



Northern Ireland Affairs Committee

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

Monday 19 January 2015

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Written evidence from witnesses:

- [Northern Ireland Office](#)

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

Questions 3790-3990

Witnesses: **Right hon. Theresa Villiers MP**, Secretary of State for Northern Ireland, **Sir Jonathan Stephens KCB**, Permanent Secretary, Northern Ireland Office, **Mark Sweeney**, former Head of Rights and International Relations Division, Northern Ireland Office, and **Dr Simon Case**, former Deputy Director, Security and Legacy Group, Northern Ireland Office, gave evidence.

Q3790 Chair: Secretary of State, you are very welcome for your second appearance in this particular inquiry. Sir Jonathan, I think that this is your third appearance. Dr Case and Mr Sweeney, you are very welcome. Thank you all very much indeed for joining us today. This will probably be the last evidence session of the inquiry. We have taken a great deal of evidence from very many witnesses, and we are grateful to everybody. I don't know who would like to start with the first question, but one of the things that has been worrying and exercising the Committee is how the administrative scheme was actually run. Was it run by Secretaries of State? Was it run by officials? Was it a combination of the two?

Mrs Villiers: I would welcome the chance to make a few opening remarks about the hearing generally, and I am happy to share my views on that latter question at the end, if that is okay. They are perhaps slightly longer than those I would normally make on this kind of occasion, but I thought it might be helpful. I would like once again to reiterate the appreciation I have for the work that NIAC has been doing on this very sensitive issue, not least because of the grave concern that many victims have felt about the OTR scheme. The Committee will be aware of the written memorandum that has been provided by Sir Jonathan Stephens to aid discussions today. As you will see, I am here with Sir Jonathan, Mark Sweeney and Simon Case.

Let me clarify the Government's position on the appearance of officials at Select Committees. As you are very much aware, it has taken some months for this hearing to be agreed. I would emphasise that that delay is very much down to my decision, not that of officials. My rationale was essentially that politicians sign up for this kind of scrutiny; it goes with the territory, and it is right that we should make ourselves available to Select Committees, but it is primarily for Ministers and, in certain circumstances, senior officials to answer to these Committees. As a responsible employer, the Government has to exercise a degree of care as to what it subjects its civil servants to. It is not generally the case that middle-ranking or junior civil servants would answer to a parliamentary Committee.

I see this case as an exceptional one because of the grave concerns expressed by this Committee, but I hope that it will not be viewed as a general change in the approach that has been followed by successive Governments, in that civil servants are primarily responsible to Ministers, permanent secretaries and the civil service commissioners, in carrying out their roles as laid down within the civil service code. Of course, once Ministers make decisions, civil servants are expected to implement them impartially, whatever their views and whatever advice they may have given before the decision was made. Also, it is a long-standing principle that Ministers should be able to receive frank advice from civil servants in the knowledge that it will not be disclosed at a later stage.

There are obviously, in practical terms, a few constraints on what civil servants appearing today are able to discuss with the Committee, in terms of the advice they provided to Ministers in the previous Government, but they are keen to provide assistance in so far as they can. I would also reiterate that Lady Justice Hallett did not find any evidence that officials interfered improperly, or interfere with due process of law or the independence of police and prosecutors, but of course she made very serious criticisms of the overall way that the scheme was run and managed, in that it lacked proper lines of responsibility, accountability and safeguards. Obviously, the systemic failings were very significant.

If it would be helpful for the Committee, I might just briefly update you on the implementation of the recommendations of the Hallett report, just for completeness. The OTR policy oversight board was created in response to the Hallett report. Chaired by NIO, it brings together the relevant agencies and Government Departments to deal with any residual issues arising from the scheme and oversee the implementation of Lady Justice Hallett's recommendations. There were 11. Three of them were covered and completed with the statement made to the House on 9 September to confirm that the NIO retains responsibility for dealing with and closing down the scheme. It also confirmed that the OTR scheme is at an end, and that the assurances contained in the letters should no longer be relied on.

Three recommendations for the PSNI are more or less completed, subject to sign-off from the policy oversight board: settling terms of reference for Operation Redfield and the re-examination of OTR case files; new training procedures for use by police of criminal databases; and establishing single points of contact for the exchange of information between police forces.

Progress is being made on establishing a single RPM register for Northern Ireland, and we expect that to be completed soon. Work is ongoing on the remaining recommendations. For example, actions to mitigate any future abuse of process arguments can be addressed

only as and when the errors come to light. Other recommendations include the re-examination of OTR cases. Operation Redfield is ongoing, as is work between the Home Office and the PSNI to look at protocols between police services on the sharing of information.

Finally, the Northern Ireland Office is implementing the recommendations of the records management review by taking on further staff to look at the strategic management of information across the NIO, the IT used in record keeping and improving training and updating guidance to ensure consistent good practice.

In relation to your question, Chairman, from my experience as Secretary of State and from what I understand of previous Secretaries of State, the scheme was authorised and understood by Secretaries of State and Ministers. At all stages, they knew what was happening and they gave officials the go-ahead to operate on the basis of the scheme. It was at all stages clear that it was not an amnesty. Certainly, if the Government had inherited a scheme that amounted to an amnesty, we would have closed it down immediately. It seems to me that the balance between the decisions made by officials and by politicians was more or less normal in this instance. The scheme was overseen and authorised by politicians, and the day-to-day administration of it was the responsibility of officials.

Q3791 Chair: Thank you. We have spoken to many witnesses. Paul Murphy, for example, seemed to know very little about the scheme. Last week, we spoke to Tony Blair, who obviously knew about the scheme and the issue, but he seemed surprised when we asked him about the letters coming from the Northern Ireland Office. We asked whether they were appropriate and he seemed—I think I am correct—surprised that that was the case. Are you surprised about his lack of knowledge and detail in that respect?

Mrs Villiers: I can certainly believe, with the vast in-tray that a Secretary of State has, that he might not have focused in detail on the scheme. When I was briefed about it, it was clear to me that there was a system of notification going from the Northern Ireland Office to Sinn Féin in the relevant cases. I would assume that previous Secretaries of State were aware of that. Broadly, in their evidence to NIAC, they understood the way that the process was working, even if they didn't necessarily focus in detail on individual cases.

Q3792 Chair: Would you expect Tony Blair to know that the NIO was sending letters?

Mrs Villiers: Yes, I am sure that he would have done. Otherwise, there was no point in running the exercise.

Q3793 Chair: Well, he was very vague indeed on that point.

Mrs Villiers: That's clearly a matter for him to respond on.

Q3794 Chair: What I suppose I am getting at is the question we put to him—he couldn't answer it because he wasn't aware that the NIO was doing it. Perhaps you will allow your officials to tell me whether they felt uneasy about a non-law Department getting involved in calling for assessments about whether people were wanted by the police and then informing them that they weren't wanted by the police. If you are happy for your officials to answer that, I would like to know whether they felt any discomfort about that. It has certainly been described as a very unusual set of circumstances; it may even be unique—I can't think of another example of where it has happened.

Mrs Villiers: Yes, I am happy for them to respond on this. I think I'd describe it as exceptional—an exceptional scheme for exceptional circumstances. As you will have seen in your discussions with Law Officers, there was an appreciation of the sensitivities here, and, therefore, efforts were strongly made to try and ensure that appropriate propriety was observed, given that it was, as you say, very unusual for a Government Department to be in any sense involved in this kind of process.

Sir Jonathan Stephens: Perhaps I could pick up on the generality of the scheme. As the Secretary of State has said, it was clearly overseen and authorised by Ministers. It originated from a series of policy decisions by Ministers. How the scheme should operate and, indeed, the legal considerations around the scheme were carefully considered by successive Attorneys-General around the time of the start of the scheme.

The process by which the scheme operated was that names were sent in, usually to the Northern Ireland Office, which then forwarded them to the Attorney-General's office, which forwarded them to the prosecution authorities and, in turn, to the police, for an assessment by the police and the prosecution authorities as to whether individuals were wanted or were liable for prosecution. Then, the response came back through that chain, and the Northern Ireland Office was clear that it could not issue any letter other than in the circumstances where it had received a clear indication from the Attorney-General's office that it was appropriate to do so.

Mark Sweeney: I agree with what the Secretary of State and Sir Jonathan have said. I think your question was, did we feel uncomfortable? It was certainly—I would concur with the Secretary of State's description—an exceptional scheme, but as Sir Jonathan says it was at all times known to be, as far as were concerned, lawful. The intent behind the scheme, as you have heard from successive witnesses, and as Lady Justice Hallett finds in her report, was to notify people who were not wanted that that was the case. That was the basis on which it operated, and as Jonathan says, it was something that we understood to be lawful and in pursuit of a ministerial decision.

Dr Case: I won't repeat what you have just heard.

Q3795 Chair: Having a non-legal office involved is yet another process to go through—yet another letter to send. Obviously, the case that fired all this up was the dropping of the case against Mr Downey, whom the Northern Ireland Office had been told in a letter by the Attorney-General was wanted for serious terrorist offences, but who ended up receiving a letter saying that he was not. Obviously, the police were asked to assess him again, and various e-mails were sent. Did the fact that the Northern Ireland Office were involved, as a non-law office, not complicate matters? The catastrophic mistake, as it has been referred to,

really should not have happened. The Northern Ireland Office were told he was wanted, but we ended up with this letter going to him. Is that not an example of why the Northern Ireland Office should not have been involved?

Sir Jonathan Stephens: For the sake of clarity, I should make it clear that the reason why Mr Downey was sent the letter, which was sent in error, was that, via the Attorney-General's office, the Northern Ireland Office was subsequently told that Mr Downey was not wanted, and as I think we say in the memorandum, it would not have been appropriate for officials in the Northern Ireland Office to challenge the decisions reached by the police and the prosecuting authorities, as conveyed to them by the Attorney-General's office. The NIO was a means by which names were received and by which the final views of the police and prosecuting authorities were conveyed, but the NIO had no basis on which, independently, to reach its own views or to challenge the views of the police and prosecuting views as conveyed to us.

Mrs Villiers: Obviously, although these particular events in relation to the first letter, which said John Downey wasn't wanted, and the subsequent indication that he wasn't wanted, took place under the previous Government, and Ministers have answered for themselves, my clear understanding of the scheme was that that was in some cases how it worked—there were a number of instances where names originally appeared on lists of individuals who were wanted and then, after subsequent work and consideration, it was concluded that they were not wanted. That seems to be borne out by Lady Justice Hallett's report. The fact that the AGO at one stage was saying that Mr Downey was wanted and then it was later indicated that he wasn't was, in a sense, often how the scheme operated. Obviously, a crucial error occurred in the latter—

Q3796 Chair: Why was it necessary to go back to the police when the letter from the Attorney-General of, I think, 27 February 2006 said Downey is wanted for arrest and questioning in respect of serious terrorist offences? This is not shoplifting; this is very serious. Why was it necessary to check again whether he was wanted? It seems that it was almost a determination that he should be given this letter. It is very odd that it should be referred back to the police yet again.

Sir Jonathan Stephens: Again, for the sake of clarity, there is no suggestion that Mr Downey was in any way singled out for re-examination. The course of events around the Downey letter and, indeed, the whole consideration by Operation Rapid, is set out in some detail in chapters 5 and 6 of the Hallett review. At the beginning of 2007, the PSNI undertook a review of a wide range of cases, of which Mr Downey was one, and the results of that are also well documented in chapter 6, but Lady Justice Hallett is clear that at no stage did she identify any evidence that officials or Ministers put any improper pressure to reach a different decision in the case of any individual—

Q3797 Chair: Why refer it back, then?

Sir Jonathan Stephens: I'm sorry. I don't recognise the "refer it back" characterisation. Operation Rapid undertook a review of a wide range of cases. Mr Downey's was one among a number of those, but a large number were considered. A number of others, in the

course of that, changed from “wanted” to “not wanted”. There was no individual request, in the case of Mr Downey, for that particular case to be re-examined specifically.

Q3798 Chair: I do not have the letter immediately in front of me, but I think Mr Sweeney wrote to the police, asking about Mr Downey again.

Sir Jonathan Stephens: Mr Sweeney may want to comment on that, but that was specifically to seek to check and to confirm that the PSNI had undertaken the checks in respect of other police forces that earlier ACC Sheridan had confirmed were being undertaken as part of the Operation Rapid review.

Q3799 Chair: It was 27 January 2006: “You thought that he was confirmed as wanted. Can you confirm?” So that question was specifically asked about Mr Downey.

Mark Sweeney: I am happy to take you through the chronology, if that’s all right. You have helpfully provided me with the chronology and some of the papers, so I will take you through them briefly, and please interrupt me, as I’m sure you will.

The letter you have just quoted from is a letter of 27 January 2006 from me to an individual in the PSNI. Mr Downey is one of the names in that letter. You will see that the rest of the letter is redacted, because it is from the Downey trial papers. What the rest of that letter consists of, as I understand it, is a list of many, many other names of people who were classed as either “wanted” or “not wanted”. This letter was part of an exercise that Lady Justice Hallett describes in her report as seeking to reconcile records between us and the PSNI. She says at one point—I don’t have the paragraph reference, but I believe it is in chapter 4—that in 2005 and 2006, there were a number of efforts to reconcile records, to make sure that the NIO, the police and the other organisations involved had the same knowledge of who had been notified and what they had been notified of in relation to their status. That is what this letter is.

I think, from looking at it, this letter follows a meeting. It says at the start: “Thank you for making the time last Monday to go through our respective data. In the meantime, I said I would write to you setting out the points on which we had different information, including in relation to individuals.” A couple of pages later, I say, “You thought he was confirmed as wanted, which I take to be a reference to the fact that he was marked as still being considered” at this point in January 2006. “Can you confirm?” I ask.

You then see—Lady Justice Hallett mentions this as well—the letter is copied to Kevin McGinty at the Attorney-General’s office. What subsequently happens is that the police arrive at a view on Mr Downey, which they evidently did in January or February 2006. That then feeds through into a letter from the Attorney-General—at the time, Lord Goldsmith—to Peter Hain, which I know has been discussed in the Committee’s evidence sessions. It is dated 27 February and lists a number of individuals. The only one listed here, because of the redactions, is Mr Downey. It says that he, as well as—as Lady Justice Hallett says—two other individuals remained wanted, or were considered wanted.

That then led to the letter that is next in the bundle you have given me, which is a letter to Gerry Kelly. It mentions that, among other people, Mr Downey remains wanted. So there

are two different types of letter there. One is aimed at reconciling records, which was aimed at putting together a spreadsheet to catch all the data accurately. The other is the police writing, through the DPP and the Attorney-General, to the NIO to say that Mr Downey is wanted, and so Sinn Féin was duly notified of that in March 2006.

Q3800 Chair: But how does it move on from there?

Mark Sweeney: Subsequently, as Sir Jonathan said, through Operation Rapid, the PSNI considered a number of individuals, including Mr Downey, who they had regarded as wanted, and they changed their assessment. Then we received a letter and, in Mr Downey's case, his was one of 10 names in the letter of July 2007 to the NIO from the Attorney-General's office saying that Mr Downey was no longer wanted. So, along with other individuals, the police and prosecuting authorities had changed their assessment of Mr Downey. They reported that to the Attorney-General's Office, and so we therefore issued a pro forma letter to him.

Q3801 Lady Hermon: I am very grateful to Dr Case and Mr Sweeney, and of course the Secretary of State. It is very good of them to come back again. I think we gave you quite a grilling, but you came out with flying colours.

Secretary of State, may I go back to one or two things that you mentioned in your opening remarks? The register for the Royal Prerogative of Mercy is going to be introduced in Northern Ireland. Can you confirm that it will be retrospective, so we will know that the names of the 13 OTRs mentioned in the Hallett report will appear in this new register?

Mrs Villiers: The intention is for it to be prospective. We are not proposing to—

Q3802 Lady Hermon: What justification could there be for it to be prospective? It should be retrospective so that we know. That is the point of having the register set up.

Mrs Villiers: Obviously, we had the chance to debate this at length in my previous appearance at NIAC. For a variety of reasons, it would not be appropriate to put names into the public domain. In terms of future criminal prosecutions, there are problems with disclosing names, as Heather Hallett made clear in her report. The RPMs are in a slightly different category to OTRs generally.

Q3803 Lady Hermon: Precisely. These are people who have a Royal Prerogative of Mercy, so they are not going to be prosecuted again. We are not going to jeopardise a future criminal process.

Mrs Villiers: The reality is that a number of these names are in the public domain anyway. I just do not feel it is appropriate for them to be disclosed by the Northern Ireland Office. But some of them are in the public domain.

Q3804 Lady Hermon: What is the rationale for some being disclosed and in the public domain, and others not being disclosed?

Mrs Villiers: Some of them are in the public domain as a result of legal proceedings. I maintain that it would be helpful to focus on those, particularly because of, in many instances, the misunderstandings around what happened in relation to these cases. I appreciate the concern felt about this matter, but the important thing was a full account of the scheme being provided: how it worked and what the defects were. That has certainly been provided by Justice Hallett, and I am sure NIAC's report will throw further light on what happened.

Q3805 Lady Hermon: But the policy is that we are going to continue with a lack of transparency, even with the Royal Prerogative of Mercy.

Mrs Villiers: One always needs to be very hesitant before putting individual names into the public domain, particularly on an issue as sensitive as this. That is why I am not proposing to do that in relation to RPMs or the OTRs.

Q3806 Kate Hoey: When you say "as sensitive as this", who are you actually saying that it is sensitive to?

Mrs Villiers: For all the individuals concerned there is a sensitivity, but of course for anything relating to the criminal justice system, if there is a widespread debate about individuals and what they might or might not have done or been associated with, that can jeopardise or put risks against a future prosecution, so the less of a reference to individual names, the better tends to be the advice of lawyers, because once a name is out there in public, with people making assumptions and concluding, "Oh well, if they had an OTR letter, that means that they must have been a terrorist", that potentially jeopardises a future prosecution.

Q3807 Kate Hoey: I am talking about the RPM letters—the RPMs. Surely if you have been given one of those, you must have done something.

Mrs Villiers: Yes. All those individuals were—the RPM was used by the previous Government to remit—

Kate Hoey: I am not interested in who did it; all the Governments have seemingly been in cahoots on this, so I am not really interested in that. But surely if those people have had RPMs because they have done something, the public must be entitled to know. If you are saying it is "sensitive", who is it sensitive to? Gerry Adams, Gerry Kelly, who?

Mrs Villiers: I do not think that it would be helpful, given the controversy around this issue, to start naming names. I do not think that that would necessarily be the appropriate thing to do. We are seeking to set up a register, which would mean that if the RPM is used in the future, there will be a central register.

Q3808 Naomi Long: With respect to the RPMs, is it not the case that all the RPMs are in the public domain? We simply do not know which of them are OTRs or not? Is that not the only thing that is not in the public domain at this point?

Mrs Villiers: Well, what is in the public domain is that, I think, 13 of the 16 cases of RPMs were OTRs, and—

Naomi Long: But we do not know which of the 16, or whatever number was granted, those 13 are, but we know all their names. They are all in the public domain, is that not correct?

Mrs Villiers: My understanding is that, as a result of court proceedings, I think pretty much all those names—certainly the 13, I would imagine—are in the public domain.

Q3809 Naomi Long: So the argument that some form of jeopardy is involved here is really quite wrong. If they are all in the public domain, the only concern you have is not about publishing people who have had a Royal Prerogative of Mercy, but simply about associating those who received it with those who were on-the-runs. So you are happy to publish the names, and for the names to be known in future; for other people who get a Royal Prerogative of Mercy, you have no concerns about jeopardy to court cases or future prosecutions, which there cannot be if they have had a Royal Prerogative of Mercy. So you are going to set up a register for the future, and you do not see any difficulty with that prospectively, but you have a problem with it retrospectively. How can it be any different? The law is the law, and if you publish the names in future, it will have the same impact on those cases as publishing the names of those who received it in the past would have now.

Mrs Villiers: But in the future there are not going to be fresh “not wanted” indications issued. There will not be new OTR cases.

Naomi Long: The Royal Prerogative of Mercy will be used again, Secretary of State.

Mrs Villiers: I think you make a fair point. One of the problems with the Northern Ireland Office publicly disclosing the names of individual RPMs is because it is known that these individuals, or at least some of them, also received “not wanted” assurances. Certainly the advice of lawyers is very clear: that disclosure of the names of the individuals who received OTR letters could make future prosecution more difficult, because of the public perception that anyone who received an OTR letter was a terrorist, and that, as the Committee will appreciate, is not the case. There may have been connections with incidents, but the connection with terrorist offences was not proved.

Q3810 Naomi Long: I entirely accept the point with respect to those who received the OTR letters, but if someone has a Royal Prerogative of Mercy, they have been granted immunity, effectively, from prosecution, or whatever, so there is no jeopardy for future prosecution—they cannot be prosecuted because they have had a Royal Prerogative of Mercy.

Mrs Villiers: There may be other offences in question—I do not know.

Q3811 Naomi Long: Naming them would not jeopardise another offence, because the prerogative would be only for the particular offence.

Mrs Villiers: I believe naming any recipient of an OTR letter would make it more difficult to prosecute them if evidence emerges in the future that connects them to a terrorist offence. That is the very clear advice from lawyers and was a very clear conclusion from Lady Justice Hallett. I am very clear that I want to do everything possible to prevent any barriers to a future prosecution. The interests of justice have to be paramount, and they are best served by not disclosing OTR names.

Q3812 Naomi Long: Can you clarify again that some people received “not wanted” OTR letters who also received RPMs?

Mrs Villiers: Yes. Thirteen.

Q3813 Naomi Long: On what basis did they require the RPM if they weren’t wanted?

Mrs Villiers: The RPM was issued by the previous Government in relation to offences that they thought were analogous to those covered by the Good Friday Agreement. They thought that those individuals should be treated in the same way as people who had committed offences within the Good Friday Agreement. That was the rationale.

Q3814 Naomi Long: Yes, but why did they get a “not wanted” letter? They must have been wanted to require the Royal Prerogative of Mercy—if you haven’t done anything, you don’t need mercy.

Mrs Villiers: They were wanted in that they were either in prison or else were wanted for a return to prison after having been convicted. Clearly, they had been wanted, but because the RPM was exercised, they—

Q3815 Naomi Long: They had been wanted, but why would they get a “not wanted” letter in that case? That is the point I am making. It feels inconsistent, Secretary of State.

Mrs Villiers: In many instances, they did not necessarily get a letter. The question arose as to whether they were entitled to early release under the Good Friday Agreement. For technical reasons they did not qualify for early release under the Good Friday Agreement, but the previous Government decided that their cases were sufficiently close to qualifying offences that they should be released in accordance with the Good Friday Agreement. There have been three cases under the current Government where people have tried to make the same case. We have refused to grant the RPM in any of those instances.

Naomi Long: Chairman, I would like it if we could at some point return to get clarity on that point. I cannot understand why someone would need the RPM and also be in receipt of a letter to say that they were not wanted.

Chair: Perhaps we can come back to that in a minute.

Q3816 Lady Hermon: In fairness to Lady Justice Hallett, and with the greatest of respect, Secretary of State, we would like to clarify one point. Lady Justice Hallett was given the names of all the recipients of the OTR letters on the basis of strictest confidentiality. She was not entitled as a matter of law to disclose the names. She makes that quite clear in her report. It wasn't that she chose on legal grounds not to disclose them because there was a risk, or because of article 2 of the European convention on human rights—that is not what she said. She actually said that as part of her terms of reference she wasn't entitled to disclose them. We need to clarify that.

I will move on slightly, and go back to your opening remarks. Presumably you saw or have at least read a transcript of the evidence that was given to us last week by the former Prime Minister, Tony Blair, who told us repeatedly on the recipients of the OTR letters that it was just due process. These were people who were not going to be convicted of anything and were not wanted—sorry, I am doing the hand gestures as well, which became so repetitive. If that were indeed the case, are you not a bit surprised that the PSNI has invested in—and you have supported, quite rightly, Secretary of State—Operation Redfield to look at every single OTR case? There seems to be an inconsistency between Operation Redfield and the repeated assurances by the former Prime Minister that none of these people were going to be convicted, that they weren't wanted at all and that it was due process. Would you like to reconcile the two conflicting factual accounts that we have been given?

Mrs Villiers: I can't speak for Tony Blair.

Lady Hermon: I wouldn't want you to.

Mrs Villiers: What is very clear, however, from the Hallett report is that the way that the scheme operated was deeply flawed. We already have an example of where a letter issued in error led to disastrous consequences with the Downey case. Lady Justice Hallett identified two other cases where a serious mistake was made. Her analysis was pretty damning in terms of the systemic errors in the scheme. It is only appropriate that a proper examination of each case takes place, so that we can ascertain whether mistakes were made in other cases. They could be the sort of factual mistakes that have been identified in those three instances, or they could be errors of judgment on whether the evidential threshold was met for arrest or prosecution. It is important that we take on board the conclusions of the Hallett report to say that the scheme was not well run and was systemically flawed, so other errors may have been made, and that is why it is essential that the police investigate.

Q3817 Lady Hermon: Thank you very much for putting that on the record. I agree entirely with every word that you have said. I am absolutely delighted that the PSNI is conducting Operation Redfield, although it may take some years. Were you surprised by Mr Blair's evidence to the Committee last week?

Mrs Villiers: I may not be as on top of the detail of his evidence as you, but what he said seemed in a number of instances to be broadly along the same lines as what the Secretaries of State in the previous Government have said. If there was a particular instance that you found surprising, I would be happy to comment on it.

Q3818 Lady Hermon: I will come back to that. I want now to move to Dr Case. I am delighted that he is with us. Dr Case, where were you working when John Downey walked free from the Old Bailey at the end of February last year?

Dr Case: I was then in the Prime Minister's office.

Q3819 Lady Hermon: I thought so. You were in the Prime Minister's office.

Dr Case: Correct.

Q3820 Lady Hermon: How long had you been involved in the Northern Ireland Office with the OTR scheme?

Dr Case: I think it was about 18 months.

Q3821 Lady Hermon: Did you take over from Mr Sweeney?

Dr Case: No.

Q3822 Lady Hermon: Who was in the middle between the two of you?

Dr Case: The names are set out in the annex. Katie Pettifer, I think, was the one between us.

Q3823 Lady Hermon: Did you volunteer for this post, or was it given to you? Was it like a poisoned chalice?

Dr Case: The Northern Ireland post, you mean, or the post in the Prime Minister's office?

Lady Hermon: Oh no, I could not possibly call the latter a poisoned chalice.

Dr Case: I applied through fair and open competition.

Q3824 Lady Hermon: So you applied to head up the OTR scheme in the Northern Ireland Office?

Dr Case: I applied for a job that was then called "Deputy Director, Rights, Elections and Legacy".

Q3825 Lady Hermon: Thank you. That is very interesting, because when you, Mr Sweeney, were dealing with the OTR letters and signing them off, you were in a different directorate, yes?

Mark Sweeney: No. Unless Simon corrects me—it may be that the Northern Ireland Office was reorganised between when I left in 2007 and his arrival in 2010—I think that we were doing a broadly similar job, which is the deputy director job that dealt with human rights policy, legacy issues and electoral law and policy in Northern Ireland. The division was called something different when I ran it. It was called, I think, “Rights and International Relations”, which reflects the fact that it had another team in it that dealt with bits of the significant international interest in Northern Ireland, particularly from the United States, providing information to posts and so on.

Q3826 Lady Hermon: Right, because the letters that were signed off and reproduced at the back of the Hallett report indicate that Dr Case was in the Rights, Elections and Legacy Division and that when Mr Sweeney was there, it was called the Rights and International Relations Division. It was not the fact that the OTR scheme was demoted or made less important, it was simply an operational or structural change in the Northern Ireland Office.

Dr Case: Yes, that is completely right. For the sake of clarity, I think it was in late 2010, following a reorganisation of the Northern Ireland Office in line with the then Secretary of State’s priorities, that I moved to head up a division then called the Security and Legacy Group. The legacy elements of my previous job came with me into that role.

Q3827 Lady Hermon: So you leave the Northern Ireland Office, having dealt with the OTR issue. Last week, the former Prime Minister assured us repeatedly that the OTR letters and dealing with the OTR scheme were absolutely critical. The peace process, to quote him, was “on a knife edge”. In 2007, it was on a knife edge, even though we had the happiest First Minister in the Reverend Ian Paisley and his Deputy, Martin McGuinness. According to the former Prime Minister, however, it was on a knife edge in 2007. When you applied to move to Downing street, did you put your involvement in the OTR scheme, since it is so critical and so important to the peace process, on your CV?

Dr Case: No, but clearly involvement in Northern Ireland legacy, policy and casework is.

Q3828 Lady Hermon: But the words OTR do not appear in your CV?

Dr Case: Correct, in my current draft.

Q3829 Lady Hermon: Mr Sweeney, may I ask you the same question? Does your involvement with the OTR scheme—

Mark Sweeney: I can’t recall. I think that it was a bit longer ago for me and I suspect that, a bit like Simon, my CV says something like “involvement in policy on the past in Northern Ireland”.

Q3830 Lady Hermon: Why would you not boast about it, as it was so critical to the peace process? Why would you not put it on your CV?

Mark Sweeney: I didn't say that I wouldn't boast about it. I simply explained that I was not sure whether it appeared on my CV in exactly those terms, and neither am I suggesting that it would; it is just a statement of fact.

Q3831 Lady Hermon: Let me come to Dr Case. In February last year Mr Downey walked out of the Old Bailey and there was a huge public outcry. This man was charged with the Hyde Park bombings. He was sought for the murders, allegedly, of two UDR soldiers in Northern Ireland, and the Enniskillen bombing. Did you discuss the OTR scheme with the Prime Minister and other colleagues in Downing Street at the time?

Dr Case: No.

Q3832 Lady Hermon: Did you not think it appropriate, at any stage after the news of Mr Downey walking out of the Old Bailey, even to mention it to the Prime Minister?

Dr Case: I have to confess that I cannot recall. To be clear, when I was in the Prime Minister's private office, a colleague of mine was responsible for advising the Prime Minister on Northern Ireland issues. It was not part of my portfolio. I cannot recall having a conversation with the Prime Minister about the case.

Q3833 Lady Hermon: Secretary of State, you must have been profoundly shocked when you heard the news of Mr Downey walking out of the Old Bailey. Presumably, you phoned the Prime Minister fairly quickly.

Mrs Villiers: Certainly, the Prime Minister was briefed when the Downey issue first emerged—when it transpired that the error had been made. That was back when he was first arrested. I was fully briefed at that point, as was the Prime Minister.

Q3834 Lady Hermon: Because it has taken such a long time, I repeat how very grateful the Committee is that Mr Sweeney, in particular, is here. He has always been entitled to a right of reply; there have been umpteen criticisms and I put my hand up to say that I have made those criticisms of Mr Sweeney. I am so pleased to see you today, and you are entitled to a right of reply. Why has it taken so long and was the Prime Minister involved in preventing the two of you, Dr Case and Mr Sweeney, from coming before us earlier?

Mrs Villiers: Perhaps I could reiterate that it is generally a matter for Secretaries of State as to which, if any, officials appear in front of Select Committees. Up until just a few weeks ago, I was adamant that it was not appropriate for middle-ranking and junior civil servants to go through this process. Certainly, there were various conversations between No. 10 and the NIO—No. 10 being the current employer of the two officials—but there is only one person who is responsible for the history of whether they are here or not; that is me.

Q3835 Lady Hermon: Thank you for taking responsibility for that but did the Prime Minister give a view as to whether the officials would attend?

Mrs Villiers: I certainly think that he was consulted at various points. He was kept informed and I believe, at various stages, expressed a view.

Q3836 Lady Hermon: Yes, we did understand that. The one person who must not reply to my next question is Sir Jonathan because the last time I put him under pressure by repeatedly asking the same question. If that put you in a very awkward position, Sir Jonathan, I apologise. I really want a straight answer from Mr Sweeney in particular. Why on earth were the letters kept secret from the PSNI?

Mark Sweeney: When the scheme was established in 2000, as you will know from the Hallett review, no decision was taken by the NIO to copy the letters issued back to the police. That was the situation that operated throughout until, I think—again, this is apparent from the Hallett report—December 2011. She records that the police at that stage were sent the full text of the pro forma letter.

Q3837 Lady Hermon: Sorry, just repeat that because your voice is very low.

Mark Sweeney: December 2011.

Q3838 Lady Hermon: So Mr Sweeney, concentrate on the letter that went to Mr Downey. The PSNI became aware of the standard text of the letter only in December 2011. That is confirmed in the Hallett report. So, when you contacted the private office of ACC Sheridan, which is in direct contradiction to the memorandum—thank you very much indeed, Sir Jonathan, for preparing that, which was supposed to be an outline of the Hallett report, but, with the greatest respect, is so selective that it distorts that report. The middle of the first page of your memorandum says, “That process was followed before any individual received a letter notifying them that they were not wanted: in 2006 the NIO made clear to the AGO they would not write any letters to Sinn Féin without confirmation from the AGO.” That is minuted in the Hallett report.

So, fast-forward to 2007, Mr Sweeney, when you both e-mailed and telephoned the private office of ACC Sheridan, asking if checks had been carried out on a number of individuals, including Mr John Downey. I find the last words of your e-mail really disturbing, which are set out in paragraph 6.62 of Lady Justice Hallett’s report, though I am sure that you will recall them. You are asking if the checks have been carried out on those individuals, having been prompted by the Attorney-General’s Office and at the very end you say, “Sorry to make a meal of this: it just helps us keep our records in order at this end.” Of course, you were not just keeping your records in order: that was used to send out a letter about which the PSNI was totally unaware.

When you received the reply from ACC Sheridan’s private office, did you contact the Attorney-General’s Office? That, according to Sir Jonathan, is the normal format: no letters

were to be sent out unless there was confirmation from the Attorney-General's Office. Did you phone the Attorney-General's Office before signing the letters on Mr Downey?

Mark Sweeney: I do not recall, but, if I may, the quote in the memorandum is, as you say, from Lady Justice Hallett's report. That is from an e-mail exchange from someone in my team in the NIO in February 2006 to Kevin McGinty at the Attorney-General's Office.

The process that had been gone through in relation to Mr Downey and all the other names was that a letter had been received from the Attorney-General's Office saying that Mr Downey was no longer wanted. The reason that I telephoned the staff officer for Mr Sheridan was because, evidently—although I cannot remember my exact state of mind at the time; it was eight years ago—as is clear from the e-mail, I wanted to check whether they had done the checks with UK forces in relation to the 10 names in the further letter that we had been sent. That is clear from the e-mail.

If I can take you back to the original impetus for the checking, it was that, as the Hallett report records, the Attorney-General's Office had sent us a list of names that the police and prosecution service had told them were not wanted. That was on 11 June. It contained 25 names and the Attorney-General's Office asked us, "Can you check that the police have done checks with other UK forces?"

That led—this is set out at paragraphs 6.40 to 6.54 of Hallett—to the NIO asking that question. The police produced a letter back—the one from Hilary Jackson to Peter Sheridan—which said that the checks had been done. It said, "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." So my e-mail correspondence of 18 July and then 20 July was an attempt on my part to make absolutely certain that they had done those checks in relation to the further 10.

Q3839 Lady Hermon: Yes, but did you explain to ACC Sheridan and ACC Sheridan's private office why you were making those checks? Did you say at any stage that you were going to issue a letter?

Mark Sweeney: ACC Sheridan, and I think his private office, though you will need to ask the staff officer concerned, were well aware that the Northern Ireland Office was notifying Sinn Fein and individuals if they were not wanted.

Q3840 Lady Hermon: Sorry, with the greatest respect, Mr Sweeney, it is quite clear that they knew that, somehow, assurances were being given to Sinn Fein. I will quote back to you the Hallett report. Lady Justice Hallett says in paragraph 6.69, "I also have no doubt that if the PSNI had been aware of precisely what Sinn Fein were being told – both in the letters of assurance and in the covering letters – DCS Baxter"—that is Norman Baxter—"would not have omitted reference to the Hyde Park bombing". This is where the crux of the matter—and the problem, and the catastrophic mistake—lies.

Mark Sweeney: Lady Hermon, may I read you the succeeding sentence to the one you just quoted? In it, Lady Justice Hallett says, "Even ignoring that fact I still cannot

understand...why he”—from the context, that is Mr Baxter—“did not refer to the Hyde Park bombing in any event”, and report it to his superior, Mr Sheridan.

I accept that Lady Justice Hallett says that it would have been better—much better—if the police, as a matter of routine from the start of the scheme, had been copied the letters, but she goes on to say—and her conclusions on the case are in paragraphs 10.42 to 10.49 of her report—that even not withstanding that she cannot find a “logical explanation” for the fact that the Rapid team, having established that Mr Downey was wanted, did not report that up the line to Mr Sheridan and then on to the DPP.

Q3841 Lady Hermon: I want to know why the Northern Ireland Office kept the letters of assurance, and the wording of them, secret from the PSNI.

Mark Sweeney: As I say, I don’t know why, when the scheme was originally established, it wasn’t part of it that the letters were copied. The letters said nothing that the police did not already know and there was no operational reason, from that perspective, why we would not have copied that in—

Q3842 Lady Hermon: Forgive me, Mr Sweeney, but I am going to contradict you there, because in fact the terms of reference of Operation Rapid made it quite clear, and Hilary Jackson was e-mailed with the terms of reference, that at all times ACC Sheridan and the Operation Rapid team were looking for offences that were pre-the Good Friday Agreement—the Belfast Agreement—and terrorist-related offences. The letters that were issued by the Northern Ireland Office made absolutely no reference at all to the Belfast Agreement or terrorist offences predating the signing of the agreement on 10 April 1998.

The two organisations—the Northern Ireland Office and the PSNI—were working closely. So why were the PSNI kept in the dark about the text—the standard text? Sir Jonathan makes reference to the standard text and the settled text. The standard text had been there for years and years and years. Why was the PSNI kept in the dark, deliberately and wilfully blindfolded?

Mark Sweeney: I don’t think that there was a deliberate decision that I am aware of not to show the police the text of the letter. I can only talk to you about the period from 2004 to 2007, when I was in the Northern Ireland Office dealing with this.

Q3843 Lady Hermon: If that’s the case and you can only talk about the period when you were there, why did you not explain to ACC Sheridan’s office why you were phoning to ask about the checks? They had no idea that you were going to substitute a standard form letter; they had no idea you were going to do that. You would accept that?

Mark Sweeney: They didn’t know the text of the letter being issued; they knew that Sinn Féin and the individuals were going to be notified. You mentioned the Operation Rapid terms of reference. Lady Hallett makes it clear, and she publishes a number of contemporaneous e-mails from the time internal to the PSNI, that the PSNI Rapid team regarded it as part of their checks to check with other UK forces. In fact, she quotes an e-

mail from Norman Baxter saying that, which I think was sent to Mr Sheridan's office. Mr Sheridan says in his evidence to Lady Justice Hallett, and she cites it in her report, that he would have been expected to have been told that the check had revealed that Mr Downey was wanted by another UK police force.

Q3844 Lady Hermon: Secretary of State, could you just tell us, as a Committee, at what level was the decision made to keep the letters a secret? All the parliamentary replies by Peter Hain, John Reid and various other Secretaries of State talked about individuals being reviewed by the DPP, and this, that and the other thing happened. The words that were omitted—wilfully and deliberately—from all parliamentary questions were references to the letters.

So, at a political level, who made the decision, and perpetuated that decision? We know that the PSNI knew of a standard letter in December 2011. So, for 11 years, at a political level and within the Northern Ireland Office, the PSNI and the rest of us—for goodness' sake—were not told whose decision that was.

Mrs Villiers: There are obviously two slightly separate issues. One was this question of the disclosure of the text of the letters to the PSNI by the Northern Ireland Office. As the Committee is aware, there is no clarity that that was done until 2011—December 2011, I think.

Q3845 Lady Hermon: Correct, so why was the deceit maintained for so long?

Mrs Villiers: The reality is that it is not at all clear to me why it was not done earlier than that. It does seem to be pretty clear that the PSNI did know that indications were being issued by the Northern Ireland Office. This is an illustration of the overall problems of the scheme that Lady Justice Hallett illustrated, because there was no proper assessment of risk, there were no proper lines of accountability, and there was no systematic way to guard against mistakes being made. One can only consider the disclosure of the letters to the PSNI in that context. If the scheme had been managed more effectively at a senior level, it may well have been that the mistake would never have occurred, that the letters would have been disclosed, or that there would never have been a collapse of the trial in the Downey case.

As I said in response to your question during one of the parliamentary statements, on the one hand there is a question of fact about who made the mistake in the letter, but, overall, responsibility must still lie at a political and ministerial level for not managing the scheme in a sufficiently careful and legally robust way, because if that had been done, it is far less likely that the mistake would have been made, and if it had been made, one would expect it to have been picked up before it led to disastrous consequences.

Q3846 Lady Hermon: I listened very carefully to that, but it cannot have been accidental for at least 11 years—for the general public, 14 years, until Mr Downey walked out of the Old Bailey. There was a deliberate decision. In Mr Justice Sweeney's judgment in the Downey case, he refers to Mr Gerry Adams having wished for an invisible scheme. Can we just have a

straight answer? The decision was made at a very senior level about the letters, which were key because that is what Mr Downey was able to walk free on, waving his letter, as it was an abuse of process to have given him that assurance. There was a deliberate policy set at the highest level that this process was going to be invisible. The letters certainly were invisible; they were kept secret. It cannot have been accidental for so many years.

Mrs Villiers: Speaking from my own perspective, I have made it very clear that I regret that I did not share details of the scheme with the Ministry of Justice when it came across my desk. On my part, there was no deliberate decision not to disclose; I was simply making a decision, essentially confirming Owen Paterson's decision that the scheme was going to be wound up and that future cases should be directed directly to the police and prosecuting authorities. But, as I have made very clear, at that point it should have been raised and disclosed to the Northern Ireland Executive, and I have apologised for the fact that it wasn't.

The decisions made by the previous Government on transparency are a matter for them to answer, but I think it should have been more transparent. Had it been dealt with in a more transparent way, that would have avoided much of the distress that has surrounded the scheme. Victims are understandably distressed that this was going on and they were not told about it properly. As Lady Hallett confirmed, to say that it was kept secret is not entirely the case: information about it was out in the public domain and it was referred to in—

Q3847 Lady Hermon: The letters were secret, Secretary of State.

Mrs Villiers: As Heather Hallett put it, you would have to be a very astute observer to fit together all the pieces in order to get a clear idea of what was happening. I completely agree with you that it should have been handled more transparently by the previous Government. I regret that I did not discuss it with the Ministry of Justice when I was first briefed about it.

Q3848 Oliver Colvile: Thank you all very much indeed for coming to see us. Mr Sweeney, you were the one who ended up sending the letter to Mr Downey, weren't you? Did you sign that letter?

Mark Sweeney: Yes, evidently I did. I think it is recorded at paragraph 6.68 of Lady Justice Hallett's report.

Q3849 Oliver Colvile: Can we have a copy of the letter that you sent?

Mark Sweeney: I don't have a copy; you would need to look to the NIO for contemporaneous records.

Q3850 Oliver Colvile: Could the NIO produce that for us? We have been looking at copies of letters that do not have a signature at the bottom. Do you have a copy of it?

Mrs Villiers: Is it not in the Hallett report?

Q3851 Oliver Colvile: Forgive me, the Hallett report was done in private. This is very much a public event that is taking place. We have yet to see a copy of that letter. We would like to see a copy of that letter. Could you please provide it for us?

Mrs Villiers: Is the one in the Hallett report not—is it redacted? *[Interruption.]* It doesn't have the signature?

Oliver Colvile: We've got it without the signature.

Mrs Villiers: Right.

Oliver Colvile: So could we have, please, a copy with the signature on it?

Mrs Villiers: Well, I don't see a huge objection to that, but if you will allow me to reflect on whether there are any possible difficult consequences, I will do my best to provide the letter for you.

Oliver Colvile: If I may say so, the reason why I suspect there may be is that, if it hasn't been signed, then it is going to produce a very big question mark as to how liable that is and how legal that is. As I say, I continue to ask for a copy of it and I should be very grateful.

Sir Jonathan Stephens: Just to repeat, Lady Justice Hallett's report says that she established that there was a signed letter.

Oliver Colvile: We haven't, though, been able to establish that.

Chair: Just to come in there, the Metropolitan Police say they enclose an exact copy of the version provided to them, which is not signed. I think that's the basis of the questioning.

Q3852 Oliver Colvile: My understanding is that when Downey returned to this country at Gatwick Airport on 19 May 2013, he did not, physically, have a copy of the letter on him; it had to be provided to him at some stage. As I say, there is some doubt as to whether or not—we have not seen a copy of the signed letter.

The thing that I find incredibly difficult about this, if I am honest with you, Mr Sweeney, is that you are the one who ended up writing some of these letters. Why did it come from the Northern Ireland Office? Why didn't it come from the Crown Prosecution Service? It seems to my mind that that would have been a much cleverer and neater way of doing it, and it would have divorced it from where, frankly, we have got to—the perception is that the Northern Ireland Office were very much involved in the whole thing. If it had been the Crown Prosecution Service that had sent those letters to those people who were on the run, that would have been a much more natural thing to do. I am just very surprised, because it has complicated the NIO into being very much part of a political activity. So why didn't you end up saying, "Look, mateys, this isn't my problem. Actually, it needs to be sent from the Crown Prosecution Service"?

Mark Sweeney: With hindsight, it may be that it would have been better to set it up a different way—I don't know—and Lady Justice Hallett makes that point in her report about hindsight. Some of this is within my knowledge, some isn't, so forgive me, but the way the scheme was originally established was that, as you know, names were provided from Sinn Fein to the NIO and then onwards down the chain from the Attorney-General's office. Certainly, during the period when I was involved with the scheme, from 2004 to 2007, that essential approach was not questioned. So it may be that—and now I am speculating—it was originally put in place in that way because Sinn Fein were more comfortable providing names to the NIO and then names being passed from the NIO onwards, because, as members of the Committee will know better than me, Sinn Fein's relationship with criminal justice institutions was at that time not—well, it was at sort of arm's length in a sense.

Oliver Colville: I have to say I found it slightly strange, when Tony Blair came to give evidence last week, that he knew nothing about where the letters had come from. He didn't know whether or not it had come from the Crown Prosecution Service or not. If I might say so, Secretary of State, you made it very clear, that you had the responsibility in your current position as Secretary of State, and you would have thought, wouldn't you, that all of that would have happened under your predecessors as Secretary of State as well. I find it very strange indeed that the Crown Prosecution Service did not take responsibility for doing that.

Mark Sweeney: The thing I would say is that it was an administrative choice or administrative fact that the NIO was issuing the letters and receiving the names in the first place from Sinn Fein. It doesn't reflect at all, to my knowledge, nor indeed has this been suggested by Lady Justice Hallett, or any of the senior police officers who have appeared, any kind of involvement in the NIO in the decision making about the status of individuals. That's quite separate.

Mrs Villiers: And presumably this was a question you would address to my various predecessors: why these decisions were taken.

Q3853 Oliver Colville: We have been down this route several times over, I can tell you that. The other person in whom I have expressed a great interest during the course of this inquiry is Rita O'Hare, as became apparent last week. Tony Blair was before us, and he confirmed—although rather unwillingly, I felt—that the whole thing started off because of the issue to do with Rita O'Hare. The fact of the matter was that Sinn Fein, and Gerry Adams in particular, was very keen to try to allow Rita O'Hare back into the country, but they had been told by the Law Officers that that couldn't happen because, if Rita O'Hare were to come back, she would end up being arrested for escaping bail down to Dublin, despite the fact that she was being charged and was wanted to be inquired with as far as the potential murder of a British soldier. How much involvement did you have in that? Were you aware of Rita O'Hare's interest in coming back to this country?

Mark Sweeney: I am not sure what I can say about individual cases. I am looking down the bench at this point.

Sir Jonathan Stephens: For a large number of years, the case of Rita O'Hare was raised at a number of levels, most of all politically—I think we can say that.

Q3854 Oliver Colvile: Did you ever meet her?

Mark Sweeney: No.

Q3855 Oliver Colvile: It would be interesting to hear from the Secretary of State on whether you feel it is appropriate that a senior Government official, Jonathan Powell, should go down to Dublin to tell Rita O'Hare that she couldn't come back to this country because, if she did so, she would be arrested. I find it extraordinary that someone who is fleeing the justice system in this country is tipped off, or has it confirmed, by somebody in No. 10 that they should not come back.

Mrs Villiers: That is really a matter for Jonathan Powell and the Ministers of the time to answer. It certainly seems so.

Q3856 Oliver Colvile: Rita O'Hare is still a wanted felon, as I understand it, and I presume that we will now be making efforts to ensure that we use the European arrest warrant to try to bring her back.

Mrs Villiers: Decisions on the use of the EAW are for police and prosecutors. They used to be made at political level, but that is no longer the case, so again it is a question that needs to be deployed to police and prosecutors.

Oliver Colvile: I will be writing to the PSNI, and anybody else who is interested in doing so, to do that. If you could give me some support, it would be incredibly helpful. Thank you very much indeed.

Q3857 Chair: May I just go back to when you telephoned the police about various matters, Mr Sweeney? Again, it is a very unusual situation for politicians or officials to be asking the police for such detailed information about individuals. Did they give that information very freely, or did they say, "Have you gone through the Attorney-General's Office?"? How free were they with that information?

Mark Sweeney: There are two separate points here. First, the channel for communicating the status of individuals, whether or not they were wanted, was from the police to the DPP through the AGO to the Northern Ireland Office. What I was asking, and what had been previously asked and answered by ACC Sheridan in his letter to Hilary Jackson, was a question about the process that the police had gone through. The question that Hilary asked, or so it appears from the Hallett report—it may have been Robert Hannigan who originally asked the question of the police at a meeting on 11 June 2007—was: "Before you sent names to the DPP, have you checked with external UK forces, too?" That question was then answered in writing by Peter Sheridan of the PSNI direct to Hilary, which I take as a signal that he was comfortable providing that information. Effectively, I asked the same question of his staff officer in relation to further names.

You asked earlier in this session about the letter from me to an individual at the PSNI in January 2006. In a sense, that is the same sort of exchange, in that what I was seeking to do was to ensure that we could try to compare records to make sure that they were accurate. In both instances, I was asking the Police Service of Northern Ireland a process question. Lady Justice Hallett says at paragraph 9.26 of her report that there is no reason why the police service could not pass on to officials what the status of individuals was.

Q3858 Chair: It is a very unusual situation. Do you believe it is any different now, following the devolution of policing and justice? If you were to phone now, I do not think that information would be available—or would it?

Mark Sweeney: I cannot speculate on that, because I am afraid I do not know enough about how the devolution settlement in this area works in Northern Ireland.

Q3859 Chair: There are one or two individuals in my constituency I would like some more details on. I do not think the police would give that to me.

Mark Sweeney: The information that we were seeking from the police in relation to individuals was whether or not they were wanted. Lady Justice Hallett's report is clear that it is proper for the police to provide that information if they wish—if they are happy to—in this kind of context.

Mrs Villiers: It seems that there isn't an entitlement to be told whether you are wanted or not, but in some circumstances, the police may choose to provide that indication.

Q3860 Mr Anderson: May I ask you if you know, Mr Sweeney, when Downey's name was first on the list? Was he on the list going back to 2000?

Mark Sweeney: I think the Hallett report says that his name was first provided around 2002. I would have to check.

Q3861 Mr Anderson: So clearly, from 2002—you refer to the letter from 2006. He was clearly seen as still being wanted.

Mark Sweeney: I think the sequence would have been something like this, although again, I think his name will have been provided before my time. His name, along with others, will have come in from Sinn Féin to the NIO and then it would have been sent off through the AGO to the DPP and the police. The police then conducted checks in relation to him. To my knowledge, and I think this is borne out by the detailed analysis of his case in the Hallett report, the point at which his status was definitively reported back through the chain via the AGO was the letter that you have an extract from of February 2006.

Q3862 Mr Anderson: This is the one that says he is now confirmed as wanted.

Mark Sweeney: You might be right. Let me turn to it.

Q3863 Mr Anderson: That was 27 January.

Mark Sweeney: No, that letter is the one following a meeting to try to reconcile records that I had had with the police, where they had evidently said to me, after reading the letter, “We think Downey is wanted”, because I presume that we had him on our records as something like “Police continuing to check.” I wrote back and said, “You thought this individual was now wanted—can you confirm?” Presumably what happened is that they confirmed through the correct route—through the Attorney-General’s Office.

Q3864 Mr Anderson: At any time, did they say to you what he was wanted for?

Mark Sweeney: No, not to my recollection. The letters that we received—the one from the Attorney-General to the Secretary of State, of February, is a good example. We would simply receive something that would say whether or not they were wanted. We would not have known that he was wanted or suspected of involvement in the Hyde Park bombing, for example.

Q3865 Mr Anderson: But you would have known he was wanted—or would you not have seen, I suppose, this letter that says he is wanted in respect of serious terrorist offences?

Mark Sweeney: That is right. It says that he is wanted for arrest and questioning in respect of serious terrorist offences. It does not say what or indeed where.

Q3866 Mr Anderson: Would you have known that, or would you not have known that?

Mark Sweeney: We would have known at this point. It would have been our assumption that if Sinn Fein were providing the name, it would be that the individual had concerns that he or she might be wanted. Given that they were being provided through Sinn Fein in the context of this process, it would presumably have been a terrorist offence or offences. As I say, what we did not get back from the police was a great big file—or the DPP or the Attorney-General—that said “X is wanted for this and might be wanted for questioning in relation to that.” It would simply be, “This person is wanted. This person is not wanted.”

Q3867 Mr Anderson: So we go from that letter from Lord Goldsmith in February 2006 to some time in June 2007, when it is then said he “has not resided in Northern Ireland and remains a resident in the Republic. He is not therefore currently ‘On the Run’ from his home”, obviously as his home is not in Northern Ireland. Was there not any question about how we had gone from somebody who is wanted for serious terrorist offences to somebody who, just because he does not live there, is no longer wanted? That seems like a huge jump.

Mark Sweeney: The first thing I would say is that the letter I think you are quoting from is the one to the DPP from ACC Sheridan. That letter was not copied to the Northern Ireland Office, because we would not have received it. The substance of it is—

Mr Anderson: But that would be the information given to you. It might not be in those terms, but—

Mark Sweeney: There are two separate statements. One is Mr Sheridan saying that he does not reside in Northern Ireland and: “He is not therefore...‘On the Run’ from his home.” It then says that he is “not currently wanted” by the police. I assume—I think that the Downey judgment itself bears this out—that the reason Mr Downey provided his name through Sinn Féin was that he wished to travel to the United Kingdom. It was within the United Kingdom that he was arrested. The letter says that he is not on the run from his home. It says subsequently that inquiries indicate that the individual is not wanted by the PSNI.

Q3868 Mr Anderson: But you would not have had any idea what those inquiries were, who had been involved in them, who had been spoken to or how this had turned 180°?

Mark Sweeney: No. Judgments on who is wanted for arrest, who is wanted for prosecution or whether they should proceed to a prosecution will be entirely for the PSNI and the DPP, not for us.

Q3869 Mr Anderson: This is probably an impossible question to answer, but I will ask it anyway. Have you any idea how many of these checks there were in the time that you were involved?

Mark Sweeney: My understanding is that, of the individuals who received letters saying that they were not wanted during the period of the scheme, over 10 or 12 years, around 60 were issued—around a third, roughly; I do not have all the figures—between 2004 and the end of 2007.

Q3870 Mr Anderson: Were you involved in the setting up of Operation Rapid?

Mark Sweeney: I would not have been involved in drafting the terms of reference or anything like that. Operation Rapid was a police operation. I may have been involved, along with other NIO officials, in conveying the Minister’s wish that something be done quickly to consider the status of individuals. I do not recall any particular conversations, but that is entirely possible.

Q3871 Mr Anderson: Can I ask you a question that you might be able to answer? What was the general feeling within the NIO about why this had to change?

Mark Sweeney: As the Committee has heard—I think Tony Blair talked about this when he was in front of you last week—there are effectively two separate ways in which “on-

the-runs” were dealt with. There were individuals who received letters telling them that they were not wanted if they were not wanted. There were then people who remained wanted and that was that. What the then Government sought to do was deliver what some people have called a de facto legislative amnesty—effectively, a process through which people went. As members of the Committee know far better than me, the Bill was introduced and withdrawn after the scale of opposition to it.

Q3872 Lady Hermon: It was only when Sinn Fein opposed it, though, that the Government dropped it.

Mark Sweeney: Your recollection may be right. Throughout 2006, I recall that Ministers were keen that the consideration of the remaining on-the-runs be carried out. As I think the former Prime Minister said to you last week, Sinn Fein always regarded this, from their perspective, as sub-optimal. What they wanted was some mechanism for people who remained wanted for arrest or prosecution to be able to return without having to serve any time in prison, which is what the OTRs Bill would have produced. Although the scheme was, I presume, helpful from their perspective because it would have allowed them to say to individuals who were not wanted that they could return without fear of arrest at that point, it did not deliver what they regarded as the commitment made to them originally in 2001.

Q3873 Mr Anderson: From an operational point of view—the view on the ground—could you explain what the differences were between what had happened previously and what was happening with Operation Rapid?

Mark Sweeney: In what sense?

Mr Anderson: In the sense that, hopefully, there were not any mistakes in the previous scheme—as slow as people might have thought it was or not moving in the right direction. Clearly, a new scheme comes in and something goes wrong.

Mark Sweeney: As I say, what Lady Justice Hallett concludes in this case is that, regrettably, the police knew that Mr Downey was wanted and did not relay that internally. The result was that an indication was given that he was not wanted and was free to return. In that individual case, Lady Justice Hallett goes atomically through what happened and sets out her judgment in chapter 10 of her report. She makes a number of other observations about Operation Rapid; in particular, she makes an observation about the threshold applied for arrest, which I think a number of others before the Committee have talked about. The threshold for arrest is an area of police expertise, not of mine, so I do not think that I can get into that.

Mrs Villiers: Certainly Heather Hallett highlights those 36 cases as ones that should be a priority for checking because of the potential concerns around the threshold that was being applied, but as I said in response to Sylvia’s question, the structural problems, systemic problems, around the scheme mean that it is important for all cases to be looked at in due course. Unfortunately, I don’t think we can be certain that potential errors are confined to those 36. It is just that Heather Hallett concluded that the risk of error was higher in those

cases because of the problem with the application of the test to be applied in relation to arrest and prosecution.

Q3874 Mr Anderson: Right, but what I'm asking Mr Sweeney about, because he was there, is the actual operation of it. From your point of view, had anything changed in the way in which you, and staff working with you, operated between Operation Rapid and prior to that?

Mark Sweeney: No, in the sense that the position remained that once the Attorney-General's Office wrote saying that somebody either was or wasn't wanted, that was the point at which the NIO would notify individuals. That did not change. The text of the standard letter that was sent to individuals did not change, either. That had been settled around 2001 between the Attorney-General's Office and the NIO, as I understand it, although that is from the report; I was not there at the time.

What may have been different, Lady Justice Hallett says in her report—I think that is disputed by some—is the test for arrest that the police were applying. The police said to us themselves—and there is evidence of this in the report—that they were conducting the same checks in relation to other forces that they had conducted in relation to previous reviews.

Q3875 Mr Anderson: In the letter you wrote in January, you are basically saying, "Can we try to get some focus and get this in better shape than it was in?" Did you do any more of that post-Operation Rapid than you had beforehand?

Mark Sweeney: Dredging back through my memory, with apologies, I arrived—

Q3876 Mr Anderson: At least you have a memory—you were there.

Mark Sweeney: Indeed. I arrived in this post, in the rights and international relations division, around, I think, the very end of May or the start of June 2004. At that point, I don't think letters were being issued, because I think the state of the political process was such that letters were not being issued. From recollection—this is partly in Lady Justice Hallett's report—there were talks ongoing after the November 2003 Assembly elections, which in the end led, among other things, to an IRA statement in July 2005 that was seen as significant. It was, I think, after that that the scheme was reactivated, in the sense that letters began to be issued. This, I think, in the context of that and the fact that the Bill had just been withdrawn, was us working through a process, which went on throughout 2006, of trying to reconcile records.

Lady Justice Hallett talks in the report as well about the fact—I do remember this—that we were trying to produce a spreadsheet. It was a copy of that spreadsheet that ended up being sent to the police in January 2007 as a means of comparing records. The point of that was, as I think a number of witnesses have said to you, that the NIO and, in fact, the Attorney-General's Office did not have individual files on individual names, because the only information we had generally was a name; sometimes we had an address and date of birth. There was just a paper file series stretching back a number of years to the start of the

scheme in 2000, so what the team working in my division on this did was to try to put together a spreadsheet so that, first of all, you can go in and see on a database whether this person is being considered, whether they have had a letter and, if so, when they had a letter. That was also something that we were able to and did share with the police, with the Attorney-General's Office and, I suspect, although I don't recall, with the DPP, because it allowed us to be clear about exactly who had been sent what.

Q3877 Mr Anderson: This is the last question from me. In terms of the letters that went out—we have a copy of, I think, 10 that were sent out in July 2007—did you basically write them yourself, were you guided by somebody or—

Mark Sweeney: They were the standard wording. That wording had been agreed and signed off between the NIO and the Attorney-General's Office in 2001, so it was a kind of template letter, but an individual in the team within my division that dealt with this, among other things, would have produced the letters for me.

Q3878 Mr Anderson: That is the standard letter that has been going out since the beginning.

Mark Sweeney: Yes, it wasn't drafted afresh at the time; it was the standard letter.

Q3879 Ian Paisley: I thank the witnesses for coming today. Secretary of State, I feel a little sorry for you, because you are here cleaning up the last Government's mess. I must say I admire your restraint in not putting the boot in, despite several opportunities that have been offered to you today and on other occasions to do that. I think that is admirable. I doubt that I could hold back as much as you have.

Mr Sweeney, you are described in the memorandum we received today and in the Secretary of State's comments as "middle-ranking", and in previous evidence that we took from Mr Stephens as a "junior civil servant". Can you confirm that you gave evidence to the Hallett review?

Mark Sweeney: I did.

Q3880 Ian Paisley: Did you give that evidence in person or by telephone?

Mark Sweeney: I gave it in person.

Q3881 Ian Paisley: So from that, I think it is rather unfair to describe you as "middle-ranking". Would you agree?

Mark Sweeney: It is simply a statement of what I think was considered to be fact. I don't know whether Jonathan wants to say anything, but, from my perspective, at the time the letters were issued I was a deputy director. As you may know, that is the lowest of the ranks within the senior civil service. That is the context in which I signed off the letter.

Q3882 Ian Paisley: Dr Case, of course, never gave any evidence to Hallett. Is that right, Dr Case?

Dr Case: No, I didn't give any.

Q3883 Ian Paisley: You were really of no interest. If he was middle-ranking, I don't know what that makes you. You were of no interest to the Justice. Mr Sweeney, is there anything that we haven't got a handle on and that you are dying to tell us to clear up some of this?

Mark Sweeney: I don't think so. If you want to be more specific—

Q3884 Ian Paisley: I am just offering you the opportunity, if there is anything you really need to tell us that you know would benefit us in getting to the bottom of this.

Mark Sweeney: I don't think so, no. If, as a number of witnesses before you from lots of different organisations have said, Lady Justice Hallett's analysis of the scheme and the conclusions she drew were reasonable, I don't have anything to add.

Q3885 Ian Paisley: Were you aware in 2006 of the notoriety of Mr Downey?

Mark Sweeney: No.

Q3886 Ian Paisley: So you never said, "John Downey—he's the Hyde Park bomber"? There was never any association with that?

Mark Sweeney: No. I don't recall knowing who either John Downey or any of the other individual names were.

Q3887 Ian Paisley: Or what they were associated with. Okay. That is very important. You would have been aware, however, that his name cropped up a number of times during your tenure—from 2004 until 2007. His name would have come across your desk on at least four occasions.

Mark Sweeney: Well, his name and a number of other names would have done, because the purpose of the scheme was to receive names and ask the police and the other authorities whether the individual was wanted, so in that context, yes, but not individually.

Q3888 Ian Paisley: In 2006, in correspondence between you and Gerry Kelly, you indicated that Mr Downey was wanted. Some 15 months later, in July 2007, there was correspondence between you and Gerry Kelly issuing Mr Downey's OTR letter, which meant, therefore, that the decision had been overturned. Were you prompted at any point to say, "There's a change in what's happened with that particular individual"?

Mark Sweeney: No. I would make two points. First, in both cases, the reason why Gerry Kelly received a letter saying, in the first instance, that Mr Downey was wanted and, in the second, that he wasn't is because, in each case, that was the decision that the police and the prosecuting authorities had communicated to us via the Attorney-General's office. Secondly, I don't recall noticing Mr Downey's name, or any of the names with which it was bracketed, in the correspondence at the time.

Q3889 Ian Paisley: And you weren't putting people who had been wanted and then had become not wanted into the spreadsheet that you were starting to draw up at that point? Is that the case?

Mark Sweeney: I don't recall—I apologise, but I have not seen the spreadsheet for a very long time—whether it tracked things sequentially and said, "The police or the Attorney-General's office say he was wanted on this date, and it was subsequently changed." I suspect that it recorded the point at which it was last communicated to Sinn Féin, because that was the bit of the process that the NIO ran. I suspect that what will have happened—there is some evidence for this in the e-mail to Peter Sheridan that Lady Justice Hallett cites—is that the final column will have said something such as "notification" and then when and what the notification was of.

Q3890 Ian Paisley: But it didn't ring any bells when the letter came up in 2007 for you to pass on to Gerry Kelly.

Mark Sweeney: No.

Q3891 Ian Paisley: One of my colleagues has already asked this, but I want to be clear about it. You actually signed the letter to Mr Downey. Is that correct?

Mark Sweeney: That is my understanding. The reason I say that is just because it was eight years ago and I have no physical memory of having signed the individual letter, but Lady Justice Hallett has produced the signed copy of it, so yes, I will have done so. It would have been my normal practice, I think, to sign and issue the letters.

Q3892 Ian Paisley: According to evidence you gave to Dave Anderson, you signed about 60 of these letters. Is that right?

Mark Sweeney: In total, I think that is what the NIO has told me, yes. That's right.

Q3893 Ian Paisley: Given that this letter was signed in July 2007, this was one of the last that you would have signed off. Is that right?

Mark Sweeney: I believe that I may have signed some in September of that year. I am not certain—I left the Northern Ireland Office in the middle of November.

Q3894 Ian Paisley: Okay. I suppose I am right to conclude that it wasn't really much of an event then; it was something you had got quite used to since 2004, in terms of signing off these letters.

Mark Sweeney: The act of signing the letter itself I suppose was not an "event", because it was the end of a process, but the process itself was something that we took very seriously, which is why we would only issue such letters when we had an assurance from the Attorney-General's Office that the individual had been assessed as "not wanted", or as "wanted" in the case of people who remained so.

Q3895 Ian Paisley: Did you post the letter, or hand-deliver it to Gerry Kelly?

Mark Sweeney: I would not have hand-delivered it. I was based, as were the team dealing with this, in London, on Millbank, which was then the Northern Ireland Office's London office. My recollection is that we would have communicated, by 2007, possibly by e-mail, as well as by fax or hard-copy letter.

Q3896 Ian Paisley: So you would have signed it in London and it would have been faxed to Belfast.

Mark Sweeney: Yes. That is my expectation, given that I do not recall exactly. But yes, that is my expectation.

Q3897 Ian Paisley: Therefore whether it was posted or hand-delivered was a matter for the Administration in Ulster, okay.

Why do you think that Downey never actually had a signed copy with him?

Mark Sweeney: I do not know why he did not. I am speculating now, but it might be that what we did was to e-mail unsigned copies to Sinn Féin and then the signed versions were sent in the post or by fax. It might therefore be—I do not know this, I am speculating—that he was given one of those. I do not know. Are you saying that he had an unsigned copy of his letter?

Ian Paisley: He never had a copy.

Mark Sweeney: Okay. We relied on Sinn Féin, for obvious reasons, to transmit the letters to the individual—

Q3898 Ian Paisley: It looks like Gerry Kelly maybe kept the letters safe and decided if people were allowed to use them at any point. That is what it looks like—I would not ask you to speculate—whenever the Metropolitan police asked to see this letter. They were confronted with this man they had arrested—they had bagged a real baddie, as far as they were concerned, and they had someone they wanted to question for mass murder—and he

kept saying, “I have a letter, go and check with the authorities.” The Northern Ireland Office then very kindly sent to the Metropolitan police a copy, but it was an unsigned copy of the letter. Why do you think that a signed copy was not sent?

Mark Sweeney: I don’t know. It would have been the NIO in 2013, when Mr Downey was arrested, that provided the information, so I do not know, I’m afraid.

Q3899 Ian Paisley: Secretary of State, do you know why? It must have been in your tenure. Why was no signed copy sent from you?

Mrs Villiers: I have to say, I don’t know why the copy that was sent would have been an unsigned version. It may be that that was the version that we had on record, but quite why the version was sent in that form, I’m afraid I do not know.

Q3900 Ian Paisley: The letter you had on record, how did you happen to have a copy and were able to provide it to Heather Hallett, but the copy you have on record is unsigned?

Mrs Villiers: I am not entirely sure whether we have a signed copy on record or not. I imagine we do, because I think I have a copy of all the letters and my recollection is that they are all signed, but—

Sir Jonathan Stephens: We need to check that. Of course there is only one original and the original was sent to Mr Kelly and, as Lady Justice Hallett says, she has checked and seen that original signed copy.

Q3901 Ian Paisley: Let us just go back. There is only one original. It has been faxed, so the original must then have been posted from Millbank.

Sir Jonathan Stephens: Or it may have been faxed—

Q3902 Ian Paisley: If it is faxed, you still have the original—you put the fax in the machine and you retain the original. Do you see what I am saying? Where is the original? Has Mr Downey got off with something here? And he never even got a copy of this letter.

Sir Jonathan Stephens: My understanding is that the original, as you would expect, was sent to Sinn Féin, who undertook the responsibility to pass it on—

Q3903 Ian Paisley: I have absolute clarity from Mr Sweeney. Mr Sweeney has told me today that he signed the letter and faxed it to the Northern Ireland Office in Belfast—

Mark Sweeney: I apologise for interrupting, Mr Paisley, but what I have said is that I did sign the letter, because evidently Lady Justice Hallett has a copy of it. I have said that it may be that I faxed it. I do not recall whether I faxed it or posted it at the time. It was eight years ago.

Q3904 Ian Paisley: It was electronically given over, you think. You do not recall putting it in the post and you certainly did not hand deliver it.

Mark Sweeney: I don't recall exactly how the letter was transmitted and whether the individual letter was sent—

Q3905 Ian Paisley: Let's electronically look at it. If it was scanned and e-mailed, you still have the original. How did the original—the piece of paper with your original signature on it—get to Gerry Kelly?

Mark Sweeney: I could not tell you because I do not recall what we did with that individual letter in July 2007.

Q3906 Ian Paisley: Was that letter ever given to Mr Kelly?

Mark Sweeney: As far as I am aware, it would have been. It would have been our usual practice to transmit the letters to them, but I cannot tell you exactly—

Q3907 Ian Paisley: How were they transmitted to them?

Mark Sweeney: I do not recall exactly how. It would have been by a combination of either e-mail, fax or post.

Q3908 Ian Paisley: It appears to me that perhaps this letter never actually got to Mr Downey and in 2013 the Home Office and the Northern Ireland Office very helpfully assisted Mr Downey when he was wanted for a crime. Secretary of State, were you part of anything? Was anything ever put to you such as, "Get this letter. Get it re-signed. Get it back to the Metropolitan police"?

Mrs Villiers: No. I am sure that I was aware, in general terms, that the NIO was being asked to provide clarification as to whether there was a letter, but there was no conversation about whether it was signed. I assumed that it was signed but will have to double check that. I have been looking back through some of the paperwork but I cannot find a copy of it, I am afraid.

Q3909 Ian Paisley: I am at a loss as to how Gerry Kelly got something that was not other than a copy. He must have a copy. I assume that he has a copy if it was faxed or e-mailed, but how did the original get to him and did it ever get to him?

Mrs Villiers: I don't think that there is any dispute that the Northern Ireland Office conveyed that there was a letter that went to Gerry Kelly. Clearly, Mr Downey was aware of it because he referred to it when he was arrested.

Q3910 Ian Paisley: Yes, but he never had it; he was just aware of it. He was working in good faith with his Sinn Féin officials.

Sir Jonathan Stephens: My understanding is that there was a letter to Mr Kelly with which were enclosed a number of letters to individuals for Sinn Féin to pass on. The original would have been sent to Mr Kelly to pass on.

Q3911 Ian Paisley: By post or by hand?

Sir Jonathan Stephens: I can't answer that. I am not sure, frankly, at this stage whether we would be able to establish the precise means of transmission but the point would have been under cover of a general letter to Mr Kelly to convey the actual letter to Mr Downey and to the others concerned.

Q3912 Ian Paisley: This does not add up because these were the most important letters, according to the Government Ministers we have heard from. The Secretary of State has told us that the peace process was on a knife edge—doom and gloom if these letters did not arrive. Some of you do not even know how the letters got out of Millbank.

Mrs Villiers: You kindly invited me to criticise the previous Government. I think they were sincere in believing that this was an important part of what they were doing in relation to the peace process, but criticism is justified in that they fell down because it was not properly managed. It was a scheme that, as is now clear, was fraught with legal risk, so it is absolutely clear that insufficient attention was paid to gripping it and ensuring that errors did not occur. That manifested itself in all sorts of ways.

A point of particular concern to me is the terms of the letters that were sent out; in many ways they were problematic, and if one were taking a more rigorous approach to mitigating any future dangers of abuse of process, in hindsight those letters should have been considerably different and more detailed. No one can be in any doubt that the mismanagement of the scheme contributed to the problems that occurred in the Downey case. In that instance, there is an inconsistency in the way that the previous Government approached this. They considered it to be important and I am sure that they were motivated by a sincere wish to move the process forward.

My party took a different approach on various issues relating to OTRs, in particular the legislation that was proposed. I have no doubt that the then Government were sincere, but where they did fall down was that they should have been much more careful about how this scheme was run. Their lack of care contributed to the fact that a mistake was made and not picked up on, which had significant consequences.

Ian Paisley: I have another question but it is not related to this and I can see in the corner of my peripheral vision that Sylvia is jumping up and down.

Q3913 Lady Hermon: Thank you, Ian. It is on a small but important point. Secretary of State, you just criticised the standard text letter that Mr Sweeney had been operating for all those years when he was issuing the OTR letters. Will you confirm who drafted that settled standard letter that Sir Jonathan mentions in his memorandum today?

Mrs Villiers: I assume it was drafted by the Northern Ireland Office, working with the Attorney-General's office and after consultation with legal advisers. But, as Heather Hallett highlights, there were defects, at least with some of those letters.

Q3914 Lady Hermon: Mr Sweeney, would you like to be any more specific than that? Who drafted the standard letter?

Mark Sweeney: I am afraid that I can't be, because according to the Hallett report it was in 2001, and I did not work in the Northern Ireland Office at that time.

Q3915 Lady Hermon: But you have read the Hallett report.

Mark Sweeney: Yes, and the report does not identify who drafted it. It says, I think—I haven't got it in front of me at the right page—something like, "By a process that is not entirely clear to me, the text of the letter was settled between the Northern Ireland Office and the Attorney-General's Office." I do not think that Lady Justice Hallett attributes the text of the letter to an individual in her report.

Q3916 Lady Hermon: The Secretary of State has been critical of the Attorney-General's Office—it could have been handled better. Is that what I should take from your reply to Ian?

Mrs Villiers: I think that more care should have been given to the content of the letters. There is a question, which has already been picked up on, about whether they related to pre-'97 offences. That was not qualified. The early letters referred to specific offences and the later letters did not. And although the understanding by the recipients was that a reassessment of existing evidence could lead to prosecution in the normal way, again I do not believe that that was entirely clear from some of the letters. I share the opinion of Heather Hallett that there were problems with a number of the letters that were issued. They could have been clearer in legal terms.

Q3917 Chair: Before Ian asks a different question, can I follow up on what the Metropolitan Police told us in a letter that I think you have been sent? They said, "Following his arrest Mr Downey stated that he had been served with a letter by the Home Office". Can you throw any light on why he would think that? That is not a loaded question; I am perplexed by that.

Mrs Villiers: I would assume that the copy of the letter was held by the Northern Ireland Office. Whether it was conveyed directly to the Metropolitan Police by the NIO or whether it came through the Home Office, I do not know.

Sir Jonathan Stephens: I have no suggestion at all that the Home Office were involved. I cannot explain why Mr Downey referred to the Home Office at all, other than to observe that, quite frequently, people confuse different parts of Government.

Q3918 Chair: I would have thought that he would have known.

Sir Jonathan Stephens: You would have thought so.

Q3919 Ian Paisley: Mr Sweeney, you were in charge of this from 2004 to 2007 in that deputy director role, moving up the ranks. From what you have given us, I assume that you were on top of your brief and at all the meetings to do with OTRs, or did you send junior officials to those meetings?

Mark Sweeney: I would have been at some, but not necessarily all.

Q3920 Ian Paisley: Were you at a meeting on Friday 9 June 2006?

Mark Sweeney: Not to my knowledge, no.

Q3921 Ian Paisley: Okay. At that meeting, Mr Davison of the PSNI, Mr McGinty of the Attorney-General's Office, Mr Morrison of the PPS, Ms Pettifer of the NIO and Mr XX of the NIO were in attendance. The minutes of the discussion detail those who were wanted for questioning. Who was Mr XX of the NIO?

Mark Sweeney: I do not know, but I think it says that because it is a draft—Lady Justice Hallett reprints the minute of that meeting in her report and observes that it is a draft. I think I have seen a copy of it, because it was supplied to me by Lady Justice Hallett as part of a bundle before I went to see her, and I think the person who took the note, who I do not think was an NIO official—it may have been someone from the DPP's office—did not know the name of the person there with Katie Pettifer. I think they put Mr XX there with the intention of establishing who it was and filling that in later.

Q3922 Ian Paisley: So Mr XX definitely was not you. Was anyone from MI5 at those meetings?

Mark Sweeney: I wouldn't have thought so.

Q3923 Ian Paisley: Why not? There were national security issues at stake here.

Mark Sweeney: From my perspective, I am assuming, as Lady Justice Hallett says, that the meeting was designed—I am leafing through the report to find it—to reconcile records. As far as I am aware, the Security Service did not have a role in the scheme, and

so they would not have been present at the meeting to try to establish whether the records were accurate.

Q3924 Ian Paisley: So they did not have a role at any time or at any point in the scheme?

Mark Sweeney: I cannot comment on whether it was the case that either the Police Service of Northern Ireland or the DPP discussed individuals with the Security Service during the course of their determinations as to whether they were wanted or not. They might have done, but that is not something that we would have been involved in, because the NIO's role at the end of the process was to issue notifications saying, "You are not wanted," or saying to Sinn Fein in relation to people that they remain wanted.

Q3925 Ian Paisley: There was some concern expressed at the reluctance of officials to be brought here, because maybe those officials were MI5. So we can it take from that that none of the officials in front of us today are MI5.

Mark Sweeney: As long as there is no confirm or deny problem, I am not. Very much not.

Q3926 Ian Paisley: Secretary of State, had MI5 any role to play in this? Have you been given any briefing that you can share with us that says MI5 and the security services had a particular interest?

Mrs Villiers: To be honest, I am not aware of a role that I can think of. Clearly, when the police would have been conducting their investigation as to whether there were grounds for arrest or prosecution, one would expect them to consult intelligence information, so that may have involved conversations with intelligence agencies, but, off the top of my head, I cannot see an instance where I have seen a reference to the intelligence services having any kind of role beyond that.

Sir Jonathan Stephens: I agree with that. I am not aware of any direct involvement. Decisions on arrest and prosecution are matters for the police and the prosecuting authorities.

Q3927 Ian Paisley: Let me ask the question from the other end. Given what was at stake, should not MI5 have been involved?

Mrs Villiers: As I say, these were decisions for police and prosecutors to decide whether there were grounds for arrest and prosecution. In making those decisions, it may have been appropriate for them to have consulted all intelligence sources that were available, including MI5, but that would not be a matter for me to comment on. That was very much a matter for the police and the intelligence services themselves.

Q3928 Ian Paisley: Secretary of State, do you agree that there are national security issues at play in all this?

Mrs Villiers: Since the offences that were being considered related to terrorism, yes, there were national security considerations that were relevant here.

Q3929 Ian Paisley: Are you surprised that MI5 are so passive in this?

Mrs Villiers: Given the nature of the scheme, I cannot see a relevant role for the intelligence services, beyond the one I have outlined as contributing and inputting into a decision to be made by police and prosecutors as to whether there was justification for arrest or prosecution.

Q3930 Kate Hoey: Mr Sweeney, you seem quite comfortable in front of us. We are not putting you off in any way. In other words, you would have been happy to come all along, even if you had been asked not to by the Secretary of State. Is that right?

Mark Sweeney: I will not pretend I am not concentrating very hard, because I want to make sure I give the Committee a full, clear and truthful account.

Q3931 Kate Hoey: Good. About this letter, unsigned or signed, can we be clear about who gave the letter to, presumably, Justice Sweeney—no relation of yours—who took the decision to let John Downey go free? Who gave him the letter?

Mark Sweeney: I don't know. To be clear, I did not have any involvement in the Downey case or proceedings. I had long left the NIO, so it will have been handled by the current organisation.

Q3932 Kate Hoey: But it is rather strange that Lady Justice Hallett apparently saw this signed letter. I presume Justice Sweeney must have seen this signed letter. You gave evidence to Lady Justice Hallett, so you were senior enough to do that. We have not seen this letter, and neither the permanent secretary at the Northern Ireland Office nor the Secretary of State seem to have seen it either.

Mrs Villiers: I have certainly seen the letter.

Q3933 Kate Hoey: How did you see it?

Mrs Villiers: I can't remember whether I have seen it signed or unsigned, to be honest. That is the disadvantage I am labouring under. I assumed it was signed—I thought that that was something that had been stated in various contexts—but we will have to double check whether we have the signed copy.

Q3934 Kate Hoey: But you would all accept that the letter that came to us after we heard evidence from the Metropolitan police—very good evidence about what had happened on the day in the morning, when he was arrested—and they then sent us detail, saying that it was the

exact copy that they were sent from the Northern Ireland Office, was not signed. Does that not strike you as being a little bit strange?

Mrs Villiers: Not necessarily. Mr Justice Sweeney concluded that this was a serious statement by the Government, which is why it was material to the decision that he made. The reality is that whether it was signed or unsigned a court of law decided that it was a serious statement by the Government. That is why Mr Justice Sweeney took it into account in his decision in the way that he did.

Q3935 Kate Hoey: Mr Sweeney, you have said that you don't really recall John Downey in any particular way. You just signed the letter after a process.

Mark Sweeney: That's right.

Q3936 Kate Hoey: You were signing all sorts of other letters, and his name did not mean anything to you at all—you really are saying that you had never heard of John Downey until you signed that letter, or you started the process.

Mark Sweeney: Not to my recollection, no.

Q3937 Kate Hoey: On the letter that came in from Lord Goldsmith to Peter Hain, do you recall or can you answer what we have been trying to find out—was that letter responded to by anyone?

Mark Sweeney: Not to my knowledge.

Q3938 Kate Hoey: So Lord Goldsmith wrote to Peter Hain, copied to you all, saying that these people, including Downey, were alleged to have done serious terrorist offences, and that wasn't responded to.

Mark Sweeney: Not to my knowledge, no, and I wouldn't have expected it to have been, because you can see from the copy of the letter that you got from the disclosure bundle from the Downey case that the private office have handwritten a distribution list in the Department, and there is an asterisk next to the name—

Q3939 Kate Hoey: There was also handwritten, "Response by the Secretary of State".

Mark Sweeney: Exactly, which is a standard thing that private offices do.

Q3940 Kate Hoey: So you put "Response by Secretary of State" but no one responds.

Mark Sweeney: Yes.

Q3941 Kate Hoey: So it is just a meaningless little note that goes on a letter.

Mark Sweeney: No. It will depend. If I can explain what will have happened with that letter from Lord Goldsmith, I have mentioned and we have discussed the fact that what would happen is that the Attorney-General's office—sometimes it would be the Attorney-General himself or herself; sometimes it would be their officials—would send a letter to the NIO saying, “These people are wanted and these people are not wanted.” This was one of those letters. There were other names in it alongside Mr Downey's. The private office will, I assume, have received the letter, seen that it was from one Cabinet Minister to another, known that I was the deputy director who had on-the-runs within my team and marked it out to me in a standard way. But the action that was required on the foot of that letter was not to write back to the Attorney-General, and such a response wouldn't really have said anything apart from, “Thank you, I have received your letter.” The action was to write to Gerry Kelly and say, “The Secretary of State has been informed by the Attorney-General that the following people are wanted, including Mr Downey. I enclose letters in relation to the other individuals.” The short answer is that it wasn't a letter expecting a reply.

Q3942 Kate Hoey: This was a letter from some time before John Downey got the letter saying that he wasn't wanted.

Mark Sweeney: It was a letter from, I think, four weeks before the letter that went to Gerry Kelly saying that Mr Downey was wanted. The sequence is that the Attorney-General wrote to the Secretary of State in February 2006 saying that a number of individuals were wanted—one of whom, as you know, was John Downey—and a number of individuals weren't. On the foot of that, Gerry Kelly received a letter from me, of which you have a redacted version, that says that Mr Downey was wanted and other individuals were not. Subsequently, once we had received a further letter from the Attorney-General's office in July 2007 saying that Mr Downey wasn't wanted, that was the point at which a letter then went via Sinn Féin to Mr Downey.

Q3943 Kate Hoey: So rather than Mr Baggott and Mr Sheridan being blamed, are you blaming the Attorney-General?

Mark Sweeney: I don't follow your question, sorry.

Kate Hoey: In the sense that the mistake was made. You are saying that the Attorney-General said that he wasn't wanted.

Mark Sweeney: The Attorney-General's office sent a letter saying that the police and the prosecution service had concluded that Mr Downey wasn't wanted. As Lady Justice Hallett says, and as I have said before in front of the Committee, the regrettable error was that the police said that they had conducted checks in relation to all the individuals, including Downey, with other UK forces, but they did not relay internally that the result of that was that Mr Downey was shown as wanted.

Q3944 Kate Hoey: We heard from Mr Hain that there was a lot of pressure coming to sort this from Sinn Fein and IRA-Sinn Fein, and also from the Prime Minister's office. Do you recall having many conversations with Jonathan Powell or anybody telling you to try to sort it out?

Mark Sweeney: I don't recall any conversations with Jonathan Powell because I wouldn't have been that senior to have that many conversations with Jonathan Powell; my boss might have done. I certainly attended meetings with the then Secretary of State at which it was discussed, and we put advice to him and, as I think he said to you, he was keen to see progress on assessing names being made as quickly as possible, but I don't recall at any point being subject to improper pressure or being asked to have a word with the police or anyone else about what—

Q3945 Kate Hoey: So did you speak to Gerry Kelly on the phone often, or at all?

Mark Sweeney: We certainly had a couple of meetings with Sinn Fein. I think that probably Gerry Kelly was at one of them. I certainly recall an individual called Leo Green was at one.

Q3946 Kate Hoey: I am really trying to see if you want to say if there was any pressure at all in that run-up to the Prime Minister leaving, and the Secretary of State leaving, where there was a feeling around—even if it was not put in writing—of, "Let's get the John Downey case sorted, because Gerry Kelly is very keen to get it sorted."

Mark Sweeney: No, and if I may say so there are three reasons for that, I think, or three points that I would make. The first is that Downey did not mean anything to individuals in the Northern Ireland Office, including me, and I do not think—although I cannot recall what Peter Hain told you about this point—that his name meant anything to Peter Hain, but you would obviously have to ask him.

Secondly, as I say, in my experience Ministers never placed any pressure on me or other official colleagues to seek particular outcomes. What they were keen to do, in relation to the administrative scheme, was they wanted the police to put more resource in and they wanted it to be done as quickly as possible, because they were feeling that pressure from Sinn Fein, which the former Prime Minister and the former Secretary of State have both spoken to you about.

The other thing they were keen that officials did, and on this we drew a blank, was to see, after the withdrawal of the Northern Ireland (Offences) Bill in January 2006, if there were any other ways—always, of course, within the law—that would allow a means of dealing with those who were wanted, and who were just going to remain so, that would be acceptable to Sinn Fein. No means of doing that was ever found. And the letter from Tony Blair that is published in the Hallett review refers to those two things, I think, in its text: first of all, that he says words to the effect of, "We will try to make sure the administrative scheme continues"; and the second is words to the effect of, "We will try and find a solution for the others"—that is, those who remain wanted—but that never happened.

Q3947 Kate Hoey: The reputation of both Norman Baxter and Peter Sheridan have been pretty well attempted to be destroyed by some of the things that have been said by both the Northern Ireland Office and other agencies, including Dame Heather Hallett. How do you feel about that? Do you actually think that they—one officer in particular—were responsible for this? Don't you feel you should take any responsibility? Fortunately, the ex-Prime Minister took ultimate responsibility, but do you feel quite confident that the Northern Ireland Office did everything it could to make sure that these people who were being sent letters were not guilty?

Mark Sweeney: Can I make three points, if that is all right? The first is that I am very sorry the letter issued; it clearly should not have done. I wouldn't want anyone to be in any doubt that that is what I think. It is also the case, as far as I am concerned and as Lady Justice Hallett's report says, that the NIO sent the letter in good faith, having been assured that Mr Downey was not wanted and having checked to that effect. That doesn't mean that I don't deeply regret the fact that the letter issued. It shouldn't have done; that is absolutely clear.

The second thing is that Lady Justice Hallett concludes that, among other things, it would have been better if the standard text of the letter, or the letters as they issued, had been copied back to the police right from the beginning of the scheme. She says that that is with the benefit of hindsight, but she concludes it and I accept that. However, she makes it clear that she still doesn't understand why the error was made.

The third thing is that you asked me about reputations. To be clear, I don't bear either Mr Baxter or Mr Sheridan any ill will, and there is nothing in Lady Justice Hallett's report that I am aware of that suggests that they acted in anything other than good faith; it is that an error was made.

Q3948 Kate Hoey: So you would think that it was wrong for the head of the police in Northern Ireland to come out so quickly, taking the blame—basically—for the Downey case?

Mark Sweeney: I think it's for others to take views on what the right judgment is. I simply say, as I have said before, and I apologise for repeating myself, that Lady Justice Hallett's conclusions specifically on the Downey case are at paragraphs 10.42 to 10.49 of her report, and I accept them.

Q3949 Kate Hoey: Do you accept that Mr Baxter did not say that he was not wanted in mainland Britain and that that letter was then changed?

Mark Sweeney: No letter was changed.

Q3950 Kate Hoey: Well, do you accept that Mr Baxter didn't say that Mr Downey was not wanted in Great Britain.

Mark Sweeney: Mr Baxter, as far as I understand from Lady Justice Hallett's report, did not relay to Mr Sheridan that Mr Downey was wanted in mainland Britain, so it is right that he did not pass that information up the chain.

Q3951 Kate Hoey: No, I am asking it the other way round. Do you accept that the letter that finally went out to Mr Downey said that he was not wanted in any part of the United Kingdom, but that the letter and the information from the PSNI did not include the rest of the United Kingdom?

Mark Sweeney: The PSNI had confirmed to us that they had checked in relation to all of the names, including Mr Downey, with other UK forces—

Q3952 Kate Hoey: Who in the PSNI?

Mark Sweeney: Assistant Chief Constable Sheridan and then Assistant Chief Constable Sheridan's staff officer.

Kate Hoey: Hmm.

Q3953 Lady Hermon: Of course Mr Baxter and Mr Sheridan of the PSNI acted in good faith, because they had absolutely no way of checking the accuracy of the letters that were being issued by you, Mr Sweeney, and by the Northern Ireland Office; they had no awareness of those letters, which were kept secret. Surely to goodness, the Northern Ireland Office should bear and accept some responsibility—joint responsibility—for the catastrophic error that led to Mr John Downey walking free from the Old Bailey.

Mrs Villiers: Sylvia, perhaps I could come in here. The Northern Ireland Office has accepted responsibility. This was a scheme that was authorised by Ministers. It was run by the Northern Ireland Office. So, ultimately, Ministers take responsibility for what happened under the scheme. I believe my predecessors have done that in relation to what happened during their terms of office.

Q3954 Lady Hermon: So you are accepting responsibility for a catastrophic error in Mr Downey's case—the Northern Ireland Office? We are not going to blame the PSNI, because they had absolutely no awareness of the accuracy—no way to check the accuracy—of the letter that was being sent out by you, Mr Sweeney, because they did not know until 2011 that there was a standard letter.

Mark Sweeney: If I may, Lady Hermon, I understand the point. The Police Service of Northern Ireland, including the Operation Rapid team and—on the basis of the documents in Lady Justice Hallett's report, which include an e-mail from him—Mr Baxter, understood that it was part of their role to establish whether individuals were wanted not just in Northern Ireland, but in the UK by another force. When the Northern Ireland Office sought to check, first of all in June 2007—not prompted by Mr Downey's name, but prompted by a letter with 25 names—it received a letter from Mr Sheridan, saying,

“Before any names are sent to the DPP, we conduct checks with external UK forces.” That was confirmed in relation to all of the names, including Mr Downey, subsequently to us.

I accept that it would have been better if they had seen the letter, because, as Lady Justice Hallett says, if they had seen the standard form of the letters, that mistake might not have been made, but she goes on to say that she still cannot understand why it was. She also makes the point that the Police Service of Northern Ireland could arrest somebody wanted by another UK force, so—the UK being one jurisdiction—Mr Downey would have been liable to arrest by the PSNI had he entered Northern Ireland because of the Hyde Park bombing alert.

Q3955 Lady Hermon: Lady Justice Hallett also makes the point that “the Operation Rapid team proceeded on a false basis” because they had absolutely no awareness, and no way to check the accuracy, of the letters being issued by the Northern Ireland Office. That is where the problem lay. I am not questioning your bona fides; I am just saying that it is grossly unfair that two police officers should be blamed for a catastrophic error, when it absolutely was not their fault.

Sir Jonathan Stephens: With respect, I think we are slightly going over familiar ground now. Both the Secretary of State and I have, on a number of occasions in front of the Committee, made clear that we accept the Hallett conclusions—in particular, that there were systemic failings and flaws in the scheme that meant that, within Departments and organisations, and between different Departments and organisations, there was not transparency or complete understanding of how the scheme operated. As the Secretary of State has said, if that had been avoided, it is very likely that the errors made in this case could have been avoided as well.

There is no desire on the part of the Northern Ireland Office—I have apologised for our part in the scheme—to blame others or to shift responsibility on to others. Equally, it is important to be clear that the letters were sent on the basis of specific assurances received from the Attorney-General’s Office that Mr Downey was not wanted and that that was specifically on foot of checks being made that that included confirmation that he was not wanted by other police forces. However much we repeat that, that essentially will still be the case.

Chair: The letter from Mr Sheridan to Mr Junkin at the Department of the Director of Public Prosecutions dated 6 June states: “Enquiries indicate that John Anthony Downey is not currently wanted by the PSNI.” He does not go beyond that, so there is some concern about that, but unless you want to come back on that, I will move on.

Sir Jonathan Stephens: If I may, when the first set of names were transmitted via the DPP to the Attorney-General’s Office with that sort of formula employed, it was at that stage that the Attorney-General’s Office asked the NIO to go back to the PSNI to establish whether the checks that they were undertaking included checks in respect of other police forces. That was what prompted the response from ACC Sheridan confirming in terms that the purpose of the review that the PSNI was undertaking was to establish, among other matters, whether an individual was wanted for arrest by other police forces. That was what was then confirmed in the case of the letter that arrived from the Attorney-General’s

Office, which included the name of Mr Downey. That was when Mr Sweeney specifically sought confirmation from the PSNI that those checks in respect of other police forces had been undertaken.

Q3956 David Simpson: I will not go over a lot of the stuff again, because a lot of the material has been covered. I will be very brief. As we heard earlier, this is the 26th evidence session. I am sure that you would forgive a member of the general public who was sad enough to watch every evidence session for being somewhat sceptical. There will also be a degree of a lack of trust and a lack of transparency. The words “in secret” have been used several times. We are told that it was not done in secret, yet the PSNI was not told about the letters. The RUC and the Department of Justice were not told about the letters. The Minister was not told about the letters.

We are told that none of the names can be published, including the OTRs and royal pardons. As we have heard, royal pardons were given to those who were guilty of perhaps some of the most heinous crimes that have been committed in Northern Ireland. Then we are told that Sinn Fein wanted it kept under the radar. So you can forgive the general public for thinking, “This is just a charade. We would never have been told anything about these letters, but for the complete horrors that was made with Mr Downey.” You can understand the mistrust with all of this. I do not know what form the report will take. That will be discussed later on this week, I assume. As I said to Mr Blair last week, you can understand the total frustration and anger from the victims’ point of view. By and large, all those people involved in the Hyde Park bomb may never see justice for any of this. Once we accept the apologies from the Government of today and the NIO, the bottom line is that the horse has bolted here. I understand that, in law, Mr Downey will never stand trial again for the Hyde Park bombing. You can understand that all that is in the mix, and the mistrust of all that.

I wanted to put that out there because I do a lot of work with victims’ groups and listen to what they have to say to me. They are just at a complete loss. Mr Blair said last week that the whole process was on a knife edge and the whole thing could have fallen down around their ears—all of that—but it seems that the political process and getting Sinn Fein into Government was more important than what happened to the families and the victims. That is the message I am getting from victims’ groups. I am sure that you have heard similar messages, Secretary of State.

I want to ask a couple of questions of Dr Case. You have got off very lightly today—I don’t know whether that means you were a junior junior official—but you are present today so I am going to ask you some questions. When was the former Secretary of State Owen Paterson first briefed on the scheme when he came into office, and who briefed him?

Dr Case: As normal practice when Ministers arrive into a Department, they get a pack of papers called the first-day briefs. There was a description of the operation of the scheme in those briefs. I or my team will have written those briefs. I am afraid that I cannot recall the first conversation with him—I do not recall having an early oral briefing with him. I suspect that it was probably around the time of his first meeting with Sinn Fein, as that was where this issue was most likely to come up.

Q3957 David Simpson: Are you aware of any major discussion within the NIO or No. 10 when the whole process started on the royal prerogatives?

Dr Case: At any point? No, I am not aware of any.

Q3958 David Simpson: You are not aware of any discussion; it was just a natural process and these letters were given out by Her Majesty, advised, I assume, by Government officials.

Dr Case: That's well outside my time—I wasn't even working in Government at that time.

Mrs Villiers: I think the RPMs all date back to the early years of this century.

Dr Case: I think from about 2000, which was before my time.

Q3959 David Simpson: Okay. Last question: was Mr Paterson aware of the content of the first letters that went out after the 2010 elections, before they were sent in August? If so, did he approve them?

Dr Case: My recollection is that he did not see the letters themselves. As he said to you, I think he considered this to be a routine matter to be conducted by officials.

Q3960 David Simpson: So they weren't checked, just routine.

Dr Case: That is what he said to you, and my recollection is the same—that he did not see the text of the letters before they went.

Q3961 Nigel Mills: Since we are with you, Dr Case, I will continue. Can you recall what briefing you received on the scheme when you took on your role at the NIO?

Dr Case: I thought you might ask that, and I have been racking my brains. I am afraid I can't. I am sure that my predecessor gave me a briefing on how the scheme worked. I will have had conversations with colleagues, particularly Kevin McGinty, who has given evidence to the Committee and who knew more about the scheme than anyone else. I think I can recall speaking to him about the scheme early on.

Q3962 Nigel Mills: Do you recall how you perceived the scheme? Did you see it as a risky part of your role, or was it a pretty standard thing, whereby you just printed off a letter when you had to?

Dr Case: I am having to rack my memory. I recall recognising that it was an unusual scheme.

Q3963 Nigel Mills: But you don't recall having any processes in place that you used to make sure that you didn't transpose names and, by mistake, send out a letter to someone who shouldn't be cleared, rather than someone who should?

Dr Case: Inside the team, we did a good deal of checking. It was the same process in my time that, at the end of the line, we would get a letter from the Attorney-General's Office—at that time it was from the Office rather than from the Attorney-General—and we would ensure that, whatever came in from the Attorney-General's Office, the names were properly transcribed and put into the letters that I would then sign.

Q3964 Nigel Mills: But you weren't checking a spreadsheet or file, or updating a record?

Dr Case: I never personally sat down with the PSNI, AGO or DPP with a spreadsheet, but my team did the same process, which Mr Sweeney described earlier, of sitting down to make sure that our records matched on what names we had, and we checked their status. We made sure that we all had the same records.

Q3965 Nigel Mills: Mr Sweeney, I will ask you the same question. Can you recall quite a lot further ago?

Mark Sweeney: I can recall a little bit more. In process terms, I had a predecessor whom the Hallett report identifies: Anita Bharucha. As in Simon's time, there was a team that dealt with the work day to day, maintained the files and produced the template letters, and so on. The team did much of the talking, as necessary, to the Attorney-General's Office. The team continued, although the head of division changed. There was an ongoing thread there, and I think my predecessor would have briefed me about it—I am sure she would have done, although I don't remember specifically because it was quite a long time ago. The thing that did stick in my mind is that I was given a copy of William Fittall's note, which I think has been disclosed through the bundle given to the Committee. I remember being given that because it was a sort of primer, if you like, on how the Weston Park commitment to on-the-runs was made and on the fact that the administrative scheme existed. I remember seeing that note.

Q3966 Nigel Mills: I suppose that in your time there was a fair few more who were told that they couldn't have a letter, and obviously some were told that they could. How did you personally make sure that you were signing those letters to the right names and that someone hadn't mistakenly copied the wrong list on to the wrong page, or something?

Mark Sweeney: Like Simon, I had a team who did that. They would take care over it because they knew that it was important work. You asked Simon whether it was something that was important or routine, and I regarded it as clearly important that the letters went to the right individuals. The team produced the letters in the standard template, and I would sign them off. You can see that in July 2007 I wanted to be certain that what I was hearing about checks not having been done was right. I don't know what prompted that. I don't know whether it was that I thought, "I must check," because we

checked the last batch, or whether the Attorney-General's Office said, "Can you check again, please?" I don't know.

Q3967 Nigel Mills: How important did you think these letters were? There has been some question about whether they meant that that was it and that these people were clear for any pre-Good Friday Agreement crimes or whether it was just a line in the sand for that day and that, if the parties changed their mind the next day, it was meaningless. When you were signing them, did you think, "This person is now free for those crimes"?

Mark Sweeney: No. The intention, and our understanding at the time, was that they were letters for a specific purpose, which was to say, "At this point in time, you are not wanted for arrest or prosecution, but that could change." What you suggest was never the intention, which was why, from recollection, Sinn Fein regarded the letters as important in the sense that they allowed them to say to some individuals, "You can come back, but you are at risk because of the terms," but they always regarded it as not sufficient to meet the commitment that they thought the Prime Minister had given them at Weston Park, which was to find a way in which anybody who had committed a crime before the Good Friday Agreement, as opposed to people who weren't wanted for committing a crime, could come back.

Q3968 Nigel Mills: But you thought that what you were doing here was a slightly unusual way of doing a normal process—people are allowed to find out whether they are still wanted. This wasn't political; it was just a strange way of issuing something that is perhaps normal in any other way.

Mark Sweeney: The fact of doing it at all—having the scheme, as it were—was political in the sense that it was at the wish of Ministers, because, as Tony Blair told the Committee, he saw it as an important component of moving the peace process forward, and that is his political judgment, but the content of the scheme, in the sense of what the decisions were—no, that wasn't political.

I would concur with what the Secretary of State said, I suppose. It was exceptional in the sense that I have never before or since come across something like that in any of the roles I have held as a civil servant.

Q3969 Nigel Mills: Dr Case, did you think the same? That this was a strange way of doing something that was actually pretty normal and that people are entitled to know whether they are still wanted or not?

Dr Case: I recognised it was unusual. I mean, obviously, it was significantly later in the process of the scheme running and also the politics was different, so for me there was a lot more discussion to have with colleagues, to explain precisely where this scheme came from and why it was significant. So I recognised its unusual nature.

Mrs Villiers: Perhaps I could just take the liberty to speak on behalf of my predecessor, because Simon, I think, used the word—that Owen viewed it as "routine". I am very clear

that Owen appreciated the sensitivity of this matter. It was something that we took seriously as, essentially, an obligation inherited from the previous Government. I think our approach was—I would emphasise, both from my point of view and Owen’s—that what was important was the nature of the scheme itself: that it was not an amnesty, that it was only a scheme which notified people who were not wanted that they were not wanted. Had it gone further than that—had it conveyed an amnesty; had it blocked prosecutions where there was evidence that prosecution would be justified—of course, that would not have been acceptable and we wouldn’t have allowed it to continue under the current Government.

Q3970 Nigel Mills: I was pursuing that question because I was intrigued by an answer you gave earlier, Mr Sweeney. You commented entirely fairly that no letters had been issued for a while between 2003 and 2004 and then Sinn Féin made an important announcement in 2005, and then the letters scheme started up again. That made it sound as if this was a bit of negotiating tool: “We aren’t going to let your people know they are not wanted unless you do what we want you to”. I am trying to work out whether this was a normal part of the justice process that was just being done in a strange way or whether it was a bit more political in terms of how it was—

Mark Sweeney: I understand the question, I think, and will try to answer it, but tell me if I haven’t. I have to be a bit careful, because of the convention about advice to previous Ministers. My recollection is that, at the time I took on the role, it had previously been decided, at ministerial level, that letters were not going to issue for a time, in part, I expect—again, this is partly speculation on my part—because of the state of the broader political process. So if you are trying to incentivise Sinn Féin to do various things, then doing things that they want you to do, you might not wish to comply with that.

My recollection is that, in the autumn of 2005, we did go back to Ministers and say, “Do you want to continue to do this?” At that point, in the autumn of 2005, the big focus was the ill-fated Bill. So I expect that—but this isn’t recollection, it’s from inference—given that the Bill, I think, was withdrawn early in January 2006, after that, the effort which had been sort of on a twin track in the NIO, in terms of preparing and piloting this very controversial legislation through Parliament, and talking to the police about getting the on-the-runs scheme going again, moved solely or principally to the question of getting the on-the-runs scheme cranked up again.

Q3971 Nigel Mills: When we got into Operation Rapid—it became a bit more rapid—were you ever, or do you recall being, a little surprised about how much more quickly names were coming through to be cleared? Do you recall ever being concerned that perhaps this had got out of control at that point?

Mark Sweeney: To be completely honest, I don’t recall exactly how I felt, as it were. So it’s possible that I might have been surprised and I don’t remember. I don’t recall thinking, “Gosh, all these names have come through at once.” It’s possible that that’s what might have given rise to the Attorney-General’s Office saying to us, “Can you just check they’ve done the checks with UK forces?”, for example. I don’t know that, but that’s a possibility.

Lady Justice Hallett says in the report, I think, that it could have been because they had all the paperwork to hand, they had done previous reviews in a number of these cases and, of course, during 2006 they had presumably been assembling and arranging their own records. I don't know. The other bit of speculation or suggestion in her report is that they might have applied a different threshold. The short answer is that I do not recall at the time thinking, "This has all changed. Something funny must be going on." I think I just thought that the police had been putting their shoulder to the wheel.

Q3972 Naomi Long: I have just a few questions to clarify a few things in my own mind. Just to be clear, no one in the Northern Ireland Office noticed the change of status in John Downey from the two letters that said that he was wanted to the advice that said that he was not wanted. Is that correct?

Mark Sweeney: I do not recall that I, anyway, or others noticed him particularly and thought, "This person has changed." Obviously, we knew that his status had changed in the view of the police because they had written via the Attorney-General to tell us so. But I do not remember us saying, "John Downey has changed status. This is particularly remarkable," given that a number of others had changed status as well, and we did not know what these individuals were potentially wanted for.

Q3973 Naomi Long: I understand that. When you talked about the need to reconcile the data that you held with the other agencies that were involved, that would not have included any mechanism that would highlight where an individual's status was changing that would have allowed you to confirm before issuing the letter that the information you had received was accurate?

Mark Sweeney: My recollection of the spreadsheet—I have not seen a copy for a long time—is that, broadly, it would have recorded the name; when Sinn Fein had provided it; what the position was in terms of whether they had been written to and, if so, when, to say "not wanted"; whether Sinn Fein had been told that they were wanted; or whether checks were continuing on that individual. So it certainly would not have contained information about individual offences, I do not think.

Naomi Long: No. I am not suggesting that.

Mark Sweeney: I do not think, from memory—again, I do not know, because I have not seen it for a long time—that, to take John Downey, it would have said: "Notified by Attorney-General's Office wanted February 2006; Sinn Fein notified wanted March 2006" and then in another column: "Notified by Attorney-General's Office no longer wanted July 2007; notified by Sinn Fein 2007." I do not think that every time there was an interaction in relation to an individual, there was a separate column recording it. As I say, that is from memory and I have not seen the document.

Q3974 Naomi Long: Dr Case, you have used the database more recently. Can you recall whether that information would have been recorded?

Dr Case: I am afraid that I do not. I am not even necessarily sure that when I was in the Northern Ireland Office, I myself sat down with the spreadsheet. My team had it and operated it, but I am afraid I do not recall.

Q3975 Naomi Long: Sir Jonathan, the spreadsheet—does it detail that level of information?

Sir Jonathan Stephens: I do not know.

Q3976 Naomi Long: Will you be able to revert to us and let us know?

Sir Jonathan Stephens: Yes. I am happy to write with that information.

Mrs Villiers: I acknowledge that the record keeping in relation to the OTR scheme was flawed, both under this Government and its predecessors, as we found out when we were trying to clarify exactly the numbers of people who had received these letters. That is unfortunately very clear. Obviously, it is a matter of regret to me that that is, sadly, a characteristic of the way the scheme was run under both Administrations.

Q3977 Naomi Long: It would still be helpful to know the level of detail that was recorded on the spreadsheet and whether it would have been possible for that to be flagged up. Sir Jonathan, you said at the beginning that it would not have been appropriate to challenge the information that was coming, but you would agree that it would be appropriate to check the information if there were any doubts. You mentioned that there were people who were wanted and then they were not, after further checks. That was how the scheme worked, I think was the phrase you used. You would say that, while the NIO could not challenge the decision on whether people were wanted, it would be appropriate, given that you were the issuing Department of the letters, to check that the information that you had been given was accurate and full.

Sir Jonathan Stephens: The process was a careful one, involving the Attorney-General's Office, the DPP's office and the PSNI. The response came back through those organisations with a clear indication as to whether an individual was wanted or not wanted. In the case in 2007, the NIO did, first of all, seek to establish and confirm that the checks that were being done included checks in respect of other police forces. That was the specific focus of the check that Mr Sweeney asked for in respect of the names that included Mr Downey. So that sort of confirmation that the process was operating as we expected it to and understood it to was done; but we had no means by which to go back and say "We think you have reached the wrong judgment on this case."

Q3978 Naomi Long: No, I accept that; but you could go back and ask the question validly: "This person was listed as wanted; they are now listed as not wanted; could we have clarification, at a very superficial level, of what has changed in the interim?" so that either they would come back and say, "Well, evidence wasn't there," or "We don't need to question them; the case has been resolved; someone else has been found guilty; we have made a mistake, actually—we hadn't checked with another police force. Our apologies. That person

does not get a letter after all.” So it would have been valid, surely, to ask the reasons why status was changing, to have a full understanding of the information that was coming to you.

Sir Jonathan Stephens: I will ask Mr Sweeney to comment on whether there were any—

Mark Sweeney: I was just going to say that my recollection is I don’t think we would have seen it as our role to say to the police, “You told us that x person was wanted, and a year and a bit later, or however long later, you have changed your determination: on what basis have you decided that? Why do you not want to question them? Have other things changed?” Because we would have seen that as a decision for the police and the DPP. As Jonathan said, what we were concerned to do, at the prompting of the Attorney-General’s Office, first, in June 2007, was to say “Have you done these particular checks?” On one view, you are right. One could go back and say, “Are you sure about this?” But actually I think we would have regarded it as a bit odd to go back and ask about individuals, because we did not have any particular knowledge about them, and because we were not the people making the judgments, because we were not a criminal justice organisation.

Q3979 Naomi Long: I was not suggesting you would question the judgment of those involved, but simply the accuracy of the information. You had, for example, internal checks, to make sure that names were not transposed incorrectly. It is obviously conceivable that others could have transposed names incorrectly, and so if someone had previously been wanted, and then not wanted, it would not be particularly audacious to ask the question as to what had led to the change in status.

The reason I ask is this: you said you would not have thought it was your role. When I put my name to a letter and I sign it I take responsibility for its content, and when I delegate that authority to someone else, to sign a letter on my behalf, I still take responsibility for its content. I do not always compile all the data that are contained in the letter, but I am responsible for checking it, when my signature is on it. The NIO was the signing Department, so had a responsibility to check the veracity of the information that was brought through. So it would not have been impertinent, surely, to check on those cases which changed.

I can understand perhaps you did not see it as your role to second-guess every single decision that was put in front of you; but where someone’s status changed there is surely reason to ask what changed.

Mark Sweeney: I think we would have worked on the basis that the police would have been very careful before telling the DPP they did not want someone to do the necessary checks; and that the DPP would have been equally careful before relaying that to the Attorney-General and checking their own files in relation to somebody who was wanted—whether they met the test for a prosecution or not. At the end, the Attorney-General’s Office would write to us and give us the outcome. I understand that we could have asked repeatedly, “Are you sure; are you sure; are you sure?” But in the end we regarded the Attorney-General’s Office writing to us and telling us that those organisations had conducted those checks, as meaning that those organisations had reached those views and done their due diligence.

Q3980 Naomi Long: Okay, thank you. When you then did check in 2007—and no one can remember what triggered that; there was no record of what triggered that check that you did with the PSNI?

Mark Sweeney: The check by the NIO was triggered by the Attorney-General's Office, and that is recorded in e-mail.

Q3981 Naomi Long: Yes. I am interested in that; because why did you check with the PSNI—why did the Attorney-General's Office not go back through the chain you described? The communication was PSNI to DPP to Attorney-General to the Northern Ireland Office. Surely if the Attorney-General had a question about the information, the natural thing would have been to turn to the next person in the chain, the DPP, and say "Could you check with the PSNI that they have done these checks?" Why was that responsibility passed to the NIO?

Mark Sweeney: The Attorney-General's Office asked the Northern Ireland Office on, I think, 11 June 2007, to ask the PSNI. So the short answer is the Attorney-General's Office asked us to ask the PSNI. As I said earlier, it was a process question. It was not a question about an individual name or individual names. It was, "Can you"—it is in the report—"check with the Attorney-General's Office and the Northern Ireland Office that the police have done these checks?" That was then done through a meeting and process of e-mails in which I do not think I was involved, although I was copied, which was an individual in my team, and my boss at the time, Hilary Jackson. That resulted in the police—it was Assistant Chief Constable Sheridan—writing back on 27 June to say that those checks had been done.

I suppose that I would say two things. First, evidently Assistant Chief Constable Sheridan did not see a problem in relaying that fact directly to the Northern Ireland Office because he signed off a letter saying so. The other point—I appreciate that this is speculation—is that, if instead of asking us, the Attorney-General's Office had gone the other way down the chain and said to the DPP or directly to the PSNI, "Have you done these checks?" as I understand it, the point at which the police talks to the DPP about these issues was at the level of Mr Sheridan, so the same question would have gone in at the same point of the organisation. I am guessing, but I presume that that would have produced the same answer.

Q3982 Naomi Long: But you could not necessarily assume that, because the issue would be law enforcement agencies communicating with each other, at a level of detail that may have been politically sensitive, about potential prosecution. For example, when Norman Baxter gave us evidence, he said clearly that he would have felt uncomfortable talking about whether other police forces wanted these individuals because he would have been informing them that they were wanted by other forces. He might not have been as nervous in doing that if his information was being passed to the DPP and the Attorney-General, but he may have been more uncomfortable in doing that if such information was being passed to a political Office.

The question still stands: if there was a need to go from the PSNI to the DPP to make a judgment on whether prosecution was likely before going to the Attorney-General's Office, do you not feel that, with the benefit of hindsight, it would have been sensible to ask the

Attorney-General's Office to conduct its own inquiry into the extent of the checks that the PSNI was conducting at that time?

Mark Sweeney: I think there are two separate points there: one is about the status of individuals and the other is about what process checks the police were undertaking. That question was asked by Hilary Jackson of the Northern Ireland Office of Peter Sheridan. ACC Sheridan wrote back and said, "We are undertaking these checks." Had he been uncomfortable with that, or thought that that information should not be shared with the Northern Ireland Office, I am sure that he would have felt quite able to turn to Hilary or others in the Northern Ireland Office and say, "No, I am not prepared to discuss that with you."

Q3983 Lady Hermon: Was it unusual for you to phone ACC Sheridan's office, or was that routine?

Mark Sweeney: I do not recall doing it a huge amount. I do not think that there was anything unusual in the sense that it was the NIO asking the PSNI a question. So, if you like, another variant of Hilary asking Peter a question was for me to ask his private office.

Mrs Villiers: Perhaps I may come in on that. It strikes me that here again we have another illustration of the problem highlighted in Heather Hallett's report. The scheme evolved over time and there was not a stage at which Ministers at the top of the chain stood back and said, "How is this being done? Is it properly audited? How do we risk-assess it?" Here is another instance of different practice developing over time.

Again, one needs to look at these systemic issues for answers and responsibilities on these matters. It is not so much a matter of Mark Sweeney sending out the letters; it is another illustration of the overall defects in managing the scheme.

Q3984 Naomi Long: And at no time was there any indication from the Attorney-General's Office as to what prompted the Attorney-General to query whether the checks had been undertaken on this particular group of names with all the police forces?

Mark Sweeney: When you say this particular group of names, you do not presumably—

Naomi Long: In 2007.

Mark Sweeney: Okay. The letter which prompted the AGO to ask us to check the particular group of names—it did not include Mr Downey, for the avoidance of doubt—was a list of 25 names. Other than what is in that report, I do not think there is any documentary evidence as to why the Attorney-General's Office did that. I am not aware that it was the Attorney-General personally—from the report I think it was the office—but it is possible that it might have been any number of things. I do not know what the answer is.

Q3985 Naomi Long: Is it possible—this is one of the reasons that was given to us—that it was about PSNI access arrangements to the national computer? Apparently there had been a

change in their access arrangements. You are not clear at the Northern Ireland Office level as to what prompted that request, and no one asked. There has been a stunning lack of curiosity throughout the process, which I find rather shocking to be honest.

Mark Sweeney: Another explanation might be that, because the letter from the PSNI through the DPP to the Attorney-General's Office said, "This individual is not wanted by the PSNI", that form of words prompted the Attorney-General's Office to say to us, "Can you check that they checked with other UK forces?" As I say though, I do not know and I do not recall.

Q3986 Naomi Long: No one would have thought to ask the rationale for the query, to determine whether it affected only that current batch or whether it had affected previous batches of letters that had been issued? Given the sensitivity of the letters and everyone's awareness and acknowledgment of that, no one would have thought to check what the Attorney-General specifically would have—

Sir Jonathan Stephens: I was going to quote from paragraph 6.40, which is the e-mail recording the Attorney-General's Office concern. It says, "Kevin [McGinty] has deliberately not said that they"—the set of 25 people—"are free to return because he doesn't know whether the PSNI have done the checks with other police forces and CSO that they used to carry out. He wants to clarify this with Peter Sheridan". A doubt had arisen in his mind. What this is saying is, "I know that they used to undertake these checks. I am now unsure and I want it to be checked out."

Q3987 Naomi Long: Yes. I've read that and it says, "used to". It did not say at what point he doubted it had stopped. I am asking whether anyone pursued that to see whether the checks had stopped recently. Was there any discussion between yourselves and the Attorney-General's Office to try to get an indication of what triggered the request?

Mark Sweeney: To answer your question: yes, it was pursued. That list of 25 names was, I think, the first list that came through subsequent to Operation Rapid working. Peter Sheridan's letter back is clear, and there is an e-mail exchange about it in the Hallett report prior to it arriving, that those were the same checks that were done during previous reviews. Subsequently, when we got the next list of 10 names, I asked the same question so, in relation to that period at least, we were clear that we wanted to ensure specifically that the checks had been done for all names that were received.

Q3988 Chair: Is there anything else that you would like to tell us?

Mrs Villiers: I just wanted to jump in. I can provide some clarification on whether the letter was signed or not. The letter to John Downey was apparently signed. We know that because the Hallett review obtained a copy from John Downey's legal team. The Northern Ireland Office has a record of the signed cover letter but we have not, so far, found a signed copy of the letter sent specifically to John Downey via Sinn Féin.

Q3989 Ian Paisley: Was that signed in 2007?

Mark Sweeney: Yes.

Mrs Villiers: Yes, that is the date that the letter went out so if it was signed, it must have been signed then.

Q3990 Chair: Do you think that Mr Downey ever physically got it? Going back to the question I asked earlier, it is odd that he refers to the Home Office on a matter that is so important. You would have thought he would know who wrote it.

Mrs Villiers: That is something that we cannot know for certain. The records indicate that a letter was given to Gerry Kelly. Whether he passed it on to John Downey is not clear. Presumably, as John Downey had knowledge of it, he must at least have known about it even if he did not have a copy.

Chair: You have been extremely helpful. Thank you very much for coming.