House of Commons
Northern Ireland Affairs Committee

The administrative scheme for “on-the-runs”

Second Report of Session 2014–15

Report, together with formal minutes relating to the report

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The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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The administrative scheme for “on-the-runs”

Summary

Our sympathies are with the victims and their relatives, and especially those connected with the Hyde Park bombings. We do not believe that they have been well served by HM Government. Nevertheless, we are grateful to former Prime Minister Rt Hon Tony Blair for his apology to victims for the hurt caused by the existence of the scheme, and to Secretary of State Rt Hon Theresa Villiers MP for accepting that the Northern Ireland Office (NIO) shared the blame for the Downey error.

It is questionable whether the “on-the-runs” (OTR) scheme was lawful or not, but we believe its existence distorted the legal process. We accept that there was a difficult peace process going on at the time, but believe that there still has to be transparency and accountability in government and in the legal process.

We also believe, and as has been accepted by some witnesses, including Tony Blair, former Secretaries of State and the Permanent Secretary in the NIO, that it was badly run and, if it existed at all, should have been formalised within the various agencies involved with clear lines of reporting and accountabilities. This should have included full avenues of dialogue between police forces and other agencies involved to ensure that all steps were taken to send out accurate information at the end of the process and discussed publicly. Given the context in which these issues took place we believe that those involved in the process felt strongly that there was the need for a degree of necessary confidentiality. However we do believe that the desire to achieve this contributed to the outcome with which we are faced and we believe that a more open process could have prevented the letter being sent to Mr John Downey.

We are very surprised that Mr Downey’s case remained on the Sinn Féin lists the NIO held and was one of the cases the Operation Rapid team was asked to look at again, given that the NIO were aware that he was wanted for serious terrorist offences. We are further dismayed that the PSNI concluded that he was not wanted. And we question why the letters were worded in the open-ended way they were, saying that the PSNI were “not aware” of interest by any other police force in the person concerned.

We do not accept that the OTRs were an “anomaly”. If OTRs were suspected of having committed offences, they should have been tried in the normal way. If they were not suspected of anything, then there is no issue. The Committee believes that the scheme should never have taken place in the manner in which it was developed and run.

It is hard to understand how anyone could consider that writing letters to innocent people saved the peace process. We therefore conclude the scheme did amount to an amnesty of sorts, in at least one case—that of John Downey.

We are alarmed that the PSNI believed that up to 95 people who received letters were connected through intelligence to almost 300 murders, and indeed that the Metropolitan Police wished to speak to some of them. We urge HM Government to provide the
resources to enable the police to reassess these cases quickly.

We regret the absence of an appeal to remove the stay put on the trial. We are surprised that the balance was placed in favour of preserving the integrity of the criminal justice system over the public interest involved in continuing the trial of someone accused of carrying out multiple murders. On the contrary, we believe that the integrity of the criminal justice system, and part of HM Government, has been damaged by the stay which was put on the case.
1 Introduction and background

1. On 20 July 1982, the Provisional IRA detonated a remotely-controlled car bomb, packed with nails to maximise fatalities and injuries, in Hyde Park as soldiers and horses from the Blues and Royals Regiment were passing by on ceremonial duty on their way from Knightsbridge Barracks to Horse Guards. Two soldiers, Lieutenant Anthony Daly, aged 23, and Trooper Simon Tipper, aged 19, died at the scene; one soldier, Lance Corporal Jeffrey Young, aged 19, died the day after the bomb, and a fourth soldier, Squadron Quartermaster Corporal Roy Bright, aged 36, died two days after that. A further 31 people were injured, some seriously, with the effects being felt by survivors and victims’ families to this day.

2. A few hours after the Hyde Park explosion, the IRA also detonated, by means of a timing device, another bomb in Regent’s Park, killing seven members of the Royal Green Jackets band as they gave a performance. Nobody has ever been charged with the Regent’s Park murders.

3. In 1987, Gilbert “Danny” McNamee was jailed for 25 years after being found guilty of building the bomb used in the Hyde Park attack. He was released from prison in November 1998 under the terms of the Belfast Agreement (also known as the “Good Friday Agreement”) of that year, and had his conviction overturned by the Court of Appeal the following month on the grounds that his conviction was unsafe.

4. No one else was charged with being involved with the Hyde Park bombing until May 2013; indeed, as we were told by Christopher Daly, brother of Anthony, when he later gave evidence to us on behalf of the Hyde Park families:

   prior to […] May 2013, neither I nor any of the families of those killed on that tragic day were even aware that anybody was wanted in connection with the Hyde Park bombing.¹

5. On 19 May 2013, John Anthony Downey, an Irish national, resident in County Donegal, was arrested at Gatwick Airport on his way from the Republic of Ireland to Spain. He was charged and prosecuted on four counts of murder and causing an explosion—the Hyde Park bomb. If the law had taken its course, John Downey would have stood trial; if found not guilty, he would have left court an innocent man. If he had been found guilty, he would now be serving a prison sentence. However, due to what would later be called a “catastrophic error”, he was able to walk free without having to face trial.

6. It transpired that Downey, who was one of those former members of the IRA classed as an “on-the-run” (OTR), was the subject of a letter, signed by an Official in the Northern Ireland Office (NIO), stating that, as far as the Police Service of Northern Ireland (PSNI) were aware, Downey was not wanted by the PSNI, nor, as far as they were aware, by any other UK police force. It is essential to note that the PSNI were unaware of the exact content of the letter issued by the NIO. In fact, the PSNI were kept ‘in the dark’ by the NIO

¹ Q1918
about these secret letters for some 11 years. Downey was, therefore, free to travel to any part of the United Kingdom without fear of arrest.

7. By a bitter irony, the letter was dated 20 July 2007, the 25th anniversary of the Hyde Park bomb. The letter was wrong: Downey was wanted, and the PSNI knew he was wanted, by the Metropolitan Police Service (MPS) on suspicion of involvement in the Hyde Park bomb. However, the PSNI’s Terms of Reference did not consider Downey to have been on the run from the UK, as he had been born and resided in County Donegal in the Republic of Ireland.

8. Due to the NIO’s letter, the trial judge in R v John Downey, Mr Justice Sweeney, ruled, on 21 February 2014, that it would be an abuse of process to try Downey, who had acted to his detriment in travelling to the UK in reliance on the NIO’s letter.

9. The collapse of the case against John Downey provoked a huge public outrage, including a threat from the First Minister of Northern Ireland, Peter Robinson MLA, to resign; to keep him in post, and prevent a collapse of the Northern Ireland Assembly, HM Government announced that it would set up an independent review of the administrative scheme for OTRs, in particular, to examine the circumstances of the letter, whether it had been issued in error to Downey, and to investigate whether any other letters might have also been issued in error. This review was chaired by Rt Hon Dame Heather Hallett (Lady Justice Hallett, although she did not act in a judicial capacity). The Terms of Reference for the Hallett Review are annexed to this Report.

10. Whilst we welcomed Dame Heather’s review, we considered the Terms of Reference for the Hallett Review far too narrow. We therefore announced, on 11 March 2014, our own inquiry which was much wider ranging than simply the circumstances surrounding the Downey letter, and if any others had been issued in error. In addition, unlike Dame Heather’s Review which took all its evidence in private, the evidence taken in our inquiry was in public, as we did not consider that taking evidence in private was in the best interests of establishing the truth for victims; taking our evidence in private would only have reinforced the secretive nature of the scheme.

11. During the inquiry, we held 26 public evidence sessions, at both Westminster and at Stormont, taking evidence from 55 individual witnesses, three of whom—former Prime Minister Tony Blair, and former NIO Officials Mr Mark Sweeney, who signed the letter dated 20 July 2007 to Mr Downey, and Dr Simon Case—we had to summon to attend. We chose not to summon Lady Justice Hallett to attend, but we consider it to be a regrettable discourtesy to Parliament that she declined our initial invitation to give evidence to the Committee, especially as she had not acted in a judicial capacity when carrying out her review. We urge the Government to ensure that, in future, all parties that carry out inquiries or reviews on behalf of the Government are instructed from the outset that they would be required to explain their findings to Parliament if invited to do so.

12. Sinn Féin were responsible for providing a number of the names of people who went on to receive letters from the NIO. Given that they are part of the government of Northern Ireland, we think it was wrong for Sinn Féin to decline our invitation to give evidence in
public, even though they had given evidence to the Hallett review in private. This put into further question the private nature of the scheme, and did, of course, deprive them of the opportunity of putting their side of the argument forward in public.

13. We are grateful to all those who gave oral evidence and to those who submitted written evidence, to the then Speaker of the Northern Ireland Assembly, William Hay MLA,2 for allowing us to hold our evidence sessions at Stormont, to the Assembly staff who facilitated our meetings there, and to Andrew Trolley QC and Dr Austen Morgan3, who provided specialist legal advice during the inquiry.

14. We would also wish to place on record our particular thanks to the Attorney General’s Office (AGO) for making available to us the witnesses’ statements and many other documents which were available to Mr Justice Sweeney during the Downey case—the “Downey disclosure documents”. Although these documents were, technically, already in the public domain, we agreed to make them available also on the Committee’s website whenever the Committee, or witnesses, quoted from a particular document. In that way, we hoped that we would make those documents more readily accessible to members of the public. We have now placed all the documents on our website.

The impact on victims

15. During our inquiry, we have sought to keep the views and feelings of victims, survivors and relatives uppermost in our minds. It is invidious to speak of one event as being the “worst” of the Troubles; to anyone who lost a loved one, the incident which took his or her life will always be regarded as the “worst” for those left behind.

16. Nevertheless, the Downey case will have been particularly poignant for the Hyde Park families as, over 30 years after the murder of their son, brother or father, there seemed to be a real possibility that justice might finally be achieved. Any optimism they might have had was cruelly shattered due to the administrative scheme for OTRs which is described in this Report.

17. In our meetings with victims’ families and representatives, what struck us, apart from the dignity they have all displayed, was the fact that no one expressed a desire for “vengeance”. The majority asked for truth and justice. For example, we were told by Julie Hambleton, of Justice4the21, and whose sister Maxine was killed by the IRA in the pub bombings in Birmingham on 21 November 1974, that:

\[
\text{Justice, in the context of the Birmingham pub bombings, is the use of authority to uphold what is just and to administer the investigations, establishment and uphold the principles of laws set by precedent and to treat all before the law fairly and decently. The basic principle that all are equal before the law has been conveniently and deliberately ignored. The authority of the United Kingdom has blatantly discriminated against the many seeking}
\]

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2 Now Lord Hay of Ballyore
3 For declaration of relevant interests, see 2 April 2014 in ‘Formal Minutes 2013-2014’, Northern Ireland Affairs Committee
justice for this crime. The United Kingdom has witnessed [...] a total corruption of justice in this matter [...] 4

18. Michael Gallagher, of the Omagh Support and Self Help Group (OSSHG), and whose son Aiden was killed in the Omagh bomb on 15 August 1998, also told us:

I am concerned about truth, justice and dignity for those who have suffered. By sending letters of assurance, the possibility of justice is denied to many victims and their basic human rights have been ignored [...] There seems to be no accountability mechanism working that stops politicians from ignoring the wishes of Parliament. 5

19. Some other victims, however, simply express the wish to be able to get on with their lives. Kevin Skelton, who lost his wife, Mena, in the Omagh atrocity, writing on behalf of Families Moving On, said that:

At the end of the day we are all victims some want justice and are entitled to justice but as we all know that will never happen so you have to talk to the victims in the middle ground who are prepared to move this process forward because the past is the past and we can’t always keep looking back. 6

20. However, the emotion that seems most prevalent amongst victims and survivors is a sense of betrayal by HM Government, which it seems sought to keep key elements of the OTR scheme secret. As Cat Wilkinson, sister of Aiden Gallagher, from OSSHG, said:

[…] it is about the secrecy. There are secret deals being done and they say it is for the better good and the victims, to be honest, are always the last thought in their mind […] Even with the Government, which you put your trust into […] things perhaps have to be done behind closed doors that we do not need to know about, but not something so major as to let people get away with murder. They tried before, in 2005, to do it openly and it failed[...] 7

21. Another particularly telling comment came from David Scott, a member of the Victims and Survivors Forum, and whose father was an indirect victim of The Troubles. He told us in Belfast that:

The phrase that comes continually to my attention is the word “justice”. Justice does not appear to be on the radar currently. There is a deep sense of betrayal since the perpetrator appears to be benefitting much more from the benefits of the Belfast Agreement than the victim. For many folk, there is a difficulty in relation to the Belfast Agreement [...] 8

4 Q2285
5 Q2251
6 Families Moving On (OTR0021)
7 Q2281
8 Q1153
22. When Ann Travers, also a member of the Victims and Survivors Forum, was asked whether the secrecy surrounding the scheme had affected her confidence and trust in political parties and the system itself, her response was:

> It has irritated me whenever I hear people say, “You should’ve known about this. It was reported. I reported it.” We are talking about 1998 when we agreed the Belfast/Good Friday Agreement. Maybe peoples’ loved ones had been blown up or murdered only 10 years previously [...] Anything I can do is to help prevent victims from being retraumatised. They have been through enough. I do agree that the secrecy just cannot happen any more. We need to have transparency, and we need to have honesty.9

**The Belfast Agreement 1998**

23. On 10 April 1998—Good Friday—an agreement was signed in Belfast that, effectively, put an end to more than 30 years of bloodshed known as The Troubles. Perhaps one of the most controversial parts of the Belfast Agreement10 was that both the UK and the Irish Governments would “put in place mechanisms to provide for an accelerated programme for the release of prisoners, including transferred prisoners, convicted of scheduled offences in Northern Ireland or, in the case of those sentenced outside Northern Ireland, similar offences (referred to hereafter as qualifying prisoners)”, and that “both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners [...] should the circumstances allow it, any qualifying prisoners who remained in custody two years after the commencement of the scheme would be released at that point.” In other words, someone convicted of mass murder could be released after serving as little as two years in custody.

24. Referendums on 22 May 1998, in both Northern Ireland and in the Republic of Ireland, endorsed The Belfast Agreement, and legislation, the Northern Ireland (Sentences) Act 1998, enacted the early release scheme. However, the Belfast Agreement did not cover those individuals suspected of having carried out terrorist offences, nor those who had been charged, or convicted, but had subsequently escaped from detention. Most of these individuals were members of the Provisional IRA, and many had sought refuge from justice in the Republic of Ireland, though some had fled to other countries, such as the United States, and they came to be known as the “on-the-runs”.

25. The situation of OTRs was not discussed during the negotiations for The Belfast Agreement, as Tony Blair, Prime Minister at the time, told us that the issue of OTRs “only arose after those discussions”.11

26. In contrast, many loyalist terrorists, from organisations such as the Ulster Volunteer Force or the Ulster Defence Association had no equivalent safe haven or bolt-hole to
escape to. Most loyalists fleeing Northern Ireland went to Scotland where, of course, they were still subject to UK law.

27. In order to deal with OTRs, HM Government came up with an administrative scheme to have individual cases looked at, details of which are set out below.

28. There was no public indication whatsoever that OTRs had been issued with what came to be called “comfort letters”. The fact that Downey escaped justice due to his reliance upon a “comfort letter” was devastating news for the families of the Hyde Park victims, as well as inspiring feelings of real anger and incredulity for those who knew nothing about such letters before Mr Justice Sweeney’s ruling on 24 February 2014.
2 The administrative scheme

What was the scheme designed to do?

29. The administrative scheme to deal with OTRs arose out of what Sinn Féin saw as an anomaly left over from the Belfast Agreement. After the Agreement was signed, it became apparent that those who had voluntarily exiled themselves from the jurisdiction would not be covered by the terms of the early release scheme and would not be able to return to the UK without the risk of arrest.

30. The administrative scheme devised by the Government allowed those individuals on the run to ask, through lists of names mainly submitted to the NIO and No. 10 Downing Street by Sinn Féin, the Irish Government, and the NI Prison Service, whether they would be at risk of arrest should they return to the UK.

31. The scheme involved checks which, according to the Report of the Hallett Review, would, in general, be carried out in the following way:

   the NIO would forward the names, via the Attorney General’s Office and the Public Prosecution Service for Northern Ireland, to the PSNI. A dedicated PSNI team conducted a review and submitted a report to the DPP(NI). The DPP(NI) and Attorney General then determined whether arrest/prosecution was justified. If the police/prosecutorial review concluded that an individual was ‘not wanted’, the NIO wrote to Sinn Féin enclosing a letter for onward transmission to the individual.\footnote{12 The Hallett Review, \textit{The Report of the Hallett Review}, July 2014, para 2.21}

Whilst this was the essence of the scheme, it is very important to emphasise at an early stage that the Royal Ulster Constabulary (RUC)/PSNI did not know the exact content of the letters being sent by the NIO throughout the operation of this scheme.

The type of people on the lists

32. The initial administrative scheme looked at the names on Sinn Féin lists 1 and 2, sent on 19 May 2000 and 30 March 2001 respectively. In his evidence to us, the Director of Public Prosecutions for Northern Ireland (DPP(NI)), Barra McGrory QC, who had previously been the solicitor who represented Sinn Féin and the OTRs during part of the administrative scheme, described the type of people whose names were on the lists as follows:

   Phase one, which was Sinn Féin list one—the list of 36 names—is difficult, because among those names were 17 escapees and quite a number of others who were unlawfully at large and wanted […] There were those who had not served two years who would have had some time to serve and then there were
others who were not escapees but who had skipped bail or who were on the list as well.\textsuperscript{13}

He continued by telling us that:

I have no doubt that many people received letters saying that they were not wanted who, in ordinary circumstances, the police would have liked to speak to. That is not to say that people who received letters saying that they were not wanted would automatically or necessarily have been prosecuted. Those are two very different things.\textsuperscript{14}

33. The then Assistant Chief Constable, now Deputy Chief Constable, of the PSNI, Drew Harris, made the following comments to the Committee on 7 May 2014, with regard to the type of people who were included on the Sinn Féin lists. He stated:

When you look through the full 228 names, there are people in that who are, in your own terms, “notorious”, without a doubt. 95 of these individuals are linked in some way or other to 200\textsuperscript{15} murder investigations, but that linkage may only be in intelligence. All of that is now being assessed.\textsuperscript{16}

We, therefore, have several areas of concern with regard to the types of people on the Sinn Féin lists.

34. We are particularly troubled about Barra McGrory’s comments that “in ordinary circumstances, the police would have liked to speak to”\textsuperscript{17} those people. The police would normally speak to someone who was a suspect, or potential suspect, but did not do so with OTRs. This meant that the police did not have the opportunity to arrest and charge those people as a result of that questioning. This strikes us as having potentially distorted the course of justice.

35. Finally, the fact that 95 recipients of the letters are potentially linked to 295 murders is undoubtedly significant, albeit through intelligence, and begs the question as to why these letters were issued if that was the case. We are left wondering whether any political pressure was applied to ensure letters were issued as expeditiously as possible.

**Agreement of the schemes**

36. The scheme was not subject to an overarching agreement with all of the political parties involved in the peace process. Key figures in the negotiations to the Belfast Agreement, such as Rt Hon David Trimble (now Lord Trimble), former leader of the Ulster Unionist Party, and Mark Durkan MP, former leader of the SDLP, were kept totally in the dark by

\textsuperscript{13} Q1301
\textsuperscript{14} Q1301
\textsuperscript{15} The witness requested that his evidence be amended to clarify that the 95 individuals are linked in some way or other to 200 murder investigations, “touching upon 295 murders”, but that linkage may only be in intelligence.
\textsuperscript{16} Q696 [Drew Harris]
\textsuperscript{17} Q1301
HM Government about it. Former Secretary of State for Northern Ireland, Rt Hon John Reid (now Lord Reid) told us that, “what became known as the administrative scheme was not initially a scheme at all. It was meant to deal with a limited number of individuals, and it was only over time that it developed into the size that it has now.”

37. The scheme evolved piecemeal, as opposed to being something that was designed with the whole process and outcome in mind from the beginning. At the outset, it was not realised that there would be so many names appearing on the lists and it certainly was not considered that the scheme would continue for nearly 14 years.

**Beginnings**

38. The scheme started in 1998 by looking at whether the outstanding prosecution against one particular high profile individual, Rita O’Hare, could be stopped. Sinn Féin was extremely keen to see her able to return to the UK and participate in the peace process. It is believed that Ms O’Hare was seen as an important link between Sinn Féin and the United States.

39. This request was renewed in 1999, alongside two further names, which resulted in them being considered by the Attorney General and the DPP(NI) to assess whether they were able to return to the UK without fear of arrest.

40. Following a meeting on 4 November 1999 where Gerry Adams, leader of Sinn Féin, raised those ‘on-the-run’, and in particular Rita O’Hare, the then Prime Minister, Tony Blair, wrote to Mr Adams, on 5 November 1999, stating:

   In the case of [words redacted] and others who are subject to extradition warrants, I entirely take the point that some of these people are active advocates of the peace process. The question of whether to pursue prosecutions is a matter for the DPP(NI) and the Attorney General who, constitutionally, act independent of the Government. However, I understand that the Attorney General would wish to use the discretion he has to review, without commitment, whether the public interest continues to require a prosecution in these cases.

In a further letter the next day, Tony Blair remarked that he hoped to have the review finished by Christmas. Given that the review of some names was still going on in 2012, this hope proved to be completely unrealistic.

41. It was still considered by the prosecution authorities that, in the case of Rita O’Hare, there was sufficient evidence to justify prosecution, and she was not allowed to return to the UK without risking being arrested. As a result of these deliberations, Sinn Féin put pressure on HM Government for movement on others living outside the UK who wanted...
to return. Because of this pressure, on 5 May 2000, Tony Blair wrote to Gerry Adams, stating:

I can confirm that, if you can provide details of a number of cases involving people “on the run” we will arrange for them to be considered by the Attorney General, consulting with the Director of Public Prosecutions and the Police as appropriate, with a view to giving you a response within a month if at all possible.\textsuperscript{20}

This resulted in the first list of 36 names being sent to Downing Street on 19 May 2000.

42. By this stage, the RUC (the predecessor of the PSNI), as well as the DPP(NI), the AGO, and the NIO were all involved in the scheme and a more formalised process was beginning to form. Moreover, by March 2002, the PSNI had drawn up detailed Terms of Reference. These are reproduced in the Report of the Hallett Review at Appendix 7.\textsuperscript{21} These Terms of Reference included the requirement that the PSNI inform the DPP(NI) and the Crown Solicitor of whether a person is wanted by any other police service in the UK and by any other country outside the UK.

**Who initially drove the process?**

43. Sinn Féin raised the issue of OTRs repeatedly with HM Government and initially discussed it at a very high level in talks with Tony Blair and his Chief of Staff, Jonathan Powell. The initial scheme (as outlined above) was also discussed between Mr Bertie Ahern TD, the then Taoiseach, and Tony Blair. Jonathan Powell told us that he first heard about the OTR issue when it was raised by Sinn Féin in November 1999. He said:

after the Winfield House meeting[…] is when Adams and McGuinness came with a list of things they wanted, including the solution to the problem of OTRs. We then started working on it at that stage […] the Irish Government, thereafter, did apply pressure on us, did try to persuade us this was the right way to move forward, yes.\textsuperscript{22}

44. Further evidence of the high level nature of these talks can be seen from a letter the Prime Minister received from the Taoiseach, after a meeting in December 1999. In the letter, Mr Ahern pressed HM Government to drop prosecutions in relation to those who had been arrested or convicted of offences which would have been a “qualifying offence”\textsuperscript{23} under the Belfast Agreement. His letter stated:

there is a strong case for deciding that the relevant authorities will not proceed further now or during the continuation of the complete and unequivocal ceasefire, in regard to certain outstanding warrants or any

\textsuperscript{20} Downey Disclosure Documents, p 37, Letter from Tony Blair to Gerry Adams, 5 May 2000


\textsuperscript{22} Q2659

\textsuperscript{23} As defined by Northern Ireland (Sentences) Act 1998, s3(7)
proceedings that may be subsequently completed in all relevant jurisdictions in Ireland and in the United Kingdom. The warrants of proceeding related to persons who had they already been arrested for or convicted of the offices in question would have been qualifying prisoners for the purposes of the Good Friday Agreement.24

45. In the letter discussed in paragraph 40, Tony Blair promised that the Attorney General would review the list of OTRs and decide whether there was enough evidence to prosecute. However, Sinn Féin thought that they were getting something more. In a meeting between the then Secretary of State, Peter Mandelson (now Lord Mandelson), and Sinn Féin on 26 July, Gerry Kelly MLA stated that:

Sinn Féin understood why, in his letter to Adams, the Prime Minister set out the formal technical position: when things got written down everyone covered themselves. But in private meetings, the understanding had been clear: the Prime Minister said that he would sort things out.25

46. The high-level nature of the talks was confirmed by Tony Blair when he appeared before us. He stated: “I was making a promise to deal with it [the issue of OTRs]. I was, at points, going for this scheme, that proposal, this legislation”.26 He was clearly pushing for a solution.

47. It is clear that Sinn Féin pushed for OTRs to be dealt with at the highest level, and that promises were made by the Prime Minister as a result of the pressure put upon HM Government by Sinn Féin. Over the years, Tony Blair put in much effort to ensure those promises were fulfilled, but did so without telling other Northern Ireland party leaders about the exact nature of the administrative scheme.

48. The role of the Irish Government also gives rise for concern, as the December 1999 letter highlighted that it was pushing for cases which had not even been tried in the United Kingdom courts to be completely dropped. It appears that the Irish Government was, in effect, trying to persuade HM Government to introduce an amnesty for republican terrorist suspects.

49. We would like to see HM Government state its policy on pursuing those who were still wanted at the end of the OTR scheme including Rita O’Hare.

Barriers

50. Sinn Féin did not ask directly for an amnesty. However, in a meeting on 2 May between Jonathan Powell, NIO representatives, Irish Officials and Sinn Féin, it was noted that “Sinn Féin want an undertaking that the general principle of not pursuing OTRs will be
recognised by July.”

When questioned on whether Sinn Féin had asked for an amnesty, Lord Mandelson said that:

To all intents and purposes, yes. What they wanted was a solution for all the OTRs and not part of them and, secondly, they did not want a system created in which OTRs would effectively have to surrender themselves to whatever authority it was in Northern Ireland for however short a time.

This clearly shows that, whilst not asking for an amnesty directly, this is effectively what Sinn Féin wanted.

51. It is clear from the Downey disclosure documents that the then Attorney General, Rt Hon Lord Williams of Mostyn QC, emphasised the legal process that should be followed for all OTR cases. In a letter to the then Secretary of State, Lord Mandelson, the Attorney General stated:

I am seriously concerned that the exercise that is being undertaken has the capacity of severely undermining confidence in the criminal justice system in Northern Ireland at this most sensitive of times. Individual prosecution decisions have to be justifiable within the framework in which all prosecution decisions are reached and I am not persuaded that some unquantifiable benefit to the peace process can be a proper basis for a decision based on public interest.

As a result of his letter, decisions on whether an OTR on the list was wanted were based on the evidential test and not the public interest test. For something to satisfy the evidential test, prosecutors must be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against a suspect. According to the Code for Crown Prosecutors, “it has never been the rule that a prosecution will automatically take place once the evidential stage is met. A prosecution will not usually take place unless the prosecutor is satisfied that there are public interest factors tending against prosecution which outweigh those in favour.” In the case of OTRs the public interest test could have been based on the wider benefit to the peace process and, whilst this was considered, the then Attorney General rejected its use.

52. Jonathan Powell said that, due to these restrictions, the promises made to Sinn Féin, i.e. that they would sort the issue of OTRs out, were ultimately not fulfilled. He told us:

The point is that we were trying to come up with a scheme that would solve the problem of those people who were wanted. [...] We came up with many
different schemes to try to solve it, but none of them worked. In the end, we failed to deliver on the promise that we made to resolve that problem.31

53. Tony Blair agreed with Jonathan Powell, stating that Sinn Féin wanted HM Government to deal with those who were wanted, not those who were not wanted. He told us, “All my focus was on whether it was possible to put together a proper scheme to deal with the problem in its entirety. In the end, we were never able to do that, and we therefore never actually had the deal”.32

54. Without the restrictions placed upon the scheme by Lord Williams, that only the evidential, rather than the public interest test, would be considered,33 it is possible that many more of those on the Sinn Féin lists may have been eligible for a letter stating they were not wanted. We welcome the fact that Lord Williams intervened in this way, and consider his behaviour was an example for others.

Did it go over and above the terms of the Belfast Agreement?

Dropping extradition cases

55. The dropping of extradition cases was one concession given to Sinn Féin as a result of the OTR discussions. In June 2000, shortly after the first Sinn Féin list was sent through, there was some discussion between the Secretary of State for Northern Ireland and the Attorney General with regard to the dropping of certain extradition cases. During the exchange it was recognised by the then Attorney General that the power lay with the Secretary of State to decide whether an extradition case should be dropped. In response to this suggestion, Lord Williams raised some concerns, and stated:

Further a decision not to extradite leaves two issues unresolved. The first is whether any charge ought to be brought in relation to the escape. […] perhaps the more difficult problem is whether or not you decide to continue with an extradition, that does not affect the fact that a person concerned still has a prison sentence to serve. If the individual returns voluntarily to the UK, he will be arrested and taken to prison to complete the sentence […] I understand that a number of the seventeen were convicted for murder.34

On 21 August 2000, Lord Mandelson wrote to the then Attorney General, saying that he was going to drop the remaining extradition cases.

56. In a meeting in Castle Buildings in Belfast on 31 August 2000, it was noted that the people on the Sinn Féin lists would not be willing to present themselves to the authorities. The meeting note stated:

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31 Q2576
32 Q3682
33 As we will set out later, the public interest test was used in certain limited cases
34 Downey Disclosure Documents, p 65, Letter from Lord Williams to Peter Mandelson, 2 June 2000
Mr Kelly was adamant that such a scheme would not work and that no-one who had gone abroad to avoid arrest would willingly hand themselves in. He outlined the unreasonable action taken, he claimed, when escapees had been re-arrested in the past.35

57. Subsequently, in a meeting between the Secretary of State and the Attorney General on 11 September 2000, the Secretary of State addressed this point. He said:

Sinn Féin were unhappy about his [Lord Mandelson’s] proposed scheme as it meant individuals giving themselves up to authority and being released subject to constraints. However, nothing less than that would be acceptable to him.36

58. The scheme proposed by Lord Mandelson, in a statement on 29 September 200037 made it clear that when those ‘on the run’ returned to the UK, once extradition had been dropped, they would have to submit an application to the Sentence Review Commissioners. They were, therefore, no better off than those who had been released under the Sentences Act.

59. Even though the extradition cases were dropped, we have seen no evidence that those returning were compelled to present themselves to authorities upon their return to Northern Ireland. We believe that some were given a ‘not wanted letter’, in some cases the Royal Prerogative of Mercy (RPM) was used, and, in the cases of Maze escapees, where extradition was sought due to their escape, the public interest test was used to drop cases against them.

Maze escapees

60. Cases against Maze escapees were dropped on the grounds that there was no longer a public interest in pursuing the cases against them. In this instance, Rt Hon Lord Goldsmith QC, who was then the Attorney General, was willing to consider those cases on public interest grounds, which was something Lord Williams was not willing to do. Barra McGrory, in his written evidence, set out the circumstances of how this came about, he stated that:

The Attorney set out his own view that in these circumstances the public interest did not require prosecution and that this was his advice to the Director. On 8 January 2001 a decision for no prosecution in the Maze escape case was issued. This related to 12 suspects all of whom appeared on the Sinn Féin List. [...] In relation to the offence of escaping from lawful custody the Director indicated that without further police enquiries he was not able to conclude that the evidential test would not be met. [...] [He]

35 Downey Disclosure Documents, p 209, Minutes of OTR meeting with Sinn Féin, 31 August 2000
36 Downey Disclosure Documents, p 219, Minutes of meeting between Peter Mandelson and Lord Williams, 11 September 2000
37 ‘Statement by Secretary of State, Peter Mandelson MP on extradition of convicted fugitives’, Northern Ireland Office press release, 29 September 2000
concluded that the public interest did not require prosecution. A further review meeting was held on 12 January 2001.38

This meant that the cases against the Maze escapees, for their escape from prison, were dropped on the grounds that even though the evidential threshold would be met, the Attorney General and the DPP(NI) agreed that there was no longer a public interest in pursuing a prosecution.

61. One of the most controversial issues within the Belfast Agreement was the early release of prisoners, but at least it was publicly disclosed in the Agreement which itself was endorsed by referendum and enshrined in statute. By contrast, the administrative scheme for OTRs, also a highly controversial scheme, remained largely invisible for some 14 years.

62. We believe the scheme was intended to go beyond the Belfast Agreement and the early release scheme, to cover further categories of republicans accused of serious terrorist acts. To this extent the public was deceived.

63. The dropping of extradition cases resulted in some suspected terrorists having the opportunity to return to the UK, without standing trial. The dropping of the cases against the Maze escapees, using a public interest argument, also goes beyond the terms of the Belfast Agreement. Those released under the Agreement had, at least, stood trial and been convicted for the crimes they committed, whereas the Maze escapees did not face further trial for the crime of escaping prison.

The involvement of politicians and civil servants in decision making

64. In the UK, the criminal justice system should operate independently of government. However, one of the most unusual and surprising features of the administrative scheme was the role played by, and between politicians, Officials and the prosecution authorities.

65. The roles that the various public bodies played within the administrative scheme was described differently by the Officials involved. Kevin McGinty, Director of Criminal Law and Deputy Head of the AGO, described the role of the prosecutorial authorities as follows:

I am not saying it is unlawful or illegal. It was an unusual process that the prosecutor would not normally do. It was taking this step because of the unusual circumstances in Northern Ireland; the prosecutor and the police were being asked to do it by those involved in the negotiations in the peace process in Northern Ireland. It is a uniquely Northern Ireland issue.39

66. Officials in the NIO also had a key role to play in the scheme. Sir Bill Jeffrey, who was Political Director of the NIO from 1998 until 2002, described the NIO’s role in the scheme as “highly unusual” but “justified”. In evidence to us, he stated:

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38 Barra McGrory [OTR0018] para 10
39 Q558
It was, as other witnesses have said, a highly unusual arrangement, but it was one that seemed to me, at least, justified by the conditions in which Ministers were operating at the time and the efforts they were making to implement the agreement and advance the process.\(^{40}\)

67. Sir Jonathan Philips, who was Director-General, Political, in the NIO from 2002, and Permanent Secretary from 2005 to 2010, told us that Officials during his time “were acting within the framework of the scheme as it had evolved since 2001.”\(^{41}\) This suggests to us that, reasonably early on in the scheme, there was at least a very loose framework in place for the role of NIO Officials.

68. Officials in the early days of the scheme were ultimately trying to implement in good faith what was desired by Ministers. Nevertheless, there has been some suggestion that the role of Officials and the NIO blurred the principle of the separation of powers, and the public expectation that the criminal justice system should operate separately from government.

69. Another surprising and worrying feature of the scheme was the degree of knowledge that different Secretaries of State had about it and its operation. For example, Lord Mandelson was closely involved in the scheme. He advocated for its use in individual cases, dropped extradition cases and also made use of the RPM. He was fully aware of the process from end-to-end.

70. Lord Mandelson’s successor as Secretary of State for Northern Ireland, Lord Reid, was also fully aware of the processes involved in the scheme. He appears to have assumed that everyone else was too, although did not see the process as a fully-fledged scheme during his time at the NIO.

71. Subsequent Secretaries of State, however, knew much less about the scheme and its operation. Rt Hon Paul Murphy MP, who was Secretary of State for Northern Ireland between October 2002 and June 2005, succeeding Lord Reid, told us that:

   During my time after that, I cannot actually recall—but it does not mean to say I did not know—anything about the administrative scheme to which you were referring. I have had a look at the documents that have very kindly been sent to me and they may well have crossed my desk, but I do not see my name on any of them, in terms of being copied to me. […] I am not saying I did not know about it, but I cannot recall certainly it being an issue, in the way it developed into as the years went by. […] I do remember the issue of on-the-runs, but I want to distinguish between the two things completely.\(^{42}\)

72. It is evident that Mr Murphy cannot recall anything about the administrative scheme, during his time as Secretary of State. We have no reason to disbelieve Paul Murphy’s
account of his time in the NIO and believe him to have been a very co-operative witness. Given his failure to remember much about the scheme, it could suggest that in this instance Officials continued with the scheme without the full authority of the Secretary of State. During his time, twelve letters were issued by Officials.

73. Thereafter, Rt Hon Peter Hain MP, who was Secretary of State for Northern Ireland between June 2005 and June 2007, was able to reveal far more about the details involved in the scheme. Indeed, during his time as Secretary of State, Operation Rapid (which we will discuss later) was established within the PSNI. Mr Hain told us:

> The administrative scheme processed people on behalf of whom Sinn Féin inquired as to their status, were they wanted or not, at the time of asking. […] In the case of those who were not wanted, the letters they received contained statements of fact, after careful checks by the police, the Attorney-General’s office and Northern Ireland Office Officials. They were clear that, should further evidence come to light, these letters would no longer be valid.43

He also contributed by way of a witness statement44 to the Downey trial, which clearly reflects his intimate knowledge of the scheme. In it he stated:

> The scheme addressed the position of individuals who through Sinn Féin put their names forward. To qualify for consideration the offences for which each individual who believed he or she might be suspected, or “wanted” (in some cases already convicted and having escaped from prison), should have been committed before the signing of the Good Friday Agreement in 1998 and have been connected with the conflict in Northern Ireland. […] Whilst the first cases pressed by Sinn Féin concerned those who lived and had family in the North of Ireland, the scheme extended to applicants in the Republic of Ireland who had no such relationships and to persons whose extradition had been actively sought from within other jurisdictions. The scheme was not limited to offences committed in the North of Ireland […] There were a number of exceptional features to the scheme. The first, of course required Sinn Féin being formally put on notice; individuals who otherwise might not know with any certainty that they could be subject to arrest were alerted. The second was that the scheme progressed in a non-public manner. Confidentiality was maintained for the individuals who submitted their names to the scheme; neither the names of the applicants nor the outcome of the applications were subjected to publicity.45

However, unlike some of his predecessors, such as Lord Mandelson and Lord Reid, he was not involved in any decision making, or advocating for individuals. He told us, “It would

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43 Q1696
44 Downey Disclosure Documents, Peter Hain Witness Statement to Mr Justice Sweeney, 30 January 2014
45 Downey Disclosure Documents, Peter Hain Witness Statement to Mr Justice Sweeney, 30 January 2014
have been [...] absolutely improper for me to have got involved in the assessment of who did or did not receive those letters.”

74. He also argued that he was not involved in the mechanics of the scheme and was not aware that the PSNI did not know about the letters, saying, “Frankly, I didn’t realise that they didn’t know. I didn’t realise that. As I said, I was not involved in the mechanics of the scheme.”

75. The direct involvement of Secretaries of State for Northern Ireland, Officials in the political directorate in the NIO, and even No. 10 Officials, in the criminal justice process was recognised as being extraordinary by many witnesses. We understand that the circumstances after the Belfast Agreement were also extraordinary and given the lack of confidence Sinn Féin, at that point, had in the criminal justice system in NI, we recognise that an extraordinary process was required. However once Sinn Féin had signed up to support policing in NI this scheme should have reverted to more normal criminal justice processes. We also consider that the extraordinary nature of the scheme should also have required all those involved to put in place thorough processes to ensure that the identified risks of damaging the criminal justice processes were mitigated as far as possible from the start. It is greatly regrettable that this was not done.

76. It is apparent to us that different Secretaries of State played significantly different roles in the scheme. Those who were in post at the initial stages of the scheme were very knowledgeable about it, as was Peter Hain, a long serving Secretary of State for Northern Ireland. His evidence appears to have been heavily relied upon by Judge Sweeney in the Downey judgment. Those involved later in the scheme seemed to be much less well informed about the detail of the scheme, and did not have the same role with regard to individual OTRs. This may have been because the scheme had become firmly established by the time they became the Secretary of State and it continued to be operated by NIO Officials. It was wrong the final scheme continued without the full involvement of successive Secretaries of State.

Role of the RUC GC/PSNI in the initial scheme

77. Sir Ronnie Flanagan, who was the Chief Constable of the RUC when the scheme began, told us about the initial Police Service involvement in looking at OTR cases. He stated, “if we take April 1998 as the signing of the Good Friday Agreement, it would be some time after that [...] My recollection is that in— I am guessing—1999 or 2000 we [the RUC] would have been asked questions about identified individuals.”

78. He went on to describe how the scheme operated at the time he was Chief Constable as follows:

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46 Q1720
47 Q1700
48 Q424
during my time as Chief Constable there would have been that process—a process chaired by the then Director of Public Prosecutions—to consider the position of individuals [...] We were given the name of an individual and considered all of the intelligence, if there was any that we held about that individual, and whether there was any fingerprint, DNA or physical witness evidence or anything else, and if, after an examination of all of that, we had no grounds for arresting a person whatever.49

79. Sir Ronnie saw the role being undertaken by the police at this stage as normal policing. When we asked him whether what the police were doing was normal and if they were just confirming whether there was enough evidence to prosecute, Sir Ronnie told us, “Yes. That is a fair description.”50

80. The scheme developed into something more formalised as it continued. In 2002, the PSNI drafted Terms of Reference for the scheme, which listed everybody’s responsibilities51.

81. Sir Hugh Orde, formerly PSNI Chief Constable, differed in his view to Sir Ronnie Flanagan. He described the scheme as something unusual, and different to what would normally be considered a normal review process. He expressed the view that:

   This was without question different from any other review process in my professional experience as a police officer. People are circulated as wanted; there is an obligation on the service nationally to review those cases routinely to see if those cases still stand up, because if you do not, someone may end up getting arrested when you have not got a case, and that is a) unlawful and b) expensive. So, there is a process in this country. The unique part was that we would then routinely communicate that information to the prosecuting authority. That was different; we would not do that in the United Kingdom routinely.52

He did make it clear that he did not see anything unlawful about the scheme or the role carried out by the PSNI.

82. We also looked at whether there was any undue political pressure put on the police during the original administrative scheme. Sir Hugh Orde stated he was:

   very concerned that the suggestion is that at any stage, at any time, one of my senior investigators was put under any pressure to release serious terrorist suspects—of course, in the particular case referred to by Mr Baxter, one of

49 Q432
50 Q488
52 Q267
whom was convicted. It did not happen in my judgment and I would be very, very surprised if any such call was made in that regard.\textsuperscript{53}

83. Whilst the role being undertaken by the RUC GC/PSNI were highly unusual, the police and prosecuting authorities carried out their task with appropriate diligence during these early years of the scheme, in what were very difficult circumstances. We are very concerned by Mr Norman Baxter’s assertion of political interference in policing matters and hope it is investigated properly.

\textbf{Role of the Public Prosecution Service for Northern Ireland}

84. We have heard from various witnesses that the former DPP(NI), Sir Alasdair Fraser QC, played a vital role in the initial scheme, to the extent that, according to Kevin McGinty, he “insisted that he would take decisions personally himself. We tried everything we could to try to ensure that the decisions that were taken were as good as they could possibly be.”\textsuperscript{54}

85. Barra McGrory stated that the DPP(NI)’s role in the initial scheme was as follows.

Sir Alasdair became engaged with the scheme to give a prosecutorial assessment of the individuals whose names he was given by the police. It would have been clear that there was some method of communicating that to the individuals concerned, but the Department of the Director of Public Prosecutions was not involved in that and was not sighted on the majority of the letters at that time.\textsuperscript{55}

He also told us that:

Anyone who knew Sir Alasdair [Fraser] will know that he was not only a man of the utmost integrity but he was fastidious in his record keeping and documenting of events. So, we have the benefit of his fastidiousness in that regard.\textsuperscript{56}

\textbf{Overall conclusions on the initial scheme}

86. Whilst the scheme may not have given Sinn Féin exactly what they wanted, it was designed to go well beyond the terms of the Belfast Agreement early release scheme to cover a much wider range of people. It allowed people to return to the UK, without going through any judicial process. It also allowed prison escapees to return to the UK, without serving the remainder of their sentence or being charged with escaping from prison.
87. At this point we would also like to recall what Barra McGrory told us, that these people in “normal circumstances, would be arrested, interrogated”57 before a decision was made to drop the case for their prosecution, which would give the police a chance to gather further evidence. The initial scheme also moved at a much slower pace, with 80 letters issued over seven years, than was subsequently the case with Operation Rapid, which is discussed in Chapter 5.
3 Knowledge of the scheme

88. Much debate has been generated about whether the scheme, or elements of it, have been deliberately kept secret or not. Many witnesses gave us varying accounts of their knowledge of the administrative scheme and the comfort letters.

The general issue of OTRs

89. It is clear to us that it was widely accepted that the issue of OTRs needed to be dealt with. All political parties were aware that Sinn Féin were looking for a resolution to the issue of OTRs, because it had been openly discussed since 1999. Indeed, a number of parties put forward suggestions as to how the issue could be resolved.

Knowledge of the administrative scheme

90. In the eyes of many observers, the Northern Ireland (Offences) Bill was HM Government’s only proposed scheme for dealing with OTRs and, apart from Sinn Féin, they did not know that a separate administrative scheme had been in operation for OTRs since 1999.

91. Unlike the terms of the early release scheme in the Belfast Agreement, the full details of the administrative scheme were not released publicly and any information that was disclosed was released in an ad hoc way over many years.

Disclosure to Parliament

92. The answers to several Parliamentary Questions gave some indication as to the nature of the scheme, and we will not attempt to reflect on them all; however, the following questions stand out as being particularly important.

**Mr. Barnes:** To ask the Secretary of State for Northern Ireland by what process suspected terrorists who are wanted for alleged crimes are having prosecutions against them stopped; and if he will list their names, giving in each case the details of the charges that are being dropped and the known paramilitary affiliations. [12932]

**Jane Kennedy:** Where decisions as to prosecution arise, the prosecuting authorities, who act independently of Government, reach decisions in accordance with the Test for Prosecution.

In the light of the proposal emerging from the Weston Park talks, the Government have agreed to provide new arrangements to facilitate the return to Northern Ireland of persons who may otherwise be liable to possible prosecution in respect of certain qualifying offences. We are currently considering the mechanism for delivering this. 58
93. The above answer gives some details of the scheme, highlighting that the prosecuting authorities are looking at some cases and making decisions on them. However, most importantly, the answer states “We are currently considering the mechanism for delivering this”, pretending that towards the end of 2001, there was not already an ongoing process. By this stage, at least 18 people had in fact been cleared for return and the Royal Prerogative had been used in 10 cases. It is clear that a mechanism for delivering the scheme was already in place.

94. The Parliamentary Question quoted most often in relation to OTRs, from 1 July 2002, states the following:

**Mr. Quentin Davies**: To ask the Secretary of State for Northern Ireland if he will make a statement on his plans to inform persons suspected of involvement in terrorist activities that their cases will not be pursued. [63943]

**Dr. John Reid**: We are still considering how best to implement the proposals which we and the Irish Government made in relation to this following the Weston Park talks. In the meantime, any inquiries received in relation to individuals wishing to establish whether they are wanted in Northern Ireland in relation to suspected terrorist activities have been communicated to the Attorney-General, who has referred them to the prosecuting authorities and the police.

We are clear that this answer refers to individuals having their names checked by the relevant authorities, but it does not reflect the fully-fledged scheme that had emerged by this point. We accept that the answer to his later question (below) does give some additional details. However, in this answer, the dropping of extradition cases, which was the policy announced by his predecessor on 29 September 2000, is confused with cases were there was not sufficient evidence to prosecute. For example, Rita O’Hare’s extradition was dropped but she remained wanted. This answer adds to the confusion and lack of clear details released about the scheme.

**Mr. Quentin Davies**: To ask the Secretary of State for Northern Ireland (1) how many people suspected of involvement in terrorist activities have been informed by the Northern Ireland Office since 10 April 1998 that they are no longer wanted by the prosecuting authorities; [63945]

(2) how many people residing outside the United Kingdom and suspected of involvement in terrorist activities have been informed by the Northern Ireland Office since 10 April 1998 that if they return to any part of the United Kingdom their cases will not be pursued by the prosecuting authorities. [63942]

**Dr. John Reid**: As a result of inquiries received and referred to the prosecuting authorities and the police, 32 individuals have been informed over the past two years that they are not

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59 HC Deb, 1 July 2002, Col 136W
wanted for arrest in relation to terrorist offences. In accordance with the policy announced by my predecessor on 29 September 2000, an additional 25 persons, who had left Northern Ireland without completing their sentences, have been informed since then that they can return to Northern Ireland without serving more time in custody and that the prosecuting authorities and police have confirmed they will not face fresh charges.60

95. Later responses from other Northern Ireland Secretaries of State, most notably by Peter Hain, are less than helpful and are certainly incomplete. For example, the following exchange in our predecessor Committee, in 2005, suggests that those being considered for OTR legislation were not submitted by way of Sinn Féin lists. Since the Downey judgment, we know this is not the case.

Q32 Lady Hermon: You have referred to `on the runs' as a category of people and you have from time to time referred to the fact that you will be taking advice from the PSNI. Can you give a categorical assurance that those who appear within the list of `on the runs' will not be a list submitted by Sinn Féin or Loyalist paramilitary organisations, but will genuinely come from the PSNI?

Mr Hain: These are people whom the police suspect of committing crimes, in some cases very serious atrocities. That is the basis upon which they will be defined and selected.

[...]

Q33 Sammy Wilson: What you have said seems to be at variance with what the police are indicating. As far as the police are concerned, they have actually suggested that the names which were first given and the names which first appeared on this whole `on the runs' issue were given by the IRA. Indeed the police were surprised at some of the names; they did not know the people who were named were actually people they should be looking at and searching after. So could you just confirm for us whether there was at any stage in this process a list of names given by the IRA which then provoked the promise to introduce this legislation?

Mr Hain: I have not seen such a list, if that is the question you are asking. Have there been discussions, including with the police and including with Sinn Féin? Yes, of course there have[...]

96. A prominent example of an answer to a Parliamentary Question that leaves out some of the key detail is the following from 2006:

Mr. Robinson: Is the Secretary of State aware of how damaging it would be to the prospects for restoration if the Government were to return to the issue of on-the-run terrorists being given what amounts to an amnesty? Although we welcome the earlier
answer from the Minister of State that no legislation is to be brought before the House, will the Secretary of State reassure the House and settle the nerves of my colleagues and me by assuring us that no other procedure will be used to allow on-the-run terrorists to return?

**Mr. Hain:** There is no other procedure. There is no prospect of an amnesty. The legislation was tried; it was withdrawn when support for it collapsed, not least in this House, and we have absolutely no intention of bringing legislation back. That, I think, should reassure the hon. Gentleman. What we shall look for in the next few days is delivery—not promises—from Sinn Féin on policing and respect for the rule of law, and then a commitment from all the parties to a power-sharing Executive.62

97. Given that, in late 2006, meetings to setup Operation Rapid had already taken place, and that this Parliamentary Answer did not give any details of that, this deprived Parliament of the chance to properly scrutinise the OTR scheme, and the commencement of Operation Rapid. We note that the Report of the Hallett Review states, “Mr Hain has argued that these answers were strictly accurate given the context of the questions [the withdrawal of a Bill which would have provided a legislative amnesty for OTRs]. Others disagree.”63

**Disclosure to political parties**

98. In our evidence, we have heard from several party leaders regarding their knowledge or, rather, lack of knowledge of the scheme.

99. Lord Trimble, former First Minister of Northern Ireland, and leader of the Ulster Unionist Party from 1995 until 2005, when asked about the circumstances when he first heard about the scheme, said:

> At the time of the Downey judgment. When that became known was the first I had heard of it. I was quite shocked to find that it had been operated since 2000. Between 2000 and 2005, I have not tried to count how many times we met either the Secretary of State for Northern Ireland or the Prime Minister, and at no time was any hint dropped to us about the existence of this scheme.64

100. The current First Minister and leader of the Democratic Unionist Party, Rt Hon Peter Robinson MLA, told us:

> My first knowledge of the OTR letter scheme came in the days immediately before the publication of the Downey judgment—two days before, when we were given advance notice. At no point before that had it ever been indicated

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62 HC Deb, 11 October 2006, Col 291
64 Q784
to me or, to the best of my knowledge, any of my party colleagues that such a scheme was in operation.65

The Justice Minister, David Ford MLA, was also only made aware of the scheme at this point. He told us, “I first became aware of the scheme when I received a telephone call from an NIO Official on Friday 21 February to brief me about the Downey judgment.”66

**RUC GC/PSNI**

101. The police knew that the investigations they undertook were part of some sort of administrative scheme. Whilst they did not know the full end-to-end processes involved, they were aware that their role was to look at names which were provided to the NIO primarily by Sinn Féin, to see whether those individuals named were wanted. They were not aware of how that status was being communicated to Sinn Féin.

**Wider public knowledge**

102. There has been some information circulated in the public domain about OTRs. As well as the disclosures to Parliament, some journalists and reports, such as the Report of the Consultative Group on the Past67, have endeavoured to disclose details over a long period of time (1998–2014). Many of the articles had only a small amount of detail about the scheme and did not give a clear view of what was happening, especially when we read them alongside some of the less than helpful Parliamentary Answers.

103. We also note that in his witness statement to the Downey trial, Peter Hain stated that one of the exceptional features of the scheme was that it “progressed in a non-public manner”68

104. *Only with the benefit of hindsight, can it now be seen that there were several indications that an administrative scheme for OTRs was in operation, including, for example, from Ministers’ responses to Parliamentary Questions; the scheme was therefore an example of something being “hidden in plain sight”.*

105. Whilst we accept that some disclosure had been made about dealing with OTRs, these have tended to be incomplete accounts of what the scheme fully entailed. Indeed, some of the disclosures to Parliament, both in response to Parliamentary Questions, and to questions raised by our predecessor Committee, leave out some key information about how the scheme worked, and in his judgment Mr Justice Sweeney commented: “At a meeting with the [Secretary of State for Northern Ireland] in May 2001 Mr Adams expressed the view that, in terms of Republican confidence, it would be better if there was an invisible process for dealing with OTRs”.69 It is clear the intention was that

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65 Q1437
66 Q1186
68 Downey Disclosure Documents, *Peter Hain Witness Statement to Mr Justice Sweeney*, 30 January 2014
69 Judiciary of England and Wales, *The Queen-v-John Anthony Downey*, 21 February 2014, para 52
the people of Northern Ireland and other political parties were kept in the dark about the scheme to the greatest possible extent.

The letters

106. A key element of the scheme was sending administrative letters, signed by NIO Officials, to those who were deemed either “wanted” or “not wanted”.

Disclosure to Parliament

107. We are highly critical of the fact that further disclosure was not made to Parliament about the existence of 'comfort letters'.

Disclosure to political parties

108. None of the leaders of Northern Ireland political parties we heard from (DUP, UUP, SDLP and Alliance Party) were aware of the so-called 'comfort letters'. It is apparent that only Sinn Féin were aware of them. When former Prime Minister Tony Blair was asked directly if he ever mentioned the scheme to the prominent loyalist leader, David Ervine, he could not confirm he had told him. He stated, “I didn’t tell him about the scheme, but he knew about the on-the-runs.”

RUC GC/PSNI

109. Sir Ronnie Flanagan, who was the first Chief Constable to preside over the scheme, told us that he did not know that the NIO were sending out letters to those not wanted, but that he “had an awareness that letters of the type that I am describing would certainly have been contemplated, and I would not have had a difficulty with that.”71 There was not, however, an awareness within the PSNI [which succeeded the RUC in 2002] as to the end product of the scheme.

110. Other PSNI officers told us that there were not aware that a letter had been sent from the NIO. Sir Hugh Orde stated:

We did not know they [the letters] were there. We did not know they existed. One of my frustrations about the judgment was one of the observations I think that was persuasive—far be it from me to second-guess the judge—in the judge’s mind was, when the information went out that was not right, it was not corrected. I cannot correct what I do not know.72

111. Former Chief Constable (now Sir) Matt Baggott told us the PSNI thought there must have been a way of informing OTRs of the outcome of their investigations. They did not think this would have been done by letter. He also told us that, had he known they were
being informed by letters he would have ensured there was more discussion over the consequences of a mistake. He said:

Obviously with the benefit of hindsight, had we known there were letters, could there have been a bigger conversation about the implications if a mistake had been made.\(^\text{73}\)

112. The Report of the Hallett Review made it clear that the first evidence they could find of the PSNI knowing about standard text of the OTR letters was in December 2011, some eleven years after they had first been used to give comfort to OTRs. The Report states, “the PSNI were not aware of the ‘normal text’ terms of the letters of assurance until December 2011”.\(^\text{74}\)

**Secretaries of State**

113. As we have discussed in Chapter 2, not all Secretaries of State had the same level of knowledge about the scheme and what was fully involved in it. During the Labour administrations, all of the Secretaries of State, with the exception of Paul Murphy, knew about the letters sent to Gerry Kelly of Sinn Féin from the NIO Officials.

114. During the current administration, Rt Hon Owen Paterson MP, told us that he did not see a single OTR letter during his time as Secretary of State, and his evidence leads to some confusion as to whether he actually knew about the letters at all. When questioned on whether he asked about the mechanism of communication between the NIO Officials and those in receipt of a comfort letter, he stated “I knew my Officials were talking to Sinn Féin; that was what I had inherited. That was the system that had worked through the whole period that the scheme had been in operation.”\(^\text{75}\) He went on to say that he “knew my Officials were responsible and were talking to the political parties on a regular basis. How they communicated I left to them.”\(^\text{76}\)

**The public**

115. There was no disclosure whatsoever to the general public about OTR letters, although some individuals had specific knowledge of the scheme through Historical Enquiries Team (HET) reports.

116. In section 8.54 of The Report of the Hallett Review, it is stated that “there was sufficient information in the public domain to alert the close observer of political affairs in Northern Ireland to the fact that some kind of process existed by which OTRs could submit their names for consideration by the police and prosecuting authorities”. We disagree. Even Owen Paterson, who had been shadow Secretary of State for

\(^{73}\) Q688  
\(^{75}\) Q2707  
\(^{76}\) Q2712
Northern Ireland since 2007, told us he did not know about the scheme until he actually became Secretary of State in 2010.

117. We have found no evidence that, beyond Sinn Féin and the NIO, anyone else knew about the precise use of letters, issued on behalf of HM Government, to alert someone as to whether they were “wanted” or “not wanted”.

118. It is important to make clear at this point that the PSNI knew nothing about the content of the letters sent from the NIO to Sinn Féin until December 2011. This is one of the major failings of the scheme.

119. Due to the fact that the detail of the scheme was not fully disclosed, it prevented citizens from seeking to judicially review the legality of the scheme, or the decisions made with regard to whether an individual would receive a letter or not. The criminal justice system in the UK is based around transparency with details of individuals arrested and charged being made public and trials also being open to the public. This transparency is key for public confidence in the fairness of the system. The secrecy of the administrative scheme runs counter to this need for transparency and in our view should have been fully disclosed from the start.
The administrative scheme for “on-the-runs”

4 The OTR letters

120. One of the most vital and controversial components of the administrative scheme were the letters of comfort sent to those ‘not wanted’, first by Jonathan Powell, subsequently by Officials in the NIO and eventually two by the PSNI from January 2011. There has been significant debate about the status of the letters, their withdrawal, and the secrecy that surrounded the circumstances in which they were issued. We will explore these issues in this chapter.

121. The standard text of the letters, drafted between the AGO and the NIO in March 2001, eventually became:

The Secretary of State understands on the basis of information available that there is no outstanding direction for your prosecution in Northern Ireland there are no warrants in existence nor are you wanted in Northern Ireland for arrest, questioning or charge by the police. The RUC [later the PSNI] are not aware of any interest in you from any other police force in the United Kingdom. If any other outstanding offence or offences came to light, or any request for extradition were to be received, theses would have to be dealt with in the normal way.77

122. The Attorney General at the time, Lord Williams, warned that the biggest risk of a scheme like this was that if there was a mistake in the letter there was a risk of an abuse of process. The letters also contained the phrase “not aware”, which suggested that all checks had not been carried out, so other police forces could come forward with information. This wording was imprecise, and open to interpretation, and made it unclear as to what, if any, guarantee they were intended to give.

Names

Why those names

123. We understand that initially Sinn Féin put forward the names of supporters who were strong advocates for the peace process, and were key individuals, in the Sinn Féin hierarchy. It is clear, however, that as the scheme matured, Sinn Féin increasingly put forward names from a broader group of people and not just those who could contribute to the peace process.

124. None of our witnesses has suggested reasons as to why Sinn Féin put forward these particular people. Sinn Féin must have been aware that at least some of them were wanted by the police for serious terrorist offences, and Sinn Féin would have been aware of the crimes for which they were wanted.

77 Downey Disclosure Documents, p446, ‘Standard text of the OTR letters drafted between the Attorney General’s Office and the Northern Ireland Office’, March 2001
125. By the end of the scheme, a total of 228 names were put forward from Sinn Féin, the Prison Service and the Irish Government. Of those, 187 were deemed free to return. We have not seen the list of the 228 names, but we have not seen conclusive evidence that convinces us to believe that all 228 on the list were so essential to the peace process and vital to its survival that process that they were allowed to return to Northern Ireland. In his witness statement to the Downey case, Gerry Kelly stated:

Sinn Féin for whom I speak in this statement emphasises that it is impossible to overstate the importance of the assurances given to the 187 recipients, which included John Downey, being maintained. These were essential in the achievements which began with the Good Friday Agreement in 1998, and were consolidated in the St Andrews Agreement in 2006 and the commencement of the Northern Ireland Assembly in 2007.78

126. We invited Sinn Féin to give evidence to us in public to explain fully why it was so important that these people came back within the UK jurisdiction. It might have reassured some victims if Sinn Féin representatives had appeared in public to explain their insistence upon having the OTR issued resolved. They, however, declined to appear. Amongst other issues, we would have welcomed the opportunity to have been able to ask Sinn Féin what they thought John Downey could have contributed to progressing the peace process in Northern Ireland.

**Access to the names**

127. Unlike Dame Heather Hallett, the NIO and the PSNI, this Committee has not had access to the names on the OTR list. The Committee’s conclusions and recommendations are, therefore, based only on the evidence given orally in public or in writing, and which is also available to members of the public.

**Should the names ever be published?**

128. As we say above, we have not been given access to the names of those who received OTR letters, and are not part of the group of people who are keeping this vital information from victims and the general public. We questioned the current Secretary of State Theresa Villiers MP about her refusal to publish the names, and she explained, “I do not think it would be helpful to do that. I think there are privacy concerns”79. She continued that, “there are security concerns as well, in terms of HM Government’s obligations under Article 2 of the European Convention on Human Rights. I do not believe it would be appropriate to publish the individual names. Releasing the names could also risk prejudging any investigations into these people”.80

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78 Downey Disclosure Documents, Gerry Kelly Witness Statement to Mr Justice Sweeney, 3 January 2014
79 Q2395
80 Q2495
129. The Report of the Hallett Review had access to the names, but Dame Heather Hallett makes clear she received the names under strict confidentiality and was not entitled to release them. It was, she said, “for others to decide whether they are bound by the same principle [of confidentiality],” but she did not say that she had concerns about the release of the names.

130. When Deputy Chief Constable Drew Harris appeared before us on 7 November 2014, we asked him whether he was able to release the names, and his response was:

I have weighed this decision up. One has to consider the rights of the suspect—this is potentially an Article 2 right, because this is only about serious crime, so you would be concerned about someone doing harm to the individual—against the potential for harm to the public of someone who is a fugitive, whom you have already made strenuous efforts to try to locate.81

131. A number of Members of the Committee felt that the names of those who had received letters should be published immediately, provided that publication would not prejudice any future trial and would not cause any security risk to the individual named. It was felt that naming the individuals would go some way towards restoring faith in the justice system where it may have been lost due to the way in which the administrative scheme was run. Others on the Committee, however, felt that the names should not be published at this point. However, there was strong agreement that Operation Redfield should be carried out as quickly as possible so that a full assessment is made of the current status of those who had received letters.

Status of the letters at the time they were issued

132. Barra McGrory QC, the DPP(NI), said that from a prosecutorial point of view he believed the letters were valueless. He told us, “They are not, maybe, entirely worthless [to the individuals to which they were issued], but I think they are largely worthless. That is my view as a prosecutor.”82

133. Other witnesses said the letters were not an amnesty. Rt Hon Dominic Grieve MP, the then Attorney General when he gave evidence to the Committee, told us, “These letters do not constitute an amnesty. An amnesty would require legislation and, actually, revoking an amnesty after you have legislated for one might well raise some very difficult and complex issues indeed.”83

134. Lord Mandelson agreed the letters were not an amnesty, he said, “the letters were written on the basis of evidence currently available to the police and the prosecuting
authorities. By extension, if evidence had emerged subsequently, then, in principle, the police could have revisited those cases.”

135. When the then Chief Constable, Matt Baggott, appeared before us he told us the letters were supposed to convey whether someone was wanted at a moment in time. He said “It is a moment in time. It is your status at that moment in time. It is what information we have on you.” This suggests that the person’s status could be reviewed at a later date, and a different decision could be made. However, we question who had the authority to inform people that they were free to return to the UK without fear of arrest.

136. Whilst former PSNI Officer DCS Norman Baxter did not know letters were being sent out by the NIO, he believed that his recommendation, on which the letters were based, was only relevant on the day it was made. This again suggests that the person’s status was something that could have been changed and was something that did not confirm a permanent or final assessment. He told us:

> I know they are called “comfort letters”, but, from my perspective, they were only valuable on the day they were printed. I did not send letters, but my recommendation to Mr Sheridan [former Assistant Chief Constable in the PSNI, and in charge of Operation Rapid] was only relevant on the day it was made.

137. The first Chief Constable who dealt with these letters was Sir Ronnie Flanagan, who told us that the letters should not prevent someone from being prosecuted. He stated: “These letters should not in any sense—and I have said it again and again today—be a barrier to the investigation of crimes or to the arrest of people or the prosecution of people.” However, precisely the opposite occurred in John Downey’s case; the OTR letter was key to him walking free from the Old Bailey.

**New evidence**

138. We considered whether the letters could still be relied upon should new evidence come to light. We heard from Kevin McGinty, of the AGO, that he thought the letters would no longer be valid, if this was the case. He told us:

> If fresh evidence became available, then there would be no bar to prosecuting that individual. There would inevitably be an abuse-of-process argument, but we would survive that because we would be able to show that since that letter had been sent, new evidence had come to light.
139. Matt Baggott told us that there was some difficulty in assessing whether the situation would be the same if, for example, something had been missed in the file. It is unclear whether this would constitute new evidence. He said, “That would be a matter for the Public Prosecution Service to take forward, because that would probably need a mechanism in relation to the letters that were sent. It has to be for the PPS to determine the legal route for that.”

140. When we questioned Dominic Grieve, Attorney General from 2010 until July 2014, on the issue of missed evidence, he said:

> It all depends how and where it was missed. We have to be a bit careful, but, if it is within the knowledge of the prosecutor, then the prosecutor is fixed with that knowledge, and I do not think there is any way out of that. If is something that is not within the prosecutor’s knowledge, it is new evidence.

He went on to agree with Lord Goldsmith, who made clear that:

> I have said, from early on that a risk involved in sending any letter of that sort was that if it was not accurate, if it was misleading, somebody might afterwards be able to say that they had been misled and it was an abuse of process, in the light of what was said to be an assurance, for them to be prosecuted.

141. The letters themselves, and subsequent statements by the PSNI and NIO, have left it unclear quite what “new evidence” would be required for a prosecution to be brought against a recipient of one of the letters. This issue is key and should have been addressed before the text of the letters was decided so that all involved were clear regarding what could and could not be considered. This issue exposes again the lack of care that was taken in designing the scheme. This is a point which needs to be clarified, particularly given the statement by the PSNI that 95 recipients of letters are potentially linked, by intelligence, to almost 300 murders.

**Sinn Féin’s reliance on the letters**

142. Sinn Féin thought individuals were receiving clarification of their legal status and something much more than whether they were wanted at a particular moment in time.

143. To back up how important these letters were to Sinn Féin, Gerry Kelly’s written statement to the Downey judgment said:

> The Court will be aware from the presence of Sinn Féin MPs at the hearing to date in the case, as well as the presence of the Irish Government, of the importance that is attached to the firmness of each of the building blocks of
the peace process in the North of Ireland and reliance of the assurance given, by all parties to those agreements, to those assurances being honoured by those who gave them.92

This again makes it clear that Sinn Féin thought that the letters were far more than simply a statement of facts, and that the letters gave reliable assurances about the permanent status of those who received them.

144. Lord Mandelson, however, told us that Sinn Féin were not entirely satisfied with the scheme, and viewed it as “sub-optimal from their point of view would be the expression I would use”.93 This suggests Sinn Féin had some reservations about how strong an assurance the letters intended to convey. He also stated that:

I can assure you the exercise of the royal prerogative, combined with withdrawing extraditions, did not make them [Sinn Féin] put the bunting up and jump for joy in the streets. They thought that was just a token concession to string them along for a bit longer.94

145. Tony Blair agreed with this analysis, telling us that, “Gerry Adams wasn’t saying, ‘Thank you for this administrative scheme.’ He was saying, ‘You let us down because you haven’t done what you promised to do.’”95

146. Sinn Féin stated that it was “impossible to overstate the importance of the assurances” the letters gave. It is unclear whether this means Sinn Féin took the letters to have some legal status beyond being a simple statement of facts at the time, but it is difficult to see how the letters could have been thought to have such significance if taken purely at face value. The fact that Gerry Kelly refused our invitation to give public evidence has denied Sinn Féin the opportunity to explain what assurances they had been given by HM Government as to the status of the letters.

Views of Jonathan Powell

147. Jonathan Powell, who was Chief of Staff in Downing Street from 1997 to 2007, when asked how he sold the letters to Sinn Féin as a way of moving forward, told us:

What we said, rather unfortunately as you will see from the letter, [from Tony Blair to Gerry Adams in November 1999]96 is, “Yes, we will fix it and we will do it straightaway,” […] The administrative scheme was dealing with those people who were not wanted. The solution we were looking for was
people who were wanted. This was a way of dealing with people who should not be made to wait until the solution had been found. 97

148. However, in contrast, in his witness statement to the Downey judgment he stated that:

Although this had not been the first solution envisaged by the British Government in its wish to deal with this particular aspect of the past, nevertheless it was intended to provide a solution that worked in practice even if more slowly and in a more cumbersome and less universal way than had been wished by those negotiating on behalf of Sinn Féin. 98

149. In his witness statement, he suggests that the administrative scheme was a solution to the problem of OTRs. However, in his evidence to us, he implied that the problem had not been solved. When questioned by us about this disparity and apparent change of view of what the letters were intended to convey, he stated:

I am not saying that they are somehow irrelevant, otherwise I would not have signed the two letters in Downing Street at the beginning, in order to do it speedily. It was important that we showed to Sinn Féin that we were trying to deal with those who were not wanted. That was an integral part of our negotiation. What they were not is the big issue in the negotiation, which was dealing with those who were wanted. 99

New status as a consequence of the judgment

150. As well as bringing the administrative scheme into the public domain, the judgment in R v Downey made it clear there was at least one error in the scheme (Downey). The judgment resulted in the prosecution being stayed. It is unclear whether the judgment, therefore, gave a higher status to the letters as a whole, or it was solely based upon the specific circumstances in Downey’s case. The Report of the Hallett Review concluded that:

the ruling in Mr Downey’s case was very much on its own facts. It is a first instance decision. It does not bind any other judge in any part of the UK. It does not follow, therefore, from the result in Mr Downey’s case that recipients of letters of assurance can never be prosecuted nor does it mean that evidence which existed before a letter was sent (but was considered insufficient to justify arrest at the time the letter was sent) can never be used. It will depend on the individual circumstances. 100

Former Attorney General, Lord Goldsmith, appeared less convinced in his reasoning. He stated:

97 Q2624
98 Downey Disclosure Documents, Jonathan Powell Witness Statement to Mr Justice Sweeney
99 Q2641
I think the judge decided in this particular case that it was a barrier to prosecution. It depends what you say in the letter and what is understood by it. The judge decided in this case that it was an abuse of process to continue with the prosecution in the circumstances of a letter in that form. We had wanted to avoid that sort of issue and if the letter had been accurate it would have been avoided. The problem goes back to the inaccuracy of the letter that was sent.\textsuperscript{101}

151. \textbf{Whatever the intended consequences of the comfort letters that were issued, it is clear to us that the issue of a letter to Downey was the result of errors during the process. Whatever the original status of the letters, the fact that a letter was issued to Mr Downey resulted in him being able to successfully claim an abuse of process, preventing him from being prosecuted for his alleged involvement in the Hyde Park bomb.}

\textbf{Withdrawal by the Secretary of State}

152. On 3 September 2014 the Secretary of State, Theresa Villiers MP, told us that HM Government would no longer stand by the OTR letters, she stated:

\begin{quote}
no-one should take any comfort from these letters—no-one should rely on them. Decisions of the independent police and prosecuting authorities on whether individuals are prosecuted will be on the basis of decisions made now, not decisions made at some point in time in the past, and those decisions will be made on the basis of all the available evidence. To those who have a letter I say: if the police or prosecuting authorities have evidence that is available today or becomes available in the future to pursue you, they can and will pursue you.\textsuperscript{102}
\end{quote}

153. Her evidence raised the question of whether this announcement changed the current status of the letters, and what would happen should another case arise where a letter is produced in evidence before the courts, especially if the recipient had relied on it to their detriment, as John Downey did.

154. After this statement by the Secretary of State, the Deputy Chief Constable of the PSNI, Drew Harris, told the Committee that those on the lists were now being treated as potential suspects, and that the police, through “Operation Redfield”, were looking at whether there was potential for prosecution in each individual case. He told us:

\begin{quote}
We regard these individuals as the same as any other citizen and their letters are now without worth. In respect of the investigations, these are investigations into serious crime and if evidential thresholds are met, and
\end{quote}

\textsuperscript{101} Q2088\textsuperscript{102} Q2372
even the requirements of the investigation are met, then an interview report will follow to the Public Prosecution Service.103

155. We have some concerns about the weight the Secretary of State’s statement, issued on 9 September 2014, carried. In it she admitted that she could not give a 100 per cent guarantee that future prosecutions would not fail despite her statement. She said:

> These decisions are rightly matters for independent police and prosecuting authorities, and no option is available to me that will give us 100% protection against a successful abuse-of-process defence in the future. This is, however, the most effective and expeditious way I can seek to remove potential barriers and reduce the likelihood of another prosecution collapsing.104

156. Barra McGrory told us that “another prosecution is under consideration. In fact, it is under way, but the recipient of the letter has challenged the prosecution on the basis of the receipt of that letter. So this issue will be tested in the court imminently.”105 It is therefore still unclear what impact the Downey judgment or the Secretary of State’s statement will have in legal actions where any subsequent ‘comfort letters’ are relied upon in evidence; much will depend on the individual circumstances of the letter issued.

157. **The Government should set its mind to ensuring that all necessary steps are taken, including, if necessary, introducing legislation to ensure the letters have no legal effect.**
5 Operation Rapid

Introduction

159. According to the Downey judgment, the work on the administrative scheme came to a halt in 2004. From the documents we have available to us, we can see that very little was done between 2004 and 2006, although 12 letters were sent out during that period. According to the Report of the Hallett review, the last list of Sinn Féin names was provided on 18 August 2006.

160. In February 2007, following the letter promising acceleration sent by Tony Blair to Sinn Féin in later 2006, the PSNI began ‘Operation Rapid’, the operational name for a review of people regarded as “wanted” in connection with terrorist-related offences committed after the Belfast Agreement of 10 April 1998. Its Terms of Reference were drawn up internally by the PSNI.

161. It appears that in Operation Rapid, after files had been assessed, they were effectively closed and new evidence no longer sought. Drew Harris told us that, “In respect of the Operation Rapid files, what you describe, in effect, of them being closed is probably what happened.”

Speeding up the process

162. We heard from many people, including Tony Blair, that Operation Rapid was an attempt to accelerate the OTR administrative process. He explained:

at the end of December [2006], the commitment that I gave to Gerry Adams to speed this process up, did it have an impact on Sinn Féin’s decision on policing? Probably. I don’t recall for sure whether I was told that at the time, but I should think so, because it was an important issue for them.

163. The Terms of Reference resulted in OTR cases being reviewed far more quickly than had previously been the case. In 2007, the first year of Operation Rapid, 58 OTRs received a letter stating they were not wanted. During the previous administrative scheme, the greatest number of names cleared in a single year was 31.

164. Kevin McGinty, of the AGO, when asked whether the process changed, told us:

I do not think it did change. There were always questions about whether this process could be speeded up, and I provided you with some correspondence, which perhaps suggested a way of speeding the process up by taking the prosecution process out of it and simply asking the police whether or not these individuals were wanted. The Director said, “I do not think that is going to speed the process up and I would not be happy doing it”, so it

107 Q3700
continued on in the same way as before—that is, with a rigorous check made by both the police and the prosecutors as to whether or not the evidential test was met.  

165. The Northern Ireland Police Ombudsman’s report, and other sources, explained that all of the names previously submitted to the scheme were looked at again and 36 of those who had previously been listed as “wanted” had their status changed to “not wanted”. The Police Ombudsman’s report stated that Operation Rapid:

- carried out a review of all names again, not merely a continuation of outstanding checks or a processing of additional names. Furthermore the reviews conducted through Operation Rapid resulted in a change of status in a considerable number of those who had already been reviewed in recent years. In comparing the recorded status of the individuals, 36 of those who were assessed prior to January 2007 as ‘wanted’, for arrest and interview in relation to serious terrorist offences, were subsequently re-assessed in 2007 and 2008 as ‘not wanted’ by Operation Rapid.

166. We consider that speeding up the process in 2007 made it more difficult for thorough and competent reviews to be carried out and, therefore, may well have made it more likely that someone would get a letter who was not supposed to.

Terms of Reference

167. The Terms of Reference for Operation Rapid were written by DCS Norman Baxter and signed off by Assistant Chief Constable Peter Sheridan in the PSNI. The team involved was summarised in the Downey judgment as follows:

- responsibility for the expeditious completion of the review rested with the Head of Branch C2 of the PSNI (who would ensure that a proper detailed record auditing the review and decision making process would be made and retained); that there would be a small team of investigators (a Detective Chief Inspector, 2 Detective Sergeants and 3 assistant civilian investigators); that the review would be conducted on terms of conditional reporting in order to prevent a misinterpretation of its purpose; that the Assistant Chief Constable, Crime Operations would supply a list of those individuals identified to the PSNI as having requested information as to their status with the PSNI as a “wanted person”; that each offence would be reviewed on an individual basis; and that recommendations would be made in accordance with particular forms of words set out in the Terms (although the forms of words in relation...
to a person wanted for arrest did not include one for someone who was wanted by another police force in the UK).  

168. It is clear from the Terms of Reference for Operation Rapid that, strictly speaking, the Operation Rapid team was only looking at whether someone was wanted by the PSNI, not by any other UK force.

169. The Terms of Reference suggest that they did not consider Downey to be ‘on-the-run’ as he was born in the Republic of Ireland, and that was where he was currently residing. In his assessment of Downey’s case, DCS Baxter stated:

    The above person is a native of the Republic of Ireland and is a citizen of the Irish Republic. He has not resided in Northern Ireland and remains resident in his native district. He is not currently ‘on the run’ from his home

This shows DCS Baxter did not see Downey as an OTR, under the Terms of Reference for Operation Rapid.

170. According to the Police Ombudsman’s Report, the PSNI had shared these Terms of Reference with the NIO. The Police Ombudsman’s statement said:

    It has been established that the Operation Rapid Terms of Reference were shared with an NIO Official in a letter dated 15 February 2007, and when explored with the Assistant Chief Constable he explained the rationale for this was to ensure the NIO understood what the PSNI Operation Rapid involved.

171. The NIO should have, therefore, been aware of what the PSNI were investigating and raised any concerns they had with the Terms of Reference directly with the PSNI.

172. Sir Matt Baggott told us that the Terms of Reference for Operation Rapid were, “very detailed” and “very thorough”. However the Report of the Hallett Review disagreed with this assessment, pointing to the Terms of Reference for the original scheme in 2002 as a much more comprehensive document.

**Was it the role of the Attorney General’s Office to check cases in England and Wales?**

173. In the summer of 2006, several meetings took place resulting in the establishment of Operation Rapid. One of the most important of these was on 9 June 2006. A note of the meeting was shared with us by the AGO. In the meeting, one individual was discussed who was not wanted by the PSNI, but may have been wanted by the MPS. The note states:

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112 Q739
Mr McGinty accepted it would probably fall to the Attorney General’s office to make these enquiries, he accepted the Met would have to be persuaded of the necessity of responding to these enquiries.

(ACTION 2–Kevin McGinty to confirm with the Metropolitan Police if individuals are wanted, why they are wanted and what evidence exists in relation to the incidents.)

174. Whist he did not attend the meeting, DCS Norman Baxter, who was in charge of Operation Rapid in 2007–8, told us that at that meeting it was decided that the Attorney General would confirm whether an individual was wanted by the MPS. In oral evidence he told us, “Mr McGinty said that the duty to check in England would fall to the AGO.”

175. Mr McGinty told us that, whilst his office was able to pass on England and Wales cases to the relevant authorities, he would have to have been made aware they were wanted before he could do that. He stated:

I had to be told that they were wanted by the Met before I could start that process. I cannot check the PNC, and it would be absurd, for the reasons I have set out in my statement, that I would write to the Met in relation to every single name and ask them, “Please check the PNC to see not only if you want them, but if any other force in the United Kingdom wants them” when the PSNI were already doing that.

176. We note the difference between the two views and believe that whilst it may not have been the responsibility of the PSNI to check with the MPS as to whether someone was wanted, they should have alerted the DPP(NI) or the AGO that there was a possibility they could have been wanted by the MPS. We also note that, on occasion, the PSNI did make enquiries with the MPS with regard to individuals’ statuses.

177. ACC Peter Sheridan told us that, in hindsight, he understood why the PSNI were worried about releasing information about somebody wanted by another police force to the NIO, and that he would have felt more comfortable if the request for information had come through the proper channels, i.e. from the Attorney General, the DPP(NI), and to the PSNI. He told us:

I can see now that what the Operation Rapid team was doing was not telling my staff officer that John Downey was wanted on the PNC, because that was going to go to the Northern Ireland Office. The proper procedure would have been for the Northern Ireland Office to write back to the Attorney General, to the DPP, to ask the question then of the police, and we would have had no difficulty in telling the DPP.

113 Downey Disclosure Documents, Flag 17, Minutes of the OTR meeting, 9 June 2006
114 Q17
115 Q647
116 Q3170
Was it Illegal to pass the information on to another police force

178. DCS Norman Baxter did not see it as his job to pass on that someone was wanted by the MPS. Indeed, he told us that he thought it would actually be illegal to pass on such information:

[I]t was not a “catastrophic mistake”, but it was a legal requirement. I had no jurisdiction to pass information about a person wanted in another jurisdiction to that individual. Indeed, to do so would be prejudicing the investigation; it would be perverting the course of justice.117

179. However, the MPS in their written evidence stated, “The MPS does not consider that it would be illegal (or unlawful) for it to provide advice as to whether a person was wanted, or was not wanted, by a police service in another jurisdiction.”118 In any case, DCS Baxter was not being asked to pass on to the individual whether he was wanted or not.

180. ACC Peter Sheridan also told us he did not know that Downey was wanted by the MPS, as this information was not passed on to him. He stated, “I did not know that and was not aware of it. The review team—Mr Baxter’s team—knew he was wanted but they did not pass that information to me.”119 He also told us that “If I had have been told, then I would have alerted the DPP(NI) of it”.120

Did everyone knew their role in the scheme?

181. Another argument Mr McGinty used as to why the AGO would not check for names is that his understanding was that everyone involved in the scheme already knew their place and knew their role due to the fact that the process had “been going on for about six years”.121

182. Unfortunately, by the time Operation Rapid began, there was almost an entirely new PSNI team. The Police Ombudsman Statement explained:

The Detective Chief Superintendent stated that he understood from his briefing that the work required by the PSNI was a relatively new issue arising after the legislation drafted to address ‘On the Runs’ had failed in Westminster in 2006. […] He described the revelation through the judgment of an ‘administrative scheme’ dating back to 1999 as ‘quite shocking’.122

183. Both DCS Norman Baxter and ACC Peter Sheridan told us that they did not know about the work done on OTRs before Operation Rapid commenced. ACC Sheridan said,
“The first time I heard of the administrative scheme was in recent weeks and months, when the press talked about the administrative scheme. I was unaware of an administrative scheme.”

**Evidential threshold**

184. In both the Report of the Hallett Review and in the statement by the Police Ombudsman, criticisms were made of DCS Norman Baxter’s leadership of Operation Rapid, specifically in the approach he took to dealing with evidence. The Hallett Report stated:

> Mr Baxter acknowledged in interview that he took a far more robust attitude to ‘intelligence’. If there were doubts as to the reliability of intelligence/evidence then it was ignored. During the course of the earlier reviews the approach in general terms had been much more cautious and individuals were only informed that they were ‘not wanted’ if there was no or very limited evidence or intelligence.

185. It is not clear why such a robust approach was taken. However, in his written evidence to us, Barra McGrory suggested the following:

> [F]ollowing the judgement in the prosecution of Sean Hoey for involvement in the Omagh bombing in which there was trenchant criticism of the police handling and storage of exhibits it was agreed that a further review should be undertaken of those cases in which the evidential test had previously been found to be met.

186. The Police Ombudsman’s statement also criticised the PSNI for the assumption that there had been a change in powers of arrest from “reasonable suspicion” to “reasonable grounds”. The report stated:

> The most serious flaw is the wrongly articulated threshold for arrest creating the potential to impose a different standard when considering the grounds for arrest than that which is normally applied.

The Police Ombudsman argued that this was a mistake, and there had been no change in the circumstances in which someone could have been arrested.

187. ACC Sheridan contended, however, that this was not the threshold for arrest used by the Operation Rapid team. He stated:

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123 Q118
125 Barra McGrory (QTR0018) para 29
In Lady Justice Hallett’s report, [...] she says, “until the PSNI has concluded its lengthy review of all of the decisions previously made, it is too early to say whether an incorrect threshold was applied at any time, including in 2007-08” [...] 6a(1) was about police intelligence and reasonable suspicion. To say that it is not articulated in the terms of reference is not right; it is in the terms of reference.

Furthermore, until we know what the quality of the work done was, it is unfair to say that the threshold was wrong.127

188. Under different leadership by DCS Williamson from October/November 2008 onwards, a different approach was taken in dealing with intelligence evidence.

189. Downey was born and resided in Donegal, so was not considered an OTR by DCS Norman Baxter, under the Terms of Reference for Operation Rapid.

190. There was undoubtedly confusion over who was supposed to check whether someone was wanted by the police in England and Wales. The Terms of Reference of Operation Rapid made it clear that the PSNI were only looking at whether someone was wanted by the PSNI.

191. We accept that DCS Norman Baxter and ACC Sheridan did not know about the previous scheme so, unlike Mr McGinty, they were not aware of the normal processes and the normal roles everyone played. For example, they were not aware that they should pass on information as to whether someone was wanted by the MPS. This, however, begs the question as to why the PSNI felt they had to check with the MPS whether Downey was wanted, and, in hearing that he was wanted, did not pass this information on. DCS Norman Baxter should have, at the very least, passed this information to ACC Sheridan.

192. It is not illegal to pass the information on to another police force, so DCS Baxter was mistaken; he should have passed the information that John Downey was wanted by the MPS on to the DPP(NI).

193. The approach to evidence during Operation Rapid is concerning, especially in light of the very large number of cases which had their status changed during DCS Baxter’s time in charge.128 We endorse Dame Heather Hallett’s recommendation that “The PSNI give priority in this new review of OTR cases to the 36 individuals whose status changed under Operation Rapid in 2007–08.”129

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127 Q3150
128 See Annex 1
Role of the Northern Ireland Office

194. After the withdrawal of the Northern Ireland (Offences) Bill in January 2006, pressure continued to be exerted by Sinn Féin on HM Government to resolve the remaining OTR cases. Tony Blair wrote to Gerry Adams in December 2006 regarding the issue of OTRs, promising to expedite the remaining cases. As we have previously stated, speeding up the process was also something that was promised in order for Sinn Féin to join the Policing Board. The letter stated:

The Government remains committed to resolving the issue of OTRs.

The Government has already announced that it would no longer pursue the extradition of individuals convicted of pre-1998 offences who had escaped from prison and who would, if they returned to Northern Ireland and successfully applied for the early release scheme, have little if any of their time left to serve.

We remain committed also to addressing the anomalous position of all other OTRs, including those suspected but not convicted of qualifying offences before the Belfast Agreement.

Had these individuals been convicted for these offences they would have benefited from the early release scheme which was part of the provisions of the Agreement.

We are now working with a renewed focus on putting in place mechanisms to resolve these cases. This includes expediting the existing administrative procedures and putting in place measures to deal with the cases of those who would, were they to return to Northern Ireland, be brought before the courts.

I have always believed that the position of these OTRs is an anomaly which needs to be addressed. Before I leave office I am committed to finding a scheme which will resolve all the remaining cases. 130

195. The Police Ombudsman Review also highlighted an email sent from a Senior Police Officer to the Operation Rapid team, stating:

Due to the renewed progress on the political front the NIO are pushing strongly to:

Have the outstanding reviews completed as soon as possible.

To resolve the instances of approx. 54 OTR’s who, following review, are listed as wanted by PSNI for arrest and question in relation to serious terrorist offences. 131
196. These statements show clearly that the beginning of Operation Rapid was a government initiative and only because of pressure from the NIO did the Police begin Operation Rapid.

**Knowledge of the end to end scheme**

197. Officials in the NIO were clearly aware of the processes in the Operation Rapid; however, not everyone else was. The full extent of the scheme was not shared with the PSNI, who did not know that OTRs were being informed by letter whether they were “wanted” or “not wanted”.

198. What is even more concerning is that the NIO did not liaise with the PSNI when drafting the letters, and ensuring they were aware of the precise terms of the letters before they were released. This was a failure on behalf of the NIO.

199. It is very clear that several Chief Constables of the PSNI and the Operation Rapid team did not know about the letters until 2011.

**Failure to liaise with the Metropolitan Police Service**

200. The MPS told us the circumstances in which they found out about the scheme, which was only upon Downey’s arrest in 2013. They said Mr Downey made them aware that:

> there had been some discussions and there was a potential for a letter indicating that the matter had been resolved. We were then immediately able to speak to both the PSNI and the Northern Ireland Office in order to identify the circumstances behind the letter, because this was the first knowledge we had around any potential letter or the whole process of on-the-runs scheme.\(^{132}\)

201. By the time of his arrest, the MPS had already used significant police time and resources to ensure the arrest of Mr Downey. They told us:

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

\(^{131}\) Police Ombudsman for Northern Ireland, *Public Statement on PSNI Operation Rapid, matters arising from the ruling in R v John Anthony Downey*, October 2014, para 4.53

\(^{132}\) Q2819
202. We share the MPS’s frustration; if the NIO had informed them about the scheme, so much time and resources would not have been wasted. We agree with the Report of the Hallett Review that:

MPS officers should have been told—and were entitled to know—of the existence of the administrative scheme and of the letters of assurance. Quite apart from the fact that their expertise and intelligence sources could have informed PSNI considerations, the scheme potentially impacted upon their own investigations (as with Mr Downey’s case). Failure to inform the MPS of the scheme meant that it was unable to alert the PSNI to the fact that the details of all ‘wanted’ individuals would not necessarily have been registered on the PNC.\(^\text{133}\)

203. It is clear that Operation Rapid was put in place as Tony Blair was leaving office and it was absolutely critical that Sinn Féin signed up to the Policing Board before he left.

204. When assessing the role of the NIO, it is important to note that Operation Rapid was completely separate to the previous administrative scheme. It had different PSNI staff, and those people in charge did not have any knowledge of the previous scheme in place. The NIO were the only party in a position to assume overall control of the scheme and ensure everyone understood what it involved.

205. There was no overall policy and procedural control of the specific role the different bodies involved had. Most importantly, there was also no procedure in place which dealt with how to correct a mistake, and this was a serious failing of the scheme. A process should have been in place for dealing with errors. If there had been such a process when the PSNI were alerted to the Downey error in 2008 and 2009, the error could have been rectified and the letter withdrawn.

206. We are also surprised that the wording of the letters—“the PSNI are not aware of interest in you by any other police force”—was allowed to stand. Surely, the writers of the letters should have realised that this was an incomplete assessment of a person’s status.

207. If the PSNI had known about the entire scheme and had been involved in checking the letters sent to OTRs, it is almost certain that the Downey judgment could have been prevented. Matt Baggott, former Chief Constable of the PSNI, told us that, “with the benefit of hindsight, had we known there were letters, could there have been a bigger conversation about the implications if a mistake had been made”\(^\text{134}\). We agree with this comment.


\(^\text{134}\) Q688
208. In particular, the NIO should have ensured the MPS were aware of Operation Rapid and understood what it involved. The NIO were the only party in a position to do this. The mistake could also have been prevented if the MPS had been directly involved in the scheme and had been working alongside the PSNI to ensure that those on the OTR lists were not wanted by the MPS Counter Terrorism Unit.

**Operation Redfield**

209. As a result of the Downey judgment the PSNI is now reviewing all of the OTR cases to ensure that no further mistakes have been made. Former Chief Constable Matt Baggott told us that:

> We have established a team of experienced detectives to work our way through the 228 cases to ensure that no mistakes have been made and that any new evidence can be pursued. We have given this a name, as you would expect. It is called Operation Redfield. If I can say, the Downey case does appear to be somewhat unique, as far as we are aware from the ongoing work of the review at the moment, in that the fact that he was wanted was not passed on. It is the only case of this nature that we know of. In the only case that was wanted elsewhere, the individual remains wanted. As far as we are aware at the moment, that review is showing that this is in fact a unique matter.135

210. On the second occasion giving evidence to the Committee, Deputy Chief Constable Drew Harris told us:

> 28 [cases] are open, but that is not to say that that is 28 concluded. That is 28 open and presently under examination and investigation. What I could point to, though, is the priority by which we are doing these. Thirty-six were specifically referred to in Lady Justice Hallett’s report, so those 36 are a priority for our work in terms of examination. […] Given that in various reports both Lady Hallett and the Police Ombudsman have complimented the depth and quality of the work between 2000 and 2006, we believe that is, as has been pointed out to us, a good starting place in terms of our work and those will receive priority. I think those 36 cases are an appropriate place to begin our efforts and to concentrate our efforts for the moment.136

211. Clearly we welcome the PSNI’s review of all OTR cases. We are, nevertheless, extremely concerned that, because of reductions in the PSNI’s budget, it could take up to a decade to complete the task.

212. The work around OTRs was commissioned specifically by the NIO for reasons other than policing. The checks being undertaken initially by the PSNI, in relation to OTRs, were not as a result of its normal policing role; they were being carried out at the

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135 Q678
136 Q3041
request of the NIO for political reasons. What has followed, specifically Operation Redfield, was a direct result of that piece of work being commissioned by the NIO. We believe this needs to be separated out from the wider work around historic investigations and we recommend that the NIO should commit the funds to ensure the review of the names of all those who received letters is undertaken swiftly.

Historical Enquiries Team

213. The HET is a unit of the PSNI set up in September 2005 to investigate the unsolved murders committed during the Troubles in Northern Ireland. It should be noted the team did not consider murders carried out in England. The aims of the project were defined by the PSNI as follows:

We envisage a re-examination process for all deaths attributable to the security situation with case reviews leading to re-investigation in appropriate circumstances where there are evidential opportunities.

Families will sit at the very heart of our investigations. The primary objective will be to work with them to achieve a measure of resolution in these difficult cases. [...] The second objective will be to enable a sense of confidence among those directly affected and the wider public that all these cases will be comprehensively examined to current professional standards, to the extent that as an organisation we can be satisfied that all evidential opportunities have been explored.

When this unit was set up, little thought was given to how the HET’s work would operate alongside the investigations into OTRs.

214. This has caused us much concern, as it is clear that there was a significant overlap between the work of the two teams. When we questioned the former Director of the HET, Dave Cox, about the his knowledge of the OTR scheme and how his team interacted with the PSNI, he stated:

I certainly knew that a scheme was being worked up, and I knew Norman Baxter was running it, but it did not really impact on us because we were going to do our job anyway. We felt that if we came across anything relevant, we would be in touch with them.

He also went on to say there was “no formal interaction” between the HET and Operation Rapid.

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137 Between 1968 and 1998
138 Police Service of Northern Ireland, ‘Policing the Past. Introducing the work of the Historical Enquiries Team’
139 Q890
140 Q892
215. Whilst we are concerned that there was little crossover between the two teams, we do not think Operation Rapid impacted on the work being carried out by the HET. We agree with Dave Cox that if the HET had found new evidence, they “would not have stopped referring it to the PSNI because there was an OTR letter”\(^{141}\).

216. With regard to Mr Downey’s case in particular, the fact that he had received an OTR letter did not prevent the HET from investigating his case and, in fact, the HET were able to highlight the result to the PSNI team. As expressed in the conclusions regarding the Downey case, this was an opportunity missed to correct the impression that Mr Downey was not wanted by the MPS and pass this information onto ACC Sheridan.

217. We support fully the principle of revisiting murders from that period and pursuing prosecutions where the evidence allows, and it is a great pity that the parallel process to consider the cases of OTRs was incompatible with HET’s investigations.

**Lawfulness of the scheme**

218. The Report of the Hallett Review concluded that the scheme was “not unlawful in principle”\(^{142}\), which is a heavily qualified comment and far from saying that this was in practise a lawful scheme.

219. Dame Heather Hallett takes a narrow view, that no specific criminal justice offence had been committed in carrying out the scheme. However, we regard the scheme as a significant departure from what would be considered the normal/ordinary criminal process. On the contrary, it involved the police looking at cases out of sequence, and exclusively on behalf of Sinn Féin, on the instruction of the then Prime Minister. We share Lord Williams’ concern, as referred to in paragraph 51 above, that the issue of “comfort-letters” could result in individuals gaining immunity from prosecution in a manner inconsistent with the normal criminal justice processes in Northern Ireland and the rest of the UK. We are concerned that, especially during the initial phase of Operation Rapid, where the speed of review was accelerated considerably and the threshold may have been mistakenly set too high, that the operation of the scheme had crossed the line from being an extraordinary method of carrying out normal policing work into an unjustifiably reckless exercise of executive authority.

220. Whilst there is no suggestion that the scheme was actually illegal, it would be difficult to say that the scheme is unquestionably lawful in every case and this might have given an aggrieved person an opportunity to have a decision made by a Minister quashed in judicial review proceedings. Secrecy denied this opportunity. However, we are pleased that cases for judicial review have now been brought given the wider public understanding of the scheme. We are also concerned that the availability of this scheme

\(^{141}\) Q927

to only one section of the community, and even then only effectively at the whim of one political party, raises questions about equality rules in Northern Ireland.

221. What is also curious is the continuation of the OTR scheme by the Coalition Government in May 2010, even though justice and policing had been devolved to the Northern Ireland Assembly in the spring of 2010. Not all OTRs were wanted for terrorist-related crimes and so it was not a matter of national security, as Dominic Grieve confirmed, when he told us, “National security could come into it but I certainly would not want to mislead this Committee. Whilst national security could arise in these cases, in some cases it would not.”\textsuperscript{143}

\textsuperscript{143} Q2228
6 Devolution of Policing and Justice

223. Responsibility for policing and justice was devolved to the Northern Ireland Assembly on 12 April 2010; the Department of Justice was set up, and David Ford MLA, the Leader of the Alliance Party, was elected as the Justice Minister.

224. Details of the Downey judgment emerged on the 25 February 2014. The Justice Minister told us he did not hear about the scheme until a few days before this was made public. He stated:

prior to the Downey judgment becoming public, I was unaware that such a scheme was in operation. I first became aware of the scheme when I received a telephone call from an NIO Official on Friday 21 February to brief me about the Downey judgment, before it became public on Tuesday 25 February.144

225. Initially there was some confusion over whether the scheme was or was not devolved; in a Statement to the House on 25 February 2014, the Secretary of State, Theresa Villiers MP, indicated that the scheme was devolved, saying:

As policing and justice have been devolved issues in Northern Ireland since 2010, any further requests for the scheme, or clarifications on whether particular individuals remain wanted for arrest, should be directed to the PSNI and devolved prosecuting authorities.145

However, in a further Statement to the House, the Secretary of State confirmed that the current Government continued the scheme from May 2010, stating:

On coming to office in May 2010 my predecessor was made aware of a list of names submitted by Sinn Féin to the previous government under an agreement they had reached to clarify the status of so-called ‘On the Runs’.146

She also confirmed that neither the Justice Minister, nor the First Minister, were told about the scheme, stating, “I should also make it clear that, to my knowledge, this government did not inform either the First Minister or the Northern Ireland Justice Minister of this scheme.”147 The fact that the First Minister was not told, even on Privy Council terms, about the scheme was, we believe, an insult to him personally, and to his Office.

Why was the scheme not devolved?

226. Some of the arguments that we have heard as to why the scheme was not devolved in 2010 are set out in the paragraphs below.

144 Q1186
145 HC Deb, 25 February 2014, Col 17WS [Commons written ministerial statement]
Legal advice

227. Whether or not the scheme was to be devolved in 2010, was discussed within the NIO. The Permanent Secretary in the Department of Justice, Mr Nick Perry, who had previously worked in the NIO, told us that a decision not to devolve responsibility for the scheme was taken on the basis of legal advice. He told us:

the Ministers who had responsibility for this issue had decided that it would not devolve. They took that decision, I believe, on the basis of legal advice and the Law Officers supported that advice. It simply had not transferred across to the Department of Justice.\textsuperscript{148}

By convention, that legal advice has not been released, and we have not had access to it.

National security

228. National security issues were not devolved to the Northern Ireland Assembly, when policing and justice was devolved. In the Report of the Hallett Review, Dame Heather Hallett offered what she describes as the arguments the NIO put forward for not devolving the scheme in 2010. Her Review stated:

Accordingly, it is an excepted matter by virtue of paragraph 17 of Schedule 2. The argument is along these lines: the scheme evolved as part of the peace process. It was one of a number of measures designed to ensure the implementation of the Belfast Agreement (also known as the Good Friday Agreement) and the end of terrorism. The scheme, therefore, had and has the potential to affect national security.\textsuperscript{149}

229. Owen Paterson, who was Secretary of State just after policing and justice had been devolved, told us that his Government saw the issue of OTRs as one to do with national security. He stated:

We saw it as an issue of national security that had come out of these very difficult negotiations that the last Government had conducted with the Irish and American Governments, and it just was not appropriate. I cannot remember a single person at that time suggesting that we should have handed over this issue to the very new devolved Minister.\textsuperscript{150}

Should the scheme have been devolved?

230. During the course of this inquiry, we have also heard some evidence which suggests the scheme should have been devolved. The Report of the Hallett Review states that:

\textsuperscript{148} Q1025
\textsuperscript{150} Q2671
Opinions vary on whether the administrative scheme should have been devolved to the Northern Ireland Executive in April 2010 as part of the devolution of criminal justice and policing. Anything that is not expressly ‘reserved’ or ‘excepted’ is considered to be devolved. Primarily, the argument turns on whether the administrative scheme is part of the ‘normal criminal justice process’ and therefore devolved, or whether it relates to ‘national security’ (i.e. terrorism) and is therefore ‘excepted’. If ‘excepted’, only primary legislation in Westminster can transfer it.\(^{151}\)

231. Time and time again we have been told that the police, the DPP(NI) and the AGO’s Office are following the normal criminal justice process in the job they are carrying out, which adds weight to the argument that the operation of the scheme should have been devolved.

232. Another argument that could be made with regard to whether the scheme should have been devolved stems from the fact that Mr Paterson planned to devolve the scheme in 2012. In his evidence, he stated:

> In summer 2012, I did, and I said, “We are getting nowhere with Sinn Féin. You and I agree there cannot be an amnesty. Is there any other way forward?” Having discussed it with him, we both agreed the best solution by then, as devolution of policing and justice had satisfactorily gone through and David Ford’s position was well established, was that it was appropriate to go to the local Minister.\(^ {152}\)

233. If something is an excepted matter, then only primary legislation in Westminster can transfer it. It is clear to us that no legislation was planned when Mr Paterson was going to devolve the scheme in 2012—he had already written to Gerry Adams stating that he should bring any further cases to the devolved institutions.

234. Finally, we heard that the final Sinn Féin list was passed to the PSNI the day before the devolution of policing and justice. The then Chief Constable, Matt Baggott, stated:

> At the end of that process, we were asked to review some 38 names. These were names that had been previously submitted and I would probably describe it as a completion of the review process. It was the tail-end; it was a reconciliation. A day before devolution was agreed, I took those names and we put them into a pre-existing review process.\(^ {153}\)

If the NIO thought that the scheme was not going to be devolved, then there would have been no need to pass over the names on that day, as they would have known the scheme would stay within the NIO. The suspicion must be that the NIO believed that the scheme was going to be devolved, resulting in a haste bordering on the cynical.


\(^{152}\) Q2791

\(^{153}\) Q678
235. We believe an opportunity was missed in 2010 to inform Northern Ireland parties, other than Sinn Féin, about the scheme, as well as devolve responsibility for it. Had the scheme been devolved earlier, the scheme would have become public knowledge much earlier. Justice Minister David Ford has made it clear that a scheme like this would not have been allowed to continue under his watch. He told the Northern Ireland Assembly Justice Committee on 3 April 2014 that “there will be no such scheme in the devolved sphere while I am Minister of Justice.”

236. Devolving the scheme would at the very least have given someone, potentially the Justice Minister himself or one of his senior Officials, the chance to take control of the scheme as a whole, and end it. The peace process in Northern Ireland was not in peril in 2010 and it would not have come tumbling down, if the OTR scheme had ended then.

237. The status of the letters after the devolution of policing and justice should also be called into question. Given confusion and differing opinions on whether the scheme was devolved or not, we question the legitimacy of the NIO for continuing with the scheme after that point.

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154 Northern Ireland Assembly, Oral evidence taken before the Committee for Justice, 3 April 2014
7 The Downey error

238. The full factual analysis of the Downey case has already been set out extensively in both the Downey judgment and in Dame Heather Hallett’s Report. We have not, therefore, rehearsed that analysis at length in this Report.

Downey’s name submitted

239. Downey’s name was submitted via a letter to the NIO, on 10 January 2002, and formed part of the sixth set of names in what has become known as Sinn Féin list two. From the tables of ‘on the runs’ lists which form Appendix 5 of the Report of the Hallett Review, we know that Downey was assessed as “wanted” by the PSNI in September 2004, and that Sinn Féin were informed in September 2005 that his case was under review.

240. On 27 January 2006, Mark Sweeney, then Head of the Rights and International Relations Division at the NIO, wrote to the PSNI to seek clarification that Mr Downey was still classed as wanted. When he appeared before the Committee, Mr Sweeney was able to take us through some of these documents and explain their purpose. He described the letter of 27 January as follows:

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.

The PSNI replied on 31 January 2006 to confirm that he was wanted.

241. The result of this clarification exercise was a letter, dated 27 February 2006, from Lord Goldsmith, the then Attorney General, to Peter Hain, the then Secretary of State for Northern Ireland, confirming that “Downey is wanted for arrest and questioning in respect of serious terrorist offences.” When we pressed Mr Hain about whether he had seen the letter, he told us, “I am not saying I have never seen it. I am saying I can’t recall it.” We believe that he should have had sight of the letter and responded, given its importance. Mr Sweeney explained the purpose of the letter, and why it was not responded to. He stated:

If I can explain what will have happened with that letter from Lord Goldsmith, […] 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.

155 Downey Disclosure Documents, p 722-726, Letter from Mark Sweeney to the PSNI, 27 January 2006
156 Q3799
157 Downey Disclosure Documents, p 733-734, Letter from Lord Goldsmith to Peter Hain, 27 February 2006
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.”

242. On 22 March 2006 the NIO informed Sinn Féin, via Gerry Kelly, that Downey remained wanted.

**Downey’s case considered by Operation Rapid**

243. As a result of a meeting on 9 June 2007, DCS Norman Baxter thought the AGO’s Office would look at offences committed in Great Britain, and Operation Rapid’s Terms of Reference stated that the Rapid team would look only at whether someone was wanted by the PSNI. The PSNI did, however, check with the MPS, on 13 April 2007, whether Downey was wanted by them. During his evidence, Mark Rowley, Assistant Commissioner for Specialist Operations in the MPS, confirmed that the “Metropolitan Police did inform them […] that he was wanted in relation to the Hyde Park bombing offences.”

**PSNI decision on Downey**

244. On 7 May 2007, DCI Graham, the Senior Investigating Officer in Operation Rapid, assessed the evidence which the PSNI held on Downey and made the following recommendation:

- a) That Subject is listed as “NOT WANTED” by the PSNI at this time.
- b) That clarification be sought from the Metropolitan Police as to the current position with their circulation of Subject.

245. Within the body of the Report, with respect to the Hyde Park Bomb, it states, “he [Mr Downey] is still wanted by the MPS subject to any new further evidence.”

246. On 10 May 2007, DCS Baxter produced a two-page report on Downey for Assistant Chief Constable Peter Sheridan, which stated the following:

The above person is a native of the Republic of Ireland and is a citizen of the Irish Republic. He has not resided in Northern Ireland and remains resident in his native district. He is not currently ‘on the run’ from his home. I have reviewed his case and there is no basis in my professional opinion to seek his arrest currently for any offence prior to the signing of the Good Friday Agreement.

The above person should be informed that he is not currently wanted by the PSNI for offences prior to the Good Friday Agreement 1998, but it should be

158 Q3941
159 Q2824
borne in mind that should new properly assessed and reliable intelligence, or new evidence which has been judged to retain its integrity, emerge which creates reasonable grounds to suspect his involvement in offences then he will be liable to arrest for any such offence which may have been committed during this period.\textsuperscript{162}

It should be noted that this report does not refer to the fact that Downey was wanted by the MPS for the Hyde Park Bomb.

247. Following the receipt of this report ACC Sheridan wrote, on 6 June 2007, to the DPP(NI), stating the following:

The above person is a native of the Republic of Ireland and is a citizen of the Irish Republic. He has not resided in Northern Ireland and remains resident in his native district. He is not currently “on the run” from his home.

Enquiries indicate that John Anthony Downey is not currently wanted by PSNI.\textsuperscript{163}

**What happened after Downey’s case had been initially processed by the PSNI in 2007**

248. Once Downey’s name had been sent to the DPP(NI) and the AGO, the NIO were asked by the AGO to check with the PSNI whether they had done checks with all other police forces in the UK. ACC Sheridan sent two letters to the DPP(NI)–first, in respect of 25 names; second, in respect of 10 names–which stated that the individuals were ‘not currently wanted by the PSNI’.

249. At this stage, the NIO had not yet seen the list of names of people who were no longer wanted; they were simply making the inquiries based on the Attorney General’s advice.

250. Following an exchange of emails within the Operation Rapid team, ACC Sheridan sent a letter to the NIO on 27 June 2007, with regard to their concerns about what checks had been carried out as to whether X was wanted for arrest by PSNI for any offences pre the Belfast Agreement or circulated as wanted for arrest by an external force and the existence of reasonable grounds (within the UK) or a European Arrest Warrant, and confirmed that the checks had 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.\textsuperscript{164}

251. On 11 July 2007, the AGO sent the further 10 names to the NIO, of which Downey was one, and again asked the NIO to make sure that all checks had been carried out.

\textsuperscript{162} Downey Disclosure Documents, p 764-765, *Report by Norman Baxter to Peter Sheridan*, 10 May 2007

\textsuperscript{163} Downey Disclosure Documents, p 766, *Peter Sheridan’s letter to the Department of the Director of Public Prosecutions*, 6 June 2007

\textsuperscript{164} Downey Disclosure Documents, p 769, *Letter from Peter Sheridan to Hilary Jackson*, 27 June 2007
Sweeney told us, “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.” Again, the answer came back that they had been.

252. It was this email that Sir Jonathan Stephens, current Permanent Secretary at the NIO, told us was the trigger to send out a letter to Mr Downey. He stated:

Mr Sweeney’s intervention was to clarify, “Can we just check that, in saying that, you have checked that he is not wanted by other police forces as well?” That check followed on from a number of previous checks from the NIO in respect of earlier cases as to whether those checks with other police forces had been carried out. The response from the PSNI, from ACC Sheridan in his letter […] was clear and unequivocal. The PSNI accepted that the purpose of the review they were undertaking was to establish not only whether a person was wanted in respect of the PSNI, but also whether he was wanted in respect of other police forces, and to confirm that those checks had been carried out.

As a result of this, a letter was sent to John Downey, via Gerry Kelly, on 20 July 2007.

Role of the DPP(NI)/AGO

253. It is clear that, on 27 June 2007, the PPS wrote to Mr McGinty at the AGO about ten individuals, one of which was Mr Downey, simply repeating the relevant contents of the letter sent by ACC Sheridan to the PPS on 6 June 2007, with no reference to Mr Downey being wanted by the MPS for the Hyde Park bombing. In his evidence to the Committee, ACC Sheridan agreed that, “My assessment was not amended by the DPP. It left the DPP(NI)’s office in the same format that I sent it.” Mr McGinty wrote to the NIO on 11 July 2007 in relation to ten individuals, including Mr Downey, duplicating the contents of the PPS letter.

254. When Mr McGinty was pressed further on the fact the ACC Sheridan’s letter only stated that Mr Downey was not currently wanted by the PSNI, he expressed his view that the distinction was irrelevant:

There is no sensible idea of being able to come back to Northern Ireland if you were wanted in London, because you would be arrested in Northern Ireland[…]To get that response was slightly odd, because it did not mean anything, because, as I said, even if you were wanted not by the PSNI but by the Met, you would be arrested.
**Should the NIO have known that Downey was wanted**

255. We questioned whether Mark Sweeney should have recognised Mr Downey’s name in 2007, given that it had appeared in a letter from the AGO to the then Secretary of State in 2006, whilst he was the NIO’s Deputy Director responsible for the OTR issue. The 2006 letter stated that Mr Downey was wanted for serious terrorist offences.

256. We have noted that Downey was on a list with 10 others who were, according to Mr Sweeney, listed only as “wanted” or “not wanted”. He told us, “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”.169

257. We also note that Downey’s name was on a list with ten others, including some who also had their status changed due to the reassessment in Operation Rapid. Mr Sweeney told us:

> 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.170

258. It is therefore clear to us that the names did not mean anything to Mr Sweeney in the NIO, so it would be unreasonable for him to know about any potential suspicion as to Mr Downey’s alleged involvement in the Hyde Park Bomb. He told us, that:

> 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.

**Further checks by the NIO in 2008–9**

259. Downey’s case was considered by the HET in 2008 and, on 7 May 2008, a PSNI Officer from the HET emailed the PSNI’s Intelligence Unit requesting clarification on the fact that Downey was listed as “Not currently wanted by PSNI”. The Operation Rapid Team, responded by stating that:

> Your presumption is correct. The decision by Head C2 that Downey is ‘not currently wanted’ is based upon information available at the time of the assessment. If further evidence comes to light the matter would then be reviewed by an appropriate SIO.171

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169 Q3864
170 Q3800
171 Downey Disclosure Documents, p 790, Email exchange between the HET and PSNI, May 2008
260. The Downey disclosure documents show that Paul McGowan, of the Operation Rapid Team, emailed both ADCI Graham and ACC Sheridan’s Staff Officer on 23 July 2008 highlighting HET’s concern that Downey was not considered as wanted, despite there being a crucial piece of evidence in relation to a double murder for which HET had submitted a review template.172

261. As stated in the Hallett Review, Mr McGowan emailed ADCI Graham and ACC Sheridan’s Staff Officer to say that he had advised HET of the existence of the DPP(NI) direction dated May 1985 and would confirm whether they were aware of the MPS’s interest in Mr Downey. He also highlighted that DCS Baxter’s report to ACC Sheridan, and the subsequent letter to the DPP(NI), did not state that Downey was wanted by the MPS.

262. Following this email, further investigation into Downey’s case was recommended by both Mr McGowan and ADCI Graham. On 4 August 2008, DCS Baxter, forwarded this email and stated:

> The discovery of new evidence in this case may provide an opportunity to recommence an investigation which may lead to a potential prosecution.

> This is a matter which I feel should be discussed with HET to determine if they are prepared to conduct a full investigation. The issues of integrity highlighted in the PPS direction of 1985 would also need to be reviewed to determine what impact this would have on the rediscovered evidence.

263. The Downey Judgment highlights that further queries were made as to Downey’s status in 2009. It states:

> On 21 October 2009 an internal PSNI report (p.796) recorded that the defendant was one of a number of individuals whose name was checked against lists held by Operation Rapid with the result: “Status reviewed by Op Rapid and assessed as ‘not currently wanted’ by PSNI. He is, however, alerted on PNC as wanted for murder 20/07/82 (Hyde Park Bombing)”.

> Again, nothing was done to alert the DPP(NI), or anyone else, in relation to the defendant being wanted by the Metropolitan Police in connection with the Hyde Park Bombing.174

264. We heard from ACC Peter Sheridan that one of the reasons that the PSNI “did nothing to correct the situation” was that they did not know that these letters were going out. He stated:

> If we had been given notification that this letter was going out “and it is going to say this”, then that would have gone to the Rapid team, who would have, right away, seen that it was wrong, because they would have known.175

172 Downey Disclosure Documents, p 794, Email exchange between members of HET and PSNI, July to August 2008


265. If the PSNI, specifically the Operation Rapid team, had known the terms of the letter sent out to those ‘on the run’ by the NIO they would have been able to ensure that its content was factually correct. Without knowing the content of the letter, it was impossible for them to ‘correct a mistake’ when they were presented with new information. We believe that Norman Baxter acted in good faith throughout.

266. At no point in the exchanges between the NIO and the PSNI, did the NIO mention why they were carrying out follow-up checks, nor did they send to ACC Sheridan the proposed letter to Downey, so that he could check with the Operation Rapid team that it was correct.

267. ACC Sheridan did not know that Downey was wanted by the MPS, so would not have been able to correct the mistake even if he had had sight of it; however, if he had shared it with the other members of the Operation Rapid team, they would have been able to correct the mistake.

268. We have noted also that it was the NIO that queried the level of checks carried out by the PSNI, not the DPP(NI) or the AGO. It is unclear why the queries went directly to ACC Sheridan’s office, and not back to the AG office and the DPP(NI) and, finally, the PSNI.

269. The NIO did not know what offences Downey had committed, as they do not have access to police files. This lack of knowledge on behalf of those who sent the final letter is a major failing of the scheme. No letters should have been sent out by the NIO, and they should have had no involvement in the scheme after sending the names on to the AGO. The prosecuting authorities should have sent out the letters, as they would have been in a position to ensure their content was correct by checking the files before the letters were sent.

**Should the case have been appealed?**

270. On 25 February 2014, the then Attorney General, Dominic Grieve QC MP, made the decision not to seek to appeal Mr Justice Sweeney’s judgment. He subsequently told the House of Commons:

> The court has now heard full argument and has considered a great deal of documentation. The judgment given is a detailed and careful assessment of the case and the circumstances in which Mr Downey received his letter. The CPS and I do not consider it gives rise to any prospect of successful appeal, and I am therefore of the view that the matter cannot be pursued further.  

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175 Q238
176 HC Deb, 26 February 2014, Col 266
271. When he appeared before the Committee he expanded on this decision not to appeal the judgment, and told us:

I did bring the prosecution, but I also read the judgment with great care. Indeed, I have re-read the judgment before I came here again this afternoon, as I had not looked at it for a while. I sat down with the most senior lawyer within the CPS dealing with terrorism crime, and I sat down with the prosecuting barrister, who was previously First Treasury Counsel at the Old Bailey before he moved onto other things, but he is still doing prosecuting work for us. We discussed this case in great detail before we took the decision not to appeal the judge’s judgment.177

272. We note that the judge considered witness statements from Peter Hain, Jonathan Powell and Gerry Kelly, the content of which was agreed by both sides, as part of the evidence put forward at the Downey trial. These statements were clearly given considerable weight. An appeal might have provided an opportunity for a fuller and more a balanced picture about the status and context of the letter to have been presented, especially in the context of the weight that may have been placed on the statement in the original letter, subsequently shown to be erroneous, that the PSNI were “not aware” of Downey being wanted in connection with offences outside Northern Ireland.

273. In taking evidence, we heard views from those who considered that the judgment should have been appealed. The Northern Ireland Attorney General, John Larkin QC, told us that he thought there were avenues to be explored upon appeal. He stated:

With the Margus judgment, and as one reads the careful decision by Mr Justice Sweeney, it seems to me that there is no explicit weighing of the article 2 rights of the next of kin of the deceased. This strikes me, looking at it now, with the benefit of the subsequent decision of the Grand Chamber in Margus, as perhaps something that could have been usefully explored on appeal.

Of course, our system of criminal justice, as you know, does not, unlike, particularly, the French system, have a formal role for the next of kin of victims. But it does strike me that, subject to issues about time limit, this is not a reference to appeal, but the next of kin could quite possibly pray in aid the Margus decision in an application to Strasbourg.178

274. Lord Goldsmith, who was Attorney General from 8 June 2001 until 27 June 2007, also thought a different judge may have taken a different decision. He stated:

I am not sure whether I asked myself the question whether I was surprised. I was conscious, as I have said, from early on that a risk involved in sending any letter of that sort was that if it was not accurate, if it was misleading, somebody might afterwards be able to say that they had been misled and it

177 Q2157
178 Q1661
was an abuse of process, in the light of what was said to be an assurance, for them to be prosecuted. There are a number of cases, in different ways in the criminal law, quite different circumstances, where people have been able to avoid prosecution even for serious crimes on the basis of an abuse of process by the prosecution. It is quite a tough regime. This may be quite a tough example of its operation. If the letter had been corrected, then the situation really would not have arisen, but I understand the legal thinking behind it, though I think that other judges might have reached a different conclusion.179

275. Early in the process, advice to this effect was circulated to the NIO by Lord Williams. The successful abuse of process cases show the danger of having checks carried out by a team kept in the dark as to what information the letters conveyed. Extreme care needed to be taken to avoid this situation arising in the first place.

**Conclusion**

276. The only point we believe which the judgment could be appealed is on the “Third ground”, described in the Downey judgment as:

> a balancing exercise between the public interest in ensuring that those who are accused of serious crime should be tried and the competing public interests in ensuring that executive conduct does not undermine public confidence in the criminal justice system and bring it into disrepute, and in holding Officials of the state to promises they have made in full understanding of what is involved in the bargain.180

277. The judgment in the Downey case served to highlight the inherent risk in the design and subsequent operation of the scheme. It created a situation in which the trial of a suspected terrorist could not proceed because the judge concluded that it would be an abuse of process. We recall that is exactly what Lord Williams of Mostyn warned could happen. We regret that neither the judge nor the prosecution sought witness statements on the nature of the OTR scheme from other parties to ensure that the understanding of the role and importance of the OTR scheme at the time of the decision was consistent with that now expressed by successive Secretaries of State in evidence to this Committee. The then Attorney General, Dominic Grieve, concluded that the judgment should not be the subject of an appeal. We, nevertheless, consider his decision to be a matter for regret, because an opportunity was thereby missed to enable further judicial consideration to be given to whether the integrity of the legal system has been damaged more by discontinuing the trial of someone accused of multiple murder, because of the politically motivated and exceptional scheme for OTRs, than would have been the case had the trial continued. Further judicial consideration could also have been given as to the prevailing political situation when making the judgment.
Further mistake

278. The Report of the Hallett Review highlighted two further errors found during her investigations. Further details of what the report describes as “error 2” came to light on 26 January 2015. It relates to the fact that someone had been sent a letter, even though they were wanted in connection with a very serious offence committed in 2003, five years after the Belfast Agreement had been signed.

279. The Secretary of State commented in a statement to the House on 27 January 2015:

   On Monday 26 January, the coroner conducting the inquest into the death of Mr Gareth O’Connor, who disappeared in May 2003, directed that the inquest should be stayed pending an investigation by the Police Service of Northern Ireland into one of the suspects in Mr O’Connor’s murder.¹⁸¹

280. This letter had been sent to a suspect in the case of the murder of Gareth O’Connor. His family believes that he was murdered by the Provisional IRA.

281. We are concerned about this further revelation for several reasons. Firstly, although Dame Heather Hallett highlighted a second error when her report was published in July 2014, it would appear no action was taken to try to rectify the error, or to withdraw the letter.

282. Moreover, this case also highlights again the fact that the NIO sent out ‘comfort letters’ even though the PSNI’s Terms of Reference for Operation Rapid clearly stated that the police would review suspected terrorist offences committed before the signing of the Belfast Agreement.¹⁸²

¹⁸¹ HC Deb, 27 January 2015, Col 730, [Commons Chamber]
¹⁸² See Appendix 2
8 Use of the Royal Prerogative of Mercy

283. The Royal Prerogative of Mercy (RPM) allows the Sovereign to grant pardons to those persons convicted of a criminal offence. In practice, exercise of this power is delegated to either the Home Office or to the NIO, as appropriate. For Northern Ireland, the power was devolved to the Department of Justice in Northern Ireland in 2010.183

284. The Downey judgment alerted us to the use of the RPM in OTR cases. It stated that “by the end of November 2001 the cases of 41 individuals had been resolved (one way or the other) with 8 more expected to be resolved shortly. The Royal Prerogative was used in a small number of cases.”184

Pre-conviction pardons

285. Below, we set out some of the key correspondence in the Downey disclosure bundle relating to the use of the RPM.

286. On 11 December 2000, the Attorney General wrote to the Secretary of State for Northern Ireland regarding the issue of pre-conviction pardons. In his letter he concluded that:

“This is a very high risk strategy where you will need to be satisfied that the political objective is sufficiently important to undergo the substantial risk that the decision will be overturned in the courts.”185

287. On 14 December 2000, Lord Mandelson wrote to the Attorney General, Lord Williams, to ask him to consider how best to deal with those who went ‘on the run’ prior to conviction and whether their extradition should be dropped by the UK authorities. In a note to the Prime Minister on 20 December 2000, Lord Mandelson considered the use of pre-conviction pardons. He concluded, however, that this should not be used at the time.

Conclusion on Pre-Conviction Pardons

288. Having looked at all of those documents which have been made available to us, we have concluded that pre-conviction pardons were not used in relation to OTRs.

When were Royal Prerogatives of Mercy used?

289. In total the RPM was used in 13 OTR cases, which are highlighted in the Report of the Hallett Review and in the Downey disclosure documents. The Report stated that during December 2000, when Lord Mandelson was Secretary of State for Northern Ireland, the RPM was used in four cases:

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183 For Scotland, the use of the RPM was devolved to Scottish Ministers by the Scotland Act 1998
185 Downey Disclosure Documents, p 394, Letter from Lord Williams to Peter Mandelson, 11 December 2000
In December 2000 four of the OTR cases under consideration appeared to present a particular problem. All four had escaped from custody in Northern Ireland, having been sentenced to determinate terms for offences in the Republic of Ireland; three of the four had also received indeterminate life sentences. They had all served substantial parts of those sentences in the Republic. Had they served the sentences in Northern Ireland, they would have qualified under the Northern Ireland (Sentences) Act 1998 and would have been released on 28 July 2000[…]

[...] All four received the RPM to remit the outstanding balance of their sentences. The three who had received life sentences were also made the subject of a licence, leaving them liable to recall under section 23 of the Prison Act (Northern Ireland) 1953. They were not ‘pardoned’.186

290. A number of names on Sinn Féin’s first list were those who had escaped from prison had been convicted, sentenced and served part of their sentence. The Report of the Hallett Review stated that:

The use of the RPM was suggested as a means of remitting the outstanding balance of those sentences. ... It was believed that the RPM could be an effective way of dealing with these anomalous categories of individuals who would otherwise have been released on 28 July 2000 in accordance with the Northern Ireland (Sentences) Act 1998. The advice of senior independent Counsel was commissioned to check whether this solution would be proper and lawful.187

291. Lord Mandelson explained to us the use of the RPM during his time as Secretary of State, telling us, “These were not pardons; they were commutations of their sentences. That is an absolutely fundamental principle. I was not party to giving people pardons.”188 He then went on to clarify that:

If there was no evidential basis for a direction of prosecution or further prosecution for people who had absconded and had served time, it was reasonable, alongside the early release scheme and in the spirit of that scheme, to give them their freedom.189

With regard to using the RPM for four OTR cases in December 2000, Lord Mandelson told us:

Did I feel happy about, as it were, using the Queen’s name to do this just before Christmas? No, I did not. Did I have any alternative? No, I did not.
292. Lord Reid, the only other Secretary of State who commissioned the use of the RPM, told us what it was used for in OTR cases, he stated:

      Thirdly, the royal prerogative of mercy can be used where there is a technical exclusion from qualification by an act, but in the spirit and intention of the act itself you fell within the bounds of that.190

**Parliamentary Questions and disclosure to the Public**

293. There have been some early disclosures to Parliament regarding the use of the RPM. For example, in March 2002 in response to a question by Jeffrey Donaldson MP, Lord Reid stated:

      11 prisoners on the run have successfully applied to the Sentence Review Commissioners for early release under the terms of the Northern Ireland (Sentences) Act 1998. In addition eight prisoners on the run have met the principles of the early release scheme but a strict application of the Sentences Act has created an anomaly whereby the Sentence Review Commissioners are unable to grant an early release. In those circumstances the Secretary of State’s powers under the Northern Ireland Prisons Act 1953 or the Royal Prerogative of Mercy have been used to provide early release. It has always been the Government’s policy that they do not name individuals released under the early release scheme.191

294. On 29 May 2002, Lord Williams disclosed the following in a Parliamentary Question in relation to the use of the RPM in relation to terrorist prisoners. He stated:

      There is no central record of prisoners released using the Royal Prerogative of Mercy. However the records that have been traced by the NIO show that since 1990 the Royal Prerogative of Mercy has been used to release terrorist prisoners in the following circumstances:

      - providing information or assistance to the authorities—five cases;
      - terminal illness—one case;
      - remission incorrectly calculated—one case;
      - to correct anomalies in the treatment of offenders convicted of the same offence(s) and given the same sentence as co-defendants but who would otherwise have served longer in prison—two cases;
      - to release prisoners who would have been eligible for release under the Belfast Agreement had they not transferred to a different jurisdiction—two cases;
The administrative scheme for “on-the-runs”

- to release prisoners who would have been eligible to be released under the Belfast Agreement had their offences (which subsequently became scheduled offences) been scheduled at the time they were committed—eight cases;

- to release prisoners who would have been eligible to be released under the Belfast Agreement had they not served sentences outside the jurisdiction having been convicted extraterritorially—five cases.

In addition, it was the practice before 1995 to release using the RPM terrorist and non-terrorist prisoners whose release date fell while they were on Christmas home leave.192

Publication of names

295. We accept there was some early disclosure of the use of the Royal Prerogative; but, most regrettably, unlike in England and Wales, where the names are published in the London Gazette, these names were not publicised anywhere in Northern Ireland. For them the RPM was only used to remit sentences. The Report of the Hallett Review states:

There is no legal obligation to publish the exercise of the RPM. By convention, the use of the RPM to grant a free pardon (which is not relevant here and is a truly exceptional measure) is published in the London Gazette. It is not the usual practice to publish the use of the RPM to remit sentences; hence there was no publication of its use for the 13 OTRs.193

296. We welcome the fact that the Hallett report recommended that a central register of RPMs be drawn up for Northern Ireland, and are pleased that HM Government has already accepted this recommendation, although this information will not be provided retrospectively. In the interests of transparency, and given that the names of those who received the use of the RPM are already in the public domain, however, we recommend that the Secretary of State should publish this information retrospectively.

Rodger’s (Robert James Shaw) Application [2014] NIQB 79

297. In June 2014, the Court case Rodger’s (Robert James Shaw) Application [2014] NIQB 79194, published the names of sixteen of the people who received the RPM in Northern Ireland between 2000 and 2002. Those people were:- James Mc Ardle, Sean Branniff, Fergal Toal, Hugh Clarke; Eugene Fanning; Malachy McCann; Edward F Campbell; Daniel Keenan; James Monaghan; SJ Clarke; Gerard Fryers, Robert J Campbell; Paul Magee; Angelo Fusco; Gerard Sloan; and Anthony Sloan. The court document does not, however, set out which of those recipients of the RPM were the thirteen OTRs.

192 HL Deb, 29 May 2002, col WA161
194 High Court of Justice in Northern Ireland, Rodger’s (Robert James Shaw) Application [2014] NIQB 79, June 2014
Conclusion on the use of RPM

298. We believe that the use of the RPM went far beyond the terms of the Belfast Agreement. Given that the early release of prisoners was a bitter pill for victims, OTRs being given the RPM is incomprehensible. **We recommend that HM Government confirm which OTRs received the RPM, as the provision of such information could not jeopardise any future prosecution of those individuals.**

299. Whilst the name of those who received a RPM have been disclosed in court cases, the Secretary of State has refused to name which of those are OTRs. We find this wholly unacceptable.

300. **Where the RPM has been used in Northern Ireland in the past, we believe HM Government should publish the names of those people, and list what they received the RPM for, and we recommend that the names of any future recipients of the RPM in Northern Ireland should be required to be published in the Belfast Gazette.**
Role in the Peace Process

301. The evidence in the disclosure documents suggests that dealing with the issue of OTRs was certainly an important issue for Sinn Féin in its dealings with the Blair government, and therefore a major bargaining chip for the Government. Sinn Féin raised the issue repeatedly at a high level with the British and the Irish Governments and at bilateral talks such as at Weston Park. As we mentioned earlier, in his written statement for the Downey judgment, Gerry Kelly stated:

Sinn Féin for whom I speak in this statement emphasises that it is impossible to overstate the importance of the assurances given to the 187 recipients, which included John Downey, being maintained. These were essential in the achievement of the series of agreements and that began with the Good Friday Agreement in 1998, and were consolidated in the St Andrews Agreement in 2007.195

302. Nevertheless, during his evidence, Tony Blair told us that Sinn Féin were not, however, getting what they wanted from the scheme:

The idea from the very beginning was to try to deal with it by way of a comprehensive scheme, so that you would have a proper and full way to deal with all those people—those people who might be wanted for questioning or who might be charged, and also those people in respect of whom the prosecuting authorities might decide that there is insufficient evidence to charge them—that is, anyone who might be roughly within that category of people who could be wanted in respect of terrorist offences but had not been convicted. They were known colloquially as the “on-the-runs”.

Essentially, over the period of time that I was Prime Minister we tried to find a way to deal with it comprehensively, but were unable to do so. What we were able to do was review those cases, or have the prosecuting authorities review the cases of people who might or might not be charged, and then those people whom the prosecuting authorities decided that they did not want to charge would be informed of that decision.196

303. We have been told that the scheme was purely administrative and only dealt with matters of fact on any particular day. Consequently, the comfort letters made no material change in the case against individuals. Lord Mandelson described them as “sub-optimal, from Sinn Féin’s point of view would be the expression I would use”.197 Sinn Féin themselves have said that the letters were so important, and so critical to the peace process, that it could have collapsed without the letters being issued. These two positions seem
irreconcilable; however, Lord Mandelson probably best summed up the situation when he said, “something can be both sub-optimal and necessary to keep in place”198

Would Sinn Féin have walked away?

304. The question whether Sinn Féin would have walked away from the peace process, if the OTR scheme and its secret letters from the NIO had not been in existence, has had mixed responses.

305. Early on in this process, 1999–2000 seems the most likely time that one could make this political argument. The political situation at the time was difficult, the Belfast Agreement had only been signed in April 1998, but had not yet been fully implemented. The early release of prisoners had not yet happened, the Northern Ireland Assembly was not fully up and running until December 1999, and the Patten Reforms of the RUC had not yet been implemented.

306. The biggest argument against the scheme being a “deal breaker” is the fact that Rita O’Hare who was, in effect, was the person responsible for the start of the whole process, was neither given a letter nor was able to be processed through the administrative scheme. Despite this, Sinn Féin did not walk away from the peace process.

307. We also asked previous Secretaries of State whether they thought Sinn Féin would have walked away if the OTR scheme had not been in place. Lord Mandelson, Secretary of State from October 1999 until January 2001, told us:

> It is very difficult. You are not conducting a laboratory experiment here. If I had done absolutely nothing, they would have taken it very badly. The pressure on me would have greatly escalated, and it was quite strong as it was. Would they, at the end of the day, have walked away and brought the institutions down? In my judgment, no, even though they felt very strongly about it and they felt it was very important.199

308. Peter Hain, Secretary of State between May 2005 and June 2007 told us that “it was essential for Sinn Féin to have that reassurance.”200

309. Owen Paterson, Secretary of State from May 2010 until September 2012, when asked whether the process was a deal breaker, told us:

> At the time I came along it certainly was not, but I cannot comment on what the preceding Labour Secretary of State was faced with when negotiating. By the time I came in it obviously was not a deal-breaker; it was a constant irritant.201

198 Q2983
199 Q2970
200 Q1757
201 Q2720
310. Tony Blair, when he gave evidence, was unequivocal about the importance of the letters, stating that the:

[…issue of on-the-runs was absolutely critical to the peace process and at certain points became fundamental to it. If I had literally been saying, “We’re not dealing with this at all, in any way at all,” I think—you can never be sure of these things—it is likely that the process would have collapsed.202

When then asked whether, without the letters, Sinn Féin would have walked away, his answer was “Correct.”203

311. He also contradicted Lord Mandelson’s conclusions that they would not have walked away, stating that:

I don’t know whether they would have walked away at the time when he was Secretary of State for Northern Ireland. At the beginning of this process, when we were first dealing with this in 1999, it was absolutely crucial. Towards the end, it became absolutely central to getting Sinn Féin on board for policing. It we hadn’t got the deal on policing, we could not have set up the institutions as we did finally in May 2007 and we wouldn’t be where we are today.204

312. Tony Blair also told us that, even though the scheme was not giving Sinn Féin what they wanted, that these letters were important to show that they were doing something to deal with OTRs. He stated:

at least you were then doing something on this issue when you were not able to do the larger thing that people wanted. In other words, you were keeping the thing moving even though, all the way through, what Sinn Féin was saying was: “This is not good enough. It is not right. You promised, but you have not delivered. What are you doing? You said at Weston Park that you would do it, but you are now not doing it. You are only dealing with these cases in a piecemeal way.” At least you were able to say that there was something that was happening. I accept that, as we got to the end of this and it accelerated—particularly when we came to what was, after the Good Friday Agreement, possibly the most difficult negotiation, in late December 2006—it did matter that we said, “Okay, we cannot do anything other than this—what we are doing already—but we’ll accelerate it.” That, again, was an important part of bringing them on board for this final bit; but these are difficult judgments.205

202 Q3661
203 Qq3661-2
204 Q3663
205 Q3690
313. We have previously noted that Sinn Féin were not getting what they wanted from the letters, which was, effectively, an amnesty. It has been suggested that the letters were only sent to those people who had the status of “not wanted”, but we find it somewhat difficult to follow the logic that Sinn Féin would have been kept on board by the NIO sending letters to not wanted people.

314. Without being able to question Sinn Féin about exactly what assurances they thought they were being given by HM Government through these letters, we are not convinced that the OTR letters were deal breakers. It appears to us that Mr Blair was saying that it was necessary to find a solution to the OTR issue in order to keep Sinn Féin on board, and while it was too difficult to legislate for an amnesty, this scheme served as a substitute, a distraction, which kept Sinn Féin in the peace talks. However, it looks to us that the two processes became blurred.

**Damage to the justice system**

315. When examining the role this scheme has played in the peace process, it is important to look at the impact of the revelation of the scheme, since the Downey judgment was made public. Arguably it had greatly damaged public trust, especially in light of the secretive way in which the administrative scheme operated.

316. Moreover, witnesses have told us that the emergence of details of the scheme has played a part in damaging public confidence in the justice system. When asked whether he thought the process had genuinely damaged public confidence in the legal process in Northern Ireland, Barra McGrory told us:

> I think that is a statement of fact that I would have to agree with […] As a prosecutor, I simply have to agree that it is not a process that sits well with the prosecutorial function.206

317. Sam Pollock, Chief Executive of the Northern Ireland Policing Board stated:

> The issue is around 220 people on the run outside the jurisdiction, in some cases for many, many years. That is what is exceptional, has damaged the public confidence and is causing the concern in this particular case; the openness of it.207

**Damage to the relationship between the Assembly and the NIO**

318. We have also heard concerns expressed that the scheme has damaged relationships between the Northern Ireland Assembly and the NIO. David Ford, the Minister for Justice in Northern Ireland told us:

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206 Q1336
207 Q1549
I do not believe it has put the devolution and the position of the Minister in serious jeopardy, but it is an issue that shows how much the past is continuing to impact on the work we’re doing. There have been a number of statements from Government Ministers which have talked about the responsibility of the devolved authorities. I picked up one particular media interview in the immediate aftermath of the Downey judgment where the Deputy Prime Minister referred to the devolved authorities. Now, it was clear, if you looked at the detail of it, that he meant the police and the PPS, but the problem is that, in this building, when you talk about the devolved authorities, people tend to assume that you mean the Assembly, the Department of Justice or the Justice Committee. That is the challenge.208

319. Whilst we consider that damage has undoubtedly been done to public confidence in the criminal justice system, time alone will tell if future openness and honesty will repair that damage. In addition, we expect all future UK Governments of whatever complexion will ensure that such a one-sided and secretive scheme of letters does not happen again.
### Annex: Analysis of OTR data

**By Secretary of State**

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<tr>
<th>Secretary</th>
<th>OTR letters</th>
<th>RPMs</th>
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* ‘Total RPMs and Licence’ counts once those who received both a licence and RPM
† PJM is PJ McGrory & Co, who received two letters directly from the PSNI


**By Date Sent**

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Appendix 1: Hallett Review Terms of Reference

The Review’s terms of reference as originally agreed were:

- to produce a full public account of the operation and extent of the administrative scheme for OTRs;
- to determine whether any letters sent through the scheme contained errors;
- to make recommendations as necessary on this or related matters that are drawn to the attention of the inquiry.

Given the timescale, the Lord Chief Justice insisted on a document clarifying the purpose of the Review in greater detail so that there could be no misunderstanding.

The purpose of the Review was explained in a letter dated 10 March 2014 from Mr Julian King CMG CVO, then Director General at the NIO, to the Lord Chief Justice. Mr King wrote as follows:

The purpose of the review is to examine the operation of the administrative scheme for OTRs. While the reviewer is free to consider the circumstances that led to the establishment of the scheme, a full examination of the political decisions and agreements making up the Northern Ireland peace process is not required. It is envisaged that to produce a public account of the scheme the reviewer will not need to examine the detail of every individual case dealt with under the scheme, but will look at a sample of cases from across the scheme.

The reviewer may choose to look at the grounds on which the police and prosecutors reached the decisions they did and the general approach they used, but will not need to re-investigate every case or make a fresh decision about whether a recipient of a letter should or should not have been pursued for arrest and prosecution. Decisions in respect of arrest and prosecution were and are a matter for the police and prosecuting authorities. If the reviewer decides to consider police or prosecution decisions in this way, they will not examine the detail of every individual case dealt with under the scheme, but will look at a sample of cases from across the scheme.

The reviewer should investigate and form a view on whether any of the letters issued under the scheme contained errors. In this context ‘errors’ means the possibility that the letter contained inaccurate or misleading information, as in the Downey case. To investigate and form a view in respect of errors, the reviewer will not be required to examine the detail of every individual case dealt with under the scheme, but on the basis of the information obtained from such checks as are considered necessary by the reviewer, and from examination of the detail of any case produced by such
checks, will report to the extent possible on whether there are errors in any of the letters sent.

The review should also examine and report on how any errors came to be made, including any systemic failings within the operation of the administrative scheme. In examining how errors came to be made, the reviewer will not examine the detail of every individual case dealt with under the scheme, but will look at any case in which an error is found.

While it is open to the reviewer to consider the general lawfulness and/or legal effect of the scheme and the letters sent under it, the reviewer is not expected to reach a conclusion on the specific legal effect of individual letters, or any action taken or not taken as a result of the letter being sent.

It is, as you will appreciate, essential that any further errors should be identified as quickly as possible, so that the NIO can take steps to correct them.
Appendix 2: Operation Rapid Terms of Reference

Op Rapid is the operational name for the review of persons circulated as ‘wanted’ by the PSNI in connection with terrorist related offences up to the 10 April 1998.

Head of Branch C2 will have the responsibility to undertake this review with the purpose of identifying those individuals for whom a legal basis remains to seek their arrest based upon:

- Existing evidence, the integrity of which would withstand a legal challenge within a judicial process in Northern Ireland; or

- Reasonable suspicion of committing serious crime in Northern Ireland, such suspicion being based upon a standard which meets current Human Rights standards; or

- Being unlawfully at large having escaped from custody or failed to return to prison from parole or having failed to surrender to a court as a condition of the granting of bail.

The Terms of Reference for Operation Rapid were as follows:

1. Responsibility for the completion of the review will rest with the Head of Branch C2, who will have the support of other Crime Operation Departments in undertaking supporting work in respect of reviewing intelligence and forensic exhibits.

2. A small team of investigators of 1 D/C/Inspector, 2 D/Sergeants and 3 civilian assistant investigators will be formed to work on the review.

3. The review will be conducted under terms of confidential reporting in order to prevent a misinterpretation of the purpose of this review.

4. Assistant Chief Constable, Crime Operations will supply a list of those individuals identified to the PSNI as having requested information as to their status with the PSNI as a ‘wanted person’.

5. Each offence will be reviewed on an individual basis; although where a number of separate offences have been identified relating to one individual these will be grouped together to enable a collective assessment of intelligence, forensic and other evidence to be made.

6. The Head of Branch C2 will make a recommendation in respect of each individual in one of the following terms:-

   a) Wanted for arrest for …… offence(s) on the following grounds:-

      i) Intelligence exists which is of such a required grade, which has been assessed as to support a reasonable suspicion to be formed that ‘X’ committed the offence for which he/she has been circulated.
ii) Evidence exists which supports reasonable suspicion that ‘X’ committed the offence for which he/she has been circulated. This evidence has been reviewed and has been assessed as retaining its integrity and would withstand a legal challenge within a judicial process in Northern Ireland.

iii) Forensic evidence directly links ‘X’ to the offence for which he/she has been circulated. Such forensic evidence has been reviewed and it has been assessed that its integrity in terms of scene recovery, continuity of handling, scientific examination and subsequent storage is such that it would withstand a legal challenge within a judicial process in Northern Ireland.

iv) An international warrant has been issued by another jurisdiction for ‘X’ and is in possession of the PSNI on behalf of the United Kingdom legal authority. Clarification has been made with the issuing jurisdiction and the warrant for arrest remains valid and enforceable.

v) Wanted for arrest as ‘X’ has escaped from lawful custody, failed to return to prison for a period of parole or failed to surrender to a court as a condition of the granting of bail.

b) No longer wanted for arrested for…Offence(s) on the following ground:-

i) Original intelligence in respect of the offence has been reviewed and deemed to be of a grade that would not support a reasonable suspicion being formed that ‘X’ committed the offence for which he/she has been circulated.

ii) Original intelligence in respect of the offence cannot be released to the review team due to National Security considerations and therefore cannot be released to an SIO. It has been assessed in these circumstances that a reasonable suspicion based upon disclosed information to support an arrest cannot be made at this case.

iii) The personal details of ‘X’ cannot conclusively be connected with the personal details of the person currently identified as being wanted. In such circumstances a reasonable suspicion to arrest ‘X’ cannot be formed at this point.

iv) There are reasonable grounds to arrest ‘X’ for the offence(s) of …… however, it has been assessed in consultation with the PPS that the conduct of the PSNI in addressing the detention and apprehension of ‘X’ is such that to act at this stage would be in contravention of Art 6 of the ECHR in respect of abuse of process.

v) The offence of[...] allegedly committed by ‘X’ is statute barred or in the view of the PPS the case is of such a minor nature that there is no reasonable prospect of a prosecution being sustained after a prolonged period of time.

7. The Head of Branch C2 will ensure that a proper detailed record auditing the review and decision making process in respect of each individual is made and retained.

8. The Head of Branch C2 will expeditiously undertake this review and will submit responses to individual cases as soon as an accurate assessment can be made.
Conclusions and recommendations

Introduction and background

1. We urge the Government to ensure that, in future, all parties that carry out inquiries or reviews on behalf of the Government are instructed from the outset that they would be required to explain their findings to Parliament if invited to do so. (Paragraph 11)

The administrative scheme

2. It is clear that Sinn Féin pushed for OTRs to be dealt with at the highest level, and that promises were made by the Prime Minister as a result of the pressure put upon HM Government by Sinn Féin. Over the years, Tony Blair put in much effort to ensure those promises were fulfilled, but did so without telling other Northern Ireland party leaders about the exact nature of the administrative scheme. (Paragraph 47)

3. The role of the Irish Government also gives rise for concern, as the December 1999 letter highlighted that it was pushing for cases which had not even been tried in the United Kingdom courts to be completely dropped. It appears that the Irish Government was, in effect, trying to persuade HM Government to introduce an amnesty for republican terrorist suspects. (Paragraph 48)

4. We would like to see HM Government state its policy on pursuing those who were still wanted at the end of the OTR scheme including Rita O’Hare. (Paragraph 49)

Barriers

5. Without the restrictions placed upon the scheme by Lord Williams, that only the evidential, rather than the public interest test, would be considered, it is possible that many more of those on the Sinn Féin lists may have been eligible for a letter stating they were not wanted. We welcome the fact that Lord Williams intervened in this way, and consider his behaviour was an example for others. (Paragraph 54)

Did it go over and above the terms of the Belfast Agreement?

6. Even though the extradition cases were dropped, we have seen no evidence that those returning were compelled to present themselves to authorities upon their return to Northern Ireland. We believe that some were given a ‘not wanted letter’, in some cases the Royal Prerogative of Mercy (RPM) was used, and, in the cases of Maze escapees, where extradition was sought due to their escape, the public interest test was used to drop cases against them. (Paragraph 59)

7. One of the most controversial issues within the Belfast Agreement was the early release of prisoners, but at least it was publicly disclosed in the Agreement which itself was endorsed by referendum and enshrined in statute. By contrast, the
administrative scheme for OTRs, also a highly controversial scheme, remained largely invisible for some 14 years. (Paragraph 61)

8. We believe the scheme was intended to go beyond the Belfast Agreement and the early release scheme, to cover further categories of republicans accused of serious terrorist acts. To this extent the public was deceived. (Paragraph 62)

9. The dropping of extradition cases resulted in some suspected terrorists having the opportunity to return to the UK, without standing trial. The dropping of the cases against the Maze escapees, using a public interest argument, also goes beyond the terms of the Belfast Agreement. Those released under the Agreement had, at least, stood trial and been convicted for the crimes they committed, whereas the Maze escapees did not face further trial for the crime of escaping prison. (Paragraph 63)

The involvement of politicians and civil servants in decision making

10. Sir Jonathan Philips, who was Director-General, Political, in the NIO from 2002, and Permanent Secretary from 2005 to 2010, told us that Officials during his time “were acting within the framework of the scheme as it had evolved since 2001.” This suggests to us that, reasonably early on in the scheme, there was at least a very loose framework in place for the role of NIO Officials. (Paragraph 67)

11. Officials in the early days of the scheme were ultimately trying to implement in good faith what was desired by Ministers. Nevertheless, there has been some suggestion that the role of Officials and the NIO blurred the principle of the separation of powers, and the public expectation that the criminal justice system should operate separately from government. (Paragraph 68)

12. The direct involvement of Secretaries of State for Northern Ireland, Officials in the political directorate in the NIO, and even No. 10 Officials, in the criminal justice process was recognised as being extraordinary by many witnesses. We understand that the circumstances after the Belfast Agreement were also extraordinary and given the lack of confidence Sinn Féin, at that point, had in the criminal justice system in NI, we recognise that an extraordinary process was required. However once Sinn Féin had signed up to support policing in NI this scheme should have reverted to more normal criminal justice processes. We also consider that the extraordinary nature of the scheme should also have required all those involved to put in place thorough processes to ensure that the identified risks of damaging the criminal justice processes were mitigated as far as possible from the start. It is greatly regrettable that this was not done. (Paragraph 75)

13. It is apparent to us that different Secretaries of State played significantly different roles in the scheme. Those who were in post at the initial stages of the scheme were very knowledgeable about it, as was Peter Hain, a long serving Secretary of State for Northern Ireland. His evidence appears to have been heavily relied upon by Judge Sweeney in the Downey judgment. Those involved later in the scheme seemed to be much less well informed about the detail of the scheme, and did not have the same role with regard to individual OTRs. This may have been because the scheme had
become firmly established by the time they became the Secretary of State and it continued to be operated by NIO Officials. It was wrong the final scheme continued without the full involvement of successive Secretaries of State. (Paragraph 76)

Role of the RUC GC/PSNI in the initial scheme

14. Whilst the role being undertaken by the RUC GC/PSNI were highly unusual, the police and prosecuting authorities carried out their task with appropriate diligence during these early years of the scheme, in what were very difficult circumstances. We are very concerned by Mr Norman Baxter’s assertion of political interference in policing matters and hope it is investigated properly. (Paragraph 83)

Overall conclusions on the initial scheme

15. Whilst the scheme may not have given Sinn Féin exactly what they wanted, it was designed to go well beyond the terms of the Belfast Agreement early release scheme to cover a much wider range of people. It allowed people to return to the UK, without going through any judicial process. It also allowed prison escapees to return to the UK, without serving the remainder of their sentence or being charged with escaping from prison. (Paragraph 86)

Knowledge of the administrative scheme

16. Only with the benefit of hindsight, can it now be seen that there were several indications that an administrative scheme for OTRs was in operation, including, for example, from Ministers’ responses to Parliamentary Questions; the scheme was therefore an example of something being “hidden in plain sight”. (Paragraph 104)

17. Whilst we accept that some disclosure had been made about dealing with OTRs, these have tended to be incomplete accounts of what the scheme fully entailed. Indeed, some of the disclosures to Parliament, both in response to Parliamentary Questions, and to questions raised by our predecessor Committee, leave out some key information about how the scheme worked, and in his judgment Mr Justice Sweeney commented: “At a meeting with the [Secretary of State for Northern Ireland] in May 2001 Mr Adams expressed the view that, in terms of Republican confidence, it would be better if there was an invisible process for dealing with OTRs”. It is clear the intention was that the people of Northern Ireland and other political parties were kept in the dark about the scheme to the greatest possible extent. (Paragraph 105)

Knowledge of the letters

18. In section 8.54 of The Report of the Hallett Review, it is stated that “there was sufficient information in the public domain to alert the close observer of political affairs in Northern Ireland to the fact that some kind of process existed by which OTRs could submit their names for consideration by the police and prosecuting authorities”. We disagree. Even Owen Paterson, who had been shadow Secretary of State for Northern Ireland since 2007, told us he did not know about the scheme until he actually became Secretary of State in 2010. (Paragraph 116)
19. We have found no evidence that, beyond Sinn Féin and the NIO, anyone else knew about the precise use of letters, issued on behalf of HM Government, to alert someone as to whether they were “wanted” or “not wanted”. (Paragraph 117)

20. It is important to make clear at this point that the PSNI knew nothing about the content of the letters sent from the NIO to Sinn Féin until December 2011. This is one of the major failings of the scheme. (Paragraph 118)

21. Due to the fact that the detail of the scheme was not fully disclosed, it prevented citizens from seeking to judicially review the legality of the scheme, or the decisions made with regard to whether an individual would receive a letter or not. The criminal justice system in the UK is based around transparency with details of individuals arrested and charged being made public and trials also being open to the public. This transparency is key for public confidence in the fairness of the system. The secrecy of the administrative scheme runs counter to this need for transparency and in our view should have been fully disclosed from the start. (Paragraph 119)

Publication of names

22. A number of Members of the Committee felt that the names of those who had received letters should be published immediately, provided that publication would not prejudice any future trial and would not cause any security risk to the individual named. It was felt that naming the individuals would go some way towards restoring faith in the justice system where it may have been lost due to the way the in which the administrative scheme was run. Others on the Committee, however, felt that the names should not be published at this point. However, there was strong agreement that Operation Redfield should be carried out as quickly as possible so that a full assessment is made of the current status of those who had received letters. (Paragraph 131)

New evidence

23. The letters themselves, and subsequent statements by the PSNI and NIO, have left it unclear quite what “new evidence” would be required for a prosecution to be brought against a recipient of one of the letters. This issue is key and should have been addressed before the text of the letters was decided so that all involved were clear regarding what could and could not be considered. This issue exposes again the lack of care that was taken in designing the scheme. This is a point which needs to be clarified, particularly given the statement by the PSNI that 95 recipients of letters are potentially linked, by intelligence, to almost 300 murders. (Paragraph 141)

Sinn Féin’s reliance on the letters

24. Sinn Féin stated that it was “impossible to overstate the importance of the assurances” the letters gave. It is unclear whether this means Sinn Féin took the letters to have some legal status beyond being a simple statement of facts at the time, but it is difficult to see how the letters could have been thought to have such significance if taken purely at face value. The fact that Gerry Kelly refused our
invitation to give public evidence has denied Sinn Féin the opportunity to explain what assurances they had been given by HM Government as to the status of the letters. (Paragraph 146)

**New status as a consequence of the judgment**

25. Whatever the intended consequences of the comfort letters that were issued, it is clear to us that the issue of a letter to Downey was the result of errors during the process. Whatever the original status of the letters, the fact that a letter was issued to Mr Downey resulted in him being able to successfully claim an abuse of process, preventing him from being prosecuted for his alleged involvement in the Hyde Park bomb. (Paragraph 151)

**Withdrawal by the Secretary of State**

26. The Government should set its mind to ensuring that all necessary steps are taken, including, if necessary, introducing legislation to ensure the letters have no legal effect. (Paragraph 157)

**Speeding up the process**

27. We consider that speeding up the process in 2007 made it more difficult for thorough and competent reviews to be carried out and, therefore, may well have made it more likely that someone would get a letter who was not supposed to. (Paragraph 166)

**Terms of reference**

28. Downey was born and resided in Donegal, so was not considered an OTR by DCS Norman Baxter, under the Terms of Reference for Operation Rapid. (Paragraph 189)

29. There was undoubtedly confusion over who was supposed to check whether someone was wanted by the police in England and Wales. The Terms of Reference of Operation Rapid made it clear that the PSNI were only looking at whether someone was wanted by the PSNI. (Paragraph 190)

**PSNI role in Operation Rapid**

30. We accept that DCS Norman Baxter and ACC Sheridan did not know about the previous scheme so, unlike Mr McGinty, they were not aware of the normal processes and the normal roles everyone played. For example, they were not aware that they should pass on information as to whether someone was wanted by the MPS. This, however, begs the question as to why the PSNI felt they had to check with the MPS whether Downey was wanted, and, in hearing that he was wanted, did not pass this information on. DCS Norman Baxter should have, at the very least, passed this information to ACC Sheridan. (Paragraph 191)

31. It is not illegal to pass the information on to another police force, so DCS Baxter was mistaken; he should have passed the information that John Downey was wanted by the MPS on to the DPP(NI). (Paragraph 192)
32. The approach to evidence during Operation Rapid is concerning, especially in light of the very large number of cases which had their status changed during DCS Baxter’s time in charge. We endorse Dame Heather Hallett’s recommendation that “The PSNI give priority in this new review of OTR cases to the 36 individuals whose status changed under Operation Rapid in 2007–08.” (Paragraph 193)

Overall conclusions on Operation Rapid

33. It is clear that Operation Rapid was put in place as Tony Blair was leaving office and it was absolutely critical that Sinn Féin signed up to the Policing Board before he left. (Paragraph 203)

34. When assessing the role of the NIO, it is important to note that Operation Rapid was completely separate to the previous administrative scheme. It had different PSNI staff, and those people in charge did not have any knowledge of the previous scheme in place. The NIO were the only party in a position to assume overall control of the scheme and ensure everyone understood what it involved. (Paragraph 204)

35. There was no overall policy and procedural control of the specific role the different bodies involved had. Most importantly, there was also no procedure in place which dealt with how to correct a mistake, and this was a serious failing of the scheme. A process should have been in place for dealing with errors. If there had been such a process when the PSNI were alerted to the Downey error in 2008 and 2009, the error could have been rectified and the letter withdrawn. (Paragraph 205)

36. We are also surprised that the wording of the letters—“the PSNI are not aware of interest in you by any other police force”—was allowed to stand. Surely, the writers of the letters should have realised that this was an incomplete assessment of a person’s status. (Paragraph 206)

37. If the PSNI had known about the entire scheme and had been involved in checking the letters sent to OTRs, it is almost certain that the Downey judgment could have been prevented. Matt Baggott, former Chief Constable of the PSNI, told us that, “with the benefit of hindsight, had we known there were letters, could there have been a bigger conversation about the implications if a mistake had been made”. We agree with this comment. (Paragraph 207)

38. The NIO should have ensured the MPS were aware of Operation Rapid and understood what it involved. The NIO were the only party in a position to do this. The mistake could also have been prevented if the MPS had been directly involved in the scheme and had been working alongside the PSNI to ensure that those on the OTR lists were not wanted by the MPS Counter Terrorism Unit. (Paragraph 208)
Operation Redfield

39. The work around OTRs was commissioned specifically by the NIO for reasons other than policing. The checks being undertaken initially by the PSNI, in relation to OTRs, were not as a result of its normal policing role; they were being carried out at the request of the NIO for political reasons. What has followed, specifically Operation Redfield, was a direct result of that piece of work being commissioned by the NIO. We believe this needs to be separated out from the wider work around historic investigations and we recommend that the NIO should commit the funds to ensure the review of the names of all those who received letters is undertaken swiftly. (Paragraph 212)

40. Whilst we are concerned that there was little crossover between the two teams, we do not think Operation Rapid impacted on the work being carried out by the HET. We agree with Dave Cox that if the HET had found new evidence, they “would not have stopped referring it to the PSNI because there was an OTR letter” (Paragraph 215)

41. With regard to Mr Downey’s case in particular, the fact that he had received an OTR letter did not prevent the HET from investigating his case and, in fact, the HET were able to highlight the result to the PSNI team. As expressed in the conclusions regarding the Downey case, this was an opportunity missed to correct the impression that Mr Downey was not wanted by the MPS and pass this information onto ACC Sheridan. (Paragraph 216)

42. We support fully the principle of revisiting murders from that period and pursuing prosecutions where the evidence allows, and it is a great pity that the parallel process to consider the cases of OTRs was incompatible with HET’s investigations. (Paragraph 217)

Lawfulness of the scheme

43. Whilst there is no suggestion that the scheme was actually illegal, it would be difficult to say that the scheme is unquestionably lawful in every case and this might have given an aggrieved person an opportunity to have a decision made by a Minister quashed in judicial review proceedings. Secrecy denied this opportunity. However, we are pleased that cases for judicial review have now been brought given the wider public understanding of the scheme. We are also concerned that the availability of this scheme to only one section of the community, and even then only effectively at the whim of one political party, raises questions about equality rules in Northern Ireland. (Paragraph 220)

Should the scheme have been devolved?

44. We believe an opportunity was missed in 2010 to inform Northern Ireland parties, other than Sinn Féin, about the scheme, as well as devolve responsibility for it. Had the scheme been devolved earlier, the scheme would have become public knowledge much earlier. Justice Minister David Ford has made it clear that a scheme like this would not have been allowed to continue under his watch. He told the Northern
Ireland Assembly Justice Committee on 3 April 2014 that “there will be no such scheme in the devolved sphere while I am Minister of Justice.” (Paragraph 235)

45. Devolving the scheme would at the very least have given someone, potentially the Justice Minister himself or one of his senior Officials, the chance to take control of the scheme as a whole, and end it. The peace process in Northern Ireland was not in peril in 2010 and it would not have come tumbling down, if the OTR scheme had ended then. (Paragraph 236)

46. The status of the letters after the devolution of policing and justice should also be called into question. Given confusion and differing opinions on whether the scheme was devolved or not, we question the legitimacy of the NIO for continuing with the scheme after that point. (Paragraph 237)

**The Downey error**

47. If the PSNI, specifically the Operation Rapid team, had known the terms of the letter sent out to those ‘on the run’ by the NIO they would have been able to ensure that its content was factually correct. Without knowing the content of the letter, it was impossible for them to ‘correct a mistake’ when they were presented with new information. We believe that Norman Baxter acted in good faith throughout. (Paragraph 265)

48. At no point in the exchanges between the NIO and the PSNI, did the NIO mention why they were carrying out follow-up checks, nor did they send to ACC Sheridan the proposed letter to Downey, so that he could check with the Operation Rapid team that it was correct. (Paragraph 266)

49. ACC Sheridan did not know that Downey was wanted by the MPS, so would not have been able to correct the mistake even if he had had sight of it; however, if he had shared it with the other members of the Operation Rapid team, they would have been able to correct the mistake. (Paragraph 267)

50. We have noted also that it was the NIO that queried the level of checks carried out by the PSNI, not the DPP(NI) or the AGO. It is unclear why the queries went directly to ACC Sheridan’s office, and not back to the AG office and the DPP(NI) and, finally, the PSNI. (Paragraph 268)

51. The NIO did not know what offences Downey had committed, as they do not have access to police files. This lack of knowledge on behalf of those who sent the final letter is a major failing of the scheme. No letters should have been sent out by the NIO, and they should have had no involvement in the scheme after sending the names on to the AGO. The prosecuting authorities should have sent out the letters, as they would have been in a position to ensure their content was correct by checking the files before the letters were sent. (Paragraph 269)
Should the case have been appealed?

52. The judgment in the Downey case served to highlight the inherent risk in the design and subsequent operation of the scheme. It created a situation in which the trial of a suspected terrorist could not proceed because the judge concluded that it would be an abuse of process. We recall that is exactly what Lord Williams of Mostyn warned could happen. We regret that neither the judge nor the prosecution sought witness statements on the nature of the OTR scheme from other parties to ensure that the understanding of the role and importance of the OTR scheme at the time of the decision was consistent with that now expressed by successive Secretaries of State in evidence to this Committee. The then Attorney General, Dominic Grieve, concluded that the judgment should not be the subject of an appeal. We, nevertheless, consider his decision to be a matter for regret, because an opportunity was thereby missed to enable further judicial consideration to be given to whether the integrity of the legal system has been damaged more by discontinuing the trial of someone accused of multiple murder, because of the politically motivated and exceptional scheme for OTRs, than would have been the case had the trial continued. Further judicial consideration could also have been given as to the prevailing political situation when making the judgment. (Paragraph 277)

Further mistake

53. Although Dame Heather Hallett highlighted a second error when her report was published in July 2014, it would appear no action was taken to try to rectify the error, or to withdraw the letter. (Paragraph 281)

54. This case also highlights again the fact that the NIO sent out ‘comfort letters’ even though the PSNI’s Terms of Reference for Operation Rapid clearly stated that the police would review suspected terrorist offences committed before the signing of the Belfast Agreement (Paragraph 282)

Use of the Royal Prerogative of Mercy

55. Having looked at all of those documents which have been made available to us, we have concluded that pre-conviction pardons were not used in relation to OTRs. (Paragraph 288)

56. We welcome the fact that the Hallett report recommended that a central register of RPMs be drawn up for Northern Ireland, and are pleased that HM Government has already accepted this recommendation, although this information will not be provided retrospectively. In the interests of transparency, and given that the names of those who received the use of the RPM are already in the public domain, however, we recommend that the Secretary of State should publish this information retrospectively. (Paragraph 296)

57. We recommend that HM Government confirm which OTRs received the RPM, as the provision of such information could not jeopardise any future prosecution of those individuals. (Paragraph 298)
58. Whilst the name of those who received a RPM have been disclosed in court cases, the Secretary of State has refused to name which of those are OTRs. We find this wholly unacceptable. (Paragraph 299)

59. Where the RPM has been used in Northern Ireland in the past, we believe HM Government should publish the names of those people, and list what they received the RPM for, and we recommend that the names of any future recipients of the RPM in Northern Ireland should be required to be published in the Belfast Gazette. (Paragraph 300)

Role in the peace process

60. We have previously noted that Sinn Féin were not getting what they wanted from the letters, which was, effectively, an amnesty. It has been suggested that the letters were only sent to those people who had the status of “not wanted”, but we find it somewhat difficult to follow the logic that Sinn Féin would have been kept on board by the NIO sending letters to not wanted people. (Paragraph 313)

61. Without being able to question Sinn Féin about exactly what assurances they thought they were being given by HM Government through these letters, we are not convinced that the OTR letters were deal breakers. It appears to us that Mr Blair was saying that it was necessary to find a solution to the OTR issue in order to keep Sinn Féin on board, and while it was too difficult to legislate for an amnesty, this scheme served as a substitute, a distraction, which kept Sinn Féin in the peace talks. However, it looks to us that the two processes became blurred. (Paragraph 314)

62. Whilst we consider that damage has undoubtedly been done to public confidence in the criminal justice system, time alone will tell if future openness and honesty will repair that damage. In addition, we expect all future UK Governments of whatever complexion will ensure that such a one-sided and secretive scheme of letters does not happen again (Paragraph 319)
Wednesday 18 March 2015

Members present:

Mr Laurence Robertson, in the Chair

Mr David Anderson
Mr Joe Benton
Oliver Colvile
Mr Stephen Hepburn
Lady Hermon
Kate Hoey
Naomi Long
Nigel Mills
Ian Paisley
David Simpson

Draft Report (The administrative scheme for “on-the-runs”), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 130 read and agreed to.

Paragraph 131 read.

Amendment proposed, leave out paragraph 131 and insert:

“We believe that publishing the names would be entirely consistent with the principles of open justice in a system where the details of individuals arrested are made public, even if they are never charged. We therefore recommend that the names of those in receipt of letters should be published forthwith. However, we believe that it is of extreme importance that Operation Redfield is completed as soon as possible.”—(Nigel Mills.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Kate Hoey
Nigel Mills
Ian Paisley

Noes, 5

Mr David Anderson
Mr Joe Benton
Oliver Colvile
Mr Stephen Hepburn
Naomi Long

Paragraphs 132 to 319 read and agreed to.

Annex agreed to.

Summary read.

Amendment proposed, leave out Summary and insert:

“There are a number of fundamentals concerning the administrative scheme which cannot be disputed: the scheme came about during the peace process, and was a way by which individuals living outside of the UK could find out if they would be arrested if they were to return; only those OTRs where there was insufficient
The administrative scheme for “on-the-runs” evidence of criminal activity should have received a letter; errors such as the Downey case occurred because of flaws in the system, such as inadequate leadership, organisation and liaison, but decisions were taken independently of politicians, and that should not have not been allowed to occur; the scheme was not publicised but there was, however, significant information in the public sphere over the years of its operation; Dame Heather Hallett was appointed to review the scheme in light of the Downey error and concluded that the scheme was unprecedented, flawed, but not unlawful, and did not constitute an amnesty.

We share the real and genuine disappointment felt by victims, but conclude that that we are now in a far better place today as a result of the decisions taken around the peace process. People did take risks at that time, but those risks have paid off for the vast majority of people in the UK. Furthermore, we believe that everyone acted in good faith believing that they were securing peace in a very fragile environment.” - (Mr Stephen Hepburn.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Mr Stephen Hepburn

Noes, 7

Mr David Anderson
Mr Joe Benton
Oliver Colvile
Kate Hoey
Naomi Long
Nigel Mills
Ian Paisley

Several Papers were appended to the Report.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned to a date and time to be fixed by the Chair]
Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at www.parliament.uk/niacom.

**Wednesday 2 April 2014**

Norman Baxter QPM, former Detective Chief Superintendent, RUC GC/PSNI  
**Q1-116**

Peter Sheridan OBE, former Assistant Chief Constable, RUC GC/PSNI  
**Q117-243**

**Wednesday 9 April 2014**

Sir Hugh Orde OBE QPM, President, Association of Chief Police Officers and former Chief Constable, Police Service of Northern Ireland  
**Q244-336**

Rt Hon Shaun Woodward MP, former Secretary of State for Northern Ireland  
**Q337-411**

**Wednesday 30 April 2014**

Sir Ronnie Flanagan GBE QPM, former Chief Constable, Royal Ulster Constabulary GC/Police Service of Northern Ireland  
**Q412-521**

Kevin McGinty CBE, Director of Criminal Law and Deputy Head, Attorney General's Office  
**Q522-672**

**Wednesday 7 May 2014**

Chief Constable Matt Baggott CBE QPM, and Assistant Chief Constable Drew Harris OBE, Police Service of Northern Ireland  
**Q673-783**

**Tuesday 13 May 2014**

Rt Hon the Lord Trimble, former First Minister of Northern Ireland  
**Q784-840**

**Wednesday 4 June 2014**

Mark Durkan MP, former deputy First Minister of Northern Ireland  
**Q841-886**

Dave Cox QPM, former Director, Historical Enquiries Team  
**Q887-966**

**Monday 9 June 2014, Morning session**

Nick Perry, Permanent Secretary, Department of Justice  
**Q967-1097**
Monday 9 June 2014, Afternoon session

William Frazer, Families Acting for Innocent Relatives (FAIR), Barry Halliday, and Gordon Murdock

John Beggs, Secretary and Adrian McNamee, Head of Policy and Research, Commission for Victims and Survivors for Northern Ireland, Ann Travers and David Scott, Victims and Survivors Forum

Tuesday 10 June 2014, Morning session

David Ford MLA, Minister of Justice

Barra McGrory QC, Director of Public Prosecutions for Northern Ireland

Rt Hon Peter Robinson MLA, First Minister

Tuesday 10 June 2014, Afternoon session

Anne Connolly, Chair, Sam Pollock, Chief Executive and Brian Rea, member, Northern Ireland Policing Board

Phyllis Carrothers, Kenny Donaldson, Stephen Gault and Shelley Gilfillan, Innocent Victims Unit

John Larkin QC, Attorney General for Northern Ireland

Wednesday 18 June 2014

Rt Hon Peter Hain MP, former Secretary of State for Northern Ireland

Christopher Daly, representing the Hyde Park families

Wednesday 25 June 2014

Rt Hon the Lord Reid of Cadowan, former Secretary of State for Northern Ireland

Wednesday 2 July 2014

Rt Hon the Lord Goldsmith QC, former Attorney General

Rt Hon Dominic Grieve QC MP, Attorney General

Wednesday 9 July 2014

Michael Gallagher and Cat Wilkinson, Omagh Support and Self Help Group

Brian Hambleton and Julie Hambleton, Justice4the21
Wednesday 15 July 2014
Rt Hon Paul Murphy MP, former Secretary of State for Northern Ireland  Q2320–2371

Wednesday 3 September 2014
Rt Hon Theresa Villiers MP, Secretary of State for Northern Ireland, and Sir Jonathan Stephens KCB, Permanent Secretary, Northern Ireland Office  Q2372–2491

Monday 8 September 2014
Jonathan Powell, Chief of Staff to Prime Minister Tony Blair (1997–2007)  Q2492-2670

Wednesday 10 September 2014
Rt Hon Owen Paterson MP, former Secretary of State for Northern Ireland  Q2671–2816

Wednesday 22 October 2014
Mark Rowley QPM, Assistant Commissioner for Specialist Operations, and Duncan Ball, Commander of the Counter Terrorism Command, Metropolitan Police Service  Q2817–2934

Tuesday 4 November 2014, Morning session
Rt Hon the Lord Mandelson, former Secretary of State for Northern Ireland  Q2935–3039

Tuesday 4 November 2014, Afternoon session
Drew Harris OBE, Deputy Chief Constable, Police Service of Northern Ireland  Q3040–3148

Tuesday 11 November 2014
Peter Sheridan OBE, former Assistant Chief Constable, Royal Ulster Constabulary GC/Police Service of Northern Ireland  Q3149–3226

Dr Michael Maguire, Police Ombudsman for Northern Ireland, Adrian McAllister, Chief Executive, and Paula Cunningham, Deputy Senior Investigations Officer, Office of the Police Ombudsman for Northern Ireland  Q3227–3314

Wednesday 19 November 2014
Sir Bill Jeffrey KCB, former Political Director, Northern Ireland Office  Q3315–3406
Sir Jonathan Phillips KCB, former Permanent Secretary, Northern Ireland Office  Q3407–3482

Tuesday 6 January 2015
Sir Jonathan Stephens KCB, Permanent Secretary, Northern Ireland Office  Q3483–3653
Tuesday 13 January 2015

Rt Hon Tony Blair

Monday 19 January 2015

Rt Hon Theresa Villiers MP, Secretary of State for Northern Ireland, Sir Jonathan Stephens KCB, Permanent Secretary, Mark Sweeney, former Head of Rights and International Relations Division and Dr Simon Case, former Deputy Director, Security and Legacy Group, Northern Ireland Office
Published written evidence

The following written evidence was received and can be viewed on the Committee’s inquiry web page at www.parliament.uk/niacom. OTR numbers are generated by the evidence processing system and so may not be complete.

1. Aileen Quinton (OTR0016)
2. Barra McGrory QC, Director of Public Prosecutions Northern Ireland (OTR0018)
3. Christopher Daly (OTR0003)
4. Commission for Victims and Survivors (OTR0020)
5. Committee on the administration of Justice (OTR0005)
6. Dr Cillian McGrattan (OTR0012)
7. Families Moving on (OTR0021)
8. Gerry Kelly MLA (OTR0014)
9. Innocent Victims United (OTR0017)
10. Kevin McGinty (OTR0009)
11. Rt Hon the Lord Goldsmith QC (OTR0025)
12. Northern Ireland Office (OTR0026)
13. Peter Sheridan (OTR0024)
14. Police Federation of Northern Ireland (OTR0007)
15. Sinn Féin (OTR0015)
16. SO15 Counter Terrorism Command, Metropolitan Police (OTR0023)
17. Terri Jackson (OTR0002)
Extracts of Downey disclosure, and other relevant documents

The following extracts from the Downey Disclosure Papers can be viewed on the Committee's inquiry web page at www.parliament.uk/niacom.

1. Letter from Tony Blair to Gerry Adams, 5 November 1999
2. Letter from John Sawers to Nick Perry, 20 December 1999
3. Letter from Bertie Ahern to Tony Blair, 23 December 1999
4. Letter from Gerry Adams to Tony Blair, 8 March 2000
5. Note of meeting with Irish Officials and Sinn Féin, 2 May 2000
6. Letter from Tony Blair to Gerry Adams, 5 May 2000
7. Letter from Lord Williams to Peter Mandelson, 2 June 2000
8. Letter from Jonathan Powell to Lord Williams of Mostyn, 23 June 2000
9. Letter from Peter Mandelson to Lord Williams, 27 June 2000
10. Letter from Jonathan Powell to Nick Perry, 28 June 2000
11. Draft letter from Peter Mandelson to Gerry Kelly, July 2000
12. Letter from Peter Mandelson to Tony Blair, July 2000
13. Jonathan Powell’s report on meeting with Gerry Adams Gerry Kelly and Rita O’Hare, July 2000
14. Letter from Gerry Kelly to Peter Mandelson, 10 July 2000
15. Memo from Jonathan Powell to Tony Blair, 13 July 2000
16. Memo from Jonathan Powell to Tony Blair, 14 July 2000
17. Memo from Peter Mandelson to Tony Blair, 18 July 2000
18. Memo from Bill Jeffrey re conversation with Jonathan Powell, 20 July 2000
20. Letter from the NIO to John Sawers, 28 July 2000
21. Minutes of the meeting between Peter Mandelson (Secretary of State) and Martin McGuinness, August 2000
22. Letter from Lord Williams to Peter Mandelson, 15 August 2000
23. Memo from William Fittall to Peter Mandelson, 18 August 2000
24. Letter from Peter Mandelson to Lord Williams, 21 August 2000
25. Letter from John Sawers to Nick Perry, 30 August 2000
26. Minutes of OTR meeting with Sinn Féin, 31 August 2000
27. Minutes of meeting between Peter Mandelson and Lord Williams, 11 September 2000
28. Memo from Peter Mandelson to Tony Blair, 4 October 2000
29. Memo from Peter Mandelson re meeting with Gerry Adams, 7 November 2000
30. Letter from Quentin Thomas to John Sawers, 1 December 2000
31. Letter from Peter Mandelson to Ken Maginnis, 8 December 2000
32. Letter from Lord Williams to Peter Mandelson, 11 December 2000
33. Letter from Peter Mandelson to Lord Williams, 14 December 2000
34. Memo from Peter Mandelson to Tony Blair, 18 December 2000
35. Letter from Lord Williams to Peter Mandelson, 19 December 2000
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<td>Letter from John Reid to Lord Irvine, <a href="#">May 2002</a></td>
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<td>‘OTRs–A Brief History of Crime’, William Fittall, <a href="#">September 2002</a></td>
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<td>Letter from David Trimble to the Prime Minister, <a href="#">11 November 2002</a></td>
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Letter from Metropolitan Police to the Clerk of the Committee, 2 January 2015
List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee’s website at [www.parliament.uk/niacom](http://www.parliament.uk/niacom).

The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

**Session 2010–12**

| First Report | Corporation Tax in Northern Ireland | HC 558 (HC 1767) |
| Second Report | Air Passenger Duty: Implications for Northern Ireland | HC 1227 |
| Third Report | Fuel laundering and smuggling in Northern Ireland | HC 1504 |

**Session 2012–13**

| First Special Report | Fuel laundering and smuggling in Northern Ireland: Government Response to the Committee’s Third Report of Session 2010–12 | HC 272 |
| First Report | An air transport strategy for Northern Ireland | HC 76 (HC 960) |
| Second Report | Draft Northern Ireland (Miscellaneous Provisions) Bill | HC 1003 (CM 8621) |

**Session 2013–14**

| First Report | Implementation of the Armed Forces Covenant in Northern Ireland | HC 51 (HC 721) |

**Session 2014–15**

| First Report | Northern Ireland: banking on recovery? | HC 178 |