

Justice Committee

Oral evidence: [Prison governance](#), HC 2128

Tuesday 18 June 2019

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

Questions 1 - 138

Witnesses

[I](#): Andrea Albutt, President, Prison Governors Association; and Frances Crook, Chief Executive, Howard League.

[II](#): Janine McDowell, Chief Executive Officer, Justice Services, Sodexo; Wyn Jones, Custodial Operations Director, Serco; Neil Richards, Director of Custodial Contracts, Her Majesty's Prison and Probation Service; and Mark Brickell, Deputy Director, Ministry of Justice.

Examination of witnesses

Witnesses: Andrea Albutt and Frances Crook.

Chair: Good morning, ladies. Welcome to our session. We will turn to the evidence shortly, but we always 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 should also say that Frances is the secretariat for an APPG, with which I am very involved, on women in the penal system. On that note, we would both like to ask you to come to our party tonight, celebrating 10 years of the APPG, at 6.30 in the Home Room.

Chair: That is certainly the earliest plug for anything on the Select Committee today. Are there any other declarations?

Andy Slaughter: I am a non-practising barrister.

Ellie Reeves: I am a non-practising barrister.

Bambos Charalambous: I am a non-practising solicitor.

Q1 **Chair:** Can I ask our witnesses to introduce themselves and their organisation for the record? We can then get into the questions.

Andrea Albutt: I am Andrea Albutt, president of the Prison Governors Association.

Frances Crook: I am Frances Crook, chief executive of the Howard League for Penal Reform.

Q2 **Chair:** Andrea, you represent an organisation of leaders in the Prison Service. We all know the importance of leadership. We have this governor empowerment agenda, which the Ministry has made much of. From what your members feel and from your own experience in the matter, does it actually enable you and your members to make real change, or is it largely cosmetic?

Andrea Albutt: We no longer use the term “empowerment”. We use the term “freedoms”—freedoms for governors. That probably says a lot about the empowerment agenda.

Q3 **Chair:** It is a bit of a downgrade from empowerment, isn’t it?

Andrea Albutt: Yes, I would say so. What do our members feel? I think we need to park empowerment, because we do not really deal with that.

Q4 **Chair:** That is not what you have, is it?

Andrea Albutt: That is not what we have—exactly. In a really poorly resourced organisation like HMPPS, the freedom you have is incredibly limited. In the budget of a prison, 85% will be for staff costs, and the rest will be for the running of the prison, basically. There is not a lot left to be



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free and innovative with. If you are lucky enough to get a small sum of money, that is probably the only chance you have to show true freedom.

The White Paper said that governors would be able to decide their staffing structure. That is not the case. We have fairly rigid staffing structures because of equal pay claims. You have what you've got to deliver in a prison. You cannot be innovative or different, even in your staffing structure. That is just one example.

Q5 Chair: Why do equal pay claims have that impact on the rigidity of the staffing structure? People may be surprised at that.

Andrea Albutt: A number of years ago, there was a significant payout to non-operational staff, who were paid significantly less than operational staff. Now all job descriptions have to be job evaluated. They are given a certain weighting, and that weighting means that they are given a certain pay band. That is how we have to work.

In a complex and diverse prison like Bristol, you have to have a band 11 governor and a band 9 deputy governor. Your functional heads will be band 8s. Your prison officers have different bandings. You have to stay within that. If you want to do a different, innovative job, it has to be written and job evaluated, and given a score and a pay band. That makes things quite difficult.

Q6 Chair: How long does it take you to get anything like that through?

Andrea Albutt: Quite a long time. You would be talking a few months.

Q7 Chair: I understand. When the White Paper came out, I saw one example that suggested that governors might choose to use their resource budget to pay for increased dedicated police officer time, to reduce criminal activity in prison and to improve safety. Has anybody done that?

Andrea Albutt: No.

Q8 Chair: What on earth is it supposed to mean?

Andrea Albutt: You do not have that within your budget.

Q9 Chair: No. It is not in the budget.

Andrea Albutt: The benchmark budget is to run your prison. You do not have money in your budget to pay for somebody external.

Q10 Chair: That was something in the White Paper that never actually happened.

Andrea Albutt: No.

Frances Crook: Can I give you an example of how crazy the system is? Not long ago, I visited a prison that was struggling. The governor is very good. He wanted to encourage staff to participate in what was going on, and to support staff he set up a breakfast club, so that staff could come in early, have a cup of tea and a piece of toast together and socialise. It



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was free. He was told he could not do that because it was a taxable benefit, even though it was only costing £9 a year per officer. What he found as a result of bringing his staff together like that and making them feel valued was that the number of restraints had gone down and conflict had gone down in the prison, because staff were feeling valued.

The headquarters said that he could not do that. What he did, which I think is genius, as a way around all of that, was to use the budget he has for rewarding individual staff members. He rewarded an individual staff member, who gave the budget back so that he could have the breakfast club. That is not freedom, nor is it empowerment; it is nonsense. It is the heavy hand of the central control that goes on and does not allow governors to be flexible and to support staff, which then has a benefit effect across the whole prison.

Q11 **Chair:** That is helpful. It is a very good example. The other thing we picked up is this. Andrea, you said that there are issues around the bureaucracy involved. What about procuring equipment? We have heard things about long delays. There are an awful lot of hoops to jump through to get things like drug scanners.

Andrea Albutt: Yes. Procurement has always been a testy issue for prison governors. We can talk about scanners. We are really struggling to procure scanners to reduce the level of drugs coming into our prisons. We are having to piggyback on the UKBA contract. They are buying extra body scanners that we will purchase from them, because we do not yet have a procurement system in place to get them.

Q12 **Chair:** You have to go to BAM.

Andrea Albutt: To UKBA.

Q13 **Chair:** You have to go to UKBA, to buy from them, rather than buy directly. What explanation do you get from the centre when you query why you have to take that bizarre route?

Andrea Albutt: I don't know. When you ask questions like that, you never really get a sensible answer from them. It just seems to be that it is very difficult to do. It is the whole thing about contracts. Prisons still struggle to get kit. With the central contracts, you cannot get kit into prisons. You need to purchase new furniture for prison cells, but six or seven months down the road you still do not have it.

Q14 **Chair:** That has just come out in the urgent notice for Bristol.

Andrea Albutt: Yes. Things have not improved as you would want. It is still not responsive to the needs of prisons.

Q15 **Chair:** For context, the prison has been in special measures, yet it has taken months to get new furniture. It has still not happened.

Andrea Albutt: Yes. The prison had been in special measures for two years, yet it still got a UN.



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Q16 **Chair:** What about capital budgets? Do you have any scope at all around capital budgets? If so, what?

Andrea Albutt: We have very little scope around capital budgets. I am sure you are aware that capital funding for prisons is fairly dire. In order just to stabilise prison assets, we need £500 million every year for a decade. Currently, in this financial year, we have only £100 million committed. Capital is dire.

Q17 **Chair:** I see. We have been told of examples of governors having to go through the exercise of getting approval. There is limited authority to authorise capital expenditure, isn't there?

Andrea Albutt: Yes. It is very limited.

Q18 **Chair:** By the time you have done it, you are told that there is no money left to pay for it. Is that a common occurrence?

Andrea Albutt: Yes, it is common, or you have gone past year end and the money has gone.

Chair: The approval has not been dealt with in the course of the year. You put it in in time, but the process at headquarters means that year end has run out and you cannot get it.

Q19 **Victoria Prentis:** I want to ask about the oversight regime in prisons at the moment and how well you think it is working. Slightly in the context of what we have just heard about both HMP Bristol and HMP Birmingham, do you feel that it has sufficient teeth?

Frances Crook: There are two sides to that. There is a lot of scrutiny of what prisons do and what they should do. There are the IMBs, the inspectorate and all sorts of people. There are audits. Everybody is looking at what you should do. My argument is that there is not a higher level of scrutiny, which is about the ethical oversight.

I work in the voluntary sector, in a charity. I have scrutiny that I conform to—the Legal Aid Agency, the Charity Commission and all of that—and I have executive authority. Above that, I have a board of trustees. They oversee the strategic role and responsibility of the charity. They scrutinise the ethics of what we do and good practice. They do landscape scanning— what is good practice?

There seems to be a layer missing in prisons. It is interesting that, in policing, that is being put more into place. The College of Policing is performing that kind of role. It is very similar to the BMA or something like that, but it has not happened in prisons. Prisons are operating with lots of operational scrutiny, but in pretty much the same way as they have for 100 years. There is no ethical scrutiny—the governance side. There is a lot of scrutiny of governing, but not of governance, and I think there is a layer missing.

Q20 **Victoria Prentis:** Andrea, do you agree?



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Andrea Albutt: I do not know. I would have to think about it a bit longer before answering that question.

Frances Crook: Let's talk about it outside later.

Andrea Albutt: At a practical level, prison governors feel that they are under more scrutiny than ever. Prisons have been in a bad place for a long time, so the answer is, "Let's scrutinise and assure more," which is absolutely what they do. We have built a big factory of assurance above prisons, but in prisons they feel they are spending more time assuring than actually governing. It has become a real monster to feed. That is what governors report to us.

The fact is that they are giving assurance. In many of our prisons, they are giving assurance that they are not able to deliver, but there is no resource to make things better. If assurance was saying that Bristol was not performing well, Bristol should have got funding to make Bristol work better, and then it would not be in a UN. When there are 16, 17, probably more, prisons of concern and there is no more money, what little bit of money there is—we got a little bit of resource in Liverpool to make it better—is spread so thinly that it does not make a difference.

Q21 **Victoria Prentis:** We have seen that. The Committee was distressed to see that HMP Birmingham had not got the full body scanner that it requested, for example, which would make life so much easier in drug finding. The Ministry gave a fairly positive response to our long report and committed to developing performance measures that are a bit different, such as time out of cell, which I have always been very keen on. Is that something you would welcome?

Frances Crook: Yes. Locking people up for 23 hours a day in a stinking cell with a toilet and somebody they do not particularly like is not helpful to anybody. It is not helpful to those people, it is not helpful to staff, it is not helpful to their victims and it is not helpful when they are released back into the community, probably homeless.

Q22 **Victoria Prentis:** I couldn't agree more. What type of other specific measures should we be measuring that we are not at the moment?

Frances Crook: That is why I come back to the governance and ethical side. We need evidence about what works and does not work, and why doing something like that is not helpful. There is quite a lot of research that goes on in prisons, but there is not that sort of scrutiny across them. Locking a child or an adult in a cell for a long time is not a good thing to do. We need scrutiny of that in a different way. There is a lot of scrutiny; you have to do things right. You have to do what you are told and do it right, but there is not scrutiny about doing the right thing. What prisons are doing at the moment is not the right thing. The prison system and prisons should be held accountable for doing the right thing, and they need a body to criticise that.

Q23 **Victoria Prentis:** Do you think we could do that within the system, but



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at director level in HMPPS?

Frances Crook: I think you need outside scrutiny for it. You need a college, or something that would look at the penal system. I know that the Minister, who gave evidence to you last week—I was here listening to him and it was very interesting—has talked about setting up a college for the probation service. That is a great idea, but I think you should do it for prisons, too, very like the College of Policing for the police, which has been a force for good. It quickly established itself as a critical friend—a source of research and ideas. Something like that for prisons would be helpful at national level, but there should be a board at local level, too.

Q24 **Victoria Prentis:** I thought that is what the Howard League was. Andrea, would you like to add something?

Andrea Albutt: I have a slightly different view. I think the performance measures that we have are the right performance measures, because I think they deliver. If we could achieve them, we would deliver really good outcomes for prisoners. The fact is that we are not resourced to deliver them in lots of our prisons. You can have as many targets as you want, but, if the money is not there to deliver them, they are pointless targets.

Q25 **Victoria Prentis:** Do you think there are enough specific performance measures for decency and health, for example?

Andrea Albutt: Let us look at all the performance targets. You have HMPPS, MQPL—managing the quality of prison life—staff quality of life, HMIP and the PPO; there are loads of people who do that. There are hard targets and soft targets. If we were resourced to deliver all those things, we would have really good outcomes for prisoners. You can put in more scrutiny, more targets and more specific targets, but the outcomes will still not be achieved if you are not resourced.

Frances Crook: I do not want to give you more targets or more work.

Andrea Albutt: Thanks, Frances.

Frances Crook: There are two things. First, prisons cannot achieve what they are expected to achieve when there are so many people in them. You can pull in more resources, but it still will not solve the problem. We are finding that. There are more staff going in, but it is not solving the problem. It is creating more problems, in a sense. You have to get the number of prisoners down.

Secondly, the idea I keep pushing for—some kind of oversight—is not just for the prisoners. It is to give leadership for staff, so that they can understand what they are doing and why they are doing it, and for the public. We need a champion for what prisons are meant to be doing, and why they are meant to be doing it, for the public, too. That is what the College of Policing, the BMA and other organisations do. They are the ethical interface between the public role of the public service and the actual delivery. At the moment, there is not that halfway stage.



Chair: That is helpful.

Q26 **David Hanson:** Looking at urgent notifications, we have had notifications for Nottingham, Exeter, Birmingham, Bedford and, recently, Bristol as poorly performing prisons. Andrea, I am particularly interested in why we have got to that stage. What support do governors need for them not to get to that stage? The inspector of prisons is giving urgent notifications because the system has failed. I am interested in what the arrangements are to identify poorly performing prisons, to make sure that they do not get urgent notifications in the first place.

Andrea Albutt: It is interesting that all the prisons that have gone into urgent notification are Victorian category B local prisons. They are at the front end and have people coming into the prison from the community, with all their issues. They are high-churn, volatile and probably our most difficult prisons, and they are probably poorly resourced to meet the needs of those individuals. It is important that that is said.

Identifying poorly performing prisons is fairly obvious. In HMPPS, it will be prisons that, on the performance metrics, are struggling. They will have poor previous HMIPs, a pattern of poor HMIPs or high sick rates—the usual things. That is how they identify them as prisons of concern. We have a list of prisons of concern. It is at that point that prisons go on to performance improvement.

Q27 **David Hanson:** Ultimately, in some cases, governors of poorly performing prisons have paid with their jobs. I want to get a sense of whether, from your perspective, on behalf of governors, there is sufficient support in place to ensure that those problems are identified early, plans are put in place and governors are given support to turn them around, before it gets to the public notification stage.

Andrea Albutt: We will use Bristol as an example. Bristol was identified as a prison with issues and put into special measures two years prior to the recent inspection. In those two years, Bristol should have been given all the support it needed to show improvements, so that when HMIP returned it would be better than it was the previous time. It was not.

That begs the question around special measures. Are special measures delivering? They certainly are not in Bristol's case. I am not necessarily blaming HMPPS for that. Bristol is now the fifth prison in urgent measures, and, as I said previously, if there is no money and you are robbing Peter to pay Paul, the impact you are going to have on making a very challenging prison like Bristol better will be minimal. That is clearly what has happened.

Q28 **David Hanson:** The 10 prisons project was put in place by the former Minister, Rory Stewart. Can you give me an assessment of that and whether or not it is the type of measure that turns around poorly performing prisons? If it is not, what measures do you need to turn around poorly performing prisons?



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Andrea Albutt: It is important to say that, for the 10 prisons project, they did not pick the 10 worst prisons in the country. I am not saying that they were not challenging prisons, but they were not the 10 worst prisons in the country.

From a PGA perspective, we have asked time and again for data on what has worked in the 10 prisons project. We are unable to get a sense of what has worked, because the monitoring of the improvements in the 10 prisons project is really unsophisticated. We were hopeful that whatever happened and what worked in the 10 prisons project would be the basis for a business case for the next spending review, but it does not appear to the PGA that we know exactly what has worked there to make things better.

From our perspective, one of the most important things in trying to stabilise our prisons is to do something that prevents illicit items coming through the gate. Based on HMPPS data, that is where most illicit items come through. We need some technology and some kit right at the front door of our prisons to try to prevent stuff coming in. That has been put in at some of the 10 prisons, and we want to know whether it is working.

Q29 **David Hanson:** In our inquiry, we are looking at prison governors and prison governance. Given the devolved aspiration of Government to provide lots of additional support to governors to enable them to deliver locally, our question is, if there is a poorly performing prison, what is the mechanism between governor, regional management, national management and, in private sector prisons, controllers and others to make sure that you are not just carrying the can and that you have some flexibility to make improvements?

Andrea Albutt: There isn't flexibility in the budget. If I, as a governor, decided that I needed technology at the front of my prison, I would not have the money in my budget to do that. I would have to put a business case, through my prison group director, asking for more money to do that. Whether or not that business case was agreed, the prison group director would not necessarily have the resource to pay for it either, so it would then have to be escalated higher.

Q30 **David Hanson:** It is responsibility without real power.

Andrea Albutt: Yes. The budget a governor has is basically to run the prison, and not much else.

Q31 **David Hanson:** You mentioned sharing good practice and that we are not measuring what, if anything, made a difference in the 10 prison project. What mechanisms do you think there are to ensure that we share and replicate good practice, so that if something is going well under the governor in Bristol it might be replicated in another local prison elsewhere? What mechanisms are there for that?

Andrea Albutt: I do not know what specific mechanisms are in place, but I would be hopeful that a prison group director with four prisons



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would be able to see what good practice was going on in their prisons and that, in their relationships and partnerships with other prison group directors, there would be dialogue: "We are doing a really good piece of work here in Bristol. What about you over there in London, at Wandsworth? I think it could be replicated there."

Q32 David Hanson: That strikes me again as 100-plus islands floating around the country, where governors have responsibility but no power, and they are exchanging information through your organisation or through personal contact. Is there no overarching—

Andrea Albutt: Is there a formal strategy for doing it? I would say not.

Frances Crook: That is exactly what I am talking about. You need a base to share knowledge, and to commission and to share research. You need some body that will share, rather than just keeping on with custom and practice. You need a body that will look at education, quality requirements, standards and what works. There is not that independent, critical-friend overview at the moment.

You have asked some important questions. In the prisons that are in special measures of one kind or another—Liverpool, Bedford and Birmingham—when it came to public notice how poor things were, sometimes there was a governor change and sometimes not, but it tended to be a political face-saving exercise. What they did was reduce the number of prisoners, quite dramatically, and that made the difference. That is what made the difference. Having more resources and more staff made a bit of a difference, but in Liverpool the number was down by about third. Of course, what they do is take people out and put them somewhere else. They do not suddenly disappear. That causes problems across the system, because people have been moved when they did not want to be moved; they are Scousers, and they do not want to go to Bedford. That causes real problems.

You asked about governor empowerment or freedom. It is possible, but, because governors have had so little freedom or empowerment for years, few of them are willing to take those kinds of risks. They know that they will not be supported. Very few will take risks. Not long ago, there was a prison with young adults in it. I think it was the first prison where the inspectorate published photographs, with stinking toilets and dilapidated windows. It was in a terrible state. They put in a new governor, who did exactly what I said. He reduced the numbers dramatically—he also sacked some staff—busted the budget, repaired the place and spent all the money. He went well outside his authority, and the place really improved. The prisoners had something to do all day. They were out of their cells and being purposeful, not just milling about out of their cells.

The place improved. He moved on, and it is back to where it was before. The numbers have been crowded again. The eye of Mordor has moved on, in a sense, and it just collapses.



- Q33 **David Hanson:** My final question is to do with activities with the local community and the voluntary sector. How much flexibility do your members have in undertaking outreach work, with local commissioning of services in the local community and the voluntary sector? Is there any further support that you think your members need in order to make that more effective?

Andrea Albutt: Once again, it comes down to resource—whether or not they have the resource to do that. There is innovative practice out there, but it is hit and miss, because they do not have the freedom around their budgets to do that.

- Q34 **Ms Marie Rimmer:** Can we look at the commissioning of services? The White Paper emphasised the need for a whole prison approach to managing healthcare and committed to enabling governors. How far do you think that that has actually happened?

There are five bodies implicated in the national partnership agreement for healthcare: the MOJ, HMPPS, Public Health England, the Department of Health and Social Care, and NHS England. Governors tell us that they feel they have had as little as 2% influence on what they commission. In fact, things have been commissioned against their recommendations. What do you have to say to that, Andrea?

Andrea Albutt: It is quite interesting that the White Paper refers to governors becoming core commissioners of health. That is wholly untrue. They are not core commissioners. They do not hold the budget. If they do not hold the budget, how can they be commissioners? They just remain influencers.

Our members have reported back to us that, in some cases, commissioners are not particularly transparent about the budget. What is the budget to deliver healthcare in prison X? They do not know. They do not know what the spend is against that budget. What they tell us is that, given the needs of the population, there is a provision gap; as you know, we have an older population, with a lot of mental health issues. They do not know whether the provision gap is down to decisions by the NHS commissioner or whether, in fact, there is insufficient budget for the needs of the prison. I think that using the term “core commissioner” is incorrect.

- Q35 **Ms Marie Rimmer:** Frances, do you agree entirely with Andrea?

Frances Crook: Yes. I think that she made a very strong case.

- Q36 **Ms Marie Rimmer:** That gave us the situation that, when there was a massive increase in the number of historical sex offenders going in, there was no increase in the health budget, but there was a switch. Governors said that it went from drugs to sexual offences without any money.

Frances Crook: But that was not a great success; it did not work well.

- Q37 **Ms Marie Rimmer:** There was £2 million for education as well.



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Governors felt that control of facilities management in prisons in particular was a problem. What could be done to improve it?

Andrea Albutt: To improve facilities management?

Chair: The control they have over it.

Andrea Albutt: Governors have only so much control; it is more about influence over central contracts. Again, it is about using leadership skill and the ability to build up strong partnerships with people to try to make things work, but the state of facilities management contracts has been well documented in the media. There is insufficient budget, and our prisons are suffering the consequences.

Frances Crook: The Carillion and Amey fiasco was a complete disaster for prisons. I was in Pentonville recently. They were meant to have a new kitchen developed for training, but it is just sitting as a derelict building. There is not much in Pentonville anyway. That is a disaster because prisoners like to learn to cook, and they have a voluntary cooking thing going on there. It is an absolute disaster and a shambles.

Q38 **Ms Marie Rimmer:** Dame Sally, in her report “Unlocking Potential”, talked about the lack of ability for change because contracts had largely gone to the same four providers that had previously had them, but they covered much larger geographical areas. She expressed concern about the lack of influence they could have. How do you think we could help prisoners learn the basics of life—education, healthcare and cooking, as you say?

Frances Crook: I feel very uncomfortable. Education is incredibly important for everybody—prisoners and the rest of us. I started life as a teacher. I am passionate about education, but we have to be very careful about not sending people to prison to get an education. It should be something that happens, not an aim.

Prison education ought to be, and used to be, a central part of life in prison, but I do not think prisons and the Prison Service have caught up with the changes in the population. They are still obsessed with the basic three Rs, whereas the population has changed. Twenty years ago, 75% to 80% of prisoners had the literacy and numeracy levels of seven-year-olds. That is no longer true. Quite a lot of prisoners who have committed sex offences are very well educated. The population has changed, and we need a more subtle and clever response to educational needs and the provision of education in prisons. That means governors having the autonomy, power and budget to be quick in response to the changing needs of their population, and allowing for creative education.

One of the most important things you can do is be creative, and prisons stifle creativity. Being able to do art, photography and music—all those sorts of things—is just as important as doing the three Rs. As a former literacy teacher myself, I know that you can teach people to read and write through the arts, so you need creativity and a budget, but that



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requires facilities, empowerment of governors—I'm going to use that expression; I don't care—and budgets. However, as I am going to keep saying, with too many people in prison you cannot do it; it is not possible. It is a vision of a world that cannot happen until we reduce numbers.

Andrea Albutt: It is important to mention the new education contract that started in April this year. The purpose of it was to realign budgets. Under the OLASS contract, there was not a budget that reflected the needs of the population. The new contracts were with governors who were empowered—probably one case where you can use the word “empowered”—to decide what to put into their prisons, but there is conflict. For example, HMP Styal relies incredibly heavily, which may well be wrong, on education provision to deliver activity places because it does not have workshops and things like that, but, because the new contracts are about reflecting the needs of the population, they have had a 40% cut in their education budget, which means a significant impact on their purposeful activity places.

I am not saying that education budgets should be funding activity places in their entirety in a prison, but that is where the conflict arises. There will be an impact on the women in Styal prison. With these new contracts, there will be winners and losers, and Styal is an example of a loser in the realignment of budgets.

Ms Marie Rimmer: Is there anything else either of you would like to say about facilities, budgets and health education? From what you are saying, it should be local finance, empowerment and numbers.

Q39 **Bambos Charalambous:** In the White Paper, the Government noted that empowering governors meant a “significant change in the way we expect our governors and senior managers to work.” When we spoke to focus groups and governors a few weeks ago, they highlighted the difference between a governor and a deputy governor. They said that one was broadly operational and the other was about strategic leadership and accountability. Do you think governors have received the necessary training and support to build the more strategic elements of their role, such as commissioning services and managing finances? Has the training kept pace with the new roles and the expertise they have available for that?

Andrea Albutt: It is important to say that governors have been woefully underinvested in during the period of austerity, so they have not necessarily had the kind of development they need. In governing a prison, governors need the services of competent people around them as well. Governors might not necessarily be experts in contract management, but they need access to people who are. Governors are not necessarily accountants, but they need access to people who are. They need knowledge of and access to the services that help run their prisons. With the functional leadership model, where HR, finance, estates and various things have gone into the Ministry of Justice, it is early days, but



governors are already reporting that they are not getting the service they need to be leaders of the prisons of the future.

Q40 Bambos Charalambous: They are having difficulty acquiring the skillset needed to run prisons.

Andrea Albutt: Yes, or a responsive service.

Frances Crook: I have been doing this for a long time, but I started when I was very young. I have seen real changes in governors and the kind of people they are. One of the important things that has happened, which we were talking about outside in the corridor, is the number of women coming in. The critical mass of women coming into the service has changed things, and that is very helpful and positive. There are still not enough minority, BME, governors, and that is a real issue because of the population. Therefore, at the highest level there is a lack of understanding, and a lack of skill in understanding what the issues are.

You can have all the training, which is fine, and you can have the support networks of people with other skills, but one of my other bugbears is that I do not think people stay long enough when they want to. Sometimes people want to move for career reasons, and they do, but they should have more autonomy and say as to where they go. People should stay longer, and there should be a handover. It is horrific when a prison has a governor with a stable team for five years, and suddenly they are parachuted somewhere else and three or four months go by with no leadership and somebody is acting up. They know they will not stay, so they will not do anything, and then somebody else is dumped in without a handover period. Those sorts of things would not happen in industry or anywhere else. Bad leadership at the top allows that to happen.

Andrea Albutt: I agree wholeheartedly with Frances. The only thing I would say is that, if you are governing a difficult and challenging prison, five years in that difficult and challenging prison, where you are just firefighting day after day, is a tall ask for some people. The wellbeing of governors needs to be paramount as well.

Q41 Bambos Charalambous: Frances, you referred to the diverse prison population, which was raised in our "Prison population 2022" report. Many prisoners have complex mental health and social needs, and that is also an issue that governors need to deal with. Do you think prison governors have the skill and support they need to meet the complex needs of prisoners?

Frances Crook: I hope they do, and I hope they have the medical, psychiatric and other support they need, but I do not think that is true; there has been lack of support. You are right that many prisons face challenging problems with people who are dumped by other services and dumped by the rest of society. Prisons are full of people we find annoying and do not like, and they are very challenging—a bit like the House of Commons.



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We are asking governors and staff to do a very complicated job. One of the things that is happening, and which I welcome, is the introduction of Unlocked Graduates. We at the Howard League have always said that being a prison officer is a very skilled job and it should be properly qualified, like a nurse. I would not want somebody who had just walked in and had a few weeks' training to give me an injection; I would not want someone who had just had a few weeks' training, having walked in off the street, to open a cell door if somebody is trying to take their own life, or all sorts of other problems. It is the whole structure of the pyramid that is not functioning well at the moment. It needs radical change from top to bottom, not just governors and governance.

Andrea Albutt: I agree. There is movement in governor grades. There is a review of assessments. One of the issues is that people from BME backgrounds do not even bother to apply for the assessment process to enter junior governor grades, to become a governor. We need to look at why that is the case. Part of the review is to see why people are not even putting themselves forward to apply for the accreditation.

Q42 **Victoria Prentis:** Is there mentoring specifically to encourage people to apply?

Andrea Albutt: No, there isn't a formal mentoring process, but at least it has been acknowledged and they are doing a review.

Chair: But nothing in any formal sense.

Q43 **Andy Slaughter:** To pursue the point on governor recruitment, how does it happen in practice? We have seen a big turnover of governors. The figure we have is that 52 establishments have had four or more governors since 2010. That is a huge turnover. I assume that most recruitment comes through the system and there is very little entry from outside. What do you do if you have a governor vacancy, particularly at a prison that is failing or is particularly challenging? How do you get somebody into that post and try to keep them there?

Andrea Albutt: In a failing prison, HMPPS senior leaders will probably look for somebody who they think would fit the role and be able to move the prison forward. That is probably what would happen in a challenging prison. You would not put a newly promoted governor into it.

Q44 **Andy Slaughter:** Is it head-hunting but within a small pool of people, or is it open selection?

Andrea Albutt: There would be a bit of both. Depending on the type of prison, they might head-hunt somebody with a specific set of skills. If it is a less demanding prison, it would probably be open and fair competition.

Q45 **Andy Slaughter:** Is it generally the case that people go up through the ranks and the management system, so that almost everybody who has been promoted has been in the system for 20 years or more by the time they become a governor?



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Andrea Albutt: There is a significant number, but we have direct entrance and fast-track schemes as well.

Q46 **Andy Slaughter:** Do you think turnover is getting higher, or has it always been like this?

Andrea Albutt: It has always been like this.

Q47 **Andy Slaughter:** That is unusual.

Andrea Albutt: It's not unusual in our organisation.

Q48 **Andy Slaughter:** Why do you think that is? They are only going on to another job in the Prison Service, presumably.

Andrea Albutt: There are a number of reasons. We have different grades of governors. Some people might move on in promotion; some might decide they want to go into the Ministry of Justice and do a headquarters job; some might be removed because of performance issues; some might have gone into a prison where they lived away from home and might have the opportunity to be closer to home. There are lots of reasons.

Frances Crook: It is not dissimilar to the police. Like the police, you go up through the ranks but there is also a fast track.

Q49 **Andy Slaughter:** Normally, the complaint we have about the police is that people are moved on, for reasons I have never understood. Typically, someone is a local police commander for three years and is then moved on as part of their career progression. Is that what is happening? From experience at my own prison, governors move on quite quickly for a variety of reasons, but it is usually not satisfactory, shall we say. There could be different reasons. It is not necessarily related to performance. You do not get the feeling that it is a managed process; it is a firefighting process.

Andrea Albutt: I would not say it is always a firefighting process; it is for the reasons I stated previously. Sometimes, the manager of the governor feels it is time for that governor to move, or it might be the choice of the governor. Their dream job might have come up down the road, and they want to go for it. They might have a promotion prospect or they might want to do something different.

Q50 **Andy Slaughter:** Do you think that two or three years is a suitable time for a governor to stay in post?

Andrea Albutt: No, I don't. If a governor stays at a prison for five years, generally that prison is more stable, so a longer governorship is better.

Q51 **Chair:** That is fair enough. Is one of the problems with the system at the moment, among other things, lack of stability?

Andrea Albutt: Yes, but it has always been there. I have been in the Prison Service for 30 years and governors have always moved on. To



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have a governor in the same prison for five years is unusual, and it always has been unusual. I do not think it is necessarily the problem now; it has always been a problem, but the state of our prisons compounds it.

- Q52 **Chair:** Should length of tenure and the ability to be there long enough to make a difference be higher up in the thinking of the Department when strategy is worked out around these things?

Andrea Albutt: Yes.

- Q53 **Chair:** Are any incentives available to try to persuade governors to stay in post, financial or otherwise?

Andrea Albutt: There are no incentives.

- Q54 **Chair:** If you have a good person, you want to try to persuade them to stay, don't you?

Andrea Albutt: That is what you do; you try to persuade them to stay, but there is not a bag of goodies to persuade them.

Chair: There is no means to reward them in the way we reward very good teachers or heads to stay in a particular place.

- Q55 **Ellie Reeves:** One of the things that came up in our informal session with prison governors was that in the past there has been perhaps an expectation that people who went into the prison officer service would want to go through the ranks and become governors, but now that is completely different and has completely changed. Lots of people go into the Prison Service for a couple of years and then, because of the conditions, they want to leave and work in private security, or whatever, outside the prison estate. Succession planning gets a bit lost if people go in for a few years' experience and then leave. Is that something you can identify with?

Andrea Albutt: We have significant attrition rates among new prison officers. I think the highest attrition rate is in prison officers who have been in the job for less than 12 months. Prisons are difficult places. When people come in, their reward package, and thus the incentive to stay, is probably not as good as it used to be. If employers outside the prison—Tesco or whoever—pay a similar sort of wage, without all the violence and aggression that happens in some of our prisons, that is why people leave.

On succession planning, another reason we struggle to get people into more senior management is that they can earn significant money as a prison officer by doing overtime, bed watches and things like that. When they go into the lower governor grades they can no longer do that, so there is not the financial incentive to progress to higher grades if money is a driver for them.



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Frances Crook: Being a prison officer should be a profession, a career, where people see that they have progression ahead of them, with increased responsibility and training, increased opportunities to take time out for education and development, and promotional opportunities. It should be a profession and it is not; it is still a hybrid. The example you used was interesting; they go out of the Prison Service to become security guards. I do not want them to come from being a security guard or go into it. They are not security guards; they are much more like nurses, medical workers, social workers, even police officers. It is a profession.

- Q56 **Ellie Reeves:** The example given was that an individual would be a prison officer for a couple of years and then maybe look for a job as a security officer on the parliamentary estate.

Frances Crook: That is a profession, too.

- Q57 **Chair:** That is because we see prisons all too much perhaps as warehousing people rather than as therapeutic.

Frances Crook: Yes.

Chair: Thank you very much for your time and your evidence.

Examination of witnesses

Witnesses: Janine McDowell, Wyn Jones, Neil Richards and Mark Brickell.

- Q58 **Chair:** Good morning. Thank you very much for coming to give evidence to us. A number of you are familiar faces, but welcome in any event. Perhaps I could ask you to introduce yourselves for the record, and then we can get into the questions.

Wyn Jones: My name is Wyn Jones. I am the operations director for Serco custodial services. I have been in and around the Prison Service for 37 years, 22 years in the public sector and the past 14, nearly 15, in Serco.

Janine McDowell: I am Janine McDowell, chief executive of Sodexo Justice Services. Similarly to Wyn, I have been around the system for 30 years, 12 of which were in the public sector and 18 with Sodexo.

Neil Richards: My name is Neil Richards. I am head of custodial contracts for HMPPS. I look after all the contracted prison estate, which is part of my portfolio, excluding HMP Parc in Wales which is looked after by HMPPS Wales.

Mark Brickell: I am Mark Brickell, MOJ Commercial. I have been with the Ministry of Justice for the past three and a half years, and in this role, which has responsibility for private prisons, for the past two months.

- Q59 **Chair:** Thank you very much indeed. Can I start with a broad question? We are interested in oversight. What are the criteria to determine what



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sort of prison should be contracted to the private sector? Mr Richards and Mr Brickell, can you help? When you are deciding that you will let a contract for a particular type of institution go to private management, rather than kept in the state sector, what criteria do you apply?

Neil Richards: To be honest, that sits outside my portfolio; it is normally done through a programme of work with the Ministry of Justice deciding what the direction of travel is going to be.

Q60 **Chair:** Mr Brickell, you are MOJ Commercial. You are the people who let the contracts. You must know.

Mark Brickell: Yes. We work in close collaboration with the programme teams that develop the outsourcing contracts. Any outsourcing goes through a make or buy decision as to the best route for the services to be delivered. Historically, particularly in the '90s and the early noughties, most of the outsourcing contractor prisons were private finance initiatives where the private sector was used to fund the construction and, therefore, the subsequent operation of those prisons.

Q61 **Chair:** When you go through the make or buy process, what are the criteria that you apply? Are they money criteria, essentially?

Neil Richards: I do not know. I do not chair the programme board.

Q62 **Chair:** No, but Mr Brickell is probably well placed to know.

Mark Brickell: I do not know; I am not privy to that.

Q63 **Chair:** Who would know? Who would be able to tell us the criteria?

Mark Brickell: We can speak to the programme board and respond to you.

Q64 **Chair:** The programme board in?

Mark Brickell: HMPPS.

Q65 **Chair:** That is helpful to know. Mr Jones and Ms McDowell, from your experience of the system, are there particular types of prisons that are better suited to operation by contracted arrangements than not?

Janine McDowell: I do not think it is a particular type of prison. The point Mark made is right. Most of the estate that is managed in the private sector is under PFI contracts. Clearly, part of the kind of reasoning behind that was about private financing of the construction, and the operating contract was associated with that.

Q66 **Chair:** That has been the main driver historically, hasn't it?

Janine McDowell: It has, but within that a variety of types of establishment are operated. In our portfolio, we operate women's prisons and a cat C training prison, as well as large local prisons, so there is a variety.



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Q67 **Chair:** There is quite a high percentage of local prisons.

Janine McDowell: That's right. Indeed.

Q68 **Chair:** Mr Jones, what is your take?

Wyn Jones: Predominantly, the first generation of contracted prisons was in the category B estate, whether a cat B local or a cat B trainer. That is predominantly where we have been. While I cannot make any comments on the commercial imperatives, it felt to me at the time that it was about taking an innovative stance at reasonable cost for the services provided.

Q69 **Chair:** That is fair enough. Mr Brickell, you helpfully said that it is moving away perhaps from that PFI-based approach now.

Mark Brickell: Yes. I think the last PFI was HMP Thameside, which opened in 2012. The two new prisons at Glen Parva and Wellingborough are both publicly financed.

Q70 **Chair:** But thereafter they are going to be run on contracts.

Mark Brickell: Once they are constructed, the operation of both prisons will be a separate call-off from the newly appointed private prison operator framework.

Q71 **Chair:** I think Kier are going to do Glen Parva. Are they in contention for it?

Mark Brickell: I understand Kier are the constructor of Glen Parva.

Q72 **Chair:** They are up front.

Mark Brickell: Yes.

Q73 **Chair:** Are you reviewing the position in the light of their share price?

Mark Brickell: The financial position of all our suppliers is under constant review, especially Kier, given the current situation with their share price.

Q74 **Chair:** What form does that review take?

Mark Brickell: It is a cross-Government review. As you understand, Kier are a key supplier across Government. There are contingency plans in place as well for all of our gold contracts—the contracts within the MOJ that are greater than £10 million.

Q75 **Chair:** When he was Minister, I think Mr Stewart indicated that, if need be, the public sector would have to step in if the provider was unable to do it.

Mark Brickell: I think the nuance with the construction contract is that Kier are constructing the prison. The MOJ does not itself have the capability to construct prisons.



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Q76 **Chair:** Mr Jones, you are nodding. Was that also your understanding?

Wyn Jones: Indeed.

Q77 **Chair:** There may be a step-in. It is being looked at.

Mark Brickell: The financial situation of Kier is being looked at.

Q78 **Chair:** Mr Jones and Ms McDowell, from your experience in the sector, how easy is it to run a prison at a profit, because that is what you have to do ultimately?

Janine McDowell: It comes down to the way the prison was contracted in the first place, and whether the contract that we as a provider signed up to has in it a model that allows us to operate that prison effectively, and achieve the reasonable margin the company would expect for the work it is delivering and the risk profile it is accepting on behalf of the Ministry in those circumstances. Running prisons is not easy. The first evidence session of your whole inquiry reflected that.

Q79 **Chair:** It is not easy, whatever sector it is in.

Janine McDowell: Prisons are not easy institutions to operate at all. They require a skillset that reflects experience of working in the sector. I would not say it is easy; it is not straightforward. A lot of it comes down to the way the contract was commissioned in the first instance.

Q80 **Chair:** Do you think there are things that can be learned, and that we could take on, from the way contracts were commissioned in the first tranche of privatisation?

Wyn Jones: Undoubtedly. Second and third generation contracts should take learning from the first generation. Operators themselves take learning from that; equally, commercial colleagues will take as much learning as we do. Looking at the framework for the new prison competitions, and the rebid pipeline for the PFIs that are rapidly heading towards contract expiry, all those lessons learned, certainly from my conversations with the estate transformation team, are well embedded in the commercial conversations we are having.

Q81 **Chair:** Mr Richards, do you have any thoughts on that?

Neil Richards: I totally agree with what Wyn has just said. In my whole portfolio of prisons, some learning certainly gets picked up for each new contract that comes along. I have sat before this Committee talking about what the key performance indicators look like, especially for Birmingham. They are different for every single prison. It makes the job more complex for my team, and sometimes it becomes difficult to explain in joint conversations with providers and staffing groups, why some things might happen at a particular prison—say at Thameside with Serco—and what might not happen at Lowdham Grange, because there are such complex and different indicators. The learning is definitely fed back in.



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For the last 12 months, we have piloted with Serco a strategic relationship management model that we will roll out across our other main providers as well this year. In those conversations, we have discussed learning around contract management, which I think Wyn was referring to in part. We have talked about contract delivery indicators and that has been fed back to the transformation team, and clearly has been taken on board as well. I too will be very pleased with what the new contracts look like.

Chair: Ms Rimmer, do you want to raise an issue on this side of things, or do you want to come in later with your point?

Q82 **Ms Marie Rimmer:** I am deeply interested that, in our brief, Birmingham, which was with G4S and had a rating of 1, has been taken over by the public sector, and the male prison at Peterborough was rated 1, and Sodexo was running that. I notice that those companies are two of the three that are now able to bid for the new prison in the next contract. I am rather alarmed by that. Why are they two of the three? Is it being earmarked for the third one? It is not really competition.

As part of the process of getting on to the performance risk framework to bid for new prisons, they have to demonstrate that they can manage effectively all types of prisons. How did those two get on, because Birmingham certainly failed among the Victorian-type prisons, didn't it? Peterborough was a PFI prison and was pretty new with all mod cons, and they failed in that. How are they allowed to get on to the framework to bid for new business, and why are two of the three among the six that have failed on one prison type?

Mark Brickell: It is worth bearing in mind that the Ministry of Justice as a public authority has to adhere to public procurement rules, including the public contract regulations, and within that the awarding criteria for the framework need to be applied.

Q83 **Ms Marie Rimmer:** We have been told by a Minister and have it in writing that they must be able to demonstrate that. We've got that in writing and we have it in this report. I have experience in contract management; I was a procurement officer in a multinational in the private sector. What you go for in procurement is what you have got. You do not go on what is on paper; you test. Are they capable? They must demonstrate it. That is what was said in this brief. They must demonstrate that they are capable of doing it. If they fail on one, they do not get on. How have they got on?

Mark Brickell: As I was saying, the awarding criteria need to be applied in an objective, consistent and fair manner. It is worth bearing in mind that the framework does not give any guarantee of work to the competitors who bid for it.

Q84 **Ms Marie Rimmer:** Yes, I asked the Minister that last time.



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Mark Brickell: Any further call-off from the framework would be subject to a separate competition.

Q85 **Ms Marie Rimmer:** What you are telling me is that the Minister can say one thing. You go by the legislation. What you are saying is ambiguous; it is like getting through hoops and corners. You can do what you want.

Mark Brickell: As I say, we need to apply the award criteria framework in an objective manner. It would be inappropriate for me to prejudge any future call-offs from the framework.

Q86 **Ms Marie Rimmer:** But it is set down in your contract specification what you require. The Minister has said—we have it in writing in the brief—that they must demonstrate that they are efficient and capable of delivering in all the prison estate, and two of the three have failed in one prison type.

Mark Brickell: Yes, so any future competition that we call off from the framework would take into account the specifics of the prisons against which they are being evaluated.

Q87 **Ms Marie Rimmer:** You are saying that what we have been told by the Minister is not true.

Mark Brickell: No. What I am saying is that the awarding criteria of the framework were applied in a consistent manner.

Ms Marie Rimmer: But it has not happened, because we have been told one thing and you are saying that another thing is happening in practice. On paper, it is one thing; in practice, it is another. This Committee is being misled. We shall have to take this further, Chair.

Q88 **Chair:** Can you help us with this? The concerns Ms Rimmer seems to raise are these: on the face of it, two of the potential contractors included on the list do not appear to meet all the criteria for running a safe prison. Why are they still allowed to be on the list of contractors? I think that is what she is driving at.

Mark Brickell: Because they met the requirements set down in the procurement.

Q89 **Chair:** But how can they meet the requirements if they do not meet the criteria for running a safe prison?

Neil Richards: We will be speaking to the transformation team programme board. Would it be helpful to put something in writing in terms of the very specifics of what that looks like? We do not have all the evidence in front of us, and neither of us is part of that programme board.

Q90 **Chair:** On the face of it, the two do not sit very well together, as I am sure you understand.

Neil Richards: Nor do we know exactly what the Minister said in terms of what they laid out.



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Chair: It would be helpful if you did that.

- Q91 **Victoria Prentis:** I want to talk about the controller. There are shades of Thomas the Tank Engine in my head, but I am sure that the role of the controller is an important part of the oversight of private prisons. I want to ask the two of you from the Department how you ensure that the right controllers are picked and that they have the mixture of operational experience and commercial expertise that is needed.

Neil Richards: Across the 13 sites, the local contract management team consists of a controller, deputy controller and assistant controller. You are right. There is a real mix in people's backgrounds. However, what we have, as you heard Andrea say earlier, is a job description for a controller, and all the key skills and the essential criteria sit within that. Having an operational background is not always absolutely necessary, so we have a mix. The majority of our staff actually have an operational background. Within that, we also ask people whether, if they do not already have it, they will work towards a contract management qualification of a Cabinet Office approved standard.

- Q92 **Victoria Prentis:** Do you support them to do that?

Neil Richards: Yes, we do. They get five days a year towards that, as a minimum. With the demand this year, because we have had quite a lot of change of personnel, we are going to give more time to making sure that they achieve that qualification within this financial year.

There is an open competition for selection, so we advertise the job. Historically, it has probably been seen as a role for people who want a break from what would have been seen then as a more demanding operational role in a public sector prison, perhaps something that people want to do as they come towards the end of their career. Over the last 12 months, since I have been in role, I have concentrated on a real focus on making it dynamic and making it a central part of the business. You heard the evidence that I gave about Birmingham on some of the plans that we had for what was then the 12 months coming, and we have started to deliver some of that. We have made the controller's role front and centre as part of our assurance processes for the oversight of the contracted estate.

- Q93 **Victoria Prentis:** Mr Jones, do you think there is scope for making the role of the controller more effective?

Wyn Jones: Yes, we do. At the very outset, I would say that I do not think any private operator would advocate that there is not an absolute need for oversight and assurance of public-private contracts, where public money is being spent. I share Neil's view in that, in the last 12 months, there has been a real shake-up of controllers, and a real professionalisation, if I may say that.

To go back to when private prisons first became a reality in 1994, the model is 25 years old. Serco advocates that it may be worth a fairly



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comprehensive review, and maybe you could look at international best practice as to how to provide assurance in governance in a mixed market of public and private prisons. That is what we would advocate.

Q94 **Victoria Prentis:** Do you have any specific ideas?

Wyn Jones: We manage prisons in Australia as well as in the UK. The assurance model in Australia is almost a peripatetic role, in that it is public and private. They work geographically; they have open access to public and private prisons, and measure them against the same things. We find that works really well. They have unannounced walk-up capability, and can find you sleeping and/or active, whichever they find on the day.

Q95 **Victoria Prentis:** That sounds really interesting. Anything you would like to feed in on that would be very welcome.

Wyn Jones: Yes, I would be happy to.

Q96 **David Hanson:** Can we look at the performance measures in the contract? There has been some discussion about the fact that performance measures can sometimes act in different ways by incentivising the wrong things or not measuring the right things. I want to get a sense, first from the private sector, as to what you regard as the key performance measures that the Ministry are putting on you. Are they the right measures?

Janine McDowell: As Neil reflected, the contracts we operate are all slightly different, which I am sure is probably true of the other providers, too. They reflect a point in time and the generation of contract we are operating. There are contractual measures in our contract and then, overlaid on that, is the prison performance framework that all prisons operate within and the measures contained in that. Sometimes, they are the same and duplicate one another, and at other times they are quite different.

On the whole, some of the older contracts in particular tend to have quite a lot of input measures. We can all come up with examples. For example, it is absolutely right and appropriate that we report against the numbers of finds of contraband in prisons, be that mobile phones or drug finds, and so on. At times, they can also reflect a moment in time when mobile phones were this big, whereas they are now this big, but the measure is exactly the same.

Q97 **David Hanson:** On finds of mobile phones, is that viewed as a positive or a negative by the Ministry?

Janine McDowell: It is an interesting one, isn't it? You can absolutely make the case that the more you find, the more successful you are at detecting contraband and doing your job properly. Equally, it can be interpreted that a failure of systems has allowed the contraband to find its way into the prison in the first instance.



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Q98 David Hanson: Does that have a financial implication for your performance? If you find mobile phones, are you rewarded or are you penalised financially?

Janine McDowell: It varies from contract to contract, but it would be seen as a penalty in terms of finds of contraband.

Q99 David Hanson: Why does it vary from contract to contract? Presumably, the Ministry has a series of performance measures they want to see as outputs and, if you do not meet those outputs, they hit you. Whether it is viewed negatively or positively, there has to be some consistency from the Ministry, surely.

Janine McDowell: That is absolutely broadly the case, but some of the contracts are old. For example, for Forest Bank the contract is 20 years old, as are the measures in it. There have been some modifications over time, but they are quite different from a contract that is only five years old, for example.

Wyn Jones: Older contracts have older penalties and contract delivery indicators. With the passage of time, they have become clearly unfit for purpose. We have done some fabulous work with Neil's team trying to shape what the next generation of key performance and contract delivery indicators might look like, and the suite that is appropriate, certainly in my view, to the next generation of prisoners that are on their way down. That means getting rid of things that have not stood the test of time.

Let's take offender management in custody—the new key worker model—which is having a massive positive impact across public and private prisons. In the new generation, private providers will be judged on the level and quality of delivery, which is the right measure to demonstrate contemporary issues.

Neil Richards: There are two types of measurement, which is probably reflective of how my team works, with support from others. You have the operational performance measures, measured through the prison performance tool, which is applicable to both the contracted estate and the national estate. They can change during the course of the year, and that gives us an indication of the overall operational output. That is very much in tandem with what the public sector is doing.

Wyn was referring to the contractual delivery indicators, which is about a form of contract management and not just operational outputs. I have a spreadsheet here, which I am happy to share with you in writing if want.

Chair: That would be helpful.

Neil Richards: You will see that the contract delivery indicators are vastly different across every single contract. The discussion we started with Serco through the strategic relationship management pilot to which I referred was to reflect how we change some of those CDIs to bring them all into line.



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There are two important issues where we did not get any further at this moment in time. One was that we were just about to go out for procurement for the framework, which we touched on earlier, so we thought it was inappropriate to have that discussion, and we put it further forward to that time. A new set of CDIs is coming out in that generation of contracts, so we will probably get quite a lot of learning from that, which we can then feed back afterwards. Secondly, it was important to include our other two main providers in that conversation. As we start to roll out that relationship model during the rest of the course of this year, and we get past the competition stage, we will have that discussion with all three of our main providers. I agree with you that it needs updating, and we will start that discussion.

Q100 David Hanson: In overall terms, what use do you make of contract delivery requirements and financial penalties? How many times do you issue financial penalties to the private sector providers?

Neil Richards: Roughly speaking, because it is probably valued across the whole of the estate, the financial penalty, which comes back in the form of a service credit, is about £1 million a year. Sometimes, it is significantly more.

Q101 David Hanson: Is that your main mechanism for managing poor contract performance?

Neil Richards: Absolutely not, no. As I said a second ago, the contractual management is four tiered. On a daily basis, the director and controller have discussions, and there is a more formal process after that, which is a quarterly meeting with the senior contract manager, where they go through operational delivery and contract management issues that might arise from both sides, and have that discussion. That will come through to me eventually, and my senior leadership team, for discussions at an assurance meeting. I have the ability to escalate that right the way through to the operational management committee headed by Phil Copple at HMPPS.

Q102 David Hanson: With the experience of Birmingham over the last 12 months, you have indicated that some changes might be afoot. What are the main changes that you are proposing, or have delivered, as a result of Birmingham?

Neil Richards: We have put in place completely new governance processes, and completely new assurance and performance management processes. We have piloted the strategic relationship management model, which we are about to roll out. We have invested £1.5 million in assurance and performance oversight. We have subject matter expert support now in FM and health and safety. The list of what we have done in 12 months is quite extensive.

Q103 David Hanson: On the financial penalty to G4S for the failures in Birmingham, are you satisfied that the mechanism worked sufficiently, without the apparent hand-to-hand combat we had to have to get to a



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resolution?

Neil Richards: It is not just about a financial value; it is about what was best for the prison at the time. The discussions we had with G4S to get to the solution that we did, which means that the contract is fully back in public sector hands at the end of this month, were done in the very best way possible.

Q104 **David Hanson:** Are you able to give us a figure as to the final cost that the public sector incurred that was reimbursed by the private sector for the failures at Birmingham?

Neil Richards: As you know, you can divvy up a pie to make it say whatever you want it to say, if I am totally blunt. We do not have a final cost. The negotiated settlement agreement recompensed us for the contractual issues, or the state that it had to be in contractually at the end, when it was handed back. What it did not necessarily cover is the standard we might have wanted it to be. That is not dissimilar, I guess, from what you heard from Andrea earlier. We might have wanted to see investment in new equipment, for example.

Q105 **David Hanson:** Are you able to share with the Committee a figure for the final cost to the taxpayer that was reimbursed by G4S for the failures at Birmingham?

Neil Richards: We have covered all of them.

Q106 **David Hanson:** How much is it?

Neil Richards: As you know, because it has been published—

Q107 **David Hanson:** Just remind me.

Neil Richards: It was about £10 million, which covered a variety of issues, but certainly all of the step-in costs, and made a significant contribution towards the failings that I have seen on A, B and C wings.

Q108 **David Hanson:** I do not think we have heard the £10 million figure before.

Neil Richards: It is £9.8 million, roughly £10 million.

Q109 **Chair:** As near as—rounded up to £10 million.

Neil Richards: Yes, and I am satisfied that it covers the step-in costs and the issues that we faced on A, B and C wings.

Q110 **Chair:** That is very helpful, Mr Richards. You also said that the total amount of financial penalties, in reply to Mr Hanson, was £1 billion.

Neil Richards: No, £1 million.

Q111 **Chair:** A billion would have seemed enormous; £1 million puts it in a much better context.



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Neil Richards: On that point, there is an ability for some flex around that. I hope that my colleagues here would agree with me that we have a supportive approach, generally speaking. Just because a mobile phone is found does not mean that we go straight in and exercise the maximum interaction that we can around it. We try to have a supportive approach in dealing with it overall.

Q112 **Chair:** I assume that the penalties come at the end of a process, depending on the gravity. I get that impression from private sector witnesses.

Neil Richards: Yes.

Q113 **Ms Marie Rimmer:** While we are on Birmingham, the contract delivery indicators for private prisons include financial incentives built into the contract. What were those private financial incentives in the Birmingham contract with G4S?

Neil Richards: I am not sure that there were any. I would have to double-check.

Q114 **Ms Marie Rimmer:** Would you, please? Would you also check whether there was any benefit from private financial incentives affected by what went on in that prison while it was under G4S? Did any problems arise because of numbers? Was there any incentive on staff numbers—that kind of thing? What financial incentives—accrued finances for Birmingham—had an impact in that riot, or the troubles there?

Neil Richards: If we are talking specifically about the disturbance in 2016, there is a full report.

Chair: What are you asking for specifically, Ms Rimmer?

Q115 **Ms Marie Rimmer:** I would like to know the financial incentives included in the Birmingham contract, because every prison is different, and they are not widely available, so I have not been able to get my hands on that.

Chair: That is pre the disturbance, when the contract was let.

Neil Richards: Pre the disturbance, up to 2016. We can confirm that, yes.

Ms Marie Rimmer: Thank you very much.

Chair: And you are going to come back to us with the spreadsheet as well, which is also very useful to us. Ms Rimmer, I think you wanted to raise an issue around commissioning.

Q116 **Ms Marie Rimmer:** Some of the private prisons directly commission their own health and education services, like Serco. Two are like that. No, three are self-delivering, and Serco does joint commissioning. Why is that, and not just with Serco? Why has it been decided to do some under



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myriad health bodies and HMPPS, and some directly by prisons? How was that decided?

Neil Richards: It is a legacy issue. Healthcare overall, nationally, used to be delivered in-house, even by the public sector, until 2005. I stand to be corrected, but I think it was 2005. At that point in time, PFIs were already around. We had contracted prisons already, and within those contracts we had adopted a similar model to what the public sector delivery model looked like. In 2005, there was an agreement to extract healthcare and healthcare budgets and give them to whatever was the title at the time of the organisation currently known as NHS England, which holds those budgets. I was not about at that time, but some of my colleagues were in those discussions. It was much more commercially difficult to extract healthcare provision from those particular contracts at that time, so they remained in the contracted-out part. Therefore, we still have legacy issues.

I think that five prisons in total still deliver healthcare directly through the contracted provision. Everybody recognises that nobody wants to be in that position, and we are having commercial discussions about how we start to think about extracting ourselves from that position. Some PFI contracts are coming towards an end; as they start to expire, if we re-tender those contracts, it will be on a model where healthcare is outsourced and delivered through NHS England commissioning. There are some PFIs where there is a longer lead-in period to the end of the contract, and conversations are starting commercially as we speak—literally, this year.

Q117 **Ms Marie Rimmer:** NHS England has statutory responsibility for oversight of the level of service in prisons, but it does not actually do the commissioning. How does that work? Sodexo said: "This has the potential to cause some tension as, for example, NHSE do not commission services in 3 of our prisons but have statutory oversight of the level of service." How does that work? Do they just look at it? Do they advise? Is there a way of holding them to account to improve, if they find something wrong? They are not health service professionals in prisons. They may have some generic sense, but they are not specifically trained. How does it work?

Janine McDowell: Maybe I can bring that to life a bit from my own experience in Sodexo. We self-deliver healthcare in three of the contracts we operate. The commissioning responsibility actually sits in our head contract, with the Ministry of Justice.

As Neil rightly described, the Ministry of Justice took a policy decision a number of years ago that commissioning should sit with the NHS, but it does not do so for those legacy contracts. In practice, HMPPS commercial and contractual colleagues sit alongside the same NHS commissioners that commission health in other prisons in a local area, and the NHS commissioner provides advice, support and guidance to members of Neil's team in oversight of our delivery. Our delivery is subject to the



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same measures—the HJIPs, for example. Healthcare delivery in prisons is subject to the same CQC inspection, as part of HMIP arrangements.

As Neil said, we all absolutely recognise that it would make more sense, and I think time will bring this, for the commissioning arrangements for healthcare delivery in private prisons to fall into line with what happens across the wider estate. Within the reality of where we are right now, all parties—NHS England, the Ministry of Justice, HMPPS and ourselves—work together to replicate the arrangements that exist across the estate.

Q118 Ms Marie Rimmer: It is a case of suck it and see, and then trying to improve to the best.

Janine McDowell: It is more than suck it and see, because we are subject to the right levels of scrutiny, through the CQC and NHS England, that work alongside the Ministry.

Neil Richards: I would argue that you are probably subject, potentially, to even harsher outcomes. You can have the CQC come in, which they would do even in one of Janine's prisons, and they may be critical. They might say to a public body, "We'll be coming back and we want this to happen." Potentially, what I would then do is look at the CQC report and at Sodexo's response, and I might have a contractual measure that I would implement. It would not necessarily be a financial penalty; it would just be that there was a wider implication for them, if they did not fix it. Depending on what type of prison it is, that might have an implication for shareholders, and for the SPV of a PFI. Janine as the chief exec would be under even more pressure to get it fixed quicker than, probably, in some other circumstances.

Q119 Ms Marie Rimmer: And the Minister for Prisons would come in for a hell of a kicking from the CQC, if it was not put right.

Neil Richards: Well, we all would, wouldn't we?

Q120 Ms Marie Rimmer: What commissioning arrangements work best for health and education in private prisons?

Janine McDowell: Can I just respond on education in our prisons? Again, we are in a situation where we self-deliver education across our prisons, with the exception of Northumberland, where it is commissioned through the prison education framework, in line with the public estate.

I am quite a strong advocate of the self-delivery arrangements we have in place in our prisons. It is a neat link to the subject of this inquiry into prison governance; our prison directors have, in my opinion, significantly more control and oversight of, in this case, education delivery in the prisons. Our most recent suite of inspections through HMIP awarded a good Ofsted rating to each of the prisons for their education delivery. The prison director genuinely has empowerment, if you want to call it that, or freedom to influence, change and have an impact on how education is delivered in their own particular establishment, to meet the priorities of



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that prison. I strongly believe that it is an advantage in that circumstance.

Neil Richards: A more general comment from my point of view is that a mixed model delivery is really helpful to test different ways of delivery and innovation. It is not just about education. Health might be slightly different, but certainly with education provision, and generally a contracted-out prison per se, it is helpful to be able to test and develop different ways of delivery. If it was just delivered in one particular model through one particular organisation, I do not think the market would be as rich as it currently is.

- Q121 **Ms Marie Rimmer:** Some 80% of the budget goes on staffing, leaving 20%. The governors who have spoken to us about this, and controllers and directors in the private sector, say that they have had as little as 2% of influence on health provision. In fact, contracts have been awarded or commissioned against their desires or wisdom. They are in the prison and they know who they have, but they have as little as 2% influence, and contracts that they did not want have been awarded. How can that be good and how quickly can you get it put right?

Neil Richards: I think you have heard colleagues say that they have the ability to have a different way of delivering, so it is a good opportunity to be able to compare and contrast what you have just described with other ways of doing things. Sometimes, learning goes both ways. The contracted estate has certainly learned lots from the public sector, but also vice versa, so we sort of keep pace with each other.

- Q122 **Ms Marie Rimmer:** It can be switched. There are myriad things. People think, "We can do it under this, I'll shift it over here. We can use the CQC's advice, or we can go to the contract advice"—what is in the contract specification, or whatever you call it in prisons, whatever is in the framework. They can move things around so that they meet this, but they do not meet that.

How do we get it put right, and how quickly can we do it, so that we know that we are getting the healthcare and education services that prisoners need while they are in prison? How can it be effective and flexible enough to be able to meet my needs, should I go into prison? At the present time, it cannot. Where 17 prisons are involved in one area, as Dame Sally talked about in her report, how can we get it put right, and how quickly? Are you happy with it?

Chair: What changes would you make?

Neil Richards: You have already heard Janine say that in recent Ofsted inspections three of their prisons were given "Good". I am not sure what is wrong with that or what we would want to put right, since a "Good" mark in Ofsted is quite good.

- Q123 **Ms Marie Rimmer:** But what a complex job they've got, directors and prison governors. Some are expected to provide health directly, and



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education, as well as human resources and training. They are not trained in all this. Do they get effective training to do it? No, they do not. They cannot possibly understand contract management and specification, holding people to account and putting penalties in when they are needed, and, at the same time, understand, manage and commission for health needs. They cannot possibly do that.

How can we get the systems for health and education right for prisoners? You say that you are picking the best from each, but how do we transfer the best from a prison providing its own education or doing its own health commissioning to another area that is under the myriad of five public sector bodies, with the HMPPS and so on?

Neil Richards: It does not fit directly into my role, but I have been involved in part of the commissioning of the new education framework. The portfolio of evidence we have currently in front of us on outcomes looks back on previous OLASS provision. As you know, we have just awarded the new framework this year, and a new way of delivering. There are mechanisms in that that actually give governors some autonomy in education curriculum design and the percentage of it that should be fixed for their prison.

It also allows for flexibility to have some specialist provision. It is not just 5%; it is whatever was set at the beginning, when they were part of the discussion. There is the ability year on year to flex what that percentage looks like as well. You heard evidence in a previous session about what a core curriculum might look like. There is the ability for a governor and, indeed, directors—as at Northumberland—to sit within that delivery model and say that they want what we call a dynamic purchasing process as part of the system. You could have cooking or bakery, or whatever you think is the right interaction, and that can be flexed.

Q124 **Ms Marie Rimmer:** Can I quote to you what was said to us? When we had focus groups of prison governors and directors, we heard that healthcare in five private prisons is commissioned directly by the Ministry, using the safer service specification rather than the current specification used by NHS England. Participants said that was supposed to be rectified within five years, but the commitment was given two years ago and no progress has been made. That is what has been said.

Chair: Can you help us on that? You may be aware of it perhaps, Mr Jones or Ms McDowell. Is there a different approach to commissioning for those five private prisons? They seem to be an anomaly. That may not be in your portfolio.

Wyn Jones: Serco does not provide its own health services; we actually extracted them in 2013 and 2014. We recognised at that point that the health needs of prisoners were becoming ever more sophisticated, in line with outside community provision. We felt that we were not in a position to match that pace of change, so we took it out and we are now a direct recipient of commissioned services from the regional geography.



There has been considerable growth in healthcare, but in my view it has not been commensurately supported by enabling resource. Traditionally, we just devolved budgets that went down; I do not think those budgets have particularly grown in any way, shape or form, so you have an ever-increasing service specification requirement with an ever-dwindling pot of pounds.

Ms Marie Rimmer: That's right.

Wyn Jones: That is the issue for health. I can talk about my own experience; I cannot talk about anybody else's. It feels as if the elastic is getting ever more stretched, which is a frustration for commentators and operators and, more importantly, for service users.

Chair: That is very helpful.

Q125 **Andy Slaughter:** I was just looking at the length of contracts and, typically, some of them are about 15 years. Thameside, which is a Serco contract, runs to 2036. Is 15 years a typical length of contract? With renewal of contract, do they typically stay with the same provider?

The reason I ask is that I want to know how integrated the private sector is with the state sector. We keep talking about sharing innovation and different ways of doing things. Is there transfer of staff? You are both in senior positions in private companies, and you came from the state sector, presumably because, when private companies became involved, that was the only place where they could draw expertise, unless they had foreign contracts.

Does that continue, and do you have transfers? Do prison officers typically move across in that way? I do not see how you will get the benefit of cross-fertilisation unless there is an actual integration of the two sectors, and I do not see how that works if you have very long contracts, and it is passed from one to another.

Wyn Jones: There are quite a number of vehicles where best practice is garnered and shared. The Butler Trust is a fantastic organisation, which takes best practice, recognises it and shares it. In fact, it actually has what is, I think, the second prison officers' summer school this year. It invites prison officers from the public and the private estate to a summer school weekend where they talk about best practice from the perspective of the prison officer, which is a nice change, rather than the prison governor or director. Along with the Butler Trust, you have Her Majesty's chief inspectorate. They, too, identify areas of best practice when they visit, and promulgate that right across the service. There are avenues for best practice and shared learning to be inculcated into both sides of the organisation.

The difficulty is that, yes, I poach public sector prison governors, the best ones in my view, and bring them into my business because I admire what they do. I think they are very good at what they do. I give them levels of autonomy that they do not quite enjoy in the public sector. That cannot



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be the same at prison officer level, for a whole host of reasons, not least that it is a very unionised environment, and that would not work.

Q126 **Andy Slaughter:** Are you not unionised?

Wyn Jones: Yes, we are, but it is a different trade union.

Q127 **Chair:** Which union?

Wyn Jones: We have collective bargaining rights and recognition agreements with the Community trade union and the GMB.

Neil Richards: I agree with Wyn. Sometimes, it can create difficulties for providers as well. I have had some conversations where a public sector prison will be recruiting very close to a contracted prison, and that can cause difficulties as well.

Q128 **Andy Slaughter:** But are terms and conditions more favourable in one or the other? Can the private sector offer more incentives to senior staff?

Neil Richards: It comes down to individual choice, doesn't it? You heard some evidence from the first panel referring to that. There has been a change in the way people approach the job of a prison officer. It used to be seen far more as a career, which is absolutely where it needs to be, so that people have an allegiance to developing their skills and being able to deliver the very best services, but we find that there is quite high turnover in both the public and the private sector.

Sometimes, a total reward package in the public sector, including a pension scheme, might be more attractive in the long term, but if you are only in it for a few years you might find it more attractive to work with a contracted provider, because the starting salary is at least equitable, and there might be other benefits. It is down to individual choice about whether what you are really after is a job or a career. Wyn is right: we tend to find that more middle and senior managers leave the public sector to go to the private.

Q129 **Andy Slaughter:** What is the answer on length of contract? How do you decide whether something should be 15, 10 or 20 years? In practice, how many contracts have ended and then been re-let, and have they in general gone to the same provider?

Mark Brickell: Of the contracts we have, one of the lengthiest, to use Thameside as an example, is actually a private finance initiative so, obviously, the capital repayment dictates the term. The manage and maintain contracts are of a very significant size and require a lot of investment and a degree of mobilisation to begin with. That is why most of the manage and maintains are for 15 years. From an operational perspective, if they were shorter, it would be incredibly disruptive. Employees in prisons would be transferring under TUPE regulations very regularly. Having that length of time allows a culture to embed and grow in the prison.



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Q130 **Andy Slaughter:** Facilities management companies have contracts all over the public sector and, typically, they would not be at that length. They would be re-let and TUPE-ed in that way. I do not see that that is a problem.

Neil Richards: There are examples of that happening on a large scale. HMP Blakenhurst, which was run by UKDS, the company that has progressed to being Sodexo, as we know it now, came back into the public sector. It is interesting to listen to some of the lessons from that in terms of the cultural shifts required. HMP Wolds in Yorkshire, which was run by G4S, was amalgamated and became HMP Humber. I was the deputy director of custody with oversight of that at the time, and I spent 12 months looking at the cultural issues that fell out from that, when the G4S staff came into the public sector. It was a really interesting piece of work. We deal with all the practical issues.

Q131 **Andy Slaughter:** In total, how many contracts have come to an end and been re-let, and how many of those have changed provider?

Neil Richards: It is probably those two, and HMP Birmingham, which has obviously come to an end.

Q132 **Andy Slaughter:** They are the only three that have come to an end.

Neil Richards: I think so.

Janine McDowell: There was Buckley Hall.

Neil Richards: Sorry, there was Buckley Hall—there are four.

Q133 **Andy Slaughter:** Four have come to an end. How many of those have gone to a different provider?

Neil Richards: They have all come into the public sector.

Q134 **Andy Slaughter:** At the end of the period of privatisation, they have all gone back into the public sector.

Neil Richards: Yes.

Q135 **Andy Slaughter:** Is that significant?

Neil Richards: I did not make the decisions at the time, but my understanding from the Department is that we want to see a balanced mix of providers.

Q136 **Andy Slaughter:** I understand it from the finance point of view, and the PFI point of view, in terms of repayment of capital and things like that. I am trying to think of other contracts in the public sector that are around 15 to 20 years. Obviously, you can terminate them for non-performance, but that is complex and difficult to do.

Neil Richards: Ultimately, it is a national system. To be able to respond in certain ways in the delivery of a national system, especially to larger operational issues, managing a high security estate, or whatever the



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nuance might be, you need a certain percentage of direct oversight so that you can make that happen very quickly, without having to go through a commercial negotiation to make some of it happen.

The actual percentage of contracted provision sort of sits around 20%. The last Government talked about maybe upping that to the 30% mark. Who knows? When we have seen some of the changes happen and, as you say, they have all gone back into the public sector, it has generally been at the same time as a new PFI or contract provision has come online, so it has kept the balance at around that percentage.

Q137 **Chair:** Okay. That brings us back to the beginning, and the discussion of the criteria, doesn't it?

Neil Richards: Yes.

Q138 **Chair:** That is something we need to explore further. Thank you very much for your time and your evidence. It is appreciated. Mr Richards, you have some specifics on which you are very kindly going to come back to us.

Neil Richards: Yes, thank you.

Chair: Thank you very much indeed.