



## Northern Ireland Affairs Committee

Oral evidence: [Administrative scheme for 'on-the-runs'](#), HC 177

Wednesday 4 June 2014

Ordered by the House of Commons to be published on 4 June 2014.

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Members present: Mr Laurence Robertson (Chair); Mr Joe Benton; Oliver Colville; Lady Hermon; Kate Hoey; Naomi Long; Nigel Mills; Ian Paisley; David Simpson.

Questions 841-966

*Witness:* **Mark Durkan MP**, former Deputy First Minister of Northern Ireland, gave evidence.

**Q841 Chair:** You are very welcome, Mr Durkan, and thank you very much for joining us. I think you are well aware of what we are carrying out, so there is no need for a long introduction. It would probably be useful to us, and perhaps even to yourself, to give us some idea of when you first knew about the administrative scheme for on-the-runs and what you knew about it—just talk us through your experience of it. That would be very helpful.

**Mark Durkan:** I first really knew about the political issue of the on-the-runs in the context of the peace process, essentially in the run-up to Weston Park. Although I have learned that various schemes were meant to be in place before that and were being operated on different terms before that, the first time it emerged as a supposedly salient political issue in the context of implementing the Agreement and dealing with problems in the implementation of the Agreement was in the run-up to Weston Park.

The SDLP was certainly advised about it then. Issues to do with policing and the implementation of the Patten reforms were key issues for us, the vexed issue around decommissioning was another key issue that had to be sorted, and there were also questions around the outstanding promises from the Agreement for victims and in relation to the past. There was also the issue of the better performance of institutions, and whether achieving more certainty around decommissioning would allow us to create a bit more stability in the context of the operating of the institutions. Clearly we were in difficulties then because we were going to Weston Park with, in effect, an acting First Minister, because David Trimble had activated his resignation at that stage. We were not just dealing with the decommissioning issue but were making sure that if we got the political institutions sorted, on the basis of an understanding around decommissioning, we could also make them more productive and effective than they were proving to be at that stage.

**Q842 Lady Hermon:** That was July 2001?

**Mark Durkan:** Yes, that was July 2001. It was in that context that we had been told by the Irish Government that, while the issue of policing was a major issue for us, because we were trying to secure the implementation of Patten, obviously other parties had a different view on that, and the Irish Government told us that Sinn Féin's approach to Weston Park looked like having the on-the-runs as their number one issue, with demilitarisation second and policing a long way third. In trying to understand exactly the terms around the on-the-runs issue, it was explained that they were still saying and making the case that this was an outstanding anomaly—that given that the prisoner release scheme had progressed, the outstanding cases of those on the run, as it were, were all the more anomalous.

At Weston Park, the two Governments spoke to us about the issue of the on-the-runs, but at no stage in Weston Park were the parties brought together around the table and asked, "What are your issues and proposals? Where do you see the problems lying?" Although we were all gathered in the one building in Weston Park, we were never part of the same negotiations.

**Q843 Chair:** So there was no agreement about a scheme at that point?

**Mark Durkan:** No, there was absolutely no agreement about a scheme at Weston Park, just as there wasn't agreement in relation to policing. We had our view in relation to the implementation of Patten, and other parties had theirs. There was a whole range of different issues on which there was not agreement.

The parties were talked to separately about different issues. I can remember well that Seamus Mallon and John Hume, who were our deputy leader and leader at the time, were both critical of the Governments for the way in which they were managing those negotiations. They had created a sort of hothouse expectation. There were stories running in the papers that different things were going to be part of the deal, and that maybe policing wasn't going to come through, and maybe there would be the issue of the on-the-runs instead. We queried what the Governments' sense of purpose and handling at Weston Park was when they weren't bringing parties around the table at any one time. They spent their time, seemingly, shuttling between parties and shuffling papers and not telling all of us what each other was saying.

**Q844 Chair:** You referred to the word "anomaly". Was it your view, and your party's view, that the "on-the-runs" was an anomaly? For example, David Trimble told the Committee no, it is just people who had not been arrested, not been through the judicial process, not served time in prison—if, indeed, that is what they would have had to do: it is not an anomaly as such. And the police, indeed, do not view it as an anomaly. They view it as individuals who should or should not be questioned. What is your take on all that?

**Mark Durkan:** Well, we did not see it as something that was directly arising from the Agreement, and we did not see it as one of the priorities that needed to be addressed to resolve the difficulties in implementing and stabilising the Agreement; but in so far as the issue was raised, we recognised that the case could be made that there was a certain anomaly there, in respect of some cases. The fact is that there are some people who went on the run not necessarily because the police had any immediate intelligence on them but, maybe at the time of supergrass trials, or whatever, they felt that they were maybe going to be vulnerable. So some people took themselves on the run for different reasons.

We had no problem with the so-called anomalies being dealt with, but we did not see that that needed a grand political scheme or any major negotiation, and we certainly did not want anything by way of amnesties, or anything else. We also did ask the two Governments, in the context of these negotiations that we seemed to be hearing about, going on between them and Sinn Féin in relation to on-the-runs, and that we were reading some kite-flying articles in the papers about: whether or not in this context they were using this issue to get any more certainty from Sinn Féin around questions like decommissioning, broader criminality and their attitude to policing and the implementation of Patten, but it seemed to be that the Government were treating this sort of as a discrete issue. You got the impression, the odd time, from Tony Blair, that maybe they were talking about the on-the-runs in the context of decommissioning; but then you looked to Bertie Ahern and you kind of got a shake of the head, indicating that that was not the way in which the Irish Government were perhaps addressing the issue.

**Chair:** That is very helpful; thank you.

**Q845 Lady Hermon:** It is very good to have you as a witness before us this afternoon. First of all, you have got an incredibly good memory, which is always very helpful indeed, and you are very frank and very honest.

Mark, you have given us the context—that is the Weston Park talks of 2001. Since the publication of the Downey judgment<sup>1</sup>, has any pressure been brought to bear on you by the Irish Government to pipe down, so to speak, over the OTRs issue?

**Mark Durkan:** No, no direct pressure has come on me from the Irish Government in any way.

**Q846 Lady Hermon:** No direct pressure.

**Mark Durkan:** No. The most I would say is that, purely at conversational level, I may have been asked as to where I thought the issue was going to go, and how far I thought the inquiry by this Committee might go, and whether or not I envisaged that I might be in front of the inquiry, or whatever, and I indicated that I would not be uncomfortable if I was.

**Q847 Lady Hermon:** Yes. In your conversations, at whatever level—perhaps you would very kindly let us know at what level you were discussing the Downey judgment with representatives of the Irish Government—how did you raise this with them? Surely you would have probed the Irish Government—how much they knew about the administrative scheme and when it first commenced? Did you have a very frank discussion? Could we ask you that? Well, we can ask you, but whether or not you answer it—

**Mark Durkan:** No, I have not had a particularly frank discussion about this. I have not avoided one, either, so if the opportunity arose I would have. Remember, at a political level, we are talking about a different Government now than we were talking about then. Obviously many of the officials in the service of the Government might be the same, albeit in different positions. The conversations that I had would have been more at the level of officials, and I think it was just so

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<sup>1</sup> 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>

that they could politically brief Ministers as to where they thought the fallout from this may or may not go.

It was no secret—it is no secret on the part of people who were in the then Irish Government—that we took a jaundiced view of how the British and Irish Governments were handling aspects of the peace process, not least their negotiations with Sinn Féin at one level, and then at other times it was their negotiations with Sinn Féin on the one hand and the UUP on the other—subsequently, the DUP on the other—and abandoned the more inclusive approach, which we thought was the ethic of the peace process and had given rise to the Agreement. We think that more and more problems arose in the process when the two Governments started having separate negotiations on separate issues with different parties, and started having the side deals and the secret deals and the sub-deals. We think that badly affected the whole process and we tried several times to warn against it, including at Weston Park itself.

We reminded Tony Blair that he had told us late in 2000—whenever it was, it was during President Clinton’s lap of honour visit to Northern Ireland before he left the White House. Again, John Hume and Seamus Mallon were complaining to President Clinton and Tony Blair about how the process was being managed and the pretty exclusive attention being given to two parties, and Tony Blair at that time—we reminded him of this at Weston Park—said, “Yeah, you guys, your problem is you don’t have guns.” So we reminded him at Weston Park that he was negotiating in exactly that same syndrome: they wanted to talk to us about policing, because they needed us to make the new beginning in policing happen, but they didn’t want to hear from us on certain other issues. The two Governments did not want to address the wider issues of the past, or the outstanding promises to victims that still were not being kept. Of course, on the other hand there was the focus around language on decommissioning as well. So there were disparate discussions at disparate times, and people in the Irish Government know that the SDLP and I were always very frustrated by that approach.

**Q848 Lady Hermon:** Staying with Weston Park in July 2001, the impression would have been created—certainly the perception was held by those in the Unionist community—that the SDLP was fairly close and friendly with the Irish Government in 2001 under Bertie Ahern. The point I want to make is that among the documents disclosed in the Downey judgment is a letter between Bertie Ahern and Tony Blair, sent by Bertie Ahern in December 1999<sup>2</sup>, 18 months before the Weston Park talks. In that letter, he—Bertie Ahern—suggests that perhaps, subsequent to the Good Friday Agreement being signed, there were some people in the Republic of Ireland who were on the run who could be very useful in promoting the Agreement in both Northern Ireland and the Republic of Ireland. Are you surprised by that, Mark? I was certainly very surprised. Had you any awareness that, behind your back, the Irish Government were speaking in those terms to the Prime Minister then?

**Mark Durkan:** I had no awareness of it at the time, but I’m not surprised.

**Q849 Lady Hermon:** You are not surprised?

**Mark Durkan:** No, I’m not surprised.

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<sup>2</sup> The letter from Bertie Ahern to Tony Blair (23 December 1999) can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Letter%20from%20Bertie%20Ahern%20to%20Tony%20Blair,%2023%20December%201999.pdf>

**Q850 Lady Hermon:** You are not surprised because it's Bertie Ahern, or not surprised about the Irish Government of 2001? Which bit does not surprise you?

**Mark Durkan:** Well, the fact that Bertie Ahern and the Irish Government had that sort of slant on things at that time. We maybe had a different angle of vision on this than the Irish Government had. We were more conscious of outstanding issues in relation to the past and the sensitivities of victims in that regard. We were also clear on the sort of the promises that we had made during the referendum campaign, when people were asking us questions, and not necessarily just our electorate. It was a very public campaign, including in TV studios and other settings, and we were being asked questions by people who would not be voting SDLP, such as, "Did the Agreement mean this?" and "Did the Agreement mean that that nobody was ever going to be prosecuted for anything, and that all outstanding cases were going to be washed away?" We had said, no, that wasn't our interpretation: yes, there were difficult choices and compromises in the Agreement in respect of prison releases et cetera, and that there were going to be outstanding issues arising about possible policing change and changes to criminal justice, but no, we did not think it was the case that everything was going to be washed away.

Whenever we find now that the Irish Government were taking quite a sweeping and categorical approach to that, I do not think that it is even consistent with what the Irish Government were saying about other issues at that time, for instance, Bloody Sunday and other issues in relation to the past and victims who we were bringing to the Irish Government in relation to issues in the past. So the sort of sweeping approach that seems to be reflected in what we now know was in the letter from Bertie Ahern seems to me to be inconsistent with that.

**Q851 Lady Hermon:** So do you think that the approach to OTRs was the initiative of the Irish Government? It certainly appeared to be the initiative of the Irish Government in 1999 to drop proceedings, including extradition against those who might have spoken favourably in terms of the Good Friday Agreement—the Belfast Agreement—and it then morphed into something else, perhaps as a sweetener for decommissioning. What is your take on all that?

**Mark Durkan:** That is possibly what may have happened. I doubt if any of this began purely in the head of anybody in the Irish Government or anywhere else. I would imagine any thoughts put in the heads of the Irish Government would have come as a result of their own engagement with Sinn Féin. I would have assumed that they were conscious, as they felt that people who could be helpful to the peace process were in a particular position—that is, other people were released, and as matters began to be sorted there was a problem then about the status of some other people, whether they were in the Republic or elsewhere. That is what I assume was the case.

**Q852 Lady Hermon:** So the sequence of events would have started with Sinn Féin, and then the Irish Government—Bertie Ahern—to persuade the then Prime Minister, Tony Blair, and then this invisible scheme to be set up to suit—

**Mark Durkan:** I am not sure that it all came from the Irish Government prompting it. Again, from what I have seen of some of the papers that seem to be reflected upon in the Downey judgment, there seemed to be a lot of conversations happening directly between Sinn Féin and the British Government as well. I don't think it was the case that it all happened on a triangular basis.

**Q853 Lady Hermon:** It is just the key date is 1999. That is what is so interesting about Bertie Ahern's letter, because of course Operation Rapid<sup>3</sup>, as we know, did not begin until the spring of 2007. Although there was an earlier administrative scheme after 2000, it seems somehow to have been in response to decommissioning, so the reason for the OTR scheme seems to have morphed during the years. Anyway, I will come back to you when other people have had a go.

**Q854 David Simpson:** You are very welcome, Mark. It is good to get you in the position that you are in today. It does not often happen. During the debate on the Downey case, you indicated that your party—maybe not you directly, but your party—had raised the whole issue of OTRs during talks, and you were told quietly that it was not an issue and that we—you—should forget about it as an issue. Who told you that?

**Mark Durkan:** The Irish Government and, on some occasions, the British Government as well. I mentioned the talks—

**Q855 David Simpson:** When you say the Irish Government and the British Government, which individuals said it?

**Mark Durkan:** Well, first of all, I will clarify the couple of times it arose. After Weston Park, the two Governments produced a paper that was issued to the parties<sup>4</sup>. There was not an agreement. There was not a paper even issued at Weston Park. The paper was issued a couple of weeks after Weston Park, and parties were asked to respond. The two Governments again described the on-the-runs as an anomalous issue. Certainly in the SDLP response, we said that we did not see it as a particular priority issue arising from the Agreement, but if people were making the case that there was a particular anomaly, it could be addressed, but we did not think it needed anything elaborate.

The issue then emerged again in a very strong way in the Hillsborough talks in 2003. Again, we were pressing, and the Alliance party were pressing, for instance, that issues of the past be dealt with. We were both saying that, given the failure of the process to deal with the past, maybe a victims forum could be set up, but we were told at that time that both the UUP and Sinn Féin were opposed to that, or to anything in particular that had been done on the past in that context.

The two Governments produced a joint declaration at that point<sup>5</sup>, which then went further than Weston Park. It referred back to Weston Park and it talked about how they would come forward with a scheme to deal with this issue—again, the word “anomaly” was used—but for the first time it referred to covering all scheduled offences. That is what it actually said. The term was ambiguous. When I queried it with the Governments subsequently, I was told it just meant that it could cover any scheduled offence, ranging from membership to anything else; it did not mean that it was going to be open for every single offence—obviously, we questioned the Irish Government about that in relation to a number of other issues that they and we were supposedly pressing at the time. So it came up in 2003.

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<sup>3</sup> The terms of reference of “Operation Rapid” can be found here:

<http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Operation-Rapid-Terms-of-Reference.pdf>

<sup>4</sup> A link to the Weston Park Agreement can be found here:

<http://cain.ulst.ac.uk/events/peace/docs/bi010801.htm>

<sup>5</sup> ‘Proposals in relation to on the runs (OTRs)’, April 2003, can be found here:

<http://cain.ulst.ac.uk/events/peace/docs/biotrs010503.pdf>

Then, in the context of Leeds Castle, we asked where the issue was. If it had been an issue at Weston Park, and was in the Governments' declaration as an issue in 2003, where was it at Leeds Castle? We were told, "It's not an issue for the DUP." It was as though we were in danger of trying to spook the DUP. The suggestion seemed to be that we were doing it to try to cause trouble, raise difficulties or get in the way of an agreement, but that was not our purpose. Similarly, when we raised concerns about what the British Government were intending to do about the national security designations and the role of MI5, we got the inference from some officials that we were doing this to spook Sinn Féin. We were not doing things to spook Sinn Féin or the DUP; we had our own view and the right to be clear about it.

The issue came up at Leeds Castle, where it seemed to be treated as very much a non-issue, and then there was the abortive comprehensive agreement in December 2004. The issue came up again in subsequent talks, including at St Andrews. We asked at St Andrews where the issue was, and we were told again that it was not a problem or an issue. In fact, it was suggested that something like what I had advocated in the context of the 2005 Bill—namely, a scheme whereby people could make inquiries through their lawyers about whether anybody was interested and whether they were safe to return—was, in effect, operating, and I was asked not to raise it any further than that. I remember, specifically at St Andrews, Paul Goggins came to speak to me—I had conversations with different officials—and shared with me that people in both Governments were concerned that with the MI5 issue and the on-the-runs issue we were going to create scares and spook either Sinn Féin or the DUP, as either of those issues could be sensitive for them.

**Q856 Lady Hermon:** Just remind me of the date of the St Andrews talks.

**Mark Durkan:** The St Andrews talks were late 2006.

**Q857 David Simpson:** Apart from Paul Goggins, were there any senior politicians or officials from either Government?

**Mark Durkan:** I want to stress that in that personal conversation with me, Paul Goggins made it clear that he did not share his colleagues' suspicion or concern that we were in the business of spooking. He had had enough conversations with me—too many for his taste, I'm sure—about the MI5 issue and other issues to know where we stood on them and we were not going to push it beyond that in any other way, but I recall being told by a senior Irish Government representative when we raised those questions in very private sessions that I and the SDLP were in danger of losing our friends if we asked such things.

There was a lot of confusion about who was raising what, for what reason. One of the bizarre moments I recall from St Andrews was when Tony Blair told me that the DUP had become wobbly on a number of issues and that I needed to do something about it. I said, "I don't know what you think I can do about it." He said, "I've been told that it is because Alasdair is spooking them." I said, "Well, of course he is. He's brought himself here." Tony Blair then said to me, "But he's your deputy." Tony Blair clearly didn't understand that when people were saying, "Allister is spooking people", they were referring to Jim Allister, now of the TUV. Tony Blair, when he heard that, thought instead of Alasdair McDonnell, the deputy leader of the SDLP. He completely misunderstood. Then I had to explain to him who Jim Allister was.

**Q858 David Simpson:** And did you explain it to him?

**Mark Durkan:** I explained it to him and said it was the guy who looks like chewing a wasp. Tony Blair said, “Oh yeah, I know him”, and I said, “he is not as nice as he looks.”

**Q859 Oliver Colvile:** Thanks for coming to see us; I am very grateful, Mark. It seems to me that this is all very much a part of the whole discussion about the legacy issues. What I find slightly strange is that this issue of the on-the-runs was not considered as part of the strategy of trying to deal with legacy issues as well. What conversations did you have with anybody about the legacy issues and how those could be handled? Why was this not just wrapped up into it? Was it because, frankly, there was pressure on the Government from Sinn Fein to try to help their boys, and that is the reason that all this happened?

**Mark Durkan:** I think obviously there was political pressure from Sinn Fein in relation to the on-the-runs questions, for the reasons that I have already touched on, and that you will have read about in the various papers that you have seen. In terms of wider issues of the past, on any of the occasions on which there were various sorts of impasse talks, with helicopters flying in to Hillsborough and on the lawn of Stormont, or whether we were in Leeds Castle, St Andrews or anywhere else, many of us did try to make the point that outstanding commitments in the Agreement in respect of victims on the one hand and in overall terms of the past still were not being addressed.

We found ourselves frustrated and deflected on that again and again. Again I give the example of Hillsborough 2003, where we and other parties, for instance, were at least crystallising around, as a way of moving forward on the past, if the political process is not doing it, at least of giving some path forward on it would be a victims forum. Again the two Governments told us that was out because neither the UUP nor Sinn Fein wanted it. Yet, this very partial approach in relation to the past was sanctioned at Hillsborough 2003. That was the point at which the term about it relating to all scheduled offences came in, which perhaps is why the Government, when they brought forward the Bill in 2005, did present the Bill that was basically about giving an amnesty scheme for people in respect of any and all scheduled offences and indeed some other offences as well.

I think that was wrong; I think the two Governments were wrong in failing to deal with the past on a more comprehensive basis, and failing to have more inclusive discussions around these things. Remember, in very few of these negotiations were parties for very long around the one table together, hearing the same issues and hearing each other’s ideas, points and concerns. That was not the way to deal with the past; it was not even the way to deal with current problems that we had in the implementation of the Agreement and stabilising the institutions. When I complained about that separately and together to Governments, I can remember on one occasion in Dublin in Government buildings when I made the point that a big mistake had been made on the past, the Taoiseach Bertie Ahern said, “Frankly, Mark, I don’t have a lot of time for the past. I even hate it when half the country is being dug up looking for bodies.”

**Q860 Oliver Colvile:** Presumably you were not aware of the on-the-runs scheme in the first place.

**Mark Durkan:** No.

**Q861 Oliver Colvile:** If you had been, what would you have said to the Prime Minister of the day or, for that matter, the Secretary of State?

**Mark Durkan:** It depends which mutation of the on-the-runs scheme we are talking about. In the context of the Bill that was produced in late 2005, we made it very clear, both in our bilateral meetings with Government and when the Bill was going through its abortive stages here, that we had no problem with a scheme whereby anybody who was outside the jurisdiction who was worried as to whether they were in peril of arrest on their return could find out whether there was a live interest in them on the part of the police. That to us seemed to be a fair, proper and reasonable thing, not least because there would be many people who took themselves on the run, maybe unbeknown to the police, because they felt that they could be at risk as they had seen other people being scooped up in part of supergrass cases that they maybe believed had very tentative involvement in relation to any offences. They would have felt themselves potentially at risk, and also very conscious of the Castlereagh syndrome and being subject to interrogation methods that would have induced confessions or whatever.

So people did take themselves on the run, maybe without the police having as much evidence against them as some of us, when we are now talking about the on the runs, suggest or imply. That is why I said in the debate in the Chamber that I was not one of those who said that every name should now be published and this, that and the other, because many of them were people the police genuinely were unaware of and were probably able to say, "No, we have no interest or live file in relation to that person." We had no problem with a scheme that was simply about confirming whether there was an interest, but not something that tilted into potentially giving people letters of indemnity or some sort of certification of amnesty or court immunity. When we made that point on the 2005 Bill, we heard from both the Government and Sinn Féin that such a scheme would not be enough and would not really be possible, yet we are now being told that that was what they were doing and intending all along.

**Q862 Kate Hoey:** Thank you, Mark. When David Trimble came before us<sup>6</sup> he more or less said similar things about not knowing what was going on. He said that he felt very hurt over it. Given your involvement and the way you went out and took risks for the whole peace process, do you feel let down perhaps not so much by Tony Blair but by the Irish Government on this? Or do you just feel that it was one of those things and that is the way things were?

**Mark Durkan:** No. I think the two Governments should have dealt on an up-front basis with all issues. All parties should have been confronted with the difficult choices and if there were anomalies, we had to address them. There were difficult choices in relation to prison releases and difficult choices in relation to policing change by people on both sides of the argument on policing change. There were compromises within the Patten proposals etcetera and whether they agreed with them or not, people found themselves having to implement and manage some of those things. We used to regularly say to the two Governments, "Look, when things fall to all the parties to do and manage, they work. The things that don't work are the ones that are taken away just for the two parties."

We should not forget that the Assembly never went into suspension because the Assembly was failing to work and because Committees were failing to work or whatever, it was because of issues in the process rather than issues in the Assembly or the institution. So parties, whether they like budgets or not, whether they like the laws or the Bills they had in front of them or not,

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<sup>6</sup> A transcript of Lord Trimble's oral evidence to the Northern Ireland Affairs Committee on 13 May 2014 can be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/9593.html>

were able to take decisions within those processes. Similarly, whether people liked Patten or not, or all the issues that were being managed at the Policing Board, along with the independence, they were managing difficult issues. Our point to the two Governments was, “Look at the system. Our politics can be mature enough to deal with these things. You don’t have to deal with these things in secret or in private.” But that was the course that they chose and I think that was because that was the way Sinn Fein wanted it.

**Q863 Kate Hoey:** Given that some of the other unpalatable things like releasing prisoners early and all of that were accepted, if reluctantly, by the Northern Ireland electorate, clearly you could say that if this had all been handled very differently the public in Northern Ireland would have understood the whole on-the-runs issue?

**Mark Durkan:** Yes, I think that people would have. Given the terms in which people now explain what they thought the scheme was doing—that these letters were purely administrative letters to confirm that people should not regard themselves as being at particular risk if they came back—I think the public would have understood that. Remember that, notwithstanding the deep grievances that there were in Northern Ireland, people could also see in this context that ex-prisoners were making various contributions in various ways at community and political levels in relation to the peace process. Notwithstanding people’s misgivings and grievances in relation to people’s pasts, there were many things that people were prepared to make a lot of allowances and room for. I do not believe that the need to do some of these things as secretly and as furtively as they were done actually stood up, which is why we had problems when things emerged in the way that they did with the Downey judgment.

**Q864 Kate Hoey:** You said that it was down to Sinn Fein in a way. You probably understand Sinn Fein a bit better than I would, but why would Sinn Fein have wanted to treat this in such a secretive way when they had not wanted to treat secretly prisoners being released early and that kind of thing? What was so special about on-the-runs?

**Mark Durkan:** Because they wanted it to be seen that they were in a special and bespoke negotiating position. Part of it goes back to Tony Blair’s thing: “You guys—your problem is you don’t have guns.” So we had Tony Blair basically saying that he had to have bespoke or separate negotiations with Sinn Fein, precisely because they were identified as being associated with those who had the guns, which was the justification for excluding us from certain negotiations at times on certain issues. Sinn Fein would have wanted to be responding to people if anyone was bringing concerns about other people being released and other things being squared and sorted and saying, “What about our status? We don’t know if we can come back home for a wedding, funeral or whatever.” In so far as there is a legitimate issue there, Sinn Fein had the right to raise and address those questions. What they did not have the right to was a fairly exclusive and intensive negotiating channel with Downing street on that.

**Q865 Kate Hoey:** Was it a very useful power tool for the leadership of Sinn Fein at that time?

**Mark Durkan:** It seemed to be, because, from what we now know and what we can read in the papers relating to the Downey judgment, they seemed to be putting on a lot of pressure at times in the early 2000s in relation to on-the-runs. In not many of those conversations does it seem that the point was being made back to them about what they were doing in relation to decommissioning and other things. What wider give were they giving? What better context of

moving forward were they helping to create? There did not seem to be a lot of that. Certainly, we asked at Weston Park and subsequently about Sinn Fein's stance on policing, "How come you're prepared to take from them that they won't endorse the new arrangements in policing and will attack those of us who do?", including in quite serious tones in a number of the council chambers when it came to the district policing partnership boards being appointed and with the threatening gestures that Sinn Fein councillors were making at that time. We questioned both Governments why they would feel under pressure to do something for Sinn Fein in respect of those sorts of issues while not asking anything of them in relation to policing or decommissioning or anything else. There seemed to be an unequal attitude there where the Government did not seem to be minded to state the obvious to Sinn Fein. While not specifically related to on-the-runs, that became very apparent then in late 2004 or early 2005 when you had the Northern Bank robbery and the McCartney murder, where again the two Governments did not seem to want to pull Sinn Fein up short on anything.

**Q866 Kate Hoey:** Is it too simple to sum up that Tony Blair and Bertie Ahern were willing to do anything in any deal with Sinn Fein as long as it meant that the peace process was kept to?

**Mark Durkan:** In that sense, they would always give that justification. I never thought that there was a real threat of Sinn Fein turning turtle or resiling on the peace process. I would agree with David Trimble that in the context of the Good Friday Agreement, yes, there was uncertainty as to whether Sinn Fein would endorse the agreement, which was why Mo Mowlam went ape when she heard that Tony Blair had sent John Hume to tell Sinn Fein, "If you don't over-negotiate in these last few hours, prisoner releases could be done within a year." Mo Mowlam went ape when she heard that that sort of offer was being canvassed or suggested. I recall that there was an issue about the election of a First and Deputy First Minister in late October, early November 2001, and there were issues then about whether or not there could be another 24-hour suspension, to give more time for the Assembly then to elect. There were also issues about re-designation of Members, and all the rest of it, to effect that election.

In one phone call I had with the Secretary of State at the time, John Reid, when I indicated that we could just move to an election then, he said, "No, no. We can't do that." He could not countenance that. He wanted us to sign up to particular changes to the Agreement there and then that would have been favoured by the Alliance party. I said, "We're not signing up to the changes to the Agreement just in order to take office as Deputy First Minister." He was spending a lot of time attacking John Alderdice, and saying it was the Speaker's fault—because he was going off on holiday to buy a house, or something, in France—that a six-week date could not be met. I said, "You could do it simply by having another 24-hour suspension", but he said, "No, no, no. We can't do that. You don't know the threats I'm dealing with. You don't know what I am hearing from others. We have made promises". If we remember, at that stage, in October 2001, there had been, obviously, some further understanding then in relation to decommissioning. I told John Reid that I did not believe that, if such a threat was being communicated to him, it was real or credible.

**Kate Hoey:** Thank you very much. I hope you are writing a book about this, Mark, because it would be very interesting.

**Q867 Naomi Long:** Mark, it is good to have you with us. You have been reflecting on the state of the peace process at various times, and one of the times we have been probing, I suppose, is 2007, which was when the Downey letter, in particular, was issued.

Shaun Woodward, when he came to the Committee<sup>7</sup>, described a parlous state of affairs, where the Assembly was on the brink of collapse and where the process had almost never been so vulnerable. That was not my recollection, I have to say, given that we had at that stage a transition over to Ian Paisley as First Minister and Martin McGuinness as his Deputy, and so on.

I am interested in what you said about things looking more parlous even before that. You felt that there was not a real threat of anybody walking away. Do you think that that analysis holds any water—that in some way this Downey letter was so critical to keeping the process together in 2007 that it could not have proceeded without it being issued?

**Mark Durkan:** I think that it is probably the case that nearly all Secretaries of State for Northern Ireland think that, when they were there, the biggest threat ever existed and that they withstood it and navigated it skilfully, and that the rest of us mere political Lilliputians do not appreciate what those political Gullivers actually did for us all.

As I said, John Reid was implying to me that there was a risk and that there was intelligence or information that he had, and that there were commitments they had made, as though something was going to happen—that the IRA might do something if there was another 24-hour suspension, or whatever, which I did not think was real.

In 2007, my view was, whether or not all the arrangements around Sinn Féin's and DUP's ascendancy were to our taste, I was clear that we now had a settled process. One thing that was clear was that there was a settled process and that people should move on, on that basis. I did not think it was a process that was not going to face any of its own threats or tensions, but it was a settled process.

**Q868 Naomi Long:** It is interesting, because it was the context in which the Downey letter itself was set for us, as a Committee, and I have to say that it just did not ring true, from my recollection of the time, because we had had that suspension and it had been quite fraught, but we had got everybody back into the Assembly. It was really quite a prolonged process, through the Assembly, the transitional Assembly and all the different kind of movements that went through.

You mentioned the OTRs being the live issue at Weston Park, which it was, but not so much at Leeds Castle in terms of Governments raising it. You and the SDLP raised it at Leeds Castle to find out what was happening there, and again at St Andrews there was discussion about it, but not in the open and not raised by the Governments out front. You clearly came under considerable pressure not to keep raising it. Did you stop raising it?

**Mark Durkan:** To be honest, yes. We weren't making a big issue of it publicly or whatever, partly because we had made it clear that we were not trying to spike any potential agreement or to throw spanners into the works, but we had a sense that something was going on, that something was being done or that something was going down, and we wanted to be very clear with people that we were not part of it. As well as the British and Irish Governments, the American Government, who were sometimes represented, including at St Andrews, would have been

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<sup>7</sup> A transcript of Shaun Woodward's oral evidence to the Northern Ireland Affairs Committee on 9 April 2014 can be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/8472.html>

aware of our position and questions on these issues, whether it was MI5 and the whole business of annex E at St Andrews, which we would not sign up to and would not be part of.

At the time, I asked Paul Goggins on one occasion and Mitchell Reiss on another whether or not it was possible that Sinn Féin's agreement with annex E was in the context of some other understanding, including in relation to on-the-runs and other things as to how intelligence and intelligence-related issues would be dealt with and addressed in future, and what would or would not be coming under the purview of the Policing Board, ombudsman or anything else, and that some issues dealing with the past might find themselves off limits from the Patten structures.

**Q869 Naomi Long:** I understand that you were not there with a view to trying to destabilise the process, but were you not concerned—two concerns—first about what the Government might be cooking up behind the scenes with Sinn Féin around this issue because it runs fairly core to the integrative process? Secondly, were you not concerned that by not continuing to ask for clarity and openness on that the public could end up becoming disillusioned if, as has happened, this was flushed out into the open at some later stage?

**Mark Durkan:** Yes, I think there is a valid point there. I suppose it was a matter of judgment and nuance as to how far you pushed a point or made a point if it was not to destabilise but was to make sure that everybody who was privy to the negotiations was clear and that the record would be sufficiently clear afterwards. That is what we did.

Remember that what I was surmising to be the case was that basically people were being told that they were safe to return to the jurisdiction and that the police did not have a direct interest in them. We were also being told that the HET was operating fully to attend to any possible evidence that might be emerging from its work.

I suppose, Chair, I should have indicated that also in 2003, in the aftermath of the Hillsborough discussions, there was the policing Bill and amendments to the Act. In the context of discussions on those, Paul Murphy, as Secretary of State, was making significant commitments to the establishment of the HET and its funding in response to proposals from Hugh Orde. Paul Murphy made it clear to me at the time that I was the only party leader who was lobbying for and in favour of such a thing and that others did not seem to want to be doing too much in relation to the past. The fact of that happening was offered to me in 2003 as an assurance against the concerns we had about what was in the Hillsborough declaration from March 2003 and whether it could deal with all scheduled offences. I was told that, no, it was intended only in relation to on-the-runs, not all scheduled offences as such.

Were we wrong to take some of the assurances that we were given, insofar as we would have trusted or relied on any of them? Maybe we were, but it was also clear to me that all parties knew that the on-the-runs was a stated issue. It was also clear that after the Bill had been withdrawn in 2006, the Government had said that they would deal with it by another way, by other means. They did say that.

I at least asked questions at the subsequent negotiations—I do not know why others did not ask questions at the subsequent negotiations. I asked these again at the pre-devolution negotiations in Hillsborough. I asked, “Does anybody know what has happened in relation to this?”, and, “Are people happy with what has been told to the Policing Board?”, because an answer had been given to the Policing Board that indicated that there was, essentially, an administrative scheme, or whatever, which I think most people believed was happening in response to legal

representation and queries coming in. People did not realise that it was a whole *parti pris* scheme of this Shinner's list being provided via the NIO for the police to then generate letters that emerged from elsewhere.

**Q870 Naomi Long:** Just on that, Mark, the Government said they were going to proceed by other means. Obviously, everybody will have reached their own conclusions about what those other means were without necessarily having to be told. In any of the private conversations that you had with any of the Governments, did any of them ever indicate to you the nature of what they were intending to do, or the other means that they were using? Did they ever suggest to you how they were handling it at any stage?

**Mark Durkan:** Assurances would have been given that there was no amnesty or anything like that—that people were being given indications that meant they were then travelling on their own assurances, but that there was not anything else by way of amnesty or anything. A lot of the language that we hear now is that it is not an amnesty and it was not intended to be a blanket thing, but, of course, the Downey judgment makes the letters sound to be of a different order from that.

**Q871 Naomi Long:** And his reliance and his enthusiasm for it also. Comments were made to the Policing Board at the time, which you have referred to. When you read them back it sounds more like an assurance that there is not a scheme, rather than a description of a scheme. It seemed to be more to reassure people that normal and due process was being followed, which, in itself, was quite misleading, in terms of what people would have read into that particular briefing. But in terms of your own view, obviously, when people were saying, "Don't ask any more questions about it. We are dealing with it by other means.", and so on, what was your presumption, because it did drop off the political agenda?

**Mark Durkan:** My presumption was that a decision had been made—that something had happened or was done and there was a need not to know. My working assumption, again, going back to my recollection of the Bill in late 2005, was that a large part of the DUP's pitch against that Bill was to make sure that the blame for it hung around David Trimble's neck and the UUPs—that it was very much using the emphasis that "This goes back to Weston Park. Weston Park was a David Trimble deal. It's a done deal."

I can recall, on one occasion, coming out of that Bill Committee one day, and Peter Robinson actually questioning me about the vehemence with which I was opposing the Bill and the amount of effort that I was putting in to try and put heat under Sinn Féin's position—that I seemed to be trying to create a situation where we could get victims to pressurise Sinn Féin into withdrawing support, and therefore, the Bill might be pulled. He indicated that he did not think that was a very realistic strategy, and that, as far as the DUP were concerned, it was a done deal, but it was not being done on their watch. They were going to make it clear that everybody knew that this had been done on David Trimble's watch, but that issue was never made a deal-breaker by the DUP at that stage. Lots of issues were deal-breakers—issues about the First Minister and Deputy First Minister, issues to do with the north-south bodies and reviews, and all sorts of things. Lots of things were deal breakers, but there was this issue about the on-the-runs and how it might be dealt with, and having had the example of a Bill, it just seems strange that that completely disappeared off the DUP's screen.

So my hunch was that whenever they bought this idea that it could be pinned on David Trimble—and therefore, “We can allow it to happen; we do not have to be seen to stop it.”—that seemed to carry on in relation to the ongoing negotiations between the two Governments and Sinn Féin and the DUP about establishing the institutions under their ascendancy. The effort seemed to be to make sure that whatever was done was done, as far as possible, prior to actual devolution and certainly not on terms that would implicate an incoming First Minister and Deputy First Minister.

**Q872 Ian Paisley:** Thank you for your evidence so far, Mark. The analysis you have just presented, however, somewhat breaks down. If this was all to be pinned on David Trimble and on his watch, remember that the Bill collapsed. Once the Bill collapsed, you seem to have taken your foot off the pedal in terms of your interest in the OTR material. Why was that?

**Mark Durkan:** Well, first of all we didn’t. At subsequent talks we asked about what was happening in relation to the OTRs and where this was featuring. It was other people who took their foot off the pedal, not the SDLP. If anything, we had the Governments trying to discourage us from raising the issue or raising the question, and in terms that seemed to me to mean that people knew something was going on but wanted to make sure that their hand wasn’t in it, that it wasn’t part of any actual agreement and that what was happening was happening on a need not to know basis. Certainly we were behind the pillar on it, and that was not necessarily of our choosing. But it seemed to us that possibly other people were behind the pillar on it and had chosen that pillar.

**Q873 Ian Paisley:** With hindsight—I know it is a wonderful thing—could you have probed more, and do you wish you had?

**Mark Durkan:** I don’t know that there was anything more we could have found out than what we did, because the most that we would have been told was along the lines of what has been offered in support of the scheme anyway—that it was simply a way of letting people know. We could have done more if we had known that this was happening on the basis of one political party seeming to come in with lists, and using the NIO and the police. We know the phrase “political policing” has been in vogue, but if anything brings us down the lane of political policing it is the way in which this scheme seemed to operate and the dimensions of it—it seems very much in the realms of political policing.

We were in circumstances where deals were being done that were going to say, for instance, that the SDLP and the UUP were going to be excluded from Government if we did not vote for the First Minister and Deputy First Minister. Under the Agreement, Sinn Féin and the DUP were included having voted against or abstained on the election of the First Minister and Deputy First Minister, but under the deal that was going to go down in the comprehensive agreement of 2004 and that was planned for St Andrews, parties were not going to have the right to nominate Ministers unless they voted for the First Minister and Deputy First Minister. So there were pretty dramatic political changes afoot between parties, and we were trying to withstand those changes in relation to the agreement. We were trying to defend the north-south institutions, and there were quite a number of things that we were trying to do in those things. We were also trying to push in relation to the Finucane inquiry and many other things.

We raised our concerns, particularly in relation to the MI5 changes and the fact that we saw that as a significant departure from Patten, and we did raise the question of the OTRs and what was happening. But when we were told that it wasn’t an issue and that we were only creating

problems by raising the issue, we left the matter at that. Whether or not we were right to do so, those were the terms on which we left it.

**Q874 Ian Paisley:** The MI5 issue, from our side of the negotiating table, was the rule of law and the arrangements with regard to policing and the national institutions that would be left in Northern Ireland. That was very much a DUP issue during the St Andrews process, and very much an issue that we pushed, yet from your side you were being told by people like Paul Goggins, “Lay off this—you could spook Sinn Féin.” Do you feel you were played?

**Mark Durkan:** No, I don’t feel that we were played at all, because I accepted Paul Goggins’s word that he didn’t entertain suspicions on the part of others. Indeed, I made the point in conversation to Paul Goggins that it seemed to me that if people had confected all these suspicions around us and around me, those seemed to be something that they were perhaps using to reinforce the arrangements whereby they were going to make sure that there was no prospect of an SDLP Justice Minister or whatever. People can take all sorts of things and use them in reinforcement as to why—“Well, if the SDLP are flaky on this, and shaky on it, and if they’re going to get an attack of principle and qualms on these things, maybe it’s as well that they’re away from this.” And he indicated to me that that was a sentiment that he thought may be shared by some people in the Irish Government and certainly by one colleague of his in the British Government.

**Q875 Ian Paisley:** You have described the process in terms of there was an ethical process and the process. Do you feel post-Downey and the judgment that the process—whether it is the ethical one or otherwise—has been damaged?

**Mark Durkan:** I think some damage has been done to the process, in the sense that there are a lot of pretentious claims being made that all sorts of things were done to keep the process on the road and to stop violence returning. I don’t actually believe that the threats of violence returning from the Provisional IRA or whatever were as live then as some people now seem to attach to it.

I also think that it makes the process, as conducted by the two Governments, appear as grubby as it was. People weren’t giving us all these details in their memoirs; their memoirs were of all the great and dramatic things that they did to save things. It’s funny—if these things were so vital and so central, they would find themselves explained in the memoirs a lot more, and more people would be able to own up to them and recognise where they had their place.

It makes the process look grubbier in that sense, but the fact is that the peace is good. We still have a settled process and, okay, in the wake of the Downey letters we had people appearing to threaten that they might walk from the political institutions and after the arrest of Gerry Adams we had people who seemed to threaten they might walk from the policing institutions. But so long as we don’t think that every bit of turbulence means we’re potentially in crash mode, we can have perspective on these things.

**Q876 Ian Paisley:** “As grubby as it was” is a telling phrase, in terms of your reflection, really, about how the process was ultimately managed, in terms of, “This was grubby; this was messy.”

**Mark Durkan:** Well, it was done as a side deal—a privy arrangement in relation to one party in respect of a certain group of people. Whenever the issue first came up, we were being told in Downing street that this was about a few dozen people and then we were told that it was

something like 70-odd people, and now we know that there are much, much bigger numbers, and Dublin were telling us similar numbers at that time as well.

I don't think it looks good for the two Governments—how they handled this and how they were played in relation to this. If anybody was played on all these issues, it was the two Governments. They were played by Sinn Fein in relation to these issues and these are two Governments who were taught—who really were told—how to deal with Sinn Fein and the IRA by the McCartney sisters. And if anybody delivered the real changes in relation to definitive moves to end criminality and definitive moves on the whole issue of decommissioning and all the rest, it was the McCartney sisters, because they taught the two Governments that what you do is draw a line and you hold people to it, and when they progress to it, yes, you celebrate the progress, but you don't blur the line.

**Q877 Ian Paisley:** Do you think there were any other side deals done with regards to criminality and former terrorists' activity in the criminal world? I am thinking particularly of smuggling.

**Mark Durkan:** I know a lot of people have that suspicion—that there were certain blind eyes turned. Whether that is true or not, I don't know, but many people have that suspicion—that some people seemed to be immune, that some former paramilitary operatives seemed to be allowed to successfully privatise some of their activities and didn't seem to be getting their collars felt, or whatever. So, there were those sorts of things there.

Going back to the McCartney murder and post the Northern bank, I can remember being asked about the British Government and meeting Sinn Fein. I said, "I'm not advising people not to meet Sinn Fein or whatever." I just said you should not be doing that on the usual basis in Downing Street and so on; with that thing where they come in and are feted. I said that is unfair on the McCartneys and others, if they are treated in that sort of way. But we are not saying that you break off contact or you create anything like that.

I was subsequently phoned to be told that Downing Street had followed my advice, that there was going to be a meeting with Sinn Fein and that it was not going to take place in Downing Street. I assumed it was going to take place here, but no, it was taking place in Chequers. That was on my advice, so be careful what you ask for.

**Q878 Ian Paisley:** One final thing: if you put Sinn Fein behind the eight ball on all of this OTR stuff, what one question would you, as a leader of nationalism, ask them?

**Mark Durkan:** Why did they not support earlier moves in relation to dealing with the past comprehensively? Some of what they say in the context of Haass and other things is positive and fair enough, but in the context of what they now claim has been their approach to the past all along, why did they never make it their business to get the broader issues of the past resolved? It is quite clear from all the letters and all the things that we now see as revealed by the Downey judgment that their focus in all negotiations has always been about them and their own role. It has never been about the wider national interest, in terms of national reconciliation and justice for all victims, not even justice for nationalist victims.

**Q879 Mr Benton:** Welcome. May I start by going back to the purpose of this inquiry, which I think I am right in saying is about the letters that went out, whether you describe them as letters of

amnesty or whatever interpretation you put on them? Our inquiry emanated from the fact that those letters went out. As far as I am concerned, it is about the legal authenticity of those letters, on which there have been a number of judgments. It is about the whole purpose of the letters, their intent and everything else. Whether they are about amnesty or personal records does not really matter. The purpose of this inquiry is whether people have acted ultra vires, that is, beyond their powers. That is what our inquiry is about and what I am pursuing. I want to get to the nub of that because, honestly, if people have acted outside of their powers, whether politically or anything else, it is totally and absolutely wrong.

I am asking you now, in view of the situation, what is your disposition? Are you of the opinion that those letters were ultra vires? How should this Committee regard the current situation? What should we be saying? How should we act? I ask that generally because I know exactly and precisely what you represent and where you come from.

The point is that we need to get to this position and really tackle the problem of whether those letters were ultra vires. I will conclude by posing this question to you. Right throughout the conduct of our inquiry—and we all know exactly about political wheelings and dealings—I constantly get a flavour that there is a cover-up. I am openly expressing this now because I think that somewhere along the line people have known things that have gone on, whether surreptitiously or tacitly. It is rather unfair for us as a Committee to have to consider that possibility and come to a just conclusion about what we are inquiring into.

There are two points to which I would genuinely like your response. I am not suggesting in any shape or form that the witnesses we have heard falsified anything, but I get the feeling—I don't know about the other members of the Committee—that through the pursuance of our investigation there has been a cover-up and something surreptitious has been going on. I would like your response to that.

**Mark Durkan:** I do think there is an element of “now you see it, now you don't” in all this. On the one hand, people are saying, “Well, everybody knew all about this, so there should be no shock about it,” and on the other hand, it is clear from the record that people were saying they wanted an invisible process.

I do not know whether the letters themselves are ultra vires. In the various mutations of the scheme, I understand that at one point people were receiving letters from Jonathan Powell. I am not sure that the chief of staff at Downing street should have been issuing letters of that order and saying that he had been asked by the Attorney-General to issue them. That seems to be a twilight zone too far on a number of levels.

Would it be ultra vires for the police to respond to a genuine representation on behalf of someone about whether there was a direct interest and whether the police had sufficient evidence, particularly in the context of modern evidential requirements, to take a case? I think it is entirely appropriate to find a way to allow the police to give such indications to people; I don't have a problem with that. I argued at the time of the 2005 Bill, which I completely opposed, that there is a way of dealing with the genuine anomalies—the supposedly small number of on-the-runs. When the Bill came out in 2005, Conor Murphy flew here to welcome its publication, and he insisted that it dealt with a small number of people. We now know differently.

Yes, false claims were made at the time that the issue was dealt with. Things were covered that other people should have known about at the time, and things are being spun differently now. I am particularly perturbed that the judgment in the Downey case seems to have been based on a

lot of things that are not factually true. For instance, the judge clearly laboured under the impression that at Weston Park all the parties agreed that this is an important issue, but the parties did not agree. I don't know why the judgment rested on the fairly selective evidence that was taken during the period of adjournment, and I don't know who generated that evidence and who decided whom affidavits would and would not be provided from.

I don't know how much the current Attorney-General knew about all that. I am left with the impression that the current Attorney-General's decision was, "No, we are not going to make the decision that the prosecution should not proceed on the basis of those letters. However, if somebody else presents a whole load of evidence to the court, and the court is persuaded by it, we will not appeal it." That seems to be why evidence came in from Jonathan Powell in sweeping terms. He seems to be too wise to say, "You can't allow this prosecution to proceed because the whole peace process will fall," because that would appear to threaten that there was something fragile about the IRA's position, and that there might be a return to the Provisional IRA. Instead, a wider argument was made that the state will never be able to negotiate with anyone about anything if not for this letter. It just seems strange to me that a letter, which we are told was part of a purely administrative scheme and was based on an error, should be elevated to have that legal effect. It just gives rise then to question the legal standing of all other such letters, many of which would have been fair enough to issue on a good-faith, matter-of-fact basis.

**Q880 Lady Hermon:** I did say I would come back and I have waited very patiently to do so. There are a couple of things I should like to ask you, Mark. Are you content, or are you pleased, indeed, that the PSNI has commenced Operation Redfield to look at all 228 OTR cases and to review all of them? The Chief Constable gave us evidence almost a month ago<sup>8</sup> to say that it might take two to three years. Is that two to three-year wait worth it?

**Mark Durkan:** Well, I think it is going to have to be. I don't think it is for me or anybody else in the political field to put a different time scale on things. If the police are having to go through that on a professional and proper basis then that is what they have to do. Obviously, the sooner that can be concluded, the better, but in all the circumstances it needs to be thorough. So given that there are a lot of claims and counterclaims and confusions around about what did or did not happen, whether there was or was not an error or where the error was made, who did or did not check the police computers and who was meant to issue or add what bit to what letter, it is important that the new operation to look at the questions is done on a sound and thorough basis.

**Q881 Lady Hermon:** So you are pleased that the PSNI has started this process?

**Mark Durkan:** Well, I think we'd all be wondering if they didn't start a process but I don't think we can shape it or time it.

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<sup>8</sup> A link to the transcript of the oral evidence from Chief Constable Matt Baggott CBE QPM, and Assistant Chief Constable Drew Harris OBE, Police Service of Northern Ireland to the Northern Ireland Affairs Committee on 7 May 2014 can be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/9418.html>

**Q882 Lady Hermon:** Would you have preferred something else to happen to the 228 OTRs? Would you have preferred a recommendation from this Committee that the letters should all be annulled or withdrawn?

**Mark Durkan:** I don't know that they could all be annulled or withdrawn. As I said earlier, I am working on the assumption that many of them were probably straightforward and matter-of-fact. I understand that there were names that came forward through this scheme that the police genuinely didn't have an interest in and didn't have live files on. I am not one of those who say that we need every single name published and every single case reviewed in that sense. So between what this Committee is doing and what a judge is doing and in Operation Redfield, I hope that sense and assurance can prevail in relation to the wider concerns that there might be a lot more cases out there where, if there is evidence against somebody, they can then produce a letter and that gives them indemnity.

One thing I want to stress is that whatever was agreed or not agreed in relation to the Haass proposals, no party resiles from that bit of the text that says that amnesty was not a basis for dealing with the past. That was in Eames-Bradley<sup>9</sup> as well. Many victims and others have been left with concerns created by the impression around this judgment, and the case being made for it, and some of the cases that have been made on the back of this judgment about wider amnesties. There needs to be assurance on all of that.

**Q883 Lady Hermon:** How damaging do you think the Downey judgment and the revelations of these administrative letters have been?

**Mark Durkan:** I think it was damaging but I am not going to say it is terminal damage to the peace process. The peace process is robust. It has overcome many other challenges, difficulties and tensions.

**Q884 Lady Hermon:** I actually mean to public confidence in the police, the Attorney-General's office, the DPP—all of those organisations.

**Mark Durkan:** Yes, unfortunately I think it has added to the residue of cynicism that is there and that is unfortunate.

**Q885 Chair:** And you wouldn't expect this inquiry to threaten the peace process in any way at all?

**Mark Durkan:** No, I would not. I don't think transparency threatens peace.

**Q886 Chair:** Finally, have you given evidence to the judge-led inquiry? Do you expect to?

**Mark Durkan:** No, I haven't been approached or asked.

**Chair:** Mr Durkan, thank you very much indeed. You have been very helpful.

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<sup>9</sup> A link to the "Report of the *Consultative Group on the Past*", 23 January 2009 can be found here: [http://cain.ulst.ac.uk/victims/docs/consultative\\_group/cgp\\_230109\\_report.pdf](http://cain.ulst.ac.uk/victims/docs/consultative_group/cgp_230109_report.pdf)

## Examination of Witness

*Witness:* **Dave Cox QPM**, former Director, Historical Enquiries Team, gave evidence.

**Chair:** Okay, we will kick off. Thank you very much for joining us, Mr Cox, and sorry for keeping you waiting. As you saw, there is considerable interest in this subject.

**Dave Cox:** Yes, indeed.

**Q887 Chair:** It might be helpful if you set out how the HET carries out its inquiries and how it works within the PSNI generally. I think that would be helpful to the Committee.

**Dave Cox:** I was listening to Mr Durkan, and he touched on 2004 and 2005 as being an important time for the HET. In 2004, Sir Hugh Orde, who was the Chief then, was looking at coming up with a method of dealing with historical cases, for want of a better description. In early 2005, I was invited to go over and set up a unit. The background to that was the fact that the relatively new and restructured PSNI was finding it difficult to cope with the outstanding cases from the past. It had a crime operations department which was very modern and structured along the lines that you would expect for a modern police force, but it had a huge number of cases left over from the time of the troubles.

One of the side effects, so to speak, and the benefits of the peace process was that people got the confidence to come forward and ask questions about what had happened to their loved ones during the terrible times of the troubles. There was no consensus on how to deal with that. The police were looking for more resources, but they were limited. Hugh Orde came up with the idea of saying, "Well, why don't we have a bespoke unit that just deals with older cases and frees up the crime operations department to get on with current policing issues?"

That was the remit and the ballpark into which my colleague, Phil James, and I came—just the two of us—and we were asked to come up with a model of how we would create that bespoke unit. We said, "What is it exactly that you would like us to do and how big is the issue?" There was no answer to either of those questions, because there were no records, even in terms of how many cases there were. In fact, the best record we could find at the time was a book called *Lost Lives*—an excellent publication. Police statistics and police crime records only held cases that were recorded as crimes. Cases where people had perhaps been shot by soldiers and that had been found to be a lawful act were not recorded as crimes, so we did not have a full and comprehensive database.

We did not know how big the job was or what we were expected to do. There was some suggestion that we were going to be a review unit that would take case papers, look at them and just say, "Yes, there are some new opportunities in this case," or, "No there aren't." Even when we were formally announced, the Secretary of State—I think it was Paul Murphy then—said, "This unit will look at x number of unsolved murders and x number of other deaths," and he offended everybody classed as another death. It became a very difficult issue for us in those early days to say, "What is it that you want us to do?" So we met, under Hugh Orde's governance, really, and with his encouragement, with a body of people, including NGOs—I think particularly of Jane Winter and British Irish Rights Watch, a very experienced and capable operator in a very ethical organisation. I remember her saying unless you come up with something that addresses the needs of the victims' families, you are wasting your time. We also found that terms like "unsolved" or "solved" meant nothing to anybody who was not a policeman, because we met

with numbers of families who said to us, “Well, it’s all very well you saying this is a solved case, but I don’t know anything about it. I don’t know what happened.” We met families who did not know that people had been arrested for the murder of their loved ones. We met families who did not know there had been an inquest. We met lots and lots of families who had never seen a policeman from the day that their loved one was killed. It quickly became apparent to us that we had to do more. So almost overnight we went from looking at perhaps 1,300 unsolved murders to redoing all the deaths attributable to the troubles in Northern Ireland. That work counted over 3,200 deaths in some 2,540 incidents, which was a massive undertaking.

We had not been provided with a huge sum of money, and nothing in the terms of, say, the current Hillsborough inquiry or the Saville inquiry. Nothing like that. We had £30 million over six years. That was the ball park to deal with those 3,500-odd deaths. We were given no terms of reference; we had to invent our own. Essentially, after working with NGOs, we came up with the idea that we would work for families—and Hugh Orde was particularly keen on this. We will try and answer family questions. We will look again at all the deaths. We set up as a unit that became much wider than a police unit. Yes, of course, we had our core police role. We looked at a case—all the records—to see: can we find any new evidence that will advance this case? If we could, great; if not, we undertook to answer all the family questions as far as we possibly could. We then came up with the idea that we would give families a report. We generated a written report called a review summary report, which could range from about 10 pages to 110 pages. These tried to answer for families what had happened.

We set up; we moved on. It became quite clear to us that it was unrealistic. The time scale we had been given was initially six years, and after four years we had only done some 400 cases out of the 2,500 case load that we had. So it became clear to us that we were going to have to do things a different way. That led to a departure from what would be an accepted police model. In fact, we became something much more akin to a monthly magazine, or a weekly big magazine. We ran an editorial process, and it was all around getting the reports through and out on a weekly basis to families, to try and meet this number of cases. We were expected to complete some 30 to 40 reviews a month by the civil servants who were funding us. That was the target we were given. The only way we could do that was to abandon hide-bound police ideas and come up with a completely new model. We went for 10 senior investigators and we said to them, “Right, your job is to come to this board every week with a review ready for submission, and to go forward for checking, and then out to families.”

**Q888 Lady Hermon:** Sorry to interrupt; could you just—when you are working through the chronology of all this—focus on when you were told about OTRs and particularly about the operation of it?

**Chair:** Order. I have not got to that question. I did not actually pose that question; but, fascinating though the history is, I think I am going to ask if we could abbreviate it there and ask one or two other questions.

**Dave Cox:** Yes, I will abbreviate as much as I can. It all sort of ties in.

**Q889 Chair:** Perhaps you could conclude by telling us when you expect to complete the work. I think that would be of particular interest.

**Dave Cox:** Never. It no longer exists.

**Chair:** Right. We have a number of questions. I appreciate that we were late starting, so I apologise.

**Q890 Naomi Long:** You have described the work of the HET and how it was looking at historical cases. At what point were you made aware of there being an administrative scheme dealing with on-the-runs?

**Dave Cox:** I don't really remember a particular point. Again, one of the big issues was that the HET, albeit it had a massive case load, was concerned only with deaths—the HET was set up to re-examine deaths attributable to the troubles. Issues such as on-the-runs were much wider. People could be wanted by the police for a variety of issues, such as being members of terrorist organisations, possessing firearms or absconding from court. Whatever the case, the issue was much wider than the HET's remit. That is why the issue was dealt with by the PSNI. I certainly knew that a scheme was being worked up, and I knew Norman Baxter was running it, but it did not really impact on us because we were going to do our job anyway. We felt that if we came across anything relevant, we would be in touch with them.

**Q891 Naomi Long:** I do not understand how you could reach the conclusion that it would not impact on your job. If there are two parallel processes, one of which is your investigation into historical crimes, of which some of those who are on the run—although I accept that it was not all of them—may have been implicated, you could essentially have been investigating the crime while another branch of the PSNI was effectively issuing letters of comfort via the NIO to say that those people were no longer being sought by the PSNI. Surely the files that you would have been reviewing to progress those investigations were the same files on which the judgments on whether there was sufficient evidence to require somebody to attend an interview were based. Surely there had to be connectivity between the two in order to ensure that information was not being given that contradicted the work in which your team was involved.

**Dave Cox:** You have to look at where we were. As I recall, this was all happening in about 2007-08. Even by 2009-10, we had done only 400 reviews. We would not have been in a position to say that we had found any new evidence. Although I do not know, I assume that the PSNI's work would have been on the basis of what existed to their knowledge at that time. We would not have reviewed most historical cases by that stage; we were stuck in the very early '70s for many years.

**Q892 Naomi Long:** Was there no stage at which, for example, the Operation Rapid team and the HET team were jointly briefed about the ongoing work and fully informed of how that work would potentially interact or conflict? Were you never formally contacted by Operation Rapid to ask whether any of the cases on which your team was currently working had any new evidence or insight into whether an individual should be required for questioning or otherwise? Did you essentially work in isolation while Operation Rapid worked on a different stream? Was there no interaction, formally or informally?

**Dave Cox:** I do not know about there being no interaction. There was no formal interaction. If we were looking at a case, I would have expected the staff dealing with that case to check whether a person was wanted on the police databases. We may have been contacted by Operation Rapid, but I do not know that we were. I have certainly seen an exchange of e-mails in the paperwork provided to the Committee<sup>10</sup> in which there was contact from an HET operative in relation to the

Downey case, so there obviously was some interaction at various stages. Was there a weekly meeting? Was it a joined-up effort? No, it was not.

**Q893 Naomi Long:** Okay, so there is nothing structural. You say that you do not recall the precise point at which you became aware of it, but do you recall the circumstances? Was it as a result of a case review in which a so-called on-the-run was implicated? Or was it as a result of someone coming and specifically informing you about the work that was being done by Norman Baxter and team?

**Dave Cox:** My deputy at the time was Phil James. He had been to a meeting at which he was updated that this process was ongoing. As I recall, this had fallen out of a draft—"draft" may be the wrong word, but there was some prospective legislation being talked about regarding amnesties at one stage. On the back of that falling off the edge, the on-the-run issue came up, as far as I recollect, but it was not big business for the HET. We were really engaged in trying to set up our own methods to get on with a huge work load, and we had not done many cases, so we could not have said, "Excuse me, we've got a database of x number of people who are wanted." That changed. By 2013, we had referred some 63 cases to the PSNI, so it would have been a different ball game in 2013. We would have been much more involved in saying, "Hold on a minute; we have found new evidence." And it is new evidence that we are looking for.

**Q894 Naomi Long:** In light of what has happened with the Downey case and what has emerged subsequently, do you wish you had taken more interest in what Operation Rapid was doing—

**Dave Cox:** It is not a question of interest.

**Naomi Long:** And that you had had more formal procedures in place to connect the two lines of inquiry.

**Dave Cox:** I don't think the Downey case, as I recall, came into it. As far as we were concerned, he was wanted for a crime in England, which was outside our remit.

**Q895 Naomi Long:** Though you would accept that, at this point in time, we are unaware as to whether any of the other cases that you did investigate in the HET could be similarly affected by correspondence of that nature?

**Dave Cox:** Well, yes. If in 2008 you had said, "In six years' time you might be at a panel like this answering, 'Did you know this was going to happen?'," no, we did not know it was going to happen. The PSNI made their decisions on the basis of what was in front of them at the time.

**Q896 Naomi Long:** Could I perhaps then pose the question in a different way? I am not asking whether you thought this could happen; I am asking whether now, with the benefit of hindsight, you believe that the procedures that were put in place to connect the HET and Operation Rapid were sufficiently robust?

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<sup>10</sup> A link to the email exchange between members of the Historical Enquiries Team (HET) and the PSNI (23 July 2008 to 4 August 2008) can be found here: [http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email-exchange-between-members-of-the-Historical-Enquiries-Team-\(HET\)-and-the-PSNI-\(23-July-2008-to-4-August-2008\)%20.pdf](http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email-exchange-between-members-of-the-Historical-Enquiries-Team-(HET)-and-the-PSNI-(23-July-2008-to-4-August-2008)%20.pdf)

**Dave Cox:** I am not sure that the procedures to connect the HET with the PSNI at all would be sufficient, in hindsight.

**Q897 Nigel Mills:** Mr Cox, could you give us an idea of how long one of your case reviews would generally take when you were, in your words, doing proper policing work?

**Dave Cox:** Proper policing work. As I have explained, we had a much wider remit than that. We were doing two things: first, we were looking at whether there was any evidence, which could be quite a quick process; and then we were trying to answer family questions, which could be much wider than a policing context, and might involve political issues, issues about agents, and worries about collusion and all the things that families do worry about in these cases. They take a lot of research and a lot of answering. As I said, I had 10 teams working on them. Each of my senior investigators would have had a current case load of between 40 and 60 cases. I was the ogre who ran the meetings on Thursdays at which I required them to come with a completed case, so they would have cases at various stages of completion. Some cases could be dealt with in a month.

If you take a terrible case like a soldier who was shot by a sniper in Belfast—no witnesses, no evidence, no suspects; very little really—the family may have a bucket list of questions because, frankly, the Army was not very good at updating people about what had happened after a murder. Families were very bitter and unhappy and had no information, and we were able to fill in some gaps, so they would be done quite quickly, but if you went for something like the Kingsmills incident, that may take six years or more to try to review.

**Q898 Nigel Mills:** The reason for my question was that in the context of Operation Rapid, there was pressure on the police to review a large number of individuals quite quickly. Would that be hard to do in a proper policing way?

**Dave Cox:** I have nothing but admiration for Norman Baxter. I have always found him to be an excellent police officer, and if he was running it, I would expect it to be right. He could do only what was in front of him. It is an issue in policing: if a guy is shown as wanted on a computer, he is wanted; if he is not shown as wanted, as far as you can see he is not wanted. I am not sure whether that happened in that particular instance, but I do know that it is not quite as straightforward as that. Surprisingly enough, there are degrees of wanted. Someone might be wanted by the police for interview, but that does not mean that you could go to court and get a request or warrant for extradition, because if you are going to extradite someone, you have to have enough evidence to put them straight before the court. Someone might be wanted for interview about a case, but technically they might not be wanted to the degree that you could get an extradition warrant. It is not straightforward.

**Q899 Nigel Mills:** But there is a degree of evidence not existing that would mean you can write a letter to someone saying, “You are not wanted for any crime pre-1998.” That must be quite a low level of evidence, mustn’t it?

**Dave Cox:** I struggle to accept that such a letter could be given the weight that it has been given in these circumstances. As I said, it was written in the context of the time. It was written in perhaps 2007 or 2008, way before a HET review could take place. If we subsequently found something completely different, how could a letter that was issued before our review rule out any future prosecution? I do not follow that.

**Q900 Nigel Mills:** I think that is the point. There were some cases that you referred over for prosecution by the main PSNI team. I am not going to ask about specific cases, but did you do that in those cases because you found new evidence that was not in any of the files that you looked at—perhaps you found a new witness, for example—or was it because you found something in the files that you could put more weight on if you managed to join a few dots together?

**Dave Cox:** It is not like we are some super-detective who has come along later; we have benefited from advances in technology and science. I think the HET has achieved three convictions for murder in cases that the PSNI has taken to court. The first resulted from the recovery of a palm print on a door. Prior to the establishment of the HET, the PSNI computer database did not have palm prints; it had only fingerprints, because of the massive scale of it. We invested a lot of money and had all the palm prints that were held in records loaded on to the computer database. There was a palm print in one of our case reviews, and that led to the conviction of the gunman.

In another case it was DNA. The science and techniques did not exist at the time that the murder took place, but the police had kept a cigarette butt, and later DNA examination came up with a suspect. The issue was one of advances—it was not really much more than that in many of the cases. There may have been new evidence because people were more willing to talk to the police after the troubles than they would have been at the time, but there has not been a huge number of cases like that. It is really about technical evidence.

**Q901 Nigel Mills:** One of the questions we have considered is the fact that the letters said, “You will not be prosecuted for any pre-1998 offence unless new evidence comes to light,” and there were a couple of other conditions. In your view, is a palm print on file that could not be compared before, but now can, new evidence or a better use of old evidence?

**Dave Cox:** No, it is startling new evidence, I think. It is new evidence because it has not been used in court proceedings before.

**Q902 Nigel Mills:** A final question: do you think that there was any realistic prospect that the Operation Rapid process could have done a competent review of all the evidence in all the files for all the cases before issuing those letters, or was that just physically impossible?

**Dave Cox:** I think that they probably did a very competent job of what was in front of them. They would not have known whether additional stuff was going to come in future. As I say, I have great respect for Norman Baxter—

**Q903 Nigel Mills:** But you’ve seen all the evidence; you’ve seen all the files; you’ve seen the mess that everything was in. There was no way that anybody could actually quickly know that there was not enough evidence to prosecute any individual without going through all the files.

**Dave Cox:** I don’t think you could ever say that. Never say never.

**Q904 Nigel Mills:** But we were saying “never”. That is the point of these letters.

**Dave Cox:** But I don't know that they knew that they were saying that. I don't know that the police knew that the letters meant "never".

**Q905 Ian Paisley:** When did you commence working in Northern Ireland?

**Dave Cox:** First off, I was on the Stevens inquiry in 2002, which was looking at the Finucane murder until 2005. Then, in January 2005, we started setting up the HET.

**Q906 Ian Paisley:** Did you do any work during that period or was Rita O'Hare's name brought before you at any point during your assessments?

**Dave Cox:** Sorry?

**Q907 Ian Paisley:** Was Rita O'Hare's name brought to you? Did you do any investigative work into Rita O'Hare during that time?

**Dave Cox:** Not that I recall.

**Q908 Ian Paisley:** Not that you recall. We are trying to get to the bottom of who was in the secret circle and who knew what, where and when. So there was this process going on where Sinn Fein fed stuff into the sausage machine, and people in the Prime Minister's office, the Northern Ireland Office, the Attorney-General and the DPP received information from the police and then out the other end. "Postmaster" Gerry Kelly got a letter and he handed to the terrorist on the run, the villain or the person who was innocent. Did you have sight of or know about that process?

**Dave Cox:** No.

**Q909 Ian Paisley:** No.

**Dave Cox:** I was obviously not in the secret circle.

**Q910 Ian Paisley:** You were not in the secret circle. Neither were any of us. It is either that you were in the need-to-know group or the rest of the world.

There were of course some issues with Mr Downey, about which you will be well aware. It has been brought to our attention that a television programme has thrown up material suggesting that Mr Downey was complicit in the murder of two UDR soldiers. Have you done any investigative work into that activity?

**Dave Cox:** The HET did look at those murders.

**Q911 Ian Paisley:** Is Mr Downey complicit in those murders?

**Dave Cox:** The 1985 ruling from the DPP was that there was insufficient evidence to take forward any prosecution in that case.

**Q912 Ian Paisley:** Were there fresh factors or new evidence that would allow a trial?

**Dave Cox:** Not as far as I recall. This is what you would probably class as hearsay, but in preparation for coming here, I spoke to my former colleague, who is also former HET and who did that review, and he—

**Q913 Kate Hoey:** Who is that?

**Dave Cox:** His name is David Brown. I rang David and he said, “No, there was not sufficient evidence from the HET review to put that case back to the DPP.” There was nothing new that we had recovered.

**Chair:** What date was that?

**Kate Hoey:** Was it referred to the PSNI?

**Q914 Chair:** One question at a time. What date was that?

**Dave Cox:** I think it was 2010. Again, I have not been in the HET since last year, so I am guessing that it was about 2010. I note that the report came from the Committee in 2010.

**Chair:** That’s fine.

**Q915 Ian Paisley:** My understanding is that if new evidence emerges that requires investigation, the police then take that material and investigate.

**Dave Cox:** Had we found new evidence, it would have been referred to the PSNI to take it forward.

**Q916 Ian Paisley:** Right, but the fact is that a judgment was made that it did not reach the standard of new evidence and so was not handed to the PSNI. Is that correct?

**Dave Cox:** We hadn’t found anything that the PSNI hadn’t already shown to the DPP.

**Q917 Ian Paisley:** So it therefore did not go to the next stage, which would have been an investigation and perhaps charges.

**Dave Cox:** It did not.

**Q918 David Simpson:** On a point of clarification, to your knowledge, did the HET’s investigations ever result in a successful prosecution against someone who had received a letter?

**Dave Cox:** No.

**David Simpson:** You also made a point in your opening comments for some of my colleagues who have left when they asked whether this will ever be resolved and you said, “Never.” What did you mean by that?

**Dave Cox:** I don’t think that the current HET model will ever be finished.

**Q919 David Simpson:** Okay. The point that I want to make about that is that a number of victims have raised an issue with me about the OTRs—I am sure that other Members have had the same—but HET had been investigating their families’ murders. Reports were completed, but then they got letters from HET to say that those reports would not be released to them even though they were told, prior to the investigation, that they would be. So the families are saying, “Are these people that have received the letters, or royal pardons?” In your opinion, why are the reports not being released to the victims’ families?

**Dave Cox:** The reports are not being released because, since last September, the HET has been in a lockdown situation and nothing is going out. I can go on to explain. There was a long-standing issue with a number of groups. We were accused variously at various times by both sides—loyalists picketing outside saying that we only pick on loyalists and republican groups saying, “You are not article 2 compliant and you do not investigate deaths caused by soldiers properly.” There was an inspection conducted by the inspectorate of constabulary. I would assert that it was flawed, and that it was inaccurate to the extent of being totally wrong. As a result of that, the HET was suspended. I was never given the opportunity to answer the allegations in the HMI report. I was not shown the HMI report before it was published. The HMI himself never came to the HET during the inspection process. The Chief Constable accepted before even talking to me about the report, which had then been published—he went to the Policing Board and apologised, and said that he had got it wrong.

**Q920 David Simpson:** So you believe that if the lockdown was removed, the reports could be released so people could know if—

**Dave Cox:** I am not sure that they are up for being released. You would have to ask the Chief Constable that. They seem to have just shied away from it. I am not sure that there is any commitment now to honour what we said to the families.

**Q921 Lady Hermon:** Dave, I do apologise for interrupting earlier on. I just know that you have got an enormous amount of valuable information to give to the Committee and we are time-limited, so I do apologise if I appeared to be rude earlier on.

You were reflecting there about what happened to HET last autumn, which was a tragedy, in my estimation. I thought HET was doing a superb job. On the radio at that time Sir Hugh Orde, who of course is the president of ACPO, gave a very stout defence. Could you just tell the Committee how long you have known Sir Hugh Orde? The two of you served in the Metropolitan police together.

**Dave Cox:** Yes, we did. I would not say that I knew him particularly well in the Metropolitan police. I ran a series of murders that crossed over area boundaries. I was the head of murder investigation on the north-west of London in 1998, and we had a series of crimes that crossed over boundaries. Hugh was commander on the south, and he oversaw it as senior officer, but I ran it on a day-to-day basis for him. We had a good result, so he quite liked me. From that time

on, we had sort of known each other, but then he became Chief in 2002 in Northern Ireland and I took his former role as day-to-day in charge of the Stevens investigation.

**Q922 Lady Hermon:** Would it be accurate to say that in fact you were head-hunted? Did he seek you out to come and take over HET?

**Dave Cox:** Well, that is very nice—I hope he would support that.

**Q923 Lady Hermon:** Right. What intrigues me—obviously, this line of questioning is going somewhere—is the fact that you have known each other and trusted each other from your days in the Metropolitan police. I find it so difficult to grasp the fact that Sir Hugh as Chief Constable of the PSNI would not have confided in you about Operation Rapid and, as my colleague Ian Paisley has described it, the “secret circle”—to be inside the secret circle. I find it inconceivable that you would not have been told by someone who was a colleague—

**Dave Cox:** Yes, and a friend.

**Q924 Lady Hermon:** And a friend. I do not want to cast aspersions on his honesty, but I want to reconcile the two.

**Dave Cox:** I am not sure he would have thought it was exactly that important for me to be included in that circle. At the end of the day, I think he would have taken the view that you have a guy in a team here that is struggling to come up with a way of dealing with 3,200 plus deaths; he has got enough on his plate. We are looking at a much wider aspect here. Again, I go back to that. The on-the-run issue is much wider than just the deaths in cases; it is a very political issue. He has got a very good Detective Chief Superintendent and a first class Assistant Chief Constable in Peter Sheridan dealing with it. Why would he have needed to bring me into it?

I think he would have expected, had there been a crossover in a particular case, that there would have been a reference from Norman to us about it, and I believe that it happened in the Downey case.

**Q925 Lady Hermon:** Well, in the Downey case, I thought that HET were notified at least twice.

**Dave Cox:** Again, it is difficult for me to answer that, because I have not got access to papers any more, but I see from the papers that the Committee gave me that there are two separate cases mentioned. Firstly, one of my operatives had spoken about a couple who had been murdered<sup>11</sup>, and then there was the murder of the two UDR men<sup>12</sup>. I cannot recall anything about the first case and I have not got the papers. The UDR case I do remember and I spoke to the lead investigator, but again, what had happened was that, in the course of the HET review, the

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<sup>11</sup> A link to the email exchange regarding the murders of Thomas and Emily Bullockon can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/HET-email-exchange-regarding-the-deaths-of-Thomas-and-Emily-Bullockon-Sept-2010.pdf>

<sup>12</sup> A link to the email exchange between members of the Historical Enquiries Team (HET) and the PSNI (23 July 2008 to 4 August 2008) can be found here: [http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email-exchange-between-members-of-the-Historical-Enquiries-Team-\(HET\)-and-the-PSNI-\(23-July-2008-to-4-August-2008\)%20.pdf](http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email-exchange-between-members-of-the-Historical-Enquiries-Team-(HET)-and-the-PSNI-(23-July-2008-to-4-August-2008)%20.pdf)

investigator thought he had found something new—that is, a photograph of an exhibit—and he thought that this was new evidence. In actual fact, it transpired—I take this from Tim Hanley’s report<sup>13</sup>, which is also in the papers given to me by the Committee—that the DPP was aware of that evidence and had said the continuity of it was not sufficient for it to be regarded as of evidential value. So it was not new evidence and there was no other new evidence, and that is the briefing that I have had from my colleague. I think it showed that the system probably did work. They did talk to each other.

**Q926 Lady Hermon:** If that is the case, is there not a niggling doubt at the back of your mind—some of the HET reports, which, as you have explained to my colleague, Nigel, could take a very lengthy period of time and some were shorter, depending on how much evidence and how people could recall the incident. Does it not call into question, in your mind, the accuracy of some of those HETs reports that have been sent out now, in the light of the knowledge of 228 OTR letters?

**Dave Cox:** No, because—

**Q927 Lady Hermon:** You are absolutely sure?

**Dave Cox:** Yes. If we had found new evidence, we would not have stopped referring it to the PSNI because there was an OTR letter: we probably would not have known there was an OTR letter.

**Q928 Lady Hermon:** Well, that is the problem.

**Dave Cox:** But it would not have trumped the new evidence. We would still have referred a case to the—we would have said, “We’ve found a fingerprint or a DNA in this case,” and we would have passed it, expecting the PSNI to get on with it.

**Q929 Lady Hermon:** But do you think you were wilfully kept out of the loop, then?

**Dave Cox:** No.

**Q930 Lady Hermon:** Right. In any of the HET reports, did the HET seek to question on-the-runs in the Republic of Ireland, and if you did, how was that initiated? Surely, you must have.

**Dave Cox:** We wouldn’t.

**Q931 Lady Hermon:** You wouldn’t have?

**Dave Cox:** You would not be able to question on-the-runs—there were a number of cases that we looked at where there was a suspect in southern Ireland: several dozen of those cases.

**Q932 Lady Hermon:** So what did you do in those cases?

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<sup>13</sup> A link to the email exchange regarding a piece of evidence in the Downey case (29 July 2010) can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/HET-email-exchange-regarding-a-piece-of-evidence-in-the-Downey-case-29-July-2010.pdf>

**Dave Cox:** Well, we just wrote the report, saying that the person who is wanted is in the South of Ireland.

**Q933 Lady Hermon:** Would you not have said to the families, “We will seek to notify the Garda or we have brought this to the attention of—”

**Dave Cox:** No, because that would already have been done. It goes back to that case or the scenario I was trying to explain earlier: there is a different type of “wanted”. You might be wanted for interview by the police, and loads of people were put up as wanted, simply because a murder, say, happened in a small town and the local UVF or the local PIRA people would be circulated as wanted, because it is very likely that they were involved—there may be no evidence. But that would not be sufficient to circulate them to the Garda and say, “This man is wanted for extradition,” because once you extradite somebody, you have to put them straight before the court; you cannot extradite someone for interview.

**Q934 Lady Hermon:** Let me just go back to the earlier part of your evidence. You said that in fact, while you hadn’t had the details of Operation Rapid, you did know that there was something to do with an administrative scheme.

**Dave Cox:** Yes.

**Q935 Lady Hermon:** So you did know that there was some administrative scheme operating for OTRs. There were cases—you have just confirmed it to us—where in fact you wrote a report to families saying that this suspect, you believed, was on the run in the Republic of Ireland. Did you never think to tie the two things together and ask the PSNI, “Right. We believe that this suspect is on the run in the Republic. I know somewhere—somewhere in the ether—there’s an administrative scheme. Could you tie the two together for me?” Would you not have had that conversation with Hugh Orde?

**Dave Cox:** No—

**Q936 Lady Hermon:** Or Norman Baxter?

**Dave Cox:** Because I would not have thought, and I still wouldn’t think, that the fact that somebody had had an administrative letter meant that it trumped the fact that he was wanted. But with evidence, with any evidence—I can’t imagine that they would have sent a letter to anybody if there was evidence, so anybody who was wanted but living in the south of Ireland would not have got an administrative letter if he was wanted. I thought that was the whole purpose of the scheme—for the PSNI to check, “Was this person wanted?”

**Q937 Lady Hermon:** Can you, off the top of your head, in your long term and in setting up the HET, recall any occasion when an administrative letter was set aside and trumped by fresh evidence identified by the HET—any single case?

**Dave Cox:** No.

**Q938 Lady Hermon:** Correct. That, I think, proves the point.

**Dave Cox:** No, I'm not sure it does prove the point. If it does, it's not the point I have meant, because—

**Q939 Lady Hermon:** Well, I know it isn't the point you mean, but it is—

**Dave Cox:** Because I don't think that any evidence put up by the HET has been disregarded because somebody has got an administrative letter. I cannot imagine that would have happened, and I cannot imagine it would happen now.

**Q940 Lady Hermon:** Well, I am so pleased you are so confident, Mr Cox, because Mr Adams asked for an invisible scheme and Mr Cox delivered an invisible scheme. I'll just ask you this, because it has been put to me on a number of occasions by some of my constituents. This is a quote: "Loyalists believe they get the HET while republicans get comfort letters." Is that not a fair reflection of how loyalists have been treated?

**Dave Cox:** No.

**Q941 Lady Hermon:** Now why do you say that so categorically?

**Dave Cox:** Because it is not true.

**Q942 Lady Hermon:** And the facts—

**Dave Cox:** The facts are, quite simply, these. The HET reviewed the cases that were in front of them, and we went where the evidence took us. If there was evidence to take anything further, we developed it as far as we possibly could, and if it was of an evidential nature, it went to the PSNI to take forward. I can give you some figures.

**Q943 Lady Hermon:** That is very helpful; thank you.

**Dave Cox:** In 2013, when I left the HET—he said, reaching for his glasses—

**Lady Hermon:** Don't worry. If you want to leave the papers with the Committee, we'll read them into the record.

**Dave Cox:** We had referred 63 cases for further work by the PSNI, and my recollection is that 40% of those were republican cases.

**Q944 Lady Hermon:** And the other 60% were—

**Dave Cox:** The other 60% were largely around one operation conducted by the HET, which was Operation Ballast, where a small number of loyalists were arrested on multiple occasions or were suspected of many, many offences. Those are my recollections.

**Lady Hermon:** That's very helpful.

**Q945 Kate Hoey:** Mr Cox, you obviously don't like the HMIC report. Of course, a number of people thought it was actually a very good report. Do you accept their statement that the protocols on the referrals from the HET to the PSNI were inconsistent?

**Dave Cox:** No.

**Q946 Kate Hoey:** You think everything was done absolutely normally in every single case.

**Dave Cox:** Yes.

**Q947 Kate Hoey:** Why then did it take so long for Operation Trinidad—the murder of the three soldiers—to be referred to the PSNI?

**Dave Cox:** Which operation was that?

**Q948 Kate Hoey:** I am talking about Operation Trinidad—the murder of the three soldiers—which was referred not that long ago.

**Dave Cox:** I don't know, is the answer. I have not been there since September. You are asking me about an operation—

**Q949 Kate Hoey:** It was while you were there.

**Dave Cox:** Okay. Well, it is an operation name, but, as I say, we had 2,540. I've no idea what that particular case is.

**Q950 Kate Hoey:** So you still think that every single case that you looked at, that was referred to you and that officers suggested perhaps might be referred to the PSNI would have been referred to the PSNI? Did you ever overrule other officers?

**Dave Cox:** Did I overrule other officers? If a case was put up, it would be reviewed by me or my deputy and we would be looking to see: was there sufficient evidence? We would want realistic, evidential opportunities. We were more than delighted to find those. The only reason why anything would be sent back was if, in our professional opinion, there wasn't new evidence to give the PSNI.

**Q951 Kate Hoey:** What was Mr Johnson's role in all of this? Who was Mr Johnson?

**Dave Cox:** Paul Johnson was a senior investigating officer. He ran the Army review teams, and for the last year or so I was there, he was my deputy.

**Q952 Kate Hoey:** And he is no longer there?

**Dave Cox:** No. He was treated shamefully. He had spent five and a half years helping families, and following publication of the HMI report, his services were dispensed with within two weeks.

**Q953 Kate Hoey:** He had his own company as well. Did he operate with his own company?

**Dave Cox:** I think all of my staff, bar about six people, were self-employed and registered as a company.

**Q954 Kate Hoey:** Can I ask whether you ever refused a specific request from anyone within the HET to send a letter to Mr McGuinness asking him to make himself available to be interviewed about any particular issue?

**Dave Cox:** I can't say that I recall that specifically, no. There is something about a letter to Mr McGuinness; I'm just trying to think what it was.

**Q955 Kate Hoey:** It is just that I know the HET was very involved. You had access to former senior police officers and you had access to Army officers, yet you never seemed ever to go to interview any of those who were quite clearly senior commanding people within the official—

**Dave Cox:** I would not seek to interview people from that particular organisation on the basis of a chat. Sinn Féin had made it quite clear from the set-up of the HET that it would not engage with us, that it did not support us and that it had no interest in us. I would see no value in going to Martin McGuinness or Gerry Adams and saying, "Oh, can we just have a chat?" about this or that, because it would rebound negatively against the organisation, because we would be used as a political issue. They would say, "Here's the HET doing this, that or the other." It would have served no purpose. Had we had any evidence about any issue that we wanted to put to anyone, we would have done it, and Hugh Orde made that clear from the beginning.

**Kate Hoey:** Thank you, Mr Cox.

**Q956 Chair:** Can I go back to the fact that you mentioned that it was decided not to pursue the case in Northern Ireland against Mr Downey in, you think, 2010?

**Dave Cox:** I say 2010 because the papers I got from the Committee include a report from Detective Chief Superintendent Hanley which is dated 2010.

**Q957 Chair:** But he received a letter in 2007—

Dave Cox: Who?

**Q958 Chair:** Mr Downey. What we have heard is that he received the letter because the PSNI was not aware that the Met wanted him, which we find hard to believe, but the PSNI wanted him in 2007, surely?

**Dave Cox:** Did they?

**Q959 Chair:** You have told us that you didn't write him off until 2010.

**Dave Cox:** No, I said that the report from Superintendent Hanley was in 2010, in which he refers to the issue.

**Q960 Chair:** There is an e-mail from Paul McGowan dated 23 July 2008<sup>14</sup> that says, “I have just spoken with HET in relation to this matter. HET expressed some concern that Downey was not considered as wanted.”

**Dave Cox:** Yes. That is the point that I tried to cover earlier. From my conversation with the senior investigator, the investigator who had got the photograph thought that it was new evidence, but it turned out that that had already been submitted to the DPP and had been part of his earlier consideration in 1985, or whenever it was.

**Q961 Chair:** An e-mail from 29 July says, “I will also confirm that they are aware of the Met’s interest.” How can it be that all these e-mails were going around and yet the letter was not withdrawn?

**Dave Cox:** I don’t know. You would have to ask Mr Baxter that.

**Q962 Chair:** Well, we have asked others. I am wondering about your opinion.

**Dave Cox:** My opinion is that the HET went on to complete a report in that case. I have spoken to the investigator who completed it and he said that he was satisfied that there was no new evidence. That hadn’t taken the original RUC investigation any further forward, and the PSNI acknowledged that.

**Q963 Chair:** And the Met?

**Dave Cox:** The Met is out of the remit of the HET.

**Q964 Chair:** But this didn’t come as a surprise to anybody. The Police Service of Northern Ireland was aware of concern about Mr Downey and yet the letter was sent and was not withdrawn. Did discussions take place between the PSNI and the Northern Ireland Office? There was obviously concern. We have it as evidence here.

**Dave Cox:** I don’t know. I’m not the PSNI.

**Q965 Ian Paisley:** Just on that, in your opinion has Mr Downey—on both the UDR murders and the Hyde Park murders—been very lucky and got away with murder?

**Dave Cox:** I might ask him what lottery numbers he picks.

**Ian Paisley:** That’s a yes?

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<sup>14</sup> A link to the email exchange between members of the Historical Enquiries Team (HET) and the PSNI (23 July 2008 to 4 August 2008) can be found here: [http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email-exchange-between-members-of-the-Historical-Enquiries-Team-\(HET\)-and-the-PSNI-\(23-July-2008-to-4-August-2008\)%20.pdf](http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email-exchange-between-members-of-the-Historical-Enquiries-Team-(HET)-and-the-PSNI-(23-July-2008-to-4-August-2008)%20.pdf)

**Dave Cox:** Yes.

**Q966 Lady Hermon:** Now that the PSNI has commenced Operation Redfield, do you still remain confident that that will have no impact on any of the HET reports that have gone out to date?

**Dave Cox:** It shouldn't, because the letters will have been written, I am sure—because Norman Baxter was overseeing it—in good faith at the time. If he said that someone is not currently wanted, they are not currently wanted. If a subsequent review by the HET found further new evidence that was usable, I don't see that those letters would be of any value at all. There would be new evidence, and the man or woman should be charged.

**Lady Hermon:** Thank you.

**Chair:** Mr Cox, you have been very helpful to us. Thank you very much.