



Northern Ireland Affairs Committee

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

Wednesday 22 October 2014

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Written evidence from witnesses:

- [Letter from Duncan Ball, 15 September 2014](#)

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Members present: Mr Laurence Robertson (Chair); Mr David Anderson; Oliver Colvile; Mr Stephen Hepburn; Kate Hoey; Naomi Long; Jack Lopresti; Nigel Mills; Ian Paisley; David Simpson.

Questions [2817 - 2934]

Witnesses: **Mark Rowley**, Assistant Commissioner for Specialist Operations, and **Duncan Ball**, Commander of the MPS Counter Terrorism Command, Metropolitan Police, gave evidence.

Q2817 Chair: Thank you very much for joining us. As you know, we are conducting an inquiry into the on-the-runs administrative scheme, which came to light with the collapse of the case against Mr Downey. We have taken evidence from a number of witnesses. We are very grateful to you for coming to us today, in the hope that you will be able to help us, a little bit at least, in our inquiry. Obviously, our interest in your involvement centres on Mr Downey. It might be useful to open the session by asking you if you would like to make any comments or statements at all, and then we can come to questions, if that is okay. Over to you.

Mark Rowley: I would just make two or three points, in opening. The officers of the Metropolitan Police worked very hard on this case, in many phases, over a long period of time, were pleased to get Mr Downey to the doors of a trial and disappointed that the legal judgment¹ that took place meant he was not going to stand trial. However, that disappointment obviously comes second to that of the families, with whom the Met worked over a long period of time, who were hoping that this case would be brought and were massively upset at the result of it. We can understand that, and it is very sad. The last point I would make is: we felt that Dame Hallett’s report² lays out very clearly our

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>

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

knowledge and involvement in the scheme, or lack of, and that will probably be reflected in the answers we give to the questions today.

Q2818 Chair: It might be useful, then, if we start with the actual arrest of Mr Downey. Could you perhaps talk us through the circumstances of that?

Duncan Ball: Certainly. Good morning and thank you for the opportunity of appearing in front of the Committee. We became aware of Mr Downey's attendance at Gatwick airport, which was on 19 May 2013. That was not something we had prior knowledge of. We first had contact from Sussex Special Branch, who had received an alert that Mr Downey was travelling out of the country, and travelling to Greece, on that particular day. We had some inquiries made of us by Sussex, because they realised that he was wanted by us for the murders back in 1982, and we were able to confirm to them the status of Mr Downey was that he was still wanted by SO15, the Counter Terrorism Command. Once they had confirmed that he was still wanted by us, they then arrested him. We went to Gatwick Airport, and we brought him back to central London, where he remained in custody until the point that he was charged on 22 May 2013.

Q2819 Chair: It raises two questions. Firstly, at that point, did he have any letter on him that suggested he was free to travel throughout the UK?

Duncan Ball: At that particular point, he did not have a letter. He did make us aware that there had been some discussions and there was a potential for a letter indicating that the matter had been resolved. We were then immediately able to speak to both the PSNI and the Northern Ireland Office in order to identify the circumstances behind the letter, because this was the first knowledge we had around any potential letter or the whole process of on-the-runs scheme.

Q2820 Chair: What happened then?

Duncan Ball: We received a copy of that letter³, unsigned, from the Northern Ireland Office.

Q2821 Chair: Unsigned?

Duncan Ball: It was an unsigned copy from the Northern Ireland Office of that particular letter that had been sent to Mr Downey before.

Q2822 Chair: Sorry, when you say "unsigned", do you mean the signature was redacted?

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>

Duncan Ball: There was no signature on it, so I am working on the basis that that would have been a copy of the letter at that particular time that was handed to us, the police. We were then able to speak to the Crown Prosecution Service, whom we obviously work very closely with during any particular police investigation, particularly around counterterrorism matters. We were able to share that material with them, and they subsequently used that in their conversations with Attorney General's Office in relation to a charging decision, which was then reached on 22 May.

Q2823 Chair: Just one further question from me before I open it up: Sussex Police contacted you to ask if you wanted Mr Downey. One of the questions that has troubled us is why the PSNI did not contact you to ask for similar information. Surely, if one police force can ask you from within the United Kingdom, then another one can.

Mark Rowley: Ask us when, sorry—then or throughout this process?

Q2824 Chair: Prior to a letter being sent to Mr Downey, surely the PSNI should have checked with the Met, where the offences took place, before any letter was generated. Surely they should have asked you. Was there any communication from them about Mr Downey?

Mark Rowley: PSNI did make those inquiries, and the Metropolitan Police did inform them—I can draw out the exact dates, if you give me a moment—that he was wanted in relation to the Hyde Park bombing offences, and they were aware of that before the letter was subsequently sent from the Northern Ireland Office to Mr Downey.

Q2825 Chair: Which officer with the PSNI was told that?

Mark Rowley: Can you remember?

Duncan Ball: That was an inquiry that was made in April 2007. That inquiry came in from the PSNI, and that came in to the Extradition Unit. In terms of the actual identity of the officer who made that inquiry, I do not know, but we do have documentation that we have supplied to Lady Justice Hallett's inquiry to show that auditable trail of the material that has then been sent back as a result of that inquiry.

Mark Rowley: I think her report shows that our response, saying that he was wanted at that time, was briefed up to Mr Baxter. Her report shows that.

Q2826 Kate Hoey: So it was sent in writing. There is an email trail or a letter trail saying that he was wanted that went to the PSNI.

Duncan Ball: In April 2007?

Kate Hoey: 2007.

Duncan Ball: My understanding is that there is an email following a telephone conversation with the Extradition Unit.

Q2827 Kate Hoey: Have you seen that, or has Lady Justice Hallett seen that? In other words, can we have it?

Duncan Ball: We have shared that with Lady Justice Hallett, to my best recollection, and I believe that is referred to in her report. I believe it is 13 April 2007.

Q2828 Chair: It appears that we have an email copy here.

Duncan Ball: Yes.

Chair: Thank you very much for that.

Q2829 Lady Hermon: On behalf of the Committee, it is very good of the two of you to come along, answering on behalf of the Metropolitan Police. I am very interested in teasing out a little bit of your letter, Mr Ball, if that is alright. It is a carefully drafted letter. It is a perfect letter.

Duncan Ball: Thank you.

Lady Hermon: It could have been written by a civil servant, if you had not been a police officer. It is your letter dated 15 September 2014⁴. You very carefully, at the end, quote Lady Justice Hallett's report. "As to whether the MPS"—Metropolitan Police Service—"knew about the OTR scheme, the MPS respectfully endorses Dame Heather Hallett's conclusions on this issue that 'the Metropolitan Police Service had'"—and I am quoting, as you have quoted—"no knowledge of the end-to-end administrative scheme, either at a strategic or operational level, until the arrest of Mr Downey". That is a very interesting quotation: that the Metropolitan Police did not have any knowledge of the end-to-end administrative scheme. That suggests that you knew a bit about it, maybe the middle or the start of it. What exactly did the Metropolitan Police Service know about the administrative scheme for the OTRs?

Duncan Ball: In terms of what we knew collectively about the scheme, we knew very little. There were some inquiries conducted by Lady Justice Hallett of previous Commissioners within the Metropolitan Police, none of whom have any knowledge of the OTR scheme. In terms of any interaction with the Counter Terrorism Command and its predecessors, Special Branch and the Anti-Terrorist Branch, again, from all our research of our documentation, which we have also supplied to Lady Justice Hallett, there is no record of our knowledge of the OTR scheme. There were some individual inquiries made of us of names that were on that list, which, again, we have disclosed to Lady Justice

⁴ A link to Mr Ball's letter to the Committee dated 15 September 2014 can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/written/14558.pdf>

Hallett, but the context behind that, in terms of the scheme, was not something that was known to us, within the command.

Mark Rowley: Just to summarise that, Duncan's language is careful because we did not want to imply that we were never involved in any respect whatsoever, because of course inquiries were made of us.

Q2830 Lady Hermon: There was part of the scheme that you knew. You did not know the end-to-end; you did not know the end product, perhaps.

Mark Rowley: We did not know why the inquiries were being made either. Inquiries were made of the Metropolitan Police: "Is X wanted?"

Q2831 Lady Hermon: You did not know why the PSNI or the RUC were making those inquiries.

Mark Rowley: It is normally detective constables or detective sergeants of whom those inquiries would be made; we can find no evidence that suggests they were made aware that behind that request was the on-the-runs scheme.

Q2832 Lady Hermon: At a more senior level, did no one know?

Mark Rowley: We can find no one who seems to have known at any time. Lady Justice Hallett has gone through a whole range of people. We have supported her inquiries. We can find nobody who had any knowledge of the scheme.

Q2833 Lady Hermon: I preface my remarks by saying that I have the highest regard for Sir Hugh Orde. He was the longest serving Chief Constable of the Police Service of Northern Ireland. We know from our evidence that the administrative scheme for the OTRs began in 2000. Sir Hugh Orde was appointed from the Metropolitan Police, from a very senior rank—Deputy Assistant Commissioner, I believe—to the PSNI in early 2002. For the seven years that he was Chief Constable, he knew about the administrative scheme; he knew how it operated. Are you telling the Committee—as I say, I have the highest regard for Hugh Orde—that at no stage he would have said to his successors or his former colleagues in the Metropolitan Police, "There is an administrative scheme here, in Northern Ireland"?

Mark Rowley: I cannot speak for Sir Hugh.

Lady Hermon: Obviously not. I would not expect you to.

Mark Rowley: All I can say is that, in all the inquiries we have done, we have found no evidence that anybody in the Metropolitan Police was aware that there was an on-the-runs scheme. The sole involvement we found any record of is responding to these inquiries as

to whether people are wanted, but without it being clear that there was an on-the-runs scheme behind that inquiry.

Q2834 Lady Hermon: Thank you so much for that evidence, which I do not doubt for one moment. That brings me to my next question, which I need to ask you. That is: why did the Metropolitan Police make absolutely no effort, it appears, to have Mr Downey extradited? The Hyde Park bombing in 1982 was a horrible, horrible murder. Young men, British soldiers, lost their lives. Mr Downey resided in Donegal. At what stage did the Metropolitan Police seek his extradition? If they did not know about the administrative scheme—the bombing was in 1982—when did the Metropolitan Police make any effort to extradite him?

Mark Rowley: Looking back at our records, there was consideration as to whether extradition was appropriate or possible. The bar for extradition is a much higher bar than the power to arrest.

Q2835 Lady Hermon: When were those inquiries made about extradition?

Duncan Ball: Those inquiries were between 1983 and 1992, so there were a number of inquiries around extradition. The final decision in terms of extradition, as you will be aware, would be through the Crown Prosecution Service, in potential consultation with the Attorney General's Office.

Lady Hermon: I am well aware of that, yes.

Duncan Ball: There were some issues—again, they were mentioned in Mr Sweeney's judgment—at the time that concerned potential missing witnesses. There were some discussions around fingerprints and the fact that, at that time, there was not an opportunity to interview Mr Downey. The bar in terms of extradition and the code that the prosecutors within the Crown Prosecution Service would apply is far greater than it would be for us to effect an arrest here on the mainland. There is a difference between us seeking the arrest of somebody, where we would need reasonable grounds, and seeking the extradition of somebody through the Crown Prosecution Service, where, if somebody was then extradited, we would have to be in a position where we can charge them on their return to the mainland.

Q2836 Lady Hermon: Finally, because I know other colleagues want to come in as well, the Police Ombudsman for Northern Ireland was invited by the Chief Constable, then Matt Baggott, at the end of February this year, when Mr Downey walked free from the Old Bailey. It was the Chief Constable of the PSNI who referred the case for inquiry to the Northern Ireland Ombudsman. Just looking at paragraph 4:17 of the Northern Ireland Ombudsman's report⁵, which was released yesterday, it says, "In respect of template 6, relating to the Hyde

⁵ The Police Ombudsman for Northern Ireland's 'Public Statement on PSNI Operation Rapid, matters arising from the ruling in R v John Anthony Downey' (21 October 2014) can be found here: <http://www.policeombudsman.org/PONI/files/9d/9d6aa90c-5429-43cd-9f66-8ed229fde238.pdf>

Park bombing in 1982, it is recorded that no attempt had been made by the Metropolitan Police Service to extradite Mr Downey and that it was their intention ‘to arrest should he come within their jurisdiction’”. Now, we understand that not only did Mr Downey fly into Gatwick Airport in 2013 and was successfully arrested, but Mr Downey had travelled through the United Kingdom on previous occasions and had not been arrested. Why do you think that was?

Mark Rowley: The provisions around the Common Travel Area, obviously involving the Republic of Ireland, the Channel Islands, etc., beyond the UK, mean that the amount of data sharing, for example, in respect of manifests for flights and ferry trips, the detail that is available and therefore the intelligence and information available in advance of travel is far less than you receive on more conventional international travel. Therefore, it is possible to travel within the Common Travel Area and for the police and border agencies not to have the same awareness that we would with international travel. You will notice in this case that there has been travel within the UK, which the system has not identified, and it is the flight from Gatwick out to Greece he has planned that is picked up. This reflects the Common Travel Area and the policies around that. It is not a lack of attempt; it is just the system is not as reliable.

Q2837 Lady Hermon: So, a gentleman, Mr Downey, who is suspected of the murder, the Hyde Park bombing, in which four young soldiers lost their lives, was not a priority on the flagging system for travelling within the jurisdiction of the United Kingdom, where he could be arrested, since the Metropolitan Police was not seeking his extradition.

Mark Rowley: I did not say he was not a priority. The issue is that the manifest systems, the intelligence systems, the data available to the predecessors of the National Border Targeting Centre and their ability to spot people travelling within the Common Travel Area are much less than on international travel.

Q2838 Lady Hermon: Sorry, let me rephrase that. Did the Metropolitan Police make a priority to have him arrested if he entered the jurisdiction of the UK?

Mark Rowley: He has always been a priority. He has always been flagged on PNC. He has always been out there as wanted, with the exception of one brief period, when the marker fell off for, I think, six weeks in the 1990s at some stage.

Q2839 Chair: Sorry, can I just clarify? It is the fact that, for example, he may not have had to show a passport.

Mark Rowley: Yes.

Chair: It just would not flag up because of it being internal travel.

Mark Rowley: If you wanted a detailed brief on the Common Travel Area, it is probably best to do that in writing, but the provisions around the Common Travel Area are much

less than for international travel. The availability of manifest data and travel data means that even people flagged as wanted are not always picked up.

Q2840 Ian Paisley: Thank you very much, gentlemen, for coming. In your opening comment, Mr Ball, you indicated that, when Mr Downey was arrested, he did not say he had a letter but he indicated that discussions etc. had taken place and that there was some paperwork somewhere. He did not actually say he had a letter; is that correct?

Duncan Ball: He did not say that he had a letter himself, so we acquired the letter from the Northern Ireland Office, and we also had a copy from the PSNI, which we asked for subsequent to what Mr Downey had told us. The Northern Ireland Office letter was one that we then shared with his solicitor and the Crown Prosecution Service, and this was the first we were collectively aware of the scheme and the fact that this letter had been sent.

Q2841 Ian Paisley: He did not, at any point, say, “I have got a letter. I have got this document.” He did not use the term, “I have got a letter.”

Duncan Ball: He did not have it in his hand. He intimated that he did have a letter, but it was not something that he had in his possession.

Q2842 Ian Paisley: Given the fact that you then got an unsigned one through those channels of communication and then, subsequently, a signed one appeared, were you concerned that that was signed after he was arrested? Was there any possibility that that was queried?

Duncan Ball: In terms of my own personal view, no. It is clearly not for me to comment on why a particular copy was sent. Within that particular issue around the letter, because it was the first that we were aware of it, we had not had a full understanding of what the circumstances were behind it. Having arrested Mr Downey at the time, it was very much a case of trying to work out and deconstruct what the process was and whether that would then have any impact on the investigation. At that particular time, our main focus was on dealing with and recreating the case from 30 years ago, with the significant challenges around historical cases that we do have, so that was very much our focus at the time.

Q2843 Ian Paisley: When he was in custody, was he a helpful custodian? Was he helpful through questioning, or was he one of these “I will hold my silence” types?

Duncan Ball: I would not be able to comment. I do not know the answer to that.

Q2844 Ian Paisley: You do not know the answer.

Duncan Ball: I do not know the answer to that.

Q2845 Ian Paisley: You do not know the answer to that. The reason why I am concerned is if this has emerged that he had this letter that was so helpful, you would think that he would have said right at the very outset, "I have a letter, very clear, and it's signed." But you then end up through a process of elimination getting a document that is not signed, and then subsequently one emerges that is signed. The unsigned one is not a copy, because a copy has to be complete.

Mark Rowley: As I have said, Mr Downey has intimated to us there is a letter in existence.

Q2846 Ian Paisley: He is intimating to you, or he is saying?

Mark Rowley: He is saying to us there is a letter in existence. He does not have it, he cannot lay his hands on it, and so the detectives at the time are, quite sensibly, trying to go back to the source to find out: does this letter exist and can we get a copy of it? It happens that the first thing they get sent from the Northern Ireland Office is an unsigned version of it, and subsequently we get a signed version of it.

Q2847 Ian Paisley: Hang on. The Police actually went to the Northern Ireland Office and got the Northern Ireland Office to assist Downey finding something that he had lost?

Mark Rowley: We are not trying to assist Downey. Our detectives are investigating an awful and serious case, and they have just arrested somebody who has intimidated that there is a letter in existence that may have a legal bearing on the ability to prosecute.

Q2848 Ian Paisley: Alright. Why did they not tell him, "That's up to your solicitor"? Why did they go to the NIO?

Mark Rowley: Because if it exists, the sooner we know about it as investigators, the more quickly we, and more importantly, the CPS, can assess its bearing on the case. It is simply about pragmatism. It would be quite possible to say to him, "We are not going to think about that until you produce it in *x* months' time," but actually it is helpful for the prosecution to know if this is going to hole the prosecution below the waterline, so that CPS can get the information straight away, and they assessed its relevance.

Q2849 Ian Paisley: But it was through the channels of the Northern Ireland Office that you actually received the deemed, signed, usable copy of the letter?

Duncan Ball: We made a number of—

Q2850 Ian Paisley: I am sorry, Mr Rowley, you nodded your head. We are taking evidence; we need this. Is that the case?

Duncan Ball: We made a number of—

Q2851 Ian Paisley: Mr Ball, just a minute. Mr Rowley nodded his head. Is it the case that the Northern Ireland Office sent that letter through? You are both nodding your head. Can you say yes for the record?

Duncan Ball: Yes.

Mark Rowley: They sent the unsigned version through to us.

Q2852 Naomi Long: When was this letter dated?

Duncan Ball: I could not say. I can write back to the Committee to confirm, along with a copy of that letter, if that helps.

Naomi Long: It would be very helpful. Thank you.

Q2853 Ian Paisley: I must say, I find that utterly incredible. The next thing I want to know is, whenever you found that out, how concerned were the MPS when they received that letter? Did you think legally, “We are holed now below the waterline,” as you said, or, “We will let this roll”? How concerned were you when you had that letter?

Mark Rowley: Looking back, it looks to me that the detectives at the time, as Duncan has said, were focusing very heavily on, “We have this old case; can we pull the evidence together even though it is 30 years old?” We have now got this novel letter from a scheme that we know nothing of, and I think the instinctive detective view is probably, “This might affect our case; get it into the hands of CPS as quickly as possible,” which is what was done. Then it was for CPS, and they instructed the very early prosecuting counsel to assess the impact of it.

Q2854 Ian Paisley: That was the legal advice you took then, from CPS.

Mark Rowley: Yes. Within a few days—we can pull out the exact dates if that helps—the prosecuting QC has given advice on the impact of that letter potentially on the prosecution, and his advice is that he does not see it as fatal to the prosecution at that stage. I am paraphrasing, but that was the tone of it. That was his advice then, but clearly it did become fatal to the prosecution, but that was his advice at that stage.

Q2855 Kate Hoey: Who said that exactly?

Duncan Ball: Brian Altman QC provided that—it was the 18th.

Q2856 Lady Hermon: I have just a specific point. I am very aware that the two of you have very hefty files with you. By any chance, Mr Ball, Mr Rowley, but particularly Mr Ball, do you have a copy of the letter that was faxed, sent or emailed through from the Northern Ireland Office in your file—the one that was sent through at the time.

Duncan Ball: Yes, I do.

Lady Hermon: Thank you. I wonder, could you produce it for the Committee please?

Duncan Ball: Would you like me to do that now?

Q2857 Chair: That would be helpful. While you are searching for that, can you confirm that Mr Downey was held in custody all this time?

Mark Rowley: I think he was in custody for two days from arrest to charge.

Q2858 Mr Anderson: What was he charged with?

Mark Rowley: He was charged with the murder offences and the explosives offences.

Ian Paisley: This letter is only dated July 2007. There is no day on it.

Lady Hermon: It is redacted as well, I think.

Ian Paisley: Do you think it is a redacted copy?

Lady Hermon: The name of an official, but not the signature, appears.

Ian Paisley: Mr Sweeney's name is on it.

Lady Hermon: But no signature.

Ian Paisley: We are aware of Mr Sweeney. But there is no signature. So, it is a copy without a signature.

Chair: Any more questions, Ian?

Q2859 Ian Paisley: I want to ask you this. Is Mr Downey now free if he wants to travel within the United Kingdom?

Mark Rowley: You ask me to, potentially, repeat others' mistakes. I have not come here today having checked whether any force in the United Kingdom wants Mr Downey for any offence. I cannot answer that.

Q2860 Ian Paisley: Right. But if he jumped on a plane today, travelled from Dublin or wherever, over to the UK, maybe on his way to Greece again, is it not going to flag up that he is wanted for this crime?

Mark Rowley: Not for this crime, no.

Q2861 Lady Hermon: But it may flag up if he is wanted for other crimes.

Mark Rowley: If he is wanted for shoplifting in Birmingham, then of course it might be on there. As I say, I have not had those checked, but he is not wanted by the Metropolitan Police for this matter.

Q2862 Ian Paisley: In your experience, Mr Rowley, Mr Ball, have any of you had to deal with any other case that involves a letter of this nature? Is it so completely novel it is a one-off?

Duncan Ball: This is the first time we have ever been confronted with this particular situation, which is why, when he was in custody, we had to make a number of enquiries, just to ascertain what the system or the process behind that letter was.

Q2863 Ian Paisley: As police officers, you are sworn to uphold the rule of law. You want to go out there and arrest the bad people and put them behind bars. How does that make you feel?

Mark Rowley: This was novel. It is frustrating that colleagues and the Metropolitan Police over 30 years have done an immense amount of work to build the case—and these sorts of cases, where four people have died and many people were injured, are particularly awful—and even 30 years on have managed to build a case that is sustainable and potentially prosecutable. It is very disappointing that the problems with the execution of an administrative scheme have holed that prosecution below the waterline.

Q2864 Ian Paisley: Do you feel betrayed by that?

Mark Rowley: “Betrayed” is the wrong word; it is frustrating and upsetting that we have not been able to put a case before the court that we felt merited being put in front of a jury.

Q2865 Ian Paisley: How about you, Mr Ball?

Duncan Ball: I echo that, and obviously fully understand all the frustrations and the upset for the family to go through that particular process, where an individual is charged, and then to be frustrated through an abuse-of-process judgment.

Q2866 Chair: Before I come to Kate, on that point, would you say that this letter perverts the course of justice?

Mark Rowley: I would not say that, no. There has been a lot of debate about what is perverting the course of justice, what is legal etc. I would lean on someone far more legally qualified than I. I think Dame Hallett makes clear there is nothing illegal in principle in the scheme.

Q2867 Chair: But a flimsy letter, which says they are not aware of any force having any interest—it is not saying that there is no interest but that they are not aware—somehow overcomes all the 30 years’ work that the Met have done for multiple murder charges. This flimsy letter takes precedence over all that. That must surprise you.

Mark Rowley: It is very surprising and very disappointing.

Q2868 Kate Hoey: Thank you, and welcome to the Committee. You mentioned the difficulties of having extradition. Was there any thought given to using the European arrest warrant after 2003, which would have made getting someone from the Republic of Ireland much easier?

Mark Rowley: It makes it easier. I haven’t seen anything in our files that suggests that was reconsidered at that stage. I cannot be 100% certain in that, but the threshold for the European arrest warrant is still the same as conventional extradition. It makes it administratively easier, but the threshold is still that you have to be ready to prosecute at that moment, as opposed to arresting on suspicion, then being able to interview and gather more evidence. So, it is administratively easier, but the threshold is the same.

Q2869 Kate Hoey: Okay. You said the Met had spent 30 years getting evidence and looking at this; I still find it difficult to grasp why, if it was such a serious case, as it was, and they were such dreadful murders, you did not seem to do more proactively to get Downey.

Duncan Ball: Can I just make one observation, particularly in terms of the extradition processes I said had been discussed in that period between 1983 and 1992? One of the reasons for the extradition not being pursued again through those consultations with the Crown Prosecution Service is something that is alluded to in Mr Justice Sweeney’s judgment, which was around the acquisition of some fingerprints to compare with a parking ticket that was found close to the scene of the Hyde Park bombing. Now, we would not be able to use those evidentially, and we would only be able to gain that as evidence once Mr Downey was in our jurisdiction. So, you are caught in between a rock and a hard place, in that you cannot get sufficient evidence to extradite without somebody being within your jurisdiction to get that evidence. That accounts for one of the reasons why he was charged in these circumstances, and that previous decision, in addition to the political issues potentially at the time, as to why that extradition was not sought. It was very much an extradition and evidential issue.

Q2870 Kate Hoey: You are not suggesting that there was political interference, are you, at that time?

Duncan Ball: No.

Q2871 Kate Hoey: You mentioned the political aspect.

Duncan Ball: It is just the context at the time. I think it was something that may well have been in the minds, and clearly there is nothing I have got to suggest that is the case.

Q2872 Kate Hoey: Is there anything in the files that shows that there were any overtures made to the Irish government or to the Irish police concerning Mr Downey, given that he was living in the Irish republic's jurisdiction?

Mark Rowley: I have seen nothing like that.

Duncan Ball: No, I am not aware of anything.

Q2873 Kate Hoey: There was no attempt by the Metropolitan police at any stage to talk to a "friendly nation" who had someone living in their jurisdiction who was suspected very strongly, and there was evidence against, of doing the Hyde Park bombing.

Duncan Ball: I think I will probably make two points on that. The first point is around the Crown Prosecution Service. Again, if we are seeking to potentially extradite him, then the Crown Prosecution Service would lead in that, obviously with consultation with the Attorney General's office. The second point around that concerns, as I alluded to, the political situation. I do not know what was in the minds of any of the decision-makers at the time, in terms of the relationships between the British Government and the Irish Government, and whether that would have been something that may or may not have factored within their decision-making.

Q2874 Kate Hoey: I appreciate that. Coming right up to when Mr Downey was arrested, who did you contact and who is on the records as having been spoken to at both the Northern Ireland Office and the PSNI when he was arrested and was saying something about a letter? Who is in the file as having been spoken to at both of those organisations?

Duncan Ball: In terms of specific names, I am not in a position to say now because I do not know. I can provide those details. What I can say is that all of that material was disclosed to Lady Justice Hallett, but I can certainly provide that information to the Committee.

Q2875 Kate Hoey: That would be really helpful. Finally, just bringing it right up to today, given there is still a threat of terrorism and so on from the dissident republicans and from others, is there still a group within the MPS that is concentrated on Northern Ireland?

Mark Rowley: Most of our terrorist resource is flexible. We have a small group who lead on the intelligence perspective in terms of terrorist threats that emanate from Northern Ireland, but most of our investigative resource is moved flexibly between different threats. If you go back, at certain times in history you find the vast majority of the Met's counter-terrorism resources dealing with Irish-related threats. At the moment there is a very small amount on that and there is a lot more focused on Syria and other places, as you would expect.

Q2876 David Simpson: You are very welcome, gentlemen, to the Committee. I will be brief; a number of points I had wanted to make have been made. I just want to go back again to the letter and the points that Ian Paisley made in relation to the issuing of the letter. It is somewhat confusing for me, because we have had statements in this House from the Secretary of State and other individuals from the NIO who have been interviewed saying that these letters are not worth the paper they are written on and they cannot count on them as a defence for no prosecution. We have heard all the rhetoric, yet the NIO—the Secretary of State's office—assisted Mr Downey in getting off through the courts by issuing a letter they then said has no value, but they assisted Mr Downey's position by issuing the letter. At some stage, the NIO must have thought these letters were worth something when they sent the letters to assist. That is the confusing part of all of this. Quite frankly, I do not know how other Committee members feel, but I have listened to evidence given right down the line—conflicting evidence—and I have got to the stage now, with no disrespect to you, gentlemen, that I just do not know who to believe anymore. That is the problem. We have an issue where we have the Secretary of State standing up in the House of Commons saying they are useless and they are not worth the paper they are written on, yet they assisted Mr Downey to walk. End of story. There must have been a reliance on it in some shape or form. From you gentlemen's experience in all of this, who is to blame for this? Where does the fault lie? We have heard reports coming out that the PSNI are responsible for this—or the RUC or whatever. You have a long-time experience. Who is to blame for this?

Mark Rowley: I do not think we are in a better position than Lady Justice Hallett in terms of her report. She describes the scheme's strengths and its weaknesses. The phrase I take out of her report is of a scheme that evolved rather than was designed. For me, that is the crux of the issue here. Given that she says this was a legal scheme done for a political purpose, if it had been properly designed with tight processes I would have imagined the Metropolitan Police would have been involved in those processes formally given our lead role in respect of counter-terrorism in England and Wales, and we would probably have had a scheme that would not have made the administrative errors in respect of Mr Downey that were made. Those errors have led to letters that were inaccurate going to him, and Mr Justice Sweeney decided those were so prejudicial to him that he stayed the case. I put the blame on this issue of a scheme that, as Lady Justice Hallett describes it, evolved and was never designed properly.

Q2877 David Simpson: Within her report as well, she said that it was not secret, yet very few people knew about it, like you—you have said that.

Mark Rowley: It was in a very limited circle if it was not secret.

David Simpson: Parts of the report from the judge we could find argument with. At the end of the day, we have to admit that through all this travesty and injustice we have families here on the mainland and in Northern Ireland who in effect will never get justice because of this. That is the bottom line.

Mark Rowley: I agree.

David Simpson: From your point of view, as officers or whatever, it has to be very frustrating for the whole thing to evolve the way it has—that a gentleman like Mr Downey can walk, never possibly to be prosecuted again on the Hyde Park incident. It is unbelievable. From the Metropolitan Police's point of view, going forward, do you believe that because these letters have been issued and because of the involvement of the NIO, they could be or will be a barrier to any prosecutions in the future, despite what we are told by the NIO? Quite frankly, I would not believe a word now they tell me because of the evidence you have given today as well.

Mark Rowley: I look at Lady Justice Hallett's inquiries and our own in support of that in terms of the individuals we are aware of, and we are not aware of any other errors of substance that will cause similar problems on other cases. We have gone through every inquiry we are aware of, and I know that Lady Justice Hallett has looked further beyond that into other cases in Northern Ireland, etc. In terms of this case, it would take something extraordinary to be able to re-launch the prosecution. I struggle to see what that would be, however awful that reality is for the families.

Q2878 Chair: With regards to other errors, though, you will be aware that now Deputy Chief Constable Drew Harris told the Committee that 95 people who had received letters were linked through intelligence to almost 300 murders⁶. That must really alarm you. That is evidence he has given to this Committee.

Mark Rowley: The letters were very specific, it seems to me, about: "Are you wanted for arrest at this time?" The police or the security services will sometimes have intelligence. We may not have sufficient evidence to merit arresting John Smith, but we may have intelligence that suggests that they are involved in criminal activity or terrorist activity—terrorist activity in this case. That was one of the things that was looked at in terms whether this was accurate—"Would this person be arrested today if we could lay our hands on them?"—which is a much narrower question than, "Do we have any suspicions about this person's activity?" That fine distinction illustrates the challenge of the scheme. I go back to my point: unless you have a very clear doctrine, policy and structure for

⁶ A link to the transcript of the oral evidence from Chief Constable Matt Baggott CBE QPM, and Assistant Chief Constable Drew Harris OBE, Police Service of Northern Ireland to the Northern Ireland Affairs Committee on 7 May 2014 can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/9418.html>

running a scheme like this, then you do risk tripping yourself up with administrative errors.

Q2879 Oliver Colvile: I want to slightly change the subject, if I may. We had, as you may know, Jonathan Powell come and give evidence to us, who was the Chief of Staff at Number 10 Downing Street⁷. Not only during the course of that but also in letters and in his book, he admitted that he had had conversation with Rita O'Hare, who was a person who escaped bail and cut across over to the Republic. I have subsequently written to the Metropolitan Police and also the PSNI asking for you to have a look at investigating his having a conversation with Rita O'Hare in Dublin and telling her that if she came to this country she would then be arrested in order to fulfil the charges that she was being asked about. I would be very grateful if you could just tell me what progress you have made. The PSNI and the Metropolitan Police have written back to me saying that you are looking at it, but it would be helpful to know when you will be—

Mark Rowley: My officers have discussed this with the PSNI, as is routine practice. If we get allegations that pertain to potentially different jurisdictions, we have a conversation about which force is best placed to deal with it. The conclusion we came to is that the PSNI are looking at that. At the moment, they are scoping whether there is sufficient evidence to merit going into a formal criminal investigation or not. That is what they are doing at the moment.

Q2880 Oliver Colvile: Despite the fact that it happened to have been probably sent from here in London. The letter was sent from here in London.

Mark Rowley: We have discussed it with them and that was the conclusion we came to.

Q2881 Kate Hoey: Surely it is a Met Police matter to decide whether Mr Powell would be investigated.

Mark Rowley: It relates to both countries.

Kate Hoey: We are the same country.

Mark Rowley: Sorry. It relates to both parts of the country. We have discussed it with the PSNI and at the moment they are looking at it.

⁷ A link to the transcript of Jonathan Powell's oral evidence to the Northern Ireland Affairs Committee on 8 September 2014 can be found here:
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/12393.html>

Q2882 Oliver Colvile: In my mind, though, to go and tip somebody off who is a known terrorist that they should not come back to this country is perverting the course of justice. I repeat the allegation that I have made several times during the course of this.

Mark Rowley: In terms of perverting the course of justice—and much of this has been bandied about in relation to the scheme in general, not just this particular issue—to inform somebody that they are wanted, as I think Lady Justice Hallett says, is not in and of itself a criminal offence and is not in and of itself perverting the course of justice. Clearly, if it is done for money, that would be corruption; if it is done to aid somebody's likelihood of escaping justice and with that intent, then it could be. It depends on the facts and the specifics in terms of what was going on in this case. That is what needs scoping and that is what the PSNI are doing at the moment.

Q2883 Oliver Colvile: So, if somebody who is wanted in this country to face charges and to complete the judicial process that she was engaged with in the first place skips over the border and is then told by a senior official of the Government, "Awfully sorry, but do not come back, because, frankly, if you do, you will be arrested," that is not tipping off someone or making sure that someone is aware. This was a senior person in Government—not an elected official, but an official. That is perfectly alright, is it?

Mark Rowley: I do not think we should go into more detail on the specifics whilst this is being scoped for potential criminal investigation. I do not think we should discuss the specific case. The general point, though, is: if I was to tip you off, "You might not know this, but you are wanted for X offence and if you do not flee the country soon you are going to get arrested," that is likely to be found to be perverting the course of justice. What we have got to do now is to scope individual cases as to whether that is appropriate. In this case, with the allegations you have made, it is being scoped as to whether there is evidence to suggest there is a criminal offence.

Chair: We have probably covered that fully.

Q2884 Mr Anderson: Can I just try to get my head around the process here? You have a stack of evidence against Downey. He comes into the country; he is arrested; and then he is released on what is in that letter. We are now told that those letters are not worth the paper they are written on by the senior person responsible in this Government. If he was to come back into this country again—and it is doubtful he will—would you re-arrest him?

Duncan Ball: For that particular offence?

Mr Anderson: Yes.

Duncan Ball: No, we would not.

Mr Anderson: Why not?

Duncan Ball: For the simple reason of Mr Justice Sweeney's judgment. We would only be in the same position and we would go through the same process, where we would put the evidence to the Crown Prosecution Service. Mr Justice Sweeney has made his views

quite clear within that particular judgment. What I would say is if there is significant new evidence that comes to light, yes, that would clearly be investigated and that would clearly be shared with the Crown Prosecution Service. My other point is this investigation remains open as well, so we will investigate any new intelligence or any new material that comes to us as part of that terrorist attack.

Q2885 Mr Anderson: If any one of the other people who have this letter were to come in in the same way that Downey did, you picked them up at Gatwick or wherever and they waved that letter, what would your view then be, given what we have been told: that the letters have no basis whatsoever?

Mark Rowley: If there was somebody who happened to have one of these letters who we wanted for an offence, we would still arrest them and we would still look to prosecute them. There would be no change in that. Just to pick up one comment that has been made, the CPS did look at the judgment of Mr Justice Sweeney, and of course you can appeal judgments, but the legal conclusion they came to was that the bar to appeal the judgment is so high—you have to convince the High Court that the decision was unreasonable—that was not a realistic prospect, so they felt they had no choice but to accept his judgment.

Q2886 Mr Anderson: Are you saying that Sweeney’s judgment would not have any bearing on any one of the other people?

Mark Rowley: No, and he says at least once—probably several times—within his judgment that this is a fact-specific decision based on this case and the scheme and the letters as they applied to him, and the errors that were made as they applied to him. He makes his decision in respect of Mr Downey. He stresses several times that he is not writing a judgment that necessarily has a bearing on any other cases relating to others in the scheme.

Q2887 Mr Anderson: In terms of the overall number of people who are on the list, do you and other police forces across the United Kingdom have that list? If any one of these people did come in and you have evidence—whether it is the amount of evidence that you had in terms of Downey or other people—would they have access to that?

Mark Rowley: We do not need access to the list in that sense, because it is not a barrier to arresting people and it is not a barrier to prosecuting people, for all the reasons that have been said. The important thing was, on the back of the problems in that the way the Downey case was handled in terms of letters destroyed the prospect of a trial, to have a look at the scheme—which was the first look we had ever had—in terms of whether there are any other cases that this one may trip up. There has been a system that we have run through and Northern Ireland have run through—and Lady Justice Hallett reports on it. The conclusion is that we cannot see other cases that could be tripped up in a similar way to the Downey case.

Q2888 Chair: If somebody turns up in the UK and you arrest them, why can they not hide behind the letter in the same way as Downey hid behind the letter?

Mark Rowley: It depends on the facts of the case, but it seems to me the issue is that the letter is a comment on whether you are wanted at that time—as in the date of the letter. It is nothing more than that. For example, we may have evidence that comes to bear after the date you get a letter, so you were not wanted on 1 January but on 2 January we got new evidence, so we can arrest you on 3 January. That is the subtlety and complexity of this process as it was run. I go back to my earlier point, picking up that phrase from Hallett’s report: this evolved and was not designed. If you designed a scheme with tight rules and systems and processes, these issues would be nailed down much more clearly than they were. That created the scope for mistakes to be made.

Q2889 Chair: But I think you said, Mr Ball, you would not re-arrest Mr Downey, or you would not seek his extradition, unless significant new evidence came forward. It is a matter of judgment what constitutes significant, not only in Mr Downey’s case but in the cases of anybody else who has a letter. What would constitute significant, and what would constitute new evidence? We asked the former Attorney General, Dominic Grieve, this, and he said, “Well, that is one of the weaknesses of the scheme.” Is that how you would see it?

Mark Rowley: The point about significance in Downey that is different from the other cases is for anybody else I would use the word “additional”. If I get a letter on 1 January that says I am not wanted but if there is additional evidence on 2 January, the police may arrest me on the 3rd. That is about having more that changes the picture beyond the day I got a letter of comfort. With Mr Downey it is different. A prosecution has been stopped by the judge. The legal bar to re-launch a prosecution is a very high bar, so additional evidence on its own would not be sufficient; it would have to be very significant.

Q2890 Chair: And if you found that significant evidence, would you then go through the extradition procedure?

Mark Rowley: If we did get some startling, significant evidence, the first thing we would be doing is, given the legal complexities already in this case, sitting down with the CPS and saying, “We think we have got significant extra evidence. Would this help us get past any legal threshold to re-launch the prosecution?” Based on the advice of them and any counsel they may instruct, we would then take the investigation forward or not as we saw fit. But always it would be about whether we can get across what will now be a very high legal threshold.

Q2891 Jack Lopresti: Mr Chairman, you and David have sort of asked the question I was going to ask, which is essentially reassurance about the future. The letters were a snapshot, if you like, of the current status of the person who received them. I just want reassurance—I think you have addressed this—that the existence of letters in future cases where new

information or new evidence presents itself will not be a bar to any future prosecution or more judicial process. I think you have covered that.

Mark Rowley: I have, yes.

Jack Lopresti: Just for clarity, that is the case.

Mark Rowley: That is absolutely as we see it, yes. The case-specific issues around Downey were very much that he got a letter that was incorrect—that was the judgment of Sweeney—and not only did he get a letter that was incorrect but there were opportunities to repair that error on several occasions that were missed. Sweeney felt that the prejudice caused in all that meant that he could not go ahead with the case. That is massively frustrating from a police perspective and much more upsetting from a family perspective, but that is where we are. That is quite specific for that case, which is the reason for doing the review and making sure there are no other cases that are similar.

Duncan Ball: Could I just make one more point on that? We have a fundamental role as police to investigate terrorist offences. Whether somebody arrives in our jurisdiction, and whether we gather evidence around that, we will relentlessly investigate that. These are the gravest offences. One thing that I can assure you and assure the Committee is where there is that evidence, we will pursue it, and, in accordance with the laws of this land, we will put this towards the Crown Prosecution Service, and other decisions—for example, Mr Justice Sweeney's—are for the courts to make. We have to play our part in this process, which is getting the evidence to the Crown Prosecution Service.

Q2892 Naomi Long: Thank you for your evidence so far. I am just going to touch on a couple of things that you have already answered but I just want to clarify. With respect to the PNC, did you say that the PSNI would not have had direct access to the PNC at the time when the Downey letter was issued? I believe that changed at some point—that there was a point where the PSNI would have been able to do PNC checks directly and then that stopped, I think around the time of devolution. Could you just clarify that for us?

Duncan Ball: I do not know what the PSNI would have access to. If we were asked any question, we would provide an answer to that.

Q2893 Naomi Long: But in the case of the Downey letter, the understanding is that a question was asked of the Met. Is that correct?

Mark Rowley: Yes.

Q2894 Naomi Long: You have described Northern Ireland as being a separate jurisdiction in policing. Can you just explain a bit further the implications of that in terms of your investigation of serious crime where the locus, if you like, of those who are involved in that serious crime is in Northern Ireland? Could you explain to us what challenges that presents to you more generally?

Mark Rowley: It is a very closely related jurisdiction—there is a lot of overlap—but there are some separations. There has been a different DPP, for example. Since devolution there have been increased powers for local legislation, which you know and understand far better than I do. There are some separate jurisdictional issues that we have to deal with. Fundamentally, in terms of exchanging intelligence and co-operating operationally, particularly on cross-border operations, that does not present any insurmountable problems, but there are some differences.

Q2895 Naomi Long: The PSNI is unique in terms of police services in the UK, in that they have a responsibility directly for intelligence and security, which is not the case here, where that is dealt with separately. Does that cause any difficulties where you are specifically investigating terrorist offences?

Duncan Ball: No. We have a very close relationship with our security services. We work very closely to disrupt any threats to the public. There is a similar relationship within Northern Ireland as well. We have continual communications. On an operational basis, if there was a particular issue that affected London, for example, and Northern Ireland, we would have the same process in place and the same relationship that we would have if, for example, it was between London and Manchester.

Q2896 Naomi Long: So, the situation in the John Downey case, where there was some form of miscommunication or misunderstanding around the status of John Downey and whether or not he was wanted, currently you think is a unique failing of this particular process as opposed to a more general weakness in terms of communications between the different police services.

Mark Rowley: I do not think it is indicative of a general weakness. Also, I would be slightly hesitant about a miscommunication. From all the evidence that I have seen, the records show that the Metropolitan Police were asked a routine question about whether John Downey was wanted, not knowing the full purpose behind that question, and communicated the right answer. How that information that he was wanted in relation to the offences around the Hyde Park bombing was then handled within the PSNI, the Northern Ireland Office, etc. is for others to answer. There was not a miscommunication there.

Q2897 Naomi Long: Are you surprised that you were not told the context in which the question was being asked? Would it have helped had you been told?

Mark Rowley: The fact that one detective constable made an enquiry of another detective constable and did not share full details is not surprising to me, but, as I said earlier, if you were designing a scheme to manage the on-the-run letters policy—for want of a better description—then a good scheme would have had, I would suggest, the involvement and knowledge of the Metropolitan Police in the appropriate ways.

Q2898 Naomi Long: But given the purpose of the enquiry, are you surprised that the opportunity was not taken to explain that—just given the potential importance of the information that was being sought? It was not a casual enquiry; it was quite an important enquiry. Are you surprised that the PSNI at that time did not explain the context in which they were seeking the information?

Mark Rowley: Not really. I would not want to criticise junior officers involved in making the enquiry. Probably the officer making the enquiry in Northern Ireland knows he is doing some work for a scheme that is kept on very limited distribution and therefore is not going to routinely discuss it. I do not think that is where the challenge is. The challenge is not having a scheme designed where the Metropolitan Police at the right levels in the right ways are party to it so we can make sure that the information is handled properly. Most importantly, these information-handling decisions and what gets disclosed and how it gets managed have potential operational impacts. That is the fundamental point here. In this case, because it was handled badly, the operational impact was awful in terms of a trial that fell over. That is why there needed to be a scheme, properly designed, in which I suggest the Metropolitan Police would probably be involved.

Q2899 Naomi Long: I want to come back to the point that Oliver tested with you earlier. You said that if you had knowledge, as a police officer, of information and you were to share that information with somebody who was suspected of a crime or who was wanted for arrest, that could be perverting the course of justice. Is that correct? That would be your view as a police officer.

Mark Rowley: What we are saying is it is not automatically so.

Naomi Long: No, I understand.

Mark Rowley: But if I do something deliberately and intending to help somebody escape justice, that is wrong and it is a crime. That does not mean that every time that you share the information that somebody is wanted is automatically a crime. That is a separate question.

Q2900 Naomi Long: Well, let us ask a more specific question, then, in terms of context. A person who is wanted for a crime makes a request to ask whether they are wanted for arrest for a crime while they are outside the jurisdiction where they could be arrested. Do you believe, in your view as a police officer, that in that context sharing the information that, yes, they are wanted, knowing that they have absented themselves from a jurisdiction where they could be arrested and charged or questioned, is a perversion of the course of justice?

Mark Rowley: Again, not necessarily. I am sorry; this sounds like I am being awkward. I do not mean to be. It does depend on the facts. As a routine example, we might go and do a search warrant at a house because there is a burglar who lives there and we are looking for some property, and he is not there so we cannot arrest him. His mum tells him we have searched the house and subsequently he phones us up and says, “Am I wanted? Do I need to speak to you?” We are going to say, “Yes. You need to come in and get interviewed,” because, frankly, there is no element of surprise and he can skip the country.

There is a whole range of circumstances when we will tell people; we will ask people to attend for interview.

Q2901 Naomi Long: But you would accept that that is different from somebody who has already taken flight and essentially gone into hiding.

Mark Rowley: The argument for the on-the-run scheme—and I am not the legal expert on this—is if someone has already taken flight, you are not helping them flee justice, because they have already done so. But my point was if I know somebody is wanted and I do something maliciously to try to help them escape justice, then that is potentially perverting the course of justice.

Q2902 Naomi Long: The reason that I am probing you is that when Norman Baxter came and gave his evidence, he was of the view that had he disclosed that John Downey was wanted by the Metropolitan Police Service he would have been perverting the course of justice and he would have been assisting John Downey in avoiding arrest by warning John Downey, effectively, not to travel through where the Metropolitan Police Service could arrest him. That was Norman Baxter's view as a police officer at the time, given to this Committee. I am just interested to know: as a police officer, do you understand, at least—if you cannot agree—the concerns that he would have had about passing that information on in the way that he was criticised for not having done?

Mark Rowley: I cannot speak for what was in his mind. This goes to whole on-the-run scheme about telling people they are on the run and confirming whether they need to be on the run or not, which was the whole purpose of the scheme. Dame Hallett says that it was not, in and of itself, legal. I would probably lean on her greater legal mind than mine.

Q2903 Lady Hermon: You lead me very neatly on to Justice Hallett's report⁸. I would ask each of you to reflect on a sentence from her report. This is in her conclusions. This is paragraph 10.56 I am reading, here. It is a short sentence. "The administrative scheme not kept secret or highly confidential." From your perspective as a representative the Metropolitan Police Service, what is your response to reading Lady Justice Hallett's conclusion that this administrative scheme was not kept secret or highly confidential? Does that match your experience of the scheme? Was it secret, to you?

Mark Rowley: It was secret to the Metropolitan Police. We can find nobody in the Metropolitan Police who knew about it.

Q2904 Lady Hermon: It was secret to the Metropolitan Police. Thank you. Was it highly confidential to the Metropolitan Police?

⁸ A link to the Hallett Review report can be found here: <http://www.hallettreview.org/report/>

Mark Rowley: Nobody in the Metropolitan Police knew about it. When I saw that, I thought that she was saying that it had not formally been classified under government security systems as “secret” or “confidential”. It was clearly kept in very tight circle, and as I say, we can find no evidence that anybody in the Met knew about it.

Q2905 Lady Hermon: So from the perspective of the Metropolitan Police, the administrative scheme for on-the-runs was secret.

Mark Rowley: It might be in a dictionary sense, but not in a government classification sense, which is what I think she means here.

Q2906 Lady Hermon: But she does not say that. She does not say, “Under the government classification system, it is ‘secret’ or ‘highly confidential’”.

Mark Rowley: That is how I read it. I would read it differently.

Jack Lopresti: Not named does not necessarily mean secret, of course.

Q2907 Lady Hermon: Sorry, but that just seems a confusing response, if you do not mind me saying so.

Mark Rowley: Sorry.

Lady Hermon: In your experience within the Metropolitan Police, was the OTR scheme secret to you or not?

Mark Rowley: The word “secret”—

Q2908 Lady Hermon: Was it kept secret? Sorry.

Mark Rowley: It was not known to the Metropolitan Police. That is probably the best way of answering it.

Q2909 Lady Hermon: It would be very helpful to the families of the victims, and the survivors, and those who were so horribly injured in the Hyde Park bombing, if you could give us a categorical assurance that the investigation into the Hyde Park bombing has not been closed.

Mark Rowley: We would never close an investigation like that and we are always open to more evidence. As I say, if we had something significant and strong enough to get into court again, we would be very keen to do so.

Q2910 Lady Hermon: So you can confirm that if there is new and compelling evidence—because under the legislation, I think you need new and compelling evidence to overcome the double jeopardy rule—then this investigation would be reopened, including a re-investigation of Mr Downey’s involvement? Can you confirm that to us today?

Mark Rowley: Absolutely.

Q2911 Lady Hermon: Thank you. Finally, may I ask about the co-operation? I am sure hard lessons have been learned from Mr Downey walking free from the Old Bailey. The PSNI very quickly set up Operation Redfield to review all 228 cases. Are you personally involved in assisting the PSNI in reviewing all of those 228 cases?

Mark Rowley: Yes. We effectively did our own subset of that investigation in relation to cases that we had some knowledge of. We have worked through our cases and that got fed into Dame Hallett’s work.

Q2912 Lady Hermon: So you have completed your review, and there is no possibility of a Mr-Downey-type case mark two coming through the Metropolitan Police?

Mark Rowley: For every case we have looked at, we can find no errors in the system of a significant scale that would cause the same challenges. I say, “significant scale” because Dame Hallett mentions two administrative errors. I think one is about a date of birth and one is about something else. But through the work we have done, we have found no errors in the scheme to date that will have bearing on other terrorist cases we have dealt with.

Q2913 Lady Hermon: What procedures have been put in place to make sure we never have a repetition of this again?

Mark Rowley: That is a question for the PSNI and the Northern Ireland Office, etc.

Q2914 Lady Hermon: With the greatest respect, it is actually the responsibility of the Metropolitan Police to ensure that no-one like Mr Downey walks free simply because they are relying on a letter supplied by the Northern Ireland Office without a signature on it. I would like to think that the Metropolitan Police has insisted on closer co-operation with the PSNI. Is that the case?

Mark Rowley: Of course. As I said, we would have expected then, and we expect now, to be involved in such a scheme in the future.

Q2915 Lady Hermon: There will not be a scheme in the future, of course. The Government would never risk doing this again, surely?

Mark Rowley: That is for future governments. It is probably too fanciful to talk about schemes in the future. However, where any tricky political issue has a policy like this that then has a bearing on investigations, it is really important—it was then, and we would do the same again on anything vaguely similar in future, not that I can see what that would be—to have a very thorough policy and system so that you dot every “i” and cross every “t”, you do not make any mistakes, and you understand the consequences operationally for what you do. I think that is what Dame Hallett is saying when she says, “This evolved and wasn’t designed. That’s the mistake here”.

Q2916 Lady Hermon: Yes. I agree entirely with what you have just said. To that end, have the Metropolitan Police already contacted the Home Office and the Home Secretary to discuss what would happen if, in extremis, some scheme were to happen, perhaps for some foreign jurisdiction and not Northern Ireland? Because it will never be repeated in Northern Ireland; the Government would not be so foolish to do so again. Has the Metropolitan Police Commissioner written to the Home Secretary expressing the views that you have just given to this Committee?

Mark Rowley: We have not. There are so many hypotheticals in that. Here we have a very weighty and compelling public document, which they are cited on. I am not sure that a letter from me or the Commissioner, or the Mayor’s Office for Policing and Crime, adds anything to this being on the shelf and in the knowledge of the Home Secretary.

Q2917 Lady Hermon: But with the greatest respect, Lady Justice Hallett is obviously not speaking for the Metropolitan Police. Surely the Metropolitan Police has to speak for itself. Therefore, there is nothing stopping the Metropolitan Police writing formally to the Home Secretary to say that lessons have to be learned from Lady Justice Hallett’s report. What is the point in just having it on the shelf, collecting dust?

Mark Rowley: It is a matter of public record. I will reflect on it after this meeting, given your questions, but up to this point, I have not seen any need to add to the public record on the back of this.

Q2918 Lady Hermon: You have not seen any need for the Metropolitan Police to communicate to the Home Secretary and the Government regarding any future circumstance involving a potential scheme similar to that operated behind backs, secretly, in Northern Ireland?

Mark Rowley: The Government has commissioned a very eminent senior judge to do a report to ensure that lessons are learnt and this does not happen again. She has done an excellent report. I do not know whether lots of other people writing letters helps. That is all I am saying. I agree with the sentiment though—it must not happen again.

Q2919 Lady Hermon: You have very kindly come here today to represent the Metropolitan Police. I am not questioning that Lady Justice Hallett is a very eminent judge. I agree entirely with that. I am asking what the Metropolitan Police is doing in response to Lady Justice Hallett's report. It appears that they are simply putting it on shelf and assuming that the Government reads it, and that by a process of osmosis everyone gets the points in it. Perhaps after this Committee you would reflect on what I hope is a consensus in this Committee: that we would like to see the Metropolitan Police taking its own initiative and communicating to the Home Secretary to put its views that, as you have very eloquently expressed to us, you would expect the Metropolitan Police to be involved in any potential future scheme with any other jurisdiction, if those circumstances were to arise.

Mark Rowley: I will reflect on that, thank you.

Q2920 Chair: Can I just press you slightly further? You say you reviewed the cases under the review that is going on. I think you said you found no mistakes. Does that mean that for everyone you looked at, you have no evidence against them and no interest in them at all? Is that what you are saying?

Mark Rowley: So, the letters in shorthand say, "You are not currently wanted". We have looked back at all the names, and particularly the names of people we may have some degree of interest in, to make sure that letter was accurate; is there anything there that is going to trip us up in future, in terms of the way the errors in the Downey case tripped us up? We found no errors of a scale or significance that will trip us up.

Q2921 Chair: So you do not want to speak to those people. You have no reason to speak to them.

Mark Rowley: I said "arrest". Are there people on the list where there is intelligence to cause concern about their past or present activities? You would be surprised if I said "no". Of course there are.

Q2922 Chair: But these people have got letters.

Mark Rowley: But the letter says, "Are you wanted for arrest on the day of the letter?" Again, that is getting into the nuances. I will go back to my previous point about why you need clarity. The letters are answering the question, "Are you wanted today for an arrest, when this letter is sent?" We checked the accuracy of those and we are content at the moment that none of the remainder of the letters that were sent will cause a problem of the nature of Downey to cases we have some involvement in.

Q2923 Chair: But a stay was not put on Mr Downey's trial because of error. A stay was put on it because he had the letter, and because he had relied on the letter. That is a central legal point. We have two barristers working for us and they have advised us that that is the central

point—not the fact it was in error, but the fact that he had the letter. I think that is right—that he relied on that letter to come back to this jurisdiction.

Mark Rowley: It said on the day he got it—

Q2924 Chair: That was in 2007. He was arrested in 2013.

Mark Rowley: It said in 2007, broadly, “You are not wanted”.

Q2925 Oliver Colvile: By the PSNI, not by you.

Mark Rowley: No.

Q2926 Chair: His arrest was six years after this letter. So, it did not just apply to the day he received it.

Mark Rowley: On the day it was sent, it was incorrect. He was wanted by the Metropolitan Police then. What Justice Sweeney said, and what Dame Hallett’s report concluded, was that he got a letter that was wrong because he was wanted at that time by the Metropolitan Police. I think they concluded that because there were other opportunities where that error was spotted and could have been corrected but was not, that compounded together to create a prejudice to Mr Downey that meant he felt he had to stay the trial.

Q2927 Chair: To come back to my central point, though, you may in the future want to interview some of these people that have received letters.

Mark Rowley: Yes, but they were not wanted by us on that day.

Q2928 Chair: No, but there are some people who received letters who could possibly be prosecuted in future.

Mark Rowley: Yes.

Q2929 Nigel Mills: Can we just be clear on letters? At least some of the letters say, “You are not wanted but you might be if new evidence comes to light”. That is very different to saying, “You are not wanted today but we might change our mind tomorrow”. That is saying, “We can only change our mind if new evidence comes to light—i.e., stuff we do not have today when making this decision.” Is that something you have borne in mind when doing that assessment?

Mark Rowley: We have borne that in mind, as have others taking part in the various reviews. The changing drafting of letters again reflects a lack of design in the scheme. So, different people have different ideas at different phases of the scheme. That adds to the complexity, but we have looked at it. We have had a fresh look against our cases that it may appertain to and we are content at the moment.

Q2930 Oliver Colvile: Duncan, you should be aware that I was in Harrods and in Brighton when both of those places came up. Fortunately I survived that. Thank you for doing your level best for trying to protect me. I am very grateful. I would make one final point. Unfortunately, the Prime Minister beckons in a second. One of the things I would point out to you is that this is the only inquiry that has been held in public. There are a lot of families who have been listening and following what we have ended up saying. I would make the point to you that you have given evidence very much in public, whereas Lady Justice Hallett's was very much done in private. Therefore, it has been much easier for people to understand and interpret the words that you have all ended up by saying. I have no doubt at all that Lady Justice Hallett made a very thorough examination of the issues, but it is important to realise that this is the only public forum where this has been considered.

Mark Rowley: That is why we are more than happy to come and give evidence, and offer all the help we can do.

Oliver Colvile: You have been very helpful in doing so.

Q2931 Kate Hoey: I should probably know this, but who from the Metropolitan Police went to see her or give evidence to her?

Duncan Ball: We worked very closely with her legal team.

Q2932 Kate Hoey: So did you actually meet Lady Justice Hallett and explain to her that it was basically a secret scheme?

Duncan Ball: I met the head of her legal team. We had a team from the Counter Terrorism Command gathering all the evidence and the information for her—not just around the Downey case, but also around the other issues that we have discussed today. We have provided all that information to Lady Justice Hallett's team.

Q2933 Kate Hoey: Do you think she knew that the Metropolitan Police formally knew nothing about this scheme, so it could not have been very public?

Duncan Ball: Yes.

Mark Rowley: Yes.

Q2934 Kate Hoey: She knows that, but she still went ahead to say that it was not a secret scheme.

Duncan Ball: All I can comment on is the material that we have provided to her.

Mark Rowley: There are quite a number of quotes in her report where she is very clear that the Metropolitan Police had no knowledge of this.

Kate Hoey: Thank you.

Chair: I think there are no more questions. As Oliver said, it has been a very useful session. Gentlemen, thank you very much for coming to see us. Thank you.