



Northern Ireland Affairs Committee

Oral evidence: [Administrative scheme for 'on-the-runs'](#), HC 1194

Wednesday 30 April 2014

Ordered by the House of Commons to be published on 30 April 2014.

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Members present: Mr Laurence Robertson (Chair); Mr Joe Benton; Oliver Colvile; Mr Stephen Hepburn; Lady Hermon; Kate Hoey; Jack Lopresti; Nigel Mills; Ian Paisley; Andrew Percy; David Simpson.

Questions 412-672

Witness: **Sir Ronnie Flanagan GBE QPM**, Former Chief Constable, Royal Ulster Constabulary GC/Police Service of Northern Ireland, gave evidence.

Q412 Chair: Mr McGinty, you are very welcome. Thank you very much for joining us.

Kevin McGinty: Mr Robertson, I was speaking to Sir Ronnie outside. He has a flight to catch. I do not know whether the Committee would be prepared to hear Sir Ronnie first or want to hear from me first.

Chair: That seems agreeable. We have only just discovered that, but we are very flexible. We will continue the public session. Can I just announce that there are likely to be one or two votes this afternoon, which might delay us further, so it is probably good that we do take you first, Sir Ronnie. Thank you very much for joining us. Perhaps I could just kick off by asking you to make a brief opening statement, if you would like to, on what you have heard so far in evidence, or what you have read about in evidence we have received, and your take on the on-the-runs issue. That would be very useful to the Committee. Thank you very much for joining us today.

Sir Ronnie Flanagan: Chairman and members, it is a great pleasure to be with you. I was appointed as Chief Constable in 1996 and I am very proud to have been, therefore, the last Chief Constable of the Royal Ulster Constabulary GC. I was appointed as the first Chief Constable of PSNI in November 2001 when the title changed. On 1 April 2002, I took up the position in Her Majesty's Inspectorate. I hopefully can assist the Committee with my recollections in the area that you have under investigation so far as my time in office is concerned. That would be the time, if you like, from the signing of the Good Friday Agreement up until 31 March 2002, when I left that position.

Q413 Chair: What is an on-the-run, and what is your understanding of the on-the-runs scheme, process or whatever you wish to call it?

Sir Ronnie Flanagan: Clearly, the Good Friday Agreement included subsequent legislation whereby prisoners got early release from prison. It was clear, probably particularly to Sinn Féin, as a political party, that some of the persons for whom they had an interest and whom they perhaps represented spent most of their time in the Irish Republic, even though they were born and brought up in Northern Ireland. There was that group of people who became known as “OTRs” or “on-the-runs”. That was across a very broad spectrum. Clearly, there were people in that grouping who knew exactly what they had done, but not necessarily was it the case that we knew exactly what they had done. In some cases, we might have had intelligence as to what they may have done, but that would not have amounted to evidence. There were also people who had escaped from lawful custody and who were in that category known as on-the-runs. There were other people in respect of whom we may have been considering extradition proceedings. The global title of “on-the-runs” covered quite a broad spectrum of persons.

Q414 Chair: And they somehow form a group, do they? The police surely look at individuals. You either want an individual and, if you do, you pursue them; or, in most cases, you do not want an individual and you are not interested in them. How does it come together as a group?

Sir Ronnie Flanagan: I would have tended to look at them as individuals across that broad spectrum that I have described, falling into different categories across that spectrum.

Q415 Chair: Our difficulty, I suppose, is understanding why those people felt they needed to be on the run and why they felt they needed a letter of assurance, or whatever you want to call it. There must be some background to that.

Sir Ronnie Flanagan: Some of them fell into a very simple category, in that they had escaped from lawful custody and therefore wanted to remain free. That is a very simple reason why people would be on the run. Others may have been on the run because of guilty knowledge of theirs, but that did not necessarily equate to the level of knowledge that we had about them. The questions for the police were: did we want to arrest a particular person to interview them because we had enough reasonable suspicion to make an arrest and conduct interviews? Did we want to arrest a person to bring them back into the lawful custody from which they had escaped? Did we want, through the legal authorities, to pursue extradition in respect of individuals? Again, I keep coming back to a number of sub-groups within the overall group, but the overall group, as I got to understand it, comprised a list of names provided to the Government by Sinn Féin.

Q416 Chair: But do the police recognise a group?

Sir Ronnie Flanagan: Not in terms of, “Here is a group”, no. As I said earlier, I would have seen them as a collective of individuals in different categories who came to be known under an umbrella term.

Q417 Lady Hermon: From one particular community, as opposed to being even-handed.

Sir Ronnie Flanagan: Yes. We had—

Q418 Lady Hermon: Were there any Loyalists on the run who received administrative letters—

Sir Ronnie Flanagan: I remember as a young sergeant someone jumped over the dock in Belfast Magistrates Court and disappeared for years. I remember being stationed in East Belfast and looking for this person. He was on the run, but I have no doubt on the run somewhere in East Belfast. I saw only recently that he was brought to justice. So, there were individuals trying to evade lawful process.

Q419 Lady Hermon: Yes, but I am sure he was not one of the names put forward by Sinn Féin.

Sir Ronnie Flanagan: No.

Chair: Not for the purpose of letters.

Sir Ronnie Flanagan: No. A different category altogether.

Q420 Jack Lopresti: Ronnie, as far as the categorisation and then the decisions of actions once an individual was in a certain categorisation, was that purely an operational detail for yourself or was there any political interference on actions taken?

Sir Ronnie Flanagan: My recollection of the time was that there was a process chaired by the then Director of Public Prosecutions, Sir Alasdair, a man of absolutely unimpeachable integrity who would never countenance anything that would in any way compromise his office and, indeed, on my behalf, would never countenance anything that would in any way compromise my office. There was a process to try to determine, if a list was provided, the exact state of desire on the part of the police and others to deal with such persons. My recollection is that a small unit was created within our Crime department. With us, it was the Assistant Chief Constable (Crime) who had the daily contact with the Director of Public Prosecutions, and they would have conducted all sorts of checks. There would have been intelligence checks; there would have been a check on what we called at the time ICIS—the integrated computerised intelligence system—there would have been checks with Interpol as to whether there was any international interest in such persons; there would have been a check on the Police National Computer as to whether anyone else in the United Kingdom had any interest in an individual; and there would have been checks with the Garda Síochána.

Q421 Jack Lopresti: So, for clarity, operational, not political, as far as your actions.

Sir Ronnie Flanagan: Yes. Then the Director would have conducted a process to come to a decision as to whether there was any evidence to proceed criminally against a person.

Q422 Oliver Colville: This may sound very simple, and please forgive me, Sir Ronnie. Thank you very, very much indeed for coming to speak to us today. I just want to understand this. The police have got to collect all the evidence as to whether or not there is a case that the Government can end up by prosecuting the person concerned. You will collect all that evidence; you will then make that available to the Crown Prosecution Service, who in turn will then say to the DPP, “This is the evidence that we have got. We think, in the main, there is every likelihood that you will succeed in getting a prosecution,” and that is how the position ends up by working. Yes?

Sir Ronnie Flanagan: It is slightly different. The Crown Prosecution Service relates to England and Wales. The Director of Public Prosecutions was the title of the office for Northern Ireland. If there were people in respect of whom there was a suspicion within England and Wales, that

would pass to the Attorney General's Office, who, with the Crown Prosecution Service, would make that consideration. Just to be clear, so far as the police were concerned, we were not involved in—we were being asked questions and we took part in a process to answer those questions.

Q423 Oliver Colvile: So ultimately, any kind of prosecution that would take place in Northern Ireland was down to the DPP in Northern Ireland.

Sir Ronnie Flanagan: Absolutely.

Oliver Colvile: And if there was information that you had collected as a police force that related to what was happening here in London or in England or anywhere else, then you would have handed that over to the English Crown Prosecution Service, who in turn would have gone that route of going to talk to the Attorney General here.

Sir Ronnie Flanagan: Through the Attorney General's Office.

Oliver Colvile: Yes. Sorry for asking it, but I am not a fantastically big lawyer—in fact, I am not a lawyer at all, you will be delighted to know—and so therefore I have got to try to pick my way through what the procedure and what the process is. You have been incredibly helpful in telling us. Thank you.

Q424 David Simpson: Sir Ronnie, it is good to see you again. Thank you very much indeed for coming. I just want you to clarify for us again when the RUC/PSNI became involved in the whole scheme. When did it start?

Sir Ronnie Flanagan: I am working on recollection rather than having seen any specific papers.

David Simpson: I accept that, yes.

Sir Ronnie Flanagan: To give you a specific date would be difficult, so I am guessing, but if we take April 1998 as the signing of the Good Friday Agreement, it would be some time after that. The first thing was the question of legislation for early release of prisoners. In those days, I remember as Chief Constable being asked publicly very often, "What do you feel about that?" My answer was then, and is now, that a police officer, from day one of his or her training, is taught that it is their job to bring people into the criminal justice system; what happens to them thereafter is a matter for other elements of that criminal justice system. In terms of early release, as a human being, to see people released who had killed friends and colleagues of mine earlier than courts had decided, and having seen the terrible trauma the victims experienced, was not something I relished in any sense. But that had to be set apart from the professional performance of your duties. Here were a category of people being raised to Governments—plural—who were trying to agree a long-term, solidified peace process. Here were another category of people in respect of whom questions were being asked. My recollection is that in—I am guessing—1999 or 2000 we would have been asked questions about identified individuals.

Q425 David Simpson: When did you leave as Chief Constable?

Sir Ronnie Flanagan: I finished on 31 March 2002 and took up the new position on 1 April.

Q426 David Simpson: At any time, did the NIO talk to you about the scheme of on-the-runs and how you personally, as Chief Constable, would feel about it?

Sir Ronnie Flanagan: I do not remember any specific one-to-one meetings, but my impression at that time was that the intention was to consider further legislation.

Q427 David Simpson: Okay. In relation to the Downey case¹ itself—I asked this of the former police officers that were here previously—taking into consideration the letter that Mr Downey received, and taking into consideration that the Met had an interest in him because of crimes here on the mainland, do you personally believe that if there had not been political interference, the case would have run?

Sir Ronnie Flanagan: I honestly have no idea of the details. I am not evading the question. I do not know what you are describing as “political interference”.

Q428 David Simpson: There was political representation made, evidence given, letters given, or whatever, during the hearing, and the decision was taken then by the judge on the basis of this letter.

Sir Ronnie Flanagan: It would be utterly improper for me to comment on the decision that a judge came to considering all the legal implications that he had to consider in the case. No doubt there were opportunities for others to consider whether there should be an appeal or whether there should not be an appeal. In absence of knowing all of that material, it would be improper for me to give a comment.

Q429 Ian Paisley: Sir Ronnie, it is good to see you at the Committee. From what you have said so far, there was an informal interaction between the police—the Royal Ulster Constabulary then the Police Service—and the Director of Public Prosecutions with regards to names. At what point, however, did that informal interaction crystallise into a process? Did that crystallise in the time when you were there as Chief Constable, or did that come much later?

Sir Ronnie Flanagan: No, during my time as Chief Constable there would have been that process—a process chaired by the then Director of Public Prosecutions—to consider the position of individuals. My position would be that I would be utterly—and always would have been—against any form of amnesty and anything that could be described as an amnesty. But if we were given the name of an individual and considered all of the intelligence, if there was any that we held about that individual, and whether there was any fingerprint, DNA or physical witness evidence or anything else, and if, after an examination of all of that, we had no grounds for arresting a person whatever—in other words, we arrived at the conclusion that it would almost, in such circumstances, have been unlawful to arrest a person—I personally would have had no objection to such a person being told that at that particular point in time there was no basis on which they would be arrested. I would have no difficulty with that. But I would draw a distinction between that and telling people, “Actually, we want you”—tipping them off, in other words.

¹ A link to “The Queen v John Anthony Downey, Judgment: Abuse of Process” can be found here: <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-downey-abuse-judgment.pdf>

Q430 Ian Paisley: Because that tips them off, yes. I understand that, and why you would not want to do that. You said it was chaired by Sir Alasdair. Was this a formal meeting that would have been chaired that you would have attended as Chief Constable?

Sir Ronnie Flanagan: No. We had a small unit within Crime Branch at police headquarters, and representatives of that small unit would have attended the meetings chaired by Sir Alasdair.

Q431 Ian Paisley: How frequently would these meetings have taken place? Would there have been a monthly, regular slotted meeting for the Crime Branch to attend? It was literally Special Branch, was it?

Sir Ronnie Flanagan: What I will undertake to do, if it is of any assistance, is to explore these things further and perhaps in writing give you some more detail. As I sit here today, I cannot tell you. I was not party to those meetings.

Q432 Ian Paisley: Okay. But there would have been a formal meeting, then, that would have taken place where these issues would have been discussed and at which someone from Crime Branch would have been represented.

Sir Ronnie Flanagan: Yes. Exactly how frequently those meetings were, I cannot—

Q433 Ian Paisley: I understand that, and we will look forward to receiving additional material when you can on that. During your very esteemed career as Chief Constable of the RUC and then the Police Service of Northern Ireland, you had the fortune—or misfortune—to serve under many Secretaries of State. Did any of those Secretaries of State ever raise with you directly the issue of on-the-runs?

Sir Ronnie Flanagan: No. You say “a number”. My first Secretary of State was now Lord Mayhew, and then after the election Mo Mowlam was the new Secretary of State, replaced by Peter Mandelson and, ultimately, John Reid.

Q434 Ian Paisley: Yes. Thinking in particular of Mo Mowlam, Mr Mandelson and Lord Reid, none of those Secretaries of State ever discussed with you at any time the issue of on-the-runs.

Sir Ronnie Flanagan: I would not want to say categorically not, because it was an issue. It was an issue in my time. Therefore, there could well have been informal discussions; there could well have been some interaction whereby I knew there was this group of people who were being considered, and we had that small team who were part of that process—

Q435 Ian Paisley: Let us try to be a wee bit more specific, then. One of the people who was of great interest and was agitating to get some sort of release, or relief, was Rita O’Hare, who you will of course be aware of. Did any Secretary of State ever raise with you the prospect of getting Rita O’Hare back into Ulster?

Sir Ronnie Flanagan: No, not with me.

Q436 Ian Paisley: It was never directly raised.

Sir Ronnie Flanagan: No.

Q437 Ian Paisley: What about other high-profile individuals who were on the run?

Sir Ronnie Flanagan: No. No, they would not have been—

Q438 Ian Paisley: Would the cases of any of the Maze escapees have been raised with you individually?

Sir Ronnie Flanagan: No. Never.

Q439 Ian Paisley: Mr Averill? No Secretary of State raised those individual cases with you—their needs or the fact that Sinn Féin was pursuing to have those people released.

Sir Ronnie Flanagan: The sort of people you have named are the sort of people in the category that we would definitely have wanted, so there would not have been, really, any point in a discussion. It would have been very obvious.

Q440 Ian Paisley: So Mr Averill was definitely wanted.

Sir Ronnie Flanagan: Sorry, I would need to check records on that. You mentioned the Maze escapees—

Q441 Ian Paisley: It is our understanding that he received a royal pardon.

Sir Ronnie Flanagan: I would not have had any connection or any discussion about royal pardons.

Ian Paisley: It would be interesting if he was definitely wanted and got a royal pardon. That would be dynamite.

Sir Ronnie Flanagan: You should not just take the answer—

Q442 Ian Paisley: Yes. I appreciate the caveat you put on, Sir Ronnie. I do appreciate that. I am not trying to put words into your mouth; I know you are far too capable for that. The issue that has agitated the public mind so much has been this issue of secrecy. As you know, this was exposed during the Downey case. Police officers have given us evidence that it was news to them that formal letters were being sent out by the Northern Ireland Office, signed off by politicians or by senior civil servants. It was news to them. This secret has been exposed. Were you at any time ever told that this was of such a confidential nature that no one could be told about this?

Sir Ronnie Flanagan: No, absolutely not. Just before I walked in, I was trying to remember when the Weston Park agreement was. I think it was public knowledge that it was an issue for the two Governments, but I cannot tell you—you could tell me easily from records—is exactly when the date of that was. It did not seem a very secret issue to me. The question of letters had nothing to do with—

Q443 Ian Paisley: So you were aware letters were sent by the Northern Ireland Office.

Sir Ronnie Flanagan: I was not, no.

Q444 Ian Paisley: You were not. That was news to you, then.

Sir Ronnie Flanagan: As I said earlier, I would have had no difficulty with a letter in a negative sense if we had no reason to arrest someone. If we had reason to arrest, even if it was just for interview, because there was some evidence not to a standard of proof that a court would accept or there was really good intelligence, I certainly would have been against any person in such circumstances getting any form of letter. But for a person in respect of whom we would have had effectively no power of arrest or no reason to arrest, I would not have had any difficulty.

Q445 Ian Paisley: You say this in the abstract: you “would have had no difficulty” with someone getting that. Were you aware that people were getting those letters whilst you were Chief Constable?

Sir Ronnie Flanagan: No, not personally.

Q446 Ian Paisley: So that was news to you.

Sir Ronnie Flanagan: I was not aware of the letters or of the content.

Q447 Ian Paisley: Right. And when the Downey judgment came out, was that the first time you had heard that these letters were being produced? It was quite an industry. There were over 100 of them.

Sir Ronnie Flanagan: No, I do not think the recent Downey case would have been the first time.

Ian Paisley: But there was quite an industry of letters being produced.

Chair: Sorry, I did not hear you. Was the Downey case the first time, or was it not?

Sir Ronnie Flanagan: It was not.

Q448 Ian Paisley: So that was not the first time that you had heard that letters had been issued.

Sir Ronnie Flanagan: No. I do not think it would have been a particular secret, to be quite honest.

Q449 Ian Paisley: But they were a secret. This is the very basis, Sir Ronnie, of how this has been exposed. During a very, very prominent court case, the public have learnt that this letter has been issued, and it has been issued now to over 100 people, and that this letter has effectively, in some people’s view, given them an opportunity to get away from justice. If you were aware that these letters were being issued in advance of that, you are the first police officer who has sat in front of this Committee and told us that you were aware of that. Other police officers who were more active said that they did not know that the NIO were issuing these letters. It was an industry. Mr McGinty, in his written evidence², has indicated that it took up a lot of time.

Sir Ronnie Flanagan: A letter indicating to someone that we had no basis at that particular time—that particular snapshot in history, if you like—I would not have had a difficulty with.

Q450 Ian Paisley: I know, but that is the abstract. You would not have done that in the abstract. But in reality, did you know letters were being issued?

Sir Ronnie Flanagan: You used an expression of a letter that—I think you said—in the public mind allowed people to evade or escape justice. I would have been utterly against any such letter.

Q451 Ian Paisley: Yes, but again, that is in the abstract. Were you aware that letters were being issued?

Sir Ronnie Flanagan: I had an awareness—

Ian Paisley: It is a “yes” or “no” question, Sir Ronnie.

Sir Ronnie Flanagan: I am answering it in that way. I had an awareness that letters of the type that I am describing would certainly have been contemplated, and I would not have had a difficulty with that.

Q452 Chair: You were aware of those letters being sent. Did you know to whom they were being sent?

Sir Ronnie Flanagan: No. I described a process in which I would have had complete confidence. I was not personally involved in it, and that is not to resile from it as a process, but something being chaired by someone of unimpeachable integrity, such as Sir Alasdair Fraser—

Q453 Chair: Sir Ronnie, we are not questioning that. I am still not clear. You were aware of letters being sent by the NIO to people, telling them that they were not wanted. You were aware of those letters.

Sir Ronnie Flanagan: No, I would have been aware that there would have been consideration of that as a process—the possibility. What I have described would not have provided any difficulty to me, and that is exactly what my feelings would have been and are now.

Q454 Chair: We are trying to get to whether you were aware of it, not whether you approved of it. Were you aware of it?

Sir Ronnie Flanagan: I was not aware of them actually going out. I was aware of it being considered. But it was very clear that the only type of letter that I would not have objected to was the type of letter—

² Kevin McGinty’s written evidence to the Northern Ireland Affairs Committee (April 2014) can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/written/8744.html>

Q455 Ian Paisley: I am sorry to labour this, but this goes right to the heart of it, Sir Ronnie, and your answers have been incredibly helpful and given us some insight into this. Would you have thought it unusual that those letters were signed off by civil servants as opposed to the Director? Would your expectation have been in that process, because of the high integrity of someone like Sir Alasdair and the Director of Public Prosecutions, that this would have been a quasi-judicial matter and it would have been signed off by someone of that standing rather than a civil servant acting on behalf of a Secretary of State or a Prime Minister—or, indeed, a special adviser to the Prime Minister?

Sir Ronnie Flanagan: No, I would think that it would have been more unusual if the Director had signed such letters. I think that would be unusual.

Q456 Ian Paisley: Really? You think if someone got a letter signed by Jonathan Powell, that was not unusual.

Sir Ronnie Flanagan: That was not unusual. This whole thing was part of a political process that we are describing, so for it to have ended in something signed by the Director would have been highly unusual.

Q457 Kate Hoey: It is very nice to see you, Sir Ronnie. You mentioned to my colleague that this unit and the way you were working was operational; it was not political. You have now just said that there was a political process. The average person just wants to know why this group, apart from the political reasons that we know, were being treated specially. You talked about “unusual” and “part of the process”, but you did not just wake up one morning and say, “We had better start doing this”; somebody told you that, “This is an area that you have got to get a little unit for and you have got to start working on”. Who did that come from? Somebody must have said to the DPP, “Chair this meeting”.

Sir Ronnie Flanagan: Yes, absolutely.

Kate Hoey: So, just try to tell us, in a very simple way, what actually happened. All the political people seem to be saying, “Really, it is all to do with the police”. Indeed, in Mr McGinty’s thing, he talks about it being purely a PSNI issue.

Sir Ronnie Flanagan: This all has to be said in—

Kate Hoey: Put it simply, because you are quite good at putting things simply. That is a compliment, Sir Ronnie.

Sir Ronnie Flanagan: It all has to be said in the context of the ongoing political negotiation between Governments and between political parties: is there going to be a settlement that the various political parties can agree upon? Within that, policing proved to be one of the issues that was a stumbling block in terms of the signing of the Good Friday Agreement.

Q458 Kate Hoey: But you said earlier it was operational.

Sir Ronnie Flanagan: I am saying you have to set this all in the context. You are asking me how it originated. I am saying all these negotiations were going on, so Sinn Fein must have been saying, “Here are a group of people—”

Q459 Kate Hoey: Who told you, then? Who told the police? All these negotiations were going on, very understandably, yes, talking about this. Presumably Gerry Adams said to Jonathan Powell or to the Prime Minister, “We are not talking any more, negotiating, or doing anything unless we get on-the-runs sorted out”; somebody then said to you, “Look, we have got to sort this on-the-runs stuff out. Can you look at all these people?”

Sir Ronnie Flanagan: That would have been the starting point. In the context of what I have described, I am assuming the starting point would have been a list of names, sent—

Q460 Kate Hoey: By whom to you?

Sir Ronnie Flanagan: It would have come, I guess, from the Secretary of State, not to us originally but probably to the Director of Public Prosecutions.

Q461 Jack Lopresti: You told me it was purely an operational process. Now you are saying it was handed down; there were—

Sir Ronnie Flanagan: It is an operational process. If you are being asked to consider—

Q462 Kate Hoey: Yes, but who asked you? That is the point. I just want to know who asked you.

Sir Ronnie Flanagan: It had to start with the Secretary of State.

Q463 Kate Hoey: So it did come from the Secretary of State.

Sir Ronnie Flanagan: It had to.

Q464 Kate Hoey: Which Secretary of State specifically at that time? Remind us.

Sir Ronnie Flanagan: I do not know. It certainly would not have been Sir Patrick Mayhew, so I am guessing it started with Mo Mowlam immediately after the Good Friday Agreement—or soon after it.

Q465 Kate Hoey: Right. It is very clear, then, that this was absolutely about trying to get Republicans to sign up to an agreement that would stop violence.

Sir Ronnie Flanagan: That is a fair assessment.

Q466 Kate Hoey: And you, as the head of the police service at the time, did not feel that there was anything wrong, in the sense of people not going to be able to be brought to justice.

Sir Ronnie Flanagan: I would not have tolerated people being able to evade justice. People got the benefit of early release, as I have described, and I have described my personal reaction to that. That was brought about by legislation. I would not have any difficulty with someone being told, “At this given point in time, the police have no grounds to arrest you”. I have no difficulty with that.

Q467 Kate Hoey: Was there ever anything put in writing to the RUC/PSNI from anyone in the Northern Ireland Office, or from the Secretary of State? Is there any minute of this telling anybody that, "This is what you must do"?

Sir Ronnie Flanagan: I do not think so. There is bound to be correspondence that includes a list of names for consideration.

Q468 Kate Hoey: Given by Gerry Kelly.

Sir Ronnie Flanagan: I have no idea.

Chair: There probably is going to be a vote in a minute, if I can just say that to the Committee. Sylvia.

Q469 Lady Hermon: That is a very good introduction; thank you, Chairman. I will brief, but I will come back after the vote. Thank you very much indeed, Sir Ronnie, and thank you to Mr McGinty for allowing Sir Ronnie to go earlier. Sir Ronnie, it may be helpful if I just give you the timetable. The Weston Park talks were in July 2001. Have you had the benefit of reading a copy of the Downey judgment, since that is what has exposed—

Sir Ronnie Flanagan: No, I have not.

Q470 Lady Hermon: Far be it from me to recommend that you read the judgment, but it was fairly shocking. It was very, very shocking to the vast majority of right-thinking people because of the nature of the organisations that were involved in issuing administrative letters to on-the-runs. As you know, my late husband believed in the operational independence of the police, as you certainly did as Chief Constable of firstly the RUC and then the Police Service of Northern Ireland. We believed in the independence of the Attorney General's Office—we will come to Mr McGinty afterwards—and of the DPP's Office. It is with some shock and intense irritation that the Downey judgment has revealed that there was, for a long period of time, a process where representatives of all of these esteemed organisations sat down together and decided to issue comfort letters, or administrative letters, to well over 100 people—close to 200 people now, we understand. We would like to understand from you, Sir Ronnie, how it was that the RUC, then the Police Service of Northern Ireland, allowed themselves to become involved in what was a politically inspired operation to benefit on-the-runs—friends of Mr Gerry Adams. How did your organisation, which you were very proud to lead, become involved in this operation?

Sir Ronnie Flanagan: By trying to answer questions that we were being asked.

Q471 Lady Hermon: What legal authority does the PSNI or the RUC have to give the benefit to anyone who rings up—you said that you have no difficulty with this—and says, "Have I been caught"—and I am not using myself in the example—"going through a red light in a particular area?" Are they entitled as of right just to phone up and ask the PSNI whether they have any evidence on them? That is what you are telling us here this afternoon.

Sir Ronnie Flanagan: No, what I am telling you this afternoon—and I repeat—is I have no difficulty with that, if a question is being asked of me. The questions were being asked of my organisation by the Director of Public Prosecutions.

Q472 Lady Hermon: Could I just ask you what we asked your successor, Sir Hugh Orde? In fact, he volunteered that he placed reliance upon Article 3 of the European Convention on Human Rights³, which was rather a surprise to some of us. If I am fair to Sir Hugh, he was not sure why he was quoting Article 3. You had a very good legal team within the RUC and then the PSNI. Have you any recollection of the legal advice that I am absolutely sure had to be taken before the RUC/PSNI became involved in this? Can you recall the legal advice?

Sir Ronnie Flanagan: I do not recall specific legal advice. I am saying it was a much simpler process. We were being asked, “Here is a list of people. Where do they stand in terms of legal process?”

Lady Hermon: I have real difficulty with that, Sir Ronnie, because we have got a thing called DNA testing. We have now got the Historical Enquiries Team. The Historical Enquiries Team, thank goodness, are now going to prosecute some of these people who may have received these letters in the past.

Sitting suspended for a Division in the House.

On resuming—

Q473 Lady Hermon: Sorry for that short break, Sir Ronnie. Perhaps you were relieved to have that short break. We are really just trying to establish the facts here of this whole issue, the Downey case, particularly for the victims in Northern Ireland who are so grievously affected by this and want to know the truth. They want an explanation of how this came about. You will have known, during the course of your long and distinguished service in Northern Ireland, Norman Baxter.

Sir Ronnie Flanagan: Yes.

Lady Hermon: He will have served in the Royal Ulster Constabulary in your time as Chief Constable and then he moved through, as many did, into the Police Service of Northern Ireland. Could I suggest that you would agree with me—and I am suggesting that you would agree with me—that Norman Baxter is a man of the highest integrity?

Sir Ronnie Flanagan: I have great respect for Norman Baxter—always did, and always have.

Q474 Lady Hermon: Yes. He is a man of integrity and honesty.

Sir Ronnie Flanagan: Yes.

Q475 Lady Hermon: He has submitted an additional letter to the Committee following our last session of evidence and refers to something that, because none of us were previously serving police officers, I think you could help us with. That is a reference to an “assessment file”. As a police officer, what is an assessment file?

Sir Ronnie Flanagan: I am not sure what he is ascribing that title to. Does he go on to elaborate on “assessment file”?

³ A link to the *European Convention on Human Rights* can be found here:
http://www.echr.coe.int/documents/convention_eng.pdf

Q476 Lady Hermon: In the court documents, it is referred to as an “assessment review” of a particular OTR, namely Mr Downey. It would seem that each of the individuals whom you said, if the RUC and then the PSNI were not looking for them, you would be quite happy that they were issued with a letter—

Sir Ronnie Flanagan: I want to make it clear I was never shown a draft of a letter and told, “This is the format” or “This is the wording. Are you happy with it?” None of that took place. Norman is probably describing a system that had become much more formalised.

Q477 Lady Hermon: Surely, as Chief Constable, you would have been aware of such a formalised system. This was such a sensitive political issue.

Sir Ronnie Flanagan: You are talking about an assessment review. None of that existed in my time. What I am saying is it must have become more formalised thereafter. Certainly I am not aware of it.

Q478 Lady Hermon: So the term “assessment file” has no relevance.

Sir Ronnie Flanagan: It does not mean anything to me in this context, no.

Q479 Lady Hermon: Perhaps, Chairman, when Mr Baxter comes back to see us, if we as a Committee would like to see Mr Baxter again, Mr Baxter will enlighten us about the “assessment file”. Perhaps it was not in your time. I am sure Mr Baxter would be quite happy to come back to speak to the Committee.

Moving on to quote from the Downey judgment⁴—I must say I am surprised, given the nature of the inquiry that this Committee is holding, there was not an opportunity to read the judgment, but I know you are busy—it is described that there was a meeting with the Secretary of State for Northern Ireland, who, I think I am correct in saying, in May 2001 would have been John Reid, but I stand to be corrected, where Mr Gerry Adams “expressed the view that, in terms of Republican confidence, it would be better if there was an invisible process for dealing with OTRs”. He asked for an invisible process, and that is exactly what Mr Adams did receive. However, in your evidence to my colleagues here, though we are not quite sure what precisely you have indicated—and again, I would join with you in commending, though regretting the passing of, Sir Alasdair Fraser, a wonderful DPP—you have referred on a number of occasions to the fact that Sir Alasdair chaired a meeting. You have praised his integrity, with which I wholeheartedly agree. Representatives of your organisation sat at those meetings chaired by the DPP, involving also the Attorney General’s Office and, we understand, representatives of the Northern Ireland Office. Can I ask you, Sir Ronnie: did you know the end product of those meetings?

Sir Ronnie Flanagan: No, I did not.

Q480 Lady Hermon: So, as Chief Constable, you were quite happy—you said that you never attended any of those meetings—for other members of the police service to attend those meetings

⁴ A link to “The Queen v John Anthony Downey, Judgment: Abuse of Process” can be found here: <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-downey-abuse-judgment.pdf>

to deal with the highly controversial, sensitive issue of OTRs, but you never asked for a read-out of those meetings.

Sir Ronnie Flanagan: No. I had no need to ask for a read-out of those meetings. People who were representing the RUC GC and, later, the PSNI would have been there to answer questions about a given list of named people.

Q481 Lady Hermon: Yes, and in Mr McGinty's submission to the Committee, we understand that Mr McGinty has described that all of those organisations sitting at that meeting—the Attorney General's Office, the DPP's Office, the PSNI, representatives of the Northern Ireland Office and, indeed, at one meeting, someone from the Home Office—knew what was expected of them. Surely to goodness, Sir Ronnie, everybody collectively at those meetings knew what the end product was. The police were asked to do one bit and then there was a process; then that was passed to the DPP; then it was passed to the Attorney General's Office; and then it went to the Northern Ireland Office, we understand. There was an agreed procedure for these administrative letters. Are you telling this Committee that at no stage did any one of those individuals come back to you, as representatives of the police service, and say, "This is what is happening"? Did they all sit together and not know what the end product was?

Sir Ronnie Flanagan: They would have had no reason. They were there to answer questions. They were there to look at named individuals and assist as to whether we had any interest in those named individuals. I would have had 100% certainty, 100% confidence, that as a result of any such process no one would have been given the opportunity to evade justice.

Q482 Lady Hermon: We do know, of course, that was not correct, because Mr Downey did manage to evade justice. Could you just say, in your experience, Sir Ronnie, given the revelations about OTRs—the numbers, and the facts that Mr Downey has walked free from the Old Bailey and that there will be many, many victims who will never see justice—where you think the rule of law stands? How do you think this impacts on confidence in the police, the Attorney General's Office and the DPP's Office?

Sir Ronnie Flanagan: I have indicated that, if you are talking about a particular judgment—and I am sorry; I have not read the judgment, so I cannot comment on it, but in terms of anything I would have agreed to and in terms of anything I would have been happy with, no one would have been given any opportunity to evade justice.

Q483 Lady Hermon: How are you so certain of that?

Sir Ronnie Flanagan: Because in the process, we would have been talking, in my time, only about those people that I have described we would not have had any grounds to arrest. In terms of people we wanted to arrest, even though just for interview, where we might have required admissions because we did not have sufficient evidence, I would not have been happy for any such person to be given any contrary indication.

Q484 Lady Hermon: I assume you have read the media reports about the Downey judgment and the public outcry and criticism of the administrative scheme that was operated secretly, invisibly, behind people's backs for a long period of time. I am repeating my question: how do you think that impacts on the rule of law and people's respect for the law?

Sir Ronnie Flanagan: In terms of the rule of law and in terms of the police role within that rule of law, I am certain that the police would not do anything improper, either in my time, before my time or after my time. Mistakes can always be made. My reading of the letter that went to Downey, in terms of what my knowledge is, is that a serious mistake was made.

Q485 Lady Hermon: So you have knowledge of the letter that was sent to Mr Downey.

Sir Ronnie Flanagan: I have knowledge of newspaper articles or reports about the letter; that is all. Phrases were in the media such as “a grave mistake” or something like that.

Q486 Lady Hermon: Did the “grave mistake” and the apology made by the current Chief Constable, Matt Baggott, not ring alarm bells in your head? If your organisation, the PSNI, were being blamed for a catastrophic mistake in the Downey case, did that not prompt you to read the judgment?

Sir Ronnie Flanagan: No. I have not read the judgment.

Q487 Chair: Can I just clarify another point? It does not relate to your time as Chief Constable; it is a general point. If somebody has committed a crime in the United Kingdom, are they not wanted in the United Kingdom, regardless of which police force is involved?

Sir Ronnie Flanagan: Yes. We have examples. I remember we arrested an individual in our jurisdiction who was wanted for a serious bombing here, and I had discussions with the London Metropolitan Police as to which case should be heard first, and we came to a decision that the person would be brought and would stand trial here in London for a serious bombing offence in London. What I am saying is that the process in my time—and this is no reflection on any process thereafter—was a robust process: to check the Police National Computer as to whether persons were wanted by any other force in the United Kingdom; to check with the Garda Síochána whether any person would have been wanted by the Garda Síochána; and to check through Interpol whether any person would have been wanted in any other jurisdiction beyond the United Kingdom. I do not see the United Kingdom as separate entities, except, if you like, in terms of legal administration. You used the expression “Crown Prosecution Service”. That was never a title ascribed to part of the criminal justice system in Northern Ireland. There are those small differences, but if a person is wanted in the United Kingdom, I agree completely with you, Chairman: of course they are wanted throughout the United Kingdom.

Q488 Nigel Mills: I suppose the concern I have got on this is it looks like there was a political process here to sort out the anomaly of the on-the-runs, and that the police took some kind of role in this, but you are one of several witnesses to say, “What we were doing was just effectively ordinary policing. We were just confirming that there was not enough evidence to prosecute.” Is that how you saw what you were doing?

Sir Ronnie Flanagan: Yes. That is a fair description.

Q489 Nigel Mills: What worries me—and I accept it is a couple of years after your time came to an end—is that it felt there was a need to start the historical enquiries process, to go back and look through the 3,000-plus murders and try to work out if there was enough evidence to work out who

had done it and bring a prosecution forward. How could you get comfortable in this presumably relatively short process that you could check the files competently enough to know whether there was enough evidence with the police at that time? Had you effectively already done the whole of the work that the HET have done subsequently, or was what you were doing a much more superficial process?

Sir Ronnie Flanagan: The HET examines incidents, atrocities and crimes. What you are talking about is considering individuals. It was a robust process. If we came to a conclusion there was nothing and there was no basis for arresting an individual at a given point in time, as I have said before in a few of my earlier answers, I would not have had a personal difficulty with a person being so informed.

Q490 Nigel Mills: But that was not standard police policy. You did not generally, where you had suspected somebody at one stage and then decided you did not suspect them at that moment, write out to people and say, "We do not suspect you anymore".

Sir Ronnie Flanagan: Going back to an earlier answer in which I set the situation in the overall context, I do not think what you can describe as a "completely normal" situation necessarily applied. People being given early release after two years for crimes that the courts had decided they should maybe spend their life, or 20 years, in prison for, is not normal—

Q491 Nigel Mills: That was after a referendum and legislation; this was not. Just to go a bit further down that line, was it your understanding that if, a few months after this letter had been issued, someone had looked through the files and thought, "Actually, that guy we wrote to—we have just found something that does give us enough evidence for this crime", at that point you could have then gone and re-wanted them and re-sought their arrest?

Sir Ronnie Flanagan: Absolutely.

Q492 Nigel Mills: So, if you already had the evidence and you just had not put two and two together or you just had not pieced it together, you did not think these letters were carte-blanche clearance.

Sir Ronnie Flanagan: I need to repeat that I never saw a draft of a letter. No letter was ever presented to me: "Are you happy?"

Q493 Nigel Mills: But the process you thought you were engaged in was—

Sir Ronnie Flanagan: I certainly would not have been engaged in a process that would have allowed anyone to escape justice or to evade justice.

Q494 Nigel Mills: And you were not ever a little concerned about what the wording was, or what was happening once you had done your check and said, "We have not got enough to prosecute this person at this time". You did not ever think to ask who was doing what with—

Sir Ronnie Flanagan: It would have been a wording that related to that given point in time. That would not have closed any door as to whether new scientific processes allowed re-examination

of evidence or whether new evidence came to light. In any of those circumstances, no one should be free or have any idea that they are free from—

Q495 Nigel Mills: I can understand the point that if new forensic evidence becomes available, or some new evidence, or a new witness, that changed it. I am, I suppose, a little concerned about this: if it was just a better examination of evidence you already had but had not quite joined the dots of, does that count as new evidence, or does it have to be something you did not have?

Sir Ronnie Flanagan: It would be simply the case that if a new position was reached where someone was wanted for arrest, for interview or for prosecution, then no letter should ever be a bar to that process.

Q496 Jack Lopresti: Did it ever happen?

Sir Ronnie Flanagan: No, I had no knowledge of it ever happening.

Q497 Nigel Mills: The actual letter that got sent⁵—I accept you did not see them at the time—says, “If any other outstanding offence or offences come to light”. It suggests that you have to link somebody to an offence that was not one you had just said you had not got enough to prosecute on. It just feels a bit different to what you are saying you thought the process was.

Sir Ronnie Flanagan: In relation to an earlier answer, I think you are talking about a different process some years later that perhaps became more formalised. Certainly going back to 1999, 2000 and 2001, we were never there to arrive at a position where we contributed to the wording of a letter; we were there to answer questions as to what the legal position was in respect of a named individual.

Q498 Nigel Mills: So your feeling is that the analysis you did that eventually led to an assurance being given was only meaningful at that particular point in time, and you were perfectly entitled, as a police force, to change your mind the next day and say, “Actually, now we do think we have got enough and we can now prosecute”.

Sir Ronnie Flanagan: Yes. If something new came to light, or if something that had been missed was then discovered, we should never be in a position to be barred from following that through.

Q499 Lady Hermon: Were those files kept open and further investigations made in later years into those people who had been given the “all clear”, so to speak?

Sir Ronnie Flanagan: Yes. Not talking about specific files, but the whole question of a review of old cases became a regular process some years ago in policing, and then, within Northern Ireland, as you said, they created after my time the Historical Enquiries Team. In that sense, cases are never closed. In that sense, they are reviewed from time to time.

⁵ A link to the letter from the Northern Ireland office to Mr John Downey of July 2007 is provided here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Cover-letter-from-NIO-to-Gerry-Kelly-and-John-Downey-OTR-Letter-July-2007.pdf>

Q500 Lady Hermon: So, the answer is they were kept open. Even when someone was given the all clear at one point in time, those files remained active files.

Sir Ronnie Flanagan: That should not have been a case of closing any file; it would be rather more an indication that there is not a file to open in the first place. But if there were circumstances that arose whereby the police should want a person for investigation, no letter should ever be a barrier or something that would prevent that.

Q501 Nigel Mills: When you are making your judgment on whether there is enough evidence to seek a prosecution, is that purely a weight and quality of evidence test? You would not have brought in the public interest test at that point.

Sir Ronnie Flanagan: No, it is not for the police to consider the public interest case at all. That would be a matter for the prosecuting authorities.

Q502 Nigel Mills: And you were not applying a higher bar in assessing whether something was worth prosecuting in this situation than you would normally; it was just a completely level playing field.

Sir Ronnie Flanagan: No. The police would not be under any political influence, if that is behind your question.

Q503 Nigel Mills: So, no one was saying, "If in doubt, err on the side of do not".

Sir Ronnie Flanagan: Absolutely not. I would not tolerate it for a second if anyone attempted to say it.

Q504 Nigel Mills: But is that your feeling as to what this process was aiming at in general? "Look, we need to find a way of not prosecuting these people. If in doubt—nudge, nudge—let's just not."

Sir Ronnie Flanagan: No, not at all. I described some categories of these people who must have been on the run because of what they knew they had been up to; it did not necessarily mean we knew that or had evidence to believe it or intelligence to suspect it.

Q505 Mr Benton: Sir Ronnie, you have covered most of my concerns and questions in answer to other members of the Committee, but there is one thing still somewhat puzzling me. In answer to an earlier question, you said you were not aware of the actual wording of the letters that went out. I accept that you were not aware, but given your earlier illustration of what police responsibilities are in this sort of thing—I know that you are a dedicated policeman, and I accept and agree with your interpretation, by the way—did you feel in any sense affronted, in terms of your very auspicious record, if I might say so, by not having the contents of letters disclosed to you, irrespective of how they would be interpreted in the public mind, given the fact that, in one sense, it could be interpreted that political decisions and others were being made without consultation with the police? If I was in your position, I would have felt terribly offended and absolutely affronted that at least nobody had consulted me. If indeed you did react that way, did you not feel it necessary to challenge the content of those letters or to ask for the contents of the letters and what they were saying in terms of the police role? I think it is a very valid point. This issue is so confused with political decisions and other people acting in total ignorance of what was going on in the

background. It is a very confusing state of affairs and, if I may say—not in a personal sense—very murky. I just wonder if you could clarify your reaction and how you personally felt, because I would have thought that there was a need, really, for it to be challenged.

Sir Ronnie Flanagan: I had no grounds whatsoever for feeling affronted. I had no grounds whatsoever, as Chief Constable, for feeling that I was in any way obstructed, because, very simply, if something came to light in terms of evidence whereby we wanted to arrest someone, I would have made sure that person was arrested. There would have been no constraint, no obstruction and no barrier that I would have tolerated being put in our way. That being the case, I would have no grounds for feeling affronted whatsoever.

Q506 Mr Benton: Is not the nature of such letters going out in a way minimising the effectiveness of your personal interpretation to this Committee this afternoon of the efficacy of the police?

Sir Ronnie Flanagan: Not at all.

Q507 Mr Benton: You do not see any conflict there.

Sir Ronnie Flanagan: No.

Q508 Lady Hermon: Sir Ronnie, correct me if I am wrong, but you have repeated on a number of occasions the fact that you were comfortable and you were not affronted by the fact that the PSNI—previously the RUC—were involved in this process. Correct?

Sir Ronnie Flanagan: No, I would not have felt affronted in any sense. We were being asked questions about individuals and we were there to answer questions to the proper authorities, in a process chaired by the Director of Public Prosecutions. There are no grounds there for feeling affronted.

Q509 Lady Hermon: If you are not feeling affronted and you feel comfortable with all of that process, would you—

Sir Ronnie Flanagan: Sorry, I said I would have had no difficulty with a letter going to a person in respect of whom we had no grounds and no lawful reason to arrest, indicating to that person that, at that point in time, there were no such grounds. I would have no difficulty with that.

Q510 Lady Hermon: Yes. Could I just, then, take you one step further? That being the case, that you are so comfortable with that sort of a letter going out to a person—

Sir Ronnie Flanagan: I did not say “so comfortable”. Saying you have no difficulty does not mean that you are “so comfortable”.

Lady Hermon: Right. I apologise, Sir Ronnie; I did not mean to offend you. It was not meant to be offensive.

Sir Ronnie Flanagan: Throughout my career, I visited far too many bereaved homes; I visited far too many homes where people had been very seriously injured, and people who matter very, very much to me are victims.

Lady Hermon: I agree. I apologise if my tone was an unfortunate tone to use, Sir Ronnie.

Sir Ronnie Flanagan: Sorry. Victims mean everything to me; I just want that to be clear.

Q511 Lady Hermon: From my perspective, I have to say I feel very disappointed that the Downey judgment was not read, because there was huge criticism of the force that you led with such distinction for a long period of time.

Sir Ronnie Flanagan: It was not criticism of the force that I led.

Q512 Lady Hermon: Well, a catastrophic error was laid at the door of the PSNI. It was a force that you led with distinction, and I would have thought the least you might have done was read it. I apologise if my tone leaves something to be desired.

Sir Ronnie Flanagan: It is not easy in my particular circumstances—geographically where I am and all the rest of it—although of course I could get it, but because I have not read the judgment does not mean I have not spoken to people and asked what went wrong and what happened. The reputation of the PSNI today to me is very important.

Q513 Lady Hermon: I am very pleased that you have been able to put that on the record. I am glad we have had this exchange. If I could just come to the question—I will allow you to use your words and I will not use the word that you have taken exception to—from your position, do you have any difficulty, therefore, with the public knowing the names of the individuals who have been issued with these letters? From your perspective, we appear to have nothing to worry about. The Northern Ireland coroner, I understand, has asked specifically for a check to be made of whether the name of one of the individuals who have been issued with the police letters can be disclosed. That is an issue between the Northern Ireland coroner and the Secretary of State for Northern Ireland; I am not asking you to tread in that water. What I am asking you is: from your perspective, Sir Ronnie, is there anything to be hidden? If you are not uneasy with this process, why can we not hear and know who all those letters went to?

Sir Ronnie Flanagan: Great care would need to be taken not just to agree to do that in a blanket sense. Go back to the people that I described who may have thought, from their own guilty knowledge or from others telling them, “The police are after you. The police were at your house. The police were this and that,” that they were wanted, when in fact we had no grounds whatsoever for wanting them. If a letter had been received to that effect—I am being hypothetical—for that person to be in the public domain now, there may be some danger brought about in respect of such a person. It would need to be considered on a case-by-case basis rather than just a public list of everyone who had received these letters.

Q514 Lady Hermon: Can you understand why a large number of victims in Northern Ireland—victims of IRA atrocities, bombings and shootings—want to know whether any of those OTRs who received a comfort letter, or administrative letter, was involved in the particular killing of their individual? Would you support a call by those victims for the names to be confirmed to them, or not?

Sir Ronnie Flanagan: Care would need to be taken on a case-by-case basis. The victims mean a great deal to me. Great care also needs to be taken that such victims are not given the

impression that an amnesty was being given to people who had attacked their nearest and dearest and, in many cases, killed their nearest and dearest. In my book, there should never be any question of amnesty. I have always felt that, and feel that very deeply now. These letters are something I see in an absolutely different category and an absolutely different light.

Q515 Lady Hermon: What is that absolutely different category? What do you regard as the legal status of these letters?

Sir Ronnie Flanagan: These letters should not in any sense—and I have said it again and again today—be a barrier to the investigation of crimes or to the arrest of people or the prosecution of people.

Q516 Kate Hoey: Was the judge wrong, then, in your view?

Sir Ronnie Flanagan: I am not evading your question—

Kate Hoey: He ruled that the letter did mean something.

Sir Ronnie Flanagan: I am saying the letter, certainly in my view, should not prevent future prosecution. I have not read that judgment; I do not know the detail of it, and therefore it would be utterly wrong of me to sit here today and pass comment on the judge's conclusion.

Q517 Kate Hoey: How did you feel when you read—as I am sure you did read—that the Secretary of State in her statement blamed the police for this, as she put it, “grave mistake”?

Sir Ronnie Flanagan: I would always feel that personally, on behalf of the organisation. Look, if a mistake is made, mistakes can be made honestly.

Q518 Kate Hoey: Do you think it was a mistake?

Sir Ronnie Flanagan: There must have been a mistake if this person was given an indication that they were not wanted in other parts of the United Kingdom.

Q519 Kate Hoey: Do you think there might be a lot more of the 200-odd where the mistake has been made?

Sir Ronnie Flanagan: I certainly hope not.

Q520 Chair: We will have to move on to the next witness. Can I finish with this question? Part of the judge's report does refer to “a dedicated team in the PSNI”. That was in 2002. Presumably you were aware of that team. I am reading from it: “In short, the names provided by Sinn Féin to the NIO were forwarded to the Attorney General, who forwarded them to the DPP(NI), who then passed on the names to a dedicated team in the PSNI”. That is what the judge said.

Sir Ronnie Flanagan: Without knowing the exact date, I have described a very small team within Crime Branch in police headquarters.

Chair: It says, “In March 2002 internal proposals were put forward within the NIO to speed up the administrative scheme”.

Q521 Oliver Colvile: Mr Chairman, the other thing as well is you have already indicated that you had people who were looking through these names and identifying whether or not there was a case for prosecution. Did they at any stage come to talk to you about these names? Did anybody, at any stage, look at it and say, “Gosh, all these people seem to be coming from one particular side of the equation”?

Sir Ronnie Flanagan: No. No lists were ever shown to me. If they are talking about “a dedicated team”, at that given time it would be this small team within Crime Branch in police headquarters.

Chair: Thank you. We will have to finish this session. It has been very useful to us, Sir Ronnie. Thank you very much indeed for coming.

Sir Ronnie Flanagan: Chairman, members, thank you very much indeed.

Examination of Witness

Witness: Kevin McGinty CBE, Director of Criminal Law and Deputy Head, Attorney General’s Office, gave evidence⁶.

Q522 Chair: We will move straight on. I do apologise for the delay, Mr McGinty. Thank you very much for joining us. Perhaps I can ask you to introduce the subject as far as you can see it. The submission you gave us was very, very useful. You seem to take the issue back to early 1998 and “Ms X”, as you refer to the person, as being the start of what became an administrative scheme. Is that correct?

Kevin McGinty: I think so.

Chair: Perhaps you could talk us through that.

Kevin McGinty: I only went back to the Attorney General’s Office in December 1997, so this process had started and I was not involved at the very start. My understanding was that at about that time it was a very difficult stage in the negotiations; Sinn Féin were being very difficult; and the then Secretary of State, Mo Mowlam, came to the then Attorney General, John Morris, and said, “Look, there is this person who now works for Sinn Féin. She is playing a very important role within the peace process; she is a great supporter of the peace process. Would you say that in respect of those charges for which she is currently wanted the public interest is still in favour of her prosecution?” As I tried to explain in the note, in order to be prosecuted you need to meet both stages of the test.

Ian Paisley: Mr Chairman, could I just say for clarity: we are speaking about Rita O’Hare here. Is that not correct? Let us be absolutely clear: we are speaking about Rita O’Hare.

⁶ Kevin McGinty’s written evidence to the Northern Ireland Affairs Committee (April 2014) can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/written/8744.html>

Chair: I am not sure if it is relevant to my question. We perhaps can get on to that, but if we could just follow the process.

Ian Paisley: It is relevant for us, Mr Chairman. If this is the genesis of the process, let us know exactly whom we are talking about. There are three individuals whom we are talking about, and Rita O'Hare appears to be the one. It is clear you are talking about Rita O'Hare.

Q523 Chair: Alright. The note says, from memory, she faced charges of attempted murder and causing grievous bodily harm with intent, so we are talking about very serious charges.

Kevin McGinty: Very serious charges. She absconded while she was in hospital—she had been injured herself. She went to the south. We sought her extradition from Dublin. She used the political defence, whereby she had to explain what it was that she had done, but the extradition was unsuccessful. As I say, when Mo Mowlam came to the Attorney, she asked whether he thought, in light of the events that had happened since then and her role in the peace process, the public interest would still favour her prosecution. That Attorney did not have to decide that issue at that time, because things moved on and it did not seem to be as key an issue as it was when she first came to the Attorney, but it arose again the next year and, again, she went to the then Attorney General, Lord Williams, to ask the same question. He took the view, and discussed it with the then Director of Public Prosecutions, Alasdair Fraser—as he then was—and the Director said, “Look, before we give any consideration at all to the public interest, I want to be sure that the first part of the test is met: that the evidential stage of the test is met.” That was in relation to her and one or two others—I cannot remember off-hand, and I genuinely cannot remember their names. The Attorney agreed that the Director should do that and started that process. He also carried out a Shawcross exercise whereby he asked fellow Ministers whether there were any factors relevant to his and the Director’s assessment of the public interest that they might not otherwise be aware of that they should take into account. That is, essentially, “You tell me what role she is playing in the peace process and how important it is” in this particular case.

In respect of the work that the Director then did with the RUC in checking the evidence, they came to the conclusion, in relation to two of those individuals, that the evidential test was no longer met and, in fact, if they returned to Northern Ireland, they would not have been arrested and they would not have been prosecuted. This is compressing the process a lot, because, as far as consideration of the public interest was concerned, it took a long time, but eventually Lord Williams and the Director considered that the public interest was still in favour of prosecuting that one individual. They could not say that the benefit to the peace process was sufficiently clear to be able to allow them to reach that decision. It seems to me that that was probably the best bet as far as Sinn Féin was concerned in putting forward an individual whereby the public interest may not be in favour of prosecution, and if it was unsuccessful for her it was probably unlikely to be successful for anyone else. Therefore, I think at that stage Government realised that the answer to what they described as the “anomaly” of on-the-runs was not going to be sorted out by the prosecution applying the public interest to come to conclusions that, because of the peace process, they no longer needed prosecuting, so they were left in the position whereby they had to consider the evidential stage in relation to each individual. I may have got the timing slightly wrong, and it differs slightly in the judgment that Nigel Sweeney gave, but it was at about that time that we then got the first tranche of names for on-the-runs. It was about 35, possibly 36, and I have to say it was not something that anybody welcomed.

Q524 Chair: You go on to say, “In the first of my statements for the Downey abuse hearing I explained that the prosecuting authorities ‘accepted the OTR administrative scheme with some reluctance’”. They were leant on, basically.

Kevin McGinty: Let us make this clear. The prosecutors act independently of Government. The police act independently of Government. That does not mean that Government does not have a proper interest in what prosecutors and the police do. At the end of the day, it is the Government that is responsible to the people for the maintenance of law and order. It is the Government that gets voted out, not the prosecutors and not the police. Therefore, the Government has a proper interest in what the police or prosecutors may be doing. What they cannot do is say to the police, “You should arrest this person” or “You should not arrest this person”. They cannot say to the prosecutor, “You should prosecute” or “You should not prosecute this individual”. They can say, for instance, “I think you, the police, ought to concentrate on getting muggers, because that is a particular problem in this particular area”, and the police need to take account of what the Government say in those circumstances and direct a little more attention to muggers. In this case, we had politicians who were involved in the negotiations for a settlement in Northern Ireland, and the Government that was carrying out those negotiations said: “Look, we have this problem with on-the-runs. You have told us you cannot deal with this by way of public interest.”

I should say that successive Attorneys General made it very clear in a series of letters that the prosecution process could never give an answer to the problem of on-the-runs and that to do the process that they asked us to do, which was to check the evidential status of each of these individuals, would damage the criminal justice system. Nevertheless, they asked us to do it. The prosecutor is sometimes in a position whereby he or she is asked to do something that does damage the justice system or the prosecution system, but they have to balance that against the wider public interest. I can give you an example. If, for instance, in a trial it suddenly becomes clear that there was an informant and to continue with the trial would mean that the identity of that informant becomes public knowledge and that therefore the informant may be at risk of death or serious injury, then the prosecutor has to balance the public interest in stopping the trial against someone who may have committed very serious criminal offences, or continuing the trial and taking the risk that the informant is identified and killed—not that unusual, unfortunately, in Northern Ireland at certain times.

Q525 Chair: Is it correct to say that the first, Ms X, was considered and then, as you go on to say, the DPP did not expect further names to follow? Did this whole thing, then, take on a life of its own, which is not normal under the normal way of working? If the police in Gloucestershire have an interest in somebody, they do not consult the Conservatives or any other political party. It is very, very unusual and, in fact, some might say illegal to do so.

Kevin McGinty: I would not say it was illegal to do so. I would certainly agree it is very unusual.

Q526 Chair: The police would be very reluctant. We have all, probably, given evidence about certain people. The police would not tell me anything. If they were asking me questions, they would not tell me what they were looking at. This is very unusual.

Kevin McGinty: It was unusual. I do not dispute that.

Q527 Ian Paisley: It is good to see you here, Mr McGinty. I appreciate it. I found the written material that you sent us incredibly helpful in outlining the genesis of this process. My interest in understanding those three names is because it comes right at the very beginning; in your view—and, indeed, in your words—this is how it started.

Kevin McGinty: That is my belief.

Ian Paisley: Yes. So therefore, knowing that it was about Rita O'Hare and these two others—you say you do not know those other two names; you have forgotten them.

Kevin McGinty: I do not have them to hand.

Kate Hoey: They are not famous.

Ian Paisley: Well, they are infamous.

Kevin McGinty: These are people who could not have been prosecuted for anything.

Q528 Ian Paisley: Yes. But knowing those names, that was the genesis of the case and gave rise to the OTR process. As a matter of fact, did Rita O'Hare ever receive a letter?

Kevin McGinty: The individual I mentioned has never received a letter.

Q529 Ian Paisley: She has never received a letter because the evidence is so strong against her.

Kevin McGinty: I did not say that the evidence is strong, but the evidential test, the last I heard, was still met.

Q530 Ian Paisley: The two other individuals being told that there was not sufficient evidence to prosecute them prompted 36 more names to come forward in and around 2000. I am quoting your words. This was not welcomed by the Attorney General." Was Number 10 informed formally by the Attorney General's Office that this was an unwelcome development?

Kevin McGinty: The names came through Number 10. At that stage, negotiations with Sinn Fein were being carried out by Number 10, working with the Northern Ireland Office. From memory, the letters that went off to the two individuals who could no longer be prosecuted were drafted by the Attorney's Office and they were sent by Jonathan Powell. At that stage, Number 10 was still in the lead.

Q531 Ian Paisley: They were taking the lead.

Kevin McGinty: As they were taking the lead in the negotiations with Sinn Fein in the peace process at that time.

Q532 Ian Paisley: Yes, but the phrase I am interested in is, whenever Number 10 informed the Attorney General's Office that there were another 36 names brought forward, you say this was an unwelcome development. Was Number 10 informed by the AG, "This is not on"?

Kevin McGinty: Yes. Not that it was not on, because we were prepared to do it, but the Attorney—as did subsequent Attorneys on other occasions—made clear two things. First of all:

“This can never be the answer that you are looking for in relation to what you describe as the anomaly of on-the-runs, because at the very best all it can do is identify individuals who would never have been prosecuted if they returned to Northern Ireland anyway”. Secondly: “It is a process that is potentially damaging to the criminal justice process”, for the reasons I set out in my first statement.

Q533 Ian Paisley: Do you not think it is more than that—it is so deeply flawed it turns justice on its head? You cite a very interesting document, DB 525-527, Flag 6⁷, from which you quote, “The CJ system was simply not designed for the task we were asking of it”.

Kevin McGinty: It was not, for the very reason that the Chairman said. This was a very unusual process. Was it unlawful? No.

Q534 Ian Paisley: So the rule of law was turned on its head, essentially.

Kevin McGinty: It is one way of describing it. It was not a normal process. It is not a normal process to assess evidence in the absence of the individual, and it is not normal to tell people whether they are wanted or not wanted.

Q535 Ian Paisley: You go further, and you make three very distinct and powerful arguments as to why the process was so deeply flawed. You say that the impartiality of the prosecutor was called into question and public confidence could ultimately be damaged; that the benefit was all one-sided—it was all to the Republicans—and that the assessment of the evidence was made in the absence of the accused, and ultimately there is then the issue of, “Are we tipping someone off?” It is so deeply flawed. You set out a very powerful argument that this was unjust. Do you agree with me?

Kevin McGinty: No, it was not unjust. It was damaging to the criminal justice system. Alasdair Fraser, who a number of you here know, spent his life trying to ensure that the cases that came before him in Northern Ireland were dealt with in an absolutely even-handed approach, to the extent that he made all parties in Northern Ireland unhappy at one stage or another because of the decisions that he reached. This system was partial, in the sense that whereas it could have applied to Loyalists, as Hugh Orde said, and we would have looked at those in exactly the same way, Loyalists did not go to the Republic of Ireland; they went to Scotland and we could get them out of Scotland.

Q536 Ian Paisley: You mentioned Sir Alasdair Fraser. He has been held up as a paragon of virtue, and I agree with that, knowing the gentleman before he was deceased. You mention him in your statement in these terms. You say that, in May 2000, the Director of Public Prosecutions for Northern Ireland sought a public statement to be made about this process. Was that statement ever made?

Kevin McGinty: No, I do not believe so.

⁷ The document, dated 18 February 2002, can be found here:

<http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Report-to-Bill-Jeffrey-18-February-2002.pdf>

Q537 Ian Paisley: Tell us why that statement was never made.

Kevin McGinty: There was no secrecy in this on the part of the prosecution or, indeed, the police, as you have heard. Certainly an awful lot of people knew about it in what was a small legal world. We would get advice, for instance, from independent members of the Bar. A number of people knew the process was going on. I did not know at the time, but it was not, as I understand, fed into the political process—it was not fed into the negotiations—but that was a matter for those involved in the negotiations, not for the prosecutors.

Q538 Ian Paisley: But let us be very clear. Sir Alasdair Fraser was not only a paragon of virtue and a very senior individual; he was right at the top of the food chain. He was one of the bosses, essentially. He was saying, “I want a public statement made about this”. Who overruled him? Who said, “We are keeping this under wraps”?

Kevin McGinty: From memory, the Attorney General also wrote to the Secretary of State or to the Prime Minister, saying: “Look, if you are continuing this, you ought to consider making a public statement”.

Q539 Ian Paisley: And they, then, would have come back and said, “No, we are keeping mum on this”.

Kevin McGinty: I do not think at any stage there would have been a “no”. It would probably simply not have happened. It was a fast-moving thing at the time, as you know, and there were a succession of crisis talks.

Q540 Ian Paisley: It was not fast-moving at one point, because the Director was so fastidious, in that he combed through every single piece of potential evidence, but this got on the nerves of the Shinnars. It got so much on their nerves that they then went to Number 10 and, according to the written evidence you have produced, which, again, as I say, is very helpful, the process was slow, and pressure was on Number 10 from Sinn Féin. Did Number 10 then respond to that pressure by pressurising the prosecuting authority and saying, “Get the finger out here. Sort this out. We are under pressure from Sinn Féin”?

Kevin McGinty: There was always pressure to deal with the process as quickly as possible. That is not improper. There was never any pressure to reach any particular decision in relation to each individual.

Q541 Ian Paisley: Right. But the pressure was on: “Sort this out”.

Kevin McGinty: It is proper for Government, on occasions, to put pressure on prosecutors to speed the process up.

Q542 Ian Paisley: The wheels of justice turn slowly but they grind exceedingly fine. The essence of that is slowness, because they have to go through the process.

Kevin McGinty: Absolutely. You know Alasdair, and you know Alasdair, as well as being a person of the highest integrity, was also one of the most difficult, obstinate men you could deal with. He would not be pressurised into doing anything that he thought was improper. He was

determined, as was the Attorney, who supported him, that “this work, if it is to be done, it is to be done as well as it possibly can be”, because we did not want to increase the risks by making mistakes.

Q543 Ian Paisley: As a result of his determination—

Kevin McGinty: And the Attorney’s.

Ian Paisley: Yes. The process changed, then, did it not? It then was taken away from that type of process, because this was so rigorous and it probably was not going to produce the results that certain political parties wanted.

Kevin McGinty: No, I do not think it did change. There were always questions about whether this process could be speeded up, and I provided you with some correspondence, which perhaps suggested a way of speeding the process up by taking the prosecution process out of it and simply asking the police whether or not these individuals were wanted. The Director said, “I do not think that is going to speed the process up and I would not be happy doing it”, so it continued on in the same way as before—that is, with a rigorous check made by both the police and the prosecutors as to whether or not the evidential test was met or—

Q544 Ian Paisley: Do you think this verged on the margin of corrupt?

Kevin McGinty: No.

Q545 Ian Paisley: Seriously?

Kevin McGinty: Seriously.

Q546 Ian Paisley: After all the flaws? The fact that the Director is really wrestling with himself to play this role; you have internal memos sent from the Northern Ireland Office saying the criminal justice system is not built for this. Do you not think it was corrupt?

Kevin McGinty: No.

Ian Paisley: Pressure was coming from Downing Street; pressure from the IRA, from Sinn Féin.

Kevin McGinty: There is always pressure from Governments in relation to certain aspects of both policing and prosecution. That, as I say, is proper, depending how far it goes.

Q547 Ian Paisley: I have characterised it as corrupt. How would you characterise it? It is not good practice.

Kevin McGinty: It was unusual—very unusual. It would not have happened, I suspect, anywhere other than Northern Ireland, but at that stage Northern Ireland was a unique place at a unique moment in time.

Q548 Ian Paisley: But at that time Northern Ireland had a peace agreement. An Assembly had been established, and this was still going on.

Kevin McGinty: There were still blips, as you will remember. You had to return to direct rule after a particularly notorious case collapsed. You did not get devolution of justice and policing, which was, in a sense, the cherry on the cake—I do not mean in any rude way—until May 2010. Even now, there is still the occasional blip.

Q549 Ian Paisley: “Unusual” is the best you can do, in terms of your characterisation.

Kevin McGinty: I would not accept a description of “corrupt” for anything that involved either any of the Attorneys that I worked for, the Director that I worked for, or, indeed the two Chief Constables I worked for.

Q550 Ian Paisley: Let me turn it round this way. Do you think we—“we” collectively; Government—were right to do this?

Kevin McGinty: I do not know. That is a political question. These were negotiations. I do not know. You are politicians; you can make a better assessment than I can. I do not know whether the process would have continued without this. We were told that it was necessary. You judge it. I do not know what the answer to that is.

Q551 Ian Paisley: Rita O’Hare was so central to the process, but she did not get a letter and the process continued. Sinn Fein bowed the knee, went into Government and administered British law.

Kevin McGinty: That individual did not get a letter because the system was working properly. No one was going to get a letter unless the Director and the Attorney were satisfied that that person could not be prosecuted if that person returned to the jurisdiction at that moment in time.

Q552 Andrew Percy: So Rita O’Hare is still eligible for arrest in the United Kingdom.

Kevin McGinty: Please do not press me to identify the person; it is not for me to do that. The individual I was talking about, as far as I am aware, has not been told she can return.

Q553 Andrew Percy: This individual, who may or may not be Rita O’Hare, cannot be extradited from southern Ireland. If she enters a different jurisdiction—not the United Kingdom, but elsewhere in Europe or the United States, for example—what is the position with regards to the British authorities seeking arrest then?

Kevin McGinty: We could seek her arrest and extradition.

Q554 Andrew Percy: Thank you. You did not describe it as legally corrupt. Do you think the process that was established was morally corrupt?

Kevin McGinty: No.

Q555 Andrew Percy: At the time, what was the legal basis and legislative basis, so far as any existed, that you understood this was operating under?

Kevin McGinty: I have heard that question asked on a number of occasions. It is slightly misleading. I do not mean to be clever about it, but what is not unlawful is lawful. You do not necessarily need a statutory power to be able to do something. If it is not unlawful to do something, you can do it.

Q556 Andrew Percy: At the time, were questions asked? Were there dissenters within? Did anybody give clear advice saying that, “Actually, this probably is not lawful. This is not legal. This is not right”?

Kevin McGinty: It was lawful. It was not unlawful. It was, we were told, a necessary process.

Q557 Andrew Percy: So, if any other political party wrote with a list of names seeking the status of those individuals, that is entirely lawful. Would that be dealt with in the same way?

Kevin McGinty: Had it happened in Northern Ireland at that time, probably yes. If it happened here, no.

Q558 Andrew Percy: Why? Are we not all equal before the law?

Kevin McGinty: I am not saying it is illegal or illegal. It was an unusual process that the prosecutor would not normally do. It was taking this step because of the unusual circumstances in Northern Ireland; the prosecutor and the police were being asked to do it by those involved in the negotiations in the peace process in Northern Ireland. It is a uniquely Northern Ireland issue.

Q559 Andrew Percy: And the best way in which this can be described is “unusual”.

Kevin McGinty: I am not going to describe it as corrupt.

Q560 Andrew Percy: So, “unusual”.

Kevin McGinty: Not normal. There are a number of other ways to describe it.

Q561 Chair: When the first test of the likelihood of securing a prosecution is passed, so you go on to the next test, the public interest, again, it would not be normal for political considerations to form part of that, or would it?

Kevin McGinty: They could. They probably would not be terribly strong, but it is at least arguable to say that if the whole continuation of the peace process in Northern Ireland was dependent on an individual coming back to Northern Ireland and the prosecutors believed that there was strong evidence to accept that view, then, potentially, rather than allow the whole thing to go down the plughole, it might be better to say, “Fair enough. The public interest is not in favour of the prosecution of that individual.” But the more serious the charges, the more likely it is that the public interest is in favour of prosecution, for all the reasons that everyone here would understand.

Q562 Chair: In 1998, there was legislation going through here with some very difficult things to accept—some of us did not accept them—such as the early release of prisoners. Yet, at that very

time, the then Secretary of State asked the Attorney General to consider whether this woman should be given one of these letters on the basis of political considerations. Given what was going through the House at that time, that is an extraordinary thing for a politician to do, surely.

Kevin McGinty: That is something you must ask politicians.

Chair: I will. But from a legal position—

Kevin McGinty: What was going through the House at the time was about people who had already been convicted of offences. This person had not been convicted of an offence. It depends what you describe as “political”. I am not going to argue with you. What they were told was, “Look, for the peace process to continue and for Sinn Féin to remain in these negotiations, you must allow this person to come back”.

Q563 Chair: As Ian points out, that was wrong, was it not, because it continued without that—

Kevin McGinty: It was not wrong for them to make that.

Q564 Chair: No, but it was a wrong assertion to make, obviously.

Kevin McGinty: It was not accepted by the prosecutor, and as things happened it did not collapse.

Q565 Oliver Colvile: Forgive me, Mr McGinty. We in this country have a great tendency to say that we think—rightly so—that other countries should have an independent police force and should also have a judicial system that is beyond reproach. We are very proud of that in this country. It appears from what you are saying to me that there were moves by Number 10 to try to—I do not want to use this word; I will use the expression, but I mean it in a particular way—pervert the course of justice. I have real difficulty with that. At the end of the day, if people are caught for doing criminal things, they should be prosecuted and should be brought to trial, and they should answer in a court of law about that. It just seems to my mind that what you are suggesting is that there were moves within Number 10 to try to out-manoeuvre the whole of that process: “We will have our hands behind our back and we will just hope it is not going to come out eventually”.

Kevin McGinty: Number 10, as far as I was aware, always accepted the independence of the prosecutor. They may make representations, but the decision at the end of the day is one for the prosecutor, taken independently. That is what we are proud of. That is what gives us an independent prosecution process.

Q566 Oliver Colvile: But by writing the letters, they cut across all of that, which is evidently the case because the judge has thrown out the Downey case.

Kevin McGinty: The judge did not throw out the Downey case because Downey had been sent a letter.

David Simpson: No. It was the political influence.

Kevin McGinty: No. It was not that. The judge threw out the case because the letter that Downey had been sent and that he acted upon to his detriment—that is the way it is described—was wrong and the state knew, at all times, that it was wrong. That, I hope, is unique to Downey.

Chair: I am not quite sure that analysis is correct, but can we continue with the questions?

Q567 David Simpson: You may not describe it as being “corrupt”, but when we received evidence from Norman Baxter, he gave us an instance where they had arrested two known terrorists who were wanted for very serious crimes, one of them being an attempted murder and wounding of a soldier. Gerry Adams complained to Number 10; Number 10 rang the PSNI—or the RUC at that stage—to release them. They were interfering in justice. There was a corruptness there, whether you want to describe it or not. Number 10 were getting involved.

Kevin McGinty: If Number 10 did that, I would agree with you that was absolutely wrong and was corrupt.

David Simpson: Absolutely. That is the evidence given by Mr Baxter, and he is coming back to the Committee—

Kevin McGinty: It was not accepted by Hugh Orde.

Q568 David Simpson: You have heard what Ronnie Flanagan said today: that at the very heart of all of this the victims were important to him; he visited many homes, and all of those things. Those of us from Northern Ireland and maybe some from the mainland who have been affected by the Troubles and those who have had family members murdered are important to us. What has grieved us through this whole process is the fact that those victims probably will never see justice because of this. That is the bottom line in all of this. Whether it was done for a political purpose or not, they will not see justice. We heard Ronnie Flanagan say that he knew nothing about these letters that went out; other officers have come before us and said they knew nothing about them. In your experience and your position, would you not find it strange that if those letters would have been issued to whoever was on the run, they would not have been run past the Chief Constables or some senior officers within the RUC to clarify or verify them in any way?

Kevin McGinty: Can I try to deal with the three points you raised in the order you raised them? If Number 10 rang up and said, “We have had Gerry Kelly on”—well, if they had said that or not—

David Simpson: It was Gerry Adams, seemingly, yes.

Kevin McGinty: If they simply said, “You have got two people; release them,” they cannot do that. That is wrong. I do not expect they did do that. What they might have done, which would not be so unusual, would be to say, “Look, you have arrested these two people. What can you tell us about it?”

David Simpson: *Hansard* will be able to clarify, but, Mr McGinty, that would be a play with words, would it not?

Chair: As well as that, I would suggest that is bordering on illegal.

David Simpson: Absolutely.

Q569 Chair: What level of Government do you have to be at to ask the police to give you that information? Could anybody round this table get that information? Of course not.

Kevin McGinty: You may do.

Chair: Please; that is totally incorrect.

Kevin McGinty: Every MP is entitled to write to the prosecutor, and every MP usually does. He is usually given more information about a case than a member of the public would be.

Chair: I would dispute that. David.

Kevin McGinty: Can I go on to answer the second question?

Q570 David Simpson: You can tie the last question into your answer. As well as the letters, could you also give us your understanding of royal pardons and royal prerogatives, and where they are used—

Kevin McGinty: I cannot give you that, because we were not involved in that at all.

David Simpson: There were 18 issued, we understand.

Kevin McGinty: That was something that the Attorney was not involved in.

Q571 Kate Hoey: Who was involved? Who made those decisions on the royal prerogative?

Kevin McGinty: As far as I understand, it was the Northern Ireland Office.

Q572 Kate Hoey: The Secretary of State?

Kevin McGinty: Yes.

Q573 Kate Hoey: The Prime Minister?

Kevin McGinty: Possibly.

Q574 David Simpson: That is fine. If you could deal with the other point, then, just on the letters.

Kevin McGinty: You say because of the system, victims would never see justice. The whole point of this scheme, as it was operated and accepted to be operated by the police and the prosecution, and the reason why so much care was taken over it and why it took so long, was because every single effort was made to ensure that we were trying only to identify those cases where an individual, if they did come back, would have not have been prosecuted anyway. If these individuals had come back, they would not have been arrested; they would not have been prosecuted. No one ever asked us to—and no one would ever have done it—suggest to an individual, “Forget it. We are not going to prosecute you because it is not in the public interest any longer.” That did not happen.

Q575 David Simpson: That is your interpretation. Those of us from Northern Ireland know what those in political life today did, what they were in charge of, and what orders they gave. There have been no prosecutions so far against them, unless they were some of the recipients of the royal pardon, which we do not know.

Kevin McGinty: All I can talk about, Mr Simpson, is the cases that I was aware of.

David Simpson: Yes, and I appreciate that. I know the position you are in, but we live in Northern Ireland, so we know the shenanigans that did go on in order to—

Kevin McGinty: You would also know that Alasdair Fraser would not have taken part in that.

David Simpson: Yes, I appreciate that.

Q576 Lady Hermon: Thank you again, Mr McGinty. You are regarded as a key witness. We are very pleased to have you willingly coming in and being so open and frank with the Committee. Whether we like what you are saying or not is a different matter.

Kevin McGinty: I am not sure the “willing” bit was—

Lady Hermon: No, we are very pleased to have you here this afternoon, and I appreciate the fact that you changed order with Sir Ronnie as well. I have a number of questions I would like to ask you. You made a very interesting comment. You have made many interesting comments, but the one that I am particularly interested in at this stage is what you regard as the legal status of the administrative letters that have been issued post the Downey judgment. You were very careful in summing up the Downey judgment about the detriment that might have been suffered by Mr Downey. In your view, as a very experienced and highly respected and regarded lawyer, what is the legal status of the other letters?

Kevin McGinty: No letters, as I understand it, have been issued post Downey’s arrest. I do not think you mean that. You mean, post Downey, what is the legal effect of the letters that are out there.

Lady Hermon: No. Downey’s letter was sent on 20 July 2007. I mean post the Downey judgment. Sorry. My reference to Downey is shorthand for saying: what is the legal status of the others since the judgment by Mr Justice Sweeney?

Kevin McGinty: If any other letter has gone out that fits the same facts as Downey in that it is not only wrong but it is known to be wrong by the authorities, then I think we will face the same position that we did with Downey and we would not get past an abuse-of-process argument.

Q577 Lady Hermon: It would not get past.

Kevin McGinty: If we knew the letter and the assurance to be wrong.

Q578 Lady Hermon: Let us look at the letters that have been received. The letters that have been received have, therefore, in effect, been an amnesty.

Kevin McGinty: No, I do not think so.

Lady Hermon: You do not think so.

Kevin McGinty: No. The letters that were sent out were designed to state the position at a point of time—at the point that the letter was sent. As other witnesses have explained, that is on the basis of the evidence that was then available. If fresh evidence became available, then there would be no bar to prosecuting that individual. There would inevitably be an abuse-of-process argument, but we would survive that because we would be able to show that since that letter had been sent, new evidence had come to light.

Q579 Lady Hermon: You will know from the evidence that was given to this Committee by Mr Sheridan⁸, formerly an Assistant Chief Constable of the PSNI—and indeed he served with the Royal Ulster Constabulary—that he believed that the letter that had been sent by the PSNI had been altered. In fact, Mr Baxter might have suggested also that the letter was altered.

Kevin McGinty: It was.

Lady Hermon: It was. You are confirming that the letter was altered.

Kevin McGinty: Yes.

Q580 Lady Hermon: Who altered his letter, and why?

Kevin McGinty: It was altered by the Northern Ireland Office.

Q581 Lady Hermon: Altered by the Northern Ireland Office. After it had gone through the process? Just describe that process. Mr Sheridan's letter leaves police headquarters.

Kevin McGinty: Okay. By the time that the Downey letter came, the process had been operating for about six years. My understanding was that everyone knew their particular roles. The police would check whether anyone was wanted for arrest. They would check not only whether anyone was wanted for arrest in Northern Ireland but also whether they were wanted for arrest by any other force within the United Kingdom. If they were aware of any file having been sent to the DPP, or indeed even if they were not, once they had gone through that process it would go to the DPP's office. The DPP would find out whether or not there was any file. If there was a file, they would consider whether or not the test for prosecution could still be met in relation to that individual, and a large number of checks were made. The point of the whole OTR system was to be able to say to the individual, if it was right, that, "You are free to come back to the United Kingdom without fear of arrest or prosecution based on the evidence that is currently available".

Q582 Lady Hermon: Was it to the United Kingdom, or was it to Northern Ireland?

Kevin McGinty: It was always to the United Kingdom. There is no sensible idea of being able to come back to Northern Ireland if you were wanted in London, because you would be arrested in Northern Ireland. Whether it was because of the setting-up of Operation Rapid or whether it was because the officers in the Downey case were not familiar with what had gone on before, the way in which they wrote to the Director, who was Roy Junkin, I think, at that stage—he was Acting Director—was in slightly different terms, because it said "not wanted by the PSNI". Previously, what they had written had been broader than that: "or any other force within the United Kingdom". To get that response was slightly odd, because it did not mean anything, because, as I said, even if you were wanted not by the PSNI but by the Met, you would be arrested. As I put in some of the papers I sent to you, the Northern Ireland Office, I think prompted by the Attorney's Office, went back the PSNI and said, "Are you sure you have checked that these individuals are not wanted by any other force within the United Kingdom?" and Mr

⁸ The transcript of the oral evidence to the Northern Ireland Affairs Committee by Norman Baxter and Peter Sheridan on 2 April 2014 can be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/8333.html>

Sheridan said, “Yes, those checks that have always been done were done”. That was then followed up by another email by the Northern Ireland Office saying, “Are you sure these checks have been done?” and, again, the response was, “Yes, refer back to Mr Sheridan’s letter. These checks were done.” On that basis, the formulation used by the Northern Ireland Office in the past—i.e. that, “Not only are you not wanted in Northern Ireland, but nor by any other force”—would have been correct, which is why they wrote it in the form that they did.

Q583 Lady Hermon: So, it was altered by the Northern Ireland Office. Are you able to tell us which individual within the Northern Ireland Office? Was this the normal channel of dealing with these OTR letters?

Kevin McGinty: As I said at the beginning, this was a process that had risks. We wanted to try to reduce those risks as much as possible. I do not think it would be fair to criticise the Northern Ireland Office for adding some checks to a process to make sure that the letter they were sending out was correct and that the checks had been done.

Q584 Lady Hermon: Would it not have been wise, having altered someone else’s letter, to have told that person, or to at least have had the courtesy to have told that person, “I have altered your letter”?

Kevin McGinty: To be fair to the Northern Ireland Office, they went back to them and said, “Look, are you sure you have carried these checks out? Have you carried out these checks?” Remember the police said they had not seen any letters.

Q585 Lady Hermon: Forgive me for interrupting you. Did the Northern Ireland Office explain the purpose of their telephone call and their subsequent email? Did they explain to Mr Sheridan’s office that, “We are intending to alter your letter”?

Kevin McGinty: No. All I can point to is the two documents I gave you: flag 18, which is pages 769 to 771⁹.

Q586 Lady Hermon: So, the Northern Ireland Office asked the questions but did not explain what they were going to do with the information. Is that correct?

Kevin McGinty: To my knowledge.

Q587 Lady Hermon: Yes, it is. You have been in the Attorney General’s Office for a long period of time. You are the constant. I say that as a tribute to you. You are the constant. You have been there, and you know Northern Ireland very well indeed. You have been there in Peter Goldsmith’s time, then Baroness Scotland’s. Did you personally brief each different Attorney General on OTRs—on this secret scheme?

⁹ The letter from Peter Sheridan to Hilary Jackson (27 June 2007) can be found here:

<http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Letter-from-Peter-Sheridan-PSNI-to-Hilary-Jackson-27-June-2007.pdf>

The email exchange between Mark Sweeney and the PSNI (18 July 2007 to 20 July 2007) can be found here:

<http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email-exchange-between-Mark-Sweeney-NIO-and-the-PSNI-18-July-2007-to-20-July-2007.pdf>

Kevin McGinty: Yes.

Q588 Lady Hermon: You did. Could I then take you back to the General Election of 2010, when we change Administration? We change Administration completely. It is no longer a Labour Administration. We have a coalition Government. We have Dominic Grieve, a man, again, of the highest integrity. He becomes the Attorney General. Did you also brief Dominic Grieve personally about this scheme?

Kevin McGinty: He has already answered a PQ to say that he knew about the scheme in Opposition. He was given a briefing as an incoming law officer, as all law officers are. I described the OTR scheme to him in writing. I cannot say—and I have looked again at the briefing—that it was clear that it was an ongoing process, but I had described the scheme. I also gave him an oral briefing. I can no longer remember what I said; it was a while ago. But certainly he was writing to the Secretary of State about the scheme in 2012, basically repeating what all of his colleagues had said, which is, “This should not continue. This is not good.”

Q589 Lady Hermon: That was in 2012 that he came to this conclusion, but he had been in post for two years.

Kevin McGinty: It came as a request from the Secretary of State as to how to take the process forward. He said along the lines of, “Enough is enough. Do we really need to proceed with this?”

Q590 Lady Hermon: Yes. Could I take you back in time to 2010? You will remember, probably better than many of us, that devolution of policing and justice had gone through very successfully in the spring of 2010.

Kevin McGinty: Yes.

Lady Hermon: We had already selected David Ford MLA, the Leader of the Alliance Party, to be the Justice Minister. That was in March, I think, of 2010; devolution had successfully taken place of policing and justice. Why in heaven’s name did the Attorney General’s Office and Dominic Grieve and the new administration decide to continue with this ghastly scheme after devolution had been going for several months and had been going successfully for several months?

Kevin McGinty: It had been the end of a long process. There had been a number of names; I do not think there were many names left to deal with before the whole thing was stopped.

Q591 Lady Hermon: The excuse that has been given by former Secretaries of State—the Right Honourable Member for Neath comes immediately to mind, I have to say—is this was all about saving the political process. The political process in 2010 did not need to be saved. It was firm; it was steady. Stormont and the Assembly are working; we have got devolution. It might not be working quickly but it is working and it is there. Why did Dominic Grieve and the new administration accept these letters and this scheme at all? What was it saving?

Kevin McGinty: It was a hangover. As I say, it was just some few names left. That is the only explanation I can give you.

Q592 Lady Hermon: But it was not saving. You will confirm it was not saving; we did not need to save the peace process in 2010.

Kevin McGinty: That is not for me to say, but I will say my personal view is no.

Q593 Lady Hermon: Thank you. Could I just ask one final question? That is about the trial itself. If you are able to tell the Committee, were you able to attend Mr Downey's trial—to sit in the Old Bailey?

Kevin McGinty: There was not a trial; it was just an abuse-of-process argument and there was no live evidence heard as such. It was all done on written statements. I attended the bail application, I think; I did not attend the rest of it.

Q594 Lady Hermon: Would that have been common practice, or was this case regarded as being of such seriousness that you felt you had to go?

Kevin McGinty: This was a very serious case. This was a very, very serious offence. It was complicated by the fact that there was this letter and it was clear that an error had been made. The Attorney gave his consent to prosecute in relation to the Explosive Substances Act. He carried out a Shawcross exercise. We appointed Brian Altman QC to prosecute. Brian had, until recently, been First Senior Treasury Counsel at the Central Criminal Court—the doyenne of prosecutors; the prosecutor that the Government would use for all the most serious of offences. We took it very seriously.

Lady Hermon: I do not doubt that for a moment.

Kevin McGinty: I made two witness statements to try to support this prosecution.

Q595 Lady Hermon: Yes. Given both the seriousness of this for the rule of law—I think the word you used first of all was “dangerous”, and then you said it was very damaging to the rule of law; certainly it has been very damaging to the rule of law—and the political significance of this, were there representatives of the Northern Ireland Office also present?

Kevin McGinty: I do not think anyone was present, but they were kept informed and were very interested in it. I do not think anyone came from the Northern Ireland Office, but they were kept informed of it and wanted to be kept informed, as did Number 10.

Q596 Nigel Mills: I am trying to work out exactly what the purpose of entering into this scheme was. I think you have said it was not to give people a free pass from prosecution who should be prosecuted. Is that right?

Kevin McGinty: Yes, absolutely, fundamentally right.

Q597 Nigel Mills: I am intrigued, then, by paragraph 45 of the Downey judgment¹⁰, which I can read for you. It says, “On 19 January 2001 the Prime Minister gave Sinn Féin a written assurance that: ‘...The Government recognises the difficulty in respect of those people against whom there are

¹⁰ A link to “The Queen v John Anthony Downey, Judgment: Abuse of Process” can be found here: <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-downey-abuse-judgment.pdf>

outstanding prosecutions for offences committed before 10 April 1998. At present, they face the possibility of extradition or prosecution even though the offences if proven were committed before the key date for the early release scheme under the GFA. The Government is committed to dealing with the difficulty as soon as possible, so that those who, if they were convicted would be eligible under the early release scheme are no longer pursued...” That seems to suggest that people who—

Kevin McGinty: That is an amnesty.

Q598 Nigel Mills: Yes. So, that was the assurance given to Sinn Féin in 2001.

Kevin McGinty: Yes. That is why they would then try to bring in legislation that would provide that.

Nigel Mills: Five years later.

Kevin McGinty: But it was against a background where the Attorney wrote on numerous occasions to say, “The prosecution process and this administrative scheme can never fulfil that promise”.

Q599 Nigel Mills: When you say that this process would be hugely risky and could damage the rule of law—

Kevin McGinty: For the three reasons I set out in my statement, which are impartiality; the fact that you are trying to assess evidence in the absence of the individual; and I have forgotten the third. I am sorry. It is in my statement.

Nigel Mills: So, effectively, it is not just the fact that this process itself was corrupt; it was that it might be perceived to be corrupt. Is that it?

Kevin McGinty: I am not going to use the word “corrupt”. “Corrupt” has a particular meaning for lawyers. But the potential damage to the prosecutor was as Lady Hermon and others have pointed out, which is it appears to be partial. In Northern Ireland, throughout the Troubles, it was essential for maintenance of confidence in the prosecution process that it should be even-handed and it should not show partiality. That is where the potential danger lay.

Q600 Nigel Mills: I am trying to get a feeling for, when the Attorney’s department was asked to enter into this process, whether you were greatly resistant—saying, “Look, we really should not be doing this at all; this is wrong”—or it was more a resigned acceptance.

Kevin McGinty: No, it was not wrong in relation to the individuals to consider whether or not the public interest continued to require the prosecution of individuals who had been involved in the peace process. At some stage, that question was always going to be asked. I have set this out in my statement. It is speculation, but I think it was the fact that, to their surprise, two individuals who thought they were wanted in Northern Ireland were told, as a matter of fact, “You are not”. Sinn Féin say they had their own people out there who needed to be kept happy, and a number of them thought that they were not free to come back, and therefore, if those individuals who were in fact free to come back could be identified, that would help. As all of the police witnesses have said, apart from Mr Baxter, there is nothing inherently wrong in that process; it is just not one that we are comfortable doing.

Q601 Nigel Mills: It just begs the question of how thorough efforts were to find a prosecutable case with that as the backdrop, does it not? Were you not concerned—

Kevin McGinty: We could not prosecute in these cases because they were not within the jurisdiction. Some of them we had tried to extradite, unsuccessfully. These were people who were not in the jurisdiction and we could not do anything about. The system we would have much preferred—and suggested—was, “Look, if they come back, they will find out whether they are going to be prosecuted” but, not surprisingly, that was not something that could be sold to Sinn Féin. Not by us; by politicians.

Q602 Nigel Mills: Mr Sheridan suggested his preferred scheme was to get a chance to interview them under caution, but that, perhaps not surprisingly, did not seem—

Kevin McGinty: We would all prefer a more normal process. I accept this was not a normal process. We would have preferred a more normal process, but that was not going to happen.

Q603 Nigel Mills: Was your department not concerned when you heard that this Historical Enquiries Team was up and running and was reviewing some of these cases? Was it ever thought, “Oh God, we have just written and confirmed to a lot of people that we have not got enough evidence to prosecute them? Are we not corrupting that process?”

Kevin McGinty: We tried to be as rigorous as we could. For instance, if a file had gone to the Director of Public Prosecutions, a lot of checks were then done as to whether or not that individual could still be prosecuted. For instance, the police would go off and try to identify the witnesses who may have given witness statements 20 years before. Some of them may have been in the armed forces; some of them did not want to come back to Northern Ireland. Other witnesses had died. It became clear that in some cases the forensic evidence you would need to rely on in order to bring a prosecution could no longer be relied on. In some cases, we had managed to prosecute a co-defendant and in the course of a Diplock trial the judge had thrown the case out because he considered that police witnesses were not credible. In those circumstances, if a judge had already found that the witnesses were not credible in relation to one defendant, they were going to find the same in respect of the co-defendant based on the same evidence. It was only in cases like that where we were saying the Director would come to the conclusion that the test for prosecution was no longer met. The letters that were sent were designed to be, “Of at this moment we write this letter, and on the basis of the evidence we currently have, you will not be arrested or prosecuted”. If the HET came up with fresh evidence, then, in our view, you would be able to prosecute that individual.

Q604 Nigel Mills: What does “fresh” mean in that context?

Kevin McGinty: Evidence that was not available to the Director when he considered it.

Q605 Nigel Mills: And what does “available” mean?

Kevin McGinty: Evidence that is before the Director when he considers it.

Q606 Nigel Mills: So, if it was in the file but just was not spotted or dots were not joined—

Kevin McGinty: If it was in the file and was not spotted, that is evidence that is before and, through incompetence, we have not seen.

Q607 Nigel Mills: But if it was in the police file but not the one that went to the prosecutor—

Kevin McGinty: The state for these purposes is indivisible, as it was for the Downey judgment; it does not matter.

Q608 Nigel Mills: So, if, somewhere in the police files, they had some evidence that they did not quite realise what its significance was and it had not—

Kevin McGinty: That would not be new evidence, I do not think. We would never survive an abuse-of-process argument.

Q609 Nigel Mills: So when the HET are looking through all the 3,000 killings and trying to work out what happened, effectively, if they do manage to join the dots and piece things together from the files that perhaps have not been thoroughly looked at for 20 years, if someone has had a letter, that is tough. That is not fresh evidence; that is evidence you should have competently used already.

Kevin McGinty: Yes, probably. My understanding is the Historical Enquiries Team was not primarily to bring prosecutions; it was to bring an explanation to the victims as to what happened in their case.

Lady Hermon: They are proceeding with prosecutions.

Kevin McGinty: They are, and I accept that. There were some difficulties in the early days because the Historical Enquiries Team were coming to decisions as to evidence that would not meet the prosecutor's test, so we had to go through the whole process of saying, "Look, if you are going to tell people that this person could be prosecuted, you need to come to the prosecutor first to make sure that that is correct. If you are just trying to tell the story of what happened, to explain to victims what happened, that is slightly different." It may have clarified since then; I have not had much to do with it in recent years.

Q610 Nigel Mills: Did you not think it was a little strange that you would have that inquiry process ongoing and you would not pause the sending of the letters until that process had been done? It seems a bit strange that you have got one part of the PSNI, effectively, doing a new, fresh review of all these cases and another part of the PSNI doing some sort of quick and dirty review to send out one of these letters.

Kevin McGinty: No one would have been sent any letters, because the process is very slow. They carried out whatever checks they could at the time and it was a thorough process. There is always the possibility that at some stage in the future new evidence will come to light. It may well be that there are new DNA tests one perhaps could do, which, again, would be new evidence.

Q611 Nigel Mills: The letter that gets sent that says, "If any other outstanding offence or offences come to light..." means if Mr X, who was originally wanted for bombing Y, gets sent a letter but we suddenly want him for bombing Z, that counts as a new offence and we can start again.

Kevin McGinty: Yes.

Nigel Mills: But if it is just bombing Y, we are a bit stuffed unless we can clearly show it is new evidence that we did not have before.

Kevin McGinty: Yes.

Nigel Mills: That is a little different to what some other witnesses have said, who have basically said these letters were meaningless, in that if, on the next day, there was a change of mind on the ability to prosecute, then that was completely open to a change of mind. That is not the case, then.

Kevin McGinty: This was a system that had the imprimatur of the police, the DPP, the Attorney General and the Secretary of State for Northern Ireland. That gives weight to the letter that was sent. You cannot then change your view on a whim thereafter. This is why letters were sent rather than simply information being passed on to individuals. We wanted to try to make it as clear as possible what it was that you were being given.

Q612 Nigel Mills: If, in any other course of events, I am arrested and investigated and I am told, “We have not got enough to prosecute you” and then a year later they decide to change their mind, they can do that normally, can they not? The police and the prosecution services can generally change their mind on the weight of evidence.

Kevin McGinty: It depends. I am sorry. It depends.

Q613 Nigel Mills: I always thought that double jeopardy only applied if you had been acquitted, not if you had just not been formally charged.

Kevin McGinty: Yes. If fresh evidence comes to light, you can continue, which is the only circumstance in which that would have happened.

Q614 Nigel Mills: Do you think the sending of these letters, then, creates some kind of right that would not ordinarily be available? It is not like this is a slightly unusual way of doing something but something similar happens all the time to other people; these letters do create a new legal right that would not normally be created.

Kevin McGinty: I would not say it created a new legal right. It was probably unique, but I would hesitate to say a “legal right” as such.

Q615 Nigel Mills: At least these were intended to give people a right they did not have without that letter.

Kevin McGinty: It was intended to assure an individual that if he or she returned to the jurisdiction there was insufficient evidence at that stage to either arrest them or to prosecute them.

Q616 Nigel Mills: Do you think a letter is revocable? If we had written to Mr Downey and said, “Whoops, sorry. We made a mistake. Your letter is cancelled; you cannot rely on it now”, is that—

Kevin McGinty: They are not revocable if there has been no change because there is nothing to revoke, in the sense that we could not prosecute him then; we cannot prosecute him now. If the position is the Downey case, where we suddenly become aware of the fact that the letter was a mistake and there is sufficient evidence, and always was sufficient evidence, to prosecute you, then I think we withdraw the letter. That has problems, but we withdraw the letter. Indeed, on one occasion a decision was reversed.

Q617 Nigel Mills: So that is possible. The letter is not absolute; it is only enforced—

Kevin McGinty: It is going to be difficult, because you have to then tell the person that, “The letter that you have got is in error” and that “you will be arrested”, and I think you then have to give them some time to absent themselves. It becomes bizarre, but if you did not do that, you would be in the same position as you were with Downey, and you would know you would lose the case. I think it is fairer to the victims in the circumstances to try to ensure that you do maintain a possibility of prosecuting that person.

Q618 Nigel Mills: It does beg the question, though: if it was known a mistake had been made in the Downey case, why did nobody ever seek to revoke that letter?

Kevin McGinty: Because nobody told us. The only people who knew were the PSNI, and we were not told. If we had been told, we would have reversed it.

Q619 Nigel Mills: Because the Met did not know a letter had been sent and the PSNI—

Kevin McGinty: The Met were not involved in this process.

Nigel Mills: But they knew they wanted Mr Downey, effectively. It is all a horrible mess.

Q620 Kate Hoey: Mr McGinty, your evidence has been very enlightening, and your report that we got has been very helpful. Can I just ask you a couple of quick things? Did either Jonathan Powell or Peter Hain, who put in statements¹¹, discuss that at any time in the last year or so, when they were thinking of doing it or whenever they were asked to do it, with anyone in the current Government or anyone within the Attorney General’s Office or, indeed, yourself?

Kevin McGinty: Certainly not the Attorney General’s Office and certainly not myself. Any previous Minister who is giving evidence in a case is entitled to get some support and access to materials from their previous Department. I do not know whether that happened in this case. It probably did in relation to Mr Hain; I do not know if it did with Mr Powell. I do not know.

Q621 Kate Hoey: So they might have been assisted in whatever statement they put in.

¹¹ Peter Hain’s witness statement to Mr Justice Sweeney can be found here:

<http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Peter-Hain-statement-to-Mr-Justice-Sweeney-January-2014.pdf>

Jonathan Powell’s witness statement to Mr Justice Sweeney can be found here:

<http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Jonathan-Powell-Witness-Statement-to-Justice-Sweeney.pdf>

Kevin McGinty: Only to the extent that they may have been given access to material that they would have used at the time they were in office, but that is true of all past Ministers.

Q622 Kate Hoey: Okay. I was just interested. Did you know they were putting evidence in?

Kevin McGinty: I was told that Mr Hain had been approached by the defence. I did not know about Mr Powell.

Q623 Kate Hoey: Thank you. Secondly, on the appeal situation, Dominic Grieve was very clear from the beginning, when he made his statement, that he was not going to exercise the right of appeal. Did you advise him on that?

Kevin McGinty: I was part of the team that did advise him, including the Crown Prosecution Service and all of the counsel involved in the prosecution, including Brian Altman.

Q624 Kate Hoey: And you felt absolutely 100% that there was no possibility of appealing what seemed to many people an incredibly bizarre judgment by a judge.

Kevin McGinty: Mr Justice Sweeney is an extremely experienced judge.

Kate Hoey: That does not mean he always gets it right.

Kevin McGinty: In his past career, he was First Senior Treasury Counsel at the Central Criminal Court, as indeed Brian Altman had been. He prosecuted most of the big IRA terrorist cases in England. He was one of two specialist terrorist judges. He made a very careful judgment.

Q625 Kate Hoey: Was that the reason you did not appeal—because he was such an eminent person?

Kevin McGinty: No, of course not.

Q626 Kate Hoey: Okay. I did not think it would be as simple as that. What exactly—

Kevin McGinty: We did not think an appeal would be successful.

Q627 Kate Hoey: If the Attorney General had said, “Look, we have got to appeal this, for the sake of the peace process”, would you have been able to find a reason for appealing?

Kevin McGinty: At the end of the day, if you appeal it, you have to appear before the Court of Appeal and give your reasons for appealing; you cannot just say, “It is because we want to”.

Kate Hoey: No, I understand that.

Kevin McGinty: We could not come up with any grounds to be able to say we would have any chance of succeeding in the Court of Appeal.

Q628 Kate Hoey: So, with all the legal minds, nobody could find a way of being able to at least get it in front of an appeal—in terms of being able to decide whether they could—

Kevin McGinty: We did not think that we would succeed.

Q629 Chair: Can I press you on that point: succeed in getting it heard or just failing to get the decision reviewed? The reason I ask that is the Attorney General has stated that there is a right to appeal a stay; our advice from our QC is that there is no appeal against the stay.

Kevin McGinty: You can appeal the decision that he made to the Court of Appeal. If I have got this wrong and I go back and I find it is wrong, I will write to you. If new evidence in relation to Mr Downey came to light, you could apply to have the stay lifted. It would be extremely unlikely you would be successful. That is a slightly different process from appealing the decision that Mr Justice Sweeney reached in February.

Q630 Chair: If there is an appeal mechanism, which the Attorney General has said there is, it is extraordinary to us and everybody else that I have spoken to who has considered the case that that is not pursued. Whether it was a mistake or whether it was intended to be that way, is questionable; we hope to find that out. But the letter itself that Mr Downey relied on really just says, "The PSNI are not aware of any other interest". That is not clinical; that is not legally tight phrasing at all. It really does seem to us extraordinary that the Attorney General says there is a right to appeal, questionable though that is, and that he is not taking up that option.

Kevin McGinty: Prosecutors do not do things simply because they are desirable to do. They have to reach difficult decisions. You cannot prosecute someone simply because you want to prosecute them or to get the chance of getting a conviction.

Q631 Chair: No, but he brought the case. He had sufficient motivation to bring the case in the first place.

Kevin McGinty: The test for prosecution, though, has to be met before you can prosecute someone. Similarly with an appeal; you do not take an appeal forward unless the proper test is met, which is whether there is any success in taking the appeal forward.

Q632 Chair: You have described the judge's experience in bringing prosecutions. Is he experienced in due-process cases to the same degree?

Kevin McGinty: He is a very experienced judge.

Q633 Chair: So he is completely right on this, in your opinion, given that the Attorney General knew about this letter when he instructed the case to be brought.

Kevin McGinty: This was a proper case to bring for trial. We could not guarantee that we would get through the abuse-of-process argument, but we brought the prosecution because we thought that there was a realistic prospect of getting past the abuse-of-process argument and so on to trial. That was why it was a proper case to be brought.

Q634 Kate Hoey: Just on that one, if you had known then the furore and the deep hurt that the judgment would cause, would you have been advising not to go ahead with prosecution?

Kevin McGinty: I do not think the facts have changed. That is the sad thing. Prosecutors are not allowed the luxury of doing that.

Q635 Kate Hoey: Mr McGinty, you are very well respected and clearly know your job and have been there a very long time. In your document to us, you refer a number of times to Sinn Fein: “I have already explained that Sinn Fein kept up pressure on No 10”; you talk again about “Sinn Fein continued to press No 10”; Sinn Fein this; Sinn Fein that. You have described the whole process as being “not normal”, and some of my colleagues have described it as perhaps more corrupt, or at least neo-corrupt in terms of the process and what happened to people who were United Kingdom citizens. Do you understand now just how this has gone down in Northern Ireland, particularly amongst those people who have felt for a very long time that the whole process has been rather one-sided and that now it is very clear that during this whole peace process it, yes, ended up with less violence and so on, but we ended up with a situation where, quite clearly, Gerry Adams, Gerry Kelly and all the others were literally calling the tune?

Kevin McGinty: Can I just clarify one thing? What I have said about what Sinn Fein and Number 10 were doing I have only taken from the documents that were released for the purpose of the abuse-of-process argument because you asked me to try to make a statement as to how the thing evolved; it did not come from personal knowledge. Secondly, it was Number 10 and the Northern Ireland Office who were engaged in these negotiations. I do not know what they thought was necessary. I do not know what was necessary. It may have been necessary. I do not know. As to the impact this has had on Northern Ireland, it has been coloured by the Downey decision, of course. If this had become public without Downey, it may have been slightly different; I do not know. But yes, I take the general point.

Q636 Kate Hoey: Maybe I am reading you wrongly, but I get the feeling that, because it was more Downing Street and the Northern Ireland Office and this very political level, you are almost a little bit not ashamed but embarrassed by it all and wish, as a legal person, that this had not happened.

Kevin McGinty: Most lawyers will not want to move out of what they feel comfortable with. This was not a usual process. It was accepted because we were asked—not told or whatever; we were asked—to carry out this process. We did not consider it to be an unlawful process, although we realised that there were risks. But at the end of the day, it is for Government to decide, I am afraid, what risks to take and what risks not to take. All the prosecutor and police can do is to ensure that their own personal integrity is not affected, and I do not think it ever was in these cases. Both the police and the prosecutors reached the decisions that they always do without fear or favour based on the evidence. The political pressure was to carry out the process in the first place and to try to do it as quickly as possible.

Q637 Oliver Colvile: So I have got it clear in my own mind, we have the Northern Ireland Office, which wrote to the PSNI asking whether or not they had done any checks on any other potential charges that might be lying around; the PSNI wrote back twice and said, “No”, and then—

Kevin McGinty: No. Because what had come from the PSNI was in a slightly different format than had come in the past and did not say, as earlier examples had, that not only were they not wanted by the PSNI, they were not wanted by any other force in the United Kingdom either, the Northern Ireland Office went back to check with the PSNI to make sure they had checked whether they were wanted by other forces in the United Kingdom.

Q638 Oliver Colville: So the PSNI had not looked at the national crime database.

Kevin McGinty: No, they had looked at it and they came back to say, “Yes, we have looked”.

Q639 Oliver Colville: Right. But they did not say, “And, by the way, there is something on there”.

Kevin McGinty: No.

Q640 Oliver Colville: Right, okay. That seems to be a bizarre thing to go and do. We have then also got Sinn Féin, who are working on the old boys’ network of putting political pressure upon Number 10 Downing Street, and Number 10 Downing Street are desperately keen to try to make sure that the peace process continues and does not get derailed in any form at all. Alright? But we have also now got a whole group of victims who feel that their loved ones have not had justice done for their killings and their deaths. Secondly, you may know I represent a military garrison town—a naval constituency—and I have got a whole lot of Royal Marines who potentially are sitting there thinking to themselves, “Golly gosh, how are we going to end up by being treated in all of this? Are we going to be looked after in the same way, potentially, that some members of the IRA have ended up by doing so?” That is a very difficult position, therefore, for us to play, most certainly amongst the military as well. What are your views about that?

Kevin McGinty: I am sorry, but I would knock it back to politicians. This was a political process. This was the negotiations.

Oliver Colville: So we have got to make sure we have a really good conversation with all the politicians who come through this. At the moment we have had one come through and have a chat with us about it, and I do not think we got very far with him either.

Q641 Lady Hermon: In your very careful briefing to the Committee, for which we are very grateful—and you have repeated this line, without looking at it, today and it is something I need you, please, to clarify—you said, “By June 2006 the OTR scheme had been operating for nearly six years”. It is the next phrase: “Everyone involved in it knew their roles and who was expected to do what”.

Kevin McGinty: Yes.

Lady Hermon: As you will know from being able to sit in whilst Sir Ronnie Flanagan gave his evidence, I did ask him, and I will repeat the question to you, if you do not mind, Mr McGinty: at regular meetings, where the PSNI was represented, where the Attorney General’s Office was represented, where the Northern Ireland Office was represented and where the DPP’s Office was represented, when you say, “Everyone involved in it knew their roles and who was expected to do what”, did they not all know that at the end of this process the end product would be that an administrative letter or a comfort letter—call it whatever—would be issued? They were not just doing it in a vacuum.

Kevin McGinty: Hugh Orde said that he did not. Ronnie Flanagan said that he did not. I am not going to go behind that. I think everyone would accept that there had to be some product. Why would we be going through this if there was not some product? The product was that the individuals were told that they were free to return, if in fact they were. They may not have known there were letters. The other thing is, by the time we had got to 2006, there were two

retired detective sergeants, as far as I can remember, who were doing all of this work as far as the PSNI was concerned. I do not know how far that was going up.

Q642 Lady Hermon: Mr Baxter had not retired.

Kevin McGinty: No, Mr Baxter did not take over this until February 2007 and Operation Rapid. Up until then, it had been done and it was being done by a retired lawyer from the PPS and, every now and again, we would meet. I would not say they were done every month or whatever, but what would happen is the Northern Ireland Office would come under pressure because there was a meeting with Sinn Fein coming up and they knew that Sinn Fein would say, "What progress is there?" The Northern Ireland Office would ring me up to say, "Has there been any progress?" I would eventually get round to saying, "Alright, I will get everyone together and see where we are", and then we would go through the entire list of names, one-by-one, and say where we were.

Q643 Lady Hermon: Sorry, just to interrupt you, were these meetings always convened by the Attorney General's Office?

Kevin McGinty: There were different sorts of meetings over the years. Sometimes, for instance, the Director would summon a meeting if it was of a greater interest to policy, but on the day-to-day sort of things, it would usually be—

Lady Hermon: Convened by the Attorney General's Office.

Kevin McGinty: Probably by me, when I was in Belfast on a Friday or something.

Q644 Lady Hermon: So you would go through the list of names.

Kevin McGinty: We would go through the list one by one and find out where we were, what needed to be done on it, whether there was any way to bring the process up, and, importantly, to make sure that we all thought the same thing about individuals. Because the PSNI were doing work on them and the Attorney's Office were doing work on them and the PPS were doing work, sometimes it all got a bit—

Q645 Lady Hermon: So all of those representatives knew there was an end product.

Kevin McGinty: Yes, or why would we be doing it?

Lady Hermon: Of course they did. Thank you. Precisely. It has just been strange to have evidence from other people who have never heard of—

Kevin McGinty: They may not have known letters were going. I am not going to dispute with them about that.

Q646 Lady Hermon: No. I am not saying that they knew that a thing called an administrative letter or a comfort letter was sent out, but it does seem to suggest somehow a blind eye was turned to what the end product was. Would you agree with that? People sat in those meetings and did not ask, "What am I doing this for? What is the end product?"

Kevin McGinty: We did sometimes wonder what we were doing it for, but we—

Lady Hermon: Good. I am glad people wondered what they were doing, and why they were doing it.

Kevin McGinty: We all understood there was a product.

Q647 Lady Hermon: Thank you. You have confirmed you all understood there was a product. Thank you so much for that. There was an inconsistency, Mr Chairman, that we must have cleared up, and that was the inconsistency that was given very vigorously by Mr Baxter—and I am repeating again—a man whom I regard to have the highest integrity. There is a conflict between the evidence that you have given to us in your briefing paper to us and his recollection, and indeed his minute of one of these meetings, where he had minuted in 2006 where it was the Metropolitan Police that it was, I think, Mr McGinty's name—

Kevin McGinty: I heard that evidence. I heard it with some surprise.

Lady Hermon: You were surprised, or you were not surprised?

Kevin McGinty: I heard it with some surprise. Yes, I was. Mr Baxter was not at that meeting. The names are on the piece of paper I left you; I cannot remember what flag it is now. This was one of those regular meetings, as I described, where we would go through the list one by one and try to sort out where we were. It is flag 17¹². Where the PSNI identified to me that an individual was wanted by the Metropolitan Police, the chances are I would then need to take it away from Northern Ireland and engage the Metropolitan Police and engage the Crown Prosecution Service, because this would be in relation to an offence that occurred in England and Wales and it would not be the PSNI. But I had to be told that they were wanted by the Met before I could start that process. I cannot check the PNC, and it would be absurd, for the reasons I have set out in my statement, that I would write to the Met in relation to every single name and ask them, "Please check the PNC to see not only if you want them, but if any other force in the United Kingdom wants them" when the PSNI were already doing that.

Q648 Lady Hermon: The reconciliation with the evidence of Mr Baxter is there was a minute that if the person on the run was being sought by the Metropolitan Police, Mr McGinty or the Attorney General's Office would check—I think it was Mr McGinty—

Kevin McGinty: It was indeed Mr McGinty, yes.

Lady Hermon: I think it was Mr McGinty myself. I did not want to point the finger, but I think it was Mr McGinty; thank you for agreeing with that. But the key is that in relation to Mr Downey, you did not know, at any stage, that Mr Downey was being sought by the Metropolitan Police.

Kevin McGinty: No.

¹² The minutes of the OTR meeting on 9 June 2006 can be found here:

[http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Minutes-of-the-OTR-meeting-on-6-June-2006-\(flag%2017\).pdf](http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Minutes-of-the-OTR-meeting-on-6-June-2006-(flag%2017).pdf)

A link to the document 'Cases yet to be established / resolved as discussed at meeting with AG, PSNI and PPS – 9 June 2006' can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Notes-of-meeting-between-AG-PSNI-and-PPS-9-June-2006.pdf>

Q649 Lady Hermon: Thank you. We just have to reconcile that, because we have conflicting evidence. Thank you. The last question is the intriguing one. I have left it to the last because I know that you will be able to give us the answer. We have been told on a number of occasions—and it is in the Downey judgment itself, and that is a reference by a very prominent solicitor then, in reference to Article 3 of the European Convention on Human Rights, that apparently it entitles all of us—that it would be degrading treatment if we were not told whether in fact the police—is there any reliable judgment of the European Court of Human Rights that you could point to to tell us that that is what Article 3 indicates?

Kevin McGinty: I have to say it sounds absurd to me. I did ask one of my civil lawyers to see if they could try to find the Greek case that was referred to, and we could not. I cannot see how Article 3 gives anyone a right to be told.

Lady Hermon: Thank you. We can now sleep easy in our beds, because it was worrying us. I appreciate that enormously. Thank you.

Chair: Hopefully this is the last question. Nigel.

Q650 Nigel Mills: I am sure Mr McGinty would rather do them than come back again. Can I just pick up on the issue about what happens if we now have some concerns about any of these letters that may have been issued erroneously or something? What options are there available if we now want to try to prosecute somebody who has one of these letters, perhaps because we can now link them to a different offence or some new evidence has come to light? What would the process be?

Kevin McGinty: This is speculation, but I think what would happen would be, if we came to the conclusion that an individual—say Mr X—had been sent a letter to say that, “You are free to return to the United Kingdom without fear of arrest or prosecution” and we now, subsequently, discover, as we did with Mr Downey, that he was in fact wanted, we could do two things. We could either arrest that individual and seek to prosecute him without telling him anything, which is what happened to Mr Downey, or we could tell the individual that the letter was sent to them by mistake, and that in fact they are wanted. I think we would have to give them some time to absent themselves, and then I think we would have to try to get them again and take the opportunity to prosecute them if we ever get them back. The reason why I say that is that if we simply arrest them and prosecute them, then we will be in exactly the same position as we were with Mr Downey and we can guarantee that we will not survive and abuse-of-process argument and therefore the victims in this particular case will never get any trial. If we tell them and give them the opportunity to abscond, if we ever manage to get them back, we will probably survive any abuse-of-process argument and we will be able to try them. You just have to balance the public interest between those two things.

Q651 Nigel Mills: If the letter says, as they do, “If any other outstanding offence or offences come to light...”, if Mr X thought he was wanted in connection with bombing Y and we say we do not want him, then we suddenly discover we think he did bombing Z, which we have never questioned him about and we never knew we wanted him for—

Kevin McGinty: If Mr X never knew what he was potentially wanted for—he may have in his own mind what he did or what he did not do, but he does not know what the prosecution actually had—if we arrested him, we would have to explain to the court exactly what we knew when we sent that letter and exactly what we know now and why it is different. It may well be because it

is a different offence we did not consider back in 2000; it may be because new evidence has come to light in relation to the case we did know about.

Q652 Nigel Mills: What happens if we do not quite know where the individual is who is receiving a letter? Can we do an issue to the media saying, “Mr X has a letter and we now think it is not valid; therefore, Mr X cannot rely on this”?

Kevin McGinty: It is an interesting question. I do not know the answer. We would have to place ourselves in a position whereby the court would understand that we were not abusing the process by which the letter had been sent out. It may well be that publication in a Northern Ireland newspaper is the easiest way to pass the information on to Sinn Féin, frankly.

Q653 Nigel Mills: Heaven forbid. Say we thought, “This is a process that should never have been done. We should never have been issuing these letters; they are far too broad.” Is a global revocation possible? We could write to all 200 and say, “Look, this was a flawed process. It should never have been done. Therefore, as of 1 October, you cannot rely on these letters anymore.” Is that legally possible or desirable, or likely to cause a massive row?

Kevin McGinty: Possibly. Sorry to hesitate. It may well be that you would have to have some grounds for doing that if you wanted to make it effective. As I say, they were never going to be arrested or prosecuted for anything anyway, but I am not sure you could simply send out a general letter saying, “We revoke everything”, unless there is some proper basis for you having reached a decision in an individual case that that is the proper thing to do. I am fairly sure it would be subject to challenge.

Q654 Nigel Mills: When this process was worked up, you never worked through the situation of, “What happens if we issue a letter and then we find new evidence, or we find evidence we did not know we had?”

Kevin McGinty: It did happen; it is set out as an example in the decision by Mr Justice Sweeney. I cannot remember the case myself. It is in the judgment. A letter was sent in error and we wrote back and said, “It was sent in error, and you are wanted”.

Q655 Nigel Mills: But you never formalised a, “Here is how we would deal with this”.

Kevin McGinty: No, because in that case there was a reason for us to go back and say, “This was an error”.

Q656 Nigel Mills: But you never went through the legal analysis of what reliance could be placed on these letters.

Kevin McGinty: We tried to ensure that the letters gave as little, in a sense, as possible. Because you are trying to assess evidence in the absence of the individual and because the position may change, we wanted to try to preserve our position as best as possible and say, “Look, this is based on the evidence we have currently got and in relation to the offences we currently know of. That position may change. It is essentially a snapshot of the position of when you receive this letter.”

Q657 Nigel Mills: But the letters do not specifically refer to the offences that have been reviewed, so when you say “the offences that we currently know of” these letters give an effective free pass for any offence pre-1998.

Kevin McGinty: No, not at all; exactly the reverse. If we subsequently decided to prosecute someone, we would always have to disclose to the court what we knew at the time the letter was sent and what we currently know. All that would have to be disclosed, but I do not see any reason why we should have disclosed that in the form of a letter to someone who was wanted.

Q658 Nigel Mills: So when the letter says “if any other outstanding offence comes to light”, the recipient does not know what outstanding offence you have looked at before you sent that letter to know whether the new one that you are now trying to get him for is another outstanding one or the original outstanding one, or what.

Kevin McGinty: Exactly.

Q659 Nigel Mills: Effectively, if the HET had found Mr X had done bombing A and you never thought he had done bombing A—you had looked at bombings B, C, D and E—

Kevin McGinty: We could prosecute him for bombing A.

Q660 Nigel Mills: And you would say, “That is an outstanding offence that has come to light even though it was in our files—”

Kevin McGinty: Because we can show from our files we did not have that information at that time.

Q661 Nigel Mills: But if you had it and you just had not put it together that it was Mr X—

Kevin McGinty: That is different. That is not new evidence.

Q662 Nigel Mills: So effectively, Mr X gets a clear pass for any offence pre-1998 where there was evidence in your files that should have linked him to it, even if that has not been put together, or has not been spotted or ever thought of or ever dreamed of.

Kevin McGinty: It would be difficult to succeed in the inevitable abuse-of-process argument if you are relying on the incompetence of the prosecutors or the police.

Q663 Nigel Mills: So really, it is new evidence that you have never had before—

Kevin McGinty: That is why, for instance, Alasdair Fraser insisted that he would take decisions personally himself. We tried everything we could to try to ensure that the decisions that were taken were as good as they could possibly be, but there were risks.

Q664 Kate Hoey: Do you know personally the names of those who have been given pardons and the royal prerogative?

Kevin McGinty: The file is full of lists, yes.

Q665 Kate Hoey: Legally, do the public not have a right to know that? It was not put in the *London Gazette* or the *Belfast Gazette*.

Kevin McGinty: I am not sure you can say—

Q666 Kate Hoey: Could you advise me how I would find out? Her Majesty the Queen has presumably signed this on my behalf and on behalf of the United Kingdom citizens, and I would like to know.

Kevin McGinty: Sorry, are you talking about pardons?

Kate Hoey: Yes, pardons.

Kevin McGinty: I will try to find out the answer for you.

Q667 Kate Hoey: Should it not be public? Do you think Gerry Adams has had one?

Kevin McGinty: I do not know.

Q668 Kate Hoey: You said you did know. Do you not know?

Kevin McGinty: I am sorry; I thought you were talking about the OTR lists. I am very sorry.

Q669 Kate Hoey: Sorry, no. I am talking about pardons. Do you know?

Kevin McGinty: No.

Q670 Kate Hoey: How would I find out?

Kevin McGinty: You can ask the Northern Ireland Office. I do not know whether they will tell you, but you can ask them.

Kate Hoey: These are related sometimes to offences that took place in England. That is why they should have gone in the *London Gazette*.

Q671 Lady Hermon: Could you come back to the Committee with a detailed response?

Kate Hoey: Could you write to the Committee about that? It is a very important point, because we should know.

Kevin McGinty: I accept the point.

Kate Hoey: Thank you.

Chair: We will take it further. Oliver, very quickly.

Q672 Oliver Colville: If the Government decided to withdraw those letters and write to them, could Mr Downey then be prosecuted?

Kevin McGinty: No. Not for that offence.

Chair: Mr McGinty, it has been very valuable. Thank you very much.