House of Commons

Committee of Public Accounts

Confidentiality Clauses and Special Severance Payments

Thirty-sixth Report of Session 2013–14

HC 477

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Thirty-sixth Report of Session 2013–14

Report, together with formal minutes, oral and written evidence

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Committee of Public Accounts

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The current staff of the Committee is Sarah Petit (Clerk), Claire Cozens (Committee Specialist), James McQuade (Senior Committee Assistant), Ian Blair and Yvonne Platt (Committee Assistants) and Alex Paterson (Media Officer).

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We are deeply concerned about the use of compromise agreements and special severance payments to terminate employment contracts in the public sector. The lack of transparency, oversight and proper accountability over their use has allowed taxpayers' money to be used to reward failure and to avoid management action, disciplinary processes, unwelcome publicity and reputational damage. Confidentiality clauses within these compromise agreements may be appropriate in some circumstances, but they have been used inappropriately to deter former employees from speaking out about serious and systematic failures within the public sector, for example, in patient care or child safety.

Despite being responsible for approving special severance payments, the Treasury does not know how many payments have been made across the public sector. It does not review the compromise agreements associated with the payments and could therefore not tell us how many agreements have been signed by public sector bodies and contractors to government, or whether these agreements have been used to 'gag' employees. The lack of oversight by central government has led to inconsistencies in the use of compromise agreements, with no one looking for trends that might provide early warnings of service failures.

At our hearing in July, the Treasury maintained initially that there was no need for more central oversight. But, after we discussed the seriousness of failings under the current system, the Treasury acknowledged the need to do more. In September the Treasury provided us with proposals for an improved system of central oversight (the 'framework') and we then took further evidence from the Treasury and Cabinet Office. We welcome the progress made by the two departments, but believe the Treasury needs to take a more robust approach to the use of compromise agreements by the wider public sector and private sector providers of public services.

Conclusions and recommendations

1. It is not uncommon for public and private sector bodies to use compromise (or settlement) agreements to terminate an employment contract and there is usually an associated special severance payment. Departments and their arm's-length bodies must seek the Treasury's approval in advance of making a special severance payment. According to Treasury's data, in the three years to March 2013, the Treasury approved 1,053 special severance payments totalling £28.4 million. But the true number and value of payments across the public sector is unknown and likely to be higher as the Treasury does not approve payments by, for example, local government, the police, the BBC, and private sector providers of public services.

2. Following our initial hearing in July, which highlighted the lack of any meaningful central oversight, we asked the Treasury and Cabinet Office to return with proposals for a framework which would allow Parliament to hold government properly to account. We held our second hearing in October. The Cabinet Office is now preparing guidance for the civil service on the appropriate use of compromise agreements and confidentiality clauses. It plans to introduce improved monitoring processes and is committed to publishing annually a consolidated report on the number and value of special severance payments made by the civil service. The Treasury committed to changing the civil service financial reporting requirements to improve transparency around special severance payments, and it plans to 'encourage' wider public sector bodies to comply with the revised requirements.

3. **There has been a worrying lack of proper accountability and oversight around the use of compromise agreements and special severance payments by the public sector.** There has been no system of central oversight to monitor or control the use of compromise agreements across the public sector. Neither the Cabinet Office nor the Treasury provide formal guidance to departments, and neither keeps records of how departments use compromise agreements. The Treasury does take a role in approving severance payments over and above contractual amounts. But it has not done enough to make sure that payments stand up to public scrutiny and could not tell us the number or value of special severance payments made across government or the wider public sector. Departments have had full discretion over when to use a compromise agreement, but have not policed effectively the use of compromise agreements within their departmental groups. For example, the Department for Education has given Academy Trusts the authority to approve extra-contractual payments of up to £50,000 without the Treasury's prior approval. Departments provided inconsistent responses to questions on who was accountable for their use—the Treasury, the departmental Accounting Officer, or for other organisations, the designated Accounting Officer.

   Recommendation: ***The Cabinet Office should issue guidance on the appropriate use of compromise agreements and special severance payments, the governance arrangements that should be in place to approve them, and who is accountable for their use.***

4. **Confidentiality clauses have been used in compromise agreements to cover up failure.** Public sector employers decide when to use compromise agreements and have discretion over whether to include confidentiality clauses—whereby the employee agrees to keep the facts surrounding their termination confidential. Neither the Treasury nor the Cabinet Office review the confidentiality clauses contained within compromise agreements. Recent high profile cases, particularly in the NHS, have highlighted where the employer's interest may have masked the wider public interest. This is when employers have used taxpayers' money to 'pay-off' individuals who have flagged up concerns about patient or child safety to protect the reputation of the organisation. The National Audit Office report found that 88% of compromise agreements sampled contained a confidentiality clause. Two agreements contained provisions that might be considered 'gagging' clauses. A confidentiality clause in a compromise agreement cannot legally be used to prevent a person from raising issues under the Public Interest Disclosure Act ('whistleblowing')—but people who have been offered, or accepted compromise agreements have clearly felt gagged.

Recommendation: ***In its revised guidance, the Cabinet Office should explicitly:***

- ***Require public sector organisations to secure approval from the Cabinet Office for all special severance payments and associated compromise agreements where they relate to cases of whistleblowing.***
- ***Set out standard terms and conditions to be used in compromise agreements, including a provision in all compromise agreements stating that nothing within the agreement shall prejudice employees' rights under the Public Interest Disclosure Act.***
- ***Require public sector organisations to secure approval from the Cabinet Office before departing from these standard terms.***

5. **No one, either within departments or across government, has taken any responsibility for monitoring trends that might provide an early warning of service failure or for learning lessons across government.** Neither the Treasury nor departments monitor overall trends or unusual practices in the use of compromise agreements, such as departments or arm's-length bodies with unusually high numbers of agreements that might provide an early warning of management failure, individuals transferring between departments receiving large severance payments, or whether lessons from one area can be replicated more widely across government. Under the Cabinet Office's new guidance, departmental Accounting Officers will be expected to identify trends across their departmental group, while the Cabinet Office will be responsible for looking at whether there are trends across the civil service which need to be addressed. It is still not clear who will monitor trends across the wider public sector (local authorities, NHS trusts and Academy trusts) and private sector providers of public services.

Recommendations: ***The Cabinet Office guidance should set out how lessons are going to be learnt across government to prevent reoccurrence where a failure of process has occurred within an organisation.***

The Treasury should be responsible for monitoring activity across the wider public sector, and for defining what action will be taken where significant patterns or trends are identified.

6. **The Treasury's criteria for approving special severance payments are too narrow, focusing on cost alone and ignoring wider value for money issues.** The Treasury's approval focuses primarily on whether a special severance payment is less than the potential costs of defending an employment tribunal case and the chances of winning or losing the case. This fear of incurring tribunal costs can mean that managers avoid taking executive responsibility for dealing with employee failures. The Treasury has approved payments which covered up organisational and management failure or inappropriate behaviour by individuals, despite guidance that special severance payments should not be used to evade disciplinary action or avoid reputational risk.

Recommendation: ***When the Treasury does approve special severance payments, it should ensure that its decisions are based on the principles of economy, efficiency and effectiveness, not simply on cost alone.***

7. **The lack of transparency over the extent and cost of compromise agreements entered into by public sector bodies means there is no proper accountability.** While it is mandatory for public bodies to publish details of special severance payments in their annual reports and accounts, there is a lack of consistency as the level of detail varies, depending on the monetary value, the employee's grade and the body offering the agreement. Organisations can sometimes be reluctant to publish details of individual payments and non-disclosure is allowable under the Financial Reporting Manual requirements if the disclosure would breach the terms of the compromise agreement. It is not mandatory for public sector bodies to state how many compromise agreements they have entered into, with whom, on what terms, at what value and why. Requests for information under the Freedom of Information Act on the use of compromise agreements and special severance payments have been refused.

Recommendation: ***The Treasury should revise the reporting requirements in the Financial Reporting Manual to ensure the mandatory and consistent disclosure of special severance payments in public sector annual accounts. This should include disclosure of the number of individual payments, the size of payment and the requirement for individual payments for members of the Senior Civil Service or equivalent to be publically disclosed. The guidance should include explicit criteria for where non-disclosure is allowable—but such instances must be the exception and subject to the Treasury's approval.***

8. **We formally request that the Treasury inform the Committee of its proposals to 'encourage' wider public sector bodies to comply with the guidance will be effective in controlling the use of compromise agreements across the public sector.** We are grateful for the Cabinet Office's commitment to produce new guidance for the Civil Service on the use of compromise agreements. However, the Treasury could not make clear, other than through encouragement, how it will ensure that the wider public sector (including, for example, local authorities,

Academy trusts, housing associations and the police) also adopts the new guidance. The Treasury could not explain to us why compliance with the guidance cannot be required as a condition of receiving public funding.

Recommendation: ***The Treasury should write to the Committee setting out what steps it will take to ensure wider public sector adoption of the guidance, including full consideration of making compliance a condition of funding.***

9. **With the increasing role of private sector providers delivering services on behalf of government, it is important that we can follow the taxpayer's pound and have confidence that employees feel able to raise matters of public interest.** The Treasury's proposed framework does not include private sector contractors who provide public services funded by the taxpayer and there is no requirement for these organisations to disclose special severance payments in their accounts or to get prior approval from departments or the Treasury. The fact that the out-of-hours service in Cornwall was short staffed and the contractor Serco had altered performance data came to light only after whistleblowers raised concerns. The staff responsible for altering the performance data have left the company and the terms of their departure included confidentiality agreements, but Serco offered no convincing explanation as to why this was necessary. Contractors receiving public funding should demonstrate the same commitment to the proper conduct of public business as their public sector counterparts.

Recommendation: ***The Treasury should make clear what it expects from private sector employers when they enter into contracts to deliver publically funded services. This should include the expectation that staff working for private sector contractors are encouraged to raise matters of public interest, ensuring whistleblowing policies include the option to raise issues directly with government, and public reporting requirements such as the requirement to disclose special severance payments related to public services.***

Recommendation: ***Effective safeguards should be introduced ensuring that the employees of private sector providers of public services, who use compromise agreements, feel protected when raising matters of public interest.***

1 The use of compromise agreements across government

1. On the basis of two Reports by the Comptroller and Auditor General,[1] we took evidence from the Treasury, the Cabinet Office, the Department of Health, the Department for Culture, Media & Sport, the Ministry of Defence and the National Health Service on the use of compromise agreements in the public sector.

2. It is not uncommon for public and private sector bodies to offer to pay an employee to terminate their employment contract. Early termination can be in the best interest of the employee and the employer, for example where trust and confidence has irretrievably broken down, or where one party believes the other has breached the terms of employment. The employer's offer is usually referred to as a compromise agreement or settlement agreement, and payments in excess of the employee's contractual entitlement as 'special severance payments'. Compromise agreements usually contain a confidentiality clause, requiring the employer and employee to keep the circumstances surrounding the termination confidential.[2]

3. While a confidentiality clause in a compromise agreement cannot legally prevent a person from making a public interest disclosure ('whistleblowing'), some people who have been offered, or accepted, compromise agreements have felt gagged.[3] Recent high profile cases, particularly in the NHS but also in the Department for Work and Pensions and other departments too, have also brought to light instances where compromise agreements have been used to try to cover up wrongdoing or poor management, and to discourage whistleblowing. In 2006, a consultant working for a Primary Care Trust flagged up concerns to senior management about understaffing and poor record keeping. The following year, a locum doctor at the Trust saw an 'at risk' child (Baby P) who subsequently died. The consultant asserted that had record keeping been better and a named doctor been responsible for child protection, the locum would have had a more complete case history for the child and the death might have been averted. The Trust offered the consultant £80,000 to leave; when this was refused, the offer was increased to £120,000 and the Trust advised the individual to sign a draft compromise agreement and take the money, or face dismissal. The consultant refused and was eventually reinstated after a four year absence on full pay. Signing the compromise agreement would have hampered the consultant's ability to reveal shortcomings at the hospital, as it contained a requirement to return all documentation.[4]

4. The decision to offer a compromise agreement rests entirely with the management of the organisation employing the individual and does not require independent approval. Decisions can be taken to protect the interests of the employer rather than the public

1 C&AG's Report, Confidentiality clauses and special severance payments, Session 2013-14, HC 130; C&AG's Report, Confidentiality clauses and special severance payments, Session 2013-14, HC 684

2 C&AG's Report, Part One

3 C&AG's Report, para 11; Q 67

4 C&AG's Report, Case study 13; Qq 34-38, 45, 48

interest. We heard of two high profile cases which cast serious doubt on the effectiveness of relying solely on employers' oversight of compromise arrangements.[5] In the first case, the terms of a compromise agreement between the Chief Executive of Morecombe Bay Hospitals Trust and the Trust were not made public when the individual took up a one-year paid secondment with a charity, weeks after a high profile police inquiry into deaths at the Trust's maternity unit. The agreement, under which the Trust paid the Chief Executive their salary throughout their secondment and a severance payment on their departure, was approved by the North West Strategic Health Authority, which had a statutory duty to intervene in maternity issues at the Trust.[6] In the second case, the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the Francis Report) highlighted that, after serious failings came to light, the Trust secured the early departure of both the Chair and Chief Executive rather than take disciplinary action against them.[7]

5. The Treasury's guidance states that compromise agreements should not be used as an alternative to management action or disciplinary processes; nor should they be used to avoid unwelcome publicity or reputational damage.[8] We were told of cases approved by the Treasury which involved examples of alleged failure or inappropriate behaviour, including one example where an arm's-length body of the Department of Culture, Media & Sport had made a payment of £16,000 to an individual alleged to have committed gross misconduct.[9] We are concerned that the inclusion of confidentiality clauses in compromise agreements means they are not openly discussed. Departments and arm's-length bodies could be signing compromise agreements which cover up wrong or inappropriate behaviour and providing references for individuals to be re-employed within the public sector.[10]

6. We are concerned that there is insufficient transparency around the use of compromise agreements within public sector reporting. It is a mandatory requirement under the Financial Reporting Manual for public bodies to publish details of special severance payments in their annual reports and accounts, but non-disclosure is allowable if the publication would breach the terms of the compromise agreement.[11] Organisations can be reluctant to publish details of individual payments and the requirements of the Data Protection Act can be seen as preventing organisations being fully open about specific packages. Across the public sector there is a lack of consistency in the information disclosed in annual reports and accounts and the level of detail provided in the disclosure varies, depending on the monetary value, the employee's grade and the body offering the agreement. The Financial Reporting Manual requirements do not extend to the use of compromise agreements and there is therefore no information in the accounts of public sector bodies about how many compromise agreements have been entered into, with

5 Q 121

6 Qq 77-86

7 The Mid Staffordshire NHS Foundation Trust Public Inquiry Report (http://www.midstaffspublicinquiry.com/sites/default/files/report/Executive%20summary.pdf), para 1.144; Q 88

8 C&AG's Report, Part 1

9 C&AG's follow-up Report, para 2.17, Qq 215, 218-220, 223-232

10 C&AG's Report para 6; Qq 126-127, 234-236

11 C&AG's Report, paragraph 4.29; Qq 215, 218, 224-235

whom, on what terms, at what value and why.[12] Freedom of Information Requests on the use of compromise agreements have in some cases been refused. We were concerned that the lack of transparency in public sector reporting over the use and cost of compromise agreements impedes proper accountability.[13]

12 Qq 23-28

13 C&AG's Report, para 4.30; Q 164

2 Central oversight and clearer accountability for the use of compromise agreements

7. It is not possible to accurately gauge the prevalence of compromise agreements or the associated severance payments in the public sector because there is no meaningful system of central oversight to monitor or control their use. There is currently no central database or list of compromise agreements and special severance payments within government or across the public sector.[14] The closest indicator is the number of special severance payments, which are approved by the Treasury.[15] Our 2012 report on managing early departures in central government highlighted that the Treasury did not maintain proper records of approval requests for special severance payments. We made clear that we expected to see this rectified.[16] The Treasury rejected our recommendation stating that it is the responsibility of individual departments and other relevant bodies to refer cases to the Treasury, maintain records of payments, note them in their annual accounts, and to learn lessons from individual cases. It said that since details of such payments are already placed in the public domain, the Government saw no need to duplicate these records centrally.[17]

8. Twelve months on, the Treasury continues to hold no records, in aggregate, of the requests it has received for approval for special severance payments, the organisations or sums involved, or whether it had approved the payments.[18] The Treasury told us that its role was limited to considering requests for approval for individual settlements and to giving advice on how to handle these settlements. Frequently, the Treasury does not know the final value of the severance package or whether a body has acted on its advice. [19] There is no central team within the Treasury which is responsible for approving all special severance payments. The Treasury Officer of Accounts team considers most, but not all, special severance payment requests; the remainder are considered by the Treasury spending teams overseeing individual government departments.[20]

9. The National Audit Office analysed over 5,000 emails held by the Treasury and estimated that, in the three years to 31 March 2013, the Treasury approved 1,053 special severance payments totalling around £28.4 million.[21] The true number and value of these payments may be higher as the Treasury does not include judicially mediated settlements; and bodies do not always seek approval because of an oversight, or because they have the Treasury's authority to make payments without approval. The £28.4 million represents

14 Qq 3, 4

15 C&AG's Report para 13

16 Committee of Public Accounts, Eighth Report of Session 2012-13, 'Managing early departures in central government' HC503

17 Treasury Minute on eighth report from the Committee of Public Accounts 2012-13, para 4.2

18 C&AG's Report, para 14; Qq 3, 4

19 Qq 9, 21

20 Qq 20-22

21 C&AG's Report, para 15 3.13

approvals, not actual settlements, as departments will negotiate with the individual receiving the settlement.[22] The Treasury holds no details of payments by local government, bodies reporting to local authorities, publicly funded bodies such as the BBC, and private sector bodies delivering public services, as these bodies do not need Treasury approval to make special severance payments.[23]

10. The Treasury takes a narrow view of value for money when approving individual special severance payments.[24] Despite Treasury's own guidance that settling is not always advisable; its test is primarily whether a special severance payment is less than the potential costs of defending an employment tribunal case, and the legal assessment of the probability of winning or losing the case.[25] We asked the Treasury what weight it gives to wider criteria, such as the particular circumstances and seriousness of the case, the disciplinary procedures followed, and whether the case could have a wider impact for a group of potential tribunal cases. It was not clear from the Treasury's response that these elements were routinely considered. Its justification for this very restricted focus was whether the payment represented value for money for the Treasury and for the taxpayer.[26]

11. Departments have full discretion over when to use a compromise agreement. The Treasury approves only the special severance payment element and does not review the wording or content of the compromise agreements.[27] The Treasury told us that it was not responsible for deciding whether confidentiality is appropriate, or to ensure the departments adopt proper and effective practices, and insight into management and performance, which it saw as matters for the body concerned.[28] Departments, however, provided inconsistent responses to questions on who was ultimately accountable for the use of special severance payments and compromise agreements. Answers ranged from the Treasury, the departmental Accounting Officer, or for other organisations, the designated Accounting Officer.[29]

12. We questioned the Department of Health, the NHS, the Ministry of Defence and the Department for Culture, Media & Sport on their governance and accountability arrangements over the use of compromise agreements and special severance payments. The Department of Health and the NHS said they had strengthened their oversight in light of the Mid Staffordshire NHS Foundation Trust failings which came to light in 2010. The NHS set out the arrangements it has had in place since 2007 to scrutinise special severance payments. Requests for special severance payments pass initially to the remuneration committee of the hospital or Trust itself, then to the remuneration committee of the strategic health authority. The proposal is then passed to the Department of Health, where

22 C&AG's Report, para 15

23 Qq 145, 146 and 149

24 Qq 40,59

25 C&AG's Report, para 19

26 Qq 39, 237, 276-279

27 Q 50

28 Qq 45, 58, 60

29 Qq 186, 215-217, 220, 242-243

the case for a payment is scrutinised, particular for evidence that early termination is not being considered in place of disciplinary action.[30]

13. In April 2013, the Department of Health amended its authorisation template for special severance payments to state that compromise agreements are not to be used to avoid serious disciplinary matters. The Department told us it now also requires management to explicitly state in the template that the compromise agreement will not inhibit anyone from making a disclosure in the public interest about patient safety. The NHS acknowledged that there had been shortcomings in the way compromise agreements had been scrutinised previously and expressed a determination to strengthen their review processes. It told us that NHS staff responsible for approving compromise agreements were now looking into the often complex circumstances that can lead to early termination of employment—elements of sickness, falling out with colleagues, and losses of confidence—and that there was now a greater emphasis on values and principles and whether the outcome was right for patients and for the public sector.[31] The Department estimated that over the last year its increased scrutiny had resulted in around half of requests for approval for severance payments cases being rejected as unacceptable.[32] The Department of Health and the NHS acknowledged the need for more clarity, greater disclosure and more transparency in NHS and foundation trust accounts. In light of our concerns, the Department committed to disclosing more information on the use of special severance payments through an immediate change to the NHS manual of accounts, to which NHS trusts and foundation trusts will be required to adhere.[33]

14. The Ministry of Defence acknowledged that the governance arrangements surrounding special severance payments were inconsistent across the Ministry and in many cases the data resided in various locations.[34] The arrangements differed between the seven organisations which make up the Ministry but all included: seeking legal advice for a business case; approval by the director of resources (on behalf of the Accounting Officer); and Treasury approval.[35] In comparison, in the Department for Culture, Media & Sport, the Accounting Officer does not delegate authority to enter in to severance payments to arm's-length bodies. Every special severance payment request must be approved by the Accounting Officer of the arm's-length body and is then sent to the Department, which consults and seeks the agreement of the Treasury.[36] In addition to inconsistencies between departments in the governance structures surrounding special severance payments, not all special severance payments are approved by the Treasury. Academies, for example, have the authority to approve extra-contractual payments of up to £50,000 without the Treasury's prior approval.[37]

30 Q 62

31 Qq 167, 168

32 Qq 57, 128,132

33 Qq 52, 56

34 C&AG's follow-up Report, para 2.21

35 C&AG's follow-up Report, para 2.22-2.23; Q 198

36 Qq 209, 215

37 Ev 52: Treasury submission para 23

15. The Treasury does not monitor centrally trends in data on the use of compromise agreements or special severance payments and cannot provide assurance that value for money considerations are robust, take a cross-government view and that lessons learnt in one department are applied, and replicated more widely, across government. Information on the use of special severance payments is not currently used by either departments or the Treasury to identify unusual patterns or trends, such as departments or arm's-length bodies with unusually high numbers of agreements that might provide an early warning of service failure, individuals transferring between departments receiving large severance payments, or whether lessons from one area can be replicated more widely across government.[38]

16. The Department of Health acknowledged that more needed to be done across the health sector to identify patterns and systemic issues and ask further questions, and undertook to look at how best to achieve this.[39] The Accounting Officer of the Ministry of Defence admitted that he does not personally routinely review special severance payments or compromise agreements, but had reviewed all the Ministry's cases in preparation for the hearing. The Ministry of Defence told us that different judgements had been made by people within the Ministry and that in retrospect, it might have been in the public interest to take some of the cases (three to five of the 50 cases) to an employment tribunal.[40] The Ministry of Defence told us, however, that it takes four times as many cases to an employment tribunal as it settles through compromise agreements.[41] The Accounting Officer committed to strengthening corporate oversight and reviewing the cases to learn lessons.[42]

17. The Treasury maintained initially that there was no need for more central oversight. But, after we discussed the seriousness of failings under the current system, it acknowledged the need for greater accountability, consistency and transparency around the use of compromise agreements and that agreements need to be open to Parliamentary and public scrutiny.[43] We asked the Treasury to return in October with proposals for a framework that allows Parliament to hold government to account for how it uses compromise agreements.[44]

38 C&AG's Report, para 3.15; Qq 122, 135, 157

39 Q 162

40 Qq 195, 199

41 Q 240

42 Qq 198-199

43 Qq 3, 28, 51

44 Q 156; Ev: Letter from PAC Chair to the Treasury

3 The proposed framework

18. In September, the Treasury provided us with proposals for an improved system of central oversight for compromise agreements and special severance payments within the public sector (the 'framework').[45] In our subsequent hearing, the Cabinet Office told us it was preparing guidance for departments on the new system, which will be supported by improved monitoring processes. It told us that the guidance will also address the use of confidentiality clauses used in compromise agreements. The Cabinet Office stated that its guidance will make clear that Accounting Officers of individual bodies are accountable for the use of compromise agreements, and departments will be expected to track the cases within their departmental group to identify trends in their use or common issues which need to be resolved. It committed to publishing annual information on the number and value of special severance payments across the civil service.[46] The Cabinet Office also committed to collating information on the cases across the civil service to see whether there are trends across government that need to be addressed.[47] It told us it will have in place a complex case group, bringing together HR professionals from each department to ensure that lessons are learnt across government.[48]

19. The Treasury committed to amending the Financial Reporting Manual by the end of the calendar year so that departments and their arm's-length bodies consistently disclose both the number and value of special severance payments in their annual report and accounts.[49] These changes are likely to take effect from 2014-15. The Treasury told us that it also supported the principle of greater transparency in reporting special severance payments for senior civil service grades.[50]

20. The Treasury told us that other parts of the public sector, which do not apply the Financial Reporting Manual directly, will be encouraged to make similar amendments to their reporting arrangements. Its aim is that all individual public sector organisations should disclose the same information as that collected by the Cabinet Office for the Civil Service.[51] There will not, however, be any incentives or mandatory requirements for them to do so and we were not convinced how the Treasury will ensure that the wider public sector adopts the principles of the Cabinet Office guidance for the Civil Service.[52]

21. The Department of Health and Department for Education told us they plan to publish aggregate figures on the number and value of special severance payments for the NHS and Academies respectively.[53] We were concerned that the framework does not explicitly require local authorities, housing associations and the police to publish comparable

45 Ev: Treasury submission

46 Ev: Treasury submission para 8, 10; Q220, 243, 279

47 Qq 248-249, 280

48 Q 280

49 Q 211

50 Ev: Treasury submission para 18; Qq 3, 6, 212-214

51 Ev: Treasury submission para 19; Qq 211

52 Qq 249,251-254, 258-259, 263

53 Ev: Treasury submission para 21-24; Qq 52, 56, 249

information.[54] For local government, the Department for Communities and Local Government will look to the Local Government Association to take action to encourage authorities to meet the new standards. The Department told us that it was prepared to take more direct action should it become clear that authorities were not taking appropriate steps to improve accountability and transparency in this area.[55] We asked why compliance with the guidance could not be required as a condition of receiving public funding. Treasury told us that there was a balance between wanting to have central consistent reporting and localism.[56]

22. The proposed framework does not cover private sector providers of public services.[57] With the increasing role of private sector companies delivering services on behalf of government, transparency over public spending is vital to ensure value for money and it is important that whistleblowers feel able to raise matters of public interest.[58] The Committee's report on GP services in Cornwall found that the out-of-hours service in Cornwall was short staffed and that the contractor, Serco, had altered its performance data, both of which came to light only after whistleblowers raised concerns. The staff responsible for altering the performance data have since left the company. The terms of their departure included confidentiality agreements, but Serco offered no convincing explanation of why this was necessary.[59]

23. We put it to the Treasury that private sector companies delivering public sector services should, as a condition of receiving funding, expect a higher degree of scrutiny than in other transactions.[60] The Treasury did not object to this in principle, but raised issues with the practicalities of implementation and monitoring.[61] It agreed to revisit the issue of private sector outsourcing and return to the Committee after discussing with Ministers.[62]

54 Ev 52: Treasury submission, para 25-28; Qq 259, 262-266

55 Ev 52: Treasury submission, para 26; Qq 252-253, 258

56 Qq 251, 258, 263

57 Ev 53: Treasury submission, para 30-35

58 Qq 70, 282

59 Committee of Public Accounts, The provision of the out-of-hours GP services in Cornwall, Fifteenth report of Session 2013-14, HC 471; Qq 53, 282

60 Q 291

61 Q 282

62 Qq 290, 292

Formal Minutes

Wednesday 18 December 2013

Members present:

Mrs Margaret Hodge, in the Chair

Mr Richard Bacon
Stephen Barclay
Guto Bebb
Jackie Doyle-Price
Chris Heaton-Harris
Meg Hillier
Fiona Mactaggart
Nick Smith
Justin Tomlinson

Draft Report (*Confidentiality clauses and special severance payments*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 23 read and agreed to.

Conclusions and recommendations agreed to.

Summary agreed to.

Resolved, That the Report be the Thirty-sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned till Monday 13 January at 3.00 pm

Witnesses

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Oral evidence

Taken before the Committee of Public Accounts

on Wednesday 3 July 2013

Members present:

Margaret Hodge (Chair)

Mr Richard Bacon
Stephen Barclay
Jackie Doyle-Price
Chris Heaton-Harris
Meg Hillier
Mr Stewart Jackson
Austin Mitchell
Ian Swales
Justin Tomlinson

Amyas Morse, Comptroller and Auditor General, **Gabrielle Cohen**, Assistant Auditor General, and **Simon Reason**, Director, National Audit Office, and **Paula Diggle**, Treasury Officer of Accounts, were in attendance.

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

Confidentiality Clauses and Special Severance Payments (HC 130)

Examination of Witnesses

Witnesses: **Una O'Brien**, Permanent Secretary, Department of Health, **Sir David Nicholson**, Chief Executive, NHS England, and **Sharon White**, Director General, Public Services, HM Treasury, gave evidence.

Q1 Chair: Welcome. You are far more removed from us than usual, but I hope the acoustics are better so that we will hear you more clearly. This is the first of a new series of hearings that we are having, based on investigations that the NAO undertakes on our behalf. Often, they are issues that are raised by members of the Committee or that suddenly emerge as topical and important issues. We are grateful to the NAO for providing us with the basis of the Report. We would like to draw the attention of all three of you—perhaps you can tell your colleagues—to the fact that these are much quicker reports; they are not the usual NAO inquiries. They therefore require a prompter response from the Departments. If you could take that message away, we would be grateful.

I am going to ask Sharon this one. Do you think it is acceptable that Departments failed to give the NAO access so it could complete its investigation?

Sharon White: I think it relates to your introductory comments, which were really helpful for setting the context of today's hearing. It is a new style of report. We certainly welcome the timeliness, but it does mean that for some Departments that are not used to this speed—obviously, DCMS is the area where we have the biggest gap—we will certainly want to have a conversation to get us into a slightly speedier mode of operating. There is no sinister reason here. I think Departments have been caught on the back foot a little.

Q2 Chair: I hope there is no sinister reason. I should tell you that we have asked the Comptroller and Auditor General if he will do further work both in DCMS, which failed to give us any information this morning, and in MOD, which appears to think that the NAO does not have access rights. We will expect to see both those Departments very quickly on our return at the beginning of September. It is unacceptable not to give proper access rights to the NAO to undertake this sort of investigation. We will be returning to this probably in a Thursday morning meeting in September.

The other thing I was going to say was a general thing. Sharon, again, I think this is a question for you, because you have overarching cross-government responsibility for this. Do you think we should know how many confidentiality agreements are signed every year across the public sector?

Sharon White: I am going to flip this a bit, but bear with me. The Treasury, as you know, takes a very strong, close interest in these sorts of payments. There is no automatic parliamentary approval for anything that goes outside contractual arrangements. That is why it is very important that there is a central process through the Treasury—often through Paula's team in TOA—to make sure there is a value for money assessment.

In our opinion, it is also very important that there is reporting and monitoring of special payments and the openness of the confidentiality clauses. Where we might have a difference of view is that it is our strong view that Departments keep consistent, systematic records that can be compared as needs be, and can be easily collated by Amyas and his team. That is one of the reasons why the Cabinet Office will be coming forward with guidance. It will make it easier for that to happen.

Q3 Chair: I was going to draw your attention to the concluding remark in the NAO's observations in paragraph 20 of the summary. There are two things. I think the Committee's view will be—hopefully I speak on behalf of the Committee—that there should be complete openness for all sorts of reasons around

who signs confidentiality agreements right across the piece. We would include within that local authorities, NHS bodies and private sector bodies that deliver public services using taxpayer-funded money. I don't mind how you do it. I can see that it would be far too much work for you to do at the Treasury—we want you to be busy doing other finance ministry things. But we think you ought to go away and think about it. Off the top of my head, I don't see why in everybody's report and accounts there shouldn't be a paragraph every year stating how many compromise agreements have been reached, with whom, the amount, and why, so there is complete transparency on this.

Sharon White: Can I just come back on the transparency point? We are, as you know, incredibly supportive of there being transparency on this, and it is one of the reasons why we have a pro forma for the special payments that come through. It is to make it clear that, if there is a confidentiality agreement attached to a special payment, it is clearly open to public scrutiny, including by this Committee and by the NAO. As you know, the Treasury is also responsible for the FReM—the financial reporting manual. It is important that, in remuneration reports, these payments are made clear. As you know, the recording covers both contractual and non-contractual, and there is not yet a requirement that confidentiality agreements are recorded; they sometimes are. There are one or two particular cases, which I am sure the Committee is responsible for, but we are absolutely supportive of the principle of transparency in the accounts of public bodies.

Q4 Chair: It does not happen at the moment. The concluding comment in paragraph 20 says, "There is a lack of transparency, consistency and accountability in how the public sector uses compromise agreements, and little is being done to change this situation." Then there is the argument of why it is unacceptable. I accept that you may not have agreed that. I do agree with the NAO conclusion, and I really want to know this afternoon whether you will go away and, in responding to our recommendations and the Report, come back to us with a system that will ensure that you have proper transparency, proper accountability and proper consistency.

I will say this again. It is across not just the civil service, so not just Government Departments, but all the health trusts, all the academy schools, local government, which is hugely important—I am sure a number of Members will want to come back on that—and the private sector, which again I think Members will want to come back on, where the private sector delivers public services. We want a system—it does not mean that you have to do it—whereby the public, this Committee and the NAO can know what is happening across the piece. Not because of the money, but because it is important that people know, for all sorts of reasons, about this.

Sharon White: As I say, we are very supportive of the principle of transparency. Where we may have a difference of view is whether that is a centralised collected system, or whether that is something that is best done, made transparent, by the individual Department and by the individual body.

Chair: I am not arguing about how you do it; that is down to you. What I am saying is that it will not be good enough if we come back to this in a year's time and there is a further conclusion saying that it is not transparent across the whole of the public sector—again I stress that this is not just central Government—it is not consistent and it is not accountable.

Q5 Mr Bacon: When you say, Sharon White, that we might have a difference of view about whether it is best done by central Government or locally, I am not quite clear what your view is.

Sharon White: The Report sets out very clearly the question of whether the Treasury—

Q6 Mr Bacon: I am interested in your view, not the Report.

Sharon White: My personal view is that the Treasury should work harder and closer with Departments to ensure that departmental publications and transparency are there for public scrutiny and for easy comparison across Departments. My personal view is that that is not a responsibility that the Treasury is best placed to do, not least because—

Q7 Mr Bacon: Sorry. What is it that the Treasury is not best placed to do?

Sharon White: To collect, to record and, in a sense, to keep a database of all the severance payments and confidentiality agreements.

Q8 Mr Bacon: Okay. I understand that your view is that the Treasury is not best placed to collect all this information.

Sharon White: Yes.

Q9 Mr Bacon: You said at the beginning that the Treasury takes a strong and close interest in this. It says in the Report that the Treasury reviews each departmental request. Since you see everything and take a strong and close interest, how difficult would it be for you, the Treasury, to keep a list? How difficult would it be for the Treasury to keep a list?

Sharon White: I think Paula wants to come in on this.

Mr Bacon: You are Treasury as well—I am happy to hear from Ms Diggle as well.

Paula Diggle: It is actually my team that does this work. We get requests for individual settlements. We give advice on how to handle the settlements. Very frequently, we do not know what actually happens to that advice and what actually happens at the end of the settlement.

Q10 Mr Bacon: That was not my question. My question was not "Do you know what happens to your advice?" but "How difficult would it be to keep a list?"

Sharon White: Can I come in on this? The issue, for me, is not whether it is difficult for the Treasury to keep a paper folder.

Department of Health, NHS England and HM Treasury

Q11 Mr Bacon: Could you answer my question then, please? By all means add other points later, but what I am interested in is your answering my question. If you think my question is irrelevant or not important, you can say so. You are entitled to say what you think. What I want to know at the moment is: given that, to quote from paragraph 14, "The Treasury reviews each departmental request", how difficult would it be for the Treasury to keep a list?
Sharon White: I do not think it would be hugely difficult.

Q12 Mr Bacon: It would not be difficult at all, would it?
Sharon White: I do not think it would be difficult as a practical issue, no.

Q13 Mr Bacon: Okay. Now, you said that the Treasury was not best placed. Assuming that you want all this information in one place so that we can look at it easily, who would be better placed than the Treasury to keep a list?
Sharon White: I guess what I am saying is that—

Q14 Mr Bacon: Who would be better placed than the Treasury to keep a complete list?
Sharon White: The Treasury as a central team would be best placed to keep what we call the value-for-money test. We do not systematically collect information on the confidentiality agreements.

Q15 Mr Bacon: I was actually not asking about the Treasury; I was asking a different question. You said that the Treasury was not best placed, so you must think that somebody else was better placed. Who would be better placed to keep a complete list?
Sharon White: My own view is that it should rest with the Department concerned.

Q16 Mr Bacon: Okay, but that is not a complete list; it is just a list in relation to that particular Department.
Sharon White: That is right, yes.

Q17 Mr Bacon: In terms of keeping a complete list—that is to say, all of them, irrespective of what subsequently happens to them—which simply records the fact that a request has been made; if you want the total universe of these things you need one total list—who is best placed to keep a complete list?
Sharon White: It would either be ourselves or the Cabinet Office.
Paula Diggle: I just want to explain that the kind of list that we could keep at the moment would be a list of requests, not a list of settlements, because we do not have settlement information.

Q18 Mr Bacon: It would be fairly easy, wouldn't it, on a spreadsheet to add an extra column and record what happened?
Paula Diggle: We would have to chase the information, which would create work.

Q19 Mr Bacon: Since you hold the purse strings and if they do not comply they eventually see financial consequences, I would have thought that that would not be too difficult.
Paula Diggle: One does question the value of this work.

Q20 Ian Swales: Sorry, are you saying that the amount that is eventually agreed is not the amount that you have approved, and you do not know what the amount is?
Paula Diggle: We do not know what the amount approved is.

Q21 Ian Swales: That is a really important point. So you are asked to approve a settlement with a figure, and then they go away and can agree a different figure and you do not have the information.
Paula Diggle: Normally what happens is that the Department agrees a figure within the range that we have given them. We say, "Don't settle for more than x". They can settle for less than x, but we would not expect it to be more.

Q22 Ian Swales: This list could still have the maximum amounts, for example, on which you have agreed.
Paula Diggle: But that would not be helpful information, because it is not actually what happened.
Ian Swales: Are you trying to say that you do not have the data? That is a bit scary.
Chair: It is clear from the Report that you do not do it all. It goes to various bits of the Treasury; it does not all go to you. That is what the Report says. It does not all come to you. You have inconsistent rules across Government, so education and academies are treated in one way and the MOD is treated in another way. Everybody is treated differently. We have no idea what happens down health. We have pretty little idea what happens down education. We probably have no idea what happens, for example, with the private sector delivering public services in somewhere like DWP.
I do not think that we are going to resolve this here this afternoon, but all we are after is for you to go away—we understand your constrained resources—and find a way to ensure that the public, this Committee and the NAO can access a comprehensive database that tells us how many people each year have a compromise agreement, what it is and any other relevant factors, particularly around confidentiality because that is where there is public concern. I don't think that is a big ask, and it might not be megabucks. But for all the implications of this area for whistleblowing and other areas of expenditure, it is an important ask, which is why we have done it. We are not asking for an answer this afternoon, but you have got to give one when you come back with the recommendations. You cannot just say, "The Treasury will not collect this"; you have got to come back with a mechanism that enables us to be satisfied, otherwise we are going to call you back, Sharon, again and again and again until we get it. I will just warn you of that.

Q23 Mr Bacon: Two more questions, possibly three, then I will let others come in. One relates to exactly what the Chair just said. Sharon White, how do you

think Parliament can hold the Government to account for these confidentiality clauses and severance payments without central oversight?
Sharon White: I think through the scrutiny of the Department's accounts.

Q24 Mr Bacon: Really? If it is mandatory that it is in the accounts.
Sharon White: Yes.

Q25 Mr Bacon: Because it's not at the moment, is it?
Sharon White: So the guidance we have—

Q26 Mr Bacon: I am not talking about guidance. I was asking a question about whether it is mandatory to put it in the Department's account.
Sharon White: No, it is not mandatory currently—

Q27 Mr Bacon: Thank you. That is what I wanted to know. It is not mandatory to put it in the departmental accounts at the moment.
Sharon White: It is not mandatory

Q28 Mr Bacon: So what is the answer to my previous question? How can Parliament hold the Government to account for special severance payments and confidentiality clauses without any central oversight? If it is not mandatory, what is the answer?
Sharon White: I want to be clear: the point that is not mandatory is the confidentiality agreement. It is mandatory to include any special payments within the accounts. That is set out for senior staff, it is set out for payments above £250,000 for other staff, and the aggregate has to be set out.

Q29 Mr Bacon: If we are to hold the Government to account for both the payments and the confidentiality clauses, how do we do it without central oversight?
Sharon White: The point I would say there is that we are planning, through the Cabinet Office, to have more systematic guidance to ensure that this happens more.

Q30 Mr Bacon: Is the answer to my question that we actually do need central oversight?
Sharon White: I think where we agree is that it is important that it is possible to collect and bring this information together. The question for us is whether that is best done by having it set out clearly, consistently and question marked mandatorily in departmental accounts, or whether it is best done by Cabinet Office or Treasury teams?

Q31 Mr Bacon: Could I ask you to turn to page 10, paragraph 21, titled "The Treasury view"? It is all in quotes, so I presume it is a piece of text provided by the Treasury. The last sentence reads: "The Treasury believes that there is no need for central collection of data on this limited area of public expenditure, amounting to less than £10 million a year across Whitehall." Do you think this is mainly about money?
Sharon White: I do not think it is. I think it is about reputation and the best use of public funds.

Q32 Mr Bacon: So the fact that it is a "limited area of public expenditure, amounting to less than £10 million a year across Whitehall" is not really relevant, is it?
Sharon White: I agree. That is not to say that the sum of money is trivial or does not matter—

Q33 Mr Bacon: I did not say it is trivial. To most of us, £10 million is a lot of money. My point is that this issue is not fundamentally about money, is it?
Sharon White: No, I agree.

Q34 Mr Bacon: Thank you. Could you turn to page 54? This describes a case in the National Heath Service. There was an individual who "worked as a consultant for a Primary Care Trust and wrote to senior managers in July 2006, warning that understaffing and poor record keeping posed a serious risk to patients' safety. In February 2007, the individual became unwell due to the workload and work-related stress (they felt bullied) and was signed off on special leave. In the Summer of 2007, a locum doctor at the PCT saw an at risk child who subsequently died. The individual"—who had worked as a consultant—"asserts that had record keeping been better and a named doctor responsible for child protection, the locum doctor would have had a more complete case history for the child and the death might have been averted." It goes on: "In November 2007, the individual"—the consultant working for the primary care trust—"was offered £80,000 (a year's salary) to leave which they refused as their objective was patient safety, not financial gain; they remained on special leave. The offer had increased to £120,000 and the PCT advised the individual to take the money or face dismissal. The individual was presented with a draft compromise agreement and asked to sign a related statement that all their concerns had been addressed. The individual's legal representative advised them not to sign the related statement. In June 2011, following an independent investigation the hospital and PCT formally apologised. After a four year absence on full pay, in November 2011, the individual was reinstated."
It went on: "The individual stated that their ability to make any public interest disclosure would have been severely hampered by the necessity to return all documentation," which would have been a requirement had they signed the compromise agreement. Do you know which case that was?
Sharon White: We have some—

Q35 Mr Bacon: Do you know which case case 13 is?
Sharon White: We have some information on this, yes.

Q36 Mr Bacon: You know which one it is?
Sharon White: Yes.

Q37 Mr Bacon: It is Baby P?
Sharon White: Yes.

Q38 Mr Bacon: The primary care trust was going to use public money, taxpayers' money, to pay off an individual who had flagged up concerns about Baby P

while Baby P was still alive. When that individual refused, the offer was made with an increased amount of money and a threat that they would lose their job if they didn't accept it. Do you think that's acceptable?
Sharon White: I don't know all the details and background on the case, but on the face of it no.

Q39 Mr Bacon: No. Given the propensity of the NHS over many years to use confidentiality and compromise agreements to hide misconduct and malpractice, and to cover up, do you think that we can trust the NHS and all the different bodies in it, of which there are many hundreds, to disclose all the information? Or, would it be better if it were collected centrally so that we could look at all of it, then knowing, mandatorily, that they had to disclose it to a central collecting point—you, the Treasury?
Sharon White: This may not be a very welcome answer but from our point of view, the point that we will focus on in such cases is whether this represents value for money for the Treasury? Does it represent value for money for the taxpayer?

Q40 Mr Bacon: In that case, could you define value for money for me ?
Sharon White: So, we particularly focus on whether a case is likely to be lost at an employment tribunal. We also take a wider view as to whether taking a case forward, even if the chances aren't high, may be important in discouraging other cases in moving forward.

Q41 Mr Bacon: Do you think value for money includes effectiveness?
Sharon White: Effectiveness in terms of what?

Q42 Mr Bacon: Well, you are familiar with the three Es are you not?
Sharon White: Yes, I am.

Q43 Mr Bacon: Economy, efficiency and effectiveness. Do you think that effectiveness is a component of value for money?
Sharon White: I think it is a component.

Q44 Mr Bacon: Yes, thank you. I do to. Do you think it's effective to spend taxpayers' money on hiding this kind of malpractice, as described in case study 13?
Sharon White: As I say, on the details of this case, where the Treasury will have signed off an agreement, we will have looked at whether it makes more or less sense in the interests of the taxpayer?

Q45 Mr Bacon: I can't believe there is a single taxpayer, at least I can't imagine there is—apart from those responsible for the death of Baby P and I don't know whether they paid tax—who thinks it was a good idea or value for money, to spend taxpayers' money, or to offer to spend taxpayers' money, trying to keep a consultant quiet when she had revealed this malpractice.
Sharon White: What we would have emphasised in the context of the confidentiality agreement is that that must be open to public scrutiny and that must be open to your, and the NAO's, purview. The Treasury does not scrutinise the confidentiality agreement. That is a matter—and maybe David and Una can come in on this—to ensure that there is proper practice, proper effectiveness, and proper managerial and performance oversight within the body concerned.

Q46 Mr Bacon: What I am interested in is how we, as a Committee of Parliament, hold the Government to account for both confidentiality clauses and for special severance payments, without any central oversight. You have not explained that to me yet.
Sharon White: It may be that my answer has not been sufficiently satisfactory for the Committee.

Q47 Mr Bacon: No, it hasn't been satisfactory because I don't think you've explained how it's possible without central oversight. My point is that if you can have a case like Baby P, where public money is apparently offered to shut up the consultant involved, and you do not recognise the need for central oversight in this circumstance, then what circumstance would it take for you to recognise it?
Sharon White: The case here, the transparency and scrutiny of this case, needs to be, and should be, publicly available in the accounts of the relevant hospital.

Q48 Mr Bacon: The only reason this came to light in this particular case was because the individual refused to sign an agreement, despite being threatened that if they didn't take the money they would be dismissed. You don't find that acceptable do you?
Sharon White: As I say, I don't know—

Q49 Mr Bacon: Just read case study 13. My question is, do you find that acceptable?
Sharon White: From the face of this, clearly no.

Q50 Mr Bacon: Thank you. It seems to me to be inevitable that it is never going to work—with the range of cases going on across the country in an organisation as large as the NHS, never mind that there are other organisations as well—especially given that the Treasury has to see these things anyway because it is asked to do so, just as Monitor is asked to look at them if they are foundation hospitals. The Treasury is the one point that actually sees all of this.
Sharon White: But we do not systematically have sight of the confidentiality agreement. The question is whether the Treasury ought to make that mandatory, but we currently do not.

Q51 Mr Bacon: With a couple of extra columns in your spreadsheet it would be very, very easy. What comes out of this—I am clear about this from my discussions with the NAO—is that, whether it is the Treasury, the Cabinet Office, the Department of Health or the NHS, no one wants to take responsibility for this. That is the problem, isn't it?
Sharon White: I come back to the point that we completely agree with you that this has got to be transparent and open for scrutiny, and it needs systematically to be available for your oversight

through the accounts of the hospitals so that you can ask and be clear about these penetrating questions.

Mr Bacon: I am amazed that you trust the NHS. I do not see how we can after what has happened over the past few years.

Q52 Chair: Just before I bring in Ian, I do not know whether Una or David want to add to that, given the generality.

Una O'Brien: I completely agree that we need more transparency. If I may start in a technical space: in preparing and responding to the Report, I have again looked at sets of accounts. I regularly look at accounts from NHS trusts and foundation trusts, but in light of the Report's findings—I have spoken to the Comptroller and Auditor General about this—when you actually look at what is in the accounts, there is information but it is not enough, and it is not clear enough. There are reports in the remuneration section of the accounts, and there are reports in the schedule of tables, but clearly, in light of what you have identified in the Report, there is not sufficient clarity and transparency. Certainly, as far as I am concerned, we have no sense of what is actually within the column called "other payments". I am very clear that, notwithstanding what we may see from the Treasury and the Cabinet Office, I really cannot wait now, and I am going to give instructions for the NHS manual of accounts to be changed so that we can see change in the accounts that are being produced for the current—

Q53 Chair: It will not be Monitor. It will not be foundation trusts.

Una O'Brien: And for foundation trusts, yes.

Q54 Chair: It would be NHS-run trusts?

Una O'Brien: Yes.

Q55 Chair: Of which how many are left now?

Una O'Brien: Well, there are one hundred and—

Q56 Chair: You said foundation trusts as well, didn't you?

Una O'Brien: Foundation trusts as well, yes. I have already spoken to the chief executive of Monitor. They have guidance in their manual of accounts identical to what we currently have for the NHS trusts, and they have agreed that they will make the changes that I am requesting so that we can get greater transparency in this year's reporting. I only have a certain window before the auditors will—

Q57 Chair: What we want to stop is the use of severance payments and confidentiality agreements to gag people and stop issues that are in the pubic interest. Clearly there will be circumstances when people's incompetence means that you want them to leave very fast, and the Committee understands that, but you have to provide us with sufficient data for the public to judge that, when a severance agreement is reached with a confidentiality clause, the purpose is not to gag the individual and prevent them from saying something in the public interest. However much the law may say they can, what this Report tells us is that, all too often, they feel they cannot.

Una O'Brien: I completely agree, and I think our Secretary of State has been extremely clear about that. We have also been very clear in our response to Robert Francis's report, and we have taken a number of actions to reinforce that message further. If I may give you some examples of things that we have done since we last spoke about this, the first thing is that we have now further changed the template. When people come forward either to Monitor or to the Department for onward transmission to the Treasury, we have changed the template so that people have to prospectively sign off that there is clarity in any agreement that it does not in any sense inhibit anybody from making a disclosure in the public interest about patient safety. We are absolutely clear that that has to be written in. Nothing can come forward, certainly through the Department, that does not have that on the template.

Secondly, we are very clear that these agreements should not be used to avoid serious disciplinary matters. They need to be addressed properly. That is also set out clearly at the top of the template. The Report does not go into this, for understandable reasons, but for me it raises a wider set of questions about the quality of HR support that people are getting. When I look at the detail of some of these problems, they need to be dealt with much earlier on and must not be allowed to build up into the scale of grievance, dispute and complexity that they arrive at. Having said all that, I do think that we are working very hard to scrutinise these things more thoroughly. Certainly of the ones that are coming up through the Department, we have pushed back about half that have come forward in the past 12 months.

Q58 Ian Swales: I would like to follow up Mr Bacon's line of questioning. It would be helpful to the Committee if you could say a bit more about the assessment process that you use in the Treasury—in other words, what are the boundaries? Is it simply a financial assessment versus salary and that kind of thing? To what extent are you looking at the detail of an agreement and making wider decisions, as opposed to just financial ones?

Sharon White: We look narrowly at the financial question as to whether or not the payment, being non-contractual, is value for money. We do not examine the wider issue of confidentiality.

Q59 Ian Swales: So you would be measuring things such as how fast the person is going to leave versus the salary that they might otherwise receive, and you make no judgment—from what Mr Bacon was saying, this is very important—on whether it is sensible to pay an agreement or not. In terms of the content, you are just looking at the money side of things.

Sharon White: It is just the money side. The key point in making the money judgment is normally whether we expect a case to be lost in court. Obviously an associated payment would be made on the back of that.

Q60 Ian Swales: So for clarity, you would say that the decision to do one of these compromise agreements rest entirely with the management of the Department concerned, and you would expect them to sign it off before you ever see the details.
Sharon White: Exactly.

Q61 Ian Swales: Does it work like that now—are you actually getting that kind of detail?
Sharon White: I think that that is true. The thing that we have strengthened, with every Department having to fill in a business case form, is to make clear that if there is a confidentiality agreement, that is clearly open for public discussion.

Q62 Ian Swales: Going back to Mr Bacon's question, you make no decision about the effectiveness, beyond the simple pound notes, and we should not be expecting you to do so under the current arrangements. Is that right?
Sharon White: That is exactly right.
Sir David Nicholson: Could I add something from the health perspective, because obviously we deal with it before it goes there? The arrangements that we put into place in 2007 were such that we expect any of these to go to the remuneration committee of the organisation itself. We then expect it to go to the remuneration committee of the strategic health authority, where a wider view could be taken, because don't forget, many of these issues are very, very complicated, have gone on over many years, and there are piles of information about them. So they make a judgment about that. Then, in the Department, up until 31 March this year, my deputy and the HR director would sit down and go through each one individually. They would look particularly at the issue, which we thought was particularly important, of where we thought payments were being taken instead of taking serious action. For example, if someone was dismissed for gross misconduct, we would normally reject that at that stage.
Ian Swales: I guess that that emphasises the point I am trying to make, which is that we should not expect the Treasury to make a judgment about these payments beyond the pure value for money. It is actually the Department management who are making the decisions. That is something, I guess, that the Committee and the NAO ought to be thinking about. It potentially leads to a conflict of interest if a very senior person might reveal something about the organisation that the top people in the organisation do not want to have revealed. There is a clear conflict of interest in terms of judgment.

Q63 Chair: I think where I would take it, Ian, is that Sharon has to go away and think of a system that provides not just the value-for-money crude one. You have got to come back with a system that is effective. I know Steve will want to talk about the NHS but I want to raise just one other issue, although there are lots. If DWP is contracting with a private provider on the Work programme, which we have spent some time on, and somebody gets paid off via a compromise agreement, how would we know whether there was a gagging clause, or whether the individual had raised concerns about malpractice or fraud? How would we know?
Sharon White: Unless the Department chooses to put that in its accounts, it would not be public.

Q64 Chair: Should we know?
Sharon White: There is clearly a public interest, given the use of public funds. One of the things that I take away from this is whether the financial reporting manual and the guidance we have needs to be more encompassing.

Q65 Chair: More encompassing is general. I hope it is more specific. The reason I raised that is because of a case reported in the press—maybe right or wrong—about someone who worked for Atos and tried to raise concerns about the way the claimants were assessed as fit for work, in particular people with mental health issues. That rings a bell with me because I get a lot like that coming to my constituency surgery: people who feel they have not been properly assessed by Atos, particularly around mental health. This person said that claimants were not being assessed in an even-handed way, that evidence for claims was never put forward by the company for doctors to use, and that medical staff were told to change reports if they were too favourable to claimants. What happened to him? He was paid off and had a contract with a confidentiality clause, which prevented him from saying anything about it. That is another instance, and in another Department, of behaviour that is not in the public interest.
Sharon White: It is clearly in the public interest given that there is use of public funds.

Q66 Chair: Yes, but it is not in the public interest to use a confidentiality clause and prevent us from knowing what happened.
Sharon White: As you know, a confidentiality clause is still captured by the Public Interest Disclosure Act.

Q67 Chair: Indeed, but you are going to have to think this through. The problem is, as the Report says and this instance—true or not—reveals, people take a severance agreement, sign a confidentiality clause and then think they are gagged. They think they are gagged whether or not that it true. That is what they believe.
Sharon White: From our point of view, the thing we are now specifying is that "any compromise agreement or undertaking about confidentiality leaves severance transactions open to adequate public scrutiny, that there is sunshine thrown on these payments".

Q68 Chair: Does that apply to private companies providing taxpayer-funded public services? Does it go to that bunch of people? I have chosen one in DWP; I could have chosen one in Health.
Sharon White: I understand. We would not have sight of a severance payment for someone who is not a DWP employee.

Q69 Chair: How could we, on behalf of the taxpayer, know that?

Sharon White: For this to be known on a more systematic basis, it would have to be made mandatory. Richard Bacon said that we could collect that centrally, or we could change our guidance, so that Departments need to expose this and make it transparent in their remuneration reports and accounts.

Q70 Chair: Will you take that away? I don't think we will be satisfied until, with the growth of the private sector delivering public services, you get that accountability. That has to be embedded in there for us to be satisfied that taxpayers' money has been properly used.
Sharon White: We shall take that away.

Q71 Ian Swales: But you are actually going in the other direction. You have allowed academies to be outside the net, as the Report says. You are actually going in the opposite direction at the moment. How do explain that?
Sharon White: Not quite. Maintained schools, as the Report makes clear, are outside of our oversight, because of the scrutiny through local authorities and local electorates. The new process we have put in—it is temporary and there will be a review—will put academies on the same footing as maintained schools.

Q72 Ian Swales: But the Secretary of State cannot have it both ways. He is taking those schools out of local authorities into his own Department. You have now allowed him not to have scrutiny of them, even though they are in his Department. Why would you do that?
Sharon White: That is not quite right. The new process that we have got, which was put in place in September last year, gives academies that have been through a financial scrutiny test discretion on granting payments of up to £50,000, as they would have had they stayed in the maintained sector. That was a policy decision by Government. We will review it and we will need to ensure that the academies have not misused that discretion, but it is discretion that they would have had in the maintained sector.

Q73 Ian Swales: You only need to read the press to see that academies misusing funds is an issue. I am really surprised that that has happened. Maybe you need to go away and look at that.
Sharon White: This has been in place since September last year. We will have a review to see if there has been any misuse at the end of the year.
Chair: We have had three commitments.

Q74 Stephen Barclay: Ms White, the Department of Health confirmed to me in a letter this morning that it spent more than £73,000 on external consultants in preparing for just one hearing of the Public Accounts Committee. That was 52.5 days of external consultancy spend, initially at a cost of £1,714 a day, and then reduced to £1,000 a day. Is that value for money from a Treasury perspective?
Sharon White: It is not something that we have had sight of. It clearly depends on what one sees as the benefits against that spend. We are not against consultancy spend per se, but it may be better for my colleagues to pick that up.

Q75 Stephen Barclay: I am asking in terms of managing public money and the duties of an accounting officer. Is it the Treasury's view that it is consistent with the managing of public money for Departments preparing for Select Committee hearings in Parliament to spend money—in this case more than £73,000 for a single hearing—on external consultants?
Sharon White: The accounting officer would need to satisfy herself that the benefits of doing so outweighed the costs of that outlay.

Q76 Stephen Barclay: Are you planning to review in the Treasury whether such coaching is more widespread?
Sharon White: We are happy to take that up.

Q77 Stephen Barclay: The Treasury signed off the compromise agreement, including a gagging clause, for the chief executive of Morecambe Bay hospitals trust. Could you explain why the Treasury signed that off?
Sharon White: We do not sign off compromise agreements, in the sense that we do not sign off the confidentiality clause. We sign off whether the payment represents value for money.

Q78 Stephen Barclay: Could you explain to the Committee why you felt that a large pay-off to the chief exec of an organisation that was under police investigation a couple of weeks after a damning report by external consultants PwC and which had warning notices from CQC and various other issues of concern, was not worthy of consideration from a disciplinary point of view? Instead, the chief exec was subject to a large pay-off.
Sharon White: In the earlier part of the hearing we said that from the Treasury's point of view we would expect the Department and the NHS to manage, and to have satisfied itself on, the HR managerial and disciplinary procedures. In that case, we will have examined, as in all cases, whether the taxpayer would be better off as a result of an early settlement that avoids cost down the road, normally through a tribunal.

Q79 Stephen Barclay: But why would it be value for money? That is the point that the Treasury is approving—that it is value for money.
Sharon White: As I said, the financial test for us is whether the outlay of the special payment is less than the expectation of losing the case and the associated payment at an employment tribunal.

Q80 Stephen Barclay: In your own guidelines, in annex 4.13.11, it says, "Departments should not treat special severance as a soft option, e.g. to avoid management action, disciplinary processes, unwelcome publicity or reputational damage." Did you not think that that applied in the case of Tony Halsall?
Sharon White: I am making a slightly different point, which is that we rely on the Department and the NHS

to satisfy itself that those guidelines are adhered to and that a payment is not being used to avoid what ought to be an HR-managed disciplinary case. That is not something on which the Treasury is in a position to give additional scrutiny or make a different judgment.

Q81 Stephen Barclay: I am trying to establish exactly what scrutiny the Treasury gave. It is unclear to me whether the compromise agreement was in February 2012 or March 2013, but the hospital said, "The compromise agreement that he"—Mr Halsall—"and the Trust signed in February 2012 contained a confidentiality clause." So it is suggesting that he signed a compromise agreement in February 2012. He was then paid for a 12-month secondment to work at the NHS Confederation, and for a further six months after that. That is 18 months' payment, which appears to be three times his contractual entitlement. Could you explain why someone in the organisation, subject to such public concerns, would be paid three times their contractual entitlement?
Sharon White: We would have made the judgment based not on the size of the payment, but on whether the payment would have been exceeded by the loss of a case at an employment tribunal.

Q82 Chair: So the presumption on which you base your judgment is that you would lose.
Sharon White: What the Department, through the NHS, would have provided in that case would have been a business case setting out why the later costs at a tribunal would have exceeded the contractual—

Q83 Chair: But on the presumption that you would lose, which sounds extraordinary.
Sharon White: That is a presumption on the judgment from the Department that we would have lost.

Q84 Stephen Barclay: There are further concerns. For example, the chief exec concerned was aware of a report by Dame Pauline Fielding, which he did not share with the regulator, and baby deaths happened after he had been in receipt of that report. It is not for the Committee to run an employment tribunal for the chief exec concerned; what I am saying is that your own guidelines say that pay-offs cannot be used as a way of avoiding disciplinary action or reputational risk, but this seems to be a clear case of where that happened and the Treasury approved that.
Sharon White: Again, I absolutely stand by the guidance. The issue is that we will be relying on the management—the Department and the NHS—to be ensuring that payments are not being inappropriately used as a sop or replacement for proper disciplinary procedures.

Q85 Stephen Barclay: In relying on those individuals, are you confident, in this case, that there were no conflicts of interest?
Sharon White: We would have been confident on the judgment, based on approving the severance payment.

Q86 Stephen Barclay: The chairman who negotiated in February 2012 with the chief exec was the former chairman of the North West strategic health authority. That authority is heavily criticised in a number of quarters, but if I read from the Grant Thornton report, paragraph 3.278 says, "the local SHA, the lead agency responsible for the performance management of UHMB, provided the Regulator with assurances as they considered UHMB's responses to the incidents and its progress satisfactory." The charge is that the chairman of the North West strategic health authority was responsible for an organisation with a statutory duty to intervene in maternity issues at Morecambe and failed to do so. He then moves across to Morecambe, where there are very serious concerns raised and, three weeks after the PwC report which lists serious failures or concerns, he signs off an 18-month pay-off to the chief executive. Does that not look like a conflict of interests?
Sharon White: I am afraid that I cannot judge without the details. The issue for the Treasury, narrowly, is to ensure that the NHS senior management has assured itself that these are proper payments and that it has assured itself that the guidelines set out are adhered to.

Q87 Stephen Barclay: A further conflict of interest appears, because the chief executive of the North West strategic health authority, who provided reassurance that the concerns at Morecambe were unfounded was Mike Farrer, who is now the chief exec of the NHS Confederation, a charity that derives almost all its funding from NHS institutions. It makes no money from voluntary donations. Mike Farrer is now paid more than £200,000 as the chief exec of that charity. That is the charity to which Mr Halsall, the chief exec of Morecambe, was then seconded for 12 months.
So we have a damning report on the back of a police investigation into Morecambe. Three weeks after the PWC report, the chief exec is able to walk out of the door without disciplinary action, go on secondment for 12 months to the NHS Confederation, a charity, where the boss is Mike Farrer, the chief exec of the North West strategic health authority, and the deal is done by the former chairman of the North West strategic health authority, who used to be Mike Farrer's boss. Does that not seem like some sort of cosy club of comrades doing a deal together?
Sharon White: All I can say is that, from our perspective, what is key is that the management of the NHS ensures that there is not a conflict of interest which the taxpayer is then almost complicit in. That is absolutely clear in the guidelines that we set out.

Q88 Stephen Barclay: One of the other players at Morecambe was the Care Quality Commission. Obviously, people are well aware of the failures. Indeed, this Committee had a hearing last year where we criticised its poor leadership. That did not stop glowing tributes being given to its outgoing chief executive by the Department of Health when she left. It is striking that Martin Yeates, the chief exec of Mid-Staffs, got a pay-off and then goes to a charity—IMPACT Alcohol & Addiction Services—which is funded by the NHS. Cynthia Bower leaves the Care Quality Commission with tributes and goes and works for Skills for Health, on their board, which is funded by the Government, by BIS. Tony Halsall goes to the

NHS Confederation, another charity, in this case one deriving all its money from the NHS. Mike Farrer, the chief exec of the North West strategic health authority, who people like Mr Titcombe, whose son tragically died at Morecambe, is critical of gets himself a £200,000 perk running another charity, the NHS Confederation.

I do not know whether it is sort of a retirement home for lame ducks and sitting ducks, but there seems to be a trend where bodies like the NHS Confederation are using public money to park people who have failed within the NHS and the Treasury is signing off the deals as value for money when they leave.

I go back to your own guidelines: "Departments should not treat special severance as a soft option." Are you satisfied that it is not being used as a soft option?

Sharon White: In the cases that we have signed off, we will have been satisfied by the judgment taken by the Department—in this case, the NHS concerned—that they are not using public funds instead of taking a proper, appropriate HR route of disciplinary action.

Q89 Stephen Barclay: Could you tell me how many hospital bosses have had their compromise agreement turned down and dismissed with no pay-out?

Sharon White: I do not know. Others may. There are certainly cases that we will not approve.

Q90 Stephen Barclay: I am not talking about where perhaps they have stolen something or there is gross misconduct—something clear-cut—I am saying over performance.

Sharon White: I do not know the answer to that.

Q91 Chair: Do you know, Una?

Una O'Brien: No, I do not know the answer to that.

Q92 Chair: David?

Sir David Nicholson: No.

Q93 Stephen Barclay: So we are not aware of a single case, is what you are saying.

Una O'Brien: I am not saying I am not aware of a single case.

Q94 Mr Bacon: Name ones you are aware of, then.

Una O'Brien: What I am saying is that I do not know the answer to it—

Q95 Mr Bacon: Can you name the ones you are aware of?

Una O'Brien: I will certainly look into it.

Q96 Mr Bacon: If you are not saying you are not aware of a single case, which you have just said, can you name the ones you are aware of?

Una O'Brien: There may be cases. I do not know. That is what I am saying.

Q97 Mr Bacon: You just said, "I am not saying I am not aware of any cases". The implication of that is that you are aware of some cases. Which ones?

Una O'Brien: I do not know the answer to the question.

Q98 Chair: What about Sir David?

Sir David Nicholson: I have said that I do not know the answer to the question.

Q99 Stephen Barclay: I was quite surprised, given the very generous remuneration that Mike Farrar is receiving—indirectly but in essence from the public purse—that he appears to have an interest in a health consultancy, Unique Health Solutions. That was reported in the *Health Service Journal*. Tony Halsall, I understand, has an interest in the health consultancy T29 Solutions Ltd. I do not know whether any of the others have. Are you aware of how much has been spent with any of these health consultancies? If not, can we have a note?

Sir David Nicholson: By the NHS? I do not know.

Q100 Chair: Can we have a note?

Sir David Nicholson: Yes, of course.

Q101 Stephen Barclay: Would it concern you, Sir David, if someone about whom there is a great deal of public concern, such as the outgoing chief executive of Morecambe, had received any public money? Would it concern you if Mike Farrar, given his high-profile role lobbying the Government—funded by the taxpayer, but lobbying the Government all the same—had interests in a consultancy in addition to his £200,000-plus remuneration? Is that something that he has ever declared to you?

Sir David Nicholson: I am aware of it, because I read it in the *Health Service Journal*.

Q102 Stephen Barclay: And did you discuss it with him?

Sir David Nicholson: No, it is a matter for him and his employer.

Q103 Stephen Barclay: Is it an interest that he registers or gives visibility at the various conferences or dinners that you have?

Sir David Nicholson: I am sorry; I did not catch the first part.

Q104 Stephen Barclay: How is his personal interest reflected if he has a side interest in a private lobbying company?

Sir David Nicholson: I have never heard him talk about it.

Q105 Chair: Who would he have to reveal it to?

Sir David Nicholson: The confederation, his employer.

Q106 Stephen Barclay: Is there not a conflict of interest if someone who is so high profile and lobbies on Government policy, funded by the taxpayer, has a private health consultancy and does not have to declare it to anyone?

Sir David Nicholson: I think that is a matter for his employer, not for us.

Q107 Stephen Barclay: His employer is a charity, but they receive £23 million, they do not get a single voluntary donation and they spend £8.5 million on

staff. Ms White, do you think that charities such as the NHS Confederation spending £8.5 million on staff to lobby on Government policy is an effective use of public money?
Sharon White: I do not feel that I am in the best position to comment on that, or indeed on the activities of the confederation.

Q108 Stephen Barclay: Perhaps you would be more able to comment on the Treasury's interpretation of its own rules. As colleagues will know, I have raised judicial mediation on a number of occasions; indeed, Sir David gave the Committee an assurance that he then unilaterally chose to break without informing us. In a letter about judicial mediation dated 15 August 2011, the Treasury gets its own rules right until the last line. On page 1, it talks about judicial mediation involving no contractual entitlement or any form of legal judgment, which is correct. As I am sure you are aware, Ms White, judicial mediation is not a court order; it is a discretionary payment, and as such it falls within the definitions of what should be declared. In the final paragraph, however, the letter's author states that, because the settlement reached is likely to be the same as or less than would be awarded by the judge if the case completed the employment tribunal, they are satisfied that Treasury approval is not required. That is incorrect, isn't it?
Sharon White: It is. We made a mistake.

Q109 Stephen Barclay: So the Treasury got its own rules wrong?
Sharon White: We made a mistake, and we have been clear about that and subsequently reviewed the cases.

Q110 Stephen Barclay: So why is it that even though this is the third Committee at which the issue has been raised, we still do not know how much the NHS has spent on judicial mediation?
Sharon White: I am afraid I do not have those figures. All I can say is that these are now captured by the approval process in the Treasury.

Q111 Chair: Una, do we know?
Una O'Brien: I know this was discussed at your last Committee. I think the issue that we discussed last time—forgive me; I was not here, so I did not get the full tenor of the discussion—and was particularly a concern of the Committee was that people were gagged or that they would feel gagged by those agreements, which had not come through any other process. So we have followed up on the commitment that we made at that meeting to contact all the trade unions and professional bodies to reach as many people as were involved, so that the message gets out—

Q112 Chair: To be honest, the simple request was about how much had been spent on settling cases through judicial mediation—how many and how much?
Una O'Brien: We do not know the answer to that, because—

Q113 Chair: Can you get the answer to that?
Una O'Brien: I suppose it is technically possible to get it, but I do not have the answer right now.

Q114 Stephen Barclay: Your own guidelines required NHS bodies to keep a record of judicial mediation.
Una O'Brien: And indeed those payments should be reflected in the accounts of every single organisation, although they are not delineated—

Q115 Stephen Barclay: I am sorry, but that is very misleading, because they are reflected in the accounts as part of the overall staff cost. There is, therefore, absolutely no way of knowing. Judicial mediation is not listed as an individual item in the accounts.
Una O'Brien: Correct. It is not listed as an individual item, but it does have to be referred to. I mentioned earlier that I did not think that the categories were clear enough. There are two categories: one to capture redundancies and another to capture other payments. In the "other payments" group, it is not sufficiently delineated—

Q116 Chair: At the end of the day, you are the accounting officers for the money that Parliament gives you to spend on the NHS. We simply want to know the number and amount of cases that have been settled through judicial mediation—just a list. That is not a crazy request and ought to be met. If you cannot provide that, it is a systemic issue. It is not one for the trusts. We are not getting the accountability to Parliament that we are obsessed with here. We cannot follow the taxpayer's pound. You have to provide that for us. If that means beavering away and getting your systems right, it may help you in future, but in the end you are accountable for that money.
Una O'Brien: I accept that. We have certainly changed it for anything from now into the future.
Mr Bacon: We are not only interested in now and the future.
Una O'Brien: As I understand it, judicial mediation has been used between—we are talking about the period between 2009 and the financial year that has just completed. Those are the years for which we do not have that information.
Chair: Those are the years for which we are asking you to collect information.
Mr Bacon: Your guidelines say that the trusts involved should have collected the information, so you just have to ask them to get it. If people across the system had been following my earlier advice to the Treasury and keeping a central list, you could just look it up, but since you have not done that, you now have to create one.

Q117 Chair: That is another issue, but I just wanted to pick up on one thing that arose from what Stephen said. What you, Sharon, consistently said in response to Stephen is, "We assume that the health body responsible for a particular settlement has been following our guidance." On the assumption that everything that we have is correct, what has emerged from the exchange is that your presumption that the health bodies are sticking to the guidance is misplaced.

Sharon White: When we get a case for a severance payment, what we ask for and obtain for the Department is something that sets out the view about how it was taken forward. There is no tick-box element. They need to set out for us and lay out clearly what the management response has been. We cannot second-guess that.

Q118 Stephen Barclay: To clarify, the reason why it cannot be working is because either the compromise agreement was from February 2012, in which case it covers 18 months, so the statement from the hospital that he got no more than what he was contractually entitled to is wrong, because he was not contractually entitled to a 12-month secondment to a charity, or he did a 12-month secondment and then the agreement was reached in March 2013, in which case there were clear grounds for disciplinary action under your own guidelines. I do not know which of the two it is, but I cannot see how either is compliant with your own rules, yet you have nodded it through when the issue is of huge public interest.
Sharon White: We ask the Department to explain and set out clearly what management procedures have been followed. Clearly, the Treasury's expertise is in ensuring that financial probity has been followed; we are not in a position to second-guess or do detailed scrutiny on the management procedures of Departments.

Q119 Mr Jackson: Why are you not in a position to do that?
Sharon White: We just don't have the expertise.

Q120 Mr Jackson: You have said it is not a tick-box exercise: it is a tick-box exercise. You are not in a position to judge the accuracy, veracity or efficacy of these decisions: you just sign them off. You can't make a value judgment on whether there is any conflict of interest—Mr Barclay has very eloquently drawn attention to that—you just sign them off.
Two things strike me. One is that you need to have some regulatory oversight or investigatory powers if it is still happening, or else you needed to have that. You also need to get proper legal advice on employment practices: as the Chair has said, your fall-back position seems to be to say, "We are going to lose the employment tribunals, so basically you can put any number of noughts at the end of the amount," as long as that is less than what you at the Treasury decide—on the basis of no demonstrable evidence, as far as I can see—might be the likely costs if you lose the case. That is not a satisfactory use of public money. It is a complete disgrace, frankly. You should not just sit there and say, "We don't have any capacity to look at this"—essentially, you are saying, "It's not our problem, guv." That is not good enough. You should be looking at this. If you are signing these payments off at the trust level through the Department, you have a responsibility to do that.
Sharon White: Can I say a couple of things? First, we do not sign off all the proposals that come through to us—quite the reverse. As Paula has mentioned before, it often turns out that end payments are less than what we approve. Secondly, I am not saying that we are abrogating responsibility; we are saying a different thing, which is that the expertise and the management oversight for the disciplinary or other HR procedures being followed in detail do not rest with the Treasury. It is not an entirely tick-box exercise, because the Department needs to lay out the procedures that it has followed, and indeed the procedures it has not followed.
Mr Bacon: Surely, the litany of stuff that we have heard makes it abundantly clear that you cannot trust the NHS and the Department of Health to mark its own homework. That is the point, isn't it?

Q121 Mr Jackson: We have just had examples of clear conflicts of interest, where people have been bunging public money to people to shut them up and keep them quiet because they have fallen out over very important issues about clinical governance and safety; yet, as Mr Bacon quite rightly says, you are going to people who are marking their own homework, and you are ticking a box and paying them money. There is no proper oversight. You have not acknowledged that. That is the serious worry I have. If you said, "Yes, there is a flaw in the process; it is clearly unsatisfactory and is not good value for money," I would be slightly reassured. But you are stonewalling and saying, "Well, it's just one of those things; we just have to trust these guys." It is just not good enough.
Sharon White: I am not saying that it is just one of those things, actually.
Sir David Nicholson: Can I say something?
Mr Bacon: Not at the moment. I am still trying to get things out of Sharon White.
Sir David Nicholson: I am trying to help.

Q122 Mr Bacon: I know you are, but could you just wait? I am still looking for an acknowledgment that central oversight is required and is insufficient. Paragraph 3.15, on page 27 of the Report, says: "The Treasury's record keeping is cause for concern. The records suggest that the Treasury does not monitor centrally overall trends in the data and cannot provide assurance that…value for money considerations are robust". I thought that was what you were saying that you are trying to do. That paragraph also says the Treasury cannot provide assurance that you are taking "a cross-government view", that you do not identify "unusual trends in the data", and that you cannot provide assurance that "lessons learnt in one department are applied, and replicated more widely across government." So none of that is happening: somebody has to take responsibility for this and provide central oversight, otherwise nobody can account to Parliament for this money and how it is being spent.
Sharon White: Currently we don't keep records, but, in response to the earlier exchange, it is something we will take a look at in connection with the Cabinet Office.

Q123 Chair: Can I emphasise that this is not just the Department of Health? Paul Stephenson, the former commissioner who left because of his relationship and links with the *News of the World*, got over £176,000

after he'd signed an agreement. John Yates also left after the phone hacking scandal; he got £86,000 on top of his £120,000 salary. It is not just NHS oversight. You will have signed those off.

Sharon White: I don't know the detail of the cases but there is a general point for the Treasury to take back on the basis of this discussion which is whether and how we might have a system that is more—

Q124 Chair: I tell you what astounds us, which is why you are getting uniform shock around the table: these are high-profile cases we are talking about. These are not cases where it could well be that Paula Diggle or her officials in the Treasury would not have heard of them. Morecambe Bay is high profile. North Staffs is high profile. The Met Police and phone hacking is high profile. Yet somehow they get signed off through the Treasury.

Sharon White: In the case of the police, this is not part of our approval process. We would not have signed off those individual cases.

Q125 Chair: Again, this brings me to the second point, which is why we say Parliament wants to be satisfied across the public sector, whether it is the NHS and its trusts, whether it is local government and its organisation or whether it is private organisations providing services paid for by the taxpayer's pound. We have not had it so much with the NHS, but it is not good enough for any civil servant to come to us and say, "It is not in my brief. It is somebody else's responsibility." We are the Committee now that has to be accountable for all these organisations. You see these huge amounts in high-profile cases with compromise agreements when people have allegedly done wrong and it shocks the public.

Sharon White: The Committee feels strongly about this. We will look at whether there is more we can properly do to provide central oversight through guidance or other means.

Chair: I think this Committee won't be satisfied until we have proper accountability for this area of expenditure. It is because of what it says about how we spend public money rather than the quantum. It is a statement about the integrity of the expenditure of public money. That is what is so important.

Q126 Stephen Barclay: On the quantum, it is very misleading. The exposure to clinical negligence is enormous, but the patient safety harm as a consequence of clinical negligence is also enormous. So it is misleading if the Treasury focuses on the size of these payments and thinks that that reflects the size of the problem. These payments are an early warning sign of organisations that have problems. If people had been listening more in Morecambe to the warning signs, we would not have had the subsequent baby deaths. We will spend over £3 billion this year on clinical negligence. I am sure Ms O'Brien will know the figure.

Una O'Brien: It is in that category.

Q127 Stephen Barclay: It is over £3 billion so it is very misleading to look at this in terms of the size of the payouts. Those payouts do not include the legal costs. They don't include the several years that people are often suspended on full pay. But they hide the harm done to the patient by the surgeon who butchers people and should have been stopped years ago. Then there is the cost to the taxpayer in fixing those problems caused by clinical negligence. That is why the Committee finds this issue of grave concern. Judicial mediation has often been used for the higher end, like the Gary Walker case. He was a chief exec. That is why the figures on judicial mediation matter because often they were used in the more complex, high-profile cases. The Treasury does not seem to recognise that.

Q128 Austin Mitchell: I will move on to another point that you raised with the Treasury earlier, Chair, about the confidentiality of agreements made by commercial undertakings working for the DWP. I assume you were referring to things like AFE or AFU or whatever it is called. I should like to transfer that to the Department of Health. You are quoted in the Report in respect of arm's length bodies in the health service. I assume that could mean private contractors but probably means social enterprises working in the health service. You say: "The Department does not request, or hold, compromise agreements relating to arm's-length body staff as these are confidential documents between the individual and the employer." That seems to vitiate the whole purpose. Questions of disclosure and whistleblowing are more likely to arise with smaller, less adequately supervised bodies. Staff are, in the main, transferred under TUPE employment undertakings to the private sector. They are spending public money, yet we cannot be told about any agreements that they reach. Why is that? Is it justified?

Una O'Brien: The arm's length bodies referred to in the report refer to two things. The first is the agencies of the Department of Health: that is, the Medicines and Healthcare products Regulatory Agency and Public Health England, although Public Health England only came into effect a few weeks ago. The second is those organisations sponsored by the Department that are set up statutorily as non-departmental public bodies. That would include, for example, the NHS Litigation Authority, the NHS Business Services Authority and NHS Blood and Transplant. It refers to those bodies, which are not in the private sector.

The first point to make is that any severance payment proposed from any of those organisations has to come through the Department and be scrutinised by the Department before it goes to the Treasury. A number of them are knocked back. They do not get through because they do not meet the criteria, which are not simply about value for money. A group of people in the Department considers those cases and pushes them back if they are not acceptable for whatever reason.

The point made in the Report to which you refer is the specific observation by the National Audit Office when it comes to the agreements that were made. It is factually correct that we do not have them in a document file held by the Department.

Q129 Austin Mitchell: Well, shouldn't you have them? Don't we need to know this?
Una O'Brien: I have listened with great care to what has been discussed in the last hour, and I am deeply concerned about any suggestion that there could be any conflict of interest whatsoever. It causes me to reflect on how we could tighten up our arrangements to make sure that there is proper validation at the point at which things are being considered.

Q130 Chair: I'll tell you where you can tighten it up. You can open it up.
Una O'Brien: Absolutely. This is not an element—you have raised it in relation to ALBs—that we have previously considered with the seriousness that it deserves. It needs looking at. I am not aware myself of any case where there has been such a situation, but I am clearly concerned to think that there could be.

Q131 Austin Mitchell: But unless they are required to notify, you wouldn't be aware, would you? What the Committee is saying about the ability to know and to make this accountable applies to arm's length bodies as well as to the health service.
Una O'Brien: Yes, I can see that. I would certainly be aware, in relation to the arm's length bodies, who was making the proposal and the individuals concerned, because we are talking about a much smaller group of employees in that context than we are about the whole of the NHS, which as you know employs over 1 million people, so you cannot know those things to that degree. Nevertheless, there is a legitimate point about conflict of interest that bears further checking that we have assistance in place to capture it should it occur.

Q132 Austin Mitchell: It says at 4.12: "The Department's arm's-length bodies are independent employers but are required to submit all special severance payments to the Department." What are the special severance payments that they are required to submit, and how do they differ from all the others that they are not required to submit?
Una O'Brien: These are exactly as set out within the rules. Any payment from the arm's length bodies that is non-contractual or non-statutory, according to the Treasury guidance, must be submitted with the business case to the Department. It is scrutinised by the Department. In the last 12 months, half of those put to the Department were rejected, and the remainder were put forward to the Treasury for approval.

Q133 Austin Mitchell: I hope you will give consideration to ripping this veil of secrecy aside. How will you ensure that staff who want to whistleblow or raise problems with such organisations are able to do so and bring them to the attention of the health service itself?
Una O'Brien: Certainly within the Department of Health as an organisation, we take our own procedures for whistleblowing extremely seriously, and I also constantly work to ensure that all the arm's length bodies, which are national organisations that have a role in relation to the health and care system themselves, have effective whistleblowing policies. I am very open to any feedback that they are not effective, but we are taking this issue extremely seriously. It must always be possible for staff to raise concerns with senior managers so that those concerns are dealt with properly.

Q134 Austin Mitchell: I am glad to hear that, but can you ensure that they are not punished or paid off for raising these points?
Una O'Brien: I will absolutely seek to do so. Equally, I would add that the Secretary of State, in response to the Francis report, has made it very clear to Parliament that that is his expectation.

Q135 Meg Hillier: Stephen Barclay and other colleagues have mentioned serious issues around child deaths, and so on, where a pattern could have emerged had they been scrutinised more closely. Sir David, perhaps I can start with you. What about lower-level patterns of behaviour where perhaps a trust, a health organisation or any part of the NHS family had an issue with, say, discrimination of some sort? A lot of lower-level compromise agreements have been put in place. Would you be in a position—you say you oversee them—to see a pattern of management behaviour masked by such agreements?
Sir David Nicholson: We get the data through the processes that we have just described, which the Treasury use. We do not routinely collect the kind of low-level data that you describe. We do not do that. We have had a national staff and patient survey every year for the past seven years—we have 160,000 staff—and we publish all those data. For every hospital, every community service and every mental health service, we publish detailed information about the way in which those staff are supported and the way they feel about how they are dealt with. All of that is in the public domain, and it is the responsibility of individual organisations to take action to put that right.

Q136 Meg Hillier: Okay, so that is qualitative work, depending on who responds. Surveys have their place, but that is not all that I am talking about. If I were a chief executive of a hospital trust and I had a bad manager who is a problem in a department in which a lot of staff were taking action, perhaps on the grounds of race discrimination, but a compromise agreement had been struck with them—if you are on a low salary and in a relatively small family like the NHS, the hassle, the reputational damage and the stress of moving on and dealing with that situation might make it quite tempting to take a compromise agreement—I might think that is an easy way of dealing with the problem if I was not particularly on top of my job.
Who, above me—apart from the governors and trustees, if it is a trust—would actually be watching for such patterns of behaviour, which can lead to really bad morale and some of the bigger things that Stephen Barclay and others have raised? Who would be watching that low level stuff? You are saying that you would not see that.

Sir David Nicholson: No, we wouldn't see that. It depends on the type of organisation. If it is a foundation trust, it would be its governors and members.

Q137 Meg Hillier: But I have to say, with all respect, that the governors in my area would not be watching that level. They would not be privy to the level of detail in agreements.
Sir David Nicholson: That is the accountability system that has been set up. We have a set of members and governors who do that. One of the things that has come out of the light the Committee has shone on all of these kinds of issues is to think about what the responsibilities of commissioners are in relation to that—so your local CCG. In the guidance we have sent out to the service, we think it is a commissioner responsibility if such information becomes available to them. Certainly on compromise agreements, we would expect commissioners to have that, and we would expect them to take action.

Q138 Meg Hillier: So my CCG should know which compromise agreements the hospital has?
Sir David Nicholson: Certainly the large ones that come up are put in the guidance to them, because we think that that is potentially an important indicator of what may be happening in the hospital, and the potential that it has for patients.

Q139 Meg Hillier: I would agree with you completely on that last statement, but it just worries me that we are relying on local management. I agree there is a system in place, which neither you nor I has control over, but the idea that the governors as a body would know about those individual compromise agreements—let us say it is a staff nurse or a lower level—is not really going to happen, is it? They will not be privy to that information, are they, Una O'Brien?
Una O'Brien: Let us be clear about it. All compromise agreements in a properly run organisation should come to the remuneration committee of the board. That would be my expectation and I will certainly be taking steps to make sure that that is the approach that is used in the governance, because they have to be seen at board level. I have spent four years working in a hospital—6,500 people in a highly complex organisation—and the board of that organisation has to have a grip on what is going on inside that body. If it does not, any degree of externality will only be running to catch up. We need stronger external regulation, but we need strong boards inside organisations.
When it comes to a compromise agreement, they do not all involve severance payments or payments, but most specifically where they are involved in payment, they should be going to the remuneration committee of the board, which involves non-executive oversight.

Q140 Meg Hillier: I think I would agree with you there, but, as you say, they do not all involve payments. The remuneration—the money side—is not all of it, so you are relying on good hospital management, which we always hope for, but the cases we have highlighted are where the hospital management has broken down. So you are basically saying, just to be clear, that there is no external oversight saying, "It's funny that this hospital has had rather a lot of staff nurses going off with agreements. What's going on in that neonatal department or in that geriatric ward?" No one can actually see that picture.
Una O'Brien: As we build the new system for the chief inspector of hospitals, I know Professor Sir Mike Richards is keen to find any information that will give a sense of early warning of problems or indicate a sense in which there is something not quite right.

Q141 Chair: We are always told that things are going to be brilliant in the future. What I would love to hear is something that is happening now that gives us confidence.
Una O'Brien: What is interesting is that we have had three goes at getting this inspection right—10 years—and now we can see the importance of transparency around these matters and how poor relationships between members of staff, which might get revealed through a compromise agreement, would be an important area for an inspector to investigate, and I think we need to tie things up in that new regime. I would agree with you on that and let's hope it happens.

Q142 Ian Swales: This question is for Sharon White. I have some freedom of information data that relates to the now defunct One North East regional development agency that shows, over a period, gagging orders to 12 people totalling £363,000, and, at the same time, pension contributions over and above contract levels of nearly £1.8 million, so five times as much as the gagging orders. Can I ask whether your financial analysis takes into account pensions?
Sharon White: It will do, yes.

Q143 Ian Swales: So if people are given instant pensions or whatever, you would factor in the full cost to the state pension system of that—yes?
Sharon White: That is right, yes. We will take into account any pension that would accrue as part of the calculation. One of the things I should have said earlier, partly in response to the earlier questions, is that we will look at the legal advice that has been made in connection with the likelihood of losing an employment tribunal, alongside the evidence that we take into consideration.

Q144 Ian Swales: But you are taking the full cash benefit to the person, including pensions. Related to that, I want to return to the question of boundaries. By the end of today we ought to know in this Committee what area you approve now, what part of the public sector you would expect to approve and, therefore, what bits are not approved. We have bodies such as the BBC frequently in this room, and I guess you do not approve them. Can you explain the boundary of the areas you do approve? For example, would you have approved these One North East payments? I guess not.
Sharon White: No, we wouldn't.

Q145 Ian Swales: So can you describe what you do and whether you think it is changing?
Sharon White: Yes, I will, and Paula can correct me if I get the boundaries wrong. Essentially, it will be central Government and related arm's length bodies. We do not approve bodies that essentially report in to the local authorities. That is why we had the previous exchange about maintained schools and academies. We do not approve bodies that are publicly funded but independent arms outside Government, such as the BBC because of its trust status.

Q146 Ian Swales: So you don't even approve local authorities themselves?
Sharon White: No. Even CLG will not have sight. Local authority chief executive—
Amyas Morse: Our findings were that the Treasury does not always include the contractual elements of the payment or legal advice. Forgive me, I want to say it now so that we don't go back and restate.
Sharon White: We should do.
Amyas Morse: Yes, I know, but you don't at the moment. So, if it is contractual elements such as pensions and so forth, they will not be included. It will be just non-contractual elements.

Q147 Ian Swales: To be absolutely clear, my question was about pension payments, over and above contract. Would you be involved?
Amyas Morse: You look at them, but not things that are contractual and not payments in respect of legal advice.
Chair: You have added years.
Simon Reason: We sometimes found that the business cases did not split up the contractual and non-contractual elements and we refer to that on page 26, paragraph 3.14 subsection (d).
Sharon White: Your question is the right one. In principle, we are looking at what rests above the contractual element.

Q148 Ian Swales: Returning to the subject of boundaries, you have given us a definition. On the one hand that is good, but on the other hand, as we often find on this Committee, it leaves us with enormous concerns about a huge range of bodies, where the sort of Treasury oversight that you might give—
Chair: Sharon White has been absolutely clear, Ian. She has promised to come back—I am going to say by September, when we reconvene to interrogate MOD and DCMS—with an accountability structure across public expenditure. That is really important, particularly with local government, with the Audit Commission going. We are not going to leave that one alone either.
Sharon White: I have promised to come back on a response to your right request to know what an improved system should look like.

Q149 Ian Swales: Exactly. I would be concerned. I know people would say that a local authority has democratic accountability, but we know that there are lots of parts of the country where local authorities stay under the same democratic mandate for ever. I am from the north-east. I would like to be sure that you are satisfied that the kind of scrutiny that you place on the areas that you do scrutinise is taking place in the areas that you do not look at. To follow the Chair's point, are you looking at that? Are you checking that the kind of things that you would not be satisfied with in the areas you do look at are not happening in the areas that you don't look at?
Sharon White: Currently, we have no sight at all. As I said, CLG has no sight at all, for the principle that you say, which is if it is working well it is the local electorate that is providing the scrutiny and accountability.

Q150 Chair: You have no approval. It is up to central Government with their responsibilities for accountability to set the systems that allow that transparency. It may be that you do not approve them. We want systems that ensure transparency, so that you can see across the piece, wherever it is the taxpayers' pound. I'm sorry, Ian, if I am boring, but it is wherever it is the taxpayers' pound.
Sharon White: Okay. It will be in the accounts, as we have talked about before.

Q151 Ian Swales: That leads me on to a question that Ms O'Brien perhaps can answer. It is a similar question about boundaries. You talked about arm's length bodies. If such a situation happened in what you defined as an arm's length body, you would know about it, I think you said. If a compromise agreement was done or whatever, did you say it would be reported?
Una O'Brien: Under the rules, we have a system in the Department, which I think is set down in the Report. Arm's length body proposals have to come to the Department in relation to their own staff.

Q152 Ian Swales: Can you confirm whether such arrangements relate to private sector contractors? In the rules, are they regarded as arm's length bodies in your terms?
Una O'Brien: Not in the terms in which I talk about an arm's length body. There are two different things, really. Perhaps David can comment on the National Health Service, but you raise a legitimate question, because among that wide group of organisations there are 15 A or Bs. Some are self-contained organisations and all the staff are public sector employees, and others have contracts for the supply of work. I will certainly take away from this Committee that I must check what the arrangements are for those A or Bs in relation to how it works with contractors, because I don't know the answer to that today.

Q153 Ian Swales: To be specific, not long ago the Committee had a hearing about the Cornwall out-of-hours service. Part of the thrust of that was about the data being manipulated. One could imagine a case where the management of the Cornwall out-of-hours service wanted to deal with a whistleblower and could easily put together some kind of compromise agreement, and you would never hear about it. Or would you? That is really my question—if we are concerned about transparency and ensuring that faults

in the system are reported, do we need to reach out to the private sector contractors in some cases?

Sir David Nicholson: Yes, I think we do. One of the things I said earlier was about the importance of commissioners getting transparent information about their providers and what they do. We are currently exploring the way in which we use the standard national contract in order to include in it a clause around transparency and getting information about the kinds of things that you described from any provider, whether it be NHS or private sector.

Q154 Ian Swales: Will you be specifically listing compromise agreements, for example, in such a contract?

Sir David Nicholson: Yes.

Ian Swales: Okay. Thank you.

Q155 Mr Jackson: I believe that the Treasury comes out of the Report in a very poor light indeed, in so much as it makes the Department of Health look like a paragon of virtue. What concerns me is that it seems to be a sort of Gus O'Donnell credo that Departments are responsible only to their Ministers, and not really to Parliament. I think it is a major concern that, about a year ago, when the Committee published its report, "Managing early departures in central government"—the Public Administration Committee published a similar report—it specifically referred to the issues in the Treasury that we have covered today. At the time, the Government stated: "Since details of such payments are already placed in the public domain, the Government sees no need to duplicate these records centrally bearing in mind the Treasury does not have the resources to do so." The attitude seemed to be: "Well, it's only £10 million a year. We have bigger fish to fry, so we're not going to do it."

The Treasury hands over 5,000 individual e-mails to the Comptroller and Auditor General and says, "You get on with it. See what you can find here." You do not keep any records. You do not have consistent legal advice. You do not have any investigatory or regulatory powers. All that is shambolic and shows a degree of cultural arrogance when it comes to responsibility for value for money and the public pound.

When you come back with your improved system, you must take on board two separate reports: the one from this investigation and the one from last year. You have to understand the significant concern about conflicts of interest and about the fact that you cannot pass the buck on these issues. They are very important and, as Mr Barclay quite rightly says, they are often signs of serious systemic failures, which, in the case of the health service, mean that people may very well die. I believe that, as a Department, the Treasury has failed to take on the ramifications and the serious warnings in the report that they received last year, which is not good enough. Will you respond specifically to that?

Permanent Secretary, this issue of judicial mediation and the payments arising from that has been on this Committee's radar for about a year. I find it astonishing that we are now rolling out real-time information for tax returns for small business so that we can tell, to the penny, tax revenues—in theory, anyway—as well as universal credit and so on. Yet, in a year, you failed to collate payments arising from judicial mediation for a limited number of health trusts. Again, that speaks volumes of a disdain for parliamentary sovereignty and for the authority and autonomy of the Committee. That is not good enough; you should have had that information weeks—if not months—ago.

Sharon White: If the Committee has got the impression that the Treasury does not take this seriously because these are somehow small sums of money, I want to correct that fulsomely. This is an incredibly important area and we hear the very strong views because these are huge reputational as well as value-for-money issues.

The point that we have made, which is obviously reflected in the previous report, is that our view has been that the way that this best gets public airing is through departmental records rather than through a central repository. I hear very strongly from Richard Bacon and others for a very strong push for the Treasury and/or the Cabinet Office to have central record keeping, which we will come back on within the accounting officer framework. That means that every accounting officer needs to be taking these payments very seriously indeed.

Q156 Mr Jackson: That would be all well and good, but you specifically disagreed with the recommendation. So it is no good coming back now and saying that you hear what we are saying, that we understand that record keeping was an issue and we did not disaggregate between contractual and non-contractual obligations. Over a year ago, you essentially said to the Committee, "You do not know what you are talking about. We disagree. We do not need to take any note of your comments because the Departments are handling this in an appropriate way." That is clearly not the case. You had an opportunity to put in place remedial procedures and you failed to do so.

Sharon White: I am not saying that there is not more to learn from here. On the back of last year, we strengthened the guidance that we give to Departments in connection with the public scrutiny of the confidentiality agreements. Now, with the Cabinet Office, we want to make sure—as the letter from Richard Heaton to the Chair makes clear—that there is more systematic collection. But I think that, rightly, in response to the discussion today, we will come back to the Committee to see whether we can go further with more systematic sight from the Treasury within the constraints that we have.

Q157 Mr Bacon: On this point, you referred to my view that perhaps the Treasury or the Cabinet Office needs to do more. I should make it clear that we are not interested in information for information's sake or stamp collecting, as it were. What we want to know is: where is the information being held in such a way that there is somebody looking at it across the piece? For example, who is looking at patterns in these payments not just, say, vis-à-vis the Department of Health, but right across government? Who is looking at patterns of, for example, repeated payments for

similar reasons, or repeated cases of overpayments in excess of contractual entitlement? Who is doing that across government now?
Sharon White: At the moment, that does not happen.

Q158 Mr Bacon: Right. Good—I am glad that you said that, because I did not think that it happened. That is what needs to change. You say that you are looking at it purely from a value for money perspective, but I do not understand how you can form a sound, robust, value for money judgment without that information. And, at the moment, as you just said, that is not happening.
Sharon White: As I say, the value for money judgment that we form is on the individual case. What we do not do is to make those comparisons Department by Department—

Q159 Chair: If you look at the Report, on page 25 it says that the median figure for the MoJ is just over £26,000, but the median figure for Education is £7,000. Can you explain that to us?
Sharon White: This comes to the point about whether there is consistency or not. One would expect to see some—

Q160 Chair: Do you know why? Can you explain it to us? Not what one would expect, but why it is different.
Sharon White: I do not know for the departmental comparisons that we have here. Often, it is because you have got variation in salary or variation in pension entitlement.

Q161 Chair: Or is it that they are being more generous in one or the other?
Sharon White: I do not know the answer to that.
Chair: It would be helpful to know, wouldn't it, for managing public money better? It would be helpful to know whether the MOJ is just letting people go with a bigger amount than the Department for Education.
Mr Jackson: Or DFID.
Chair: Or DFID.

Q162 Mr Jackson: Can the Permanent Secretary come back to me on the time scale for more information on payments in judicial mediation?
Chair: I was going to say at the end of the session that we will re-meet in September to look at DCMS and the MOD, and we will want your first take on everything else then. Then we are coming back to it in October or November.
Una O'Brien: May I respond to the question that Mr Jackson put to me a moment ago? I have heard what the Committee has said to me today about historical information on judicial mediation, and I will take that away. I have very much focused on putting it right for the future, and I think that has been my first priority, to make sure, first, that that loophole was closed and that we also got it closed on the Treasury guidance. We have also been focusing on responding to a number of systemic issues, which we have not yet discussed at this Committee in the follow-up to the Francis inquiry. I have taken that on board. I think your point about patterns is well made, and I will take that away and see what we can do. You sometimes cannot see a pattern if you look at one or two, but you might if you look at a 12-month span of data.
I have already been talking to Monitor. We have not mentioned them today, but a number of the payments to which you referred earlier come through that route rather than through the Department. I think more could be done there. They do scrutinise payments, but you can see patterns on a bigger scale when you put the information together. They have done some work for me just on the last 12 months, and there are some patterns that would cause you to ask further questions. Finally, if I may say so, this point about connecting this information at the trust level—duty of candour, which we are going to legislate for, for all trusts—is part of the jigsaw. Making sure that there is that duty of candour—that responsibility that sits on the local board to make the information available, particularly to the chief inspector—will give us a complete source of ensuring that this information comes into the public domain appropriately.

Q163 Mr Bacon: Can I thank you, Una O'Brien, for that answer? I think it is very helpful and also quite revealing that you are seeing patterns already in just one area, namely health. Of course, it is a very big area, so it is certainly big enough to expect that, if you looked, you might find patterns. Sharon White, do you accept that the same could be true across the whole of the public sector, comparing health with transport, culture, the Home Office and so on, and that therefore that work does need to be done somewhere?
Sharon White: I agree.
Una O'Brien: I just wanted to make one final point. I know you have asked Sharon a lot of questions today about the role of the Treasury, but, in truth, I think that the people who are closest to the system are more able to make a judgment. We should be looking more for patterns, but if we take everything into one place across the whole of the public sector, it is going to be a very long way away from the reality.

Q164 Chair: I was very careful to say that it does not mean the decisions are taken centrally. We just have to have confidence that those decisions are well taken, and we have to be able to compare across. I was going to ask you just one specific question. I have been told that the NHS Hertfordshire primary care trust—I accept that it is now defunct—refused to comply with an FOI and release information on the compromise agreements.
Una O'Brien: We will take that away.
Sir David Nicholson: There will be a successor body, so we can take it up with them.

Q165 Chair: They should be releasing the information, shouldn't they?
Sir David Nicholson: Yes, absolutely.
Chair: This is an article from 8 May 2013, so it is only six weeks old.

Q166 Stephen Barclay: As I raised with you last time, Sir David, seven hospitals refused to give me the data. I do not know whether you followed that up.

Sir David Nicholson: You sent a letter on Friday, which people are examining at the moment. We will certainly pursue it.

Q167 Jackie Doyle-Price: Una, what you have just said has taken us to a debate that I just want to note here. You have identified the problem quite clearly, which is that we have confused accountability. The Treasury looks at it from a value for money perspective, which is a narrow aspect of value for money—it is just cost—and there are broader value for money considerations that need to be borne in mind. But we will leave that for a moment.

You have highlighted that there is a lack of accountability and therefore everything should go into one place. Dare I say that the classic bureaucrat's answer is, "Let's invent a new process"? Can I turn that on its head and say, "Shouldn't we be looking freshly at the values that we expect our public servants to display as they execute their behaviour"? It seems to me that it is very easy for an organisation to say, "Well, here is our recommendation. Let's get it signed off by the Treasury and avoid the accountability that follows from that", when actually, if we go back to case study 15, that in itself was not a value for money decision, because it was not addressing the lack of fitness for purpose of the organisation.

Una O'Brien: I completely understand that. It is interesting, isn't it? Part of what I think the NAO and you yourselves are saying to me and the community of accounting officers is that we need better bureaucracy around this—record keeping, proper accountability at the right level, people scrutinising the information, challenging and asking questions, and transparency. To me, that is good bureaucracy and what we should be doing, ensuring that those systems are in place.

One of the areas where we will and should learn more lessons—this takes us back—is employee relations, good HR practices and good management. The cases that we have dealt with in the Department often reveal weaknesses in those areas that lead you into having these in the first place. I do not know whether David wants to comment, because there is a wider set of issues about values and the work we are doing on the NHS constitution.

Sir David Nicholson: The Committee has shone a light on something that is really important. I think it is incumbent on everyone in the system to think and look at it in different ways. With my new responsibilities, I now personally look at any compromise agreement that comes forward. When you go through the detail of them—we have been going back to look at them—you find that they are incredibly complicated things, which have involved highly paid people, in some circumstances, falling out with their colleagues, losing confidence in their employers, and having their employers lose confidence in them. There have also been elements of sickness. All these things, when you read them, are quite complex. But the important thing is that we are now starting to read and look at them, and to make judgments on the things that you have just described. NHS England has had one since 1 April. You are absolutely right. When you make a decision about it, you are really making a decision from a point of view of values and principles, which is about, "Does this look right for the public sector? Does this look right for patients?"

Q168 Jackie Doyle-Price: But we are seeing so often that it doesn't.

Sir David Nicholson: Would I say that this happened everywhere in the NHS in the past? No, I don't think I would. I think that there have been some good things that people have done in scrutinising these payments, but the light has been shone on it, in the light of what we are trying to do generally, which is to take the NHS through this very difficult transition from a professionally dominated culture through to one that is transparent and open. You can see, day by day, the pain that the NHS and its leadership are going through to get it there. I think you can see how we can make progress and be positive both for people who work in the service and for patients.

Q169 Jackie Doyle-Price: There is a flip-side to that question for Sharon. Essentially, we have a culture of accountability where you are relying on accounting officers to be satisfied that they are using the money voted by Parliament to them to deliver a service that is fit for purpose and efficient, but essentially this is a machinery based on the Victorian values of civil service and public service. What we actually have is a massive public sector and a public sector "salariat" who rotate around these positions and get ever-inflated salaries.

Sharon White: We try to make sure that that is not happening quite so much.

Q170 Jackie Doyle-Price: But, essentially, that is true. If you look at the health service, that is exactly what has happened. Sir David has just articulated that, most often, these cases happen when people get found out for not actually doing the job very well, so you end up with this mess. Do we need to look at whether the Treasury's oversight of this is fit for purpose in 21st-century Britain, with a public sector that is as large as it is and that relies not only on public employees, but, increasingly, on large monopoly providers to deliver services? Do we need to go back and say, "Let's look at the outcomes here."? Have we got the machinery to look at this properly?

Sharon White: I think that is right. It also relates to the Treasury's ongoing relationship with Departments. Obviously, we are looking today at one topic—I would not say narrowly, because severance payments and confidentiality agreements are incredibly important. We will be looking with every Department at their broader financial management, their ability to implement projects on time, their working style and their management practices. These things need to be joined together.

Q171 Jackie Doyle-Price: But it is human behaviour that is at the heart of this.

Sharon White: Yes, I understand.

Q172 Jackie Doyle-Price: So the Cabinet Office has to be properly involved. Who is going to own the culture of public service?

Sharon White: It seems to me that one of the things that has come out of today is that there is probably a bigger role for the Cabinet Office. It is talking about guidance, but in terms of follow-up and support, the HR practices, the culture, the values and the civil service reform agenda of Sir Bob Kerslake and team, this is a good opportunity to use a practical problem that we have in this area to drive things through.
Chair: Although I have to say that one of the worries is that one case is that of the managing director of Kent county council, who was paid off with nearly half a million pounds after less than 20 months and ended up in charge of civil service reform.
Stephen Barclay: It's beyond parody.
Mr Bacon: That was what was said about Henry Kissinger after he got the Nobel peace prize—it is beyond satire.
Chair: It is a serious issue. It demonstrates that, all too often, somebody gets a compromise agreement out of one bit of the public sector and pops up elsewhere in a very lucrative job.
Jackie Doyle-Price: They might deserve to.
Chair: £420,000 after less than 20 months.

Q173 Mr Bacon: We are having a private conversation, which is very rude, but I have another question for Una O'Brien. Figure 3 on page 19 of the Report talks about the cases requested of the Departments by the National Audit Office and the cases that were obtained. In the case of Health, there is a big gap. The NAO requested 23 cases and received 12. Note 4 at the bottom of the page says that of the 23 cases, three were from arm's length bodies, 10 were from trusts and 10 were from Monitor. Monitor provided nine cases, as well as confirming that one case did not have a compromise agreement because it was settled through the employment tribunal process, as it were, which made 10 cases. The note then says, "The Department was not able to provide those for other Trusts as it did not hold these." The trusts involved were not foundation trusts, so they are directly responsible to the Department. Why did you not just ask them to provide the NAO with the information?
Una O'Brien: I think we did everything we could to help in the time that we had. I think these are NHS trusts.

Q174 Mr Bacon: That's right, they are NHS trusts. You could just send each of the trusts an e-mail followed by a phone call, saying, "Please send the National Audit Office the information it has requested," couldn't you?
Una O'Brien: I don't know the reason why that was.

Q175 Mr Bacon: Could you make sure that the National Audit Office gets all the information it has requested, please? We will be following this up. Is that a yes?
Una O'Brien: Absolutely. My understanding was that we did our absolute level best to work with the NAO to do this Report. It was done very quickly, and compared with other Departments we did our best.

Q176 Mr Bacon: I know that it was done quickly, but the chart suggests that many trusts did not co-operate. I think generally—especially if they are not foundation trusts—they would be minded to listen to what you told them, if you told them.
Una O'Brien: Yes.
Mr Bacon: Thank you.

Q177 Chair: My very final question—I think we are almost there—is actually case study 3 on page 48. I can't believe we used a compromise agreement with a civil servant:
"Following a political change of direction for the employer".
I just could not make head nor tail of that one. If it was a SpAd, their contract would have terminated—they were clear—but what civil servant would need to leave because they disagreed with the new Government's policy? This is completely against the whole ethos of the civil service.
Sharon White: I'm afraid I don't know the details of the individual case.

Q178 Chair: Do you know, Paula?
Paula Diggle: I don't. I'm afraid you would have to ask the Department for Education.

Q179 Mr Bacon: Did the Treasury sign it off?
Paula Diggle: Apparently. I didn't look at the case myself, but—

Q180 Chair: Can you help us, from the NAO? It's your case.
Simon Reason: It's our case study, but I don't have any specific information other than to say that an approval was made by the Treasury for the payment and a compromise agreement was signed.
Chair: It's pretty shocking stuff.
Stephen Barclay: It's a case study in the Report; it just seems odd that people are not aware of why it was signed off.
Chair: It doesn't fit with everybody's perception of what the civil service should be all about.
Thank you very much indeed. You have made a whole range of commitments, which I hope have been faithfully recorded by *Hansard*. We look forward to seeing you again in September.

Thursday 10 October 2013

Members present:

Margaret Hodge (Chair)

Mr Richard Bacon	Fiona Mactaggart
Stephen Barclay	Austin Mitchell
Guto Bebb	Justin Tomlinson
Mr Stewart Jackson	

Gabrielle Cohen, Assistant Auditor General, **Paul Oliffe**, Director, National Audit Office, and **Marius Gallaher**, Alternate Treasury Officer of Accounts, were in attendance.

Examination of Witnesses

Witnesses: **Sir Bob Kerslake**, Head of the Civil Service, **Sir Jonathan Stephens**, former Permanent Secretary, Department for Culture, Media and Sport, **Jon Thompson**, Permanent Secretary, Ministry of Defence, and **Sharon White**, Director General, Public Spending, HM Treasury, gave evidence.

Q181 Chair: Welcome. Thank you. Hopefully, we can keep this session tight. We are going to start with Defence and DCMS and then move on, Sharon, to discussing the useful document. I gather Cabinet Office is going to think about and send us their guidance after today's hearing—that is what we have been told.
Sir Bob Kerslake: Yes, Chair, we have done a lot of work on the guidance; it is at quite a good stage, but we felt we should see the results of your supplementary report and today, and then we will send it to you.

Q182 Chair: Okay. So this is probably an ongoing issue.
Sir Bob Kerslake: Indeed.

Q183 Chair: I will start with the MOD. Jon, hi. Thank you for your letter. What is interesting—we were talking about this just before you came in—is that it appears that this is one of those areas where the NAO comes in and does a bit of an investigation, and that reveals operations in the MOD where things went wrong. Can you help us understand why the MOD felt they should not co-operate with the NAO originally?
Jon Thompson: Just to reiterate my apology to you, the Committee and the NAO, a decision was made in the legal and HR department about whether the NAO had access to these records; some doubt was placed on that. Then, the error was compounded by the fact that nobody let the director general of finance or me know that there was some doubt. As soon as I became aware of this, we released the records. There was some doubt about whether this was a record that the NAO could access. I was very clear that they could access all the records in this space.

Q184 Chair: So it was just a misunderstanding.
Jon Thompson: Just a misunderstanding, and I apologise for that.

Q185 Chair: One of the things I am interested in is that paragraph 2.22 on page 14 says that you always send your papers to the Treasury for approval. What I am interested in is, do you think that in any way absolves you of responsibility and accountability? Where do you think accountability and responsibility lie?
Jon Thompson: Although I have no delegated authority to settle these cases, it is still our responsibility to put together the necessary information on which the decision is to be made. We put those cases up essentially on the basis that we think that a compromise agreement is the right course of action instead of taking an employment tribunal case, for example. It is still our responsibility to put up the necessary information, but I have no delegated authority in this space, and all the cases are ultimately decided in the Treasury.

Q186 Chair: So it is Sharon we go to if we think that it was wrong to sign it off, or is it you we go to?
Jon Thompson: No, I think we have some joint responsibilities in this space, and not all cases are approved. We ought to be clear about that.

Q187 Chair: How many are not?
Jon Thompson: In the last three years, we have had 50 cases, of which the NAO looked at 25, so that was half. I can certainly see a small number: I think it's three.

Q188 Chair: Three out of the 50—
Jon Thompson: No, three in addition to the 50 that were not—

Q189 Chair: Three in addition that were not approved.
Jon Thompson: Yes.

Q190 Chair: So on the whole, they get approved.
Jon Thompson: They do, yes.

Q191 Chair: Interestingly enough, you didn't look at it. Can you tell us a bit about why those three weren't, in generalities?
Jon Thompson: Although I did read the 50 case files—because you know I like to be prepared—I did not read the three, so I'm sorry. But I did read the 50.

Q192 Mr Jackson: You mention employment tribunals. What is the capability in terms of legal

advice that your Department receives? Who would you go to first to examine the efficacy of the way you proceed and whether there is a legal risk? What is the legal capacity within the Ministry of Defence? Do you get internal legal advice? How would you progress? Presumably, you would test every case on the level of risk, the balance of risk, as to whether you would lose an employment tribunal case.

Jon Thompson: Yes, we do. Just to give you some facts, of the 50 cases that we had in the last three years, in 44 cases somebody started an employment tribunal claim, and of course in setting out the claim they set out the grounds as to why they believed that there was a disagreement, as it were, between them and us. I think the legal advice we get is very good. It is a mixture of internal to the Ministry of Defence and Treasury solicitors' advice, but I am very comfortable with the advice we get.

You are absolutely right. An opinion is given on the balance of probabilities of winning or losing a case, and an estimate is made—"In the event of losing the case, this is the likely range of settlement that would be deemed appropriate by an employment tribunal."

I think one of the questions at your previous hearing was, what are the main factors driving along the settlement number? There are two, in my opinion. One is, clearly, the amount of money that an individual earns, but the second is, what is the likely compensation they would receive through the employment tribunal process? And there are different limits, depending on the nature of the claim.

Q193 Mr Jackson: Is the legal advice you get specifically from people with expertise in employment law? It is not people who would deal with courts martial.

Jon Thompson: No.

Q194 Chair: We'll come to it in the generality later. On the whole, government being what it is, you tend to get very conservative—with a small c—advice on the likelihood of a case succeeding or not in a tribunal. Does that have an impact? You are told it is more likely you would lose this or it is a 50:50 chance you could win/lose. If you are given that sort of advice, how does that impact on your decision whether to try to find a compromise agreement and therefore make a severance payment beyond statutory obligations?

Jon Thompson: Legal advice—we have to be clear here. If a lawyer gives you, as an accounting officer, some advice, you're to take it very seriously.

Chair: That is the problem.

Jon Thompson: It is pretty difficult to—

Chair: But you would agree with me it tends to be—

Jon Thompson: It would be difficult for me to sit here in front of you and say, "Well, I disagreed with my lawyers, my lawyer friend"—

Q195 Chair: No, but you might take a risk.

Jon Thompson: I might, and I think there is, at the margin, to be transparent with you—at the margin, having read all the cases, I think in retrospect that it might have been in the public interest to take some of those cases to an employment tribunal; but at the margin. My estimate would be three to five of the 50 cases. There may have been a case to do that. That is my opinion. I think the rest of them were sound judgments and we should have proceeded through a compromise.

Q196 Chair: And how many were whistleblowers?

Jon Thompson: According to the National Audit Office, none; and I can't see any either. I can't see any in the 50, and the NAO Report says—well, it doesn't really opine on that issue, but I take it that there were zero in that sample.

Q197 Chair: And the other thing; you have got a complex and inconsistent system of working, within both the civilian and the different services. How are you tackling that, or what have you changed since we started? How have you handled that?

Jon Thompson: You are absolutely right. There are 15,500 line managers in the Ministry of Defence. At any one time, if they do not follow the policies and procedures that we have laid down, that increases the risk of this kind of situation occurring. We put everyone through the necessary training, but, given that there are 15,500 people, they occasionally get it wrong.

I think, in the sample, the judgment is that three of the 25, you know, we didn't follow up. Now, I am not complacent, but over a three-year period three does not seem that many to me in a work force of 250,000; but nevertheless, we will try and address that through training of individual line managers as much as we can.

Q198 Chair: What about consistency of approach across the Department—both civilian and then across the three services?

Jon Thompson: I think one of the reflections from your inquiries is that we should have some kind of corporate oversight of the cases, because the way that we run this is that we delegate it to the directors of resources in each of the seven organisations that make up the Ministry of Defence—so the RAF, Army or Navy finance directors will consider the cases, and then they will deal with the Treasury. I think there is a case to say that we might want to review the cases overall, and see what lessons we should learn; so, a bit more corporate oversight of the total portfolio.

Q199 Chair: Where would you review them—at the corporate level, at the director level, at your board level? You might, you will? How? A bit more on that.

Jon Thompson: I am happy to commit that we will look at it, having as you said read 50 case files; I think I know where we are. There are some lessons to be learned from comparing and contrasting, and slightly different judgments being made by people. We have to understand that we live in a delegated world and not everything can cross my desk. Nevertheless, we should have some corporate oversight.

Q200 Fiona Mactaggart: Now you have read the 50 case files, what is the biggest lesson you have learned?

Jon Thompson: That it takes an awful lot of time to prepare for a Public Accounts Committee hearing.

People are very strange, and they do very odd things. Some of them result in compromise agreements. People behave very oddly, and in the case files you see some of the most extreme behaviour, resulting in these kinds of cases. I didn't realise people did those kinds of things. For example, somebody steals something, is convicted of stealing it and then will launch an employment tribunal case for unfair dismissal.

Q201 Fiona Mactaggart: And gets let off?
Jon Thompson: No, not necessarily in that particular case, but I use it because it is quite a colourful illustration.

Q202 Chair: But he would have got paid off—assuming it is a he—because otherwise he would not be in the list. So he got paid off more than the contractual commitment.
Jon Thompson: One of the real cases was what happens when two people have a fight at work, and then you have conflicting human resources disciplinary processes, and in the end those have to be settled because people cannot continue to work together. So human behaviour is unpredictable.

Q203 Guto Bebb: It appears that, as a result of your review, you have clarified the guidance that you are offering in these cases; so, for example, it says at 2.25 that your guidance now states that managers should seek legal advice before finalising any agreements. So, of the 50 cases you reviewed, were there any where no legal advice was taken? You did indicate that. I am just asking a question.
Jon Thompson: Not in my opinion, no.

Q204 Guto Bebb: So why have you made that clarification, then? Was the guidance not clear to start off with?
Jon Thompson: It is always helpful for it to be reinforced, and for the guidance to be really clear about what you have to do. My reading of the case files is that there is appropriate advice on all of them. My assumption is that for them to have been approved, somebody had to double-check that there was appropriate advice.

Q205 Guto Bebb: So the 50 cases were all checked, and legal advice was taken on all cases?
Jon Thompson: I think so.

Q206 Chair: My understanding of what you said earlier is that you start looking at severance payments when you are almost into an industrial tribunal threat, so you will have legal advice around that.
Jon Thompson: Yes. Of the 50 cases, 44 started in an employment tribunal. Ultimately, 24 of those were settled by an ACAS or independent process. There are also other bodies involved in this compromise agreement arrangement—the civil service appeals board, for example, or ACAS can look at those cases and take a view about the various views and evidence and so on, and sometimes help to settle the case.

Q207 Chair: Okay, let's just have a little bit on DCMS, starting on the same thing, Sir Jonathan. It is why you are here, both of you, because you failed to co-operate with the NAO in the original inquiry. Can you explain to us why that was?
Sir Jonathan Stephens: I am sorry, but we certainly never refused to co-operate. We simply said in this case that we had an awful lot of other work on, including another very significant NAO investigation, and we simply asked if another Department could be sampled or our participation could be delayed. There was absolutely no intention not to co-operate once the NAO made it clear that they wanted us to co-operate.

Q208 Mr Jackson: So you did not instruct or ask your legal teams to question the Comptroller's statutory access rights?
Sir Jonathan Stephens: No, the issue was not about that at all. We were initially given an impression that we were being offered a choice as to whether to participate in this study. Perhaps there was a misunderstanding on that, but I spoke to the Comptroller and as soon as he made it clear that he wanted us to participate, I agreed that we would.
Paul Oliffe: I think there were questions here from MOD and from DCMS about rights of access here in general terms, but I think for DCMS, the request was made on the grounds of volume of other work rather than access rights. Although there was no refusal from DCMS to participate, there certainly was a sufficient delay that we could not complete the work to be part of our previous Report.

Q209 Chair: It seems to me that on DCMS, there is a real issue around arm's-length bodies, which I understand. What I am really interested in is how the Department is tackling that, and whether you are going to require disclosure of compromise agreements and severance payments in their annual reports and accounts.
Sir Jonathan Stephens: Just to be absolutely clear, we do not delegate authority to enter into severance payments to arm's-length bodies. Every severance payment is required to come in the first instance to the Department, and then we, in turn, consult and seek the agreement of the Treasury on every such agreement. That is the case in all the cases that the NAO sampled.
Indeed, the NAO, having gone through the well-documented cases, said that there was no evidence of incorrect decision making in any of those cases. The point on compromise agreements—giving the legal form to the severance payment—
Chair: Can you see with the sun there? I am a bit worried about that.
Sir Jonathan Stephens: It is slightly in the eyes, but I am coping.
The point is slightly different on compromise agreements—the legal form. We have not monitored those in the past, as opposed to the severance payments, which we have focused on. I think there is going to be a new monitoring system in place as a result of the note that you have already got. We will make sure that that is implemented across our arm's-length bodies.

Q210 Chair: We will come to that when Sharon does it. It seems obvious to me that you should require the disclosure of the severance payments and the compromise agreements in the annual report and accounts of all your arm's-length bodies, which would enable everybody to see what is happening.

Sir Jonathan Stephens: I agree. I think that transparency is a very good force in this case. Our arm's-length bodies abide by the reporting standards that are set out by the Treasury, and we will follow any changes that are made to that.

Q211 Chair: I was going to come to you on that later. There are some that you are going to encourage, and there are others that you are going to insist. I think you have just insisted that everyone does it, and that includes the DCMS's arm's-length bodies.

Sharon White: The point I was going to make following on from Jonathan is that we will be amending, as I think you have seen from the Report, the financial reporting manual that we produce, which applies to all central Departments and their arm's-length bodies, so that they record systematically in their annual report both the number and the value of severance payments. I am sure that the Committee will then want to have a discussion about the broader public sector, where there are differences.

Q212 Chair: We will come to that. Let me say just one other thing. There are also exemptions. Are you looking at them, such as non-disclosures being acceptable where publication would be in breach of any confidentiality agreement? You have to rule that out—it prejudices the rights, freedoms and legitimate interests of the individual. How do you interpret that, or "cause or likely to cause substantial damage or distress to the individual or another"?

Sharon White: Our plan is not to identify individuals and individual payments in the report. Our plan is to identify the number of severance payments that have been made and the overall value. There may be different ways we can do this—by income or payment bands—but we will need to find ways to protect the anonymity of the individuals concerned. It is out for consultation. If the Committee has a view about how that transparency is best made available, we want to take on views today.

Q213 Chair: Given our discussions with the BBC, in requiring the BBC to give us the names of people whom they have given excessive pay-offs, I think that, regarding anyone in the senior civil service band and above, we ought to have transparency. I do not know if my Committee agrees with that, but that seems to be a sensible way of ensuring some consistency in our approach to the civil service and Government-funded bodies and what we are requesting of the BBC in the current climate.

Sharon White: We will look at this. We will need to ensure that, in looking at the legality of this, we are also giving people protection where a confidentiality agreement has been made.

Q214 Chair: There will always be exceptions, although I find it rather worrying, because you are then into, "Should there have been a confidentiality agreement?". Again, there will be circumstances—you can all think of them—where it is sensible to have a confidentiality agreement and not to disclose. But if it is too broad a criterion, it becomes a way of hiding legitimate public concerns.

Sharon White: I agree, but our presumption is for transparency.

Sir Bob Kerslake: The issue that you have to bear in mind here, Chair, is that we are seeking to reach agreements with people who really want to go. They may themselves be seeking confidentiality about the nature of the agreement that has been reached in the severance. If we are in a position where we are seeking to publish all of them automatically, that may inhibit doing the deals that we need to do. Clearly, we understand the point about transparency, and we will look at that.

Chair: Senior civil service grade looks like a sensible cut-off point.

Q215 Mr Jackson: It occurs to me that it all seems very pedestrian. There does not seem to be any alacrity or imperative to get this done. If you look at the DCMS issue, there is a lack of consistency. You had 19 cases—a relatively small amount of money in the great scheme of things—but 19 cases. There is no consistent policy or protocol.

We are now in the fourth year of this Parliament. What concerns me is that there does not seem to be any sanction in terms of giving public money for alleged failure or inappropriate behaviour. Four of those cases are about failure or inappropriate behaviour.

I am slightly concerned, Sir Bob, about your mention that the main thing is that we expedite this as soon as possible; you implied that. That is not actually the main thing; the main thing is protecting public value for money. If you do not have a framework and system in place, you are going to carry on making these mistakes and giving away public money that we have not got. I guess my question is why has it taken so long to extend the regime to arm's length bodies as well as Departments?

Sir Jonathan Stephens: Shall I pick that up, since you mentioned DCMS? First, the regime has always applied to arm's length bodies. In the case of DCMS, there is a clear and robust policy and practice in place. It is written into the management agreements with each of the arm's length bodies and it reflects the terms and criteria of managing public money. In each case, it requires that there is a clear and documented business case, that it has the approval of the accounting officer of the arm's length body, that the appropriate legal advice is taken, that there is a clear estimate of the financial costs involved, that it comes to the Department for approval and that we then seek the approval of the Treasury.

Q216 Mr Jackson: But in paragraph 2.13 it says "none of them had a policy".

Sir Jonathan Stephens: In what sense?

Q217 Mr Jackson: It says: "The arm's-length bodies told us that none of them had a policy on using

compromise agreements as, in their experience, special severance payments were rare."

Sir Jonathan Stephens: I'm sorry, I think that that is making a distinction between compromise agreements and severance payments. It is a perfectly fair point that up until now we have been focused, and the guidance has tended to be focused, on severance payments—the question of when it is appropriate to commit public money, as you say. Turning that into a legal form in the compromise or settlement agreement has not been so much the focus of guidance. The issues of confidentiality and whistleblowing that the Committee has brought out are very valid, but I wanted to make the point that there is a very clear policy and guidance and a clear process that has been adhered to on the question of when it is appropriate to make a severance payment.

Q218 Chair: What is interesting about DCMS is that there are more cases—it says four at paragraph 2.17, on page 13 of my early copy—where you gave a severance payment and a compromise agreement where individuals had failed or acted inappropriately. So you were rewarding failure, which is one of the areas where we have said before about these sort of agreements that there has been a greater propensity towards that in DCMS than across the other Departments that we looked at.

Sir Jonathan Stephens: I have not seen the evidence to support that. I do not think that that was a particular finding of the NAO.

Q219 Fiona Mactaggart: It is in figure 4 of the Report, on page 13. That says specifically what the individual failures are.

Sir Jonathan Stephens: I am happy that that is absolutely right; it is just the question of whether there was more in DCMS. I have not seen the evidence to support that.

Q220 Mr Jackson: In mitigation to your Department, in fairness, paragraph 2.16 makes it clear: "The Treasury's guidance does not define failure or inappropriate behaviour." As the accounting officer responsible for the arm's length bodies, you are placed in a relatively difficult position in making a valid judgment because the Treasury has not given you the guidance for making a judgment on sanctioning payments. Maybe Sharon or Sir Bob would like to come back on that.

Sir Jonathan Stephens: May I come back on the question of rewarding failure? We are very clear that settlement agreements are not the first resort to deal with performance or conduct issues. In three out of the four cases, the first resort was, quite properly, for management to take disciplinary or performance action and, in three out of those four cases, to seek to pursue that to the point of dismissal, or with a view to dismissal.

A settlement agreement only came to be considered either when that process of disciplinary or performance management had come to an end with an outcome that the management thought was unsatisfactory, or when the costs involved in continuing to pursue the case, particularly when it is joined with counter-claims from the employee, so far outweighed the benefit of pursuing the case that a responsible accounting officer had to think about whether there was a way to achieve a quick, clean and cheap break with the employee in the interests of the organisation and protecting public money.

Sir Bob Kerslake: May I just come back on the other part of the question that Mr Jackson raised, which is on pace and moving on with this? Your Committee and the NAO rightly said that we needed clear, consistent guidance across the whole civil service and the NDPBs. We are acting on that and we are well advanced on that. In the note from the Treasury we set out the sorts of things that the guidance will contain. In particular, it will say when it is right and when it is not right to use settlement agreements and special payments. It will state the level of clarity and transparency we want.

There will be an annual report through the Cabinet Office on that. In particular, there is the overriding priority to ensure value for money is the test, but particularly, the accountability of accounting officers to take responsibility for those decisions. I think you will see in that guidance a lot of things that you were concerned about being answered. We have, I think, taken on board the things that you raised.

Q221 Mr Jackson: Including the definition of failure? Did you look at that? Obviously, it was specifically mentioned in the report. Accounting officers have a difficult job to make the decision, and clarity from the Treasury will assist their position.

Sir Bob Kerslake: I saw that point, but the report did go on to refer to the Civil Service Code, which clearly covers issues around behaviour. The question of failure would come through effective performance management of the individual.

Q222 Stephen Barclay: Is it your evidence, Sir Jonathan, that the Treasury guidelines were not complied with and Sir Bob therefore is revising the guidelines or is it that you looked at it and the business case was correct due to the high costs of continuing?

Sir Jonathan Stephens: The Treasury guidance was complied with. It sets out a range of criteria to be considered in each of these cases, including the legal risk and financial costs, but not exclusively those, and also the other wider considerations, which might cut either way. In some of these cases, an organisation is coming in saying, for example, "Actually, this is disruptive to our business. We have a critical business function that, while this dispute with this employee is going on, is not able to do its job. We need to resolve this quickly in the interests of the wider business."

Q223 Stephen Barclay: Did you make any payments to members of staff guilty of gross misconduct?

Sir Jonathan Stephens: First, the cases sampled here—within DCMS—

Q224 Stephen Barclay: No, the sample is only a small sample. There are other disciplinary proceedings you will have had and there will be other cases. Have you made special severance payments or other

compromise agreement payments to staff guilty of misconduct?
Sir Jonathan Stephens: DCMS as a Department has not. There are one or two cases where arm's length bodies have done so.

Q225 Stephen Barclay: So the answer is yes for arm's length bodies. Are they within your accounting officer remit?
Sir Jonathan Stephens: Yes, they are. They have their own separate accounting officers under me, but they are within my area.

Q226 Stephen Barclay: Areas within your responsibility have made payments—payoffs—to people guilty of gross misconduct.
Sir Jonathan Stephens: Yes. For example, case study 2 is one example of that.
Chair: Case study 3 is the worst one: "Following investigation and a disciplinary hearing—"
Sir Jonathan Stephens: I am talking about case study 2 on page 15. Not surprisingly, that was a very serious case. It was treated very seriously by the management, who instituted disciplinary proceedings with a view to a finding of gross misconduct and summary dismissal. Those concluded, but, as is the right under these cases, there was an appeal, which upheld the finding of fact, but reduced the penalty to require the reinstatement of the individual. In those circumstances, management, I think rightly, took the view that the relationship with the employee had so broken down that it was not sustainable, so a way had to be found—the disciplinary process having concluded with the individual not being dismissed—to ensure the individual did not continue working.

Q227 Stephen Barclay: I do not know about other members of the Committee, but I am totally lost by that answer. Either they had committed gross misconduct or they had not. If they committed gross misconduct and in particular sexual harassment, you are saying that that would not in itself mean that they were dismissed?
Sir Jonathan Stephens: There is an independent appeal process. The appeal process upheld the finding, but reduced the penalty to a lesser penalty than dismissal.

Q228 Stephen Barclay: So just to untangle that, are you saying that a member of staff had sexually harassed another member of staff but that that was not sufficient for them to be dismissed?
Sir Jonathan Stephens: Under the independent appeal process.

Q229 Chair: Can I just be clear? There is case study 2, and then there is figure 4—figure 4.3 has another one. Is that the same case?
Sir Jonathan Stephens: That is the same one.

Q230 Mr Jackson: Basically, in terms of due process not being followed, it was a clerical or administrative error? So instead of firing that person for gross misconduct—
Sir Jonathan Stephens: I would not describe it as a clerical or administrative error. The appeal panel just substituted a different penalty.

Q231 Mr Jackson: Why? If that person has been found on the balance of probabilities, with evidence presented, as having sexually or otherwise harassed one person or another, and it has been proven that they are guilty of gross misconduct, it seems strange that not only is the penalty downgraded to a final warning, but that the Department then makes a value judgment that the person cannot carry on working any way—basically, because everyone hates them and wants to get rid of them—so the person leaves. That person's skills and expertise, such as it was, are lost, and the Department has to pay out money to them.
Sir Jonathan Stephens: To be clear, this was a case raised in an arm's length body. I am not in a position to second-guess or enter into the mind of the appeal panel, but management had to contend with the position of having sought summary dismissal, which would have been dismissal without any compensation—my instinctive reaction, like yours, is that that is the right penalty in a case of this sort—but it had been pursued to its logical conclusion without achieving that.

Q232 Mr Jackson: But £16,000 of taxpayers' money went to a groper.
Sir Jonathan Stephens: I cannot comment, and I do not know the individual circumstances of the specific case.

Q233 Mr Jackson: That is not good enough.
Sir Jonathan Stephens: But at that point—if I may, because this illustrates some of the choices that have to be made—the employee had a right to reinstatement. Whatever we think of whether that was the right decision, they had the right to reinstatement. In those circumstances, management took an understandable decision that, actually, in light of all that had happened and all that had been disclosed, the relationship with the employee had irretrievably broken down. In those circumstances, the legal advice was that, having sought summary dismissal on one ground but it having resulted in less than that, there were weak grounds for securing dismissal on other grounds. In practice, the employee was suspended on full pay, so incurring costs until the settlement agreement to end it on a quit basis was achieved.

Q234 Fiona Mactaggart: I am really interested in confidentiality issues in relation to such cases. We do not know from the paper we have seen whether the harassment of which this person was guilty was sexual harassment, but I know that in the private sector, when senior staff have sexually harassed their staff, what tends to happen horribly frequently is that the victim comes to a deal and there is a confidentiality agreement so that no one actually knows about the predatory behaviour of the person involved. There is a real public interest in confidentiality in cases such as case study 3 in relation to the public not just spending taxpayers' money on paying off someone who harasses their colleagues but keeping secret the fact

that that person is a predator. Was that the case in this particular example?

Sir Jonathan Stephens: This was the management taking action to address the unacceptable actions of an individual in order to protect the safety of the workplace and the interests of other workers. I had better write to you on what precisely was written into the settlement agreement in this case.

Q235 Fiona Mactaggart: I do think that, in terms of guidance, there is an issue lurking in here. It is less a value issue than a values issue. We need to make sure that the guidance issued by the Department ensures that where there has been dangerous or inappropriate behaviour, we do not collude with the predator to keep their behaviour secret.

Sir Jonathan Stephens: Can I just add something on this case? That is absolutely right. In this specific case, one of the lessons learned—part of the process of each of these cases is addressing lessons to be learned—was that the organisation should institute a full review of its bullying and harassment policy.

Sir Bob Kerslake: I think you raise a good point. We will look again at the guidance to see if it covers it.

Q236 Stephen Barclay: On that point, where the Department or its arm's length bodies have entered into compromise agreements with those paid off who have been linked to misconduct, do you provide a reference?

Sir Jonathan Stephens: I think I am going to write on that one.

Stephen Barclay: It is a rather material point, isn't it? To go back to Fiona's issue, if you have entered into a compromise agreement that provides for non-disclosure, they are then free to crop up elsewhere in the public sector and continue that behaviour.

Q237 Guto Bebb: I have a quick point of clarification on paragraph 2.19. I understand that this Committee is concerned with value for money. The Treasury argument is that where the chance is 50–50 that litigation on behalf of somebody being dismissed will be successful, the Treasury might be inclined to settle. How often is it a 50–50 decision? Is the Treasury more inclined to be of the view that the individual would win? I am interested to see whether 50–50 cases occur regularly.

Sharon White: Certainly, in the cases that I reviewed, although it has been quite a small sample, there have been two or three where it has been 50–50 or 60–40. That is why I pick up Jonathan's point. Although clearly the Treasury looks carefully at whether the taxpayer will lose more money by going to a tribunal than by settling, we also look at wider factors, including the cost to the business of restructuring, reputational issues and whether this is a case worth fighting because a series of other cases might come behind.

Q238 Guto Bebb: My concern is that we heard the same evidence from the BBC, who said that where an individual is willing to litigate, they are more likely to settle and offer a better package. My concern is whether, in a 50–50 case, we are making decisions that reward bad behaviour or misconduct.

Sharon White: It is an interesting point. Thinking about the case that Jonathan has described, the legal advice in that case was that the taxpayer might have ended up spending in court between four and 10 times the amount of money that we gave in the settlement. That is the judgment that we need to balance against the probability of success or failure.

Q239 Stephen Barclay: Yes and no. To take Guto's point, if you look at other areas, there are more private injury claims against prisons in the public sector for example, than against private prisons. Why is that? Is it that they are inherently less safe? No, it is that private prisons are more willing to fight litigation, so they get fewer claims. What goes to the heart of Guto's point is that if staff members feel that it is a pushover and a legal letter will lead you to pay out, more people will put in legal letters.

Sir Bob Kerslake: It is really important to say that we take more cases to employment tribunal than we settle through this route. We have a pretty good track record. I am happy—

Q240 Chair: Does that mean you turn down more than 50%?

Sharon White: We will not see all of these. The cases that the Treasury sees are those which are novel and contentious.

Sir Bob Kerslake: My point is that taken across the civil service, we contest more cases. We are not a soft touch on employment tribunals. We take more cases to tribunal than we settle through special severance, and we have a good track record of success. We are very clear that we do not want a claims culture here and that we will contest where we think there is a prospect of winning.

Jon Thompson: I was going to give some facts to support what Bob said. We fight four times as many employment tribunal cases as we settle through compromise agreements, to give you some sense of the scale.

Sir Bob Kerslake: That is in the MOD.

Jon Thompson: Yes, in the MOD.

Q241 Chair: I want to come back to the hierarchy of your criteria when we come to your document. May I just ask Sir Jonathan this, and then we will move on? It is a question I would ask of Jon as well, but it is more complicated in your instance, because it is about an arm's length body. Who is responsible and accountable? On the one being discussed, who is it—the arm's length body, you as the accounting officer or the Treasury?

Sir Jonathan Stephens: My answer would be that the accounting officer of the organisation concerned has to sign off the case. That is what we require. The decision is fundamentally for the accounting officer at the organisation concerned. They have got to be able to manage their organisation. We set out the framework in which they do so. Within the financial framework, in particular, we require—

Q242 Chair: You said earlier that nobody can sign off a severance payment without you authorising it, and you cannot do it without them.

Sir Jonathan Stephens: Yes. I am coming on to explain the different layers. These cases arise in individual organisations. In every case, they go for approval to the top of that organisation. My view is that it is an important part of being able to manage an organisation that the accounting officer, the chief executive, feels responsible for it.

I would feel responsible for a case that arose within the Department. I would require and expect that we go to the Treasury for approval, but that does not mean I do not think about the case. Indeed, we ourselves scrutinise the cases that come to us in the Department, and sometimes we challenge the arm's length body; we do not just send them automatically to the Treasury.

We are looking to apply our judgment across the range of arm's length bodies, because many arm's length bodies did not have a case of this sort arise in the three-year period that was being looked at; many will have had only one or two in that three-year period. Having an ability to look across the range of arm's length bodies is good, and the Treasury is also in a position to look for consistency across Departments and—

Q243 Chair: So who do I hold to account?

Sir Jonathan Stephens: My answer is that the accounting officer in the organisation concerned is the one on the ground taking the decision. He or she has to seek approval and conform to guidance from others. My personal view is that in a Department where the decision affected my members of staff, I would look at it very closely, and I would want to be absolutely satisfied that I could come here and say, "This was the right decision."

Q244 Chair: On that basis, it becomes ever more important that the arm's length body should report in its annual report and accounts on all these issues.

Sir Jonathan Stephens: I think that is very sensible.

Q245 Chair: Can we move to your way forward document? We have talked a little about it. I will raise some issues, and I am sure that Members have other issues to raise. First, there is the issue about naming individuals—I think at senior civil service level—which you can take away. The second issue arose around whether you can confirm that information will be broken down by Department—you talk about "departmental groups", but I did not quite understand what that meant—and whether it will be comparable and consistent.

Sharon White: This is probably more for Bob, because this is a Cabinet Office report.

Q246 Chair: Is this a Cabinet Office report?

Sharon White: No, sorry. Let me clarify: the report is from the Treasury, but we have worked very closely with Cabinet Office colleagues, and the reporting will be done by the Cabinet Office.

Sir Bob Kerslake: It is the Cabinet Office's responsibility to issue this guidance. You go first, Sharon, and I will come in afterwards.

Q247 Chair: It does talk about departmental groupings somewhere. Paragraph 10 states that the report will be in table form and will contain data for each "departmental group". I just want to be clear that we will get information for Departments—I could not understand what departmental group meant—and that we would be able to compare DCMS, MOD et al.

Sir Bob Kerslake: I think in this instance that a departmental group is about the family within a Department, so it is the totality of that Department, including its arm's length bodies. It would be open to us—this is a perfectly fair suggestion to make—to break it down within departmental groups. Essentially, the departmental group is the whole of the Department, including its arm's length bodies—the set of all those organisations for which it takes overall responsibility.

Q248 Chair: Okay. That gives me some time. I am just wondering who to go to next. Let us take the Department of Health, the Department for Communities and Local Government—your Department—or the Department for Education: the Departments where most of the severance agreements will be in the bodies underneath, with a smallish Department on the top. I do not know what other members of the Committee feel, but my view is that in those instances we would want to be able to see the actual organisation—the accounting officers that Jonathan talked about—that signed off on the agreements. It will not be enough to know that the Department of Health had 500 severance agreements; we need to see underneath that, probably at trust level.

Sir Bob Kerslake: It is worth saying that, in a sense, we are expecting reporting in two directions. The Cabinet Office will pull all the information together, so that, as you recommended, you will have a single source across the civil service and arm's length bodies, but those individual bodies in their accounts—this is where the Treasury role comes in—will, through changed financial regulations, have to report their own cases.

Q249 Chair: They will report their own cases, but I would like to see—I do not know whether I am alone in this, or whether others agree—not an overarching figure for the Department of Health, but that broken down, and similarly, in education, I would like to see the figures on an academy trust basis. A very useful way of picking up the sort of culture and nature of an organisation is through those sorts of data. They are useful bits of information.

Sharon White: Can I pick that up? We have exactly the same intentions as the Committee. Our question is that we have slightly different levers once you get into the broader public sector. As Bob has said, for central Government and all the arm's length bodies, in a way it is straightforward, because essentially we mandate the new reporting requirements. They go through to the Cabinet Office; there is then tracking and you can

monitor trends by Department across arm's length bodies.

Where it becomes more complicated is when you are in the broader public sector—hospitals, schools and local authorities. For health, the Department of Health has decided to take exactly the same approach as the rest of the civil service, so not only will the Department of Health have an aggregate figure, but each trust, whether a foundation or not, will as result of the change in financial reporting also have to report on the individual information.

On schools, for the first time in 2012–13, the Department for Education will consolidate the academies' data, so it will also have some aggregate information. Academies already have to produce an annual report, and the Department for Education has said that it will use our new reporting guidelines for the academies.

On local authorities, it is a bit more complicated, and Bob would probably be much more articulate than me in explaining it. Again, the intention is that local authorities provide the information, but we cannot mandate that.

Q250 Chair: You can.

Sharon White: Well, we should—

Fiona Mactaggart: What about police and crime commissioners?

Q251 Chair: It is both. There is nothing to stop you. You give out the money to local authorities. I do not know what it is nowadays—50% or 60% of local authority spending is your money, and probably 100% for the police. All their money comes from the Home Office, so it is central Government money, and there is nothing to stop you legally requiring disclosure. All you are doing is requiring disclosure in the annual report of accounts, as health is doing and as education is doing. On local government more than anything, I would love the NAO to be able to look at my authority. It has done severance and compromise agreements like there is no tomorrow. I am extremely suspicious of the reasons for that and would love to see them opened to public accountability.

Sir Bob Kerslake: Shall I deal with local government? Obviously, the question of police and crime commissioners will be for the Home Office to comment on. As far as local government is concerned, when we finalise the guidance, our aim is that it will be something we expect local government to follow, too.

Q252 Chair: Expect, but you can instruct.

Sir Bob Kerslake: Let me finish what I was going to say. We would expect it to do that. We would also look to the Local Government Association to take on a role of pulling together information through its regular reporting. That is what we would want to start with as a challenge to local government. If we think the response from local government is not adequate, Ministers have indicated that they are willing to explore other measures, so they are very clear.

Q253 Chair: I understand that. When the Committee looked at personal service companies, we had a representative of the LGA before us, because a lot of people in local government take advantage of personal service companies. Basically, to be honest, Sir Bob, it was wimpish, because she just said it was a voluntary association of local authorities, and she had absolutely no authority whatever to get the information for us so that we could make a judgment about the use of personal service companies in local government. That is an outstanding area. I know we have done work around it in the civil service, and maybe we are on top of it. We are probably not on top of it in health, but in local government, we are nowhere near, because we do not even have the data.

Sir Bob Kerslake: The first stage is that we need clear guidance for ourselves. We would then expect local government to follow that guidance. We would expect data to be pulled together across the local government world. We are looking for the LGA to play a role here, and I think that is the right way forward. If, on the other hand, we do not see the response we are looking for, Ministers have made it very clear that they would look to other measures, and I think that is the right approach.

Q254 Stephen Barclay: There may well be something for us to take away from the hearing on a cross-party basis. For example, there is the issue of conflicts of interest around planning—planning officers who are paid off. There are some very high-value, serious issues, which are often pertinent in local government, where vested interests may not have a particular desire for transparency. Given what I am hearing—I think this reflects the Chair's concerns—can I just emphasise my concern at the need for urgency around this issue, particularly in local government?

Sir Bob Kerslake: I share that view. What I am saying to you is that we need get our own position clarified first, which we are doing through this guidance. We would also look, by the way, for local government to adopt the same financial reporting disclosure arrangements under the CIPFA code of practice as we are looking for in central Government, but before we can put the requirement on local government, we need to be clear about our own requirements, and that requires firming up our own guidance.

Q255 Stephen Barclay: Annual accounts, for a start, could be much more transparent about signalling issues. That must be within your gift.

Sir Bob Kerslake: What I am saying is that when we have clarified what we are doing on our own accounts through the changes to the financial reporting manual, we will look to local government to do the same thing.

Q256 Stephen Barclay: When will we have that?

Sir Bob Kerslake: As I say, we are very close to completing the work on that, and it will be very soon. I would expect—I think this is the case, Sharon—that the changes to the financial reporting manual will be for next year.

Sharon White: They should be applicable for 2014–15.

Sir Bob Kerslake: We will talk to CIPFA, but I see no reason why they could not adjust their code accordingly for that as well.
Sharon White: CIPFA would normally reflect the—

Q257 Chair: CIPFA is not statutory; it is advice.
Sir Bob Kerslake: It is a requirement for local authorities to follow the code on their accounts.

Q258 Mr Jackson: I declare an interest as a vice-president of the Local Government Association, as you know, Sir Bob. I am slightly incredulous at the idea of the LGA as a sort of regulatory body, because it is not, really. You know very well that it is a trade union for local authorities; it is not a regulatory body—I am not even sure it has the capacity to collect data at that level. My worry is that it is all very well consulting, thinking about this and edging people along, but the fact is that the only way people find out anything these days about most of the most contentious finance issues in local government is through freedom of information.
Audit trails are often oblique and obfuscated somewhat. The Treasury needs to take a firm lead. As the Chair says, you have the purse strings. It is all very well trying to cajole and persuade, but I think you need to compel, and you need to do it quickly, because although there are some extremely good examples of financial management in local government, there are also, as Mr Barclay suggested, some shady dealings, which need the harsh sunlight of transparency shining on them.
Sir Bob Kerslake: I think Ministers in CLG would absolutely agree with what you have said, and we have already taken steps in relation to the guidance on transparency for compensation payments. What I am saying to you is that when we have confirmed our own proposals, we will look to, and expect, local government to follow the same thing.
In relation to the accounting changes, it will be compelled, because they follow the same rules, as Sharon said. In relation to the data gathering, the question we are looking to discuss with the LGA is whether it will take on the data gathering exercise. If there is a doubt about that, we will look at an alternative measure.

Q259 Mr Jackson: It also needs to be watertight—the quality of governmental bodies in local government. As you know, lots of local authorities are involved with joint venture partnerships. They are creating regeneration partnerships where they are outsourcing some officers and that kind of thing.
It should not be just within the very narrow remit of local government—people who receive a lump salary and pension. It should be all aspects of delivery of services including arm's-length bodies in local government. I respectfully suggest that you need to bear that in mind when you write guidance or, if necessary, compel local authorities to pursue certain policies.
Sir Bob Kerslake: Clearly, if local authorities have arm's-length bodies that form part of that local authority, then they should follow the same procedures for them as well.

Q260 Chair: Private companies and outsourced companies delivering local government? A lot of local authorities have now outsourced all their back-office stuff.
Sir Bob Kerslake: Private companies are an issue both for central Government and local government.
Chair: Quite.
Sir Bob Kerslake: Perhaps we should come back to that issue in a minute. I do not think that we are in any different place with them as we are for us.

Q261 Chair: You have heard the unanimous view here. Our experience with personal services companies was the failure of the LGA to do anything meaningful on our behalf on that issue.
Sir Bob Kerslake: I hear what you say. You have a person involved in the LGA on your Committee. I would make two points. First, we need to be sure that we have sorted out our own rules and guidance before we look to local government. I think it is perfectly fair that we are clear about what we are doing before we say to them, "What are you doing?" Once we are clear, we will expect them to follow with equal rigour and equal transparency. If we cannot secure that from a voluntary route, then we will take other measures. We are very clear about that.

Q262 Mr Jackson: One last question. Hitherto, housing associations have not been subject to the Freedom of Information Act. They are making significant commitments of public money, as in joint ventures with local authorities. From anecdotal experience, they are just as culpable in paying off people unsuitable amounts of money for things they should not have done. There is weak governance on a lot of housing associations' boards. I know that is not directly within your bailiwick, but do you have an opinion on that, because that is a blind spot in these value-for-money issues?
Sir Bob Kerslake: We would look for housing associations to be transparent about such issues as well. In fact, that is the value of having this conversation. We could also talk to our housing associations about them adopting the same guidance as we are, and that is something I would be very happy to follow up.
Chair: That is a good point.

Q263 Fiona Mactaggart: The thing that rather shocked me about your memo, Sharon, was that in paragraph 28 it tells us that police forces are not arm's-length bodies so accountability for their spending rests with their police and crime commissioner. As we all know, those commissioners did not exactly get massive public backing, and some of them are completely barmy. *[Interruption.]* It is okay; I am not naming which ones.
I am concerned about this attitude of let every flower bloom and we hope the Home Secretary will have a nice chat with them. Actually, on this one, you could say that the bulk of the money that goes to policing, which most people hold the Government accountable for, means that you should follow this guidance. I do not understand why you do not, on this fairly small

issue, make compliance with the guidance a condition of funding.

Sharon White: This is where you have the balance between wanting to have central consistent reporting and localism.

Q264 Fiona Mactaggart: This is just reporting.

Sharon White: I know it is just reporting. The Home Office's view, and that includes Home Office Ministers as well as officials, is that the system of local accountability that has been set up with PCCs is both the right and most effective place to throw transparency on this.

Q265 Fiona Mactaggart: But all we are talking about is how it is reported—not what your behaviour is and so on. I cannot accept that if you have a process of how you report these things, which is carefully thought-through and has clearly taken some effort, we cannot make how you report it—not who you report it to, not where it is published, but actually how you report it—a condition of funding.

Sharon White: I completely understand the point. The Home Office is in a different position. The Committee may want to have a discussion with Mark Sedwill, the accounting officer. The Treasury is not in a position to direct PCCs, because of the way in which they are constituted.

Chair: I think there is a unanimous view; I do not think anybody disagrees with that.

Q266 Mr Jackson: I think there is a blind spot on police and crime commissioners. I was a big fan of them; my maiden speech was about having an elected sheriff for Peterborough—clearly, I was ahead of my time. But there is a concern, especially about the appointment of assistant police and crime commissioners, or deputies, and the balance of accountability, as between local elected councillors and how much access they get. That is something that needs to be looked at pretty urgently.

Sharon White: My advice is that in the same way that you have brought other departmental accounting officers to the Committee, you do the same in this instance.

Q267 Chair: Yes. We may want to have Health back on it as well.

I want to deal with the issue of whistleblowers. I have had a letter from a whistleblower in the Treasury, which I have not been able to circulate because he wanted to keep his identity confidential. He blew the whistle, and the concerns he expressed were found to be valid, but the decision has since been taken that he is better out of the organisation, so he has been offered various severance payments with confidentiality agreements attached. That is one case, and he has written a perfectly coherent letter to me about it. The other case is one we had in HMRC that started us on our journey around tax avoidance. The whistleblower there has also left, or is in the process of leaving HMRC with a confidentiality agreement and a severance payment.

That seems to me, in the general scheme of things, to be the wrong way to go, because it will discourage whistleblowing unintentionally. If you blow the whistle—there may or may not be proof, but if it was right to blow the whistle—and your only future is then out of the organisation, that will make people reluctant to do so. I think you have to look at the issue.

I think that in all your guidance—I have not shared this, so I do not know whether other people feel differently across the Committee—whistleblowing should not be a valid reason for moving towards severance payments and for people leaving an organisation, although, obviously, the whistleblowing would mean that they would probably win an industrial tribunal case.

Sharon White: I do not know the individual cases, but I completely agree with the thrust and principle of your point. We have picked this up, in the pro formas or templates that Departments get when they are sending a business case across to us, to make it absolutely clear that a confidentiality agreement does not preclude your ability to—

Q268 Chair: No, that is a different issue. I accept that. I think we are clear on that, but this is an issue involving two people in the Treasury family. One guy in Treasury has written to me, and one guy in HMRC. They are both losing their jobs, in effect, because they blew the whistle.

Sharon White: I absolutely think we should pick that up in the guidance.

Sir Bob Kerslake: We are very clear that that is not a good or acceptable reason to go for a special severance payment—solely because somebody has been involved in whistleblowing. That would clearly not give grounds to do so. There would have to be a wider set of reasons why you wish to reach an agreement.

Chair: I think what we would look for in the guidance is something that talks about the re-engagement of whistleblowers.

Q269 Stephen Barclay: The guidance could set that out. The difficulty is that you could still run that argument where the person claimed constructive dismissal because your culture was so unsupportive of the whistleblower that they felt they had no choice but to leave. Either they come to you and you offer a settlement, or they would say, "The culture does not support whistleblowers," and claim. On what you have just alluded to, on your new guidance you would pay them out because you were preventing a tribunal.

Sir Bob Kerslake: No, what I was trying to say was that I could not envisage a circumstance where if the only factor involved was that they had been involved in whistleblowing, we would move to special agreements and severance payments.

Stephen Barclay: It would never be like that.

Q270 Chair: No, because once someone has blown the whistle—the case that I know best is my HMRC case, which we have been more closely involved in—it is very difficult for him. You have got to work very hard to re-integrate him into the organisation, and HMRC failed. He wanted to stay, but they failed.

Sir Bob Kerslake: It is not right for us to comment on the individual cases.

Stephen Barclay: No, but it is more about, for example: do whistleblowers get promoted?
Chair: Actually, it is about whether they can even get back in.

Q271 Stephen Barclay: We had this exchange with Sir David Nicholson, who could not name anyone in his whole 35 years in the NHS that he had promoted who was a whistleblower. It is more about the culture. Do they feel that if they have blown the whistle, they are not going to get promoted and it is going to damage them? Or do they see people in senior positions who, earlier in their career, have blown the whistle?
Sir Bob Kerslake: Your points go, really, to our whistleblowing policy—how that works, and how we handle situations where people have done this.

Q272 Stephen Barclay: The civil service is awash with policies. I am sure that there are policies that suggest that you do not pay off anyone who has sexually harassed people. I am more interested in what happens in practice, not what is in the policy. In your career, how many people have you promoted who have blown the whistle?
Sir Bob Kerslake: None.
Mr Bacon: QED.
Sir Bob Kerslake: I have not actually had a case of someone coming up for promotion who has whistleblown.

Q273 Chair: This alleges that there is a perception that Treasury management—I think he says that you do not know about the case, Sharon—see whistleblowers as so problematic as to be unemployable. That is what he feels.
Sharon White: I do not know the circumstance of the individual case, but the principle about not using severance payments as a way to root out whistleblowers who are somehow difficult to reintegrate—I think that is an incredibly valid point that we should pick up.
Sir Bob Kerslake: We will pick that up in the guidance. My point was that you are going beyond that—not just saying that we should not use severance payments, but asking how we handle them in management terms.

Q274 Stephen Barclay: I am going even further, Sir Bob. I am asking whether whistleblowing is seen as so extreme that most members of staff would never get to that point, and therefore those who have whistleblown are seen as mavericks and beyond the pale. Or do you have a culture that encourages people to whistleblow and learns from that, so it becomes a more mainstream practice and a less nuclear option, and therefore talent can whistleblow?
Let us remember that the definition under PIDA of whistleblowing is within the organisation. We are not talking about people playing out all their concerns in the media, which is not necessarily the first step. And then people getting progression, so that they can see senior leadership figures in Whitehall who have been brave enough to speak out and have done so without damaging their career. It goes to the heart of how you see the role of a whistleblower.
Sir Bob Kerslake: I entirely share your view that there will be situations in which whistleblowing is the right and proper thing to do, and we should recognise that. I am saying that it should be in both our policy and practice.
Paul Oliffe: These are examples of very sensitive cases, and the Treasury submission says that the Cabinet Office will play an increased role in sensitive cases. It might be worth your confirming, or otherwise, that you would look at all cases that involve a whistleblowing element.

Q275 Chair: I accept that, but I think you have to have a paragraph in there around this.
Sir Bob Kerslake: We are not fighting that point; in fact, we are agreeing with it. I was simply saying that the issue is bigger than just the severance agreement.

Q276 Chair: Can I move on to the next issue? On paragraph 14 you have got a list of criteria, which looks fine, but it is not clear which criterion trumps. If it is always money that trumps, some other things that we have been talking about will not have any weight. Nobody can quarrel with the list—it is how you use it.
Sharon White: I agree. Money will not trump in all cases.

Q277 Chair: How are we going to be clear about that?
Sharon White: We can make that clear and it is one of the things we are making clearer within the Treasury, to the teams that are signing these payments off, because we look not just at how much money the taxpayer might lose, vis-à-vis an employment tribunal. We look, in discussion with the Department, and with legal advice, at whether there are other reasons why a particular submission ought to be rejected. It is a reason why we do not have value for money right at the top of the list and there is a bundle of other factors, because, genuinely, this is a judgment.

Q278 Chair: Okay. The feeling we got last time that we talked to the unit was that, okay, there is a likelihood. We have talked about the conservative legal advice that people get and sometimes the advice says there is a likelihood you may lose this.
Sharon White: We have tried to listen and respond to your Committee's deliberations over previous months.

Q279 Chair: Right. I am saying that paragraph 14 needs strengthening, to demonstrate that it is not money that will always trump.
Can I move to responsibility and accountability? Because we are going to get a bit muddled, having had a little discussion, about who is responsible and who is accountable. It could be an arm's-length body, the departmental accounting officer or Treasury that signs off the money, or it could be Cabinet Office, which signs off the sensitive information.
Sir Bob Kerslake: Shall I start on that? My personal view is that the starting point for accountability lies with the principal accounting officer for the

Department, to ensure that they have proper governance arrangements to ensure that both within their Department and with their arm's length bodies they are aware of the process and how they should follow it. Treasury's role is to provide a second line of scrutiny and testing of the cases, but in the first instance it is the accounting officer. I also share Jonathan's view that, in the day-to-day management of their organisations, we would look to the accounting officers for those organisations and how they conduct their affairs and the circumstances in which these cases arise.

So yes, they should be the first mover on this. They have to make the case. The accounting officer has to have good governance in place and to properly challenge and test those cases, with legal advice. And then we have a second line of control with the Treasury, to ultimately approve it and, potentially, for the Cabinet Office to play a role as well.

I am clear and I think the guidance—

Q280 Chair: It is the accounting officer?

Sir Bob Kerslake: Yes.

Chair: Paul, do you want to make your point about the learning?

***Paul Oliffe*:** In individual cases, it is quite clear, often, whether an appropriate decision has been made, but often other things are relevant in that case. In particular, in the examples of DCMS that we have seen, there is clearly a pattern of instances of poor performance or failure, which you would wish to address. So it is not clear to me who is responsible for driving that change and that learning from the compromise agreements that highlight these issues.

Sir Bob Kerslake: I think it is at two levels. First, I would expect in each Department that the accounting officer is tracking cases that occur, seeing whether there are common issues emerging from that and, if that speaks to an issue about how one part of their Department or one of the arm's length bodies is being managed, to follow that up with those organisations.

But what we are proposing in the new guidance is that the Cabinet Office also pulls all the cases across Government together and sees whether there are trends across Government, as well, that we need to attend to.

We will have in place what we are calling a complex case group, bringing together HR professionals from each Department, that will look at these complex cases and see what we can learn from that.

So it is both in Departments, about what lessons they learn from individual cases, and the Cabinet Office will be leading work about lessons learnt.

Q281 Chair: All right. But in terms of strengthening the guidance, we would like to see something in about the learning process and also this issue about absolute clarity about with whom, and how, the buck stops.

Sir Bob Kerslake: It will be clear on both points.

Q282 Chair: Then we come to private sector companies. Our obsession as a Committee is that you have to be able to follow the taxpayer's pound, wherever it is. With the increasing role of private sector companies, you have to be able to follow that pound. Let me put three issues to you. One is on companies whose business is solely—or virtually solely—public sector. I am thinking of A4e and some of the companies that we are currently looking at, such as G4S—which is probably not so bad—Serco and Capita. They live off public sector contracts, and it is not acceptable for them not to be covered by this protocol.

We did a case recently on Serco's provision of GP out-of-hours services in Cornwall, and the whistleblowers there, which links the two matters together, were given severance payments and in effect summarily dismissed—they were not dismissed, but a deal was made and they were gotten rid of. I want to know, because that was a case where there had been 250 instances in which Serco had filled in forms wrongly. The forms were on how long it takes to answer phones and whether the doctors had gotten to patients within a particular time frame. They just misled in their contract. There was a whistleblower, and Serco dealt with that whistleblower by getting rid of them.

We have to be able to follow the taxpayer's pound. In this very important area, with all its ramifications, you have to be able to do that. It is about companies whose business depends on public contracts in particular.

The other issue is where Government chooses to privatise a whole Government service, such as the probation service or welfare to work services. It is absurd to say that—again, in quite sensitive areas—we are not able to understand where there has been use of severance payments and compromise agreements.

Sharon White: I know that the Committee feels very strongly, because we have heard this conversation a few times. We have looked really closely at this, with a presumption to extend transparency. We have just found that the practicality of doing this and monitoring it seem to us to be very tough. This is not an area where there is some sort of in principle objection. There are obviously questions about whether this would discourage what is actually quite a thin market on contracts—there are some very big players but not many behind them. We were concerned, as my note to you sets out, about whether this was practically enforceable.

Q283 Mr Bacon: You're saying that it is an oligopoly of suppliers: a small number of big players. It is a thin market, and if you make them behave in a way that discloses more of where our public money and our constituents' money goes, they will not come and bid. Is that what you are saying?

Sharon White: That could be a question, but the bigger issue we had when thinking about how we would monitor it is less that they would be less likely to bid—as you know, particularly with Serco, they are almost all public sector contracts—and more whether the Treasury and Cabinet Office would be able to monitor whether the new rules had been adhered to.

Q284 Mr Bacon: Do you monitor whether you have given them the money?

Sharon White: The departmental accounting officer will certainly follow through on those contracts.

Q285 Mr Bacon: Do you monitor whether you have given them the money?
Sharon White: Yes, of course we do.

Q286 Mr Bacon: You don't have any problem doing that, do you?
Sharon White: We don't.

Q287 Mr Bacon: Just thinking about it from the point of view of my tax-paying constituent, you find it easy enough to give them the money—you can monitor that—but there are enormous practical difficulties in monitoring what they do with it. That is what you are saying. I am not misrepresenting you?
Sir Bob Kerslake: No, no.

Q288 Mr Bacon: Hang on. Sir Bob, I always love hearing from you, but right now I am asking Sharon White. I want to be sure that I am not misrepresenting what she has just said.
Sharon White: Our concern when we looked through this was whether we would be able to judge whether Serco and other service companies had or had not adhered to our framework, reporting and criteria on their use of payments. In a sense, this is part of the wider management of their work force.

Q289 Mr Bacon: As the Chair says, you could always spot check it. I know you do seem to have a degree of difficulty in monitoring whether entirely public sector, public funded organisations are adhering to your framework, and a curious lack of interest in whether they are doing that. We could go back to the personal services contract issue, where we still have a long way to go. That arose because of the revelation—it was a revelation—that Ed Lester, the chief executive of the Student Loans Company, was on a personal services contract. Do you remember when that was?
Sharon White: I don't remember the date.

Q290 Mr Bacon: It was 1 February last year. It was 618 days ago and we are still listening to you talking about what you are going to do about it. There does not seem to be a huge amount of urgency, to be perfectly honest.
Sharon White: All I can say is that we do take the Committee's concern about this very seriously. I am happy, again, to look at whether there is more we can do to make this work in practice, rather than giving a commitment to you that we then find we cannot properly track and properly monitor.

Q291 Mr Bacon: What I don't detect is—and I have always believed that buying from the private sector is not something that should be verboten. I am sure that Victorian schools did not manufacture the chalk, the blackboards or the chairs; they bought them in. By the way, I have one of the best school furniture manufacturers in the country in my constituency, so if you are in the market for school furniture, do let me know. The issue is not whether we buy things from the private sector, because we have been doing that for hundreds of years. The issue is, how good are we at doing that and how do we measure cost, quality and timeliness?
Sharon White: Yes, I agree.
Mr Bacon: Getting good at that, whether it is complex services and contracting or much more simple things, is one of the core skills that, frankly, central Government are really poor at, have been really poor at for a long time and need to get better at. It seems to me that there is a very obvious corollary to the private sector's accepting the Queen's shilling for these various services. That is that those companies should expect to endure a higher degree of transparency as the concomitant of receiving this public money than they would if they were in a private-to-private transaction. That is the reassurance that our tax-paying constituents need.
If those companies do not want that, they do not have to take the money, although many of them live on nothing else. I do not get any sense that inside Government there is the view that, in the words of Lyndon Johnson, "We've got them by the balls, so the hearts and minds should follow." You are putting the bread on their table. Without you, they would disappear. I think you should just start negotiating a little bit harder and understand whose money you are dealing with. I do not get any sense of urgency about that at all.

Q292 Chair: We're not going away on this one, Sharon. We're going to be doing a whole lot of work, through the NAO, on this issue.
Sharon White: I know you're not and, as I say, I'm not surprised that the Committee remains very focused and very concerted on this. We will look again at this. We will also need to talk to our Ministers, because obviously this is something that might affect the landscape on outsourcing, but I will take that away again.

Q293 Stephen Barclay: May I ask, Ms White, if a hospital, such as Great Ormond Street, signed a compromise agreement with a senior clinician, would that be approved by the Treasury?
Sharon White: If it's a compromise agreement—I think Great Ormond Street is a foundation trust and, as a foundation trust, it will submit a case to Monitor and it will then come through to the Treasury, yes.

Q294 Stephen Barclay: So it would be approved by the Treasury?
Sharon White: Yes, it would have to come through, for approval, to us.

Q295 Stephen Barclay: Is it conceivable that a compromise agreement could say to a clinician that the provision of training that benefits patients would be withheld if they broke the terms of their gagging clause in that agreement?
Sharon White: I don't think that's something I am well qualified to comment on, but we would, in signing off a business case, make it very clear that the terms should not preclude whistleblowing or bringing to light any issues within the organisation, so the withdrawal of training or rather performance issues within the organisation.

Q296 Stephen Barclay: I'm asking about this as a matter of policy.
Sharon White: Yes, as a matter of policy.

Q297 Stephen Barclay: As a matter of policy, could the Treasury approve—because you're saying you will have approved any such compromise agreement—a compromise agreement that threatened to withhold training from a senior clinician unless they abided by the gagging clauses in that contract?
Sharon White: I do not know the details, but, certainly, our guidance would suggest that that should not have gone through.
Paul Oliffe: To clarify, the Treasury responsibility here is to approve the payment, not the compromise agreement.
Marius Gallaher: Value for money and the payment.
Sharon White: Exactly. We do not look at the compromise agreement.
Paul Oliffe: There is a difference between the payment and the terms of the compromise agreement.

Q298 Chair: Who would it be with a foundation trust? It would be the foundation trust, not Monitor or the Department?
Sharon White: The foundation trust will have had to go through a process involving its remuneration committee, its auditors and lawyers, then a conversation with Monitor, and then through to the Treasury. Non-foundation trust hospitals are in a slightly different position because of the existence of the TDA.

Q299 Stephen Barclay: May I turn to you, Sir Bob? Would it be tenable for anyone who agreed to the imposition of such a condition on a senior clinician to retain their post?
Sir Bob Kerslake: It is hard to give you a general answer to that. Clearly, the reasons why we achieve these severance arrangements are not about gagging people who are properly raising issues, so you would not expect that to be part of the deal. The reason why we use confidentiality agreements is not about whistleblowing at all; it is about the wish of both parties to keep the agreement confidential.

Q300 Stephen Barclay: What I am trying to clarify with you, Sir Bob, as head of the civil service, is whether it is acceptable for a senior clinician to be threatened with having training withheld if they break the terms of a compromise agreement, when that would benefit patients, particularly if they are dying children. Surely, you could say that that would be totally untenable.
Sir Bob Kerslake: In general, you would not want to see those sorts of situations occur—of course not.

Q301 Stephen Barclay: So you would not expect a hospital to be able to impose such a condition?
Sir Bob Kerslake: I would not expect that, in the negotiation of their settlement agreement, they would seek to put unreasonable clauses in as regards the individuals concerned—of course not.

Q302 Stephen Barclay: So if a hospital said that a clinician would lose their training if they were to speak out about the terms of their compromise agreement, that would be wrong.
Sir Bob Kerslake: As I say, in general terms—I am not going to get into individual cases—we would not want to have onerous requirements built into settlement agreements.

Q303 Stephen Barclay: If that had happened, where would that senior clinician go?
Sir Bob Kerslake: They would clearly have the option to talk to the management of the hospital.

Q304 Stephen Barclay: The allegation is against the senior management of the hospital. They would have signed the compromise agreement.
Sir Bob Kerslake: Well, it depends. I was going to mention the board of the hospital as well. The clinician has the opportunity to go to the chair of the hospital and to talk to them if they feel that the management is not handling the issue appropriately.

Q305 Stephen Barclay: Again, the board of the hospital will have a conflict of interest in managing the litigation risk associated with any claims against the hospital, won't they?
Sir Bob Kerslake: Indeed, but they have a wider governance role as a board to take these issues seriously.

Q306 Stephen Barclay: Do you think that conflict of interest would be exacerbated if anyone sitting on a panel making these decisions had made a public statement at odds with the position of the whistleblower a couple of weeks before?
Sir Bob Kerslake: It sounds to me as though you have a specific case in mind. I do not really want to comment on what sounds like a specific case.

Q307 Stephen Barclay: Right. Could we just look at this more generally? I asked Sir David Nicholson at our hearing on 18 March about retrospection—the gags that have been applied in the NHS to those raising concerns about patient safety. At question 187, the Chair had an exchange with Sir David, in which he said, "If it means writing to those individuals who have been involved in those"—gagging clauses—"explaining the arrangements that we have suggested, then that is what we will do, if that is necessary." Do you know how many people who have been gagged in the past have come forward since the new arrangements, whatever they are, have been put in place?
Sir Bob Kerslake: I do not have any information on that.

Q308 Stephen Barclay: Do you know whether anyone has come forward?
Sir Bob Kerslake: I do not, no.

Q309 Stephen Barclay: Would you expect, after that assurance to the Committee on 18 March, that some might have come forward?

Sir Bob Kerslake: I do not want to speculate on that. If you want to test those issues, you ought to bring David back and have that conversation.

Stephen Barclay: This is not a criticism of Una O'Brien—the change was agreed with the Chair—but she was originally due to be here today.

Chair: I do not want to cut you short, Steve, but I see where your question is going. We have a Thursday recall day in which we can have both Health and the Home Office.

Q310 Stephen Barclay: The wider point, Sir Bob, is that the Committee has established over our recent hearings the extensive use of judicial mediation, which was outside Treasury controls, even though Sir David said he only thought there was one. It has also established extensive use of special severance payments to gag people raising patient safety concerns. Many of those who were responsible for the issues that whistleblowers were seeking to raise, and were unable to do so, are still working in the NHS.

What I am unclear about is first, how we are encouraging anyone who has genuine patient safety concerns to bring those forward, and rather than simply saying play them out in the media, what the mechanism is for doing so. As I understand it, the remit of the Care Quality Commission is to look at senior leadership as a whole, and not to look at individual cases.

What you are unable to share with us today is any sense of anything having changed since 18 March—that none of the whistleblowers previously gagged appear to have come forward and none of the patient safety concerns they had have been aired. If any of them were to get in touch with me, I would have no idea where to direct them, in terms of the process for them going, constructively, to say, "I have these concerns about"—for example—"the chief executive of a hospital, and I would like them to be investigated." There does not seem to be a mechanism in place for them to do so.

Sir Bob Kerslake: I did not say that none had come forward; I said I do not know whether they have come forward. I think that if you want to go through these issues, it would be better to have Una and David back to the Committee.

Chair: Yes. I think we are going to have to do that.

Q311 Stephen Barclay: There is a wider point within the civil service, Sir Bob—and I absolutely accept the point. I was under the understanding that Una would be here, and I accept that at the eleventh hour, that change, which I was unaware of, was agreed. However, there is a wider point, again, about the role of whistleblowers. With existing whistleblowers that have been gagged, what are you doing, as head of the civil service, to ensure that where they want to bring issues forward, they feel able to do so?

Sir Bob Kerslake: First, we should be clear that whether or not they signed a confidentiality agreement, their rights under the Act remain, and we will be very clear in the guidance that we produce—in fact, we use a standard form of wording for confidentiality agreements—that people's protected disclosure rights are not affected by the agreement. So they still have those rights and they still have the right to exercise them.

Chair: Okay. I have just found a date we can do this; there is a follow-up session we can do it in. I am through on the memo. Does anybody have anything to add?

Q312 Guto Bebb: Just a brief comment on point 17, where you were stating that any payment over £300,000 will be separately noted. I feel that in this day and age, £300,000 is a very high level for a separate notification. I think you should consider something lower. The average private sector employee in my constituency will be retiring with a pension pot of £30,000, so the idea of something 10 times higher, before you even disclose the individual payments—I think that is too high.

Q313 Chair: Guto, I think that gets covered if we go for anybody who is senior civil service.

Sharon White: Exactly. I think this is, looking at the existing rules, paragraph 7—

Guto Bebb: Well, it's just that it's there.

Sharon White: That is helpful, thank you.

Chair: Thank you very much indeed. We look forward to further progress.

Written evidence

Written evidence from the Department of Health

1. Note to Clarify Q95

The Committee asked "how many hospital bosses have had their compromise agreement turned down and dismissed with no pay-out"

This information is not held centrally by the Department of Health. We are working with the NHS Trust Development Authority and Monitor to establish this information. A further note containing the information obtained will be sent to the Clerk to the Public Accounts Committee by the end of July.

2. Note to Clarify Q112–113

The Committee asked "how much had been spent on settling cases through judicial mediation—how many and how much"

This information is not held centrally by the Department of Health. We are seeking to obtain this information by undertaking a collection exercise with the assistance of Monitor and the NHS Trust Development Authority. A further note containing the information obtained will be sent to the Clerk to the Committee by the end of July 2013.

3. Note to Clarify Q152

The Committee asked what arrangements applied to private sector contractors in the NHS. This question was answered by Sir David Nicholson at Q154 saying

"One of the things I said earlier was about the importance of commissioners getting transparent information about their providers and what they do. We are currently exploring the way in which we use the standard national contract in order to include in it a clause around transparency and getting information about the kinds of things that you described from any provider, whether it be NHS or private sector."

4. Note in Response to Q164

The Committee asked about the refusal of a Primary Care Trust to release information on compromise agreements in response to an FOI request

The Primary Care Trust (PCT) concerned no longer exists, as all PCTs were abolished on 31 March 2013. However, as set out below the Department is taking steps, through its Legacy Management Team for former NHS bodies, to obtain all those compromise agreements from Primary Care Trusts which the NAO has requested to see.

5. Note in Response to Q175

The PAC asked the Department to ensure the NAO receives all the information it requested

Compromise agreements between NHS organisations and their employees are not held centrally by the Department of Health. We have written to the eight NHS Trusts in the NAO's sample of compromise agreements which they wished to review, asking them to provide all outstanding agreements direct to the National Audit Office by 19th July 2013. The Department, through its Legacy Management Team, will also seek to obtain the compromise agreements for the two Primary Care Trusts in the sample and provide these to the NAO by 19 July.

Una O'Brien
Permanent Secretary

11 July 2013

Written evidence from Department of Health

Please find attached Notes relating to Compromise agreements and special severance payments, requested by the Committee at last week's Hearing along with the corrected transcript.

You will see from the notes that many of these areas contain work that is in progress and we will update the PAC on progress by 31 July.

Please do not hesitate to contact me if you require further information.

10 July 2013

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This information is not held centrally by the Department of Health. We are now seeking to obtain this information by undertaking a collection exercise going back to 2009 with the assistance of Monitor and the NHS Trust Development Authority. A further note containing the information obtained will be sent to the Clerk to the Committee as soon as possible.

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Una O'Brien
Permanent Secretary

11 July 2013

Written evidence from HM Treasury

At the hearing on the 3 July, the Treasury agreed to look at a system of monitoring confidentiality clauses and special severance packages. Your letter of 15 July provides some specific objectives that you would expect such a framework to meet. I can confirm that the Treasury is working with other government departments, including the Cabinet Office, to develop proposals to present to you in September to facilitate greater transparency of accountability, clearer value for money, proper disclosure and stronger governance.

Mr Barclay asked if the Treasury was looking into whether coaching of officials to prepare for PAC hearings was widespread. I can confirm that the Treasury will undertake a survey to find out whether organisations make use of consultants for such purposes and, if so, to provide the relevant details in each instance. Once we have gathered the information, I will write to the Committee with our findings ahead of the September hearing. Civil Service Learning have sent me some information on the costs incurred across Government for training and coaching by Civil Service Learning to support select committee appearances generally. These costs amount to £29,250 from April 2012 to June 2013.

Finally, you asked for more information on case study 3 from the NAO's report As you are aware the Treasury concentrates mainly on the financial information rather than the HR justification for any proposals. However, the Department for Education have provided the following further information.

> "The drafting of the case 3 in the NAO report gives the impression that the case concerned an employee of the Department for Education, leading the Committee to ask questions about the appropriateness of

taking this action for a civil servant. This was misleading: the case cited concerns a statutory office-holder, not an employee and not a civil servant. We apologise for any confusion caused.

The context for the case was the new Government's review of all Arms Length Bodies. The new Secretary of State wished to see a new governance structure for the organisation in question, and to confer upon it additional functions in line with his educational reform priorities. These modifications were achieved through the Education Act 2011, and led to changes to the role of the office-holder within the organisation.

The office-holder in question decided it was right in all the circumstances to offer their resignation before the expiry of their term of office. A modest compensation package was agreed. The payment was disclosed in the annual accounts of the body, in the usual way."

Sharon White
Director General Public Spending

17 July 2013

Written evidence from NHS England

I am writing to provide further information following my appearance at the Public Accounts Committee on 3 July 2013 and to clarify a point I made when I gave evidence at the meeting.

At the committee session you asked me (Q100) for a note on Unique Health Solutions and T29 Solutions Ltd. I can confirm that NHS England has made no payments to either of these organisations.

In addition, Mike Farrar (Chief Executive of the NHS Confederation) has confirmed to me that he had an interest in Unique Health Solutions Ltd from 16th April 2012 to 26th April 2013, but he carried out no paid consultancy work for UHS Ltd and received no income or dividend from the company during this time.

During the committee session, Stephen Barclay MP asked me several questions about Mr Farrar. Having reviewed the transcript of the committee session, I need to clarify the position regarding Mr Farrar's employment. Mr Farrar was employed by North West Strategic Health Authority (SHA) as its Chief Executive. In June 2011 he was seconded from the SHA to the NHS Confederation. North West SHA was abolished at the end of March 2013 at which point his employment contract was novated to NHS England. He is accountable to the Chair of the NHS Confederation while on secondment and the full cost of his salary and expenses are met by the NHS Confederation.

Sir David Nicholson
Chief Executive

17 July 2013

Supplementary written evidence from the Department of Health

I wrote to you on 10 July committing to update the Committee on progress with the above Notes by the end of July.

Although the work is well underway to collect and collate all the information that the Committee requested, we do not yet have all the data from trusts. I want to provide the Committee with full responses rather than partial ones. Therefore, I will write to you again during August with the information for the following two Notes:

1. Note to Clarify Q95

The Committee asked "how many hospitals bosses have had their compromise agreements turned down and dismissed with no pay-out."

2. Note to Clarify Q112–113

The Committee asked "how much had been spent on settling cases through judicial mediation—how many and how much."

In the meantime, please see responses to points 3, 4 and 5 of my letter of the 10 July:

3. Note to clarify Q152

The Committee asked what arrangements applied to private sector contractors in the NHS. As confirmed in my letter of 10 July, Sir David Nicholson responded at Q154 of the transcript note.

4. Note in Response to Q164

The Committee asked about the refusal of Primary Care Trusts to release information on compromise agreements in response to an FOI request.

Primary Care Trusts were abolished as of 31 March 2013. The Department's Legacy Management Team has worked closely with the NAO to ensure they have the information required. I can confirm that the NAO has received the compromise agreements for all three PCT cases they requested.

5. Note in Response to Q175

The PAC asked the Department to ensure the NAO receives all the information requested in relation to its sample of NHS Trusts.

There were 7 NHS Trusts for which compromise agreements were outstanding (not 8 as stated in my letter of 10 July).The NAO has received the documentation for all the NHS Trust cases and has not asked for anything further.

I will write to you again with the outstanding information as soon as i can.

Una O'Brien
Permanent Secretary

Further supplementary written evidence from the Department of Health

1. Note to Clarify Q95

The Committee asked "how many hospitals bosses have had their compromise agreements turned down and dismissed with no pay-out."

2. Note to Clarify Q112–113

The Committee asked "how much had been spent on settling cases through judicial mediation—how many and how much."

In the meantime, please see responses to points 3, 4 and 5 of my letter of the 10 July:

3. Note to Clarify Q152

The Committee asked what arrangements applied to private sector contractors in the NHS. As confirmed in my letter of 10 July, Sir David Nicholson responded at Q154 of the transcript note.

4. Note in Response to Q164

The Committee asked about the refusal of Primary Care Trusts to release information on compromise agreements in response to an FOI request.

Primary Care Trusts were abolished as of 31 March 2013. The Department's Legacy Management Team has worked closely with the NAO to ensure they have the information required. I can confirm that the NAO has received the compromise agreements for all three PCT cases they requested.

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There were seven NHS Trusts for which compromise agreements were outstanding (not eight as stated in my letter of 10 July).The NAO has received the documentation for all the NHS Trust cases and has not asked for anything further.

Una O'Brien
Permanent Secretary

31 July

Written evidence from Department of Health

I wrote to you in July committing to an update on work that was undertaken following the above hearing: this letter now seeks to fulfil that commitment.

Note to Clarify Q95

The Committee asked "how many hospitals bosses have had their compromise agreements turned down and dismissed with no pay-out?"

The short answer is we cannot be entirely certain, although we do have some data. Applications that are turned down are not followed up with the relevant Trusts. However, to the best of our current knowledge, what we do know is that four hospital senior executives had a compromise (settlement) agreement turned down over the last three years. None of these four cases involved performance issues.

The definition used for "hospital bosses" is chief executives and executive directors in NHS Trusts and NHS Foundation Trusts.

Turning to the detail for NHS Trusts, DH compiled information from the detailed records we have of all applications for non-contractual severance payments. As DH witnesses explained at the July hearing, DH assesses the business cases for NHS Trusts before either rejecting the application or applying to HMT for approval.

In the last three years there were three cases in NHS Trusts where proposed payments were not approved. One was for a chief executive and two were for executive directors. Two of these were in 2010–11 with total potential payments of £64,824 and the third was in 2011–12 with a potential payment of £106,000.

Two of these three cases involved a redundancy situation. The third concerned a breakdown of trust between the chief executive and director of finance. In each case the application related to non-contractual payment in lieu of notice (PILON). Where there is no provision within a contract of employment to pay PILON, such a payment would be deemed non-contractual, hence the application to DH. In relation to the breakdown of trust case, no payment was needed because the individual moved to another NHS role. In no instance were there performance issues.

Turning to the detail for Foundation Trusts, FTs are required to send their submission for special severance payments to HMT via Monitor. Monitor has no powers to reject an application from an FT. However, Monitor can advise the FT that an application looks weak or requires further information. The FT may then choose to proceed with the application as it is, change it and proceed or decide not to proceed. Monitor gathered the information in respect of FTs by undertaking a fresh information gathering exercise.

In relation to FTs in the last three years, Monitor's recent exercise identified one case in 2012–13: a compromise agreement was discussed as part of a potential voluntary redundancy, but in fact the person left for another job, no compromise agreement was signed and no extra-contractual payment was suggested or agreed or paid.

Generally in considering applications, HMT apply the principle, made clear in "Managing Public Money" that poor performance will not be rewarded nor be seen to be rewarded through non-contractual payments.

Given that all the applications for NHS Trusts came via DH, I am content that, to the best of my knowledge, this provides you with a full and accurate record of those compromise agreements which have been turned down with no extra-contractual payment made. In relation to FTs, as described earlier, the data was collected by Monitor and is as declared by FTs with a 100% response. FT chief executives are accounting officers and I have no reason to believe that they would provide anything but a fully accurate response.

This information suggests it is difficult to draw any overall conclusions from the numbers of cases turned down in isolation; to set this in some context, over this three year period 48 cases were approved for NHS Trusts and 363 cases for FTs but these covered all staff not just executive directors and chief executives. The total number of staff employed in NHS Trusts and NHS FTs combined in 2012–13 was 1,179,500 as of May 2013.

NOTE TO CLARIFY Q112–113

The Committee asked "how much had been spent on settling cases through judicial mediation—how many and how much?"

Further to your request, the Department compiled the information provided in Annex A (below) from the following sources:

— for ALBs from data collected by DH writing to each ALB asking for information about judicial mediation settlements;

— for NHS Trusts -from data collected by the NHS Trust Development Authority writing to each NHS Trust asking for the information about judicial mediation settlements; and

— for NHSFTs—from data collected by Monitor writing to each NHSFT asking for the information about judicial mediation settlements.

There was a 100% response rate. There has been no further validation or audit by DH of the data provided by these organisations. Again, it is important to note that FT chief executives are accounting officers in their own right.

In previous years severance costs have been included within ALBs' and Trusts' annual statutory accounts in line with the Department of Health's Manual for Accounts, and are subject to retrospective external audit scrutiny. The aggregate figures given in each organisation's accounts include negotiated settlements made by judicial mediation. We will enhance this disclosure further and extend it to all Non-departmental and NHS bodies within the accounting boundary for the Department of Health's resource accounts. In addition to greater classification of the type of severance between contractual and non-contractual, the disclosure will include the number and value of severance payments made.

Clearly, there has been a significant increase in the use of judicial mediation from the point when it was first rolled out in 2009. I understand that it has been seen as a valuable additional approach to dispute resolution, not only in the NHS but between employers and employees more generally. It is conducted on a confidential

"without prejudice" basis and Tribunals can suspend the formal tribunal hearing timetable pending the outcome of the process, (which can save the parties time and expense if the mediation is successful).

As the Committee knows, until recently HMT did not require judicial mediation cases to be approved by them. Following HMT's clarification in March 2013, in future all such payments will have to be approved as per the system for extra-contractual payments.

In addition, I understand that Monitor's Regional Managers should already be looking for any clusters or patterns within approvals for special severance payments, which might indicate there are wider questions for quality and safety. Further, in our sponsorship role, DH will be following this up with Monitor and the NTDA.

I trust the information provided is of help to the Committee. It is the best we have been able to achieve in the time and while I have been clear in this letter about the method of collection and the sources, the data in this format is unaudited.

For ease of reference I attach copies of the earlier letters sent to you responding to the notes. Please contact me should you require more information.

Una O'Brie
Permanent Secretary

Annex A

PROVIDED AS FOLLOW UP TO PAC COMMITTEE HEARING ON WEDNESDAY 3 JULY

2. NOTE TO CLARIFY Q112–113

The Committee asked "how much had been spent on settling cases through judicial mediation—how many and how much?"

ARM'S LENGTH BODIES

Year	*Number of Arm's Length Bodies*	*Number of Cases*	*Number of Individuals*	*Number of Board members*	*Paid*
2009–10	0	0	0	0	£ 0
2010–11	0	0	0	0	£ 0
2011–12	0	0	0	0	£ 0
2012–13	1	1	1	1	£ 194,748
TOTAL		1	1	1	£ 194,748

Source: collated by Department of Health from data provided by individual organisations, August 2013

NHS FOUNDATION TRUSTS

Year	*Number of foundation trusts*	*Number of Cases*	*Number of individuals*	*Number of Board members*	*Paid*
2009–10	6	6	6	0	£ 151,368
2010–11	8	8	8	0	£ 148,200
2011–12	13	18	18	1	£ 414,171
2012–13	21	**28	43	0	£ 620,229
TOTAL	35	60	75	1	£1,333,967

***A disparity between the number of cases and the individuals involved often occurs in the case of restructuring within a Trust where a number of people choose to take redundancy and an overall pot of money is requested to facilitate that.*

Source: collated by Monitor from data provided by NHS FTs, August 2013

NHS TRUSTS

Year	*Number of NHS Trusts*	*Number of Cases*	*Number of Individuals*	*Number of Executive Board Members*	*Paid £*
2009–10	2	2	2	0	£50,402
2010–11	2	2	2	0	£270,636
2011–12	18	24	24	2	£1,235,702
2012–13	19	29	29	0	£830,253
	41	57	57	2	£2,386,993

There were 129 at the start of 2009/10 there are now 99 NHS Trusts

Source: collated by the NHS Trust Development Authority from data provided by NHS Trusts, August 2013

12 September 2013

Further supplementary written evidence from the Department of Health

NOTE TO CLARIFY Q95

The Committee asked "how many hospitals bosses have had their compromise agreements turned down and dismissed with no pay-out?"

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Permanent Secretary

12 September 2013

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Supplementary written evidence from HM Treasury

SPECIAL SEVERANCE PAYMENTS AND CONFIDENTIALITY CLAUSES:

REPORT TO THE PAC

The government intends to improve reporting of severance settlements in the public interest. The Cabinet Office will publish guidance about the use of settlements, including confidentiality clauses. It will also publish consolidated information about Civil Service settlements, enabling readers to see the amounts involved.

Once the detail of the Civil Service reporting framework is clear, the government will work toward parallel publications covering other parts of the public sector.

1. At the PAC hearing on 3 July, the Treasury promised a report on the framework for settlement agreements across the public sector, including confidentiality clauses and special severance payments.

2. Mrs Hodge's letter of 15 July asked that the coverage should include the civil service, arm's length bodies, health, education, local government (including the police) and private sector suppliers of public services. The framework should also provide accountability with central recording and monitoring.

3. Mrs Hodge set the objectives for the framework to include the following.

— Greater transparency to give effective accountability.
— Expenditure should provide value for money.
— Confidentiality clauses should not inhibit the proper disclosure of matters of public interest.
— Strong governance arrangements should be in place.
— Effective monitoring of trends within bodies and across sectors.

4. The Treasury is working with other relevant government departments to establish what can be achieved.

Settlement Agreements and Special Severance Payments

5. Settlement agreements are legally binding contracts, used either to settle statutory claims or claims under an individual employment contract. They are used in exceptional circumstances to define the terms agreed by an employer and employee on the termination of a contract of employment. Settlement agreements are entirely voluntary and parties do not have to enter into discussions about them or agree to them if they do not wish to do so. An employee does not have a right to a settlement agreement and agreeing one is at the discretion of the employer.

6. Settlement agreements protect both employer and employee by ensuring that there is a clean break between the parties, with no further legal or other action being taken. Settlement agreements often use the scope for discretion within the contract between employer and employee.

7. Settlement agreements may be replaced by, or topped up by, special severance payments, ie financial payments to the employee upon termination which are not within the terms of the contract, and which can go beyond what the contract covers. Not all settlement agreements include special terms of this kind.

Civil Service and Arms Length Bodies

8. The Cabinet Office is preparing Guidance for departments and will introduce improved monitoring processes for settlement agreements and special severance payments made in connection with the termination of employment. The Guidance will also address the use of confidentiality clauses used in settlement agreements.

9. The Cabinet Office is working to finalise the Guidance and the detail of the monitoring process, including consulting ministers. As an indication of content, the Guidance will cover:

— when a settlement agreement and special severance payment may or may not be used;
— a clear line and standard wording on confidentiality clauses to be used in settlement agreements—making it clear that no provision in the agreement or undertaking can prevent the individual from making a protected disclosure;
— good practice for governance in deciding special severance payments and settlement agreements;
— improved scrutiny of cases prior to agreements being finalised. This will include ensuring that sponsor departments are clear on the relationship with any arm's-length bodies; and
— a new reporting process under which departments will notify the Cabinet Office of concluded settlements and special severance cases.

10. The Cabinet Office plans to publish annually by financial year a consolidated report of figures for the number of Special Severance Payments made by the Civil Service. This report will be in table form, probably on www.data.gov.uk. It will contain the following data for each departmental group, or amalgamated as "Other Departments" where the small number of payments would lead to identification of individuals:

— number of special severance payments made;
— aggregated cost of payments; and

— maximum (highest), minimum (lowest) and median values of payments fot each department.

11. The new Cabinet Office system will take account of the PAC's reaction to this report. Subject to its timing, it will take effect as early as possible in 2014, with the first annual report in 2015.

12. This process will provide independent scrutiny of sensitive cases at the decision stage so that departments can be confident that they understand the guidance. It will also give the Cabinet Office insight into how well the general guidance rules are working to make sure that they operate as intended. The Cabinet Office will use the data collected to analyse trends and numbers of cases. This analysis will be used to monitor activity across the Civil Service and decide whether any further intervention is required.

Assessing Individual Cases

13. In addition to the Cabinet Office guidance service, the Treasury will continue to assess in each case whether a special severance payment is warranted and whether the proposed settlement provides value for the public purse. These checks will apply to both departmental settlements and arm's length bodes, as now.

14. In reviewing special severance payments proposed by departments and their arms length bodies, the Treasury will take account of:

— the circumstances of the case;

— any scope for reference to a tribunal with its potential consequences, including the legal assessment of the organisation's chances of winning or losing the case and likely scale of any award;

— the management procedures followed;

— the value for money offered by the possible settlement;

— any non-financial considerations, eg whether it is desirable to end someone's employment without dismissal, perhaps because of restructuring; and

— whether the case could have wider impact, eg for a group of potential tribunal cases.

15. The Treasury does not treat special severance as a soft option, eg to allow departments and their arm's length bodies to avoid management action, disciplinary processes, unwelcome publicity or reputational damage. However, in some of these cases legal advice shows that the employer could not expect to win. In such cases the Treasury's judgement is that it is good value for money to agree payments where these do not exceed the likely tribunal award.

Disclosure of Individual Cases

16. Central government organisations already have an obligation to be transparent about their severance payments through mandatory disclosures in their annual report and accounts. These disclosures follow the requirements of *Managing Public Money* and the Financial Reporting Manual (FReM).

17. Under the rules in the FReM, specific information on payments to named Board Members is provided in the remuneration report. Information about all other severance cases is included in an exit costs note showing the number of compulsory redundancies and other exits in cost bands. This note also contains information about any payments not covered by the provisions of the Civil Service Compensation Scheme, for example ex-gratia payments agreed with the Treasury. Each annual report and accounts also includes information on total special payments, including special severance payments, with individual payments above £300,000 separately noted.

18. The Treasury intends to amend the FReM (subject to the views of the Financial Reporting Advisory Board) by the end of this calendar year to reflect the additional information the Cabinet Office now proposes to publish for the Civil Service (paragraph 10 of this report). These changes are likely to take effect from 2014–15.

19. Other parts of the public sector that do not apply the FReM directly will be encouraged to make similar amendments to their financial reporting manuals. In this way the new standard should be for all individual public sector organisations to disclose the same information as that collected by the Cabinet Office for the Civil Service.

Other Parts of the Public Sector

Devolved health trusts

20. The Department of Health plans to adjust its NHS Accounting Manual, alongside changes to the FT Annual Reporting Manual so that the accounts of NHS Trusts, Foundation Trusts and Clinical Commissioning Groups will be required to report all special severance payments discretely in their Annual Accounts.

21. The Department of Health will annually publish aggregate figures on the use of special severance in the NHS in a format similar to that the Cabinet Office will use for the Civil Service.

Academies and free schools

22. The Department for Education has developed a process of gathering and reporting information to central government for academies. In line with the FReM academies disclose details of all special severance payments in their accounts and DfE publishes these in their consolidated accounts. The accounts will include the aggregated total value of all special severance payments, in payment bands, in line with the specification the Cabinet Office will operate.

23. Academies have the authority, following guidance in DfE's handbook for Academies, to approve extra-contractual payments of up to £50,000 in individual cases, similar to arrangements for maintained schools. Extra-contractual payments above that amount require the prior approval of the Treasury. The Education Funding Agency examines a proportion of severance payments made by academies each year to confirm that the authority is being discharged effectively and that they represent good value for money. The effectiveness of the system is reviewed annually by the Treasury. The first review will take place at the start of 2014.

24. DfE reviews the system of academy accountability on a continual basis and will review the existing arrangements against the proposed revisions to the reporting standards. Any necessary amendments will be issued through an update to the Accounts Direction to academy trusts, which will be issued in June 2014. The Accounting Officer for DfE can report to the Committee if required.

Local government

25. The Government agrees local authorities should adopt the same principles in relation to the use of compromise agreements as the rest of the public sector. But local authorities are independent employers in their own right, led by elected members with a direct mandate from local taxpayers. So the government will seek to ensure that local elected members—and those that represent them—are properly accountable for local decisions on these matters.

26. DCLG will therefore set a challenge for the Local Government Association to take action to support authorities to meet the new standards being set for the public sector in relation to the use of compromise agreements. The government is prepared to take more direct action should it become clear that authorities are not taking appropriate steps to improve accountability and transparency in this area.

27. The Government agrees that transparency of information is essential to help the public hold their local authorities to account for their decisions, and the way they spend public money. As a first step, DCLG will ask the Local Government Association to examine the role it can play in ensuring this information is available to the public, for example through their existing annual workforce survey. If it becomes necessary to do so, the government will consider other steps to improve local transparency.

The police

28. Police forces are not arm's-length bodies so accountability for their spending rests with their Police and Crime Commissioner, not with central government. As part of the Government's broader police reform, the Home Office has also given chief constables greater responsibility over their officers, and the College of Policing has been established to set standards for policing; central government guidance should therefore not apply directly to the police. Nevertheless, Home Office Ministers are likely to encourage forces to take note of the guidance and to reflect on how their own policy and practice align with its content. Such an approach would be consistent with enhancing police integrity.

The devolved administrations

29. For the devolved administrations (including their local authorities, police forces, health and education sectors where these are devolved), the UK government can only request equivalent treatment as responsibility for these matters is devolved. The Chief Secretary will therefore write to his counterparts in the devolved administrations to tell them of the changes described in this report and to ask them to consider equivalent action.

PRIVATE SECTOR SUPPLIERS OF PUBLIC SERVICES

30. There would be a real difficulty about requiring the government's contractors to disclose equivalent information about severance payments.

31. First, there must be considerable doubt about whether it would be possible in practice for the government to enforce contract terms requiring disclosure. If contractors failed to disclose the required information, the government might never find out unless there was an enforcement mechanism which could only be expensive, cumbersome and intrusive. This would be a poor fit with the government's commitment to encouraging a wide variety of firms, including SMEs, to get involved with government business.

32. In addition, it would be necessary to define which contractors would face a new obligation to disclose information about severance settlements. It might be difficult to draw any boundary and so all providers of goods or services—for instance suppliers of office goods and pharmaceuticals—might have to be included. It would be a large task to renegotiate contracts to include disclosure clauses.

33. The business case for imposing disclosure requirements about severance deals on each contractor does not look strong, and it may be burdensome for business. The government chooses to contract out where it expects that private sector contractors should be able to do a better and often more cost effective job. So it is good procurement practice to specify the outcomes sought, leaving contractors to propose how the required outcomes can be delivered accurately, efficiently and economically. If potential contractors were willing to accept terms requiring disclosure, they would tend to bid at higher prices since they would lose flexibility and have to display their internal performance processes to competitors. Less competition would tend to mean worse value for money for the public purse.

34. It is important to remember that contractors are private sector firms which set their own internal rules and which will be concerned to protect their commercial decisions about managing their workforces and operations. They have no obligation to bid for government business and can choose not to do so if they find the conditions of proposed contracts onerous or objectionable. Some firms might find terms requiring disclosure of severance deals unacceptable and so refuse to bid. Ultimately it must be shareholders who dictate contractor behaviour, not purchasers of their services.

35. The government takes the view that the balance of advantage here lies in favour of pursuing practicality and value for money. The key argument is that there is no reason to expect that disclosure about severance payments would improve the performance of contracts.

Would this meet the five objectives?

36. The government believes this package of measures will deliver a proportionate and responsible response to the PAC's objectives.

- *Greater transparency to give effective accountability*: the government aims for all bodies to report improved information in their accounts and for Cabinet Office to provide guidance and to report annually for central government organisations. Other parts of the public sector will be encouraged or required to act similarly.
- *Expenditure should provide value for money*: for special severance payments this is required in the guidance and already happens for central government. The planned Cabinet Office guidance should cover how expenditure on compromise agreements stands up to public scrutiny in central government. Again equivalent action elsewhere in the public sector is planned.
- *Confidentiality clauses should not inhibit the proper disclosure of matters of public interest*: Cabinet Office guidance should meet this for central government and establish the standard elsewhere in the public sector.
- *Strong governance arrangements should be in place*: for central government, Managing Public Money guidance and Cabinet Office guidance should together meet this objective. Elsewhere in the public sector equivalent arrangements should apply.
- *There needs to be effective monitoring of trends within bodies and across sectors*: central government already plans to meet this objective through the planned annual Cabinet Office publication about the civil service and arm's length bodies in central government. Again, elsewhere in the public sector equivalent arrangements should apply.

September 2013

Further supplementary written evidence from HM Treasury

USE OF EXTERNAL CONSULTANTS IN PREPARING FOR SELECT COMMITTEE HEARINGS

At a hearing of the Committee on 3 July (taking evidence on the use of confidentiality clauses and severance packages in government), Mr Stephen Barclay asked the Treasury (Question 76) whether the use of external consultants to coach officials appearing at select committee hearings was widespread. At the time, the Treasury was unable to provide the information Mr Barclay requested but promised to investigate and report back to the Committee.

Following the hearing, the Treasury conducted a survey across all central government departments and arm's length bodies to explore how widespread the practice of using consultants for such purposes has been since June 2010. The survey found that only the Department of Health made use of consultants in connection with preparations for committee hearings (on the National Programme for IT). However, the Department did make it clear that the employment of consultants, as summarised in the attached table (see annex), was purely for collecting and collating factual material for use by officials appearing before the Committee and not, in any way, for coaching officials or witnesses.

The survey confirmed that no other department or public body reported the use of external consultants for any purpose in connection with preparation for committee hearings.

Coincidentally, in case Mr Barclay is not already aware, he might find it useful to know that within government, *Civil Service Learning* (the Cabinet Office training organisation) provides tailored coaching to help senior officials, particularly newly appointed permanent secretaries and chief executives, prepare for select

committee hearings including Public Accounts Committee hearings. More information on these courses can be obtained from *Civil Service Learning*. An electronic link to the *Civil Service Learning's* courses programme may be found at: https://civilservicelearning.civilservice.gov.uk/static/files/learningmap.pdf.

Marius Gallaher
Alternate Treasury Officer of Accounts

9 October 2013

Annex

Table showing costs of external consultants employed by the Department of Health (Connecting for Health) in preparation for hearings of the Public Accounts Committee on the National Programme for Information Technology since June 2010. Consultants were used to collect and collate factual material only.

Year	*Name(s) of consultants*	*Basis of contract: package or daily rate*	*Cost*
2011	QI Consulting	Package	£11,650
	KPMG	Package	£86,406
		Total	**£98,056**
		For PAC hearing on 23 May 2011	
2013	KPMG	Daily from 4/2/2013—31/3/2013 (29.5 days)	£50,563
	KPMG	Daily from 1/4/2013—20/6/2013 (23 days)	£23,000
		(52.5 days in total during the above period)	**£73,563**
		Total	
		For PAC hearing on 12 June 2013	

Written evidence from the Department for Culture, Media and Sports

I promised to write to you regarding a number of points raised at the oral evidence session on Severance Payments which took place before the Public Accounts Committee on Thursday 10 October.

You asked me to provide further detail in relation to the severance case referenced as case "3" in the table in "Figure 4" (page 13) of the National Audit Office (NAO) report and also summarised as "Case study 2" (page 14).

First, I should clarify that in this case, the original finding of gross misconduct resulting in dismissal was reduced on appeal to a lesser charge of serious misconduct and a final written warning. At that point, management considered that the relationship with the individual had irretrievably broken down. But legal advice was that a claim for unfair dismissal was, on balance, more likely to succeed than not. It was only at this point that management considered a settlement agreement.

You sought clarification as to whether there were any provisions for employment references to be provided where the Department or its Arm's-length bodies had entered into compromise agreements with those who had been the recipient of a severance payment and where misconduct had been alleged.

An obligation to provide an employment reference is invariably part of negotiating compromise agreements in severance cases and the format of the reference often depends on the nature of the conduct and the legal merit of the case, and is a matter of judgment.

In cases where DCMS' Arm's-length bodies had entered into compromise agreements and misconduct had been alleged, the agreements typically did make provision for a reference to be provided on receipt of a written request from a potential employer.

In the case referenced above ("Case Study 2" of the report) and several other cases the reference took the form of a factual statement detailing only the dates when the individual was an employee of the organisation, their job title and the responsibilities of their role, with a commitment from the Employer for any oral reference to be on no less favourable terms.

Sir Jonathan Stephens KCB
Permanent Secretary

25 October 2013

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