

Justice Committee

Oral evidence: [The work of the Lord Chancellor,](#)
HC 41

Wednesday 16 October 2019

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

Questions 1 - 125

Witnesses

I: Rt Hon Robert Buckland QC MP, Lord Chancellor and Secretary of State for Justice, and Sir Richard Heaton, Permanent Secretary, Ministry of Justice.

Examination of witnesses

Witnesses: Robert Buckland and Sir Richard Heaton.

Q1 **Chair:** Good morning and welcome, Lord Chancellor and Sir Richard. It is very good to see both of you, and for the first time in this particular high office, Lord Chancellor. Congratulations.

Robert Buckland: Thank you, Chair. I am very pleased to be at the Committee.

Chair: Perhaps we can deal as usual with the formal declarations of interest of Committee members. As per the register, I am a non-practising barrister and a consultant to a law firm.

Victoria Prentis: I am a non-practising barrister married to a judge who used to work at the Treasury Solicitor's Department, and, if I ask about probate, I should also say that my mother died recently so we will be applying for probate, although death and taxes obviously come to us all.

Q2 **Chair:** I think that is it for the time being. If other members come along, we will deal with it then. Lord Chancellor, it is also good to see you back as a former member of the Committee. There is hope for us all.

You and I have had a number of, I hope, positive exchanges both personally and in the Chamber on the record about your position as Lord Chancellor constitutionally. You have made it clear that you take the view that the Government can respectfully disagree, for example, with the judgment of a court, in your words, but that the decisions of the court bind everybody. That, I think, is still your position.

Robert Buckland: Very much so, Mr Neill. You know from my near 30-year career at the Bar living with the rule of law every day that it is part of who I am and what I believe in. Therefore, taking the oath as Lord Chancellor was not just a form of words; it was very much a reaffirmation of my beliefs, and a future affirmation and promise to uphold not just the rule of law, as every Minister should do, but the independence of the judiciary. I am their guardian in Cabinet and that is a role I take extremely seriously.

Q3 **Chair:** The occasional comments that tend to be ad hominem attacks on members of the judiciary by Members of this House do not seem to me to be consistent with that.

Robert Buckland: Indeed. We live in a free and lively democracy, and people are entitled to their opinions, but I have a particular role to play. In order to maintain the balance within our constitution it is vital that our judiciary, whose public judgments are their public statements but who cannot otherwise speak for themselves, are defended vigorously, particularly if their motives are impugned. That for me is a red line, which, if it is crossed, needs to be marked accordingly by the Lord Chancellor.



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Q4 **Chair:** Which you have done. I gather the distinction is that you can disagree, but to impute a political motive or some form of bias is absolutely wrong.

Robert Buckland: Indeed. Disagreement will run through the warp and woof of a case. For example, in the recent Prorogation case the submissions of counsel on behalf of the Government were a reflection of the respectful disagreement with the course that was taken. One can disagree, but one should not make it personal or imply political motive to the independent judiciary. That would be inappropriate.

Q5 **Chair:** Was it the justiciability point or the legality of Prorogation with which the Government respectfully disagreed, or perhaps both?

Robert Buckland: I am not going to rehearse the arguments made by either the Advocate General or Sir James Eadie. We all heard them; they were broadcast. It is not for me to go back and rake over the coals. The decision was made and we respect that decision. As you note, Mr Neill, I was quick in defending the judiciary's position when certain attacks were made.

Q6 **Chair:** It has been noted very widely, and appreciated, many would say. Is your view as expressed to us that the decisions of the court and acceptance that the rule of law binds everybody the position of the whole of the Government?

Robert Buckland: Of course.

Q7 **Chair:** One thing that came off the back of that discussion was a suggestion that there might again be a look at the way in which the senior judiciary are appointed. I get the sense that you do not have much sympathy for that idea.

Robert Buckland: No, I do not. The day we end up with a US-style confirmation hearing for senior members of the judiciary would be a very black day for our constitution. That sort of approach would be erroneous and would be based on an assumption that we were creating a constitutional court in the United Kingdom. That is something I do not believe in.

The United Kingdom Supreme Court is the highest court of appeal in our land, but it is a court of final appeal to deal with whatever question is asked of it. Sometimes that question may have constitutional ramifications. Very often it does not; very often they are cases that start out as ordinary run-of-the-mill cases that develop a novel or important point of public importance or a point of law. That is what the court does week in, week out; it answers the question before it in the finest traditions not just of English and Welsh law but of Scots law and Northern Irish law. I want that tradition to be maintained.

In this rather febrile time of constitutional turmoil, as I put it in the House last week, we have other fish to fry when it comes to political issues.



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Constitutional matters should be determined calmly and coolly at length, perhaps at a quieter time when we can all reflect very much on what we want our constitutional future to be.

- Q8 Victoria Prentis:** I want to ask about sentencing and the sentencing review the Prime Minister announced in August into whether sentencing for violent and sexual offences adequately reflects the severity of the crime. We have all seen what is in the Queen's Speech, but did the review happen and can we see it?

Robert Buckland: The review took the form of very thorough advice to Ministers. It is an internal document. If I can put it this way, I was satisfied by the thoroughness and depth of it, and I would like to think I bring quite a wealth of my own experience of the criminal justice system to the table. It has long been a concern of mine that, however diligently Her Majesty's judges apply the sentencing guidelines—in the case of serious sexual offences and violence, guidelines have led to an increase in overall sentencing, which is a very important point—the way in which those sentences are administered is a matter for the Minister of Justice and has to some degree not helped to maintain public confidence in sentencing. I am referring particularly to automatic halfway release.

- Q9 Victoria Prentis:** Of course, the courts can impose determinate sentences that have a release point of two thirds of a sentence, so why are the new proposals necessary?

Robert Buckland: Those extended determinate sentences are imposed by the courts if a determination has been made that the particular offender is a dangerous offender. That is based upon evidence and an assessment by the judge of the risk that the offender poses. There are a significant number of cases where, although the offence is a serious one, the court does not make a determination of dangerousness on the basis of the evidence and, therefore, an ordinary determinate term is imposed. That is where I think there is an anomaly.

For a dangerous offender on an extended determinate sentence, the Parole Board would consider early release at two thirds. Therefore, there is a difference between that and what happens with a determinate sentence. For example, a rapist who is determined as dangerous can have an EDS of nine years, which would mean that he or she would have to serve six before being considered for release on licence by the Parole Board, whereas if he or she was sentenced to a determinate term of nine years and was not dangerous they would be automatically released at four and a half. I think that is anomalous. What we are going to introduce is a system that preserves automatic release but brings it in line with the other sentence, in the sense that it will be a two-thirds automatic release.

- Q10 Victoria Prentis:** In your view, this adds to clarity and you are confident that you have taken into account the statutory purpose of sentencing in setting out the new system.



Robert Buckland: Very much so, in particular, punishment and public protection. Those are two of the statutory purposes that have been taken into account. I also take into account rehabilitation, because there are a number of offenders in that cohort with whom we can work more constructively, being given more time to do so. I make no apology for a long-held concern that I have had, one that I know is shared by a large number of people, because this is an opportunity for us to increase confidence and make sure that judges, who are properly imposing sentences according to the guidelines, are supported as fully as possible when it comes to the elements of punishment and public protection.

- Q11 **Victoria Prentis:** We all know what happened to the old sex offender treatment programmes and the concerns about them increasing reoffending. Are you confident that the work that is being done with sex offenders today in prison—nearly a quarter of the prison population—is useful and working?

Robert Buckland: Yes. I think that what we are doing is creating more space for that work to happen, because, as you know, there is often time pressure in terms of eligibility for those programmes. What I am trying to do is something that is robust, humane and smart.

- Q12 **Victoria Prentis:** And clear.

Robert Buckland: And very clear.

- Q13 **Victoria Prentis:** Can you help me with the new SI that has been laid that has a period of seven years? Where did that come from?

Robert Buckland: That is because I am trying to make sure that we create a system that is supported by the resources I need. It would be gimmicky and easy for me to jump straight to four years, which is where I want to go—

- Q14 **Victoria Prentis:** And is what you want to do.

Robert Buckland: And it is, by the way, where we were a generation ago. Mr Neill will remember that the threshold was four years. That is what I want to get back to, because in many ways there is nothing new under the sun when it comes to criminal justice.

- Q15 **Victoria Prentis:** Except a far greater proportion of sex offenders.

Robert Buckland: That is a different factor and something that obviously we work with, but I thought it would be better to take this on a step-by-step basis and go to seven years first, and then move to four years by way of primary legislation. I wanted to take some swift but sustainable action.

- Q16 **Victoria Prentis:** Have you done modelling on the effect it will have on the size of the prison population?

Robert Buckland: Yes, we have. It is always something of an inexact science, bearing in mind unexpected factors and the ebb and flow of the



supply of offences, but looking at the estimates we have projected on the seven-year change, we think that by March 2030—in just over 10 years' time—an additional 2,000 people will be in the prison system. This is a very incremental change. Obviously, the changes are not retrospective; they will apply only to new sentences and, therefore, we are predicting as a central measure an increase of about 2,000 over that 10-year period.

Q17 **Victoria Prentis:** Can you share that modelling with us?

Robert Buckland: I think we can. I am reminded that the impact assessment that I signed off before the SI contains those figures. We have three projections; we have given a low, central and high one, and that is available for the Committee to consider.

Q18 **Victoria Prentis:** Can I ask a really difficult question? What modelling have you done on the likely changes to reoffending rates as a result of this change?

Robert Buckland: I do not have modelling figures with regard to the precise direction of reoffending. What I can say is that reoffending rates for people who serve longer terms of imprisonment are somewhat lower—dramatically lower—than they are for people who serve short-term sentences.

I want to put down this marker, Ms Prentis. The work on short-term sentences is not going to be forgotten, or put away in a box and ignored. There are plenty of things I want to do about that, again using my own judicial and barristerial experience, and about the community options that judges need to have available to them in order to avoid the churn we see in our prison population when it comes to short sentences.

Q19 **Victoria Prentis:** Your message would be that long sentences can be useful and, broadly, short sentences are not.

Robert Buckland: That is right. Therefore, the answer to short sentences, in a nutshell, is to improve the range of choice for judges to have robust community-based options that are well evidenced and put before them in pre-sentence reports that they can follow with confidence.

Q20 **Ms Marie Rimmer:** I want to ask about short sentences of less than six months. Your predecessor agreed with our suggestion about the removal of custodial sentences of less than six months, saying that we could reduce the reoffending rate by 32,000, or 13%, and that it was much better, as you say, to give a community-based sentence. Do you agree with what your predecessor said?

Robert Buckland: Towards the latter part of his term of office my predecessor and I were working hard on gathering evidence about the need to produce alternatives to ineffective short-term sentences. With respect, I do not believe that abolition is the right way forward. Why do I say that?



My own experience as a recorder teaches me that there are times when, however reluctantly, that ultimate option should be available to judges and magistrates. For example, repeat offenders who fail to comply with community orders ultimately need the sanction of custody. It is a sad fact but a true fact. Therefore, removing that option would not be appropriate. Where I think we share a view is that the evidence points to their ineffectiveness. The question is not about disagreeing with the evidence but using it in a constructive way.

In the Queen's Speech, it was announced that there will be a sentencing Bill in this Session. What I want to do is make sure that before we get to the Bill stage we do some thorough work in terms of evidence gathering and consultation. I envisage a White Paper process whereby we can set out what we think the alternatives to short-term sentences should be. I want to couple that with the important work that is going on with probation reform. The probation reform is not just about structures; it is about outcomes, so that the sort of community sentencing options that I think all of us and the public want to see are genuinely available to judges up and down the country as direct alternatives to short terms of imprisonment.

Q21 Ms Marie Rimmer: What about the initial six-month sentence? For me, the evidence gathered is that, if initially offenders go to prison for a short sentence of six months, they are more likely to return to prison. What about keeping them out of prison initially by community orders so that they are not repeat offenders?

Robert Buckland: Ms Rimmer, you make a very powerful point. Let us not forget that the current legislation says that custody should be a last resort and applied only when a community sentence is not appropriate. Therefore, already in our legislation we have a very clear direction to every court in the land that it should not resort to short-term sentences as a knee-jerk first port of call.

What I and the Ministry have to do is give judges and magistrates a sensible choice of options. They need greater confidence that they have structures and services in place, for example, a community sentence with electronic tagging, unpaid work, or perhaps a programme dealing with alcohol addiction and mental health, that can be incorporated into part of a robust community alternative. It is that sort of work that I want to get to grips with in order to avoid the sort of nightmare scenario that you quite rightly point out.

Q22 Ms Marie Rimmer: Could you give an assurance to the Committee today that what you consider and bring forward in the future will be evidence based?

Robert Buckland: Very much so. The work that has been done by the Ministry in the past year or so is not going to be wasted. We have gathered a lot of material about short sentences and potential alternatives. As you have already heard in the Queen's Speech



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announcements, via SI we are going to roll out sobriety monitoring tags. That is not just a one-off; it is very much a gateway to the sort of approach I want to take to deal with the causes of crime as much as with serious criminals and public protection when it comes to longer-term sentences. It is very much a whole-system and evidence-based approach that I want to take.

Q23 Ms Marie Rimmer: Taking that into consideration with community orders and probation, how can you reassure us that they will be effective?

Robert Buckland: As I said to you earlier, there is a twin-track approach. It is not just about getting the right services; it is making sure that our probation service is in a position to be able to monitor and supervise as effectively as possible.

I care very deeply about our probation service. I have worked with hundreds of probation officers personally over the years and I know that they can and do change lives. That is why I think the recruitment of more probation officers, which we are undertaking at the moment, and the reform to the system that I know from my previous incarnation we have discussed are all part of a higher purpose to deepen and strengthen the direct alternatives to custody.

Q24 Chair: Talking about that whole-system approach, Lord Chancellor, what on earth happened to the Reducing Reoffending Board?

Robert Buckland: You are right. One of my predecessors—I think it was Sir David Lidington—pioneered that approach. I am looking actively at ways in which we can at Cabinet level make sure there is greater co-ordination of approach. You will be glad to know that already I work very closely with the Home Secretary and the Attorney General. I view us very much as a tripartite group, triumvirate, or whatever you want to call it, of senior Ministers, all of whom have a key part to play in the criminal justice system. Through that mechanism and the Criminal Justice Board itself, which I now chair, I want to get a sense of co-ordination. While we might not be specifically recreating that mechanism, something similar to it is very much in my mind.

I am grateful for the work of the Cabinet Office implementation unit and the Paymaster General who is taking quite a lead in analysing and number-crunching a lot of the criminal justice statistics. That Cabinet Office approach, together with the leadership that I and senior Cabinet Ministers can provide, will give you an indication that we are all about reducing reoffending.

Sir Richard Heaton: Perhaps I could give the Committee some reassurance that in the meantime at official level work is going on.

Q25 Chair: That is very helpful.



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Sir Richard Heaton: For example, we are working with the Ministry of Housing and Local Government on accommodation pilots; we are working with NHS England and we are working with the DWP on access to universal credit. The work is going on, even if the architecture is changing.

Q26 **Chair:** Sir Richard, that is one of the things that has struck us. In the past, we have often asked you about the pressures on the Department in being downstream and unprotected in financial terms. If the board in its current form has gone, but there are, as the Lord Chancellor has told us, other political and governmental measures at ministerial level being put in place, what is being done to make sure that the impacts of policy change and operations are understood at official level by your permanent secretary colleagues and their officials?

Sir Richard Heaton: I think that collectively we can regard this last period as one of success. With the help of stakeholders and Committees such as this, we have won the argument that you cannot make upstream changes to the system without looking at the downstream impacts. The reason we have a better financial settlement in terms of both capital and resource is that collectively we have won that argument. That is why I think it is a bit of a breakthrough.

Q27 **Chair:** In due course are we likely to see any strategies published in consequence of that? How do you think we are going to see it delivered in practice?

Sir Richard Heaton: On reducing reoffending?

Q28 **Chair:** Yes, and evidence of that joined-up working at both ministerial and official level.

Sir Richard Heaton: The rough sleeping strategy is already out there in its implementation, so I do not want to go back to the starting point on that. That is happening. We are working on a drug recovery prison pilot with NHS England, and we will be publishing progress on that. We have published a national partnership agreement with the Department of Health and Social Care. I do not want to launch into new strategies to replace the ground we have already started to cover, if you see what I mean.

Q29 **Victoria Prentis:** Are you confident that you can currently apply for universal credit while still in prison as you leave?

Sir Richard Heaton: No, I am not confident, but we have a partnership agreement with DWP. We know in principle how to get there and we are at implementation stage. I am not yet confident about that.

Robert Buckland: I signed the partnership agreement when I was Minister of State. At ministerial level, I can assure you that there is real political will to improve the way in which applications can be made. It is about looking at things like telephony services and trying to get them in



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as early as possible so that at the very least when people are released they are able to have the loan help they can get from the DWP.

At ministerial level, as well as official level, there is a real will to work together, not just on that but with my colleague the Health Secretary on issues like autism, which I think you will know is a particular passion of mine, and other undiagnosed or diagnosed disabilities that we often see in the prison system and in community offending too.

- Q30 **Victoria Prentis:** Are you familiar with NACRO's film "Out of Time", which was released last week to considerable acclaim? I should have said that I am involved with NACRO; it is yet another interest that I probably needed to declare at the beginning. The film makes clear that the process of leaving prison, particularly on a Friday, is not streamlined across Government Departments.

Sir Richard Heaton: I have not seen the film; I have read about it, but I have not yet got round to seeing it.

- Q31 **Victoria Prentis:** It is three minutes well spent.

Sir Richard Heaton: I respect the work of NACRO and I know exactly the point they are making. We can do better on prison leaving, particularly on a Friday.

- Q32 **Victoria Prentis:** Are you confident that we have the right systems within Government to make sure that work is genuinely holistic?

Sir Richard Heaton: Yes. It generally depends on certain central Government Departments and on relationships with local authorities as well. It is bound to be patchy, but in principle I think we do.

- Q33 **Victoria Prentis:** Next time we have you before the Committee I can ask you about joined-up Government working, and you will have a very good answer.

Sir Richard Heaton: Yes, and I look forward to being able to say, in answer to your first question, that, yes, people can access benefits. That would be a great milestone.

Victoria Prentis: It would be a major step forward.

- Q34 **Chair:** That is very helpful and useful. Before we move away from questions on sentencing, which we were talking about earlier, you made a fair point, Lord Chancellor, about the way sentencing is applied in often quite complex provisions in practice. We all know that, generally, sentencing has increased over the years. The evidence is pretty clear even if the public do not pick it up, but sometimes there are concerns about individual cases. What about the proposal that has been making progress for sentencing codification as recommended by the Law Commission? Whereabouts are we on that?

Robert Buckland: I was very glad to secure a carry-over motion for the pre-consolidation Bill that is currently making its way through their



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Lordships' House. We will, hopefully, have that very soon. Then we can do the consolidation Bill in this Session. Of course, that will lead to the code. Having campaigned hard for it over the years, having listened very carefully to the views of practitioners and the judiciary, and having had to wrestle with the issues myself as a sentencer, I can tell you that it is close to my heart and we are going to get it done.

Q35 **Chair:** Within this Session.

Robert Buckland: Yes.

Q36 **David Hanson:** Before I go on to the main topic I want to talk about, which is prison places, the Queen's Speech talked about strengthening community orders and improving mental health and alcohol and drug misuse rates. Is that resource neutral, or are additional resources going into it?

Robert Buckland: That is a very good question. As part of the bid I made in the spending round, I made specific play of the need for more resources for the probation service and probation reforms. We will obviously go through the allocations process, with which I know you are familiar from your time in office, but it is my priority to make sure that we get that right. Having said that, the commissioning of a lot of these services depends on other Departments, for example, the Department of Health, NHS England and clinical commissioning groups. Therefore, the work that my officials do with officials in Health is going to be crucial to help roll out the pilots more widely.

Q37 **David Hanson:** What is your estimate of the cost of strengthening community orders?

Robert Buckland: I do not have an estimate because it will vary very much according to demand. What I do know is that, with increased resources in the health system and an increased and welcome emphasis on mental health, the mental health of offenders both in the community and in the prison estate, which has a different way of commissioning, is going to be very important. The point made by the permanent secretary about Justice being a downstream Department and dependent upon the work of other Departments is one that is being increasingly understood in Whitehall. In me, you have a very powerful advocate to keep making that case.

Q38 **David Hanson:** Let us look at prison places. The Prime Minister announced in August £2.5 billion to build 10,000 more prison places. How many prison places will there be at the end of the Prime Minister's programme?

Robert Buckland: There are two stages. There was the announcement in 2016, which will yield 3,500 places. Wellingborough, which I started a couple of weeks ago, is part of that. Glen Parva will be part of that. Where we will see the step into the 10,000 programme is at Full Sutton. That will be the first of the prisons to be built under that programme. We



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envisage that we can roll it out by the mid-2020s. Why do we say that? We now have a very good model prison, and the design of Wellingborough is one we can replicate.

Q39 David Hanson: I am asking how many prison places you are expecting at the end of that programme. You might decommission some, self-evidently.

Robert Buckland: There are two things. There are 13,500 in total from the previous programme and this one. I accept that at a normal rate of attrition I am losing 500 prison places a year. However, we have had a welcome injection of maintenance funding for the next year from the Treasury.

Q40 David Hanson: We will come on to that.

Robert Buckland: It is only a start, but it is an important one because it can help me remove and reduce the rate of attrition of prison places, so the combination of the two will get us into the right position in the 2020s.

Q41 David Hanson: How many prison places do you expect to have at your disposal in the mid-2020s?

Robert Buckland: There are an additional 13,500 on the current one, and I do not plan any closures at the moment because I do not think that would be right.

Q42 David Hanson: Let me phrase it a different way. How many prison places are available now, in October 2019?

Sir Richard Heaton: There are 83,000 current prisoners and there is headroom of something like 1,400.

Q43 David Hanson: On the basis of 13,600 prison places being announced, are you expecting there to be 13,000 plus the figure for October 2019?

Robert Buckland: Yes, because I am not planning any prison closures. I am planning more maintenance work. Therefore, the figure in the mid to late 90s is the figure we would have.

Sir Richard Heaton: The point the Lord Chancellor is making—I know you are on to this, Mr Hanson—is absolutely crucial. If we do not maintain our prisons, they fall into unacceptable conditions and we have to close them.

Q44 David Hanson: We will touch on that in a moment. I just want to get the final date that the current Prime Minister has proposed and your efforts as permanent secretary and those of the Lord Chancellor. What would be the final date for completion of the 10,000 we have been talking about?

Robert Buckland: I am looking to a date in the mid-2020s. I have in my mind 2025. That is something I have probed and checked with officials. HMPPS itself will be leading the build and will be building the prisons. Running the prisons is a different matter, as you know. The building will



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be done by HMPPS and funded by Government. We have that model now. I think Wellingborough—I am sure you have seen it—is a really good modern prison model. We can use that as the prototype and we can build more new prisons. We can also build extra house blocks on existing sites and through that we can get to the 10,000 figure by 2025.

Q45 David Hanson: To go back to the points Ms Prentis covered earlier, what is prison number inflation? You said earlier it was about 2,000. Obviously, there is prison number inflation of 2,000. Who is going to fill those extra places?

Robert Buckland: In the sense of the type of offender?

Q46 David Hanson: We have the figure you have given today; we have the 13,600 that are coming in. You indicated to Ms Prentis that there is a potential sentence inflation of approximately 2,000 under the proposed sentencing Bill. I am interested in who else will fill the vacant places that you are proposing to build.

Sir Richard Heaton: The other factor inflating the prison population will be the 20,000 additional police officers. It is hard to convert those into prison places because we do not know exactly what they will be doing in policing terms. Assuming that they arrest and charge people, we can expect the charge rate to go back closer to what it was in 2010. There is a very low charge rate at the moment. That is the thing driving the prison population, as well as the sentencing changes. It is very difficult to calculate because we do not yet know whether the police will be pursuing high-level crime, low-level crime or crime that results in imprisonment. That is the major factor.

Q47 David Hanson: It is still feasible and possible, as has happened in the past, that some of the £2.5 billion the Prime Minister announced could at some point be diverted into resource.

Robert Buckland: It is a capital allocation, and my intention is for it to be spent in that way. We need infrastructure investment and resource is a continuing issue.

Q48 David Hanson: You did it before.

Robert Buckland: I know it has been done before, but it is my intention that we maintain buildings, with new and modern prisons. That is what I want to see.

Sir Richard Heaton: This happened on my watch, so I should probably explain. As the Lord Chancellor said, we do not intend this capital to be spent on anything other than prison building. As the Committee knows, on two occasions in consecutive years we converted capital into resource to try to fill the funding deficit faced by the Department. The settlement we have now reached with the Treasury for the coming year has corrected our baseline, so we should not be in that position again.

Q49 David Hanson: I know it is not your Department, but at what stage do



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you expect 20,000 police officers to be operational and lifting people off the streets for the courts to sentence?

Robert Buckland: We already see how it is rolling out. We have seen the first tranche of 6,000 police officers.

Q50 **David Hanson:** It is an extra boot on the ground.

Robert Buckland: Indeed. It is difficult for us to predict precisely what the flow is, but I think the permanent secretary is absolutely right. We could make an easy assumption that there will be an increase in serious crime detection. I do not know. I think the reality is that we will see quite an increase in volume crime detection. That might not necessarily result in prison sentences; it might result in more community sentences.

Q51 **David Hanson:** The assumption is that a 20,000 reduction in police officers has meant fewer people being arrested and fewer people going to prison.

Robert Buckland: As you know, it is more complex than that.

David Hanson: Well—

Robert Buckland: It is. In the 1980s, when crime was considerably higher than it is now we had higher numbers of police officers, so it is not right to make that assumption. I would never accuse you of making glib assumptions, by the way, Mr Hanson.

Q52 **David Hanson:** Having been prisons Minister and police Minister, I am conscious of this.

Robert Buckland: Indeed. That is why I am always, I hope, appropriately respectful, because you have walked this way yourself.

David Hanson: Let's look at maintenance.

Q53 **Victoria Prentis:** First, could I butt in with a very simple question? Lord Chancellor, some of us hope that you will be Lord Chancellor for a long time. When you leave office do you want there to be more or fewer people in prison?

Robert Buckland: Having sat in the sentencer's chair, you cannot think about a system on the basis of numbers. It is tempting to do so, but what you have to think about is: have we got the right sort of people in prison? By that I mean people who need to be punished and the public need to be protected from. That cohort of prisoners needs to be dealt with by way of custody.

What I would like to see is a decrease in what I would describe as people who should not be in a prison environment—those who might have an addiction or a mental health issue that can be better dealt with by way of a community-based order, or, to go back to Ms Rimmer's point, people who might have come into the criminal justice system for the first time



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and whose exposure to prison is, frankly, not an appropriate or beneficial influence either for them or for wider society.

There will come a day, hopefully not for a long time, when I leave office. I would like to be able to say that we are using prison in the right way, as opposed to a holding pen for people who could benefit from something more constructive on the outside.

- Q54 **Chair:** That implies, doesn't it, that all of us as politicians, perhaps regardless of party, make the case to the public that there must be investment in community provision and alternatives to custody? Many of us feel that that case has not been effectively made, save by yourself and others. Do you accept that we need to do much more to make that case both within and without Government?

Robert Buckland: I do, Mr Neill. The Home Secretary made a very important point about the correction to the base assumptions for this Department. That was a very important step forward in September. It is by no means the end of the story. I am not going to sit here and pretend that everything in the garden is lovely, but we are certainly going in the right direction when it comes to resourcing for the system. I will keep making the case for as long as I am given that opportunity.

- Q55 **David Hanson:** How many prison officers do you expect at the end of the building programme to be personing your prison system?

Sir Richard Heaton: I ought to have the number at my fingertips. I do not think I have it. If we have modelled it, I do not have it with me. Can I come back to that?

- Q56 **David Hanson:** It is important, because the discussion has been about capital investment and additional prison places. If we are putting in an extra 13,600 prison places—

Sir Richard Heaton: There is a reasonably straightforward calculation to be made, and during this conversation I will try to get back to you.

- Q57 **David Hanson:** I would welcome that, Sir Richard.

Robert Buckland: There is a ratio-based calculation.

- Q58 **David Hanson:** Could you advise the Committee of your estimate of the current backlog in prison maintenance?

Sir Richard Heaton: I am afraid it is a large number; it is around £900 million.

- Q59 **David Hanson:** That is up from £716 million last year, in August 2018.

Sir Richard Heaton: We may not be counting precisely; maybe my numbers are a combination of capital and resource.

- Q60 **David Hanson:** The Committee's figures are that it was £716 million in August 2018 and current estimates are £900 million, as you said. I



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understand you have put in place an annual budget of roughly £75 million. You have announced £156 million, but it is not enough, is it?

Robert Buckland: Mr Hanson, I am not going to pretend that it is enough, but, as I was alluding to in my previous answer to Mr Neill, it is certainly a very good step in the right direction. The case for maintenance is one that you and I well know. It is not just about making sure that we have the existing numbers; it is preventing attrition and loss of prison places. For example, this morning at Hewell we have taken action to close 206 spaces because they are not fit for use.

I feel somewhat more confident that I am able to make those decisions with the increased resources that I have for next year. I want to be in a position to be able to make those confident judgments in future years with an increased maintenance budget.

Q61 **David Hanson:** The president of the Prison Governors Association said it would require around £500 million a year for a decade to stabilise the prison system. Is she wrong?

Robert Buckland: I am not going to get into a direct numbers argument with the governors association. What I would say is that I am not sitting here pretending that what we have secured is by any means the complete answer. It is progress, but I will need more over the next few years to achieve the sorts of goals that both the governors association and I want to secure.

Q62 **David Hanson:** How many prison cells in an average month are out of commission because of poor maintenance?

Robert Buckland: I do not have that overall figure. What I can tell you is that, if you just leave it as it is and do not invest, 500 a year are lost to the system because of dilapidation.

Q63 **David Hanson:** Are the 10,000 additional places new places or are they in part to make sure that existing places are maintained?

Robert Buckland: In vast measure, they will be additional; they will be new places. There will be a small element where I can bring back into commission some existing places. The vast bulk of them, virtually all the 10,000, barring a few hundred, will be new.

Q64 **David Hanson:** What would you say to somebody who said, for example, that maybe part of the £2.5 billion would be better invested in the £900 million backlog than in building brand-new places?

Robert Buckland: It is tempting to say that, but we also need to look long term. The new prison model and design we see at Wellingborough will take us into the 22nd century, as opposed to just tiding us over for now.

Q65 **David Hanson:** Some people might say it is jam tomorrow when there is actually no jam on the toast today.



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Robert Buckland: With respect, Mr Hanson, you and I would agree that modern prison environments are better places to do purposeful work with prisoners, whether it is formal training or employment. I think that the design we have pioneered for Wellingborough and Glen Parva will be able to help prison staff deliver that in a better environment.

Q66 **David Hanson:** You said in response to our report "Prison Population 2022" that the Ministry was "developing a long-term estate strategy." Is that published? Can we see it?

Sir Richard Heaton: We can certainly write to you with the bare bones of it. Whether we have published anything I am not sure, but it will contain, exactly as you say, a new-build programme and a maintenance programme. I would be very unhappy sitting here if we just had money for new build without maintenance, because if we are building new prisons and having to close prisons we will never catch up. It is genuinely both. The strategy we have devised is genuinely both maintain and build.

Chair: How do we test you on it?

Q67 **David Hanson:** That was why I started with a question about how many prison places you expect to have at the end of this process. You are losing 500 a year and you have a £900 million backlog. You are building Glen Parva, Wellingborough and a further new prison. I want to get an estimate of how many prison places the Ministry of Justice currently expects to be operational and serviceable in 2025; how many prisoners it expects to be filling those places, given the sentence inflation discussions we had earlier; and whether the maintenance backlog will be reduced to a level that is able to maintain those prison places without losing them.

Sir Richard Heaton: We can write to you on almost all of those things. I could give you off-the-cuff answers on much of it. As the Lord Chancellor said, the total prison capacity we anticipate just by arithmetic to be between 95,000 and 105,000. It is that sort of figure. Estimating the population is very much more difficult because of the wide gulf between police arrests and low-level or high-level crimes, and what the case mix and volume will be, but we can certainly write to you on the third point, which is the relationship between maintenance and new build. They have to go together.

Q68 **David Hanson:** Over and above the three prisons you have announced, at what stage will you be announcing further new prison building programmes, if any, so that we get some idea of the timescale for those announcements?

Robert Buckland: We have the model and the type of prison in our mind, so we do not have to go back to the drawing board in terms of design. It is a question of selecting appropriate sites. As you know, Mr Hanson, sometimes it is better to build a new prison on a shared site where you have an existing prison.

Q69 **David Hanson:** There are some empty places at Berwyn.



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Robert Buckland: Point taken, but you will know from your own experience that, for example, at Full Sutton there is an existing prison and we are going to build a prison next to it. At those sorts of sites you have an existing community acceptance. I always find that a community is never keen on having a prison built in its area, but it never wants it to close because it is such a contribution not just to the local economy but to the community. We are going to identify those sites at pace and, as I have said, 2025 is when I want to see the programme completed. In the next year to two years, I think you will see more identification of sites and more development as we go through the early years of the next decade.

Q70 **Chair:** Will there still be a maintenance backlog by 2025, Lord Chancellor?

Robert Buckland: To be honest with you, the day that I end the maintenance backlog would be a red letter day for all of us. I will continue to fight for as much resource as possible to make our prisons safe, humane and robust environments that deliver what we all want them to deliver.

Q71 **Chair:** I understand the point. Money has come in, as Sir Richard said.

Sir Richard Heaton: Our funding, as you know, is annualised, so we will be fighting this battle every year.

Q72 **Chair:** I appreciate that and I have much sympathy with you about it; we are on your side about the lack of a longer programme. When you write to us, can you perhaps indicate what the plan is, subject to the funding, to reduce that backlog rather than seeing it increase by 25% as we did in the last 15 months?

Sir Richard Heaton: Of course. We are working flat out on this plan. The 20,000 is quite recent; the sentencing changes are quite recent, so we are working flat out. It is a tight plan. It is going to be difficult to build and maintain these places, let alone get the money from the Treasury. It is not an easy back-of-the-fag packet calculation; it is a careful plan that needs to be considered.

Q73 **David Hanson:** There might be a cynic out there—not me—who says that the 10,000 places and 20,000 police officers are a gimmick as opposed to a delivery. Is that fair, or not?

Robert Buckland: I have not come into this high office to deliver gimmicks; I want to do something for the long term. When I talk about prison design, I want to build the sort of prisons of which the next generation will say, "They did the right thing," and leave a proper legacy for the penal system that you would want to see happen. For me this is not for Christmas; it is for life.

Q74 **Ms Marie Rimmer:** I hear that you are working flat out and I do not dispute that, particularly on the prison estate and the future plan, but will



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you take into consideration the existing Victorian prisons? Will your suggested investment plan be based on evidence?

I ask this question quite simply because Liverpool prison was arguably the worst one. It was knocked down for new build; it was knocked down for refurbishment, and it is going to be practically a new prison, thank goodness, with the investment that has gone into it. What are we doing to look at the remaining Victorian prisons that are not planned to be demolished, sold off and replaced? Significant investment is required. They are not easy to manage and are in dire need of improvement and maintenance.

Sir Richard Heaton: If I may say so, that is a very well made point. In a world of falling prison population, you would be looking to close some of those prisons because they are very difficult to maintain and have very small cells and all the rest of it.

Ms Marie Rimmer: Absolutely.

Sir Richard Heaton: We are not in that world. The only answer has to be that we have to keep those cells up to date and maintain the Victorian plumbing. It is a bit like this building, with its heating and ventilation systems. They are difficult prisons to maintain, but we have no choice; we have to put money into them.

Q75 **Ms Marie Rimmer:** We cannot just maintain the state of those prisons. They have to be remodelled. Indeed, from information that I gather about Liverpool, it is transformed. Many of the existing places that were closed down are reopening, and it seems we should take a visit there at some time. It is being reformed; significant amounts of investment have gone in there, not just in building but in the management of prisoners. It needs investment, and there must be investment that has gone into Liverpool far way and above—I think that perhaps a lot of the money that we did not get in capital that was transferred over has gone in there.

Sir Richard Heaton: Can I take that as good feedback on the Liverpool experience, and we will take it back to the Department?

Ms Marie Rimmer: Yes, please. Thank you.

Q76 **Victoria Prentis:** Echoing what Ms Rimmer said, there is concern in this Committee. The new shiny prisons are, of course, something we want, but we are worried about the maintenance backlog. I met the governor of HMP Low Newton yesterday, who came to an excellent event for prisons week, organised I think by the Bishop of Gloucester, and who was told during the course of the event that she had failed to achieve £3 million from the Department for rebuilding her roof. How are we to reassure ourselves that the maintenance backlog is going to be dealt with and is going to the right places?

Sir Richard Heaton: I do not know the precise details on that. I was in a Victorian prison where the governor had successfully got a capital bid to replace some windows. The truth is that not all capital bids are met,



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because we have a backlog. All I can do is repeat what we have said: we will do our best to get the funding, and we know exactly where we need to put it, but we do not at the moment have money for everything.

In this coming year, with the £156 million that Mr Hanson mentioned, we will be spending something like £300 million total, a combination of resource and capital, on prison maintenance. That will not close the gap, but we are working really hard to do the best we can.

Q77 Victoria Prentis: The gap will be higher at the end of the year. There will still be more maintenance to do.

Sir Richard Heaton: I hope the gap will not be higher. I hope we will have begun to close it, but I cannot give an assurance on that.

Chair: Understood.

Q78 Bambos Charalambous: I turn now to courts. Your predecessor, Lord Chancellor, said that the courts and tribunals reform programme was operating within a realistic timeframe, but a recent NAO report has concluded that it faces "significant challenges." Do you think the reforms can still be delivered by 2023?

Robert Buckland: Richard will deal with the history and the basis on which those reforms were agreed, which were very much working alongside and with the judiciary to get their support. More than that, the fact is that this needs to be a structured reform. Where we have got to is that we are starting to see an improvement, in terms of the billion that we are investing in modernisation. A key outlier or indicator of that would be the use of online services; we are seeing an increase in the use of those services. In 2018, over 150,000 people chose to use the online service, which I think shows a pattern or trajectory that will only increase in the years ahead. So many, shall we say, non-contentious matters can now be dealt with online.

I do not sit here as a Lord Chancellor who blithely pretends that we can have virtual courts the length and breadth of the country. We are still going to need good, old-fashioned courtrooms, because the court experience and the solemnity of those proceedings is something that should never be underestimated, particularly the giving of evidence by witnesses. I do not want to lose that, especially when we have a generation coming of age that does not know what the world was like before the internet. We are trying to make sure that there is continued understanding of the solemnity and importance of court proceedings before a judge at any level.

Q79 Bambos Charalambous: To move on from that point, you will have seen in our report concerns about vulnerable court users. Obviously, that is a matter of concern for this Committee, and we hope that it is taken into account when looking at the programme.



Robert Buckland: Yes, I am particularly interested in vulnerable court users. It is not just about disability access, important though that is, and it is still a challenge in some of our court estate. It is also about the sensory differences for neuroatypical court users who might have a particular issue with the way the court is set out, and about the reasonable adjustments we can make for people with a hidden or invisible disability. All of this is becoming increasingly better understood. Certainly, as the steward of the system, I will do all I can to make sure that, at all levels, the adjustments that need to be made are made to help people with disabilities.

Q80 **Bambos Charalambous:** In the light of that, HMCTS has a target of, I think, £244 million of savings to achieve by 2024-25. Do you still think it is realistic to make those reductions?

Sir Richard Heaton: I shall have the pleasure of giving evidence on the court reform programme to the PAC this afternoon. Broadly speaking, the answer to your first question is, yes, we expect the court reform programme to conclude by 2023. The savings numbers, if I am asked, are fluctuating a bit; the likely anticipated savings have reduced a bit, but I would expect it to be in that ballpark.

Q81 **Bambos Charalambous:** Can you tell us more about what you are going to say to the Public Accounts Committee later today?

Sir Richard Heaton: If I had the brief with me, I would. Broadly speaking, the court reform programme is going well. It is a very big and complicated programme, which is trying to shift 50 different things—to develop new digital services, create a new breed of call centres, and create a modern justice system that works for the user.

It has slipped, because complicated programmes generally slip; it was originally envisaged as a four-year programme, which was ludicrously ambitious, and it is now properly rebased as a seven-year programme. It is delivering, and it is roughly halfway through. I am pleased with progress and worried about benefits realisation, which is the final savings point. Broadly speaking, I am happy that the programme has been well led and is broadly on track. That is roughly what I will be saying.

Q82 **Bambos Charalambous:** I come now to the Crown court and delays in sitting days. In spite of an increase in Crown court delays, the allocation of court sitting days has been reduced by over 15,000 days since last year, which means that many courtrooms are now lying empty. What is the justification for that policy? How are you measuring the impact? I note that some recorders are now not able to meet the days that they are required to sit. How are you addressing those issues?

Robert Buckland: You start, Richard.

Sir Richard Heaton: Every year—this is nothing new—we set an allocation of sitting days for each jurisdiction. Broadly speaking, that is dictated by the anticipated volume of business coming in. I mentioned



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earlier that the charging level—the receipts into the Crown court—is at what appears to be a 15-year low. That is the basic reason why there are fewer Crown court sitting days than there were before.

We also keep an eye on the backlog, the number of cases waiting to come on, and on the average waiting time. Those are both at historical lows, although there is some recent evidence that the waiting time is creeping up. We keep this thing under very close review, and we can revisit it with the judiciary if we need to. Broadly speaking, the reduction in charging is the main reason why you see a reduced number of Crown court sitting days.

Q83 Bambos Charalambous: To follow up on that, if the additional police officers are charging more people, will that not lead to an increase?

Sir Richard Heaton: We would expect the number to go up, yes.

Robert Buckland: Yes, we would, and we would be prepared to make the necessary adjustments and, indeed, in effect to allocate and ask for more funds to deal with that particular issue. All of us who practise regularly in the Crown courts know that, while there is an element of flexibility in listing, and indeed the court day, sometimes it is difficult to get the flexibility that all of us would fully desire. You cannot just bring a case up in the list, if it is genuinely not ready.

The difficulty for many Crown court centres is that you might, for example, have a couple of pretty large cases that need to be listed for many weeks. If for whatever reason those cases fold or end much more quickly than expected, it is difficult to fill the gap with cases immediately behind them; those cases might not be ready, because everybody has been working to a particular timetable. However, I am listening and watching very carefully the recent information that is emanating about further delays. While we have to base our estimates on hard evidence, with all my contacts within the criminal Bar and the criminal justice system I am listening and watching very carefully to see the trend, and I will be prepared to act as much as possible to prevent undue delay in the system from getting worse.

Q84 Andrew Griffiths: I understand the point you make, Lord Chancellor, about trials of complicated cases finishing early, but it was ever thus. It has always been the same that sometimes trials take longer than tabled and sometimes they are much quicker, but we are seeing an increase in the number of courts sitting empty. The point that you make is not the reason, I would suggest, for courts sitting empty.

Robert Buckland: What I was talking about was the backlog and the desideratum of trying to shorten that backlog by making sure that cases get on as early as possible in terms of a trial. On the issue of courts sitting empty, I think the permanent secretary answered that point in terms of how we project the demand for court sitting days according to the workload. What happened in the most recent period was a downturn



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in receipts into the Crown court, and an increase in family law cases, which meant that we had to increase resources there. Let us not forget that, in care cases, the family court has to work to a statutory 26-week maximum, which must be adhered to. We do not have any leeway with regard to that. We have to adjust our priorities according to the evidence. It is not an exact science, and it is not easy.

I do not like to see courts lying empty at all, Mr Griffiths. I was a recorder myself, and I know the feeling of struggling to meet your allocation because there is no sitting day available. But I cannot govern the receipts that come in as a result of charges. We anticipate that, with the 20,000 extra police officers, we will see an uptake in those receipts, but it is not, I am afraid, an exact science.

Sir Richard Heaton: Recorders have been given an assurance that they will be offered their minimum sitting days this year.

Q85 **Chair:** Sir Richard, you made the point about receipts being the main driver. Common sense says, of course, that, if there is a drop in receipts, it is the absolute opportunity to reduce the backlog, positively. Why has that not been done?

Robert Buckland: I think I have tried to give you some of that answer, Mr Neill.

Q86 **Chair:** It is a political decision, isn't it, Lord Chancellor?

Robert Buckland: It certainly is not.

Q87 **Chair:** I am quoting Lady Justice Macur, in her letter to the Criminal Bar Association—to be accurate, to the chair of the Bar Council. Lady Justice Macur, the senior presiding judge, referred to a “concordat” between the senior judiciary and the Department, in effect. She explains that the reduction in Crown court sitting days, “was calculated by MOJ analysts”—your people, Sir Richard—“as being necessary to maintain the number of outstanding criminal cases in the backlog.” Maintaining the backlog, not reducing it. She ends: “The decision not to further reduce the backlog was a political decision.” Those are Lady Justice Macur’s words.

Robert Buckland: I think what she was referring to there was that it was a decision made in the Department, as opposed to a decision made by judges, and we absolutely accept that.

Q88 **Chair:** Was it your decision, Lord Chancellor?

Robert Buckland: The answer I am giving you is because I thought—it might be my fault—there was perhaps a pejorative sense in what you were asking, and that it was a political calculation as opposed to an administrative or judicial one.

Q89 **Chair:** I was simply quoting her words.

Robert Buckland: I can assure you that, when it comes to political calculation, that would not come into it at all. Lady Justice Macur, the



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SPJ, is right to draw the distinction between the judicial function and—I would prefer to use the word—Executive function, which is really what we are about in the MOJ. I do not know whether the permanent secretary wants to add anything.

Sir Richard Heaton: No, it is exactly as the Lord Chancellor said: there was no politics in the pure sense of the word.

Q90 **Chair:** It is a surprising use of words to see.

Sir Richard Heaton: It is a difficult allocative decision made by the Ministry in consultation with the judiciary.

Q91 **Chair:** That is why I raised it for you to deal with.

Robert Buckland: Look, I know the SPJ well. I have known her for a long time. She is a very experienced judge of the highest quality. She, like me, is very respectful of the distinction and the division that we maintain.

Q92 **Chair:** Is it perhaps fairer to say that the decision by the Ministry not to actively seek to reduce the backlog is about financing? It is budgetary.

Sir Richard Heaton: It is part of our allocation decisions.

Q93 **Chair:** That would be a fair way to put it, then. Lord Chancellor, you said that you have to put more money on family, so it has to come from somewhere.

Robert Buckland: It is difficult for me sometimes to hide my frustration as somebody who has come to the helm of a justice system that I care deeply and passionately about.

Q94 **Chair:** Absolutely. Nobody doubts that.

Robert Buckland: I want to do more.

Q95 **Chair:** I am sure you do.

Robert Buckland: I hear what is being said out there by my colleagues and friends.

Q96 **Chair:** I get that, yes.

Robert Buckland: This is about users of the system as well. This is about victims of crime, witnesses, and all the people who use the system. This is not some producer-led interest, as far as I am concerned. It is about the quality of justice that we deliver. Both the permanent secretary and I are deeply committed to trying to do this, which is why I hope we have given you the clear and correct impression that, as long as I am the steward of this system, I will keep on making the case at the highest level.

Q97 **Chair:** I think pretty much everybody in this room would accept that. I have known your commitment for the number of years that I have known



you, and many of us share it.

I shall be frank with you, Lord Chancellor and Sir Richard. A particular concern is that those who administer Her Majesty's Courts and Tribunals Service are not rooted in the system in the way that you are and many of us are, and there can be a tendency for administrators to see things as transactional matters. Is that worth looking at to make sure that the real concerns of the people you have worked with and many of us have worked with—the specific cases that we see on the CBA's Twitter feed, for example—are actually picked up and weighed sufficiently by those who have the day-to-day administration of the system? It is not the judges but the administrators.

Sir Richard Heaton: I feel I ought to come in in defence of the chief executive of the courts service, who is one of the people who is most active in engaging on Twitter. After all, her staff have far closer proximity to the frontline than I do, so I do not think that I could claim that I know the system better than they do. They work in courts and tribunals up and down the land, and they work with judges. I would push back on that characterisation of HMCTS as being purely administrators. They have to administer a difficult system, so they require administrative skills, but justice runs through their veins as well.

Robert Buckland: I would like to pray in aid the support not just of Susan Acland-Hood but also of all the listing officers, whom I know and have worked with over the years in court services up and down the country, and all the administrative assistants who work with them. It is a tremendously complex job to list Crown court cases and to list cases in any of our courts. I do not think they are desiccated calculating machines, Mr Neill; they are dedicated public servants.

Q98 **Chair:** As you say, "Twas ever thus." But I shall give three examples for the record, because it is important to get this on the record. We have seen evidence in the last couple of days. In an attempted murder involving juveniles, not guilty pleas were entered in March 2019, with a trial date set in January 2020, because of listing issues. It has been trial-ready for months. That is not acceptable, is it?

Robert Buckland: It is invidious for me to comment on individual ongoing cases, but I note the point about trial readiness.

Q99 **Chair:** On flexibility, there is a one-to-two-day trial at Isleworth around mental health issues, listed for August 2020. That is the sort of thing that, normally, an experienced listing officer would bring in quite quickly.

Robert Buckland: Under the youth justice protocol. I absolutely understand that.

Q100 **Chair:** I am sorry to labour the point, but it is important. We talk about confidence in sentencing. As you rightly say, Lord Chancellor, it is about the confidence of victims. It is not just the Crown court, is it? I was speaking to a bench chair in my own constituency only last night.



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Increasingly, they have a number of cases taken out of the list the night before. People have geared themselves up to give evidence, which is often quite traumatic, and it is all stood down the night before. It is part of the whole-system approach, in this case, not necessarily HMCTS.

Sir Richard Heaton: It is right that we hear and acknowledge those anecdotes. That is a pejorative term, but it is important that we hear them; otherwise, we would simply be guided by the statistics. Statistics tell us that waiting times are low and the backlog is low, but on the ground it is worth hearing the stories.

Chair: I think we have done that, and I think you will probably follow up some of these accounts.

Q101 **Andrew Griffiths:** Lord Chancellor, it is great to see you in that seat. It has been a long time coming, and we hope you are there for a considerable amount of time. I am delighted that you reiterated that the justice system is actually there for the victims. When we talk in this Committee about allocation of resources, it is all too easy to forget that we are here to serve the victim, so I am grateful for that.

Can I drag you back—to coin a phrase—to follow the money? Can I drag you back to the issue of the budget? Sir Richard, when you came before this Committee 12 months ago—I am sure time has flown—you said that it was “difficult” for the MOJ in relation to budgetary constraints, particularly the annualisation of the budget. We have seen the fantastic settlement announced in September, with a 4.9% increase in the resource budget and £55 million across the criminal justice system to support the 20,000 police officers, all of this great work. But last year you received £1 billion extra in-year funding. Will you need extra funding again from the Treasury part-way through this year?

Sir Richard Heaton: We shouldn't do. There may be one or two slightly technical pre-agreed claims on the reserve, but we shouldn't do. The reason we needed that large sum of money last year was that our baseline was so far adrift. We have corrected the baseline. If you take into account that £1 billion and you uplift it for inflation, you get to the figure that we were given in the one-year spending round. We have got rid of that particular problem, which I know I was greatly exercised by and spoke in rather dramatic language about when I sat here a year ago. We have got rid of the structural underfunding, so we should not go back saying that we are £1 billion adrift.

Q102 **Andrew Griffiths:** How do you think the righting of that systemic fault within the budget impacts on your planning year on year from now on?

Sir Richard Heaton: It is the money needed to keep the lights on, which is the slightly dramatic way of putting it. It is a baseline; it is no more than that. No Department ever gets all they ask for. We asked for a number of things that we think were necessary to rebuild and maintain courts—we have not mentioned that the court estate needs maintenance—and to maintain prisons.



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We got some of what we asked for, but we need money desperately to repay our technical debt. We have computer systems that desperately need replacing. There are lots of things we need to do, and I feel that we have a baseline for keeping the lights on and we have a third of the extra stuff we need. We have to keep plugging away at this. Isn't that right, Lord Chancellor?

Robert Buckland: I entirely agree, permanent secretary. This was a one-year spending round completed at pace, and I pay tribute to the officials in my Department who worked, on one occasion through the night, to make sure that we made as convincing an evidence base to bid as possible. As in many bids, you do not always get all you ask for, but I think this year there was a marked change, a step change, from some of the previous years.

I have sat in your place, Mr Griffiths, as a Committee member, and I saw the Ministry's budget, shall we say, somewhat constrained in the early years of this decade. We are not going to go into the political reasons why. There are people on the Committee who would disagree with what I might say, and I am not going to waste time doing that, but the fact is that it was. We were not a protected Department, and we are not a protected Department now, so we have to continue to make the case that, as a downstream Department, we have to pick up the consequences of decisions made elsewhere. We are getting much more traction on making that case. If we continue to get that traction, I am confident that we can continue to make really strong bids, particularly for the next SR, which will be for 2021-24, a three-year period, and make a credible evidence-based bid to create a much more sustainable future for justice funding.

Q103 **Andrew Griffiths:** But haven't you just described the folly of the system in which we operate? I pay tribute to your persuasive skills in getting such a good allocation this time around, and I am sure it will be wisely spent. You talked about officials working through the night to put that budget together, and there were unique circumstances, with the change in Prime Minister and a reshuffle. But isn't the real folly that we plan this on a yearly basis and you have a yearly budget?

We have heard today about the maintenance backlog, and how you can project that. We have heard how we can project with some certainty prisoner numbers, taking into consideration the 20,000 new police officers. But isn't it ridiculous that you find yourself in a situation, Lord Chancellor, with an annualised budget, trying to plan a Department that is so important for the people we represent? While you are making a strong case for better allocation of resources, shouldn't we also be making the case that, actually, you need a longer-term strategy in the allocation of budget?

Robert Buckland: I agree. This year was particularly unusual, but of course we are due to have a three-year spending review, with the control period from 2021 through to 2024. It will not be the first time we have



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done that; we have had previous spending reviews of three-yearly periods, and it is a much more sustainable way to plan ahead. It would be nice to say that we could have a 10-year spending programme, but I do not think that is realistic politically. Three years strike a reasonable balance, and that is why we are going into that round really well prepared, with as much evidence as we can muster, to make the case for the arguments on prison maintenance, the points about the court system and, indeed, the general importance to our society of having a justice system that is worthy of its name.

This is not just about transaction and process. Sometimes I feel I am at the head of a giant processing Department, but I am not. I am here to be the steward of one of the hallmarks of a civilised society. That matters hugely to me, and not just to me but to the permanent secretary and all the staff who work in the Ministry, whether they are in the centre or out in Haverigg prison or Dartmoor prison, or whether they are in Carlisle Crown court. It is that sense of ethos that sits at the heart of what the MOJ is doing and at the heart of what I as Lord Chancellor, I hope, embody.

Q104 Andrew Griffiths: A 4.9% increase in real terms is very good. Sir Richard, I think I heard you say that no Department gets what it wants, but you got a third of what you asked for. Is the 4.9% enough to meet your needs? If not, what did you ask for? Could you also give us some indication of what the additional resources will be spent on? You talked about the court system, but there is also the issue of legal aid. Could you talk to us about spending priorities going forward?

Sir Richard Heaton: The third was a manner of speaking, but I mention two things that we have not yet got funding secured for. One is our technical debt, and there are pay pressures that I do not think we are properly funded for. I think we need to keep pushing on court maintenance, because the court estate is in some places in a dire state.

On spending priorities going forward, we have been talking about one of the major ones, which is a prison estate fit for this population, and a probation system that is fit for purpose. That requires departmental bandwidth and spend, to turn our CRC regime into something that really works and delivers non-custodial sentences. We need to modernise our employment conditions so that we can keep our prison officers and retain our staff.

We will undoubtedly need to address some aspects of the legal aid system, but there is more detail on that to follow. The court reform programme requires continued investment. It is a billion-pound programme, and we are only halfway through. Those are broadly the things that we will spend our money on, but we will spend it wisely and in the interests of justice.

Q105 Chair: On that point, are you able to help us at this stage as to what percentage of that new money is likely to go on the courts, for example,



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or on legal aid and support for legal services, or is it work in progress?

Robert Buckland: I think we are in an allocations process, and I do not think it would be right to give you chapter and verse on that. As you know, it is a balancing exercise that we have to maintain. We have certain priorities; the permanent secretary mentioned probation reform, which is a very important element that I know your Committee will take a very keen interest in. We want to get that right. As well as resources, we have a lot of work to do, and the bandwidth of my officials is wide but not infinite. After the interesting and busy summer we have had, I have to respect that they are gifted but not superhuman.

Chair: Fair point.

Q106 **Andrew Griffiths:** To go back to a point that Mr Hanson made earlier in relation to the maintenance backlog, we know that a great deal of good work has been done in surveying the prisons estate and getting a handle on where the problems lie and what money needs to be spent. Given that we have that information, and given that you know what your spending allocation is in relation to prison maintenance and the backlog, surely you can tell us whether at the end of the period of time—the end of 2023 or even the end of 2021—the maintenance backlog will be continuing to rise, will be flat or will be being reduced. Which of those three will it be?

Sir Richard Heaton: I think on our current funding it will be slightly better than maintained. In other words, we will have started to reduce it. The reason I cannot say with precision is that, as the Lord Chancellor said, we have not yet made allocations. Within the Department, we will have more bids than we have resources for, both on capital and spending.

Q107 **Andrew Griffiths:** Define “slightly”.

Sir Richard Heaton: That is as far as I think I can put it, sitting here right now. I certainly cannot look many years ahead because, as we discussed, we only have a one-year settlement. With the money we have, I think the backlog should be slightly smaller, but that is slightly finger in the air.

Q108 **Andrew Griffiths:** Lord Chancellor, in one of your previous answers you touched on mental health in prisons. I am interested to know your priority in allocation of resources in relation to improving conditions. You have a duty of care to prisoners in the prison estate. I think we all recognise that, while as a Government we have prioritised improving mental health for the nation, there are many challenges for the inhabitants of our prisons.

Do you feel that you are discharging your duty of care correctly in our prisons? What extra allocation of resources are you putting towards improving mental health and cutting suicides in our prisons, and how are you doing that?



Robert Buckland: You touch on a really sensitive and important issue. I think I have talked to the Committee in the past about self-harm and suicide in custody, and I made the point that one death is one too many. I am encouraged and informed by my visits to prisons to speak to prison officers about the jail-craft and the work they do to prevent or reduce instances of self-harm and worse. The ACCT, the assessment, care in custody and teamwork process, has now been improved somewhat; it has become more user-friendly and adaptable, and that is at the heart of it.

By the way, Mr Griffiths, I get personal notification of every death in prison. I was asked by my civil servants whether I wanted that and I said, "Yes, I do want that, because that is a human life we're dealing with and I am responsible for it." It is not a statistic to me. I always ask whether the individual has been on an ACCT. Sometimes the individual has just come in, so they are in reception and not known and their needs have not been fully assessed. Sometimes people do these things, in the eyes of the staff, out of the blue. Very often they are on an ACCT, and, for all the tragedies we have, there is a significant cohort of prisoners who are being supported on ACCTs by dedicated prison officers and therapeutic staff, and I pay tribute to them for the work that they are doing.

We are continuing to improve the way we do the ACCT process. We have a pilot at the moment. Where I see the focus now is not just on the prison officer; it has to be the multidisciplinary approach. In prison, obviously, therapeutic services, and perhaps wider commissioned services, are trying to work around the offender as to what is going on and where we are with mental health. Underpinning that is the new key worker scheme, where prison officers will be working with up to six prisoners, trying to identify their everyday needs, and then, once that is dealt with, getting to grips with the underlying issues that often apply to the lives of many offenders. Already I am seeing that yield some fruit in terms of the value of the work that prison officers tell me they find as a result of that.

There is still a long way to go. We have a three-year funding programme for the Samaritans, and their listeners programme, which is invaluable, believe you me. The work they can do, and are doing, to support prisoners is significant. Then, of course, there is training. Where we are now is that 25,000 of the staff have received some training and 14,000 of those have had all the module training on mental health, self-harm and suicide. That applies to new and existing staff. There is a lot of real, practical work being done to improve the response.

Q109 **Andrew Griffiths:** How many prison officers would not have received any training?

Robert Buckland: I do not have the proportion in front of me.

Q110 **Andrew Griffiths:** Perhaps you could write to the Committee.



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Robert Buckland: Yes, I will get that for you. What I want to emphasise with you is that, as society becomes more knowledgeable and engages with mental health on the outside, we have to do the same on the inside. That is why the mental health of prisoners is a particularly important issue for me. It is not just about their welfare, important though that is.

Q111 **Andrew Griffiths:** It is about reoffending.

Robert Buckland: It is about reoffending, and about the safety of prison staff as well. Unpredictable and dangerous behaviour can cause real harm to the staff who work in our prisons too, so this is of wide importance.

Q112 **Victoria Prentis:** On a completely different subject, probate fees, we welcomed, or I welcomed, the announcement over the weekend. As a Committee, we were concerned by the previous suggestion and plan, which would have seen bereaved families pay significant amounts of money, with no time to organise themselves or plan, in most cases. Can you tell us what the plan is now?

Robert Buckland: The decision and the announcement I have made is as a result of a lot of reflection about the function of the system and what we should be doing. Clearly, we have a duty to the taxpayer to make sure the system funds itself. Therefore, we will work closely with the Treasury to make sure that any revisions to the current fee structure reflect that, so that we do our duty as a Government Department to make sure that we provide value to the taxpayer and the general public.

Q113 **Victoria Prentis:** But that is not your view with the criminal justice system as a whole—that it should fund itself.

Robert Buckland: I am talking about the fees recovery system.

Victoria Prentis: Okay.

Robert Buckland: I am very mindful of the strictures of the courts about, frankly, the size of the envelope, and therefore I want to maintain the appropriate balance. I felt, having looked at it and considered it, that we were not striking the right balance with this proposal and that, although it is important to listen to the public and their concerns, it was not just about that. It was about whether it was “the right thing” to do in terms of striking the balance. I felt that it was not, on balance, but at the same time I am very mindful of my duty to make sure that we have a sustainable system, as we develop it in the future, so we will be working very closely with officials and the Treasury to do that.

Q114 **Victoria Prentis:** Are you liaising on inheritance tax, for example, which is another tax that hits you as soon as somebody dies? Often you are not able to plan, because you do not know when a relation is going to be taken from you, so you might get a significant bill for inheritance tax at the same time as having to deal with probate. Is proper consideration being given to the panoply of taxes that hit you as a bereaved family member?



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Robert Buckland: Ultimately, I have to cede to my colleagues in the Treasury, and it would perhaps be foolish of me to try to hold out on their behalf particular approaches, but clearly it is a discussion that we will continue to have with our colleagues in that Department to make sure that the appropriate balance is struck between the need to generate revenue and pay for public services and—

Q115 **Victoria Prentis:** But you do not feel any need to use the bereaved as a cash cow to pay for the criminal justice system, for example.

Robert Buckland: I think the idea that you should use bereaved people as cash cows is deeply inappropriate. It is one that I do not think any of us, whether we are members of the Committee or members of the Government, should in any way be seeking to propagate. I was very anxious to make sure that, in developing what clearly needs to be some change, and a system that is much more in line with balancing the books, we respect inflation but do not recast the system in a way that would be seen as some sort of tax on the bereaved.

Q116 **Victoria Prentis:** So a 28 times increase was too far.

Robert Buckland: It was too far for me. Clearly, the Department had to make some difficult decisions with regard to revenue. We have talked about the pressures we were under. Having reflected carefully on the matter, we feel now that we are in a position to make this announcement and revisit the issue as soon as possible, but on the principle of sustainability rather than taxing bereaved people.

Q117 **Chair:** The final topic I want to raise, Lord Chancellor, is the elephant in the room in many respects, and that, of course, is Brexit. You and I are both very clearly and publicly on the record as people who support leaving the EU with a deal. I stress the importance of that very strongly, myself, but we have to look at the potential impacts on the judicial system, the justice system and your Department if that were not to be achieved.

If we get a transition, there is the opportunity to sort these things through, but what is your assessment, supposing that there were not to be an acceptable deal, and we were to leave on 31 October? What is the position in terms of civil justice co-operation, and your assessment, too, as a criminal practitioner, of criminal justice co-operation? What mitigations is your Department putting in place?

Robert Buckland: First, my Department has pulled out all the stops to make sure that, in terms of sheer logistics for the prisons and the court system, we will be ready for a no-deal Brexit on a logistical contingency basis.

Q118 **Chair:** That includes the potential spike to cases.

Robert Buckland: Yes, it does, and it also includes supplies to our prisons. It is something that of course we are used to. Adverse weather conditions mean that some of our remote prisons have to have those



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plans in place. There are concurrent issues as well, which are what always blindside planners. Let us say we had a serious incident in one of our prisons, with the gold command structure. What would trigger the wider command structure that would apply for more serious incidents? All that has been planned and factored in. I am very grateful to the team who worked on this; very senior officials of conspicuous ability worked on it, and we have tested it virtually daily to make sure that it is up and running. We have even done dress rehearsal testing of the resilience of the system. On that front, I think the Ministry is ready.

Can I pray in aid the Crown dependencies, which are my responsibility? In the Privy Council, we have that responsibility. We work closely with those Administrations, particularly on the issue of supply from Portsmouth and the Channel Islands, and Heysham and Liverpool for the Isle of Man. I am satisfied that all the necessary contingency arrangements are in place to ensure continuity of supply to the Crown dependencies, and I am grateful to them for their active engagement.

When it comes to civil justice co-operation, you know already that a clear commitment has been made for continuation in the Hague convention, which is of vital importance for families, for divorced families and child maintenance. Clearly, that is a priority for us, but, of course, there are other aspects of civil and judicial co-operation that are important. With no deal, as a baseline, signing up to the Lugano convention would be the minimum standard that I would want to see. You will see legislation coming forward in the new Session that gives a domestic underpinning to civil justice co-operation not just for Hague but for future arrangements, whether they be Lugano, or, indeed, the ambition that I have to see this country signed up to the Singapore convention on mediation and the Hague judgments convention as well. We remain very ambitious in terms of what we want to achieve.

I have to accept that a no-deal Brexit would mean a qualitative change in the nature of civil and criminal justice co-operation. Despite that, it does not mean that we cannot, as a Government, set out our stall and not just be ambitious but seek to co-operate, and be co-operative and consensual with our European friends, to achieve the highest degree of co-operation and recognition, which is good not just for individuals but for our economy as well, and I will continue to make that case.

Q119 Chair: I take that point. In terms of the economy, of course, the Law Society predicts that without a deal, as opposed to a deal with a transition, you are looking at the legal sector taking a hit of about £3.5 billion in turnover, potentially about 10,000 jobs.

Robert Buckland: It is a real concern. I pay tribute to the sector for their sector-to-sector engagement with other member states. Let us not underestimate that, because a lot of this has to be done by the regulator or the sectors themselves. We as a Government support that. We have actively supported it and will of course continue to do that. Through organisations such as the Brexit Law Committee, which I chair—or,



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rather, which I attend and work with—the Department gets a real sense of what the sector wants and what its priorities are, and what we as a Government need to do to help to achieve those aims.

Q120 Chair: I take on board that the Department wants to be a voice for that sector in government, but however hard we try, and whatever the ambitions for the future, we cannot deal in a no-deal scenario with the loss of rights of audience, mutual recognition of professional qualifications, and enforcement of judgments in civil and family matters. That will inevitably leave, at the very least, a gap for a period of time when British firms and citizens—a woman seeking to enforce her maintenance—would be at a disadvantage.

Robert Buckland: That case is made regularly by me at the appropriate level, in the Cabinet Committee, and it is fully understood by my colleagues in the Treasury and BEIS. We are talking not just about the larger organisations within legal services but the SMEs as well, and particular sectors that might be disproportionately affected by a no-deal Brexit. All those issues are being thoroughly canvased within Government, and not just canvased but discussed in terms of the support that might be needed. All those plans are being developed.

Q121 Chair: And the judiciary is kept fully in the loop as regards any impacts on the courts and demands on them.

Robert Buckland: Yes, indeed. With HMCTS, we have contingency plans in place. There are particular areas, such as Westminster magistrates, that might feel a particular pressure, so those contingencies are in place and fully understood.

Sir Richard Heaton: Before we close, can I answer Mr Hanson?

Chair: Indeed. By all means. Your officials have produced it.

Sir Richard Heaton: He asked how many prison officers would be needed to service 10,000 places. The answer is that we would need 2,000 prison officers plus ancillary staff. It turned out to be a rather simple calculation which I could do in my head.

Chair: It is always the job of the junior sitting behind in these things to have a calculator, isn't it?

Q122 David Hanson: The question is how many prison officers in total there would be in 2025, on your current projections of the current prison numbers.

Sir Richard Heaton: There are 22,000 now, so there would be 24,000.

Q123 David Hanson: An interesting point on that, Chair, is that there were 29,000 for an 85,000 population, and Sir Richard is now indicating that there will be 23,000 or 24,000 for a 90,000 population.



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Sir Richard Heaton: The prison officer population has recovered from the low number that it hit after the cuts, if I may say so, but we never said that we would replace every officer who was in place in 2010. We have covered about a third of the gap.

Q124 **David Hanson:** It is still more for less.

Sir Richard Heaton: Yes, but, crucially, new officers will be engaged in offender management, which is a one-to-one relationship, so they will be well deployed.

David Hanson: One for further debate.

Q125 **Chair:** We have the Prisons Minister coming next week, so we will be able to explore that.

Lord Chancellor and permanent secretary, thank you very much for your time and for your detailed answers to the wide-ranging questions we put to you. We appreciate it, and we very much hope to see you again before too long.

Robert Buckland: Thank you, Mr Neill, and thank you, Committee.