HOUSE OF COMMONS

Justice Committee

Oral evidence: Ministry of Justice Annual Report and Accounts 2017-18, HC 1650

Tuesday 6 November 2018

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Watch the meeting

Members present: Robert Neill (Chair); Bambos Charalambous; David Hanson; Victoria Prentis; Ellie Reeves; Ms Marie Rimmer.

Questions 1 - 136

Witnesses

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

Examination of witnesses

Witnesses: Richard Heaton and Mike Driver.

Chair: Good morning, Mr Heaton and Mr Driver. Thank you very much for coming to give evidence to us. As you know, we have to start with declarations of interest. I am a non-practising barrister and a consultant to a law firm.

Victoria Prentis: I am a non-practising barrister. I have just become a trustee of Nacro, on a voluntary basis.

Ellie Reeves: I am a non-practising barrister.

Bambos Charalambous: I am a non-practising solicitor.

Q1 **Chair:** Thank you very much for coming today. It is a very sad time for all of us who knew Lord Heywood. I worked with him a little, and I know you did; we all recognise the work he did over many years. I am sure the Public Administration Committee will deal with that in rather more detail, but it is something all of us who knew him, including yourselves, are conscious of. He was a very significant and devoted public servant. It is very sad for everyone. We all recognise that. It is also sad for the civil service.

Richard Heaton: Jeremy was an extraordinary servant to Ministers and Prime Ministers—successive Prime Ministers have said so very eloquently. He was also, as you say, Chair, an extraordinary leader of the civil service, passionate about our values and renewal, and passionate about people's careers. He is a great loss.

Q2 **Chair:** That is very much understood. Gentlemen, we will be asking you questions about the Budget, but I appreciate that you are officials and you have to work with the resource you are given. I preface our questioning with that recognition, as I know Jeremy Heywood would have wanted.

Mr Driver, recently you gave evidence about some of the finances of the Department in our prison population inquiry. That was very helpful. Mr Heaton, we have had a chance to talk to officials at various points, which we are grateful for. You are the permanent secretary. In a nutshell, how would you describe the financial health of the Department?

Richard Heaton: Do you mind if I am reasonably frank?

Chair: We would be delighted if you were.

Richard Heaton: Okay. I will, however, choose my words carefully.

Chair: There is a little problem. I should have reminded you that the very high ceiling makes the acoustics particularly difficult in this room. We do not have the kit that we have in the more modern Committee rooms, so can you shout out a bit?

Richard Heaton: I would start with 2010. We have been an unprotected Department ever since that happy concept was introduced in 2010. It has been difficult. We have taken a lot of money out of our budgets and have raised fees correspondingly in order to help to cover our costs, but it has always been a challenge to live within our budget, frankly. The pressure on us probably feels more acute, as well as more chronic, than on some other Departments, if I may say so.

For seven years, we have been bearing down on costs, always looking to meet our budget and always feeling that it is quite tight. We have made lots of efficiencies, and I am proud of those. We continue to be a Department playing our part in fiscal consolidation. I make no apologies for that. But at several stages, assumptions in the system, particularly on demand—for example, for legal aid—have gone against us. One of the difficulties is that we have a fixed budget, but a floating, AME-behaving cost base in areas such as legal aid. The same applies to the costs of running the courts and the Prison Service, which depend on demand, which is out of our control. That has been a chronic difficulty.

However, we are not a black-hole Department. I think we have a good reputation with the Treasury. We are on top of our numbers and are increasingly on top of our forecasts. We work very closely with the Treasury for help on issues where risks have crystallised against us, but I think the Treasury recognises that we are a Department under some considerable strain. I would put it like that.

We are not working against the Treasury; we are working with them, but that is the overall theme and overall mood music of our financial position. It is always a strain. We set a balanced budget this year. I am proud that we did that, but, as has often happened in the past, risks have materialised against us in year. We are in conversations with the Treasury about how to meet those. The spending round, and getting the right baseline and multi-year settlement, is really important for us, because the system is under strain.

Q3 **Chair:** To be blunt, over 10 years, 40% in real terms has come out of a Department that, as you said, is essentially demand-led in most of the key elements. If I suggested to you that that is not sustainable, would you argue with me?

Richard Heaton: It restricts our ability to plan with confidence. Let me put it like that.

Q4 **Chair:** If one cannot plan with confidence, that is not really a sustainable position.

Richard Heaton: It would be even more sustainable if we were able to plan with confidence.

Q5 **Chair:** You say that you have had to take various measures. If one looked at that purely in management and accounting terms, you would describe some of them as rather short-termist.

Richard Heaton: We have had to take some tough decisions. We took one recently, in the beginning of year allocations. We decided not to proceed with a programme to reform criminal fine enforcement in the courts. We called it TCEP. That was a pretty straightforward value for money case. It would have been good to continue with that, but we simply could not afford the up-front costs. We are making tough decisions of that nature.

Q6 **Chair:** Where did the money from the cancellation of TCEP go?

Richard Heaton: It went to redress our projected overspend.

Q7 **Chair:** It was simply that.

Mike Driver: At the beginning of the financial year, we were projecting that we would overspend by £500 million, if we took no action, and that was one of a number of actions we took. When I was here in June to talk about prisons and was challenged by Ms Rimmer on this, you will remember that I explained that, with Treasury permission, we had also switched some capital—some longer-term investment money—into shorter-term resource in order to help us to handle that financial situation.

Q8 **Chair:** I understand. Mr Heaton said that you are not a black-hole Department, Mr Driver. I understand that, but you told us very frankly in June that there is a hole in the finances of about £1.2 billion over two years. Is that still the case?

Mike Driver: It is the case that our financial position remains challenging. As I said when I was before you in June, our financial position across both 2018-19 and 2019-20 required action. We took action in 2018-19. There is still more that we are working with the Treasury to deal with. Mr Heaton talked about the position on legal aid and other measures. We are in the process of resetting our plans for 2019-20. I foresee challenges in that year as well.

Q9 **Chair:** Without something happening in the spending round, it will be extremely difficult to continue to balance that hole in the finances.

Mike Driver: The year 2019-20 is not covered by the next spending review period.

Q10 **Chair:** No. It is the last bit, isn't it?

Mike Driver: It is the last part of the current spending review period. I would argue that, as part of the spending review, we need to work with the Treasury to reset our finances, as an organisation. Some of the issues around the financial framework do not work as effectively as they could, but we still need realistic and implementable plans for 2019-20, within the resources that are allocated to us by Government.

Q11 **Chair:** Would you like to expand on what "do not work as effectively as they could" means around some of the financial measures?

Mike Driver: As an example, legal aid is a regulated payment made to people on the basis of entitlement against regulations and rules. I would suggest that that operates in a way that is very similar, in many respects, to a welfare benefit. Welfare benefits are covered by annually managed expenditure, rather than departmental expenditure limits. I think that the incentives are not quite in the right place. We need an arrangement around legal aid, for example, that incentivises the Department to deliver policy adjustments, but does not place us and our services in other areas at risk if demand rises further than forecast.

Q12 **Chair:** Where it sits within the AME-DEL breakdown does not help at the moment.

Mike Driver: It could sit in DEL, but it needs a different incentive arrangement as we go forward.

Richard Heaton: I apologise for leading out with the slang word "AME," which Mr Driver has translated for you.

Q13 **Ms Rimmer:** What would the impact on the service to the public be if they were given a figure they had to work to, rather than an entitlement? Would they have to restrict it?

Mike Driver: At the moment, because of the way the budget is set, with a departmental expenditure limit, it is a fixed budget. It can go up and down, of course, as demand flexes. If demand were to continue to rise as we have seen, particularly in the family jurisdiction, we would need to make choices within the Department to deal with the issue, unless we were given more funds by the Treasury. Were we to make it something covered by annually managed expenditure, as long as the quality of our forecasts met Treasury requirements, there would be a much more fluid approach to its funding.

Q14 **Ms Rimmer:** Can I ask about that in plain English that the public will understand? You have just mentioned legal aid, for example. The Department uses that like an entitlement, rather than like welfare benefits, where it would have to make policy decisions to live within a particular amount. What would that mean for legal aid? Would we have to make more policy decisions around legal aid, if it applied to that?

Richard Heaton: I do not think that we are talking about a different policy design for legal aid.

Mike Driver: No.

Richard Heaton: Legal aid would be paid under the scheme. It is just an accounting treatment. Because we pay out on legal aid and we cannot control the volume, we then have to make decisions in other areas of our business where we can control the volume. It is a perverse accounting result.

Q15 **Chair:** You are drawing the analogy with benefits, in that you cannot control the number of claimants and the costs.

Mike Driver: Yes.

Richard Heaton: Indeed.

Chair: In the same way, you cannot control the number of applicants for legal aid and the costs.

Q16 **Ms Rimmer:** Which areas could you amend without policy decisions?

Richard Heaton: Funding of our prisons, for example. I know we will touch on that during the hearing.

Chair: We will.

Richard Heaton: Shall we take it later?

Q17 **Chair:** Yes. We will touch on prisons and other things, but you can talk about it as a preliminary.

Richard Heaton: I was going to make a comment about capital.

Chair: That is helpful.

Richard Heaton: This is partly about resource expenditure, but it is partly about capital. It would be great if we could plan with certainty, on the basis that we will be renewing our prison estate, which requires capital. At the moment, as Mr Driver has explained, because our budget is so tight, we have to bring capital on to the resource balance sheet, and that is not as satisfactory.

Q18 **Chair:** Indeed. I understand that.

Richard Heaton: We need to be able to plan—preferably on a cycle even longer than a spending review—that we are going to renew our prison estate. That requires capital investment.

Q19 **Chair:** In any other world, you would have a much longer spending cycle.

Richard Heaton: It would be true for the court estate as well.

Chair: Indeed. I get that perfectly. I will touch on one more specific topic myself; other colleagues will then want to drill down into some of the detail.

You talked about pressures, and further pressures that may come along. One of those, of course, relates to Brexit planning. I think the position is that the Department has an additional £17.4 million for Brexit planning. The Minister told us that you are putting in a bid for more. Can we be clear on that? Do you have the capacity in the Department to deal with all the eventualities of Brexit?

Richard Heaton: Yes, I would say that we do.

Q20 **Chair:** What gives you grounds for that confidence?

Richard Heaton: The money from the Treasury is a huge help. By and large, our Brexit pressures are that we have to secure a position in negotiations not just for withdrawal, but for future partnership. That requires policy thinking and negotiating. We have to plan for the downstream impact on the courts, legal aid and the Prison Service, and that requires analysis and support. Helpfully, the Treasury funding gives us the staff numbers we need to do that sort of work, so I think the answer is yes.

We will be negotiating on the international scene like never before. That will require different skills, but the Treasury has helped us by enabling us to staff up to do it. At the moment, our capacity is not a great concern for me.

Q21 **Chair:** The reason I ask is that there could be any number of outcomes, some of which would involve a bit more work than others.

Richard Heaton: There could. To be clear, I am not saying that all the outcomes are certain and have been perfectly planned for. The very nature of Brexit, particularly in the no-deal scenario, gives rise to an awful lot of uncertainty, but staffing capacity is not one of my worries.

Q22 **Chair:** A no-deal scenario would have very significant impacts, potentially, on the Department's finances, as it would for everybody.

Richard Heaton: It is very difficult to read. It is very difficult to read the downstream consequences on courts and tribunals, but we are having to work through those consequences.

Q23 **Chair:** You said that you had been able to get in some staffing capacity. What is the total staffing, in ballpark terms, dealing with Brexit issues in the Department?

Richard Heaton: Of the £17 million that we were given by the Treasury, roughly two thirds is allocated to staffing. Those people are not all in post, by any means. They will range from staff for analysis in the courts service, to do with volume, through to staff for trade negotiations and withdrawal agreement negotiations. Two thirds of £17 million will fund staffing numbers in the high tens, I think.

Q24 **Chair:** Are you seeking to bring in particular skillsets that we do not have at the moment?

Richard Heaton: They are mostly traditional civil service skillsets, including analysis. Some are in international negotiations, which are not something we habitually do. That is the area that is new.

Q25 **Victoria Prentis:** Global Britain launched with great fanfare. We were hopeful that we would be able to do a lot more business across the world. Is it true that, in fact, that budget has now been swallowed up on interior problems within the Ministry?

Richard Heaton: No, I do not think so. I look to Mr Driver, but I do not think I recognise that.

Q26 **Victoria Prentis:** There was great talk of our going out and selling our legal services around the world, and resource was put aside to do that. Is that resource still available?

Mike Driver: Yes. We have not switched any resource from Global Britain. The ongoing series of visits that we have been supporting in both Asia and Africa has continued.

Q27 **Victoria Prentis:** Can you tell us how much that resource is?

Mike Driver: It will be low millions. We are not talking about a huge amount of money from the Department to support that activity. As Mr Heaton said, the amount of money we received for Brexit activity was just less than £18 million.

Chair: If there is an exact figure for Global Britain, perhaps you could write to us with it in due course.

Q28 **Ms Rimmer:** You have explained that it is a challenging Department and that it has an unprotected budget. You have met those challenges, and you are to be complimented on how you have balanced the budget up to now, which has not been easy for you. In last week's Budget, the Department received an extra £52 million to spend this year, in the year. It is not a good sign that we needed that to prop us up this year, is it?

Mike Driver: I think it is a good outcome for the Department. In some respects, it is recognition of some of the longer-term challenges that we have faced, and continue to face, as an organisation. The £52 million is addressed primarily at maintenance of security and decency in prisons, but also at maintenance in the court system; £30 million is to be focused on prison safety and decency, which is money that we can spend this year. It will help to improve the environment that will exist—

Q29 **Ms Rimmer:** It doesn't leave a revenue tail.

Mike Driver: No. It doesn't leave a revenue tail.

Q30 **Ms Rimmer:** It is one-off money, for one-off spending.

Mike Driver: Yes. It is one-off money. It is a one-off spend.

Ms Rimmer: That is good.

Mike Driver: There are some other issues that came out of the Budget. The announcement of the building of the second prison at Glen Parva was a positive outcome for us as a Department, on top of the £52 million that you identified.

Q31 **Ms Rimmer:** Will you need to ask for more funding in the spring supplementary estimates? If so, for what?

Richard Heaton: The answer is, "Quite possibly, yes." Our in-year position is not yet squared off. We are talking to the Treasury at the moment about the pressures we face, and we are trying to make our forecasts as accurate as possible, but a supplementary vote is possible. Do you want to add to that, Mr Driver?

Mike Driver: Yes. At the moment, we are very actively engaged with the Treasury on a number of areas. We are finalising the financial transfers I talked to the Committee about previously. We are also dealing with the drawdown from the Treasury of money previously agreed for court reform, which we agreed as part of the autumn statement in 2016. There are other known issues that we continue to speak to the Treasury about, and we hope to come to a conclusion on those shortly.

Q32 **Ms Rimmer:** What are the areas where you want some more money?

Mike Driver: I do not want to go into too much detail. In previous years, we have looked for some support for loss of income in certain areas. As we mentioned right at the beginning, there are challenges to the legal aid fund that we want to rectify.

Q33 **Ms Rimmer:** The Department moved £235 million from capital resources to what I would call revenue spending—spending on day-to-day running. We talked about that earlier in the year. What implications has moving £235 million from capital into revenue had?

Richard Heaton: First, it was not an optimal thing to do. Normally, you would not do that, but we were determined to balance our books. It meant that we were less able to plan with confidence prison building and other capital items.

The item Mr Driver mentioned—the announcement by the Treasury in the Budget of funding for a second prison—is important to us, because it restores our ability to get ahead with a capital building programme in prisons. That is vitally important, because many of our prisons require renewal or replacement. We had to step back in our plans, by taking money out of our capital budget, and now we are able to step forward again in some budget areas.

Q34 **Ms Rimmer:** Will that money be put back at some time? Will we get another injection from the Treasury?

Richard Heaton: That is what the Budget was, effectively. The Budget was saying, "Capital money will be available to build the second prison." I am simplifying, but previously we would have had to take that out in order to balance the books.

Mike Driver: When I was here with Minister Stewart in June, he explained that it had been our intention to build the second prison at Glen Parva using private finance. The Chancellor announced in the Budget that there would be no further contracts signed under the private finance 2 arrangements. He made an announcement in the Red Book to explain that Glen Parva would be built with public sector capital.

Q35 **Chair:** Yes. As far as we are aware, all future prison building will be public sector financed.

Richard Heaton: The Budget said there would no further PF2s.

Mike Driver: There will be no further PF2s. You mentioned the spending review previously, Chair. Between now and the spending review, we expect to agree an approach to prison building, but we want to do that on a much longer-term basis than just a spending review. We may come back to that.

Q36 **Ms Rimmer:** He did not announce an actual capital allocation for Glen Parva, did he?

Mike Driver: He said that it would be funded from public sector capital. I think it would be wrong to put in the Budget arithmetic an amount for exactly how much it will cost, because we have not yet gone out to competition to determine who is going to build it, and at what price.

Q37 **Ms Rimmer:** Would it be right for me to assume that you will get a capital allocation to meet that cost?

Mike Driver: I would assume that.

Q38 **Chair:** There must be some idea, in ballpark terms, of how much Glen Parva is going to cost.

Mike Driver: Yes. We understand how—

Q39 **Chair:** In ballpark terms. I understand that you cannot—

Mike Driver: We have a business case.

Q40 **Chair:** Can you help us? How much more do you reckon Glen Parva is going to cost?

Richard Heaton: If you are about to go out to procurement, you do not want to frame the market by naming a figure.

Mike Driver: Prisons cost hundreds of millions of pounds to build.

Q41 **Chair:** Yes. Can you help me out? How much did the last one we built cost? How about that?

Mike Driver: Between £200 million and £300 million.

Chair: That gives the sort of figure we are looking at.

Q42 **Victoria Prentis:** Is that to gain 2,000 places?

Richard Heaton: No.

Mike Driver: The new prisons will have 1,500 to 1,600 places.

Q43 **Ms Rimmer:** What plans do you have to drop or deprioritise for lack of funding? In September, you announced that you were dropping the £66 million transforming compliance and enforcement programme, as "plans are no longer affordable." I know it is not what you would have wanted. How much public funding has been spent on that project?

Richard Heaton: To date?

Ms Rimmer: Yes. Was it £18 million?

Richard Heaton: I do not have the number in front of me.

Q44 **Ms Rimmer:** I think it was £18 million, of £66 million that was planned.

Richard Heaton: I don't know; nor do I know how much of it is sunk costs or wasted costs.

Q45 **Chair:** There will be some sunk costs when you abandon a programme arbitrarily.

Richard Heaton: I imagine that there will, but I do not know how much that is.

Mike Driver: We will declare that as a loss in the next set of HMCTS accounts.

Q46 **Ms Rimmer:** That spend of £18 million, out of £66 million, actually realised £31 million of benefits, through collection of previously uncollected debt. If the programme had been completed, it would have realised an estimated £427 million. Was that a wise decision?

Richard Heaton: It was not a decision that any of us wanted to make. It was forced on us by the Budget arithmetic.

Q47 **Ms Rimmer:** According to my notes, we would have realised another £396 million had we spent the rest of the £66 million. It is a short-term decision, when you do the finances.

Richard Heaton: Yes.

Q48 **Chair:** If it helps, gentlemen, the figure of £18 million Ms Rimmer referred to comes from a response to a freedom of information request on 3 October this year, which said that spend on the programme until the end of August 2018 was £18 million.

Richard Heaton: Thank you. I was not trying to conceal that, Chair. I just did not have it on me.

Chair: I understand.

Mike Driver: As part of our processes, we try to maintain a focus on value for money. Those would be the long-term benefits that would be achieved. One of the decisions that we took in our last allocations exercise was to maintain an absolute focus on court reform overall, which delivers significant benefits in the future. That is not the case always.

Sometimes we have to take decisions that are shorter term and based on economy.

Q49 **Ms Rimmer:** Would you say that we are setting a realistic budget in the first place, as a baseline? If we set a more realistic budget that met the costs that we know are going to be incurred in the year, we would not have to make those short-term decisions.

Richard Heaton: I agree with that. I think our baseline is unrealistic. In addition, we have to carry financial risks, which are very difficult to account for.

Chair: I understand that. That is very helpful.

Q50 **Victoria Prentis:** Fees and charges are your biggest income stream, aside from parliamentary funding. Last year, it was about 20% of your available funds. You have limited control over what you get. What are the prospects for funding from fees and charges in the short term?

Richard Heaton: Our current income from fees is £700 and something million, I think. We need to achieve a fees strategy that protects access to justice, which is really important, as the Supreme Court reminded us in the Unison case, and at the same time asks court users, where they can, to pay a proportionate amount towards the running of the courts service. That basic proposition has been in place for some years.

We are not seeking simply to squeeze as much money as we possibly can out of every single litigant. We have to get it right. The fees have to be proportionate, they have to be progressive, where possible, and they have to allow access to court to people who cannot afford to pay fees. That requires a rebate scheme, which is currently our help with fees scheme, and at the same time it requires fee levels to be intelligently placed across our courts and tribunals system.

It is quite a difficult matrix. The current model delivers, but it is not quite right. We did not get employment tribunal fees right, as is widely known, and we have to replace them with a better scheme. We are nervous about banking too much on the fees income stream, if I may say so, because we have to protect access to justice. That is our prime constitutional duty.

Q51 **Victoria Prentis:** That is very wise. On the Unison fallout, we have provisional figures, and we have the figure for the worst-case scenario. How is the repayment of those fees going?

Richard Heaton: We are trying very hard to reach the people who are entitled to rebates.

Q52 **Victoria Prentis:** What are you doing to bring that about?

Richard Heaton: We have written a number of letters; I think I saw a figure of 42,000. We are working with trade unions and other groups that have access to the litigants. We have paid out a percentage of the entire notional fee that was collected—I will dig out the number in a moment. It appears that there are some people who are reluctant, unwilling or unable to reclaim, so we are not going to reach everyone. It may be that people have written the fee off, as it is not worth their recovering. We are using all reasonable steps, as the law requires us to do, to reach people who are entitled to a refund.

Mike Driver: Could I add a couple of numbers to what Mr Heaton said? Earlier, you asked about the proportion of our income we rely on, as an organisation. We receive, or anticipate receiving—it is in the main estimate—£6,923 million of resource DEL. Our current forecast for income is £1,791 million, so a significant proportion of our running costs comes from income.

In terms of the employment tribunal refund scheme, in 2017-18 we made a provision of £9.2 million; that is what we expected to have to pay out. There was a contingent liability of £16.5 million, and we made repayments of £7.1 million. We made good progress in the first year of the refunds. So far, on a cumulative basis up to 30 September, we have made refunds of £15.8 million. In the first six months of this year, we have already doubled what we repaid in 2017-18.

Q53 **Ellie Reeves:** Can I confirm whether everyone who paid employment tribunal fees has been written to in relation to their entitlement to a refund? There seems to be quite a big gap between what was paid in fees and what has been paid back to people.

Richard Heaton: Where we have been able to trace them—where we have the addresses—we have written to them. As I said, we have written 42,000 letters. We have taken all reasonable steps that we can take to reach the people who are entitled to a fee refund. People may have moved, or their addresses may not be correct on file, but that is what we tried to do. We cannot require people to seek a refund, but we have gone out of our way to make it available.

Mike Driver: We have been working with the trade unions as well, to seek help and support in doing this. As Mr Heaton said, we are issuing about 10,000 letters a month to people who may be entitled to refunds.

Q54 **Ellie Reeves:** You are issuing 10,000 a month. When do you expect the process of writing to people to be completed?

Mike Driver: I am not sure of the end date of that process.

Chair: Has an end date been set, or is it open-ended?

Q55 **Ellie Reeves:** Is there a set date, or will it be complete when everyone has been written to?

Richard Heaton: I rather thought that we had completed our letter writing. Shall we write to you on that?

Chair: That would be helpful.

Q56 **Ellie Reeves:** I have another question on fees. There has been some suggestion to this Committee by Ministers that fees might be reintroduced, but at a lower level. What is your view on that? It seems to me that it would be very difficult to find a rate that would not impede access to justice, as per the Supreme Court judgment, and would also bring in revenue, given that it costs money to administer a scheme in the first place. What are your views on whether a fee for tribunals is realistic?

Richard Heaton: I do not want to foreshadow what will be a policy announcement. You will see that we have taken our time over this. We have not reintroduced fees. It is quite difficult. You have to get the fee levels right, and then you have to get the rebate scheme right. I think a fee scheme will be available, but we have not finalised it yet and there are no immediate plans to introduce one. I can see a fee scheme working that is progressive and allows people out of fees, where they cannot afford them, but we have made no announcements on that. We are still working on it.

Q57 **Chair:** You recognise that it would have to be consistent with what was said in the Unison judgment. It has to be challenge-proof this time.

Richard Heaton: Yes, but I do not need to remind the Committee that the Unison judgment said that charging fees was an okay thing to do.

Chair: In principle, it is okay. I get that. Ministers have said that a lot. It is about getting the detail right, isn't it?

Q58 **Victoria Prentis:** A large amount of money—£89 million—seems to have been set aside, following internal analysis, for overcharging by the Office of the Public Guardian. Can you talk us through what happened?

Richard Heaton: It is quite tricky. Our powers do not allow us to charge more than it costs to run the service. The service has volumes going up, which means that the unit costs go down. We are also getting considerably more efficient, which means that the unit costs go down again. We have to pitch in at the right fee level, which has cost recovery but no more. The Treasury rules allow a bit of wiggle room here and there, but basically that is the proposition.

In the past, we were not rapid or regular enough about reviewing our fees, which meant that we allowed an overcharging situation to develop when we should have reined it in earlier. We are running a refund scheme because people were overcharged, and we did not have the power to charge them those levels of fees. Modelling the costs of running the service is quite difficult. Our main lesson learned is to review our fee levels at least annually, so that we do not allow the overcharging to build up, as happened in the past.

Q59 **Victoria Prentis:** How are you contacting the people you are refunding?

Richard Heaton: In the OPG case, they remain our clients, so we have contact with them. I think there is direct contact, unless anyone has a note that says otherwise.

Mike Driver: That is true. That is why we were able to state in our accounts that we were making a provision of £89 million. We were much more certain of the amount that we would be refunding. We started the fee repayment scheme in that financial year and paid back £1.8 million. That has risen to £10.6 million, as of 30 September. Of course, we reduced the price of an application from £120 to £82, so that we could balance the finances much more effectively.

Q60 **Victoria Prentis:** Fine. Are you confident that the backlog will be cleared in the next financial year?

Mike Driver: We continue to work through the backlog. We have a team involved in making the repayments. We will deal with it as quickly as possible.

Q61 **Victoria Prentis:** Are you confident that any new prospective charges for probate fit within your overall plans for access to justice and fees?

Richard Heaton: Yes. As the Committee will know, the Government have laid a draft statutory instrument on a scheme of probate fees. We regard those fees as within our powers, consistent with the principle of access to justice, proportionate and progressive. We have taken on board feedback from the previous scheme, which was laid before the 2017 election and has been withdrawn. We think that this scheme is proportionate, progressive and within our powers.

Q62 **Victoria Prentis:** And it will be reviewed annually.

Richard Heaton: It will be reviewed. I cannot give a commitment as to frequency, but it will be reviewed.

Q63 **Chair:** It is quite scaled back from the previous scheme.

Richard Heaton: Yes. The previous scheme had a top charge of £20,000. This one is £6,000 top.

Chair: I understand that.

Q64 **Bambos Charalambous:** Having overspent against the original spending review in 2017-18, do you think the Department is able to make the required savings this year and next?

Richard Heaton: For reasons we touched on earlier, it might be a struggle to meet our in-year budget, so the answer is, "Possibly not," which is why we are having conversations with the Treasury about a possible supplementary estimate.

Q65 **Bambos Charalambous:** Is that because of pressures such as the—

Richard Heaton: It is because some of the risks I mentioned have materialised against us. Legal aid in public and family law cases has gone up. Pay is more expensive than we budgeted for; the pay deals of 1.5% are more than the 1% we budgeted for. There are a number of other things of that nature. The long and short of it is that we may need some help in year.

Q66 **Bambos Charalambous:** Obviously, things like the Civil Liability Bill might lead to more litigants in person, because of the increase in the small claims limit. Is there preparation in place, if that were to happen? There would need to be more resources in the courts to deal with that. That is just one example.

Richard Heaton: That is a level of planning I have not been sighted on, but I take your point.

Q67 **Bambos Charalambous:** Some contracts, such as the CRC contracts, were badly drawn up, which led to a need for additional funding to be made available. Some of those contracts are coming up for renewal. Is there any planning as to how they will be made up in the future?

Richard Heaton: Yes, there is. You mentioned the CRC contracts. I would not say that the first generation of those contracts was badly drawn up, but you would find broad agreement that they were too complicated and contained assumptions that the companies themselves did not fully understand or budget for. That meant that they worked against the interests of the companies and did not work particularly well for Government. The first generation of contracts was not ideal. The second generation will be better.

However, it is not quite true to say that that means they will cost more. In fact, the money we have spent on the CRCs has been less than originally budgeted for, partly because volumes have been lower than expected in that area and partly because the payment by results mechanism has not worked in the companies' favour. My answer to the first point is yes, the second generation of contracts needs to be better; but the second point is not quite right.

Q68 **Bambos Charalambous:** I have another question on private contracts. Carillion provided services for 50 prisons. What has been the cost to the Department of Carillion's failure? Do you have a figure for that?

Richard Heaton: First, I am very proud of the way the Department managed to step in so seamlessly and successfully to take over the Carillion contracts and place them in a GovCo, so that the service continues and is improving. Mr Driver, can you help on the cost of the step-in?

Mike Driver: Yes. It was validated by the official receiver that Carillion was absorbing a loss of approximately £12 million a year on the contract. GFSL has a delegated budget this year that is higher than the contract value of Carillion, to reflect those losses and to deal with the backlog of work. We are currently giving GFSL a budget of £73 million, whereas contractually we would have given Carillion £57 million. On top of that, we invested £4 million in the set-up costs of the new Government company.

Q69 **Bambos Charalambous:** How long will that continue?

Mike Driver: We expect that level of funding through the rest of this spending review period, certainly. We will then reset it, as part of the next spending review. In its report, the National Audit Office talked about a cost to us of £50 million over the rest of the contract period. I think that is a broadly accurate figure. We are spending roughly £16 million a year more through to the end of the contract, plus the set-up costs, which will take us to £50 million.

Q70 **David Hanson:** What due diligence did you, as a Department, do on Carillion in the first place? If I came in and said, "I can do something for £X million," and that provided a lot more saving to the Department than an in-house cost would provide, you might bite my hand off. I was wondering whether you did any due diligence.

Richard Heaton: I cannot remember the sequencing, but I think it is clear that we let the contract before the profit warnings and the overt signs that Carillion was in trouble or was being badly run. We did not enter into contracts knowing those things; it was before those things happened. We ran a procurement process that was above board, and Carillion was the best bidder. They won several contracts.

Q71 **David Hanson:** They have not been able to deliver on them.

Richard Heaton: No, absolutely not. They failed catastrophically on our contract, as elsewhere, and we had to step in, but at the time of awarding the contracts I do not think that we, as a reasonable contractor, would have spotted that.

Q72 **David Hanson:** Can you talk me through what due diligence was done?

Richard Heaton: I cannot at the moment, but I can write to you. This would have been back in 2015, when the contracts were let. It was the first generation of outsourcing of prison maintenance. They were big, difficult contracts, with lots of hidden things that you only find when you let contracts on maintenance for the first time. I will have to write to you with the answer to your question.

Mike Driver: This may be broadening your question, so please stop me if you want. It is fair to say that, over recent years, the civil service has invested significantly in both commercial and contract management professionalism and expertise. The commercial function, led out of the Cabinet Office by Gareth Rhys Williams, has changed the whole nature of the way the commercial landscape is looked at.

In the MOJ, we have a much stronger, more capable and more confident commercial function today than we have ever had before. All our contracts are now managed by identified senior business owners. We are investing in contract management skills and capabilities, as well as in financial skills and capabilities. We are monitoring the effectiveness of our suppliers much better than we have ever done before, in terms of their performance and financial stability. We are also working closely with colleagues not just in the Department, but across the civil service and Whitehall, to look at the performance of contracts, where they touch public services in multiple ways.

Q73 **David Hanson:** I can accept that, Mr Driver, but last week we were at Birmingham prison. The management of the contract did not work there, did it?

Richard Heaton: No, it did not. That is why we had to step in and take over the management of Birmingham prison. I do not think either of us is saying that we have contractual partners out there who perform in every case. Clearly, that is not the case, but our ability to create decent contracts is stronger than it was previously.

Q74 **David Hanson:** To go back to Mr Charalambous's questions with regard to the community rehabilitation companies, what due diligence was done there? It is self-evident that there has been underbidding and failure of outcomes as regards what the contract was wanted for. Again, I am interested in the capability in your professional service to manage the awarding of those contracts and their management on an output-led basis, rather than on a cost basis, which is apparently what happened initially.

Richard Heaton: I do not sit here and disown the past. I would never do that, but Mr Driver is absolutely right; our capability for doing that now is much better than it was in 2010 to 2015. In addition, first-generation contracts are particularly difficult. CRCs were first generation, as were the Amey and Carillion contracts for prison maintenance.

I am confident in saying that we will know the market. First, we will not be creating one. We had to create a market in the CRC world. We will know the market better and we will have better due diligence and better contracts than we had in the first generation. I can say that with confidence.

Mike Driver: If it would help the Committee, I would be very happy to put together a short piece to show the procurement routes we go through to ensure that due diligence is taken into account.

Q75 **Chair:** That will be helpful. Within that, perhaps you can tell us what the resources are—how many commercial contract lawyers you have, what negotiators you have, and so on.

Mike Driver: Of course.

Chair: That would be helpful.

Q76 **David Hanson:** Can we turn away from that issue to the annual report? A number of other Departments, such as the DWP and the MOD, have been able to take a forward look at some of their expenditure issues. Last week, the Budget Red Book gave figures of £6.3 billion for this year's expenditure levels and £6 billion for next year's. I want to get a flavour of whether, at this stage, you can give some indication of what the plans are for next year, based on that £300 million expenditure reduction.

Mike Driver: In our annual report and accounts, at page 160 we set out our budget position in 2018-19. We show how that is broken down. The weakness of our return—if I could call it a weakness in this instance—is that what we set out for 2019-20 is only a forecast at this stage. As I was explaining to Ms Rimmer earlier, the reason we were unable to go through that detail is because we are still in detailed negotiations with the Treasury about not just the budget for this year, but the budget for next year. If I was to populate that column with the 2019-20 plan, I would just be writing numbers that would have no real substance for the Committee.

Q77 **David Hanson:** Just talk me through the Red Book from the Treasury. The figure under departmental resource budgets for this year is £6.3 billion and for next year it is £6 billion. That is in the Treasury Red Book for the Budget last week.

Mike Driver: Bear with me a moment. If you take 2018-19, our resource DEL position is £6.923 billion, which includes £590 million for non-cash. We know those budget numbers, absolutely.

Q78 **David Hanson:** Mr Driver, I am reading from the UK Government's Red Book, produced for the Budget last week, which says, "Departmental resource budgets: Justice, £6.3 billion 2018-19, £6 billion 2019-20." That is in the Treasury's Red Book.

Mike Driver: Yes, and that is the figure I have just given you. The fiscal resource number for 2018-19 that appeared in the main estimate is £6.333 billion.

Richard Heaton: It is not a newly announced cut.

Q79 **David Hanson:** I know. What is the management of that for next year? Other Departments, DWP and MOD, have set out spending plans in that format, as to what the management of the reduction is.

Richard Heaton: One of the difficulties we have is that we are forced to allocate budgets quite late in the cycle each year, for the reasons we have discussed, because our numbers are so tight; for example, TCEP was a decision we made very late in the planning process. Unhappily, we are not in the position of being able to tell you with complete confidence what our itemised spend will be in 2019-20, which is why the number is vacant. If we could plan with confidence, and say, "That is my planning budget," that column would be full of numbers, but it is not. We know the overall number. We know where the pressures will be. We have some savings, which will work through the system. We will contribute to our savings number, but we cannot tell you with certainty exactly where the savings will come from.

Q80 **David Hanson:** I appreciate that comment and I realise the financial difficulties and challenges you are faced with, but we are talking about April next year, which is four months away, at a time when there are the Brexit pressures we have talked about, and others such as income pressures and fee pressures. I just want to get a sense of it. If I were managing the prison estate, as Mr Spurr is currently, or if I was managing the CRC budgets, I would want to know what the definitive figures were for next year.

Richard Heaton: As I say, we cannot yet give those Executive agencies the definitive figures. We can give them an indication, and they have all had indications, but we cannot finalise any figures because the uncertainty is too great.

Q81 **David Hanson:** Earlier, I think Mr Driver said, on the spending review for spring 2019, "We are going to have a realistic plan." What does that mean?

Mike Driver: In what context?

Q82 **David Hanson:** The spending review for spring 2019. You said earlier that you were going to have a realistic plan for that spending review.

Mike Driver: The spending review has not been announced.

Q83 **David Hanson:** I know, but let's go back to the position we are in now. We are in a position where you cannot tell us what is going to be the spend next year in definitive terms, and there is a spending review that we are expecting to start in spring 2019.

Mike Driver: No, the first year of the spending review in resource terms will be 2020-21, and in capital terms it will be 2021-22.

Q84 **David Hanson:** But the spending review discussions will commence.

Mike Driver: We would expect spending review discussions with the Treasury to commence next year, and for those to be concluded ahead of the end of the financial year.

Q85 **David Hanson:** That is right. You said earlier this morning, Mr Driver—and I quote—that you want to put "realistic plans" to the Treasury. I am interested in what those realistic plans are, given the baseline you currently have and the difficulties you have in telling me and the Committee what your expenditure will be next year.

Mike Driver: That is what we are in discussion with the Treasury about at the moment. We recognise, as a non-protected organisation since 2010, that we are under significant strain. We made two significant assumptions as an organisation at the last spending review. One was that demand for our services would fall, and the other was that we could raise more income through charging. Both of those assumptions have proven to be wrong.

What we are doing at the moment is working through with the Treasury details of how we should reset our baseline as an organisation. As we have said to you before, there are some structural challenges that we face as an organisation, and in-year injections—going back to Ms Rimmer's point earlier—are not necessarily going to fix all of those. We need multi-year funding in order to deal with some of those issues.

Q86 **David Hanson:** In summary, you are putting your faith and trust in a recalibration of the baseline.

Mike Driver: No. We are putting our faith and trust into a very strong evidence base and a good discussion with the Treasury, so that we can set out to them in a logical and informed way the amount of money the organisation needs to operate and deliver its services.

Richard Heaton: I think Mr Hanson's adjusted baseline is absolutely part of it, as is, we would argue, a link between upstream investment and downstream costs, and a link between demand costs and our own budgets. We would argue strongly for capital budgets, because we need to renew our court estate and our prison estate. We would argue for a mechanism to avoid us being clobbered by the downstream impact of other Departments' spending settlements.

We know what we are going to ask for, and we want to persuade the Treasury that investing in those aspects of the justice system is good for citizens and good for public outcomes, and is good governance and good justice. We have to make the case though; it has to be evidence based, as Mr Driver said. Why do we need new prisons? Why do we need to invest in the courts? Why do we need to invest in court reform?

Those are the cases we are making to the Treasury. We hope that will result in a proper baseline and a decent multi-year settlement that we can live within and plan with confidence against. In that respect, we are better than in our last spending round, we hope.

Mike Driver: But we are still a non-protected Department at the moment.

Q87 **Chair:** Yes, I understand your problem. I appreciate, Mr Driver, that, as you said, you had made assumptions that demand for your services will fall. The principal cost that drives demand for your services is prison places. Given that the prison population has gone up year on year for a considerable amount of time, what on earth was the basis for the assumption that demand for services would fall? Was it based on fewer prisoners and fewer people going through the court system? Where did that come from?

Richard Heaton: It was way before our time, but, yes, I think there was an assumption that the prison population would be flat. Actually, it has not risen continually, but there was an assumption that a level of flatness would continue, and it did not. The long-term growth continued.

Q88 **David Hanson:** I am sorry to go back to a long time ago, but in 2009, when I was the Prisons Minister, we had a population plan for 96,000 by now; by 2012 and onwards.

Richard Heaton: Unfortunately, that planning assumption was not baked into our last spending round.

David Hanson: I appreciate that, but in 2009 it was baked in; it was baked out in 2010.

Q89 **Chair:** Just how realistic were those assumptions ever going to be? I understand the pressures you are under.

Richard Heaton: As it now looks, it is fundamentally unrealistic.

Q90 **Chair:** I appreciate that it was before your time, but it seems a bit optimistic, to say the least.

Richard Heaton: I cannot tell you exactly what led to those assumptions being included. Yes, it was unrealistic.

Q91 **Victoria Prentis:** The last time the Minister came before us, with you Mr Driver, he said that he did not feel he could project that the prison population would go down drastically. Do you think your current estimations for what is going to happen to the prison population are about right?

Richard Heaton: They are as robust as forecasts can be. They project a steady increase driven by, as I am sure you know, long-term sentences rather than short-term sentences. Unless something arrests the pattern of crime or the pattern of sentencing, which is, by and large, governed by statutory framework and individual decision making within that, the trend will continue. We are pretty confident that the long-term trend remains upwards unless there is an intervention to stop it.

Q92 **Victoria Prentis:** How granular is your modelling for that? For example, do you look at the costs for different sorts of prisoners—for example, sex offenders?

Richard Heaton: Yes. There is modelling to project the prison population, and then there is modelling of the downstream cost consequences. Yes, in the latter case, certainly.

Q93 **Chair:** I understand your point, and I think we all sympathise about the greater upstream and downstream costs and pressures. How do you envisage they will be captured more efficiently? What would you be looking to do around that?

Richard Heaton: One answer, which I do not think is realistic, would be to treat expenditure on legal aid as AME—managed expenditure. I do not think that would quite work. Mike might want to comment on other linkages we might argue for or seek to put in place.

Mike Driver: One of the things that is important for us as a downstream organisation is for upstream changes, for example, to the criminal justice system, to be properly impacted on a multi-year basis for the MOJ. We are getting much better at that, but, if police numbers are to increase, we would like to see the impact—through the CPS, the courts, prisons and probation at the end of that cycle—properly factored in.

Q94 **Chair:** Is there anything whereby you are able to capture potential upstream costs? For example, by increasing maximum sentences for certain types of criminal offence, you are likely to increase the prison population rather than decrease it. Are you involved in the consultations with the Home Office when it draws up prison policy, to say, "You may want to do this, but there will be a cost"?

Richard Heaton: Yes. When a Government Department seeks to do something that will have a downstream cost, there has to be a justice impact test, and we police that quite robustly.

Q95 **Chair:** You put it in the write-around.

Richard Heaton: Ministers habitually write around on that point.

Q96 **Chair:** With that background, which is helpful to us, we are looking at where you are with your risk assessment. You have a number of projects going on. There are about 11 projects in the MOJ's major projects portfolio. In September 2017, almost all of them were at amber or red. What is the current position? What is the movement since September 2017?

Richard Heaton: I will stop just short of revealing the current round, because, as you know, the Government position is to do it six months in arrears. The biggest one is prison estates building. The project there is fine and in good health in the following sense: they are very good at building prisons. I am absolutely confident that they will build the prisons that we commission the project to build, but they cannot plan with confidence because they had thought they were doing PF2, and they are now not. They were told that they had money for a second, public capitally-funded prison, but no pipeline thereafter. For that project to be truly healthy, we would have a decent pipeline with projected funding. With that reservation, I am fine with that contract.

I am proud of electronic monitoring. I sat in front of the Public Accounts Committee and had to explain a litany of delay and cost on that project. I am very pleased that the project has now come to fruition under an excellent leadership team, so that satellite tagging will be rolled out from November this year with completion at Easter next year. That is ahead of the timescale I gave the PAC. I am pleased with the way that has landed.

Similarly, one of our big in-house risk programmes was our technology. It was a programme known as FITS. That has now slimmed down but has delivered, so I am happy with that.

We cancelled TCEP, for the reasons we mentioned. HMCTS reform is our big multi-year delivery project on the court side, but that is ahead of schedule in its benefits. It is beginning to roll out some really exciting projects and beginning to engage with stakeholders. I am not complacent, because it is a very big and complicated project, but it is in good hands.

Q97 **Chair:** Let me deal with that one before we move on, and then we will come back to the others. There are a couple of things. It will require quite substantial behavioural change by court users. You say that you are dealing with the roll-out and so on. Are the pilots being done with court users on the reforms going to be fully evaluated before the roll-outs?

Richard Heaton: Yes. The HMCTS team tends to roll things out in an agile way—I do not know if you are familiar with that modern terminology. It means that, if you unleash a new digital service, you do not plan and plan and then suddenly unleash it and it falls over, which is the old-school way of doing these things. Programmes are rolled out in private beta and then public beta, and user testing is absolutely integral to getting it right. The answer is yes.

Q98 **Chair:** It happens almost as it goes along.

Richard Heaton: It is absolutely part of the design and build process. Engaging with legal stakeholders and other court users is really important. It was an area of weakness. It was certainly an area that the PAC pressed us hard on, but I hope that the team is engaging well with professional court users as well as lay court users; I would welcome any feedback that the Committee has. Yes, is my short answer. We are not complacent. That is absolutely part of the programme.

Q99 **Chair:** Have you made any changes to the programme as a result of the concerns that the Public Accounts Committee raised about the delivery of that particular programme?

Richard Heaton: I am absolutely sure that we will have done, because it was a very useful hearing and a very useful report. I cannot say which of the changes are attributable to the report. I can write to you about it.

Q100 **Chair:** That would be helpful, yes.

Richard Heaton: It was a helpful report.

Q101 **Chair:** It is sometimes useful for us to cross-reference with what has happened. You were helpfully going through progress on the other projects.

Richard Heaton: There are several programmes that are new to the portfolio since the last publication, so the next time you see it you will read about HMCTS's FM contracts, where clearly we have to learn the lessons of the prison FM exercise. You will hear about the youth justice programme. Prisoner escort and custody—PECS—is a renewal. Prison education has achieved a contract award. The probation programme is the other big one; it is the exercise to bring to an early end the CRC contracts and re-let them on a better basis for the second generation. That is a massive programme, but I am confident in its leadership; we are resourcing hard and putting in the right skills. We have to achieve a better set of contracts than last time around.

Q102 **Chair:** Are you still going to use payment by results?

Richard Heaton: I cannot say what precisely will replace that model.

Q103 **Chair:** But something better will be in place.

Richard Heaton: We have consulted on that, and I know that the Committee has very helpfully had an exchange with the Secretary of State.

Q104 **Chair:** I have a couple of other questions. Mr Charalambous touched earlier on the personal injury claim reforms in one respect. It depends really on creating the electronic platform for small claims. I am told that the objective was large-scale testing of that by October 2019. Is that still on track?

Richard Heaton: If that is what you have been told, I am confident that it is still on track, but could I check on that?

Q105 **Chair:** If you could check, I would be grateful. If you are able to come back to us, it would be very helpful.

The other point raised generally was the growth in litigants in person and the knock-on costs. You might make a saving in legal aid, but there are costs—in court time, for example. With HMCTS, do you have means or systems whereby perhaps you can measure the number of cases in which there are litigants in person appearing? Whether or not the parties were represented would be logged, and that would be a means of measuring the number of court days consumed by cases where the parties are represented as opposed to where the parties are unrepresented.

Mike Driver: HMCTS has some quite complicated models that deal with demand consequences, as you have just described. I could not tell you hand on heart whether it goes down to the level of the impact on litigants in person, but we would be happy to share the details of our modelling so that it is slightly more transparent for you.

Q106 **Chair:** I am grateful to you for that. That would be useful, and then we can go back to Ms Acland-Hood's team if there is any more we need. If you are able to share what you have, it would be useful.

On LASPO, the Minister of State came along and told us that the Secretary of State did not want to see it slipping into next year. Are we still on track to make sure that it does not slip into next year?

Richard Heaton: I am pretty sure that we are. I will get you an assured line on that. We remain committed to publishing the findings by the end of the year.

Chair: That is certainly what Minister Frazer told us; we just wanted to double-check that you are confident on that.

Q107 **Ms Rimmer:** Could you tell us if the criminal justice system exchange reprovisioning is up to date—the automated data transfer service between the key IT systems across the criminal justice system?

Mike Driver: That is the common platform. The programme continues to deliver, but we have to admit that progress is behind the business case expectations. A recovery plan has been agreed by the programme board, and the forecast for improving progress on that is up to date now.

Q108 **Ms Rimmer:** Is it up to date, or do you have a plan to get it up to date?

Mike Driver: We have adjusted our plans, and we are up to date against the revised plans, but that is slightly behind where the original business case would have taken us.

Q109 **Ms Rimmer:** How much longer is it going to take than originally planned?

Mike Driver: I do not know.

Q110 **Ms Rimmer:** Could you let us know that?

Mike Driver: Yes.

Q111 **Chair:** We talked about LASPO, and you are going to confirm whether you are on track with that. How does that timeframe affect your financial planning? There may be implications. Is it one of the big uncertainties?

Richard Heaton: That could be a cunning way to get me to reveal what is in the response to the LASPO review, which I am not in a position to do. I do not have it in front of me, and I do not think I would want to do that. I cannot answer because I cannot tell you what financial pressures there are.

Q112 **Chair:** One other thing where there is work in hand on the criminal justice front is the Attorney General's review of disclosure. I understand that the Secretary of State has indicated that he will reply to our report on disclosure in criminal cases.

Have you done any measurement of the impact of, say, upstream cuts in police and courts administration on things like justice, and the knock-on effects? You talk, very fairly, about upstream effects being borne in mind. The argument is that if there are failures in the disclosure system at the police station it ends in wasted costs for the courts, with adjournments and aborted cases. Is any work being done around Government to try to link those things?

Richard Heaton: There is. It is clearly not our lead.

Q113 **Chair:** I accept that it is not your lead.

Richard Heaton: I would go a little bit broader. The disclosure debate takes place in the context that there is so much electronic evidence deriving from so many sources. How that is processed, presented and dealt with in a Crown court jury setting is very difficult. It has consequences for us in how legal aid is administered and how courts are administered. We are a party in all those conversations, but I cannot give you figures on it.

Q114 **Chair:** I understand. The fact that you are a party is important. The courts reform programme is a major piece of work. Do you have any idea when the primary legislation is coming?

Richard Heaton: Some legislation is before the House: the Bill with the unpronounceable acronym—CATJFS. We hope to introduce further legislation when parliamentary time allows. I am sorry to use that phrase.

Q115 **Chair:** It is a phrase I have used myself in the past.

Richard Heaton: We would appreciate any support that Parliament can give.

Q116 **Chair:** I understand. You cannot do the thing in full without that primary legislation. You can do bits.

Richard Heaton: Correct. We cannot do it in its optimal sense, but we can get an awful lot done. The programme continues, and it is going to do some brilliant stuff, but it would be useful and neater to have legislation.

Q117 **David Hanson:** We will touch on this in more detail with other colleagues from the Justice Department at a later date, but I want to get a sense of where you think we are with HMP Birmingham, particularly in relation to the potential costs that may or may not be accrued by G4S for the remedial work currently being done by the Department. We visited last week and we saw a couple of wings out of use because of that, which obviously has a knock-on effect for the Department. We saw a lot of investment in upgrading work at HMP Birmingham. I just want to get a sense of what the relationship is with G4S and the Department, given the need to step in on this particular item, with potentially more cost to the Department.

Richard Heaton: There are two general things. First of all, it is fair to say that G4S runs some good prisons. It is not a provider that is universally bad by any means. Secondly, on bringing cells back into use in Birmingham, we need to do that across the estate. We have an underinvested-in prison estate, which is why the money from the Treasury in the Budget was so useful. We carry a lot of risk by having cells that can be taken out of use at the slightest incident, because we lose valuable accommodation.

Q118 **David Hanson:** Have you reached agreement with G4S on the liability for the costs?

Mike Driver: No, not yet. We are in ongoing discussions with G4S.

Q119 **David Hanson:** When do you expect those to conclude, Mr Driver?

Mike Driver: As soon as possible.

David Hanson: We will explore those in December.

Q120 **Ms Rimmer:** We went to Birmingham last week and what we saw was not nice, although a lot better than it was. It might be silly to ask, but how did it get into such a state of disrepair? When you are looking at your realistic budgets, will you be looking to put in a planned maintenance heading? Even if we get new prisons, they need to be maintained. It is much more efficient to have a planned maintenance programme so that we do not let things slip. Would you agree with that?

Richard Heaton: Yes, I would.

Q121 **Ms Rimmer:** Will you consider it?

Richard Heaton: Yes. It is one of the things we will argue very hard for in the spending round. We have two large estates—the courts estate and the prison estate—and I think it is fair to say that there is a backlog of maintenance in both. We have not invested at industry standard in the renewal and maintenance of those buildings. That brings risks of a different nature on both the court side and the prison side. On the prison side, they are very acute risks. There are risks of things happening and bad, unsanitary conditions and unsuitable prisons. In answer to your question, yes, we need a proper capital investment renewal programme.

Mike Driver: In 2015-16 we spent £131 million on capital and facilities management in public service prisons. In 2018-19 our budget is £275 million, so over that period we have been able to make choices that allowed us to invest in prisons, both in facilities management and, going back to Mr Charalambous's point, in GFSL. We have had to invest more in GFSL for facilities management. As a result of money that we put into prisons for safety and security, and the 10 prisons project in particular, we are investing more there.

Going back to your earlier question about the £30 million announced in the Budget, some of that money will be in addition to the £275 million, so we should be able to invest more. When I was in front of the Committee in June, I said that one of the things we had to deal with was the backlog of works within prisons, and we had to bring prison cells, and prisons more generally, into better condition.

Q122 **Ms Rimmer:** Yes. I am looking for a planned maintenance programme heading in the MOJ budget for the future. Would you agree that, every year, we should have planned maintenance and that we do not wait until the windows fall out before we replace them? We should maintain them so that the windows do not fall out.

Mike Driver: If the right person from HMPPS was here today, they would be able to give you a detailed list of all maintenance that is planned to take place in this financial year using the budget we have. It is not something that we are not addressing. We are developing asset plans and maintenance plans as an organisation. We are investing more to make a difference with public money.

Richard Heaton: I do not think we are disagreeing. We have always had a maintenance plan in prisons. It is just that it has been underfunded. We have always had a maintenance plan.

Q123 **Chair:** It has been underfunded.

Richard Heaton: We have always had a maintenance plan in prisons, but it has been underfunded.

Q124 **Ms Rimmer:** Has that maintenance plan been sufficient, inasmuch as we had Birmingham and Liverpool in the state they were?

Richard Heaton: No.

Q125 **Ms Rimmer:** Are you looking to get a more realistic maintenance plan that maintains the MOJ assets and does not wait for the crumbling?

Richard Heaton: Yes, we are.

Mike Driver: Yes. We are seeking to inject more money.

Q126 **Victoria Prentis:** The other buildings you have that are falling down, of course, are court buildings. Do you think that has an effect on the judicial recruitment crisis?

Richard Heaton: I accept your premise. As on the prison side, as I mentioned earlier, the courts buildings also have a backlog of maintenance, and it is a large one. The feedback we get from court users and the judiciary, and from our own staff to some extent, is that that contributes to a lack of confidence or morale. Whether it is directly attributable to judicial recruitment I would not like to say, but certainly it does not help judicial morale to have an estate that is underinvested in. The Lord Chief Justice and his predecessor said as much. I agree with your central position. We need to invest more money in courts maintenance, which is why, again, the money in the Budget was a helpful recognition that it is an issue.

Q127 **Victoria Prentis:** It was a helpful recognition, but it will not really scratch the surface, will it?

Richard Heaton: It will do some things that are morale enhancing. If you are sitting or working in a court and something has been unrepaired for years and then it is fixed, that is quite helpful. But you are absolutely right; it does not address the fundamental backlog in repairs or renewals.

Q128 **Victoria Prentis:** The big elephant in the room for judicial recruitment is always pensions. Has any change at all been factored into your financial planning?

Richard Heaton: Again, I do not want by that means to indicate what any outcome might be. We have had a Senior Salaries Review Body report that evidences the need for us to address remuneration. The Government are currently considering our response to that report, absolutely recognising the diagnosis and the evidence that it compellingly presents. What shape the final settlement takes is yet to be decided.

Q129 **Chair:** We are nearly at the end, and I am grateful to you for your answers. Looking at the analysis we have had of some of your arm's length bodies spend, it struck me that you have increased the spending on the Judicial Appointments Commission, for example, because of the pressures of getting good people.

Richard Heaton: And because of the volume of recruitment.

Chair: Which is not happening. It is going to grow, with a number of senior judicial appointments falling vacant in the coming year.

Richard Heaton: Yes, it is a large workload.

Q130 **Chair:** There is a 36% reduction in the net funding to the Youth Justice Board, which might seem surprising on the face of it. Would you like to explain how that comes about? If it helps you, the net in 2015-16 was £164.546 million. Then it goes down to £104 million.

Richard Heaton: I want to consult colleagues on that. It may be transferred responsibility for directly running the estate.

Q131 **Chair:** Is it transfers?

Mike Driver: Yes, I think it is a transfer between HMPPS and the Youth Justice Board.

Richard Heaton: The Youth Justice Board used to directly commission places, and now it does not. I think it may be that.

Q132 **Chair:** It is a difference in the commissioning.

Mike Driver: I think it is just where the money is pointed.

Q133 **Chair:** I think an observer might want some reassurance about that.

Richard Heaton: If we are not right, we will write to you.

Q134 **Chair:** Perhaps you could write to clarify, but your assumption is that it is a transfer rather than a reduction.

Richard Heaton: The YOT—youth offending team—grant this year remains unchanged.

Mike Driver: It does.

Q135 **Chair:** That is very helpful. Mr Heaton and Mr Driver, thank you very much for your time and for being frank with answers on difficult issues. On a positive note, I accept that there is work being done, and that it is progressive and will have good results in the Department. We appreciate what your officials are doing within the constraints. Equally, you will understand why we need to probe on some matters.

Richard Heaton: It is essential scrutiny, yes.

Q136 **Chair:** On a final note, I notice that your annual report and accounts gained a PWC building public trust award, which I gather is jointly sponsored with the National Audit Office. Well done.

Richard Heaton: That is a tribute to Mike and the team sitting behind him. It is the second year we have gone for it, and we beat all-comers. We tried to make the report transparent and readable, and to bring to life the issues we face. I am very proud of the team.

Chair: We can end on that positive note. Thank you very much for your time and for your evidence, gentlemen. The session is concluded.