



Northern Ireland Affairs Committee

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

Afternoon Session, Tuesday 10 June 2014

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Members present: Mr Laurence Robertson (Chair), Oliver Colvile, Lady Hermon, Kate Hoey, Naomi Long, Dr Alasdair McDonnell, Nigel Mills, David Simpson.

Questions 1496-1695

Witnesses: **Anne Connolly**, Chair, Northern Ireland Policing Board, **Sam Pollock**, Chief Executive, Northern Ireland Policing Board, and **Brian Rea**, member, Northern Ireland Policing Board.

Q1496 Chair: We recommence our public session. I apologise that we are a bit short on numbers at the moment, but we overran on the previous session because of everything we had to get through. Apologies for that, but other Members will be coming in shortly.

Thank you for joining us. I think you are aware of what we are looking into. We have a brief on the role of the Policing Board, but it may be helpful if you briefly introduce yourselves and tell us your particular role in it, briefly please.

Anne Connolly: Good afternoon, Chair and Members, and thank you for your invitation to come before the Committee. I would like to introduce my colleagues who are with me today: Sam Pollock, chief executive; and former chair of the board, Brian Rea. By way of background, I was appointed chair of the board in June 2013 and have been a member since May 2011. Brian Rea was acting chair from 2010 and chair from May 2011 until May 2013. Sam Pollock has been chief executive since August 2012.

I will not go into the Policing Board's establishment because you have said you know it, but the major focus of our work has been about police effectiveness and efficiency, human rights issues and the composition of the service, which has of course become more representative of the community.

In relation to the scheme for on-the-runs, following the Downey judgment and particular public commentary regarding information provided to the board and awareness in the board of the PSNI unit's work, an internal information review was initiated to establish what information was made available to the Policing Board about the establishment of the unit and its work. We are obviously happy to answer questions on the findings of this review. The information was placed in the public domain¹ and I am happy to supply the Committee with a copy.

¹ The "Review of Information held by the Northern Ireland Policing Board", an internal information review to establish what information was made available to the Policing Board regarding the establishment of the PSNI unit and its work is available here: <http://www.nipolicingboard.org.uk/05.03.14-review-document.pdf>

We had a special meeting on 5 March to question the Chief Constable on the establishment, role and work of the PSNI's OTR unit, the origins of Operation Rapid, and issues with the judgment of Mr Justice Sweeney. The Chief Constable and ACC crime operations were also questioned during public and private board meetings since then and information has been requested in writing to the Chief Constable. Again, we have a chronology of this information, which we are happy to provide to you if it is helpful, and we are happy to take your questions.

Q1497 Chair: Thank you very much. That is probably a good place to start. One of the accusations made against the on-the-runs scheme concerns its secretive nature, but were any of you, in your current or previous roles or as individuals, aware not of the issue—obviously, that was generally discussed—but that a special scheme was in place?

Anne Connolly: I might hand that to the chief executive, who probably has a view on that. I was not aware of a special scheme.

Sam Pollock: We were surprised at the formal scheme, in which there was clearly an administrative process that engaged a number of stakeholders. We were aware, and there was a clear indication, that on-the-runs were discussed as a general issue. That was very much in relation to the Bill on offences, which failed but was the subject of significant discussion, and we can cite a number of instances—in board meetings and in a working group—when the issue of on-the-runs was discussed. However, that was in the context of the Bill and in the context of the Historical Enquiries Team as it was established. The answer to your question, Chair, is that, no, we were not aware of the formality of the scheme.

Brian Rea: I agree with what Mr Pollock said. I was acting chair from February '10, having been vice-chairman from June '09, and I was just generally aware, from observing the news from time to time, that efforts were being made to introduce something in Parliament and clearly that had failed. Following that, there seemed to be an enormous period of silence, and I was not aware of anything other than what Mr Pollock has said and what we have included in our detailed presentation.

Q1498 Chair: You were not aware of any letters being sent to people at all?

Anne Connolly: No.

Brian Rea: Absolutely not.

Q1499 Chair: The assertion has been made, particularly by Sinn Féin, that although it was not common knowledge, it was certainly known by a number of people, and that the DUP knew and the UUP knew. It is not for you to speak for others, but presumably you would find it surprising if they knew and you did not?

Anne Connolly: As chair of the board, I can confirm that the majority of board members heard when Justice Sweeney made his judgment.² That is when we heard that there were letters. No one else on the board has suggested otherwise to us.

² "The Queen v John Anthony Downey, Judgment: Abuse of Process", Justice Sweeney, 21 February 2014 can be found here: <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-downey-abuse-judgment.pdf>

Q1500 Lady Hermon: Could I just read to you a comment made publically by the former vice-chair, Denis Bradley, who, I believe, served the Policing Board very well? He said on the record: “When I was vice-chairman of the Northern Ireland Policing Board, the police came in and gave us a detailed briefing of the scheme. The Policing Board, at that stage, was the only institution up and running. The executive wasn’t in being, it was suspended and didn’t come into being until a couple of years later. But the police were up front and open and all of the political parties in Northern Ireland, barring Sinn Féin, who weren’t on the board at that time, would have been aware of the scheme.” Is that an accurate assessment? You have carried out a review. Do you mind if I call you Anne? It seems very formal to call you the chair.

Anne Connolly: No.

Q1501 Lady Hermon: You have carried out a review of the documents, the correspondence and the minutes of the meetings. How accurate is Denis Bradley’s recall of the briefing to the Policing Board?

Anne Connolly: Again, I will hand over to Sam, because I know that he has the details. I know that confidential briefings were given to Denis Bradley and his chair at the time, Professor Desmond Rea, but I am not aware that the whole board was informed of this.

Sam Pollock: I am aware of the statement. It is not that clear from the statement whether Denis was referring to formal briefings to the board or briefings to him and the chair of the board. I emphasise again, Lady Hermon, that starting with a visit to the board by Peter Hain, from November 2005 to October 2006 and, subsequently, December 2006, when the Bill failed to make progress, there were extensive briefings on the on-the-runs issue.

Q1502 Lady Hermon: In terms of the legislation?

Sam Pollock: The draft legislation. In that context, I would say that Denis was right to say that was a briefing. There has also been comment about informal briefings to the chair and the vice-chair, and, again, that is correct. There would be verification from the previous ACC, and certainly from the Chief Constable, that there would have been informal briefings, as we would have currently, to the chair and the vice-chair, on matters of sensitivity. But I can emphasise with absolute authority that any information regarding a case, an individual or particular reviews would not have been the subject of detailed briefing, and there is no evidence anywhere that that was the case.

The important thing is that the Chief Constable has operational independence, and it would be absolutely wrong for the board to interfere in that. But, equally, the board has a significant responsibility to oversee and hold the Chief Constable to account for anything that is going on, and, again, there is a clear indication that the board did exercise its responsibilities—then and now—in terms of asking for information on the scheme. But I go back to what I said at the beginning: knowledge of letters, knowledge of the formal process in terms of a review being carried out by a police officer, being shared with the PPS, going to the Attorney-General and going to the Northern Ireland Office in London—the board would not have been aware of that.

Q1503 Lady Hermon: How did you react when you heard about the Downey judgment? What did you feel, apart from anger? I am assuming the anger is there.

Anne Connolly: I felt foolish. I am chair of the board. I did not have any knowledge of this at all. Of course, I had a number of members who had contacted me who felt the same—that we didn't know anything about this. So it wasn't a very good day, hearing it in that way.

Q1504 Lady Hermon: What was your first reaction? Who did you contact? Was there a series of people that you needed to speak to to get this clarified? Who did you contact on that day?

Anne Connolly: The first thing I did was talk to the chief executive about trying to ascertain whether there was evidence that this had ever been discussed, because, as has been previously mentioned, there are some differences of opinion as to what actually transpired. That is where we started from: trying to find the evidence.

Sam Pollock: The Chief Constable contacted us that day to indicate—

Q1505 Lady Hermon: So he contacted you, rather than the other way round?

Sam Pollock: Yes.

Anne Connolly: Yes.

Lady Hermon: That is very good to hear.

Sam Pollock: He indicated that he believed that there had been a crucial mistake made with regard to the case. He was going to make a statement of apology for that mistake because it was of such significance.

Q1506 Lady Hermon: So he believed the mistake had been made by a police officer in the Downey case? That was the apology he was going to make?

Sam Pollock: Yes.

Anne Connolly: Yes.

Sam Pollock: A review clearly had been carried out. The review, in terms of whether this person was wanted in Northern Ireland, would have been negative. The mistake seems to be that it did not extend to whether this person was also wanted in another part of the United Kingdom.

Q1507 Lady Hermon: Yes. Since the revelation in the Downey case, has the Policing Board been able to look at the PSNI document? It certainly has been made available to the Committee—it says "Operation Rapid"³ at the top, and it goes on for eight, nine, 10 pages. That is the basis on which the reviews were concluded, including Mr Downey's. Operation Rapid was commenced in February 2007. Do you have a copy of that document? Have you asked for legal advice on it?

³ 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>

Sam Pollock: What we have are the terms of reference of the review. These, unfortunately, were only conveyed to us when the issue over Downey arose. But the terms of reference are absolutely consistent with the Northern Ireland (Offences) Bill⁴ and the specification that was set out in it in terms of the basis on which a review would be carried out. The terms of reference were very clear: when there is a review of a person, is there existing evidence in relation to that person in terms of a crime being committed, or is there reasonable suspicion of a serious crime, and is the person unlawfully at large? They also go into much greater detail in terms of what intelligence exists, whether that intelligence has been reviewed and what forensic evidence is available. It lists the basis on which a detailed review of the person should be carried out, both in this jurisdiction and also in the jurisdiction of the United Kingdom. You could not say that it is in any way anything other than a robust, thorough review. The end result was that, if there is a need to arrest this person if they return to the jurisdiction, then that person would not be given any information to the contrary. So it was not a get-out-of-jail card or some sort of amnesty.

The provisions of the agreement still stand: released prisoners were released and anyone else coming to the attention of the justice system would be prosecuted and would get the two-year sentence, which they would serve—and that would be the issue of justice dealt with.

The review was to underpin those who were at large. Most of those at large may have been so because they believed that they may be arrested for an offence. Some may have been at large because of a feud or something within their own organisation or fear of danger in returning to the jurisdiction. The basis on which anyone might be on the run is not clear.

Q1508 Lady Hermon: Does the document you are quoting from say “Operation Rapid, terms of reference”? Just to make sure we are looking at the same documents. I wonder whether you would kindly leave us a copy or provide a copy to the Committee.

Sam Pollock: Okay. Yes, we can do that.⁵

Q1509 Lady Hermon: One thing appears to me to be inconsistent with the terms of reference—you are reading the terms of reference. The terms of reference that the Committee has already been given, with the heading “Operation Rapid”, refers extensively to provisions of the European convention on human rights and various articles. You said that the advice and the terms of reference are very robust. I suppose that what I was getting at is that the actual document that was relied upon by the PSNI team—well, it would have been the RUC team in 2007, in Mr Downey’s case—relied heavily on an interpretation of various aspects of the European convention on human rights. Are you aware of that about the terms of reference? Yes?

Sam Pollock: This is “Operation Rapid, terms of reference”.

Q1510 Lady Hermon: Would you kindly leave us a copy of that, Sam?

Sam Pollock: Yes.

Q1511 Lady Hermon: Thank you so much.

⁴ A link to the Northern Ireland (Offences) Bill can be found here:

<http://www.publications.parliament.uk/pa/cm200506/cmbills/081/2006081.pdf>

Finally, when the Chief Constable came to the Committee,⁶ along with ACC Drew Harris, and gave us important evidence on that occasion, Matt Baggott said quite clearly: “This was not a devolved matter when I became the Chief Constable. This was a matter relating to”—talking about OTRs and the OTR scheme—“terrorism, which I think can be argued fits within the national security domain. In which case, it was not the Board’s responsibility and neither was it the responsibility of Mr Harris or anybody to brief the Board on the detail.” Is the collective view of the board that it accepts the evidence of the Chief Constable about the board not being briefed because this was “within the national security domain”?

Anne Connolly: Some members would say that that is correct. Others, obviously, would have a different view.

Q1512 Lady Hermon: Is that a minority or a majority?

Anne Connolly: Well, probably—

Lady Hermon: There are 19 members.

Anne Connolly: Probably 50:50. There is often a fine line between what can be shared with us and what cannot. Operation Rapid commenced in 2007 and it was stood down in 2013, and we were not even told that that was happening. Members would have liked to have known that, at least.

Q1513 Lady Hermon: It was stopped when the Chief Constable became aware that Mr Downey had been arrested and was facing trial.

Anne Connolly: Yes. Again, that was not made clear. I do not know if you want to comment any further on national security.

Sam Pollock: Lady Hermon, the issue of national security arises in a number of areas, often.

Lady Hermon: Yes, obviously.

Sam Pollock: The importance of national security is to protect lives and the state. That must be guarded carefully and handled carefully, but in terms of crimes that are committed in Northern Ireland, the Chief Constable has primacy. The board would consider that the Chief Constable has primacy in all matters. Some information that a Chief Constable may wish to share with the board may need to be protected and restricted properly and carefully, but the board would not take the view that the Chief Constable can hide behind national security as a reason for not informing the board on matters that it should know about.

I would again emphasise what I said earlier: in terms of cases or particular criminal matters, the Chief Constable must protect his operational independence. There is a fine line to be drawn between operational independence and the board’s oversight, but generally speaking it works, and it works well in the public interest.

⁶ The transcript of the oral evidence to the Northern Ireland Affairs Committee by Matt Baggott CBE QPM, Chief Constable, PSNI 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.pdf>

Q1514 Lady Hermon: Just to clarify a phrase that you used in replying to me, I am assuming that in fact you didn't wish to give the impression that in the case of the OTR scheme the Chief Constable was hiding behind national security.

Sam Pollock: I would not give that impression at all. He was having proper regard for national security issues.

Q1515 Lady Hermon: So in other words, the conclusion must be that the Chief Constable acted entirely properly in not briefing the board comprehensively on this scheme. Is that the conclusion of the board?

Sam Pollock: I am an adviser to the board. The board would have different views in terms of the extent to which the Chief Constable should inform the board on key issues such as this. Those would range from "As little as possible" to "Tell us everything there is to know."

Q1516 Lady Hermon: Mr Rea is obviously trying to catch my eye.

Brian Rea: Yes, thank you, Chair, and thank you, Lady Hermon. I just want to note, for your information, that at the board meeting on Thursday 1 April 2010,⁷ Mr Alex Attwood asked a question with three elements to it. I asked Assistant Chief Constable Drew Harris to answer that, which he did, and he referred to on-the-runs. That was in April 2010. Another member, Tom Buchanan MLA, had a written question in which he also cited the three words "on-the-runs". Mr Harris gave quite a full answer to that. That is of course in the public domain and is available. Subsequent to that, in response to the issue raised by Mr Attwood, Mr Harris then wrote to us on 28 April and submitted numbers to us of the various categories of people that there were.

Q1517 Lady Hermon: Would you like to read an extract of that?

Brian Rea: Oh yes. "In response to your question dated 1 April 2010 regarding the current situation with 'On the Runs', the PSNI are engaged in a process to resolve this issue. To date 218 names have been considered with each individual case being evaluated and reviewed. These cases are then referred to the Public Prosecution Service (PPS) if appropriate. Of the submitted names, 173 are not wanted, 8 have been returned to prison and 11 remain wanted. In the year 2007 to 2008, 3 persons were arrested and referred to the Court Service. Of the 23 remaining names, 10 have been referred to the PPS for direction, 11 are proceeding through Historical Enquiry Team (HET) review and 2 are ongoing live investigations. These processes are continuing and it would be inappropriate to comment further at this stage."

Q1518 Lady Hermon: That was dated?

Brian Rea: 28 April 2010.

⁷ Minutes of the meeting of the Northern Ireland Policing Board held on Thursday 1 April 2010 can be found here: http://www.nipolicingboard.org.uk/1_april_2010_meeting_in_public.pdf

Q1519 Lady Hermon: And when did the scheme actually begin? We know now that it began at the tail end of 1999 and commenced certainly in 2000. What is so glaringly omitted in that letter is any reference to an administrative letter scheme signed off by the Northern Ireland Office or, initially, by Downing street. Anyway, thank you for reading that into the record.

Brian Rea: Thank you, Lady Hermon.

Q1520 Naomi Long: On that specific point, is it not the case that in the evidence we received from the police, they say they were unaware of letters being issued, so they wouldn't have been able to report on that? I am assuming it is this letter that I have here?

Brian Rea: It is that letter, yes.

Chair: The police have told that they were unaware of letters being issued. Also, I asked Sir Ronnie Flanagan about this special unit that was in the police and it came as a complete surprise to him. That is a little bit worrying. Anyway, we will explore that further with the relevant people.

Q1521 Oliver Colville: First of all, thank you very much indeed for coming to see us. We are grateful that you have given up your time to come and have a chat. Could you just remind me when was the first moment that you knew about, potentially, any letters at all?

Anne Connolly: As I said, it was from the news bulletin that announced the Justice Sweeney judgment on Downey. That was the very first time.

Q1522 Oliver Colville: Downey came back into this country on 19 May 2013. I remember the news story and I am rather surprised that there seems to be collective amnesia taking place. Nobody else seems to have remembered that he came in saying, "I've got a letter which is going to get me out of all of this." And you didn't know anything about it?

Brian Rea: I certainly didn't know anything about that. As the Chair said, I think I had just had tea and I was sitting down at home and the BBC news was on, and this announcement came. Mr Downey was filmed walking down the street and that was the first I knew.

Q1523 Oliver Colville: It just seems to my mind incredibly odd—there was quite a lot of publicity. I am not particularly a follower of masses of news, but I remember hearing about all this, and I am very surprised that nobody else seems to remember it. It seems rather odd.

So when these letters became apparent, my understanding is that your job as the Policing Board is to keep the Chief Constable to account. To that end, did you ask the Chief Constable whether he had tried to find out what was in these letters and who they were sent to? If this was a major issue to do with trying to arrest and charge people who have committed horrendous crimes of blowing people up and things like that, then it would have been something that I would probably have sought to do. Did you do that?

Sam Pollock: Mr Colville, we immediately had seven Members who demanded a special meeting and we convened that. That was for the—

Anne Connolly: Fifth of March.

Sam Pollock: We sought the presence of the Chief Constable at that meeting. In the meantime we commissioned a review of what information existed within the annals of the board on the matter. I also had conversations with those I needed to, because I am vetted to a point where I can have those conversations. Again, I would affirm what has already been said. Clearly the ACC I spoke to and the previous ACC, who has retired, said they were not aware of the letters. Remember, their responsibility was, on the request of a solicitor or the NIO, to carry out a review of particular individuals who may have been interested in returning or wished to return to the jurisdiction. They carried out those reviews. They put their evidence file to the PPS.

Essentially at that point, having decided that this person should remain wanted, or this person should be arrested, or they were already in the jurisdiction or, no, we have no evidence that would stand up to any due process—once they had made that decision, essentially that was the police duty exercised. Where it went from there was the administrative process that had clearly at some point in 2007 been agreed and activated under Operation Rapid. What came back later, then, was to inform this person, “You are wanted” or “You are not wanted; you will not be arrested.” That is clearly what had gone to Downey, and that had been in his case a huge mistake. The police, in fairness, were not aware, or did not seem to be aware, of the administrative processing of the matter. Certainly I am assured that they say they did not know about the letters. No one, I believe, knew about the letters until February 2013 when Justice Sweeney made his judgment.

Oliver Colvile: 2014.

Sam Pollock: Yes.

Q1524 Lady Hermon: Could I just ask you, Sam, to reflect on the evidence you have just given? In the Downey judgment it is perfectly obvious, because Mr Mark Sweeney of the Northern Ireland Office is actually named in the Downey judgment as having been the NIO official who contacted PSNI headquarters and tried to contact ACC Sheridan, I think it was, to verify whether the information that the PSNI had given was in fact accurate.

In fact, I think there was a series of e-mails from the NIO and in particular from Mark Sweeney on that very point. At least two exchanges of e-mails appear, verbatim, in the Downey judgment. So it is not as if the PSNI just dropped out the system when they did the initial review. They knew perfectly well that it involved the DPP, the Attorney-General’s office and the NIO. Has that not been probed by the Policing Board? I’m sure it has.

Sam Pollock: No. Some of the questions that you rightly ask were raised as specific questions by one of our members to be asked of the Chief Constable. The Chief Constable has indicated to the board that he wished this review and Lady Hallett’s to be done first, and the answers would then be given to the board after that.

Q1525 Oliver Colvile: So the bolt out of the blue comes when Sweeney makes his announcement about this letter and everything like that. Obviously you, as the Policing Board, asked the Chief Constable and the police whether they knew anything about it and they denied they did. Did you then ask them, or would it have been appropriate for you to ask them, to make inquiries of the Northern Ireland Office as to what may or may not have been available?

Did you also ask not just for a copy of the letters but who were the people concerned in this? It seems to me that if those 200-odd people had been sent those letters, that would have a significant

impact on the amount of resources and time you or the police force were putting into producing some evidence on cases that they were trying to do.

Anne Connolly: Yes, we did, and we have answers. We did ask questions around that. The special board meeting on 5 March was purely on that issue and nothing else. We didn't get answers on everything, as Sam the chief executive said. There was a feeling that some of the discussion needed to take place here first before we would be given the information. Indeed, some of the information still has not been provided.

Sam Pollock: As you all know, we did get an update on 4 March from ACC Crime Operations to myself, again basically repeating most of the information that Mr Rea indicated earlier. Some of the numbers had changed slightly: 192 had been categorised as not wanted; of the remainder, eight were returned to prison, 15 were still wanted, three persons were arrested, two were subject to review and six were being held in abeyance.

Oliver Colville: One thing that would be incredibly helpful for us would be if you could let us know—not now, but some stage in the future—what information you have requested and not had. That would demonstrate how slow people are being in trying to come up with the goods and the information. That will help us when we formulate our activity.

Q1526 Naomi Long: I think there is a more fundamental point, Chairman. On what basis can the Chief Constable refuse to answer questions of the Policing Board when asked? They are the formal accountability mechanism for the PSNI. If the Policing Board asks questions of officers, they are surely under an obligation to provide answers. On what basis is there a delay? Has the board simply accepted that delay and the reason given by the Chief Constable, or are you continuing to press for information? If I were a member of your board I would want the information when I asked for it.

Anne Connolly: The Chief Constable can refuse to give information if he believes it is in the interests of national security not to supply it. We are pressing for the information. We do have a power that we can use and have come close to using. We may well use that power under section 59. We had a long discussion about whether we would use that power, because once you go down that route, it quite often shapes how information will be provided in the future.

Lady Hermon: Can you explain that comment in detail?

Q1527 Naomi Long: Could I just clarify something, and then you can explain the comment? The Chief Constable is not saying that he will not give you the information; he is simply choosing to delay the point at which he will provide the information, so the national security argument is completely gone. The information is within the purview of the Policing Board, and it is reasonable for it to be requested, so on what basis is he withholding that information?

Anne Connolly: The reason for this is that he felt that, in the interests of this inquiry and other inquiries, it should go there first.

If you do want answers, obviously, about the process—

Q1528 Chair: If you could comment on what that particular power is, that would be useful.

Sam Pollock: It's under section 33A. If it is a statutory duty, the Chief Constable cannot choose whether to give the information or not, but he must be formally asked for it first and he must have refused to give it, at which point section 59 is invoked, whereby you can compel him to report to you on the matter. The board has chosen not to do that. If, for example, he was holding out and saying, "This is national security information, top secret information; people's lives would be at risk," the board can call a standing committee, a special purposes committee—that has happened—whereby the Chief Constable can give to a number of the board members sensitive information that in the public domain might create a risk. Again, you should try to use every possible provision before you compel a person to give the information.

Q1529 Naomi Long: But there is absolutely no suggestion in this case that the information that the board has requested would fall under national security. It is simply that the Chief Constable, for his own purposes, is deciding the order in which he will disclose the information. Is that correct?

Anne Connolly: Yes.

Naomi Long: I find that really quite disrespectful to the Policing Board, to be honest.

Q1530 Kate Hoey: When is the Chief Constable leaving?

Lady Hermon: The end of June.

Anne Connolly: Yes, at the end of June.

Q1531 Kate Hoey: Do you expect to get it before he leaves?

Anne Connolly: No. Do we expect to get it before he leaves? No, we don't.

Q1532 Kate Hoey: So don't you want to start the mechanism before he leaves?

Sam Pollock: We did.

Anne Connolly: We have done, yes.

Sam Pollock: One of the board members, Mr Craig, raised questions—what was the statutory basis of this scheme? That's the essential question. There is the other information about the numbers of people involved, and Drew Harris has already provided that. But the information that Mr Craig wanted then was formally adopted by the board, so the board asked the Chief Constable for the information. We got a reply back saying he would like to wait until the other two key mechanisms were complete in terms of their review, and that was accepted—that we would wait. But the letter that I sent to the Chief Constable was on the basis of section 33A. In other words, the Chief Constable had been given the request to provide the information. The board can then invoke the higher authority of section 59 in order to insist that it gets it. The board at the minute is showing deference to this review and also to Lady Justice Hallett's review. Whether that's right or wrong is—

Q1533 Naomi Long: Can I move on slightly? Can you clarify this for me again? I may have missed it. At what point did the board become aware formally of Operation Rapid in those terms—of the actual Operation Rapid that existed in the PSNI?

Sam Pollock: I believe it was 13 February 2014.

Q1534 Naomi Long: So at no point in the past was the name “Operation Rapid” or the detail of that process ever disclosed to the board in any meaningful way.

Brian Rea: If I may say so, the earliest recollection, apart from what I heard on the news earlier than that, was the questions that I have read out here. Remember: I joined the board in 2006. All the previous, with Sir Desmond Rea and Denis Bradley, took place long before I was on the board. When I went in, I did not go into the library and start digging through what had happened from 2001, because we were so busy doing the day-to-day stuff.

Q1535 Naomi Long: But there were no specific references at that time in the answers to Operation Rapid as an operation within the PSNI.

Brian Rea: Not to my knowledge or recollection was it ever referred to as Operation Rapid. The term used loosely was on-the-runs or OTRs. There at least I recollect. That was again just general awareness—on the news when the legislation did not make it through. Then it appeared to me that it left the scene. Sadly, it went underground, one might say.

Q1536 Naomi Long: You also have oversight of the HET structures, as well as of the mainstream investigation. When Dave Cox gave evidence to us, he said that there was no connection. He was aware of Operation Rapid—I think that was how he put it—but there was no formal structure connecting that and the HET, to link up the three lines of work. The letter that you referenced from April 2010⁸ spoke about 11 of the cases—11 of 218 names—being progressed through the Historical Enquiries Team review and being dealt with through that mechanism. Does it surprise you that that is the case, given the claim that we have had that there were no structural connections between the two things at all, and no formal sharing of information?

Brian Rea: With regard to the sharing of information, it does not surprise me that 11 were proceeding through the Historical Enquiries Team, because that would indicate to me that investigations were taking place. They were looking at all these cases again and, as they—dare I say—peeled them off one by one, they must have said at the end of a particular period of time, “There are 11 that need to go to the Historical Enquiries Team.” I genuinely do not think that there is any reason why, over and above any other form of reporting, they would have said, “By the way, there are 11 of these OTR cases that have gone to the HET.”

Q1537 Naomi Long: In terms of the Hallett review, what has the engagement of the board been?

Sam Pollock: None.

Q1538 Naomi Long: Have you been asked to appear?

⁸ The letter of 28 April 2010 can be found here:

Sam Pollock: No.

Q1539 Naomi Long: You have not requested to do so? You have not made contact?

Sam Pollock: No.

Q1540 Naomi Long: Do you find that strange at any level, given the involvement of the PSNI throughout this process, that the view of the oversight body of the PSNI throughout that period is not seen as important in the work of the Hallett review?⁹

Sam Pollock: It is important, and I expect that the board will be engaged in it. I do not know what the timing mechanism is in relation to that review.

Brian Rea: I would have an expectation that they ought to talk to us to see what we knew.

Q1541 Naomi Long: And your own review, which the board is undertaking, is due to report when?

Sam Pollock: We are not undertaking a review.

Q1542 Naomi Long: At all?

Sam Pollock: Well, we reviewed what information we had and briefed members as fully as we could. We are continuing to do that, but we are not conducting an inquiry at this point. We have an outstanding question with the chief constable, which we expect to be addressed. The board, rightly or wrongly, has accepted that we would wait for this hearing to take place and then raise that again. We have no reason to believe that the chief constable will refuse to co-operate with the request for information.

Q1543 Naomi Long: May I ask a simple question? How do you feel that the board has been treated throughout this episode? Right from the beginning of the scheme, right through to how you are now being treated in terms of your request to the chief constable, the Hallett review and everything else, how do you feel that the board has been treated during this period?

Anne Connolly: It was the whole way in which the board worked, even up to this time. It was accepted that confidential briefings be given to two people. I don't think that was an advisable thing to do, and I certainly don't believe it is what we would be doing now. There are 19 members of the board—it is a corporate body—and I personally don't want information given to me that I can't share with other people. That was the nature of the beast at the time, and it had to be for all the reasons we know. It is no secret—it is in the public domain—that we are not the only body that has been having bother getting information. That is wrong, and we have already started to look at how we are going to move into the future with a new team and how we access information. An oversight body is only as good as the quality of information it receives. We can't know what we don't know, and we can't ask for things we don't know are there, but when we ask

⁹ A link to *The Hallett Review*, The Right Honourable Dame Heather Hallett DBE, 11 July 2014 can be found here: <http://www.hallettreview.org/report/>

for information we should get it. We had a powerful discussion about section 59, and I have no doubt the board will use that power in the future if we ever get into this situation again.

Q1544 Naomi Long: The Policing Board was one of the key structures at the time of change in the PSNI, in terms of accountability. Do you believe the board has been damaged by this secretive process and its exclusion from the information and its oversight role? Has the board been damaged, either in its relationships with the PSNI and others, or in how the general public view its ability to hold the PSNI to account?

Anne Connolly: Any situation like this damages public confidence, and the board has worked hard over the past few years to increase public confidence. It has done a lot of good work, but it takes only one incident to shunt us back. All the recent evidence shows that public confidence is high, but this does not help. People don't understand why we sometimes can't get information. Sometimes we can't understand it either, but even when we do, the public don't see it like that. Many members of the public think we have a right to interfere in operational decisions, and we have to respect that we can't do that.

I don't think it is irreparable; we can move forward. In the past couple of years the Policing Board has managed quite a few difficult situations. We have had the HET, which you referred to. The Policing Board stood out firmly as a corporate body and said it is not good enough from the point of view of victims, or from the point of view of how an organisation functions, in terms of its own processes and procedures. We had the incident around the rehiring of agency staff, when the board was really persistent, and persevered to get it to a resolution. It was hard-fought, but the board showed it was not going to give up.

Chair: We have to move on.

Q1545 David Simpson: You are very welcome. I apologise for being in and out. I had a few important calls to take.

I may have missed some information, but what I am hearing is convoluted. What teeth does the Policing Board have? When you ask the chief constable for information, he chooses when and where he delivers it. You are saying that public confidence has increased, but I think, through this, public confidence will be very low. What teeth has the board exactly? I sat on the board a number of years ago, long before this—it was '04 or '05, and Brian was there at the time—and it seemed to be all over the place. What teeth has the board? I understand your point, Anne, about the operational issues, but information is required to get answers on this grubby deal that was done by the Government. Surely you guys have more teeth than just the ability to say, "Well, we asked the chief constable, and we called emergency meetings." What teeth have you?

Sam Pollock: The ultimate teeth is to have a vote of no confidence. If you visit our board meetings, particularly our public board meetings, you will say that there are teeth. In some of the meetings, the extent to which the chief constable is held to account with questioning is severe and really difficult. Many governance relationships between public boards and services are difficult, and it is particularly difficult with policing issues. On a huge number of issues, in my time over the past two years, I have seen the board hold fast to its right for information. You will sometimes believe you have information but not enough, so you ask for more and, again on this particular issue, this unquestionably damages public confidence. It hurts victims and everybody involved but the board has been resolute in saying this must be addressed fully. This is part of it

being addressed fully, but the board will absolutely do its duty in terms of getting to the bottom of things. It did it over the agency staff thing. It has done it over the HET issue and that is still not resolved completely but the board—my observation, from close to it—has teeth.

Q1546 David Simpson: In regards to what Lady Hermon mentioned about the chief constable who retires now in June—there is no information. Anne, I think you said you did not expect to get the information by the end of that time. Why not? Why do we have to wait until after he goes—until a new chief constable comes in—to get the information? Why do you believe you will not get it before he goes, which is another two or three weeks away?

Anne Connolly: The board agreed that this inquiry would go ahead first but the board will get the information. It may not be before the departure of this chief constable but we will get the information.

Q1547 David Simpson: I understand that you will get it but when will you get it? Has no one from the PSNI said, “Action it off. You will get this by such and such,” or are they just dragging it out as long as they possibly can, thinking, “It’s only the Policing Board. We’ll answer as and when it suits us.”? That is the perception.

Anne Connolly: That is the perception. The whole accountability thing has been hard-fought. It reminds me of what other public bodies—I have worked in others—were like 10 years ago. We are only now getting to a situation where it is becoming more acceptable. When I joined the board—I am relatively new so I am not in tune with this—I was horrified at how difficult it was to get basic information, even around personnel issues. Over time, that all changed because people were determined and they asked and asked. It has now become more acceptable that we will not give up. If we need to use it, we have section 59. We will do, if we have to. I do not believe we will have to. I believe we will get the information when we go back to look for it.

Q1548 Lady Hermon: You are going to be having a new chief constable. Are you expecting George Hamilton to be more forthcoming, a new broom sweeping clean?

Anne Connolly: We have learned a lot about protocols for information sharing and communication. We have introduced some new things, which we feel is the right way to do it, rather than to go to section 59. It is timely that we will have a new deputy chief and a new chief.

Chair: There are five minutes left to finish. It is probably best that we move on.

Q1549 Nigel Mills: Do you feel that the police’s involvement in Operation Rapid was properly within the bounds of normal policing or do you think they strayed outside the role they should be taking?

Sam Pollock: Remember that it is an absolutely ordinary—perhaps, extraordinary—thing for any member of the public to seek information about whether they are being investigated, going to be investigated or, if they have been investigated, where that investigation is at, even up to asking the PPS what is happening in that case. That is not abnormal at all. For people who are on the run, outside the jurisdiction, believing that there would be a danger of arrest if they came back, there is nothing abnormal about that person asking, “What is my position in the eyes of the law?” It would be seen as a right for that person to know what their situation is. It would be fairly normal for a solicitor to ask the chief constable or an investigating officer, “What is the position in

relation to this case?" On one hand, there is nothing unusual about a review being done—"This investigation is going nowhere; we are going to close it," or, "This investigation now has new evidence and we are going to go further," or, "This investigation can now go to the PPS and get a direction from the PPS as to whether it will stand up in court." The issue is around 220 people on the run outside the jurisdiction, in some cases for many, many years. That is what is exceptional, has damaged the public confidence and is causing the concern in this particular case; the openness of it.

Q1550 Nigel Mills: But we heard from the director of public prosecutions this morning that¹⁰—without wishing to paraphrase him too much—this was not a normal part of the prosecutorial process going on. Did it not worry you that the police might have got themselves into a scheme where what they were perhaps doing was just about stretchable into being believable as normal policing? They must have suspected it was part of a process that was not normal. Would you not expect, before you got involved in something that was pushing the boundaries, to check with your oversight body that they were happy with it? If I was getting towards the edge of my responsibilities, I would check that my superiors were happy for me to be doing that. That would be the last thing I would want to hide.

Sam Pollock: Remember that that is exactly the question we asked the Chief Constable: what is the legal basis to this scheme, Rapid? We have not got a definitive answer to that yet. The ordinary process of an individual or an individual's representative asking for information on a particular matter is not, in itself, out of the ordinary. But a scheme of this size with a specific group of individuals is what makes it exceptional.

Brian Rea: If one or two individuals, as has been described by the Chair, sought to find out information on themselves, that might go unnoticed in a sense. But, as someone said, to get a shed-full of applications, to get lists and lists of people—I would have thought that I would have sensed, "There is something going on here. I want to know more about it and really get to the bottom of all of this." Yet, I suppose if they took them as individuals, as I described about the 11 that went to the HET—if, when they were decanting all these people out of the shed, they found that some went here and some went there and some were not needed at all, that would have raised major concerns in my mind, had I seen that and been aware of that.

Nigel Mills: It is a serious question, whether this was ultra vires, and that is in effect what we are dancing around. That is quite a serious issue for any force to have to answer.

Q1551 Kate Hoey: I have just been reading about the role of the Policing Board and the main statutory duties and responsibilities that you all have. It is very similar to what police authorities would have in England and, indeed, the London Metropolitan police in holding the Metropolitan police commissioner to account. Words fail me almost, because it does seem as if, as a Policing Board, you do not really have any teeth or power. I know you said what you can do, but if this had happened in England, there would have been an immediate referral. The Home Affairs Select Committee would probably have immediately had the commissioner in. Yet everyone in Northern

¹⁰ The transcript of the oral evidence of Mr Barra McGrory QC, Director of Public Prosecutions for Northern Ireland to the Northern Ireland Affairs Committee on Tuesday 10 June 2014 (HC 177) can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/10426.html>

Ireland seems to have this thing, “It’s not ours. We can’t get involved.” The Justice Minister’s not really interested and doesn’t want to get involved. Is it worth having a Policing Board?

Anne Connolly: I think it did happen in England. That is the problem. Part of the problem is that there seem to be too many masters. The Chief Constable gets money from the Treasury, and he is accountable for that money to a body different from us. I think it is worth having a Policing Board. If you look at what the Policing Board has done since its inception, it has done quite a lot. It has brought on communities that would not have accepted the police before. We are being looked at by other jurisdictions, including the south of Ireland and the Met itself, because we haven’t had the huge problems that they have had. Of course the Policing Board is not perfect, but I think we do a very good job. I think we can do a better job. I believe that we are getting there, and things are definitely improving. In the three years I have been on the board I have seen information that would have been refused, but it is not being refused any more. Part of building that relationship is letting the police know that they are accountable.

Q1552 Kate Hoey: I appreciate that. On this issue alone it seems amazing that the Chief Constable is treating you with such disrespect.

Anne Connolly: I don’t believe he sees it that way. I think he genuinely believes that he is reporting in the correct way.

Q1553 Kate Hoey: What are the reasons why he says he won’t give you that information?

Anne Connolly: He would prefer that it goes through the two inquiries.

Q1554 Kate Hoey: Before he gives it to his own Policing Board?

Anne Connolly: Yes.

Brian Rea: During my lifetime on the board from 2006, during my time as acting chairman and chairman—and I am sure during the time that Mr David Simpson, Ian and others have been there—some of the exchanges and discussions have been very robust. It would only be fair to say that the vast majority of business is conducted in a very honourable and respectful way. There are reports, and David Simpson will remember those reports. One of the highlights in my memory was how challenging Ian Paisley Jr. was when the quarterly reports were put up on the screen. He always had something there to go for right away.

The Policing Board has a role, and I think it has a very strong role. I think the Policing Board has demonstrated that through the years. Whenever nothing else was working, the Policing Board was working, and it is now more inclusive and cross-community than it was. The exchanges and the demands are still very robust. Yes, I think there is an essential role for the Policing Board.

As a comparison, when I was a member of the Association of Police Authorities in England and Wales, I was on the Association of Police and Crime Commissioners, the interim body prior to the appointment of the police and crime commissioners, and there were many over there who envied the format, role, relationship and requirements that the Northern Ireland Policing Board could have. As you know, the authorities across the water were totally politically constructed, whereas we have 10 politicians and nine independents, which does not mean to say that they are all independents and some of them aren’t involved on the fringes, or even at the heart, of

politics. I think there is a role, and it is unfortunate that some of these major and important issues, although they are not large, are more difficult to deal with and catch the headlines. I do not know what you would replace the Policing Board with.

Q1555 Kate Hoey: You still didn't get an answer from the Chief Constable.

Brian Rea: As the Chair says, that is on its way whenever he pays respect to Lady Hallett.

Chair: Thank you very much. We are out of time. This has been very interesting. Thank you very much for joining us.

Examination of Witnesses

Witnesses: **Phyllis Carrothers, Kenny Donaldson, Stephen Gault and Shelley Gilfillan**, Innocent Victims United.¹¹

Chair: Thank you very much for joining us, you are aware of the issue we are looking into and we are very grateful to you for coming in this afternoon. I do not know who the main spokesman is. It would be useful if you could introduce yourselves very briefly and tell us a little bit about what you do and your background.

Kenny Donaldson: My name is Kenny Donaldson, I am the spokesman for Innocent Victims United. To my left here is Phyllis Carrothers, who lost her husband, Dougie, murdered by the IRA. To my right is Stephen Gault, whose daddy was murdered in the Enniskillen poppy day bomb. Stephen himself is a bomb survivor. To my right here is Shelley Gilfillan who hails from Castlederg country, a little bit further up in fact. Shelley lost her uncle, Lexie Cummings.

Q1556 Chair: Would you like to tell us very briefly about your group? What do you seek to do?

Kenny Donaldson: Innocent Victims United is an umbrella organisation for 21 victim and survivor member groups, particularly across the south and west of Northern Ireland. We have a combined membership of in excess of 11,000 people, so it is a significant organisation in that regard. What we seek to do is offer a strategic voice to victims and survivors, in terms of how they engage with the political system and with other strata within society to come together with a collective voice.

I suppose we have an agenda which certainly folk in Northern Ireland would be aware of. In fact, we brought out a victim's contract in the last couple of months in the run up to the European election in which we challenged the parties that were standing here to sign up to the contract which we very much feel would transform the way victims' issues are dealt with in Northern Ireland and the wider United Kingdom.

¹¹ The written evidence from Innocent Victims United, June 2014 (OTR0017) to the Northern Ireland Affairs Committee can be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/written/10374.pdf>

Q1557 Chair: Can you give us a brief idea of what sort of things are in that, what are you looking for in particular?

Kenny Donaldson: It is not going to be a surprise to those of you around this table that the definition of a victim continues to be a hotly contested issue in this country and we have lobbied for many, many years on that matter.

I suppose we want to make it clear that we come from the perspective that we acknowledge that there are terrorists and, indeed, their families who are going to continue to live within this society. Any state or Government is required to provide for its citizens. What we feel is obnoxious is that those individuals are facilitated within the current definition of victim and survivor, because they are not victims and survivors.

We also would be very clear on the issue of language revisionism, whereby—aside from this table—sometimes in this country you can barely use the word “terrorist” or “murdered”. There is almost an attempt at airbrushing going on and it is all rounded under the terminology of conflict, which certainly folks here would not accept was what happened in Northern Ireland.

We also have a very principled position in terms of the Maze and our opposition to a peace/conflict transformation centre being built there while the old prison architecture would remain. We have consistently fought that for over a decade.

Particularly for the GB representatives around the table, we also feel that it is an absolute disgrace that victims and survivors services are effectively determined by postcode across this nation of ours, because there are many, many individuals within your own constituencies in GB who are crying out for help and support, and we have linked into many of those over this last number of years. I think there is a real issue there around how victims and survivors are treated in GB. That is a snapshot of some of the issues.

Q1558 Chair: Thank you. Obviously, we are here to look into the on-the-runs scheme. Perhaps you would like to give us your thoughts on the scheme itself.

Kenny Donaldson: We have a range of points that we would like to make today and rather than me hogging this, I would like to bring in colleagues. Each of my three colleagues here is going to raise particular matters that were of principal concern to them. Stephen is going to start us off.

Stephen Gault: Good afternoon, everyone. Initially, when I first heard about the on-the-runs, I was at a CVSNI—the Commission for Victims and Survivors for Northern Ireland—conference, very ironically, on truth, justice, acknowledgement and reparations, in the Stormont hotel. When we came out after the conference and saw the footage on the news of the whole OTR scandal, it was very poignant for me because the footage that they were using on Sky News was of the Enniskillen poppy day bombing, in which my father was murdered, along with 10 others, and myself injured.

My feelings at the time—I didn’t know what to think. I can honestly say that I broke down on the way home in the car. I couldn’t control my emotions. It was just a retraumatisation of everything I went through that fateful day in November 1987. I didn’t sleep for two or three days afterwards, not knowing whether this could possibly be, and more than likely is, the people involved in the Enniskillen poppy day bombing.

I would like to make the point, too, that nobody has ever been convicted for the Enniskillen bomb. My feeling is that at least two people have received these letters of comfort, so in the future—we always talk about getting justice—what happens if, the same as Mr Downey, someone is brought into a court of law, and he produces the letter? Where is the justice for my father and the other innocent people who were murdered, not only in Enniskillen, but in the countless other acts of terrorism throughout Northern Ireland and further afield? I have to say that I was very upset, very hurt and very let down by the British Government—the Government which I looked up to all my life. So yes, I have very mixed emotions about the whole thing.

Kenny Donaldson: Phyllis is going to come in now, just to give a little bit of a backdrop. Phyllis was one of the RUC widows who lobbied Tony Blair back in 2005, and in fact, went to Downing street. She has a very first-hand experience of how that all has factored out now.

Phyllis Carrothers: My husband, Dougie, was a part-time member of the RUC reserve, and he was murdered in an under-car booby-trap bomb outside the front door of our home on 17 May 1991. Regarding the OTRs, I just feel so betrayed and deeply hurt. As Kenny has already said, I was part of a delegation that went over to Westminster in November 2005. We spoke to all the various political leaders and I ended up in the afternoon with our main target, No. 10 Downing street, where we met our Prime Minister, Tony Blair, and Peter Hain. The meeting was quite formal and courteous, but the mood visibly changed once we told our stories—the four of us who were victims. Mr Tony Blair was visibly moved whenever we showed him childhood photographs. I appealed to him, saying just, “Prime Minister, could I appeal to you as a family man?”, and I showed him a photograph of my three children with their dad just a couple of Saturdays before his murder. As I say, the Prime Minister was visibly moved. We had our meeting and our time was up, and we went out and faced a barrage of press interviews, shortly after which Mr Hain came out and told us that the Prime Minister was indeed very moved by our stories.

It was a few days after this that Sinn Féin withdrew their support from the Bill unless the provision for the security forces was withdrawn. Mr Hain made a statement in the House of Commons to the effect of withdrawing the Bill, largely due to a tidal wave of moral disgust. He said that “the visit...by the RUC George Cross widows and parents had been strongly instrumental in persuading the Government that the legislation was morally offensive.”

So you can imagine how I felt earlier this year; I just couldn’t believe it. Disbelief. I turned the TV up to make sure I was hearing what I was hearing. I just feel utterly betrayed by the top politician in the land—the Prime Minister of the then Government. I just don’t know now who to trust. Who can you trust? What else is there to come out of the woodwork? These letters were being sent out from 2001, I understand. We had the meeting in 2005, and I just feel deep hurt and trampled upon, and my husband’s memory trampled upon, along with all the other husbands and family members who were murdered. What else is going on behind the scenes?

Chair: Thank you.

Kenny Donaldson: To reinforce what Phyllis has said, we have a short DVD that we want to give each of you today. We were not able to show it within the rules of today, but it will explain very well Phyllis being interviewed last February and her understanding of OTRs in terms of that meeting she had in 2005. Anybody who says that victims and everybody in this country knew about this scheme will need to watch that particular interview, and it will become clear that no, they did not.

Shelley Gilfillan: In December 1971, my brother was murdered. I can accept—I don't want to, but I can accept—that the people who murdered him will never be convicted. I don't like it, but I can now accept that. In 1982, my uncle was working in his daily job. He was a part-time member of the UDR. He went out to have his lunch, and he was gunned down in the centre of Strabane at lunch time. I have two HET reports here, one for my brother and one for Lexie Cummings.

When I heard this news, I was totally devastated. I still can't come to terms with that; I'm finding that very difficult.

I would like to know how exactly did this Downey case occur and what level of cross-communication existed between the Metropolitan police, the PSNI and other forces at the time with respect to terrorism and prevention. What is going to be done to ensure that this is not going to happen again? How are we victims going to be given some kind of reassurance? At the moment, no one has thought about the victims; this is all about terrorists. It is about people who go out and break the law. My upbringing was you do not break the law. If you break the law, you are in a court and you are sentenced.

I can't understand this. I just fail to know how people can go out and murder other human beings and be handed a letter to say, "That's okay. That's all right."

"Thou shalt not kill" is one of the commandments. Surely to goodness, in this day and age, in any country, this should not have taken place. This leaves us, the victims, back at square one again—back to those days. We do not want to have to go there again. I never wanted my children to be brought up—I was brought up very equally—listening to bombs and shootings and murders. I would not like that. Castlederg was one of the most bombed towns in Northern Ireland. There are 29 unsolved murders in that small town. How on earth can that happen? There is something wrong somewhere.

I would also like to know whether there is a political hand in policing here in this country, because it seems that the police have their hands tied behind their back. Everyone is very quick to blame the police for this, that and the other, but they are not allowed to do anything, so why blame them? It is not their fault.

I would like to read you something out of Lexie's report. I can name the man who is on the run. I suspect he has had a letter—a love letter. The report states: "A review into Lexie's murder was carried out by the 'On the Run'...review team, in 2003, following William McMonagle's inclusion on a list of OTRs supplied by Sinn Féin to HM Government." That happened in 2003.

The report goes on to say: "Following this review, the DPP rescinded the direction of December 13 1982 to prosecute William McMonagle and directed no prosecution against him." The new direction was made on 7 October 2003, so it is quite obvious that, at that stage, something was rattling about somewhere. I learnt of that in 2010, when I received that report. That is all I have to say.

Chair: Thank you very much to all of you for those accounts. Perhaps you will allow us to ask some questions.

Q1559 David Simpson: Thank you, Chairman, and thank you all for coming today. All of us, whenever we have listened to the groups that have come in from the victims sector, would need to be very hard individuals not to be moved by the stories. I remember Phyllis being over in London.

She made a very good point about 2005. You got lorded in No. 10 with coffee and tea and all the rest of it, and yet this was going on.

We as MPs who stand in the House of Commons feel equally betrayed. I have suffered before—my family have been murdered by the provos—and unless people have that pain and anxiety, they do not know what victims are going through, but as MPs, we feel betrayed by the then Government, who made this dirty, murky deal with the provos. It is disgraceful that it has taken place.

You have asked a number of questions. We are hoping to get to the bottom of this. I think that Mr Blair, Mr Hain and one or two others—maybe Mo Mowlam—were involved. It was to placate the provos so that they did not go out of the peace. We know what it is all about, but victims today—I speak to a lot of victims groups and we have had them here in the Committee—feel betrayed. They were promised justice, and today that justice seems so far away.

Stephen, you mentioned Enniskillen. I remember it well. People who I knew died in Enniskillen. Will they ever get justice? God only knows. It goes right to the heart of society in Northern Ireland. There are few families in Northern Ireland—no matter who they are—that are not affected, because we are a close-knit community. Whether they be security forces or just someone in the wrong place at the wrong time, we need answers.

We appreciate the fact that victims feel let down and betrayed, and it again goes back to your point, Phyllis: who do you trust any more? When it goes right to height of senior Government members and then the Committee learns that 18 royal prerogatives were given as well, does that mean that the people who murdered your husband and family and your father in Enniskillen got letters or royal prerogatives? Did the ones who murdered my family get royal prerogatives? Those are questions that we are trying to get to the bottom of.

It is alleged that a member in the Northern Ireland victims' forum has received an OTR letter. What would your feelings be on that?

Kenny Donaldson: Colleagues here have aptly said that it is the non-knowledge that is most concerning. Obviously, speculation has always been a factor in Northern Ireland over the years, but how can people be expected to sit on a forum with individuals about whose backgrounds they are not confident? Stephen Gault, who happens to sit on the forum—everybody knows who Stephen is. People know his story and how his father was murdered and how Stephen himself was injured. We cannot say that for everyone who sits on that forum, which is a big problem. In terms of the CVSNI and how it is actually viewed across our constituency, there are big, big problems.

Q1560 David Simpson: So it is a question of trust?

Kenny Donaldson: Very much so.

Q1561 David Simpson: And of not knowing who you are sitting alongside and who is receiving these things.

I am going to finish as I know that others want to get in. In relation to the outcome, you know about the Committee's remit, but what do you want the outcome to be? What outcome do you want ultimately to see coming from this Committee?

Kenny Donaldson: The first point is that in many ways we come here with a heavy heart today, because it has been insinuated in the last 24 hours that OTR letters were handed out as recently as March to three further individuals. Now, that is the first point that this inquiry and others need to come to terms with, because if that is the case, there are serious implications not only for the NIO, but also potentially—if I was the Justice Minister, I would also be wanting answers, including from senior officials within the Department. After the massive uproar at the time and the assurances given on 7 March by the Secretary of State that no OTR letter had been issued since 2012, how can it be that we now have this situation? We are not by any stretch of the imagination taking the gospel of Sinn Féin on this—they are making that insinuation—but, by goodness, it needs to be examined.

We also appeal to folks here today to please compel Sinn Féin along with Tony Blair and Peter Hain if they refuse to co-operate with this inquiry. Otherwise, what is it? It is the rest of us talking in the dark once again. The main protagonists will be outside the process, which is no good for any of us.

Chair: On that point, Mr Blair has expressed a willingness to engage with the Committee, as has Mr Powell. It is a matter of finding a date. I think that I am right in saying that a date for Mr Hain to come to the Committee is established for next week. For Sinn Féin, we have only just over the weekend received the letter explaining their views and why they did not want to come. It is full of misapprehensions, so the position is that I will be writing back to them and setting out what the work of the Committee is and so forth, and we will take it from there. We are in a process that we hope to follow through.

Q1562 Lady Hermon: Thank you so much for coming in, albeit with a heavy heart. It is really important that we have your evidence and your contribution on the record, and that those in Sinn Féin and those who have received the OTR letters hear from relatives of those who were murdered during the troubles, and can look at you sitting here today and reflecting on how damaging the scheme has been. In the very helpful briefing that was prepared for us, one sentence jumped off the page: "The OTR letters fiasco is merely the straw that broke the camel's back." You are nodding in agreement with that.

Shelley, the extract that you read on Lexie Cummings was really important. When was that report from the HET given to you?

Shelley Gilfillan: In 2010.

Q1563 Lady Hermon: I thought that was what you said. It makes reference to the OTR team, doesn't it?

Shelley Gilfillan: Yes, it does.

Q1564 Lady Hermon: Does it say where the OTR team was based?

Shelley Gilfillan: No.

Q1565 Lady Hermon: Just read it again, Shelley—it was fine. It was just really striking.

Shelley Gilfillan: It just says that a review was carried out by the OTR review team in 2003.

Q1566 Lady Hermon: It doesn't identify that the OTR team was based in the PSNI headquarters?

Shelley Gilfillan: No.

Lady Hermon: So it was economical with the—

Shelley Gilfillan: It was somewhere.

Q1567 Lady Hermon: We know from previous evidence that in fact there was an OTR team in the police headquarters. Just read the next sentence, please.

Shelley Gilfillan: "Following William McMonagle's inclusion on a list of OTRs supplied by Sinn Féin to HM Government".

Q1568 Lady Hermon: The then director of the HET, Dave Cox, gave evidence to this Committee in which he assured us that fresh evidence would "trump"—his word, not mine—an OTR letter. Reading Lexie's report from the HET, is your impression the opposite—that the OTR letter would actually have trumped any evidence that was produced in relation to the gentleman you have named?

Shelley Gilfillan: I was truly shocked when I read this. I was under the impression that this man was still on the run. It is quite obvious, now—

Q1569 Lady Hermon: Yes, it is obvious now when you have heard the Downey judgment and you know that these OTR comfort letters have been in existence for 228 OTRs. So you have now concluded that Mr McMonagle is in receipt of an OTR letter?

Shelley Gilfillan: Yes.

Q1570 Lady Hermon: Could I just ask you this, then? This morning we were taking evidence from the Director of Public Prosecutions, Barra McGrory¹²—I don't know whether you had the opportunity to listen to any of his evidence. Mr McGrory, while a solicitor, was of course the main legal adviser acting on behalf of OTRs when they were making the applications to the police for these letters. But as the DPP—I am quoting exactly—he said, "Letters are not an impediment to prosecution." That was his message from the DPP's office now—the OTR letters are not an impediment to prosecution. How do you react to that reassurance from the DPP, the head of the prosecution service? Are you reassured by that?

Shelley Gilfillan: No.

¹² For transcript see footnote 10.

Q1571 Lady Hermon: That is a very spontaneous reply—why do you feel that, Shelley? You obviously feel that in your heart and in your bones.

Shelley Gilfillan: Yes, I do. There is the trust, as Phyllis said—who do we trust? We have been told so many lies. It is very difficult to trust.

Kenny Donaldson: In many ways, people are making promises that they hope they will never have to check out on, because until such a case is actually presented before the courts, where the evidence exists, in many ways people can say what they want to say.

Q1572 Lady Hermon: Do you think the words are easy to say—“Letters are not an impediment to prosecution”—but that doesn’t mean to say you are going to get a prosecution?

Kenny Donaldson: Where victims are concerned, I think the point has come where blank cheques have been signed enough times, and people have given broad assurances around any number of issues over the last 16 or 17 years, but the proof has been in the eating of the pudding, and it hasn’t been what it said on the tin. For victims, the trust is not there any more. With the greatest respect, if anyone states at this stage that these letters are effectively meaningless, until such time as a case is before the courts, that can’t be tested.

Q1573 Lady Hermon: Thank you for that. Can you comment on the fact, and it is a fact, that the Chief Constable and the leadership team within the police now have already established a large team—we understand it is 19 strong—of experienced, dedicated investigators? These are PSNI officers who are going to review every single one of the OTR letters. In response again, Shelley, when you say that you feel the police have their hands tied, they are certainly not indicating that their hands are tied; they are saying very boldly, both to us and publicly,¹³ “We have a review team called Operation Redfield. It consists of 19 dedicated officers who have been pulled off other serious investigations to focus exclusively on these OTR letters and the recipients.” Does that help to build some confidence and trust? And there’s this huge pause before anybody replies—that is really worrying.

Shelley Gilfillan: It is very difficult, it really is. It is a very difficult situation to be in when you have heard news about letters given to murderers.

Q1574 Lady Hermon: Even though they are going to review every single case again?

Shelley Gilfillan: Yes, they are going to review every case again, but are they allowed to review anything?

Q1575 Lady Hermon: Operational independence. May I suggest something? I am looking at Phyllis here as well. I remember the visit to Downing street, and I had occasion to remember the date. You remember it as November; I remember it as 23 November, because it was also the date on which it was announced that the Royal Ulster Constabulary would be given the George Cross, so I had reason

¹³ The transcript of Matt Baggott CBE QPM, Chief Constable, Police Service of Northern Ireland to the Northern Ireland Affairs Committee of 7 May 2014 (HC 1194) can be found here:

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

to remember the date particularly. As a group, may I suggest something that might be helpful? I am really worried by the phrase “the straw that broke the camel’s back”. We must build that trust back up. You are the victims. You have to live your lives. You have your children and grandchildren—you, Mr Donaldson, are too young for grandchildren, but we hope for the future. We have to build confidence in the criminal justice system here in Northern Ireland. Have you as a group asked for a meeting with the incoming Chief Constable? It might be helpful to talk about Operation Redfield, although obviously not in detail. Has that been considered?

Kenny Donaldson: We have indeed issued that request. I think that when we say that the straw broke the camel’s back, where we are coming from there is that our position at the start, when this OTR scandal first broke, was that we felt there was a need for a full public inquiry. Our position has not changed. We have had all manner of inquiries—four or five in total—which have had their own particular purpose and remit. To be honest, what victims want to know once and for all is, from when negotiations first began between the Government and the IRA in 1972, and what followed thereafter, we need everything out on the table once and for all, because people need to be clear about what was done and why it was done, and, indeed, what has been committed to being done.

The concern for folks around this table, and others, is that this is not the end by any stretch. There are individuals in this country, particularly in border areas, who operate mafia empires. The very strong belief is that those individuals are receiving a form of immunity—they were allowed effectively to job diversify from terrorists to mafia gangsters. That is the sort of situation we are dealing with here. If anybody thinks about papering over the cracks regarding this issue, that is part of the overall problem. The royal pardons issue was referred to earlier, and 10 years of records going missing around the period when a peace agreement is being developed. As they say, the dog in the street knows what’s going on there. Against that backdrop, unless there is full disclosure and accountability once and for all, you are not going to get back the trust of the individuals around this table, or others. It ain’t going to happen.

Q1576 Lady Hermon: What weight will you as a group attach to the report by Lady Justice Hallett? She has very generously given up her time to come over and conduct an inquiry, albeit in private, to call in and ask those who were at the heart of this to account for what they have done, including Sinn Féin, who did go, of course, because it was a private session. It is a pity they are not here in a public session, but they did co-operate with Lady Justice Hallett. Is that not significant at all, Kenny? You seem very dogmatic in your approach.

Kenny Donaldson: We will look at what comes out there, but folk around this table need to understand that there is a wider background to all this. The 1998 peace agreement was signed, wherever people stood on that. The point is that in 1998 society in Northern Ireland understood those individuals to be terrorists released on licence. Sixteen years on, those individuals are equated in law as victims, the same as the individuals around this table. That is the nub of all of this. So the OTR scandal, to be perfectly honest, as ugly and whatever else it was, did not come as an entire shock to many people.

Q1577 Lady Hermon: It didn’t?

Kenny Donaldson: No.

Q1578 Lady Hermon: It came as a complete shock to me. I think Phyllis said—

Kenny Donaldson: What I would say is that it did not come as an entire shock in the sense that people believed that anything was possible, if you see where I am coming from, because of what had happened up to that point—some of what has happened over the last number of years. Victims have been the collateral damage. Was the peace process inclusive of victims? That is a pertinent question to ask, and I do not believe that anyone around this table can realistically answer yes. Was it inclusive of victims?

Lady Hermon: Today is not the day for that debate.

Q1579 Naomi Long: Thank you for coming and giving us your evidence. I have a few questions to ask to all of you. Shelley, could I ask you a question first, just based on the extract that you read from the HET report? You mentioned in the extract that you read that, when they reviewed the case, they had rescinded the previous direction to prosecute and directed that there would be no prosecution. Does the HET report give any rationale or reason as to why that decision to rescind the original direction was made?

Shelley Gilfillan: It is quite obvious that this man, McMonagle, was on a list.

Q1580 Naomi Long: They said he was on the list, and they said that the case was reviewed as a result of him being on the list, but did they give any reason, such as lost evidence, change of circumstance, death of a witness or anything like that, that would have suggested that there was a substantive reason why they would have changed their direction to prosecute to a direction not to prosecute?

Shelley Gilfillan: No. Why this man got away was—Lexie's case was the very first case to go up in court. The law had changed where things had to be countersigned. And that was how this man got away: on a technicality. Something wasn't countersigned. He got away the first time and he was re-arrested on the steps of the courthouse. There was another technicality and he got away again, but this time there was a motorbike waiting for him outside. If he was innocent, why did he run?

Q1581 Naomi Long: There is nothing in the report that offers any explanation as to the change in decision other than the fact that his case was reviewed by the OTR review scheme?

Shelley Gilfillan: No.

Q1582 Naomi Long: We have had a number of people in front of us over the last few days, particularly from victims' organisations, who have given very powerful and, I think, very important evidence to the Committee. In all of this, there has been at one level political discourse about whether this was a necessary part of the peace process or not. We will all have varying views on that matter, but what I think has been to some degree lost is the voice of those who have suffered as a result of the process, so it is important that we have been able to put that on the record.

I noted down some of the words you used. You talked about uncertainty, the retraumatising effect of it and the fact that justice has been denied, which is of course different from justice not being able to be done—there is a distinction. You spoke of being betrayed and hurt and of your trust

having been damaged. I repeat those things because they are quite important, because when we have taken evidence from some of the politicians who have been involved in this, there has not been a recognition at some level that it has been as damaging as that to the individuals who have been directly affected. It is important that we acknowledge it.

I want to ask you a question that I asked David Scott and Ann Travers yesterday. There were two elements to the scheme. There was the review of those who were on the run and the issue of the letters. If you take the scheme at its most benign, the assumption is that those letters were simply a statement of fact and nothing more than that. I believe, according to the evidence that we have had this morning, that one of those may well be tested in court reasonably soon, so we will find out whether the Downey case is an anomaly or part of a pattern. So there were the letters themselves and then the second element of the scheme was the secrecy that surrounded it and the deceit that accompanied it at all levels.

Can I ask, and I realise that it is a difficult question, but which of the two is it that has affected you, as victims, most profoundly? Is it the fact that a scheme was devised and operated, or was it the fact that it was done in such a secretive manner, with no oversight and with no public accountability? Which of the two has been the most damaging in terms of your experience?

Phyllis Carrothers: I have to say the secrecy. For me, to sit—just as close as Lady Sylvia and I are sitting at the minute, and maybe a bit closer—and for the Prime Minister and I to look at each other across the table, for him to have not just given us a categorical assurance, but one in type, and to then realise umpteen years later, or four or five later, that that wasn't the case. I think what hurts me, and I am only speaking personally here, is this drip feed of the truth. If I was faced with the truth and the processes, I think, perhaps given time, I could come to terms with things. You hear something now and further along the line is there going to be something else, and maybe previous to the OTR letters—I just can't think off the top of my head, I'm that nervous. It is this drip feed of this leaking of this information that has eroded my trust and confidence. I am only speaking for myself.

Stephen Gault: I agree with Phyllis. It is the secrecy of the whole thing going on behind people's back. It was done in 1997. The then Prime Minister had an opportunity to hold a full inquiry into the Enniskillen poppy day bomb, but for the sake of the peace process, which came a year later, declined that opportunity of an inquiry where the family might have got some justice or some truth. Then in 2001, he devised the OTR scandal. It is the whole secrecy that went on within the British Government and terrorists that is the sickening thing.

Phyllis Carrothers: It is just the lack of transparency.

Q1583 Naomi Long: I expected that that would be your answer, but I think it is important to put it on the record because I don't think that there has been an acknowledgement yet from those who were involved in devising and operating this scheme that actually the secrecy matters. The fact that it was not disclosed to people, the fact that people were in some way deceived and feel abused as a result of that, I don't think has really hit home, so I think it is important to put it on the record.

The other issue that you raised was the uncertainty, this sort of drip feed of information. How important is it to you at this point, in terms of trying to rebuild some kind of trust and confidence in the system, that there is full disclosure now from Government about all of the various schemes that may or may not be operating in dealing with the past? How important to you is it that they now

come clean and are open and transparent about all of the things that they have been doing over the last 20 years or so?

Kenny Donaldson: I would certainly feel that there would be uniformity of view here that that is crucial. I would also say that, and this needs to be borne in mind—I know it goes outside the realms of this inquiry—our neighbouring state must provide that disclosure particularly around matters concerning those of us who live in border areas. There is a big issue there for both states to step up to the mark.

With the OTR legislation—maybe it is the wrong language to use—there was a fair fight of sorts because Phyllis was able to go over as someone to lobby the Prime Minister against that legislation actually being introduced. Ultimately, the then Prime Minister didn't pull it necessarily because of what those widows had done and their bravery; it was actually, again, a sop of sorts to Sinn Féin, but it was open. This was not an open fight. This was a dirty fight without gloves on. For any individual within Government to have the arrogance to believe that because they are elected they have carte blanche to do those most deceitful of things is unbelievable. No equality impact assessment was carried out in 2005 on how that scheme was going to affect victims, and there certainly was no equality impact assessment carried out on how the OTR administration scheme was going to actually affect victims. So they were never factored into the process. This was about feeding people who needed to be kept on board a process.

Q1584 Naomi Long: I have one final question. I apologise, because, after I ask it, I will have to leave. I don't mean any discourtesy, but I have to be somewhere else.

From your perspective, how important is it that everyone involved in the OTR process gives evidence to this Committee, including Gerry Kelly, who was the go-between in this process? How important is it to you that he puts his side and his version of events on the record and is questioned in this inquiry? Is that important to you as victims?

Phyllis Carrothers: It is important to me as a victim. I just want to enable myself to have a better understanding of the process. Part of the problem—maybe this is too simplistic—is that victims have existed outside the whole process for so long. It has not been victim-centric in any way from my perspective. We are being made sacrificial lambs. I don't want to be too emotive about it, but that is the black and white way I see it, so I would welcome the participation of everybody involved in order for myself to have an all-round view and to be better informed myself. We have to bear in mind transparency and accountability and whatever needs to be implemented from that.

Q1585 Oliver Colville: Thank you very much for coming to see us. It is a very moving story that you have told us. You have my commiserations for all that has happened. You talked at some length, and quite rightly so, about how you all want the truth. Which is more important: the truth or justice?

Phyllis Carrothers: The two have to go hand in hand. I don't think you can have justice without the truth, or truth without justice.

Kenny Donaldson: There is a word that champions both of those terms: accountability. And there is very limited accountability.

Q1586 Oliver Colvile: And you feel there is a lack of accountability—I think that is very clear from what you have said—so we now have to try to find a way of trying to resolve this. One of the suggestions that has been made—I talked a bit about it yesterday—was the idea of having a truth and reconciliation commission. I am not convinced that that is the answer. It was different in South Africa, because there was a complete change in political culture, whereas that has not really happened to the same extent here. So how do you think we can make that move forward? Do you think that a truth and reconciliation commission would be helpful to try and produce the results? How do we move it on from here? What do you physically want to do? If you had, say, five actions that you would like us to press the Government to do, what would they be? What are the five?

Kenny Donaldson: The first thing that I think we are all agreed on is that there certainly should be no amnesty for pre-1998 troubles-related crimes, which has been mooted by senior individuals in authority here—hopefully Peter Hain will be before this Committee—and we do not accept that. We would want the Government to appraise the past 16 years and the roll-out of the Belfast Agreement, because the agreement that people signed up to—those who did support it—is a very different agreement from what they actually got. Side deals have existed as annexes to that agreement, so there needs to be an appraisal of what has happened, and sometimes you have to go back before you can actually go forward.

People say that Northern Ireland is at peace. Are we going to have a sustainable peace without there being justice? Justice must be worked through in all its ugliness. Our position, which we as an organisation want to get across, is that whether it involves individual members of the security forces who have dishonoured the code and engaged in acts of criminality, or republican or loyalist terrorists, they should all be treated equally before the law.

What we also want very much for victims is an acknowledgement and the rewrite of what has been allowed to happen. We have seen processes in the last number of years and we talked earlier about language revisionism. In a sense, this whole mess that occurred for 40-odd years to the outside world is barely recognisable to those who actually lived through it. This was terrorism and it needs to be called that loudly. We want people in the Government to deal with that. The definition of “victim” is crucial, and we believe that there is a way in which a definition can be revised to cover those who are innocent victims of terrorism and the actions of individual members of the security forces. Terrorists and their families still have to be dealt with, but they can be dealt with through other processes and structures without their obnoxious inclusion in the definition of “victim” and “survivor of terrorism”. That is wrong.

Q1587 Kate Hoey: Thank you for your submission, which I have read with great interest, and the one that you may have seen from Aileen Quinton, who lost her mother at Enniskillen. One bit of your submission that stands out is: “Let us never forget that peace is not the absence of terrorism, but the presence of justice.” In a way, that almost sums up everything you have said.

I want to ask you a little more about your organisation. Do you receive any funding from anyone?

Kenny Donaldson: No. Innocent Victims United is the umbrella organisation for 21 other victims groups, many of which do receive funding. It is, if you want to call it this, a lobbyist-based organisation, and in many ways it is not a bad thing that we are not funded.

Q1588 Kate Hoey: You go to the forum, and Stephen is a member. Let me be clear, the forum has a definition of “victim” that includes, for example, the Shankill bomber.

Kenny Donaldson: Yes. In law, the definition in the 2006 order—

Q1589 Kate Hoey: And you are campaigning to get that changed. Of course, it would not be the definition of “victim” in the rest of the United Kingdom and in specific legislation here.

Kenny Donaldson: What we are saying, and to those around the table here who are GB-based representatives, is that within your constituencies, whether in London, which had the Hyde park and Harrods bombings, or in Birmingham, individuals are obviously equally affected by this OTR issue. The definition change may have been doing the rounds for many years, but people have skirted around it. It actually is the root cause of all our difficulties here. If the moral compass was rebalanced—it has gone totally out of kilter—we could start building a proper foundation for moving forward. We appeal to those of you around this table to consider that we are talking about having a new round of dealing with the past, and while that involves the local parties here, there is obviously an interest from the two Governments. What needs to be understood is that until we have an accord across all the participant political parties that the use of violence, whether present or past, is illegitimate in the furtherance of a political objective, we are not going anywhere because while people continue to justify what they did, that is what is hurting victims daily.

Q1590 Kate Hoey: So this is your paragraph about wanting all the democratic political parties to say that the use of violence in furthering a political objective was never and is never justified.

Kenny Donaldson: Very much so.

Q1591 Kate Hoey: And some of the other victims groups agree with that?

Kenny Donaldson: I suppose that across the 21 groups attached to ourselves, that is certainly the agreement. Outside that, we have a lot of support—I think it is true to say—across the churches and civic society. I believe a silent majority wants that.

Q1592 Kate Hoey: Am I right that the Victims Commissioner, who is paid quite a lot of money and is leaving soon, does not agree with that?

Kenny Donaldson: I suppose that the Victims Commissioner would say that she is required to apply the law of the land, which is the 2006 order, but we certainly would have issues about her unwillingness to use the term “terrorism”, because the Terrorism Act trumps that. There has been an unwillingness to call what here actually was. I grew up in South Armagh, in Crossmaglen, and there were the crosses around the countryside and other border areas over the years, particularly around the late '80s, early '90s, and they read, “My brother is not a criminal”. We need to wake up and realise that what the last 20 years has been about is the decriminalisation of the terrorism campaign. That is the bigger issue in the whole of this, and we are sleepwalking into that.

Q1593 Kate Hoey: Do you think there is an attempt to rewrite history?

Kenny Donaldson: Very much so.

Q1594 Kate Hoey: And the on-the-runs are becoming part of it. We are not going to have—at the moment he is refusing to come along. Is part of that rewriting of history people not being willing to speak publicly in an official Committee?

Kenny Donaldson: I think that for broad society and particularly for victims, there is this sense that there is no accountability. There seems to be one element of this peace process—one constituency, one interest group, who are able to be placated time and time again. We had the Haass process where, as we understand it, that particular political party insisted that the very narrative of terrorism could not be included within that document. It is at that level, so it is inherent and intrinsic through everything that we do. This OTR inquiry is but the latest. This has been ongoing for many years. So people need to get to grips with what has been happening, not simply what is on our doorstep now.

Kate Hoey: Thank you.

Chair: Okay. We are out of time. Thank you very much for coming and sharing your experiences with us and giving us your evidence.

Kenny Donaldson: We would just like to express our appreciation as victims of having the opportunity to come and speak to you directly. That has not often been the case over the years. There is a great deal of respect in that we were given that opportunity.

Examination of Witnesses

Witness: **John Larkin**, Attorney-General for Northern Ireland.

Q1595 Chair: Thank you, Mr Larkin, for joining us. You are very welcome. You know what we are looking into, so I won't give a long preamble, but may I just clarify one or two points? You were appointed by the First and Deputy First Ministers. Is that correct?

John Larkin: That is right.

Q1596 Chair: And you in turn appoint the DPP and, in this case, you appointed Mr McGrory.

John Larkin: Also correct.

Q1597 Chair: What was your role before you become Attorney-General?

John Larkin: I was a barrister—a QC—in private practice, practising mainly in constitutional and administrative law, and human rights.

Q1598 Chair: Can I just start, then, with the issue we are looking at: the OTR scheme? Have you had any involvement with it at all?

John Larkin: No, I haven't, and I have been careful. Obviously I am aware of the deliberations of this Committee, but I have tried not to follow them too closely lest I acquire a secondary

knowledge, because obviously what the Committee is interested in from me is my primary knowledge, and I have no primary knowledge of the on-the-runs scheme.

Q1599 Chair: When did you become aware of it?

John Larkin: I suppose when everybody else did, through media and principally through the Downey decision by Mr Justice Sweeney. I think there was a sense that people were aware of the discussions that had culminated in the abortive legislation to which reference has been made. Then there was rather an impression that the issue had rather subsided, but I had the sense—and obviously I was in private practice at the time, not following the issue closely—that there was something going on. But in terms of the material elements of it and the detail, that is something which I certainly was unaware of.

Q1600 Chair: So you heard it on the media.

John Larkin: Essentially.

Q1601 Chair: You did not receive a phone call telling you about it.

John Larkin: No.

Q1602 Chair: Okay. What are your feelings about it now?

John Larkin: I suppose that is perhaps not primarily for me—it is a matter for the Committee to form its judgment on—but I think that reference has been made, either directly or indirectly, to the suggestion that I threw out last November, summarised as drawing a line under our past. I think that that certainly prompted discussion—indeed, I think a useful discussion—but that is at one end of the continuum. That is a very public process and it is an invitation to engage in a very public debate about an issue.

I think—and certainly having heard a little of the previous witnesses it is apparent—that one of the great concerns is the relative secrecy of the process. I think there are two elements, when one strips it down. There is firstly simply letting someone know that there are no active proceedings in contemplation on the basis of a certain corpus of knowledge at a particular time. But then this is the bit that, oddly enough, troubles me—I do not think it has received as much attention—which is saying to someone, “Look, you are wanted,” with the implication, “Don’t come back.” I think that gives rise to issues under section 4(1) of the Criminal Law Act (Northern Ireland) 1967¹⁴ and also the common-law offence of attempting to pervert the course of justice. Obviously, on the one hand, if one is dealing with someone who has made it absolutely clear that they are not coming back and you happen to pass on to that person that it is not safe for them to come back, neither of those offences may be committed, but the issue, certainly it strikes me, is at large.

¹⁴ A link to the Criminal Law Act (Northern Ireland) 1967 can be found here:
<http://www.legislation.gov.uk/apni/1967/18/contents>

Q1603 Chair: You are quite right to say it is the secrecy which has offended victims and victims' relatives and friends, and just a few minutes ago, and indeed yesterday, we established that from the people who were in front of us. That was one of the main reasons why we decided to hold this inquiry, because the judge-led inquiry, for all its value, is in private, but this is in public. What do you think we will find?

John Larkin: I have given up calling jury verdicts and I have given up calling judicial decisions in advance, so I certainly would not presume to have a stab at what the Committee might conclude.

One piece of information which I suppose I should bring to the attention of the Committee is the very recent decision of the Grand Chamber of the European Court of Human Rights in the case of *Margus against Croatia*.¹⁵ It is a decision of 27 May this year, and this is a decision where Mr Margus benefited from a statutory amnesty in respect of his activities during the Bosnian war, and his prosecution for the killing and wounding of civilians was stayed pursuant to that amnesty. To cut the matter short, the Grand Chamber of the European Court of Human Rights held that to accord such an amnesty was inconsistent with the duty of states under articles 2 and 3 of the European convention on human rights.¹⁶ That is a factor that the Committee may well wish to bring into its deliberations.

Q1604 Chair: That is very useful. Given that, what is your view of the value of the letters that are held by people?

John Larkin: Again, I will be careful. I gather there is a variety of texts. I have seen none of those texts directly, but if there is a careful letter, hedged around with the appropriate lawyerly reservations, simply saying, "As things stand at present, we have nothing against you," it seems to me that there is no difficulty, when material comes into the possession of the police and the prosecuting authorities, for action to be taken.

Q1605 Chair: Can I press you further on that? In an answer to a question from Mr Mills, Mr McGrory said that if, let us say, there was a fingerprint on the file that was not discovered at the time that the letter was sent, but had subsequently been discovered, he would assess that as new evidence that would therefore render the letter obsolete. Would that be your advice?

John Larkin: Yes, the letter would be overtaken by events.

Q1606 Dr McDonnell: Even if the fingerprint was there all the time.

John Larkin: The relevant issue is the discovery of the fingerprint. If it had not been known about, but subsequently is known about, then—

Q1607 Dr McDonnell: What if it was known about but overlooked?

John Larkin: Then you are closer to the Downey case and to the disposition of that.

¹⁵ A link to the Judgment of the European Court of Human Rights in the case of *Marguš v Croatia*, Strasbourg, 27 May 2014 can be found here: [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144276#{"itemid":\["001-144276"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-144276#{)

¹⁶ A link to the European Convention on Human Rights can be found here: <http://www.supremecourt.ge/files/upload-file/pdf/act4.pdf>

Q1608 Chair: That is my question. If Mr X comes back to the United Kingdom waving this letter and then, subsequent to that, this fingerprint is found, it is going to be a very fine call, given the precedent of the Downey judgment.

John Larkin: There is a tolerably clear distinction between material that is known about but whose effects, however innocently, are misstated, and material that exists but is not known about. I suppose it is the nature of many criminal trials to depend on evidence that has existed since the commission of the crime, but almost *ex hypothesi* is not known about until some time later.

Q1609 Chair: That is slightly more equivocal than your earlier answer.

John Larkin: Not at all, Chair; it is responding to a specific issue. The case that you put to me was that a letter is sent and then new evidence—the fingerprint—is discovered. That is quite clear. The letter is overtaken by events.

Q1610 Dr McDonnell: In the case of DNA, which has fallen into the same category, DNA testing has upgraded. Does that constitute new evidence, even though the DNA material is very old?

John Larkin: That is a very good example. I think it is a clear case of new evidence. A classic example would be low copy DNA. The bloodstains exist and are known about, but it is not possible at point A in the continuum to make anything of them; at point B, it is.

Q1611 Chair: The evidence was presumably there in the Downey case.

John Larkin: Again, I express no view on the evidence in the Downey case.

Chair: I am sure this is something we will come back to, if not today then in the future.

Q1612 Lady Hermon: It is very nice to see the Attorney-General in front of this Committee this afternoon. As I have explained to my Committee colleagues in private, Mr Larkin was, once upon a time, a student of mine in the law faculty at Queen's. Even then he took a great interest in human rights and the European convention on human rights, so I am not one bit surprised to hear it quoted this afternoon.

John Larkin: I am terrified in case I am asked questions about EU law.

Chair: I am sure Mr Larkin benefited greatly from the experience.

Lady Hermon: It is my claim to fame that John Larkin is the Attorney-General.

The evidence given to us by the DPP this morning was wide ranging—I don't know whether you have had an opportunity to see any of it.

John Larkin: I have not. Aspects of it have been drawn to my attention, but I didn't hear it all.

Q1613 Lady Hermon: It would be interesting to know which aspects were drawn to your attention. Am I right in thinking that the DPP is appointed by the Northern Ireland Attorney-General?

John Larkin: He is.

Q1614 Lady Hermon: So you appointed Mr McGrory as the DPP?

John Larkin: I did.

Q1615 Lady Hermon: He was appointed in 2011 and you were appointed the previous year, 2010. Is that correct?

John Larkin: Yes.

Q1616 Lady Hermon: I do not know if it has been drawn to your attention that Mr McGrory explained to the Committee this morning that in his application, while there was not a question about something that he should declare that might undermine confidence in the public office he was to hold, he did not declare that he had any involvement as a solicitor in advising OTR clients. Is that concerning to you as the Law Officer who appointed him to the highest role within the prosecution service in Northern Ireland?

John Larkin: I have to say no. Let me briefly explain why. Obviously a solicitor in private practice will be involved in a variety of pieces of work that will be subject to legal professional privilege. As long as the solicitor, or the barrister for that matter, discharges his or her duties properly and professionally, the nature of the work, the sulphurous or not nature of the client, would not give rise to any concern—

Q1617 Lady Hermon: Sorry, can I interrupt you, Attorney-General? Even though we now know, courtesy of Mr Downey's case—and perhaps Mr Downey was the one who was unlucky—that there has to have been some perception or belief that what happened to Mr Downey would not have happened to any of those who were recipients of the OTR letters. Surely to goodness it is a problem when we now have a Director of Public Prosecutions who knew from his past, having represented these OTR clients, that this was a secret scheme. You actually used the words “relative secrecy” of the OTR process. I am not sure why you labelled it relative secrecy if it was a secret scheme. It was an invisible scheme at the request of Mr Gerry Adams. Once appointed, the DPP knew that if this ever saw the light of day he was going to have to take himself aside and could not look at this case or that case. What if we have a DPP who potentially could not look at 228 OTR cases? Is that not a concern to you?

John Larkin: There are obvious practical issues in the scenario that you sketch. As you will know, an important feature of our employment law is an insistence on merit-based methods of appointment. I can tell the Committee that through a fairly conducted process, in which I was assisted by the person who is now the police ombudsman, and the former Scottish Lord Advocate, Mr McGrory came out ahead. Once he is appointed, then he must properly discharge his duties. If that means that there are actual or perceived conflicts of interest, that work must be done by his deputy, who has by statute all of the powers that he has.

Q1618 Lady Hermon: Thank you for that. Mr McGrory also summarised what he thought about the impact of the letters having been sent to some of his former clients. I am sure they will be delighted to know that he said to the Committee today that the letters are not an impediment to prosecution by the DPP.

John Larkin: That is interesting. In the case that we have discussed, in so far as the letters are simply accurate statements of fact, bearing the particular date that they do, then that is undoubtedly correct. The complicating factor that arose in the Downey case was that Mr Downey was told that he was not being actively sought when it appears that he was.

Q1619 Lady Hermon: Yes, but is it not the case that if any other OTRs are now sought for prosecution by the DPP because these letters are not an impediment, every single lawyer will use an abuse of process argument to defend their client, courtesy of Mr Downey? These letters actually have a different status post the Downey case. Is that not the case?

John Larkin: I think the letters that, like the Downey letter, are inaccurate but relied upon, to the detriment of Mr Downey, as Mr Justice Sweeney held, are capable of being relied upon. A letter that says simply, "At present we have nothing against you," but later evidence emerges is not capable of being so relied on. That is not in any way to detract from the ingenuity of lawyers, who will of course take every available point that is open to them on behalf of their client.

Lady Hermon: Yes, and you did say that you were not a gambling man and that, in fact, you had given up—

John Larkin: Indeed. Not, obviously, that the Committee would expect me to pass judgment on the judgment of Mr Justice Sweeney, but it is interesting to observe that in the evaluation that the judge engages in, there is no explicit balancing of the article 2—possibly article 3—rights of the next of kin of the deceased.

Q1620 Lady Hermon: Have you had any conversations post-Downey judgment with Dominic Grieve, the Attorney-General?

John Larkin: Yes.

Q1621 Lady Hermon: You have. Specifically about the OTR scheme?

John Larkin: No. It was a general conversation last week—

Q1622 Lady Hermon: As recently as last week—so there has not been any communication since the Downey judgment was published?

John Larkin: No. Again, that should not—

Lady Hermon: Did you not seek to find out something about this?

John Larkin: That should not be a surprise, because I do not have a prosecutorial function. It would be quite a different matter, I assure you, if I had the responsibilities of the non-devolved Attorney-General for Northern Ireland—that is, the English Attorney-General ex officio discharging the functions of the Attorney-General for Northern Ireland. Then, as you know, there

was the power of superintendence and direction of the DPP. That ceased in April 2010, with the devolution of policing and justice. So you are absolutely right to hint that, if I had prosecutorial responsibilities, I would—I can assure you of that—have wanted to know about this at the earliest possible opportunity.

Q1623 Lady Hermon: Would you have checked the legal position—because I am quite sure that you did—when the Secretary of State originally said that this was a devolved responsibility, then changed her mind and said, no, it was a reserved responsibility? Have you checked the legal position?

John Larkin: This is the delicate issue, which the Committee will be familiar with, of the conventions around Law Officers' advice. I have to decline being drawn into this.

Q1624 Lady Hermon: I am not asking you for the advice; I am asking you: do you know whether it is a reserved matter or a devolved matter? I am sure you have checked the law since the Downey judgment.

John Larkin: I prefer not to be drawn, bearing in mind the convention.

Q1625 Lady Hermon: That is talking in circles. Forgive me, Attorney-General, I am asking a straight question. I am not asking about the legal advice—I am not going to ask you, did you ask yourself in the mirror, "What is the legal advice here, Attorney-General?"—I am just asking you if you checked the legal position after the Downey judgment. Was this a devolved matter, or was it a reserved matter?

John Larkin: No. I know that this appears hugely unhelpful, but—

Q1626 Lady Hermon: It does. It certainly is hugely unhelpful.

John Larkin: But you are moving into the territory, for reasons I cannot explain—

Q1627 Lady Hermon: So for reasons you cannot explain—

John Larkin: The Law Officers' convention is that neither the content of Law Officers' advice, nor the fact that it has or has not been sought, should be disclosed.

Q1628 Lady Hermon: I am not actually asking you whether you sought legal advice; I am asking you—

John Larkin: No. It is whether advice is sought. You asked me if I checked the position—

Q1629 Lady Hermon: Yes. Did you check the position for yourself? I am not asking if you advised anyone else.

John Larkin: If you will—I would have no call to check it for myself, because it does not sound on my current duties.

Q1630 Kate Hoey: It does sound very strange. You are the Attorney-General for Northern Ireland. There is all this furore. You have made a statement a few months earlier calling for an amnesty, or discussion of an amnesty. Then this all blows up, which begs the question: did you actually know about that?

John Larkin: Let me correct you. I studiously avoided the word “amnesty”, having as it does a common origin with the word “amnesia” and the suggestion that we forget about what happened—we do not forget about it. We very definitely in my view should not forget what happened; we simply no longer prosecute for a particular—

Q1631 Kate Hoey: Yes, but we know that words can mean different things to different people in Northern Ireland. But, following on, I do not understand why you would not have wanted to check things for yourself—“I should know whether this was devolved or not devolved.” It seems so obvious and common sense.

John Larkin: Well, I know that it is for the Committee to ask the questions and for me to attempt to answer them, but the difficulty is, why would I engage in a piece of research that does not directly sound on my current duties?

Q1632 Lady Hermon: Because we have the devolution of policing and justice to David Ford. We have had that in place since the spring of 2010, when he was elected as Justice Minister. In the spring of 2014, four years later, we discovered it through the Downey judgment and Dominic Grieve’s statement on the Downey case courtesy of an urgent question asked by our Chairman in the House of Commons. There was a subsequent statement by the Secretary of State in which the blame was originally placed with, “It’s a devolved matter,” and then she had to apologise and retract that statement because it is a reserved matter. One would have thought that, as the Attorney-General for Northern Ireland, you would have thought, “Gosh, we have devolution of policing and justice, and I’m the Attorney-General for Northern Ireland. I had better check the law here.”

John Larkin: I am sometimes accused of being too much of a self-starter.

Q1633 Lady Hermon: I haven’t accused you of that.

John Larkin: I am talking about people outside this Committee. I know this appears dreadfully unhelpful, but you are moving into the territory of whether I would look at that. Well, why would it have been that, hypothetically, I might look at issue x? The usual answer is because I have been asked to look at issue x.

Q1634 Lady Hermon: I am not asking about anything else. I am asking whether you personally, as Attorney-General, sought to understand the legal position in case you needed to make other inquiries. I am startled that the Chief Constable tells us that, for national security reasons, he could not possibly tell the Policing Board in full about the OTR administrative comfort scheme. Representatives of the policing board have come here, and we asked them what they understand the policing board’s powers to be. Now we have the Attorney-General for Northern Ireland telling us that you will not confirm that you have checked the law on whether what the chief constable is saying is technically correct—that this is a matter of national security and therefore cannot be

devolved to the policing board. More to the point, even though we have had devolution for four years, this still remains the responsibility of Westminster. Where is the statutory authority for that?

John Larkin: The statutory authority for what?

Q1635 Lady Hermon: For reserving OTRs after the devolution of policing and justice and after your appointment. Where is the statutory authority for that? Give me a piece of legislation?

John Larkin: Again, with respect, you are moving into the territory of—

Q1636 Lady Hermon: I am not asking you about legal advice. I am just asking you to identify to the Committee the statutory authority for OTRs being reserved.

Chair: We have established that he has not researched that. I think that is the answer.

John Larkin: Certainly initially I did not take a view on that issue. I wouldn't go further than that.

Q1637 Lady Hermon: I just want to ask what the statutory authority is for the OTR scheme continuing to be regarded as a reserved matter.

John Larkin: Again, for the reasons I have touched on, I cannot answer that question. The one thing that does immediately occur to me—

Q1638 Lady Hermon: It has nothing to do with advice. What is the statutory authority?

Chair: Let's hear the answer.

John Larkin: It seems to me, and I speak subject to correction, that the Policing Board has the power to require the Chief Constable to provide it with information. Of course there is an analogous issue looming large at present, as we all know, with the police ombudsman's powers. It strikes me that, in the absence of a specific exception, which doesn't immediately appear to me to exist, the Chief Constable will have to supply that information to the Policing Board.

Lady Hermon: I have to say that I am enormously disappointed with that response.

Chair: We may have to return to that, and I am sure we will.

David Simpson: I think your teaching will have to improve if Mr Larkin is a past student.

Lady Hermon: I agree entirely.

Q1639 David Simpson: You may have answered this before I came in—I apologise for being late, but I had folk to see outside. Did the United Kingdom mainland Attorney-General consult you before deciding to proceed with the prosecution of Downey?

John Larkin: No.

Q1640 David Simpson: Didn't you find that unusual?

John Larkin: No, not at all, because I do not have prosecutorial responsibilities.

Q1641 David Simpson: So he didn't consult in any shape or form?

John Larkin: No.

David Simpson: That is the only question I have.

Q1642 Nigel Mills: Mr Larkin, I think one of your duties is to protect the public interest in legal matters. Is that right?

John Larkin: Yes.

Q1643 Nigel Mills: We heard various witnesses say that there is a clear public interest in prosecutions taking place for serious offences, so I am a little surprised that you don't see protecting the public interest by making sure these prosecutions take place as one of your duties.

John Larkin: You would be absolutely correct if I were responsible for the superintendence and direction of the Public Prosecution Service, but I am not. My predecessors, who were also the Attorneys-General for England and Wales, had that power of superintendence and direction. The Director of Public Prosecutions, although appointed by me, is also statutorily independent in the discharge of his or her functions.

Q1644 Nigel Mills: So you don't have a responsibility to ensure the legal framework in Northern Ireland is correct to ensure prosecutions in the public interest take place?

John Larkin: It is entirely the function of the director to make decisions independently about who is and is not prosecuted. That is statute; it is nothing to do with me.

Q1645 Nigel Mills: I am thinking more of the fact that we have managed to issue 228 letters that may or may not confer some kind of a right to a group of individuals, plus a selection of royal prerogatives of mercy. Isn't there a policy issue here? Seemingly, the devolved authorities in Northern Ireland need to understand the legal status of all those things, and what should be done to get them in line with the public interest. That strikes me as being a policy issue that falls within your domain, rather than an individual prosecution case.

John Larkin: I am not sure it is. Different models of prosecutorial accountability have been explored, including confining the power of superintendence to issues of broad policy. I have no power even over the broad policy of a particular issue that the PPS might, from time to time, adopt. I have also expressed my view publicly on more than one occasion about when I should have the power of superintendence and direction, but don't at present.

Q1646 Nigel Mills: It strikes me that we have a devolved justice system and devolved policing, and you are the Attorney-General who advises the Assembly and, ultimately, the Departments.

John Larkin: Advises the Executive, not the Assembly.

Q1647 Nigel Mills: If there is a public policy interest in having a system that is capable of delivering prosecutions, if there is a need to work out what has to be done in Northern Ireland to ensure prosecutions have a greater chance of success, and if it is a matter of policy and a general issue, rather than an individual case, would that not fall within your domain?

John Larkin: I agree entirely that it should, but it doesn't.

Q1648 Nigel Mills: So whose job is it, then?

John Larkin: There is a gap, and I have made that point publicly. There is an accountability gap in the present statutory arrangement.

Q1649 Nigel Mills: You don't think you could squeeze it into your duty of protecting public policy?

John Larkin: Not even those who from time to time have counted as my opponents have ever accused me of a lack of resource in the making of legal arguments. I assure you that if it could be done, I would do it, but it can't.

Q1650 Nigel Mills: I want to move swiftly on to the Croatian case that you cited earlier, which you suggested might mean that amnesties are not lawful. If someone has had a pre-conviction royal prerogative of mercy that does not let them off afterwards, but lets them off in advance, does that not look a little like an amnesty?

John Larkin: It is not an amnesty, but the discrete discharge of an aspect of the royal prerogative. A lot of issues may have to be addressed, given some of the rather sweeping statements in the Grand Chamber's decision in *Margus*.

Q1651 Nigel Mills: Normally, you would think of mercy as, "You have been convicted for offence X. We will give you mercy on that offence." You wouldn't normally think, "You may or may not have done offences A, B, C or D. We will let you off all of them." In that situation, that would start to look like an amnesty rather than an exercise of clemency, wouldn't it?

John Larkin: The difficulty that certainly I have—I suspect that the Committee also labours under this—is that we simply do not know enough about these exercises of the royal prerogative.

Q1652 Nigel Mills: One concern I have on these letters is that, effectively, they say, "You are not wanted for any offence pre-98." Of course, without going through every murder pre-98 and checking that each individual hasn't any connection with that that hadn't previously been spotted, it is very hard to know whether you are wanted for any offence. It is easy to go and check, in theory, whether you are wanted for offence X that you were accused of, but the letters go much more broadly than that, don't they?

John Larkin: I haven't looked at the particular text; I gather that there is a variation in the particular text employed. But it strikes me that that must be right; obviously, if the request comes in: "Are you looking for me with respect to the following offences?" the answer, at least from the

perspective of those administering such a scheme, is easier to come by. But I suspect that, given the nature of this exercise, people will want more the general reassurance.

Q1653 Chair: You mentioned the accountability gap. Do you suspect any intention there, to enable the OTR schemes to run?

John Larkin: No. It is purely a by-product of the statutory arrangements found in the Justice (Northern Ireland) Act 2002.¹⁷

Q1654 Kate Hoey: Mr Larkin, just remind me, how did you first hear about the Downey judgment? Who rang you?

John Larkin: No one rang me.

Q1655 Kate Hoey: You didn't get any special notification? You only found out about it when it appeared on Sky News?

John Larkin: I am not going to give any advertising to a particular outlet. Generally through the media.

Q1656 Kate Hoey: So the Attorney-General did not, as you have already answered, did not ask you before they were going to prosecute Downey?

John Larkin: No.

Q1657 Kate Hoey: Did he ring you to ask you whether you thought he should appeal or anything?

John Larkin: No.

Q1658 Kate Hoey: Have you discussed this matter with Dominic Grieve?

John Larkin: In very general terms. Again, that is on a Law Officer to Law Officer basis.

Q1659 Kate Hoey: On the telephone?

John Larkin: In person. Last week.

Q1660 Kate Hoey: So you met him last week and talked about this?

John Larkin: The purpose of our meeting was much more general. This issue was touched on.

Q1661 Kate Hoey: Do you have a personal view on whether the case should have been appealed?

¹⁷ A link to the Justice (Northern Ireland) Act 2002 can be found here:
<http://www.legislation.gov.uk/ukpga/2002/26/contents>

John Larkin: In one sense, it is easy. We have a phrase in this part of the world, “the hurdler on the ditch”. With the Margus judgment, and as one reads the careful decision by Mr Justice Sweeney, it seems to me that there is no explicit weighing of the article 2 rights of the next of kin of the deceased. This strikes me, looking at it now, with the benefit of the subsequent decision of the Grand Chamber in Margus, as perhaps something that could have been usefully explored on appeal.

Of course, our system of criminal justice, as you know, does not, unlike, particularly, the French system, have a formal role for the next of kin of victims. But it does strike me that, subject to issues about time limit, this is not a reference to appeal, but the next of kin could quite possibly pray in aid the Margus decision in an application to Strasbourg.

Q1662 Kate Hoey: So some of the victims of Hyde Park?

John Larkin: The next of kin of the victims.

Q1663 Kate Hoey: Okay, thank you.

Just looking at what it says about you, you are the chief legal adviser of the Northern Ireland Executive on both criminal and civil matters and are responsible for protecting the public interest in matters of law. Do you advise individual members of the Executive?

John Larkin: Yes. I will be asked by individual Ministers as well as groups of Minister to advise.

Q1664 Kate Hoey: When it is a public interest matter?

John Larkin: Or a specific, discrete legal issue.

Q1665 Kate Hoey: Okay. Has Gerry Kelly approached you to ask you for advice about appearing before the Select Committee?

John Larkin: That is a classic invocation of the Law Officers’ convention.

Q1666 Kate Hoey: If Gerry Kelly had asked you, presumably, in terms of protecting the public interest, you would have advised him to come before this Committee?

John Larkin: What I can say is that it is most unlikely that Mr Kelly would have done so, because he is not currently a Minister. He was previously a junior Minister. He is not a Minister at present.

Q1667 Kate Hoey: So he could not come and ask you for advice, anyway?

John Larkin: I would have been, in the circumstances, very surprised if he had, but I cannot—being faithful to the convention as best I can—really go any further with that. If the question is asked in the abstract, whether I think it a good thing for all the available material to be placed before this Committee, then of course the answer is a resounding yes.

Kate Hoey: Thank you.

Q1668 Oliver Colvile: When Lord Goldsmith was under some pressure to release his information about his legal opinion on Iraq, he also played the line, “I can’t do it under convention.” There was then quite a large amount of public outcry, and presumably if there was a similar kind of public outcry, you might be found to move your position from where you are at the moment on this?

John Larkin: I assure you that the issue of public outcry would have nothing to do with any shift of position. Frankly, I think that, at the risk of treading beyond the purview of this Committee, if the nation is being taken to war, those who are going to be placed in harm’s way in the service of the nation should know the legal basis for being asked to do so. So I have to say, that would strike me as one where, exceptionally but quite clearly—in the absence of some issue touching on the nature of our relationship with allies, and setting that to one side—it is absolutely clear that the advice should be made public.

Q1669 Oliver Colvile: I am not a lawyer or a constitutional expert. Could you just explain to me who your line manager is?

John Larkin: The rule of law.

Q1670 Oliver Colvile: Who do you report to?

John Larkin: I am statutorily independent. There are mechanisms for accountability through the Assembly. I appear regularly before the Justice Committee and provision exists for questions to be asked of the Attorney, but the necessary Standing Orders for Assembly participation by the Attorney have not yet been made.

Q1671 Oliver Colvile: My final point—I understand that before you took up this job, you were a constitutional lawyer. You cannot tell us whether this is a reserved matter. You also cannot tell us whether or not you have taken advice. Could you point us in the direction of someone who could actually tell us?

John Larkin: The Committee has, through the House of Commons staff, access to very high calibre legal advice.

Q1672 Oliver Colvile: So your advice is that we should go and talk to the Library to find that information?

Lady Hermon: That is probably true.

Oliver Colvile: Can I ask that we do that?

Q1673 Chair: We obviously have in our employment two eminent QCs for this inquiry, and we have discussed that with them, but I think the questions are really about your own position and understanding. You have set out why you cannot answer the questions.

John Larkin: Nothing would give me greater pleasure than to discuss some of the constitutional law issues at length with the Committee but there are reasons which I cannot go in to, which

stand under the Law Officers' convention and which, historically—perhaps when we are all dead—will become more widely known.

Lady Hermon: I hope we do not have to wait that long.

Q1674 Dr McDonnell: I would like to probe a little bit, and you have probably touched around the edge of this but in terms of the position since devolution, since you were appointed and the Minister of Justice was appointed—have you been asked for any advice or given any advice to the Executive around these issues?

John Larkin: That is a clearer example of the territory touched on by Lady Hermon. The convention is that I cannot answer that question.

Q1675 Dr McDonnell: Right. Okay, well, you cannot answer that question, but do you have an opinion that you might offer to us—or suggest to us—around the issue of whether or not devolution of policing and justice should have devolved the responsibilities for some aspects of on-the-runs?

John Larkin: I have to commend Dr McDonnell for attempting again what Lady Hermon has previously attempted, but I must equally decline.

Q1676 Lady Hermon: You will be relieved to know I am not going to go back over that topic. But I am going to go back to something that is a little bit startling and I think you need to give some evidence about that in more detail.

I took down exactly what you said. The point that you did not think had been highlighted sufficiently but troubles you more about the scheme than, perhaps, some other aspects, which of course you could not possibly reveal—which bits really troubled you—was those OTRs on whose behalf an application had been made and who were told that they were not wanted, and those who told that they would be wanted, who you felt had been tipped off that, in fact, they were wanted. Could you elaborate on that? Your concern was—you actually said the bit that troubled you most that had not received the attention was those people who were indicated, where their name had been fed through by Mr McGrory or another means—by Sinn Féin simply handing over the list to the PSNI—and they did not get a letter at the end of the day.

John Larkin: There are told, essentially, in terms, either in correspondence or not, or by drawing the inference from the non-issue of correspondence, “Stay where you are”.

Q1677 Lady Hermon: Yes. Why is that troubling you so much? It is a criminal offence.

John Larkin: It seems to give rise to the possibility of tipping off to the offence, under section 4(1) of the Criminal Law Act (Northern Ireland) 1967,¹⁸ or attempting to pervert the course of justice, which is the residual common law offence that section 4(1) has left in place.

Q1678 Lady Hermon: Who will be guilty of that offence, then? What further detail would you need?

¹⁸ A link to the Criminal Law Act (Northern Ireland) 1967 can be found here:
<http://www.legislation.gov.uk/apni/1967/18/section/4>

John Larkin: It involves, obviously, a very detailed factual inquiry and I do not directly know the facts. However, if one takes it away from the context of the scheme, if I know that the police—to give an example—are looking for Lady Hermon, and I tell her not to return home for a period of months because the police are looking for her, then, subject to me knowing or believing that she has committed an offence, I have either fallen into section 4(1) or, if I am not so sure whether or not she has committed an offence but I am aware the police are looking for her, then I may have committed the common law offence.

Q1679 Lady Hermon: So if the letters were signed off initially by Jonathan Powell in No. 10, as we now know from the Downey judgment, and then subsequently by various individuals in the Northern Ireland Office, and then handed, we believe, to Gerry Kelly, is the contention that Gerry Kelly, having fed the names in at the beginning and knowing which ones are getting the letter and which ones have not got a letter communicates that to them, then is there potential there that a number of people have committed—

John Larkin: I am making no contention, of course, against individuals or groups. I am simply saying that it strikes me that the aspect of the scheme that has been relatively underexplored has been the indication, by whatever means, to individuals that the police are still looking for them.

Q1680 Lady Hermon: Following on from that, since the PSNI has commenced Operation Redfield, in light of your evidence today, would you expect the PSNI to be looking at the possibility that those who tipped off on-the-runs that they were not safe to come back into the jurisdiction, and communicated that information to them, may be in breach of the criminal law? Should the PSNI be looking at that as well?

John Larkin: Of course, the function of the Committee is to find facts that are not in the public domain. One would have expected—one would have hoped—that care was taken and that regard would have been had to section 4 and the common law offence of attempting to pervert the course of justice before any indication or material was put in play that could have given rise to those issues. If it wasn't—if there was carelessness or worse—one would, indeed, expect that to be properly looked at.

Q1681 Dr McDonnell: Extracting that point further—I hope that this time I am not treading on thin ice—there is the suggestion that part of the failure in the Downey case was that Downey's inappropriate letter should have been rescinded in 2008 and 2009. What has intrigued me from the beginning is that, by rescinding the letter, it would effectively be similar to tipping somebody off. Have you any opinion on that?

John Larkin: I have to confess that hadn't occurred to me.

Q1682 Dr McDonnell: It is logical.

John Larkin: It is a very good point but I suppose that there, the lawful excuse for the purposes of section 4, would lie in the fact that one was removing—as we now know—any potential obstacle to prosecution so there would be a clear, lawful excuse for taking that course.

Q1683 Dr McDonnell: What intrigued me—I am still not quite clear—was where, in that case, responsibility would have lain, in terms of going back to reverse the letter, because it was so muddled. The chain of command—

John Larkin: Steering away, as I must, from the issues that both of you have earlier sought to explore with me, let me say that it is very clear that, at least before devolution of policing justice, there is a relatively unified authority. It strikes me that the person who writes the letter is the person best placed to rescind.

Q1684 Dr McDonnell: In rescinding, there is the potential for compounding the offence.

John Larkin: No, because the rescinding would be done to ensure that the prosecuting authorities were free should the opportunity rise to prosecute. Therefore, the lawful excuse concentrated by section 4 would be in play.

Q1685 Lady Hermon: The Northern Ireland Office should simply rescind these letters.

John Larkin: Or should have.

Q1686 Chair: That would create a very odd situation if someone had relied on the original letter to come back to the UK, then to have it rescinded.

John Larkin: Speaking of course in the past in relation to the pre-devolution era, Mr McGinty gave evidence to you and he suggested that if there was a rescinding, there would have to be—

Lady Hermon: Time to go on the run—breathing space.

John Larkin: I am not myself sure. I can see why he says that—

Lady Hermon: To avoid the abuse of process—

John Larkin: He is a very distinguished lawyer. But I am not myself sure if that is right, because it seems to be that the longer one has the letter that one regards as a talisman unrescinded, the stronger it becomes. If, for example, very quickly it had become clear that that should not have gone, then, setting aside all concerns about the structural architecture of the scheme as a whole, it strikes me as perfectly proper to say, “It’s been rescinded” and the arrest could follow. One would leave it to the individual to raise the point on an abuse of process application.

Q1687 Chair: We have taken counsel’s advice on this over a very brief lunch. This is complete confusion as to how this would all work out. As I said, if someone has come back to this country, relying on the letter, as Downey did, even then to have it withdrawn, you have still got the abuse of process argument, haven’t you?

John Larkin: Yes, but, as I think I mentioned earlier, the abuse of process application is founded under the second limb of the Mullen series of cases. It is not a question of it being impossible for him to get a fair trial. It’s more abstract: it offends the court’s sense of propriety. When you weigh in the equation the specific rights that were reinforced, admittedly post the event, by the Grand Chamber decision of the end of May in Margus, it strikes me, subject to the usual difficulties about predicting judicial outcomes, that there might well have been a different

outcome had there been a rescinding of the original letter and, even if there had not been, if the decision in Margus had been available to the court. Of course, it couldn't have been.

Q1688 Chair: When you say “available”, you mean in the Downey case?

John Larkin: Yes.

Q1689 Chair: That was not very long ago.

John Larkin: No, Downey was in February; Margus was the end of May.

Q1690 Chair: Yes, but there is not much time between them.

John Larkin: No, but my point is that Margus represents something of a development in the Strasbourg jurisprudence. Subject to all the usual reservations about judicial outcomes and their unpredictability, I wouldn't be surprised—if I can put it that way—if such an issue now would, on the back of the decision in Margus, perhaps be resolved differently.

Chair: That's very useful; thank you.

Q1691 Oliver Colvile: I have one question that I suspect I know the answer to already, but I'll have a go. Given that the letters have now been sent, is there a chance that it could be claimed on behalf of the victims whose lives have been lost and their families that a decision to send letters to these people on the run is potentially a perverse action—perverting the course of action? Presumably you would prefer not to answer the question on that.

John Larkin: Mr Colvile earlier disclaimed any lawyerly status, but he should know, if he doesn't know already, that the first rule of cross-examination is, “Don't ask a question that you don't know the answer to,” so may I compliment him on adhering to that advocates' rule? This is very interesting. The Margus case I do commend to the Committee. Margus had unambiguously the benefit of a Croatian amnesty. The status of these letters—it will vary according to the text—is much, much less than any formal amnesty.

Q1692 Oliver Colvile: The second question that I want to ask you is this. I, as you know, represent a military garrison city. At the moment, it looks to a number of my constituents, I suspect, that Sinn Fein has been dealt with in one way—I have some people who may think to themselves that they did things on orders in Northern Ireland in the course of trying to maintain the peace. Can you just give me some advice as to how we can try to ensure that they are handled in an equal manner?

John Larkin: One of the matters that I highlighted in my contribution to the debate of November last year was about drawing attention to the tools that exist, that are ready and to hand, to address aspects of state wrongdoing. We have inquests. We have a discrete number of inquiries. The state keeps records. FOI is available. The archives are rightly and increasingly being made available to the public. However, it seems to me that comparable tools do not readily exist for the actions of non-state actors. All I can say is that you draw attention to a very real problem that my own contribution also attempted, at least in part, to highlight.

Oliver Colvile: Thank you very much.

Chair: I am sure we would love to go into that, but we are out of time.

Q1693 Lady Hermon: Can I just ask a final question? You may not be able disclose to the Committee your answer to the first part of my question, but have you been invited by Lady Justice Hallett to meet her privately? Are you allowed to tell us that?

John Larkin: I can, with pleasure, tell you that. I have not been able to meet her in person, but I had a very interesting telephone conversation with her.

Q1694 Lady Hermon: Was that because you asked to speak to Lady Justice Hallett?

John Larkin: No, she asked to speak to me.

Q1695 Lady Hermon: I am so pleased to hear that. On the Margus case—I have been very helpfully supplied with a copy of the judgment—is it the case that where an amnesty has been given as part of a peace and reconciliation process, those can be upheld?

John Larkin: The language of the Grand Chamber judgment dismissing Margus's contentions states that they can, even if it were to be supposed that an amnesty was part of a reconciliation and/or the award of damages. So it floats a possibility that the main judgment of the Grand Chamber does not bite on. I have to say, I think that is a useful possibility, although it does not arise in Margus's case because it was not part of a broader reconciliation and no compensation was paid, so he did not benefit from that possibility.

However, there is a concurring opinion that is useful, particularly in the context of the question that Mr Colvile has latterly asked me. The three judges from, I think, Slovakia, Poland and Bosnia and Herzegovina, point to the need for a certain caution and humility in these matters, and draw attention to the fact that very many states have come to all kinds of varying solutions to bring about the transition to democracy and the rule of law. By implication, their argument, to which I am sympathetic, is that we should be slow to shut out absolutely the possibility of something that would result in a stay on prosecutions.

But, that is simply a concurring judgment by three judges of the Grand Chamber. The main judgment, in which all but one join, is as you have suggested. So there is a possibility that, as part of a reconciliation process, in the context of perhaps the paying of compensation, an amnesty may be permissible, but it certainly wasn't in Mr Margus's case.

Lady Hermon: Thank you so much.

Chair: That has been very useful. Thank you very much for joining us, Mr Larkin.