



Northern Ireland Affairs Committee

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

Wednesday 3 September 2014

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

Questions [2372-2491]

Witnesses: **Rt Hon Theresa Villiers MP**, Secretary of State for Northern Ireland, and **Sir Jonathan Stephens KCB**, Permanent Secretary, Northern Ireland Office, gave evidence.

Q2372 Chair: Secretary of State, can I welcome you to the Committee again? Can I also welcome Sir Jonathan and also welcome you to your new position? I hope you have a happy time in the NIO.

Sir Jonathan Stephens: Thank you.

Chair: You are both very welcome. I do not think there is any need to go into the background of what we are doing. Everybody is well aware. Secretary of State, would you like to make a brief opening statement at all?

Mrs Villiers: Yes, I would. I will try to keep it brief, because of course the crucial thing is your questions. However, I know how seriously this matter is taken by this Committee, and I wanted to say a few things before we got started.

As you pointed out, I am pleased to be joined by my Permanent Secretary, Sir Jonathan Stephens, who appears on behalf of all current and past civil servants of the Northern Ireland Office who are still in public service. I want to reiterate what I have said in the past: the hurt caused by the collective failures that led to the *Downey* case¹ is very deep, and I would like to reiterate the sincere apology that the Government has made to all victims for the pain this has caused. I would also repeat that, while I might not agree with every decision made by previous administrations on the OTR issue generally, whatever the differences of emphasis of approach we might have, I recognise that all my predecessors were dealing with difficult judgments in difficult circumstances, and that they were at all times acting with sincerity and seeking to move the peace process forward. As both the

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

Hallett report² and the judgment in the *John Downey* case confirm, this scheme did not grant any amnesties from prosecution. No-one was given a “get out of jail free” card. This Government believes in the rule of law, and that applies across the board to everyone, including those in possession of letters issued under this scheme.

In accordance with Lady Justice Hallett’s recommendations, the Government’s key objective now is to seek to remove any barriers to successful future prosecutions and take the most effective steps we can to reduce the risk of an abuse-of-process defence succeeding in any future case. With that in mind, I say to those who may have derived comfort from these letters in the past that they should understand the following very clearly: the Hallett report concludes that errors of fact were made and errors of judgment may have been made in cases considered under this scheme. The serious systemic failures in the way the scheme was run, which were highlighted in the Hallett report, must mean there is a very real possibility that mistakes were made in other cases that have yet to come to light.

In the light of this, no-one should take any comfort from these letters—no-one should rely on them. Decisions of the independent police and prosecuting authorities on whether individuals are prosecuted will be on the basis of decisions made now, not decisions made at some point in time in the past, and those decisions will be made on the basis of all the available evidence. To those who have a letter I say: if the police or prosecuting authorities have evidence that is available today or becomes available in the future to pursue you, they can and will pursue you.

I have taken legal advice and I will make a fuller statement to Parliament in the coming days. This will set out my decision and the reasons for it, and outline the next steps. I would urge anyone affected by the administrative scheme to read that statement carefully when it is published.

If I may, I might hand over to Sir Jonathan to make one or two opening remarks as well.

Sir Jonathan Stephens: Thank you very much, Chairman, for your welcome. I just wanted to add to the Secretary of State that I too welcome the Hallett report and accept its conclusions in full.

The role of the Northern Ireland Office and officials within it is to advise Ministers and to implement the decisions they reach. The Hallett report gives a comprehensive and very detailed account of this scheme and the NIO’s role in it. I do not think I am going to better that. I think it shows that officials sought to implement Ministerial decisions with integrity and sought to act in good faith. However, it also points out the serious and significant failings—systemic failings—and opportunities missed that could have helped minimise the risk of errors. I wanted to say, on behalf of the Northern Ireland Office, that I was very sorry for those failings and for the impact they have had on victims, and in particular the family and friends of the 11 who died on 20 July 1982. Our task now, as the Northern Ireland Office, is to learn and apply the lessons from the Hallett report and implement its recommendations, and to continue to play our part in helping to build a safe, stable and prosperous Northern Ireland.

² A link to the Hallett Review report can be found here: <http://www.hallettreview.org/report/>

Q2373 Chair: Thank you. Can I pick you up, Secretary of State, on where we go from here? I think probably all the Members of the Committee would welcome some sort of action being taken to clarify the position, but is it really within the powers of the Secretary of State to judge or to state value of those letters? Is it not a matter for any judge that the case came before?

Mrs Villiers: There are steps I can take that will help clarify the current situation in accordance with the recommendations made by Lady Justice Hallett. I have given you a flavour of what those will be, and at the heart of this is just making it very clear to individuals who have these letters that they should no longer rely on them. At the heart of the *Downey* judgment was the fact that Mr Downey relied on the letter³ that he had been given to his detriment. I am stating very clearly, and will do so again in a formal written statement to Parliament, that those who have these letters should no longer rely on them. We cannot be certain that they were factually correct at the time. For all the reasons that Lady Justice Hallett identified, there were serious systemic failings in the scheme. I believe that it is important to clarify that those holding these letters should not rely on them. That statement is an important step forward in providing clarification and minimising the risk of an abuse-of-process defence succeeding in the future.

Q2374 Chair: Would you be confident that any judge looking at a future case would rule differently from the way that Mr Justice Sweeney ruled? As you say, Mr Downey relied on that letter to come to the UK. If another person relied on a letter to come to the UK, has not a legal precedent been set by the *Downey* case?

Mrs Villiers: As the Hallett report points out, the facts of the *Downey* case are specific to that case. There is no guarantee that an attempt to prosecute an individual who holds a letter would reach the same conclusion. If the facts are different, the judge may well come to a different conclusion. However, I have to be frank with the Committee: given the legal advice I have taken and the discussions I have had, I do not think there is any way to say there is a 100% guarantee that we cannot prevent a future abuse-of-process problem or a future collapse of a trial. After care and thought, though, I am taking the steps that I believe are going to be the most effective to do all we can to mitigate that risk and to do all we can to remove potential barriers to a future prosecution.

Q2375 Chair: You mentioned your statement. Will that be an oral statement?

Mrs Villiers: My plan for the moment is a written statement.

Q2376 Chair: When will that be, do you think?

³ A link to the letter from the Northern Ireland office to Mr John Downey of July 2007 is provided here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Cover-letter-from-NIO-to-Gerry-Kelly-and-John-Downey-OTR-Letter-July-2007.pdf>

Mrs Villiers: It will be within the next few days.

Chair: Thank you. I have a queue of people to come in here. I will take everybody in order.

Q2377 Naomi Long: Secretary of State, Sir Jonathan, you are very welcome to the Committee. Specifically you have said that the Government accepts the report and its recommendations in full. With that in mind, have you decided to notify any individuals specifically that they should not be reliant on the letter? Of those who are in receipt of a letter, have they or will they now receive correspondence from the Government to indicate that they should not rely on those letters?

Mrs Villiers: There will be, as I have said, a general statement, which I would urge everyone affected by this scheme to read. There are particular risks associated with individual letters. As I have said, I will be setting out the next steps in my statement to Parliament, but at the heart of that will be a general statement of the current status of these letters.

Q2378 Naomi Long: I appreciate that there will be a general statement; however, they will not be given reassurance by a general statement, and a case could be constructed to say that someone in receipt of that letter who is not watching the news or the Parliament channel or regularly reading Hansard may not be aware of your statement on the issue. The question is quite important: do you intend to contact each individual who received a letter and make it clear to that individual, in writing in the same way they received the original assurance, that that assurance is now withdrawn?

Mrs Villiers: There are no ideal choices here. All of the options come with some degree of legal risk continuing. I would say that an attempt to correspond with all the individuals concerned itself might come with some legal risk, partly because it would be unlikely that we could necessarily be certain of the addresses of all these individuals.

Q2379 Naomi Long: I am sure Gerry Kelly could pass those letters on, as he did with the originals.

Mrs Villiers: If we were to write to some but not all of them, that could involve a degree of legal risk in the future. I believe, having considered this carefully, that the most effective and the fastest way to provide the clarification that is needed in response to the Hallett report is by a general statement setting out to the individuals who have these letters that they should not rely on them.

Q2380 Naomi Long: I do need to persist with this because, whilst it may have seemed like a facetious point, in the previous phase of this scheme, where people were having these issued—these letters of reassurance or comfort, or whatever they are going to be described as going forward—the reality was that people made an approach. The letters were then requested and were then delivered to them, so each of them received a letter. You have said

there may be difficulties contacting those people individually, but surely by the same token those people may not then readily be able to access, read or be aware of your statement. If there are difficulties—for example, if those people have moved abroad and so on and are difficult to contact—is there not a valid point to say that there is an onus on Government to find each of those individuals, to contact each of those individuals and to make it clear that the letter they received no longer holds that import. I understand the point you make about risk. Surely there is also a risk that someone could end up in court and stand with their letter and say, “I was unaware that this had been rescinded,” and be able, if you like, to defend themselves on an abuse of process on that basis.

Mrs Villiers: As I have said, there is no course of action that is open to me, given the history of events, that completely immunises us against a possible abuse-of-process defence in the future. However, I am confident that, having reflected on it carefully, the most effective way is a very clear general statement to Parliament that these letters should not be relied on.

Q2381 Naomi Long: With respect to the issue of abuse of process that related to factual inaccuracy in the letter in the *John Downey* case, what procedures have been put in place to ensure that the remaining letters that were issued are indeed accurate, and were accurate at the time of issue?

Mrs Villiers: We have formed an oversight board consisting of the organisations that are relevant on this matter, and in particular the Northern Ireland Office, Sir Jonathan, is chairing. The PSNI are also taking part and there is observer status for the Department of Justice and the Public Prosecution Service. As you know from evidence given to this Committee, the PSNI are looking at all of the cases that were processed under the scheme and in which a not-wanted indication was given. Care is going to be taken to ensure that there is no encroachment on the independence of either the police or the prosecutorial authorities, but a clear lesson to be learned, as reflected in the Hallett report, is that we need to make sure that all the relevant parties are acting in a co-ordinated way, that they all know what one another is doing, and that the process is conducted in a transparent way as between these different organisations.

Each of these cases is being looked at, but the issue of whether individual mistakes were made in individual cases becomes less relevant following on from the statement, which I have made today and will repeat in more detail in the coming days, that we cannot guarantee the accuracy of any of these letters. The Hallett report demonstrates that there were flaws in the scheme, so it may well be that there were errors in relation to a number of other cases, and that is why no-one should rely on them any longer to regulate their behaviour. If they drew some comfort from these letters in the past, they should not draw any comfort from them in the future.

Q2382 Naomi Long: My final question is to both of you. Given the sensitivity of the cases we are dealing with here, where there were victims’ sensitivities engaged, there were individuals who had been suspected of committing crimes or, indeed, convicted in some cases of committing crimes, and also given their alleged importance to the peace process in

that they were deemed at the time to be critical to the peace process, are either of you surprised by the lack of oversight at Ministerial level of the scheme in that period when the letters were being issued?

Mrs Villiers: As Sir Jonathan has emphasised and I emphasised at the despatch box, I accept the conclusions of the Hallett report. It was a very serious failure in terms of the way the scheme was run and, yes, the responsibility for that ultimately lies with Ministers, which is a point I acknowledge. Would I say I was surprised? Yes, I suppose it is surprising that these matters were not properly considered, although, as Lady Justice Hallett acknowledged, hindsight can give a different perspective on these matters. However, there were clearly a number of risks that were not properly managed or properly considered, and that is of course a matter of grave concern.

Q2383 Naomi Long: In that context, given the sensitivity and the importance of this at the time, would it not be normal practice for those civil servants who would be dealing with matters that they felt were so sensitive within the process to wish there to be more Ministerial oversight and even to request that?

Sir Jonathan Stephens: It would be fair to say that the degree of Ministerial involvement in the issue and in individual cases came and went. I think Lady Justice Hallett demonstrates that at times, particularly in the early days, there was very close Ministerial involvement and involvement by the Attorney General, and very close consideration of issues and options and things like that. At all times, Ministers were aware of the scheme and it was clearly operating with their consent and under their directions. As far as I am concerned, I think that if officials had identified issues that they thought needed to be brought to the attention of Ministers, they would have seen it clearly as their duty to do so. I think that officials across the system, not just in the Northern Ireland Office, thought that they were seeking to implement what was desired in the best possible way in good faith. That is not to downplay that, across the system, there were serious failings, as Lady Justice Hallett identifies, of lack of common shared strategy and policy, understanding, risk management and so on.

Q2384 Chair: Given the importance that you are attaching to this statement, would it not be better to have an oral statement.

Mrs Villiers: I feel that a written statement is appropriate for the moment, but I will certainly reflect on that in the next few days.

Q2385 Lady Hermon: You are very welcome indeed, Secretary of State, and our new Permanent Secretary for the Northern Ireland Office. I reserve my questions for Sir Jonathan until the end. Secretary of State, can I just ask whether in fact anyone from the Northern Ireland Office, you or officials, notified Sinn Féin at any level prior to what you have just said to this Committee or, indeed, the trailing in various newspapers that you were going to make this announcement before the Northern Ireland Select Committee today? Was Sinn Féin given prior knowledge of that?

Mrs Villiers: I have not discussed this issue with Sinn Féin in recent days.

Q2386 Lady Hermon: Have any of your officials? I think I did say, “Any of your officials” as well as you, Secretary of State.

Mrs Villiers: Not as far as I know. I know that there was a request for a call with me, but I do not think there have been conversations.

Sir Jonathan Stephens: No.

Q2387 Lady Hermon: Since the publication in newspapers that trailed this and today’s newspapers, have any Sinn Féin members been in touch with you, Secretary of State, or your office?

Mrs Villiers: There was a call this afternoon, but I have not had a chance to speak to the Deputy First Minister. I hope to do so later today.

Q2388 Lady Hermon: Was the call was from the Deputy First Minister?

Mrs Villiers: There was a call to my office from the Deputy First Minister’s office.

Q2389 Lady Hermon: Sir Jonathan, I think you wanted to indicate whether there had been any notification from officials. You are shaking your head.

Sir Jonathan Stephens: No.

Q2390 Kate Hoey: Were there no briefings given to any newspapers in the last couple of days from anyone within the Northern Ireland Office that something was likely to be being said by the Secretary of State today?

Mrs Villiers: We did get a call from *The Daily Telegraph* yesterday, so we responded to some of their questions.

Q2391 Lady Hermon: How would *The Daily Telegraph*⁴ have been aware of information that you were going to give to this Select Committee?

⁴ A link to *The Daily Telegraph* article, “IRA terror suspects to lose immunity from prosecution”, 2 September 2014 can be found here: <http://www.telegraph.co.uk/news/uknews/terrorism-in-the-uk/11071080/IRA-terror-suspects-to-lose-immunity-from-prosecution.html>

Mrs Villiers: I do not know how *The Telegraph* picked up on the story, I am afraid. We just responded to a call we got from them. It must have been somebody else who was briefing them and the Northern Ireland Office—

Q2392 Lady Hermon: Do you not think it is a bit curious that *The Daily Telegraph* had it before Members of Parliament or, indeed, it appears before Sinn Féin?

Mrs Villiers: Certainly, I was not keen for anything to be published at all on this. I very much wanted to talk to the Committee about it, particularly as the newspapers, throughout the coverage of this issue, have not always given a completely accurate picture of what has been happening.

Q2393 Lady Hermon: But in this case they seem to be very accurate. Bearing in mind that you have announced to the Committee and to the general public that these letters now are effectively rescinded—I think that was the general tenor of what you said—and that you are not bound by the terms of confidentiality that, of course, did bind Lady Justice Hallett, what justification can there be for not disclosing the names of the 228 recipients of these comfort letters? They are now meaningless; they are not to be relied upon, so why not publish their names?

Mrs Villiers: I do not think it would be helpful to do that. I think there are privacy concerns.

Q2394 Lady Hermon: Privacy concerns?

Mrs Villiers: Yes, and there are security concerns as well, in terms of the Government's obligations under Article 2 of the European Convention on Human Rights.⁵ I do not believe it would be appropriate to publish the individual names.

Q2395 Lady Hermon: That is a firm decision. Have you taken legal advice on that, Secretary of State?

Mrs Villiers: I have had some extensive discussions with officials, including legal advisers, on this scheme, and, yes, certainly I have discussed the matter of disclosure of names with officials and legal advisers. However, it is my decision, and I do not believe it would be appropriate or helpful to publish the names of the people who were considered under this scheme.

⁵ A link to the European Convention on Human Rights can be found here:
http://www.echr.coe.int/Documents/convention_ENg.pdf

Q2396 Lady Hermon: How do you think that gives any comfort to the victims, where the right to life of a loved one has counted for absolutely nought by some of those who are sitting with an OTR letter? How does that give comfort to those victims, who have been so wounded? In fairness to you, Secretary of State, you were very generous in your apology, and I believe it to be a very sincere apology, but what comfort does it give to those many, many victims, not just in Northern Ireland but throughout the United Kingdom—the Hyde Park bombing victims? What you have just said is that under no circumstances would you be prepared to publish the names of the recipients of OTR letters, which we have been told today are now rescinded and valueless.

Mrs Villiers: I have not used the word “rescinded” specifically. I think it is important to focus on the clear fact that these letters should not be relied on.

Q2397 Lady Hermon: So are they not rescinded?

Mrs Villiers: I am not sure “rescinded” is the appropriate term for it, but these letters should not be relied on.

Lady Hermon: So they haven’t not been rescinded.

Mrs Villiers: In terms of the effect on victims, I know that it has been extremely distressing, particularly for, I am sure, the families of those who died as result of the Hyde Park bomb, but many others were deeply distressed by it. I have, as you say, apologised with sincerity—

Lady Hermon: You have.

Mrs Villiers: —About the role that successive Governments played in the events that led up to the Downey trial, but I feel that publication of the names of those who went through the scheme would not be appropriate. I think it is important to remember that this was a scheme to inform people who were not wanted that they were not wanted. By definition, in these cases they did not get a letter unless it was believed that they were not wanted. What we have to do now is check whether errors were made, and the Hallett report makes it clear that there is a real risk of errors having been made in other cases, and that is one of the reasons why individuals should not rely on them. There is a danger that mistakes were made. However, it would be a mistake to assume that everyone who went through this scheme is a terrorist. There was an extensive exercise conducted to seek to ascertain whether there was evidence sufficient to arrest or convict in relation to 187 people. That exercise indicated that they were not wanted. Now, we accept that errors may well have been made, but I think it would be wrong to assume that all of those individuals were guilty of terrorist offences.

Q2398 Lady Hermon: Let’s then move on to the 13 who received royal pardons.⁶ They were certainly guilty; they have certainly been convicted, and so we do not have to jeopardise their security, privacy or whatever. They have been identified in Lady Justice Hallett’s

⁶ A link to the Hallett Review report can be found here: <http://www.hallettreview.org/report/>

report. Let's have names of those. What justification can you possibly offer? They have been convicted and they have been given a royal pardon, so let's have their names.

Mrs Villiers: I do not think it would be appropriate to make an exception for those 13 individuals. Of course, these matters have been discussed in other forums, in the courts in particular.

Q2399 Lady Hermon: I just want to know the justification for keeping secret the names of recipients of royal pardons when they were guilty of an offence. They have been given a pardon, so they do not have to prison to serve their full term. What justification can there possibly be for concealing the identity of those names?

Mrs Villiers: I think there would be security and legal concerns with disclosure of those names. I do not feel revealing the names will help the situation and I decided it would not be appropriate to do so.

Q2400 Lady Hermon: So, in effect, Secretary of State, some people are above the law.

Mrs Villiers: They are not above the law. No-one was given immunity from prosecution. This Government does not believe in immunity from prosecution. A number of these individuals were released early from having to serve their sentence because it was believed by the previous Government that that was in line with the spirit, if not the letter, of the Belfast Agreement.

Q2401 Lady Hermon: That just brings me very neatly back to Sir Jonathan. Sir Jonathan, I appreciate the apology that you have given, an apology of behalf of all the Northern Ireland Office officials who were involved in this. This of course includes yourself. Do you regret your earlier involvement with the OTR scheme?

Sir Jonathan Stephens: At the time I was involved, primarily up to the summer of 2000, I was certainly aware of the issue. It was an issue that was discussed and raised with us; it was discussed and raised with Ministers. Officials advised Ministers on the options. I see nothing improper or wrong in that course of conduct by officials generally. I do not want to downplay my role, but I was not dealing with individual cases.

Q2402 Lady Hermon: But you will appreciate how terribly controversial and how very upsetting this has been since we have learned, from the *Downey* judgment, about these secret letters having been sent. How can you give a reassurance to the general public now that you are sitting as the Permanent Secretary for the Northern Ireland Office that they do not have to worry that your career is sort of tainted by your involvement with this OTR scheme at its very inception?

Sir Jonathan Stephens: I have to remind you that Lady Justice Hallett concludes that there was nothing unlawful in the scheme properly administered.

Lady Hermon: In principle.

Sir Jonathan Stephens: There were errors in individual cases, which Lady Justice Hallett says are primarily attributable to systemic failings. It is also, of course, the duty and responsibility of civil servants faithfully and loyally to implement the decisions of Ministers. It is not generally for civil servants to substitute their own decisions and their own judgments for those of Ministers.

Q2403 Lady Hermon: At the beginning of the scheme, were you uneasy yourself about implementing this scheme?

Sir Jonathan Stephens: No. Indeed, in those very early days, it was not considered as a scheme. The Ministers had asked officials—Lady Justice Hallett gives a very full account of this period—to enable names to be presented to the Attorney General to consider whether prosecutions were pending or were liable to be brought, and to see if that could reach a position where the outcome of that consideration could be communicated back. I would certainly describe that as unusual and exceptional, but I do not see anything improper or contrary to the Civil Service code, or unlawful.

Q2404 Lady Hermon: Finally, Secretary of State, if the status of what you have said today does not in effect rescind the letters, are the letters sitting in sort of no-man's land, limbo land? How would you describe these letters at the present time? They cannot be relied upon but have not been rescinded. I think those are the words you used: "have not been rescinded".

Mrs Villiers: I think the word "rescinded" probably is not necessarily appropriate for what were statements of fact. I am saying very clearly is that these letters should not be relied on. That hopefully takes a plank out of any future possible case of abuse of process. That was at the heart of the *Downey* judgment. In my view, it is important to provide clarity in relation to these matters. They are very serious, and that is why I will be publishing a statement in due course to make it absolutely clear that these letters cannot be relied on. People should not regulate their behaviour on the basis of these letters.

Decisions on whether an individual is liable for arrest or prosecution will be made on the basis of the evidence available today by today's prosecutors and police. They may come to the same conclusions as their predecessors did when the letters were issued, but they may not. However, I want to be clear that all the evidence—evidence that was available at the time of the letter and evidence that has become available since—will be taken into account. These individuals who have these letters should be very clear that they will be treated in exactly the same way as someone who does not have a letter. The evidence will be looked at in exactly the same way as it would for an individual who is being investigated who does not have a letter.

Q2405 Kate Hoey: Sir Jonathan, when did you leave the Northern Ireland Office?

Sir Jonathan Stephens: I left in the summer of 2000. I returned briefly for a three-month period to cover sick leave around the Weston Park negotiations in 2001.

Q2406 Kate Hoey: So really you cannot speak on behalf of everybody who has been in the Northern Ireland Office since 2001, so obviously this Committee would still want to see quite a number of people who were officials. I think the Secretary of State referred to you as answering on behalf of everyone. You could not possibly know what has gone on between 2001 and now.

Sir Jonathan Stephens: As Permanent Secretary, one of my roles is as accounting officer, where I have the responsibility to account for both what I personally know about, but also any other actions and decisions of the Northern Ireland Office.

Q2407 Kate Hoey: We will still want to see some other people. Anyway, you said that civil servants have to do more or less what Ministers say, which is understandable. It was civil servants who actually signed the letters, wasn't it? Mr Downey's letter was signed by a civil servant.

Sir Jonathan Stephens: Yes.

Q2408 Kate Hoey: Would, in your view, the person who signed the letter that went to Mr Downey have been instructed by the then Secretary of State to send it?

Sir Jonathan Stephens: They would have been acting under the direction of the Secretary of State.

Q2409 Kate Hoey: So the Secretary of State at that time would have known the letter was going out on the day, in fact.

Sir Jonathan Stephens: No. This would be a normal part of administrative processes. There are many occasions, indeed it is a routine part of Government business, that appropriate civil servants act on behalf of and under the direction and control of Ministers. That means that in many general schemes, for example in disbursing grants and things like that, approval is sought from Ministers for the policy and operation of the scheme, and generally then the detailed implementation and decision-making would be conducted under, in effect, delegated authority from Ministers, without Ministers necessarily being involved. Indeed, most decisions of Government clearly cannot directly involve individual Ministers.

Q2410 Kate Hoey: I think the specific letter to Mr Downey went out a few days or a week or so after the then Secretary of State had left office. It would have been that Secretary of State that would have been involved with the decision to send the letter.

Sir Jonathan Stephens: It would be under the direction of the Secretary of State at the time. I am not aware that the Secretary of State was personally consulted. I would not expect him to have been.

Q2411 Kate Hoey: Even though, just over a year earlier, the Northern Ireland Office had had a letter from the Attorney General to the Secretary of State⁷ saying, “This man”—Mr Downey—“is wanted for serious terrorist offences”, and yet just over a year later a letter goes out, signed by the same civil servant who was copied in to the letter from the Attorney General. I know you were not there at the time, but does that not strike you now as being a little strange?

Sir Jonathan Stephens: I think you are referring to a letter that covered a number of names, and there was an established scheme that operated on the basis of names being passed to the Attorney’s office, the prosecuting authorities, and in turn the police being consulted and appropriate checks being made. When the answers to those checks came back, the NIO conveyed the answer as a result. The Northern Ireland Office itself did not have the information. It was not the appropriate body to make judgments upon whether individuals were prosecuted or investigated. We did not, do not and will not have access to the Police National Computer and things like that. We had no independent means of checking the assurances we were receiving, and indeed, Lady Justice Hallett, in her report, says that the NIO had good reason for relying on the assurances on which it operated.

Q2412 Kate Hoey: But Mr Sweeney, who signed the letter, would have been instructed to send that letter out by the Secretary of State.

Sir Jonathan Stephens: If by that you mean a specific instruction in the case of the Secretary of State saying to Mr Sweeney, “I want you to sign the letter in respect of John Downey,” no. That was not how this scheme or equivalent operations of discretion by Government normally operate. If by that you mean operating under a policy agreed and endorsed by Ministers, and operating with their knowledge, which in this case was applied in good faith as far as the NIO was concerned, yes.

Q2413 Kate Hoey: Can you tell us, in the time that you have not been in the Northern Ireland Office—since 2001, apart from that short time—have you met any senior members of Sinn Féin, like Gerry Adams or Gerry Kelly, in all that time when you were moving around your career ladder in the civil service?

Sir Jonathan Stephens: I can certainly remember one occasion when I was in Portcullis House, in the lobby, and Martin McGuinness happened to come up to me. I can remember

⁷ The letter from the Rt Hon Lord Goldsmith QC, Attorney General to the Rt Hon Peter Hain MP, Secretary of State for Northern Ireland dated 27 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>

a number of encounters with other Northern Ireland MPs and Members of the House of Lords who I happen to know.

Q2414 Kate Hoey: I am talking about members who do not take their seats.

Sir Jonathan Stephens: That is the only one I can think of in this hearing.

Q2415 Kate Hoey: Secretary of State, I appreciate you are coming in at the end of this whole saga and picking up what previous Secretaries of State obviously knew more about than you could be expected to. Can you just remind us, when you took office that day and were given large numbers of briefings, who first told you about the OTR scheme? Was it the first you had heard of it?

Mrs Villiers: Can I just make sure I clarify something that I said to Sylvia? To reiterate, on the Sinn Féin point, I did try to get hold of the Deputy First Minister in response to his call to my office, but I did not succeed. I sent him a text.

Q2416 Lady Hermon: That was today.

Mrs Villiers: Today.

Lady Hermon: That was today, after the publicity in the newspapers.

Mrs Villiers: Yes.

Q2417 Lady Hermon: So, the Deputy First Minister is trying to contact you and you have tried—

Mrs Villiers: Yes. About half an hour ago, I sent him a text saying, “I’m just about to go to NIAC, but I’m happy to talk afterwards.”

Q2418 Lady Hermon: We would love to see the content of the text. Do you often text the Deputy First Minister?

Mrs Villiers: I think that is the first time I have texted the Deputy First Minister, but I am not entirely sure about that.

Chair: Can we get back to—

Mrs Villiers: Sorry, I am digressing. As far as I recall, it was not necessarily in the first-day briefing, but within a week or so, I would have thought. It was certainly very soon after I was appointed as Secretary of State I was briefed on the scheme and essentially was asked the question—

Q2419 Kate Hoey: By whom?

Mrs Villiers: By Julian King, and I cannot remember the other civil servants who briefed me on it at that time, but certainly Julian King, and my private secretary and my special adviser were there too. We started off with a document, and then we had a discussion about it. In essence, it was explained that Owen Paterson, having had an exchange of correspondence with the Attorney General, had reached the conclusion in August that it was no longer appropriate for the Northern Ireland Office to be involved in the scheme and it would make more sense for Sinn Féin to direct any new cases directly to the devolved police and prosecuting authorities. There was also a recognition that, if we had cases already in the system, they could continue to be dealt with. We would not take on new cases, but just reach a conclusion on the ones that had already been submitted to the Northern Ireland Office. I was asked whether I thought that Owen's decision was right or whether I wanted to do something different, and I agreed with Owen's decision. I was asked whether I was supportive of the idea of reviving some form of amnesty, and I said I was not. That was the essence of how I first became aware of the scheme.

Q2420 Kate Hoey: At the time when you were told that, did it occur to you to pick up the phone to David Ford?

Mrs Villiers: I am afraid it did not, and that is something that I do regret.

Q2421 Kate Hoey: Should your officials not have suggested that to you? You were new to the office; you were new to Northern Ireland. I think I can understand why you might not have thought about it, but would you not have thought that Julian King or somebody would have thought of that?

Mrs Villiers: In hindsight, we all should have thought of that. One of the first things that I was advised on becoming Secretary of State is that the relationship with the Department of Justice and Justice Minister is crucial because of the sometimes grey area between national security and devolved matters relating to devolved administration of justice. I very much regret that I did not pick up the phone to David Ford at that time and that it did not occur to me to do so. That is why I apologised to David when the whole thing became public at a later date. I would emphasise that there was no question of it being devolved to the Department of Justice. All we were doing was advising Sinn Féin to go directly to the devolved police and prosecuting authorities. I am absolutely clear that I should have briefed David Ford at that point.

Q2422 Kate Hoey: Coming in as, again, fairly new to Northern Ireland, did you not think to compare it with something happening, say, on the mainland your own constituency? Did you not feel at any time that it was strange that nobody knew about this—that the public did not know about this? There are all these people who have been sent letters. Did it never occur to

you, or did you just get so immersed in the civil service bureaucracy all telling you this is the right thing to do because, if you question anything, you might damage the peace process?

Mrs Villiers: I have obviously studied the ways previous Secretaries of State have described this scheme and reflected on the best sort of adjective. It was certainly not a normal process. I decided, of all the ways we have had it described, I probably agreed most with Kevin McGinty that it was far from normal, but there are many aspects of what has happened in Northern Ireland over the last 20 years that are not normal. The key for me was that this was not an amnesty. This was a scheme to indicate whether or not individuals were wanted by the police. If it had been an amnesty, I certainly would not have had anything to do with it. I am sure my predecessor, Owen Paterson, would have taken the same attitude. As it was, it was not a normal scheme, certainly, but I could see the background in terms of how it had arisen and why the previous Government had set it up. As I say, a crucial thing was it was not giving anyone immunity from prosecution; it was trying to ascertain whether there was evidence that justified an arrest of individuals and, if there was not, to inform them of that fact.

Q2423 Kate Hoey: Did you think at the time, “This is being very one-sided”? Only certain parts of the community were asking for this to happen to their people.

Mrs Villiers: I am obviously aware of the concerns about it being one-sided. It did not occur to me at the time, but then again, as far as I could see, if others had come forward asking for their status to be clarified, then they could have been considered by the scheme as well.

Lady Hermon: If they had known about it. The problem was they did not know about it.

Q2424 Kate Hoey: They were not all in the position of Gerry Kelly. I have one further point and then I will let others come in and maybe come back. I am very unclear about what you have said about the letter. Maybe I am different, but I certainly feel unclear about the status of these letters. Would the only thing that makes it clear be for you to bring forward very quickly, with all-party support, a motion through Parliament that says, “Parliament has said that these letters don’t matter and don’t mean anything”? Otherwise, we are always going to be in the position of the judges ruling something.

Mrs Villiers: I can reiterate these letters do not confer immunity, nor should they be relied on as accurate statements of fact.

Kate Hoey: That is only you saying it, Secretary of State.

Mrs Villiers: I of course have considered the option of legislation but, having reflected on this, I am clear that a statement by the Government in Parliament is more effective than legislation. Legislation would not take us any further, and of course legislation provokes the risk of potential amendment or defeat in Parliament, at which point it would become very much more difficult to make an appropriate general statement.

Q2425 Kate Hoey: With respect, you could do both. You could make a verbal statement, which I think is absolutely crucial on this issue. There has been enough hiddenness and secrecy. You need to make a verbal statement, and you could announce in that statement a quick legislative measure.

Mrs Villiers: I simply do not believe legislation would be the best way to deal with this problem. I do not believe it would be more effective than a statement by the Government. After all, one of the key points in Sir Nigel Sweeney's judgment on *Downey* was that these letters were a statement from the Government, so it was reasonable for Mr Downey to have relied on that statement from the Government. That needs to be corrected so that it is very clear that it is no longer reasonable to rely on these statements, because the Hallett report makes it very clear that mistakes were made. Some we know about; others we may not. No-one should act, as John Downey did, in reliance on these statements.

Q2426 Kate Hoey: I presume you will reflect on what our Chairman has asked you do, which is to make it a verbal statement.

Mrs Villiers: I will of course reflect on that, yes.

Q2427 Chair: The advice that we have given is that these people could have already relied on those letters; they could already be back in Northern Ireland or back in Great Britain. The statement would not have any effect in that case, would it?

Mrs Villiers: I do not think legislation would either. There is a problem. That is part of the legal risk that we face: reliance could already have taken place. However, it has to be said that one of the most high risk forms of reliance is that someone comes to Northern Ireland thinking they are not liable for arrest and then they are arrested. Obviously, there are not, as far as we know, examples of that, other than John Downey. We are in a position to mitigate that risk but, yes, we cannot know all the full facts of other cases. As I have said to the Committee, I am afraid, given what has happened, we cannot say with absolute certainty that there is a means to prevent further trials being defeated by an abuse-of-process defence.

Chair: Thank you. I am going to go out of sequence slightly because I know Oliver has to go soon. Do you want to come in now?

Q2428 Oliver Colvile: Thank you very much, Secretary of State, for coming to see us. You have arrived in your job and you have ended up having a briefing. You are saying that you did not really raise any issues during the course of that time about the system that was in place.

Mrs Villiers: I asked a number of questions about the interaction with the HET, and asked to what extent we expected new cases to come up in the scheme, because obviously HET were looking at historic offences and, therefore, there might be new queries from individuals as to whether they were wanted or not.

Q2429 Oliver Colvile: Did you ask at any stage whether or not letters had been sent to some people saying, “Don’t come back”? This is not under your jurisdiction, I suspect, but the Northern Ireland Office might have written to somebody saying, “Just do not come back to this country, because if that happens, you will be prosecuted”.

Mrs Villiers: I cannot remember the detail of the briefing, but I am pretty sure I would have been told that indications were given where people were not wanted and, in some cases indications were also given where they were wanted. My understanding is that those individuals did not get letters directly, but the wanted information was conveyed to Sinn Féin.

Q2430 Oliver Colvile: I would argue that what might have happened is id the Northern Ireland might have said, “Don’t come back” that makes it very difficult to be able prosecute people if they do not come back to this country. I am rather surprised that the Northern Ireland Office might have done that, because I would have thought the job of Government is to make sure that we get anybody who is a potential criminal should come and face charges in this country.

Mrs Villiers: As I have said, this was far from a normal scheme, but it was a scheme that was lawful. That is what successive Attorneys General have said, and that is what Lady Justice Hallett concluded as well.

Q2431 Oliver Colvile: 19 May 2013, Downey comes back to this country. He gets arrested. What then happens is he says, “Excuse me, guv; I’ve got these letters”. What did you do when you heard that news? There are one or two people who seem to have been involved in this process who claim that they actually knew nothing whatsoever about it and do not remember this activity taking place. I do.

Mrs Villiers: Sorry—did I know Downey had been arrested?

Q2432 Oliver Colvile: He comes back on 19 May 2013; Downey comes back to Gatwick airport. Police therefore resolve they are going to and he says, “I don’t know why you are doing this, because I’ve got these letters, which I received from the Northern Ireland Office,” and which eventually get used in the case when it goes to court. Did that suddenly start alarm bells ringing in your mind: “Excuse me: what on earth has been going on?” Did you ask that?

Mrs Villiers: Yes, I did.

Q2433 Oliver Colvile: Did you have any conversations at all with the First Minister in Northern Ireland, or anybody else in Northern Ireland, at all on that?

Mrs Villiers: I had a lot of conversations with my officials. It was also raised with me by the Deputy First Minister.

Q2434 Oliver Colvile: Right. So we now have a state, do we not, where Downey has been given a “get out of jail free” card? There are families who have seen loved ones have been killed in the Hyde Park bombings, and we now have no route to go down in order to try to get any justice for those servicemen who have been killed.

Mrs Villiers: John Downey was not given a “get out of jail free” card.

Q2435 Oliver Colvile: So, we can have him back. Can we get him back into court?

Mrs Villiers: The reason for the collapse of the *Downey* trial was that John Downey was sent a letter that he should not have been. John Downey was wanted. The letter he was sent was incorrect in saying that he was not wanted. It was that mistake that led to the collapse of the *Downey* trial. If the scheme had operated as it was supposed to, John Downey would never have got a letter. That was the conclusion both of Sir Nigel Sweeney in the case and Lady Justice Hallett in her report. This scheme was supposed to be about notifying people who were not wanted that they were not wanted. It was not a scheme to tell people who were wanted that they were not wanted.

Q2436 Oliver Colvile: Do you think there is a way in which justice can be gained by the families of those servicemen who have been killed?

Mrs Villiers: Well, it is highly unlikely that John Downey could ever stand trial for the Hyde Park bombing, given the stay has been issued. Whether other individuals will ever be brought to justice for the Hyde Park bombing is not something I can tell you, but there must be a possibility of that.

Q2437 Oliver Colvile: Does the statement that you are about to in any way make that possible, to do it?

Mrs Villiers: There is no way that we could legislate or make a statement that would change the outcome of the John Downey trial.

Q2438 Ian Paisley: Secretary of State, you are very welcome, as are you, Sir Jonathan. I have a couple of questions. First of all, on the issue of legislation, are you saying absolutely and completely that legislation in this matter is ruled out, in terms of legislation to rescind or annul or formally make useless the letters?

Mrs Villiers: Yes. I do not think legislation is the right option in this instance.

Q2439 Ian Paisley: In the last 24 hours in Parliament, your Cabinet has agreed to emergency legislation to rescind/remove passports from British citizens. The reason the Prime Minister has made clear why he has had to go down that line is to prevent the very thing that we are scared of here, and that is clever lawyers running amok with jihadists in the United Kingdom. Why does the Government not take the option in this case to put in legislation now to make sure that, if there is another lever that a republican terrorist or suspected terrorist has in his possession it will be made utterly useless forever and he will be in no doubt about it?

Mrs Villiers: The most effective way to deal with this problem is by a public statement from the Government. At the heart of the *Downey* judgment was the fact that Mr Downey was given a letter that was an assurance from the Government. That is the key issue here. It is a statement from the Government. So, the Government can make it clear that its previous statements should no longer be relied on because of the flaws in the scheme. That is the most effective way to make it clear that these letters cannot be relied upon.

Q2440 Ian Paisley: You recognise that for the public the way you are dealing with republican terrorists does not appear to be consistent with the way in which you are dealing with jihadist terrorists.

Mrs Villiers: They are consistent, because in both instances we are seeking to take the most effective action to deal with the problem we face.

Q2441 Ian Paisley: You have used the phrase—you have relied upon it today—that people cannot “rely on” these letters. Could you help us and the general public characterise what that means? Are these letters useless?

Mrs Villiers: I do not think they do have any value anymore.

Q2442 Ian Paisley: If they have no value, they are therefore worthless as well. The reason why I use the term “worthless” or “useless” is because that appeared to be in the brief that was given to *The Daily Telegraph* last night. If those words are the words now—

Mrs Villiers: To echo the words of Barra McGrory, those who have had these letters should not sleep easily in their beds because they will not protect them.

Q2443 Ian Paisley: But he is a prosecutor and we will deal with that in just a minute. So, they are unreliable, they are worthless and they are useless. However, there is a doubt in your mind that you can use the word “rescinded”. Is that right?

Mrs Villiers: Yes. I think that is appropriate because we are talking here about a statement of fact. If they were some kind of amnesty, rescinding might be appropriate, but they were just statements of fact. Therefore, the key change we need to make is to make it

absolutely clear that the Government no longer stands by those statements of fact. They cannot be relied on; there may well be mistakes in these cases.

Q2444 Ian Paisley: Is there use, then, annulled?

Mrs Villiers: They should no longer be relied on as providing any kind of defence, whether evidence is old or new. It is going to be a matter for today's prosecutors to decide whether that justifies arrest and prosecution. They do not have an effect of protecting people from prosecution in any way.

Q2445 Ian Paisley: You will be aware that anything that is said in Northern Ireland about one section of the community provokes a reaction usually by that section of the community. I am sure today, when Sinn Féin hear your words and have read your words, they realise they have engaged in a process where they have sold some of their hard men a pup. 228 individuals, many of whom would be wanted for very serious crimes or suspected of being engaged in very serious crimes, will have today been sold a pup by the Government. What sort of reaction are you expecting now from Sinn Féin?

Mrs Villiers: Sinn Féin were always clear that this scheme was not the answer they wanted on the on-the-runs. They wanted some means of ensuring that people could come home to Northern Ireland even when it was clear that there was evidence to prosecute. My understanding is that, throughout the discussions with my predecessors, Sinn Féin repeatedly complained about the fact that this was an inadequate scheme—it was not the answer that they were looking for.

Q2446 Ian Paisley: Can I turn now to the issue that Sylvia Hermon correctly raised about publishing the actual material and making the public aware? You appeared to suggest to the Committee that security concerns trump public interest. Before we turn to those security concerns, you can understand why there is a public interest in wanting to see those names. I will make that very clear in the next set of questions I want to ask you. Has Gerry Adams got one of these letters?

Mrs Villiers: As I have said, I am not going to comment on whether individuals were or were not considered by the scheme.

Q2447 Ian Paisley: Let me give you a collection of individuals then. Has any Member of Parliament got one of these letters.

Mrs Villiers: I can only repeat that I think, for all sorts of reasons, it would not be appropriate to start identifying individuals.

Q2448 Ian Paisley: So you can't identify to us Gerry Adams, Martin McGuinness, a Sinn Féin MP, a Sinn Féin MLA or a Sinn Féin councillor represented in this jurisdiction or in the Republic of Ireland's jurisdiction. You cannot confirm or deny if any of those individuals have one of these letters.

Mrs Villiers: I am not going to comment on which individuals were or were not considered by the scheme.

Q2449 Ian Paisley: You can understand from my perspective why that is so inadequate and why, as a representative of the general public in Northern Ireland, why they will feel that is so inadequate. They should know who has these. After all, if they're going to elect someone, they should at least know their character and the background and all of the favours or non-favours those individuals might have. It sews a considerable thread of doubt through this process because the suspicion on the street is that senior, prominent members of Sinn Féin in the Government of Northern Ireland have one of these letters. I think you have a duty to dispel that and say, "That is complete nonsense. They don't have it and here is the list of people who do".

Mrs Villiers: I am afraid I cannot agree on that. It would not be helpful for me to publish names.

Q2450 Ian Paisley: Well, I won't push you on that part, but I will push you on the security aspect of it. You have said that the security concerns are preventing you from publishing them. Can you outline to us what those security concerns are? I am not aware of any active or specific threats being issued by unionists to take revenge on anyone who has any of these letters.

Mrs Villiers: I believe that we do have to take into account Article 2 considerations when publishing personal data. In this instance, that was one factor that I have taken into account in deciding that it would not be appropriate to publish names. Obviously I would not comment on specific threats to individuals.

Q2451 Ian Paisley: Is there a general threat? Have the security services, either the intelligence services or the police in Northern Ireland, said that they have a view that these people would then be threatened and their lives would be in danger if their names were published.

Mrs Villiers: As I say, it is not appropriate for me to comment on threat assessments. I believe it is important to take into account the Government's responsibilities under Article 2 in decisions like this, and I have done so. That is one of the reasons why I am not proposing to publish names.

Q2452 Ian Paisley: Can you not give us any more on security? You have made it very clear to either Naomi or Sylvia it was security issue. What are those issues? What really concerns

you? There are Article 2 rights, but is there any general security issue that has been brought to your attention? More importantly, who has brought that to your attention? Has it been the police? Has it been the intelligence services?

Mrs Villiers: As I said, I do not think it would be appropriate to comment on security matters; Secretaries of State generally do not do that. But I stick by my decision that I do not think it would be helpful to publish these names.

Q2453 Kate Hoey: Do you think it would damage the peace process?

Mrs Villiers: I think there could be unforeseen consequences with the publication of names, but I think the important thing is that the Government acted in response to the concerns raised on this view. They appointed a judge-led investigation. Lady Justice Hallett produced a very full public account of the scheme, and in many ways that account was damning in terms of the way that it was run. The relevant facts have been disclosed. I think that is the key thing, not the names of the individuals whose cases were considered under the scheme.

Ian Paisley: Can I just ask you about the Hallett Review then?

Chair: Can I come back to you in one minute? David has to go.

Q2454 David Simpson: I will be brief. Just to follow up on Ian's point about revealing the names, Secretary of State, can you confirm that you have seen the list of names and those that received royal pardons?

Mrs Villiers: Yes.

David Simpson: You have seen the list?

Mrs Villiers: Yes.

David Simpson: You have seen them, but you are refusing to give the names to us.

Mrs Villiers: Yes.

Q2455 David Simpson: Secondly, in the Hallett report, Lady Justice Hallett did not class the scheme as secret. That was in the report. I think, Sir Jonathan, in your answers to Sylvia Hermon, you said that there had been discussions held internally and with Ministers with regard to the issues. I think you also stated at one stage that police had been consulted. I am not sure what you were referring when you said that, but yet we have had senior police officers giving evidence here and saying that they knew nothing about the scheme or the letters. Now, if Lady Justice Hallett is saying the scheme was not secret, why do you think that senior police officers were not informed that there were letters going out to people that potentially, in the figures that we were given, included quite a number of possible murderers? Why would it be that the senior officers of the RUC or PSNI at that time were not told, and yet we are told that this scheme was not a secret scheme?

Sir Jonathan Stephens: The letters of course were going out to people who were judged under the scheme—whether in hindsight correctly or not—to be not wanted.

Q2456 David Simpson: Judged by whom?

Sir Jonathan Stephens: The only people equipped to make those judgments were the police and prosecuting authorities. Therefore, the involvement of the police in the scheme was absolutely intrinsic, and they were involved in the scheme. No letter could have been issued without the police being involved as part of the system involving prosecuting authorities and the Northern Ireland Office as well. May I just complete my answer? Lady Justice Hallett goes into this in some detail. It is quite correct that the precise text of the letter sent to people in receipt of the letter was not shared with the police until 2011. However, as Lady Justice Hallett illustrates, there was clearly knowledge and assurances were being given on the basis of judgments reached by the police and prosecuting authorities, and the general tenor and gist of those assurances was known also.

Q2457 David Simpson: So, what you are saying to the Committee today, if I have understood you correctly, is that the RUC or PSNI did know about these letters.

Lady Hermon: No.

Sir Jonathan Stephens: No, I'm saying that they did know about the scheme. They were absolutely intrinsic to the scheme. They did know that assurances were being given. This is what Lady Justice Hallett concludes. They did not have the text of the letter until 2011.

Q2458 David Simpson: Why was it held back till 2011? Why were they not informed before that? Was it done politically?

Sir Jonathan Stephens: No. I think the short answer is it is difficult to know why. I suspect that this was part of the concern to respect the different roles and responsibilities and accountabilities and the operational independence of the different elements within the scheme. Certainly, with hindsight, as Lady Justice Hallett observes, it would have helped to minimise the risk of errors if everyone within the scheme had been clear about the nature of the assurances that were being given at the end of the scheme.

Q2459 David Simpson: To finish, I will pick up on a point that Naomi raised with the Secretary of State in regard to the victims. Whilst Lady Justice Hallett said that scheme was not secret, many victims do not see it that way. What has the NIO or the Government done to alleviate that sense of secrecy that the victims believe it was done with?

Mrs Villiers: Publication of the Hallett report is obviously the main way that the Government has sought to respond to the understandable concerns of victims. They were demanding the facts of what happened, and obviously the 200 or so pages of the Hallett report is a very detailed and thorough examination of what did happen.

Q2460 David Simpson: Whilst the Government can apologise—and I accept what Sylvia has said that we believe that your apology was very sincere—there is a realistic possibility here that the victims now will not get justice for their families because of what has happened with these letters. The law of averages would state that there is a possibility that none of these people will now get justice for Hyde Park or any bombings or murders in Northern Ireland. Would that be a fact?

Mrs Villiers: As I have said, I think it is important to recognise that it was not proved that the individuals who went through the scheme had committed any crimes. Of course, I fully recognise the concern felt about the collapse of the John Downey trial. As I have said here, there is really no prospect of John Downey standing trial for the Hyde Park bombing, but that does not mean others may not in the future stand trial for offences with which they may be connected. As I have said, we are doing everything we possibly can to ensure that these letters do not stand in the way of future prosecutions, and that is why it is important to emphasise they not immunities or amnesties. They were only a statement of fact at a particular point in time and, as the Hallett report has now made clear, they are statements of fact that should not be relied on because of the significant flaws in the way the scheme operated.

Chair: We will come back to Ian. If we could finish by four o'clock at the vote, it would be very helpful.

Ian Paisley: I will certainly be finished by four o'clock.

Chair: Well, everybody.

Q2461 Ian Paisley: If would we could come back to this issue of the police search for Jonathan. You have kind of let the cat out of the bag and I do not know if you have been very clever in doing that one. We have had three Chief Constables in front of us,^{8 9 10} the head of Special of Branch, C Division; we have had a former ACC in front of us and the senior investigating officer involved in it.¹¹ Every single one of them, to a man, said the first

⁸ A link to the transcript of the oral evidence from Sir Hugh Orde OBE QPM, President, Association of Chief Police Officers and former Chief Constable, Police Service of Northern Ireland to the Northern Ireland Affairs Committee on 9 April 2014 (HC 1194) can be found here:

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

⁹ A link to the transcript of the oral evidence from Sir Ronnie Flanagan GBE QPM, former Chief Constable, Royal Ulster Constabulary GC/Police Service of Northern Ireland to the Northern Ireland Affairs Committee on 30 April 2014 (HC 1194) can be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/9013.html>

¹⁰ A link to the transcript of the oral evidence from Chief Constable Matt Baggott CBE QPM, and Assistant Chief Constable Drew Harris OBE, Police Service of Northern Ireland to the Northern Ireland Affairs Committee on 7 May 2014 (HC 1194) can be found here:

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

¹¹ A link to the transcript of the oral evidence from Norman Baxter QPM, former Detective Chief Superintendent, RUC GC/PSNI; and Peter Sheridan OBE, former Assistant Chief Constable, RUC GC/PSNI to

they knew of the letters was the *Downey* judgment. You today have very kindly revealed that the police knew about the letters in 2011. I believe the date is December 2011, because tomorrow at the police board meeting there is going to be an answer given to the question by the police that says that letter was shared with a member of the PPS staff, along with a single PSNI member of staff, in 2011. It then goes on to say, “This letter was not subsequently passed on.” Obviously that police officer and PPS official realised there was something wrong with the content of the letter, and it was not passed on. The system, when there were checks and balances, appeared to work. However, there is the fundamental issue of deceit. We have been told by a trail of people coming in here the first time the police knew of this was in 2013, when actually now we have a document trail back to 2011. Were you aware of that single officer? Do you know who that single officer was?

Sir Jonathan Stephens: No. It is Lady Justice Hallett’s report that talks about that at 2011. I repeat what I said earlier, because this is also in Lady Justice Hallett’s report. She has had the chance to speak to police and NIO officials. Although she finds no evidence the text of a letter was shared earlier than 2011, nonetheless she is confident the fact that assurances were being given on the basis of the scheme and judgments made under it was known, and the general tenor and the gist of the letters was known.

Q2462 Ian Paisley: These letters—these responses to questions by the police board—are signed off by the Chief Constable, so he will probably have to give this letter and, whilst it was not the current Chief Constable who gave the answers to us, he is now making it clear that there is a significant date change on those two years or three years. Can I ask you this? In terms of the knowledge of the names, Secretary of State, do you know all of the names on that list, and you have said your reasons not to divulge. Does Lady Justice Hallett have full access to all of the names or just some of the names?

Mrs Villiers: No, but she could see all of the relevant documents, and that included all the names.

Q2463 Lady Hermon: But she was bound by the principle of confidentiality.

Mrs Villiers: She also pointed out that, even if she were not bound by a duty of confidentiality, she felt that reference to names could jeopardise future prosecutions, and that is obviously another reason that I have to bear in mind in deciding whether names should be published. As Lady Justice Hallett said, no-one would thank me if I were to mess up potentially a future prosecution by putting names into the public domain. That is another important consideration.

Q2464 Lady Hermon: With the greatest of respect, Secretary of State, the reason that you have given is your Article 2 obligations on the right to life. The evidence points the opposite

the Northern Ireland Affairs Committee on 2 April 2014 (HC 1194) can be found here:
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/8333.html>

way, again with the greatest respect. Mr John Downey, if the judge had been so overwhelmed by the concerns of Article 2 in European Convention on Human Rights, we would not have known about the *Downey* case at all. Those were not overriding considerations. Mr Downey walks free today to breathe the air of County Donegal and, I understand, to walk about in Northern Ireland as well. So, I think the evidence points in the opposite direction. You should publish the names.

Mrs Villiers: As I say, another disadvantage of publishing the names is the impact that might potentially have on the ability to prosecute these individuals in the future.

Chair: We have gone through this quite a bit, and we may return to it another day.

Q2465 Ian Paisley: Sir Jonathan, I heard your sincere apology, and that is appreciated. Victims will at least appreciate that there is recognition. As Chief Executive Officer of the Northern Ireland Office, is there a sense of shame about this saga within the Northern Ireland Office as a result of what has happened?

Sir Jonathan Stephens: I would say there is a sense of the seriousness, particularly of what is variously described as the catastrophic error that occurred in the *Downey* case. There is a sense of the importance of learning lessons and recognising that there were systemic failings. You asked me, “What is the sense of the Northern Ireland Office?” It is also fair to say that there is a sense that the Hallett report recognises that throughout officials sought to act in good faith and with integrity, on a number of occasions sought to bring everyone involved in the system together to ensure they were operating on a common basis and common understanding, sought to ensure that common records were established and shared, and sought to make every effort to ensure and check that the assurances that they were giving were based correctly on checks that had been done. I think it is important to put on the record that a number of officials worked very hard to seek to administer the scheme properly. Nonetheless, as the Hallett report concludes, there were failings, largely systemic rather than individual. It is important to recognise that and learn. Of course, the Northern Ireland Office now is a very different organisation with very different responsibilities.

Q2466 Ian Paisley: There is the “we were only following orders” argument. I accept that. What amazes me, Sir Jonathan, was that throughout all of this, given how it has now unravelled and given the views that are now emerging from officials privately and in public, is that there was never a whistle-blower in all of this who actually said, “This is just wrong”, because as the Secretary of State said, this was not normal.

Sir Jonathan Stephens: I have to repeat, as Lady Justice Hallett said, this scheme, properly administered, was not unlawful. It is the duty and responsibility of civil servants to implement the decisions of the Government of the day, irrespective of their personal views. That is a very important principle of the civil service. It is sometimes quite important also to recognise that the Northern Ireland Office is not faceless bureaucrats. We are flesh and blood, and in particular a large number of individuals have grown up,

lived and worked in Northern Ireland for all or much of their lives, and represent a range of opinion and experience in Northern Ireland.

Ian Paisley: And a few have faced threats from terrorists as well, I imagine.

Sir Jonathan Stephens: As you say, some of them have themselves been victims and have themselves found that in their official work they have to deal with issues that perhaps they would otherwise prefer not to have, and have dealings with people that they would otherwise prefer not to, but it is their public duty to do so if that is a lawful and proper direction from Ministers.

Q2467 Mr Anderson: Mr Stephens, I want to ask you first: you said earlier in the meeting that all times Ministers were aware of the scheme. Does that include Ministers in the Northern Ireland Assembly?

Sir Jonathan Stephens: Sorry; I was talking about Ministers in the Northern Ireland Office.

Q2468 Mr Anderson: I see. Is it possible there was a list of who they were and how much information they had?

Sir Jonathan Stephens: Specifically, I am referring to the Secretary of State for Northern Ireland of the day, from the discussions here, when I think it was Peter Mandelson. I briefly worked for him. Every successive Secretary of State since then.

Q2469 Mr Anderson: But it would it not include Ministers on the ground in Northern Ireland?

Sir Jonathan Stephens: It would not include devolved Ministers, no.

Q2470 Mr Anderson: I want to ask a number of questions about the letters and the reporting within the *Belfast Telegraph*. You said you were contacted or your office was contacted by the *Telegraph*.

Mrs Villiers: Yes.

Mr Anderson: Did they speak to you directly or to you officials?

Mrs Villiers: The *Daily Telegraph* rang, and my special adviser spoke to them.

Q2471 Mr Anderson: Did they not think it was inappropriate to respond? Everyone in this room gets approached by the press and sometimes you have to say, “No comment”, but particular concerning you coming here today, do you not think it was wrong for your

officials—whether they instigated the brief or they were asked for a response—to give that response?

Mrs Villiers: It is always a difficult balance. As I said to Sylvia, I was concerned about this phone call precisely because I did not want what was happening today to be trailed. However, the reason we responded was because I was concerned that something quite sensationalist might be printed. The efforts were to try to mitigate it. That was the rationale behind the conversation with *The Daily Telegraph*. I did not speak to them myself.

Q2472 Mr Anderson: Had you briefed all the political parties before the report?

Mrs Villiers: Did I brief political parties before someone spoke to *The Daily Telegraph*?

Q2473 Mr Anderson: Yes, or before coming to speak today.

Mrs Villiers: No, I had not had a discussion about the OTR issue with the Northern Ireland political parties for some time. I did not have any conversations specifically about this hearing today that I can remember.

Q2474 Mr Anderson: So in terms of the report in the *Belfast Telegraph* this morning—¹²

Mrs Villiers: Just to be clear, I have been talking about *The Daily Telegraph*. I am not aware of what has happened in relation to the *Belfast Telegraph*.

Q2475 Mr Anderson: We got a copy this morning. There is a big comment from the DUP MP Jeffrey Donaldson about a lot of the detail—

Mrs Villiers: Yes, I have seen article. I am just saying that my comments about having been rung up were *The Daily Telegraph* not the *Belfast Telegraph*.

Q2476 Mr Anderson: If your office had not responded and said, “Look, I’m sorry. There is no comment. I will make the statement as I believe is appropriate to the people who have got responsibility”—i.e. us or the House more widely—then there would not have been anything for *The Telegraph* to run with. They could have contacted MPs, as they obviously contacted Mr Donaldson, and no doubt they are saying, “We’ve been told by special adviser. What’s your view?” None of us in this room are unaware about how sensitive these issues are. Yet, potentially, you are saying you are worried about sensationalism. Well, the sensationalist

¹² A link to the article in the *Belfast Telegraph*, “OTR letters: IRA suspects to lose immunity from prosecution, U-turn is a victory for justice: DUP”, 23 September 2014 can be found here: <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/otr-letters-ira-suspects-to-lose-immunity-from-prosecution-30557374.html>

report without any quotes from yourself or other MPs would have had less validity than what this report has.

Mrs Villiers: I can only assure you that whatever contacts there were with the media were aimed at trying to ensure that there was not sensationalist reporting. It is difficult. Very often the preferable thing might be just to say, “No comment,” but then one could end up with an article that was unbalanced. I meant no disrespect at all to the Committee. I would rather there was no advance consideration of our discussion, but this is something in which the media is understandably very interested, so we responded to some of the enquiries we received.

Q2477 Mr Anderson: We are constantly advised by the Speaker of this House that Government Ministers should not make statements to the press before they make them in here. This is a very important issue we have raised here, so effectively you have basically shown contempt for the Speaker’s advice was.

Mrs Villiers: It was absolutely not meant in that way. It was meant to try to ensure that we did not have sensationalist reporting this morning.

Q2478 Mr Anderson: In terms of the debate on whether the letters will be rescinded or not, the term that’s used in the *Belfast Telegraph*—and I think this appeared last year as well—is “annulled”. Would you accept these letters are either annulled or rescinded?

Mrs Villiers: What I am saying is they do not have any value. They never conferred immunity. They were statements of fact at the time they were issued, and what I can make clear is that they cannot be relied on even as statements of fact. The Government no longer stands behind them, because we cannot be certain that they were accurate and reliable at the time. There can be no question of looking back at past decisions by prosecutors and the police. What will count is the evidence available today: does that justify arrest? Does that justify prosecution? That decision will be made by today’s police and prosecutors regardless of what judgments were made in the past about whether someone was wanted or not. Today’s decision will be made by today’s prosecutors on the basis of all evidence, regardless of when it first became available.

Q2479 Mr Anderson: Have you been advised, either by your officials or by perhaps the Attorney General or somebody else within Government specifically not to rescind the letters? Or have you taken the decision yourself?

Mrs Villiers: I have taken advice on the best way to prevent these letters causing a problem in future prosecutions.

Q2480 Mr Anderson: From whom?

Mrs Villiers: The leading Treasury counsel. I have taken that advice into account. I have had a number of other discussions and have concluded that the most effective way to do everything we can to remove barriers to prosecution is through the statement that I will issue in the next few days.

Q2481 Mr Anderson: So, you are not going to rescind or annul letters.

Mrs Villiers: I am saying very clearly they should not be relied on, so that means that they do not have a value. They do not protect people from prosecution.

Q2482 Mr Anderson: I have understood that the last 20 times you have said it. What I want to be very clear is: you are not going to rescind them; you are not going to annul them; and you are also not going to issue new letters.

Mrs Villiers: As I have said to Naomi, there would be risks associated with issuing new letters, not least because it starts to look a bit like the continuation of the scheme when the Government has been clear that the scheme is at an end.

Q2483 Nigel Mills: If I just take you to paragraph 10.66 of the Hallett report, the wording there is that the scheme was, “Not unlawful in principle”. It appears to have more caveats there than you could normally get into a sentence. She could have said the scheme was lawful. What do you read into the fact she has chosen to add in “not unlawful” and “in principle”. It implies it was perhaps okay in theory; in practice it was a bit dodgy. Is that how you would read that sentence?

Mrs Villiers: I would not read it that way. It is carefully worded. We all know that lawyers have an approach to text that is very precise, but the upshot of it is Lady Justice Hallett agrees with successive Attorneys General that the scheme is lawful.

Nigel Mills: Although she does not say quite that.

Sir Jonathan Stephens: It might be worth referring to paragraph 2.67, where she expresses the thought in slightly different language, “To my mind the administrative scheme, properly implemented, was not unlawful”.

Q2484 Nigel Mills: Again we have a rather big caveat in “properly implement”, which I think is the point I am raising in my question: it might in theory be okay, but in practice it might not have been.

Mrs Villiers: The conclusion of successive Attorneys General and Lady Justice Hallett is that, in principle, a scheme that indicated to people whether or not they are wanted for arrest is lawful. As we discussed, it was not normal, but it was not unlawful.

Q2485 Nigel Mills: Can I just take you to the fix that you are proposing? I do not think we need to pick on the words, but are you confident that the fix should not be done by the Department of Justice in Northern Ireland or some other devolved body in Northern Ireland, given that devolution has happened since most of these letters were issued?

Mrs Villiers: We are working closely with the other organisations affected by this, including the Department of Justice, but the reasons are twofold for the statement to come from the Government. Firstly, as the Hallett report recommends, it is for the Northern Ireland Office to deal with the outworkings of this scheme since it was created by the Northern Ireland Office. More importantly and simply, these statements were issued by the UK Government in the first place. Therefore, it is for the UK Government to make it clear that they can no longer be relied on. We could not be as confident of the effectiveness of the response if it came from the devolved administration.

Q2486 Nigel Mills: Is it worth considering having both administrations issue a similar statement, just for the belt and braces in that situation?

Mrs Villiers: Certainly that's something that I am happy to consider and discuss with the Department of Justice.

Q2487 Dr McDonnell: Very quickly, you have covered a lot of ground, but there were just a couple of points I want to bring in here. At the start, Secretary of State, you mentioned systemic failures. One of the first things that we were presented with was that it was in fact the sole responsibility of the police, the failure, and indeed some people dumped it on Norman Baxter because of some apparent failure on his part. Is there now a general acceptance in the system that in fact there were a lot of people to blame and there was a collective and systemic failure?

Mrs Villiers: Yes. There is no doubt that a serious mistake was made in the PSNI, and that was an important element of the result of the *Downey* case. However, as I said in the chamber in response, I think, to Ian's question, the systemic failures were very clear, and were it not for those kinds of failures—if the scheme had been gripped and managed properly—the mistake might never have been made. It would have been clearer who was doing what and who was responsible for what. If risks had been addressed properly, there was every possibility that that mistake, if it had been made, would have been picked up and remedied. So, yes, it would not be fair to say that this issue is solely down to a mistake that was made at the PSNI, because they were operating within a scheme that was sanctioned by Ministers and was flawed. The responsibility lies with Ministers too.

Q2488 Dr McDonnell: But you are not quite saying that the whole thing was such a cloak and dagger operation that basically mistakes were inevitable—

Chair: There is the vote starting, but perhaps you could answer very quickly.

Dr McDonnell: —Because of the nature, the secrecy and the piecemeal version of it.

Mrs Villiers: Mistakes were not necessarily inevitable, but given the sensitivity of the issues, much more care should have been taken to guard against mistakes, particularly in terms of the way the letters were caveated. There are a range of ways in which the scheme was not gripped properly, which gave rise to the risk of mistakes.

Q2489 Dr McDonnell: Two very quick, minor supplementary questions. How many people got “Don’t come back” advice?

Mrs Villiers: As set out in the Hallett report, I believe 23 individuals are categorised as wanted.

Q2490 Dr McDonnell: And the other thing was, on the royal pardons or the royal prerogatives of mercy, were any of those people agents? Were they awarded pardons on the basis of them being agents for the security services?

Mrs Villiers: As I have said, I do not think it would be appropriate to comment on individual cases. It is certainly not the practice of the UK Government to comment on whether individuals might or might not be agents.

Chair: We will have to wind up. Secretary of State, Sir Jonathan, thank you very much.

Naomi Long: There was quite an important point raised. I do realise—

Chair: We have to vote. We are voting now. You have five seconds. Go on.

Q2491 Naomi Long: The PPS and PSNI operate in the devolved sphere, but they are operationally independent from the Justice Minister. The DoJ will have observer status on the review panel you have set up. What value could the DoJ bring to the issuing of any letters or issuing of any indication that these letters have no value?

Mrs Villiers: As I said to Nigel, I think the message has to come from the UK Government; however, I was happy to consider his suggestion as to whether any involvement from DoJ would be helpful.

Chair: I think on that point the Committee would recommend an oral statement for the purposes of extending the message as far as it could be extended. You did say you would reflect on that.

Mrs Villiers: I will.

Chair: Thank you very much, indeed.