Justice Committee

Oral evidence: Prison population 2022: planning for the future, HC 483

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Watch the meeting

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

Questions 1 – 116

Witnesses

I: Rory Stewart OBE MP, Minister of State, Ministry of Justice; Mike Driver, Chief Financial Officer, Ministry of Justice; and Justin Russell, Director General, Offender Reform and Commissioning Group, Ministry of Justice.
Examination of witnesses

Witnesses: Rory Stewart, Mike Driver and Justin Russell.

Chair: Good morning, everyone. Welcome to our evidence session on the prison population 2022. Welcome, Minister, Mr Driver and Mr Russell. Before we move on to the questioning, we have to deal with declarations of interest. I am a non-practising barrister and consultant to a law firm.

Alex Chalk: I am a barrister.

Victoria Prentis: I am a non-practising barrister.

Bambos Charalambous: I am a non-practising solicitor.

Q1 Chair: Minister, thank you very much for coming to give evidence to us today; it is appreciated. Your role as Minister of State responsible for prisons and probation is, I think, well known and on the public record, but perhaps your two officials might like to say what their role is within the Department and how that fits into the overall picture.

Mike Driver: I am Mike Driver. I am the chief financial officer at the Ministry of Justice.

Justin Russell: I am Justin Russell. I am director general for justice, analysis and offender policy within the Ministry of Justice.

Q2 Chair: It is your analysis that drives some of the projections we see.

Justin Russell: And policy and strategy development, yes.

Q3 Chair: Thank you very much. Minister, let’s take a look at what has happened over the last 15 years or more, by way of context. We have seen huge growth in the prison population, some stability in recent years but a level of unpredictability, I think you would agree, with an unexpected spike of 1,200 last summer, and then some stability and a bit of reduction.

Underpinning that, the evidence we have heard from the Department is that there is a considerable change in the mix of the prison population—longer sentences, more people over four years, an older population and so on. Given that changing total number and the changing mix within it, what is the Ministry’s plan? As the Minister, how do you intend to deal with those changing demands, because clearly the demands change not just numerically but in terms of treatment within the system? What is the Ministry’s objective?

Rory Stewart: There are two main elements. One is trying to do our best to predict the future prison population in order to provide safe, decent, clean spaces to accommodate people when they are put in prison. The second is to look at the drivers affecting population and work out what we can do to influence them. Some of those, as you will be aware, Chair, are within our gift and some are not. I am responsible for
sentencing, for example, so one of the ways I could have an impact either on increasing or decreasing the prison population would be based on primary legislation—increasing sentence length or decreasing sentence length. But other things that will have a huge effect on prison populations are not within my gift.

One of them, clearly, is if people suddenly start to commit different types of offences, or more of those types of offences, and there was a sudden surge in violent crime. A second thing would be if the police behaved in a different way, or if the courts behaved in a different way. If the police started prosecuting more people and the judges started giving longer sentences, those would not be things within the control of the Department. One example is the fact that our prison population is now at the lowest level it has been since 2010, although that sounds more dramatic than it actually is because it is actually a marginal decline.

Chair: It is a marginal decrease.

Rory Stewart: Yes. It is driven partly by things that we in the Ministry have some influence over; home detention curfew guidance, particularly around processes, probably accounts for around half of that. The other half, particularly in the 12 to 24-month population, is simply driven by a reduction in the number of people who are being prosecuted. That will be affected both by potential changes in crime and by changes in police and CPS behaviour.

Q4 Chair: Of course, a great deal of the reduction in people prosecuted—about 45,000—is in summary-only offences, the vast bulk of which would never have resulted in imprisonment in any event. Is that perhaps less of a real driver than it might at first seem?

Rory Stewart: There has also been a very significant reduction in indictable offences. Over the period of the last seven years, the figure has fallen from about 400,000 a year to about 270,000 a year, so there has been an almost 30% reduction in indictable offences, as well as summary offences, over that period.

Q5 Chair: The irony is, of course, that perhaps sentence inflation and other matters have meant that that reduction in the number of indictable offences has not had a significant effect on the prison population.

Rory Stewart: Absolutely. The number of offences going through the Crown court, or as indictable offences through the magistrates court, has fallen in absolute terms, but the seriousness of the crimes has radically increased, and that has also affected our population. We have gone from about 40% of people in for sexual or violent offences to 60% of our population being in for sexual or violent offences over the same period.

Q6 Chair: Are you concerned about the threefold growth in the last 15 years or so in the indeterminate prison population?
Rory Stewart: Yes. That has also been a significant issue and one we have been trying to address through many methods. You are absolutely right: an indeterminate sentence population has a very dramatic effect on numbers. It goes back to the fundamental calculation that we keep looking at again and again, which is that in obvious numerical terms, Chair, as you will be aware, if we have 12 people getting 11-month sentences and suddenly we get 12 people getting 12-month sentences, that is an extra prison place. With an IPP sentence, effectively, we have locked up that prison place indefinitely.

Q7 Chair: Isn’t it time that we finally grasp the nettle and make sure that these people are released, or resentenced, as Lord Thomas, the former Lord Chief Justice, suggested some time back, to determinate sentences, so that everybody knows where they stand in the system? It is a historical hangover that is mucking up the works, isn’t it?

Rory Stewart: Yes. I have a lot of sympathy for your position. We are working very hard within the Department to try to resolve this, but I completely accept the logic of your position.

Q8 Chair: Do you think we might be able to work with you to get that translated into practice?

Rory Stewart: Chair, keep challenging us. We will keep pushing on that one.

Q9 Chair: I promise you we will. The other thing that struck me was the massive increase in recall. It was 150 in 1995. I was trying to work out the mathematics; 6,400 is a massive increase. That is something Government can very often have a lever on, because it relates to the way people are dealt with by the probation service, by rehabilitation and community rehabilitation companies, and through what is done with ROTL and a raft of other things. What is the plan to prevent that massive increase?

Rory Stewart: It is a very difficult balance. We take this very seriously. We asked Dame Glenys to look at our recall. She concluded that 90% of our recalls were justified, but you have raised an interesting question: what does justified mean?

Obviously, the recalls are driven by a strong sense that people should comply with their terms. Critics of the previous system—the system you are quoting back in the 1990s when there were only a few hundred—would have said that under the old system people did not comply with their community sentences, nothing really happened to them and they just shrugged their shoulders, so you need some type of clear backdrop.

On the other hand, there is not much evidence that putting someone back in prison for a short period of time has much impact on their behaviour or their reoffending. What it does is put a lot of pressure on prison places; it causes an enormous amount of churn and puts a huge amount of stress on the system. The final thing that we face is a situation
in which for more than 10 years the judiciary has consistently expressed a lot of scepticism about community sentences. I was very interested in the conversation with Mr Hanson on the subject. Not having recall measures may have an impact on the judiciary’s confidence in community sentences. If they feel that people get community sentences and nothing happens to them if they do not comply, we may have even less confidence in community sentences.

Q10 Chair: Exactly, I understand. You will know that we touched on that in some detail in our report on “Transforming Rehabilitation,” which was published last week. I am not going to pull you into that, Minister, because you have only recently had sight of it, so that would not be fair, but you make the point. Mr Russell, did you want to make a point?

Justin Russell: Recalls have actually come down a bit, to about 700 over the last year. There was an increase driven by the Offender Rehabilitation Act. We think that is now starting to bottom out again, so we are hopeful that the number will continue to come down.

Q11 Chair: The latest prison population projection suggested that the population was stabilising and would grow from 2019 to 2020. Is that right? Just how confident are you around those populations?

Rory Stewart: I have here a tiny little graph; essentially, this large red swathe shows uncertainty about prison population projections for all the reasons I described. These populations are driven by police behaviour, sentencing behaviour and social behaviour and crime statistics, which makes it very difficult for us to confidently predict prison populations.

You could argue perfectly reasonably that one of the reasons why the Department has been under strain over the last seven or eight years is that we have been, particularly back in 2011-2012, over-optimistic in our confidence about projections on prison population. I am trying to encourage the Department to move away from an optimism bias and plan towards a worst-case scenario. We have been pleasantly surprised over the last six months that things have begun to improve, but there are many reasons to believe that things are going to get worse again, because the sentence mix is not going in our favour.

Generally, there is more of a tendency to give longer sentences, and there are fewer first-time offenders going through. There are more prolific offenders going through. If you ask us to be confident on whether our figures are going to get up to 93,000 or 89,000 by 2022, it is very difficult to do. That is, I am afraid, asking our statisticians to do stuff they are not very good at doing. It is no accident that this red thing on my graph expands like a trumpet, because the further out you go in time, the more uncertain projections become.

Q12 Chair: That is helpful. I was going to say for the record that it is very clear from the graph. Would it be possible to provide that graph to the Committee? It would be most helpful.
Rory Stewart: I believe so, or something very like it, before I get kicked for revealing confidential information.

Justin Russell: I think we are allowed to do that.

Q13 Chair: Given that the ambition is to make it a data-driven Department, something that graphically represents the data would be very consistent with the Ministry’s objective, and it demonstrates your point very well.

Rory Stewart: Mr Russell assures me that this is not classified, so we will provide it.

Chair: I am grateful for what I take to be the assurance that we will have it. Thank you.

Q14 Victoria Prentis: I am afraid, Minister, you just gave us a challenge, which it would be rude of us to ignore. IPPs relate to only a small proportion of the prison population but are a continual sore to those of us who care about justice. The Department has done some great work in recent years on reducing the number enormously. There is a whole dedicated team, I understand. Is that right? Are they still working? They have presumably dealt with the easier cases and are now reaching a rump of cases that are more difficult. What are your options?

Rory Stewart: To be absolutely honest, there are no easy answers on any of it. We are stuck in the middle of going through case by case, trying to work out who we can get rid of. The policy direction is clear: we do not like IPP. It is not an approach that we thought was a good one. We are trying to balance that with risk calculations. There are no easy answers at all that I can offer, except to say there are a lot of very smart people in the Department grinding through those cases, trying to reduce the number.

Q15 Victoria Prentis: Are you considering all options, such as releasing people who we fear may be dangerous and then resentencing them in some way? What else is on the table?

Rory Stewart: I am afraid I would be more comfortable discussing this in a future session when I am more prepared. I was not expecting to talk a lot about IPP.

Q16 Victoria Prentis: Fair enough, and I am sorry. It is just the challenge. Going back to HDCs, are you happy with the way the system is working?

Rory Stewart: Yes. Let’s talk HDC for a second. Basically, the way we have moved on home detention curfews is to focus on two separate things. The first is to get rid of a lot of the bureaucracy and paperwork. There were 24 separate processes that you needed to go through in order to get an HDC. You needed to apply for it, you needed to get a bit of paper and you needed to give it to a particular person. It then got given back to you. You then needed to give it to someone else. A lot of energy went into cracking through and mapping those 24 stages, getting rid of a
lot of it, simplifying it and essentially creating a process that moved automatically towards it. That is the bureaucracy—the paperwork.

The second bit is around the risk assessment. We have moved to a situation where the presumption is that you get HDC unless you can prove that there is a strong risk against it. In the system we inherited a year ago, it was the other way around. Those two things together are having an impact. We think we are going to be able to get to a situation where we will have, at a steady state, about 1,400 extra people on HDC at any one time.

Q17 **Victoria Prentis:** Brilliant. Do you think that number can be increased a lot more in the future, or do you think it is likely to stay?

**Rory Stewart:** Not without changing primary legislation. At the moment, we are limited to doing it to a sub-category of people—people with shorter sentences—and not including sex offenders and some other exclusions. There is a stock and flow issue. We are seeing an increase in the flow of people going to HDC, but we will eventually get to a steady state. When we hit that steady state, it will remain constant unless we change the primary legislation.

Q18 **Victoria Prentis:** Is the Department keen to evidence how well that is working, assuming that it continues to work well as a system, so that we could consider changing the primary legislation in the future?

**Rory Stewart:** Yes, definitely. We are very happy to share the evidence on how we achieve that steady state. The 1,400 is an increase in the stock, which will take us to an eventual 3,600.

Q19 **Victoria Prentis:** The Justice 2030 project was created to understand the drivers of change going on in the Prison Service at the moment. We know that you are a big-thinking, strategic sort of Minister. What do you think are the three key potential opportunities in that project that could help improve the Prison Service?

**Rory Stewart:** Thinking forward to 2030, one big thing that we would all talk about a great deal is technology and the ways it can help or hinder our ability to work with prisoners and the sentenced population. The second thing, which is much more difficult, is around changes to social attitudes, in particular the views of victims, which I want to go back to.

The third is trying to predict the ways in which social change in general drives crime. The third is probably the least interesting and the most obvious to you. We do not know whether by 2030 we will end up in a situation, to use the old cliché, where there is a snowflake generation less likely to commit crime but another group of prolific offenders who are more likely to commit violent crime. Let us set that aside.

The data bit is very interesting. Clearly, we believe that if we can get tagging right it ought to have a transforming impact. To take the HDC conversation we just had, even at the moment we spend about £55 per
day keeping someone in prison and £12 a day tagging someone. Already, the shift of an extra 1,400 people into HDC has serious financial implications for us.

At Thameside, where everybody has a computer in their cell, data and technology are already making a huge difference to the stability of the prison, violence within the prison and relationships between prisoners and prison officers. That in turn, we hope, will continue in issues of reoffending. We certainly assume that we can do much more distance learning and much better family engagement through data. All of that should help to make more humane, decent, purposeful environments in prison, but it is the middle thing that is possibly the most interesting, and we are only beginning to move towards it.

One of the things on which I would be interested in your views as MPs is this. Generally, in society, I feel that over the next 15 years there will be increasing suspicion of perceived elites, and an increasing demand—I do not know whether to call it a populist demand or a democratic demand—for the expression of the citizen’s views. That will express itself, I believe, in more focus on victims. We can see this already in people coming forward all the time on legislation. Probably the most dramatic example will be sentences for people killed in car accidents—death by dangerous driving and death by careless driving.

Traditionally, the view of law, as you are aware, would be that somebody driving the car was not intending to kill that person, and therefore the sentence length was correspondingly shorter. We are moving to a situation where victims are increasingly saying that, if you kill someone, it feels to the victim like murder, even if it does not appear to be so from the point of view of the law. Members of Parliament are coming forward with more pressure for new laws and sentences for that, and for things such as attacks on service dogs and attacks on police officers. The pressure for sentences is rising. That has to be balanced against all the research and evidence we gather, which is pushing towards a smaller prison population. I feel this in engaging with my own constituents, and I would be very interested in your interaction with constituents.

As we give more voice to citizens and to victims, almost inevitably we are going to face pressure between now and 2030 for longer and more brutal sentences, for burglary, for example. I think there will be a groundswell, probably between now and 2030, of people saying that domestic burglary is an absolute taboo, that we do not tolerate domestic burglary, and people will push for longer sentences. That will cause a very difficult conversation with this Committee and the Department. Many of us have very strong reasons to want to reduce the prison population, particularly around short sentences, because we feel very strongly that they do not do any good, but the voice of the victims is going to be a huge challenge over the next five years.

Q20 **Victoria Prentis:** It is worth considering the Sentencing Council’s
evidence to this Committee, which shows that members of the public with whom they engage favour shorter sentences rather than longer sentences. Those of us who are caught up in the *Daily Mail* bubble find that hard to remember. One area where people consistently ask for longer sentences is that of sex offenders, which, as you mentioned earlier, are a very highly growing part of our prison population. How can we manage people’s expectations and explain that 99.5% of sex offenders will be released one day?

*Rory Stewart:* You put your finger on the central very difficult problem. As a footnote of caution behind what the Sentencing Council is saying, that kind of data from those sorts of surveys is unbelievably complex. There is no straightforward answer from the public that they want shorter sentences. It entirely depends on what you pose to them as the hypothetical case. The most obvious one is that, if you ask someone their view if their son is killed compared with their view if their son did the killing, you will get a completely different response. In our dangerous driving survey, nearly 80% of the public were in favour of ferocious sentences for death by dangerous driving. The Sentencing Council thing, and the idea that it is just a *Daily Mail* bubble, I do not think is true, unfortunately.

Q21 **Victoria Prentis:** Just testing. But on the sex offenders?

*Rory Stewart:* On sex offenders, you are absolutely right: people get out in the end, and that is really uncomfortable and victims do not like it. One of the problems for people working on the victim side in probation is that they have very uncomfortable conversations when people get out. Yes, we have to say that these people are going to get out eventually, they have a determinate sentence length and they come out the other end. We have to do all we can to try to make sure that they are less likely to reoffend when they come out, and that will affect the way they are treated, which are possibly some of the things that can make victims feel uncomfortable in the short term, such as the ways we reintegrate sex offenders back into society. The way we might think about getting people back into employment may protect the public in the long run, but those are really not easy conversations to have.

There will be an increasing push from victims’ lobbies over the next 15 years to say: do not release them; we do not want these guys coming out. I do not think we can simply say it is a fact that they are coming out eventually, so why does it matter whether they come out in two or five years’ time? The answer from many people in the public is that at least it is another three years without that person on the streets.

Q22 **Chair:** I understand the position for victims. We all have them in our constituencies and naturally we talk to them. The only thing that troubles me is that I get the sense, although I am sure this is not what you are saying, that we simply roll with that trend and say this is the pressure and we must accept it, because that is the view that comes. Isn’t it the job of any responsible Government to lead and shape the conversation,
to try to make sure that we have a more informed debate about how to deal with this?

**Rory Stewart:** Yes, 100%, Chair, provided we understand the sea in which we are swimming.

**Chair:** Yes, I accept that.

**Rory Stewart:** You are absolutely right that we need to lead; we need to shape and make the arguments very powerfully for why an ever-growing prison population is not in the interests of the public. In the end, sending someone to prison, particularly for a short sentence, is more likely to lead to them reoffending than giving them a community sentence. The victim will be better off, the offender will be better off and society will be better off if we ultimately have fewer people in prison. But making that argument is going to become more difficult, not easier, over the next 15 years. We need to acknowledge that.

Q23 **Chair:** We need to acknowledge that and perhaps, therefore, we have to work at it all the harder.

**Rory Stewart:** Yes.

Q24 **David Hanson:** Could we talk budgets for a moment and look at departmental plans? I would be interested in what the revenue budget is for prisons for the next five years, and what the capital budget is for prisons for the next five years.

**Rory Stewart:** Mr Hanson, I will hand over to the chief financial officer and then I will defend the figures. He will produce the figures.

**Mike Driver:** We do not have five-year revenue budgets, so we are bound by the Treasury spending review process. The current period of that spending review process is to 2019-20. We expect a future spending review shortly, which will set the budgets as we go forward.

On prisons, if we think about what is happening at the moment, the budget, in terms of resource DEL for HMPPS for 2018-19, is £3.876 billion. That is a slight increase on the previous year when our out-turn was £3.730 billion. One of the things we have been trying to do, which will apply in 2019-20 as well, is looking to protect the areas of expenditure, or areas of business, that are under the greatest stress within the organisation, so we have continued to invest in prisons. You will have seen, Mr Hanson, that, when we reopened the spending review at autumn statement 2016, we received nearly an additional £300 million for prison officers.

Q25 **David Hanson:** The figures you quoted include probation and headquarters costs as well.

**Mike Driver:** They do. To look at public prisons alone for a moment, the budget that we set for public prisons in 2018-19 is £1.712 billion. Expenditure in the previous year was £1.673 billion. In the year before
that, it was £1.556 billion. We have seen a steady increase in our investment in public sector prisons.

**Q26** David Hanson: For a comparison, given that the figures for prison population are roughly the same as they were in 2010, what was the spending on prisons in 2010?

**Mike Driver:** I do not have the figure for 2010. The earliest figure I can give you today—although I am very happy to give you the figure for 2010 later—is the 2013-14 figure, so, five years ago, it was £1.657 billion. We have seen an increase over that period in cash terms.

**Q27** David Hanson: What is the real-terms increase in the budget between the current spending review commencement to date and the end of the current spending review?

**Mike Driver:** I will have to calculate that figure for you. I may be able to give it to you today, but I may have to write to you. We are trying, as far as we can as an organisation, to protect the public prison budget as much as possible.

**Q28** David Hanson: I appreciate that you are trying to do that, but there is still going to be—

**Mike Driver:** Not only are we trying to do it, we are doing it.

**Q29** David Hanson: I have seen figures from the Prison Reform Trust, which may or may not be accurate; I would welcome your comment on them. They indicate that, for example, and this is from Julian Le Vay, who did your job at one point—

**Mike Driver:** No, he did not do my job. He was the CFO in the Prison Service.

**Q30** David Hanson: He worked in the Ministry of Justice and was chief financial officer. He concludes on the figures, and if it is wrong I want you to challenge them, that he believes there is a shortfall for the Ministry’s current ambitions of around £162 million in 2018-19, and £463 million in 2022-23 on prison build. Is that an accurate figure or not?

**Mike Driver:** Prison build is a different thing.

**David Hanson:** Yes, I know.

**Mike Driver:** I have been talking about resource budgets. Obviously, as part of the spending review 2015, we received additional capital investment to build prisons. We still have an ambition, as was set out in the Conservative manifesto, to build an additional 10,000 prison places.

**Q31** David Hanson: I appreciate that revenue and capital are different—I am aware of that—but there is still a gap between projected capital and resource spending up to 2019-20 and 2020-22, isn’t there?
Mike Driver: At the moment, I am comfortable with the amounts of money we have allocated to HMPPS. We have properly gone through the delegation of budgets to HMPPS, which has been accepted by the chief executive. I am not saying, by the way—let us be clear—that this is a perfect amount; there is risk associated with the overall budget, which we will be managing with the chief executive and his team.

Q32 David Hanson: For planning purposes, have you allocated gaps for prison riots, taking prisoners out, for spaces, for slowdowns in capital expenditure programmes and in overspends? Are all those concluded and allocated?

Mike Driver: We have made some adjustment between capital and resource, which we discussed with the Treasury. We have a very strong system of financial risk management in the organisation. The Minister has already alluded to the size of the prison population at the moment. It is slightly lower at the moment than our original August 2017 forecasts, so we believe we have flexibility in the number of cells in use, certainly in 2018-19 and 2019-20.

Q33 David Hanson: The HMPPS budget we talked about, which you mentioned, also includes, as we said, probation and headquarters staff. There has been press speculation about a reduction in the number of CRC companies in contracts, and the termination of contracts in 2020. That might be within the Minister’s remit or it might be within Mr Russell’s remit, but is any cost element anticipated in any changes that would impact upon the Prison Service budget as a whole as a result of any proposed changes that may or may not happen?

Mike Driver: Can I deal with the National Probation Service first of all? If we look at 2018-19, we have made a budget allocation to HMPPS of £483 million, an increase of £40 million on the previous year. In terms of the NPS, we continue to fund the activities. As you rightly say, there are issues around community rehabilitation companies. We are looking at that matter at the moment. Justin Russell is leading the work of resetting our arrangements around that, but I can say I believe that we are attempting to contain the costs of the CRCs within the forecast budget we have available.

Q34 David Hanson: Do you anticipate, just to be clear, that there will be any cost if there are any changes in the reduction of the number of CRCs?

Rory Stewart: The answer is that we are at the moment in the very middle of the negotiation with the different CRCs on what happens to the contracts. The answer is that this is very sensitive. We are contracted with those people to deliver those services. Under the contracts, as currently drafted, there should not be additional costs, but it is possible, during the negotiations, that there may be some compromise that is necessary, but the sums of money we are talking about are relatively small compared with our overall budgets. I was in discussions this past week with the people conducting negotiations. Compared with the billions
we are talking about here with Mike, we are talking about relatively small sums of money in terms of adjusting the CRC contracts if we are forced to do that.

Q35 David Hanson: As any changes that may or may not incur will impact upon the Prison Service, CRCs, probation and the HMPPS as a whole, can you give an indication of when it is likely that you will make an announcement, if any, on these issues, because there is press speculation at the moment?

Rory Stewart: Okay. We will aim to come to an agreement with the companies very soon. We are meeting with the chief executives of the companies at the moment. We should be in a position by the end of July to provide much more clarity to you as a Committee and to the public on where we are with those contracts and the next stage of those contracts. I am not currently anticipating that the negotiations we are having at the moment will have a fundamental bottom-line impact on the kind of finances that Mike is talking about.

Q36 David Hanson: Given that we are talking about prison population and expenditure to 2022, and given the clarity that, as has been mentioned, you cannot project beyond the current spending review but this period takes us beyond that current spending review, what representations are you likely to make to the Treasury with regard to the overall HMPPS budget in the period following 2019-20 and onwards?

Rory Stewart: We are going to put a lot of energy into bringing together a spending review bid. That is something we aim to bring together in the next few months. We anticipate that it is probably something that will begin through the beginning of next year; it is not certain, because we have to do it with the Treasury.

We are challenging the Department to take seriously our views on prison numbers, the future capital investment programme and the types of cells we want to provide, and the type of maintenance ambition we have for maintaining that estate, and present it to the Treasury as a well-reasoned argument for public protection and reducing reoffending. At the same time, clearly, we are still, unfortunately, in a situation of serious public pressures; I do not need to talk about the fact that we are putting a great deal more money into the NHS. It will be a tough negotiation, but we hope to get some more money out of the Treasury.

Q37 David Hanson: Do you agree with the statement that it has been underfunded to date?

Rory Stewart: I would certainly like to get more money out of the Treasury, particularly to invest in prisons, but that is going to be a negotiation between us and the Treasury, and they will have to balance our Department against others, yes.

Q38 David Hanson: How much of the HMPPS budget do you anticipate will be directly in the gift of governors by the end of this current spending
period, in terms of their control?

**Rory Stewart:** The majority of the budget will not be directly within their gift. They will have control over the way in which education services are delivered. They will have some flexibility. For example, in a prison such as Leeds, the governor is able to move money around in determining the balance of band 5 and band 4 staff; the governor is able to determine whether additional money is spent on prisoners, maintaining the building and manufacture of things within the prison, but those are relatively small sums of money. The basic operating budgets of these prisons are determined from the centre and the discretion of the governor is relatively limited. The governor has next to no discretion over expenditure on things such as healthcare.

**Q39 David Hanson:** Given the variation in place costs in the prison estate, what influence do you think governors are going to have on that, and what central drivers are you going to undertake to reduce that variance in cost?

**Rory Stewart:** The fundamental drivers around prison places are to do with the costs of running the building compared with the number of prisoners within that building. The governors have very little control over that. For example, in a modern building where capital costs are being repaid for the construction of that building—if you take Liverpool Altcourse where in fact the Government signed a 25-year contract, and the annual costs involve paying back the costs of building the building—the cost per prisoner can be quite high. If you take an old building with high maintenance costs, a relatively inefficient design and a relatively small number of prisoners in the building, the cost per prisoner will be high.

If on the other hand you have, as in Pentonville or Wormwood Scrubs, a lot of people two to a cell, you can end up with a situation where the cost per prisoner can be relatively low. We are aiming of course to transition, with our 10,000 new places, and in fact the 10,000 relatively modern places that we already have, towards a situation closer to places like Berwyn where we hope to get down to a cost of about £17,000 per prisoner. But these are not things that a governor is really able to control. It is very much determined by the age of the building and the number of people within it.

**Q40 David Hanson:** Can you help the Committee by one of you indicating how currently, today, you determine budgets for each individual prison?

**Mike Driver:** We have, as you would expect, a series of models. We have a model that looks in particular at the pay budget because, as you would expect, the pay budget makes up a significant element of the prison population. That is based on a huge amount of historical data, but also a link to the future size and likely population of the prison and the configuration of the workforce against the regime.
We also have models that look at the non-pay budget elements of the prison, everything from food consumption through to other materials and contracts that are in place. As you say, the cost of the prison place is an element beyond that, because in many respects it goes to the adjustments that are made for the types of prisoners held, the length of their sentence, the levels of violence within prisons and, for example, the churn in the reception arrangements.

*Rory Stewart:* The easiest comparisons are within a cohort because, as you will be aware, the long-term high-security estate is much more expensive per prisoner place, so the real aim is to try to make sure that, for example, cat C training places are roughly the same cost across the estate, but we are not trying to compare cat A with cat C.

Q41 **David Hanson:** This is the final question from me for the moment. What has been the cost of the collapse of Carillion to the taxpayer in relation to the Prison Service?

**Mike Driver:** I think the National Audit Office used a figure of £50 million. That is saying that in many respects we as an organisation are now investing more in the southern part of the country as a result of the collapse of Carillion. Carillion was spending roughly £50 million a year on facilities management in those prisons, and we expect to spend £65 million per year. I do not—

*Rory Stewart:* The implication to us is £15 million a year. We feel that Carillion was underinvesting to the tune of £15 million. That does not mean that we feel we are not going to be getting value for money. We are confident that the £65 million we are spending is money that needs to be spent, and that that is the genuine cost of maintaining prisons, but in effect Carillion underbid and was operating under cost. As a result, we have to spend £15 million more to achieve the standards we want.

Q42 **David Hanson:** That is the second place in a by-election defence, I think.

**Mike Driver:** In order to get to the £50 million a year, it is £15 million a year in additional costs. There is a slight issue, because the contract with Carillion came to an end in May 2020, about whether applying a three-year cost is quite right. On top of that—

Q43 **David Hanson:** Just so I am clear, £15 million a year and, therefore, to 2020, it will—

**Mike Driver:** We will invest £15 million a year more than Carillion was investing.

Q44 **David Hanson:** I can work it out myself, but I want to hear it from you: what is the total cost over the length of the contract to the taxpayer of the collapse of Carillion in the Prison Service?

**Mike Driver:** Fifty million pounds is the figure that the National Audit Office is using. I think there is a slight issue that that goes slightly
beyond the end of the contract period, so it is less than 50, but I would use the figure of 50 for the moment.

Q45 **David Hanson:** The taxpayer has lost £50 million as a result.

**Mike Driver:** I do not think the taxpayer has lost £50 million.

**Rory Stewart:** It depends how you—

Q46 **David Hanson:** That is the additional cost to the taxpayer.

**Rory Stewart:** That is the cost of maintaining these buildings. Carillion was proposing to try to save the taxpayer £15 million per year by underbidding and trying to take on work that cost Carillion £15 million more a year to deliver than it was receiving from the taxpayer. The taxpayer is now paying a more realistic cost than Carillion bid, so Carillion was losing—

Q47 **David Hanson:** Given that the MOJ signed off the final contract with Carillion in relation to that, what due diligence did the MOJ do, and what due diligence is it doing on other contractors, to ensure that we do not have further bills downstream?

**Rory Stewart:** What effectively happened, I believe, is that a contractor came to us—this is something that is a vulnerability with all private sector contractors—and offered, at their own risk, to do our maintenance for considerably less money than it would cost us to do: in effect, £15 million a year less. We signed up to that and, in retrospect, as you say, Mr Hanson, more weight should have been given to the factors, to say, “Wait a second. What on earth is Carillion proposing here? It is basically proposing to do this and lose £15 million a year. Is that really sustainable or are we going to end up back in a situation where we are paying for it?”

The taxpayer has not lost. We were previously spending much more than that on doing our maintenance, and the amount we will now be spending on maintenance is still going to be lower than it was before Carillion took over the contract. But you are absolutely right: we did not get the deal that Carillion was proposing to give us, because it turned out that what Carillion was proposing to us was completely unsustainable in terms of its finances.

**Mike Driver:** One of the issues for us as we go forward is to make sure that, as we contract with organisations, we do perhaps more due diligence on the financial viability of those organisations—their balance sheets. As a public service, we need to be sure that we do not tie organisations down to too little margin, because the result of too little margin is that they cut costs and therefore cut quality.

Q48 **Chair:** Did you say “perhaps” more due diligence, Mr Driver?

**Mike Driver:** No—certainly more.

**Rory Stewart:** Certainly more due diligence.
Chair: It is absolutely basic, isn’t it?

Rory Stewart: Certainly. This is a real lesson. We need to be absolutely clear about what people’s costs are, and we need to be more honest internally that something that looks like too good a deal may be too good a deal, and, realistically, in terms of human nature, if people are losing money on a contract, they are going to start disinvesting.

Chair: Of course, leaving aside the financial costs or otherwise, there has been a cost to the service from the poor performance of Carillion in dealing with the maintenance repairs and so on, with degradation of the conditions for both inmates and staff during that period. It is an unquantifiable cost, but I think we all agree that it is a damage to the system that I know you are keen to see rectified.

Mr Driver, can I come back to a point that you raised? You stressed to Mr Hanson the difference between capital and revenue, which I think we all accept. Why is it that you switched £235 million from capital to resource allocation, which is contrary to Treasury guidance?

Mike Driver: This was something we did with the full agreement of the Treasury.

Chair: Yes, but why?

Mike Driver: There was a recognition—

Rory Stewart: Let me explain, as I think this is unfair. I try to put Mr Driver in the position of producing the figures and I will try to defend the decision.

Chair: You tell me the position then, Mr Driver. It is something that has been agreed with the Treasury.

Mike Driver: I am quite comfortable.

Rory Stewart: Let me try the defence of the position. Basically, that was money we were hoping to spend that year on building prisons, and, for a whole series of reasons, we were much slower on moving ahead and getting those prisons under way. We then had £235 million sitting in our capital budget that we were not able to spend on prisons. We therefore moved it over to things that were a more pressing priority for us and we negotiated that with the Treasury. We needed the money in our current running account. We were not able to build the prisons that year. Therefore, we agreed with the Treasury that we would move the capital money across.

Chair: Understood, but of course that leaves the suggestion that, because ultimately the revenue budget provided is unsustainable, you cannot really keep up with the running costs without raiding capital.

Mike Driver: The revenue budget that was agreed by the MOJ in spending review 2015 is challenging because it was underpinned by two big assumptions: first, that demand would fall; and, secondly, that we
could raise more revenue through charging for services. Both of those things, for different reasons, have been difficult. As a result of that, and of what the Minister has just explained about the capital, because our capital plans have adjusted over time and our revenue plans have adjusted, we have agreed with the Treasury short-term measures that allow us to use capital to support our running-cost budgets. One of the things we are going to have to do as part of the spending review process—we touched on it earlier with Mr Hanson—is, very properly, to reset the baseline of the Department with the Treasury, in both revenue and capital terms.

Q54 **Chair:** As a finance officer, you would agree that approach is not sustainable on an ongoing basis—a one-off maybe.

**Mike Driver:** We certainly should not be using investment funding to prop up running costs on an ongoing basis.

**Rory Stewart:** We need a much more realistic baseline that reflects our genuine populations.

**Chair:** Point taken.

Q55 **Alex Chalk:** At what prison population does the current resource budget become sustainable? The issue at the moment is that you have X number of people in custody and there is not enough money in the resource DEL to do it. Just by way of comparison, in the whole of the UK—let us compare apples with apples—there are about 92,000 people in custody, whereas in France, a similar-sized country, it is 68,000 and in Italy it is 58,000. It is all very well saying we do not have enough money in the resource DEL, but isn’t the answer to that, well, actually you are locking up an unaffordable number of people? What is the affordable number that the United Kingdom can lock up?

**Rory Stewart:** The history of this is that Ken Clarke, when he was Lord Chancellor and Secretary of State for Justice, did the first negotiations with the Treasury on setting our baseline, and was hoping to reduce the prison population to 65,000. In every conversation I have with him he says that is what he thought he could get through. He was assuming that there would be the political will for huge shifts in primary legislation and reductions in sentence lengths, which would drop the prison population by about 20,000 people. He negotiated, he says in good faith, with the Treasury that he was going to get a sum of money that he felt would help him on that kind of number.

We have been working since then on a much higher population than Ken Clarke thought he would get to. Why is that? It is because, he would say—it would be interesting to get him in front of the Committee, and I am sure you have—that he was let down, and he did not find the political support and will for that.

**Mike Driver:** Can I try to help on this?
Q56  **Alex Chalk:** Before you do, can I press a little on the answer I really want to get? You, Minister, must sit down with your officials and have an idea in your own head, within this funding envelope, of the number we can afford to incarcerate. There is a suggestion that we are over that limit. What is the number in your head?

**Rory Stewart:** Remember that the number is not an absolute number. It is a number that is allocated to us by the Treasury. We can do one of two things: we either go for the Ken Clarke model, which is that you take a very low sum of money and gamble everything on being able to reduce the prison population; or we can do what I would be tempted to do, which is to say that I do not feel, I am afraid, even though ideally the prison population will go down, that that is very likely to happen, because I am not sure that there is the will among the public or Parliament to take the kind of measures to reduce that population, in which case we have to increase our baseline and we need more money. That is the argument that I am likely to be making in the spending review. Anyway, let me hand over to Mike.

**Mike Driver:** I was going to say that, in the latest spending round we have been working through, we have been trying to balance a hole in our finances of about £1.2 billion over two years. We have set a balanced budget this year, and there is still more work to do on the 2019-20 budget. We of course did a bit of scenario planning about some of the choices that could be made. To solve the £1.2 billion, we would have to see a reduction in the prison population of something like 20,000. That would allow us to close prisons and to change massively the structure of our workforce. The thing is that we are not working in an environment that would necessarily allow those very broad assumptions to be deliverable.

Q57  **Alex Chalk:** Is it fair to say that we cannot afford as a nation to imprison the numbers we are currently imprisoning?

**Rory Stewart:** We just have to be practical. We have a huge amount of sympathy, but the problem, and my fear, is that for the last 20 or 30 years Governments have theoretically been agreeing with you, but, as a result, they have been funding for lower numbers and have never got the legislation through. If we could work to reduce the prison population—100%—but I am afraid that what I would say to the Department is let’s stop thinking like that; we have to be realistic.

The likelihood at the moment, unless something astonishing changes, is that our prison population will go up beyond 92,000 or 93,000, and we need the money to pay for that. If some radical change happened, whereby your Committee could lead a cross-party consensus, work with us on totally changing all the sentencing policy and drop the prison population down to 60,000, great, but I do not want to plan financially on that basis at the moment, because we have been let down again and again over nearly 20 or 30 years. In fact, the prison population has gone from 40,000 to 80,000 since the 1990s.
Mike Driver: All our current plans are based on the forecasts that the Minister showed you, so that is a central estimate.

Justin Russell: Our most recent published projection is that there is a 65% chance that the prison population will be at least 89,000 by 2022. As we have discussed, that reflects sentencing decisions that have actually been made recently.

Q58 Alex Chalk: That is just in England and Wales.

Rory Stewart: Ken Clarke’s painful discovery is that all the people he thought agreed with you and him, in the end, when it came to it, would not go into the Lobby and would not get the legislation through to do that.

Q59 Chair: The honest answer is that, if we are not prepared to reduce the prison population, we have to say to the popular press, and to every one of our constituents, that if you want to carry on locking people up at this rate you have to pay for it.

Rory Stewart: Correct.

Q60 Chair: And your taxes are going to have to go up for it. That is the only solution, isn’t it?

Rory Stewart: I am not sure that I can speak for the Treasury on whether they would do it through taxes.

Q61 Chair: Either you imprison fewer people or the public purse has to pay more, and that comes from the taxpayer.

Mike Driver: There has to be a greater understanding of what the prison system costs.

Chair: Yes. Maybe that goes back to our point about making the debate as to why it is not always good value for money to adopt that punitive approach. That is perhaps an observation rather than a comment. Ms Rimmer, do you want to come in on that point?

Q62 Ms Marie Rimmer: There was £235 million switched directly from capital to resources and £103 million went back to the Treasury through budget exchange and £204 million in 2017-18. Was that earmarked for prisons? Did it come back? What happened to it?

Mike Driver: Budget exchange is a process that allows Departments to move money by good forecasting from one year to another. The 103 and the 204 that you referred to is money that we said to the Treasury early on in the financial year we would not spend, so that the Treasury did not have to borrow that money or could assign it to different priorities for Government. The money is not lost to the Department, though. We have agreed as part of our plans for 2018-19 that some of that money will be switched from capital to resource in the current financial year.

Q63 Ms Marie Rimmer: Is that £125 million for 2017 and 2018, £245 million
for 2018 and 2019, and £185 million for 2019-20?

**Mike Driver:** Please give me a moment so that I do not give you the wrong figures. In 2018-19, we are making a capital to resource transfer. Some of that money will come from budget exchange and some will come from in-year capital of £292 million. In the following year, we are assuming that we can make a transfer—again, we are in discussion with the Treasury—of over £100 million.

Q64  **Ms Marie Rimmer:** In 2017 and 2018, there was £125 million for prison security and staff recruitment. Is that a similar budget exchange or was it extra resource just for that year? Did it come from budget exchange—

**Mike Driver:** I do not know the answer to that question off the top of my head, I am sorry.

Q65  **Chair:** Perhaps you can write to us about some of these detailed matters.

**Mike Driver:** Yes.

Q66  **Ms Marie Rimmer:** Is the £245 million for 2018-19 additional funding? Is it year on year, or just one-off?

**Mike Driver:** I am sorry, but I slightly misunderstood your question.

**Rory Stewart:** I think we are talking about the additional money that we received, possibly.

Q67  **Ms Marie Rimmer:** The main estimates should include additional funding for prison security and staff recruitment.

**Mike Driver:** The money for additional prison officers, which was in total £291 million, we received across the three years of the spending review, 2017-18, 2018-19 and 2019-20.

**Rory Stewart:** The Treasury effectively agreed to increase our baseline, so we hope to go into the SR taking that funding for additional prison officers forward. The idea is that that would pay for those officers on a permanent basis, not just bring people in for a year and then sack them again.

Q68  **Ms Marie Rimmer:** It does not seem to me like a budget to work to if you are switching from one to the other, from capital to revenue; it is unsustainable. It is all right as a one-off, but then you are going for extra money.

**Mike Driver:** One of the things we are trying to do as an organisation, and one of the priorities of the Secretary of State, is for us to continue to be well managed in financial terms. If I could go back a few years in the MOJ, I would say our behaviour was to go to the Treasury each year and just ask for additional money. We recognise, given the broader fiscal and financial challenges for the public purse, that that is not a behaviour that is acceptable, so we are trying to manage within our budgets ourselves. That requires us, however, to think more laterally about the way revenue
and capital budgets are used, looking at adjustments in our plans. That is why we have agreed with the Treasury that we need to look at our budget in total managed expenditure terms rather than hypothecating it to individual areas.

Ms Marie Rimmer: Then you are requesting additional budget to “mitigate emerging risks within the Ministry.” It seems to me that it is chaotic and not a very good environment to work in, if you do not have enough money for prisons to manage and then you have to raise alerts to get the money that you need, and it goes up.

Mike Driver: I would say that we have a very good financial management regime within the organisation. I am not saying that the budgets are exactly what we want, but, if we think about some of the principles of public value, I do not think that many taxpayers believe that funding on prisons is as important as funding education, so we live with a budget that is agreed on a cyclical basis with the Treasury and we try to work through those things. Importantly, we try to prioritise against the things that are highest risk for the organisation. One of the reasons we have invested more in prisons is that we consider them a higher risk than some other elements of our business.

Ms Marie Rimmer: If there is so much switching from one to another, and this year to that year, it is not very good planning, is it? It is one thing having a budget—

Mike Driver: It is very good planning—

Ms Marie Rimmer: I don’t think so.

Mike Driver: In actual fact, we have a very good and clear view of the way the finances work. I would be very happy, out of the Committee, to have a discussion with you and take you through some of the detail.

Ms Marie Rimmer: I would love to have an hour with you. It is one thing managing a budget on paper, but quite another being someone working in the service and seeing what happens and what you need.

Mike Driver: That is why our system of financial management is not just on paper. If we think about the regime that I lead, and I lead the finance function within the organisation, it is not just me sitting in Petty France doing some clever calculations. We have finance business partners working at the shoulder of governors to help them to manage the budget and resource pressures that they face on a day-to-day basis at that level.

Chair: Understood.

Rory Stewart: There are some challenges, but the bottom line is that in terms of the experience in a prison we are getting to a better situation than we were in two years ago. We have an extra 2,500 prison officers. We are putting more money into maintaining the buildings; we are putting nearly £100 million now into maintenance of facilities when we
would have been spending about half of that three years ago. Underlying the story of money moving between different budgets is that the experience in the prison is more prison officers and more money being spent on maintaining the buildings than was the case three years ago. Actually, the Treasury has effectively allowed us to spend more money on our prisons, as we need to; we needed money in those prisons.

Q72 **Chair:** That implies, long term, a different settlement on a different basis.

*Rory Stewart:* Right, and it is on that baseline that we will be going into the spending review.

Q73 **Bambos Charalambous:** Changing the subject slightly to look at prison performance and safety and decency, we have heard from you, Minister, that you anticipate the prison population going up to 92,000 in the years to come. You have stated an intention to go back to basics in prisons. What decency standards are you using to define what you mean by the basics?

*Rory Stewart:* By basics, I mean first that we need clean, sanitary accommodation—clean sanitary cells, clean sanitary public areas and clean sanitary washing conditions. We need to ensure that buildings are maintained, that the perimeter security is good and that grilles and windows are in place so that we are not in a situation where people are dragging drone-provided drugs through the windows. That needs to be balanced with using that clean, decent regime in order to drive people into education and employment training to help them turn their lives around and get out the other side.

The way in which we inspect that is, first, by setting a baseline this year. We are sending people round inspecting prisons to describe what the conditions are in those prisons, right the way down to the number of broken windows and the condition of the showers, so that we can measure this year, next year and the following year whether we are genuinely improving against those key performance indicators, to prove to you and to the public that we are improving conditions in those prisons.

Q74 **Bambos Charalambous:** Is there a baseline against which you are going to measure that?

*Rory Stewart:* Yes. That is the baseline we are establishing at the moment and it goes along with the second measurement process, which is the inspection report. We are putting a lot of weight on HMIP reports. The HMIP judgments on decency will be central measurement tools for seeing whether we are achieving our objectives.

Q75 **Bambos Charalambous:** Moving on to inspections, HMPs Nottingham, Exeter and Liverpool were targeted to receive extra funding two years ago, after recommendations that the then Government urgently needed to improve prison safety. Each of those prisons has now received the very
poorest assessment of performance by the chief inspector of prisons. What are the implications of the failure to improve the safety and decency of those establishments, despite the injection of additional funding, and what does that say for your strategy for the future of the prison estate?

**Rory Stewart:** Nottingham, Exeter and Liverpool are very challenged prisons. They were challenged prisons in 2015 and 2017. They are probably the most testing part of our estate. They are busy local prisons with a highly mobile population that disproportionately contributes to violence and drugs.

Two years ago, we focused particularly on ensuring that we increased the staffing numbers in those prisons by making them pathfinders towards a key worker system where we could get fully staffed, so that we could have one prison officer paired with every six prisoners in order to go through developing those personal relationships. That investment over the last two years has led to an increase in prison officer numbers and has allowed us to begin to roll out the key worker system, but, as you pointed out, it did not deliver benefits in terms of cleanliness, in particular within cells, and violence. Why is that?

I believe it is because of two things. First, numbers alone are not enough. If you bring in a lot of new prison officers, even when you hit your number targets, it is still going to take another year or two before those people have really bedded in and learned what they are doing, in order to provide a consistent, fair regime to the prisoners, so that prisoners are not in the situation of dealing with inexperienced staff, which destabilises the prison.

The second thing is that the focus on safety did not, in the case of Liverpool particularly, go along with the kind of focus I would have liked to see on basic decency: what are the conditions of cells; is garbage gathering outside; is garbage gathering in the corridors? The governor of Liverpool, for understandable reasons, but I think ultimately he made the wrong decision, agreed with the centre to take prisoners into cells that should have been taken out of operation and should have been cleaned. The reason he did that was that there were pressures on the population and he was asked to do it. He should have said, “Not in this prison. These cells are not fit to put people in. We need to remedy them.” We have now taken those cells out of condition.

It is about getting those two things right. It is about training staff. It is not enough just to have the numbers—we must make sure they are trained. Secondly, it is making sure that there is a real focus on cleanliness and taking cells out of operation if they are no good.

**Q76 Bambos Charalambous:** Will those prisons get particular attention because of the poor reports they have received in the past?
**Rory Stewart:** Absolutely. At Liverpool, we have dropped the population, we have taken whole wings out of operation and we have taken cells out of operation. Extra money is going into windows. Extra money is going into Exeter, and Nottingham is one of a pilot of 10 prisons into which we are going to be putting roughly £1 million extra.

**Bambos Charalambous:** You are focusing on improving incentives for prisoners to reform through increase in the use of ROTL to allow them to train and work through the gate, and you are allowing governors to flex the incentives of the earned privileges scheme. That is welcome, but how do you assess whether provision made in prisons for mental health treatment, for drug and alcohol treatment, offender behaviour programmes, work and training is adequate to give prisoners sufficient access to the opportunities they need to stop their reoffending?

**Rory Stewart:** The inspectors will be a very important part of that. In the education sphere, it is actually Ofsted. Ofsted has increasing weight in the way we evaluate education in prisons. In relation to health provision, the Care Quality Commission and NHS England will be very important partners on judging the level of healthcare delivered in prisons. More generally, on the general question of decency and resettlement, it will be inspectors of prisons and, of course, the independent monitoring boards in prisons, acting alongside our own internal measurements.

At the moment, we are in a process of setting key performance indicators to judge prisons over the next 12 months. Those are key performance indicators that operate at a system level, so we look at the metrics and the numbers over the next 12 months to see whether they are going up and down at a system level, and then we drive key performance indicators to the individual prisons. The combination of those metrics should allow us to have a very good amount of information over the next 12 months, to answer those kinds of questions.

**Bambos Charalambous:** There was one metric on which the Secretary of State, at a previous inquiry, said that the Ministry does not currently collect or hold specific data: the amount of time prisoners spend out of cell. Is that something you are hoping to introduce?

**Rory Stewart:** Yes. In the conversations I had with Michael Spurr, who is the chief executive of HMPPS, over the KPIs for the next 12 months—and these are conversations I will have next week—I am pushing very hard to get better data on the number of hours people spend out of cell. At the moment, we tend to measure the number of hours people are spending in work or employment-related or education-related activity, but there is a point in getting people out of cell even when they are not in work or employment-related activity.

One problem in the past has been how exactly you measure that. It is a KPI we have attached to the private prisons, and there has been a lot of push-back that the reporting we are getting is not accurate and that we
are not good at measuring it. There is a double challenge: setting the KPI and then working out how we really measure it reliably.

**Justin Russell:** We collect the data for young offender institutions, and it shows interesting variations between them, so it can be done.

Q79 **Chair:** Of course, preparation for employment is an important part of reform and rehabilitation, and we know at the moment that a large percentage of the funding for employment preparation—about £31.4 million—comes from European Social Fund money, which will be lost when we leave the EU. How are you going to replace it?

**Rory Stewart:** That is part of the general negotiations to do with the EU. The point you are making is really important, but it applies to the whole of the Government. The European Union is currently bringing in many billions of pounds a year; in my old Department, DEFRA, we were getting close to £2.3 billion per year from Europe in agri-environmental support, so Britain will have to find some way of replacing that money from our own taxation revenue.

Q80 **Chair:** Absolutely. People are going to have to put their hands in their pockets to maintain that. It is an example of something that is not an obvious Department where people think there is that money, but it is there.

**Rory Stewart:** Yes, you are quite right. We have done well out of Europe.

**Chair:** It is a fair point.

Q81 **Ms Marie Rimmer:** Secretary of State, what is the empirical evidence that increasing staffing to the levels you have set and achieved will improve prison safety to the levels necessary to reduce violence and self-harm in prisons? Where did you get the evidence to arrive at 2,500?

**Rory Stewart:** The 2,500 figure is focused on the idea that a key driver in reducing violence—not the only one—is to have a key worker or personal officer scheme, and that getting a prison officer to sit down with a prisoner for at least 45 minutes for an hour a week of detailed personal conversation, where you get to know that prisoner, understand what their problems are, go through their sentencing plan with them and go through their education plan with them, will do a great deal to reduce violence. In order to do that, we believe the appropriate span is one prison officer to six prisoners. One prison officer ought to be able to have that conversation with six prisoners in a week. We are assuming, let’s say, 45 minutes for each prisoner, so a day of their week spent dealing with six prisoners is the way we would calculate it. The 2,500 additional officers allow us to achieve the ratio of one prison officer against six for our key worker system.

Q82 **Ms Marie Rimmer:** How far have we got with that one prison officer to six prisoners?
**Rory Stewart:** In our most challenged prisoners, we are already a long way ahead. The prisons that Mr Charalambous mentioned—Exeter, Nottingham and Liverpool—are examples where we are pushing ahead hard with the key worker system, and we are now aiming to roll it out right across the estate. The problem at the moment is that we are still in a situation where quite a lot of the 2,500 officers are still on their basic training.

**Ms Marie Rimmer:** Yes. I understand that.

**Justin Russell:** Thirty-two prisons have started the roll-out of key workers, so there are about 6,000 prisoners who already have a key worker.

**Q83**

**Ms Marie Rimmer:** What impact have the prison officer pay rises and allowances had on recruitment and retention in London and the south-east?

**Rory Stewart:** The biggest impact has been around a one-time payment for people working either in inner London or on the fringes of London; in somewhere like Aylesbury, you can get a £5,000 addition to come into the Prison Service. That has had a big impact. It has suddenly meant that Isis, for example, which is recruiting in London, and was really struggling to bring in prison officers who otherwise would be joining the police or working for London Transport, has suddenly found a much higher number of applications. One of the ways in which we have managed to get ahead of schedule on recruitment, and managed to meet the 2,500 target a few months ahead of what we thought, is by providing that extra money.

**Q84**

**Ms Marie Rimmer:** To what extent are staffing numbers for each prison affected by sickness absence, training and deployment to other prisons under detached duty schemes?

**Rory Stewart:** All the things that you have identified are real drivers for a situation where you might have a nominal head count in a prison, which looks good but in effect has fewer people, either because they are sick or because they are on training or detached duties. Any governor wanting to run a good, stable regime will want to reduce the number of sick days, get over the training cycle problem and make sure that there are not too many people on detached duty.

**Justin Russell:** As prisons get up to their benchmark level, the level of detached duty can reduce, and we can return people to their home prison.

**Rory Stewart:** Detached duty is being used to fill holes in other prisons, so once you get full staffing in all prisons there should be much less of it.

**Q85**

**Ms Marie Rimmer:** What is your strategy for training qualified prison officers and prison leaders up to 2022?
Rory Stewart: This is probably the single most important thing that we can do in the whole prison estate. I increasingly believe that the basic problem with our prisons is right down at band 3, band 4 and band 5—uniformed prison officers. The difference between a good prison and a bad prison is not really, in the end, the three of us or even the governor. What is really going to make a difference are the individual daily interactions between the prison officer and the prisoner. Does the prisoner feel that they are getting fair, consistent treatment? Are they getting their telephone every day? Are they getting their shower every day? Are they getting their association every day? Do they feel that people dealing with them know what they are doing? When you get that right, violence drops and people stop chucking rubbish out of the windows.

At HMP Perth, over the last four years, suddenly prisoners are putting rubbish in rubbish bins instead of throwing it out of the window. That is to do with a predictable clean regime. How do you get that? It is all down to the quality of those people. Often there may be only three people dealing with 80 prisoners on a wing in somewhere like Wormwood Scrubs or Pentonville, so how do you get that right? How do you train them? How do you make sure that the band 4 and band 5 officers, the more experienced people, are mentoring staff so that they are learning day in, day out how to deal consistently and fairly with prisoners, and how to set boundaries?

How does the governor create a resilient situation? At the moment, far too often the super-governor leaves, the prison collapses and a new super-governor comes in to turn it around because the system at uniform level is not resilient enough, particularly when in some prisons 50% or 60% of our prison officers have been there for less than a year. Training is absolutely central. This is our once-in-a-lifetime opportunity to get a really good prison service. That is going to be basic training. It is going to be what happens when you are on the housing unit; it is mentoring and partnering; it is making sure that everybody knows who their line manager is, and that there is a clear job description and a clear review; and that when you are out on the housing unit there is an experienced woman or man with you who is teaching you day in, day out how to deal with prisoners safely and professionally.

Ms Marie Rimmer: Will you include in your training package, which sounds very impressive, retraining and refresher training? Usually, after six months, industries in different places tend to lose staff, and you can get bad practice. We do not want bad practice. Will you look at retraining and refresher training?

Rory Stewart: One of the biggest things I want to try to get into the baseline as we go into the next spending review is far more on training across the board. You are absolutely right that we are not doing enough refresher training. At the moment, too much goes into the basic training
at the beginning. There is not enough happening at six months and 12 months.

I would like us to have a staff college for governors, so that governors know at least six months before they take over a prison. That is a really big thing to do. They would go into a residential course and really focus on developing the skills of leadership, getting those leadership skills in place and visiting other prisons. If I could get the budget, I would like them to visit other countries too. I would like them to see the Scandinavian or Dutch systems and learn how people are doing things.

It is not a huge amount of money. We are talking about 20 new prison governors a year. It ought to be possible to get really high-quality training for 20 people a year. Getting that right means that in five or 10 years’ time we will have an amazing prison service. It is all about systems. To get out of a firefighting system, where somebody like me is getting into the business of whether or not a floor is filthy, to a system where we just take that for granted and it does not matter who the Prisons Minister is or the governor is, because the systems are working, is all about training.

Ms Marie Rimmer: Training people and ongoing training. Very good.

Q87 Alex Chalk: In light of what you said about Carillion—they underbid, it was all too good to be true, and so on—and in terms of where we have got to, has the maintenance backlog got bigger or smaller on your watch?

Rory Stewart: We are spending more on maintenance than we were.

Q88 Alex Chalk: That was not the question.

Rory Stewart: But the maintenance backlog has continued to rise. That is to do, I believe, with lack of investment historically over many years. How do we address that?

Q89 Alex Chalk: Before you do that, by how much has it risen, please?

Rory Stewart: It will depend establishment by establishment. In an establishment such as Chelmsford, which I was looking at recently, the backlog on maintenance has gone from about 1,000 outstanding maintenance requests two years ago to about 1,200 now, and that would not be untypical.

Q90 Alex Chalk: But you were able to answer my question to say that it has got bigger, so presumably you have aggregated all of that. My question is, over the piece, by what percentage or proportion—

Rory Stewart: —has the number of backlog maintenance requests gone up? Do we have a figure on that?

Mike Driver: I do not have that figure here. The total backlog on maintenance is now in the region of £860 million, but about half of that, we would say, is high-priority maintenance.
Q91 **Alex Chalk**: Up from what?

**Rory Stewart**: To explain, that is our calculation of the total amount of money in an ideal world that you would spend to get every single prison in the entire estate into good condition. That includes a lot of very major capital expenditure. For Dartmoor, you would basically have to rebuild an entire wing and sort out the building—

Q92 **Alex Chalk**: That is very helpful. Figures of £860 million are meaningless numbers for mere mortals like me unless you put them into some sort of context. Are you able to say over the last couple of years what that is up from?

**Mike Driver**: I will try to give you a bit of context. The total building value of prisons is approximately £6.5 billion. An industry standard in terms of how much you would spend on maintenance would be something in the order of 3%. The annual requirement for maintenance would therefore be £194 million. As the Minister said earlier in the hearing, in the current financial year we would expect to spend in capital about £103 million on maintenance. There is facilities management on top of that, and we are trying to improve our facilities management so that we do not allow some of the issues to become larger issues.

Q93 **Alex Chalk**: It is a big backlog, isn’t it?

**Mike Driver**: It is a significant backlog, but we have recognised the size of the backlog, and we are trying to prioritise how we spend our money so that we deal with the most significant elements of it. As we go forward, we cannot allow prisons to deteriorate in terms of their condition, so the focus has been on facilities management, capital maintenance and, ultimately, for some of our prisons, swapping them out with new prisons as we build new estate.

Q94 **Alex Chalk**: That takes me very neatly to my last question. We were told that we were going to have a prison building programme, hopefully to make sure they are all tickety-boo and you do not have such a maintenance backlog, due to be submitted this summer. Are we going to get a prison building programme submitted this summer?

**Rory Stewart**: The commitment was 10,000 more places, which equates to six prisons. We are happy to announce to the Committee now that we got approval yesterday from the Treasury to proceed with the first two of those prisons. We now have a commitment that there will be one entirely public sector financed prison and one privately financed prison going ahead. The public sector financed prison will be Wellingborough and the privately financed prison Glen Parva. They will be new prisons. We will then proceed with the following four over the coming years. We would expect in Wellingborough to break earth—first spades in the earth—towards the end of this year.

Q95 **Alex Chalk**: How many places are we talking about in aggregate this year?
**Rory Stewart:** Do you mean out of those commitments?

**Q96 Alex Chalk:** How many places do those two produce?

**Rory Stewart:** We are going to assume that we produce somewhere in the region of 2,000 places per prison.

**Q97 Alex Chalk:** You will be breaking earth on prisons generating 4,000 spaces.

**Rory Stewart:** Between 3,000 and 4,000 for those two, yes.

**Q98 Chair:** That is very helpful. Before we move on from prison building, what is the position with the disposal of Holloway?

**Mike Driver:** I am not sure exactly what stage Holloway is at the moment.

**Rory Stewart:** I will come in on this. That was unfair, as Mike is not in charge of selling Holloway. The answer is that we have gone out to the market and we are taking in bids. We are going for a full commercial sale rather than a reuse. People have come to us with other forms of proposals, and we are currently going through a full disposal process and hope that we will get a buyer in place towards the end of this year.

**Q99 Chair:** It is not the best time market-wise, I understand.

**Rory Stewart:** It is not the best time in the market to be selling a prison. It is difficult. Holloway is an interesting thing to buy, but it is difficult to work out the ideal time to sell.

**Q100 Chair:** Will the receipt be available to the Department?

**Rory Stewart:** The receipt will then come into the Department, and that becomes available to us. Of course, going forward, to answer Mr Chalk’s question, our future expenditure will partly be dependent on our ability to generate receipts, so we hope to build new prisons and then to get money in from some of our more valuable prison sites.

**Q101 Ellie Reeves:** You have talked about the Ministry becoming a data-driven Department, but is there sufficient data available on sentencing decisions, the outcomes of those decisions, the impact of legislation and the impact of sentencing guidelines to enable you to plan adequately for prison demand?

**Rory Stewart:** We are getting richer and richer datasets on all those things, so our data lab and our analytical departments are generating more information data and we have a better understanding of the relationship between all the things you mentioned.

**Q102 Ellie Reeves:** It is encouraging that you are getting better at that, but have you set yourselves any targets for becoming the data-driven Department that you have talked about?
**Rory Stewart:** Yes. In essence, we are now in a situation where we have, from my point of view, the kind of data that allows us to make practical management decisions. We can keep refining it, but we now have a perfectly good understanding of all the different components and sentencing decisions, in order to try to generate a lot of graphs of the sort I have here, and break them down, so that we can talk you through exactly what would happen if we had an increase in sex offenders; we can talk you through population ages; and we can talk you through what the likely impacts would be if we removed the under 12-month-sentence population. We can do that financially, and by category and cohort of prison. We now have the planning tools available to us to do that.

**Justin Russell:** We hope that in the future, as the courts reform programme goes through and we start to get real-time data on what is happening in the criminal courts, it will give us live feed of what is happening with sentencing decisions. At the moment, it is slightly historical.

**Rory Stewart:** The live feed will help us with day-to-day management, but for the long term, six to 12 months, we have that kind of data.

**Justin Russell:** It is already incorporated in all our forecasts, and in Sentencing Council guidelines decisions as well.

Q103 **Ellie Reeves:** Have you commissioned any economic analysis for different policy options for reducing the prison population, and what do they indicate about achieving sustainability?

**Rory Stewart:** Yes. We commission a lot of economic analysis and some of it goes back a long way. There is absolutely no doubt that a significant reduction in reoffending rates—something in the region of 7%—would save many billions of pounds a year in economic costs. Therefore, any investment that we are putting into our prisons that has a proven impact on reoffending will be of huge benefit to the economy and society. Ditto, our data, which shows very clearly that for an under 12-month population a community sentence leads to less reoffending than putting somebody in custody, is a very strong argument both on public protection and on the economic benefits of ensuring that people are not being put in custody.

Q104 **Ellie Reeves:** Leading on from the point about short prison sentences, both you and the Secretary of State have talked about the ineffectiveness of short sentences, and, just last week, this Committee in our report recommended a presumption against sentences of 12 months or less. How do you intend to encourage greater use of community sentences and discourage the use of short sentences? What practical steps will you take?

**Rory Stewart:** We are looking at different options, but essentially we need to do two things at the same time. We need to do one thing that effectively means that people are not getting custodial sentences; the second thing is to invest in the quality of community sentences to
reassure people that, when people are not put into custody, they are properly looked after. That second part, I believe, will be about looking at what more we can do around tagging.

We have not committed to it, but I am interested in exploring the role judges could play in monitoring people on community sentences, which has been an effective model in the United States and that we have run as models and looked at in Britain, but the Department has been cautious about in the past. There is more we can do on community payback schemes to make sure they are visible and that communities see them again. We can learn from Scotland in that regard.

In terms of the sentences themselves, essentially we need to get into a situation where we first win over judges and magistrates to understand why we are doing this, so that we do not end up in a situation in which magistrates and judges oppose our changes. We need to look at what we can do with legislation, not just a presumption but actual legislation. In order to pull this off, we need to identify a subset of offences for under 12 months that we may want to exclude. For example, we may want to exclude certain kinds of violent and sex offences under 12 months, because we do not want to discredit a really good initiative by a few hard cases blowing up where people say, “What on earth are you doing not putting this person away in prison?”

There will be easier bits. Somebody shoplifting a bag of sweets or maybe somebody not paying their television licence might be pretty uncontroversial examples where the public could understand that the person would be better dealt with through a community sentence than a very expensive, harmful custodial sentence. There will be other things, towards the violent sex offences, where we need to be more sensitive and think very intelligently about how we define where the exclusions or the exceptions are.

Q105 Chair: A cross-departmental taskforce on reoffending has been established, I think about three months ago. When is it going to meet? Soon?

Rory Stewart: Is there a meeting today?

Justin Russell: It is meeting today, yes.

Q106 Chair: Good. You couldn’t give me a better answer.

Justin Russell: It is being chaired by David Lidington. Our Secretary of State is attending and there are representatives from a wide range of Departments. They are looking at all the evidence around reoffending.

Rory Stewart: Thank you, Justin. That is a reassuring answer.

David Hanson: It is not being established but re-established.

Q107 Chair: Okay. Mr Hanson has a particular point to make. That is the first
meeting, is it?

Justin Russell: Yes.

Chair: Perhaps you will be able to update us on progress with that on a future occasion.

Rory Stewart: Absolutely.

Chair: That is very helpful indeed. Thank you very much. That is good news.

Q109 Victoria Prentis: Will we get the female offender strategy in the next four weeks?

Rory Stewart: Yes.

Q110 Victoria Prentis: Good. You have been characteristically frank this morning. There is clearly a large disconnect between the Ken Clarke model—if we call it that—and the Treasury’s idea of what the Justice Department needs. Can you confirm that you will continue to work to reduce the prison population?

Rory Stewart: My No. 1 priority is to protect the public. I believe that the best way of protecting the public is to reduce significantly, if not eliminate, the under 12-month prison population, because people on community sentences are less likely to reoffend than people who are put in custody.

Q111 Victoria Prentis: Do you feel a drive to try to reduce the rest of the prison population?

Rory Stewart: My primary driver is public protection and reoffending statistics. I am not going to reduce the prison population just to save money. If somebody ought to be in prison, they ought to be in prison and my job is to go to the Treasury and get the money to pay for that prisoner place, to drive up the baseline.

Q112 Victoria Prentis: That was my next question. How on earth are you going to be able to get sufficient sums out of the Treasury to do the right things for people in prison that will enable them not to reoffend, that will enable two thirds of their children not to offend and will in turn protect the victims in society, which is the primary purpose of all of our interest in the Prison Service?

Rory Stewart: We achieve that by making sure that Mike, Justin and I are as professional and as prepared as possible when we go into the spending review, with very detailed realistic costings on what it actually costs to run a prison at a particular population level.

I do not think we are going to get there in the SR period, but in the long run I would like there to be a much more direct relationship between the population and the amount of money we receive.
Q113 **Victoria Prentis:** The disconnect at the moment is about 20%, you think.

**Rory Stewart:** In education, pupil premiums and other measures actually allow them to say, "We do not control the number of children coming into our school and therefore we want to be paid for the number of people we have." We do not control the number of people coming into prison. We have a small control. I have some leverage around sentencing, but there are many other things in society, such as the amount of crime people commit and the way police and judges behave, that I do not control. Therefore, we need to try to get into a situation where we have a realistic relationship between the number of people in prison and the amount of money it costs to look after them.

Q114 **Chair:** Part of that, I suppose—the challenge for us all—is making the case that investment in those areas—

**Victoria Prentis:** —is worth it.

**Rory Stewart:** Absolutely, and bearing in mind the fact that this is not popular with many parts of the public. We have to say, “These are the minimum conditions to look after someone and stop them reoffending,” but we have to face the fact that, of the many things the public want to spend their money on, prisons are not their top priority.

Q115 **Victoria Prentis:** Do you view it as part of your role to explain that, if we do not want people to become victims, we have to deal with stopping reoffending and stopping people’s children offending?

**Rory Stewart:** There are two things: explaining that spending this money will stop reoffending; but, secondly, and perhaps more fundamentally, we should be a society that looks after people—anybody—in clean, decent conditions. We should be deeply ashamed as a society if people are living in filthy, rat-infested conditions with smashed-up windows, with high rates of suicide and violence. That is something we should be ashamed of.

We need to make sure that we spend the money so that people can be looked after decently, cleanly and humanely, and that will have huge benefits for us economically and in terms of reoffending. But the most fundamental benefit is that it is what we are as a country—right? We are tough and we are clear on prisoners: if you commit an offence, your punishment is to go to prison. But we do not torture people in prisons through unsanitary conditions, and we must never allow that to happen.

Q116 **Chair:** Minister, your passion is welcome. Thank you for the clarity of your evidence. Mr Driver and Mr Russell, thank you for your assistance on a number of factual matters. If there are any remaining issues on budgetary matters and so on, perhaps we can write in due course.

**Rory Stewart:** Chair, can I add one small thing, and a small announcement that will interest the Committee? There are two major things that we have achieved this year that I think we ought to be proud
of, with all the challenges. First, we have 2,500 extra prison officers ahead of time, and that will make a huge difference.

The second thing was controversial and tough and there was a lot of debate around it, but I can announce that we have now achieved 100% smoke-free prisons. Not everybody was in favour of it. It was a tough fight, but we are ahead of the Scots and we have done it. There will be huge health benefits to our prisoners, our prison officers, to wider society and indeed, ultimately, to the NHS of achieving 100% smoke-free prisons. That is one of our achievements, which has happened in the last couple of weeks.

Chair: It is good to end on some positives, Minister. Thank you very much for your time, gentlemen. The session is concluded.