing anything about that at all. What is the impact on the people who are going to be involved in this? Remember that some prisoners have huge learning problems and learning disabilities and mental health problems. Where is all that in this?

Richard Goodman: I will talk about that, if I may, in terms of the experience of prisoners. The Permanent Secretary's point earlier about the status quo is a very good one. Often, we disrupt prisoners' regimes and lives daily for what I would describe as unnecessary reasons. They might get into a van in the morning and go back to a different prison in the afternoon because they have been produced at court, often for an extremely short, 10-minute hearing. They have lost their educational opportunity in that. They have lost the stability of the cellmate that they had previously. They have lost their relationship with the prison officers in the prison. Our current process disrupts prison life and life for those prisoners.

On the issue of video and video remand, we have engaged an academic from the London School of Economics to undertake an evaluation of what we do on video. We have actually started in the tax tribunal; we have not started on remand work yet. We need to understand what that looks like. I am not trying to suggest that we are unconcerned about it. What I am trying to suggest is that I don't think I can tell you the answer now,



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because we are not far enough advanced yet to have gone through the process to answer it.

Susan Acland-Hood: I think it's worth saying that we already do a lot of video work where we have the defendant on a screen and everybody else in the courtroom. What we are talking about is improving the systems and processes around that, but also giving ourselves the option of a fully virtual hearing, where everybody is on video. There is some evidence—

Chair: We know what is being discussed. This is about whether—

Susan Acland-Hood: There is some evidence that it can be better for people if they are not the only one on the video link. The other thing is—

Q114 **Anne Marie Morris:** Can I stop you there? Nothing you have said to me gives me any comfort that you really have fully understood the unintended consequences, fully understood the culture change issues and fully understood the impact on people with mental health problems. All this talk about systems and processes—sample this and sample that—does not give me the comfort I want that this system is going to work in practice. We are dealing with real people; we are not talking about something in a laboratory. One of the crucial things in this is that we get better access to justice, and also justice that is justice. There is real concern that using videos and camera systems will not actually deliver something that is fair. Can you tell me how you believe and how you can test—how you are going to measure—that we get real justice out of this and we do not bring in unfairness?

Richard Heaton: Of course we care passionately about justice, about proper justice and proper outcomes—justice fairly delivered. One of the main architects of this programme has been the senior judiciary: the current Lord Chief Justice and the previous Lord Chief Justice. They are with this absolutely every testing step of the way, because they are the safeguards of what is just and what is fair. That is the first really important thing to say.

Q115 **Chair:** But can you test it on these cases?

Richard Heaton: There is no—

Chair: You need a flow of cases to show what is actually happening. You can't look at small samples.

Richard Heaton: The whole architecture is to test, test, test—do things small, test, test, and see exactly the impacts that you are describing, Ms Morris.

Q116 **Chair:** You talked about some evidence earlier, Ms Acland-Hood. What evidence was that?

Susan Acland-Hood: There are a few things to say. A huge amount of this comes from Lord Leveson's report; we use that as a lodestone. I am sorry we are not conveying—I am hugely proud to do my job. I am proud to do it because it matters so much and because we have to get this right

for people. We can improve access to justice enormously through what we are doing here.

There are three really critical things to say. The first is that the business of testing may sound like process, but it's about really listening to what people tell us about what the impact is on them. The second thing is that we are absolutely committed to evaluating this properly, including through external evaluation. As Richard says, we have engaged an academic to evaluate the work we are doing on virtual hearings. We are starting on the tax tribunal not because we think that is transferable but partly because we want to start in a place where we know that we can do something small and manageable.

Q117 Anne Marie Morris: Let me stop you there. I am not interested in an evaluation of the process. What I want is an evaluation of whether or not people get a fair hearing and fair justice. What sort of measures are you putting in place to deliver that? That is not about measuring the process.

Susan Acland-Hood: But the evaluation can look at that as well.

Q118 Anne Marie Morris: Are you telling me, sitting here now, that you are putting together a process for which you have not yet evaluated how you are going to measure whether the outcomes, not the output, deliver justice?

Susan Acland-Hood: It's extremely difficult to evaluate something that you haven't done. What I am saying is that as we begin to do it at very small scale, we will evaluate what we are doing extremely carefully and make sure that we understand the impact on justice. We have looked at other people's evidence on this. We have looked, for example, at the study that was done in the University of Western Australia and was published last July. It looked at whether people found differences in credibility and whether people were more likely to convict when people appeared on video as opposed to in open court, and found that there was no difference.

Q119 Chair: So that is your international evidence?

Susan Acland-Hood: Yes.

Q120 Chair: Is there any other evidence that you have used before going down this route? It is groundbreaking and world-leading; you are the first in the world to do it, which fills us with a bit of alarm.

Susan Acland-Hood: When you take together everything we are doing, it is groundbreaking and world-leading, but most of the components that we are putting together have been done in some place before, and we are trying to learn absolutely everything we can from that. The other thing is that we have defendants on video in our court every day now. That happens all the time.

Q121 Anne Marie Morris: Can I get some clarity on a particular point, which is about an individual getting legal advice? How is an individual going to get legal advice online?

Susan Acland-Hood: I think there are two things. We have started a set of conversations with the Law Society. Richard Miller is right to say that we haven't got as far as we would like to have got with that, but we have started a set of conversations with the Law Society about how we can make sure that people are given really good signposting to legal advice online and good access to it. I think there will be cases where it is easier for us to signpost and give people access more readily.

Q122 **Anne Marie Morris:** How are you going to do that?

Chair: How will you know that they have got that advice? You can signpost people all you want, but how will you know that they have had proper good advice before entering a plea online?

Richard Goodman: In terms of testing, there is some work happening in Medway in Kent at the moment, which is looking to encourage the earliest access in criminal work, if we are talking about criminal and video—it is slightly different in civil, family and tribunals, which we can talk about as well—and to incentivise the early provision of legal advice at the police station. Some of those are process changes. There is also the production of a digital guide to help improve the availability of information there, which we are testing in Medway with the police.

Q123 **Chair:** Digital guide for who? For the person who has been arrested?

Richard Goodman: Yes, for the person who has been accused.

Q124 **Chair:** Will they still have their phone? How will they access that?

Richard Goodman: That is part of the process setting—how they get to it, including digital legal aid submissions, and in particular what safeguards we need to put in place for vulnerable defendants. So I don't have the answer to that yet, because we haven't done it, but there is work happening on video justice in Medway in Kent, which is being led by the police and crime commissioner and the police there. That is where we will start exploring those issues before we bank on saying that we have got the process right, because I don't think we know yet.

Q125 **Anne Marie Morris:** In which case, it seems to me that you are going to have a challenge getting this done within the timeframe that you have set yourselves.

I am still concerned that there are some issues that I don't think you have fully thought through. What are you going to do when the system breaks down in the middle of a hearing? Suddenly the records are lost, and the IT breaks down. Have you looked at that?

Susan Acland-Hood: Yes. The records won't be lost if the system breaks down because of the security plan and the way that they are stored. We already run almost all our Crown court hearings on a digital system at the moment and we have a set of back-up mechanisms that we use that enable people to produce paper relatively quickly and continue the hearing if that happens. We also make sure that we have good back-up servers. Most of the things we do in life now are on digital systems and we have a

set of back-up procedures that we use, so I don't think it is fundamentally different from that.

Q126 Anne Marie Morris: No, it is not, but you are dealing with people who are not used to dealing with technology, so you have a real challenge here and a culture change. You have got to train the professionals, whether they are in the prison or the CPS or whatever, but you have also got those, often with mental difficulties, who are the accused. At the end of the day, particular on the criminal side of things, you get a criminal sentence. If justice wasn't delivered, you get a criminal sentence and you can't get rid of that.

Richard Goodman: That is absolutely right. I think it is worth talking about the different types of offence that we are describing here. At the moment, for the least serious offences—an example we used when we consulted a few years back about online conviction was fishing with an unlicensed rod and line—if you are charged with that offence, normally because you have not engaged with your fixed penalty notice, then you will get that through the post. You will reply to that through the post, and you may be convicted in absentia by post.

Chair: These are small—

Richard Goodman: Yes. That is absolutely right, that is why—

Susan Acland-Hood: They are small offences, but very large numbers. A large part of what we are trying to shift online is those things that we currently do by post, and we then see slightly higher rates of engagement.

Q127 Chair: Okay, but I think Ms Morris was highlighting the difference between the civil—divorce—and the criminal. Perhaps you will answer that.

Susan Acland-Hood: But those are low-level criminal offences that we described—

Chair: That is for criminal offences.

Richard Goodman: Those are for criminal offences.

Susan Acland-Hood: That is for a criminal offence. There is a set of work on online that we are doing at the moment, which is to replace paper. It is marginal, but we think we see higher engagement with the online process than we see with paper.

We have also been looking at introducing the ability to indicate a plea online for more serious offences. I think the first thing to say is that it is only an indication of plea; it is not a full plea. The second thing is that we would expect in the first instance that this would almost always be done by your legal adviser, rather than by you. So we are not incentivising or trying to encourage lots of people to go on and make a plea before they have had a chance to get legal advice. What we do want is that when people have that first conversation with their legal adviser, they give us an indication of plea online, and they don't have to wait until a first hearing to

do that. That enables lots of things in the system to happen earlier and more efficiently than they do at the moment.

We are talking to practitioners about how we support that, but the ability to make a plea online for more serious cases—it is worth remembering that in 99% of cases where legal aid is sought in the criminal system it is granted, so the vast majority of people who wish to get legal aid and to be represented get legal aid and are represented. But we would expect that to be done by your legal adviser. The fact that it is online doesn't mean it has to be done by you as a litigant in person.

In terms of making sure that we are offering support—the point that the Permanent Secretary has made—I don't think that our system works well enough for the most vulnerable, the people who go through it at the moment. We are not starting from a good position and I think that we can improve on it. The digital systems will work much better than our current system for many people, but they will not work better for everyone, so we will retain paper channels for those who want them and we will provide for telephone and face-to-face support for those who need it. We will give people support to move through the system in the way that works for them.

Q128 **Anne Marie Morris:** But how will you know who they are?

Susan Acland-Hood: The final thing is that things such as the use of video will remain a matter for judicial discretion. If the judge does not think it is in the interests of justice for video to be used, then video will not be used. That is an absolute principle, and it is in the legislation that we brought forward—

Chair: It is a judicial decision. We know.

Susan Acland-Hood: It has got to be a judicial decision. If a person is vulnerable and it is not going to work for them, we won't do it.

Chair: We could get into legal issues of whether representatives can argue against them and so on. Ms Morris, will you finish up?

Q129 **Anne Marie Morris:** You have looked at the economics of it and you have said that you will spread it across departments, but I haven't seen anything that gives me any comfort that there is, if you like, interflow between your big project and whether that is going to work—you say it will, but I am not yet comfortable that it will. Secondly, in terms of all the testing you have done, it seems to be extremely limited, a bit classroom laboratory. Thirdly, I have not heard anything about any training for anybody—that seems to be pretty critical. And I have not heard anything about what you will do when things go wrong—you just keep telling us that everything will go right. So please, each of the three of you, will you tell me what you think the top three risks are?

Susan Acland-Hood: Sure. Our top three risks are that we don't manage to make the connections across the system that we want to make and that I hope we have the process to make. The raising of that risk is right, and it



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is one of our top risks—that we don't make those connections across the system.

Q130 **Anne Marie Morris:** The second?

Susan Acland-Hood: The second risk is that we don't keep our focus relentlessly and remorselessly on the people using the system. I say that because the voice of the real user in the system is hard to get in the criminal justice system. Most people touch the system once and don't self-identify as a user of the system, so you have to pull their voice in. The voice of the professionals is very loud.

Q131 **Anne Marie Morris:** And the third?

Susan Acland-Hood: The third risk—sorry I have got—

Chair: It is probably a longer list than three.

Anne Marie Morris: Yes, but I would like to know what the top three are.

Susan Acland-Hood: Yes, of course. The third top risk that I see is that we don't engage people properly in what we are doing and explain it. We are working really hard to engage and to talk to people about what we are doing, but we are clearly not doing that well enough yet. There is clearly much more we need to do.

Q132 **Anne Marie Morris:** Right. Those are your three. Mr Heaton, what are your three?

Richard Heaton: I will start in reverse order. Your previous witnesses—there are many others in a similar position—care passionately about the system. The system belongs to all of us. If we don't bring the matrix of interested parties with us, we won't have done this well.

Q133 **Anne Marie Morris:** So that is the first one.

Richard Heaton: That is first. Secondly, I have to be boring and say the delivery of benefits. That is always a risk for me—property sales and all the rest of it. The third would be velocity on the crime programme, which we started with. I need to see that get better and be more sustained. Those would be my three.

Q134 **Anne Marie Morris:** Thank you. Mr Goodman?

Richard Goodman: I obviously share those risks. To give you a slightly different perspective, I worry about being able to get new processes and services out early enough for people to really see the whites of their eyes and understand, when we test them in real time, whether they work, what the training requirement is, how it feels and whether it is better. I feel very encouraged by what we have done, but that is extremely important, and we must keep up the pace.

Q135 **Chair:** Okay. The second risk?

Richard Goodman: The second one is that I think there are large economic uncertainties in the programme, which could affect the business-

as-usual operation, in terms of demand. You mentioned earlier the pressures on the public family law system overall. We also mentioned immigration and asylum. We are also exposed to the property market, in terms of the asset sales we expect to realise, so there are broader economic factors.

Q136 Anne Marie Morris: Sure. And the third one?

Richard Goodman: I agree with the Permanent Secretary about the crime programme, not least because there are a lot of interrelated decisions that need to be made in a very complex system. We need to get people comfortable and aligned so that they can get started on it. It has been the most challenging part of the programme. I expect it to be the most challenging part of the programme over the medium term.

Anne Marie Morris: Right. I certainly hope that when we see you next time—I am sure there will be a next time—you will have given us a proper plan.

Chair: There is an open invitation to you.

Anne Marie Morris: Indeed.

Sir Amyas Morse: I am listening to you, and you are putting great emphasis on developing fast. One of your key techniques for doing that is to get into detail with small groups of people, work through that and find things out. I can see that is very innovative, but I am uneasy about that as a method, because you are projecting that on to the whole population. I would like to know whether you are actually testing whether the very attractive suppositions you are making each time you work through these small groups actually bear out into the larger population. What is your method for doing that? Is it statistically valid?

Chair: Mr Goodman, I think everyone is looking at you.

Sir Amyas Morse: I wanted to ask you earlier. I think it is a fair question.

Richard Goodman: I think it is a fair question, and my fair answer—although it may not be the one you are looking for—is that it depends. For example, in civil money claims, one of the suppositions we had is that we can help people make a small claim without legal advice that they felt confident about doing. We measure that both by the satisfaction of the people at the serve at the end of it, through looking at the engagement of defendants, which has gone up, and through watching people's reactions to it—they actually are in a lab. I have had feedback from a barrister who said it was a relief not to fill in the particulars of claim for this type of claim, because it is 8,000 pages long.

For some of the broader, cross-system work, we do not do that ourselves. We need to rely on somebody external to evaluate that for us and tell us what the answer is, because it will have a system impact that will not be within our line of sight, let alone within our control.

Q137 Chair: So knowing what you don't know.

Richard Goodman: Exactly.

Susan Acland-Hood: I have just one thing to add to that. In general, we do not go from very tiny samples to national roll-out in one step. We start with lab testing and go to private beta—we think carefully about who we test in private beta. Where we have tested and found that there are issues at a medium scale, we pause and develop further before we go out.

Sir Amyas Morse: Right. You have got to be a bit careful, because you keep talking about how fast you want to go, and then you talk about pausing it a lot. It doesn't quite hang together for me. I am not trying to be destructive, because I am impressed with a lot of what you are saying, but I just want to say to you that it doesn't quite click for me. If I was looking to make an objective test of this, I would want to see a bit more than what you are saying. It all seems narratory when you are answering these questions, if I am honest.

Chair: You have got a bit of free consultancy there from the Comptroller and Auditor General, so thank him for that.

Q138 **Shabana Mahmood:** The problem with people going online and not having access to legal advice, or you not being able to confirm that they have had legal advice, is that for the sake of ease and getting something off their plate they might not appreciate that they are going to end up with a criminal record. A criminal record for something that is minor still follows you around for the rest of your life. So I return to the point about access to legal advice. Are you aware of this problem? Have you considered the impact it has on people for the rest of their lives? What are you going to do to give all of us confidence that that is something you will alleviate and ensure is not a problem going forward?

Susan Acland-Hood: We absolutely have thought about it. As Richard said, for example in relation to people being seen on the video, we are talking to a legal aid agency about how they have structured themselves and working on trying to pull forward people's access to legal advice, so that they actually get advice earlier than they do at the moment. In terms of the online system and online plea, again, for the most minor offences typically we are replacing a system where people plead on paper and we similarly do not know whether they have taken legal advice. Online systems can give us better opportunities to give people really clear warnings about the implications of their actions. It is quite often easier with an online system to ensure that people have understood it than it is with a paper form. Where we are shifting to online plea for more complicated cases, as I say, our starting point will be that people do that with their legal adviser and not on their own.

Chair: It will be interesting if some of us are here in 10 or 20 years' time to see whether that has become formal.

Richard Heaton: Just to be clear, the programme implies no reduction in the scope of criminal legal aid.

Q139 **Chair:** Ms Acland-Hood, earlier you talked about the progress measures



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and you said that you were being hard on yourself in your measurements and so on. What measures do you think we should be challenging you on when you appear before us in six months or a years' time? What are your measures of success in a dynamic sense?

Susan Acland-Hood: Our next chunk ends in January, so we have a set of measures that we are testing ourselves against for January. They are a bit different from the ones we used for the end of interim state 1, because we have learnt from what we did. They are a bit more about how far people are using our services and how far we have realised benefits from them. There are also some significant milestones in terms of us setting up the Courts and Tribunals Service centres that we have announced in Birmingham and Stoke-on-Trent, in order to change the way we are processing things in the background. You should be measuring us against that set of measures.

Q140 **Chair:** Can you provide us with those measures?

Susan Acland-Hood: I would be very happy for us to share some of them. As part of communication we have also recently produced a reform update, which I am happy to share with the Committee, and which sets out what we expect to do over the course of this year. Again, I would be happy for you to measure us against that.

Chair: It is always helpful if we are looking at the same measures as you, because it makes it a bit easier all round. We look forward to doing that. Thank you very much for your time this afternoon. As ever, we will publish an uncorrected transcript in the next couple of days, and our report, as you heard earlier, will be out before the summer. Thank you very much for your time.