



Northern Ireland Affairs Committee

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

Wednesday 2 July 2014

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Members present: Mr Laurence Robertson (Chair); Mr Joe Benton; Oliver Colvile; Mr Stephen Hepburn; Lady Sylvia Hermon; Kate Hoey; Naomi Long; Nigel Mills; Ian Paisley

Questions 2058-2250

Witness: **Rt Hon the Lord Goldsmith**, former Attorney-General, gave evidence.

Q2058 Chair: Lord Goldsmith, thank you very much for joining us; you are very welcome. I think you know what we are looking into with this particular inquiry, so we are very grateful to you for agreeing to join us. It might be useful, perhaps, if I give you the opportunity—I do not know whether you wish to make a brief opening statement.

Lord Goldsmith: Apart from saying that I am very happy to answer any questions that the Committee has and hope I can help you in your work, I just want to make three points—it is not really a statement—which may be helpful and seem to me to be pertinent. One is that the scheme that was involved was not an amnesty and we were very clear and, indeed, I was very clear in advising and we were consistently clear in advising from my office that the only way there could be an amnesty would be through a legislative process.

The second point, which, in a sense, follows on from that is that the process in which we were involved was intended as a purely factual process—a statement of facts in relation to the status of particular individuals, which depended upon information coming from different sources, including, particularly, the Police Service of Northern Ireland, who were most involved, but in certain circumstances others as well.

The third point, which also follows from that, was that this was a process that, in my office, we went along with a degree of reluctance, and the reason for that was twofold: first of all, because the process risked damaging the perception of justice, and that we were concerned to avoid; secondly, because of the factual inquiries that had to be made, it was a burdensome process. It was particularly burdensome on the office of the Director of Public Prosecutions for Northern Ireland, a very fastidious, painstaking man of absolute integrity and so it concerned us. We did the job we were asked to do, he did the job, but it did have a burden attached to it, which added to the reluctance, but there we are; we did it.

Those are the three points I wanted just to underline.

Q2059 Chair: Okay, thank you very much. Do you feel your position in dealing with the OTRs was any different from that of the position taken by your predecessor?

Lord Goldsmith: I do not think so. We came at it at slightly different points, as I recollect. John Morris was Attorney-General when the issue first arose. It arose in the context of whether there could be some general decision that it was not in the public interest to prosecute. Gareth Williams, who succeeded him—Lord Williams—then had to carry the burden of making the decision on that and decided it could not be said that it was in the public interest not to prosecute. Then the scheme—the administrative scheme, I think people are starting to call it—started under him and, when I came in, I took that over. When I took over, there was another issue about the possibility of using pardons, but otherwise I think the answer to your question, Chairman, is yes, I think I saw it the same way as my predecessors.

Q2060 Chair: Thank you. You have mentioned two things. You have mentioned the word “amnesty”; you have also referred to the Director of Public Prosecutions. You will be aware that three or four weeks ago in Northern Ireland, we interviewed the current Director of Public Prosecutions, Mr Barra McGrory¹, who, at the time of the on-the-run scheme, in the early days, was a solicitor advising Sinn Féin on putting their names forward.

Lord Goldsmith: Yes.

Chair: Now, when I asked him about this, he said that a lot of these individuals who received letters were people that in ordinary circumstances—and I quote directly—the police might well have been interested in speaking to. That smacks of an amnesty.

Lord Goldsmith: It is interesting. I know the current Director from not quite those early days, but he was quite a prominent legal figure when I was Attorney-General for Northern Ireland, so I met him from time to time. I do not think that is right, though, because the process that took place, which was to ascertain whether somebody was wanted, including whether they were wanted for questioning, was intended as a statement of present fact as to whether they were or not. The Police Service, as far as I know, were encouraged to answer those questions very honestly, and there were people who did not get letters that would have enabled them to feel free to return to Northern Ireland or, indeed, to the United Kingdom precisely because it was not possible to say they were not wanted in different ways. This is complete speculation on my part, but it is always possible, I suppose, that he knew something from his clients about their circumstances or events relating to them that put him in a privileged position to decide whether the police ought to question them. However, that is not the same, it seems to me, as whether the police were in a position to answer that, but I was not responsible at all for the police so I cannot answer for them.

¹ Mr McGrory's evidence 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/oral/10426.pdf>

Q2061 Chair: No, but you would accept that when Mr McGrory made that statement, that is a very strong statement to make; that does have a lot of implications to it, if it is correct. For example, who stopped the police interviewing those people?

Lord Goldsmith: I am not aware of anybody stopping the police, and there is no suggestion of that. The way the system was operated was to try to insulate, as it were, the political process from the justice process and that is really the reason that my office, my predecessors and I were involved, so that we would be the people who asked the prosecutors and, through them, the police as to whether they wanted somebody and then responded to the Northern Ireland Office, rather than putting them directly in touch with each other, which might have given an impression of some political pressure being put on the police or the prosecutors to say somebody was not wanted when they were.

Q2062 Lady Hermon: It is very good of you to come along this afternoon, Lord Goldsmith; we do appreciate it very much indeed. Could I just follow on from the questions the Chairman has posed? Who drafted the original letters? Was it the Attorney-General's Office?

Lord Goldsmith: I am not sure I know. If it was not drafted by the Attorney-General's Office, I am sure we looked at it or the office looked at it and approved it, but I do not know who the first draft was done by.

Q2063 Lady Hermon: May I suggest to you one very prominent solicitor, who is now the Northern Ireland DPP, Barra McGrory, who is mentioned in the Downey judgment as being a solicitor acting on behalf of a large number of OTRs, but not all of them. Did Mr McGrory have an input into the drafting of the letters?

Lord Goldsmith: Lady Hermon, I do not know if he did. I want to thank the Committee: I have looked at the papers that were sent to me and did not see anything there. Whether in the archives of the Attorney-General's Office there is further information I do not know, but I am afraid I cannot help you.

Q2064 Lady Hermon: I think Mr Kevin McGinty might have indicated in his evidence to us that in fact the letters came from the Attorney-General's Office, but it was a general description that came from the Attorney-General's Office; I wondered who else had had an input into drafting those letters. Perhaps that is something that we could have a reply in writing at some stage, after today's session, just to confirm who exactly was involved in the drafting of the original letters.

Lord Goldsmith: Lady Hermon, you glanced, rightly, at Mr McGinty when you asked me that question, I think. I am sure that, together with the current Attorney-General and Mr McGinty, we will take that on board and see if we can.

Q2065 Lady Hermon: That would be very helpful. Mr McGinty also suggested in his evidence that on the advice of—in fact, I am reading from—well, I do not have to read from the Downey judgment—that on the Attorney-General’s advice the original letters in 2000 were signed off by Jonathan Powell. Why on earth would anybody invite Jonathan Powell, Number 10 Chief of Staff to the then Prime Minister Tony Blair, to sign off these letters?

Lord Goldsmith: I wonder, Lady Hermon, can you, very kindly, just direct me to where in the Downey judgment that appears. I have not picked up on that.

Lady Hermon: In paragraph 39, which is page 13 of the Downey judgment, “On 15 June 2000 Mr Powell wrote to Mr Kelly enclosing letters signed by him”—meaning Mr Powell—“representing decisions by the Attorney-General and the Director of Public Prosecutions for England and Wales”, and at the very end, in quotations, it quotes the letter and at the very end it says, “This decision would normally be conveyed to you by the police or to your solicitor but as this is not possible the Attorney-General has asked that I write to you”. It is in Mr Powell’s letter given as evidence in the Downey judgment, so why on earth would the Attorney-General—why would you have asked Jonathan Powell—

Lord Goldsmith: It was not me. I was not in office in June 2000.

Q2066 Lady Hermon: I beg your pardon. Why would the Attorney-General, your predecessor, have decided that Jonathan Powell was the appropriate person to sign off the original letters?

Lord Goldsmith: I cannot answer that. I certainly cannot answer it on the basis of any knowledge as to what the circumstances were at the time. I am not trying to shift—

Lady Hermon: You are not prompting me to write formally to Mr McGinty, but since Mr McGinty was in post since 1997, perhaps Mr McGinty could—

Lord Goldsmith: What I was suggesting is I do not know—oh.

Lady Hermon: Thank you, to both of you.

Lord Goldsmith: I am informed, as you have just seen, that the first letters signed by Mr Powell were drafted by the Attorney-General’s Office. They were used as the model for letters sent by the Northern Ireland Office, but the Attorney-General’s Office did not, in fact, see those. It is also suggested to me that Mr Powell wrote because it was he who was in charge of negotiations at the time.

Q2067 Lady Hermon: You would accept that it is highly unusual for a Chief of Staff to a Prime Minister to be sending out OTR letters to anyone who is on the on-the-run; that was highly unusual and exceptional.

Lord Goldsmith: I think, though, these were exceptional circumstances. I was not a person who was in charge in any way or even particularly involved in any of the negotiations. I was not involved in the peace negotiations at all; we were just a part of it. However, from what I do know, obviously this was an issue that had been raised about the possibility for people, particularly people who were involved in the peace process, to be

able to return to Northern Ireland or to the United Kingdom, and I am not, therefore, surprised. It was obvious to me that Number 10 was involved in the question of how to meet the promises that they believed had to be met. Some of them, in my view, could not be met. For example, we could not clear people from prosecution without a legislative amnesty; that is one of them. However, I am not surprised that Mr Powell would have taken an active interest and involvement in trying to—

Q2068 Lady Hermon: Sorry to interrupt, but you would agree it was highly unusual for someone in Number 10 to sign off letters to on-the-runs.

Lord Goldsmith: I would agree that it is unusual for somebody in Number 10 to be sending letters to anybody who is, as it were, the question of subject to prosecution, but I would add—the Committee will have its own views about this and, Lady Hermon, you certainly will—that these were exceptional circumstances.

Q2069 Lady Hermon: Yes they were in 2000, immediately after the signing of the Belfast Agreement in 1998. What is so extraordinary is that Mr Downey's letter was signed off on 20 July 2007, when the peace process did not have to be saved. We had Martin McGuinness as Deputy First Minister and Ian Paisley senior as First Minister, so it was extraordinary it continued for such a long time.

Could I just move you to a different issue, and that is whether at any stage in your long tenure—and it was a long and very distinguished tenure, and I have to put that on the record.

Lord Goldsmith: Thank you so much.

Lady Hermon: It was a very distinguished tenure and you had a very difficult time, because there were other issues that you were asked to give legal advice on. I really want to understand how this mechanism worked. Did solicitors, such as Mr McGrory but not exclusively Mr McGrory, who were representing their clients who were OTRs at the time, meet with solicitors representing or officials representing the Attorney-General's Office? Was that part of the process?

Lord Goldsmith: Not that I am aware of at all. To some extent we were a post box. We were an intermediary in the sense that names came to us for consideration and they came to us from within Government, and we then sent those to the DPP of Northern Ireland to follow the process through. We would get a response, after however much time it had taken him and his office to go through the process, indicating what the status was and if certain individuals were wanted, were not wanted and so forth. We would pass that back to the Northern Ireland Office. I think there were a number of letters that I sent to the relevant Secretary of State for Northern Ireland at the time, which was really passing on that information. However, I do not believe any of the Attorney-General's officials ever met anybody representing the on-the-runs, if I can use your expression.

Q2070 Lady Hermon: It is not just my expression; it is the expression to describe 228 people who are recipients of comfort letters, administrative letters.

Lord Goldsmith: I accept that.

Q2071 Lady Hermon: Yes, thank you. To the best of your knowledge, you did not meet with, in your time as Attorney-General, and no official in your office met with, for example, Mr McGrory representing OTRs.

Lord Goldsmith: I met with Mr McGrory, but in different circumstances. He was a prominent lawyer and he had a role in the Law Society of Northern Ireland. I met him in those circumstances. I do not recall ever discussing this issue with him at all, and I certainly do not recall any meeting that was set up for that purpose. I regarded this, as I have said, that we were rather a post box. They would send out the information, it would be processed, and the information would come back. I supported the DPP of Northern Ireland, who was concerned about the resources, made certain suggestions to him about how we might help that and, from time to time, then there would be questions, which would come to me, certainly on one occasion from the Secretary of State or from Northern Ireland about whether we could speed up the process, so we looked at that issue.

Q2072 Lady Hermon: They asked, “Could you speed it up?” Did you say no, you could not speed it up?

Lord Goldsmith: We looked at it. There were issues in relation to it. If you are going to do the job properly it has to be done carefully, so we discussed with the DPP of Northern Ireland how that could be done. He discussed that also with the PSNI, and they thought they could not give sufficiently accurate answers without going through what seemed to be much the same process. I think at that stage I said to him, “Why do you not take on a retired officer or two from your service who you trust, who can be devoted simply to this task or substantially to this task, so as to be able to speed it up?” I do not think we could do much more than that.

Q2073 Lady Hermon: I have one last issue and then I must allow my colleagues to come in as well. We had what I can only describe as new and interesting evidence last week from Lord Reid, formerly a Secretary of State in Northern Ireland, going back to the early days, January 2001 until October 2002. What was so interesting and new and surprising—I am speaking for myself, but I am sure some of my colleagues also found it surprising—was when asked if the OTR scheme was open to others, Lord Reid replied that if “anyone else had said, ‘Here are 12 names and addresses; would you please tell us if these people can come back without arrest?’ we would not have said, ‘No, we cannot’”. We would have gone through the same process; of course, it would have caused all sorts of problems about the scheme escalating, but we did not refuse—and why? Because we were using the due process.” In your time as the Attorney-General, was there any application for an on-the-run letter, an administrative letter, a comfort letter by, for example, people who were Loyalists, people who were members or retired members or former members of the British Army, anyone who was, for example, as the suggestion was given to us, someone was from the SDLP? To your knowledge—and you were there for a very long time as Attorney-General—did anyone else make use of this scheme apart from Republicans?

Lord Goldsmith: Not to my knowledge, and that is partly because I know what happened later when the legislation was proposed and the attitude that then emerged from others, so I understood that there were different points of view about how to deal with these issues. However, just to be clear, we received a list of names, and I do not think the names would have said—I believe they all were coming from the Republican side, but I do not believe they were so identified. I may be wrong about that.

Q2074 Lady Hermon: However, to the best of your knowledge, the OTR scheme was designed and facilitated Republicans.

Lord Goldsmith: That is to the best of my knowledge. That is not to say it did not arise, so far as I know. That is not to say that if it had been decided, by Dr Reid or whoever else, that it was desirable to apply the scheme to others, I do not see any reason why we would not have been prepared to have gone along with it if we were told that that was significant somehow for the peace process—to be even-handed, for example. We would have grumbled about the additional work that was involved, I have no doubt, but I do not see as a matter of principle we would have refused to do it.

Q2075 Lady Hermon: As a Committee, it would be very helpful indeed to us—since the Attorney-General’s Office has a long list of the 228 recipients of these letters, since the Attorney-General’s Office was, as you described it, a post box, so the Attorney-General’s Office is one of the few institutions that has the entire list of all the OTRs—if you could trail back through those records and let the Committee know whether any other recipient of an OTR letter was not a Republican.

Lord Goldsmith: If you will permit me, I am going to respectfully invite you to put that question to Mr Grieve, who follows me in giving his evidence, because Dominic Grieve is the current Attorney-General.

Lady Hermon: I will do my very best to catch his eye and put that question to him when he follows you. Thank you so much, Lord Goldsmith.

Q2076 Chair: Just to press on one point about the separation of powers between the political and the judicial process, which you referred to, and two former Secretaries of State have said that was important. Going back to Sylvia’s point, the fact that a member of Number 10 or, indeed, a member of the Northern Ireland Office signed these letters—in fact the letter that kicked all this off was signed by Mr Mark Sweeney; I think that is well known now—does that not really rather undermine this separation-of-powers theory?

Lord Goldsmith: I do not think so. Let me just explain. What we were concerned about in relation to the separation of powers is that there should not be either actual or the appearance of pressure being put by the political side, if I can call it that, on the justice side. There should not be pressure being put on the DPP to say, “I do not need to prosecute this person because, alright, it is quite valuable not to”. That is what I think we meant and, accordingly, it was thought—and I think it was right—to be important to keep

quite strict division in that way. The request would come, as it were, from the political side to me, which is one of the things that the Attorney-General does. The Attorney-General bridges between the judicial, if you like, or the legal and the political in a number of ways—come to me, or to my predecessors or my successors, and then pass that to the people who, as it were, we had a responsibility for, which was the prosecutors. We did not have a responsibility for the police, but the prosecutors would speak to the police and then pass the information back. How that was dealt with by the NIO or by Number 10 was then a matter for them to determine.

We were alive to the risk that if there was a letter that misled someone into believing that they were not wanted when they were, that could give rise to judicial problems. It could give rise to what, in fact, absolutely happened in relation to Mr Downey's case—that somebody would say there was an abuse of process. We were alive to that, which is one of the reasons the DPP wanted to take a great deal of care in dealing with the questions that were put to him.

Q2077 Chair: Would you accept that it would not happen that way in another part of the United Kingdom?

Lord Goldsmith: I am just thinking about that question. There obviously was not a peace process going on in any other part of the United Kingdom that required to deal with a particular problem of people who were involved in the peace process after the terrible things that had taken place and questions about their responsibility.

Ian Paisley: Lord Goldsmith, thank you for coming to the Committee; it is good to see you.

Lord Goldsmith: Nice to see you too.

Ian Paisley: Whilst you have been very modest that you did not play a particular role in terms of the peace process, I think it is important we place on record our thanks for the role that you did play. I recall you coming to Northern Ireland in 2003 and 2004 and making a very important comment about people supporting the rule of law and setting down very important principles that people had to ascribe to the rule of law, which ultimately vital in getting certain people over the line and behaving normally in a democracy, so it is a good point to thank you publicly.

Lord Goldsmith: Thank you for that, Mr Paisley.

Q2078 Ian Paisley: We heard evidence from Peter Hain that the first time he recalled the name “John Downey” was last year during the trial, when the trial broke down on John Downey. However, the evidence suggests, indeed proves, that you wrote to him in February 2006² reviewing the case of John Downey. Could you help us square the circle? Had there been any other conversations between yourself and Peter Hain, whilst he was

² The letter from Lord Goldsmith to Peter Hain (February 2006) can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Letter-from-Lord-Goldsmith-to-Peter-Hain-February-2006.pdf>

Secretary of State and you were Attorney-General, before February 2006 and, indeed, subsequent to that letter?

Lord Goldsmith: I do not think any discussions in which Mr Downey's name was mentioned. There would have been some discussions—I have to remember precisely the chronology—between us about issues relating to Northern Ireland and I imagine that at one stage one of the issues that would have cropped would be the continuation of the administrative scheme or something of that sort, but I am afraid I have no distinct recollection. If any of the correspondence I have been helpfully supplied with touches on that, I am happy to look at that and it might refresh my memory.

Q2079 Ian Paisley: Did, for example, Peter Hain reply to that letter in February 2006?

Lord Goldsmith: I do not know, though I would not have expected one; it did not really call for a reply other than “Thank you” or “Noted” or something of that sort. We were not engaged in a debate. It was, “This is the information you have asked for; here it is.”

Q2080 Ian Paisley: It was a very important letter, because it reviewed the John Downey case and said that the evidence was clear this man could not receive one of these letters, because there was substantial evidence about him being involved in mass murder here on the mainland. That being the case, were you surprised to hear that he did not recall that letter?

Lord Goldsmith: To be frank, no, I was not surprised to hear that.

Ian Paisley: How am I to take that?

Lord Goldsmith: Let me explain, because it is not a reflection on Peter Hain at all. It is the fact that we were engaged in a process where the names of individuals were set out in a letter to us and then came back in a letter—a number of names of individuals. I do not know whether any particular name would have meant anything to him. Obviously, when the Downey decision came out, I had no recollection that he was on a list in a letter that I had written—or rather sent. I do not think I was in post when the letter that Mr Downey complained about was sent to him; I think that was just after I had left office. Therefore, I am not surprised that he does not recall that particular name. We certainly did not have any conversation about Mr Downey, and I would not have known very much to say, because, as I said, my office did not really get into the details of the individuals cases; we were relying on the very good work that was done by Sir Alasdair Fraser and his team and passing that information on.

Q2081 Ian Paisley: Part of the narrative that is being propelled by all of this is that the PSNI made a mistake—that they sent the letter wrongly to John Downey.

Lord Goldsmith: Yes, so I have seen.

Ian Paisley: Given that you had written quite a substantial note or your office had written quite a substantial note about John Downey and why he could not be cleared, do you think it was remiss that your Department did not have an alarm bell ringing, saying, “That does not

square with what we sent out last year”—this is, I am thinking, 2007—with the John Downey case?

Lord Goldsmith: I am not sure it would. I did not see the further letter, but we knew, of course, that there was a process of review that took place. I would not have recollected, a year later, what we had said about one individual in that letter. Without having that letter put in front of me, I would not have recollected that and I would not have known that much about what lay behind it either.

Q2082 Ian Paisley: I can understand why you, sir, would not, given you were dealing with Northern Ireland, you were dealing with the IRA, with the queue, with Iraq; you were dealing with a whole host of other very important issues. However, should your officials have noticed that there was a mistake there and this needed to be recanted or returned as quickly as possible?

Lord Goldsmith: That is obviously a matter you have to put to them or to the current Attorney-General, who is their current boss. I know that particular letter was sent by Mr McGinty, as I have seen from the documents I have read. I say this sparing his blushes: he was always extremely conscientious, very thorough, very careful, very conscious of the responsibilities he had and the difference of the prosecution process. He would be making sure that his Attorney-General was not pressed into doing things that were perhaps not consistent with the rule of law in relation to how one dealt with Northern Ireland. He understood Northern Ireland well.

Lady Hermon: We agree.

Q2083 Ian Paisley: Whenever Norman Baxter gave us evidence, he indicated to us and to the Committee that the duty was on the Attorney-General's Office to check this material before it was issued.

Lord Goldsmith: I was very surprised to see that. For one thing, the first thing you have to do in order to check the status of people is to go on to the Police National Computer. We did not have a terminal for the Police National Computer in our office; we could not do that. We would have to go to the police, whether in Northern Ireland or through the DPP in Northern Ireland or through the DPP in England and Wales in order to check the Police National Database. I understand, but I had no knowledge of it at the time and I have no more knowledge than I see in the papers, that there was a particular meeting that Mr Baxter is referring to. I am not even sure, having looked at the piece of his evidence, he knew about that at the time, but that is for the Committee to consider. However, as I understand it, Mr McGinty believes that related simply to a specific issue and not a general responsibility—or a specific name or names and not generally taking on the responsibility.

If we had decided—if officials had decided—that henceforth the Attorney-General's Office was going to be responsible for making enquiries that hitherto had been made by the police, or the DPP and the police, I would have expected to have been told about it,

because it would have had an implication for our resources. The fact that that did not happen suggests to me that that was not something that he undertook at all.

Q2084 Ian Paisley: Do you think that the secrecy surrounding all of this affair has damaged confidence in the rule of law?

Lord Goldsmith: I think that what happened when the Downey decision took place may well have damaged, in the sense that people will be unhappy about what took place. The very fact that I am having to sit here—not having to; I am happy to do so, but that it is necessary for you as a Committee to sit in order to examine this is an indication of that. One of the things that we were concerned about was not to damage the justice system. However, I very much hope that, as a result of the airing that you are giving to all of this, those concerns about damage to justice may be dispelled.

Q2085 Ian Paisley: Finally, Lord Goldsmith, what are we really to believe in all of this? You have had to give advice under very difficult circumstances. Give advice to us, as the ear of the public, the voice of the public, public opinion in Northern Ireland. What are we to make of this? Was this cock-up or was this conspiracy?

Lord Goldsmith: I think so far as the particular letter to Mr Downey was concerned, I do not quite know what to make of that. I do not quite understand how to square the statements made by the judge—I do not know the background to it—of saying that the letter was not corrected afterwards even though the PSNI knew that it was wrong. I do not quite know what to make of that. That smacks, I am afraid, of something more than cock-up, but I do not want to criticise anybody in circumstances that were very difficult.

The big thing that I would suggest you get from this is that there was a bona fide intention to deal with a very difficult situation in order to advance the peace process in a way that did not damage the justice system, which did not involve removing people from prosecution in circumstances where prosecution was justified, so if prosecution was justified, then they would not get a comfort letter. I think that is what the bona fide intention was, and if it failed on one occasion, for whatever reason that may have been, it is unfortunate, but to my mind it does not undermine the validity and legitimacy of the process that was being undertaken.

Q2086 Chair: With regard to the judgment, though, on Mr Downey, were you surprised that having a letter outweighed the public interest in carrying on the prosecution, given how serious the charges were against him? Were you surprised the judge took that view?

Lord Goldsmith: I am not sure whether I asked myself the question whether I was surprised. I was conscious, as I have said, from early on that a risk involved in sending any letter of that sort was that if it was not accurate, if it was misleading, somebody might afterwards be able to say that they had been misled and it was an abuse of process, in the light of what was said to be an assurance, for them to be prosecuted. There are a number of cases, in different ways in the criminal law, quite different circumstances, where people

have been able to avoid prosecution even for serious crimes on the basis of an abuse of process by the prosecution. It is quite a tough regime. This may be quite a tough example of its operation. If the letter had been corrected, then the situation really would not have arisen, but I understand the legal thinking behind it, though I think that other judges might have reached a different conclusion.

Q2087 Chair: Sorry; could you say that bit again?

Lord Goldsmith: I understand the legal thinking behind it, although I think other judges might have reached a different conclusion.

Q2088 Naomi Long: You are very welcome to the Committee. I just want to ask a couple of questions. When Barra McGrory gave us his evidence, he said to us that, speaking as a prosecutor, he did not see the letters that had been issued in any way as a barrier to prosecution. Do you believe that is accurate, or would you have concerns that they may now be a barrier to prosecution, given the Downey judgment?

Lord Goldsmith: I think the judge decided in this particular case that it was a barrier to prosecution. It depends what you say in the letter and what is understood by it. The judge decided in this case that it was an abuse of process to continue with the prosecution in the circumstances of a letter in that form. We had wanted to avoid that sort of issue and if the letter had been accurate it would have been avoided. The problem goes back to the inaccuracy of the letter that was sent.

Chair: Sorry to interrupt. I am advised there may be a vote very shortly. If there is, we will suspend the Committee for 15 minutes.

Lord Goldsmith: Of course.

Q2089 Naomi Long: There are two schools of thought with respect to the letters. The first is one that we have heard, I guess, as a political view, which is that the letters were crucial in order to keep the process on board; that we would be able to proceed with the peace process and ensure that everyone moved forward. In which case, the suggestion is that the letters themselves were of significant value. However, we have also been advised, in terms of the evidence, that the letters were no more than a statement of fact on a particular day at a particular time and therefore, in terms of providing comfort to someone who potentially could face prosecution, were essentially a snapshot in time and not really any kind of protection from future prosecution. Which of the two categories do you think they fall into? Can they be both at the same time, merely a snapshot that does not prevent future prosecution or review of the case and still so valuable politically in terms of being able to move the process forward, because the two do not seem to match?

Lord Goldsmith: I understand your point, but I think that historically these derived from the discussions and the peace negotiations that had taken place and that we all strongly

believed and very much hoped would come to a successful conclusion. We could not do what some might have liked to have done, which was to do an amnesty but without legislation. With legislation it would have been possible. Parliament could, of course, have decided that it was going to give an amnesty, if that is what it had wanted to do. We could not do that and so this was an intermediate process, which appeared to have carried some value. I cannot say how much value it carried, because I was not talking to the people, particularly to the Republican side, who were particularly concerned about these issues.

Q2090 Naomi Long: However, in your view, do you believe that the letters carry significant weight as legal documents? Would you have expected someone to brandish one, if arrested, and to claim that it in some way gave them protection from prosecution?

Lord Goldsmith: In my current life, which is different, I do have occasions where people want to know whether, if they go to a particular country, they will face an arrest, and it is nothing to do with the sort of events we are talking about. Therefore, occasionally, we will see if we can find out through sources; we may talk to prosecutors in those countries and say, “Can you tell us is this man wanted? Do you have an arrest for him?” That is a factual statement. If the answer comes back, “No”, it is a factual statement, which the person relies on. I think I would always tell anyone—and this has not happened often—“That is what we are told. There are possibilities it is not right. There are possibilities that new evidence may come to light, but if you want to rely upon that you can.”

Q2091 Naomi Long: In terms of your wider role, if someone in England or Wales, for example, were to seek clarity on whether they were likely to face questioning or arrest or prosecution on the basis of a crime that they may or may not have committed, how frequently would you have come across cases where people had made such enquiries and asked for written confirmation one way or the other?

Lord Goldsmith: Not frequently.

Q2092 Naomi Long: Therefore, when Peter Hain said that this was a normal process, not part of the normal criminal justice process, that would not have been normal.

Lord Goldsmith: Sorry, he said it was not part of the normal process?

Naomi Long: No, he said it was part of the normal criminal justice process.

Lord Goldsmith: In a sense that is right, because what I read from that is the normal process is that the police decide whether someone is to be investigated; they then gather the evidence. The prosecutor then looks at the evidence, decides whether the evidence meets what we call the evidential test for prosecution: is it sufficiently cogent to justify prosecution? The prosecutor then asks the question: is there a public interest in prosecuting or against prosecuting? If the answer to both those questions is “yes”—yes, there is enough evidence; yes, it is in the public interest—then you move to prosecute. If the answer to either of those is “no”, you do not.

Now, in this particular process we were not asking the question of whether it is in the public interest to prosecute, because the decision was taken, rightly, in my view, before, that with serious offences of the sort we were concerned with, it is always in the public interest to prosecute if the evidence is there. The normal process would then be to look at whether there was evidence to support those and, particularly with offences that were a long time after they took place, you would have to consider whether the evidence is still available, whether the evidence is cogent, and whether you will therefore meet the test for prosecution. We all know—we see it in the papers all the time—prosecutors are making decisions not to proceed with prosecutions on the basis the evidence is not there.

Therefore, to that extent—I am sorry it is such a long answer—that is the normal process and that is, in a sense, exactly what was taking place.

Q2093 Naomi Long: However, the issuing of letters would have been an abnormal process. It would not have been seen to be something that would have been common. It certainly would not have been seen as something that would have been routinely done. I can imagine that anyone who may have been suspected of a crime or accused of a crime would want to have clarity as to whether or not they were likely to be prosecuted, but they do not normally get letters of comfort, surely.

Lord Goldsmith: I do not want to appear to be argumentative about this, but I would think that up and down the country people who have been stopped by the police or summoned by the police will often receive messages from the police, either oral or written, saying, “We are not going to take this any further”. You may see that as different because it is not coming from a high political level, but the idea of telling somebody, “You are not wanted. This matter has been dropped,” I do not think is so unusual at all.

Q2094 Naomi Long: The fact that there was this level of political intervention in the process—is that not the issue on which the John Downey case hinges, in that there was a promise by Government issued, which became abuse of process, whereas had the police locally simply stated that they were not intending to follow up enquiries, that would have been a different level of promise?

Lord Goldsmith: I am not sure. If the police make statements to potential defendants, that can found an abuse-of-process application as well.

Q2095 Naomi Long: In fairness, though, the Downey judgment did cite the fact that Government had made the promise as being of huge significance.

Lord Goldsmith: Yes, and the police are not private; the police are part of the government machinery as well. However, obviously there is a surrounding to this because of the Weston Park Agreement³ and so forth, which gives these particular letters a particular colour; I accept that.

³ The Implementation Plan issued by the British and Irish Governments on 1 August 2001 (the “Weston Park Agreement”) can be found here: <http://cain.ulst.ac.uk/events/peace/docs/bi010801.htm>

Q2096 Lady Hermon: Sorry, can I just interject? Lord Goldsmith, what made the OTR scheme not normal and could not be equated to the normal criminal process—forgive me for disagreeing with you, but we already know that representatives of the PSNI sat in meetings with representatives of the Attorney-General’s Office, the DPP’s Office and the Northern Ireland Office and, on some occasions, the Home Office to discuss the OTR-letter scheme. That, surely you will agree, is not normal—

Lord Goldsmith: No, and I have accepted that these were exceptional circumstances and they led to exceptional events. What I was trying to deal with perhaps slightly—I do not know; I was not in Peter Hain’s mind or even here when he said what he did, but I can understand that certainly the process that took place and the questions that were asked are part of a normal prosecution process, even though the way of then delivering the answers to that may be abnormal in the exceptional circumstances. That I entirely accept.

Sitting suspended for a Division in the House.

On resuming—

Q2097 Naomi Long: I was about to ask about the issue of the fact that you have, if you like, characterised this as, if not normal, certainly not interfering with the due process that would be undertaken in such a case. Is it not the case, though, that normally, in the run up to a decision whether or not to prosecute, the prosecution and the police, in particular, would, for example, have the opportunity to question or interview someone who may be of interest to them or who may, in some way, be either related to or have knowledge linked to a particular event and that that was denied as part of this process?

Lord Goldsmith: Obviously, you are right, but one of the questions that was put was: do the police want to question a particular person? Therefore, the answer, “The person is not wanted” is not just a question of not wanted because there is a charge, wanted for arrest, but also the questioning as well. That was, as I understood it, allowed for in the process.

Q2098 Naomi Long: Although in these cases, for example, no extradition proceedings had been initiated against any of the individuals in order to forcibly return them to the jurisdiction even where were they were known to be living outside.

Lord Goldsmith: I am afraid I cannot tell you. I do not recall that.

Q2099 Naomi Long: Basically, it is your understanding that if the police had wished to have the opportunity to interview or question them, they could have sought to do so or refused a letter on the basis that they were wanting to do so and had not yet had the opportunity.

Lord Goldsmith: Yes, that is my understanding.

Q2100 Naomi Long: Okay, thank you for that. My last question, Mr Chairman: obviously for the period when you were Attorney-General there was no devolution of policing and justice, and therefore it was understandable that the Attorney-General's office would, if you like, operate, as you described, as the kind of post-box function for this particular scheme. Were you surprised that it continued to do so after devolution, when Northern Ireland had its own Minister for Justice, its own Attorney-General and its own structures?

Lord Goldsmith: I did not know that it did. You told me that it did just now, and I picked up from the fact that Mr Grieve is here that it probably did, but I did not directly know that.

Q2101 Naomi Long: Are you currently surprised, having heard it today then?

Lord Goldsmith: I am surprised.

Lady Hermon: We should say that Naomi's party leader, David Ford, was elected as the Justice Minister in 2010?

Lord Goldsmith: Yes. Congratulations to him.

Q2102 Naomi Long: Or commiserations, depending on how you view the role. From your perspective and experience, do you find that unusual, surprising or in any way strange or questionable?

Lord Goldsmith: I do not want to shirk the question, but I am just not sure I am in the best position to answer this. As you said, devolution of justice and policing had not taken place while I was in office. We talked quite a lot about it, but in terms of actually how it operated and what the remaining responsibilities for the Attorney-General were, I am not sure. Certainly there was then a different process and a different DPP, who we have mentioned today. I would want to think a bit further about that to give you a considered answer; I am sorry.

Q2103 Kate Hoey: Thank you, Lord Goldsmith, for being here. Can I just take you back to what we are now almost calling the infamous Peter Hain letter that you wrote on 27 February. It is a very clear letter, and what is interesting about it is it does seem to be the first time we have on record very clearly that John Anthony Downey is wanted for arrest and questioning. It was sent on 27 February 2006. It says, "John Anthony Downey", his date of birth, "County Clare", and then, "Downey is wanted for arrest and questioning in respect of serious terrorist offences". That was February 2006. This was copied to a whole range of Northern Ireland officials—senior ones. One of those was the person who, just over a year later, signed the letter to John Downey, saying that he was not wanted. What do you think happened between your enquiries to seven cases? You said, "I write now with the results of seven cases"—that the DPP of Northern Ireland was asked, with the police, to carry out a review of the evidence against each of the names provided. This involved an enormous effort by both the police and

the DPP. Witnesses had to be traced; you went through all of that, making out that it was serious work that was done.

Lord Goldsmith: Absolutely.

Kate Hoey: Then you say, “However, prompted by”, blah, blah, blah, “I write now with the results of seven cases”. Of course, all the others have been redacted, except this particular one. How would anyone in the public feel confident when you have written letters, the Attorney-General, to the Secretary of State for Northern Ireland, copied to all these important people in the Northern Ireland Office, and yet a short time later he could get a letter? Why are people trying to blame all this on the PSNI and not the Northern Ireland Office?

Lord Goldsmith: As I understand the chronology—and obviously this letter I was of course involved in—I leave in June 2007, which is a few days or a month before the letter goes to Mr Downey.

Lady Hermon: A month.

Lord Goldsmith: Presumably following this letter of 2006, Mr Downey did not get a letter at that stage. There is a further letter sent that prompts the letter that he then gets the following year. I cannot tell you, I am afraid, how that came about; I was not involved in it. I assume what happened is that a further list came in, so this list would have been dealt with. These are the answers, and I would have sent comfort letters to whoever was justified in getting them. I presume—forgive me for not having read the judgment carefully enough to know—a further list then comes out, which results in another letter, and Mr Downey’s name was on the other list as well. Then the error occurs and it is not picked up.

Q2104 Kate Hoey: There should not have been a letter because you, as the senior legal figure in the United Kingdom, had made it very clear here that he was wanted for arrest and questioning in respect of serious terrorist offences. How could anybody then feel that—do you understand why we feel so frustrated about this, and how the public and the victims must feel?

Lord Goldsmith: Absolutely.

Q2105 Kate Hoey: What we want is the truth as to how this happened.

Lord Goldsmith: I cannot tell you how it happened other than my understanding of what takes place, and it is not from any personal knowledge; it is from looking at the papers. Subsequently there was a further request. The answer that then comes back from PSNI at that stage is that he is not wanted. That is the answer that they have given. That is then reflected in a further letter that goes, as it happens, after my time, which gives that information in relation to him.

Kate Hoey: I think my colleague wants to come in on that point.

Q2106 Lady Hermon: When you left office in June 2007, Operation Rapid had already been introduced in February of 2007 by the PSNI⁴. It is in the Downey judgment, so we know that the first meeting of Operation Rapid took place on 7 February 2007. The devolution of policing and justice had not taken place at that time. Did you personally, or your office, at any stage look at the terms of reference drafted to guide Operation Rapid?

Lord Goldsmith: I do not recall if I did. If there is anything in these papers that helps, I am happy to look at them.

Lady Hermon: I think that might explain the speed and the haste with which Mr Downey's case was advanced.

Q2107 Kate Hoey: Anyway, you can see why people feel that there has been more than an error.

Lord Goldsmith: I can absolutely see that, in circumstances where the police are saying, "Here is a man who is wanted for very serious offences", the Hyde Park bombing, and the case cannot go ahead because a letter has been sent, then of course the public are very concerned about that, and it is entirely understandable. It is very right that you are looking at it for that reason.

Q2108 Kate Hoey: We keep hearing how wonderful the officials in the Northern Ireland Office were. Peter Hain himself went on about that. Yet with all these people—we cannot see them all but we will be seeing some of them—nothing has been raised in a worrying way that less than a year later, or just over a year later, he sent this letter. Also, Peter Hain said he did not recall this letter, and I asked him how many letters he got from you.

Lord Goldsmith: Yes, I saw that.

Kate Hoey: And you did not have many, I do not think. You did not write to him very much, he said.

Lord Goldsmith: No, I would not think so.

Q2109 Kate Hoey: So it did surprise us that a letter from you had not been noted, and certainly not enough to be replied to. I think you will see at the top of the letter it says "for advice" and "reply for Secretary of State's signature".

Lord Goldsmith: I see that.

Chair: So in other words it was not lost in the post.

Lord Goldsmith: Plainly it was not lost in the post.

⁴ The Terms of Reference for Operation Rapid can be found here:

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

Q2110 Kate Hoey: As Ministers, we all know that officials are usually very good at responding, particularly to someone like yourself. Do you think you might be able to find out if you did get a response?

Lord Goldsmith: I might be able to find a response. I can ask Mr McGinty to have a look to see if there is. I would not have recalled a response because I would not have expected one, as I said, other than, “Thank you for the information”. I was not asking him anything; I was telling him information. Obviously this was received and copied not just for officials but Ministers as well.

Q2111 Kate Hoey: Yes, lots of people saw it. Okay, we will have to keep prodding on that one. Can I just ask you about the royal prerogative of mercy and pardons? How much involvement did you have with any of that, either in mainland Britain or in Northern Ireland?

Lord Goldsmith: When I took office, there was a question—I cannot remember whether it was an outstanding question from Gareth Williams’ time, or whether it arose at that stage. Forgive me; it was put afresh to me: would I advise on whether or not it would be appropriate or possible to use pre-conviction pardons as a way of dealing with the issue? The legal conclusion—I assume from the fact that you have got all these papers I can answer this question—the legal conclusion that I reached was that it was something that was possible but difficult in a number of ways. So it is legally possible to do it, and I do not recall anything else happening as a result of that.

Q2112 Kate Hoey: You do not remember signing off any.

Lord Goldsmith: No, I certainly did not sign off any pardons that I can recall.

Q2113 Kate Hoey: There seems to be an awful lot were signed off at various times, but I appreciate not in your time.

Lord Goldsmith: I certainly do not recall any. All I recall is the episode of giving advice about that, in probably 2001 or 2002.

Q2114 Kate Hoey: Just one final point: what we are really trying to do is to find some solace and support for victims. Do you think victims would think that this has been a normal process, as Peter Hain described it?

Lord Goldsmith: I think this is hugely difficult for victims. I was very concerned about the position of victims generally when I was in office in Northern Ireland. As it happens, I want to do things there and in England, and create a victims’ charter and get the prosecutors to deal with victims in a very different way. I would like to think we have made some progress on that. I am very sympathetic to that problem, but plainly how can they feel anything other than dismay that someone who the police think is guilty, or at

least should face charge for a terrible event, gets off and does not actually stand trial? Of course I understand that.

Q2115 Chair: Lord Goldsmith, if you were not signing the royal prerogatives, who was? Who is authorised to do that?

Lord Goldsmith: Royal pardons are on behalf of the Queen.

Lady Hermon: They are signed on behalf of the Queen by the Home Secretary, or in terms of Northern Ireland, by the Northern Ireland Secretary of State.

Lord Goldsmith: Yes. It is in the Queen's name. I am sure Lady Hermon is right. It would be the Home Secretary in England and Wales, and Northern Ireland Secretary in Northern Ireland, but not the Attorney-General.

Lady Hermon: That was the evidence that was given to us last week by Lord Reid.

Q2116 Nigel Mills: In your opening statement, you said these letters were not an amnesty. Can you just define "amnesty" for us, in that context?

Lord Goldsmith: What I meant by it was something that says, "You are now cleared from any possible prosecution, even though you may have committed an offence". It may not be a very elaborate definition, but that is what I had in mind.

Q2117 Nigel Mills: With these letters that effectively say, "You are not wanted for any offence", what sort of safeguards do there need to be before that letter is issued to stop that being a kind of "nudge, nudge, wink, wink" amnesty, if I can put it that way?

Lord Goldsmith: I would not use "'nudge, nudge, wink, wink' amnesty", although I understand what you mean by that. They need to be accurate and not misleading.

Q2118 Nigel Mills: Presumably there needs to be some proper work gone into being sure those letters are accurate and not misleading.

Lord Goldsmith: Indeed.

Q2119 Nigel Mills: Were you involved in considering what that process needed to be to ensure the letters were not a "nudge, nudge, wink, wink" amnesty?

Lord Goldsmith: I was not involved personally in that. I do not believe my staff in London, or indeed in my office in Northern Ireland, were involved in going through the process, but the process involved checks being done by the DPP in Northern Ireland of what the police had. But then a process of if we had a file in relation to this person, which sometimes could happen, they would have to work through it carefully: are the witnesses

still available and are they credible? Are they willing to give evidence? Have they gone off to Canada and will not return, in which case a prosecution is not possible? So a lot of work went into it. That is why we were concerned about the burden—you have seen one reference to it, but there are other references as well—that this imposed on the DPP in Northern Ireland. That was one of our reasons for being reluctant about the process.

Q2120 Nigel Mills: I am not suggesting it was, but if you thought the level of work being undertaken was somewhat less than that level of detail, you would have been even more reluctant about the process presumably.

Lord Goldsmith: Yes, but as I have said before, I knew very well Sir Alasdair Fraser, who was the Director of Public Prosecution for Northern Ireland. He was actually in office when I first took up office as Attorney-General. I got to know him well; I saw him frequently. I would describe him as painstaking, careful and conscientious, to the point sometimes where you wished he were not quite so insistent on dotting all the Is and crossing the Ts.

Q2121 Nigel Mills: There was of course some correspondence with Alasdair Fraser about trying to speed up the process. He effectively said, “If you change the question, we can answer it, but it will be a much different assurance”. So there were discussions about speeding it up.

Lord Goldsmith: That is right.

Q2122 Nigel Mills: And the implications that might have for the worth of these letters and the integrity of the process. The reason why I am asking that is that it looks, from the evidence we see, as though the process was pretty thorough, slow and robust in the early years. Then there was what looked like a bit of a pause in the 2003, 2004, and 2005 period. Then the process comes back to life in perhaps the latter days of your time as Attorney-General. It seems to have got a little bit quicker, not helped perhaps by the police calling it Operation Rapid. I do not know whether that suggests what they thought of this. We seem, then, to have not quite the same level of work from the DDP. It also looks like the police are doing a little less detailed checking. Were you aware, perhaps, that the level of work dropped off as Operation Rapid kicked off?

Lord Goldsmith: I was not, or at least I do not recall being aware of that.

Q2123 Nigel Mills: From the papers you have seen, do you think that is a fair analysis of how the process got so much quicker in the latter days?

Lord Goldsmith: I do not know. I leave it to you to judge. I have tried to look at some of the evidence that you have had, but I simply have not looked at all of it. You have the full breadth of that, and I am afraid I do not

Q2124 Nigel Mills: It is just we have the rather unfortunate context of the review of all the old cases by the Historical Enquiries Team, which was ongoing at the same time but separate from this process.

Lord Goldsmith: That I do recall

Q2125 Nigel Mills: You might perhaps have thought that those two teams would be very closely linked and you would want to go through all the evidence before issuing letters saying, “There is no evidence against you”. Do you think it is a little unfortunate that this was not tied in more closely with the Historical Enquiries Team?

Lord Goldsmith: I think there are two points in your question. One of them is: would I have expected a high level of care in considering the answer to the question before sending the letters? The answer to that is yes, I would, and that is what I understood was taking place. I knew the burden it was putting upon Sir Alasdair Fraser. I mentioned his particular qualities and characteristic. I knew that from time to time I would have to either write letters or say to the Secretary of State, “Look, I know you have not got a response yet, but that is because it takes a lot of time to go through this”. I accept that, but the historical issues was a different process with different people. I can see the connection that you draw, but I do not think it needed to be the same people that were dealing with it. Maybe there was an overlap; I do not know.

Q2126 Nigel Mills: They have taken several years to get through all the old files and see what evidence exists, and see what can be deduced from all that. We now know there is a new review by the PSNI, Operation Redfield, which we think will take three years to go through and look at all these letters and see whether there is anything amiss with them. My fear is that, with the speed at which the Operation Rapid reviews were going on, it was impossible for them to do such a thorough review so that there could be real confidence that the letter was accurate. Is that something you refute?

Lord Goldsmith: I listen with interest to what you say. I am sorry; I just do not think I am in a position to offer an opinion on that.

Q2127 Nigel Mills: You were the Attorney-General at the time of Operation Rapid in the early days, were you not?

Lord Goldsmith: I am afraid I just do not recall very much detail about that and how the process changed. I am very happy to try to look to see if there is something there that indicates that.

Q2128 Nigel Mills: Perhaps I can go a different way. When we took evidence from ACC Sheridan, he was asked what sort of process he could draw up for giving these letters of assurance. One thing he had in his initial suggestive process was to question the individual concerned under some kind of caution at presumably some kind of neutral location. When

that process was put to Sinn Féin, I understand, perhaps not too surprisingly, they were not very keen on that being part of the process. Yet we then see Operation Rapid continue with that taken out. It just looks like somebody who presumably would have been at least wanted for questioning—that questioning does not take place, and yet we can still issue these letters. It just starts to look like not a desperately thorough—I am sure we can get the details of that evidence.

Lord Goldsmith: I am sorry; I am just not sure I can add to this. Forgive me; I was just looking at the materials at the end of the bundle, just to see what degree of personal involvement I had.

Q2129 Lady Hermon: Can I just interject, picking up on Nigel’s point about the change with Operation Rapid? Operation Rapid, of course, followed within weeks of a confidential letter from the Prime Minister, Tony Blair, being sent to Gerry Adams, the President of Sinn Féin⁵, in which he gave an undertaking that he would expedite the administrative process before he left office. If you, as Attorney-General, did not see the terms of reference governing Operation Rapid, who would have been the lawyer who would have signed off and agreed those terms of reference that governed Mr Downey’s case and every subsequent case since then?

Lord Goldsmith: I am not saying I did not; I just do not have a recollection of having seen it, and I was looking at the papers to see whether it showed that I did. It is coming up to the time that I am leaving, so it may be that I did not, but I would expect that, if there was a process that involved the DPP, my office, then it would have been looked at by officials in my office that dealt with Northern Ireland, headed by Mr McGinty. I would have expected to have looked at that. If he thought that the Attorney-General needed to see something, he would have drawn it to my attention. I say all that very diffidently, because it may well be that the position is that I did look at it and I just do not recall it at this stage.

Q2130 Lady Hermon: Could it be the opposite scenario: that because of the operational independence of the Police Service of Northern Ireland, their internal guidance, their terms of reference for Operation Rapid was internally drafted, and they had taken legal advice internally? I am not pointing the finger at all. I just genuinely want to know who advised on the terms of reference for Operation Rapid in response to Mr Mills’ question. It is something we can take up with the current Attorney-General.

Chair: Perhaps if it is not available immediately it can be found later.

Q2131 Nigel Mills: I just want to finish on that vein. Mr Paisley asked you whether you thought this was cock-up or conspiracy, with respect to the Downey case. Without checking the transcript, I think your answer was, “Given the problems with the Downey letter⁶, it looks

⁵ The letter from Tony Blair to Gerry Adams is referred to in Paragraph 74 of the R -v- John Anthony Downey (24 February 2014) judgement, which is available here: <http://www.judiciary.gov.uk/judgments/r-v-downey/>

⁶ The OTR letter sent to John Downey can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Cover-letter-from-NIO-to-Gerry-Kelly-and-John-Downey-OTR-Letter->

somewhat more than cock-up”. Does that mean you think it was some kind of deliberate effort to send letters out that should not have been?

Lord Goldsmith: What I was trying to convey was what I do not understand is, if it is cock-up, how, according to the judge, it was known after the letter had been sent that it was wrong and yet it was not corrected. At least to that extent, if the PSNI knew it was wrong and did not correct it, somebody presumably took a conscious decision not to correct it. I do not know why.

Kate Hoey: The Northern Ireland Office knew it was wrong.

Lord Goldsmith: The Northern Ireland Office knew it was wrong; forgive me.

Lady Hermon: It is more complicated.

Kate Hoey: It is more complicated.

Q2132 Lady Hermon: Sorry, Lord Goldsmith, it is more complicated in that the PSNI officers who were named in the judgment gave evidence to this Committee that they never knew there was an administrative letter sent out at the end, and therefore they could not possibly have known whether in fact it was correct.

Lord Goldsmith: Paragraph 3 of the judgment, which is what I was basing myself on, says, “Whereas in reality the PSNI were aware, at the time that the letter was given to him, that he was wanted by the Metropolitan Police ... and the PSNI had also appreciated, after the letter had been given to him, that it was misleading in that regard.” I appreciate that I am reading from what the allegations were, as the judge set them out at the beginning of his judgment. That is why I said I understand that the PSNI had appreciated it, but you have got the judgment.

Q2133 Nigel Mills: Just one final question: would you have appealed the Downey judgment, Lord Goldsmith, if you had still been holding that office?

Lord Goldsmith: I could not possibly answer that without knowing all the circumstances. Sorry, that is not me not answering the question. I would need to know all the circumstances that lay behind this, which I do not except for the judgment. I understand things changed during the course of the case, and you reach a view as to whether it is right to appeal it or not. It just would be wrong to make a snap judgment.

Q2134 Nigel Mills: It is just you said earlier that you thought different judges may have come to a different decision, which leads me to think that perhaps we might try and get a second opinion.

Lord Goldsmith: I have had a lot of experience in the law. I know that judges do reach different opinions from time to time.

Q2135 Oliver Colvile: Thank you very much indeed, Lord Goldsmith, for coming to speak to us. I am not a barrister, I am not a lawyer, and I have never sat round the Cabinet table, so some of the question I may want to ask you may seem a little bit odd. How soon after you were appointed as Attorney-General were you briefed about this, and who briefed you?

Lord Goldsmith: When I took office I had a briefing from all the different divisions and departments in the office in general terms, and also on specific issues that had to be dealt with at that stage. I remember one or two of those that were very hot at the moment, but did not include this. I visited Northern Ireland relatively soon after I had taken office. I would have been briefed on that generally about issues in relation to Northern Ireland. It may have included this; at some point it certainly would have included this, because at some point I would have been provided with correspondence to deal with. I am sure we could find out the precise date. As I have said, I also knew, relatively early in my time, about this question about pardons, which I was asked to advise on. I am just looking to see whether I could find a date for when that took place.

Q2136 Oliver Colvile: It quite evidently was not the biggest burning issue when you first took on your role as Attorney-General.

Lord Goldsmith: No, it was not. Obviously it was a very important issue. There are a lot of issues that go through the office.

Q2137 Oliver Colvile: Did you then see the letters? Did they show you the letters that had been sent out?

Lord Goldsmith: The letters that were going from my office to the Northern Ireland Office, yes, of course I saw those. There seems to have been a change right at the end of the process—it may actually have been when I left—when they were no longer being signed by the Attorney-General, but up to that point they were signed by me, and therefore of course I saw them.

Q2138 Oliver Colvile: Did you end up by seeing the ones which they were proposing to send out?

Lord Goldsmith: I would not have thought so.

Q2139 Oliver Colvile: Is there a culture in the Northern Ireland Office to say, “We are going to send this out. We just need to make absolutely sure that we have covered absolutely everything and we have got the right story here”?

Lord Goldsmith: I do not think so; I do not recall that. Of course, that is not to say that the terms of the letter would not have been agreed and approved before. I do not

specifically recall when, but I expect I had seen the terms of the letters that were going to be sent.

Q2140 Oliver Colvile: Did you have any reservations about the way this was going ahead and what your predecessors may or may not have done?

Lord Goldsmith: I had two reservations about this process. One was that it was quite burdensome, as became apparent to me, and that was an issue. The DPP Northern Ireland Office was quite small. It was obviously dealing with a lot of very key issues and difficult issues, and the additional burden of this was not helpful, in one sense. Secondly, obviously the process was an unusual process. The steps that were taken were not unusual, but the process was unusual, and I was concerned, as I said before, as I think my predecessors were, that there was a risk of the appearance of justice being tarnished by this.

Q2141 Oliver Colvile: Would you have expected that these letters should have come from the Crown Prosecution Service rather than necessarily from politicians?

Lord Goldsmith: The Director was very keen, as it were, not to be involved or seen in any way personally as being involved politically. I think he had to tread a very narrow tightrope from time to time so as not to appear to be on one side of the divide or the other. What would have been done in England and what was done in Northern Ireland were often different for that very good reason.

Q2142 Oliver Colvile: How much interest did Number 10 take in this whole process? Did they talk to you at all about that?

Lord Goldsmith: Number 10 certainly took an interest in this process. Plainly it was one of the elements of the peace process, as they understood it, because of the conversations that had taken place. They would not have taken a role in examining the files, or whether somebody was or was not wanted, or how cogent the evidence was in relation to that; that was not for them to do. I imagine they would have been concerned, and indeed they were concerned, from time to time, about the time that it took to deal with it. The time was precisely because the DPP were seeking to deal with it in a careful way.

Q2143 Oliver Colvile: In your conversations both with the Northern Ireland Office and potentially Number 10 as well, did you get any idea as to who was trying to drive this strategy or policy forward?

Lord Goldsmith: The strategy of trying to deal with the on-the-runs was obviously coming from discussions between Sinn Féin and, the Northern Ireland Office and Number 10.

Q2144 Oliver Colvile: So other victims of other crimes that have taken place now find themselves in a very difficult position. They do not know whether or not they will ever see justice for their families; for the victims that actually have been killed. So to what extent did you think to yourself, “Gosh, we have got to be a bit careful here, because frankly, at the end of the day, there is a chance that it could be perceived the wrong way”, or did you think that no judge was going to actually take that view?

Lord Goldsmith: No, I think have made this clear. We were concerned that letters should not be misleading because they could lead to an abuse-of-process application. We specifically had the possibility of an abuse-of-process application in mind, so the letters had to be accurate. Therefore they had to be looked at carefully; they must not misrepresent or mislead.

Secondly, in terms of how the process would be perceived, again, as I have said, it was one of the reasons for being reluctant, in case this was seen as a process that was not dealing with justice. Those had to be set against the desirability of moving the peace process along. My predecessors and I took the view, having carefully thought about it, that it was justifiable to do what we were doing. It was not an amnesty; we made that very clear. We said to our political colleagues, “If you want an amnesty you must go to Parliament to do that”. Indeed, as we all know, that subsequently—

Oliver Colvile: Failed.

Lord Goldsmith: Well, it started, but it was then withdrawn, yes, but that was the only legitimate way of having an amnesty. On the other hand you could tell people, after careful investigation, that they were not wanted because you would not actually be able to prosecute them. You could tell them that.

Q2145 Oliver Colvile: So Downey comes back here on 19 May 2013, and he says, “I do not know why you are arresting me”, to the police. “At the end of the day, I have got these letters that have let me out”. Did you hear the news? Everybody else seems to have forgotten that actually this great event took place.

Lord Goldsmith: I knew the case was taking place in which the argument was being raised that, in the light of the letters, it was an abuse of process to prosecute him. Obviously I knew about that. I do not recall knowing about him coming back and being arrested.

Q2146 Oliver Colvile: It was a big national story, big national news.

Lord Goldsmith: I probably saw it at the time and did not—

Oliver Colvile: —really think too much about it.

Lord Goldsmith: I may not have been in the country at the time. I am often not.

Q2147 Oliver Colvile: 19 May 2013 is when he came back. He arrived at Gatwick; he was arrested. He immediately went very public, and Sinn Féin went very public, saying, “We do

not what all this is about because frankly he has got these letters”. You did not think to yourself, “Oh, I wonder what is in those letters?” because you knew the letters had gone, but not necessarily to Downey.

Lord Goldsmith: When I knew that the issue was there—I simply cannot recall whether it was the time of his arrest or later—I certainly did think, “This relates to the administrative scheme, the on-the-run scheme”. I am sure I asked myself the question: was this a letter that was sent during my time? I actually thought it was until very recently.

Q2148 Oliver Colvile: Very interesting. We were talking to the First Minister in Northern Ireland himself, and I reminded him about what happened. He said he knew nothing about it until the Sunday before the pronouncement was going to be made by the judge. I have to say, I find that very strange because it was a big national story. Forgive me, but the victims now are faced with a conundrum. What advice would you be giving to those victims to make sure that they can actually see justice for their families?

Lord Goldsmith: I have an answer to that in my head; I am just not sure it is one I ought to be—

Oliver Colvile: If you cannot share it with us—

Chair: It is for you to decide.

Lord Goldsmith: The letter is to do with prosecution, not to do with civil proceedings. It may be, and I have not considered this at all, that the victims have that possibility. A lot of time has passed so it may not be possible.

Q2149 Oliver Colvile: I asked the Attorney-General in Northern Ireland, when we went to see him, whether or not he thought there was perhaps a case that, intentionally or not intentionally, this could actually be considered as a perversion of the course of justice as an action that has taken place and has now stopped potentially prosecution from taking place. He said he thought there was something along those lines that could actually be considered. I would be interested to hear your views.

Lord Goldsmith: You have to ask the question: what was the cause of the letter being inaccurate? That is the point. With respect, it was not the scheme that was wrong. The scheme was operated in relation to many people without this happening. It is because this particular letter was wrong. My understanding is that that was because the PSNI had sent a letter that was wrong. You are looking into this and I have not investigated that myself at all.

Q2150 Kate Hoey: Can I just add onto that question about civil proceedings? Do you think, given that this is ultimately the British state that did this, that the British state should fund the civil proceedings?

Lord Goldsmith: That is both a step further than my present role would allow me to promise, and I think a step further than I am able to do.

Chair: We may ask the next witness that question.

Kate Hoey: I just thought you might like to advise the next witness.

Chair: We are running considerably late.

Oliver Colvile: I am very grateful for everything you have said, and thank you very much indeed for your time.

Chair: We will have to wind up now. It has been a very useful session, Lord Goldsmith. Thank you very much for joining us.

Lord Goldsmith: Thank you.

Examination of Witness

Witness: **Rt Hon Dominic Grieve QC MP**, Attorney-General, gave evidence.

Q2151 Chair: Mr Grieve, thank you very much for joining us.

Mr Grieve: It is a pleasure.

Q2152 Chair: Is there an opening statement you would like to make?

Mr Grieve: No, I do not have an opening statement to make. Obviously I responded to an urgent question in Parliament⁷, I tabled a written ministerial statement⁸ in respect of the Downey case at the time that the abuse-of-process argument succeeded, and we took the decision not to appeal it. I do not think there is very much more I can usefully say.

I made clear at the time that I regarded this episode as an extremely unhappy one. The mistakes that led to this case taking place and the abuse-of-process argument should not have happened. That is quite clear. As a result, it is also quite clear that the relatives of the victims in this case will have a very justifiable sense of hurt as to what happened, as indeed, I suspect, would any right-thinking person looking at the surrounding facts.

Q2153 Chair: Before we get to the Downey judgment, this issue when it came out has led to this inquiry. It led to the Government setting up its own inquiry. It has led to an Assembly inquiry. It has led to an awful lot of hurt to a lot of people, one or two of whom we have questioned at this Committee. Can I ask why the Government did not volunteer an oral statement? Why was it necessary for me to put down an urgent question when this was such a big issue that led to the First Minister threatening to resign and, as I say, so much hurt?

⁷ Mr Grieve's response to Laurence Robertson MP's urgent question on 26 February 2014 can be found here: <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140226/debtext/140226-0001.htm#14022692000147>

⁸ Mr Grieve's written ministerial statement to the House of Commons on 26 February 2014 can be found here: http://www.parliament.uk/documents/commons-vote-office/February_2014/26%20February/1-AG-ProsecutionDecision.pdf

Why did the Government not feel it was necessary to do an oral statement to give the House of Commons chance to question either you or the Secretary of State for Northern Ireland?

Mr Grieve: I can only answer for myself. As you will appreciate, the role of my office in relation to the Downey case is a legal role, actually carried out essentially independently of Government, although it is a ministerial function of my superintendence of the Crown Prosecution Service. I was not then in any position to answer the wider public policy issues, which I think in many ways this Committee is trying to look at. The focus of my knowledge and of my Department's responsibility is rather narrow.

We tabled a written ministerial statement, which set out, very fully, I hope, the background from the point of view of the Crown Prosecution Service. That is what I would normally regard as the appropriate practice. What other Government Departments may or may not choose to do is a matter for them. You then tabled a UQ, and I went along and did my best to answer it.

It is right that I remember saying when I opened my answers to your urgent question, that in terms of what I could say initially, that I was going to be, in a sense, repeating what I had put in the written ministerial statement. I was then asked a very large number of questions, perfectly pertinent ones, but in many cases ones, which, as I explained at the time, were not actually within my own direct remit in terms of being able to answer them. But there may well be other matters on which I can answer.

Q2154 Chair: It was a Government decision that you should answer that urgent question. It was not my request that you did; it was the Government that decided to put you up, rather than another Minister.

Mr Grieve: The difficulty that arises in cases of this sort is that what had triggered this was the outcome of a prosecution. The only Minister who can answer in respect of the outcome of prosecutions is me. I think I made the point when I was answering the questions that there were wider issues of public concern and debate, which I wholly acknowledged at the time while I was answering were legitimate. They were doubtless going to be a subject of political debate in the House. Indeed, I suggested repeatedly that there were perfectly logical and good grounds why people would wish to pursue those lines of enquiry, but I myself could not answer them.

I do not think it was the wrong decision to ask me to do it, because the decision centred round a court decision, and that did fall to me. I do not think I have ever had an experience where we have put two Ministers up to do a double act at the despatch box, and I think some choice has to be made somewhere. I do not feel that I, so to speak, had it parked on me when somebody else should have been answering, because the specific issue was the collapse of the case against Mr Downey.

Q2155 Chair: Okay, thank you. Can I move on to that case then? Is it your opinion that a stay can be appealed?

Mr Grieve: Technically a stay can be appealed. The circumstances in which a stay can be appealed tend, in my experience, to be utterly and completely exceptional. I will have to go away and do some homework. The general rule is if a case has been stayed you would have to make an application to the Court of Appeal for the stay to be lifted. In my experience, it is a very unusual thing to occur. I am not saying it cannot happen, but most lawyers looking at a stay on a criminal prosecution imposed by a judge would say that that stay is not going to be lifted subsequently as a stay.

Just to be quite clear, that is different from appealing the judge at first instance's decision, just so that we should not be at cross-purposes on that. That it is a separate issue. Once the stay exists, as it does now, while it is possible that one could apply to have a stay lifted because of something quite extraordinary occurring, it would be utterly exceptional.

Q2156 Chair: Could you give us an example of what might be considered to be “quite extraordinary”?

Mr Grieve: It would be very difficult to think of anything in this particular context. I suppose the sort of circumstance that might arise is if it subsequently turned out that all the parties in the case were utterly misled about the basis of the facts on which the stay had originally been granted to such a point that there was some quite extraordinary potential for miscarriage of justice. If I may say so, in the context of this case, nothing has suggested to me that such a thing arises. I would have to go away and trawl. I cannot think of any recent example—indeed at the moment I cannot think of any example of a stay being lifted.

Q2157 Chair: Given the seriousness of these charges, though, do you accept that it seemed quite a flimsy reason, actually, not to proceed with the prosecution, on the basis of a letter that was only relevant at the time it was written, as we have heard from so many witnesses. It was a mistake, if we are generous about this, that the letter was sent at all. To most people we have interviewed, and probably everybody—in fact you will have heard Lord Goldsmith say a few moments ago that another judge may well take a different view. Did you not find it an extraordinary judgment?

Mr Grieve: No, I did not.

Chair: You brought the prosecution.

Mr Grieve: I did bring the prosecution, but I also read the judgment with great care. Indeed, I have re-read the judgment before I came here again this afternoon, as I had not looked at it for a while. I sat down with the most senior lawyer within the CPS dealing with terrorism crime, and I sat down with the prosecuting barrister, who was previously First Treasury Counsel at the Old Bailey before he moved onto other things, but he is still doing prosecuting work for us. We discussed this case in great detail before we took the decision not to appeal the judge's judgment.

All I can say is that whilst I have always been of the view that we were right to bring this prosecution and to attempt it, when I had read the judgement, and in particular the detail

that only emerged in the course of the case as it went through—and we always thought this might happen because there was going to be more work to be done at the time the original charges were being brought. But not only had there been an initial mistake, but that mistake was compounded by, on at least two occasions, there being the possibility of it being rectified, but for reasons unexplained, that not happening. Therefore, the judge's reasoning, as set out in his final paragraphs as his conclusion, seemed to me to be rather powerful and persuasive.

Now, prosecutors should not go and appeal the decision unless they think they have good grounds for doing it. All I can say about that is that we looked at it very carefully, and the independent view that had been formed by the CPS, and indeed the view that I formed when I read it, which we then discussed, was that the judgment was unappealable.

Q2158 Chair: I only heard this a few moments ago; you will know far more about it than I do—the Warren case; I understand a stay was refused, even though there was deliberate wrongdoing proven. Surely when there is no deliberate wrongdoing proven, this does make this an extraordinary judgment, given the seriousness of the cases or the charges.

Mr Grieve: It is an extremely serious case, but I can only go back to the reasoning set out by the judge, which is very comprehensive, very detailed, and goes into a wide range of issues about the circumstances in which Mr Downey found himself at Gatwick, the previous visits he had made to the United Kingdom on the back of the assurance that he had in this letter that he was not wanted, as against the process by which the mistakes were made and compounded, and he came to a conclusion.

The Crown Prosecution Service and the lawyer prosecuting the case, who is extremely experienced, were very clear in their judgment that an appeal was not justified on the basis of these comprehensive finding. Having applied my mind, as an independent lawyer—although for part of it, it would not have been my decision, I had to give my consent to part of the prosecution on the Explosive Substances Act. So I had to be consulted, otherwise it would have been a CPS decision. Of course I am entitled to express a view, but it is the CPS's decision on the other charge. I could not see any reason why I should fault the reasoning of the Crown Prosecution Service on this.

Q2159 Lady Hermon: It is very good of you, as the current Attorney- General, to come and give us evidence this afternoon. We already know from evidence given to us by Mr McGinty, representing the Attorney-General's office—and representing it very well; he was a very good witness indeed—that you were actually briefed in Opposition about the OTR scheme.

Mr Grieve: I am not sure that I would put it that I was briefed in Opposition.

Lady Hermon: You knew about the scheme when you were in Opposition.

Mr Grieve: I was asked a parliamentary question: when did I know that there was an OTR arrangement—I think that is the best way to describe it—in operation? Doing the best I

could, and trying to remember as best I could my years in Opposition, I had to conclude that I knew that something was happening of this kind when I was in Opposition.

I am afraid that I cannot tell you how I knew it. For the benefit of the Committee, many of you will know that I have had an interest in Northern Ireland matters that goes back even though I have never held a formal Opposition position. At times I have acted as an informal spokesman for the Opposition, and I was on the British-Irish parliamentary body, and I am a fairly regular attendee at British-Irish Association annual conferences, which tend to bring together a very wide range of people in an Oxford or Cambridge college, when a lot of discussion takes place.

I am also aware of what both John Reid⁹ and Peter Hain¹⁰ have said about statements made by them in the House. I have seen from your report and inquiry those statements, although I have to say to you that I do not remember being present in the House when those statements were made.

Lady Hermon: Those statements of course omitted any reference to Ministers.

Mr Grieve: All I can say is that at some point prior to 2010, I was aware that the Government had devised some way of providing reassurance, particularly in the context of Republicans or the IRA—some reassurance that they could come back into the jurisdiction without fear of being prosecuted. The details of that I was wholly unaware of; I should make that quite clear. The point I am simply making is I was not oblivious that something of this kind had gone on. Whether it was something that was said to me by somebody at a BIA conference, by one of my colleagues, who was indeed a spokesman on Northern Ireland matters, whether it was something that was said to me by one of the Government Ministers, with whom I actually enjoyed quite good and pleasant relationships because of the bi-partisan approach that we had over Northern Ireland—all those things are possible, but I am afraid I just cannot remember.

Q2160 Lady Hermon: Why on earth in 2010, when we have a new administration—the Labour Government has gone; the Labour Government had introduced this under Tony Blair. We know these letters have been going out since 2000, then they continued to go out in Prime Minister Brown's time. We have a new Administration in 2010; the peace process was not in jeopardy in Northern Ireland. Why in heaven's name did you, as the Attorney-General, continue with this scheme?

Mr Grieve: Would it be helpful if I explain what happened or happens when a new administration takes office?

Lady Hermon: Yes, I think that would be very helpful.

⁹ Dr Reid's statement to the House of Commons on 2nd July 2002 can be found here:

<http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo020701/text/20701w35.htm#20701w35.htmlsbhd2>

¹⁰ Mr Hain's statement to the House of Commons on 11th January 2006 can be found here:

http://www.publications.parliament.uk/pa/cm200506/cmhansrd/vo060111/debtext/60111-04.htm#60111-04_spmi0

Mr Grieve: I was undoubtedly—I went off to find the briefing papers—briefed about the OTR scheme. Indeed, Mr McGinty confirmed that to you. I have been back to have a look because my recollection—recollection can be faulty—is that the understanding I derived from reading the briefing was of the OTR scheme in historic terms. I did not understand it to be a current issue requiring my attention. Having read that briefing, the first I knew that there was a current issue with OTRs was in 2012, when it was raised with me by the Northern Ireland Secretary.

Q2161 Lady Hermon: Who was that at that stage?

Mr Grieve: Owen Paterson.

Q2162 Lady Hermon: So Owen Paterson was well aware of the OTR scheme as Secretary of State.

Mr Grieve: If I may say so, you would have to ask him what he was aware of. In June 2012, he spoke to me on the fringes of a Cabinet meeting, and I remember it very well. He expressed concern about the scheme, about the propriety of its operation and continuance, and about its detail, and sought my advice. In due course I provided him with some advice. He came more formally, because when colleagues ask me things outside Cabinet it is usually quite wise to suggest that they go off and do it in a more formal way.

Q2163 Lady Hermon: So why did you, Attorney-General, advise him that he could continue with this scheme? Because we know it did continue after 2012, did it not?

Mr Grieve: If I may say so, this brings us to the law officers' convention, and I have to be just a little bit careful about what I may or may not say, although I am very conscious of the fact that I think Lady Justice Hallett has all the details. I provided the NIO and him with advice in 2012, and the advice was exactly in keeping with the advice that had been given by my predecessors, which was to express reservations about the operation of the scheme and its effect, particularly on prosecutorial decision-making; it was exactly in keeping with what others had said.

Q2164 Lady Hermon: Attorney-General, I am not asking you to breach a convention; I know that you cannot tell the Committee the legal advice that you gave to Owen Paterson as the Secretary of State. That is really not what I am asking. I am asking why on earth the Coalition Government continued with this scheme, and when Owen Paterson had raised it with you, and raised his concerns in 2012, why the advice was not, "Well we were not saving the peace process in 2012; we certainly were not doing it in 2010." Why did the Government continue with it at all?

Mr Grieve: Forgive me, because it may be that you have a factual basis that I do not necessarily have. I am aware, from what I have been told subsequently, that after 2010 the

scheme continued. I have been told that the reason why the scheme continued was that there was some outstanding matters that had been put forward before 2010, which they wanted to see resolved.

Q2165 Lady Hermon: By matters, you mean people's names.

Mr Grieve: Yes, there were still outstanding names that had been fed into the system.

Q2166 Lady Hermon: Yes. Not matters, but people's names.

Mr Grieve: No, people's names had been fed into the system on which they wanted the assurance. I understand those were partially or largely dealt with, although there may have been some outstanding ones. In 2012, Owen Paterson's concern was that there was a suggestion that that the issue might be reopened yet again—that he was being asked to look yet again at more names, and he was troubled by that. That was when he came to ask for my view on the matter.

I provided him with my view, and there were two issues. One was the question about the impact that such a process has on the prosecutors, where in fact, as you will be aware, on repeated occasions Attorneys-General have made the same comments that this is an uncomfortable system—not an unlawful one, but an uncomfortable system to operate from a prosecutor's point of view.

The second issue that arose was the question as to whether, in the light of devolution in 2010, this was an appropriate system to still be being run through the Northern Ireland Office.

Q2167 Lady Hermon: Those were your two concerns at that particular time.

Mr Grieve: Those were the two issues. Those were his two concerns.

Q2168 Lady Hermon: Can I just ask you then, had it not been for Mr Downey's arrest at Gatwick Airport, and the OTR secret scheme coming to light, when would we have known about this scheme? Was it just hoped that nobody would have raised this in a court case? Did you just hope that by keeping quiet we would get through all of the other cases, all of the other names? What did you expect would happen?

Mr Grieve: If you will forgive me if I just come back to what I said at the outset. When I advised the Secretary of State for Northern Ireland, or had a discussion with him in 2012, that brought to my notice that the OTR scheme still had life in it. But I have to say to you that, having fulfilled my duty over that, as I hope I did properly, the first time that I had to focus on what I would call the entire history of the OTRs, including what had been going on 10 years earlier, only arose when Mr Downey was arrested.

Q2169 Lady Hermon: So forgive me for repeating the question: would the OTR scheme have continued, even to today, had it not been for Mr Downey's case?

Mr Grieve: I cannot answer that question, because it is not for me. The OTR scheme is not the responsibility of myself as Attorney-General or indeed of any of my predecessors as Attorneys-General. As I hope I explained when I was asked one of the questions when I answered the urgent question—somebody said, “Well, who’s responsible?” and I said, “First, and I accept this, the Government has a collective responsibility for running any scheme, but this scheme was not directed or run, in practical Executive terms, by my office”. If it was run from anywhere, it was run from the Northern Ireland Office, although as indicated when you asked questions earlier, it would appear that, at much earlier stages, it had a high degree of involvement from Number 10 and the Prime Minister’s private office at a time when the political imperatives were of a higher order.

My office, once the administrative scheme was running, operated a scheme of acting essentially as a channel of communication between the Northern Ireland Office and the police and the prosecutorial services in Northern Ireland. That is what it did, and that, I think, was fully explained by Mr McGinty when he gave his evidence, because I have seen what he said to you. I have no reason to disagree with that, although it is right that what I am telling you is what he has told me, because he is my source for most of the historic material about what actually was going on in the years 2005, 2006, 2007, 2008, 2009 and 2010.

Q2170 Lady Hermon: I would like to raise two technical points that will be within your remit. None of us on the Committee is a practising lawyer, so it would be very helpful to the Committee to know: when we took our first evidence session, it was with Mr Norman Baxter who, of course, has been named in the Downey judgment, and also ACC Sheridan, right at the very beginning of our inquiry. Both of them were extremely angry and annoyed that, in the course of the Downey case, which was conducted by written statements—it was not an open trial—neither Mr Baxter nor Mr Sheridan were asked for written statements. Why is it that the written statements that appear in the Downey judgment and that were asked for by defence counsel obviously—since the blame was going to be placed on the PSNI, why were no written statements asked for? It is a technical question because I have no idea why they were not asked for written statements to be submitted to the Downey trial?

Mr Grieve: If I may say so, I am not in a position to answer that. The Downey trial, once it moved into an abuse-of-process application, was managed by the judge in an adversarial system where counsel for Mr Downey would have requested information and disclosure, and the Crown Prosecution Service would have endeavoured to respond properly to the request for disclosure. I am aware that a lot of work went on to provide disclosure. People went backwards and forwards to Northern Ireland to look in archives; people went to check documents. In the course of that, I think it is right that more emerged than had been apparent at the beginning. That does not come as a great surprise to me. It was always clear to me when we started out on the process and took the decision to charge Mr Downey that that was a real possibility: that more would come out. Because we either had to charge him or release him; he either had to be charged or released. So it was quite apparent that this would all come out during the course of an abuse-of-process application if there was more to emerge, and more did emerge.

Q2171 Lady Hermon: Forgive me, Attorney-General, but the one bit that did not emerge, of course, until we took evidence from Mr McGinty and the Attorney-General's Office was the fact that Mr McGinty confirmed to this Committee that ACC Sheridan's—the now retired Assistant Chief Constable—letter, which he sent in relation to the Downey case, was altered. It was altered by the Northern Ireland Office. Why did that fact not come out in the Downey case?

Mr Grieve: I have read what Mr McGinty said and, first, I am in no position to comment one way or the other on Mr McGinty's evidence, except to say that I see nothing to suggest to me that the explanations that he provided in that evidence were inaccurate. However, I cannot answer the question; I am in no position to do so.

Q2172 Lady Hermon: Let me rephrase the question then, and I certainly do not want to put the spotlight on Mr McGinty who was an excellent witnesses—a brilliant witness—in front of this Committee. Let me just concentrate on the Downey judgment. In the Downey judgment, we know that a catastrophic error was made by the PSNI and a particular police officer, who was named as Norman Baxter, and that has been refuted. Subsequently retired—very recently retired—chief constables of PSNI have apologised for what was allegedly a catastrophic error by Mr Baxter. However, Mr Baxter and Mr Sheridan have told this Committee that they did not know about administrative letters being sent out. When the Northern Ireland Office official telephoned and subsequently emailed PSNI headquarters and Mr Sheridan's office to ask if the facts were correct—to ask if the details were correct and the checks had been carried out on Mr Downey—that Northern Ireland Office official did not, it seems, indicate that he was going to amend Mr Sheridan's letter. It was altered, and that was the letter that was sent out. Why was that fact not made public in the Downey case?

Mr Grieve: I do not know why that fact was not made public in the Downey case. I did not have the handling of the running of the Downey case. All I can say is that looking at the overall evidence that you have been presented with from Sir Hugh Orde and others, I did not form the view that there was a suggestion within the PSNI that the responsibility for the mistake fell outside of them.

Quite apart from your inquiry, we have asked Lady Justice Hallett to carry out a wide-ranging review. I have to say to you that I would prefer that, rather than try to pontificate to you without any factual basis of being able to do so about this matter, we wait to see what Lady Justice Hallett has to say about how this problem arose. If it is right that there was something in that that was not put before the judge in the course of his judgment in Downey, then that will be something that we will have to take into account, but I am in no position to agree or disagree with this one way or another; I am just not.

Q2173 Kate Hoey: By the way, did Lady Justice Hallett see Mr Baxter, or talk to Mr Baxter or Mr Sheridan, do you know?

Mr Grieve: I do not know.

Kate Hoey: Okay. I hope she did.

Mr Grieve: I have not an idea. I do not know if anybody has told you, but I am not privy to whom she may or may not have spoken to. She has spoken to me. I am quite happy to say that—to tell you that—but I am not aware of who else she may have spoken to.

Q2174 Kate Hoey: Do you understand that there is a feeling that there is a whole almost establishment stitch-up going on here, to make sure that any blame eventually, from whatever inquiry, will end up with the PSNI?

Mr Grieve: Yes, I have appreciated that from Lady Hermon's questions; of course, I have. I appreciate that from the tenor of the discussion that you are having with me. But I am here to give evidence, not to engage in commentary, particularly commentary on matters that I actually am in no position to comment on from personal knowledge. The prosecution—conducted by the CPS, presented by Brian Altman as ex-Senior Treasury Counsel and helped by junior barristers, who went backwards and forwards looking at material that was held within the archives of the PSNI in response to disclosure applications—I very much hope was conducted correctly, brought before the judge and that it gave to the defence all the relevant documentation that they ought to have had for the judge to make a correct and informed decision on his judgment. If that did not happen, it is very unfortunate, although whose fault that would then be I have not the slightest idea.

But, at the moment, I have no evidence to suggest that that is the case apart, obviously, from listening to Lady Hermon, who tells me that she has a concern that there may have been an error in showing the role of the Northern Ireland Office. I have read the transcripts and have also seen that some people, when this point has been put to them, have given you a reply suggesting that they do not think it is the Northern Ireland Office on whom blamed can be attributed in this context.

Q2175 Kate Hoey: No, indeed. All the Secretaries of State spend their time saying how wonderful the Northern Ireland officials were. Can I ask you about when Downey was arrested in 2013? You knew that he had been given a comfort letter.

Mr Grieve: I knew very quickly that he had been given a comfort letter because I was told that he had a) been arrested, and b) had a comfort letter on him.

Q2176 Kate Hoey: Right, so that did not influence in any way your agreement that he should be prosecuted? You did not think that—

Mr Grieve: It influenced this. It was a matter that required very careful consideration. Yes, of course it did. It was not a subject to just be saying, "Oh, we can ignore that". We had to do some careful thinking about the propriety of prosecuting somebody who had produced such a letter of comfort. That was a role principally for the Crown Prosecution Service and for the barrister who was going to prosecute the case to give his view. However, it was also a matter that had to be, could be and, indeed, should be—particularly because I had to give my consent to the Explosive Substances Act charge—one I had to

consider, with that hat on that I wear, which is non-party political and is as lawyer in Government with the responsibility for superintendence. We did that.

Q2177 Kate Hoey: Did you discuss with the Secretary of State for Northern Ireland at the time, Owen Paterson, what was happening?

Mr Grieve: The fact that Downey had been arrested and the fact that he had a letter of comfort? Yes. That was a matter that had to be discussed in trying to ascertain, first, the circumstances in which he had got the letter of comfort.

Chair: If I could just interrupt again, we have been advised that there may be a Vote. We expected it at 4.00, but it could well come earlier. Again, I will have to suspend the Committee for 15 minutes and then continue.

Q2178 Kate Hoey: He was arrested and you then discussed with the Secretary of State the difficulties—

Mr Grieve: Also we needed to make some preliminary investigations, although very quickly, about the circumstances in which this letter had been obtained. What emerged, even then, was that the letter had been issued to him mistakenly. You were asking the question earlier, “Was this a mistake?” Yes, it was a mistake. It was a very bad mistake. Of course, it was a mistake that was a two-edged sword. I suppose if no letter had ever been issued to him—this is the point, is it not?—he would never have been anywhere near Gatwick Airport. Indeed, he would never have come back from Donegal into the jurisdiction. But he had and he had, and he had this letter in his possession.

Q2179 Kate Hoey: When you then decided, after all the advice, that you would actually allow the prosecution, did you warn the Secretary of State, and indeed the Prime Minister or anyone else, that this could potentially lead to a court case where abuse of process would lead to him being released?

Mr Grieve: Yes, it was quite clear to me that there was going to be an abuse-of-process application. It would have been astonishing if there had not been, in the circumstances.

Q2180 Kate Hoey: But your feeling at that time was there was a 50-50 chance of it not being, with the judge?

Mr Grieve: My view was that, although it was a very arguable case for abuse of process, we thought that we could correctly argue that, in view of the fact that it was an innocent mistake, these were factors that would influence the judge to determine that, in fact, the trial should be allowed to proceed. I did not go ahead with the process on the basis that I thought it was going to fail. I say “I”, but I mean the Crown Prosecution Service. I want to emphasise this because I know it is a rather unusual relationship. I have a superintendence relationship. I work closely with them. In this case, there was no question but that we were completely of one mind about it. That included the view that

the evidential tests being met—although the evidence in the Downey case was not unproblematic—and the public interest test being clear—namely, that it is very much in the public interest that somebody who has been charged with multiple murders should be brought to justice—there was no basis on which we should not proceed with this trial, whilst obviously being mindful that the surrounding circumstances meant that it was a matter that would have to be kept under review as we went along. That was the decision we took and that is how he was charged and that is how the prosecution was brought.

Q2181 Kate Hoey: When that decision was being taken and you were coming to that judgment, did anyone in your office point out the Lord Goldsmith letter that had been written, some time ago admittedly—a number of years back—saying that Downey was wanted to be arrested on serious terrorist charges? It was written by Lord Goldsmith.

Mr Grieve: I may be wrong, but I do not remember the Lord Goldsmith letter of 2006, which is actually unrelated to the letter that he was waving around when he was arrested. I do not remember that detail being discussed.

Q2182 Kate Hoey: No, I would not expect you to remember that because it was 2006. But, nevertheless, there was a letter that presumably was in the Attorney-General's files not that long previously that had gone to the Secretary of State for Northern Ireland, and it was very clear Downey's name was on it.

Mr Grieve: Yes, I understand that. As I say, first, I do not remember that as being a key issue at the time that we proceeded with the prosecution because, in a sense, it was irrelevant to the prosecution. It may be relevant to the question of what the Northern Ireland Office may have known or not known about this matter—and I appreciate your line of questioning on that—but actually that was not the issue that we were having to consider. The issue that we were having to consider was: did the letter, which was undoubtedly given to Mr Downey via Sinn Féin, constitute effectively a bar on his being prosecuted for the offence because of the assurances contained within it.

Q2183 Kate Hoey: Lord Goldsmith said very clearly that a different judge might have made a different decision. What I do not understand is: when did you actually get the telephone call or the notice of what the judge was going to say?

Mr Grieve: At or about the time he said it. I cannot remember exactly when I saw it, but—

Kate Hoey: It was probably the Sunday.

Mr Grieve: Kevin McGinty may know the answer. I just cannot remember. But I knew that there was, as sometimes happens in such cases, an embargoed judgment that was circulated to counsel before it was delivered in open court. That is a perfectly standard procedure, and I think I would have known very shortly before the judgment was heard in open court. It was to give the parties an opportunity to consider their position.

Q2184 Kate Hoey: Then your first thought was: shall we appeal?

Mr Grieve: Obviously the first consideration that had to be made was whether there should be an appeal. That was a matter on which I had a conference with the Crown Prosecution Service and prosecuting counsel. We considered all the aspects of the judgment, what had gone on during the abuse-of-process hearing, and the likely prospects of success of such an appeal being made.

Q2185 Kate Hoey: Given what Lord Goldsmith said and given that another judge could have taken a different view—and he saw the judgment so he has read it all too—why would you, for the sake of the victims and for the sake of being seen to be open and public about justice, not think, “Well, it is actually worth appealing because this is too serious. We have a person here who has clearly evidence against him. He was involved in one of the worst atrocities on the mainland throughout the IRA period of terrorism and yet we are not going to seize this opportunity to at least try to get this sorted differently by an appeal judge”?

Mr Grieve: Lord Goldsmith did explain—because I was sitting here—that he has not had the benefit of studying the papers in this case or the judgment, or discussing the judgment with the counsel who did the case for the prosecution. Of course it is true—in a sense, it is a truism—that two judges on a matter may disagree reasonably in their approach to a case. Judges are not clones of each other; we are all human and judges are fallible as well. Some judges will take different views from others.

But, in determining whether an appeal should be brought, you have to look at the totality of the judgment, bearing in mind that one judge has already given this the most minute examination and come down to a particular conclusion, and that in itself always carries some weight with the Court of Appeal, which is going to review it. You must then consider carefully what the bases are on which you are going to challenge the way the judge has approached it. An appeal is not just a re-hearing; an appeal is a process by which you fault the judge’s reasoning in the case and the way he has chosen to approach it.

Q2186 Kate Hoey: I appreciate that you are a lawyer and I am not a lawyer, thank goodness, but to the layman it will seem that there was an opportunity to challenge what the judge had said. When we know that Mr Baxter was not even given the chance to give a statement to the judge—nor was Mr Sheridan or many other people—it seems to be a cosy conspiracy, almost, of people who were asked to give evidence. Surely that would have been the opportunity to get it looked at afresh by an appeal.

Mr Grieve: I have to say that I really do not see the smallest evidence of a cosy conspiracy in the way in which the case was presented or conducted in court at all. The case was conducted by the CPS using very skilled counsel as properly and as forthrightly as prosecutorial propriety demands. Prosecutors do have to act as ministers of justice, but they have also got to be pretty tough in furthering their cases. Everything I heard about the way in which this was conducted in court suggested to me that exactly that was done.

But when you then face the fact that the judge has found against you, you have got to make an informed and careful decision about whether it is justified to appeal it. Quite apart from these cases, I have to make these decisions when people refer unduly lenient sentences to me. Just because it may be a case that has excited a lot of public anxiety, such as an unduly lenient sentence, does not mean that I should refer it unless I think there are good grounds for doing so. I have to say to you that when we looked at the judgment, looked at the surrounding facts and in particular what had emerged and had added to this case in the course of the abuse-of-process argument, the view that I was presented with—the unanimous view of those who were involved in this case—was that the judgment was not appealable. I took that same view. It is our decision. I cannot really amplify it more than that.

Q2187 Kate Hoey: You do not think it was anything to do with just saying, “Look, let’s get this washed away; we do not want to raise all of this again”?

Mr Grieve: No, most certainly not. Just to make the position quite clear, no one in Government applied any suggestion or even a comment to me or to anybody else suggesting, “Oh well, we have had a go at this. Can we just quietly drop it?” Most certainly not.

Q2188 Chair: Are you concerned, Mr Grieve, this could be the tip of iceberg. We heard Assistant Chief Constable Drew Harris tell us that, of those who had received letters, the police linked 95 of them—only through intelligence at this stage—to almost 300 murders¹¹. Did that ring alarm bells when you heard that?

Mr Grieve: I am not sure it rings alarm bells with me. It highlights the fact that there are probably a large number of people in Northern Ireland who have committed heinous crimes who may never be brought to justice, or indeed even if they are not in Northern Ireland or are elsewhere. That may apply right across the board. I am afraid that we know that there are a large number of unsolved cases in the context of Northern Ireland, and there are many victims who have never seen and will probably never see justice.

At the risk of repeating what has been said, but I will say again—I do not think I have said it so far, although I said it at the time of the urgent question—that in fairness to those who produced this scheme in the period of 2001 through to 2007, if the scheme had been operating properly so that no mistakes were made, it should have had no bearing on whether somebody against whom a prosecution could be brought would escape prosecution. It should and could have had no such bearing because, as has been said, it was a statement of existing fact that there was no basis on which somebody could be prosecuted. It always contained the caveat that if further evidence came to light, then the person was at risk at that stage of being arrested. All they could be told was, “As matters stand at the moment, you would not be prosecuted because there is no evidential basis for doing it”. That is quite important. Coming back to your original question, I am very

¹¹ See Q696 of Mr Harris and Mr Baggott’s evidence to the Northern Ireland Affairs Committee, available here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/9418.pdf>

troubled that there are many people who escape justice or may have escaped justice, but unless we can have the evidence against them, we cannot prosecute.

Q2189 Chair: No, indeed. But the point is that they have letters and they may well come back into this country and use that letter as a protection. The police are saying that they are going to spend the next two to three years looking into 95 people who they are linking, through intelligence, to almost 300 murders. That is a terrible situation to find ourselves in. I am not blaming you for that situation, but it is a very worrying situation surely?

Mr Grieve: If I may say so, it becomes worrying if material is turned up as a result of this further work that could found a prosecution and it cannot because the letters were given to them mistakenly. But I do not know about that, and I do not know whether the Committee knows more about that. I am not in a position to say more about that. That could happen, but equally the further work being done by the police could unearth evidence on which it is perfectly possible to prosecute them, notwithstanding the fact that they have got letters. It would only be impossible if the letters had misled the individuals to doing something to their detriment, and even then it might not be. It all depends on the extent and degree to which that happened, which is why each of these cases has to be looked at in isolation.

On the Downey case in that context, I do not know if it is exceptional. I hope very much that it is. But particular circumstances outlined in Mr Justice Sweeney's judgment in Downey without doubt go beyond just a simple mistake; it is a compounded error. That, I think, made it particularly problematical.

Q2190 Ian Paisley: Mr Grieve, mindful of what you have just said and, indeed, the importance of what you have just said and the public concern around this entire saga, could legislation be introduced that would annul, rescind, remove, withdraw or revoke all of the letters—their effect and purpose—so as we are in no doubt that none of this sorry saga would be repeated?

Mr Grieve: I do not actually think that legislation is needed. These letters do not constitute an amnesty. An amnesty would require legislation and, actually, revoking an amnesty after you have legislated for one might well raise some very difficult and complex issues indeed. I think I would steer away from that. The letters are capable of being rescinded, although it raises some difficult issues about whether one would then have to give somebody notice—if a letter were to be rescinded—to be able to leave the jurisdiction, seeing as they were attracted into it in the first place. If I may say so, it is precisely these sort of rather difficult points, which may not arise, that highlight why prosecutors were, I think, so cautious about this process in the first place.

Q2191 Ian Paisley: Throw caution to the wind. You are a politician; you are like me; you are elected; you are answerable to the people. Should this Parliament revoke these letters?

Mr Grieve: It is a matter for the House, not for me. I have given you my best take on the significance of these letters and whether they need to be revoked. What Parliament

chooses to do is a matter for Parliament. I simply point out that, as you will have heard from ex-Secretaries of State for Northern Ireland, they believe that the letters were very important in the context of taking forward the peace process, which undoubtedly required some very strange things to happen indeed. Indeed, Parliament, in cases, enacted legislation. Individuals who, on conviction, should have received whole life tariffs served two years' imprisonment.

Q2192 Ian Paisley: If legislation was to be introduced to have that effect, would that create an exceptional circumstance that would allow you to go back to the stay on the Downey case?

Mr Grieve: No.

Ian Paisley: Definitely not.

Mr Grieve: I am quite satisfied that we would be in very difficult and dangerous territory on retrospection and also on some basic issues of human rights. No. The Downey case, in terms of the judgment, unless, as I say, the stay were ever lifted, is done. That is not to say, if there were other matters that ever emerged—that is a different issue. This case, as it stands, has been dealt with unless there were grounds on which the stay could be lifted. We discussed earlier my explanation as to why I think that is a very unlikely thing to happen.

Q2193 Ian Paisley: A civil prosecution, then, you think would be—

Mr Grieve: There is nothing to prevent civil proceedings being brought by relatives of victims against anybody.

Q2194 Kate Hoey: And will the state help pay for that?

Mr Grieve: That is a legal aid matter, is it not, if I may so? Legal aid is a devolved issue in Northern Ireland. Of course, in the case of Mr Downey, it is a matter that relates potentially to England and Wales, and that falls within the remit of the Lord Chancellor.

Q2195 Ian Paisley: Do you agree that any lawyer worth his or her salt is going to make a case of abuse of process if a case were to arise in the future where a client of theirs has one of these letters?

Mr Grieve: There must be a very high probability that, if there is an attempt to prosecute somebody who has a letter, abuse of process will be run. However, that is a very different thing from saying that the abuse of process argument will succeed. I do stress this: you have to look at each case on its individual facts. The Downey case has a series of individual facts that are very particular to it. I have no idea—and I do not suppose anybody on this Committee has any idea—whether there are any other cases of this type. If there are other cases of people being wrongly given letters, is it an isolated error or a compounded error, as is the case here? I just do not know.

Q2196 Ian Paisley: Last week, we did find out that a letter was issued mistakenly and then revoked.

Mr Grieve: That shows the process of a revocation working.

Q2197 Ian Paisley: If there was—I stress if there was—legislation put in place to remove these letters, how likely would an abuse-of-process case then be, and how likely would it be to succeed?

Mr Grieve: You are asking me to answer a question that is probably unanswerable. Forget for a moment about the legislation. If a letter is revoked, then I would expect a prosecution to be possible, although if the consequence of the revocation is that the individual concerned is arrested before they have an opportunity of leaving the jurisdiction because of the revocation of the letter, then there will be an abuse of process argument that will be brought forward. It would be said that they had acted to their detriment and not been given the opportunity. But if somebody has their letter revoked, leaves the jurisdiction and comes back voluntarily 12 months later for some other reason and is arrested, then the letter cannot, for obvious reasons, in my judgment provide a protection for them anymore.

Sitting suspended for a Division in the House.

On resuming—

Q2198 Ian Paisley: It was a very interesting session there. I noticed Gerry Adams just avoided going into the Division Lobby by about 10 yards, so who knows what progress is being made in this place? Anyway, Mr Grieve, I have one last question. I do not want to pre-empt the outcome of the Hallett review on 17 July, but are you expecting any actions to flow from your Department as a result of that review?

Mr Grieve: I am not sure whether there are any actions from my Department that need to follow. It all depends on what the Hallett review says. Clearly, the Hallett review is going to look at both what happened and why it happened. My understanding has also been that the Hallett review is going to look at whether there are other instances in which this has happened. Clearly, if there were found to be other instances, it is going to have to be a view taken by Government, and particularly by the Northern Ireland Office, how one responds to that. You have been raising some of those points with me. My Department may have some involvement with this, but, as I and Lord Goldsmith have tried to explain, the reality is that my Department provides legal advice. It also provides a channel of communication between the prosecutors and the Executive, which otherwise would not exist. That is one of the constitutional roles of the Attorney-General. That is what we did in the course of these events. It is not departmentally for us to take a particular lead on anything, although, if we are asked to co-operate as a result of anything that arises out of Hallett, we will of course do so.

Q2199 Oliver Colvile: First of all, thank you very much indeed, Dominic, for coming to see us. Can I ask you a number of questions? When did you sign off the proceedings for this to go to court?

Mr Grieve: Offhand, I do not know, but we can provide the date. I would have had to sign a fiat in respect of the Explosive Substances Act. We did it the next morning, Kevin McGinty reminds me. He was under arrest; we did it the next morning. It was done, obviously, because he was in custody. The custody time limits had to operate. We moved quite swiftly. I can give the Committee the date. The fiat is a matter of public record.

Q2200 Oliver Colvile: That would be very helpful. He comes back to this country on 19 May 2013. He then says, “I do not know why you are arresting me, because I have got this letter.” Did you not think to yourself, “Well, I had better find out what we actually wrote to him in the first place”? Did you find out what was written to him?

Mr Grieve: I think that the letter was made available to us. I cannot remember. Again, you would have to ask Mr McGinty about that. I certainly was aware that he had a letter, and I was aware—we have already discussed it—about the OTR scheme, because I had been briefed about its historical existence at the time that I came into office. Fortunately, I had Mr McGinty in the office, able to come and give me details and chapter and verse about a great deal of it, so, certainly, at some point, we saw the letter.

Q2201 Oliver Colvile: Despite the fact you had seen the letter, you made a judgment that that probably did not really count.

Mr Grieve: When a prosecutor is faced with possible challenges about abuse of process, you can make judgments. You also keep those judgments under review. You may think there are perfectly good grounds for charging this individual, and then we can look more into the background to see whether there is any justification. Of course, the alternative to charging him is that he goes, in which case you have lost your defendant and you may not be in a position to re-arrest him. There are grounds on which he can be charged: public interest grounds; evidential test met because we have the evidence, which has been kept, so to speak, in cold storage for many years waiting to be used should he ever become available. We wished to go ahead, but of course we were also going to be doing more work. Indeed, we did more work, as I explained, right through the entirety of the abuse-of-process argument, which is exactly what I would have expected.

Q2202 Oliver Colvile: I may have misunderstood what you said, but you said you were not surprised when the judge made the pronouncement he did.

Mr Grieve: I said two things. Firstly, I was not surprised that, as the process unfolded, we got more information about the background. What I had not been aware of at the beginning, for example, was it was clear there had been a mistake, but the compounding of the mistake by the fact that no action had been taken on it was not something I was aware

of at the start. That only emerged as we started looking at the information available. It was always in our mind that there was a risk that an abuse-of-process argument would succeed, yes.

Q2203 Oliver Colvile: The point is this, though. He arrives back here. You are aware about the letter. You press ahead with the court case. You know that the letter that he has been sent might be a potential issue as far as producing a successful prosecution, yet you continue to go ahead with it. How does that stack up?

Mr Grieve: I think it stacks up completely. We took a view that there were reasonable prospects, that the case met the evidential and public-interest tests and that, in addition to that, there were good reasons for thinking that, while we could not be certain about the outcome of an abuse-of-process argument, nevertheless, we had a justified case to put to the court that would make the court conclude that an abuse-of-process argument was unjustified and therefore dismiss it, which would allow the trial to take place. That was our approach, but, clearly, you keep the matter under review. At no point is it more important to keep it under review than when the argument has taken place and the judge has crystallised the arguments and presented his own reasoning about it, including his view that it was an abuse of process. Then you have to review it again, and that is what we did.

Q2204 Oliver Colvile: My understanding is that, by 2010, by the time the coalition came to power, a lot of these matters had been devolved back down to Northern Ireland, yet the Whitehall Government continues to express a very keen interest in what is going on. Certainly, David Ford, who is the Justice Minister, claims that he knew nothing about this at all. Surely he should have been told at a much earlier stage. Why is it that the Whitehall Government was continuing to take an interest in this issue when it was a devolved matter?

Mr Grieve: I will do my best to reply to that in just a second, but can I, first of all, ascertain that that is not linked to your earlier question? The two are completely unrelated, so I would just say that. They are two different matters.

To come back, then, to your second question, the devolution process to Northern Ireland is an unusual one; that may be a fair way of describing it. The structures that were put in place as a result of the Good Friday Agreement, which were agreed by and follow on the referendum, devolved and eventually led to a devolution of power to Northern Ireland, but it is not as if the Northern Ireland Executive replicates, in devolved form, the systems of Westminster governance. For example, when you are looking at the prosecutorial or justice functions of the state, the powers of the Justice Minister in Northern Ireland are very different from those exercised by the Lord Chancellor or the Secretary of State for Justice here. The relationship between the state, the police and the prosecutorial systems are entirely different.

You heard from John Larkin, the Attorney-General for Northern Ireland. The Attorney-General for Northern Ireland has no superintendence responsibilities over the Public Prosecution Service for Northern Ireland of any kind whatsoever. The DPP for Northern Ireland, in terms of prosecution, essentially combines my role with his, all rolled into one.

On top of that, he is wholly independent of the structures of the Northern Ireland Executive, apart from the fact that he is appointed by the Attorney-General for Northern Ireland, although that is done, in fact, by an Appointments Commission, as I think John Larkin explained to you. He is, in that sense, an entirely independent entity. Of course, the PSNI has answerability to its board, but its relations with the devolved Executive are quite different.

On top of that, you do not have collective responsibility of the Executive, which, in Westminster governance terms, is very unusual. It was set up to meet and respond to the peace process and to try to bring violence to an end. You are absolutely right that, in 2010, there was a devolution of justice to Northern Ireland, including the removal of my superintendence role, the independence of the Public Prosecution Service and, of course, the policing structures, so that those were operating independently. It can be argued, and perfectly clearly argued, that, if somebody wishes to get a letter of the type that we have been looking at, post-2010, then the place to go is to write directly to the only two entities that could actually respond, because there is no filter channel through the Northern Ireland Executive, which would be the DPP and the police. How they wish to weigh the public interest and respond to that themselves would be a matter for them.

That said, it is perfectly obvious that, for the purposes of government of Northern Ireland, particularly if there is a national security angle, I still have a role to play because I am still Advocate General for Northern Ireland. Of course, the DPP for Northern Ireland is free to consult with anyone he likes in terms of how to approach any particular problem that may come his way. The administrative scheme, as you have heard, had been operating for some time under the previous reserved system, and the method that was adopted post-2010, which, as I have always understood it, mainly concerned matters that had been referred pre-2010, was to follow the previous practice. I have to say I do not see anything particularly wrong about that, but it is right to point out that the structures of responsibility had undoubtedly changed post-2010 and that, certainly initially, the systems, for whatever reason, were not reflective of that. That is not to say that the systems were wrong. Ultimately, however, that is a matter that has to be determined by the DPP for Northern Ireland and the police, because of their independent status.

Q2205 Oliver Colvile: Forgive me, but how is he able to do that if he does not know anything about it?

Mr Grieve: I am not sure that is right. As I understand the matter, there is a historic memory within the Public Prosecution Service for Northern Ireland that has been operating and playing a role in the administrative scheme for a long time.

Q2206 Lady Hermon: What was the statutory authority for the coalition Government here, after 2010, after devolution of policing and justice, to have retained their involvement in the OTR scheme? I know that John Larkin, the Attorney-General for Northern Ireland, was unable to give us a straight answer. In fact, he just could not give us an answer to that at all. Maybe he had not thought of it. What is the answer?

Mr Grieve: Maybe he had thought of it a great deal; I do not know. The fact of the matter is that it is open to anyone to channel a communication through to the DPP for Northern Ireland and the PSNI to ask them whether they will cooperate in doing something. The status of the individuals doing it is rather irrelevant, which is why the point has been raised as to whether, in future, if this were to continue in any shape or form, it should be done directly to them.

Q2207 Oliver Colvile: I rather agree with you; it seems to me there is some confusion in this. This may be a non sequitur as well, but have you had much correspondence or communication with Sinn Féin? Have they spoken to you at all?

Mr Grieve: No, never. I have never had any communication from Sinn Féin. I do not think I have had any communication from Sinn Féin, certainly in my official capacity as Attorney-General, since I took office in 2010. I am not aware of it, and certainly not over this. Kevin will correct me if I have got it wrong, but I am not aware of having had anything.

Q2208 Oliver Colvile: The reason I ask that question is that I would be very interested to know whether or not the coalition Government or Ministers or representatives within it have since had representations from Sinn Féin. It appears, to my mind, that most certainly before 2010, they were quite regularly in touch, not only with Number 10, but Jonathan Powell, maybe Tony Blair and the Secretaries of State as well. I just wondered whether or not they felt they could continue to have what I would claim to be a slightly cosy relationship with the Government.

Mr Grieve: I do not think it is the case, and I would be a little bit surprised if the Secretary of State for Northern Ireland has not had contact with the Deputy First Minister in the course of their periods in office since 2010.

Q2209 Oliver Colvile: I mean on this specific issue, though, to do with on-the-runs.

Mr Grieve: You would need to ask the Secretaries of State.

Q2210 Oliver Colvile: Do not worry; we will. When we met with John Larkin when we were in Belfast, one of the points that I asked him was whether or not he felt that some of these actions had ended up potentially perverting the course of justice in relation to the victims who now, from what we heard from them, feel rather let down. They got nowhere. He said, yes, he thought there was an argument for that. Would you agree with that, or do you think that is not the case?

Mr Grieve: I do not think that the process by which the letters to the OTRs were issued at any time has come anywhere remotely close to a perversion of the course of justice. A point has been made: if it was, then the letters would be unlawful. I have stated my view, and I have explained to you at the very outset. From a point of view of a prosecutor trying

to keep a clear line on their work, the process by which these letters had been issued is not a comfortable one. Mr McGinty made his own comments before you, which I have no reason to disagree with, and, indeed, every reason to agree with, which is one of the reasons why, when I came to answer the urgent question, I was very conscious that this was a process that had gone wrong. There were risks inherent in it. It has been acknowledged by Lord Goldsmith, when he gave evidence to you, that there were risks inherent in it, which they tried to guard against. In this case, they had failed, but that does not amount to an attempt to pervert the course of justice, unless it were to be shown that somebody had deliberately, in some way, sought to engineer these letters in order to try to give somebody an ability to get off. It would be a very convoluted argument, and nobody has ever suggested it.

Q2211 Oliver Colvile: The final question I would ask you is: what advice would you give to the victims' families as to how they might proceed? At the moment, they feel they have no way in which to bring a course of action. It is rather similar to the question I asked Lord Goldsmith. What advice would you give them?

Mr Grieve: In the case of the Hyde Park bombing, I have had an opportunity to meet with the relatives of victims, which I did after we took the decision that we were not going to proceed to appeal. I had an opportunity talk to them. Obviously, as has been discussed previously, these letters are no bar on civil proceedings. In terms of criminal proceedings, in view of the judgment we now have, the letter is a bar on Mr Downey being prosecuted for the Hyde Park bombings, unless other offences were to come to light or there was some other very significant material change. I certainly did not attempt, when I saw them, to suggest that somehow there was some other avenue over this case, because, in my judgment at present, this case is at an end.

Q2212 Kate Hoey: What further evidence would be needed? There is evidence. We know there is evidence. Everybody accepts there is evidence. What further evidence would be needed to get the case reopened?

Mr Grieve: As a prosecution has been attempted and has been stayed, we are in a rather different world from if no prosecution had been attempted. I am not sure there is any further evidence on this matter that would serve to transform the position, because there has been a stay granted. I come back to the point I made earlier about the difficulties of getting a stay lifted. I do not think it is useful for me to comment further on that.

Q2213 Chair: Generally, though—not with Mr Downey, but with anybody else who has received a letter—what would you determine new evidence to be? What is the definition of “new evidence”?

Mr Grieve: New evidence can be almost anything. Remember that the purpose behind the writing of the letters was to provide an indication or not, as the case may be, that there was no current evidential basis on which a person could be prosecuted. The point has been made already to the Committee about where a person in reliance on that were to return to

the jurisdiction, but subsequently some new evidence came to light. Remember, the letters, when they were written, were not about particular offences. They were generic. They were not saying, “We cannot prosecute you for a particular outrage”. They were just saying, “There is no evidential basis for prosecuting you in this jurisdiction at the present time on anything”. Should that position change, and any evidence comes to light, particularly in relation to terrorism offences, but anything, of course, in those circumstances—we have made the point—it would be possible to bring a prosecution, as long as you could show that that evidence was not available at the time the letter was written.

Q2214 Chair: If it is in a police file when the letter is written and it is missed—

Mr Grieve: That could be different from a new witness coming forward and saying that they can identify a person as having committed a crime, yes.

Q2215 Chair: If it is in the file when the letter is written but it is missed, is that not new evidence if it turns up a year later?

Mr Grieve: It all depends how and where it was missed. We have to be a bit careful, but, if it is within the knowledge of the prosecutor, then the prosecutor is fixed with that knowledge, and I do not think there is any way out of that. If it is something that is not within the prosecutor’s knowledge, it is new evidence.

Chair: This is where the writing of the letter is risky, isn’t it, because it is not clear at all?

Mr Grieve: Lord Goldsmith made that point as clearly as I could have wished, but back then, if I may say so—I say this without acting as an advocate—that has to be weighed against the significance of these letters in terms of taking the peace process forward.

Kate Hoey: A form of blackmail.

Mr Grieve: That is an intensely political issue. When I read the evidence of Peter Hain or John Reid, I certainly am mindful, before I start passing judgment one way or the other, that they were having to take Northern Ireland from a position where hundreds of people, certainly over a decade nearly 1,000, were killed to a decade where under 100 were. These are very big differences

Q2216 Nigel Mills: That last comment leaves us in the usual dilemma on these things, and whether these were essentially meaningless things that anyone could have got or were so critical to the peace process that they justified pushing the boundary a little. Naomi asked it earlier. It is very hard to square those two situations. Either these things were offering no new rights that were not already available or they were doing something that could move the peace process on.

Mr Grieve: They were of value, because they offered the prospect of individuals who had self-exiled out of the jurisdiction because they believed or feared they would be

prosecuted the reassurance that they could come back into the jurisdiction and pursue their private and family lives and careers, whereas otherwise they would not have done so, because they believed that they were at risk of prosecution. In one sense, the state that wrote the letters was losing nothing, because there was no possibility, at that time, of these individuals being prosecuted for anything, and the individuals were gaining something and, seeing that they appeared to be or were claimed to be active participants in and supporters of the peace process, it was part of the process of trying to bring a very bloody and very difficult chapter in Northern Ireland's history to a close, and trying to bring about a situation in which violence abated and stopped. These are very difficult issues.

I was elected in 1997 and watched the peace process, not in its entirety; those of you were here before 1997 will know even more about it, but you can see how difficult it has been. I used to attend British-Irish Association conferences with people almost chucking things at each other and real vast levels of emotion, and watched how that has changed over a period into an ability for much greater dialogue and cooperation, but there are victims in this process; of course there are. There are very large numbers of people, both in Northern Ireland—I know some of them—and in this jurisdiction, in here, who have been left without children, parents, brothers, sisters. It is a tale of human folly.

Q2217 Nigel Mills: The difficulty is the way you put that would lead someone to think perhaps the public-interest test would therefore not have been satisfied and we should have said, “Well, we should just draw a line under all these and let them all back in to conduct the peace process”.

Mr Grieve: Parliament had been asked to consider some form of amnesty and had taken the clearest possible decision to reject it. Prosecutors are there to see that the rule of law is enforced. Of course, there may be public-interest tests surrounding particular cases, and past attorneys general have had to exercise quite complex reasoning on public interest. Subject to that caveat, if there is no amnesty, then it is normally in the public interest for an individual to be prosecuted, and that is why this prosecution was attempted.

Q2218 Nigel Mills: You have said that this arrangement was problematic for prosecuting authorities and attorneys general. I go back to the questions I asked Lord Goldsmith earlier, which I think you heard, about how robust the work behind producing these letters needed to be—some were issued in your time—for you to feel confident that this was the right side of being problematic rather than the wrong side of being unlawful.

Mr Grieve: It is clear that some of the letters were issued post-2010. Until the Downey case came along, there had never been, as far as I am aware, a suggestion that letters had been wrongly issued. The risk was there. Lord Goldsmith acknowledged that in the evidence he gave to this Committee. That is something that I am sure was factored in at the time that this was originally considered. I have no reason to think that I differed from my predecessors in any way in seeking to highlight the problems that such a process can undoubtedly pose, when you want to keep the purity of the prosecutorial system. Against that has to be weighed the difficulties and convolutions of the Northern Ireland peace

process. Those of you who are from Northern Ireland or know Northern Ireland intimately will know just how convoluted this has been.

Q2219 Nigel Mills: The question I was trying to ask was, if the process was so superficial, it must be very hard to be confident that there would not be some evidence sat in a file somewhere that was going to be overlooked. Would that not make you think that the risk was too high that this would make the prosecution process so impure that the damage would be greater than the good that was trying to be done?

Mr Grieve: No one, before Mr Downey came along, had ever suggested to me that they thought that the process that was being followed before a letter was written to an OTR was not rigorous. Mr McGinty was able to explain to you in evidence how it was done. Obviously, we can only talk about the coordinating role because of the way it passed backwards and forwards through the Attorney-General's office. I think you heard some evidence about how it was supposed to be done in the PSNI: looking at the records on computers; the fact it was checked through by the police; they were supposed to check not just Northern Ireland but also other police areas and jurisdictions within the United Kingdom; the fact that it went to the Public Prosecution Service, who checked their records to make sure they had nothing in their records about it, and so on. I have to say, then, that I do not think, from what I have seen, that it was, in any way, a casual process. Lord Goldsmith was commenting earlier about complaints that it was taking too long, which came from time to time.

Nigel Mills: In the first phase, rather than the Rapid phase.

Mr Grieve: As I say, because I had no direct involvement with the process, I cannot comment as to whether I think it was slapdash, but I have to say I have seen nothing to suggest to me that this was intended to be a slapdash process or, indeed, was being applied in a way that somebody would say, "This really is very slapdash". It is, however, possible that I may be wrong about that, which is, in a sense, one of the things which Lady Justice Hallett may be able to help us on.

Q2220 Nigel Mills: If it was all fine, why did the Government stop the scheme when the Downey case broke? Why would we not just continue issuing these things if there is no problem?

Mr Grieve: I think, if I may say so, you may wish to ask the Northern Ireland Office about the precise way in which the scheme ran down and stopped, because I was under the impression—but I may be mistaken about it—that, although there was a desire to finish the original names that had been put forward, there was a decision, as I understand it, and a view taken before Downey had come along that this was no longer a matter that should be handled by the Westminster Government and that, if it was to be continued, it would have to be done elsewhere.

Q2221 Kate Hoey: When did the scheme actually finish?

Mr Grieve: I do not know. You will have to ask the Northern Ireland Office.

Q2222 Kate Hoey: Sinn Féin said to us, in their written evidence—they are too frightened to come in front of this Committee and give verbal evidence—that three individuals were confirmed as cleared by the Northern Ireland Office on 3 March 2014. Did you know that?

Mr Grieve: No, I did not.

Q2223 Nigel Mills: Just one last question: I was just reading the nine policies about the law and justice system that I think your office has. When you look at things like “creating a transparent justice system”, “protecting the UK against terrorism”, “making sentencing more effective” and “helping and supporting victims of crime”, this kind of secret process flies in the face of pretty much all of them, does it not? It does not feel like a very happy place to be, does it?

Mr Grieve: I am not sure I agree with you about that. To begin with, I cannot speak for my predecessors but I do not think that what was being done by—Whitehall cannot operate without cooperation within the Civil Service and, if the method by which there is a channel of communication between the Public Prosecution Service for Northern Ireland and the police, and the Northern Ireland Office, has to be via the Attorney-General’s Office, or at least not directly, then, unless it was the case that what was happening was unlawful, there would have been no reason for my office not to do it. In those circumstances, it would be a proper thing for them to do, and I do not think it in any way detracts from the other things.

I can only go back to saying what I said originally: that it was also done in the full knowledge that this process, when it has been running, had an undoubted impact on what I call the overall integrity of the prosecutorial services. This was highlighted over and over again, not because it prevented a prosecution taking place—that was not the intention—but because it asked prosecutors to do something which was undoubtedly unusual. If I were to go over to New York and ring up Bernard Hogan-Howe and say to him, “Can I fly back tomorrow? I am concerned I might be arrested at Heathrow Airport on arrival,” I think he might say, “You are the person who knows why that might be the case, not me. Goodbye.”

Nigel Mills: That is the point, is it not?

Q2224 Lady Hermon: Could I just briefly take you back to a really important point, and that is—I am repeating myself here. I did mention that, when the question was asked of John Larkin, currently the Attorney-General for Northern Ireland—what statutory authority do the British Government and the Northern Ireland Office have? What is their statutory basis for continuing with this scheme post the devolution of justice and policing to Northern Ireland? In part of your response, after a long explanation—it was very interesting but it was a long explanation—you mentioned the words, “It was the practice”. You did not mention “custom

and practice”, thank goodness, but you did say, ‘It was the practice, so we continued with it’. What statutory authority did you have for doing so?

I ask that because it has been suggested at senior levels—I think the First Minister of Northern Ireland has certainly suggested it—that the letters that were sent out post the devolution of policing and justice were the British Government and the Northern Ireland Office acting ultra vires; that you had no statutory authority for doing so. Do you want to address those points?

Mr Grieve: I think that, in one way, I am not in a position to address it. If somebody thinks that the Government is acting ultra vires, they must act upon it. I would, however, simply say this: the United Kingdom is a country subject to parliamentary sovereignty here, and with a United Kingdom Government located here. The United Kingdom Government can devolve power elsewhere, if it chooses; it has done in the case of Scotland; it has done in the case of Northern Ireland; and it has done in the case of Wales, and all in different shapes and forms. I cannot think of anything that prohibits the United Kingdom Government from communicating with state organs around the United Kingdom unless there is something in statute that prohibits it. If I may say so, I do not think there is anything that prohibits it in this particular case.

Moreover, I think that the other thing that may be relevant is that I do not think that there is any other mechanism for consultation provided. Because of the different role of the Northern Ireland Executive, there is no role provided for the Northern Ireland Executive to replace the United Kingdom Executive in its dealings with the Public Prosecution Service and the police.

Q2225 Lady Hermon: Attorney-General, you are telling this Committee that it is proper, acceptable and right, even when we have devolution—we have a First Minister, we have the devolution of policing and justice and we have had the Justice Minister elected since 2010—that, behind their backs, because they were not aware of this administrative scheme, the British Government—

Mr Grieve: I cannot comment on whether or not they knew or they did not know.

Q2226 Lady Hermon: We have taken evidence and I would not call into question the integrity or honesty of David Ford or, indeed, Peter Robinson.

Mr Grieve: I was not suggesting—

Lady Hermon: No, and they have told us quite clearly they were not aware of this administrative scheme. How can that be right? How can it be justified that the British Government and the Northern Ireland Office continued, behind the backs of the First Minister and the Justice Minister, post the devolution of policing and justice, on such a controversial and critical issue as dealing with OTRs? What was the authority for doing so?

Mr Grieve: What was the authority—

Lady Hermon: The legal authority.

Mr Grieve: What was the legal authority for not doing so? Forgive me for reversing the—

Lady Hermon: No, you are the Attorney-General; I am not.

Mr Grieve: Forgive me, because you are raising, if I may say so, a perfectly valid political point—and, doubtless, this may be of great interest to the Committee—about the way in which devolution has taken place to Northern Ireland. I am not seeking to prevent you from doing that. All I am saying is that, whilst I have not examined the subject closely—and somebody may persuade me otherwise—I would point out, just to dot the Is and cross the Ts, that, in 2012, the point was made that the involvement of the Westminster Government in this process, in the light of the way devolution has taken place, is, arguably, no longer valid and the requests should go straight to the PPS and the DPP for Northern Ireland, rather than come through the NIO.

I have not seen anything to suggest that the NIO is forbidden from communicating with the DPP for Northern Ireland to pass on requests from Sinn Féin or anybody else for consideration as to whether a letter of comfort can be supplied through the PSNI and the Public Prosecution Service, any more, for that matter, than other people might be able to make such an approach as well. I just do not think that there is anything that says that that cannot be done.

Q2227 Lady Hermon: You are not, however, able to give the Committee any legal authority for this practice to have continued post the devolution of policing and justice. I do not want to rehearse it but I am just summarising what you said.

Mr Grieve: Let us put this way: there is certainly nothing in the devolution statute that has been brought to my attention—but, again, somebody may prove me wrong—that says that this is a practice that will continue. Bear in mind, with one exception: that the issue of national security is reserved and, indeed, I keep express powers as the Advocate General for Northern Ireland in respect of matters concerning national security.

Q2228 Lady Hermon: That is precisely the response that I had anticipated from you, Attorney-General, that you would have said—“We continued on the grounds of national security”—but, interestingly, that is not what you have said.

Mr Grieve: National security could come into it but I certainly would not want to mislead this Committee. Whilst national security could arise in these cases, in some cases it would not.

Q2229 Lady Hermon: That is really very interesting, because I am just reading from the evidence that was given to us by the very recently retired Chief Constable for the Police Service of Northern Ireland, for whom I had enormous regard so I am not being critical; I am simply reading the evidence he gave to us as a Committee. That was in Stormont, when we took evidence in the Senate Chamber. He explained, “This was not a devolved matter when I became the Chief Constable. This was a matter relating to terrorism, which I think can be argued fits within the national security domain.”

Mr Grieve: Yes.

Q2230 Lady Hermon: You have just told us, however, that not all of the cases of the OTRs were to deal with national security. That could not have been a blanket reason.

Mr Grieve: Some may have been related to national security but I am not suggesting that all of them necessarily would.

Q2231 Lady Hermon: So we have a grey area. There was another point that you touched on and which I did directly ask your predecessor in terms of the witness here this afternoon, Lord Goldsmith. Again, there has been some speculation that the OTR scheme was open to anybody. Last week, Lord Reid mentioned a particular case which involved a senior member of the SDLP and suggested that it was open to anyone to phone up with a list of names and give their dates of birth, and they would go through the scheme. Is that, to your knowledge, correct?

Mr Grieve: I do not know. I do not have the slightest idea. The scheme is not reserved for alleged Republican terrorists; it is quite clear.

Kate Hoey: Gerry Kelly asked—

Mr Grieve: The system was initiated by Gerry Kelly. I will check but the information I have always been given is that, with one possible exception of somebody who put a name forward that was then dropped or not pursued, it has always been alleged IRA terrorists—it may have involved INLA as well; I do not know—who were the people whose names were put forward.

Q2232 Lady Hermon: They were alleged Republicans, so this scheme was used exclusively by Republicans.

Mr Grieve: As far as I am aware, yes.

Q2233 Lady Hermon: I will repeat the question, because I did say, if I could catch your eye, I would ask you if you would very kindly confirm this to the Committee, because the Attorney-General's Office is one of the very few organisations that has the entire list. We as a Committee are most unlikely to see the entire list of the 228 recipients. May I just ask you, as the current Attorney-General, to confirm to this Committee that it was used exclusively by Republicans, and that British soldiers, for example—there has been some suggestion by Sinn Féin members—

Mr Grieve: No, my understanding is it has been used solely by Republicans.

Lady Hermon: Thank you. Could you double-check that for us?

Mr Grieve: Yes, we will, of course.

Lady Hermon: That is so kind, thank you.

Mr Grieve: That was the information. I have tried to check today with Mr McGinty, but that is always what I have been told. I am always cautious. You will remember what I said when I answered the urgent question: I expressed caution then because I am always prepared to be surprised and to find out that something exists that I do not know about. Doing my best for the Committee, however, that is the information I have.

Lady Hermon: I am very grateful to you.

Q2234 Oliver Colvile: About 10 minutes ago, you said that, if you had gone to the United States of America or gone to New York, and you picked up the phone to the Chief Superintendent here in London and said, “Is it safe for me to come back?” he would have just turned around to you and said, “You must know that answer better than anybody”. Was it right, then, that the Northern Ireland Office wrote to Rita O’Hare saying, “If you come back to this country, you will be arrested”?

Mr Grieve: I have not seen the letter that was written to Rita O’Hare. Did the letter say to Rita O’Hare that she would be arrested or did the information just say that they were not prepared to provide a letter of comfort to her that she would not be arrested? Rita O’Hare has featured on a number of occasions in this process. What is quite clear, I think, is that nobody has been prepared to give a letter of comfort to Rita O’Hare.

Q2235 Naomi Long: If I could briefly follow up on the point that Lady Sylvia was making with respect to devolution, just to clarify: the Secretary of State initially informed Parliament that the scheme was devolved. That was then corrected to say that the scheme was not devolved. Could you just be clear: did you give any advice at that time as to whether or not the scheme had been devolved? Were you involved in that process of being able to judge whether or not it was devolved?

Mr Grieve: No. Just to make the position clear, I will come back to what I said earlier, so that the Committee should understand. Between 2010 and 2012, I was not aware of the operation of the scheme under the current coalition Government. Maybe something was mentioned to me and I have forgotten, but it was never brought to my attention and I was not required to focus my mind on it.

When it came to my attention in 2012, one of the issues that was raised—although, bear in mind there is the wind-up of the earlier cases, so there is a transitional issue here as well—was whether the Westminster Government should be doing this anyway. I think it is right to say—we have touched on it; Lady Hermon was asking me the questions earlier—I think it is a grey area. If I may say, this is not the first time that devolution chucks up grey areas. I spend rather a lot of my time as Attorney-General—not so much in the Northern Ireland context but certainly in the context of other parts of the United Kingdom and, in particular, more recently, Wales—noticing just how grey some of the areas are in respect of what is devolved and what is not.

I do not see this, if I may say, as some sinister case-specific issue; I just happen to think that this does look to me to be slightly grey. National security is undoubtedly reserved,

and national security is a very wide-ranging concept; equally, however, it should not be extended further than it ought to be. When you have devolution set up, the sorts of teething problems that it can produce, quite innocently, are likely to be quite complicated. In some ways, I am rather surprised that Northern Ireland's devolution settlement has not produced more, but then Northern Ireland is rather different, for a variety of reasons, because the governmental structures that have been set up are so unusual.

Chair: We will perhaps not go there now, if you do not mind.

Q2236 Naomi Long: That did not really answer my question, with all due respect.

Mr Grieve: I am sorry. Put it to me again.

Naomi Long: The question that I was asking was whether or not you were involved in the discussions as to whether or not this scheme specifically was or was not devolved to the Northern Ireland Executive and whether you gave advice on that specific point.

Mr Grieve: Sorry, I thought I had answered your question, which was that I expressed a view about whether it should be treated as being devolved or not, although that is influenced by the question as to whether national security comes in to an individual case or not.

Q2237 Naomi Long: Yes, I understand that, and was your view that it was devolved or that it was not devolved?

Mr Grieve: I am not prepared to tell you that. I am sorry, but that is where the law officers' convention is going to kick in. That is where I draw the bottom line. I have really pushed the elasticity of this as far as I can. The issue was raised and the issue was considered. I simply note that the Northern Ireland Office, as you have now told me, is no longer doing this.

Q2238 Naomi Long: If I could, then, Chair, ask a different question: your office continued to be involved in the process after devolution of policing and justice. Is that correct?

Mr Grieve: Yes, my office continued, from 2010, certainly to 2012—and I can check with Mr McGinty; it may even have been beyond in the wind-up that followed—in continuing to act as the process point for the communication between the PSNI and the Public Prosecution Service for Northern Ireland, and the NIO, to whom—and it was to the NIO—the letters of request were being sent.

Q2239 Naomi Long: Your office continued to be in the process. Can you cite any other examples where your office has continued to be involved in issues that were devolved since the devolution of policing and justice?

Mr Grieve: Yes, I think is the answer. Although I cannot give you chapter and verse because it is confidential, the devolution of policing and justice still leaves my office with work to do in respect of Northern Ireland. That is one of the reasons why I try to go over from time to time. It is also important to maintain channels of communication but, yes, unfortunately, there are still issues.

It has to be said, I think, that my predecessors like Lord Goldsmith went over to Northern Ireland very frequently. There was a huge amount of work for them to do. Mr McGinty, I think, used to go over once a week. The big change for him and for me is that my arrival in 2010 coincided almost to the day with devolution, and it rapidly became apparent what a profound impact that was going to have on the workload of the Attorney-General's Office and changed it quite radically.

There are, however, still issues, particularly surrounding national security and legacy issues relating to the troubles, which do come to my office and have to be processed through it. It is not as if the processing of Northern Ireland issues is unheard of, and that is why I have the title of Advocate General for Northern Ireland.

Q2240 Naomi Long: That was not the specific question. The question was on matters that have been devolved. I am talking about those elements of the justice system which have been devolved. Are there are examples of where you and your office continue to exercise any influence, interest or other activity on issues that have been devolved, not those which are reserved?

Mr Grieve: Yes, I understand your question. It is a slightly difficult question to answer because, if you were asking me a specific question such whether we were engaging in detailed micro-management of devolved issues on the judiciary or anything like that, the answer is no. We are just not. Do we take an interest in the justice system and policing system in Northern Ireland? Yes. Ultimately, the United Kingdom Government has a responsibility for Northern Ireland's good governance, and devolution does not alter that. That is an absolute underpinning principle. There are reserved powers to the Westminster Government, and the Westminster Parliament is entitled to take an interest in Northern Ireland, just as precisely this Committee exists for that purpose. I would be failing in my duty if I did not take an interest in what was going on in Northern Ireland and if my office did not. I am ultimately an upholder of the rule of law and, in my post as Advocate General for Northern Ireland, the rule of law ought to be central to what I am trying to help facilitate.

Q2241 Kate Hoey: As you just said, you take a great interest still. Can you just tell us what your understanding of this whole question of the royal prerogative of mercy, or pardons, has been? We have been getting different answers to questions from the Secretary of State, where files for 10 years were lost; we have your responses. How were you involved and how many times have you been involved with any royal prerogatives of mercy in Northern Ireland?

Mr Grieve: We are not.

Kate Hoey: You are not involved.

Mr Grieve: I have had no involvement with the royal prerogative of mercy in Northern Ireland since I took office. I can tell you that quite categorically. I am not saying it could never arise but I am not aware of ever having had any issues surrounding the royal prerogative of mercy in the Northern Ireland context brought to my attention.

Q2242 Kate Hoey: Before devolution, would the Attorney-General's Office have had an involvement?

Mr Grieve: It could potentially because, if somebody wished to exercise the royal prerogative of mercy, any exercise of the royal prerogative has to be done on a consistent legal basis and not capriciously. Somebody might have come along and asked the advice or opinion of a law officer, but I have no idea whether that ever happened or not.

Q2243 Kate Hoey: You may have seen the answers to the questions that showed that literally hundreds of people have been given royal prerogatives of mercy in Northern Ireland.

Mr Grieve: Yes, I saw them.

Q2244 Kate Hoey: Did that surprise you?

Mr Grieve: I do not think I am ever surprised.

Q2245 Kate Hoey: The previous Secretary of State, John Reid, was very surprised, he said, when he saw the figures.

Mr Grieve: I do not know the circumstances in which those individuals benefited from the royal prerogative of mercy.

Q2246 Kate Hoey: What is your understanding of who gets a royal prerogative of mercy? Presumably, it is the same in Northern Ireland, Wales and Scotland.

Mr Grieve: It can vary enormously. It can vary from people who get the royal prerogative of mercy to enable them to be released from a sentence two days before Christmas, because otherwise, they could not be released until Boxing Day, to people who may get the benefit of the royal prerogative of mercy for high reasons of state.

Q2247 Kate Hoey: You do not, then, think there is anything particularly important in these royal prerogatives of mercy and pardons.

Mr Grieve: I have no idea. It is not that it is necessarily well outside my remit but it is well outside my state of knowledge in coming before this Committee this afternoon.

Q2248 Kate Hoey: You would, though, accept that it is just another area that, now that it is all out in the open, the Northern Ireland public—

Mr Grieve: Yes, but I think you will find the royal prerogative of mercy may also be used in England and Wales as well.

Kate Hoey: No, it has been used very—

Mr Grieve: It is unusual but I really cannot comment on why the royal prerogative of mercy may or may not have been used much more extensively in Northern Ireland, although it is not difficult, I would have thought, to have an idea as to some of the complexities that Northern Ireland has had.

Q2249 Kate Hoey: Can you comment, though, on the feeling that that must give the public in Northern Ireland—that another whole area seems to have been kept hidden from them until all these things came out? The Irish Government knew about OTRs; the British Government knew about OTRs; Northern Ireland politicians leading the peace process from the pro-Union side did not know about any of this. Can you understand why a very large number of people in Northern Ireland feel that this whole process has been incredibly one-sided and that it is still potentially one-sided because of the alleged—and perhaps real—threat from Republican dissidents, and that justice will never be done while people can threaten and—

Mr Grieve: Yes, of course I can. Of course I can understand that but, in a sense, you answered your own question because you highlighted the very unusual conditions that prevailed in Northern Ireland between the late 1960s and the ceasefire—and even beyond—and which still colour and underpin some of the problems that Northern Ireland has. With the levels of violence that existed in Northern Ireland, at times I think it is almost miraculous that we succeeded, despite all the difficulties, in maintaining the rule of law and even the basic structures of a democratic and accountable society. That is the legacy of the violence. In a sense, the great aspiration for Northern Ireland, is it not, is that it can develop so that it not only puts the violent past behind it but builds state structures for self-governance that are more reflective of a society where people trust each other more and where violence is reduced to much lower levels? It remains a real problem.

Q2250 Kate Hoey: Should there not be justice for victims?

Mr Grieve: Of course there should be justice for victims, and prosecutors and the police exist to try to deliver that. In the context of the Northern Ireland peace process, however, leaving aside all that we have discussed today, that has had to be influenced by a willingness to make some very difficult and painful adjustments to try to bring about an end to terrorist warfare and conflict. That is rather painful. As I said earlier, for those who are the relatives of the victims, it is very painful indeed.

Chair: We have had a very long session. It has been very useful, Mr Grieve. Thank you very much for joining us.