



Northern Ireland Affairs Committee

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

Tuesday 6 January 2015

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Members present: Mr Laurence Robertson (Chair); Mr David Anderson; Oliver Colvile; Lady Hermon; Kate Hoey; Nigel Mills; Ian Paisley; David Simpson

Questions 3483-3653

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

Q3483 Chair: Sir Jonathan, thank you very much for joining us—on your own this time, not with the Secretary of State. We understand that you have been very busy in Northern Ireland in the run-up to Christmas negotiating the Stormont agreement, and we hope to have a look at that in close detail very shortly.

Perhaps I can start with the rather difficult position that we have. As I said, you are appearing before us on your own as an official, and we have summonsed Mr Sweeney and Mr Case to appear before us tomorrow. We have done so on the basis of the guidance for civil servants entitled, “Giving evidence to Select Committees”. We are rather surprised to find that there appears to be ministerial objection to that. The guidance seems quite clear that the individual would have to appear before the Committee. As a very senior official, do you accept that guidance?

Sir Jonathan Stephens: If we are referring to the same Cabinet Office guidance of September 2014, which sets out the position—I think that you may be referring to paragraph 12—

Q3484 Chair: I have October 2014, paragraph 13, but I am sure it is a very similar document.

Sir Jonathan Stephens: Indeed, paragraph 12 says, “When a Select Committee indicates that it wishes to take evidence from any particular named official ...the presumption is that Ministers will seek to agree such a request. However, the decision on who is best able to represent the Minister rests with the Minister concerned.” I know that there has been correspondence from the Secretary of State in relation to previous requests setting out

some of her reasons, and I am conscious of the significance and importance of the summons for tomorrow. I can say that I expect that Ministers will be responding to the Committee very shortly in relation to that.

Q3485 Chair: The Minister met me yesterday and did not say one way or the other, but she has previously said that she feels it inappropriate that junior officials should appear before us. I do not accept that they are junior in any way. Can you tell us whether Mr Sweeney and Mr Case will be appearing tomorrow?

Sir Jonathan Stephens: I can't, because Ministers will, as I say, write to the Committee shortly. They are very conscious of the significance and importance of the summons. They are also conscious of the guidance and of the reasons that have been set out before as to why they think it appropriate to me to appear but not for Mr Sweeney and Mr Case. Those reasons include the very full evidence that has been provided by former Secretaries of State, former permanent secretaries and former political directors of the NIO, the very full factual account that has been provided by Lady Justice Hallett, who was able to take evidence from officials in the NIO and other organisations, and the relatively junior nature of the officials. Certainly, in my experience, that is below the level at which officials would normally be expected to appear before Select Committees. As I say, Ministers expect to write very shortly with a response to the summons for tomorrow.

Q3486 Chair: A letter from that official, at the relatively junior level to which you refer, was sufficient to put a stay on a multiple murder charge. How junior is that?

Sir Jonathan Stephens: At the time these individuals were, in civil service parlance, deputy directors in the NIO.

Q3487 Chair: One was head of division.

Sir Jonathan Stephens: Yes. Acting of course on behalf of and under instruction from Ministers. In my experience, which may not be complete, permanent secretaries and director generals certainly expect to appear in front of Select Committees, but below that it is much less frequent. There may be cases where a deputy director has appeared, but I am personally not aware of one.

Q3488 Chair: That may be the case, but I am certainly not aware of any case like this having a stay put on it by what appears to me to be a flimsy letter written by somebody who is now described as a junior official. Perhaps there is no precedent for that either. Given that Mr Hain, in particular, had no recollection of, for example, receiving a letter from Lord Goldsmith dated 27 February 2006 informing him clearly that "Downey is wanted for arrest and questioning in respect of serious terrorist offences", that leaves a big hole in the matter. We have the Secretary of State not recognising the letter that was written to him by Lord Goldsmith, which was completely unequivocal: "Downey is wanted". We get to the position where a stay is put on the prosecution because of a letter by Mr Sweeney, yet the Secretary of State has no recollection of that. Can you appreciate our frustration at that situation? If you

can point us to somebody else whom we might question and who can give us the answers, I am sure that we would be happy to do that.

Sir Jonathan Stephens: That is part of my purpose in being here today. I am very happy to answer to the best of my ability any questions on precisely that angle and the NIO's role and part in all this.

If I may, by way of introduction, I will briefly repeat what I said last time. I am very conscious that Lady Justice Hallett in her report identified a number of systemic failures both between and within Departments and organisations that were involved in this scheme. On behalf of the NIO, I want to repeat my apology for its part in those systemic failures and for the very serious impact of that on victims and their families.

Q3489 Chair: Let us see if you can fill in the gaps. On 14 September 2004, on behalf of the Chief Constable, a letter went to Sir Alasdair Fraser, saying "Mr Downey is currently wanted by PSNI" and again referring to "serious terrorist offences". We then go on to the letter written by Lord Goldsmith to Peter Hain on 27 February 2006: "Downey is wanted for arrest and questioning in respect of serious terrorist offences." That is pretty clear language. How does that get to a letter being sent to Mr Downey saying that the PSNI does not want him—when we have it here that they did want him—and that they are not aware of any other police force in the UK wanting him? How does one get to the other?

Sir Jonathan Stephens: The letter to which you are referring was issued on 20 July 2007, and it followed a process that was similar to that that had considered other cases, including the process, to which you referred, that had considered Downey previously. That involved consideration by the PSNI, the Public Prosecution Service and the Attorney-General's Office, and then the forwarding of the outcome of that police and prosecutorial decision-making process to the NIO. I do not think that the full account of this set out in chapters 5 and 6 of Lady Justice Hallett's report can be bettered. In particular, on foot of the early consideration of several cases by the PSNI under Operation Rapid in the first half of 2007, the Attorney-General's Office raised a number of queries as to whether, in the course of their consideration, the PSNI were checking whether individuals were wanted by forces other than the PSNI. The NIO had pursued that inquiry on behalf of the Attorney-General's Office. The PSNI responded in various forms with an assurance to the NIO that checks were being carried out to establish whether individuals were wanted by other forces, including through checks on the police national computer. It was on that basis, with the assurance from the PSNI and the prosecutorial authorities that Downey was not wanted, that the letter was finally issued.

Q3490 Chair: But they knew he was wanted. Why did they ask again? They knew he was wanted.

Sir Jonathan Stephens: They knew that previous consideration by the process had concluded that Downey was wanted. As Lady Justice Hallett considers, there was no independent means in the Northern Ireland Office for consideration of individual cases. There was no independent evidence or analysis that the NIO could undertake. It was entirely dependent on the judgments and decisions of the police and prosecutorial

authorities. That led to the earlier conclusion that Downey was wanted. The same process, undertaken by the police and prosecutorial authorities, had subsequently concluded that Downey was not wanted. On the basis of that conclusion, reached by the police and prosecutorial authorities—the NIO had no independent means of reaching a decision or judgment of that sort—the assurance was given.

Q3491 Chair: But there had already been the review. Again, Lord Goldsmith’s letter to Peter Hain said, “prompted perhaps by the introduction of the Northern Ireland (Offences) Bill, or its withdrawal, some additional information was recently provided and the Director and police have recommenced their review. I write now with the results of seven cases. John Anthony Downey... is wanted for arrest and questioning in respect of serious terrorist offences.” That is twice that the NIO have been told, yet they go back and back, as if they want a different answer.

Sir Jonathan Stephens: I do not read it that way myself. As I said, there is no independent means, evidence or analysis that the NIO is able to undertake. This was a review undertaken by the PSNI, which was then forwarded to the police and prosecutorial authorities. It came to a different conclusion from the earlier review, but the Northern Ireland Office was not in a position to know or understand what had led to that different conclusion. It had no independent means of identifying even in respect of which cases or offences Downey was being considered; that was entirely a matter for the police and prosecutorial authorities.

Indeed, the one role that the NIO performed on behalf of the Attorney-General’s Office in respect of this run of cases, including in respect of Downey, was to check with the PSNI that the work that they had been doing included checks to establish whether individuals were wanted by police forces other than the PSNI, and in the course of that, the PSNI assured the NIO that such checks were being carried out, including in the case of Downey.

Q3492 Lady Hermon: Just a few questions to begin with, and then I will open it up to other colleagues. It is good to see you back in front of us, Sir Jonathan. I am sure you are as comfortable about being back as Mr Sweeney and Mr Case are uncomfortable. It appears that our last witness, Sir Jonathan Phillips, had quite a conversation with Mr Mark Sweeney before he appeared before us; in fact, he was able to tweak Sir Jonathan Phillips’s statement. Have you had a recent conversation with Mark Sweeney?

Sir Jonathan Stephens: No, I haven’t. I do know him. I first got to know him when I was in DCMS and he was dealing with issues relevant to press regulation at the Ministry of Justice at that time. I know him because he is currently in the constitution directorate of the Cabinet Office, and that has some bearing on matters to do with Northern Ireland, but I have had no recent discussion of this specific case with him.

Q3493 Lady Hermon: And Mr Simon Case: have you had any recent discussions with him, or e-mails or any correspondence with him or Mr Sweeney?

Sir Jonathan Stephens: I know Simon Case as well. I first got to know him when I was working on the Olympics and he was working on the Olympics in the Cabinet Office. I have a passing acquaintance. Apart from passing the pleasantries of the day, I have not had a specific discussion with him.

Q3494 Lady Hermon: So you very kindly volunteered to come before this Committee to answer on behalf of Mr Mark Sweeney and Mr Simon Case. How can you possibly do that in any sort of comprehensive manner when you have now confirmed to us that you have not spoken to them recently?

Sir Jonathan Stephens: I am doing so on the basis of the very full and comprehensive report that Lady Justice Hallett has produced—

Q3495 Lady Hermon: With the greatest respect, Jonathan, I will interrupt you there. Lady Justice Hallett's report is not set in concrete. It is not the Bible; I would not even compare it with the Bible. Therefore, I encourage you not to hide behind the Hallett report. If you could kindly do that for us, it would be very helpful.

Chair: I also point out that it was conducted in private, which reinforces the private and secret nature of the scheme.

Sir Jonathan Stephens: I understand that. Equally, of course, Lady Justice Hallett was specifically commissioned by Ministers and by the Secretary of State to investigate the circumstances.

Mr Anderson: That is the whole point of why we're here.

Q3496 Chair: That makes it worse, but let's go back to the line of questioning.

Sir Jonathan Stephens: If I may, I will just complete one point about accountability. Ministers are very clear, and Ministers' accountability to Parliament is very important, including through this Select Committee. Officials, of course, are responsible and accountable to Ministers, and part of the purpose of establishing the Hallett report was to understand in full what role not just officials in the Northern Ireland Office but all the different organisations had played.

Q3497 Lady Hermon: Yes, but you will accept that the Hallett report was conducted entirely in private, and evidence was taken entirely in private. That is not very helpful to the general public, who want to understand how in heaven's name 208 comfort letters were sent to people who were on the run for extraordinarily serious crimes, including Mr Downey, who walked free from the Old Bailey relying upon the letter that you have much quoted and much referred to, in 2007. In 2007, Sir Jonathan, did the PSNI, retired ACC Sheridan or now-retired senior police officer Norman Baxter know about the secret OTR letters that were signed off by Simon Case and, in the case of Mr Downey, by Mr Mark Sweeney? Did they know anything about those letters in 2007?

Sir Jonathan Stephens: They knew that assurances were being given to Sinn Fein. They did not know the text or the precise nature of those assurances.

Q3498 Lady Hermon: Let me repeat the question. On 20 July 2007, when Mr Mark Sweeney of the Northern Ireland Office signed off an OTR letter—he is described as a junior official, so heaven help us all if he is; it is a disgrace to describe him as a junior official if he has that power—did the PSNI know that secret letters were being issued to named OTRs, to be delivered to them by Gerry Kelly of Sinn Fein? Yes or no?

Sir Jonathan Stephens: They did know that assurances were being given to Sinn Fein. If I may set it out, they knew because they had been given a spreadsheet informing them and showing them precisely when Sinn Fein had been informed of the status—wanted or not wanted—in respect of previous cases considered. The PSNI themselves authored e-mails in which they referred to the date on which NIO informed Sinn Fein of the status of various individuals. It is absolutely correct that the precise form of assurance—the precise text of the letter—was not known. That was an error that Lady Justice Hallett has identified.

Lady Hermon: Absolutely.

Sir Jonathan Stephens: I fully accept that if the PSNI had known the full nature of the assurance it is very likely that they would have realised the significance of the fact that Downey was wanted by the Metropolitan police in this case. However, just in fairness, I have to be clear that there is clear evidence that the PSNI were aware that assurances were being provided to Sinn Fein on the basis of the work and review that they and prosecutorial authorities were undertaking.

Q3499 Lady Hermon: Even Lady Justice Hallett—and I give her credit for this—mentions in her report that the first evidence that the PSNI knew of the standard format of the letter was December 2011, four years after Mr Downey had been issued with his letter.

Let us go back to Mr Sweeney. Mr Sweeney e-mails and telephones the private office of ACC Sheridan in the PSNI. Let me repeat the question I put to Sir Jonathan Phillips: bearing in mind the operational independence of the Police Service of Northern Ireland, what statutory or legal authority did Mr Mark Sweeney have for phoning the private office of ACC Sheridan and asking about details about Mr John Downey's status in July 2007? According to Sir Jonathan Phillips, it is all in the Hallett report, so if you would like to quote the chapter and verse I would be thrilled and delighted, because I cannot find it.

Sir Jonathan Stephens: Like all officials, he was acting on behalf of and under the authority of Ministers—

Lady Hermon: Sorry, Sir Jonathan Phillips was?

Sir Jonathan Stephens: No, I am referring to Mark Sweeney. You asked about the authority that he was acting on. As all officials do, he was acting on behalf of and under the authority of Ministers.

Q3500 Lady Hermon: Sorry, but I am actually asking you to identify this. Sir Jonathan Phillips told us in public session of this Committee: “The legal authority is clearly set out in, I think, chapter 9 of Hallett, and I do not have anything to add to it.” I would like you to identify the paragraph in chapter 9 of the Hallett report that gives Mr Mark Sweeney of the Northern Ireland Office legal authority to phone the PSNI and inquire about the status of Mr Downey, or any other OTR.

Sir Jonathan Stephens: I am sorry. I am trying to answer the question by saying that he was acting with the authority of and on behalf of Ministers. Specifically, in making that inquiry he was following up a more general inquiry that was stimulated by the Attorney-General’s Office in response to earlier cases that had come forward, which, in the Attorney-General’s Office’s mind, raised an uncertainty about whether the PSNI was carrying out the checks it had previously carried out about whether individuals were wanted by other police forces.

Q3501 Lady Hermon: So he had no specific legal authority to do so.

Sir Jonathan Stephens: I am slightly perplexed by the question, because there is no doubt at all that Ministers have the authority to interact with the Police Service of Northern Ireland, always properly respecting its operational independence. Successive police officers I have dealt with have been very assiduous in protecting its independence. Indeed, on a week-by-week, day-to-day basis, there is a whole range of regular contacts, as you would expect. I am clear that Mr Sweeney and others were acting on behalf of Ministers.

Q3502 Lady Hermon: Are you suggesting that Mr Mark Sweeney routinely phoned the PSNI and inquired about the status of various OTRs?

Sir Jonathan Stephens: No. It was, as has been widely recognised, an exceptional and unusual process that had been put in place under ministerial authority, including careful consideration by successive Attorneys-General.

Q3503 Lady Hermon: Let me repeat the question—

Sir Jonathan Stephens: If I may clarify one further point, because the specific—

Q3504 Lady Hermon: Just before you do, I wonder whether you can answer one question at a time—I do mean answer the question. You have given the impression that Northern Ireland officials routinely phoned PSNI headquarters, inquiring about this, that and the other thing. Could you identify any other case in which Mark Sweeney phoned an ACC’s private office inquiring about the status of an OTR, or was it exceptional in Mr Downey’s case?

Sir Jonathan Stephens: Just to clarify—I think you are referring to the e-mail that Mark Sweeney sent on 18 and 20 July, which was not solely in respect of John Downey but was in respect of the latest batch of 10 names that had come through from the Attorney-

General's Office, and in turn from the PPS, and in turn from the PSNI. It was not a specific question about John Downey. The letter from the Attorney-General's Office had already conveyed the PSNI's judgment that this individual was not wanted. What the e-mail from Mark Sweeney was seeking to do was to establish whether the PSNI had carried out the checks that would establish whether this and other individuals on the list were wanted by police forces other than the PSNI. It was not a request in respect of John Downey specifically, nor was it actually a request to know whether he was wanted or not wanted. It was a request saying, "Please can you confirm that you have carried out the checks to establish that an individual is wanted or not wanted by other police forces?"

Q3505 Lady Hermon: Did Mr Mark Sweeney take the opportunity to explain why he was asking those questions? Did he say that he was actually going to send out a letter to Mr Downey?

Sir Jonathan Stephens: You have got the text of his e-mail—

Q3506 Lady Hermon: Sent the same day. He couldn't wait to get it out. He couldn't wait to sign it to Mr Downey.

Sir Jonathan Stephens: You can see that he received the assurance on the same day.

Q3507 Lady Hermon: Sorry, the question was, did he explain to the ACC's private office why he wanted those further clarifications? Did he explain that he was going to send out a letter that day to Mr Downey?

Sir Jonathan Stephens: No, he didn't specifically say that.

Lady Hermon: Thank you. I will come back with some further questions.

Q3508 David Simpson: Sir Jonathan, you are very welcome for the second time. I am sure you are very happy that you came.

I am sure you will forgive us for being cynical, but given all the evidence we have taken over the past number of months—of course, you come from Northern Ireland and were involved recently with the talks—you can understand why we are so cynical. Given what those of us who live there have seen over the past 30 years and all the dirty deals that have been carried out, you can't expect us to be anything else.

However, the Chairman made a point at the beginning. Correct me if I am wrong, but he said that you came today of your own volition and there did not seem to be any obstacles to your coming today. Now, you are the permanent secretary of the NIO and there was no difficulty for you to come today and give evidence, yet we are told that two so-called junior officials cannot come to give evidence, or are being restricted from coming to give evidence by the

NIO, the Secretary of State or someone higher up than the Secretary of State. You can understand why we are dubious when that sort of thing happens.

Is it the case that because you were not really involved in this period of time, there is nothing you can really disclose to us here? You are going through the mantra; with the greatest of respect, you are going through the rhetoric, and you are holding very close to the report that has been produced. So there is really nothing—you are not going to let the cat out of the bag in any way, because you are a loyal permanent secretary. But the other two so-called juniors—who are being advised not to come here or who have been restricted from coming here, or whatever—really could fill the gaps for this Committee. They really could shed light on all the issues that we need to know, to fill those gaps and give us the real picture.

Now, is it the case that the NIO does not want to be embarrassed by these two individuals coming to give us the evidence that we require, or the evidence that they have? Is that really the true picture here?

Sir Jonathan Stephens: My very clear duty, as a civil servant, is to give Parliament the honest truth, as I see it.

Q3509 David Simpson: Jonathan, with the greatest respect, I am not saying that you are not giving us the truth here; I am not saying that. I am saying that you were not involved in that period of time, so therefore you are a safe pair of hands to send before this Committee. That is the bottom line.

Sir Jonathan Stephens: I was going to go on to say that if I was aware of any hidden embarrassment that might come out, it would not be right of me to connive in trying to hide it. And not only that, but the very clear request and instruction to officials in co-operating with Lady Justice Hallett was that she should be provided with the fullest possible information and co-operation. It was to establish an unvarnished account—you know, at times it does not make comfortable reading—of what happened and the roles of various organisations, including officials in the NIO, that Lady Justice Hallett was asked to undertake her report.

Of course, I can understand how people can maintain suspicions in all sorts of circumstances. It is not my purpose or the NIO's purpose to hide any difficulty. There are quite a number of real difficulties and criticisms of us and of other organisations already in that report. I am here, to the best of my ability, to help the Committee. If there are specific questions that the Committee wants to ask that it feels are not answered here, or that I am not able to answer today, I am very happy to take those away and come back, whether to appear again or to respond as fully as I can in writing.

I of course accept that this was a very serious and contentious issue that resulted in a very serious abuse of process, which resulted in an individual not being brought to justice who should have been brought to justice. That is very serious for a very serious offence. So I am very anxious to be as helpful as I can to the Committee.

Q3510 David Simpson: Was your opinion sought by the Secretary of State, or any other NIO official, on whether the two individuals should attend tomorrow?

Sir Jonathan Stephens: I have to be slightly careful here at this point, because as an official advising Ministers my duty is to advise them, and that advice remains confidential to them, but I can say that of course Ministers took a wide range of advice. They took account of the civil service guidance and other matters, and they have also set out fairly fully their reasons for the position that they have taken up until now. As I say, I expect that Ministers will write again very shortly.

Q3511 David Simpson: In that sort of spin that you have given us, going back to my first comments, with the greatest respect, as the permanent secretary you have been sent today, but in effect these two guys are not coming tomorrow. You have been sent to do the job today, but they are not coming tomorrow. You are not going to tell us that, but that seems to me what you are saying in a convoluted way.

Sir Jonathan Stephens: I have said what I have said, and I am going to stand on it, because that is the position.

Lady Hermon: It is a very grave, serious matter. You have indicated that the Ministers are going to write to the Committee; there would be no need for them to write to us if they were going to appear before us in person. It is absolutely indefensible that those two individuals do not appear before this Committee tomorrow, having been summoned.

Q3512 Chair: There are two issues here. One is the seriousness of the fact that they could be held in contempt of Parliament, possibly through no fault of their own. As an official, surely that must concern you. The other point is: what is there to fear? What's the problem?

Sir Jonathan Stephens: I'm not sure that I am really able to add very much to what I have said. I understand the points that you are making and the seriousness and significance of the Committee's summons. It is fair to say that there is something of a dilemma for officials between the summons to an individual and the duty that they owe to Ministers: they are able to appear only on behalf of Ministers and under their direction. It is quite right to conclude that it is unfair to ascribe anything to the individual officials in respect of this, and we must also consider various other duties to the officials, but I cannot really add anything to what I have said before—that Ministers will write.

Q3513 David Simpson: At the start of the meeting, the Chairman also referred to a sequence of letters that indicated very strongly that Mr Downey was wanted by both the PSNI and the Metropolitan police, but that all changed. In your opinion, did that change because there was political interference—because the letter that Mr Downey was given was signed off by Mark Sweeney and went via Gerry Kelly? Was there political interference?

Sir Jonathan Stephens: I can see no evidence of such political interference effecting the outcome of the individual consideration of the case. Clearly the letter was sent in error—no one is disputing that. Mr Downey should not have received that letter, and he would not

have received it had the PPS, the Attorney General's Office or the NIO been made aware that the Metropolitan police still wanted to interview him in respect of the Hyde park bombing. I also accept that it would not have been issued if the PSNI had been aware of the full nature of the assurances that were being issued.

Q3514 David Simpson: If that letter should not have been gone to Mr Downey, why did Mark Sweeney sign it off and send it to him? Why did he do that?

Sir Jonathan Stephens: He sent it off on foot of a process of consideration by the PSNI, the PPS and the Attorney General's Office, which led to the conclusion, notified to the NIO, that Mr Downey was not wanted. Indeed, Mr Sweeney's intervention was to clarify, "Can we just check that, in saying that, you have checked that he is not wanted by other police forces as well?" That check followed on from a number of previous checks from the NIO in respect of earlier cases as to whether those checks with other police forces had been carried out. The response from the PSNI, from ACC Sheridan in his letter, I think of 27 June, was clear and unequivocal. The PSNI accepted that the purpose of the review they were undertaking was to establish not only whether a person was wanted in respect of the PSNI, but also whether he was wanted in respect of other police forces, and to confirm that those checks had been carried out.

Q3515 Chair: Coming back to the point that Lady Hermon established about the rush to get this letter to Mr Downey, why did he need to receive one in the first place? ACC Peter Sheridan says that he is not currently on the run from his home. However we classify him, he is not an on-the-run, so why were Sinn Fein so concerned about him? Why were the NIO so concerned about him?

Sir Jonathan Stephens: I do not think that at that time there was any special distinction around his name. Indeed, the NIO at that time had no reason to connect him with any specific individual offence and they had no means of doing so. The only people who could do so were the police or the prosecuting authorities. This was part of a process, as I have said before—an exceptional, unusual process, but one that considered a large number of names, and he was one among those the names. He was one specifically among a batch of 10 or so names that came through at one point. There was nothing at that time to distinguish him from the others.

Q3516 Chair: There is also a letter from the Crown Solicitor's Office dated 5 December 2014, which confirms that two suspects in the Kingsmill massacre received letters as well. This is deadly serious; desperately serious. How far does this go? Mr Downey's letter was a catastrophic mistake, but it doesn't end there, does it? Drew Harris told us that 95 people who received letters are linked, through intelligence, to almost 300 murders. This is not just one mistake; this is potentially devastating, and it is going to take years for all these names to be looked through.

Sir Jonathan Stephens: That is why, on foot of the recommendations here and the statement that the Secretary of State made to both the Committee and the House, the PSNI are undertaking a review of all those cases.

Q3517 Ian Paisley: You have just said, and I am going to read it back to you, Sir Jonathan, that at that time—we are talking about July 2007—the NIO had no reason to suspect him of any specific offence. He was just a name. That is not true. You know why it's not true, don't you?

Sir Jonathan Stephens: No, I don't.

Q3518 Ian Paisley: If I were to tell you that Mr Sweeney had written, a year and four months and 14 days previous to that, to Gerry Kelly telling him that Mr Downey was wanted—

Sir Jonathan Stephens: Indeed—

Q3519 Ian Paisley: No, indeed nothing. Out of the vernacular today, you have painted us this lovely little set of circumstances that from Goldsmith's letter, a process—your words—of consideration was in place. The process of consideration went through this snake-like trail. It went to the e-mails that were sent, to the telephone calls that occurred. But you didn't happen to mention that in March 2006, Mr Gerry Kelly received a letter from Mark Sweeney about four individuals. Those four individuals had said categorically, however, that the following three individuals would, in the current circumstances of their cases, face arrest and questioning if they returned to Northern Ireland—not GB, but to Northern Ireland. Then John Downey, date of birth, his details. I won't go into the other people's names. That letter exists. Why hasn't that formed part of your vernacular today? Juxtapose that beside what you have just said, that the NIO had no reason to suspect him. Mark Sweeney wrote a year previously, "This man's wanted."

Sir Jonathan Stephens: The questioning started with that letter, so I have never attempted to hide that at all. However, that letter did not give the NIO any details about any specific offence that Mr Downey was wanted in connection with. Specifically, that letter, that reply, was given purely on the basis of the assessment of the PSNI and prosecutorial authorities at that time. The subsequent letter of 20 July 2007 or thereabout was given on the same basis; namely, on the basis of the assessment of the PSNI and prosecutorial authorities at that time. The NIO had no basis, no information, no evidence and was not in a position to make judgments or decisions on these matters.

Q3520 Ian Paisley: So this dummy is sitting in Stormont Castle in March 2006, and this dummy signs off a letter. He is no position to make any judgments, any values. This dummy, as I am characterising him, sends off a letter to Gerry Kelly, a fairly well known person in Northern Ireland, and tells him that John Downey would be arrested if he returned to Northern Ireland. Fast-forward a year and four months and the same dummy is sitting in Stormont Castle, and he signs off a letter saying this man is now free to go. Really? You are expecting us to believe that this man had no process, that he would not have recognised, "Hang on a minute—a year ago I signed off a letter about this very individual and they wanted him. What's happened?"? He didn't process any of that?

Sir Jonathan Stephens: There were a number of individuals who were being considered afresh by the PSNI. When Operation Rapid got going again, one of the questions that arose, actually from the Attorney-General's Office early on, was, were the PSNI undertaking checks of other police forces? It was that that they specifically asked the NIO to check, in respect of the checks that were being undertaken by the PSNI. So there clearly was a process in place. The process was consideration by the PSNI and by the prosecutorial authorities.

Q3521 Ian Paisley: So by inference, Sir Jonathan, you are saying, "We knew that he was wanted in Northern Ireland, but we could square that. We could square that one up."

Sir Jonathan Stephens: Sorry, I don't understand that.

Q3522 Ian Paisley: "We can make sure that he's no longer wanted in Northern Ireland, but if he's wanted by a force outside Northern Ireland, we can't square that one."

Sir Jonathan Stephens: I don't recognise that characterisation whatsoever. The evidence here is that the process, and the requirements of the process to establish whether an individual was wanted or was liable for prosecution—the fundamentals of it—were the same throughout. Those judgments and decisions could only properly be undertaken by the PSNI and the prosecuting authorities. There was no basis on which the NIO could take those judgments. In the course of the process, as the Hallett review sets out, there were a number of systemic errors that were part of this process.

Ian Paisley: I've read the Hallett review, I don't need a lecture or flannel on the Hallett review.

Sir Jonathan Stephens: This meant that different parts of the process ended up unclear and uncertain of the role being played by others.

Chair: There is likely to be a vote in the House in a few minutes. We'll suspend the Committee for 15 minutes if and when that happens.

Q3523 Ian Paisley: Let me ask you, what are your ministerial instructions today, Sir Jonathan?

Sir Jonathan Stephens: To be as helpful and forthcoming to the Committee as I can be.

Q3524 Ian Paisley: So you have instructions for today.

Sir Jonathan Stephens: Well, officials always appear on behalf of and under the direction of Ministers.

Q3525 Ian Paisley: So you were obviously speaking to the Secretary of State in advance of this meeting.

Sir Jonathan Stephens: The Secretary of State knows that I'm here, yes.

Q3526 Ian Paisley: Were you speaking to the Secretary of State in advance of this meeting?

Sir Jonathan Stephens: I spoke to her yesterday.

Q3527 Ian Paisley: Did she give you specific instructions about today's meeting?

Sir Jonathan Stephens: Well, she has previously said to me that she was happy for me to appear, she wanted me to appear and to do all that I could to be as helpful to the Committee as possible.

Q3528 Ian Paisley: With regards to that, were you asked to conceal anything about the on-the-runs from this Committee?

Sir Jonathan Stephens: No, and if I were, that would be an improper instruction which I would not accept.

Q3529 Ian Paisley: Okay. Let me ask you specifically, then, about Mr Sweeney, because you are able to answer for Mr Sweeney. On what date did Mr Sweeney sign the letter to John Downey?

Sir Jonathan Stephens: It was issued on 20 July.

Q3530 Ian Paisley: He definitely signed it?

Sir Jonathan Stephens: As I understand it, it was issued and signed on 20 July.

Q3531 Ian Paisley: Tell me this. When Mr Downey was arrested and claimed he had a letter, he didn't ever have a signed letter. He had to go back to the NIO to get the signed letter. Are you sure it was signed on that date?

Sir Jonathan Stephens: I am going on the basis that Lady Justice Hallett has identified a signed copy—

Q3532 Ian Paisley: No, you are able to speak for Mr Sweeney, and I am asking you specifically about Mr Sweeney because we cannot interview him, it appears. So are you able to tell us when Mr Sweeney actually signed that letter? Did he sign it after the police in England asked him for a copy of it?

Sir Jonathan Stephens: No.

Q3533 Ian Paisley: You are certain about that.

Sir Jonathan Stephens: Yes.

Q3534 Ian Paisley: Was it locked away? Was the only signed copy locked away in the NIO? Is that why the NIO had to e-mail it to the police in England, and why Mr Downey didn't have it?

Sir Jonathan Stephens: No. I mean—

Q3535 Ian Paisley: You don't know?

Sir Jonathan Stephens: There is a signed copy that was available to the Hallett report.

Q3536 Ian Paisley: Yes, but there was never a signed copy available to Mr Downey. Isn't that right?

Sir Jonathan Stephens: I am sorry; I don't know specifically about that.

Q3537 Ian Paisley: But if you were Mr Sweeney, you would know that you had signed a letter and given it to Gerry Kelly. So did you sign a letter and give it to Gerry Kelly? Or did you give him a letter without a signature?

Sir Jonathan Stephens: Well, all I can do is repeat that there is a signed letter.

Q3538 Ian Paisley: No, all you can do is give us the truth. Do you know whether that was the case?

Sir Jonathan Stephens: These are very important matters. You have raised a slightly new issue that I had not understood before. To be absolutely certain I will take that away and write back to the Committee.

Q3539 Ian Paisley: With respect, Sir Jonathan, this is not new. I raised this with the Metropolitan police, who were most helpful in their evidence. They told us for the first time that Mr Downey never gave them a signed copy, and that they had to go to the NIO, which helpfully provided them with a signed copy.

Sir Jonathan Stephens: I cannot add anything to what I have said, but I recognise—

Q3540 Ian Paisley: You understand now why we need to see Mr Sweeney.

Sir Jonathan Stephens: As I say, this specific issue is a new one as far as I am concerned, but I will take that away and write back to the Committee.

Q3541 Ian Paisley: I want you to take back a very firm message. In terms of the officials whom we have been seeking to meet to discuss these matters and the ministerial blockage on their coming here, to date, that is setting up a set of circumstances of Parliament v. the Executive. You know all the historical significance of that. It started with the King losing his head. That is not the place where any of us wants to be. This gives off an awful pong. If it walks like a duck and it talks like a duck, it's a duck. If this looks like a conspiracy, it is a conspiracy. That is why we have had this process in the open, so that if there was a mistake, the public can see it for what it was. If there was a conspiracy, people will also see that. Those officials, if they do not appear here tomorrow, will only add fuel to the flames that there is a conspiracy by the Northern Ireland Office to conceal something, someone or some action. I want you to take that back and tell the Secretary of State that it would be madness not to have officials in front of this Committee tomorrow.

Sir Jonathan Stephens: Of course I will take back the representations that have been made. As I say, Ministers will write shortly. I have to say also that that was one reason why the Secretary of State asked a Lord Justice of Appeal to undertake a very full consideration of the issue. She considered it on the basis of her expert skills, analysing evidence and giving the individuals concerned an opportunity to consider any criticism that she was minded to make of them. She did not have any criticism to make of any named individuals in the Northern Ireland Office. It is on the basis of that very full, published report that I would hope there would be reassurance that there is not a conspiracy to hide anything.

Q3542 Ian Paisley: When you are taking back the message on the previous matter about the allegedly unsigned letter, I would refer you to correspondence, which we will give you, on 2 January to our Clerk from Mark Rowley, the Assistant Commissioner for specialist operations in the Metropolitan police. He sent us the exact copy that they received, which did not have a signature. That would have been invalid. Maybe Mr Downey should not have walked, and that is why this is so crucial.

Lady Hermon: And with the greatest respect, Sir Jonathan, while Lady Justice Hallett may not have recorded criticisms of officials in her report, she was scathing about mistakes and lack of oversight by the Northern Ireland Office, and we in this Committee have certainly been critical of officials. I have criticised Mr Sweeney on a number of occasions. He is entitled to a right of reply. If he and Mr Case do not appear before this Committee, those criticisms will be reflected in our report. It is very nice of Lady Justice Hallett to have heard them in private, but I am repeating what I said earlier: this is the only public hearing for the general public to know and understand what went on in this very controversial scheme, and they have a right of reply. They should be here to do so.

Chair: Let us move on.

Q3543 Kate Hoey: Sir Jonathan, may I say that you are doing a very good job of flannelling, which of course permanent secretaries are extremely good at? Did either Mr Sweeney or Dr Case ever ask to be protected from coming to this Committee when we first asked them? Did

they approach the Secretary of State or yourself or anyone and say, “I do not think that we should be coming to this Committee”?

Sir Jonathan Stephens: The decision is for Ministers. I am not aware—generally, I would say, civil servants do not approach the giving of evidence to Select Committees as something to be embraced. It is always a difficult task to sit on this side of the table, and it is one that senior officials, permanent secretaries, directors general and so on expect to have to do. It is part of their job and their duty. For more junior officials, it is not generally part of their job and duty. I think I am in danger of repeating myself, and I do not want to engage in more flannel.

Q3544 Kate Hoey: So they did not actually come to their senior people and back to the Northern Ireland Office to say, “We do not want to appear”? I am interested because, ultimately, it is not the Ministers who are going to be in contempt of Parliament; it will be these civil servants. I would have thought that you, as the permanent secretary at Northern Ireland, would want to be protecting your civil servants, not asking them to do things that they may not want to do.

Sir Jonathan Stephens: You are absolutely right. I have a number of duties to civil servants in my employment—a duty of care that covers a wide range of matters that I have to consider. I think you are right to say that the civil servants are in something of a dilemma, because there is an individual summons from the Committee, which is serious and important, but equally the clear guidance to civil servants is that they should appear under the instruction of Ministers and under their direction. That does not exist at the moment.

Q3545 Kate Hoey: So the guidance—if they do not appear, the instruction will have come from the Secretary of State for Northern Ireland, based on advice from you. You did say that you had given her advice. I presume she listens to your advice.

Sir Jonathan Stephens: I and others, but she does not always follow it, and she is perfectly entitled not to.

Q3546 Kate Hoey: Are we absolutely clear that if the two civil servants whom we have asked to appear and who are absolutely integral to all that we have been looking into—even more, as time goes on—if they do not appear tomorrow, it will be because the Secretary of State has told them that they must not appear?

Sir Jonathan Stephens: Indeed, and I would put it the other way around: when officials appear, it is because Ministers are content and have approved their appearance as appearing on behalf of Ministers.

Q3547 Kate Hoey: So the Secretary of State will have made the decision that she is going to treat the Northern Ireland Affairs Committee, which is her Committee of scrutiny, with contempt?

Sir Jonathan Stephens: You have had a number of letters from the Secretary of State setting out her reasons and why she herself has appeared to answer questions. She is happy for me to appear and I am here to be as helpful as I can be.

Q3548 Kate Hoey: But when this was all happening, Sir Jon—I do not understand why you have been the one that has been sent—you were busy with the Olympic games. You were not interested in what was happening in Northern Ireland. You know nothing about what was happening around the time that the Downey letter was signed, and you are just flannelling and quoting from the Hallett report, which anyone can do at any time. It is very helpful of you to be here, I suppose, but quite honestly it is a bit of a waste of time, because you are just repeating everything.

Can I just be absolutely clear? You gave advice to the Secretary of State. You are not going to tell us what that is, and I understand that. The Secretary of State normally would take the advice of the permanent secretary. The Secretary of State—if the officials do not come tomorrow, it will be because she has told them.

Sir Jonathan Stephens: It is a ministerial decision.

Q3549 Kate Hoey: Do you know if the Prime Minister has been involved in this at all?

Sir Jonathan Stephens: The Prime Minister has been consulted and involved, not least because the Cabinet Office, as guardian of the general principles of officials appearing in front of Select Committees, has been involved.

Q3550 Kate Hoey: So Francis Maude?

Sir Jonathan Stephens: I have no idea. I would be rather surprised.

Q3551 Chair: The Prime Minister himself has been consulted, not his office. The Prime Minister himself—is that what you meant?

Sir Jonathan Stephens: Yes.

Chair: So David Cameron has been asked personally?

Sir Jonathan Stephens: Yes.

Q3552 Kate Hoey: So we now have discovered that not only is the Secretary of State willing to put her civil servants into a position where they are going to be in contempt of Parliament, but the Prime Minister is willing to do this as well. As an ordinary—supposedly decent—civil servant, do you not understand what has been said by my colleague and other colleagues about what that is telling people in Northern Ireland?

Sir Jonathan Stephens: You are jumping a fence ahead, because, as I have said, Ministers will write very shortly with their response to the latest summons. They have set out their position on earlier invitations to officials and they have set out their reasons. The Prime Minister was consulted on those and supported them.

Q3553 Kate Hoey: So they wanted to wait to see how you got on today before they finally sent the letter?

Sir Jonathan Stephens: It is also relevant, as the Chairman mentioned at the beginning, that we were deeply involved in the process going on towards the Stormont House Agreement. So there has been very little time for Ministers—

Q3554 Kate Hoey: It was 10 December. Anyway, we will not get any further with you on this. Will the Northern Ireland Office be willing to disclose the documents that Dame Heather Hallett stated that she had compiled? She had a core master bundle of documents and we would like to see them. Can they be sent to our Clerk?

Sir Jonathan Stephens: As I understand it, those are documents not of the Northern Ireland Office but of the Hallett review. If you want to make a specific request for a specific document, of course we will consider that.

Q3555 Kate Hoey: One final thing. What is your role in the new unit that is being set up to look at the on-the-runs issue?

Sir Jonathan Stephens: Sorry, which new unit?

Kate Hoey: The new PSNI unit that is taking over the investigation.

Sir Jonathan Stephens: The Secretary of State has asked me to Chair an oversight board which brings together, while respecting their different operational independence, representatives of the PSNI, the PPS, the Attorney-General's Office and the Northern Ireland Office. Others attend in an observer capacity, including the Department of Justice for Northern Ireland. The purpose of that is to have an oversight of the review that is being undertaken by the PSNI and the follow-up work to other recommendations in the Hallett report to try to ensure that some of the systemic errors that were identified in the Hallett report of different organisations not having a common view of the responsibilities of each are avoided.

Q3556 Kate Hoey: So you will have a group of senior civil servants from different parts of the Northern Ireland system all sitting around and examining what?

Sir Jonathan Stephens: As I have said, it will bring together not just civil servants but the PSNI and representatives of the PPS.

Q3557 Kate Hoey: Are there any victims' groups' representatives on that?

Sir Jonathan Stephens: No.

Q3558 Kate Hoey: So it is another closed shop.

Sir Jonathan Stephens: Its purpose is to have oversight of the implementation of the recommendations of the Hallett report. It is not a decision-making body. It is not empowered and it has no authority to take decisions on any individual cases. Indeed, the Secretary of State has been very clear: the scheme is closed. The reviews to be undertaken by the PSNI are for them to undertake and the decisions relating to them will be for the PSNI, consulting the prosecuting authorities as appropriate.

Q3559 Kate Hoey: One final point on that. Given what we have heard today and throughout this inquiry, do you really think that the victims' families in Northern Ireland can have any confidence whatsoever in this, not just because the investigations will take such a long time that many of the people wanted will probably no longer be on this earth, but because you are part of this group of oversight people that is full of the usual great and the good? Having seen how you have performed today, can anyone have any real confidence in you as the permanent secretary?

Sir Jonathan Stephens: Obviously, I work for Ministers and I am accountable to Ministers. That is essentially for them to answer, at the end of the day. I have tried to set out how seriously I view this episode. There has been a long exploration of the reasons why the scheme was set up. Ministers and former Ministers have set out their reasons as a matter of political decision. The Hallett report also sets out some serious systemic errors. I have accepted that the NIO was a part of those systemic errors and I have sought to apologise for those and to recognise the very serious impact that that has had on victims and their survivors. I am deeply sorry for that.

Q3560 Lady Hermon: I am very curious because you have now mentioned to the Committee and the general public that the Prime Minister has taken a real interest and involvement in the officials who signed off these secret comfort letters to OTRs. When was he briefed and who briefed him when he came into office in 2010?

Sir Jonathan Stephens: I am sorry, I can ask but I do not know. I can tell you about the briefing of Secretaries of State for Northern Ireland. I cannot tell you about the briefing of Prime Ministers.

Sitting suspended for a Division in the House.

On resuming—

Chair: I did say that we would restart at 3.45 pm—it's a good job I am in charge of the Northern Ireland Affairs Committee and not the Treasury Committee, because I cannot add up. We now open the public session again.

Q3561 Lady Hermon: I want to ask a very short question about the Prime Minister. People will be intrigued to know when and who briefed him in May 2010 when he came into Downing street. You have reassured the Committee that you will be able to make those inquiries and let us know who briefed the Prime Minister.

Sir Jonathan Stephens: I cannot answer that directly now.

Q3562 Lady Hermon: No, I ask for an assurance that you will find out for the Committee who briefed the Prime Minister when he came into office after the general election in 2010. You are confirming that to the Committee.

Sir Jonathan Stephens: Certainly.

Q3563 Lady Hermon: We would be intrigued, because of course, by that stage, policing and justice had been devolved to the Northern Ireland Assembly, so we would like to know whether the Prime Minister was involved in the decision to keep the OTR scheme quiet and secret, because the Northern Ireland Justice Minister, and indeed, the First Minister, knew nothing about it until the Downey judgment.

Could I also ask you briefly, Sir Jonathan, just to give us the Prime Minister's justification for preventing two civil servants, who were at the centre of this secret OTR scheme—of comfort letters being sent out to OTRs—from coming before this Committee? What possible justification would the Prime Minister have for preventing those who have key, essential information from coming before this Committee tomorrow?

Sir Jonathan Stephens: I was indicating that he supported the reasons given by the Secretary of State in the correspondence with the Committee before. As I have also indicated, I expect that the Ministers will be writing very shortly to the Committee about the current summons.

Q3564 Lady Hermon: Well, Sir Jonathan, could you just reflect, and perhaps indicate that the Prime Minister should reflect? The reason we know about the OTR letters is because Mr Downey walked free from the Old Bailey, having been charged with the murder of four British soldiers in Hyde park and having been sought for the murders of others in Northern Ireland. I think it ill behoves the Prime Minister to try and conceal all the information that should be in the public domain about the OTR scheme and the secret letters.

Chair: Okay, I am sure that will be taken up further.

Q3565 Oliver Colvile: Thank you, Sir Jonathan, for giving up your time to come and talk to us. You said to us when you were giving evidence that you and civil servants all act on behalf of Ministers—I am right in saying that, aren't I? So when Mark Sweeney wrote a letter to Mr Downey, he would have got this cleared by a Minister of some sort and description within the Government—yes?

Sir Jonathan Stephens: Not necessarily.

Q3566 Oliver Colvile: Oh, he was freelancing, was he?

Sir Jonathan Stephens: No. So the process—the scheme—was authorised by Ministers, undertaken with their knowledge and support. That did not mean that they were consulted on individual cases, particularly after the early cases, and that is quite a familiar position for civil servants acting on behalf of and under the authority of Ministers—that individual delegations may be made to take decisions or to convey assurances under a general scheme that has been approved by Ministers.

Q3567 Oliver Colvile: Right. So do you know whether or not Mark Sweeney will have gone and spoken to the Secretary of State or to a Minister within the Department? Do you know for sure?

Sir Jonathan Stephens: I think it is very unlikely, but I am happy to check that point specifically and write back to the Committee.

Q3568 Oliver Colvile: That would be helpful. I find it slightly surprising, if I am honest with you, that the letter has come from the NIO. You have talked about the PSNI and how the Attorney-General and Director of Public Prosecutions and so on got involved. I would have thought—maybe I have got this wrong—that the clever thing was for the NIO not to be involved in writing letters of this sort. Surely this should have been a matter for the Crown Prosecution Service or the equivalent in Northern Ireland. That is why I suspect that what will come out of this is that the NIO was getting involved in something rather than keeping themselves out of it, because you had various organisations within it. Why did the NIO get involved in all this?

Sir Jonathan Stephens: That is a good question. You quite properly identify that the NIO had no independent evidence, analysis or decision-making capacity that it could bring to the issue. It was entirely dependent on the judgments and decisions reached by the police or the prosecuting authorities, and it was essentially conveying them. Apologies for referring to the report again, but Lady Justice Hallett talks about the way in which the scheme evolved rather than was designed or consciously thought out. Indeed, at later stages, thought was given to the possibility that solicitors might be directly in touch with the Police Service, or other means. I think the simple answer is: it began that way, it evolved and no one thought to reconsider it at any stage. That is one of the systemic errors that have been identified.

Q3569 Oliver Colvile: I hope that the civil service will take home that this was an inappropriate way to manage the whole process, that the NIO should keep out of those kind of things and be much more dependent on the PSNI, the Crown Prosecution Service, the DPP and the Attorney-General all making their judgments, rather than a Government Department doing that. To my mind, it sounds as though there might have been some interest from No.

10 Downing street—the Prime Minister of the day wanting to deliver an agenda, which he may or may not have ended up having. That is important.

Can we move on a little? Obviously, some people are evading the law, who we would like—or I personally would like—to come back to this country to try to answer some questions. It cannot have escaped you that one particular person whom I am very interested in seeing back in this country is one Rita O'Hare. As you may recall, she skipped bail from Northern Ireland, went to live in southern Ireland and we seem to have real difficulty in getting her back. Some of us have voted for the European arrest warrant to be brought into operation. I am interested in knowing what moves the Northern Ireland Office have made—or who should be responsible for getting Rita O'Hare back here on a European arrest warrant. Who do you think should make that decision? The Northern Ireland Office, the PSNI—who is it?

Sir Jonathan Stephens: I am very happy to take that question away. I would want to confirm the position and write back to the Committee if I may.

Oliver Colvile: Yes, because the idea that people who have evaded the law in this country are swanning around having a nice time in southern Ireland or America and are not being brought to book does not send the right message to the victims and those who have seen their families killed. I find it very strange that Jonathan Powell went to Dublin to have a conversation with Rita O'Hare and said, "If you come back to the United Kingdom, even to Northern Ireland, I'm afraid you will find yourself being arrested." She probably knew that, and it did not need a senior No. 10 official to go and tell the person who was potentially responsible for committing a crime and not coming back to face justice. Perhaps you could also have a look at that.

Chair: Sorry, but can we have questions and answers?

Oliver Colvile: As you may know, I have written to the PSNI and the Metropolitan police about this matter as well.

Q3570 Mr Anderson: I will make a little statement, if you don't mind, Chairman, because I have been sitting here for an hour and a half, like the rest of us. I have been involved in issues in Northern Ireland for 30 years. If there is one thing above all else that I have learned, it is that you have got to be really, really careful with language and careful with what you do—much more than, possibly, anywhere else on this planet. You have heard from people who live over there who have got to face the people who are the victims of some of these people: possibly, or possibly not.

When people like David Simpson use words like "citizen", like "cover-up", and Mr Paisley talks about contempt of this place, they are not just talking for themselves; they are talking for people like me as well. So you really need to get that message back to the people in your office that this is serious stuff.

It is also serious for us as Members of Parliament, regardless of what this Committee has dealt with. If we say "Okay, it's all right. These people needn't bother coming," then we have given up our right to hold you and the people who employ you to account. The trouble is, no

matter how well you speak and how much that report speaks, the people who can actually give us the evidence are not here, and they should be here.

I want to ask you some questions specifically about that. In March 2006—Mr Paisley referred to it before—the letter went out through Gerry Kelly. The last sentence said, “The following three individuals, in the current circumstances of their cases, face arrest and question if they return to Northern Ireland.” The first one mentioned is John Downey. Fourteen months later, he gets a letter saying, effectively—I will use this pejorative term—he got a get-out-of-jail-free card, because actually he used it a few years later as a get-out-of-jail-free card.

Do you know what circumstances changed between March 2006 and July of 2007?

Sir Jonathan Stephens: Well, the letter to Mr Downey in 2007 was very clearly issued in error. It should not have been issued.

Q3571 Mr Anderson: Should it have been written?

Sir Jonathan Stephens: No, it shouldn’t have been—

Mr Anderson: It was written in error and it was given out in error. It must have been—

Sir Jonathan Stephens: And it was written in error. The letter in 2007, which—

Mr Anderson: Can I just go back?

Sir Jonathan Stephens: Yes, sure.

Q3572 Mr Anderson: If the letter had not included the phrase, “The Police Service of Northern Ireland are not aware of any interest in you by any other police force”, and just referred to Northern Ireland, would it have been accurate?

Sir Jonathan Stephens: Well, in a sense that is slightly beside the point, because—

Mr Anderson: Well, it is exactly the point. It may be beside your point, but that is not the point I want to get answers on.

Sir Jonathan Stephens: The nature of the letter and the assurance was a standard one which did not substantially change over the period, and gave the assurance—because this was important—that an individual was not wanted by the PSNI or by other police forces within the UK. I mean, when you think about it, this was very important, precisely because everyone knew that they were dealing with potentially serious matters and wanted to be sure, as far as could be, that assurances that were given applied not only in respect of the PSNI, but in respect of other police forces.

So to go back to your earlier question, what changed between 2006 and 2007? What changed was the PSNI assessment that then fed into the process through the PPS, the Attorney-General’s Office and ultimately the NIO.

Q3573 Mr Anderson: And would your office know what specifically had been done by the PSNI and the other prosecutorial bodies? Would they know? Had they had anybody in?

Sir Jonathan Stephens: Not beyond what the PSNI told us, and that was specifically why, on the foot of the doubts raised by the Attorney-General's Office, the NIO wrote back to the PSNI, first in respect of a number of cases prior to Downey in 2007, then in respect of Downey himself, to say, "Can you confirm for us that the checks that you are doing include checks on whether individuals are wanted by other police forces or not?" The NIO had no means of knowing that. They had no access to—it would be completely inappropriate to have any access to the Police National Computer, or anything like that. They were entirely dependent upon what the Police Service of Northern Ireland said to them about whether those checks were carried out. They, in due course, received the assurance that those checks were being carried out.

Q3574 Mr Anderson: Are you aware, or would Mr Sweeney be aware if he was here, of what, if anything, the circumstances in Northern Ireland changed? I don't mean this in a bad way. It is partly about the Great Britain side of it. In March 2006, you said that the circumstances were such that he would "face arrest and questioning" if he returned. In July, it says that there is "no outstanding direction for prosecution in Northern Ireland". Something must therefore have happened. What was it?

Sir Jonathan Stephens: What changed was the assessment made by the PSNI in common with the prosecuting authorities. The NIO did not have access to and did not know what led to that change. It did not know what was considered in the course of that change. Indeed, respecting the independence of the police, it would have been inappropriate for them to know the details of consideration of suspected offences.

Q3575 Mr Anderson: So you just took that information at face value?

Sir Jonathan Stephens: The only source of information that came through to the NIO was the letter originally from ACC Sheridan, first of all to the PPS, that was then passed on to the Attorney-General's Office. It was then in turn passed on to the Northern Ireland Office and it said, in effect, "This individual is not wanted by the PSNI."

Q3576 Mr Anderson: You referred to the two civil servants as junior civil servants. What was the job at the time that they were writing these letters?

Sir Jonathan Stephens: They were deputy directors at different times. I am sorry; I would need to check precisely what the job title was at the time concerned.

Q3577 Lady Hermon: It says in the Hallett report that, at the time that Mr Mark Sweeney signed off the key letter to Mr Downey, he was the director of a division—not a deputy director.

Sir Jonathan Stephens: I'm sorry. There always tends to be a degree of confusion between job titles and grades within the civil service. The grade is deputy director and that is a sort of common grade across a range of different—

Lady Hermon: He was the head of division. If one looks at paragraph 6.68 of the Hallett report, it sets out the letter and Mark Sweeney is described as the head of division. He was not a junior civil servant.

Q3578 Mr Anderson: Just to try and get some idea—what sort of “sorry” level would that be?

Sir Jonathan Stephens: I wouldn't know the precise—it is very easy to find out.

Q3579 Mr Anderson: For me, a junior civil servant is someone who is a clerk somewhere. I would have thought that a head of division or a deputy head of division—compared with you, they might well be junior, but they almost have the power of life and death in writing these letters.

Sir Jonathan Stephens: The point that I am making is that civil servants who expect to appear in front of Select Committees are generally permanent secretaries or directors general. I am not conscious myself of—there may be other experiences, but I have not come across a case in which an individual at this level is expected to appear before a Select Committee.

Q3580 Mr Anderson: I have always wanted to set a parliamentary precedent, so perhaps this Committee will do that. It is quite obvious—someone made the point earlier that we might be besmirching these two gentlemen. My friend Mr Paisley called them dummies. I would be annoyed if someone called me a dummy. They might be professional enough not to respond to that, but they should be given the chance to at least state their case. You are saying that bureaucracy will not allow them, but my view is that if they were here, they might put away a lot of these doubts that people have raised or they might not. That is the real worry in this. As long as we are not able to access the information—we might not get the information we want from a former Prime Minister of this country—we will give a report that will leave big question marks. In a place like Northern Ireland, that would be the wrong thing to do.

Sitting suspended for a Division in the House.

On resuming—

Chair: We are slightly early, but all the Members who are coming back are now here. We will continue. The public session is now reopened.

Q3581 Mr Anderson: Just a couple more things, Sir Jonathan. Would it be possible—you can send us the information—to tell us what grades the two civil servants concerned are at now, and what sort of salary level that would be?

Sir Jonathan Stephens: Yes, I can send you that information.

Q3582 Mr Anderson: Can we get it before tomorrow?

Sir Jonathan Stephens: I don't know about that, but I can try.

Q3583 Mr Anderson: And what they were getting at the time?

Sir Jonathan Stephens: And at the time, yes.

Q3584 Mr Anderson: Just to take this back so the people back in the NI Office can consider this before deciding whether to allow these people to come tomorrow, their refusal to appear, and the fact that they went and appeared in a private hearing in exactly the same way as the former Prime Minister did, makes things even more concerning for the people on the ground—people who might not have the same view as us. Wherever we come from on this Committee, we all want the same thing. We want to do everything we can to keep things going in a forward direction in Northern Ireland. When I hear people such as Lady Hallett saying that the scheme was evolved, not designed, my heart sinks to the floor. I just think, what does that mean? It means that people put this in place and were left to get on with it. Nobody had a care. They didn't think that there are 200-odd people out there who might or might not have committed huge atrocities and all the people who, through no fault of their own, were caught up in this. It was just, "They'll be all right. Let them get on with it."

Part of the reason why it took so long to resolve the issues in Northern Ireland is that people on this side of the water said, "Let them get on with it. It's just the daft Paddies. Let them get on with it." That was the attitude in this country. Thankfully, people didn't let them get on with it. They got involved. Whether we like it or not, this might be part of that, but we need to get to the bottom of it. The failure of people at a political and civil service level to let us get us to the bottom of it is detrimental on every level—including for the process, going forward. I want you to take that message back, clear and loud, to your people back there.

Q3585 Chair: It might be helpful if you can let us know why Mr Sweeney found it possible to appear before the Political and Constitutional Reform Committee on 10 April as an official of the Cabinet Office. It really adds fuel to the fire. I don't know whether you have any comments on that now.

Sir Jonathan Stephens: No.

Q3586 Nigel Mills: What has interested me a lot in the course of this inquiry is what changed when Operation Rapid started in early 2007 and how that came about and exactly what the intention was. We can all see that the scheme was very different by mid-2007 from where it had been in the very early days. Can you just tell us when Mr Sweeney first got involved in the administrative scheme?

Sir Jonathan Stephens: As I understand it, he was first involved when he wrote to the PSNI with a spreadsheet of all the individuals who had previously been considered, setting out to check and confirm that there was a common understanding among all the different agencies involved—

Q3587 Nigel Mills: You are referring to the letter in early 2007 to ACC Sheridan?

Sir Jonathan Stephens: Yes.

Q3588 Nigel Mills: Can we go back a bit further? He was signing letters a year before that, was he not—not on Operation Rapid, but on the scheme?

Sir Jonathan Stephens: Yes, you are quite right.

Q3589 Nigel Mills: When he was first involved in—

Sir Jonathan Stephens: As regards a precise date, I would have to check and write back to you with that.

Q3590 Nigel Mills: Okay, but roughly when he was first involved?

Sir Jonathan Stephens: I would have to write to you on that.

Mr Anderson: You could have answered that question—

Q3591 Nigel Mills: Hopefully he will tomorrow. This is important, because I am trying to understand when he got involved and what briefing he was given. Presumably, you do not know even roughly when he was first involved in these letters. You do not know who briefed him or what the instructions were, presumably some time before 2006.

Sir Jonathan Stephens: Well, what was clearly established was the process. It had been considered by the different organisations and looked at carefully by the Attorney-General. It involved the same process that applied throughout 2007, namely that there was a consideration by the PSNI initially, which was then passed on to the prosecutorial authorities, and the results of that consideration and those judgments were passed to the NIO to be communicated to Sinn Féin.

Q3592 Nigel Mills: I am just intrigued, because the process, as I think we have agreed, was quite different in Operation Rapid from how it had been in the early years. Presumably, at some point there was a quickening up and a taking out of various steps. I was just intrigued as to whether that was before the 2006 letters or whether it was done as part of Operation Rapid. I am just keen to know what briefing Mr Sweeney was given when he was first asked to take on this task.

Sir Jonathan Stephens: As far as I understand it, there was no change in the fundamental process, namely that this was a judgment decision by the PSNI and by the prosecuting authorities. That was the chain that went through. Clearly, with Operation Rapid, there was a new focus and new individuals were brought in within the PSNI. It was very much their decision as to how they did that. The process of consideration by the PSNI, and then the prosecuting authorities, remained fundamentally the same.

Q3593 Nigel Mills: I am not totally sure, because as I recall—no doubt, people will correct me—in the early days of the scheme Alasdair Fraser, the then DPP in Northern Ireland, was doing most of the work himself, which was causing some annoyance to Sinn Féin, because he was being very thorough and taking quite a long time. By the time that Operation Rapid was in place, I do not think that anyone thought that the DPP in Northern Ireland was doing most of the work himself. There is clearly quite a difference between the prosecutor taking the decision and the police officer taking the decision. You cannot say that that is the same in any realistic way, can you?

Sir Jonathan Stephens: There were two elements involved always. There was a decision that could only be taken by the prosecuting authorities—not necessarily by the Director himself—on whether there was sufficient evidence to merit a prosecution, and whether it was in the public interest to merit a prosecution. In addition, there was a separate assessment on—whether or not there was evidence to merit a prosecution—whether the police none the less had reason to want to interview the individual in question. That was why the process necessarily involved an assessment by the Police Service and by the prosecuting authorities.

Q3594 Nigel Mills: The point of my question is that I am trying to understand, when Operation Rapid kicked off, who briefed who at the NIO—presumably from No. 10, following the then Prime Minister’s letter to Gerry Adams to say, “I want this speeding up and doing before I leave office in the summer”—exactly what was and was not suggested, and how that was passed on in the correspondence to the PSNI. As you cannot tell me when Mr Sweeney was even originally involved, I suspect you cannot tell me what briefings he got from whom, and what the instructions were.

Sir Jonathan Stephens: The process around all that and the starting up of Operation Rapid is set out in some detail in chapter 5. There were various discussions that, at times, involved the Secretary of State, the Chief Constable and others. The concern in that process was to preserve the very important separate decision-making capacity of both the police and the prosecuting authorities.

Q3595 Nigel Mills: It is intriguing, isn’t it? I accept that it sets out that we get a letter from Tony Blair to Gerry Adams in 28 December that obviously follows earlier meetings in November, and then we get the letter from Mr Sweeney to ACC Sheridan on 8 January. I am intrigued to know what happens in those 10 days or so, and who spoke to whom. Presumably someone must have spoken to Mr Sweeney and said, “No. 10 have put a bit of a rush on this. We have written to Sinn Féin. Can you get the PSNI moving now?” I am speculating. Lady Hallett helpfully just says: “It therefore follows that by the beginning of 2007 there was a

clear political imperative to make progress”, and then that Mr Sweeney e-mails ACC Sheridan.

I am trying to understand whether any pressure was put on to say, “Can you speed this up? We’d quite like a few more positive decisions, please.” That is the fear that lots of people have—that a political decision had been taken to rush these things through, be a little more cursory, not look too hard and perhaps we could get a few more approved. It would be helpful to understand exactly what Mr Sweeney’s instructions were. Presumably you cannot tell me.

Sir Jonathan Stephens: The consistent position throughout the scheme was that these were decisions that could only properly be taken by the police and prosecuting authorities. At various times in the scheme there was a concern to make sure that that process was done expeditiously, but never to undertake to warp or change that decision-making process. Indeed, at various points chapter 5 sets out the police, quite properly, saying that it was important that they preserved their operational independence on this.

Q3596 Nigel Mills: Everyone was so concerned to maintain their independence, yet they all allowed a non-justice Department to start issuing letters that were clearly justice related. I would have thought that if I was keen to maintain my independence as a police force, I would want to decide and send letters as to who I was still investigating, and if I wanted to be an independent prosecutor, I would want to send out letters saying who I would not prosecute. If I was concerned about my independence, it seems rather bizarre that I would let the NIO issue these things. It does not really suggest that they were that keen on their independence, does it?

Sir Jonathan Stephens: I have commented before on how that role came about and came to evolve. All I can say is that during the process—and again the record shows this clearly—the police, prosecutors and successive Attorneys-General were concerned to ensure that decisions were taken properly by the responsible authorities and were taken carefully after due consideration of all the evidence. That was the concern of those not only in the police and prosecuting authorities but in the Northern Ireland Office.

Q3597 Nigel Mills: This is the problem, isn’t it? It is the person who signs the letter who in reality has the final responsibility to make sure that that letter is right—in any organisation that has to be the case. It just seems a little difficult to believe that there wasn’t a file—electronic or paper—where all the names from Sinn Féin requests were, and all the correspondence, and when things had been sent. We know there was a spreadsheet, because we know Mr Sweeney sent it to ACC Sheridan, but you would think that, before you signed the letter, you would go back and check what was in your own filing system and what you had sent before, and you would update it to say when you had passed it on. It seems a little tricky to think that before he sent that letter he wouldn’t know that he had sent one a year earlier, and wouldn’t think, “This is a bit odd, isn’t it?”

Sir Jonathan Stephens: There are a number of comments in the Hallett report about record keeping and the inconsistency of records between different organisations. That, no doubt, was partly what prompted that original e-mail in January to try to establish a

common, shared view of what had happened already, in terms of which individuals had been considered and what assurances had been communicated.

What is clear is that the NIO has no independent source of evidence, analysis, and decision-making capacity in respect of individuals, but the record clearly shows that through that period, the NIO was anxious to ensure that there was a common view of which individuals had been considered, their status, and when Sinn Fein had been informed of that. On the foot of concerns expressed by the—

Q3598 Nigel Mills: When you say “common view”—common between who?

Sir Jonathan Stephens: Between all those involved in the process. That was the purpose of—

Q3599 Nigel Mills: All those involved or—presumably the Met were not involved in this.

Sir Jonathan Stephens: No, they weren't.

Q3600 Nigel Mills: You probably think that they ought to have been.

Sir Jonathan Stephens: Indeed. That is one of the comments that Lady Justice Hallett made.

Q3601 Nigel Mills: Were they not involved at the start? I thought that they were more proactively consulted at the start when there were two original names.

Sir Jonathan Stephens: They were not a regular part of the process.

Q3602 Nigel Mills: So when you said that there was concern for a common or a shared view, it was a shared view between those who were remembered to be part of the process at the time we were sharing.

Sir Jonathan Stephens: Yes.

Q3603 Nigel Mills: I guess I should ask the question: was there a filing system in the NIO of the 220-odd names, their status and what had happened? Was that regularly updated and checked? Did Mr Sweeney check it before he sent the letters out?

Sir Jonathan Stephens: There were no individual case files held in the NIO because we had no individual case material on which to consider those files.

Q3604 Nigel Mills: Is that paper or electronic?

Sir Jonathan Stephens: Both.

Q3605 Nigel Mills: So you did not keep a separate file or folder on a computer for each individual who was asked about?

Sir Jonathan Stephens: No.

Q3606 Nigel Mills: Did you keep a separate folder for each group of name requests? Presumably not.

Sir Jonathan Stephens: No.

Q3607 Nigel Mills: So somewhere there was just one file that said, “OTR scheme” or something like that.

Sir Jonathan Stephens: Well, a number of files.

Q3608 Nigel Mills: And that was not checked before letters were sent out? He didn’t just sort of say, “I’ll just send out these four.”

Sir Jonathan Stephens: The letters were sent on the basis of assurance delivered via the Attorney-General’s Office that the police and prosecuting authorities did not have any reason—did not want these individuals. Specifically around that time, the NIO made a number of efforts specifically to check that those checks included identifying whether an individual was wanted by police forces other than the PSNI, and were assured that they did.

Q3609 Nigel Mills: You cannot tell us what, if any, process Mr Sweeney went through between getting a letter from the PSNI saying, “We have no further inquiries on these individuals”, and him signing a different letter and sending it out? It may just have been that someone typed it, and he signed it and gave it no more thought than that.

Sir Jonathan Stephens: Just to go through the process, the letter went from the PSNI to the PPS, the PPS considered it and passed on the results to the Attorney-General, who then passed it on to the NIO. During the course of an earlier batch of names, prior to Mr Downey’s, coming through, the Attorney-General’s Office raised the question, “We don’t think these names are ready to pass on, although they are communicated as not wanted via the PPS and originally from the PSNI. We don’t think we are ready to communicate those names to Sinn Féin yet, because we are not sure whether the checks that are being carried out in respect of these names include checks on whether they are wanted by police forces other than the PSNI. Please can you establish and confirm whether that is the case?”

On the foot of that, there were a number of exchanges between the NIO and the PSNI seeking to establish that. There was a reply from the PSNI, I think on around 27 June, confirming that those checks had been carried out. When the same assurance came with a batch of names including Mr Downey's at around the same time, that also triggered the question in the NIO's mind of whether, in respect of that batch, the checks in respect of other police forces had been carried out. That assurance was sought from the PSNI and the assurance came back that checks in respect of other police forces relating to that batch of names, including Mr Downey's, had been carried out. I think that that is at the heart of this particular catastrophic error. Standing back from it, first, it is clear that if anyone had signalled to the PPS, the Attorney-General or the NIO, "This individual is wanted by the Metropolitan police," a letter would not have been issued. It is also fair to say that, had the PSNI been clear about the full nature of the assurances that were being given to Sinn Féin at the end of the process, the letter would not have been issued.

Q3610 Nigel Mills: I think we all get that, but I am trying to establish exactly what process Mr Sweeney went through before he put his signature on these letters. We all know that mistakes can happen: people can transpose names, put the wrong name in the letter, and something horrible could happen—you could mistakenly send one out to someone you were not meant to. Those things are always clerically possible, even if they are not meant to happen, so it would be useful to understand exactly what final check took place before someone put their signature to the letter. But it sounds like you cannot really tell me how he did that because you were not involved.

Sir Jonathan Stephens: Beyond the very detailed account in chapter 6, which sets out the specific check that was done in respect of the batch of names.

Q3611 Nigel Mills: Yes, but that does not really tell me about the process of how they ensured that, having inserted themselves into the process, they were not inserting risks and mistakes. That is what I was trying to understand. I will accept that there is no evidence that any clerical error actually occurred. I presume that you would not just get a pile of letters from your secretary and say, "Oh, here's an OTR letter—it must be okay." I presume that there was some process.

Sir Jonathan Stephens: Standing back from the process, that is one of the very clear lessons to be learned: this was actually a complex and sensitive process involving a number of steps and a number of different decision makers, and then an ultimate issuing of a letter. What became apparent, although I do not think that it was clear at the time to those involved on all sides, was that there was a different understanding in different organisations as to their respective roles, what they were being asked to do, and the assurances on which they were being asked to operate. Unfortunately, that is the source of the systemic errors that, as you say, significantly increased the risk that individual mistakes, such as the Downey mistake, could be made.

Q3612 Nigel Mills: From what you are saying, Sir Jonathan, you can see why we are so keen to hear from Mr Sweeney to understand what tasks, instructions and advice he was given; how that changed, if at all, for Operation Rapid; and how he put those instructions in place in

as safe and systematic a way as he could in the circumstances. The problem is that you cannot give us any of those answers, can you? You can quote the Hallett report and tell us policies, but what about all those important things that would give us comfort that there was no instruction from on high telling him in early January 2007, “Look, we need this speeding up—we need a few more getting through. Would you mind getting the PSNI moving a bit more and turn a few more blind eyes please?”? That is what we are trying to understand.

Sir Jonathan Stephens: All I can say on that is that, very clearly, Lady Justice Hallett did not establish any evidence to support the changing of decisions, which would be a very serious matter. I should also bring out the fact that chapters 5 and 6 go into very thorough detail on the nature of the particular processes within the PSNI, which—

Nigel Mills: Yes, I accept that, but I do not need you to tell us about that.

Sir Jonathan Stephens: Which in this case was the particular body on which reliance had to be placed for the assurance that was given.

Chair: There is a Division. Do Members want to come back for more question afterwards?

Lady Hermon: Yes, I have a few questions.

Chair: Right. We will come back at 5 pm.

Sitting suspended for a Division in the House.

On resuming—

Q3613 Nigel Mills: Getting back to the theme of the question, I think you said there were no substantive differences in the process before and after Operation Rapid. If you had been the person in the NIO responsible for dealing with this scheme and you had seen a sudden acceleration in the speed with which replies came back from the PSNI—I think you would have to accept that the scheme is a lot quicker under Operation Rapid than it was before—and you had not had any discussions or given any instructions to speed it up, would you not have been a little concerned that all of a sudden things got a lot quicker?

Sir Jonathan Stephens: I am slightly nonplussed. That is inviting me to speculate on what would have been the case at the time.

Q3614 Nigel Mills: Was Mr Sweeney concerned, given that he had given no instruction and had no discussions about speeding up the scheme, that all of a sudden he was getting a lot more replies?

Sir Jonathan Stephens: Just to be clear, again, the Hallett report records that at various times during the process, not only in 2007 but earlier as well, there was concern to make sure that the process was being carried out as expeditiously as possible, and various attempts were made to see if the process could be carried out more quickly. That was done at various times, consistent with maintaining the principle of operational independence of the different organisations. So I was not making a comment on the speed of the process;

what I was commenting on was the fact that there was no attempt to alter or influence the outcome of individual cases.

Q3615 Nigel Mills: No, but if what you are saying is that following the Prime Minister's letter in late 2006, Mr Sweeney had had no discussions to say, "Look, would you mind speeding all this up and being a little more constructive?", surely he would have been surprised in 2007 when—

Sir Jonathan Stephens: I am sorry to keep coming back to this, but it is the conflating of the two things, and I must distinguish between them. Clearly, the process, the scheme, had been in something of an abeyance up until late 2006 and 2007. It was then renewed. There was a new focus within the PSNI. Again, chapter 5 sets out the basis upon which that was established, the consideration that was given there and the involvement of previous members within the PSNI who had considered the process in earlier stages. There was very clearly a renewed focus at that stage, as there had been at various stages before—a new concern to make sure that the process was done expeditiously—but that is very different from an attempt to influence the outcome of individual consideration, which remained a matter for the individual police and prosecuting authorities.

Q3616 Nigel Mills: I think that is one of the issues that people are concerned about. One of the issues that this inquiry is trying to work out is whether or not a speeding up could have realistically been achieved without unnecessarily high levels of risk of making mistakes, or whether the speeding up and getting to the desired answer were all part and parcel of the same thing. That is not something that I am asking you, I am just saying that going from what was a relatively slow process to what suddenly became quite a flurry of activity around the political timetable, if I was signing those letters, I would have had concerns—"Wait a minute, what has caused this speeding up?" I think you would want to check and reassure yourself that something had not gone wrong somewhere before you signed these things, wouldn't you?

Sir Jonathan Stephens: Indeed, no doubt that was one of the reasons why, prompted by the Attorney-General's Office, the questions went in from the NIO about checking—

Q3617 Nigel Mills: So was Mr Sweeney concerned that the scheme was now running a bit too fast and that perhaps some mistakes were being made?

Sir Jonathan Stephens: I am sorry, but again you are straying into—this was a scheme authorised by Ministers. The evidence is—

Q3618 Nigel Mills: Yes, we get all that. We would like to be asking Mr Sweeney about his role in this process; I am trying to ask you about his role.

Sir Jonathan Stephens: Even if he were here, his role very clearly would be to set out matters of fact, not his personal opinions. We discussed this when I was in front of the Committee before, and it is very important that I maintain that distinction between—

Q3619 Nigel Mills: It is a matter of fact whether he had concerns. That is not an opinion.

Sir Jonathan Stephens: Well—

Nigel Mills: Whether he took any measures to address those concerns is a matter of fact.

Sir Jonathan Stephens: Again, I am pointing out to you that there was a concern—whether or not on foot of a concern about whether this was being done too speedily. There was a very clear concern, prompted by the Attorney-General's Office, "Are the same checks that were being carried out before being undertaken on behalf of, in respect of, other police forces?" Quite a lot of effort was put into establishing and seeking confirmation from the PSNI that those checks were being undertaken. That was part of the necessary thoroughness with which it was understood that this all had to be done.

Q3620 Nigel Mills: So when did Mr Sweeney cease to have responsibility for this scheme?

Sir Jonathan Stephens: I am happy to write to you with that precise detail.

Q3621 Nigel Mills: Presumably he handed it over to somebody else, did he? The scheme continued.

Sir Jonathan Stephens: Yes. The record shows that a number of individuals in a number of organisations were involved throughout the life of the process.

Q3622 Nigel Mills: Presumably, when he handed over the scheme, he would have given a briefing to his successor; he wouldn't have just run off. It would be intriguing to know what he said in that handover, but I presume that you don't know that either.

Sir Jonathan Stephens: I can't help you specifically with that, but one of the lessons to be learned from this process is that, as Lady Justice Hallett says, the scheme evolved. It developed from quite a small beginning into a much larger thing that was never envisaged at the original point in time. A large number of different individuals were involved at different stages, and I would be very surprised indeed if, at every stage, the handover was entirely smooth in all the different respective organisations. I think that again demonstrates one of the systemic errors identified here: namely that, without overarching guidance and a clear, shared understanding of what role each organisation was playing, there was an increased risk of errors. That is multiplied as, over the life of this thing, which ran for 13 years or so, a large number of individuals in different organisations were involved. From memory, the one individual who remained fairly constant throughout this was Mr McGinty in the Attorney-General's Office, but otherwise in the police, the PPS and the NIO there were a large number of different individuals involved at different stages.

Q3623 Chair: The scheme is finished now. The Secretary of State said in the Commons that no one can rely on these letters to protect them from prosecution. Does that carry any legal weight, do you think?

Sir Jonathan Stephens: The Secretary of State said that on foot of very careful consideration of the legal advice, and she said it with the full weight of being the responsible Secretary of State in Parliament, and made sure that was known very widely. So the argument that individuals could not know that they were being put on notice that these letters had no force in a court of law is very clear.

Ultimately, of course, if it came to it, there might well be another case, and that case might well be argued in front of the courts, and ultimately, of course, it would be a matter for the courts to determine. But the Secretary of State said and did what she did on foot of very clear legal advice, and with the determination to take every action she could to reduce the risk of a future successful abuse of process application.

Q3624 Lady Hermon: You are being very patient, Sir Jonathan. I have no control over when Divisions are called, but it is very good of you to be so patient and to stay, and to sit here.

There are a number of questions that I really do need you to answer. No. 1: why were the letters to the OTRs kept secret? I mean, Lady Justice Hallett sets out lots of parliamentary replies from Secretary of State John Reid and from various other Secretaries of State, such as Peter Hain, to the hon. Lady for North Down, but never once mentions the letters. Why were they kept secret?

Sir Jonathan Stephens: Again, as Lady Justice Hallett says, the scheme was not kept secret, but it was certainly not broadcast widely.

Q3625 Lady Hermon: With the greatest of respect, may I just interrupt you there? There is a distinction. The OTRs scheme, Lady Justice Hallett said, was not kept secret, and if one read very carefully indeed between the lines of the written parliamentary replies from various Secretaries of State, one could have pieced together a jigsaw. It's one of those cases where you don't know what you don't know. But what was kept secret, including the two letters issued by Jonathan Powell in 2000 when this started, for 14 years until Mr John Downey walked free from the Old Bailey, was that we never knew about the secret letters sent to the OTRs, for which the Northern Ireland Office is responsible. So would you just accept, please, without quoting what Lady Justice Hallett has said, that the OTR letters were secret?

Sir Jonathan Stephens: You are absolutely right. They were not published and available.

Q3626 Lady Hermon: Thank you. And why was that, Sir Jonathan?

Sir Jonathan Stephens: Well, as Lady Justice Hallett says, the nature of the scheme was certainly not broadcast; I do not want to suggest or pretend that it was.

Lady Hermon: It certainly wasn't.

Sir Jonathan Stephens: But equally, the fact that there was such a scheme, and that consideration was being given, was not kept secret either.

Q3627 Lady Hermon: The letters—the OTR letters—weren't kept secret?

Sir Jonathan Stephens: What I would certainly also accept is that, as Lady Justice Hallett also identifies, it would have been much better if the letters had been shared with other participants in the scheme—the PSNI, the PPS and others—so that they could understand the full nature of the assurances, and that is a clear lesson to be learned.

Q3628 Lady Hermon: Yes, but could you just explain to me why various Northern Ireland Secretaries of State deliberately, wilfully omitted them from written parliamentary replies to a wide number of MPs? They are all listed, and the list is reproduced at the back of the Hallett report. Why did the Northern Ireland Office deliberately withhold the knowledge of the letters? The letters were key. Mr Downey walked free because he relied—successfully—on saying that the letter meant that he would suffer a detriment if he were to be prosecuted for the murder of those British soldiers in 1982. The letters were key, so why were they kept secret from the public, and secret from other MPs? Why were they deliberately kept secret from us?

Sir Jonathan Stephens: All I can say on that is that while not being widely broadcast, the fact of the scheme and the fact that consideration could be given in individual cases and, as a result, individuals could secure an indication of whether they were wanted or not wanted, was not kept secret. I absolutely accept that the fact and the text of the letters was confidential to the individual concerned and was kept, as far as I know, within the NIO.

Q3629 Lady Hermon: So the answer to the question is that it is because Mr Gerry Adams requested that the scheme and the letters, certainly the letters, were kept invisible. I think that is the word that was used—“invisible”. Is that not the case? The leader of Sinn Féin asked the Prime Minister that the letters be kept invisible.

Sir Jonathan Stephens: The fact of the scheme and the nature of how it operated—

Q3630 Lady Hermon: Sir Jonathan, set the scheme aside. The letters are really the key. It was the letter that Mr Downey relied on—the secret letter. That enabled him to walk free from the Old Bailey.

Sir Jonathan Stephens: With respect, it was not the fact that it was written on paper; it was the fact that there was an assurance that could be relied on.

Q3631 Lady Hermon: Issued by the Northern Ireland Office. In 2007. About which the PSNI had absolutely no idea in 2007. So the catastrophic error, Sir Jonathan, I put to you, which was made by the Northern Ireland Office, was made by Mr Mark Sweeney. He made

the catastrophic error, not the PSNI, because the PSNI had no idea that the Northern Ireland Office was amending the assessment made by ACC Sheridan.

Sir Jonathan Stephens: That is very serious.

Lady Hermon: It is very serious.

Sir Jonathan Stephens: Could I deal with that, because there are a number of aspects to it? First, it is clear from the evidence that the PSNI, while not aware of the text of the letters and the assurances being given, were very clearly aware that assurances were being given, on foot of the work that they were doing, by the NIO to Sinn Féin. There is the evidence, for example, of the spreadsheet that was sent in January 2007 by Mark Sweeney, which specifically said—

Q3632 Lady Hermon: Sir Jonathan, I am sorry, but I have to just correct you. ACC Sheridan explained to the Northern Ireland Office, and precisely to Hilary Jackson, the terms of reference of Operation Rapid. It was going to look at those OTRs who were being pursued for offences related to terrorist offences that had been committed before the signing of the Belfast agreement on Good Friday, on 10 April 1998. That was clearly indicated to the Northern Ireland Office, and I quote paragraph 533 of the Hallett report: “Unbeknownst to him”—meaning ACC Sheridan—“nearly all the letters of assurance from the NIO to Sinn Féin did not refer to specific offences or limit the timing of the assurance up until 10 April 1998. The letters of assurance suggested that the individual was not wanted for any offence as at the date of the letter.” Who took it upon themselves in the Northern Ireland Office to change what Mr Sheridan had clearly set out to the Northern Ireland Office at the beginning of 2007?

Sir Jonathan Stephens: I completely accept that that is one of the differences of understanding and uncertainty that existed between the different organisations—

Lady Hermon: Unbeknownst to Mr Sheridan.

Sir Jonathan Stephens: Which were clearly not picked up at the time and, as Lady Justice Hallett indicates, clearly had the potential to, and in one case quite possibly did, lead to assurances being given in error.

Q3633 Lady Hermon: As in Mr Downey’s case.

Sir Jonathan Stephens: Well, even just specifically to continue to follow up what you have suggested about Mr Downey’s case, I just wanted to be clear that although they were not aware of the text of the assurances, there is no doubt that the PSNI were clear that assurances were being given to Sinn Féin by the NIO on foot of the work and reviews that they were undertaking and that the prosecuting authorities were undertaking.

Q3634 Lady Hermon: I am sure, Sir Jonathan, that you would not wish to call into question the integrity of ACC Sheridan or, indeed, Norman Baxter, who told us categorically in this Committee that they had no awareness of these comfort letters until the Downey judgment.

Sir Jonathan Stephens: With respect, I am agreeing that they were not aware of the text of the letters but that they were aware—the evidence clearly shows that they were aware—that assurances were being given as to whether individuals were wanted or not wanted.

Q3635 Lady Hermon: But they had no idea of the secret letters in 2007.

Sir Jonathan Stephens: Could I move on then to—

Q3636 Lady Hermon: Sorry, I just need you to add, to be factually correct, that ACC Sheridan and Norman Baxter had absolutely no idea about those letters on 20 July 2007 when Mr Mark Sweeney in the Northern Ireland Office signed off that letter to Mr John Downey. They knew absolutely zilch—nothing—about those letters.

Sir Jonathan Stephens: I am in danger of repeating myself here.

Q3637 Lady Hermon: You are not in any danger, because you have not said it yet. I wouldn't worry about it.

Sir Jonathan Stephens: I have a duty to be honest and fair. In saying that, I need to continue to say that, while it is absolutely correct that they did not know or see, as far as can be established, the text of the assurances that were being issued, they did none the less clearly know that assurances were being issued as to whether individuals were wanted.

Q3638 Lady Hermon: But they did not know the text of the letters.

Sir Jonathan Stephens: That is perfectly correct.

Lady Hermon: You have agreed. Thank you.

Sir Jonathan Stephens: I just want to make clear that, within that context, they none the less knew that assurances were being given. In respect of the specific Downey case, standing back from this, my concern on the foot of what I considered to be a very thorough and careful analysis and examination by Lady Justice Hallett is that, at the end of the day, she identifies two things that stand out for me in respect of the Downey case. One is that if the PSNI had identified, as they knew, that Downey was wanted by the Met, internally within the PSNI, to ACC Sheridan or to the PPS or to the Attorney-General's Office, that would have meant that no letter was issued. Equally, as Lady Justice Hallett says and as I fully accept—I think that this was the earlier point you were making—if the PSNI had known and fully understood the nature of the assurances and the letters being sent, it is very unlikely that they would have failed to identify—

Q3639 Lady Hermon: Why did the Northern Ireland Office behave like that, behind the backs of the PSNI?

Sir Jonathan Stephens: In that context, it is important that I state and repeat what I said earlier: in the course of this episode, the NIO made a number of efforts, on the foot in particular of concerns being expressed by the Attorney-General's Office, to establish whether or not the PSNI specifically were continuing to carry out checks in respect of other police forces. This is, understandably, highly material to the Downey case.

Q3640 Lady Hermon: So Jonathan, just explain this. You said a number of times in relation to questions from my colleagues David and Nigel that the process remained fundamentally the same. The process was what? The names were fed in by Sinn Féin to who?

Sir Jonathan Stephens: They generally came into the NIO. They were then usually passed on to the Attorney-General's Office and, via that, to the police. There was then a consideration by the PSNI. They forwarded their consideration to the PPS, who then forwarded it to the Attorney-General's Office, who then forwarded the results after their consideration to the NIO.

Q3641 Lady Hermon: Correct. That is the way that the scheme operated, so why on earth did Mr Mark Sweeney of the Northern Ireland Office not go back through the Attorney-General's Office, back through the DPP in Northern Ireland and back to check with the PSNI in that regard? Why on earth would you e-mail and phone directly ACC Sheridan's private office? He had no authority to do so.

Sir Jonathan Stephens: The reason for that comes out from the earlier batch of letters, where the Attorney-General's Office had specifically raised the concern as to whether the assurances that were coming through, originally from the PSNI but via the PPS to the Attorney-General's Office, did include the fact that checks were carried out as before in respect of other—

Q3642 Lady Hermon: So Mark Sweeney took a shortcut?

Sir Jonathan Stephens: Perhaps I can complete this point, because it is important. The Attorney-General's Office specifically asked the NIO to undertake and check whether those checks were being carried out. It was a point specific to the PSNI. There are various exchanges recorded in chapter 6 in which the NIO asks the PSNI whether those checks were carried out. ACC Sheridan replied on 27 June to say that those checks had been carried out in respect of the cases that were then with the NIO. As it happened, on the same day into the Attorney-General's Office came the letter in respect of John Downey.

Q3643 Lady Hermon: You are repeating this mantra as if it were factually correct. Actually, what ACC Sheridan and Norman Baxter were doing was applying the terms of reference of Operation Rapid, which was looking at whether OTRs were wanted in Northern Ireland. Since Mr John Downey lived in County Donegal and that was his home, he was not regarded as being an OTR within the terms of reference of Operation Rapid, about which the Northern Ireland Office had all the details. They were sent the details at the very beginning of Operation Rapid. Sir Jonathan, I am putting it to you again that the catastrophic error was not

made by the PSNI, because they did not issue the letter to Mr Downey. With the greatest respect, it was Mr Mark Sweeney—the head of the division, not a junior civil servant—who issued the letter to John Downey. The catastrophic error was made by him.

Sir Jonathan Stephens: If I may just quote from ACC Sheridan’s letter of 27 June 2007, quoted in paragraph 6.55: “Our review set out to establish if X is wanted for arrest by PSNI for any offences pre the Good Friday Agreement”—the valid point that you were making earlier—“or circulated as wanted for arrest by an external force.” It goes on: “This can be established by an ICIS check...checks with An Garda Siochana and the Police National Computer (PNC). These checks have all been carried out in relation to the letters forwarded to the Director of Public Prosecutions from the PSNI and they are the same checks that have been carried out during previous reviews.”

That was the assurance on which the NIO relied in saying that individuals were not wanted by other police forces. As Lady Justice Hallett observes in paragraph 6.56: “It seems to me that 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.”

Q3644 Lady Hermon: The difficulty, of course, is that Mr Sweeney never explained to ACC Sheridan’s office why he was asking those questions. ACC Sheridan had absolutely no idea that Mr Mark Sweeney was going to send out a completely different text of the letter.

Sir Jonathan Stephens: The thing I think everyone struggles with in understanding in that case is why the letter from ACC Sheridan specifically says that the purpose of the review is to establish not only whether the individuals are wanted by the PSNI, but whether they are circulated as wanted for arrest by other external forces, and that those checks have actually been carried out in respect of the individuals that are being forwarded.

Of course, I absolutely accept that the John Downey letter was sent in error. It was a catastrophic error, but the assurance on which that was based was an assurance given by the PSNI. If the PSNI had raised the issue that, as they knew, Downey was still wanted by the Met, the letter would not have been issued. I entirely also accept that if the PSNI had understood fully and had full knowledge of the letter and the assurances that were ultimately sent, they would have been alerted to the significance of the issue.

Q3645 Lady Hermon: And whose fault was that? Why did ACC Sheridan not know the full content of the letter that was going to be issued by the Northern Ireland Office?

Sir Jonathan Stephens: Perhaps this is where we are going to disagree, but I think that that is part of what was identified as the systemic errors in which different organisations did not—

Q3646 Lady Hermon: Which brings me back to the first question in this set, Sir Jonathan. Why were the letters kept secret even from the police, on whom the Northern Ireland Office was relying to drive through this political agenda set by Tony Blair in No. 10? Why in

heaven's name did you not even trust the police sufficiently to tell them the nature of the letters that were going out from the Northern Ireland Office?

I find that absolutely inconceivable. Don't nod your head, Sir Jonathan; I want an explanation. There is no point in nodding your head; I want an explanation as to why they were kept secret even from the PSNI.

Sir Jonathan Stephens: I have sought to answer that as carefully as I can.

Q3647 Lady Hermon: No, you haven't. When did you seek to answer that question?

Sir Jonathan Stephens: I have explained that the PSNI were aware that assurances were being given to Sinn Féin on the foot of the work and the review.

Q3648 Lady Hermon: Sorry, Sir Jonathan; please don't repeat what you have already told us.

Sir Jonathan Stephens: I have absolutely accepted that the PSNI did not know the text or the detail of the letters of assurance.

Q3649 Lady Hermon: Why? Tell me why. Tell us why.

Sir Jonathan Stephens: Frankly, with hindsight, that is difficult to know or establish or understand.

Q3650 Lady Hermon: Hindsight is a wonderful thing. You should actually be able to answer the question.

Sir Jonathan Stephens: It would've been much better had the PSNI seen the full text of the letters. Equally, it would have been much better had the PSNI, in dealing with the case of Downey and others, drawn attention to the fact that he was at the time wanted by the Met, as they knew.

Q3651 Lady Hermon: Let me repeat this again. Could we have a straight answer this time, Sir Jonathan? We have listened very patiently. Why did the Northern Ireland Office and Secretaries of State for Northern Ireland conceal the fact that well over 200 letters had gone out secretly to on-the-runs wanted for some of the most heinous crimes—multiple murders in Northern Ireland and throughout the rest of the United Kingdom? Why was that kept secret from even the Police Service?

Sir Jonathan Stephens: I can only repeat what I have said before. I accept that the individual letters were kept to the individual in the Northern Ireland Office. They were not shared with the PSNI. It would have been much better if they had been. I can also only repeat that the fact of the scheme was, while not broadcast, not kept secret either.

Lady Hermon: The letters were certainly kept secret. We are all agreed on that. That is the fact established by the Hallett report. The answer is probably that everyone was doing the bidding and acceding to the wish of Gerry Adams to keep that set of letters invisible. Absolutely disgraceful. It is appalling.

Chair: I want to try and wrap up shortly, not least because Mr Speaker has asked to see me about a number of issues and I need to go down and see him very soon. There are really important questions to finish with.

Q3652 Oliver Colvile: I have just one very simple question, Sir Jonathan. What do we have to do to try and get the European arrest warrant to bring Rita O'Hare back to this country? Who is responsible? Is it you in the Northern Ireland Office, or is it the Crown Prosecution Service?

Sir Jonathan Stephens: I would be very surprised if we had any direct responsibility for that, but I think I said earlier when you raised the question that I would write to confirm it.

Q3653 Oliver Colvile: Will you find out about that and let us know who we can go and have a chat with?

Sir Jonathan Stephens: Yes.

Chair: That was a long, interrupted meeting, but a very useful one. Sir Jonathan, thank you very much for joining us today.