



Northern Ireland Affairs Committee

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

Wednesday 19 November 2014

Ordered by the House of Commons to be published on 19 November 2014.

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

Questions 3315-3482

Witness: **Sir Bill Jeffrey KCB**, former Political Director, Northern Ireland Office, gave evidence.

Q3315 Chair: We open the public meeting with apologies for the delay due to two votes. Sir Bill, thank you very much for joining us; you are very welcome. You know the inquiry that we are carrying out. I think you want to make a brief opening statement. You may want to cover perhaps what your role was during your time at the Northern Ireland Office. Thank you very much for joining us. Over to you.

Sir Bill Jeffrey: Thank you very much, Chairman. It will be a very brief opening statement. I really just wanted to make three principal points before we start. I was, as you know, the Political Director in the Northern Ireland Office from the period starting a couple of months before the agreement in 1998, through to shortly before the institutions collapsed in October 2002—so four and a half years or so. Therefore I was the Political Director for the first two years or so of what has become known as the administrative scheme. I think most of the members of the Committee know what that role is. It is unusual in the civil service in the sense that it is a civil service post but it reports—or reported in those days, anyway—to the Secretary of State through the Permanent Secretary. It is the main source of official advice for Ministers on the political process.

There are three points I really just wanted to make in an effort to help the Committee before the questioning starts. First of all, I wanted to say something about the political context. The Belfast Agreement—Good Friday Agreement, whatever you want to call it—settled a remarkable amount but it did not settle everything. In the years that I was there, there were a succession of efforts to implement the agreement fully and, as the Committee knows very well—particularly the Northern Ireland-based members of the Committee—these years were dominated by the decommissioning issue.

Like many others, I would argue that that issue was itself a proxy for the much bigger question of whether the Provisional IRA had really ceased their activities. It was the

feeling of doubt, to put it no higher, that they had not done so that made it so difficult to move forward with the agreement. Although the negotiations were not ultimately successful until quite some years after I had left the scene, I would argue that these post-agreement negotiations were actually about much more than decommissioning; they were part of a process of drawing militant republicanism into a process that would lead to the winding up of the Provisionals. I think, to start with, it was important to make that point.

That was the context against which the then Prime Minister told Sinn Féin that he would sort out the issue of the OTRs, as they became known. As Jonathan Powell told the Committee when he came to see you¹, the then Government never succeeded in doing so in the terms in which the question had been put. The administrative scheme, so-called, was, in a sense, the best the Government could do to meet the spirit of the undertaking that the Prime Minister had given. My first main point is that my own view is that it was, as other witnesses have said, a highly unusual arrangement, but it was one that seemed to me, at least, justified by the conditions in which Ministers were operating at the time and the efforts they were making to implement the agreement and advance the process. I must emphasise to the Committee that I was always aware—indeed, I believe my Northern Ireland Office colleagues were—of its sensitivity and of the need for care.

My second point is that, on the arrangements themselves, as is clear from Lady Justice Hallett's report², we were keenly aware of, and respectful of, the independent position of the law officers and prosecuting authorities on the one hand and the operational independence of the police on the other. Prosecution and police colleagues were acting at our request. We were conscious of the fact that we could not be sure of that; it was entirely for them to do so and to do so in a way that suited them. Of course we took an interest in how the cases were handled, but we were not, in any sense, in direct drive and, inevitably, we relied greatly on the police prosecution system for the accuracy of the advice they were giving us. As Lady Justice Hallett's report brings out, there were meetings with them over the period from about 2000 to 2002. In these early years, I certainly believed from the reports I received that the checks were being carried out painstakingly and carefully. Lady Justice Hallett's report says as much, actually, and uses these words in paragraph 4.111.

Having said that, to the extent that they bear on the early years of the scheme and with, as she puts it, the considerable benefit of hindsight, I accept Lady Justice Hallett's criticisms of its administration or, at least, the thrust of them. It might have been better if some of the conventional disciplines of project management had been applied, although whether it would have prevented the mistakes made in the particular circumstances of the Downey case seven years down the line is open to debate. I certainly regret that a scheme in whose inception I personally played a part was subject seven years down the line to such a serious error, with such distressing consequences for the families of the victims of the Hyde Park bombing.

¹ 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>

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

My third point is a much simpler one, which is that all this happened the best part of 15 years ago. After I left the Northern Ireland Office in the autumn of 2002, I did three pretty busy jobs elsewhere in Government, and I hope the Committee will forgive me if my recollection of these events is by no means complete.

Q3316 Chair: Thank you very much. That is a very helpful statement. Would it have been your role to speak directly to, and particularly to brief, the Secretaries of State when they came into office? Would that have been your role?

Sir Bill Jeffrey: Absolutely, yes.

Q3317 Chair: It would, indeed. And you briefed Dr Reid as soon as he came in?

Sir Bill Jeffrey: Yes.

Q3318 Dr McDonnell: I wanted to tease out something. At a very simple level, in the discussions we have had, there appears to be a dumping of a lot of responsibility on the police. The police were responsible for screening. Had you any sense that the police were aware that letters were going out?

Sir Bill Jeffrey: I think the police knew. I can only speak for the time I was there—that is the obvious point with which to preface everything I say—but I think the police were aware, and the comments you have had from the former Chief Constables rather bear this out, of the overall purpose of the scheme and what it entailed. I do not think they were aware that letters, as such, were being sent. That is one of the weaknesses that Lady Justice Hallett's report draws attention to. But the context in which all this was happening I think was fairly well understood by the police.

Q3319 Dr McDonnell: But, in the early stages, the Attorney General was involved and there were various debates and discussions going on about the clearances. Was that continued through your time or was it after your time that it became a simpler system with the police and just a middle-ranking official in the NIO sending out the letters?

Sir Bill Jeffrey: Lady Justice Hallett's report points out that, in the early stages, I signed some of these letters myself. It was certainly the case that, as I observed it at the time, there was a very careful process going on in which the Attorney General would pass the names that we had received from Sinn Féin to the DPP for Northern Ireland in those cases that affected alleged offences in Northern Ireland. They would then send them on to the PSNI, or the RUC as it was at that time.

As we began to understand the scheme as it was being applied, I took reassurance from what I was told. It is worth reading Lady Justice Hallett's report around paragraph 4.111 and the paragraph or so before that, where she describes, as she puts it, the painstaking and careful way in which the police were doing the work at that stage. I did not have any

reason at that stage to suppose that the checks that were being done were anything other than careful and painstaking in their nature. As I think the Committee has heard, over time, there was a process in which the DPP for Northern Ireland—the late Alasdair Fraser—himself chaired meetings to consider these cases and take stock of them. So it felt, at the time, like a process in which everyone was aware of the sensitivities; everyone was respectful of each other's distinct constitutional position; and checks were being undertaken with the purpose of establishing whether people were wanted or not as carefully as they could be.

Q3320 Dr McDonnell: But you are aware that it was relatively confidential in the tight system and, certainly, the broader political system was not aware? Do you feel they were?

Sir Bill Jeffrey: Again, what the Hallett report says on that I would recognise. She draws attention to the fact that this was not a scheme that Ministers sought publicity for, but says it would be wrong to characterise it as secret. She also says, in paragraph 5.4, that there was sufficient information in the public domain to alert the close observer of political affairs in Northern Ireland to the fact that some kind of process existed by which OTRs could submit their names for consideration by police and prosecuting authorities. I have read with interest the statements that have been made about who knew what when, and I entirely accept the word of those who are making them. I think there was an extent to which it was understood quite widely that a scheme of this sort existed. There was, I would argue, very little room for doubt after John Reid answered the parliamentary questions he answered in July 2002, when the scheme—bar the specific means by which the assurances were being conveyed to the individuals concerned—was actually described in some detail. After that, I would have thought it was better known that this was going on than it appears to have been.

Q3321 Dr McDonnell: I am going to finish on this: do you not accept that that is exactly the point: bar the details, bar the specific mechanisms? People knew something was going on—that there was a process of some sort—but it was vague. But moving from the police saying, “We’ve no evidence against this person” or “We’re not able to prosecute the case” to giving a letter—almost a clean bill of health, to some extent—was quite a jump. In that the letter was changed significantly³—or appears to have been changed significantly—the police assessment was gilded, if you like.

Sir Bill Jeffrey: I certainly do not recognise that last point, Dr McDonnell. Certainly those letters I saw myself were, first of all, written in terms that, in the first place, had been suggested by the Attorney General's office in order to reflect what the police checks had found. They followed a fairly standard format. They certainly were not doctored in the sense that you imply. How much was known? Well, I find it very difficult to tell—

³ Peter Sheridan's letter to the Department of the Director of Public Prosecutions (6 June 2007) can be found here: [http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Peter-Sheridan%e2%80%99s-letter-to-the-Department-of-the-Director-of-Public-Prosecutions-\(6-June-2007\)%20.pdf](http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Peter-Sheridan%e2%80%99s-letter-to-the-Department-of-the-Director-of-Public-Prosecutions-(6-June-2007)%20.pdf) 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>

certainly at this distance—but, in answer to the second of the two questions from Quentin Davies, John Reid answered that, “As a result of inquiries received and referred to the prosecuting authorities and the police, 32 individuals have been informed over the past two years that they are not wanted for arrest in relation to terrorist offences”⁴. Now, that does not include the word “letter”, but it is quite rich in information, actually. What is quite striking is that it was not immediately followed up with a lot of other questions about exactly how this was being done.

Q3322 Ian Paisley: Can I say at the outset, Sir Bill, that I actually really appreciate you coming here today? That is important. We have tried as a Committee to ensure that we handle what is a sensitive and difficult issue in a very transparent way to let the public get a handle on what occurred, even if there are difficult issues there for people to get a handle on. I am aware that there are victims in the public gallery and that it has been difficult for them. But it is important that we place on record our thanks that people have come to the Committee and given us evidence, even if it is difficult for you. We do appreciate that, because it helps us to hollow this situation out and lets us get transparency as much as possible. I also appreciate that you have stressed today that there is significant regret within the service for what occurred here. While for some people that will fall on deaf ears, for others it is important that they do know that there are people who regret what happened in the handling of this process over time.

Could I ask you two questions? I am looking at some of the notes that are here. I have a note of a conversation between yourself and Jonathan Powell that took place on 20 July 2000⁵. In it, you recount a telephone conversation between Mr Powell, and the conversation was about on-the-runs. You indicate that Jonathan was stressing very much that the Government’s position was no longer sustainable and that they would have to make a significant move on on-the-runs and that there would be political consequences if they did not do this. He says that they were under immense pressure from Gerry Adams and your words are, “In a conversation yesterday evening, Adams had given Jonathan a very hard time over the OTRs”, and it continues in that sort of vein about “a very hard time”. As a public servant, did you feel pressured and bullied into taking and pushing forward these decisions?

Sir Bill Jeffrey: “No” is the short answer to that, but I would like to elaborate on that if I can. Certainly, internally, nothing could be further from the truth. The conduct of this business was a very close collaboration involving officials in the Northern Ireland Office, principally Jonathan Powell in Number 10, the Prime Minister and the Secretary of State. That was a relationship that was characterised by quite exceptional levels of trust. There is no element of pressure that I can recall at all. If what you are asking about, Mr Paisley, is whether we felt we were being bullied by Sinn Féin, then, frankly, we were too grown up to be bullied by Sinn Féin. We knew that we were engaged in negotiations in which, because they were skilful and determined, they would from time to time exaggerate things,

⁴ Lord Reid’s response to Quentin Davies on 1st July 2002 can be found here: <http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo020701/text/20701w35.htm#20701w35.htmlsbhd2>

⁵ The memo from Bill Jeffrey re: conversation with Jonathan Powell, 20 July 2000, can be found here: http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Memo_from_Bill_Jeffrey_re_conversation_with_Jonathan_Powell_20_July_2000.pdf

and we would have to aim off for that. We knew that, when something that they had asked for was taking longer than they wanted it to or they had been led to expect it might take, then they would complain about that. But it did not feel like bullying; it just felt like the cut and thrust of political negotiation.

Q3323 Ian Paisley: Have you had a chance to read over the notes since then and look at the paperwork?

Sir Bill Jeffrey: The note you have just quoted from I have not read; I have no reason to doubt your quote.

Q3324 Ian Paisley: No, because you can check it obviously. It is just that the paperwork would, I think, give any observer, certainly on first read, the view that the Government was being pushed and pushed, and they were being rolled over. If this was a phase in the negotiation, certainly the paperwork would show that there was an ability by Sinn Féin to roll people over for their particular objective and, indeed, they achieved their objective.

Sir Bill Jeffrey: Did they? The only thing I would say is that, although you are right to draw attention to the fact that there were moments when the Government, from the Prime Minister down, were put under pressure by Sinn Féin on this issue, they did hold to the core point that there could be no question of acting to interfere with cases without legislation, and equally, to the core principle of the independence of the Attorney General and the prosecuting authorities. I think the record will show that that certainly informed my dealings with Sinn Féin throughout that period.

Q3325 Ian Paisley: On 25 August 2000, there is a document that shows that you were at a meeting with Martin McGuinness at Hillsborough Castle⁶, I believe it was. It was a 90-minute meeting on the subject of on-the-runs.

Sir Bill Jeffrey: I cannot remember the precise meeting, no.

Q3326 Ian Paisley: But you would have had meetings with Martin McGuinness?

Sir Bill Jeffrey: I do not have the benefit of the bundle of papers that you have got in your hands.

Q3327 Ian Paisley: It is just that I am wondering if you recall anything specific about that meeting. It was an hour-and-a-half meeting with Mr McGuinness and his special adviser,

⁶ The minutes of the meeting between Peter Mandelson, Secretary of State, and Martin McGuinness on 25 August 2000 can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Minutes%20of%20the%20meeting%20between%20Peter%20Mandelson,%20Secretary%20of%20State,%20and%20Martin%20McGuinness%20in%20August%202000.pdf>

Aidan McAteer. At that meeting, the issue of on-the-runs was discussed and the impact it might have if they called an early general election. Do you remember that discussion?

Sir Bill Jeffrey: I have a vague recollection of that discussion taking place, but I cannot, at this stage, remember the detail.

Q3328 Ian Paisley: Again, reading the documents as a historian, you would take the view that this was political pressure at its best, to achieve something in light of an election—to actually sway an election in a particular way. Again, it is really to emphasise the point that the documents tend to show a position in which you were pressured and there was a succumbing to pressure.

Sir Bill Jeffrey: The situation was pressurised, and there was pressure from all sides. What we were trying to do was to find, with the considerable assistance of the parties as well, a way through in which there might be enough confidence to enable the institutions envisaged by the agreement to operate as they were intended to. So it was a pressurised situation. The other point I would make is that you talked about the Government being rolled over, but the key objective of Sinn Féin over this period was, if not to have this thing called an amnesty, then certainly to have a means by which those who were still being pursued by the police and who could be the subject of prosecution if they returned to Northern Ireland would be made free to do so. As Jonathan Powell said when he came to this Committee, as things turned out, they never achieved that. There is more than one kind of rolling-over.

Q3329 Ian Paisley: This is my last question. The role of Political Director is obviously a very significant role. You have described it in a very good way in terms of it being a civil service post but reporting directly to the Secretary of State and really giving him eyes-and-ears advice on what is going on, and guidance. We took evidence from a Secretary of State whom you did not serve under, Peter Hain, and he indicated that he had not seen or read a letter from the Attorney General⁷. I do not know if you followed that line of evidence that we took.

Sir Bill Jeffrey: I had not noticed that, no.

Q3330 Ian Paisley: Are you surprised that a Secretary of State would not be aware of correspondence of that nature from an Attorney General?

Sir Bill Jeffrey: I cannot comment on that, Mr Paisley. I think Mr Hain would have to speak for himself. If he says he cannot recall, then clearly he cannot recall.

⁷ The letter from Lord Goldsmith to Peter Hain (February 2006) can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Letter-from-Lord-Goldsmith-to-Peter-Hain-February-2006.pdf>

Q3331 Ian Paisley: But if you were advising your Secretary of State, whom you had to give extensive advice to, I am sure that if a letter from the Attorney General arrived in front of you, you would show it to him and go through it with him. Would you be surprised if it was not recalled?

Sir Bill Jeffrey: I do not know. It comes back to the point I made at the beginning—although Mr Hain's time in office was closer to the present day—that very busy people in high-profile positions deal with very large amounts of paper, including very significant papers, and human recall is not always all that it might be. I cannot say that I am surprised or the opposite.

Q3332 Lady Hermon: Sir Bill, it really is very good of you to come and give us evidence in public. As you know, Lady Justice Hallett heard the witnesses in private, so for the general public in Northern Ireland and throughout the United Kingdom, this is the only mechanism by which they are going to understand how the scheme came about, and we are very grateful to you for coming. I wonder if you could comment on your successors who are in post and who were in post in 2007, particularly the particular civil servant who signed off—the Northern Ireland Office official—the letter that went out in error to Mr Downey⁸. Would you like to comment on their refusal to come and give evidence in public to this Committee? Do you regret that? Is that a mistake?

Sir Bill Jeffrey: I do decline to comment. I do not think it is for me. Apart from anything else, your Committee is hearing evidence from my successor, Jonathan Phillips, later this afternoon, and I would be very surprised if you did not ask him that question. It is a matter for the individuals concerned and, in the case of a serving civil servant, it is also a matter for Ministers.

Q3333 Lady Hermon: We will pursue that, then, with the next witness, but thank you for that. I wonder whether I could just clarify: regarding the documents that my colleague was quoting from, did you receive a bundle of documents? I understand that the clerks of the Committee sent of a bundle of the documents that we were going to refer to this afternoon.

Sir Bill Jeffrey: I did not receive any such bundle.

Lady Hermon: It was sent to the Northern Ireland Office and we hoped that it was going to be forwarded to both you and the subsequent witness this afternoon. You have not received those?

Sir Bill Jeffrey: No.

Lady Hermon: That is very unfortunate.

Chair: Just to confirm, it was sent to the Northern Ireland Office on Thursday.

⁸ 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>

Lady Hermon: Thank you, Mr Chairman. I do apologise. You are put at a slight disadvantage, but if I am going to quote from the letter, I will bring it down to you so that you can see it—just do not read the annotations at the side. Well, you can read them because I am going to ask you about them.

Chair: Obviously you have not had chance to read it, but it might be helpful for you to have it in front of you.

Q3334 Lady Hermon: Sorry; we understood that you would have had the documents. You explained at the beginning that you were there for a few months before the signing of the Belfast Agreement on Good Friday, so you would have known the key players within Sinn Féin. Did Sinn Féin, Gerry Adams, Gerry Kelly and their colleagues ever actually ask for an amnesty for on-the-runs?

Sir Bill Jeffrey: I do not think the word “amnesty” was used, but what they were in essence asking for was a means by which all those who were on the run might be able to return without fear of arrest or prosecution. That, for all practical purposes, to my mind is an amnesty but they did not use the word “amnesty” and it was not part of the demand. What they liked to do was to say that it was up to us to find a way of dealing with this. So an amnesty would have been such a way but they were not being prescriptive about that, is what they would say.

Q3335 Lady Hermon: That is really very interesting, because we have had a number of Secretaries of State who have given the impression of rather boasting that these OTR letters definitely were not an amnesty.

Sir Bill Jeffrey: The OTR letters were not an amnesty, clearly. I agree with the Secretaries of State over that, but your question, Lady Hermon, was—

Lady Hermon: Did Sinn Féin ask for an amnesty? And they did not.

Sir Bill Jeffrey: Not in terms, but what they were asking for is, in my mind, tantamount to an amnesty.

Q3336 Lady Hermon: Could you, Sir Bill, explain to us who exactly was the driving force behind the OTR scheme? Was it the Prime Minister himself?

Sir Bill Jeffrey: It was the product of exchanges in which the Prime Minister was involved and, as Lady Justice Hallett’s report brings out, it did itself rather evolve over time, starting with the fact that some individual cases were raised by Sinn Féin with the Prime Minister, which he arranged to have considered by the Attorney General. Then, at a later stage—the precise sequence of events I do not have in my head—there was an undertaking that he gave that the issue would be dealt with. After that, a great deal of effort, as you will have seen from the papers, was invested in trying to devise ways of meeting that commitment.

Q3337 Lady Hermon: In the bundle of papers that you have now been given you will see towards the very beginning—it is dated 5 May 2000, so you were certainly the Political Director at that stage and a key player in the Northern Ireland Office—there is a letter from 10 Downing Street to Gerry Adams⁹: “Dear Gerry”. In the second paragraph, you will see that the Prime Minister of the day, Tony Blair, says that he can confirm that if “you can provide details of the number of cases involving people on the run, we will arrange for them to be considered by the Attorney General, consulting the Director of Public Prosecutions and the police as appropriate with a view to giving you a response within a month, if at all possible.” There are a number of letters from the Prime Minister, and summaries of meetings with the Prime Minister, where it certainly appears that the Prime Minister was the driving force behind that. Could I just repeat my question: was it the Prime Minister, Tony Blair, himself who was behind the timescale for the OTR scheme?

Sir Bill Jeffrey: It was the Prime Minister who made the commitment in this letter, because they, I think, flowed out of conversations that had taken place with the Sinn Féin leadership at that time. The Prime Minister was in charge so, in that sense, we were there in the Department to try to carry out and follow through on the commitments he had given.

Q3338 Lady Hermon: What did you think of the Prime Minister’s timescale and commitments to Sinn Féin? Did you think it was a bit tight that he should have a response within a month if at all possible?

Sir Bill Jeffrey: It clearly was tight. It was hedged a lot in with the phrase “with a view to”. I think, in practice, it turned out to need quite a bit more time than a month.

Q3339 Lady Hermon: Yes, 14 years. We know from evidence that has been given and from the Downey judgment that the first two letters—the first two OTR letters—were letters signed in Number 10 by Jonathan Powell, and he did confirm that when he was here to give his evidence. After that, the Northern Ireland Office took over, and you would have been the Political Director. Who took over as a signatory of the subsequent OTR letters?

Sir Bill Jeffrey: I certainly signed some of those letters. I think it may have been a question of who was available in the office at a sufficiently senior level to do so. I do not think there is a single answer to that question but, as the report brings out, I can recall certainly, at the points in 2001—28 March 2001 and 31 October 2001—I signed one letter and then four others, and I believe some at later dates. Other NIO officials signed them—

Q3340 Lady Hermon: And how many officials in the Northern Ireland Office would have been authorised to sign these highly controversial, highly sensitive letters?

⁹ The letter from Tony Blair to Gerry Adams, 5 May 2000, can be found here:
<http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Letter-from-Tony-Blair-to-Gerry-Adams-5-November-2000.pdf>

Sir Bill Jeffrey: I would be surprised if it was more than two or three.

Q3341 Lady Hermon: Why would it have been kept so secret since you have made quite a bit of play on—and placed quite a bit of reliance on—the replies given by Lord Reid as Secretary of State¹⁰? You wondered why, in fact, nobody followed up on those. You seemed to think that the fact the words “OTR letter” were not mentioned in them was all right. Why were they kept so secret, if there was nothing wrong with them? Why were they kept so secret?

Sir Bill Jeffrey: I come back to what the Hallett report said: that they were not publicised, but it would be wrong to describe the scheme as secret.

Q3342 Lady Hermon: Sorry; the scheme was not secret. Would you like to confirm that the letters were secret?

Sir Bill Jeffrey: I would not describe them like that; they were to individuals and therefore, to that extent, confidential to the individuals.

Lady Hermon: They were secret, Sir Bill.

Sir Bill Jeffrey: I do not think—and nor, I think, did Lady Justice Hallett think—that it was fair to describe this as a secret scheme. The point I was making earlier was that after that point in 2002 when Lord Reid answered these questions, the essence of what was going on was in the public domain.

Q3343 Lady Hermon: All but the fact that letters were being sent out signed by Northern Ireland Office officials and two of them actually signed by the Chief of Staff of the Prime Minister. Apart from those key facts, yes, it was in the public domain. Do you not think that it was a bit odd that those key facts were suppressed? In fact, Lady Justice Hallett herself, in fairness to the PSNI, to the police, said that the first evidence that she could find of the PSNI, who were key to the operation—and you have praised the role of the police and how meticulous they were in their inquiries, and I would second all of that—being aware of the OTR letters was in December 2011. Why do you think it might have been kept secret?

Sir Bill Jeffrey: On that point, I certainly think it would have been better if the OTR letters had been shared with the police for the reasons that Lady Justice Hallett gives.

Q3344 Lady Hermon: What about being shared with the public? What about being actually included within the reply given by the Secretary of State, John Reid, that you relied upon? Would it not have been the honest and decent thing to do to put it into the public domain at

¹⁰ Lord Reid’s response to Quentin Davies on 1st July 2002 can be found here:

http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo020701/text/20701w35.htm#20701w35.html_sbhd2

that stage? Let me rephrase that question: was it a deliberate policy by the Northern Ireland Office—you were the Political Director at the time—to suppress the knowledge of these letters?

Sir Bill Jeffrey: I would not say so. I think the fact that questions that were asked over the period were answered quite fully suggests otherwise. We may just disagree about this, but I do come back to the fact that, bar the precise means by which individuals were being informed that they were no longer wanted, every significant aspect of the scheme is in the Reid parliamentary answers.

Q3345 Lady Hermon: Why do you think that Sinn Féin and Gerry Adams, who loved boasting about any concession that they extracted from the Blair Government at that time—any concession at all would have been regurgitated in a press release—failed to mention these OTR letters?

Sir Bill Jeffrey: I cannot answer that. I am tempted to say that you need to ask them that.

Q3346 Lady Hermon: Yes, we would love to, but, of course, they, like the Prime Minister, Tony Blair, have refused to come in front of this Committee, unfortunately. Let us move on to another question. We know from the Hallett report that 13 OTRs received the royal prerogative of mercy¹¹, four of them during December of 2000, when you would have been the Political Director and the Secretary of State was Peter Mandelson. Can you just explain why these republican terrorists were so special that they had to be given the royal prerogative of mercy, when someone like Alan Turing, the Enigma codebreaker, did not get a royal prerogative of mercy or a pardon until 2013, which is disgraceful? How come these four get the royal prerogative of mercy as early as December 2000?

Sir Bill Jeffrey: A pardon was not given in any of these cases; that is the first point to make. They were certainly not used, as was mooted at the time by some people, for pre-conviction cases, to prevent the possibility of a prosecution, although that idea was, as Lady Justice Hallett's report brings out, explored over that period. My recollection, and I think it is confirmed by the report, is that the royal prerogative of mercy was only used for people who had already been convicted and sentenced and had served part of the sentence and then typically had escaped. They were within the spirit but not the letter of the early release scheme but excluded from it by some technicality, like the offence not being one that was scheduled and covered by the early release scheme. What the Secretary of State was doing in these cases was operating in such a way as to remit the remaining portion of a sentence that someone had already begun to serve. Even then, if I remember the details correctly—they are set out in Lady Justice Hallett's report—there was a process by which those concerned had to return to Northern Ireland and be considered under the early release scheme, so that they could be released on licence.

¹¹ A list of recipients of the Royal Prerogative of Mercy can be found in Rodger's (Robert James Shaw) Application [2014] NIQB 79: http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/PublishedByYear/Documents/2014/%5b2014%5d%20NIQB%2079/j_j_STE9288Final.htm

Q3347 Lady Hermon: So what happened within the Northern Ireland Office when it was discovered that one of the four who had received the royal prerogative of mercy was being sought in connection with a murder? What happened within the Northern Ireland Office?

Sir Bill Jeffrey: The conclusion was drawn that, in relation to the so-called administrative scheme and whether people were still wanted or not, it would be very important in future to ensure that the police checks were done as close to the point when the letter was dispatched as possible.

Q3348 Lady Hermon: Did that person ever return to Northern Ireland?

Sir Bill Jeffrey: I do not know, but as I remember the case—to be frank, Lady Hermon, I am remembering it from my reading of the Hallett report and not from 15 years ago—the police said they would like to question this person and if they did return to the jurisdiction, as I suspect they probably did, there would have been nothing to prevent the police questioning them. All that had happened was that the royal prerogative had been used to omit part of their sentence so that, because they came within the spirit of the early release scheme, they could get the benefits of that scheme.

Q3349 Lady Hermon: You will know, I am sure, that, from the evidence given to us by Lord Mandelson¹²—he was very forthright. I thought he was a really wonderful witness in filling in the gaps that we did not know, and the context of the OTR scheme and how it had developed. He told us very frankly that he thought it was distasteful—I think that was his word—that the Queen was involved in signing off the royal prerogative of mercy in the run-up to Christmas. Did you find it distasteful?

Sir Bill Jeffrey: Not in these cases, for the reason I have given. But the point at which—since I am not longer a Government employee, I can say this myself—I would certainly have found it distasteful is if there had been any question of using the royal prerogative in pre-conviction cases to achieve the objectives of some kind of amnesty. That would have been quite serious. But it would have been the wrong thing to do, both in relation to Her Majesty the Queen but also in relation to Parliament, because it would have been said—and with some justice—that it would have been an attempt to bypass the need for the legislation, which was eventually unsuccessfully pursued.

Q3350 Lady Hermon: So while the Secretary of State at the time was uncomfortable about doing this, using this mechanism and involving the Queen before Christmas, you had no conscience about it. You did not feel uneasy.

¹² The transcript of Lord Mandelson's evidence to the Committee on 4 November 2014 can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/15095.pdf>

Sir Bill Jeffrey: I think there are issues of conscience in some of this, but I did not think the use of the prerogative in these circumstances was one of them.

Q3351 Oliver Colvile: First of all, Sir Bill, thank you so much for coming to see us. It has been very helpful. You were the Political Director between 1998 and 2002, were you not?

Sir Bill Jeffrey: Yes.

Q3352 Oliver Colvile: Right. As you may know, Jonathan Powell came to see us¹³ and we had a chat with him. He made out that, in 2000, he had been to Dublin and had a conversation with Rita O'Hare. Were you aware of that meeting and were you present at it?

Sir Bill Jeffrey: I believe I was present at it. I have some recollection of it, but, again, my recollection is mainly based on having read about it in the Hallett report.

Q3353 Oliver Colvile: Do you remember as to whether or not Jonathan Powell said to Rita O'Hare, "I wouldn't come back to Belfast, or come back to Northern Ireland, because you might potentially be—"

Sir Bill Jeffrey: I am sure he would not have said something like that, but I do not remember exactly what was said.

Q3354 Oliver Colvile: He has written in his book saying that he did end up by suggesting it to her. Now, when Downey then came back to this country, on 19 May 2013, he arrived here and he was arrested at Gatwick, if you remember. He arrived here, waved a piece of paper and said, "I don't know why it is you're arresting me because, at the end of the day, I've got this letter from the Northern Ireland Office saying that I wasn't wanted for anything at all." Did you recollect when that happened? Did you think to yourself, "Oh gosh, that's a bit odd because I was most certainly there at the time when that would have happened"?

Sir Bill Jeffrey: I certainly was not there at the time when the letter was sent to Mr Downey. I noticed the press coverage at the time he was arrested, but I should say directly that the fact that the scheme seven years down the line took this turn—was subject to errors of this kind—does dismay me. My strong recollection of the two years when I had some responsibility for it was about how impressed I was by what I was told about the thoroughness and care with which the DPP, the police and others were conducting the checks.

¹³ 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>

Q3355 Oliver Colvile: It is very curious that we had Peter Robinson come to see us¹⁴, who as you know is the First Minister of Northern Ireland, and claim that the first he knew about it was the day before the Downey judgment came from the judge. I just find it very strange that everybody else seems to remember it, but he did not seem to be too good on remembering that at all.

Sir Bill Jeffrey: I cannot comment on that.

Q3356 Oliver Colvile: Now, on the European Arrest Warrant, which has been quite an interesting political activity during the course of the last month here, my understanding is that that did not come into force as far as Britain was concerned until 2004. Is that right?

Sir Bill Jeffrey: I am not in position to contradict you.

Q3357 Oliver Colvile: But there was an extradition agreement between ourselves and Southern Ireland, which I think goes back to 1965—the Extradition Act. Did you at any stage when you were the Political Director think to yourself, “We need to actually try to get some of these people who are terrorists back to this country?” Did you ever think to yourself, “Let’s use the extradition law” and, indeed, did you do so in order to try to get wanted terrorists back to this country?

Sir Bill Jeffrey: I am aware that there was, before my time, an unsuccessful—a mixed experience of attempted extraditions from the Republic of Ireland. Over the period after the agreement, I certainly cannot recall any substantial consideration being given to that in individual cases. But it would be, in the first place, for the police and the prosecuting authorities to make the running on that sort of request.

Q3358 Oliver Colvile: You would not have tried to encourage them to try and use those powers?

Sir Bill Jeffrey: I think if we did we would have been accused of interfering with operational independence.

Chair: That question does arise on several occasions in our inquiry.

Q3359 Oliver Colvile: I have to say I find the fact deeply upsetting that, at the end of the day, there have been people who have been sent letters who are wanted back in this country to go through the judicial process, and unfortunately we do not seem to have been too hot on actually trying to get those people back here in order to do that.

Sir Bill Jeffrey: I take the point.

¹⁴ The transcript of Peter Robinson’s evidence to the Committee on 10 June 2014 can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/10426.pdf>

Q3360 Oliver Colvile: Do you agree with me that it is actually very difficult for victims' families whose, for want of a better expression, loved ones have been killed to know that they cannot actually now see justice back in this country?

Sir Bill Jeffrey: I sympathise greatly with the victims' families, as I said at the beginning, particularly in relation to the Hyde Park bombing. I ended my career with five years at the Ministry of Defence and came to know and respect the armed forces well. In that case in particular I sympathise very much with their feelings.

Q3361 Oliver Colvile: Regarding the event that took place in the 1980s when the bomb went off in Hyde Park, obviously there is quite a big issue about whether or not we should have ended up—did the Northern Ireland Office seek to try to talk to the Home Office about some of these people who could actually be brought back to this country?

Sir Bill Jeffrey: I am not sure I follow your question.

Oliver Colvile: I am just trying to say that in Hyde Park, obviously, the bomb went off in the 1980s, and the Government were very keen to try to get that person back to this country to face justice. Was there any co-ordination between the Northern Ireland Office and the Home Office about trying to get anybody back from Southern Ireland?

Sir Bill Jeffrey: Not that I recall during that period but it does not mean to say that it was not taking place.

Q3362 Kate Hoey: Sir Bill, I just wonder if you could tell me: did you read the evidence from David Trimble, when he came?

Sir Bill Jeffrey: I did, yes.

Q3363 Kate Hoey: David Trimble came¹⁵ and he made it very clear—as did, I think, the leader of the SDLP at the time—that neither of them knew about the letters. Does that surprise you?

Sir Bill Jeffrey: Because I know David Trimble—I certainly did then—and respect him greatly, if that is the account he has given, I accept it completely. It surprises me a little for the reason I gave earlier: that this was actually quite a small community of people who were undertaking these negotiations and discussions, and some aspects of what was going on became quite widely known, even if they were not necessarily very public. If David Trimble now has no recollection of ever being told about any of this, then I accept that, clearly.

¹⁵ The transcript of Lord Trimble's evidence to the Committee on 13 May 2014 can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/9593.pdf>

Q3364 Kate Hoey: I think the evidence they both gave to the Committee was very compelling evidence and of great use to us, but does that not tell you that, if you accept what they both said—and I think it is probably true that this Committee accepts that—that was clearly incredibly one-sided in terms of how this whole scheme was being looked at? We see from reading through—and I appreciate you have not read through them—the letters from Jonathan Powell and, indeed, some of your own letters, that it is very clear that it is really all about sorting out Gerry.

Sir Bill Jeffrey: I think Lady Justice Hallett's report makes the point that it was not an exclusive scheme. It was one that could have applied to others.

Q3365 Kate Hoey: Did any loyalists at that time—

Sir Bill Jeffrey: Others have made the point that loyalists tend not to flee outside the jurisdiction.

Q3366 Lady Hermon: Did they know about the scheme?

Sir Bill Jeffrey: I think it is also indicative that, although I know he subsequently said he was not aware that there was anything else going on, when Alex Attwood wrote to Adam Ingram about a particular case, he got a reply that made it clear that, if details had been submitted, they would have been dealt with in exactly the same way as the Sinn Féin cases were being dealt with. In that sense, I think it would be unfair to say that this was completely specific to Sinn Féin.

On the other hand, one has to remember the political context, and the political context was one in which the agreement itself was at some considerable risk because it was proving very difficult to implement, for reasons that we all understand, to do with the fact that the UUP in particular, despite many efforts to jump first, as was said at the time, were, to my mind understandably, not persuaded that the IRA were really out of business. Therefore, the decommissioning issue became a sort of totem of that and, therefore, there were very significant attempts made to persuade Sinn Féin in particular to get the Provisional IRA to take steps that would have unblocked the political process and enabled things to go forward. There were, then, quite high stakes here.

I accept entirely that there were more people in the persuasion business than the governments. The unionists themselves were, by their actions, trying to bring pressure to bear on Sinn Féin towards the eventual reform of the Provisionals, but that is really why I started my presentation as I did, because I feel that this has to be seen against the context in which there were very high political stakes and it was worth investing effort in trying to unblock the process in the way that both Prime Ministers did and, indeed, members of the other parties did as well.

Q3367 Kate Hoey: Did you or anyone within the Northern Ireland Office, or any politicians, at any time give any thought at all to how the victims in Northern Ireland might feel about people who had done some pretty dreadful things being, basically, discussed at the highest level about how they could be got off the hook?

Sir Bill Jeffrey: Clearly, people were very much aware of the interests of, and fairness for, victims, but—

Q3368 Kate Hoey: How would a victim know that that was true? How would a victim know that that was a true statement? Everyone who comes in front of us talks about the victims, but there is nothing in anything where anything is ever mentioned.

Sir Bill Jeffrey: As others have said to this Committee, the whole purpose of the activity was to try to prevent there being victims in future, and I think that that, in particular, needs to be borne in mind.

Kate Hoey: The victims of the past, then, are not so important as—

Sir Bill Jeffrey: No, I am not saying that.

Q3369 Kate Hoey: That is how it comes across; however, you may not have meant it like that. Can I just ask you: had you ever heard of Mr Downey before he was arrested at Gatwick?

Sir Bill Jeffrey: No, I do not think I had. He was, I believe—again, reading the Hallett report—on one of the lists that Sinn Féin sent to us in my time. The letter that he relied on, however, was sent after I had—

Q3370 Kate Hoey: When do you think Sinn Féin first sent his name?

Sir Bill Jeffrey: I think—and I am relying on my recollection of what Lady Justice Hallett says on the subject—that his name was submitted earlier, but it was quite a bit later before he got a letter.

Q3371 Kate Hoey: His name was lying around for a long time.

Sir Bill Jeffrey: The honest answer to your question, Ms Hoey, is that I was not aware of his name before.

Q3372 Kate Hoey: How well do you know Mark Sweeney?

Sir Bill Jeffrey: I do not know him at all. I may have met him while I was still in Government service, but I do not know him.

Q3373 Kate Hoey: You know that he was the person who signed the Downey letter.

Sir Bill Jeffrey: I do, yes.

Q3374 Kate Hoey: Do you think there is any reason why certain people in Government seem to be wanting to prevent him coming in front of us?

Sir Bill Jeffrey: I cannot comment on that.

Q3375 Kate Hoey: Could you possibly think of a reason why he might not be wanting to come in front of us?

Sir Bill Jeffrey: I think it is entirely a matter for him and for the Ministers for whom he works.

Q3376 Kate Hoey: Clearly, you are a very senior diplomatic civil servant and have a great way of answering things without telling us what you really think. Just on a final point, are you aware that the PSNI were unaware that these letters were being sent out?

Sir Bill Jeffrey: It comes back to the evidence you have taken from both Chief Constables over the period, and I think that what that amounted to was that they were aware that it was a process and that people were being told at the end of it. As I admitted earlier, they certainly were not seeing the final version of the letters, which was a shortcoming in the process. I think it is fair to say that they had a broad understanding of what all this checking activity was for, and knew that it was being done in order to let people know if they were not wanted.

Q3377 Kate Hoey: Would you agree with Sir Jonathan Stephens that, rather than the PSNI being seemingly to be the people who are being scapegoated, the Northern Ireland Office shares a substantial amount of the blame for what eventually happened with Mr Downey?

Sir Bill Jeffrey: In relation to Mr Downey, I find it very hard to comment on that. I do not know if that is what Jonathan Stephens said. I know no more about the Downey case than what I have read in the reports. All I would observe is that successive Chief Constables have acknowledged that there were very serious errors made in relation to it within the PSNI. That is not to say the police are solely responsible for this, but it is quite suggestive.

Q3378 Mr Anderson: Thank you very much, Sir Bill, for coming today. You were there right at the beginning of this scheme. Between yourself and all the other agencies, and despite the political pressure, if you had not put this scheme in place, then what happens with

the Downey case, if he ever had come back to this country or been arrested elsewhere, is that he would not have been able to use these letters as a way of getting off the hook. Effectively, the scheme that you were involved in from the start has meant that a man who may well be responsible for an atrocious terrorist attack is able to walk free.

Sir Bill Jeffrey: If that is the case, it is because mistakes were made. The purpose of the scheme was to, as I perceived it at the time, put in exhaustive checks on whether people were wanted by the police or not and, where there was no interest in them, to tell them. Serious mistakes were clearly made in Mr Downey's case, with the effect that you have indicated, but it does not mean that that was the consequence of the scheme.

Q3379 Mr Anderson: If the scheme had not been there, he would not have had the letter.

Sir Bill Jeffrey: That is true, yes.

Q3380 Mr Anderson: All I am saying is that there is a responsibility on those administering the scheme later on down the line. However, given the fact that some of the legal officers were really wary about this, you still collectively went ahead with it. If you had not, then Downey would not have been in a position to wave this piece of paper.

Sir Bill Jeffrey: Strictly speaking, that must be true but, at the time, it was, as I said earlier, somewhat short of what the Prime Minister had indicated to Sinn Féin he would try to achieve, which was a way of dealing with all these cases. The fact that we were able to let a significant number of people know that they could freely return to Northern Ireland—at that time, anyway—was, I believe, of some benefit to the political objectives that we were trying to achieve.

Q3381 Mr Anderson: Given what you are saying, I think it is a wholly honourable thing to be involved in. You said, effectively, when you were talking to Ms Hoey, that the whole purpose was that there would be no victims in the future. I think that is something we would all sign up to. Looking back, do you think that this scheme was worth progressing with because, by and large, that intent has been fulfilled?

Sir Bill Jeffrey: In the end, what I think does not matter because one must bear in mind, although I expressed myself quite freely on one aspect of the matter a few minutes ago, the fact that my function in life was to support Ministers. Constitutionally, civil servants are there to operate under ministerial direction and pursue their objectives. If you asked me for a personal view, as somebody who lived in the political process for the best part of five years, on whether this was a worthwhile thing to do in trying to unravel the immensely complex and difficult set of circumstances we were grappling with at the time, I would give the answer, "Yes, it was", but it does not mean to say that I am not dismayed by the fact that, some years later, this case went badly wrong.

Q3382 Mr Anderson: Given that, then, do you think that, if there had not been an agreement or arrangement reached that put this process in place, that would have prevented things moving forward? Would it have been a deal-breaker?

Sir Bill Jeffrey: I do not think any individual aspect of this can be isolated in quite that way. There were a number of issues being discussed among the parties at the time. There was a very difficult issue, which many members of the Committee will remember, around the implementation of the policing reforms, which was in the air at much the same time. There was the overwhelming need for militant republicanism to demonstrate its intentions and its credentials in a way that unionists found persuasive when it came to joining with them in Government. It is hard to say that any specific thing made the difference, but I am in no doubt, as other witnesses who have come to this Committee were not, that the issue was a very important one and, by partially addressing it, at the time—things then changed quite dramatically—we helped to advance the process.

Q3383 Nigel Mills: I am keen to understand, Sir Bill, how you got happy with the scheme, as it was when you were there. I think you said you had some concerns about the use of the royal prerogative of mercy for pre-conviction pardons.

Sir Bill Jeffrey: I would have had if that course had ever been adopted, but it was not.

Q3384 Nigel Mills: What concerns did you have when you were embarking on this kind of scheme?

Sir Bill Jeffrey: It was unusual, as many others have said. I think many of your witnesses have said that, despite its unusual nature and the fact that it was not an easy thing to manage for both prosecution authorities and police, it was not an improper thing to ask them to do. I did not have reservations on that ground. Undoubtedly, there were risks in it, and I think one question I have asked myself is how confident I was at the time that these checks were being undertaken as carefully and thoroughly as they could be.

Q3385 Nigel Mills: So what were the risks that you could see?

Sir Bill Jeffrey: The risk was the one that eventuated in Mr Downey's case: that the police or others might get it wrong.

Q3386 Nigel Mills: So what was the mitigation for those risks?

Sir Bill Jeffrey: A careful scheme. There was a point in, I think, early 2002 when there were some meeting, in which I was not personally involved but in which my staff were, with the police, with the DPP Northern Ireland and the Attorney General's office. These meetings are described, as I said earlier, somewhere around paragraph 4.107 to 4.111 of Lady Justice Hallett's report. What they revealed—and, I think, we really knew—was that

there was a very detailed sequence of steps which the DPP, the police and others were taking.

Lady Justice Hallett says, in paragraph 4.111, the PSNI OTRs team, by that stage, in early 2002, had worked out “a painstaking and meticulous approach to the task”, including: confirmation of identity; checking with other police services; recognising the limitations of the police IT system and, as a consequence, doing a trawl of all old papers; having the ACC (Crime) as a central point of contact; and having frequent conferences with the DPP Northern Ireland to ensure that he was comfortable with the judgments that were being made about evidence. I may have been wrong but, at the time, I felt that that gave some reassurance that this was all being done in a very careful fashion. I do not mean to sound insouciant about that, because the Downey case eventually went as badly wrong as it did.

To take one specific example, it was clear at that time that the checks that were made included checks with other police forces on the PNC, which clearly was an aspect that was of great relevance in the Downey case.

Q3387 Nigel Mills: If it had been put to you, “Can we speed this up because it is getting quite urgent? Could we perhaps take the DPP out of the loop or could we try and do a couple of dozen of these a month?” would you have said, “No, that is true risky”, the risks being a perversion of the justice system?

Sir Bill Jeffrey: We would have done what we did, which was to consult those who were doing the checks. There was a period when, for the kinds of reasons that were being implied earlier, there was pressure to speed the process up. In what I believe at the time, and still believe, was an entirely neutral way, NIO officials spoke to the DPP, the police and the Attorney General’s department, and it became clear that the process did need to take as long as it was taking, and that was accepted without question. I do come back to where I started: that, throughout this, we were respectful of the positions of the independent prosecuting authorities and the police.

In a sense, the checks that they undertook and the checks that they thought it was necessary to undertake to be satisfied before answering our questions were for them to determine. We did enquire at one stage about whether they could be done more quickly, and we received very convincing answers to the effect that they could not, which we accepted.

Q3388 Nigel Mills: If you thought corners were going to be cut on that review, you would have thought this whole scheme should not be done: it is either done fully and properly or not at all.

Sir Bill Jeffrey: It was not just me, but a number of us ended up trying to explain to Sinn Féin why this was moving, in their terms, more slowly than they would have wished. I was perfectly comfortable saying, “These are detailed, complicated cases, and the police and the prosecution authorities want to get them right”. If there had been any suggestion that corners were being cut in a way that increased the likelihood of mistakes, then I would have been very concerned.

Q3389 Nigel Mills: Before I switch topics, were you a bit surprised that we have the Historical Enquiries Team going through and doing a proper review of all 3,000 murders during the Troubles, yet there was a simultaneous review during Operation Rapid¹⁶ of certain individuals' allegations, and those two reviews were not meshed together? It just looked like a bit of a strange way of going about it.

Sir Bill Jeffrey: I do not want to appear to be ducking the question, but all of that was after my time. The Historical Enquiries Team was established by Hugh Orde as Chief Constable, but after I had departed the scene.

Q3390 Nigel Mills: Just looking at the drafting of letters, I suppose one thing that strikes me is: did you not think at the time, "Is this not a bit bizarre that we have the Political Director of the Northern Ireland Office signing letters that should really be issued by the police or the DPP? Is it really appropriate for the NIO to be signing these things?"

Sir Bill Jeffrey: Funnily enough, you asked Ronnie Flanagan that question¹⁷, and I am inclined to give the same answer, which is that it would have been more bizarre for the DPP to be signing such letters. These names had been considered as the consequence of an approach from a political party to the Secretary of State or his representatives, and it did seem to me perfectly natural that the response should come from those who were answerable to the Secretary of State.

Q3391 Nigel Mills: We try to separate the executive and the law enforcement in the courts in this country as part of our constitution. Did it not look a bit odd for somebody in the executive to start sending letters which, effectively, bind the police and the court process? It just looks we have gone down the wrong part of the tripod there.

Sir Bill Jeffrey: I am not sure I can add much to my previous answer. The letters themselves were in terms that had been drafted by, suggested by or cleared with the Attorney General's office, so they were legally proofed to the extent that they could be. I spent most of my working life among lawyers—I am not one myself—and the view I took when I was signing these letters was that it was much the safest to stick with language that had been signed off by others who were legally qualified.

¹⁶ The terms of reference of "Operation Rapid" can be found here:

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

¹⁷ 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 can be found here:

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

Q3392 Nigel Mills: You were not worried, then, about comments like, “Unless new evidence comes to light, you are wanted for any pre-1998 offence”. We have had quite a lot of witnesses trying to explain to us what “new evidence” means in this situation.

Sir Bill Jeffrey: I have read that evidence with interest, and I do not know that I want to hazard a view on that. It is a legal question which you have had more expert lawyers pass a view on than I am.

Q3393 Nigel Mills: It is quite an important principle, is it not? If I asked for the status of an investigation into me, I might think I would get told, “In relation to Offence X on Date Y, we now do not want you” or “We are not pursuing the enquiries”. It would not say, “And we do not want you for any other offence in the last 30 years”. It is that context that it starts to look like a get-out-of-jail-free on offences that we did not even know you were suspected of being involved in, rather than in ones—

Sir Bill Jeffrey: I am not implying that I read these letters uncritically, because one has to apply a sense check to anything that goes out with one’s signature, but I did rely greatly on the fact that they were, as I said earlier, either in terms suggested by the Attorney-General’s office or in terms that they had explicitly cleared.

Q3394 Chair: We did ask the former Attorney General, Dominic Grieve¹⁸, who was the Attorney General at the time, about the new evidence and what it meant. His reply—and I am paraphrasing—was that that was one of the risks of the scheme. It is a big risk.

Sir Bill Jeffrey: Yes.

Q3395 Chair: When you talk about the thoroughness with which the police looked at the cases when they were being asked to look at them, there is also a further review now into as many as perhaps 95 people who received letters, who the police are saying are connected, through intelligence—nothing more at this stage—to almost 300 murders. That risks being somewhat more than just one or two mistakes, does it not? How does that you make you feel to read that?

Sir Bill Jeffrey: A great deal depends on the quality of the intelligence. I have spent a large part of my working life dealing with intelligence; it ranges from very hard information to overheard conversations in a bar somewhere. I think it depends greatly on how much real evidence there is that could be pursued. All I can say is that, at the time, the question that we were asking of the police and the prosecuting authorities was a quite explicit one. Errors apart—and that is a very important proviso—in relation to cases where letters were sent, the answer we were being given was that, at that time, the individual concerned was not wanted.

¹⁸ The transcript of Dominic Grieve’s oral evidence to the Northern Ireland Affairs Committee on 2 July 2014 can be found here:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/11189.html>

Q3396 Chair: The implication is that they may have committed crimes since they received the letters, then.

Sir Bill Jeffrey: I do not know. They may have done.

Chair: We will have to wrap up in a couple of minutes, but Sylvia, if you can be very quick, because we have another witness.

Q3397 Lady Hermon: I have listened very intently to your evidence, Sir Bill, and there have been one or two contradictions that we just need to clarify before we wind up today. You said, in response to my colleague, Nigel, that these letters—and I think I am quoting verbatim—was the response to an approach from a political party, and that political party was Sinn Féin; we all know that. In your earlier evidence, however, you said that the scheme, of course, was open to loyalists, although, of course, loyalists did not tend to go on the run to the Republic of Ireland. That is contradictory. Was the scheme open to loyalists? How did they know about it? Or was it, as you just said, a response to a political party, which we know is Sinn Féin?

Sir Bill Jeffrey: My answer to Mr Mills reflected the fact that the lists that we were talking about were the lists that Sinn Féin had provided us with. It did not imply that any other enquiries that we might have had from elsewhere would not have been dealt with in the same way.

Q3398 Lady Hermon: Sir Bill, you did say that it was open to loyalists. Could you just confirm to the Committee which loyalist leaders were told about the scheme? You were the Political Director when these secret letters were first introduced in 2000. Which loyalist leaders did you tell about the scheme?

Sir Bill Jeffrey: What I said was that, if we had had a similar approach from anywhere else, it would have been dealt with in the same way, and I think that is really how it was concluded as well.

Q3399 Lady Hermon: Just to confirm, which loyalist leaders were told that there was a scheme available?

Sir Bill Jeffrey: They were not told.

Q3400 Lady Hermon: Was David Irvine told?

Sir Bill Jeffrey: No, they were not told.

Q3401 Oliver Colvile: You did not think to yourself, “Oh, well, we have ended up by having all these lists in from Sinn Féin. What we now need to do is just make sure that the loyalists are aware of what is going on, so that, if they want to put someone forward, they can do so.”

Lady Hermon: There was absolutely no approach to the loyalists.

Sir Bill Jeffrey: Partly for the practical reason that was suggested earlier by other witnesses, which is that loyalists were unlikely, in practice, to flee the jurisdiction.

Lady Hermon: Sorry, but we do not know that.

Sir Bill Jeffrey: The answer to Lady Hermon’s question is that there was no direct approach to loyalist leaders. Equally, as I said earlier, one conclusion of the Hallett report is that the scheme would have been applied to anyone who enquired or on whose behalf an inquiry was made.

Lady Hermon: If they knew it existed, yes.

Sir Bill Jeffrey: As a matter of fact, there was such an inquiry from Mr Attwood, and he received a response that made it clear that it would have been processed, had he pursued it, in exactly the same way as with Sinn Féin.

Q3402 Lady Hermon: However, as party leaders have consistently said, they were not aware of the scheme, and I trust their word implicitly. Moving on swiftly—

Chair: Can we be very, quick, Sylvia?

Lady Hermon: Sorry, but we have some contradictions here, Mr Chairman. Sir Bill has described the fact that the PSNI did not know about the OTR letters as “a shortcoming”. For a gentleman who, with the greatest respect, chooses his words very carefully, would you like to rephrase that? It led to a catastrophic error that the PSNI did not know about the letters, and certainly did not know that they were being issued by the Northern Ireland Office. It was not just a shortcoming; it was a catastrophic error by the Northern Ireland Office.

Sir Bill Jeffrey: It is not self-evident to me that it led directly to these consequences. As I said earlier, the PSNI were well aware of the overall purpose of the scheme and what it was trying to achieve, and the fact that the advice they gave would be communicated to the individual concerned.

Q3403 Lady Hermon: The Northern Ireland Office, however, wilfully and deliberately withheld the key, vital piece of information that the information that they were giving was going to be translated into a letter that was going to be handed to Gerry Kelly to distribute to OTRs. Was that a deliberate decision within the Northern Ireland Office? It obviously was.

Sir Bill Jeffrey: It is a matter of judgment how much difference it made, but I certainly readily acknowledge that, with the benefit of hindsight, as Lady Justice Hallett says at

several points in her report, it would have been better if these letters had simply been copied back to the police.

Q3404 Lady Hermon: Sir Bill, it made a huge amount of difference.

Sir Bill Jeffrey: That is where we may differ. I do not know. I am less confident than you are that it made all the difference in this case, but I do not know this case in detail, because I was not around.

Q3405 Lady Hermon: Yes, but I presume you did read the Downey judgment¹⁹ when it was published. Did you read it?

Sir Bill Jeffrey: Yes, I did.

Q3406 Lady Hermon: Yes, so you will know from the Downey judgment that the letter that had been issued by ACC Sheridan said that Mr Downey was not wanted in Northern Ireland—full stop. It was Mr Mark Sweeney in the Northern Ireland Office, who, unbeknownst to ACC Sheridan, amended that letter and sent it to Mr Downey. That was a catastrophic—

Sir Bill Jeffrey: Without dodging the question, these are matters beyond my direct knowledge.

Lady Hermon: I doubt that very much indeed.

Chair: We may well get on to that in the next session, I think. We have run slightly over time, but, Sir Bill, thank you very much for joining us.

Examination of Witness

Witness: **Sir Jonathan Phillips KCB**, former Permanent Secretary, Northern Ireland Office, gave evidence.

Q3407 Chair: If we could get straight on, sorry for the delay, Sir Jonathan, but thank you very much for joining us. Again, can I offer you the opportunity to make a very brief opening statement?

¹⁹ 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>

Sir Jonathan Phillips: Thank you very much, Chairman. I was Political Director at the NIO from early September 2002, taking over from Bill Jeffrey in that role. I became Permanent Secretary in December 2005, and departed from that position on 6 May 2010.

I am very grateful to the Committee for seeing me after publication of the Hallett report²⁰, because that does enable me to say that, with very few caveats, I think that her report is a good account of what happened in the particular case of John Downey and, with the benefit of hindsight, what might have been done better in terms of an end-to-end process for administering the OTR scheme, as it has come to be described.

Before I get into a little bit of the detail, if I may, I want to begin by very strongly agreeing with the comment made by Lady Justice Hallett in paragraphs 10.71 and 10.72 of her report, to the effect that this, along with many other issues with which a number of members of the Committee will be familiar, was part of a peace process that involved many messy compromises and ambiguities. From my perspective, the most important end product of that process was the preservation of lives that would otherwise have been at risk, and for that reason I am pleased to have played a small part in it.

I have followed a number of the Committee's evidence sessions, though not all of them, and, since the handling of the Downey case in relation to the OTR scheme occurred during my tenure as Permanent Secretary, I would like to put on record for the Committee, and for the avoidance of any doubt, and particularly in the light of some comments made in the earlier session today, some of the key comments, facts and conclusions from Lady Justice Hallett's thorough and authoritative account as they relate to the role of NIO officials.

First, it has been suggested that the NIO ignored or did not properly respond to a letter from the Attorney General to Peter Hain in February 2006²¹, which said that Downey and a number of others remained wanted at that point. This is wrong. As the Hallett report sets out, the Attorney General or his officials would write to the NIO listing people as wanted or not wanted, once the police and the DPP had done their checks. The Attorney's letter to Peter Hain of February 2006 was simply reporting the status of individuals to the NIO, so that they could be told they were wanted or not. So that letter did not require a reply and, in line with it, Sinn Féin were told, in March 2006, that, along with two other individuals, Downey remained wanted.

Secondly, it has been suggested that an NIO official, Mark Sweeney, whose name has been mentioned a great deal, altered a letter provided by the PSNI to the DPP in respect of Downey²². That suggestion is also and entirely wrong. The Hallett report sets out very clearly what happened. How the scheme worked was that the NIO were only sent letters from the Attorney's office listing people as wanted or not wanted once the PSNI and DPP

²⁰ A link to the Hallett Review report can be found here: <http://www.hallettreview.org/report/>

²¹ The letter from Lord Goldsmith to Peter Hain (February 2006) can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Letter-from-Lord-Goldsmith-to-Peter-Hain-February-2006.pdf>

²² Peter Sheridan's letter to the Department of the Director of Public Prosecutions (6 June 2007) can be found here: [http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Peter-Sheridan%e2%80%99s-letter-to-the-Department-of-the-Director-of-Public-Prosecutions-\(6-June-2007\)%20.pdf](http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Peter-Sheridan%e2%80%99s-letter-to-the-Department-of-the-Director-of-Public-Prosecutions-(6-June-2007)%20.pdf)

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>

had completed their checks. The NIO then sent those people classed as not wanted standard letters, which said, among other things, that the PSNI were not aware of interest in them from another UK police force. The wording of those standard letters was basically settled in 2001, though it was revised on occasions later, and a selection of those letters are, of course, included in the Hallett report, including the one sent to Downey.

On 7 June 2007, the Attorney's office sent the NIO a long list of names that they had been told by the PSNI and DPP were no longer wanted, but they asked the NIO to check with the PSNI that they had definitely done checks with other UK forces about those people. The NIO sought that assurance from the PSNI, and Peter Sheridan wrote to Hilary Jackson, a senior official at the NIO, on 27 June²³, stating explicitly that checks with other UK forces had been done for all individuals that the PSNI had reported to the DPP as not wanted. That letter is reproduced at paragraph 6.55 of the Hallett report. Lady Justice Hallett says, "Anyone at the NIO reading that letter ... would have been assured that checks in relation to external police forces within the UK had been made and that the PSNI regarded such checks as being their responsibility".

After that, on 11 June, the Attorney's office sent a further letter to the NIO, which, for the first time, included Downey in a list of 10 individuals described as no longer wanted. The NIO checked again with the PSNI about that further list of names, and were assured again, in an email exchange²⁴, that checks had taken place with other UK forces. Standard letters were then issued by the NIO to Sinn Féin for Downey and several other individuals, stating that the PSNI were not aware of interest in them from other UK police forces.

So, to be clear, no one in the NIO altered any letter from the PSNI. Officials in the NIO, acting on a suggestion from the Attorney's office, asked the PSNI to confirm that they had checked the status of two long lists—the second list of individuals, which included Downey—before issuing standard letters. The PSNI confirmed for both lists that they had, and that is set out at length in chapter 6 of Hallett.

Thirdly, it has been suggested in some questioning in Committee that Mark Sweeney or the NIO knew that John Downey was wanted at the point that the letter was sent to him in July 2007, and I have to say that that is not the case. Downey received a letter because he was on a list of people confirmed by the PSNI as not wanted, and Hallett says explicitly that the suggestion that the NIO were querying the PSNI's checking because they had a particular suspicion about Downey's status is, in her words, "not credible". Indeed the chronology is clear that officials started to query the PSNI's checks before they received the list of names that included Downey in July.

Finally, it has been suggested that it was somehow improper or unlawful for officials to ask whether the PSNI had carried out those checks with other police forces, and Lady Justice Hallett is quite clear that she does not regard the conduct of NIO officials—or, indeed, of the PSNI or the DPP's officials, or the Attorney General's officials—as unlawful. She describes the queries from the NIO to the PSNI team about external checks

²³ The letter from Peter Sheridan to Hilary Jackson, 27 June 2007, can be found here: <http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Letter-from-Peter-Sheridan-PSNI-to-Hilary-Jackson-27-June-2007.pdf>

²⁴ The email exchange between the NIO and PSNI (13-14 June 2007) can be found here: [http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email_Exchange_between_NIO_and_PSNI_\(13_-_14_June_2007_\).pdf](http://www.parliament.uk/documents/commons-committees/northern-ireland-affairs/Email_Exchange_between_NIO_and_PSNI_(13_-_14_June_2007_).pdf)

as “an attempt by the NIO to ensure that they could be confident about the accuracy of the information provided to them”. Lady Justice Hallett makes no criticism either of Mark Sweeney or any other NIO officials over the issue of a letter to Downey; in fact, she notes a number of attempts to establish that checks that were supposed to have been carried out by the PSNI had definitely been done, and I hope that the Committee will pay very careful attention to Lady Justice Hallett’s clear elaboration of those facts.

I want to go on to make one very brief final and important point.

Chair: If you could be very brief, please, because we are very short of time.

Sir Jonathan Phillips: It will be brief. So far as the officials involved in the Downey case are concerned, it is important to note that they were acting within the framework of the scheme as it had evolved since 2001, and that is using the language that Lady Justice Hallett herself uses. As I hope I made clear at the beginning of these remarks, I agree with her conclusions about where the errors were made in relation to the Downey case. As I also said at the beginning of that statement, I also, for one, acknowledge that the risks attaching to the operation of the scheme generally could have been mitigated more effectively with a better end-to-end process and, with that in mind, I do regret that the operation of the scheme could have led to the outcome that has caused such further pain to the victims of the appalling crimes with which John Downey was charged.

Thank you very much. Could I just add one detail? I did receive a copy of the bundle from the NIO.

Q3408 Chair: Thank you for that. Can we come to the letter that was sent by Lord Goldsmith to Peter Hain? First, it is written—and it is not clear who wrote on it—“for advice and draft reply, for Secretary of State’s signature”, so there was some intention within NIO to reply to it. I do not think whether there should have been a reply or not is quite the important point; I think the important point is that I think you said that the NIO were not aware of Mr Downey being wanted. I think you said that, but this letter on 28 February 2006 says very clearly, “Downey is wanted for arrest and questioning in respect of serious terrorist offences”. Does that contradict what I thought you said?

Sir Jonathan Phillips: No, you are not contradicting what I said. I said precisely that: that the 2006 letter from the Attorney was handled entirely properly.

Q3409 Chair: No, about the NIO not knowing that he was wanted. It says that it informed the NIO that he was wanted.

Sir Jonathan Phillips: The 2006 letter did say, yes, and, in accordance with that, as I said in my statement, the NIO told Sinn Féin that he was not free to return.

Q3410 Chair: How did it move to the point where he was free to return, then?

Sir Jonathan Phillips: That is the whole chronology, which I have outlined and which Lady Justice Hallett sets out in great detail, in 2007.

Q3411 Chair: We have not heard the evidence given to Lady Justice Hallett, and we are not looking into Lady Justice Hallett's report; we are looking into what happened. The fact that that was held in secret really compounds the whole misery connected to this scheme. I am trying to ascertain here whether it is the NIO's responsibility, because they sent the letter to Mr Downey and they were told that he was wanted for terrorist offences. They may have gone back to the police, or they may not have gone back to the police, in between the two letters, but they did know he was wanted for serious terrorist offences.

Sir Jonathan Phillips: In 2006, that was the position.

Chair: The letter went out in 2007.

Sir Jonathan Phillips: The position of a number of individuals during the whole history of the scheme, as we know from the Hallett report, changed over time. When the process in relation to John Downey was picked up in 2007, the sequence is very clearly set out in chapter 6 of the Hallett report. The NIO, as she concludes from her evidence-taking, was not drawing on the letter from the Attorney at the beginning of 2006, when it sought to check with the PSNI that they had checked with other UK forces. They were acting on a prompt from the Attorney's office, which may well have been because the letter from the PSNI to the Attorney's office, to which she makes reference, did not make explicit reference to other UK forces. The NIO, then, was prompted by the Attorney, which I think is the explanation for their action in 2007 in checking what the status of John Downey was at that time.

If I can just go back to the point you made about the letter from the Attorney having written on it "advice"—I have forgotten the precise words but I think you said "advice".

Chair: "For advice and draft reply, for the Secretary of State's signature."

Sir Jonathan Phillips: That is a pretty standard formula that a private office might use, not itself having the expertise in the particular area of the office's work, and it would be for officials to judge whether the letter required advice or draft reply. Indeed, letters came in from the Attorney's office during the whole operation of the scheme, variously from the Attorney of the time or from officials.

Q3412 Chair: He wrote to the Secretary of State regularly.

Sir Jonathan Phillips: Sometimes letters came from the Attorney to the Secretary of State, and sometimes from an official in the Attorney's office. I think, as Lord Goldsmith, who was the Attorney involved at the beginning of 2006, said to the Committee, he would not himself have expected a response to that letter. It was not sent to instigate a dialogue; it was part of an ongoing process in which—

Q3413 Chair: That is a point but I do not think it is the main point. I think the main point is how we go from Downey being wanted in respect of serious terrorist offences to not being wanted. It is a huge leap, and I am struggling to bridge that gap. I do not know whether other members of the Committee are, but we will open it up to further questions.

Q3414 Kate Hoey: I will go first because I know my colleague has a lot of very detailed questions, which I completely concur with. Can I just very quickly, first: have you shared your statement that you have read out so eloquently to us with anyone else?

Sir Jonathan Phillips: I have shown that statement to Mark Sweeney, yes, of course, since I have been so concerned about the way in which—

Q3415 Kate Hoey: It does seem like you are here to defend Mark Sweeney. We would love to have Mark Sweeney in front of us, and then we could listen to him and, presumably, take his evidence and be confident. The more people like you, with the greatest respect, Sir Jonathan, are trying to seemingly keep Mark Sweeney from us makes us feel there is something to hide. The fact that you have admitted that you have shared that with him is incredibly helpful. Thank you very much indeed.

Sir Jonathan Phillips: Let me just add, though, that I am not seeking to keep anybody from you. I am well aware that there is correspondence between the Committee and the Secretary of State.

Q3416 Kate Hoey: How are you aware of that?

Sir Jonathan Phillips: Because you mentioned it in your letter.

Q3417 Kate Hoey: Yes, but you have not seen it.

Sir Jonathan Phillips: I have not seen it.

Q3418 Lady Hermon: Sir Jonathan, could you just confirm whether, in fact, Mark Sweeney approached you and asked to see your statement, or have you been in conversation? You have obviously been in conversation with Mark Sweeney to take his view and then communicate it to us in a very, very lengthy statement.

Sir Jonathan Phillips: Yes.

Q3419 Kate Hoey: How long and how recently have you had this chat with Mark Sweeney?

Sir Jonathan Phillips: I would need to check my diary but I think I had a first conversation with him about a fortnight ago, and then, more recently, in the course of last week.

Q3420 Lady Hermon: Did he offer amendments to your statement when you sent him through a draft, or was it sent through as a draft and he then was free to amend it?

Sir Jonathan Phillips: He has offered me points to be included in this.

Q3421 Lady Hermon: That is absolutely outrageous, Sir Jonathan, I have to say. I am deeply annoyed by that. I have been extremely critical in Committee of what Mark Sweeney did. He is entitled to a right of reply. I am very keen that he comes and he gives evidence publicly, and replies to all of my criticisms, because I think that is the proper course of action.

Kate Hoey: Can I just ask: what is your relationship with Mark Sweeney?

Chair: Sorry.

Kate Hoey: Sylvia does not mind me asking.

Lady Hermon: No, I do not.

Chair: If I could just chair the meeting, because we have very little time.

Kate Hoey: Sorry, Chair.

Chair: Can we have questions for Sir Jonathan?

Q3422 Kate Hoey: I would like to know what your relationship is with Mark Sweeney? How do you know him, at this moment?

Sir Jonathan Phillips: I see him very occasionally, perhaps once every 18 months or so, as a former close colleague.

Q3423 Lady Hermon: But he was able to tweak your statement to this Committee. That would have been helpful, I think, Sir Jonathan, had you explained that at the very beginning.

Sir Jonathan Phillips: I said at the very beginning that I wanted, as the Permanent Secretary of the time taking responsibility for the actions of the Office, which is a well-known Whitehall convention, to make some comments about the particular remarks made about NIO officials, and he has been the most frequently named, although, clearly, in this story, there are other NIO officials.

Q3424 Lady Hermon: I think that that should have been made clear to us, but it is on the record now, Sir Jonathan. Could I just ask if, in fact, you have also spoken to anyone else—for example, the current Secretary of State, Theresa Villiers? Has she seen your statement?

Sir Jonathan Phillips: I have not spoken to Theresa Villiers.

Q3425 Lady Hermon: Or anyone else in the Northern Ireland Office?

Sir Jonathan Phillips: About this statement?

Lady Hermon: About this statement.

Sir Jonathan Phillips: I have not spoken to anyone else in the Northern Ireland Office about this statement.

Q3426 Lady Hermon: Not necessarily about this statement; about what you were going to say today. Have you been in touch with the Northern Ireland Office to get their line to take?

Sir Jonathan Phillips: In the course of receiving the email from an official in the Northern Ireland Office sending me papers, and telling the Northern Ireland Office that I had received those papers, or at least in the administrative arrangements for this hearing, I have made clear that I intended to make a statement, and I said that, having heard the reference to correspondence between the Secretary of State and the Committee in the hearing last week, I intended to make mention of it. I did not ask to see it, and I have not seen it.

Q3427 Lady Hermon: You have suggested in your statement that it was entirely wrong to suggest that Mark Sweeney had altered a letter. I think I am reading it correctly. Could you just explain what legal authority Mr Sweeney had, as an official in the Northern Ireland Office, to phone an Assistant Chief Constable of the PSNI, bearing in mind operational independence of the police, and not even speak to ACC Sheridan but to speak to a staff officer, and also email? What legal authority did Mr Sweeney have for doing that?

Sir Jonathan Phillips: The legal authority is clearly set out in, I think, chapter 9 of Hallett, and I do not have anything to add to it. He is an official who asked a question prompted by the Attorney's office about whether certain checks had been made.

Q3428 Lady Hermon: Just explain, then, the process running up. The scheme had been existing from 2000; we are now in 2007. What was the running order normally? Sinn Féin would feed in the names.

Sir Jonathan Phillips: The process is very clearly set out in the Hallett report.

Lady Hermon: Just tell us what it was, briefly. Just summarise it. Names were submitted.

Sir Jonathan Phillips: Names were sent in.

Lady Hermon: To the Northern Ireland Office?

Sir Jonathan Phillips: The Police Service considered those names and wrote to the DPP, back to the Attorney, with the NIO acting as the transmitter of information at the end of the process.

Q3429 Lady Hermon: Was it not a bit unusual for Mark Sweeney, then, to take it upon himself to directly contact the PSNI and ACC Sheridan's office? Had he done so before?

Sir Jonathan Phillips: It would have been a great dereliction of duty, would it not, and this Committee would have been horrified, I think, had it discovered, as Lady Justice Hallett discovered, that the NIO had been prompted by the Attorney's office to check whether the wider checks had been made, and he or his colleagues had failed to do so?

Q3430 Lady Hermon: Why did he not go back the normal route, which was the DPP, the Attorney General and the PSNI?

Sir Jonathan Phillips: I would have to go back to documents to be sure of the precise accuracy of what I am saying, but I am as clear as I can be without doing that that the way in which the prompt came in from the Attorney's office was a suggestion that the NIO checked again with the PSNI.

Q3431 Lady Hermon: Was that because there were two letters that were dated 20 July 2007—two different letters that could have gone to Mr Downey? One had the text of what ACC Sheridan had said—that Mr Downey was only wanted within the jurisdiction of Northern Ireland—and the alternative was the amended version, courtesy of Mr Mark Sweeney? Were there two different letters?

Sir Jonathan Phillips: No. This is at risk of introducing yet further confusion. The letters that went from the NIO at the end of all this process were pretty much standard letters. When I say "pretty much", I say "pretty much" to cover the fact that they evolved a little bit over the periods into 2001, but they were standard letters. If the message going to the individual was "You are not wanted", that would be in a standard form; if the message was "You are wanted", that would be a message that would go to Sinn Féin, and there would not be a letter in the form of a letter to an individual. It is just not correct to—

Q3432 Lady Hermon: Could I just repeat my question? Were there two letters, both dated 20 July 2007, with different content?

Sir Jonathan Phillips: No.

Lady Hermon: Absolutely not?

Sir Jonathan Phillips: No.

Q3433 Lady Hermon: That is really very interesting indeed. You have praised the Hallett report regularly. I wonder: could you just accept that Lady Justice Hallett does note that the PSNI were not aware of letters sent from the Northern Ireland Office until December 2011—four years after Mr Downey had received his letter?

Sir Jonathan Phillips: I do.

Q3434 Lady Hermon: You have praised the Hallett report, and that is contained in the Hallett report. You would confirm that.

Sir Jonathan Phillips: I do, absolutely, yes.

Q3435 Lady Hermon: Why do you think the letters were kept secret from the PSNI and kept secret from leaders of other political parties, apart from Gerry Adams?

Sir Jonathan Phillips: There are three points that you have touched on there. The first is a point that you allude to and that I think is important to make. In my view, the PSNI's knowledge of the existence of the letters is not at the heart of this issue. What is at the heart of this issue is whether the PSNI knew that, at the end of process of checking, the result of that process was communicated to the individual.

Q3436 Lady Hermon: Why were they not told, Sir Jonathan?

Sir Jonathan Phillips: Let me just pause on that point. As Lady Justice Hallett also notes in her report, it is inconceivable that that point was not well understood in the PSNI in a process that had been going on for a number of years.

Q3437 Lady Hermon: Sorry, Sir Jonathan, but which Chief Constable of the PSNI—or, indeed, Ronnie Flanagan of the RUC—confirmed that they knew that letters were sent out?

Sir Jonathan Phillips: No, forgive me. I said that there is a point that you have alluded to, because I do not think that letters are at the heart of it. It is the question. The first question is: did the PSNI know that the outcome of this whole process of consideration of an individual case was communicated to the individual? In theory, of course, that could have been done entirely orally. As everybody knows, it was not; there was a written process. On that first point, however, it is inconceivable that the PSNI did not know that the information was being given.

On the second, I entirely agree with what Bill Jeffrey said in the earlier session today; namely, it would have been much better, from the outset of this process, if it had been end-

to-end, and if the letters that were sent by the NIO had been copied to, amongst others, the PSNI.

Q3438 Lady Hermon: Why do you think that did not happen? You are a very experienced civil servant; why would you think that did not happen?

Sir Jonathan Phillips: I do not know. I think there was not, again—

Q3439 Lady Hermon: A cover-up?

Sir Jonathan Phillips: No, there was not a cover-up at all.

Lady Hermon: There was not a cover-up.

Sir Jonathan Phillips: Absolutely not.

Q3440 Lady Hermon: No one from the Northern Ireland Office, no Secretary of State, John Reid in replies to parliamentary questions—they all accidentally forgot to mention the words “letters have been sent to OTRs”. Is it not a strange coincidence that they all seemed to have amnesia at the same time?

Sir Jonathan Phillips: I think that we are conflating two things. One is the process that would have been better had letters been copied from the NIO to a range of other parties, who would have treated them with the degree of sensitivity that was required. There are questions of integrity at stake here. The suggestion is, I think, that the NIO, over a period of years, deliberately chose not to copy letters—

Lady Hermon: That is what I am asking you, yes.

Sir Jonathan Phillips: —because they did not trust the other actors in the arrangement to treat them with due sensitivity. Irrespective of the political context, due sensitivity would have required due sensitivity in relation to each individual. I have to say, just as Hugh Orde, to take one particular Chief Constable who has given evidence to you, has spoken of his confidence in the integrity of the people with whom he dealt in Government, I would send the compliment in the other way too. There would have been no doubt, given the role of the RUC and the PSNI in Northern Ireland over many years, that its integrity on a matter like this would have been trusted absolutely.

Q3441 Lady Hermon: Absolutely. We know that they started in 2000—Number 10 and Jonathan Powell signing off the first two—and the only evidence that Lady Justice Hallett could find in the PSNI was in December 2011. For 11 years, then, even though the Northern Ireland Office has a huge regard, as I would expect, for Hugh Orde, the PSNI and other Chief Constables, the Northern Ireland Office deliberately never let on that there were letters going to OTRs. That is the case.

Sir Jonathan Phillips: As a matter of fact, the word “letters” was never used in the public domain.

Lady Hermon: For 11 years.

Sir Jonathan Phillips: I would, however, go on and say that, during my period—and maybe you are going to move on to this—the description of the scheme that was in the public domain in 2002, before my time—that is to say, Secretary of State John Reid’s answer to a parliamentary question—was very clearly alluded to by Peter Hain.

Q3442 Lady Hermon: Absolutely, and John Reid’s reply to a Parliamentary question from Quentin Davies, now repeated by Peter Hain to me as the North Down MP in the spring of 2007, was on 1 July 2002. By July 2002, we discover from the wonderful Hallett report, as you keep praising it, Sir Jonathan, that almost 60 secret letters had been dispatched. How is that so carelessly omitted from John Reid’s parliamentary reply to Quentin Davies’s question? That same omission happened when Peter Hain replied to me in 2007. Why do you think that would be?

Sir Jonathan Phillips: I do not think it was careless.

Lady Hermon: It was deliberate—exactly.

Sir Jonathan Phillips: I do not sense some point here beyond the comment that has been made in many of your sessions that this was not a secret scheme; it was a sensitive scheme. Letters were not mentioned later on because they had not been mentioned earlier, and they were not mentioned in the first significant parliamentary answer on this at a period before I was involved.

Q3443 Chair: If I can just come in on that point on “a sensitive scheme”, this goes to the heart of our inquiry, really. If this is about letters written to completely innocent people, what is there to be sensitive about?

Sir Jonathan Phillips: The letters were written as part of a process that I think was very well described in the evidence session that you had with Dominic Grieve, the former Attorney General, as to what might have been taken from the receipt of such a letter. You would not, I think, in the normal course of events, leaving aside the unusual circumstances of this scheme, expect that a private letter to an individual would be put in the public domain. As Lady Hermon suggests, there is a quite separate question about why the existence of letters in general were not referred to in the public domain.

Lady Hermon: Ever.

Q3444 Chair: By officials or by politicians, it has to be said.

Sir Jonathan Phillips: I think that is the case.

Q3445 Lady Hermon: Was this an issue that was discussed with any of the Secretaries of State who you worked with? You worked with many.

Sir Jonathan Phillips: What do you mean by “this issue”?

Q3446 Lady Hermon: OTR letters. What was the briefing to every incoming Secretary of State? Did you mention the letters?

Sir Jonathan Phillips: Briefing for incoming Secretaries of State described the scheme and the way in which it operated.

Q3447 Lady Hermon: You described the scheme. Could I just ask you again, because the key is the secret letters: did you mention the letters?

Sir Jonathan Phillips: Secretaries of State were, of course, aware that letters were sent.

Q3448 Lady Hermon: Interestingly enough, some of our Secretaries of State, for whom I have huge regard, including Paul Murphy, appeared not to have heard of them, and I have no reason to doubt his word at all. I put that on the record: no reason at all. He appeared not to have any awareness of OTR letters being issued during his period.

Sir Jonathan Phillips: I watched, rather than read, Paul Murphy’s evidence²⁵, and I agree with the thrust of it: that, during his time as Secretary of State—and he arrived in October 2002, just at the point at which the institutions were about to collapse—the focus was on a much more, if you like, strategic aspect of the OTR problem: namely, whether or not it would be possible to find a legislative solution, and that gave rise to the paper which was published alongside the joint declaration at the beginning of May 2003²⁶ and then, of course, went onwards towards legislation in Peter Hain’s time.

Q3449 Lady Hermon: Could you just confirm, then, that the OTR letters just moved through the Northern Ireland Office. In terms of the tight little number of people who knew about the letters, how many would you estimate knew about the letters within the Northern Ireland Office?

Sir Jonathan Phillips: I am not going to make a guesstimate.

Lady Hermon: Half a dozen?

²⁵ The transcript of Paul Murphy’s evidence to the Committee on 15 July 2014 can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/11406.pdf>

²⁶ The Proposals in relation to On-the-Runs (OTRs) (April 2003) can be found here: <http://cain.ulst.ac.uk/events/peace/docs/biotrs010503.pdf>

Sir Jonathan Phillips: I am not going to make a guesstimate of that kind. Over the period of my time in the office, given the people at different levels would see papers, file papers and so on—

Q3450 Lady Hermon: I was thinking more about Paul Murphy's period in office, because you did say that you watched rather than read his evidence. I think that is what you said.

Sir Jonathan Phillips: Correct.

Lady Hermon: And that what he described really coincided with your recollection of the time, because, in fact, there were other priorities at that time. I am asking you: during Paul Murphy's time, is it correct that the Northern Ireland Office officials—or official, if there was one responsible for signing off these letters—simply continued with that scheme without a word to Paul Murphy, the Secretary of State?

Sir Jonathan Phillips: I have not gone back myself and double-checked in preparation for this hearing—there is a limit to how much preparation one can do—but I would be confident that, if you asked the Northern Ireland Office to check the files, you would find that the incoming first-day briefing for Paul Murphy covered this, as it should have done.

Q3451 Lady Hermon: Covered “this”?

Sir Jonathan Phillips: Meaning the scheme and its operation.

Lady Hermon: The scheme and its operation.

Sir Jonathan Phillips: Including letters, to be absolutely precise.

Q3452 Lady Hermon: Could you just confirm for the record that you also accept that ACC Sheridan, in July of the vital year, 2007, when Mr Sweeney had phoned his private office and emailed his private office, had no awareness at all that NIO officials were signing off letters? Could we just have that on the record?

Sir Jonathan Phillips: Sorry, what question are you asking me? I do not know what his state of mind was. If you are telling me that that is what he said, in terms, then I accept that that is his state of mind, yes.

Q3453 Lady Hermon: We are talking here about the Hallett report. The Hallett report confirms that there was no evidence that the PSNI knew about the OTR letters until December 2011.

Sir Jonathan Phillips: With respect, the Hallett report says that, in relation to 2011, the PSNI had not been shown the text of the standard letter, and that is the first time they saw the text. I think that is what the Hallett report says on that point. I thought your earlier question was: was ACC Sheridan aware in 2007 that letters were sent? I have accepted

absolutely the criticism, which is implicit in the Hallett report—and I think you make explicit—that it would have been far better had those letters been copied to the PSNI and the other participants in the process from a very early stage.

Q3454 Lady Hermon: Would you accept, Sir Jonathan, that this was a very sensitive and very controversial scheme of letters to facilitate progress in the peace process, and particularly decommissioning by the IRA? Would you accept that?

Sir Jonathan Phillips: I do.

Q3455 Lady Hermon: How, then, do you address the criticism in the Hallett report about the Northern Ireland Office that the review “was concerned not to be able to find any record of earlier written notification” about at least 12 OTRs—this is paragraph 4.128. Again, the review concludes, “This would illustrate the inadequate system of record-keeping on the part of the NIO.” How on earth did the NIO end up with such a poor record-keeping system for such a controversial and highly sensitive secret scheme?

Sir Jonathan Phillips: I accept the criticism that, in some cases, the record-keeping, as it has been investigated by Lady Justice Hallett, was not as good as it should have been. I cannot offer you an explanation for that, but it is a fact and I do not seek to—

Q3456 Lady Hermon: Do you think it was carelessness or was it deliberate?

Sir Jonathan Phillips: I am absolutely sure it was not deliberate.

Q3457 Lady Hermon: Why do you say that with such passion? You said that almost as a dismissal.

Sir Jonathan Phillips: Because I worked with a group of officials in dealing with this and many other strands of the peace process, and I judged their integrity to have been of the highest order.

Q3458 Lady Hermon: You must have been very surprised, then, by the criticism in the Hallett report.

Sir Jonathan Phillips: I was disappointed by that criticism in the Hallett report, but I did not take it as a criticism of the integrity of the office; I took it as a criticism of the administrative efficiency of an element of the office at a particular point.

Can I just come back to this question of who knew what about communication as opposed to the precise text of the letter? If you look at 5.12 of Hallett, there is an email that went to ACC Sheridan, which makes it clear, as she says, that PSNI was well aware of the involvement of the NIO, and specifically, the involvement of the NIO in a process of

informing Sinn Féin as to whether individuals were wanted or not wanted. That is a really rather important point.

Q3459 Lady Hermon: It is really a very important point because, of course, the PSNI did have meetings. There were representatives of the Northern Ireland Office at meetings with representatives of the DPP and, at times, the Home Office and the Attorney General's office. Yes, they were all there. That is not in dispute. What is in dispute is that ACC Sheridan's office, on roundabout 20 July 2007, was not aware that a letter was going to be issued by the Northern Ireland Office and it was going to amend the information supplied by ACC Sheridan.

Sir Jonathan Phillips: Chairman, I do not want to have to repeat everything that I said in my statement, which I think will be captured, but the NIO did not alter a letter. The NIO checked with the PSNI, at the suggestion of the Attorney General's office, and only then, having had it confirmed, as Lady Justice Hallett acknowledges, that checks had been carried out properly, writes the standard letter.

Q3460 Lady Hermon: Sir Jonathan, you have had the conversations with Mark Sweeney. Did Mark—

Sir Jonathan Phillips: With respect, Lady Hermon, I have read the Hallett report.

Q3461 Lady Hermon: However, you have also had the benefit, which we have not, of talking to Mark Sweeney. I have read the Hallett report as well, and the Hallett report does not answer this question. That is why I am asking you, because you have had the benefit of talking to Mark Sweeney, which we have not. That is: did Mark Sweeney, when he phoned and emailed ACC Sheridan's office, explain why he wanted that information?

Sir Jonathan Phillips: I have not asked that question.

Q3462 Lady Hermon: Did he explain that he was going to put it into a letter to Mr Downey?

Sir Jonathan Phillips: I have not asked that question.

Q3463 Lady Hermon: Did he explain that he was going to alter the text that ACC Sheridan had prepared?

Sir Jonathan Phillips: With respect, I have to say that he is not, in any description of his role, altering a letter which ACC Sheridan wrote. That is not how the process worked. He carried out a check to ensure that the information which ACC Sheridan had sent to the

Attorney General's office properly indicated that checks with other forces had been carried out.

Q3464 Lady Hermon: Did Mark Sweeney add anything—any sentence—to ACC Sheridan's original draft letter, or the standard letter?

Sir Jonathan Phillips: I am sorry. I do not know how to answer this. He did not have a text from ACC Sheridan. He had a standard format.

Q3465 Lady Hermon: Did he amend it? Did he amend the standard format?

Sir Jonathan Phillips: The answer to that is I have not looked at the two documents one alongside the other to be able to answer your question, but my belief is that the letter he sent was in standard form. If it was not in standard form, I am absolutely clear, from the way in which the Hallett team went about their enquiries, that that would have been a matter on which they commented. I am as confident as I can be, without, as it were, putting it on oath, that it was a letter in standard form.

Lady Hermon: I think you mentioned there were two there.

Chair: We have to wind up fairly soon. Nigel.

Q3466 Nigel Mills: We have all evening, surely. We have plenty still to ask. I am just trying to get the sequence of dates right in my mind, Sir Jonathan. You took over in 2002, was it?

Sir Jonathan Phillips: September.

Q3467 Nigel Mills: The scheme was running in its original format then. It went quiet in 2003 and not much happened until the bill failed and Operation Rapid got started.

Sir Jonathan Phillips: Yes, it started moving before what we have come to know as Operation Rapid, but broadly speaking, yes.

Q3468 Nigel Mills: When you took your office as Political Director, were you a little surprised by this scheme or were you familiar with it before you appeared in that job?

Sir Jonathan Phillips: No, I was wholly unfamiliar with it. Indeed, I came to the Northern Ireland Office without any previous experience in that Department, so the whole thing was new.

Q3469 Nigel Mills: Do you recall thinking, “This is a bit unusual. I had best be careful”?

Sir Jonathan Phillips: To be candid, I do not recall giving it a great deal of thought when I arrived, because we were on the verge of what was widely predicted to be a collapse of the political institutions. I do not need to rehearse the history of how that happened, but it happened a very few weeks after I arrived in the Political Director’s post and, frankly, responding to that took all my time and energy. In addition, it became clear that an element—one of many elements but an element—of dealing with that political crisis and the negotiations that followed was trying to put in place a legislative scheme, which I referred to earlier in this evidence.

Q3470 Nigel Mills: We can fast-forward through to the collapse of the amnesty bill in Parliament. The then Prime Minister decided to bring back this administrative scheme, in effect, and speed it all up, so that it is dealt with before he leaves office. Do you recall what your thoughts were and how you handled that situation back in 2006, I guess it was?

Sir Jonathan Phillips: There were conversations with the various actors in that particular drama. I was not involved in all of those, by any means, because it was a subject that was handled on a day-to-day basis by others in the office. I was then operating as Permanent Secretary with a wider set of responsibilities, so inevitably some subjects were delegated. I think I was present at a meeting in the autumn of 2006, which is referred to in the Hallett report, which involved the Secretary of State, the Chief Constable and various others—probably the Attorney’s office and so on—to consider how the scheme could be speeded up.

That, of course, has to be seen in a very important context which was then emerging—the prospect of talks at St Andrews; the requirement in order to make the St Andrews Agreement effective—the requirement to have Sinn Féin’s support for the policing settlement in Northern Ireland, following the Belfast Agreement and the Patten Report, and so on—which absolutely confirmed that an element in that process was an attempt to see whether anything could be done, as I said, to speed up the operation of the scheme.

This may not be quite as distant as some other memories, although it is quite a number of years ago now: one thing that I am pretty clear on from that meeting is that Hugh Orde indicated very strongly—and quite consistently with the nature of his evidence to this Committee—that whatever steps were taken had to be taken absolutely within the law and the prerogatives of the different parties to the consideration of cases; in other words, there was going to be no question of the operational integrity of PSNI being compromised.

Q3471 Nigel Mills: I presume you can see how some people might fear that the amnesty bill fails and we get this, “What else can we do? Let us just do a quick-and-dirty and rush through these letters, and that will be good enough.” Presumably, that is not something that you would agree was a fair interpretation.

Sir Jonathan Phillips: I would not, because, as I think has been clear from a number of evidence sessions, the scheme did not and could not deal with quite a number of cases where individuals were wanted. The scheme, as set out in 2003—the bill to which you

have referred—was an attempt, albeit unsuccessful, to deal with those cases. Speeding up the administrative scheme was not, as it were, an alternative to that—it could not be.

Q3472 Nigel Mills: But it was, in fact.

Sir Jonathan Phillips: No, it was not, in effect.

Q3473 Nigel Mills: The bill failed and the scheme was reactivated and turbocharged. It looks like an alternative, does it not?

Sir Jonathan Phillips: To those who were party to the conversations—and I do not need further to put on record the integrity of the different parties to this process—I do not think that is how it could have operated, let alone did operate.

Q3474 Nigel Mills: You heard Sir Bill's evidence earlier that the reason he thought the risks that a Downey-type mistake would not happen were the careful nature of the reviews and the very thorough nature of the work. Were you not worried that the wonderfully named Operation Rapid effectively meant that that thorough, careful work just was not possible in the new timescale, and that, therefore, this scheme just became so inherently risky that it should not have been handled in that way?

Sir Jonathan Phillips: No. I was not involved in all the conversations that took place from the autumn through to the beginning of 2007. I was conscious of a determination on the part of the Attorney General, the DPP and the PSNI that their integrity, to use a simple word, would not be compromised. I was conscious of a question of resource; that is to say, a team, as it turned out, needed to be created to take consideration of cases forward. I was also conscious of something that I think is true throughout the history of this scheme, and that is that the NIO had to be very careful not to be seen to be or perceived as being a party interfering with those prerogatives of independence.

With the benefit of hindsight, maybe we took that too seriously; that is to say, it would have been better had we been a little more intrusive as to process. Then the risks that that carried or could have carried in relation to perceptions of interference with proper due process were quite considerable, so I think, had we recognised the need to put a better framework in place, it is quite a complex process to imagine how that might have been achieved without damaging the prerogatives of the various agencies.

Q3475 Nigel Mills: You can see how people get a bit concerned, I think, because, on one level, you have the police, through the Historical Enquiries Team, conducting a review of all 3,000 murders and trying to work out whether there is any evidence to bring a prosecution. We are now told that the PSNI want to do a full review of all the letters, and that will take them at least three years with some kind of dedicated resource. Yet, in a matter of a few months, we have managed to issue quite a lot of letters without reference back to the

Historical Enquiries Team. It looks like this was a bit of a, “Let us have a skim of these files and we will just write off as many as we can”. It has that feeling, does it not?

Sir Jonathan Phillips: I agree very much with what Peter Sheridan said to you last week²⁷ : that it is very important to wait and see what that review shows before one comments, because this was not a process that was being overseen by the NIO. It was a process being undertaken by the PSNI and we were responding to the results of that process. I really do not want to make judgments in advance of seeing the analysis.

Nigel Mills: Perhaps it is another three years forward before we find out.

Q3476 Chair: I think Drew Harris suggested that, at the moment, with current funding, it could take up to nine years²⁸. Nine years, compared to Operation Rapid, is a huge difference, potentially.

Sir Jonathan Phillips: That, of course, is outwith my discretion, but it is the case that we cannot make a certain judgment—and this is, I think, a point that Peter Sheridan was making last week—about the impact of the Operation Rapid approach until that analysis has been done.

Q3477 Nigel Mills: Could I just put to you a question about one of Justice Hallett’s conclusions at paragraph 10.66, where she says, “The administrative scheme was not unlawful in principle”? There are enough caveats in that to make you wonder. She could have said “The administrative scheme was lawful”, so she has added “not unlawful” and “in principle”. What do you think she was trying to get to by those caveats?

Sir Jonathan Phillips: I do not know. You would have to ask her.

Q3478 Nigel Mills: I would read “in principle” as saying that perhaps, in theory, nothing was wrong here, but the way it was carried out was perhaps not quite how it ought to have been.

Sir Jonathan Phillips: I can speculate where the words are unambiguous, but not where there is that degree of ambiguity.

Q3479 Nigel Mills: With all these years of hindsight and all these reviews, you would say the scheme was lawful.

²⁷ The transcript of Peter Sheridan’s evidence to the Committee on 11 November 2014 can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/15306.pdf>

²⁸ The transcript of Drew Harris’s evidence to the Committee on 4 November 2014 can be found here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern-ireland-affairs-committee/administrative-scheme-for-ontheruns/oral/15103.pdf>

Sir Jonathan Phillips: I would.

Q3480 Nigel Mills: You would not have had to use all those qualifiers.

Sir Jonathan Phillips: But I am not speaking as a High Court judge.

Chair: Nigel appreciates she was carrying out an inquiry. You are speaking as a witness to a Select Committee.

Q3481 Nigel Mills: If you were speaking as the then Permanent Secretary whose Department was signing these letters—

Sir Jonathan Phillips: The point I am making, Mr Mills, is that she has a very sophisticated legal training, which I do not.

Q3482 Nigel Mills: It is a pity she will not come and answer that question. I am intrigued as to why she chose those words. I assume she chooses her words her carefully and, if she thought the scheme was lawful, she would have just said that.

Chair: Thank you. Because of earlier delays, we have overrun, but thank you very much, Sir Jonathan, for coming.

Oliver Colvile: Can I just make a point

Chair: We will be inquorate in 30 seconds' time.

Oliver Colvile: It was just a very quick point, and it was this: this is the only public inquiry into this matter. This is the one opportunity that those people in Northern Ireland have seen as to how this whole operated and to see something being asked in public and talked about. I really do urge everybody who has given evidence to understand that this is the one thing where they have an opportunity. Everything else to do with the Hallett report and things like that is done behind closed doors, and nobody has seen as to how the questioning is done. Thank you very much indeed, from my point of view, for being so honest with us.

Chair: Thank you very much, Sir Jonathan.