

**THE REPORT OF THE
HALLETT REVIEW**

**AN INDEPENDENT REVIEW
INTO THE ON THE RUNS
ADMINISTRATIVE SCHEME**

The Right Honourable Dame Heather Hallett DBE

July 2014

ISBN 978-1-4741-0891-1



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**Return to an Address of the Honourable the
House of Commons dated 17 July 2014**

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**Ordered by the House of Commons to be printed on
17 July 2014**

HC 380



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This publication is available at www.gov.uk/government/publications

Print ISBN 9781474108911

Web ISBN 9781474108928

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 02071433 07/14 41728 19585

Printed on paper containing 75% recycled fibre content minimum

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Foreword

The ruling in *R v John Downey* which triggered this Review, and disclosure to the public of the details of an administrative scheme to deal with ‘on the runs’, had a distressing impact on bereaved families and survivors of terrorist attacks across the United Kingdom. They deserve as many answers as one can give to their questions about the scheme as soon as possible.

There has been a great deal of misunderstanding about and misreporting of the administrative scheme, some of which may have unwittingly added to their distress. I urge everyone to read this Review carefully before commenting upon it and to choose their words with care when they do, conscious of the many victims who are affected by this issue.

My team has examined thousands of documents, and worked hard to ensure that we have conducted as thorough and rigorous a review as we could, in the time available. I am immensely grateful to them. If we have failed to answer every question within my remit to everyone’s satisfaction, it has not been for want of trying. I hope that what we have been able to establish will assist the Northern Ireland Affairs Select Committee in its inquiry into the same issue.

I am also indebted to all those who made themselves available for interview or comment (often at short notice), who took the trouble to write to me or to meet members of my team and to all those who provided assistance to the Review.

I was able to reach my preliminary findings by 30 June. It was then essential, given the sensitivity of this Review, that I allowed time for security checks and further representations from those particularly affected by these findings. Despite the slight delay in finalising my Report, I am now pleased to be able to set out my findings in full.

The Right Honourable Dame Heather Hallett DBE

11 July 2014

Chapter 1: Introduction

- 1.1** With the agreement of the Lord Chief Justice of England and Wales and by letter dated 12 March 2014, the Rt Hon Theresa Villiers MP, Secretary of State for Northern Ireland, appointed me to conduct an independent review of the administrative scheme to deal with ‘on the runs’ (OTRs) in Northern Ireland. Under the administrative scheme, individuals could ask whether they were at risk of arrest if they returned to Northern Ireland or the rest of the UK. The Review was triggered by the ruling in *R v John Downey* on 21 February 2014.
- 1.2** John Downey was one of a number of OTRs who received a letter of assurance. In July 2007 he was informed by the Northern Ireland Office (NIO) that, as far as the Police Service of Northern Ireland (PSNI) was aware, he was not of interest to any police force in the UK. This was wrong. Officers of the PSNI knew he was ‘wanted’ by the Metropolitan Police Service, and had been for some time, on suspicion of involvement in the Hyde Park bombing of 1982 in which Lieutenant Anthony Daly, Trooper Simon Tipper, Lance Corporal Jeffrey Young and Squadron Quartermaster Corporal Roy Bright lost their lives. In the years that followed the letter, officers of the PSNI realised their mistake yet did nothing to rectify the error. In the meantime Mr Downey ‘acted to his detriment’ in reliance on the letter of assurance by travelling to the UK. He was arrested on 19 May 2013 at Gatwick Airport, charged and prosecuted on four counts of murder and causing an explosion.
- 1.3** The trial judge in *R v John Downey* found that it would be an abuse of the process of the court to try him. The Hon Mr Justice Sweeney described the state’s error in informing Mr Downey he was not wanted by the police as “catastrophic”. The ruling was not appealed.
- 1.4** The effect of the ruling caused outrage in many quarters. Members of the families of the four victims of the Hyde Park bombing felt that they had been denied justice. They could not understand how the man accused of murdering four young men could escape prosecution and trial on the basis of a letter. Many surviving victims and family members of victims of other terrorist attacks felt much the same.
- 1.5** I and my Review team have met members of the families of the four men killed in the Hyde Park bombing, and representatives of victims’ groups in Northern Ireland. We have also received letters from other bereaved families across the UK. They have described, in moving terms, their acute distress at learning from the Downey ruling of the existence of the administrative scheme, which they understood, from reports, provided an amnesty to suspected terrorists. I can state categorically that it did not. Nevertheless the impact of the reports of the scheme upon victims has been distressing. One of my correspondents called it a “knife in our hearts”.
- 1.6** I have, therefore, kept the perspective of victims and bereaved families at the forefront of this Review. I hope others will do the same in order to avoid misleading commentary and further misreporting.

The Review’s terms of reference

- 1.7** 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.

1.8 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

1.9 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 Northern Ireland Office can take steps to correct them.

The timetable

- 1.10** The original timetable agreed was for me to reach my conclusions by the end of May. However, I warned both the Secretary of State for Northern Ireland and the Lord Chief Justice soon after my appointment that if I was to conduct as thorough a review as was expected, the May deadline was unrealistic.

Limitations on the Review

My role

Points of law

- 1.11** I am not sitting in a judicial capacity. If, therefore, I appear to express an opinion on a legal issue, it can only be a provisional opinion. In any event, it is not binding on any other judge.

Objective assessment

- 1.12** I have conducted an objective assessment of the administrative scheme, but with the considerable benefit of hindsight and without the contemporary pressures that would have faced the politicians, officials and police officers involved. It is in that light that my conclusions (which are mine alone) must be viewed.

Classified documents

- 1.13** My Review team and I have been given access to many classified documents. For obvious reasons I have not been able to quote verbatim from all relevant documents and I have therefore resorted to paraphrase where appropriate. I am confident that the selected document extracts, together with my paraphrasing of discussions, fairly and sufficiently reflect events. The classification of documents has not compromised my ability to report as freely and openly as I would wish. Had I felt that I had been inhibited in any way by the classification of documents I would have said so.

Accuracy of figures

- 1.14** In the time available we have done our best to check, cross-check and produce figures which are as accurate as possible. However, we were dependent on the material provided and/or shown to us. I cannot, therefore, guarantee 100% accuracy. Even if there are additional errors we have failed to identify, I believe our figures are a fair reflection of the system.

Other inquiries/reviews

- 1.15** At the same time as I have been conducting this Review, the Northern Ireland Affairs Select Committee has been conducting its own inquiry along similar lines. It has the ability to compel witnesses to attend and to hear evidence from them in public as opposed to speaking to them in private interviews. However, it does not have the benefit of access to all the relevant material and databases. I hope, therefore, that our efforts are complementary and that the results of this Review will be of some assistance to them and to the Committee for Justice of the Northern Ireland Assembly which has an obvious interest in the subject. The

committees will be in a position, I hope, to pursue any legitimate areas of concern which remain outstanding, informed by our investigation.

- 1.16** The Police Ombudsman for Northern Ireland has the responsibility for investigating any alleged police misconduct in the operation of the scheme and we have been in close contact with him and his Senior Investigating Officer.

Review v Statutory Inquiry

- 1.17** It has been suggested that I should have made representations to the Secretary of State to turn this Review into a full Statutory Inquiry.¹ For example, concerns have been expressed that the Review does not have the power to compel witnesses and that my interviews were conducted in private. However, none of those to whom I have sent questions or invited to attend an interview declined to co-operate and many have been examined in public by the Northern Ireland Affairs Select Committee. In any event, the Lord Chief Justice agreed to my appointment on the basis that the Review was fixed in time and by its scope, as explained above.
- 1.18** I should also make it clear that this is a 'government inquiry' only to the extent that I was appointed by the Secretary of State for Northern Ireland and I shall report back to her. In all other respects it is independent. No one has attempted improperly to influence my findings.

Extent of terms of reference

- 1.19** Concern has been expressed in several quarters about the extent of my terms of reference. I should emphasise that they were agreed by the Lord Chief Justice after very careful consideration. He was anxious to ensure that, as a serving judge, I embarked upon a fact-finding mission rather than a political debate.
- 1.20** Members of the Review team have conducted a thorough search of the police review files and of the relevant databases in respect of each and every OTR on the lists provided to me. They have analysed the material relating to each of the OTRs to the extent necessary to identify any obvious errors in individual cases or in the system.
- 1.21** We have not conducted our own assessment of the sufficiency of the evidence and/or the quality and reliability of the intelligence relating to any of the recipients of a letter of assurance. It would not be appropriate for me to do so and I did not have the time or resources. I understand the PSNI will be performing this task in the case of every individual on the list. The work is expected to last several years.
- 1.22** The other area we have not explored is the exercise of the Royal Prerogative of Mercy (RPM) for individuals whose names do not appear on the lists of OTRs. This is because it is outside my terms of reference. I have, however, considered the use of the RPM in the context of the OTRs on the lists.
- 1.23** I have not found myself inhibited by my terms of reference in getting to the truth of what happened as far as the development of the administrative scheme is concerned, and in identifying flaws in the scheme and potential errors.

¹As regulated by the Inquiries Act 2005 and providing, for example, powers to require the production of evidence, the attendance of witnesses and the taking of public evidence on oath

- 1.24** Again, I have the comfort of knowing that if there are legitimate lines of enquiry we have not been able to resolve during this Review, others will pursue them.

Disclosure of names

- 1.25** Some of my correspondents have asked me to disclose whether any of the OTRs who received a letter of assurance were suspected of terrorist incidents in which they lost members of their family. I understand why they wish to know but I cannot help on this issue. I was given access to the lists of names on strict terms of confidentiality and I am bound by those terms. It is for others to decide whether they are bound by the same principle. Thus, my refusal to 'name names' is not as a result of any 'whitewash' but simply because, as a matter of law, I am not entitled to do so.

- 1.26** I have also been scrupulously careful not to reveal details of offences in which any OTR was a suspect (unless they are properly in the public domain) so as not to prejudice any future criminal trials. People, especially the victims, would not thank me if I inadvertently contributed to another successful abuse of process application. I encourage others to show similar caution.

Individual cases

- 1.27** I have been invited to consider the cases of individuals who believe they should have received a letter of assurance or benefited from the exercise of the RPM but did not. They argue, *inter alia*, that this amounts to unfair treatment and discrimination and have asked me to look into their cases. It would have been beyond my terms of reference and improper for me to do so.

Source materials

- 1.28** In drawing up my Report, I have used a wide range of both open and closed source materials. The Review team and I have conducted interviews with over 40 individuals and spoken to or met a number of further contributors (most of whom are listed at Appendix 2). We considered submissions sent in response to our call for public evidence. We also conducted a disclosure exercise for relevant material across government departments and authorities including the Cabinet Office, the Northern Ireland Office, the Attorney General's Office, the Home Office, the Security Service, the Foreign and Commonwealth Office, the Police Service of Northern Ireland, the Public Prosecution Service for Northern Ireland and the Metropolitan Police Service. From this disclosure exercise, we obtained hundreds of files containing many thousands of documents. These included OTR case review files, operational documents, ministerial policy submissions, minutes of meetings and departmental correspondence. Between us, we have examined all of these documents. We compiled a core master bundle containing every significant document in chronological order, and individual files tracking each OTR from the letter submitting their name to ultimate disposal (if any) of their review. From these individual files, we created a master spreadsheet of OTRs which appears in redacted form at Appendix 5.
- 1.29** For obvious reasons it has not been possible to make reference to every single document which I have taken into account in drawing up this Report, or which is included in the master bundle referred to above.

Acknowledgements

1.30 I am grateful to all those individuals, policing bodies, government departments and other organisations who have facilitated and contributed to this Review. The spirit of openness and co-operation which I have encountered has been of great assistance in enabling me to deliver my Report in a timely fashion.

Chapter 2: Executive summary

Overview

- 2.1 There has been a great deal of misunderstanding and misreporting of the administrative scheme, and confusion about the categories of ‘on the runs’ (OTRs).
- 2.2 OTRs fall into several categories, and ways of dealing with them have varied. In this Review I have used the term ‘administrative scheme’ to mean the process whereby individuals could ask whether they were at risk of arrest if they returned to Northern Ireland or the rest of the UK.
- 2.3 The administrative scheme did not amount to an amnesty¹ for terrorists. Suspected terrorists were not handed a ‘get out of jail free card’.
- 2.4 The administrative scheme was treated by the UK Government as sensitive and details were not widely publicised. However, the scheme was not classified as ‘secret’.
- 2.5 The scheme was allowed to evolve and operate without any proper structure or policy in place. This led to considerable scope for error.
- 2.6 Failings were for the most part systemic rather than attributable to individuals. Opportunities were missed between and within departments and organisations which could have minimised the risk of errors.
- 2.7 The Northern Ireland Office (NIO) should have realised from the start, or at least shortly after the first list of 36 names was submitted by Sinn Féin on 19 May 2000, that there needed to be a proper structure for the process. Sinn Féin’s second list of names presented a further missed opportunity to draw up a clear strategy.
- 2.8 Had there been such a structure and strategy, the error in John Downey’s case might well have been recognised and rectified. Under the scheme, properly administered, Mr Downey should **not** have received a letter.
- 2.9 The Operation Rapid police report upon which the letter of assurance to Mr Downey was ultimately based failed to disclose the fact that Mr Downey was ‘wanted’ by the Metropolitan Police Service. I have been given no satisfactory explanation for this failure by the Police Service of Northern Ireland (PSNI). Members of the Operation Rapid team were aware that notifications of status were being provided, even if they did not know the precise details.
- 2.10 The error in Mr Downey’s case was compounded by the fact that the PSNI realised their mistake in 2008 yet did nothing to correct it or at least check what assurance had been given about his status.
- 2.11 We have identified two more occasions on which it appears that a letter of assurance was sent as a result of errors:
 - A letter of assurance was sent and then not revoked, despite recognition of a potential mistake over the correct date of birth.

¹Under an amnesty the state agrees never to prosecute for an offence, whatever the strength of the case against an alleged offender

- A letter of assurance was sent that suggested the recipient was not currently wanted for an offence, despite the fact that he was wanted in Northern Ireland for an offence committed after the Belfast Agreement (also known as the Good Friday Agreement).

2.12 The administrative scheme did not impact upon ongoing investigations into historical offences. PSNI and Historical Enquiries Team (HET) files on terrorist offences were not closed.

Evolution of the administrative scheme

2.13 The scheme evolved from negotiations between the UK Government and Sinn Féin on the implementation of the Belfast Agreement. How to deal with OTRs was one of a number of issues considered genuinely important to the peace process.

2.14 Former Prime Minister Tony Blair gave Gerry Adams, President of Sinn Féin, an undertaking that steps would be taken to resolve the OTR issue. Gerry Adams and his colleagues repeatedly pressed for a solution, but I have found nothing to suggest that they argued for anything which they knew was unlawful or unconstitutional.

2.15 Throughout much of the period of the scheme, there was pressure from Sinn Féin on Downing Street and from Downing Street on officials to resolve the issue of OTRs, and to do so more quickly. This pressure, although robust, did not cross the line into what might be called improper.

2.16 Various options were explored, including granting immunity from prosecution to those who advanced the cause of peace. However, it was generally accepted on advice from successive Attorneys General that an amnesty for OTRs required legislation.

2.17 The Attorneys General and the Director of Public Prosecutions for Northern Ireland (DPP(NI)) were asked to participate in a process whereby they considered each case on an individual basis. This led, in time, to the process now known as the 'administrative scheme'.

2.18 The role of the DPP(NI) and the Attorney General was to apply the two-stage test for prosecution (the evidential test of 'reasonable prospect of conviction' and the public interest test). Successive Attorneys General expressed their firm resolve to act independently of government and not to compromise their prosecutorial discretion for political reasons. They were, however, prepared in one case to receive representations from ministerial colleagues in accordance with the 'Shawcross doctrine'² on the public interest aspect. There is nothing improper in such a process.

Operation of the administrative scheme

2.19 The administrative scheme began in 2000 and continued until 7 March 2014, when the Secretary of State for Northern Ireland announced that the scheme was over.

2.20 Names were submitted to the UK Government by Sinn Féin, the Irish Government and the Prison Service of Northern Ireland. Other political parties insist they were unaware of the scheme and were not in a position to submit names.

2.21 In general, the NIO would forward the names, via the Attorney General's Office (AGO) and the Public Prosecution Service (PPS) 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

²See Appendix 10 for a full explanation of the 'Shawcross doctrine'

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. If the review concluded that the individual was 'wanted', the NIO informed Sinn Féin, but no letter was sent to the individual. On occasion, a composite letter was sent to Sinn Féin setting out a list of individuals and giving their status.

- 2.22** The individual letters of assurance were intended to inform individuals, where appropriate, that, as at the date of the letter, the recipient was 'not wanted' for questioning or prosecution in Northern Ireland or the rest of the UK. They should have contained a caveat that if new evidence or intelligence came to light or circumstances changed, the recipient might face arrest.
- 2.23** The first two letters of assurance were dated 15 June 2000 and were sent from 10 Downing Street. They were signed by the Prime Minister's Chief of Staff, Jonathan Powell, and related to alleged offences in England and Wales. Thereafter the vast majority of letters were sent by officials at the NIO.
- 2.24** In total, 228 names were put forward. Of these, 184 were submitted by Sinn Féin (of which 5 were duplicate names); 35 by solicitors acting for Sinn Féin; 4 by the Irish Government; and 14 (of which 4 were duplicate names) by the Northern Ireland Prison Service. A total of 156 people received an individual letter of assurance. Another 31 were told that they were 'not wanted' in some other way. Twenty-three individuals on the OTR list were informed that they were 'wanted'. Eighteen currently do not have a definitive answer as to their status.
- 2.25** There was a spike in the number of individuals receiving letters of assurance between February 2007 and October 2008. During this time, the status of 36 individuals changed from 'wanted' to 'not wanted'.

Criticisms of the administrative scheme

- 2.26** The administrative scheme was not designed; it evolved. As a result, it lacked proper lines of responsibility, accountability and safeguards (such as risk assessments and mechanisms for review).
- 2.27** When errors came to light, opportunities were missed to rectify them and to review the scheme as a whole. There was no policy on what to do if an error was identified.
- 2.28** There was no agreed policy on communicating the existence of the scheme.
- 2.29** The principal focus of the scheme was on offences committed in Northern Ireland. However, some of the OTRs were suspected of committing terrorist offences in England and Wales. There was insufficient liaison with police forces and senior prosecutors elsewhere in the UK at a strategic and operational level.
- 2.30** Considerable reliance was placed on the accuracy of database checks. However, there were known problems with the PSNI database (which were not addressed), and a check of the Police National Computer (PNC) would not necessarily have revealed whether an individual was 'wanted' in England or Wales. Further, there seems to have been confusion about the extent of checks with other bodies like Interpol and the police in the Republic of Ireland.
- 2.31** Police officers produced their own terms of reference with some input from lawyers who, through no fault of their own, had inadequate knowledge of the end-to-end process.

- 2.32** NIO officials did not show the PSNI the contents of a letter of assurance before it was sent; nor did they provide a copy for PSNI files. So far as I am aware, the PSNI did not become aware of the ‘normal text’ of the letters of assurance until December 2011.
- 2.33** Insufficient attention was paid to drafting the letters in accordance with information supplied by the police, in order to fit individual circumstances. The terms of the caveats included in individual letters were not carefully crafted. There was ample scope for misunderstanding.
- 2.34** Some OTRs were informed that their status was ‘free to return’ by means of a composite letter (covering a list of individuals) to Sinn Féin, without any caveat regarding a change in circumstances.
- 2.35** Insufficient legal consideration was given to the principle of sending a letter of assurance; to the consequences of sending a letter in error; and to the consequences of informing someone that they were ‘not wanted’ with no caveat as to a change of circumstances.

The scheme under Operation Rapid

- 2.36** Operation Rapid was set up in February 2007 as a PSNI initiative. The timing suggests that it was established as a result of discussions with politicians who were pressing for a speedier process.
- 2.37** Speeding up the process carried with it an increased risk of error. The scheme could only work if the police review process was thorough and details were checked meticulously.
- 2.38** The Operation Rapid team in 2007/08 processed a significantly larger number of OTR reviews than their predecessors had, and 36 individuals had their status changed from ‘wanted’ to ‘not wanted’. This may be because much of the work had been done during previous reviews, because evidence no longer existed and/or in part because the Operation Rapid team in this period may have applied a higher threshold to categorise someone as ‘wanted’.
- 2.39** The original terms of the police review (as recorded in 2002) had provided for “checks with external forces”, but the terms of reference changed under Operation Rapid. They were drafted/agreed by Assistant Chief Constable (ACC) Peter Sheridan and Detective Chief Superintendent (DCS) Norman Baxter, and a copy was sent to the NIO. ACC Sheridan showed the terms of reference to the PSNI human rights adviser and its lawyer.
- 2.40** Had DCS Baxter and ACC Sheridan been shown a copy of a letter of assurance or been made aware of its contents, their terms of reference are likely to have been drafted differently.
- 2.41** DCS Baxter felt that the new terms of reference better reflected the requirements of the courts in 2007 for the arrest of suspects and the gathering of evidence. Although I understand his concerns, which arose from judicial criticism in relation to police handling of inquiries, in my view at least one of the 2007 terms of reference set the bar too high. It arguably focused more on the test for prosecutors than on the test for investigators.³ The terms of reference were amended by DCS Baxter’s successor.
- 2.42** In the absence of any detailed guidance document, the Operation Rapid terms of reference of 2007 did not make clear what was required of the police review team. They also made no

³The test for prosecutors is the two-stage test of (i) sufficient evidence to afford a reasonable prospect of conviction and (ii) public interest; the test for investigators is reasonable grounds for suspecting that someone has committed an offence

reference to conducting external checks, although in practice the PSNI did check the PNC as part of its review.

- 2.43** Concerns were expressed by members of the Operation Rapid team about the accuracy and thoroughness of database checks, but in my view these were not properly addressed by senior officers.
- 2.44** Concerns have been expressed in some quarters about the quality of the evidential/intelligence assessments carried out under Operation Rapid in 2007/08. The PSNI is currently engaged in a full evidential review of each name on the OTR lists. This will take years. Only when this major review has been completed will it be possible to assess the existence/adequacy of the evidence and intelligence “links” between over “200 murder investigations” and 95 individuals on the OTR lists to which reference was made before the Northern Ireland Affairs Select Committee.
- 2.45** Once a recommendation that someone was ‘not wanted’ had been accepted, any entry on the PSNI’s database was altered to reflect that fact. Therefore, if the Operation Rapid categorisation was incorrect, it could lead to the deletion of a ‘wanted’ warning from the database.
- 2.46** The Operation Rapid team was unaware that the terms of the assurance being given by the NIO to Sinn Féin in relation to offences were not limited to offences committed before the Belfast Agreement. This led to at least one individual being categorised as ‘not wanted’ and being sent a letter of assurance when he was ‘wanted’ for an offence committed after the Agreement.

R v John Downey

- 2.47** Mr Downey received a letter dated 20 July 2007 signed by NIO official Mark Sweeney informing him that “The Police Service of Northern Ireland are not aware of any interest in you from any other police force in the United Kingdom”. In fact, they **were** aware that he was ‘wanted’ by the MPS. A check of the PNC had revealed that fact.
- 2.48** At the time that DCS Baxter submitted his recommendation on Mr Downey to ACC Sheridan, he failed to mention that Mr Downey was ‘wanted’. ACC Sheridan, who would have expected to have been told, assumed from DCS Baxter’s silence on the subject that Mr Downey was ‘not wanted’.
- 2.49** Mr Baxter’s explanation is that: he was not aware that letters of assurance were being sent, nor did he know the terms of any letters; it was not the PSNI’s role to check the PNC; had ACC Sheridan examined the file he would have seen the reference to the PNC checks; and, in any event, he believed that Mr Downey was not an OTR because he was born and resided in the Republic of Ireland.
- 2.50** Regardless of where ‘official’ responsibility for conducting checks of the PNC lay, the check in Mr Downey’s case had been done. DCS Baxter knew that Mr Downey was ‘wanted’ and could be arrested in Northern Ireland. I do not understand his omission to put that fact in his report to his senior officer.
- 2.51** NIO officials, on the basis of assurances given to them by the PSNI, had good reason to believe the Operation Rapid review had confirmed that Mr Downey was ‘not wanted’ anywhere in the UK.

- 2.52** In 2008, the HET alerted the Operation Rapid team in the PSNI to the fact that Mr Downey might be ‘wanted for an offence in Northern Ireland’. When the PSNI realised that their letter to the Public Prosecution Service in June 2007 regarding his status might have been erroneous, they acknowledged the potential for an argument of ‘abuse of process and bad faith’ in a future trial. Yet they did not seek to rectify the situation or at least seek clarification of what Sinn Féin had been informed even when the Hyde Park bombing was raised shortly thereafter. They had at least one further opportunity to do so in the years that followed, which they also failed to take. I have identified nothing in law or logic to explain these failures.
- 2.53** There is no evidence of anyone addressing sufficiently the issue of the withdrawal of Mr Downey’s letter, and the possible legal consequences of not withdrawing it.

The Royal Prerogative of Mercy

- 2.54** There seems to be no central register of documents recording the use of the Royal Prerogative of Mercy (RPM),⁴ and it was far from straightforward to establish how many individuals benefited from it. Given the importance of the RPM, I was surprised at the difficulties we encountered.
- 2.55** We have found that 13 of the OTRs on the lists benefited from the RPM.
- 2.56** All the OTRs on the lists who were given the RPM were convicted prisoners who had escaped. Their circumstances were thought to be analogous to those of the prisoners released under the Early Release Scheme of the Northern Ireland (Sentences) Act 1998. For various reasons, including the fact that they had served time in a foreign jail, they did not qualify under the Act. Under the RPM, their sentences were remitted and they were released, some of them on licence.
- 2.57** We have identified no cases where the RPM was used as a pre-conviction pardon for an OTR.
- 2.58** The legality and practicality of using the RPM to pardon those who had not been convicted was explored, but the RPM was not in fact used in that way. Consideration was given, for example, to inviting Her Majesty the Queen to exercise the RPM in favour of one individual (X) against whom there remained sufficient evidence to justify prosecution for alleged terrorist offences, on the basis that X’s contribution was vital to the peace process. However, the RPM was never exercised in X’s favour and X did not receive a letter of assurance during the operation of the scheme.
- 2.59** 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.

Public knowledge

- 2.60** In Appendix 9 we list references to the administrative scheme in the public domain. In the light of these, I would not categorise the scheme as ‘secret’. However, details of the scheme were treated as sensitive information by politicians, officials and police. They were not broadcast because it was thought that this might impact adversely upon the peace process. As a result,

⁴By convention, prerogative powers are exercisable by the monarch on the advice of ministers. The Royal Prerogative of Mercy may be exercised to pardon a convicted offender or to change or to remit their sentence

one very important group of people, namely the victims of terrorism, failed to appreciate what was happening. It is this lack of openness that has caused particular distress, especially following the collapse of the *R v Downey* trial.

- 2.61** I am not in a position to judge the political sensitivities at the time and whether extensive knowledge of the scheme would have affected the peace process.
- 2.62** In all the thousands of documents we have examined, there is just one reference to Gerry Adams suggesting that it would be better if there was an “invisible” process for dealing with the OTRs. This appears in a minute prepared by UK officials on 30 May 2001. Gerry Adams did not approve the minute and does not recall the comment. He does not accept that he argued for the process to be kept secret at any stage. We have found no other record of attempts by Sinn Féin or anyone else positively trying to prevent the scheme from becoming public knowledge.
- 2.63** There is a provision in the 2007 terms of reference of Operation Rapid that reporting of the scheme should be kept confidential “to avoid a misinterpretation of the purpose of this review”. Operation Rapid was not classified as highly confidential or secret.
- 2.64** Some answers to Parliamentary Questions (for example from Dr John Reid as Secretary of State for Northern Ireland), press briefings and briefings of the Police Board contained a succinct summary of the scheme. Others were less than informative.
- 2.65** Dozens of police officers, prison officers, officials and politicians must have known that some kind of scheme was in operation by which individuals received assurances that they were ‘not wanted’.
- 2.66** There were a number of references to the process in the public domain, including in the 2009 report of the Consultative Group on the Past,⁵ also known as the Eames-Bradley report. Those who followed political affairs in Northern Ireland closely and knew where to look might have been alerted, therefore, to the existence of some kind of scheme.

Legal issues

- 2.67** To my mind the administrative scheme, properly implemented, was not unlawful.
- 2.68** It would not be unlawful in principle for a police officer to inform another police officer, a prosecutor or the Attorney General that an individual was ‘wanted’. Nor would it necessarily be unlawful in this context for an NIO official to inform Sinn Féin (and therefore the individual) that they were ‘wanted’ or ‘not wanted’.
- 2.69** Had the letters stood alone as simple statements of fact, they might not have had legal consequences. However, the actions of state officials may acquire a consequence in law from their context. Whether they do or not will depend on all the circumstances.
- 2.70** In Mr Downey’s case, the following factors were considered relevant by Mr Justice Sweeney: the letter was sent within the context of ongoing peace negotiations and assurances being given to Sinn Féin at the highest level that the problem of OTRs would be resolved; Mr Downey was wrongly assured that he was ‘not wanted’ at the date of the letter; the state (that is,

⁵ Report of the Consultative Group on the Past, 23 January 2009. Main reference can be found on p121. Available at: http://cain.ulst.ac.uk/victims/docs/consultative_group/cgp_230109_report.pdf

the PSNI) realised that a mistake had been made and did nothing to correct it; and in the meantime Mr Downey relied upon the assurances of the state “to his detriment”.

- 2.71** Given the judge’s reasoning, he would not have come to a different conclusion had the Prosecution chosen to call Mr Sheridan and Mr Baxter before him.
- 2.72** The ruling in Mr Downey’s case was made 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 from the result in Mr Downey’s case that recipients of letters of assurance can never be prosecuted. This will depend on individual circumstances.
- 2.73** 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.
- 2.74** In any event, when the scheme continued to be administered by the NIO following the devolution of criminal justice and policing (in 2010), the Northern Ireland Minister of Justice (and possibly others) should have been informed of that fact.
- 2.75** Consideration of whether the scheme was devolved in 2010 was yet another missed opportunity for someone to take control of the scheme and provide structure (including a review process for decisions taken to date).

Chapter 3: Background to and origins of the administrative scheme

Background: the historical and political context

- 3.1 In order to set the administrative scheme in context, I begin with a brief summary¹ of the build-up to the Belfast Agreement (also known as the Good Friday Agreement) of 1998.
- 3.2 In April 1998 Sir Kenneth Bloomfield, the then Northern Ireland Victims' Commissioner, completed his report, *We Will Remember Them*.² In Chapter 2 he referred to the *Costs of the Troubles Study* and the calculation that, by 3 December 1997, 3,585 people had been killed in Northern Ireland, 119 people had been killed in Great Britain and an uncertain number had been killed in the Republic of Ireland and elsewhere in the world "since 1969". The deaths continued after that date.
- 3.3 Civil unrest had been growing in Northern Ireland since the early 1960s. In 1969 a bombing campaign and a succession of violent rallies and riots eventually led to the decision by the UK Government, under Prime Minister Harold Wilson, to send a contingent of British troops into Northern Ireland. The period between 1972 and 1976 saw the highest death toll by far; in those five years, 990 people were killed.
- 3.4 The following 30 years, known as 'the Troubles', were marked by a catalogue of murders by bomb explosion and shooting which caused devastation and misery across the UK. I name just one because of its relevance to this Review. On 20 July 1982 a car bomb exploded in Hyde Park in London. Lieutenant Anthony Daly, Trooper Simon Tipper, Lance Corporal Jeffrey Young and Squadron Quartermaster Corporal Roy Bright lost their lives.
- 3.5 There were many different political initiatives; some led to ceasefires, but these were only ever temporary. There were also many commissions and reports, all effectively leading to the same conclusion: the problem was "intractable". As an early attempt at resolution, an amnesty was called in May 1969 for those convicted of involvement in the riots of October 1968. The Reverend Ian Paisley was released and a number of Nationalist MPs were not prosecuted.
- 3.6 Talks and negotiations continued between London and Belfast, and London and Dublin. By 1972 the security problem had reached crisis point. In March of that year the UK Government, under Prime Minister Edward Heath, announced Direct Rule of Northern Ireland from Westminster. A new post of Secretary of State for Northern Ireland was created. Another Irish Republican Army (IRA) ceasefire was called but lasted only weeks.
- 3.7 In June 1973 the first meeting of the Northern Ireland Assembly was held. In October of that year, talks between the Ulster Unionist Party, the Social Democratic and Labour Party and the Alliance Party on the formation of a power-sharing executive were held at Stormont Castle. Agreement was reached a month later.
- 3.8 In December 1973 the Sunningdale Conference took place and the power-sharing executive took office in January 1974. It established a Council of Ireland: a council of ministers from both

¹ I am indebted to the detailed chronology set out by David McKittrick and David McVea in *Making Sense of the Troubles*, revised edition of 2012

² <http://cain.ulst.ac.uk/issues/victims/docs/bloomfield98.pdf>

the Republic of Ireland and Northern Ireland. The Northern Ireland Assembly and the Irish Government would devolve power to the Council as required. Acceptance of the Sunningdale Agreement³ caused division in the Unionist parties. By May 1974 the power-sharing executive had failed.

- 3.9** An IRA ceasefire was called in December 1974. It was originally for one month but was later extended. The Secretary of State allowed a meeting between his officials and representatives of Sinn Féin. In December 1975 internment without trial, which had been introduced in the summer of 1971, was ended and the detainees were released. Negotiations continued throughout the worst period of violence, but without success.
- 3.10** In November 1981 the governments of Northern Ireland and the Republic of Ireland established the Anglo-Irish Intergovernmental Council. Its first meeting was at Chequers in September 1983. This led to the signing of the Anglo-Irish Agreement⁴ at Hillsborough Castle in November 1985. Both governments confirmed that there would be no change in the status of Northern Ireland without the consent of the majority of its citizens. The Agreement did not receive the support of many Unionists, whose MPs in Westminster resigned their seats in protest.
- 3.11** In April 1982 Jim Prior, then Secretary of State for Northern Ireland, proposed an elected assembly to which power would be devolved by stages. The Assembly met in November 1982 but the Nationalists refused to take their seats. By May 1986 the added failure of the Unionists to participate, following the Anglo-Irish Agreement, meant that Tom King, by then Secretary of State for Northern Ireland, dissolved the Assembly.
- 3.12** Talks and negotiations continued throughout the period from 1986. Peter Brooke, as the new Secretary of State for Northern Ireland, had brought all the parties close to more productive consultations, but again without success. By 1992 meetings had begun between the Social Democratic and Labour Party and Sinn Féin, referred to as the Hume–Adams talks. By September 1993 they had reached a form of agreement but the negotiations did not have the support of all the Republican paramilitary groups. In any event, the proposals were rejected by both the UK and Irish governments. It became clear by the end of 1993 that the UK Government, under Prime Minister John Major, had been involved in some form of contact with Republicans through a chain of intermediaries.
- 3.13** On 15 December 1993 John Major and the Taoiseach (Irish Prime Minister) Albert Reynolds issued a joint statement known as the Downing Street Declaration.⁵ It affirmed the right of the people of Ireland to self-determination and announced that Northern Ireland would only ever be transferred to the Republic of Ireland from the UK if the majority of its population consented. It included the “Irish dimension” – that the people of the island of Ireland had the “exclusive right” to resolve issues between Northern Ireland and the Republic by mutual consent. It called upon all paramilitary groups to renounce violence and take part in the talks.
- 3.14** On 31 August 1994 the Provisional IRA renounced violence. On 13 October the Combined Loyalist Military Command did the same.
- 3.15** In December 1994 the then US President Bill Clinton appointed former senator George Mitchell as the US Special Envoy for Northern Ireland. The UK Government held its first official meeting with Sinn Féin. ‘Talks about talks’ about decommissioning began and continued

³ <http://cain.ulst.ac.uk/events/sunningdale/agreement.htm>

⁴ <http://cain.ulst.ac.uk/events/aia/aia.htm>

⁵ <http://cain.ulst.ac.uk/events/peace/docs/dsd151293.htm>

throughout 1995 without success. An international body was set up to resolve the issue: in January 1996 the Mitchell Commission recommended that all talks should include the issue of decommissioning.

- 3.16** In February 1996 the IRA ceasefire ended with the explosion of a bomb in London's Canary Wharf. It was proposed that Sinn Féin should be excluded from any further talks unless and until there was a ceasefire. In June of that year the Northern Ireland Forum met for the first time in Stormont; Sinn Féin was not present.
- 3.17** Throughout the 'marching season' of 1996 there was a series of violent protests as Orangemen were prevented from following their traditional routes, sometimes through Nationalist areas. Shootings and bombings began again and rioting took place in both Unionist and Nationalist areas.
- 3.18** In January 1997 the creation of an independent Parades Commission was recommended.

General election 1997

- 3.19** In May 1997 the Labour Party won the UK general election and Tony Blair became Prime Minister. He appointed Dr Mo Mowlam as Secretary of State for Northern Ireland. In that same month the Prime Minister visited Northern Ireland.
- 3.20** In July the IRA announced another ceasefire. Problems over marching continued and the Ulster Democratic Party withdrew from the talks. Meanwhile, an Independent International Commission on Decommissioning was set up under General John de Chastelain.
- 3.21** In September Sinn Féin signed up to the 'Mitchell Principles'⁶ (of democracy and non-violence) and entered all-party talks. Those talks began in October in Stormont. Tony Blair met representatives of Sinn Féin for the first time and in December Sinn Féin visited Downing Street.
- 3.22** The talks continued into 1998 despite the suspension of both the Ulster Democratic Party and Sinn Féin at different times. Throughout the early part of the year the negotiations were intense. By March 1998 George Mitchell had drafted a paper on relations between Northern Ireland and the Republic of Ireland, calling for an agreement by 9 April. The deadline passed but negotiations continued. Finally, on 10 April 1998 the Belfast Agreement⁷ was signed. Referenda were held in both parts of the island of Ireland on 22 May and the Agreement came into force on 2 December 1999.
- 3.23** The Democratic Unionist Party remained opposed to the Belfast Agreement, which committed the UK and Irish governments to the early release of prisoners convicted and serving sentences for certain terrorism-related offences known as 'qualifying offences'.⁸

⁶ Paragraph 20, *Report of the International Body on Arms Decommissioning* (Mitchell Report), 22 January 1996, George J Mitchell, John de Chastelain and Harri Holkeri: <http://cain.ulst.ac.uk/events/peace/docs/gm24196.htm>

⁷ <http://cain.ulst.ac.uk/events/peace/docs/agreement.htm>

⁸ The commitment in the Belfast Agreement led to the Early Release Scheme under the Northern Ireland (Sentences) Act 1998. A 'qualifying offence' was required to have been, at the time it was committed, a scheduled offence under the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996. The Agreement was silent, however, as to the position of those who had left the jurisdiction before arrest, conviction or the completion of any sentence imposed for such qualifying offences

Origins of the administrative scheme

The Belfast Agreement and the Early Release Scheme

3.24 The Belfast Agreement set out plans for a review of the criminal justice system. It included provision for the release of serving prisoners as follows:

PRISONERS

1. Both Governments will 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). Any such arrangements will protect the rights of individual prisoners under national and international law.
2. Prisoners affiliated to organisations which have not established or are not maintaining a complete and unequivocal ceasefire will not benefit from the arrangements. The situation in this regard will be kept under review.
3. Both Governments will complete a review process within a fixed time frame and set prospective release dates for all qualifying prisoners. The review process would provide for the advance of the release dates of qualifying prisoners while allowing account to be taken of the seriousness of the offences for which the person was convicted and the need to protect the community. In addition, the intention would be that 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.
4. The Governments will seek to enact the appropriate legislation to give effect to these arrangements by the end of June 1998.
5. The Governments continue to recognise the importance of measures to facilitate the reintegration of prisoners into the community by providing support both prior to and after release, including assistance directed towards availing of employment opportunities, re-training and/or re-skilling, and further education.

3.25 The intention was to release those convicted of terrorism-related offences as soon as practicable and, in any event, no later than two years after the introduction of the scheme. For many in Northern Ireland this was difficult to accept, but the majority did so in the cause of peace and in the hope that future generations would not suffer as past generations had done.

3.26 The Belfast Agreement did not deal with the issues either of 'exiles'⁹ or of 'on the runs' (OTRs). These do not appear to have been deliberate omissions; rather, the speed and pressure of the negotiations in the period immediately before the signing may have caused the parties to leave some important issues uncovered. More than one of my interviewees has commented that reaching a consensus on the implementation of the 1998 Agreement and the resolution of outstanding issues was almost as taxing, if not more so, as reaching the Agreement in the first place.

⁹ One of the forms of 'punishment' used by paramilitary organisations on those they suspected of alleged misdemeanours was to force them to leave Northern Ireland; these people became known as 'exiles'

- 3.27** The Early Release Scheme was announced by the UK government paper *Prisoners and the Political Settlement* (20 April 1998), placed in the library of the House of Commons 10 days after the Belfast Agreement. It set out the procedure to be followed by those wishing to apply to have their status and release date determined. Applications could be made in writing and would be considered, initially on paper, by the Sentence Review Body,¹⁰ assisted by assessors drawn from the community. It emphasised the fact that this was not an amnesty.
- 3.28** By about April 1999 it had become apparent that this procedure would not apply directly to a number of different categories of individuals, collectively known as OTRs. They included those who had left the jurisdiction even though there was no police interest in them, those who were under suspicion and at risk of arrest, those who had escaped or absconded while awaiting trial or those who had escaped having been convicted and sentenced or who were awaiting sentence.
- 3.29** There are some who have questioned why any ‘innocent’ individual would go on the run. Sinn Féin accepted that it might seem strange to a person living in a ‘normal’ society, but life in Northern Ireland was not normal. It is certainly the case that many of the OTRs who asked for their names to be put forward were not even known to the police, let alone suspected of involvement in acts of terrorism.

¹⁰ Subsequently known as the Sentence Review Commission

Chapter 4: Evolution of the administrative scheme

- 4.1** This chapter charts the evolution of the administrative scheme from its inception following the Belfast Agreement of 1998 (also known as the Good Friday Agreement) up to the summer of 2006, by which time the political pressure to resolve the issue of the outstanding ‘on the run’ (OTR) cases was intensifying.

1999

- 4.2** In April 1999 Mo Mowlam (then Secretary of State for Northern Ireland) raised the case of a high-profile individual with the Attorney General, Lord Morris of Aberavon QC. She asked him to reconsider the case, taking into account the positive effect that an undertaking not to prosecute would have on the Northern Ireland peace negotiations, which were about to restart. The individual, even if prosecuted and convicted, would not have qualified for early release following the commitment in the Belfast Agreement, because the alleged offence was committed before 1973.¹ The Attorney General agreed to look at the case but made it clear that any decision, even taking into account a consultation with Cabinet colleagues,² would be made independently and in a quasi-judicial manner, free from political pressure.
- 4.3** The Attorney General reconsidered the case and refused to give an undertaking not to prosecute. To date, that individual has never been given any assurance that they would not be prosecuted if they returned to the jurisdiction of the UK.
- 4.4** Lord Morris does not recall being asked to participate in a ‘scheme’ as such, as distinct from a review of cases on an individual basis as part of his normal duties. It was his successor, the late Lord Williams of Mostyn QC (Attorney General from July 1999 to June 2001), who was to become more involved (albeit with reservations) in the development of the administrative scheme.

Agreement to review

- 4.5** By late 1999 an undetermined number of people remained outside the UK jurisdiction following the Troubles, but wished to return to Northern Ireland or Great Britain without the risk of arrest and prosecution. At the request of 10 Downing Street, the Attorney General agreed to undertake a review of such cases, independently applying the normal evidential and public interest tests. The Attorney General would act in consultation with the Director of Public Prosecutions for Northern Ireland (DPP(NI)) on the basis of information supplied by the Royal Ulster Constabulary (RUC). The Chief Constable was to be consulted accordingly. All these cases, which remained under review by a dedicated team in the Attorney General’s Office (AGO),³ would have been reconsidered, in any event, over time.
- 4.6** No formal process for submitting names or communicating decisions was put in place at the beginning of what was a very undefined procedure. Consideration was given to names put forward through Sinn Féin, or its solicitors, on an ad hoc basis.

¹ The offence was not, therefore, covered by the Northern Ireland (Sentences) Act 1998

² The consultation was conducted through a ‘Shawcross exercise’ – the ‘Shawcross doctrine’ is explained at Appendix 10

³ Although for the early years of the administrative scheme the AGO was known as the Legal Secretariat to the Law Officers, in this Review I have referred to it, for ease, as the AGO

- 4.7** The Republic of Ireland Government had an interest in this process because many of the candidates were resident, or believed to be resident, in the Republic and possibly subject to extradition requests. It expressed resistance to anything that appeared to provide any form of amnesty, but suggested the possibility of the existing Early Release Scheme⁴ being widened to accommodate the problem.
- 4.8** Meanwhile, the Government anticipated similar applications from Loyalists, although it appeared unlikely that they would have gone ‘on the run’ to the Republic of Ireland. Loyalists who had left Northern Ireland were thought much more likely to be living elsewhere in the UK and therefore within the jurisdiction. It was clear that should such applications come from Loyalists, they would be dealt with in precisely the same way.

2000

- 4.9** On 13 January 2000 the Attorney General wrote to Peter Mandelson, Secretary of State for Northern Ireland, about the case of the high-profile individual referred to above (paragraph 4.2). He made it clear that there was still sufficient evidence to justify prosecution and that any reconsideration of whether to prosecute that individual could therefore only be made on public interest grounds. He confirmed that that he expected to be asked to consider other such cases, but was not able to grant any form of amnesty. An amnesty would require legislation. As Attorney General, his duty was to apply the test for prosecution in each individual case in a fair and consistent manner.

Sinn Féin requests and pressure for progress

- 4.10** In March 2000 Sinn Féin requested to know what progress, if any, the UK Government had made on the issue of those outside the jurisdiction who were by now described as OTRs. It is clear from the accounts of my interviewees that Sinn Féin considered this to be one of a number of important issues and one strand of a process which would lead ultimately to the decommissioning of arms.
- 4.11** Sinn Féin’s enquiry brought the issue back under active consideration and there was further discussion about the potential means of resolution. On the basis of information previously supplied by the RUC, the Northern Ireland Office (NIO) thought there could be as many as 200 individual cases. Consideration was given to how to ascertain a more precise number. The RUC was the body that would hold relevant information and it was decided that a high-level approach to the RUC should be made. The NIO appreciated that there was little the Government could do without the co-operation of the police and prosecuting authorities. Ministers could only consider whether to pursue extradition and, in the cases of those who had been convicted (and sentenced), whether to recommend the exercise of the Royal Prerogative of Mercy (RPM).⁵ It therefore needed to establish: first, how many people were likely to be involved; and second, whether the police and prosecuting authorities would be prepared to assist.

⁴ The scheme which implemented the commitment made in the Belfast Agreement for the early release of certain prisoners. To qualify for early release under the Northern Ireland (Sentences) Act 1998 an offence was required to have been, at the time it was committed, a “scheduled offence” under the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996

⁵ See footnote 4 in Chapter 2 for a definition of the Royal Prerogative of Mercy

The involvement of the Royal Ulster Constabulary

4.12 According to the minutes of a meeting in April 2000, RUC Chief Constable Sir Ronnie Flanagan was firmly of the view that the police were under an obligation to follow the judicial process initiated by others in respect of live extraditions or arrest warrants. He thought that it might be a reasonable course of action to answer an individual's enquiry as to the RUC's intention to arrest them if they returned to Northern Ireland. He was, in principle, content to consider any list of names and divide them into categories of those liable to be arrested on return and those for whom there was no current intention to arrest. He made it clear that "no current intention to arrest" must not be taken as an absolute guarantee that the individual would never be arrested, questioned or, if appropriate, charged with offences. New information or evidence could alter the position. For the first time, a proposed form of words was suggested for onward communication to the individual:

On the basis of the information currently to hand the RUC will not arrest you if you return to Northern Ireland.

Complexities

4.13 In the first half of 2000, there was still uncertainty about the size of the problem and whether there was any process available other than the normal application of the two-stage test of (i) sufficient evidence and (ii) public interest. The consistent view of Attorneys General was that the only proper means of resolution was either normal process or the introduction of a legislative amnesty.

4.14 Even at this early stage, minutes of meetings between the NIO, the AGO and the Cabinet Office recorded the "piecemeal" approach being adopted but also the view that this was inevitable given the seriousness and emerging complexities of the problem.

4.15 Thought was given to how names should be put forward. Sinn Féin took on the role of intermediary to ensure that individuals were not deterred from participating. In fact, Sinn Féin informed me that they encountered no reluctance on the part of individuals to come forward. Most, if not all, of the names submitted over the ensuing years were 'self identifying', in the sense that they or their relatives/friends asked Sinn Féin if they could be cleared to return.

Sinn Féin List 1

4.16 On 19 May 2000 Sinn Féin provided a "preliminary list" (Sinn Féin List 1) of 36 names to Downing Street. In some cases, the list simply gave a name and place of origin. In most cases, it set out the fact that the individual had escaped from a particular prison or was awaiting extradition. The list was immediately sent to the AGO. Given the length of the list, the Attorney General again expressed his opinion that a legislative amnesty would be the better method of dealing with the situation. He agreed to begin the normal process of assessing the evidence and considering the public interest on a case-by-case basis. On 24 May 2000 the Attorney General wrote to the Prime Minister's Chief of Staff, Jonathan Powell, making it clear that he was aware of the difficult task faced by the Government in the continuing negotiations. He stated that:

in so far as it is compatible with the proprieties of my position I will do what I can to assist. But the integrity of the criminal justice system is a fragile thing and in reaching

any decision as to prosecution, acting outside Government as I do, I must not act for reasons of political convenience – however desirable any immediate effect may be.

- 4.17** Of the 36 names on Sinn Féin List 1, there were 17 individuals who, having been convicted and sentenced, had escaped from prison; there were 10 who might be prosecuted in Northern Ireland; there were 6 who might be prosecuted in England and Wales; and there were 3 who had not yet been identified. The 17 escapers would have to be considered by the Secretary of State for Northern Ireland; 10 fell to be considered by the DPP(NI); and 6 by the DPP England and Wales. It was generally understood in Downing Street, the AGO and the NIO that the issues arising cut across ministerial responsibilities.
- 4.18** It was on receipt of this first list of names from Sinn Féin that the need for a structured and well-considered plan should have been obvious. Sinn Fein List 1 represented a missed opportunity for drawing up a policy for dealing with the names and considering the practical difficulties that might (and subsequently did) arise.

The process

- 4.19** The Attorney General felt that the first stage was for the DPP(NI) and/or the DPP England and Wales to seek out the individual files and begin the task of reviewing the evidence, by identifying witnesses and consulting the police. A careful examination of the evidence was required before assessing its sufficiency.
- 4.20** The application of the normal two-stage process of the evidential and public interest tests gave rise to particular problems in the context of OTR cases.
- 4.21** In terms of the evidential test, allegations went back decades and witnesses were not always willing or able still to give evidence. The pressures on the Forensic Science Northern Ireland service and the strains on the investigatory function of the police at the height of the conflict had been such that evidence had not always been recovered and stored adequately. Even where properly collected, in many cases it was no longer available, having been destroyed in the bombing of the Forensic Science Laboratory in 1992, in other bombings of Northern Ireland police stations during the Troubles, or in some cases simply lost.
- 4.22** In terms of the public interest test, the political sensitivities were manifest. The issue was important to Sinn Féin, who believed it to be a necessary step in the peace process and one which would enable it to build and maintain the confidence of Republican groups. However, it would present serious difficulties for the Unionists who would see it as an extra step or concession above and beyond the terms of the Belfast Agreement (notwithstanding that it would have applied equally in the case of Loyalist fugitives). Attorneys General remained, throughout the life of the scheme, vigilant to ensure that this was not, and would not be seen as, any form of political interference in the exercise of their quasi-judicial function. Internally, the Government's clear and stated intention was that any measures taken or implemented would apply equally to any applicant, whatever their political or religious beliefs.
- 4.23** On 2 June 2000 the Attorney General again wrote to the Secretary of State on the subject of OTRs, stating:

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.

Early consideration of other options

4.24 The debate on OTRs also led to a reconsideration of government policy on extradition in the context of Northern Ireland (an NIO responsibility) and of the exercise of the RPM as a means of remitting the outstanding balance of any partially served sentence. Consideration was also given to amending the Northern Ireland (Sentences) Act 1998 by widening it to include the OTRs. The option most commonly discussed was a formal legislative amnesty.

The first two letters – England and Wales

4.25 By 14 June 2000 the DPP England and Wales had reached a decision in two cases.⁶ These concerned allegations of terrorism occurring in England in the early 1980s. The decisions were reached on the usual prosecutorial test of sufficient evidence. There was no or insufficient evidence to support any realistic prospect of a successful prosecution in either case. The DPP England and Wales at the time, Sir David Calvert Smith QC, does not now recall if he was informed that his consideration of these two cases formed part of a wider ‘scheme’.

4.26 The two letters were drafted by the Attorney General and sent to Jonathan Powell. They were then retyped on the 10 Downing Street letterhead, and signed by Mr Powell. On 15 June 2000 Mr Powell sent a covering letter to Sinn Féin, attaching the two letters which were dated that same day and which were to be passed to the relevant individuals. In each case it was emphasised that the position stated in the letter was current. The recipients were told that the position would be reconsidered “should fresh evidence arise” (in one) or “should circumstances change” (in the other). It is clear that these two letters (reproduced here) were carefully tailored to the circumstances of each individual case. They were the only two letters signed by Mr Powell and sent from 10 Downing Street. Thereafter the vast majority of letters were sent by officials at the NIO.

⁶ Sinn Féin List 1, nos 2 and 16



10 DOWNING STREET
LONDON SW1A 2AA

From the Prime Minister's Chief of Staff

15 June 2000

P

The Director of Public Prosecutions for England and Wales has completed a review of your case and has concluded that there is at present no realistic prospect of convicting you for any offence arising out of _____

You would not, therefore, face prosecution for any such offence should you return to the United Kingdom. Should circumstances change – and any statement made by you implicating yourself in _____

may amount to such a change – the matter may have to be reconsidered. The Crown Prosecution Service is not aware of any police interest in interviewing you in relation to any other offence nor of any interest from another country seeking extradition. If there were to be other outstanding offences or requests for extradition these would have to be dealt with in the usual way.

This decision would normally be conveyed to you by the Police or to your Solicitor, but as this is not possible the Attorney General has asked that I write to you.

JONATHAN POWELL



10 DOWNING STREET
LONDON SW1A 2AA

From the Prime Minister's Chief of Staff

15 June 2000

Dear

Following a review of your case by the Director of Public Prosecutions for England and Wales, he has concluded that on the evidence before him there is insufficient to afford a realistic prospect of convicting you for any offence arising out of

You would not, therefore face prosecution for any such offence should you return to the United Kingdom. That decision is based on the evidence currently available. Should fresh evidence arise – and any statement made by you implicating yourself in

may amount to such evidence – the matter may have to be reconsidered. The Crown Prosecution Service is not aware of any police interest in interviewing you in relation to any other offence nor of any interest from another country seeking extradition. If there were to be other outstanding offences or requests for extradition these would have to be dealt with in the usual way.

This decision would normally be conveyed to you by the Police or to your Solicitor, but as this is not possible the Attorney General has asked that I write to you.

Yours truly

JONATHAN POWELL

- 4.27** Political negotiations continued throughout the summer of 2000. The profile of the topics under discussion varied but the subjects remained the same: in no particular order and not exclusively, “confidence building measures”, “Patten” (a reference to the Independent Commission on Policing for Northern Ireland), “normalisation” (for example, scaling down the military presence) and OTRs. In the course of the negotiations, the Prime Minister undertook, at Sinn Féin’s request, to consider the general issue of prosecutions for offences committed before the Agreement.
- 4.28** Meanwhile, the process of carrying out checks on an ad hoc basis continued, although the precise criteria for these checks are not clear from the documentation available.

The first letter – Northern Ireland

- 4.29** Consideration of the first OTR case⁷ involving offences alleged to have taken place in Northern Ireland began with a request for information from the DPP(NI) to the RUC and prompted a full investigation of the evidence to support charges for possession of a firearm and membership of a proscribed organisation. The RUC investigated the whereabouts and availability of witnesses, checked the continuing existence and location of documentary exhibits and reported to the DPP(NI) on the problems concerning these witnesses and exhibits. By 5 July 2000 the DPP(NI) had informed the Attorney General of his conclusion that there was no reasonable prospect of conviction in this case.
- 4.30** The Attorney General wrote to Jonathan Powell, stating explicitly that this decision was “not an amnesty” as, if fresh evidence were to emerge, the position might well change. He confirmed that the DPP(NI) had written to the solicitor whose name appeared on the record as representing the individual at the time of his arrest in 1978 (the Review has not seen a copy of that letter). Later, in 2007, PSNI officers working in the Operation Rapid team reviewed this case. No new material had come to light and the original decision of 2000 stood.
- 4.31** From the above it can be seen that there was no question of the administrative scheme granting an alleged offender an amnesty⁸ or immunity from prosecution. It is clear from the views expressed at the time that the Attorney General would not have agreed to the process had that been the intention or the effect. It is also clear that successive Attorneys General maintained the same position throughout the life of the scheme. If there was sufficient evidence to justify arrest or prosecution of an alleged offender, they were to be described as ‘wanted’ and were not to receive a letter of assurance.

Early release of prisoners, July 2000

- 4.32** The release of all remaining terrorist prisoners on 28 July 2000 under the terms of the Belfast Agreement drew attention to the continuing anomaly of the OTRs. Sinn Féin maintained its insistence that the problem must be resolved speedily. Of the original list of 36 names, only three cases had been resolved by the end of July 2000. Sinn Féin complained about the length of time the process was taking, particularly in the light of the “confidence building measures” it had delivered from Republican groups. Sinn Féin wanted the matter resolved publicly so that people could return to Northern Ireland. It said it needed to restore confidence in the UK Government’s commitment to deal with OTRs, in order to ensure the success of General John de Chastelain’s efforts at demilitarisation. The threat from Dissident Republican groups was real and active. There was serious concern that the Continuity IRA might join forces with other groups and present an even greater threat.
- 4.33** The Government kept a number of variants on the Early Release Scheme under consideration as a means of dealing with the anomaly of the OTRs, recognising the significant discrepancy between those recently released after dramatically shortened sentences (for extremely serious offences) and those who did not know how their cases would be dealt with should they return to Northern Ireland.

⁷ Sinn Féin List 1, no. 21

⁸ Under an amnesty the state agrees never to prosecute for an offence, whatever the strength of the case against an alleged offender

The administrative scheme

- 4.34** Prime Minister Tony Blair and the Taoiseach (Irish Prime Minister) were briefed at a working lunch, held at 10 Downing Street on 31 July 2000, that the RUC Chief Constable was ready to co-operate in a “scheme” that allowed individuals to check their status. A meeting between an RUC Assistant Chief Constable, the Northern Ireland Prison Service and the NIO took place on 15 August 2000 and it was agreed that work should begin on the detail of “an administrative procedure to deal with individuals who want to return to Northern Ireland”. The police showed an “enthusiasm for a comprehensive Government-led approach to the full range of ‘amnesty’ issues”. Scope for a variant of the Early Release Scheme was again discussed, as was the possibility of a legislative amnesty, conditional upon a form of truth and reconciliation process.
- 4.35** The original high-profile case from 1999 remained a continuing topic of discussion. On 17 August 2000 the Attorney General wrote to the Prime Minister confirming his full agreement with the determination of the DPP(NI) that, following consideration, he could not conclude there was insufficient evidence to afford a reasonable prospect of conviction. Nor was it a case where it could be said that the public interest did not require a prosecution.

Speculation

- 4.36** Speculation about a possible amnesty appeared in newspapers in both the UK and the Republic of Ireland. On 13 August 2000 the Ulster Unionist Party MP Ken Maginnis wrote to the Prime Minister expressing concern that there had been a “private meeting” with Sinn Féin and the Taoiseach to discuss “an amnesty for on-the-run Provo terrorists”. On 11 September 2000 Jonathan Powell had a meeting with Mr Maginnis and David Trimble, First Minister for Northern Ireland, at which OTRs were discussed. Dr Trimble had rightly assumed that Sinn Féin had linked movement on OTRs to progress on the inspection of arms dumps. The record of the meeting indicates that he tried to elicit any intention to propose an amnesty and suggested that the UK Government should “keep legislation well away for now”.
- 4.37** The problem of publicising the scheme became apparent when the RUC Chief Constable gave an interview, reported in the Police Authority News-Sheet of 15 September, which was later (mis-)reported under the headline “Amnesty list does exist says Flanagan”. In subsequent Whitehall briefings, the risk of misinterpretation surrounding the concept of a “list” was considered. Even if it was known that Sinn Féin had provided a list of names for investigation by the police and DPP, it was felt important to refute the idea that there was a list of terrorists whom the RUC were not to arrest.

Extradition

- 4.38** Meanwhile, the parallel problem of outstanding extradition cases was more easily resolved. On 29 September 2000 Peter Mandelson, Secretary of State for Northern Ireland, issued a statement setting out the UK Government’s intention to stop the pursuit of outstanding extradition cases. The beneficiaries of this decision, thought to number about 20, would be able to return and apply to the Sentence Review Commission for early release. The statement made clear that there was to be no amnesty.⁹

⁹ The full statement is attached at Appendix 6

Deterioration in the political situation

- 4.39** By October 2000 the political situation in Northern Ireland had deteriorated. The Unionists, headed by Dr Trimble, were showing increasing signs of internal strife. It was feared that if Dr Trimble lost the leadership of the Ulster Unionist Party that the future of the Executive would be in real jeopardy. Serious consideration was being given to a return to Direct Rule. On the Nationalist side, the absence of any general answer to the OTRs was a continuing problem. It was felt that some movement was required to assist another step in the “confidence building measures” process. On 16 October 2000 Sinn Féin faxed the NIO the names of 16 individuals who wanted to have their status checked urgently. Eleven of them had been included in Sinn Féin List 1 which had been provided earlier in the year, but the five new names became Sinn Féin List 1, nos 37–41.
- 4.40** Having again been asked to reconsider the first, original, high-profile OTR case, the Attorney General wrote to the Prime Minister on 23 October 2000 to confirm that he still could not conclude that the public interest did not require prosecution.

Consideration of the use of the Royal Prerogative of Mercy

- 4.41** A significant number of the names on Sinn Féin List 1 were those who had escaped from prison having been convicted, sentenced and served some part of that sentence. The use of the RPM was suggested as a means of remitting the outstanding balance of those sentences. There was also a group of individuals who had served prison sentences outside the UK jurisdiction, usually in the Republic of Ireland. 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.

The first OTR letter of assurance signed by a Northern Ireland Office official

- 4.42** By early 2001 ownership of the dispatch of letters of assurance had shifted from the Cabinet Office to the NIO. On 30 November 2000 the Attorney General wrote to the Secretary of State about an individual recorded as Sinn Féin List 1, no. 18. His letter confirmed the DPP(NI)'s conclusion that there was no outstanding direction for prosecution of the individual in Northern Ireland; there were no warrants in existence; the individual was not ‘wanted’ in Northern Ireland for arrest, questioning or charge; and the RUC was not aware of any interest from any other police force in the UK. The letter said nothing about any future change in this position. However, a suggested form of words was drafted by Kevin McGinty, an official at the AGO. Bill (now Sir Bill) Jeffrey, Political Director at the NIO, signed and sent the following letter to the individual OTR on 28 March 2001.

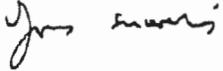
28 March 2001.

Dear

The Secretary of State for Northern Ireland has been informed by the Attorney General that, following consideration by the Director of Public Prosecutions for Northern Ireland, a direction to prosecute you summarily for an offence

. has been withdrawn.

On the basis of the information currently available, there is no outstanding direction for 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 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 if any request for extradition were to be received, these would have to be dealt with in the usual way.



BILL JEFFREY

- 4.43** That letter was sent to Gerry Kelly, Sinn Féin Member of the Legislative Assembly (MLA), for onward transmission; the covering letter (set out below) informed Gerry Kelly that 'X' was "now free to return to Northern Ireland and I enclose a letter informing ... of ... legal position".

28 March 2001.

Dear Gerry

Following investigations made by the Attorney General's office I can now confirm that _____ is now free to return to Northern Ireland and I enclose a letter informing _____ of _____ legal position.

As we do not have an address for _____ I would be grateful if you would ensure this letter is passed on to _____



BILL JEFFREY

4.44 The problem of OTRs remained high on the political agenda and all options were kept under consideration. At the suggestion of the Attorney General for Ireland, thought was given to the use of the prerogative power to issue pre-conviction pardons. The idea was considered and Counsel's advice was sought, but it was decided that this would not be a proper or appropriate use of such a power.

Review by Sir Quentin Thomas

4.45 Having been commissioned by the Secretary of State to conduct a review of the options for dealing with the OTRs, Sir Quentin Thomas (a former senior official at the NIO) provided an interim assessment on 30 November 2000. He observed that the Early Release Scheme had already created a system of special treatment for terrorist offenders; that more than 400 prisoners had been released early (albeit subject to recall); and that extraditions would no longer be pursued.

4.46 He discussed three options to resolve the outstanding OTR problem:

- To continue to apply the normal process of law.
- To decide as a matter of policy not to pursue the extradition of suspects, even though they might be prosecuted if they returned to the jurisdiction.
- To provide, through legislation, an amnesty for all relevant offences committed before the Agreement.

4.47 The significant problems surrounding any form of amnesty were manifest even in early 2000. It appeared that the best course was to maintain the status quo and to continue to apply the normal two-stage prosecution test in assessing the case against an individual and then to inform them of their status. At the same time, consideration was given to how a legislative amnesty might be drafted.

4.48 By 7 December 2000 NIO officials were referring to the existence of "an administrative scheme" which allowed sentenced fugitives to check their eligibility for early release before returning. Thereafter, this term was used within government to refer mainly to the overarching process for dealing with OTRs. More recently, it has been used (particularly by those outside government) to refer only to parts of that end-to-end process, such as the sending of letters of assurance to individual OTRs.

Use of the Royal Prerogative of Mercy for escapers

4.49 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 terms¹⁰ for offences in the Republic of Ireland; three of the four had also received indeterminate¹¹ 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.

¹⁰ A determinate sentence is where the court sets a fixed length for the prison sentence which is the maximum an offender can serve in prison. If released before completion of the sentence the offender will be released on licence, usually for the unserved period of the sentence, with conditions attached. If the offender breaches those conditions they can be recalled to complete their sentence

¹¹ An indeterminate sentence of life imprisonment is where the court sets the minimum term of imprisonment an offender must serve (in full) before becoming eligible to be considered for release on licence with conditions. The period of licence is the rest of the offender's life. Breach of the licence can lead to recall to prison

Elizabeth the Second, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of Our other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith,

To all others whom it may concern, Greeting!

WHEREAS _____ at the _____ Assises Court on the _____ was sentenced to a _____ year term of detention for the offence of _____

NOW KNOW YE that We, in consideration of some circumstances humbly represented unto US, are Graciously pleased to extend Our Grace an Mercy unto the said _____

And to pardon and remit unto him _____ days of the sentence imposed upon him as aforesaid;

OUR WILL and Pleasure therefore is that you discharge him out of custody accordingly

And for so doing this shall be a sufficient Warrant.

Given at Our Court at St James's
the _____ day of _____ 2001;
In the fiftieth Year of Our Reign

By Her Majesty's Command

2001

- 4.52** Consideration of OTR names continued during a particularly difficult stage of negotiations on decommissioning. By January 2001, 12 individuals who had been convicted and sentenced, but who had escaped, were under active review. The Attorney General informed the Secretary of State for Northern Ireland, by letter dated 8 January 2001, that the DPP(NI) had concluded his review. In relation to these 12, he had decided that there was no longer sufficient evidence to meet the test on all offences, other than the actual offence of escape. He also concluded that the public interest did not require that these individuals be prosecuted for the offence of escape. He instructed his staff to search through all their papers to check that there were no outstanding matters against the individuals and checks were made with the RUC and Special

Branch. In a letter dated 26 January 2001 the Attorney General informed John Reid, by then Secretary of State for Northern Ireland, that:

none of the 12 are wanted in Northern Ireland for arrest, questioning or charge by the police in respect of any other matter. The RUC is not aware of any interest from any other police force in the United Kingdom.

- 4.53** By 15 January 2001 Sir Quentin Thomas had concluded his full report, entitled *Clean Sheets*, which he submitted with a brief summary of his recommendation that the best way forward was by “guided evolution”. In the same month, independent Counsel’s advice was sought on the next steps in respect of all outstanding post-conviction cases.

Problems in relation to the use of the Royal Prerogative of Mercy for one individual

- 4.54** On 29 January 2001 the Attorney General wrote to the Secretary of State and to Mr Powell regarding a problem which had arisen in respect of one of the four individuals granted the RPM in December 2000. The circumstances had already been communicated to Joe Pilling, Permanent Secretary at the NIO. The Attorney General confirmed that he had previously said of ‘X’, as part of the group of four names:

there is no outstanding direction for prosecution in Northern Ireland. Apart from the unexpired portion of their sentences, they are not wanted in Northern Ireland for arrest, questioning or charge by the police in respect of any other matter. The RUC is not aware of any interest from any other police force in the United Kingdom in relation to any of them.

- 4.55** He went on to say that:

information has now come to my attention that, should [they] return to the jurisdiction, [they are] now liable to be questioned by the police concerning [their] possible involvement in a criminal offence.

- 4.56** ‘X’ had allegedly committed an offence in the short passage of time between the police checks being completed and the results being passed to Sinn Féin for onward transmission. Although still outside the jurisdiction, this individual was suspected of complicity in a murder committed in late 2000. This individual had not returned to Northern Ireland.

- 4.57** The Attorney General went on to say:

I think it worth taking this opportunity to emphasise that the remarks concerning [‘X’] and others have followed a standard pattern and refer to the position of each individual as it was known at the time the letter was written. Whilst the checks have been thorough, the remarks do not amount to an amnesty. If other offences are discovered, or new evidence is found that links individuals with offences, or fresh offences are committed, then the individual concerned will face arrest or questioning in the usual way.

- 4.58** The NIO immediately conducted a review into what had gone wrong in this case. It was resolved that, in future, police checks would be conducted as late as possible before any information was passed on. In addition, it was decided that requests of the various agencies would be more specific and state the requirement both for evidence and intelligence. As a

further consequence, notification to the 12 escapers was suspended until further last-minute checks had been done.

Letter from Alex Attwood MLA

4.59 On 6 February 2001 Alex Attwood, the Social Democratic and Labour Party MLA for West Belfast, wrote to the Minister of State for Northern Ireland, Adam Ingram, to ask about the procedure in the following terms:

Re Returning to Northern Ireland of persons in respect of whom the police have a warrant.

I refer to the above and advise that I have been approached by the family of a person who failed to honour bail conditions in the mid 1980's and has since lived in the Republic of Ireland. The person was at the time charged with scheduled offences. I am writing to determine the procedure to ascertain if the person was to return to the North, would he be re-arrested and prosecuted?

4.60 The letter did not set out if and how Mr Attwood knew that such information might be provided by the authorities. He has informed this Review that he knew nothing about the specific issue of an administrative scheme. As far as he is aware, nor did any other member of his party. He referred us to the evidence of Mark Durkan MLA (former Deputy First Minister) to the Northern Ireland Affairs Select Committee about his knowledge of the generic issue. Mr Attwood says his letter was prompted solely by the concerns of the family of the individual concerned. The Minister replied on 7 March 2001, pointing out that a pre-conviction case could not be dealt with by the Sentence Review Commission. He did say, however, that if the name and date of birth could be supplied, further enquiries would be made to ascertain the status of the individual. The Review has not seen any follow-up correspondence.

The 'Prison List'

4.61 On 11 February 2001 a list of 14 names of those "unlawfully at large from prison" was produced by the Northern Ireland Prison Service. This followed discussions with the NIO over whether there were any individuals – other than those on the Sinn Féin List – at large from prison who might qualify for early release following the commitment in the Belfast Agreement. Of the 14 names, 4 were later also submitted by Sinn Féin. They were dealt with as Sinn Féin List 2 names, with the Prison List entries treated as duplicates. Some on the list had escaped before conviction; some after. One was a Loyalist prisoner. Some were names of individuals whose whereabouts were unknown. In some cases, the authorities could not even say with certainty whether these people were still alive.

4.62 Checks with the RUC showed that all 14 appeared as 'wanted'. Further checks were set in train to see if they would still face prosecution if they returned to the jurisdiction. The 14 names were added to those still under consideration.

Temporary release for escapers

4.63 Meanwhile, in respect of the 12 cases (see paragraph 4.52) held back pending last-minute rechecking by the RUC, decisions had finally been reached. By 15 February 2001 arrangements were in place for these 12 individuals to go to an agreed location to meet a Northern Ireland Prison Service representative, who would grant them temporary release from their sentences.

They would then be able to apply to the Sentence Review Commission in the usual way. Not all 12 were expected to attend. Some were in the US and at least one could not be traced. The meeting took place on 16 March 2001 and was attended by 7 of the 12. These 7 were, accordingly, granted temporary release pending consideration by the Sentence Review Commission.

- 4.64** The ways in which these seven OTRs avoided having to spend any time in custody varied: four of the seven signed applications to the Commissioners in relation to their sentences and were subsequently released on licence; two of the seven were eligible for early release in respect of some, but not all, of their sentences – these were later granted the RPM in respect of sentences to which the early release provisions did not apply. The last of the seven individuals, whose sentence did not qualify under the Early Release Scheme, was subsequently granted the RPM. An eighth individual attended three days later and was granted temporary release; they signed an application to the Commissioners and was subsequently released on licence. Those still in the US were told that they would be dealt with in a similar way if sufficient notice of their return was given. The one who had not previously been traced had by now been contacted and was also interested in regularising their position.

Hillsborough Castle

- 4.65** By 6 March 2001 Sinn Féin was pressing the UK Government for a public statement on the issue of the OTRs. The Government had, for some time, considered a form of public announcement, set against the background of the Secretary of State for Northern Ireland's statement on extraditions and OTRs of 29 September 2000.¹²

- 4.66** The UK and Irish governments also discussed the problem of OTRs, by now in the context of IRA engagement with the Independent International Commission on Decommissioning. On 8 March 2001, during cross-party talks at Hillsborough Castle, both governments accepted that the position of the OTRs was an anomaly that would have to be addressed. In a joint statement they declared:

The Governments accept that in the context of the agreement of May 2000 being implemented, it would be a natural development of the [Early Release] Scheme for such prosecutions not to be pursued, and would intend as soon as possible thereafter to take such steps as were necessary in their jurisdictions to resolve this difficulty, so that those concerned are no longer pursued.

- 4.67** Notably, on 31 May 2001, the IRA made a statement announcing that another arms dump inspection had been carried out.
- 4.68** As high-level political talks continued, officials developed the draft letters of assurance. In respect of one individual in March 2001, the following draft was drawn up:

The Secretary of State has been informed by the Attorney General that, following consideration by the DPPNI, a direction to prosecute you summarily for has been withdrawn.

On the basis of information currently available, there is no outstanding direction for 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 are not aware of any interest in you from any other police force in the UK. If any other

¹² The full text is attached at Appendix 6

outstanding offence or offences come to light, or if any request for extradition were to be received, these would have to be dealt with in the usual way.

4.69 Mr McGinty of the AGO instructed the NIO by letter, on 14 March 2001, as follows:

It is essential that the Northern Ireland Office check the accuracy of the second paragraph: whilst the information was correct, to the best of our knowledge, in November 2000, circumstances may have changed. It would also seem sensible for the RUC to be kept informed of any letter that does issue so that the opportunity for confusion to arise as to status is lessened.

4.70 On 28 March 2001 Mr Jeffrey of the NIO wrote to Gerry Kelly confirming that the applicant was “now free to return to NI” and enclosing “a letter informing him of his legal position”. He requested that the letter be passed on to the individual concerned.

Sinn Féin List 2

4.71 On 30 March 2001 Sinn Féin wrote to the NIO with a further list, “as discussed”, of 61 names, dates of birth and places of origin. This became Sinn Féin List 2. The letter stated: “You will appreciate that our list is still growing and as the names reach us we will further [sic] them to you.”

4.72 As with the submission of Sinn Féin List 1, the submission of Sinn Féin List 2 presented another missed opportunity for the NIO to draw up a comprehensive policy to deal with the OTR applications and the consequences of checks.

4.73 By the end of March 2001, Sinn Féin had submitted a total of 41 names on Sinn Féin List 1 (in May and October 2000) plus the 61 new names known as Sinn Féin List 2. In addition (and as referred to above at paragraph 4.61) there were 14 names on the Prison List. Of the names submitted on the Sinn Féin Lists and the Prison List at that point, 4 were duplicates.

4.74 The NIO continued to consider and send individual letters to Sinn Féin for onward transmission, even though some were sent in batches. They remained in the form set out above. The NIO sent the new list of 61 names to the Chief Constable of the RUC by letter dated 12 April 2001.

4.75 On 1 May 2001 the Acting Head of Branch C2 wrote on behalf of the Chief Constable to the Director of Services at the Northern Ireland Prison Service, with regard to Sinn Féin List 2:

D/Superintendent [X] has provided the attached result from his Department, however it is important that I draw your attention to the fact that only preliminary checks were made against the data base at the Force Intelligence Bureau. It must be noted that there was no enquiry with or examination of files against (a) documents held at Headquarters Crime Branch, the office of the Director of Public Prosecutions, the Public Records Office or the Crown Solicitors’ Office. There was also no check made against Special Branch records or any circulation to the Force enquiring whether any officer had an interest in any of the named persons. To make a proper check concerning these individuals will involve a considerable amount of work for the RUC and the other agencies involved. I presume this course of action will be necessary if the Secretary of State decides to ask the Attorney General to carry out a more detailed review of any outstanding cases.

In view of my comments above I ask that you interpret the term “not wanted” against 31 of the names as “not circulated as wanted”. In respect of the persons marked as

“not identified from details given” I suggest Sinn Féin is asked to supply a date of birth and an address in respect of each person.

- 4.76** The “attached result”, as referred to in the letter, was a list showing the names as “Wanted”, “Not wanted”, “Not Identified from details given” or giving a very brief summary of outstanding allegations.
- 4.77** On 30 May 2001 at a meeting held at Hillsborough Castle, Gerry Adams, President of Sinn Féin, expressed concern to Dr Reid that OTRs had been reduced to “another negotiating issue”. The minutes of an NIO official record Gerry Adams as saying that, in terms of building confidence among the Republicans, it would be better if there was an “invisible” process for dealing with OTRs. Gerry Adams does not accept the content of those minutes.
- 4.78** At this point, preparatory work started on the drafting of a legislative scheme to provide amnesties.

The Weston Park Agreement

- 4.79** On 1 August 2001 the Weston Park Agreement was announced.¹³ Paragraph 20 read as follows:

Both governments also recognise that there is an issue to be addressed, with the completion of the early release scheme, about supporters of organisations now on cease-fire against whom there are outstanding prosecutions, and in some cases extradition proceedings, for offences committed before 10 April 1998. Such people would, if convicted, stand to benefit from the early release scheme. The Governments accept that it would be a natural development of the scheme for such prosecutions not to be pursued and will as soon as possible, and in any event before the end of the year, take such steps as are necessary in their jurisdictions to resolve this difficulty so that those concerned are no longer pursued.

- 4.80** This announcement prompted significant interest. When the Secretary of State met a delegation of the NI Women’s Coalition on 4 August 2001, they raised their concern with him that OTRs might be treated better than other ex-prisoners because they would not be subject to licence. They had understood that there were 60 such cases, though they were informed that this figure was incorrect. Shortly afterwards, Sean Neeson, leader of the Alliance Party, wrote to the Secretary of State, and to Brian Cowen, the Irish Foreign Minister, on 6 August 2001 to raise concerns that the joint commitment on OTRs sounded like a general amnesty, which would be “morally inappropriate and undeserved”. The party was none the less prepared to accept it “on the basis that all aspects are interdependent, including progress on actual decommissioning”.
- 4.81** As work progressed to process OTR names, the question of resources arose. On 9 August 2001 the Acting Head of Branch C2 wrote on behalf of the Chief Constable to William Junkin, Deputy DPP(NI), about the resources available for the work required to deal with Sinn Féin List 2 and the Prison List. He recorded that a team of one detective sergeant and six detective constables had been established and functioning since 30 July. It was becoming obvious to him that there was considerable work to be done:

The officers are attempting to locate crime files in the relevant cases, both at this Headquarters [Belfast] and within the Regions. They are revisiting the Force data

¹³ <http://cain.ulst.ac.uk/events/peace/docs/bi010801.htm>

bases, liaison officers having been established at the Criminal Intelligence Bureau and within 'E' Department. A line of contact has already been set up with the Northern Ireland Prison Service. In addition the officers are making contact in all cases with the local collator and investigating police at station level.

- 4.82** He went on to say that he was confident that he could supply individual detailed reports on all 71 names by the end of August 2001. In hindsight, this assertion was optimistic to say the least.
- 4.83** Following the publication of the Weston Park Agreement, a great deal of discussion took place in the media. In particular, Ben Lowry wrote a series of articles in the *Belfast Telegraph*.
- 4.84** By 8 October 2001 the Independent International Commission on Decommissioning announced that the IRA had completed substantial decommissioning. This brought a reaffirmation of the Weston Park Agreement and a renewed commitment from the Ulster Unionist Party to work towards fulfilling the terms of the Belfast Agreement. In the view of a senior member of the NIO, the prospects looked more favourable than at any time previously. The commitment in the Weston Park Agreement to take action "in any event before the end of the year" was to be moved back to March 2002.
- 4.85** As of 11 October 2001 30 individuals had been cleared to return although only 23 letters of assurance had been sent; 59 were still at different stages of being processed (some still could not be identified); and 12 were definitely not to be cleared as they were 'wanted'. Those definitely not to be cleared included the same high-profile candidate identified from the very start of the process. On 17 October 2001 the Attorney General (Lord Goldsmith QC) yet again reached the same view of that case.
- 4.86** By a process which is not entirely clear to me, but which may have involved NIO officials redrafting the original letters and running them past the AGO, templates of the draft letters to applicants and the covering letters to Sinn Féin (set out below) were drawn up in October 2001.

October 2001

Following investigations made by the Attorney General's Office I can now confirm that _____, date of birth _____, is now free to return to Northern Ireland and I enclose a letter informing him of his legal position.

As we do not have an address for _____ I would be grateful if you would ensure this letter is passed on to him.

BILL JEFFREY

via Gerry Kelly

October 2001

The Secretary of State for Northern Ireland has been informed by the Attorney General that on the basis of the information currently available, there is no outstanding direction for 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 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 if any request for extradition were to be received, these would have to be dealt with in the usual way.

BILL JEFFREY

- 4.87** On 24 October 2001 Dr Reid made a statement to the House of Commons about the Independent International Commission on Decommissioning's announcement of the decommissioning by the IRA of a quantity of arms.¹⁴ He went on to announce:

We and the Irish Government have now accepted that it would be a natural development of that scheme [Early Release Scheme] for outstanding prosecutions and extradition proceedings for offences committed before 10 April 1998 not to be pursued against supporters of organisations now on ceasefire. Both Governments have agreed to take such steps as are necessary to resolve the issue, as soon as possible and in any event by March 2002.

- 4.88** Sinn Féin continued to press on the subject of OTRs, particularly as to why fewer than 30 cases had been resolved out of those submitted.
- 4.89** On 31 October 2001 four letters of assurance signed by Mr Jeffrey (NIO) were sent out using the terms in the above template. In addition, four were to receive the RPM to remit the balance of their outstanding sentence, and three would go through the process of meeting the Northern Ireland Prison Service to be given a temporary release until their positions were formally regularised. One was in a position to apply to the Sentence Review Commission to have their case dealt with in their absence.

More names added to Sinn Féin List 2

- 4.90** The process of RUC checks continued. Sinn Féin was asked to provide further and better details in relation to the names it had previously supplied. On 2 November 2001 Sinn Féin replied with clarification and/or further details, as well as providing 19 new names. They were added to Sinn Féin List 2 as nos 62–80.

¹⁴ HC Deb, 24 October 2001, c302

- 4.91** Conscious of the need for a more formal scheme to deal with OTRs, William Fittall, Associate Political Director at the NIO, chaired a meeting on 9 November 2001, attended by DPP(NI) Sir Alasdair Fraser QC and representatives of the NIO, the Home Office, the AGO, the security services and the Police Service of Northern Ireland (PSNI). The option of granting certificates of immunity was discussed, but such a scheme would clearly create huge demands on resources that were already being stretched by the current administrative scheme. It was recognised that the numbers would increase if any Loyalist names were forthcoming. A scheme based on the Sentence Review Commission was also considered and the practical problems of identifying individuals were discussed – including the fact that if someone was not on one of the main databases it did not mean that they were ‘not wanted’. The DPP(NI) observed that a range of agencies held relevant information but felt it was important for this information to be co-ordinated at the most senior level (ministerial) and that it was equally important for someone to be held accountable for it.
- 4.92** On 16 November 2001 four letters of assurance were sent out using the same template. On 22 November 2001 Sinn Féin wrote with five additional names, and again on 30 November 2001 with a further four names. These became Sinn Féin List 2, nos 81–85 and 86–89 respectively.

Parliamentary interest and policy deliberation

- 4.93** By the end of 2001, the NIO was deliberating over a number of policy solutions to resolve the problem of OTRs. These included:
- the case-by-case process, which was the current model;
 - primary legislation to create a system of certificates of immunity;
 - use of the RPM more widely;
 - primary legislation to reduce the minimum sentence under the Northern Ireland (Sentences) Act 1998 from two years to zero.
- 4.94** The favoured option remained the normal prosecutorial process of reviewing each case against the two-stage (evidential and public interest) test.
- 4.95** Policy deliberations took place in the context of increasing Parliamentary interest and efforts to clarify how outstanding prosecutions were being dealt with.
- 4.96** On 27 November 2001 Harry Barnes, MP for North East Derbyshire, tabled a Parliamentary Question:

To ask the Secretary of State for Northern Ireland by what process suspected terrorists who are wanted for alleged crimes as 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.¹⁵

- 4.97** Jane Kennedy, then Minister of State at the NIO, replied:

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

¹⁵ HC Deb, 27 November 2001, c768W

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.¹⁶

- 4.98** On 28 November 2001 the Attorney General held a briefing session in the House of Lords for all peers with an interest in Northern Ireland affairs, at which he made clear – to the dismay of his audience – that the expected course of action on OTRs following the Weston Park Agreement was the pursuit of a legislative solution.

2002

- 4.99** At the start of 2002, the question of OTRs attracted public attention both in the media and in Parliament, occupying a significant part of the debate on decommissioning in the House of Commons on 9 January 2002.
- 4.100** That same day the Secretary of State for Northern Ireland held a meeting with Dr Trimble. The minutes record that the latter put forward a proposal for dealing with the problem. He suggested that the Secretary of State should take the decision as to whether someone should be prosecuted, there would be no appeals procedure following that decision, the courts could not reopen such a decision but the Secretary of State could reverse the decision at a later date. When interviewed by this Review in May 2014, Lord Trimble could not recall making this suggestion. It was not a proposal that could ever have been implemented because it would mean the Secretary of State acting in a judicial capacity.
- 4.101** On 10 January 2002 Sinn Féin supplied a further list of 25 names. These became Sinn Féin List 2, nos 90–114. One of those was John Downey, who was number 102. Less than a month later, on 4 February 2002, Sinn Féin supplied eight more names. These became Sinn Féin List 2, nos 115–122.
- 4.102** As other proposals were considered and rejected, the grant of amnesty under a legislative scheme emerged as the most credible, if not the most feasible (or politically desirable) option. It was the only way of dealing with someone against whom there was admissible evidence. Sinn Féin saw it as an unnecessary means of dealing with a relatively small number of difficult cases. In addition, there was the vexed problem of whether such a process would apply to members of the security forces.
- 4.103** Nevertheless, the Government pressed ahead with the complex procedure of drafting an amnesty Bill and the first draft appeared in February 2002.
- 4.104** The question of resources for the administrative scheme continued to feature in internal discussions, as did Sinn Féin's unhappiness at how long the process was taking. Senior NIO officials continued to notify Sinn Féin of individuals' status, and in a very limited number of cases the RPM was used to remit outstanding sentences.

The 'Trimble option'

- 4.105** On 7 March 2002 Dr Trimble wrote to the Prime Minister following an exchange between the two at Prime Minister's Questions in the House of Commons the previous day. He put forward a second suggested method of dealing with the problem. This suggestion became

¹⁶ HC Deb, 27 November 2001, c768W

widely known as the ‘Trimble option’. It proposed that an individual could return to Northern Ireland by arrangement; they would be charged, enter a guilty plea and then apply for release under the Early Release Scheme. In due course, they would receive a “notional sentence” and be released on licence. Such a proposal could only ever have applied to those found to have a case to answer.

4.106 The discussion of OTRs and a possible amnesty remained a regular feature in the media, while the UK Government was increasingly challenged on the topic in Parliament.¹⁷

Standards of checks required for OTR reviews

4.107 Despite the pressure to deal with the OTR cases in the system, both the NIO and the PSNI resolved that the process should be completed properly.

4.108 On 18 March 2002 NIO officials submitted a briefing to the Secretary of State, in advance of a meeting with the Attorney General, on the question of whether the OTR scheme could be made to operate more speedily. Significantly, it stated that:

the prosecuting authorities and police are acting at Government’s request not instruction. It is entirely up to them whether they want to pursue an individual or not. There does not even need to be a requirement to prosecute. The police have in a number of cases decided they still have an interest in questioning individuals on the basis of intelligence.

4.109 In this briefing, the idea of carrying out less stringent checks was dismissed. It was pointed out that the Integrated Criminal Information System (ICIS), the PSNI’s database, had been introduced only in 1998 and its accuracy depended on whether all material that pre-dated it had been put into the system, either correctly or at all. The question of additional resources was also raised. Neither the DPP(NI) nor the PSNI thought that increased resources would speed up the process. The PSNI had advised that the current OTR team was sufficient for the task, pointing out that it was the sequential nature of the checks which took the time. Further, the DPP(NI) had advised that relatively senior (rather than newly recruited) lawyers should undertake this work.

4.110 NIO officials described the scheme as working in a series of stages:

- Sinn Féin would submit a list to the NIO, although anyone could submit an application, either directly or through a representative.
- The Secretary of State would pass the list to the Attorney General.
- The Attorney General would ask the DPP(NI) to check whether the individual could return without fear of arrest or questioning.
- The DPP(NI) would pass the list to a dedicated team at the PSNI to check names against the database on ICIS (though the problem of the relative newness of ICIS was recognised).
- The OTR team would write to the collators in each Northern Ireland police station asking if they held any information.
- A similar check would be conducted with Special Branch.
- The Police National Computer and Interpol would also be consulted to see if an individual was wanted in the rest of the UK or internationally.

¹⁷ Some of these Parliamentary Questions are shown in Appendix 9

- The Crown Solicitor's Office would be asked if there were any ongoing extradition proceedings or warrants for arrest.
- If the evidence available included witness testimony, the OTR team would check if the witness was still available and willing to give evidence (recognising that the passage of time meant that finding witnesses and any documentary or scientific evidence were extremely difficult and time-consuming tasks).
- Consideration would be given to any new scientific test that could be carried out to provide or strengthen the evidence.
- At the end of the process a full report was sent to the DPP(NI) who then conducted the normal prosecutorial test.
- Where there was intelligence, a Superintendent would be provided with a pro forma document and would have to decide if a requirement to interview remained. (In 10 of the recent cases, a requirement to detain for interview had been recorded.)

4.111 The PSNI was notably concerned about clarifying and maintaining high standards in its process for reviewing OTRs. On 19 March 2002 Detective Inspector (DI) Davison wrote to the relevant Head of Branch to answer an enquiry about the standard of research required and what was expected of the reviewing officer. By this stage the police were considering Sinn Féin List 2, the Irish Government List and the Prison List. The team had worked out a painstaking and meticulous approach to the task.¹⁸ It included:

- Taking steps to confirm identity.
- Checking to establish whether a person was 'wanted', as opposed to merely checking whether there was an alert on ICIS.
- Checking to establish whether any other police service in the UK wanted the individual – the DPP(NI) and Crown Solicitor required this information in writing from the reviewing officer. Similarly, there had to be checks on whether another state wanted the person, information about which was also required in writing.
- Recognising the problems with ICIS and the necessity of checking at all levels. Checks of the evidence could include a trawl through all old papers held by the Court Service, PSNI headquarters, the Public Record Office (now The National Archives), local Criminal Investigation Department and Special Branch headquarters and locally.
- If it was considered that the person was wanted for questioning, preparing a full file with an attached intelligence report. All DPP(NI) and Crown Solicitor files then needed to be searched. Once a full review of the case had been conducted, a senior officer would consider its merits and confirm in writing if the person was 'wanted'. The DPP(NI) would then be advised in writing of the position (copied to the Crown Solicitor).
- If it was established that a person had absconded while on bail or from prison, preparing an additional file for being unlawfully at large or escaping from custody. If it was established that a person was wanted for anything else since absconding or escaping, preparing a new file for that also.
- Making the office of the Assistant Chief Constable (Crime) the central point of contact for the PSNI on the OTR project. It would deal with enquiries from government, Command Secretariat, the Northern Ireland Prison Service, the Department of the DPP(NI), the press office, etc. It was therefore essential that all reviewing officers notified the Head of Branch C2 immediately each individual review was concluded.

¹⁸ The full text of DI Davison's guidance on the standard of research required is available at Appendix 7

- Placing responsibility on the reviewing officer for ensuring that individuals were immediately removed from circulation if the DPP(NI) rescinded an earlier direction to prosecute or a senior officer directed no further action.
- 4.112** DI Davison was clear that the last two requirements must be “strictly complied with” to avoid embarrassment to the PSNI and the Chief Constable. If, therefore, the checks were in any way less than thorough, there was a distinct possibility that an individual’s details could be removed from the database in error. DI Davison also confirmed that frequent conferences were chaired by the DPP(NI) at the Royal Courts of Justice in Belfast for the purpose of reviewing cases. It was expected that the police would be present at these, even if the NIO and AGO would attend less frequently. The reviewing officer was required to be “completely satisfied” with the depth of the police research and aware that his comments would be reflected in the DPP’s minutes, to be sent on to the Secretary of State for Northern Ireland and Attorney General in London. DI Davison noted that the OTR review team at Knocknagoney had recently been visited by two officials from the Secretary of State’s office who had checked the methodology and were satisfied with the “meticulous approach” to the task. He confirmed the importance of all future reviews being conducted to the same standard.
- 4.113** As at 26 March 2002, 161 names had been supplied by Sinn Féin. Of these, 47 had been cleared for return, 92 were still being processed and 22 could not be cleared.
- 4.114** Much thought was given to whether the question asked of the DPP(NI) and the PSNI might be simplified in order to speed up the process. The DPP(NI), in consultation with Detective Chief Superintendent (DCS) Kennedy and DI Davison, decided that even a modified question would still involve the same amount of research, but might result in a misleading answer, following a limited and less reliable search.
- 4.115** Mr McGinty raised the question of whether it would be enough simply to check ICIS. It was recognised that, of the names already processed and declared as ‘wanted’, a significant number would not have appeared as such if that had been the only check. Further, it was pointed out that if a candidate was clear on ICIS, he might return, only to face prosecution by local police on the basis of information which they held regionally. It was recognised that for the letters to be “proper”, they must not be misleading.
- 4.116** From the material I have seen it is clear that the senior officers charged with running this part of the police operation felt they had adequate staff to deal with the task properly. It is right to observe that DCS Kennedy and DI Davison appeared to have fulfilled their responsibilities in an admirably conscientious and meticulous fashion.

Proposals for a commission to deal with OTRs

- 4.117** The proposal which had been put forward by Dr Trimble remained under consideration, as did all possible alternatives, including the long abandoned proposal of a truth commission. There had always been grave misgivings in government about any form of truth commission, given the parallels that could be drawn with South Africa’s Truth and Reconciliation Commission. The Government could not countenance any comparison with the Government of South Africa under the apartheid regime. In any event, it was considered unlikely in the extreme that those suspected of terrorism would appear before such a commission to make admissions of former crimes.
- 4.118** The Secretary of State investigated the possibility of an amended form of the ‘Trimble option’ – a special judicial commission or tribunal set up by legislation. It would have the

powers of a 'normal' criminal court; qualifying offences and organisations would be defined; and application could be made within a specified period of time for prosecution under the scheme. In the event of a conviction, the tribunal would pass sentence but the accused would immediately be entitled to apply for early release and the existing two-year minimum term would be reduced, by legislation, to zero.

4.119 On 22 April 2002 the DPP(NI) set out his observations on the above proposed scheme. Given that 'Diplock courts' (non-jury trial courts) sat alongside jury courts, the new scheme would mean three types of courts trying the same sorts of offences. A number of questions were considered:

- Whether the new commission or tribunal would survive a challenge in the European Court of Human Rights, given that it would be most likely to apply only to Republicans.
- Whether the proposed two-year period during which application could be made to the commission would be acceptable as a 'delayed amnesty' and allow sufficient time for the police to investigate offences.
- Whether fresh evidence obtained outside the two-year period would be admissible.
- Who would determine whether the applicant was a qualifying person.
- How, properly, somebody could be tried in their absence, if that meant they could not give evidence in their own defence.
- What, if any, provisions would be made for appeals.
- Who would sit on such a commission.

4.120 On 24 April 2002 DCS Kennedy wrote to the NIO, stating that although the current process of checking was slow it remained the best option. It would not, in her opinion, be possible to make a proper report on the individual cases without completing the existing checks. On 29 April 2002 DCS Kennedy wrote to the DPP(NI) expressing thanks for the decision that would now mean officers could approach witnesses to determine whether they were able and available to give evidence. It had previously been feared that such an approach might agitate emotions in some local communities.

4.121 Meanwhile, on 25 April 2002, Sinn Féin wrote to the NIO providing a further two names who became Sinn Féin List 2, nos 123 and 124. In addition, Sinn Féin provided clarification in that letter as to the identity of three individuals whose names had already been provided.

Sinn Féin's request for a public statement

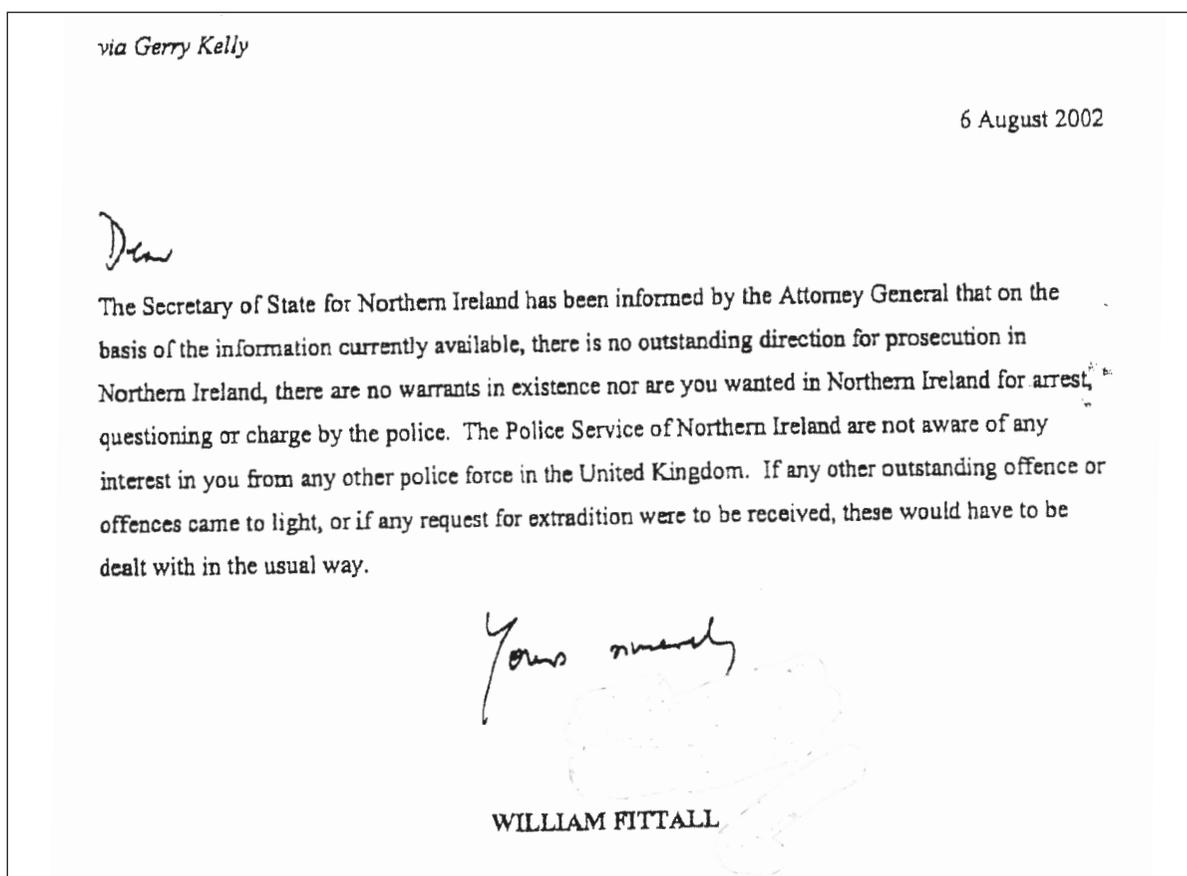
4.122 At a meeting on 6 May 2002, Gerry Adams asked when the Secretary of State would make a public statement on the OTR issue. He pointed out that throughout the tenure of three Secretaries of State for Northern Ireland the question of OTRs had not been satisfactorily resolved.

Problems with access to the database

4.123 On 15 May 2002 DI Davison raised with a PSNI Detective Superintendent the problem of civilian staff working on OTRs not having basic access to ICIS. The checks were currently being done by his officers who completed their research by checking in person with someone at the Force Intelligence Bureau (FIB). DI Davison requested better access and to have a nominated liaison officer within the FIB.

More Parliamentary interest

- 4.124** On 1 July 2002 Quentin Davies MP asked a series of written questions of the Secretary of State, including specific questions on the number of those told by the NIO since 10 April 1998 that they could return to the jurisdiction and not face prosecution.¹⁹
- 4.125** On 6 August 2002 four further letters of assurance were sent by the NIO to Sinn Féin. Each was individually addressed, but in every other detail the letters were the same. A redacted copy of one of the letters is set out below.



- 4.126** As of 5 September 2002, 162 names had been submitted by Sinn Féin. The position was that 61 had been told they were free to return, 31 remained ‘wanted’ but Sinn Féin had only been told about 12 of them, and 70 were still being processed.
- 4.127** On 12 November 2002 three further letters were sent, including one to Gerry Kelly (set out below) informing him:

We have already informed you that in 12 of the cases the individuals would still face arrest if they returned. Following investigations made by the relevant authorities in Northern Ireland I can now confirm that the necessary checks have been completed on the following 19 individuals and, in the current circumstances of their cases they too would face arrest and questioning if they returned to Northern Ireland.

- 4.128** This Review was concerned not to be able to find any record of earlier written notification that these 12 individuals “would still face arrest if they returned”. An NIO official who, in 2005, attempted to reconcile the numbers seems to have experienced the same problem. This would illustrate the inadequate system of record-keeping on the part of the NIO.

¹⁹ See Appendix 9

12 November 2002

*Dear Mr. Kelly,***'On the runs'**

You have previously been in correspondence with the Northern Ireland Office about a number of individuals who are currently on the run but want to return to Northern Ireland and wish to be informed of their status if they were to do so. We have already informed you that in 12 of the cases the individuals would still face arrest if they returned. Following investigations made by the relevant authorities in Northern Ireland I can now confirm that the necessary checks have been completed on the following 19 individuals and, in the current circumstances of their cases they too **would face arrest and questioning if they returned to Northern Ireland.**

However, following investigations made by the Attorney General's Office I can now confirm that the following:-

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-
-

are free to return to Northern Ireland on the basis of the information provided to us and I enclose further letters informing each of their legal position.

As we do not have addresses for these individuals, I would be grateful if you would ensure that these letters are passed on to them.

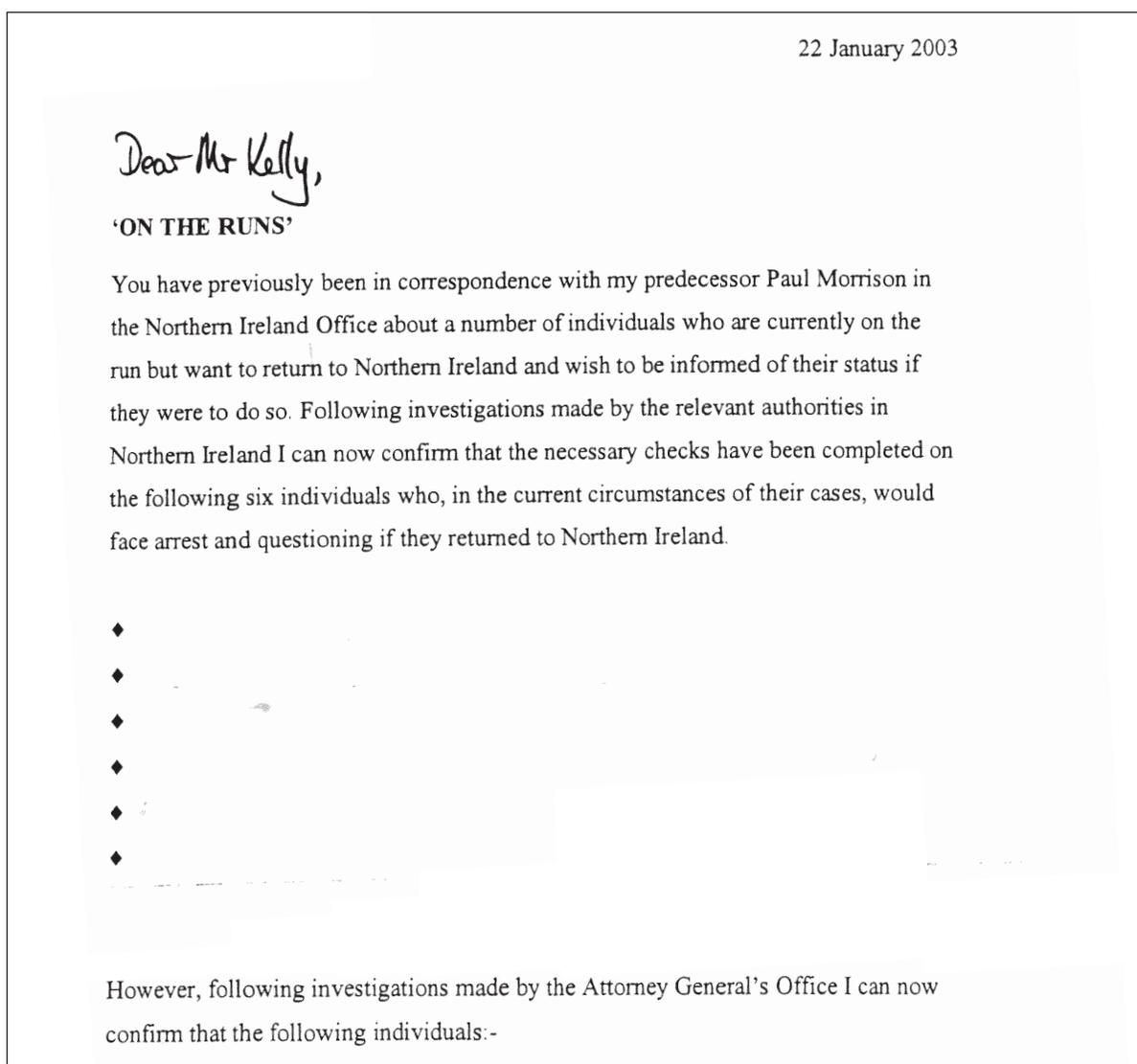
*Yours sincerely***PAUL MORRISON**

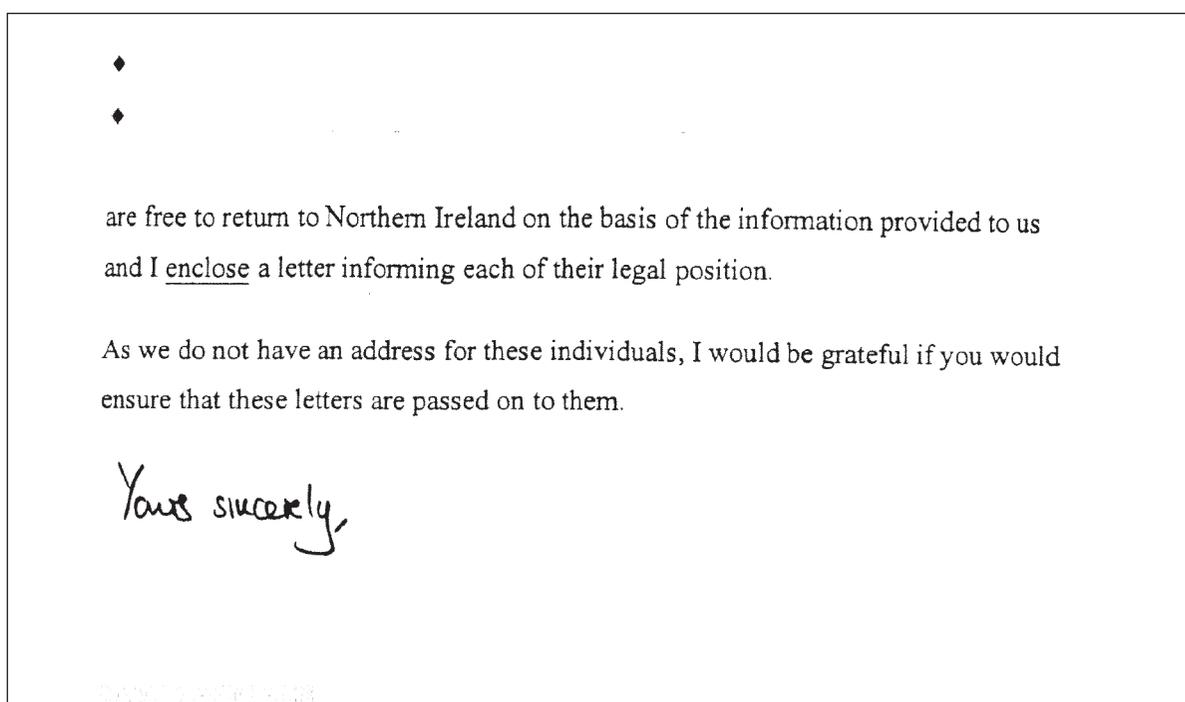
Discussions with the Alliance Party regarding 'on the runs'

4.129 On 3 December 2002 the Prime Minister met members of the Alliance Party to discuss a number of topics, including the OTRs. The official minute of that meeting records that Eileen Bell CBE, MLA for North Down, urged the Prime Minister not to give anything on OTRs to Sinn Féin without something in exchange, for example on exiles. It also records David Ford, leader of the Alliance Party, as observing that he could accept a resolution of the OTR problem along the lines of the Early Release Scheme.

2003

4.130 At the start of 2003, Gerry Kelly of Sinn Féin received further notifications of individuals' status from the NIO. On 22 January 2003 he was informed that six individuals were 'wanted' and two were free to return. Two letters were enclosed addressed to the 'not wanted' individuals. Another letter, which was sent on 13 February 2003, stated that a further six individuals faced arrest and questioning and one was free to return. Each letter used the same wording and a copy of the first is set out below.





4.131 In the search for a permanent solution to the problem of OTRs, the amended ‘Trimble option’ of a commission or tribunal had, in varying forms, remained under consideration. However, by 7 March 2003 it was clear that the Lord Chief Justice of Northern Ireland had concerns, both in principle and in practice, about a serving judge having a role in such a process. He thought it highly questionable that this was appropriate judicial work.

4.132 What was being attempted was some form of quasi-judicial process, arising out of an agreement between political parties, which almost certainly would not satisfy the victims and would probably not have been compliant with the European Convention on Human Rights.

4.133 On 1 May 2003 the UK Government’s *Proposals in Relation to On the Runs (OTRs)* was published alongside the Joint Declaration by the UK and Irish governments. It dealt expressly with the issue of unconvicted OTRs, setting out the UK Government’s conditional commitment to introduce legislation to deal with that issue, but again made no mention of any administrative scheme.²⁰

Concerns expressed over informing individuals they were ‘wanted’²¹

4.134 Also on 1 May 2003, an internal NIO memo set out concerns about the process within the existing scheme, whereby Sinn Féin was being told that some individuals were still ‘wanted’. This practice had begun in 2002. It was reported that this part of the scheme might be known only to the NIO and Sinn Féin, although the police might well suspect as much. It was felt that it was a necessary part of the process since a response merely of silence, or the implication that the cases were still under consideration, could not continue indefinitely. It concluded:

However, the Attorney General gave the decision [to notify Sinn Féin that an individual was ‘wanted’] to the Secretary of State on the basis of the public interest and on the understanding that these fugitives were most unlikely to return to the jurisdiction anyway, short of hearing that they are free to return.

²⁰ See Appendix 9

²¹ This is explored further in Chapter 9

4.135 On 18 June 2003 a letter was sent by the NIO to Gerry Kelly informing him that:

the necessary checks have been completed on the following seven individuals who, in the current circumstances of their cases, would face arrest and questioning if they returned to Northern Ireland.

4.136 It went on to say that three further individuals were “free to return to Northern Ireland on the basis of the information provided to us”. Enclosed was “a letter informing each of their legal position”. Letters were included for onward transmission. The wording used was the same as that shown at paragraph 4.86.

4.137 On 23 July 2003 Sinn Féin was told of four OTRs who would face arrest and questioning and three who were “free to return”; again, letters which used the ‘template’ text were enclosed for onward transmission.

4.138 On 3 September 2003 Sinn Féin wrote to the NIO with three additional names. They were added to Sinn Féin List 2 and became nos 125–127.

4.139 On 16 September 2003 DI Davison at the PSNI requested an extension of the contracts of employment of four of the eight agency staff working on OTR reviews, in order to deal with the work that his team had taken on.

2004

4.140 On 11 March 2004 DCS Kennedy wrote to the DPP(NI) confirming that funding had been made available to enable continuation of the work by DI Davison’s team on OTRs. It was sufficient to extend the contracts of several agency staff.

4.141 On or about 3 August 2004 DI Davison wrote to Head of Branch C3 saying that the OTR review team had been “re-established” and would again need the assistance of C3 “to provide a short pen picture on each individual named”.

2005

‘Special commission’ plans

4.142 By September 2005 detailed plans for legislation to create a ‘special commission’ had been drafted. The scheme would have enabled a candidate to apply to a certification commission. The applicant would not have to say why he was applying or to admit involvement in any offences – though he must currently not be involved in terrorism, or support a specified organisation or have been convicted of any scheduled or other serious offence since the Agreement. The commissioner would have then decided, on the basis of material supplied by the applicant and the Secretary of State, whether or not to grant a certificate. There was to be an appeal process. If a certificate was granted, the individual could not be arrested or held on remand for any scheduled offence²² committed before the Belfast Agreement. It would not have prevented arrest for non-scheduled offences. The police were to investigate whether a certificate holder had committed a qualifying offence without being able to arrest or question them. If there was sufficient evidence, the case would be heard in a special judicial tribunal, with a judge sitting effectively in a Diplock court. If convicted, the individual would be sentenced in the usual way and released immediately on licence. The scheme would

²² An offence listed in a Schedule to the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996

apply equally to Loyalist and Republican applicants. Its application to any member of the security forces was anticipated to be extremely contentious – the extraordinary difficulties in proposing, let alone implementing, such a scheme were manifest.

- 4.143** There was to be wide consultation with the PSNI, the DPP(NI), the AGO, the Northern Ireland Court Service, the Lord Chief Justices of Northern Ireland and England and Wales, the Lord President of the Court of Session, the Lord Advocate and the Lord Chancellor. Particular consideration was given as to how the proposed scheme might work alongside the work of the existing Historical Enquiries Team.
- 4.144** As of 14 September 2005 Sinn Féin had supplied 165 names, of whom 73 were free to return, 46 were still ‘wanted for questioning’ and the remainder were still under consideration. The number of names supplied was increased by one with a letter from Sinn Féin to the NIO dated 22 September 2005. This was added to Sinn Féin List 2 and became number 128. On 26 September 2005 Katie Pettifer (NIO) sent Sinn Féin the first of what has become known as a ‘composite letter’. This set out in alphabetical order (by surname) the list of OTRs and their dates of birth. It included a column entitled “Status/Date Informed” for which the entries were “checks continuing”, “free to return” and “wanted”. Where the date on which “free to return” or “wanted” was known, it was set out.
- 4.145** On 3 October 2005 Sinn Féin provided five new names to the NIO which became Sinn Féin List 2, nos 129–133. Another three names were added on 21 October 2005 and became Sinn Féin List 2, nos 134–136.

Northern Ireland (Offences) Bill

- 4.146** The legislative proposals, by now encapsulated in the Northern Ireland (Offences) Bill, were introduced in the House of Commons on 9 November 2005 and received a second reading on 23 November 2005. As expected, the Bill met with considerable opposition, both on grounds of practice and principle.²³

2006

- 4.147** The passage of the Bill prompted a great deal of public interest. The PSNI looked again at the OTR process, particularly in the light of the recent creation of a Murder Review Team (C8). On 10 January 2006 a junior PSNI officer wrote to the NIO on the subject. She informed the NIO that the OTR team had passed the OTR lists and the updated position on all the reviews completed to date to the new Murder Review Team. In response, the Murder Review Team had asked for details of the use of the RPM (referred to as an ‘RPG’), and for what category of offences it had been used. It was suggested that this was an opportune time to revisit the work completed over the previous five years to ensure that all records held by the NIO, the Public Prosecution Service, the Attorney General and the PSNI were up to date and consistent. To facilitate the process, the NIO was asked to provide information as to who had been granted the RPM or a Temporary Release Pending Review Certificate. This is the first reference the Review has found in any disclosure material of such a certificate and it seems likely that there was some confusion here with the clauses in the new Bill.
- 4.148** The junior PSNI officer observed: “we need to ensure that no one is circulated as ‘arrest on sight’ when in fact they have been granted release by the NIO.”

²³ HC Deb, 9 November 2005, c304; HC Deb, 23 November 2005, c1528

4.149 On 10 January 2006 Peter Hain, the Secretary of State, wrote to the Attorney General, Lord Goldsmith, to inform him that on the following day he would make a statement in the House of Commons announcing the Government's intention to withdraw the Northern Ireland (Offences) Bill. He set out his reasoning:

This has not been an easy decision to make. However, in the circumstances, I believe that it is the only reasonable course. The decision of Sinn Féin to withdraw its support for the Bill and, crucially, to urge republican OTRs not to participate in it, would render the scheme ineffective. Without the prospect of any OTRs going through the scheme, seeing this legislation taken through would be too painful a price for victims to pay to be justifiable. We have no alternative in preparation, because we believe that the Offences Bill scheme offered the best solution to a very difficult question.

The issue of the On the Runs, and others prosecuted for terrorism-related offences committed before the Belfast Agreement, therefore remains to be resolved, and we shall be reflecting on what can be done in the context of wider efforts to address the past in Northern Ireland.

4.150 Following the letter of 10 January 2006 from the junior PSNI officer, the NIO replied to a Superintendent Thompson about the request for details of persons who had been granted the RPM and their offences. The NIO pointed out that the information required, which was supplied, was contained in a document from the Northern Ireland Prison Service entitled "Prisoners unlawfully at large who have been released". As at that date, the document recorded 11 grants of the RPM.

4.151 Less than two weeks after the Northern Ireland (Offences) Bill was withdrawn, a meeting was held between representatives of the PSNI, the DPP(NI) and the NIO to discuss the OTRs. It was clear at that meeting that all had inconsistent information, not just in relation to the personal details of some of the OTRs but also in relation to the status of some of them. Given the importance of this information, it is at first sight surprising that this state of affairs had arisen. However, it is symptomatic of the piecemeal way in which the scheme had developed. What is clear, in the detailed five-page letter from Mark Sweeney at the NIO to the PSNI following the meeting, was that Mr Sweeney wished to ensure that there was a single accurate list of the names and status of all the individuals.

4.152 Superintendent Thompson copied his detailed reply of 31 January 2006 to the DPP(NI) because the review of the OTR lists was being undertaken at his request. He stressed that it was important that the NIO, the DPP(NI), the Attorney General and the PSNI were all in agreement as to the exact position in relation to all the persons named on all the lists. He suggested a round table meeting of all parties before the lists were finalised. That suggestion of a round table meeting was repeated in internal Public Prosecution Service correspondence between Ivor Morrison and William Junkin on 8 February 2006.

4.153 On 7 February 2006 Sinn Féin provided the NIO with a list of five additional names. Three of them were in fact duplicates of names already provided and the new two names were added to Sinn Féin List 2 and became nos 137 and 138.

4.154 On 10 February 2006 Ms Pettifer emailed Mr McGinty stating that the NIO would not write to Sinn Féin about anyone's status without confirmation from the Attorney General.

Other options following the withdrawal of the Northern Ireland (Offences) Bill

- 4.155** Following the withdrawal of the Bill, there was renewed consideration of any other means to resolve the problem of OTRs without legislation. The options were set out in an NIO paper dated 10 March 2006: they included continuing the current administrative arrangements; a decision that no such prosecution would be in the public interest; pre-conviction pardons; a modified Early Release Scheme and greater involvement of the Historical Enquiries Team.
- 4.156** On 5 April 2006 one letter of assurance was sent to an applicant via Gerry Kelly, in the same terms as below.

Via Gerry Kelly

5th April 2006

The Secretary of State for Northern Ireland has been informed by the Attorney General that on the basis of the information currently available, there is no outstanding direction for 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 Police Service of Northern Ireland 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 if any request for extradition were to be received, these would have to be dealt with in the usual way.

Katie Pettifer

- 4.157** On 18 August 2006 Sinn Féin wrote to the NIO and provided a list of five additional names. They were the last names to be included in Sinn Féin List 2 and were nos 139–143. No further names were put forward on behalf of Sinn Féin thereafter until 2008.

Summary of 2000 to 2006

- 4.158** Between May 2000 and the summer of 2006, the names of more than 170 individuals were provided by Sinn Féin to the NIO/Downing Street. In addition, other names were provided by the Northern Ireland Prison Service and the Irish Government. By the summer of 2006 only a limited number of the individuals whose names had been submitted by Sinn Féin had been sent a letter of assurance from the NIO.
- 4.159** During those six years, various ways of dealing with OTRs were considered and rejected by the UK Government. Meanwhile, the administrative scheme continued to develop and

evolve. Following the withdrawal of the Northern Ireland (Offences) Bill in January 2006, there was increased political pressure to resolve the status of the outstanding OTRs. This sets the context for the commencement of Operation Rapid in February 2007, which is now addressed in Chapter 5.

Chapter 5: Operation Rapid

The build-up to Operation Rapid during 2006

5.1 During the summer of 2006 a number of meetings were held between the Police Service of Northern Ireland (PSNI), the Public Prosecution Service (PPS), the Attorney General's Office (AGO) and the Northern Ireland Office (NIO) in yet another attempt:

- to ascertain that all concerned had the same information as to the current status of the individual 'on the runs' (OTRs);
- to seek to progress consideration of the OTRs.

Meeting of 9 June 2006

5.2 One of those meetings took place on 9 June 2006. It is clear from the amended minutes that many of those on the various lists were considered at the meeting (although John Downey does not appear to have been). The only representative of the PSNI at that meeting was Detective Inspector (DI) Davison. A number of matters arise from those minutes. In relation to four individuals (not including Mr Downey) they state:

The above names are 'wanted' for prosecution in England and Wales and would be arrested if they returned to Northern Ireland. They are 'not wanted' by the PSNI for any offence in Northern Ireland.

5.3 Accordingly, at that stage, the approach of the PSNI was that if an OTR returned to Northern Ireland they would be arrested for an offence committed in England and Wales.

5.4 In relation to a further individual (again not Mr Downey) the minutes need to be set out in full:

Mr Davison stated that 'X' is not wanted by the PSNI but he may be wanted by the Metropolitan Police, efforts were being made to confirm the Mets [sic] position. He noted that PSNI PNC checks were now linked to the mainland database but the situation remained whereby some individuals were wanted but no explanation was forthcoming as to why, alternatively others had not been circulated as wanted who should be, he noted that there was [no] quick fix to this situation which was the result of numerous system changes over a lengthy period of time. Mr McGinty [of the AGO] asked the group to determine who was best placed to confirm the Mets interest in any individual, Ms Pettifer [of the NIO] replied that she would be content to make these enquiries but that it may be inappropriate for the Home Office to act in this manner. Mr Davison stated that the PSNI could check with the Met but that additional enquiries would have to be made to determine why the individual was wanted and if evidence existed in relation to the incident. Mr McGinty accepted it could 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.)

- 5.5** This entry in the minutes has been the subject of a significant amount of questioning at various sessions of the Northern Ireland Affairs Select Committee. It seems to me that the minutes are capable of a number of interpretations.
- 5.6** There are a number of points to note in relation to these minutes:
- First, and possibly of relevance to what happened in relation to Mr Downey, is that Detective Chief Superintendent (DCS) Norman Baxter was not present at this meeting. Although a copy of the minutes was received by the PSNI and a copy of the entry in relation to the individual in question was stored as a file note in the Operation Rapid files, I have seen no evidence that DCS Baxter was aware of this particular entry before the Downey ruling. Moreover, had he seen it, I would have expected him to have raised it in various emails that he sent in 2007 and 2008 and which are set out below.
 - Second, there is a distinction between the Metropolitan Police Service (MPS) carrying out the checks and the responsibility for asking them to carry out those checks. The AGO could only ask the MPS to do those checks if they were aware that they needed to be done. Given the way in which OTRs were ordinarily considered (by the PSNI, then the PPS, then the AGO and then the NIO), it seems to me that the MPS would only know to undertake the checks if (a) asked to do so by the PSNI or (b) the PSNI flagged the issue for the PPS to pass on to the AGO to raise with the police.
 - Third, and linked to the second point, it seems to me that it is the “additional enquiries” to which Kevin McGinty is recorded in the minutes as referring, rather than the initial checks. Support for that view is that Mr McGinty informed this Review that he had never understood that it was the responsibility of the AGO to check with the MPS in every case. His understanding was that he had simply agreed to assist in that particular case. I note that this entry, on the face of it, is linked to one individual rather than to all of the OTRs. However, I accept that the way in which it has been drafted implies that it is of more general application.
 - Fourth, it is clear that at this stage the problems of the link between the Integrated Criminal Information System (ICIS) and the Police National Computer (PNC) were highlighted and, as set out below, were again raised in June 2007.
- 5.7** This entry in the minutes also reveals the underlying flaw in the way in which OTRs were to be considered under Operation Rapid in 2007 and 2008. If an OTR was or may have been ‘wanted’ for offences committed in England and Wales, DCS Baxter did not regard it as his responsibility to inform Assistant Chief Constable (ACC) Peter Sheridan of that fact, even though his review team had made the necessary checks on the PNC. Given the nature of the terrorist attacks that took place in Northern Ireland and England during the 1970s, 1980s and 1990s, it was entirely foreseeable that an individual might be ‘wanted’ for offences committed in both Northern Ireland and England. Similarly, it was foreseeable that an individual known to the PSNI might not have been ‘wanted’ by them for an offence committed in Northern Ireland but was ‘wanted’ in England for an offence committed there.
- 5.8** In my view clearer lines of responsibility should have been set out so that the relevant checks were undertaken. In order to understand why those checks were required, all concerned should have had a clear understanding of what was being represented to Sinn Féin. They did not.
- 5.9** By the autumn of 2006 it is clear that Sinn Féin was pressing the NIO to complete the consideration of OTRs as soon as possible. Between 11 and 13 October 2006 political

negotiations were held at St Andrews which resulted in the St Andrews Agreement.¹ This was a significant development in the peace process. On 17 October 2006 a meeting was held at the NIO in Millbank, London. Those present included the Secretary of State for Northern Ireland and the Attorney General, with a videoconference facility to allow the Chief Constable of the PSNI to participate. At the meeting, the Secretary of State indicated that he wished to explore whether there was a way of speeding up the resolution of the OTR issue. The minutes of that meeting reveal that both the Chief Constable and the Attorney General made it clear that the OTRs had to be dealt with in the 'ordinary way' by the police and the Public Prosecution Service for Northern Ireland.

5.10 On 30 November 2006 a meeting was held at Stormont. The Chief Constable of the PSNI, Sir Hugh Orde, was present, as were ACC Sheridan, Gerry Kelly and two other representatives from Sinn Féin. It is notable that by this stage Sinn Féin was beginning to have regular meetings with the PSNI. NIO notes from that meeting, set out in an email, reveal that a suggestion was made that one or more firms of solicitors representing the OTRs could contact the PSNI lawyers and have a lawyer-to-lawyer discussion about the status of each individual. The hope was that this might speed up cases in which a prosecution was unlikely. The NIO notes record that both Sir Hugh Orde and ACC Sheridan would be comfortable with defending the process as normal practice if it were to become public. However, the notes go on to state, in relation to publicity, that "the aim is for it not to do so of course". This led to a further meeting (at which ACC Sheridan was present) with Barra McGrory, a lawyer who acted for Sinn Féin (and who was appointed Director of Public Prosecutions for Northern Ireland in 2011). At a meeting on 7 December 2006 with the Legal Services Branch of the PSNI, Mr McGrory discussed various possible ways in which OTRs could have their cases considered. Correspondence followed but no progress was in fact made. At this stage, and for at least the first couple of months of 2007, liaison between solicitors for individuals and the PSNI was envisaged as part of the process. In fact, such liaison did not take place until 2008.

Tony Blair's letter to Gerry Adams

5.11 On 28 December 2006 the Prime Minister wrote to Gerry Adams (President of Sinn Féin) in the following terms:

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

¹www.gov.uk/government/uploads/system/uploads/attachment_data/file/136651/st_andrews_agreement_2.pdf

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.

2007

5.12 It therefore follows that by the beginning of 2007 there was a clear political imperative to make progress with the individual OTRs. On 8 January 2007 Mark Sweeney of the NIO emailed ACC Sheridan. The content of the email and its attachment are important as they reveal that ACC Sheridan was aware of the involvement of the NIO, and specifically that the NIO was informing Sinn Féin about the status of individuals as ‘wanted’ or ‘not wanted’. The email reads:

Hilary [Jackson] asked me to send you a copy of the NIO’s record of which of the OTR names provided to us had been informed c/o Sinn Fein, of their status (as either ‘wanted’ or ‘not wanted’).

The attached spreadsheet, which is obviously based largely on PSNI and AG’s office contributions, is our current understanding of the position. The final column [sic] shows when SF were informed of various individuals’ status by the NIO. The spreadsheet should be accurate in terms of the dates on which individuals were informed of their status, since that’s the bit of the process the NIO run. But you may want to cross-check with [DI] Davison that the information elsewhere in the table is still up to date.

5.13 On 9 January 2007 an internal PSNI email entitled “Requested Draft Update re OTR’s for ACC Criminal Justice” was sent to Assistant Chief Constable (ACC) Drew Harris. It began by stating “The OTR work has become a priority issue” and then later in the email the author stated:

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

- a. Have the outstanding reviews completed as soon as possible
- b. To [sic] resolve the instances of approx 54 OTR’s who, following review, are listed as wanted by PSNI for arrest and questioning in relation to serious terrorist offences.

It is to be noted that the NIO was said to be pushing strongly not just to have outstanding reviews completed but also to resolve the position of those who were at that time assessed as ‘wanted’. As it transpired, and is set out below, in the 20 months that followed a large number were reassessed as ‘not wanted’.

5.14 On 10 January 2007 the NIO wrote to Sinn Féin and informed them that two individuals (whose names were contained in the first batch of names in Sinn Féin List 2 – which Sinn Féin had provided to the NIO in March 2001 and is referred to at paragraph 4.71) were ‘not wanted’. I note that the AGO had provided that information to the NIO by fax that same day. This may be illustrative of the perceived urgency.

5.15 On 12 January 2007 a PSNI meeting was held to discuss OTRs. It was chaired by ACC Sheridan. I have seen only handwritten minutes of this meeting and they are all that appears to exist. Detective Inspector (DI) Davison was present at this meeting and so were two civilian staff

members, who were retired police officers who had assisted DI Davison with the work on the status of OTRs since about 2004. As well as other senior police officers there was also a solicitor present. There are two parts of the minutes of this meeting that are worth highlighting. The first is a note attributed to ACC Sheridan which states: “What’s possibility getting this through court? If good runner, it stays, if not we write it off here or at PPS. Then we have decision NOT/WANTED.” In isolation, this might be thought to suggest that ACC Sheridan had decided that what was important when deciding whether someone was ‘wanted’ or not was to focus on the prospects in court, as opposed to considering whether there were reasonable grounds to suspect a person of having committed an offence. These are handwritten summary notes which do not appear to have been agreed. Mr Sheridan made clear to my Review that his comments should not be taken out of context. His recollection, having looked at the minutes, and in particular an earlier entry in the minutes, is that he was referring to a particular category of case. I have no reason to doubt that and I do not regard these minutes as supporting a view that ACC Sheridan was intending to impose a higher threshold for determining whether an individual was ‘wanted’.

- 5.16** The second part of the minutes to be highlighted relates to a question raised by one of the officers, which was “What do we do with those wanted eg by MET?” The minutes record that ACC Sheridan’s reply to this was “MET do that – what standards have they used?” This could be interpreted as absolving the PSNI of any responsibility to check whether an individual was ‘wanted’ by the MPS. However, it is important to note the distinction between the PSNI checking to see if there is a record on the Police National Computer (PNC) that an individual is ‘wanted’ by the MPS and the MPS conducting a review of its own papers to determine if someone is still ‘wanted’. This distinction lies at the heart of the flaw in the approach taken by DCS Baxter to Mr Downey’s case.
- 5.17** I find the failure to involve the MPS directly in consideration of how the scheme should work surprising to say the least. The only liaison as part of Operation Rapid between the PSNI and the MPS that we have been able to ascertain is where a member of the PSNI review team contacted an MPS officer with an occasional direct query on an individual.
- 5.18** Similarly, we can find very limited involvement of the Directors of Public Prosecutions England and Wales. None of those who served in that role from 2000 to 2012 now remember any administrative scheme as such, although they accept that they may have been involved in the review of individual cases.
- 5.19** On 24 January 2007 there was a further meeting which Sir Hugh Orde and ACC Sheridan had with Sinn Féin in which OTRs were discussed and at which ACC Sheridan informed Sinn Féin what he intended to do. It seems unlikely that there was no link between this meeting and what was to take place a couple of days later. On 28 January 2007, at a special party conference (Ard Fheis), Sinn Féin voted to support policing in Northern Ireland for the first time in the party’s history. While no document I have seen or evidence I have heard reveals that this was the direct reason for Operation Rapid commencing a few days later, it does not appear to be a coincidence.

The setting up of Operation Rapid

- 5.20** On 5 February 2007 ACC Sheridan’s Staff Officer sent an email to DCS Baxter entitled “Operation Rapid”. She informed him that he would have three support staff at his disposal – namely Paul McGowan and the above-mentioned civilian staff. This email is the first reference to Operation Rapid and the Staff Officer notes in the email “Thought the Op name was good given the history!” She informed my Review that the operational name was a coincidence

and that in the usual way it was provided from a bank of names. I have seen nothing to cast doubt on that assertion.

5.21 DCS Baxter replied by email to the Staff Officer on 6 February 2007, setting out the additional members of the Operation Rapid investigation team. They were Acting Detective Chief Inspector (ADCI) Neal Graham (who was the officer in charge) and three serving police officers who were responsible for research into intelligence, forensics and witnesses respectively. However, from the information I have seen, none of those officers (apart from ADCI Graham) played any significant role in Operation Rapid. Above ADCI Graham in the chain of command was DCS Baxter and then above him ACC Sheridan. In relation to Operation Rapid, the roles of ACC Sheridan and DCS Baxter were referred to as the “Accountable Officer” and the “Managing Officer” respectively in a “Business Case” report for Operation Rapid drafted by ADCI Graham in September 2007.

The terms of reference of Operation Rapid

5.22 On 6 February 2007 DCS Baxter asked ACC Sheridan’s Staff Officer if she could forward him the Operation Rapid “Terms of Reference”. She did so. They are set out at Appendix 7. They are dated 6 February 2007 and signed by ACC Sheridan. They state:

The terms of reference for this review are 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.

- 5.23** It is not entirely clear who was primarily responsible for drafting these terms of reference. As already stated, they were signed by ACC Sheridan. DCS Baxter told me that ACC Sheridan drafted them. However, that was not ACC Sheridan's recollection when I interviewed him. He told me that he had sent something to DCS Baxter, who then drafted them, and then they were shown to both the PSNI's human rights adviser and to one of the PSNI's in-house lawyers. However, neither of those individuals could have been aware of all of the aspects of the administrative scheme from first to last. In particular, neither of them would have been aware of the content of the letters of assurance being sent by the NIO to Sinn Féin. Whether DCS Baxter and/or ACC Sheridan drafted them may not matter because I have no doubt that both were aware of and approved the terms of reference.
- 5.24** I have spent a considerable amount of time analysing these terms of reference. Having done so, it is my opinion they are lacking in both detail and practical guidance to assist those undertaking the reviews in the Operation Rapid team. They cannot be looked at in isolation. If they had been accompanied by detailed guidance then, subject to my concern about the threshold for arrest, they would not have been so problematic; but they were not. It is the absence of guidance and detailed risk assessment which I believe was a cause of a number of problems. Whether such matters are best included in a document entitled "Terms of Reference" may be a matter for debate but I have no doubt some further guidance should have been given. I acknowledge that when the then Chief Constable of the PSNI, Matt Baggott, gave evidence to the NIAC on 7 May 2014 he stated that the terms of reference were "**very detailed**" and "**very thorough**". However, in my opinion a comparison between the terms of reference of 2007 and the detailed guidance document produced in 2002, which is available at Appendix 7, reveals the shortcomings of the former.
- 5.25** Arguably, the terms of reference overall set the threshold for arrest and questioning at too high a level. I have no criticism of ground 6(a)(i) of the terms of reference, which relates to the threshold for arrest based on intelligence. In addition it is only right to note that many of the offences considered by the Operation Rapid team were based solely on intelligence. However, grounds 6(a)(ii) and (a)(iii) make reference to "withstand[ing] a legal challenge within a judicial process". To my mind, this is the kind of consideration that comes into play at a later stage. It is one of the factors that a prosecutor will bear in mind in deciding whether to charge. The test for the investigator is simply whether or not there are reasonable grounds for suspecting that someone has committed an offence.
- 5.26** On 7 February 2007 a meeting was held with DCS Baxter, ADCI Graham, a Detective Sergeant with the PSNI and a press officer. The purpose of the meeting was to discuss Operation Rapid. The minutes of that meeting are set out in an email which records that "The purpose of the meeting was to instigate a review of cases to establish the current legal status of certain persons considered to be 'On the Run'". The minutes record:

It was agreed that the terms of reference for the enquiry should be twofold. Firstly to establish the legitimate basis why a person 'On the Run' was wanted. Secondly, to establish the status and integrity of the evidence. Formal terms of reference would be drafted by AC Crime Operations and forwarded to D/C/Insp Graham for guidance.

Where it was established that no current legitimate basis existed to have a person arrested, this information would be passed to ACC Crime for onward transmission to their solicitor. Alternatively, if reasonable grounds still existed to suspect a person of committing a specific terrorist offence when balanced against Human Rights considerations a firm recommendation would be made to have these persons remain circulated as wanted for interview and records updated appropriately.

- 5.27** Accordingly, at this stage, it was still envisaged that the PSNI would have contact with a solicitor representing the individual. The minutes also reveal that the PSNI was conscious of the potential for adverse publicity. The following wording was agreed at the meeting, to be used in the event of adverse publicity:

As a result of information made available to the Police Service of Northern Ireland, officers from Crime Operations Department are conducting a review of individuals wanted for serious terrorist crime dating back a number of years. Inquiries are at an early stage but Police are working to determine whether there remains a lawful basis for arrest, having regard to current human rights legislation. Where evidence exists, and meets required standards, it remains the role of police to bring those responsible for crime before a court, regardless of their current whereabouts.

- 5.28** This provides further support for the contention that the PSNI had decided that they were going to consider whether an individual was ‘wanted’ from the perspective of whether there was sufficient evidence to prosecute, as opposed to whether there were reasonable grounds to suspect an individual of having committed an offence in order to arrest and question them.

- 5.29** On 13 February 2007 Mr McGowan emailed ADCI Graham a document entitled “OTR Matrix”, listing all of the individuals. One of the columns was headed “Date NIO informed Sinn Féin/ Individual of status”. Also, a document dated 12 November 2007 from ADCI Graham to DCS Baxter entitled “OTR ASSESSMENT REVIEW IN RESPECT OF NOMINALS CURRENTLY IDENTIFIED AS “NOT WANTED” – OPERATION RAPID” stated:

In compliance with the agreed Terms of Reference concerning the above matter, I have now completed a review of those files that have been identified as currently Not Wanted and in most cases have been forwarded to the NIO for further action in respect of notification.

- 5.30** This clearly illustrates that there was an awareness within the PSNI and in particular within the Operation Rapid team from an early stage that the NIO was responsible for notification to individuals/Sinn Féin. While I accept that they were not aware of the precise terms of the notification, it is difficult to see why more thought was not given to the importance of providing detailed information to the PPS nor why ICIS database entries would not record that nor an individual was ‘wanted’ in England. There was undoubtedly a power of arrest in Northern Ireland for an offence of murder committed in England. I would imagine that the PSNI would be anxious to use this power in appropriate circumstances.

- 5.31** On 15 February 2007 ACC Sheridan sent the terms of reference to Hilary Jackson at the NIO. The letter did not refer to Operation Rapid but stated:

Re Terms of Reference – Persons wanted by the PSNI in connection with terrorist related offences up to the 10 April 1998

To clarify the current 'status' on the identified outstanding 'wanted' persons by the PSNI in connection with terrorist related offences up to the 10 April 1998, I have appointed a senior Detective Chief Superintendent to undertake a 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.

5.32 It is important to observe two things about this letter apart from a further reference to evidence needing to withstand a legal challenge. First, it suggests that it was only offences committed in Northern Ireland that would be the concern of the PSNI in its review. It may be that this was the reason for the queries and concerns of the AGO and the NIO raised in June and July 2007 as to what checks the PSNI was undertaking and which are set out below. However, as is illustrated at paragraph 6.50, it does not appear that the PSNI did necessarily interpret the terms of reference this narrowly. I also note that, if it was the intention of the PSNI to conduct a review with a more narrow remit than before, I have seen no evidence to indicate that that was flagged in clear terms to the PPS, the AGO or the NIO.

5.33 Second, ACC Sheridan made clear to the NIO that the review was to identify those 'wanted' by the PSNI in connection with terrorist-related offences up to 10 April 1998, that being the date of the Belfast Agreement (the Agreement). However, unbeknown to him, nearly all the letters of assurance from the NIO to Sinn Féin (and most of the covering letters) did not refer to specific offences or limit the timing of the assurance up until 10 April 1998. The letters of assurance suggested that the individual was 'not wanted' for any offence **as at the date of the letter**.

5.34 Unfortunately, the NIO did not recognise the scope for error in this respect and the Operation Rapid team proceeded on a false basis. I provide an example in Chapter 7 of at least one occasion where an error did in fact occur. The Operation Rapid review team reviewed an individual linked to two terrorist offences prior to the Agreement and recommended he be marked as 'not wanted', despite his being suspected of an offence committed following the Agreement. He was sent a letter of assurance in the usual terms, namely that:

on the basis of the information currently available, there is no outstanding direction for 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.

5.35 I also observe in Chapter 7 that this case highlights another strategic shortcoming. When a decision was taken that an individual was 'not wanted' by the PSNI for any offence committed before the Agreement, 'wanted' warnings were routinely removed from ICIS or NICHE. In this case the 'wanted' warning for the post-Agreement offence was removed in 2007, at the same time as the warning relating to the pre-Agreement offences was removed. I should make it clear that the PSNI are aware of the circumstances of this case.

Commencement of Operation Rapid

5.36 On a practical level, work by the Operation Rapid review team of Mr McGowan and the two civilian staff members commenced in February 2007. They were based at Ladas Drive in Belfast and undertook this work full time. Once they had undertaken their review, they would provide the template or templates for each individual with a recommendation, as well as the underlying documentation, to ADCI Graham. Operation Rapid was just part of the work that ADCI Graham undertook from February 2007 until October/November 2008, when his involvement ceased. Based in a different police station, he would conduct his reviews, record his decisions in his Senior Investigating Officer (SIO) log book and then produce a short report for DCS Baxter. He would then send his report and the underlying documentation to DCS Baxter, who would consider it. The two would then meet to discuss the cases before DCS Baxter submitted a report/recommendation to ACC Sheridan. Just as with ADCI Graham, DCS Baxter's involvement with Operation Rapid was only part of his operational duties and his involvement with it also ceased in October/November 2008.

5.37 Within a month of Operation Rapid starting, eight names had been considered by the review team and their recommendations had been made to and considered first by ADCI Graham and then by DCS Baxter. After this, letters were sent by ACC Sheridan to the PPS on 15 March 2007. All of these eight individuals had been considered previously by the Royal Ulster Constabulary/PSNI between 2001 and 2003. At that time, they had concluded that seven of them were 'wanted' and Sinn Féin was informed of that fact in respect of all seven of them. In relation to the other individual there was some uncertainty as to his correct identity, and this had meant that no previous decision had been taken on his status by the PSNI.

5.38 The names of the first eight individuals considered as part of Operation Rapid were emailed by DCS Baxter on 5 March 2007 to ACC Sheridan and a 10-page report (Report 1) dated 9 March 2007 followed. I have considered Report 1 carefully and it should be noted that its contents are assumed to have been relied upon for DCS Baxter's subsequent shorter reports on the other OTRs. It has a lengthy section entitled "Law and Jurisprudence", which I understand was drafted by DCS Baxter.

5.39 While I acknowledge that the "Law and Jurisprudence" section correctly identifies the decision of O'Hara,² a troubling aspect of Report 1 is drafted in the following terms:

In considering reasonable grounds for arrest, the constable must be satisfied that a person is guilty of an offence. Article 6 considerations are important, especially 6(3)(b) and 6(3)(d). In order to have the necessary standard of reasonable grounds a constable must be satisfied as to have reasonable suspicion that a person is guilty of an offence. Being guilty of an offence requires at least a minimal possibility of a conviction.

5.40 It is wrong to state that to have reasonable grounds for arrest "a constable must be satisfied that a person is guilty of an offence" and it is not clear to me what DCS Baxter meant by "Article 6 considerations" in this context. Article 6 of the European Convention on Human Rights enshrines the right to a fair trial. Article 6(3)(b) provides for the right of a citizen to have adequate time and the facilities for the preparation of his defence and 6(3)(d) provides for the right to examine or have examined witnesses. I do not understand, therefore, DCS Baxter's reference to them in the context of grounds for arrest.

²The decision of the House of Lords in *O'Hara v The Chief Constable of the Royal Ulster Constabulary* [1996] UKHL 6; [1996] AC 286

5.41 At the very least, there are a number of apparent inconsistencies in this extract which show a potential for confusion as to the threshold required for an arrest. If there was such confusion in DCS Baxter's mind then it begs the question as to whether there was similar confusion in the approach being taken by the review team. I should note that on 16 February 2007 DCS Baxter sent a copy of the terms of reference to ADCI Graham, stating "Your enquiries should be conducted within these terms of reference". As is set out below at paragraphs 5.59 and 5.61, it is instructive that Detective Chief Superintendent (DCS) Williamson (who took over from DCS Baxter in October/November 2008) was concerned by the terms of reference and the approach taken to them and chose to amend them.

5.42 It should also be noted that, at the end of Report 1, DCS Baxter writes:

D/Chief Inspector Graham, C2 will now ensure that the above individuals are no longer circulated as wanted, ICIS is amended and C3 notified to perfect their records. The solicitor for the above named will also be notified of the decision and the caveat re the emergence of new intelligence and/or evidence which could lead to an arrest in the future.

Assistant Chief Constable, Crime Operations will notify the relevant department within the Northern Ireland Office.

5.43 This raises three matters of significance. First, there is the reference to the "caveat re the emergence of new intelligence and/or evidence". I note that, when this issue was later raised in 2008 (in relation to the PSNI's letter of 6 June 2007 for Mr Downey), DCS Baxter did not seek to put it right immediately or at least check to see what had been represented to Sinn Féin. Second, it appears that, at this stage, it was still thought that solicitors were going to be involved in the process, although as it turned out they were not. Third, it is evidence of DCS Baxter's knowledge of the involvement of the NIO in the process.

5.44 In relation to the eight individuals in Report 1, Sinn Féin was not informed of their status until the summer of 2007 (six in a letter of 20 July 2007 and two in a letter of 7 August 2008) because there was a delay while the NIO waited for the PSNI to confirm the extent of its checks (see below).

Consideration of further individuals by Operation Rapid

5.45 After Report 1 there then followed a number of other reports in 2007 and 2008. The following table is a summary of those reports and the recommendations that DCS Baxter made to ACC Sheridan between March 2007 and February 2008. All recommendations were followed by ACC Sheridan, and indeed he informed me that he simply read the reports from DCS Baxter, signed letters that were drafted for him and sent them to the PPS. He did not conduct any form of review of DCS Baxter's decisions, which were themselves a review of ADCI Graham's decisions. Given the workload of ACC Sheridan and other senior PSNI officers at this time, I do not find this at all surprising. He had a very experienced team working on the review (an Acting Detective Chief Inspector, a retired Detective Inspector, a retired Detective Sergeant and a retired Detective Constable) and a very senior and trusted colleague (a Detective Chief Superintendent) overseeing it.

Table 5.1: Operation Rapid reports

Operation Rapid Report	Date	Wanted	Wanted just for return to prison	Not wanted	Not OTR and not wanted	Refer to PPS or HET
1	March 2007	0	0	8	0	0
2	April 2007	0	3	20	1	0
3	May 2007	0	0	9	2 ³	0
4	May 2007	0	0	8	0	0
5	June 2007	2	0	4	1	0
6	September 2007	0	0	10	0	6
7	February 2008	0	0	7	0	0
8	February 2008	1	0	12 ⁴	0	0
	Totals	3	3	78	3	6

- 5.46** Mr Downey was considered in Report 3 of Operation Rapid, referred to above. His case is, for understandable reasons, considered separately (Chapter 6) and in significant detail.
- 5.47** It follows that, in the space of 13 months (from February 2007 to February 2008), approximately half of the names of the OTRs that had previously been provided were reviewed by the Operation Rapid team and recommendations made to ACC Sheridan. Nearly all the recommendations were that the individual was 'not wanted'. While the processing of such a large number may appear surprising, many of them had previously been reviewed and so the documentation had already been obtained. What is noticeable, however, is the number of those who had previously been regarded as 'wanted' who then became 'not wanted'. This is exemplified by Operation Rapid Report 1, as set out above, with the status of seven of the eight changing from 'wanted' to 'not wanted'.
- 5.48** When considering the number of individuals who were informed that they were 'not wanted' from 2008 onwards, it is important to note that on 10 January 2008 the Deputy Director of the PPS wrote to ACC Sheridan. In that letter he referred to the recent judgment of the Hon Mr Justice Weir in *R v Hoey [2007] NICC 49* which related to, but was not limited to, the Omagh car bombing on 15 August 1998. In that case, a series of shortcomings in relation to the recovery, packing, storage and transmission of exhibits was exposed, as a result of which the defendant was acquitted. In the judgment, Mr Justice Weir was highly critical of the recording and storage arrangements for exhibits in 1998 and 1999. The Deputy Director asked the ACC to review cases in which "problems of continuity of forensic or other evidence may arise". Such concern about the continuity of exhibits was bound to create the potential for the Operation Rapid team to be cautious in their approach, especially for historical offences where such evidence was likely to be of great importance.
- 5.49** Further, it is clear from a consideration of the PSNI files that there were a number of other reasons why the status of individuals may have changed. One obvious reason was that an important witness may have died or evidence may have been lost or destroyed.

³One of those was Mr Downey

⁴Two of these were in fact 'wanted', and although letters were sent to the PPS, the mistake was rectified (see below at paragraphs 6.70 and 6.71)

- 5.50** However, concern has been expressed to me that a major reason may have been that a different approach was taken to the assessment of the reliability of intelligence/evidence by the Operation Rapid team between February 2007 to October/November 2008 and when DCS Baxter was effectively in charge of the Operation. 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. Given the way some intelligence had been gathered in the past, I understand DCS Baxter's caution. However, some question whether he took too robust an attitude to the assessment of intelligence and came close to equating the test for arrest (reasonable grounds for suspicion) to the test for prosecution (reasonable prospect of conviction). There was undoubtedly a difference in approach between DCS Baxter and his successor.
- 5.51** There has simply not been time to conduct a detailed analysis of all of the PSNI reviews of the OTRs conducted between 2001 and 2013. In any event, an evidential review is best done by police officers themselves. It is my understanding that such a review is now being undertaken by the PSNI and will take a number of years. Only when that is complete will a better understanding emerge of whether DCS Baxter's approach to the review was justified.
- 5.52** Prior to Operation Rapid, the last names given to the NIO by Sinn Féin had been provided on 18 August 2006. No names were forthcoming in 2007. On 19 May 2008 four further names were provided. This time, however, they were sent in a letter from Mr McGrory's firm of solicitors, PJ McGrory & Co, directly to the PSNI's legal department which in turn provided the names to the NIO. As this represented a change in approach, those names and those provided thereafter from PJ McGrory & Co to the PSNI became known as Sinn Féin List 3. Between 2008 and 2013, a total of 35 names were provided to the PSNI in that way. The dates of the letters from PJ McGrory & Co and the number of names submitted in each are set out in the chronology at Appendix 4.

Downing Street telephone calls

- 5.53** I should mention that, although technically outside my terms of reference, I did try to explore with Mr Baxter in interview his evidence to the Northern Ireland Affairs Select Committee about the arrest of two terrorist suspects. During that evidence he said:

At 9.10 p.m., I received a phone call from the duty ACC at headquarters that Gerry Adams had telephoned Downing Street demanding their release. Downing Street rang the Chief Constable's Office, looking for their release, and I got a phone call suggesting that I should release them. That in my mind, of course, is attempting to pervert the course of justice, and that was conveyed back to headquarters.

- 5.54** The day in question appears to be Thursday 8 March 2007. We have obtained a copy of the 'day book' maintained by DCS Baxter for that day and the day before. An entry at 10.05am on 7 March 2007 records that a colleague of DCS Baxter (believed to be Head of C3) would be covering the ACC role for the next 24 hours. He has now retired. ACC Sheridan does not seem to have been the ACC on duty on 8 March but was one of two Gold Commanders for the arrest of the suspects. The other was Assistant Chief Constable Gillespie.
- 5.55** The call on that date that best fits Mr Baxter's account and appears to relate to Downing Street is at 9.10pm. There is no exact match to the time recorded in his day book, but the grid does show that calls were made to ACC Sheridan at 9.22pm and 9.26pm.

- 5.56** Following Mr Baxter's evidence to the Northern Ireland Affairs Select Committee, the PSNI wrote to all ACCs serving at the time, to see if they could identify the ACC in question, and also sought further clarification from Mr Baxter. Both Mr Sheridan and Deputy Chief Constable Gillespie have stated that they did not receive any call from Downing Street regarding the arrest and no complaint was made to them by DCS Baxter.
- 5.57** I did try to pursue this matter with Mr Baxter – but he declined to comment. He would not tell me the name of the person who spoke to him, the words used or the identity of any senior officer to whom he reported what he alleges was improper political pressure. No other senior police officer to whom I have spoken had this brought to their attention (which one would have expected if Mr Baxter's recollection of events as expressed to the Northern Ireland Affairs Select Committee was correct). Nor were they aware of any other attempt to interfere directly and improperly with police operations. Gerry Adams denies improperly attempting to interfere with police operations in this way, albeit Sinn Féin acknowledges it might well have protested to the UK Government about the arrest of someone who had been assured he was free to return.
- 5.58** Without knowing from Mr Baxter what was allegedly said and by whom, I could take the matter no further.

Operation Rapid under new command

- 5.59** In October/November 2008 the structure of the Operation Rapid team changed. DCS Williamson took over from DCS Baxter as the Head of C2. Detective Chief Inspector Galloway replaced ADCI Graham as the SIO responsible for making the recommendations to DCS Williamson. In addition ACC Sheridan, although still the ACC, delegated his responsibility for sending the letters to the PPS to DCS Williamson. It is clear from the material that I have seen that, having taken over the role, DCS Williamson had concerns about the terms of reference for Operation Rapid. He asked for advice from a PSNI lawyer in relation to whether the Operation Rapid review team could rely on intelligence gleaned from people who were detained at the holding centres at Castlereagh and Gough Barracks. From what my team have seen of reviews during DCS Baxter's time in charge of Operation Rapid, such evidence had been disregarded. The PSNI has kindly waived legal professional privilege in order to enable us to consider the advice dated 25 November 2008 from the PSNI's lawyer. This advice reveals that the previous approach may have been too strict. As a result of receiving the advice, on 27 November 2008, DCS Williamson sent a memo to DCI Galloway which referred to the advice and stated:

As you will see the advice is, 'I do not think we are prevented in every case from treating such evidence as capable of warranting the taking of further investigative measures against a person. There may be cases in which such evidence, in all the circumstances, retains some probative value'.

In view of that we will need to further investigate the probative value of any evidence or intelligence before coming to a final conclusion. In sum, I do not rule out the possibility of an arrest based on intelligence gleaned in any former holding centre.

- 5.60** After this DCS Williamson made handwritten amendments to the terms of reference:

Please see attached Terms of Reference in respect of Operation Rapid which is the review of 'on the runs' currently the responsibility of Head of Branch Serious Crime.

On assuming responsibility for this Operation I sought to clarify a number of matters with Mr Roche, Legal Advisor (see attached at Appendix A). On foot of that advice and as a result of a number of other concerns I have now reviewed the original Terms of Reference. A revised Terms of Reference are attached for your information and approval.

I have had a recent meeting with the Director of Public Prosecutions Service and he agrees that the 'standard tests' are being applied and should be applied to the review of material both by the PSNI and by the PPS. I have also met with the Northern Ireland Office and neither those meetings nor any material made available to me detract from my view that the attached revised Terms of Reference are necessary. For comment and or approval please.

5.61 The terms of reference themselves were amended with a half-page handwritten insertion identifying what amounts to "reasonable suspicion" and additions to make clear that the intelligence should be (a) graded, (b) dated, and (c) specific as to role, etc.

5.62 While I have not seen any documentation to confirm that the revised terms of reference were approved, DCS Williamson told this Review that they were. No thought appears to have been given, at that stage, to whether all the cases that had been previously reviewed between 2007 and 2008 should have been re-reviewed. Had they been, there is no certainty that the problem in relation to Mr Downey would have been identified. However, it is relevant to note that DCS Williamson made no change to the terms of reference to make it clear that the PSNI would check the PNC to see if an individual was 'wanted' in England and Wales. Yet he still felt that it was his responsibility within the terms of reference to inform the PPS if an individual was so 'wanted'. He did just that in relation to an individual, who I will refer to as 'X' and who was not Mr Downey. On 6 January 2009 DCS Williamson wrote to the PPS in the following terms:

The above named 'X' is assessed as wanted for interview and will remain as 'wanted' in respect of weapons and explosives find in London on 'xx.xx.xx'

5.63 The PPS also took the view that it should convey that fact to the AGO and, having received that information, copied it word for word into a letter dated 25 March 2009. This was sent to the AGO, who sent the same to the NIO on 26 March 2009. On 27 March 2009 the NIO informed Sinn Féin in a letter that 'X' would face arrest and questioning if he returned to Northern Ireland. From that chronology it is almost certain, in my opinion, that had the PPS been informed in the summer of 2007 about Mr Downey being 'wanted' for interview in relation to the Hyde Park bombing, they would have informed the AGO. The AGO, in turn, would have informed the NIO and this would have prevented Mr Downey from receiving his letter of assurance.

5.64 The cause of DCS Williamson's concern with the terms of reference for Operation Rapid appears to be the result of having to consider one particular individual on Sinn Féin List 3. This was one of the first individuals he considered after taking charge of Operation Rapid. There were a total of 20 templates for that one individual relating to a series of serious offences, many of which were based on intelligence. My team has reviewed those templates with care and agrees with DCS Williamson's assessment. He concluded it in the following terms:

The cases involving 'X' cannot be viewed in isolation and when one reads the material available overall it is clear that the general intelligence surrounding the involvement of 'X' in numerous terrorist attacks is not without foundation. Indeed it would not be unreasonable to describe him as one of the most dangerous and notorious terrorists

operating in the 'X' area. Given that analysis it would be unforgiveable for police officers to ignore that and not to interview him with regard to those crimes where 'reasonable suspicion' exists. It would be an affront to justice and to the families of the victims if he were to escape that and a realistic attempt to secure and preserve evidence by way of questioning.

It is accepted that prosecution may well be most unlikely as will the co-operation of the co-accused. Nonetheless the obligations are clear and should be discharged.

- 5.65** This document typifies the approach that DCS Williamson took between October/November 2008 and the beginning of 2010 when Detective Chief Superintendent (DCS) Hanley replaced him. During the time that DCS Williamson was in charge, the workload gradually decreased and, at the end of June 2009, the two civilian staff members were no longer part of the Operation Rapid team and only Mr McGowan undertook the reviews. DCS Hanley adopted a similar approach to the assessment of intelligence for Operation Rapid as DCS Williamson had done before. DCS Hanley remained in charge of the Operation Rapid review team until shortly after Mr Downey's arrest on 19 May 2013 when work being undertaken by the PSNI was stopped.
- 5.66** Table 5.2 summarises the letters of assurance sent by the NIO to Sinn Féin during the time when DCS Williamson and then DCS Hanley were in charge of Operation Rapid.

Table 5.2: Letters of assurance

Year	Number of letters of assurance sent to Sinn Féin by the NIO
2009	21
2010	11
2011	1
2012	3
Total	36

- 5.67** Of those 36, 13 were from Sinn Féin Lists 1 and 2 with the remaining 23 individuals being on Sinn Féin List 3 which had started in May 2008. The last letter of assurance that was sent by the NIO was dated 21 December 2012. Table 5.2 does not include two duplicates of letters that were sent by the NIO in 2009. Two individuals on Sinn Féin List 3 were first sent a letter of assurance dated 5 February 2009 and then were sent identical letters on 27 March 2009.

Chapter 6: *R v John Downey*

6.1 On the morning of 20 July 1982, an improvised explosive device containing wire nails as shrapnel that had been hidden in the boot of a Morris Marina motor vehicle parked in South Carriage Drive, Hyde Park, was detonated remotely. The detonation coincided with members of the Blues and Royals Regiment of the Household Cavalry and their horses passing the Morris Marina. Four members of the Household Cavalry were killed. They were:

- Lieutenant Anthony Daly (23 years of age);
- Trooper Simon Tipper (19 years of age);
- Lance Corporal Jeffrey Young (19 years of age);
- Squadron Quartermaster Corporal Roy Bright (36 years of age).

Thirty-one other people were injured, some of them seriously.

6.2 This was one of the most notorious IRA bombings committed in England and it happened on the same day as another bombing at the bandstand in Regent's Park, where the Band of the Royal Green Jackets was playing. That bomb killed seven members of the First Battalion of the Royal Green Jackets and injured at least eight other people.

6.3 John Downey was suspected of involvement in the Hyde Park bombing. On 19 May 2013 he was arrested at Gatwick Airport and subsequently charged with four counts of murder and one count of doing an act with intent to cause explosions.

6.4 On 21 February 2014 the Hon Mr Justice Sweeney (sitting at the Central Criminal Court), having read and heard lengthy argument in the weeks before, stayed the prosecution of Mr Downey as an abuse of process. His reasons for doing so are set out in his judgment.¹ The Prosecution requested an adjournment to consider whether they intended to apply for permission to appeal the ruling and on 25 February 2014 they informed Mr Justice Sweeney that they would not be appealing his decision.

6.5 The factual circumstances behind the abuse of process application are set out below, as well as in Mr Justice Sweeney's judgment. Understandably his judgment is detailed and complex, and in considering that and the content of this Review it is important that members of the public understand the following:

- A decision to stay a criminal case as an abuse of process is an exceptional remedy.
- There is a right of appeal to the Court of Appeal for the prosecution following a decision to stay a case in the Crown Court as an abuse of process. However, providing that the judge has correctly applied the legal principles (which Mr Justice Sweeney did), the Court of Appeal will only overturn the stay if it was a decision that no judge could reasonably have come to. That is a high threshold to cross. Simply because another judge or other judges might, or even would, have been likely to have come to a different conclusion is not sufficient to succeed in such an appeal.
- The fact that Mr Justice Sweeney stayed the case against Mr Downey as an abuse of process does not mean that any future prosecution of another individual who was sent a similar letter would necessarily amount to an abuse of process. Each case will turn on its own facts.

¹ www.judiciary.gov.uk/judgments/r-v-downey

- 6.6** The Prosecution case in respect of Mr Downey and the reason why he was not extradited from the Republic of Ireland in the 1980s are set out at paragraphs 18–23 of Mr Justice Sweeney’s judgment and will not be repeated in this Review. The fact that Mr Downey was ‘wanted’ by the Metropolitan Police Service for the Hyde Park bombing remained on the Police National Computer (PNC) until 29 August 1994, when it was automatically ‘weeded out’. However, this error was noticed and on 31 October 1994 Mr Downey was re-circulated on the PNC as being ‘wanted’ by the Metropolitan Police Service for conspiracy to murder on 20 July 1982. It was that re-circulation which was still on the PNC when he arrived at Gatwick Airport on 19 May 2013 and was arrested.
- 6.7** As set out above, Sinn Féin had provided names – initially in May 2000 – to Jonathan Powell in what subsequently became known as ‘Sinn Féin List 1’. This was followed on 30 March 2001 with 61 names, which were the beginning of ‘Sinn Féin List 2’. Further names followed in November and December 2001 in four different letters. On 10 January 2002 Sinn Féin provided the sixth set of names for Sinn Féin List 2 in a letter to the Northern Ireland Office (NIO). There were 25 names in that letter and they became numbers 90–114 of Sinn Féin List 2. Number 102 was Mr Downey. On 22 January 2002 the NIO sent a list of the names that they had received from Sinn Féin (including Mr Downey’s) to the Attorney General, who in turn informed the Public Prosecution Service (PPS). They in turn informed the Police Service of Northern Ireland (PSNI).
- 6.8** After Mr Downey’s name was provided by Sinn Féin in January 2002, consideration began to be given to his status by the PSNI in April and May 2002. On 30 April 2002 his PNC record was printed out by the team reviewing the ‘on the runs’ (OTRs). This records that Mr Downey was:

WANTED FOR MURDER
ON 20th JULY 2007
AT THE JURISDICTION CENTRAL CRIMINAL COURT
POWER ARREST
CONSPIRACY TO MURDER IRA TERRORIST
DO NOT INTERROGATE CONTACT COMMANDER SO13.²

In addition, a print-out for Mr Downey was made from the Integrated Criminal Information System (ICIS) database on 7 May 2002.

- 6.9** On 17 September 2002 the Department of the Director of Public Prosecutions for Northern Ireland (DPP(NI))³ wrote to the PSNI in relation to Mr Downey. The letter informed Detective Chief Superintendent (DCS) Kennedy that a “search of our records had revealed one file” in Mr Downey’s name, which concerned the murder of two members of the Ulster Defence Regiment (UDR) and causing an explosion at Enniskillen on 28 August 1972. A direction for no prosecution had been issued by the DPP(NI) on 28 May 1985 with the proviso that “Should any further evidence come to light in the future to connect Downey with [the] explosion, the file should be re-submitted”. The PSNI were asked in the letter of 17 September 2002 to confirm that no further evidence had come to light.
- 6.10** On 22 October 2002 an assistant investigator considering the OTRs informed Detective Inspector (DI) Davison in writing: “I refer to the attached correspondence from the DPP[NI] dated 17 September 2002. No further evidence has come to light.” As a result, on 7 November 2002 DI Davison wrote (on behalf of DCS Kennedy) to the DPP(NI), Sir Alasdair Fraser QC, stating: “The OTR Team is presently reviewing Downey’s suspected involvement in a number

² SO13 was at that time the Metropolitan Police Service’s Anti-Terrorist Branch

³ The predecessor to the PPS of Northern Ireland

of serious terrorist crimes.” The letter also stated “It would appear ... that no further evidence has come to light” in relation to the 1972 Enniskillen bombing. The letter of 7 November 2002 concluded by stating: “I hope to be in a position in the near future to advise you whether or not Downey is sought for arrest and interview in relation to the incidents presently under review.” The letter made no reference to the 1982 Hyde Park bombing.

- 6.11** Following further work, the OTR team made recommendations in relation to Mr Downey that were considered on 4 and 5 October 2003 by the relevant Head of Branch. Six potential incidents were considered. Each had its own assessment form: these were referred to as templates 1–6. Each template had underlying documentation attached to it, along with a recommendation made by the OTR team. Difficulties relating to the deaths of witnesses and other issues are outlined in these documents. In relation to the 1972 Enniskillen bombing (template 2), the recommendation from the Head of Branch was that “Downey should be arrested and interviewed for these murders and a catalogue of terrorist offences”. The approach of the PSNI review team at this stage was that because Mr Downey was regarded as ‘wanted’ for questioning in relation to the 1972 Enniskillen bombing, he should also be regarded as ‘wanted’ for questioning in relation to templates 1, 3, 4 and 5, even though there was no evidence against him. When the Head of Branch considered the template relating to the Hyde Park bombing (template 6), the handwritten entry is as follows: “Is it known whether SO13 have attempted extradition for these murders?” That question was not in fact answered for some time, because the OTR review team was effectively disbanded in late 2003 and was only reinstated in the spring of 2004.
- 6.12** On 22 July 2004 a handwritten entry by a civilian staff member of the Operation Rapid team on the OTR assessment form for template 6 stated: “No attempt to extradite Downey had been made. He is still wanted by Met.” That same day, this civilian staff member sent a memo to DI Davison stating “The arrest and interview of Downey has been approved in respect of the following” which then listed the offences for templates 1–5. In relation to the Hyde Park bombing the memo states: “A 6th incident is recorded on template however this refers to Hyde Park explosion in London on 20.7.82. Here Downey is identified by way of fingerprints. SO13 have confirmed that no extradition was attempted. It is their intention to arrest should he come within their jurisdiction.”
- 6.13** On 14 September 2004 the PSNI wrote to Sir Alasdair Fraser QC in relation to Mr Downey. They pointed out that he had never been interviewed in relation to the 1972 incident and that further evidence might come to light during such an interview. The letter stated: “I can also advise you that John Anthony Downey is currently wanted by PSNI. Enquiries confirm that this person is sought for arrest and interview in relation to a number of serious terrorist offences.” The letter makes no specific mention of Hyde Park. Although the fact that Mr Downey was now to be regarded as ‘wanted’ was raised in meetings with the PPS of Northern Ireland and the Attorney General’s Office (AGO) to discuss OTRs in 2004 and 2005, that information was not conveyed to Sinn Féin at this stage.
- 6.14** Following the announcement by the IRA on 28 July 2005 of decommissioning, no further progress was made with the administrative scheme as a potential legislative solution was considered and then attempted. However, following the withdrawal of the Northern Ireland (Offences) Bill in January 2006, fresh attempts were made to consider the outstanding names that had been provided by Sinn Féin. The meeting held on 23 January 2006 was followed by the letter of 27 January 2006 from Mark Sweeney (of the NIO) to Temporary Detective Superintendent (TDS) Thompson at the PSNI in which clarification/confirmation was sought in relation to a number of the individuals. One of those referred to was Mr Downey and Mr Sweeney’s letter stated: “You thought that he was confirmed as wanted. Can you confirm?”

On 31 January 2006 TDS Thompson replied and when referring to Mr Downey stated: “The position is correct. Our letter of 14.09.2004 refers.”

6.15 As a result, on 8 February 2006 the PPS wrote to Kevin McGinty at the AGO in relation to seven people. One of those was Mr Downey. The letter stated:

Police have written in the following terms:

It is believed these details refer to John Anthony Downey DOB 19.02.52, residing outside this jurisdiction. John Anthony Downey is currently wanted by the PSNI. Enquiries confirm that this person is sought for arrest and interview in relation to a number of serious terrorist offences.

6.16 Having considered that letter, the Attorney General wrote on 27 February 2006 to the Secretary of State for Northern Ireland in relation to the same seven individuals referred to in the letter of 8 February 2006. The letter stated in relation to Mr Downey: “Downey is wanted for arrest and questioning in respect of serious terrorist offences.” It is to be noted that there was no reference made in that letter to the Hyde Park bombing, just as there had not been in the letter of 8 February 2006 from the PPS to Mr McGinty.

6.17 On 22 March 2006 Mr Sweeney of the NIO wrote a letter to Sinn Féin informing them that, in respect of four individuals, there was no outstanding direction for prosecution. They were sent the usual letters of assurance. Mr Sweeney’s letter then went on to list three individuals, one of whom was Mr Downey, stating that “the following three individuals would in the current circumstances of their cases face arrest and questioning if they returned to Northern Ireland”.

6.18 As set out above, Operation Rapid commenced in January 2007 following discussions that had taken place in the second half of 2006. Mr Downey’s status was reviewed as part of Operation Rapid. On 13 April 2007, as the updated assessment report for Mr Downey was being completed, one of the civilian staff members telephoned a detective constable in the Metropolitan Police Service’s Extradition Unit.

6.19 Following the telephone call on 13 April 2007, this civilian staff member sent an email to the detective constable which stated: “Ref. our telephone conversation this date. I would be obliged if you could confirm if the following persons are still wanted for offences in England.” The email provided four names, one of which was Mr Downey’s, and asked whether he was ‘wanted’ for the Hyde Park bombing. The detective constable replied that same day by email, stating “As confirmed that Downey is shown as wanted”.

6.20 It is curious that a request relating to the Hyde Park bombing was not addressed to a dedicated point of contact at the Anti-Terrorist Branch – as opposed to the Extradition Unit – of the Metropolitan Police Service. Indeed, there was no such point of contact during Operation Rapid. Nothing in fact turns on this other than that it is consistent with a lack of overall thought on the need to have a coherent system in place for making checks of such significance.

6.21 Having received confirmation that Mr Downey was still ‘wanted’ by the Metropolitan Police Service for the Hyde Park bombing, the updated report (which was to be read alongside the 2003 templates) was completed. It was recorded in the update to the template for the Hyde

Park bombing that there were no case papers available in Northern Ireland, and went on to state:

Downey is alerted on PNC as wanted for murder if arrested inform SO13 evidence is by way of fingerprints. The alert is current and was last updated/confirmed by this team on 13/4/07. There is no further information to add to this template. Should Downey be arrested in Northern Ireland for offences here we would be duty bound to inform SO13 New Scotland Yard.

- 6.22** It is important to clarify that, had Mr Downey entered Northern Ireland in 2007, officers of the PSNI would have had a power of arrest in relation to the Hyde Park bombing. No single retired or serving police officer of the PSNI to whom the Review team have spoken has suggested otherwise. The only caveat is whether before such an arrest a call would have had to have been made to the Metropolitan Police Service to establish that there were sufficient grounds to justify his arrest. Had such a call been made, there is no doubt that the grounds for arrest would have been established.
- 6.23** On 7 May 2007 Acting Detective Chief Inspector (ADCI) Neal Graham, the Senior Investigating Officer (SIO) for Operation Rapid, carried out a review in relation to Mr Downey. When interviewed by the Review team he was clear that he would have considered not just the original templates and the update but also the underlying documentation. After ADCI Graham had recorded his decisions in his log book, he then produced a report that same day for Detective Chief Superintendent (DCS) Norman Baxter which stated:

A review has now been completed in respect of the above with due consideration being given to the agreed Terms of Reference. All the templates in relation to the defendant are based on intelligence.

- 6.24** In relation to the Hyde Park bombing the report states:

In respect of template 6, this relates to a Bombing in England on 20.07.1982. I have reviewed the papers and can find no evidence that would indicate that Subject is wanted by the PSNI for this offence. He is still wanted by the Metropolitan Police subject to any further new evidence.

- 6.25** I have considered the reasons that ADCI Graham has given in his decision log in relation to templates 1–5. It should be pointed out that there was no evidence in relation to templates 1, 3, 4 and 5. In relation to template 2, his approach is arguably consistent with that set out above: namely, applying the higher threshold that was set as part of Operation Rapid.
- 6.26** Mr Graham informed the Review team that he would have discussed each and every case with DCS Baxter. We have had sight of ADCI Graham's journal and this reveals that on 9 May 2007 he met DCS Baxter and "briefed him in relation to completed templates". In that meeting on 9 May 2007 they would have discussed Mr Downey, among a number of other individuals.
- 6.27** On 10 May 2007 DCS Baxter produced a two-page report for Assistant Chief Constable (ACC) Peter Sheridan on 11 individuals, one of whom was Mr Downey. He was described in the following terms:

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 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.

6.28 This was Operation Rapid Report 3 and was sent by email later that day to ACC Sheridan (see below at paragraph 6.36). There can be no doubt that, when he produced it, DCS Baxter was aware of the fact that Mr Downey was ‘wanted’ for the Hyde Park bombing. Not only was this in the report from ADCI Graham, but there was a specific template which, on his own admission to me, he would have read. Even ignoring the terms of reference of Operation Rapid, it is difficult to understand why he would not have mentioned the Hyde Park bombing in his report to ACC Sheridan, even if only to state that in his opinion it did not come within the terms of reference of Operation Rapid. Mr Baxter accepted when I interviewed him that there would have been nothing unlawful in informing ACC Sheridan of that fact, and I do not accept that the terms of reference of Operation Rapid are a proper explanation for his not having done so (see below). I note that ACC Sheridan informed me that he would have expected to have been told.

6.29 It is instructive to note the following:

- Mr Paul McGowan and the two civilian staff members of the Operation Rapid team all informed my Review that they checked the PNC in relation to each review, and that they regarded that as part of the Operation Rapid review.
- The Operation Rapid template assessment form included reference to the PNC ID number and appears to have been one of the checks that the review team were expected to undertake.
- The primary purpose of a check of the PNC by the Operation Rapid review team would have been to see if an individual was ‘wanted’ by an external police force, and in particular by a force in England and Wales.
- DCS Baxter’s own email of 14 June 2007 (see below at paragraph 6.49) suggests that checks of external police forces would be undertaken.
- When queries were raised, both before 20 July 2007 and afterwards (see below), at no stage did DCS Baxter state in clear terms that PNC checks should not be undertaken because the terms of reference of Operation Rapid were so narrow.

6.30 If DCS Baxter really thought that it was not the responsibility of the PSNI to refer to the Hyde Park bombing as part of an Operation Rapid report, this begs a number of questions, including: why were telephone calls made and emails sent to the Metropolitan Police Service on 13 May 2007; why was the bombing included in the updated template by the review team; and why did ADCI Graham refer to it in his report to DCS Baxter? It seems to me that this was simply a mistake by DCS Baxter. He failed to appreciate the consequences of what he was doing, in large part because (as is set out above) he was unaware of the nature of the assurance that was being provided to Sinn Féin by the NIO.

6.31 This was not the only occasion on which DCS Baxter failed to inform ACC Sheridan of offences committed in England. In 2008 ADCI Graham identified two individuals to DCS Baxter as “NOT

WANTED for any criminal offence in Northern Ireland” but stated that they were “alerted on PNC in respect of Conspiracy to Murder and related Offences in England”. DCS Baxter’s report to ACC Sheridan in relation to those two individuals simply stated that they “should be marked as NOT WANTED”, with no reference made to the offences in England. As a result letters were sent to the PPS signed by ACC Sheridan in respect of both individuals, stating “X is not currently wanted by the PSNI”. Mr McGowan highlighted this as a problem as the warning on ICIS for the offences in England was to be deleted. As a result, in the summer of 2008 the letters were returned by the PPS to the PSNI so that checks could be made in England. In 2009 a decision was taken by the Crown Prosecution Service (CPS) not to prosecute those individuals and they then received letters of assurance.

- 6.32** With hindsight, however, when taking the decision not to include reference to an individual being ‘wanted’ for a serious criminal offence in England it would have been prudent to have checked the nature of what Sinn Féin/the individual was being told. Mr Justice Sweeney adopted the Prosecution’s description of this as a “catastrophic failure”. That is a description with which Mr Baxter took issue when giving evidence to the Northern Ireland Affairs Select Committee. However, it seems to me that this was a failure that had catastrophic consequences, and it can therefore properly be regarded as a catastrophic failure.
- 6.33** At the same time, it is a failure which needs to be considered in the context of a system which had not been risk-assessed in detail. In particular, each of the participants did not fully understand what the roles of the other participants were, nor what representations/assurances were being given as a result of the information they were either providing or not providing.

Checks with other police forces

- 6.34** There are two documents that I have seen and have considered carefully when determining whether the PSNI had responsibility for checks with external forces. These are the minutes of a meeting that took place on 9 June 2006 and the handwritten minutes of the meeting that took place on 12 January 2007. They have been set out in some detail above in relation to Operation Rapid. It seems to me that caution needs to be shown in respect of the minutes of the meeting on 9 June 2006 – first for the reasons already identified, but in particular because they pre-date Operation Rapid and because DCS Baxter was not at that meeting.
- 6.35** As regards the meeting on 12 January 2007, again it should be noted that DCS Baxter was not present. In answer to the question in the minutes “What do we do with those wanted eg by MET?”, ACC Sheridan is recorded as having stated “MET do that”. This was a meeting at which only the PSNI were present. More importantly, there is a difference between the Metropolitan Police Service conducting an evidential review of their own cases (which is to be expected) and the PSNI alerting the PPS that an individual is ‘wanted’ by the Metropolitan Police Service so that enquiries can be made of them by the AGO. The blurring of that distinction goes to the heart of the mistake made by DCS Baxter. It therefore follows that in my opinion neither of these meetings absolved the PSNI more generally of the obligation, as part of Operation Rapid, to inform the PPS that Mr Downey was ‘wanted’ – or at the very least to have requested, from the outset of Operation Rapid, a round table meeting to determine where all areas of responsibility lay and to ensure that these were clearly identified.
- 6.36** DCS Baxter sent his two-page report, entitled “Operation Rapid Report 3”, to ACC Sheridan by email at 4.48pm on 10 May 2007. It was copied to ACC Sheridan’s Staff Officer and ADCI

Graham. The latter forwarded it to a civilian staff member of the Operation Rapid review team on 29 May 2007.

- 6.37** On 6 June 2007 ACC Sheridan signed a letter that was sent to the PPS; this related solely to Mr Downey. The letter stated:

The above person is not a resident of Northern Ireland and is a citizen of the Republic of Ireland. He has not resided in Northern Ireland and remains a resident in the Republic. He is not therefore currently 'On the Run' from his home. Enquiries indicate that John Downey is not currently wanted by the PSNI.

- 6.38** Both ACC Sheridan and his Staff Officer have informed my Review that neither of them would have reviewed any of the templates or the underlying documentation, but would simply have considered the report from DCS Baxter. I note that nearly all of DCS Baxter's reports were emailed to ACC Sheridan rather than being delivered by hand. The letters to the PPS would, I have been told, have been drafted by the Staff Officer and then signed by ACC Sheridan. Mr Baxter informed me that his recollection is that he would have provided the underlying documentation and the templates to ACC Sheridan's office. I have seen no evidence to support that having taken place. The Staff Officer's recollection was that the underlying documents were not provided. What is clear is that neither ACC Sheridan nor his Staff Officer conducted a further review of Mr Downey. As stated above, I am not surprised by that. ADCI Graham and DCS Baxter (who were senior police officers) had each conducted a review. I also note that Operation Rapid was only a small (albeit very important) part of ACC Sheridan's work at the time.

- 6.39** On the afternoon of Monday 11 June 2007 a meeting was held at Stormont Buildings (with a video conference to London) with representatives of the NIO, the PPS and the PSNI. No minutes of that meeting can be found but it can properly be inferred that OTRs were discussed in detail. I note that, on that day, ACC Sheridan was provided by his Staff Officer with a document entitled "Operation Rapid Update", which gave him headline figures.

- 6.40** The PSNI has confirmed to the Review team (after checking ACC Sheridan's electronic diary) that it records a meeting with Robert Hannigan of the NIO on 11 June 2007. DCS Baxter's handwritten journal for 11 June 2007 records for 2.30pm: "Meeting at NIO Office Video Conference London. ACC A/Director PPS and NIO staff re OTRs." On 11 June 2007 (but before the meeting) Mr McGinty (AGO) sent an email to Katie Pettifer (NIO), attaching the letter of 7 June 2007 from the Attorney General to the Secretary of State for Northern Ireland. That email was then forwarded (before the meeting) by Ms Pettifer to various civil servants at the NIO, including Mr Sweeney and Hilary Jackson. The email stated:

The AG's office have sent us the attached list of formerly wanted OTRs who the PSNI have decided they no longer want. Kevin [McGinty] has deliberately not said that they are free to return because he doesn't know whether the PSNI have done the checks with other police forces and CSO that they used to carry out. He wants to clarify this with Peter Sheridan today.

- 6.41** This email is significant and provides an explanation for the written and email communication that follows in June and July 2007 – in particular the email from Mr Sweeney to ACC Sheridan's Staff Officer originally sent on 18 July 2007 and re-sent on 20 July 2007 (see below). It does not appear from what Mr McGinty informed my Review that he attended the meeting on 11 June 2007. However, given what took place after this meeting, it seems inconceivable that the checks being undertaken by the PSNI were not discussed at the meeting.

- 6.42** On 13 June 2007 the first of a significant series of emails was sent by ACC Sheridan’s Staff Officer. It was sent to DCS Baxter and copied to ADCI Graham. The email was in the following terms:

Further to our meeting on Monday, could you please advise in writing that all checks with outside forces have been carried in relation to the subjects under review by your team prior to being sent to the PPS. Hilary Jackson has requested this in writing.

- 6.43** It would appear almost certain that the “meeting on Monday” referred to in this email was the meeting that had taken place on Monday 11 June 2007 at Stormont Buildings. It should be noted that ADCI Graham’s journal reveals that he was abroad for work on 11 June 2007 and so cannot have been at the meeting in Belfast that day. The Staff Officer’s email coupled with DCS Baxter’s own clear journal entry suggest that he was present at the meeting with NIO officials when there was a discussion about OTRs and whether checks were being conducted with external forces by the PSNI. Mr Baxter disputes that. He accepts he had a meeting at Stormont that day in an NIO video link room to discuss Operation Rapid but insists it was with the Acting DPP(NI) and a representative of the AGO and not with the NIO. He says he and ACC Sheridan bumped into Mr Perry of the NIO as he was leaving the building but they did not discuss Operation Rapid. He told the Review team that his journal entry lacked sufficient detail and clarity. Whichever version of events is correct, DCS Baxter’s response to the email was not to challenge its contents stating in clear terms it was not the responsibility of the PSNI to conduct external checks.
- 6.44** DCS Baxter forwarded the email from the Staff Officer to ADCI Graham on 13 June 2007, asking “Can you please confirm”. On 14 June 2007, following his return to Northern Ireland, ADCI Graham forwarded the email to Mr McGowan, stating “Could I ask you to clarify what if any steps are/have been taken in respect of the query raised by [the Staff Officer] below”.
- 6.45** Before turning to the detailed and important reply from Mr McGowan, I should note that it is somewhat surprising that, as the SIO, ADCI Graham did not know the answer to this question. It seems to me that this is symptomatic of the lack of practical assistance provided by the Operation Rapid terms of reference – or, if not in that document, then in some form of underlying guidance.
- 6.46** Having received the email, Mr McGowan spoke to ADCI Graham on the morning of 14 June 2007 and then sent the following lengthy reply:

Our conversation of this morning refers.

The original version of the review template did not specifically ask for an individual’s Police National Computer (PNC) and/or Interpol numbers, or if such had been checked. Subsequent letters, however, from Head of Branch C2 made reference to enquiries indicating if the person was wanted by other UK Forces or by any other country through Interpol. The letters stipulated that no enquiries had been made with An Garda Siochana.⁴ It seems that it was practice for the review team to check for PNC entries and to check via Interpol liaison for international alerts but there appears to have been no formal means of recording, or apprising the Head of Branch of, the result of such enquiries (although in some of the older files there is a checklist that includes Gazette/PNC/Interpol).

⁴The national police service of the Republic of Ireland

The current review team has examined whether individuals are wanted by the PSNI in connection with terrorist-related offences up to 10 April 1998 (as per terms of reference). It has been practice, however, for the current team to examine ICIS for indications of PNC entries by examining the PNC id field with the nominal's "View Person" screen. This is the screen that opens when an individual is 'searched' for by means of an ICIS unique reference number (URN). PNC itself is only accessed during 'searches' when the individual is sought by means of a name and date of birth or age. The vast majority of this team's searches are done by means of an ICIS urn relying therefore on the accuracy of the PNC id field. Sample checks carried out today have revealed that ICIS cannot be relied on in this respect. Ten people on our list of those recently reviewed have been scrutinised. None of the ten have entries in the PNC id field but five are recorded when PNC itself is checked. Three of the individuals are alerted as wanted in Northern Ireland and two simply have PNC nominal entries. None of the ten were recorded as wanted by any other agency. (As discussed we did recently check one individual who was recorded on PNC as wanted in England and carried out further enquiries with the Met). It is now clear that we cannot rely on the ICIS 'view person' screen and must carry out specific PNC checks on every individual.

In response to the request below this office cannot state that 'all checks with outside forces' have been carried out, as Interpol has not been consulted and earlier reliance on 'PNC id' fields is clearly flawed. The review team can now recheck PNC itself via ICIS in respect of those nominals already reviewed and can submit those names to Interpol liaison which has not been the practice of this team. It appears that requests to Interpol will require provision to them of significant information, including reason or justification for the check and details of any offences of which suspected.

The original review template was amended to answer questions of continuity/intelligence origins etc and will now be amended to state that PNC/Interpol checks have been done. All individuals will be specifically searched on ICIS for PNC entries and Interpol liaison at PSNI Criminal Justice Department will be asked to conduct enquiries at Interpol. (Subject to your confirmation that this must be done). A copy of the SOCA form for use with Interpol is attached for your information [sic].

6.47 This email requires careful consideration. It makes clear first of all that there was a systemic problem with the way PSNI officers used ICIS to link up to the PNC. This plainly created the risk that someone 'wanted' for arrest in England who was stopped in Northern Ireland might not be arrested unless a PNC check was undertaken. This would not just apply to those who were being considered by Operation Rapid, but could apply to anyone suspected of having committed a criminal offence. Once this concern had been raised by Mr McGowan it seems to me that, even putting Operation Rapid to one side, it should have been acted upon. I have seen no evidence to suggest that it was.

6.48 Later on 14 June 2007 ADCI Graham forwarded the email from Mr McGowan to DCS Baxter, and in doing so stated:

If this matter is to be FULLY RESEARCHED then the PSNI will and should ensure that INTERPOL checks are carried out. I now understand that this request Form is comprehensive and detailed and will need to include specific details of why the check is being carried out. This will also put additional work on the Team and take away from the thrust of the Terms of Reference which only related to persons wanted in Northern Ireland.

- 6.49** It is to be noted that ADCI Graham referred in this email to the terms of reference, although interestingly only to the “thrust” of the terms of reference. This could be taken to mean that the terms of reference were not as clear cut as has been suggested. Later on 14 June 2007 DCS Baxter replied to ADCI Graham. Again the entirety of the email needs to be set out:

The issue is probably resolved. As I understand it – if a person with a domicile address in Northern Ireland is wanted by police on mainland UK then the PSNI are formally notified and an entry is made against their nominal on ICIS. Similarly, if an individual is wanted outside [sic] the UK e.g. a European country then a current European Arrest Warrant is the formal and legal means of notifying the PSNI. Once again such an arrest warrant is logged against the nominal of an individual on ICIS.

If ICIS checks are not flagging an individual as wanted by a GB police force or under a European Arrest Warrant then it is correct to report that that individual is not wanted by the PSNI on behalf of either a GB force or a European country. It would be impossible to check 100% as to whether or not an individual is suspected of offences which have not reached a level of evidence to formally seek arrest and to do so throughout Europe.

I hope this guidance is helpful. What we need to establish [sic] is the following ‘Is X wanted for arrest by the police service of Northern Ireland for an offence [sic] pre the Good Friday 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 [sic]. This can be established by an ICIS check and I do not believe that investigations beyond this are necessary as the 10 examined has shown.

- 6.50** It seems to me that this email from DCS Baxter misses a number of the points and concerns that Mr McGowan was expressing. First, it fails to address the systemic problems with ICIS which Mr Baxter has informed me were well known in the PSNI. Second, it fails to address the possibility that in the past individuals might not have been identified as ‘wanted’ because no PNC entry could be identified on ICIS. Significantly, if DCS Baxter’s understanding was that the Operation Rapid terms of reference were to be interpreted so narrowly as to exclude checks on whether someone was ‘wanted’ in England, one wonders why he did not say so in an email. In fact DCS Baxter’s email suggests the opposite: it states that one of the matters that needs to be established is whether X is circulated as “wanted for arrest by an external force”.

- 6.51** DCS Baxter’s email was then forwarded to Mr McGowan by ADCI Graham, who stated:

Please see the views from HOB C2 which are forwarded for information.

We will stick to our agreed principles and progress as necessary.

- 6.52** On 20 June 2007 there was further email correspondence between Mr McGowan, ADCI Graham, DCS Baxter and ACC Sheridan’s Staff Officer, in which it was made clear that Interpol checks were not being undertaken.

- 6.53** On 21 June 2007 the following email was sent by ACC Sheridan’s Staff Officer to a civil servant at the NIO (Ms Jackson was copied in):

Just an update to let you know that I am preparing the letter this morning. It will say that we have completed checks using our computer system and PNC. The existence of an international warning would be highlighted.

Ms Jackson replied that same day:

Thank you for this and, as ever, to all your colleagues. Are the PNC checks enough to establish whether folks are wanted by other police forces – assume so? Helpful if the letter could indicate that.

The Staff Officer replied later the same day:

If there is an International Arrest Warrant for someone it would be alerted on both our ICIS system and PNC, there is always the risk that it has not been inputted as with every database but ACC Sheridan has directed that for the purposes of our review the checks we do are sufficient. Will reflect that in the letter.

6.54 Ms Jackson forwarded this email chain to Ms Pettifer, who emailed the Staff Officer on 27 June 2007, stating:

Its [sic] not only international arrest warrants we're worried about but other police forces within the UK. Forgive my ignorance, but does the PNC check confirm beyond doubt whether people are wanted by other police forces in the UK. I ask because I know that sometimes in the past we've had to contact the Metropolitan Police about particular individuals.

The Staff Officer replied that same day:

As long as the respective forces update their systems PNC is the national computer and will confirm whether other UK forces want an individual.

Ms Pettifer replied again on 27 June 2007:

Provided this is the same as the level of checks carried out by the police in the past then we're content – are you still going to send us a letters [sic]?

The Staff Officer replied later that day:

I have forwarded a letter to Hilary. I have been assured that they are the same checks as were done before and the letter reflects this.

6.55 The letter to which the Staff Officer refers is the one dated 27 June 2007 from ACC Sheridan to Ms Jackson, who at that stage was Director Political at the NIO. It is clear from all I have seen that this letter was intended to answer the request raised at the meeting on 11 June 2007 for written clarification of the extent of the checks that the PSNI were undertaking. The letter needs to be read alongside the emails above, which clearly identify the NIO's concerns. The letter states:

In relation to your query in respect of checks carried out as part of the PSNI's review of persons currently listed as wanted, I can confirm the following:

Our review set out to establish if X is wanted for arrest by PSNI for any offences pre the Good Friday 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.

This can be established by an ICIS check (PSNI's computer system), checks with An Garda Siochana and the Police National Computer (PNC).

These checks have all been carried out in relation to the letters forwarded to the Director of Public Prosecutions from the PSNI and they are the same checks that have been carried out during previous reviews.

- 6.56** A number of points arise from this letter. The first is that no emails appear to have been sent between the Staff Officer and ACC Sheridan in relation to the drafting of the letter. The second point to make is that the content of the letter clearly states that the PSNI's review included whether X was "wanted for arrest by an external force". This paragraph of the letter appears to have been lifted direct from DCS Baxter's email of 14 June 2007 (see above). I note that that email had been forwarded to the Staff Officer on 18 June 2007 by ADCI Graham. It seems to me that anyone at the NIO reading that letter and aware of the emails of 21 and 27 June 2007 (set out above) would have been assured that checks in relation to external police forces within the UK had been made and that the PSNI regarded such checks as being their responsibility.
- 6.57** The third point to make is that all of those who have been interviewed by my Review team and who were involved with Operation Rapid have said that checks were not made with An Garda Síochána. They are clear that, had they been asked in 2007, they would have said that such checks were not undertaken. No explanation has been provided to me as to how the assurance that checks were made with the Garda (when they were not) was included in this letter.
- 6.58** The fourth point is that, on the basis of the documentation I have seen, the NIO were unaware in the middle of June 2007 that they were to be informed that Mr Downey was no longer 'wanted'. Accordingly it is my opinion that it is not credible to suggest that the reason the NIO were querying in June 2007 what checks were being undertaken was because they had a particular suspicion about Mr Downey's status. Instead it seems to me simply to have been an attempt by the NIO to ensure that they could be confident about the accuracy of the information provided to them.
- 6.59** The letter of 27 June 2007 was signed by ACC Sheridan. I have not been able to ascertain who was responsible for its contents, other than the section that appears to have been taken from DCS Baxter's email of 14 June 2007. ACC Sheridan informed me in an interview that his Staff Officer would have drafted the letter. I note that ADCI Graham's journal for 27 June 2007 includes the following: "Duty re Operation Rapid liaised with ACC Office re Rapid reports. Spoke with HOB C2 and confirmed meeting tomorrow." Ordinarily ADCI Graham would report to DCS Baxter rather than to ACC Sheridan's office, and it therefore seems possible that ADCI Graham had some responsibility for the content of the letter of 27 June 2007. However, I do not have a sufficient amount of information to form a definitive conclusion on that issue – and I do not need to do so.
- 6.60** Also on 27 June 2007 the PPS wrote to Mr McGinty at the AGO about eight individuals, one of whom was Mr Downey. In relation to Mr Downey the letter simply repeated the relevant contents of the letter that ACC Sheridan had sent on 6 June 2007 to the PPS. There was therefore no reference to the fact that Mr Downey was 'wanted' by the Metropolitan Police Service for the Hyde Park bombing.
- 6.61** On 11 July 2007 Mr McGinty wrote to the NIO in relation to 10 individuals, one of whom was Mr Downey. The contents of what the PPS had informed the AGO in the letter of 27 June 2007 were duplicated. There is nothing to suggest that Mr McGinty drew any link or association between the name Downey and either the letter that had been sent the previous year (in which Mr Downey had been referred to as 'wanted') or the AGO's archived file relating

to consideration of Mr Downey's extradition from the Republic of Ireland in the 1980s for the Hyde Park bombing. It should also be noted that, with one exception, there were no individual files at the AGO relating to the names provided by Sinn Féin. Instead, there was a single chronological paper file stretching to a number of volumes relating to all of the OTRs and an electronic spreadsheet.

6.62 On 18 July 2007, following a telephone call between Mr Sweeney and ACC Sheridan's Staff Officer, Mr Sweeney sent her an email setting out his queries. It was sent to an incorrect email address and was re-sent at 10.19am on 20 July 2007. It stated:

We spoke. I mentioned to you that we had received a further letter from the Attorney's office (copy attached) dated 11 July in respect of a 10 further individuals. This prompted me to call you to clarify a couple of points.

(a) If I was correct in understanding that Peter's letter of 27 June to Hilary should be taken as confirming that the PSNI has checked whether any of the individuals in the Attorney's June letter to SOSNI which contained 25 names – were wanted by an external force as far as the PSNI could ascertain and had established that they were not. (This was on foot of a question raised by the AGO). You confirmed that this was correct.

(b) I asked whether those checks had been undertaken in respect of the 10 names in the 11 July letter. You said they had been.

We agreed that I would email you and you would check that my understanding of all this was correct and reply confirming that the relevant checks had been carried out in relation to 35; or putting me straight.

Sorry to make a meal of this: it just helps us keep our records in order at this end. I'll wait to hear from you.

6.63 It is clear to me that the reference in that email to the "question raised by the AGO" refers to the query that was set out in the email from Ms Pettifer on 11 June 2007 (see above at paragraph 6.40). This was to be raised at the meeting at Stormont Buildings and was answered in ACC Sheridan's letter of 27 June 2007. The letter of 11 July 2007 (to which the email refers) is the letter from the AGO which referred to the status of Mr Downey. I have seen no evidence to suggest that the reason the email from Mr Sweeney (originally sent on 18 July and then re-sent on 20 July 2007) was sent was because Mr Sweeney or anyone else at the NIO had a specific concern about Mr Downey. In fact, the evidence suggests otherwise, as the NIO had already raised their general queries (in June 2007) in relation to the checks that were being conducted. It is also important to note that the NIO did not have individual files for each of the names provided by Sinn Féin and would not have been able to check why the status of a particular individual had altered. Nor was the NIO aware of all the offences that individuals had previously been suspected of having committed. It seems to me therefore that this email from Mr Sweeney was simply a further attempt by the NIO to ensure that all of the checks, including with external police forces, were being undertaken by the PSNI.

6.64 ACC Sheridan's Staff Officer sent the following reply at 10.38am on 20 July 2007 – 19 minutes after receiving the earlier email from Mr Sweeney:

The letter from ACC Sheridan dated 27th June confirms that prior to forwarding all details to the Director of Public Prosecutions our review team conduct all searches

through own computer system ICIS, the Police National Computer (PNC) and check with An Garda Síochána. This is the process conducted for all individuals reviewed prior to any letter being sent from this office and this will continue to be the case.

To confirm these checks have been carried out on the 10 names in the 11 July letter.

I hope this helps. If I can be of further assistance please don't hesitate to contact me.

6.65 The question that arises is to whom, if anyone, the Staff Officer spoke before sending her email. On 20 July 2007 ACC Sheridan was working in Dublin (this is recorded in his electronic diary). A 22-second telephone call was made by the Staff Officer to ACC Sheridan's mobile telephone at 10.33am on 20 July 2007. It seems to me highly likely, given that she sent the email to the NIO five minutes later, that this telephone call related in some way to the query from the NIO. It should be noted that both DCS Baxter and ADCI Graham were in the US on the morning of 20 July 2007. Given the time difference, it is inherently unlikely that the Staff Officer would have spoken to either of them on 20 July 2007. I have considered whether she could have spoken to them on 18 or 19 July 2007, given that the query from Mr Sweeney had originally been raised with her by telephone on 18 July 2007. While this is possible, it seems unlikely as they were both in the US then as well. It also seems to me unlikely that the Staff Officer checked with Mr McGowan. He would not have confirmed that checks had been made with the Garda, and analysis of his emails reveals that he invariably followed up telephone calls with an email. No such emails have been found. As the telephone call to ACC Sheridan only lasted for 22 seconds, it seems to me probable that all that would have been spoken about is whether the Staff Officer could answer the query and whether the same checks would have been undertaken in relation to the names in the 11 July letter as had been undertaken before.

6.66 As a result of the email confirmation from the Staff Officer, two covering letters were sent on that same day to Sinn Féin by Mr Sweeney. The first covering letter referred to 25 names and attached letters for each of the individuals. The second covering letter (which referred to Mr Downey) stated:

You have previously been in correspondence with the Northern Ireland Office about a number of individuals who are currently on the run but want to return to Northern Ireland and wish to be informed of their status if they were to do so.

Following investigations made by the relevant authorities in Northern Ireland I can now confirm that the necessary checks have been completed on 10 more individuals.

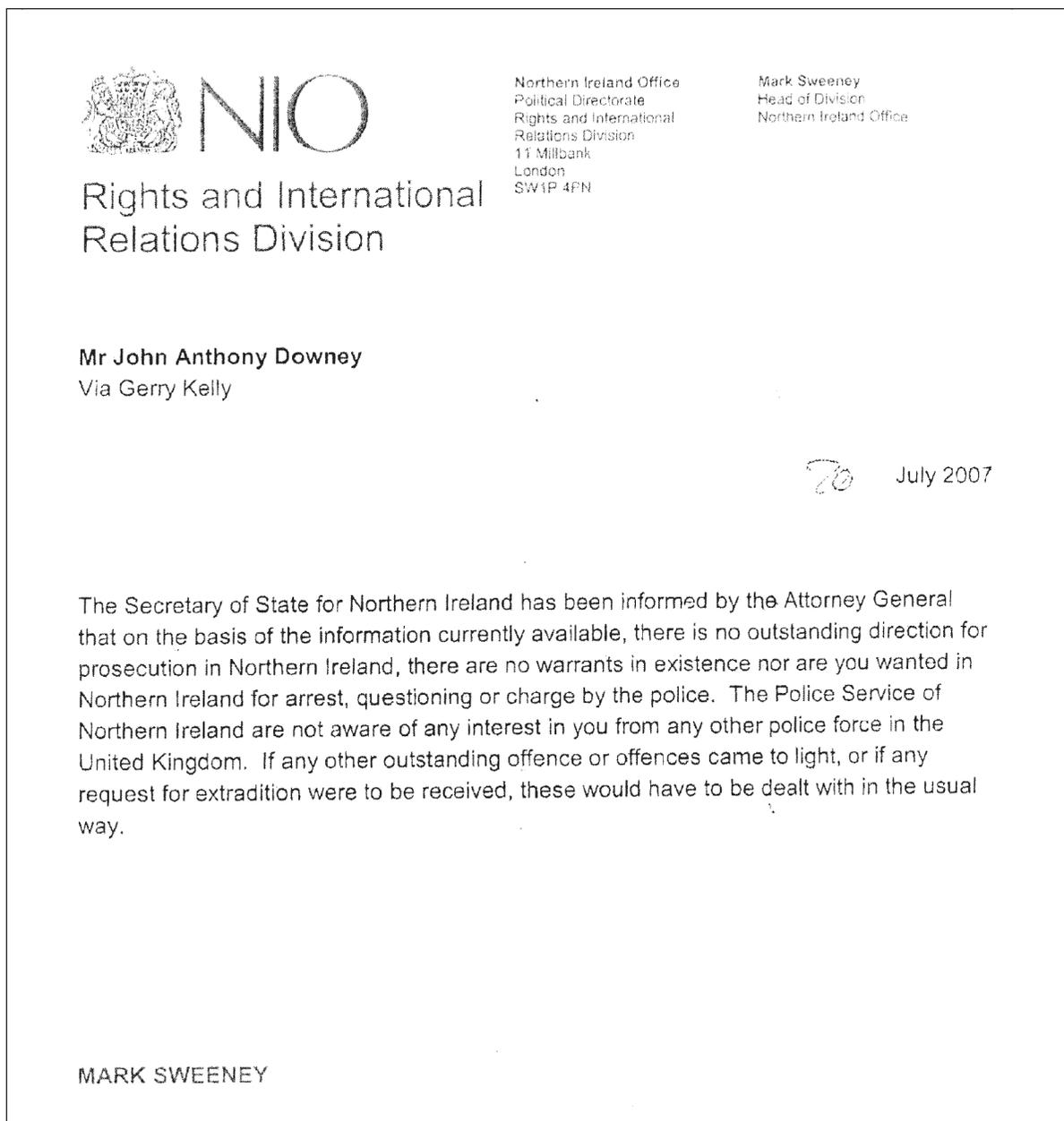
On the basis of the information currently held in respect of the 10 individuals, there is no outstanding direction for prosecution in Northern Ireland, there are no warrants in existence nor are they wanted in Northern Ireland for arrest, questioning or charge by the police ...

I enclose a letter informing each of the position. As we do not have an address for these individuals I would be grateful if you would ensure that these letters are passed on to them.

6.67 The covering letter attached 10 letters couched in identical terms, one of which was addressed to "Mr John Anthony Downey (via Gerry Kelly)" and which is reproduced below.

6.68 I was asked by the relatives of those who lost their lives in the Hyde Park bombing to investigate whether the letter was signed in person, because they have only seen an unsigned file copy.

We have been able to establish that the original – of which I have seen a copy – does in fact contain the handwritten signature.



6.69 The second sentence of this letter clearly states that: “The Police Service of Northern Ireland are not aware of any interest in you from any other police force in the United Kingdom.” As has been established, without doubt, that is incorrect. The PSNI were aware in July 2007 (and had been for a number of years) of the Metropolitan Police Service’s interest in Mr Downey. There can be no doubt that a letter should never have been sent to Sinn Féin informing them that Mr Downey was ‘not wanted’. I also have no doubt that if the PSNI had been aware of precisely what Sinn Féin were being told – both in the letters of assurance and in the covering letters – DCS Baxter would not have omitted reference to the Hyde Park bombing in his report of 10 May 2007. However, even ignoring that fact I still cannot understand (for the reasons set out above) why he did not refer to the Hyde Park bombing in any event and why, as will be set out below, this position was not rectified in the years that followed.

Opportunities to rectify the error in respect of Mr Downey

- 6.70** Following the letter of 20 July 2007 from the NIO to Mr Downey, there were at least three occasions where the PSNI might have reconsidered his status. These were in the spring/summer of 2008, in October 2009 and in December 2011. To place these opportunities to correct the error in context, I begin with two letters sent by the PSNI in January and February 2008.
- 6.71** On 18 January 2008 Mr McGowan emailed ADCI Graham to point out that ACC Sheridan's Staff Officer was about to send out letters in respect of two unconnected individuals, stating that both were 'not wanted'. Mr McGowan queried whether this was appropriate. His email noted "two 'not currently wanted' decisions relate to 'live file' cases". In other words, these were cases in which the PPS held files containing a Director of Public Prosecutions' (DPP) direction for prosecution. One involved the most high profile of all the OTRs. Nevertheless, on 28 January 2008 ACC Sheridan signed two letters that were sent to the PPS in relation to these individuals, informing the PPS that they were "not currently wanted by the PSNI". On 13 February 2008 the Deputy Director of the PPS wrote to ACC Sheridan to thank him for his letters of 28 January 2008. This letter went on to state that "without prejudice to our enquiries about the others, I could not help but notice that one of your letters refers to 'X' as not being wanted. Is that correct?" The matter was discussed at a meeting on 5 March 2008 at which the Deputy Director of the PPS, ACC Sheridan, his Staff Officer, DCS Baxter and Mr McGowan were present. It was agreed that 'X' was, in fact, still 'wanted'. I note from the minutes of that meeting that DCS Baxter apologised for the PSNI's error.
- 6.72** The fact that a letter was sent by the PSNI to the PPS in respect of a person of such notoriety, who was well known to be 'wanted', does suggest that the way in which Operation Rapid was working at that time was creating the potential for serious mistakes. However, in relation to this particular error, no consequence flowed from it since it was resolved between the PSNI and the PPS before any further communication was made back to the NIO and Sinn Féin.

Spring/summer 2008

- 6.73** I return to the error in Mr Downey's case. On 7 May 2008 a PSNI officer from the Historical Enquiries Team (HET) who was investigating the 1972 Enniskillen bombing emailed the PSNI's intelligence unit (C3) requesting clarification of an entry that had been made on ICIS on 7 June 2007, following ACC Sheridan's letter of 6 June 2007 to the PPS (see above at paragraph 6.37). This entry related to Mr Downey and read: "Not currently wanted by PSNI unless a new appropriate alert is created by an Investigating officer." The email stated: "I presume this means when any other evidence becomes available. Could you please confirm." The intelligence unit immediately forwarded this email to Mr McGowan in the Operation Rapid team, who replied on the same day (both to the intelligence unit and to the HET), stating:

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

- 6.74** It appears that after 7 May 2008 there was no contact between the HET and the Operation Rapid team in relation to Mr Downey until 23 July 2008, when there was a telephone conversation between the HET and Mr McGowan. Following that telephone conversation, Mr McGowan

made a handwritten entry on a print-out of the emails of 7 May 2008, which was then placed in the PSNI's file Sinn Féin List 2 – 102 (relating to Mr Downey). The handwritten entry read: "HET have located adhesive tape that was crucial evidence re template 1 and will seek to reinstate 'wanted' alert." In fact, the 1972 bombing was template 2 rather than template 1, but nothing turns on that.

- 6.75** Following that telephone conversation, Mr McGowan emailed both ADCI Graham and ACC Sheridan's Staff Officer on 23 July 2008. The entire email requires consideration:

In June 2007, following Op Rapid review, a letter was issued stating that Downey was not considered to be On The Run by virtue of his not having lived in Northern Ireland. The letter added that he was not currently wanted by PSNI. There was no caveat to the effect that he could become liable to arrest if further evidence came to light. I have just spoken with HET in relation to this matter. HET expressed some concern that Downey was not considered as wanted. They informed me that they have located a crucial piece of evidence in relation to a double murder for which we submitted a review template. It is probable that they will have an SIO create a new wanted alert in respect of the murders concerned. This situation reflects the circumstances catered for by the addition of a caveat in Op Rapid ICIS entries and the relevant letters. In this case however, presumably because Downey was not considered to be OTR, there was no caveat in the letter issued to the PPS. Given that Downey did not have a Northern Ireland address it is unlikely that he will now seek to live in this jurisdiction. It is of course possible that he might visit here and, if a new alert is created, be subject to arrest.

- 6.76** Therefore, just over a year after the PSNI had written to the PPS in relation to Mr Downey, the fact that the letter from the PSNI did not contain a caveat relating to further evidence was clearly identified. As is set out below, no consideration appears to have been given to the potential impact this could have. I assume that the PSNI were unaware of the precise details of what Sinn Féin were being told about each individual. But it seems to me that careful thought at this stage would have led to the conclusion that there must have been at least a possibility that Sinn Féin were being sent either a copy of the letters from ACC Sheridan or that the terms of his letters were being communicated either in writing or orally. I would therefore have expected a request at this stage to have been made by the PSNI to the PPS, the AGO or the NIO in order to ascertain precisely what Sinn Féin were being informed by the NIO. That did not happen, and instead the focus was on the HET. Had a request been made at that stage to, for example, the NIO as to the precise terms of the representation that was being made to Sinn Féin, it seems to me inevitable that the PSNI would have been informed of the contents of the letter of 20 July 2007. I have no doubt that, had that taken place, the PSNI would have pointed out the error in the letter to Mr Downey and appropriate steps could have been taken to revoke/rescind the letter.

- 6.77** It is to be noted that there was no procedure at any stage of Operation Rapid (or before) as to what should be done in the event of either a change in circumstances or a mistake as to status in relation to an individual who had received a letter of assurance. Nor was any consideration given to these scenarios. It is surprising, given advances in forensic testing, that more thought was not given to the possibility of a change in circumstances. It is also surprising that more thought was not given to contingency planning in the event of a mistake being made over an individual's status.

- 6.78** On 25 July 2008 ACC Sheridan's Staff Officer replied to Mr McGowan's email of two days before, stating:

Since the letter in relation to this individual went out some time ago stating he was not to be deemed as wanted I will need a report detailing what action should/can be taken now to present to ACC Sheridan as soon as possible.

- 6.79** On 28 July 2008 Mr McGowan emailed ADCI Graham (in response to the Staff Officer's email of 25 July 2008) in the following terms:

... further to our conversation re message attached HET have advised me that Fingerprint Branch confirmed to them in February 2008 that F'print Branch had located crucial evidence in this matter. The evidence consists of a piece of adhesive tape that was attached to a battery pack used in the murder by means of an explosion of two UDR soldiers in 1972. Fingerprints on the tape had been matched to Downey by means of a comparison with copies of prints ... At the time of the Op Rapid review in April 2007 the adhesive tape could not be located and any future comparison arising from the possible arrest of Downey would have been done only by means of photographs of the marks. Consequently Downey was assessed as not wanted in this matter. A letter outlining the result of the review was sent from the ACC Crime Ops to the DPP in June 2007.

It has always been the case that new evidence could potentially be uncovered by HET or others investigating cases previously reviewed (under specific criteria) by Op Rapid. It is my understanding that it has been made known to concerned parties that the assessment of a person as 'not currently wanted' was always subject to the condition that new evidence could result in that person becoming liable to arrest if located in this jurisdiction. Although the letter relating to Downey did not specifically carry this caveat all interested parties are apparently aware that this condition applies.

HET have indicated that they will now seek to have a new alert created in respect of John Anthony Downey. Consequently he is likely to be described as wanted for murder upon creation by the HET of an appropriate alert.

This office has not examined the murder investigation conducted by HET and has no remit to do so. There could however be value in a Senior Investigating Officer appointed by D/C/Supt Baxter liaising [sic] with HET on this matter in order to clarify the grounds to overturn the decision of the Op Rapid review. Despite the understanding that new evidence would overturn an Op Rapid assessment there is potential that PSNI could be accused of abuse of process or acting in bad faith, particularly since the letter specific to Downey did not contain the appropriate caveat.

- 6.80** Careful consideration of this email reveals that Mr McGowan (as one of the members of the Operation Rapid team, although he had not been involved before 2007) was aware that there was a caveat in what was being represented to what he calls "concerned parties" and "interested parties". It seems to me that when referring to those "parties", he must have been including Sinn Féin and/or the individual whose status was being considered. As is set out above, one of the spreadsheets provided by the NIO to the Operation Rapid team (and which was sent to ACC Sheridan in January 2007) contained a column headed "Date NIO informed Sinn Fein/individual of status". As indicated, I accept, however, that in 2008 Mr McGowan and the other members of the Operation Rapid team were not aware of the precise terms of what

was being represented to Sinn Féin, and in particular that the letters of assurance referred to checks having been conducted with external forces.

- 6.81** At 10.04am on 29 July 2008, ADCI Graham forwarded Mr McGowan's email to his senior officer DCS Baxter and ACC Sheridan's Staff Officer. He recommended that an SIO should be appointed to review the relevant material and liaise with the PPS, and that that should take place before Mr Downey was circulated as being 'wanted'. On that same day, and in response to ADCI Graham's email of 10.04am, Mr McGowan emailed ADCI Graham and ACC Sheridan's Staff Officer in the following terms:

I have advised HET of the existence of the DPP direction dated May 1985. I will also confirm that they are aware of the Met's interest. I have checked PNC and the Met wanted alert for murder is still on the system (it does not specify the Hyde Park Bomb). The report from then Head C2 to ACC Crime Ops and the subsequent letter to the DPP do not state that Downey is wanted by the Met.

- 6.82** This email clearly identifies to ADCI Graham and ACC Sheridan's Staff Officer that the letter to the PPS did not refer to the Hyde Park bombing. This email needs to be looked at alongside the earlier email from Mr McGowan expressing concern as to the absence of a caveat in the PSNI letter to the PPS about further evidence. In my opinion the combination of both of those matters should have been highlighted to ACC Sheridan. His Staff Officer informed my Review team that she would have done this. While there are no emails showing that she did, I have no reason to doubt her. What should have happened at this stage was consideration of what Sinn Féin and/or the individual had been told, and in particular what they had not been told. However, that did not happen. A few minutes after receiving the email, ADCI Graham replied to Mr McGowan, copying his email to DCS Baxter. ADCI Graham's reply simply stated: "Noted. Thank you."

- 6.83** Therefore, on 29 July 2008 both DCS Baxter and ADCI Graham were on notice that the letter sent to the PPS on 6 July 2007 did not contain a caveat in relation to further evidence, and had not made reference to Mr Downey being 'wanted' for the Hyde Park bombing. However, no attempts were made to check whether there was a risk that the content of this letter from ACC Sheridan was the basis upon which Sinn Féin had been informed about Mr Downey's status.

- 6.84** On 4 August 2008 DCS Baxter forwarded ADCI Graham's email of 10.04am on 29 July to DCS Williamson. He copied his email to ACC Sheridan, ACC Sheridan's Staff Officer and ADCI Graham. It stated:

Please see the email chain below.

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.

- 6.85** I am sure that DCS Baxter's decision on 4 August 2008 to send an email chain which started with ADCI Graham's email of 10.04am on 29 July 2008 (rather than an email chain that also included Mr McGowan's response to ADCI Graham's email) was not deliberate. However, as

a result neither ACC Sheridan nor DCS Williamson was aware of the additional concern in relation to the Hyde Park bombing. Had they been, it is difficult to know whether this would have made a difference. It should be noted that when DCS Williamson took over Operation Rapid in November 2008, he not only altered the terms of reference but on at least one occasion informed the PPS that an individual was ‘wanted’ for an offence in England (see above at paragraph 5.62). Accordingly there is at least the possibility that if DCS Williamson had received an email chain that included Mr McGowan’s reply to the 10.04am email from ADCI Graham, he would have raised his concerns.

- 6.86** Although it seems to me that more could have been done in the spring/summer of 2008, it is important to consider what took place in its proper context. That context is that none of those concerned (ACC Sheridan, ACC Sheridan’s Staff Officer, DCS Baxter, ADCI Graham and Mr McGowan) were aware at that stage of the precise terms of the representations that were being made to Sinn Féin. Had they been aware of them, I have no doubt that they would have raised their concerns. I therefore reject the possibility that there was any deliberate attempt to mislead Mr Downey by the contents of the letter of 20 July 2007, and I have seen no evidence to support such a possibility.
- 6.87** In relation to the 1972 Enniskillen bombing there is then a gap in time in the written records that I have seen until July 2010, when DCS Hanley (the Head of Serious Crime Branch C2), having considered the HET report and the Operation Rapid papers, sent an email to the Staff Officer to the Acting Chief Constable Crime and the Staff Officer to the Deputy Chief Constable. On the basis of information provided to DCS Hanley, this email stated that there was no reason to depart from the DPP’s decision in 1985 that there was insufficient evidence to institute criminal proceedings.

October 2009

- 6.88** In October 2009 a detective constable from the Metropolitan Police Service’s Counter Terrorism Command (CTC) provided a report to the PSNI containing the names of 17 people who were on the CTC’s port circulation sheets as “wanted for terrorist-related offences”. In response, the PSNI produced a report dated 21 October 2009. This summarised the position as far as the PSNI was concerned in relation to those 17 individuals. One of those individuals was Mr Downey, about whom the report stated:

Status reviewed by Operation 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).

- 6.89** I have also seen a longer draft version of the report, which provided further detail on each individual. This was plainly the document used to create the report that was sent to the CTC. This ‘draft’ states the following in relation to Mr Downey:

ICIS alert cleared (status reviewed by Operation Rapid and assessed 10 May 2007 as ‘not currently wanted’. Head C2 directed C2 and HET re-examine case. HET located fingerprint evidence and will seek to overturn DPP direction of no prosecution. Alerted on PNC as wanted for murder 20/07/82 (Hyde Park Bombing). ACC’s letter to PPS dated 6th June 2007.

- 6.90** It seems to me that there is a danger in assuming that the report dated 21 October 2009 was a missed opportunity to correct the letter of assurance of 20 July 2007 addressed to Mr Downey. There was nothing inaccurate about the report dated 21 October 2009 in relation to Mr Downey, and I have seen no evidence to suggest that the CTC knew that Mr Downey

had been sent a letter of assurance by the NIO, nor that they had any awareness of what Operation Rapid was. The fact that the CTC did not know either is surprising, and is a criticism of the system that was in place rather than a criticism of the PSNI. It therefore seems to me that the series of emails in the spring/summer of 2008 represented a better opportunity for Mr Downey's status to have been reconsidered and corrected by the PSNI.

December 2011

6.91 On 5 December 2011 a civil servant at the NIO emailed Mr McGowan in relation to a number of individuals whose names had been provided to the NIO in a letter from Mr McGinty in the previous month. The email to Mr McGowan is of some importance and states:

I hope you are well. Please see the attached letter I recently received from Kevin McGinty regarding OTRs. I'd be grateful if you could advise of the PSNI position regarding the final individual so we can write to Sinn Féin to clarify his status. I would like to write with our normal text which is:

I can confirm that on the basis of the information currently held there is no other outstanding direction for prosecution in Northern Ireland, there are no warrants in existence, nor is [X] presently wanted in Northern Ireland for arrest, questioning or charge by the police. The Police Service of Northern Ireland is not aware of any interest in [X] from any other police force in the United Kingdom. This situation may be subject to review should new evidence or intelligence become available. If any other outstanding offence or offences came to light, or if any request for extradition were to be received, these would have to be dealt with in the usual way.

6.92 Although there is clear evidence that the PSNI was aware that Sinn Féin was being informed about the status of individuals, and that it is difficult to conceive of how that could have been done other than in writing, I have seen no evidence that prior to December 2011 the PSNI had been informed of the terms in which the NIO was informing Sinn Féin. In particular, the letters that were sent by the NIO were not copied to the PSNI. However, this email establishes that before the arrest of Mr Downey they had been informed of the "normal text" of the letters.

6.93 I have seen no evidence to suggest that the content of this email was raised by Mr McGowan with more senior officers, and he cannot recollect having done so. In fairness to him there were a number of occasions (some of which are set out in this Review) when he had raised concerns with more senior officers which had not always been acted upon. Had he done so in 2011, consideration might have been given to the terms of the letters being sent by the NIO and the position of Mr Downey remedied. However, it seems to me that there are some dangers in applying too much hindsight to the content of this email for the following reasons. First, the reader of it would have been comforted that the caveat relating to new evidence was contained, and might not have thought about the consequences of reference to external police forces, especially given that there had been some suggestion in the past that the Metropolitan Police Service would undertake checks. Second, it was four and a half years since the PSNI letter relating to Mr Downey had been sent by the PSNI to the PPS. Third, the email referred to the "normal text" written to Sinn Féin, which might suggest that on some occasions other text was used. However, this was plainly another occasion when it would have been possible to have set in train a review to see if the "normal text" had been used by the NIO when the letter was sent to Sinn Féin/Mr Downey.

- 6.94** The email of 5 December 2011 to Mr McGowan was not provided to the CPS by the PSNI during the criminal proceedings and so was not considered by Mr Justice Sweeney. It seems to me that, had this email been considered by him, it would not have made any difference to his ruling. Indeed, applying the logic of his ruling he would have relied on this as another missed opportunity to correct the error. This email is not the only document that was not disclosed by the PSNI to the CPS. The same applies to various emails sent and received by ACC Sheridan's Staff Officer and ADCI Graham, the journals of ADCI Graham and DCS Baxter, and the amendments to the Operation Rapid terms of reference.
- 6.95** Having considered all of those documents carefully, I am confident that (a) they would not have made any difference to Mr Justice Sweeney's ruling and (b) this Review has managed to fill the "gaps in the documentation" and get to the bottom of "the lack of sensible explanation as to what actually happened within Operation Rapid in relation to [Mr Downey]" to which Mr Justice Sweeney referred in paragraph 170 of his judgment. I should also add that, while I understand that DCS Baxter and ACC Sheridan were frustrated that they were not asked by the Prosecution to provide witness statements for the abuse of process hearings, I cannot see from what they have told me that their evidence would have made any difference to the outcome of the criminal proceedings.

Chapter 7: Analysis of the administrative scheme and identification of errors

- 7.1** The previous chapters provide a description and analysis of the piecemeal development of the administrative scheme. This chapter seeks to draw together the analysis and add to it by setting out the total number of ‘on the runs’ (OTRs) considered; a breakdown of how their names were submitted; and the outcome of their cases following the checks undertaken as part of the administrative scheme. It then sets out the work undertaken by the Review to determine whether any letters of assurance were sent in error, describing the methodology and information considered, before setting out findings as to errors and weaknesses in the operation of the administrative scheme.
- 7.2** In the time available, the Review has done its best to ensure that the figures are accurate. However, I must repeat the reservation expressed in Chapter 1 that I cannot guarantee 100% accuracy. The Review has had access to a significant volume of documentation, as noted in Chapter 1. The administrative scheme ran for over a decade; it involved multiple departments and organisations, with a large number of individuals (many of whom changed over the years), and a great number of suspected offences were considered. It is inevitable, in these circumstances, that the Review may not have seen every relevant document. That said, I am grateful in particular to the Northern Ireland Office (NIO) and the Police Service of Northern Ireland (PSNI) for their efforts to obtain material to assist the Review’s analysis, conduct in-depth searches of records and respond to numerous queries.
- 7.3** An anonymised database of OTR documentation, which has been compiled by the Review, forms the basis of the analysis below and is included as Appendix 5.

Breakdown of ‘on the runs’ put forward for consideration

- 7.4** In the course of the administrative scheme, the names of some 228 individuals were submitted for consideration.¹
- 7.5** As described earlier in this Report, the vast majority of the OTR names were submitted by Sinn Féin to the NIO. However, names were also submitted by the Northern Ireland Prison Service and by the Irish Government, and to the PSNI directly by PJ McGrory & Co, the solicitors acting for Sinn Féin. Table 7.1 breaks down the number of OTR names put forward and by whom.

Table 7.1: OTR names

Submitted by	Number of names
Sinn Féin (Sinn Féin Lists 1 and 2)	184
PJ McGrory & Co, acting for Sinn Féin, directly to the PSNI (Sinn Féin List 3)	35
Northern Ireland Prison Service	14
Irish Government	4
TOTAL	237
Duplicate names	(9)
TOTAL (excluding duplicates)	228

¹In total, 237 names were put forward but 9 of these were duplicates

‘On the runs’ by grouping

7.6 After examination of these 228 OTR cases, it is clear that there were a number of different ways in which the names submitted for consideration were dealt with. The Review has attempted to explain these by grouping them as set out below. The intention is to reflect the different circumstances of the individuals considered; how different types of case were disposed of (partly dependent on when names were submitted and what information was on record about the particular OTRs); and how the outcomes were communicated. The eight groups – which have been identified and defined by the Review – are summarised in Table 7.2 and a brief explanation of each is provided below.

Group one

7.7 Group one consists of OTRs who were sent individual letters of assurance informing them that they were ‘not wanted’.

7.8 Between 2000 and 2012, 156 OTRs were sent individual letters of assurance, via Sinn Féin, informing them that they were ‘not wanted’. The first two OTRs were sent individual letters signed by Jonathan Powell (then the Prime Minister’s Chief of Staff) in June 2000 (see paragraph 4.26) and the remaining 154 were sent individual letters from officials at the NIO. Of these 154, two were sent letters of assurance in 2009, only to receive duplicate letters of assurance (again from NIO) shortly afterwards (see paragraph 5.67). All individual letters of assurance were accompanied by a covering letter to Sinn Féin, which confirmed the “position” of the relevant OTR. On occasions this referred to the letter of assurance as confirming the “legal position” of the individual concerned.

Group two

7.9 Group two consists of OTRs granted the Royal Prerogative of Mercy (RPM) who were subsequently described in composite letters (only) by the NIO as ‘not wanted’.

7.10 The 13 OTRs who were granted the RPM between 2000 and 2002 surrendered voluntarily following liaison between Sinn Féin, the NIO and the Northern Ireland Prison Service. The RPM was granted to them in order to remit their sentences, where their particular sentences did not fall within the scope of the Early Release Scheme as a result of an ‘anomaly’.² Of the 13 who were granted the RPM, 5 had – in addition to the offences in respect of which the RPM was granted – been convicted of and sentenced for offences in relation to which they were, in fact, eligible for early release. These five were released on licence in relation to those offences only.

7.11 As far as I am aware, the RPM was not used as a pre-conviction pardon for any of the 228 names provided. After the above mentioned 13 OTRs had been granted the RPM, Sinn Féin was subsequently informed by the NIO, in the form of composite letters (which contained a list of names rather than referring to one individual only), that the individuals were ‘not wanted’. However, none of those 13 OTRs was sent an individual letter of assurance by the NIO.

² An example of such an anomaly would be where an offence was not a ‘qualifying offence’ under the Northern Ireland (Sentences) Act 1998, because it was not a ‘scheduled offence’ within the meaning of the Northern Ireland (Emergency Provisions) Acts

Group three

- 7.12** Group three consists of OTRs released on licence who were subsequently described in composite letters (only) by the NIO as 'not wanted'.
- 7.13** Nine OTRs surrendered voluntarily (in similar circumstances to the 13 OTRs in group two) and were released on licence. In their circumstances, the RPM was not required or used to correct any anomalies. They too were subsequently informed in composite letters from the NIO that they were 'not wanted'. None of these nine was sent an individual letter of assurance by the NIO. This group represents only those OTRs who had been released on licence, as opposed to those OTRs who were granted the RPM, or those who were both granted the RPM and released on licence.

Group four

- 7.14** Group four consists of OTRs described in composite letters (only) by the NIO to Sinn Féin as 'not wanted'.
- 7.15** Five OTRs fall into this category, which includes anyone for whom the NIO cannot currently find an individual letter of assurance; who did not receive the RPM; who was not released on licence, but whose 'not wanted' status **was** communicated by the NIO to Sinn Féin in a composite letter.

Group five

- 7.16** Group five consists of OTRs described in writing by the PSNI to PJ McGrory & Co as 'not wanted' by the PSNI, but who were not sent an individual letter of assurance by the NIO.
- 7.17** Two OTRs were described in writing by the PSNI to PJ McGrory & Co as 'not wanted' by the PSNI. They did not receive an individual letter of assurance from the NIO. This took place at a late stage in the life of the administrative scheme and after direct contact had been established between the PSNI and PJ McGrory & Co. The terms of the letters sent by the PSNI regarding these two OTRs were not identical, in that one stated:

X is not currently wanted by the Police Service of Northern Ireland. It remains the case however, as in all cases, that if new evidence or intelligence of appropriate quality becomes available the circumstances could be reviewed.

while the other stated:

X is not currently wanted by the Police Service of Northern Ireland for prosecution or interview. It remains the case however, as in all cases, that if new evidence or intelligence of appropriate quality becomes available the circumstances could be reviewed.

- 7.18** Notably, the terms of both of these letters were different from the letters of assurance sent by the NIO. No mention was made in the PSNI's letters of any checks having been made with other police forces. It is not clear to me precisely how the situation arose whereby the PSNI was contacting Sinn Féin's solicitors directly to inform them of the status of individuals. It may be that the PSNI was merely seeking to inform Sinn Féin of the position, while still intending that the normal channel of communication from the NIO to Sinn Féin would be kept open.

What is clear, however, is that no letter of assurance or composite letter was ever sent by the NIO to Sinn Féin in relation to either of these two individuals.

Group six

- 7.19** Group six consists of OTRs released on licence with no subsequent written notification from the NIO of their status.
- 7.20** Two OTRs fall into this group, which represents those who returned to Northern Ireland and were released on licence, but who were neither listed in any composite letters sent by the NIO to Sinn Féin, nor received any individual letters of assurance. These two OTRs were never informed of their status – either ‘wanted’ or ‘not wanted’ – by the NIO or the PSNI via Sinn Féin.

Group seven

- 7.21** Group seven consists of OTRs described in writing by the NIO to Sinn Féin as ‘wanted’ or ‘wanted for return to prison’, and for whom there was no subsequent written notification from the NIO to Sinn Féin as to whether they were no longer ‘wanted’ or ‘wanted for return to prison’.
- 7.22** The NIO wrote to Sinn Féin in relation to a total of 23 individuals who were deemed to be ‘wanted’ or ‘wanted for return to prison’, and in relation to whom the NIO did not subsequently confirm any change in status to ‘not wanted’. It is important to note that far more than 23 individuals were informed that they were ‘wanted’ during the course of the administrative scheme, only for their status to change to ‘not wanted’ and for letters of assurance to be sent by the NIO. However, for these 23 no change in status has been communicated.

Group eight

- 7.23** Group eight consists of OTRs who were only described in writing by the NIO to Sinn Féin as ‘under review’, or who it appears never had their status described in writing by the NIO or the PSNI to Sinn Féin.
- 7.24** Eighteen OTRs fall into the eighth category of those whose status at present is not clear – either because the only communication in writing from the NIO to Sinn Féin was to the effect that they were ‘under review’ or because Sinn Féin has never had any confirmation of their status either way (‘wanted’ or ‘not wanted’).

Table 7.2: Summary of the eight OTR groups

	Description	Number of OTRs
Group one	OTRs sent an individual letter of assurance by the NIO/ Downing Street via Sinn Féin	156
Group two	OTRs granted the RPM who were subsequently described in composite letters (only) by the NIO as 'not wanted'	13
Group three	OTRs released on licence who were subsequently described in composite letters (only) as 'not wanted'	9
Group four	OTRs described in composite letters (only) by the NIO to Sinn Féin as 'not wanted'	5
Group five	OTRs described in writing by the PSNI to PJ McGrory & Co as 'not wanted' by the PSNI, but who were not sent an individual letter of assurance by the NIO	2
Group six	OTRs released on licence with no subsequent written notification from the NIO of their status	2
Group seven	OTRs described in writing by the NIO to Sinn Féin as 'wanted' or 'wanted for return to prison', and for whom there was no subsequent written notification from the NIO to Sinn Féin as to whether they were no longer 'wanted' or 'wanted for return to prison'	23
Group eight	OTRs who were only described in writing by the NIO to Sinn Féin as 'under review', or who it appears never had their status described in writing by the NIO or the PSNI to Sinn Féin	18
	TOTAL	228

Changes from 'wanted' to 'not wanted'

7.25 As might be expected given the spike in the number of letters of assurance sent between February 2007 and November 2008, a greater proportion of the changes in status (as determined by the PSNI) from 'wanted' to 'not wanted', which were then followed by letters of assurance from the NIO, took place in that period than in any other. This is illustrated in Table 7.3, which sets out the number of letters of assurance that were sent to OTRs who had previously been described as 'wanted'.

Table 7.3: Change of status of OTRs

Period	Number of letters of assurance	Of which, number sent to those previously described as 'wanted'
1 January 2000 to 31 January 2007	58	3
1 February 2007 to 31 October 2008	62	36
1 November 2008 to 21 December 2012 ³	36	16
TOTAL	156	55

7.26 It is worth noting that between 1 January 2000 and 31 January 2007, 52 OTRs were described in writing by the NIO to Sinn Féin as 'wanted'. During that time the status of just 3 of those 52 changed to 'not wanted' (leaving 49 OTRs as still 'wanted'), with letters of assurance being sent from the NIO to Sinn Féin. In contrast, during the initial phase of Operation Rapid (1 February 2007 to 20 October 2008), individual letters of assurance were sent to 36 of the remaining 49 OTRs. This illustrates the comparatively high number of OTRs whose status changed from 'wanted' to 'not wanted' during that period.

Interrogation of PSNI files and databases to uncover errors

7.27 My terms of reference require me to identify whether there were any errors in addition to the error described as "catastrophic" in the case of John Downey. It is also important that I form a view on the scope for error in the OTR administrative scheme more generally.

7.28 In order to assist me in carrying out these assessments, I commissioned two senior investigators, recently retired from the Independent Police Complaints Commission (IPCC), to examine the relevant PSNI databases in Belfast. I was further assisted by checks undertaken by the Metropolitan Police Service (MPS). In addition, the Review team carried out investigations on the basis of the full range of the material which was disclosed to the Review by government departments and prosecuting authorities. As a result, I have been able to identify two further instances where I believe errors have arisen (addressed in detail at paragraphs 7.41–7.53). I have also been alerted to the considerable scope for error within the administrative scheme.

A note on PSNI databases

7.29 The following sections will make frequent reference to the databases used by the PSNI, which include the Police National Computer (PNC). The PNC, which has been in operation since 1974, is a national database designed to record the criminal convictions, 'wanted' circulations (both for arrest and 'locate/trace' for intelligence purposes) and other relevant information relating to individuals. It is a database used by all police forces in the UK. It is not, however, the primary database for the PSNI.

³The date of the last letter of assurance in the scheme

7.30 In the last 20 years the Royal Ulster Constabulary (RUC) and the PSNI have used various intelligence and criminal records systems. Table 7.4 offers an overview of the relevant systems used.

Table 7.4: Databases used by the PSNI

Years of operation	RUC/PSNI system
1980s–1999	Crime Information Recording System (CIRS) – used for recording criminal convictions, alerts and warnings PACIFIC – used for storing intelligence
1999–2006	Integrated Criminal Information System (ICIS) – used for recording intelligence, criminal records, alerts and warnings. ICIS was a bespoke, internally built system. Data previously recorded on CIRS and PACIFIC was transferred to this system
2007–July 2014	NICHE – purchased as a replacement for ICIS; used to record intelligence, criminal records, alerts and warnings NB: ICIS was switched off in 2010 following full transfer of data to NICHE

7.31 ICIS had, and NICHE has, the ability to display information from the PNC. With ICIS this was via the selection of the PNC link or through completion of a PNC ‘ID field’. Throughout the period of the OTR administrative scheme, the PSNI worked on the assumption that an individual’s status anywhere in the UK could be determined through a check of PNC systems.

Investigators in Belfast

7.32 I commissioned the investigators in Belfast to carry out the following tasks:

- Interrogate PSNI databases, the PNC and any other system used to record and verify status for those known as ‘on the runs’.
- Ascertain whether any letters contained inaccurate information in respect of both current and historic records of relevance.
- Follow up errors or any irregularities resulting from interrogation of the database.
- Provide analysis of database checks to assist the Review in reporting its findings.
- Outline and assess PSNI processes, practices and professional standards relating to the administrative scheme between 2000 and 2012.

Information considered and methodology

7.33 For the purposes of carrying out their tasks, the investigators had access to two computers which allowed them to view historical information on ICIS and current information on NICHE. They were also able to undertake checks on the PNC via NICHE and ICIS, and on a stand-alone PNC terminal.

7.34 They were also given access to the PSNI’s hard copy OTR case review files for all 228 OTRs. It should be noted that these OTR case review files differed greatly in their content. Some files contained no more than an OTR’s assessment forms completed by members of the OTR

review team at the PSNI. Some contained correspondence to and from senior PSNI officers and the Public Prosecution Service (PPS). Some contained copies of witness statements dating back to the early 1970s. However, the OTR case review files were not intended to contain the full range of evidence (such as all witness statements and exhibits) and all the intelligence available. Notably, it was apparent that a number of the OTR files related to persons who were not previously known to the police.

7.35 The investigators carried out an ICIS and NICHE check simultaneously – with cross-reference to the PNC – and noted any irregularities and shortcomings. They also carried out a detailed review of the information contained in the hard copy OTR case review files.

Metropolitan Police Service assistance

7.36 In addition to the work undertaken by my team, I have been assisted by a complementary first phase of analysis undertaken by the MPS. This investigation sought to identify whether any other recipients of letters of assurance are in fact currently wanted by police forces in England and Wales. To establish this, the MPS interrogated a wide range of relevant databases and computer systems, including:

- the PNC (to which the MPS has higher access rights than the PSNI);
- SO15's⁴ outstanding warrants register;
- the National Ports Database;
- the National Special Branch Intelligence System.

7.37 The MPS is undertaking a second and more detailed phase of analysis using further records and databases. This examination will not be complete within the period of this Review, but will doubtless be of assistance to the PSNI and the NIO in resolving any remaining irregularities.

7.38 Where appropriate, I have alerted the PSNI and the MPS to apparent errors identified in the course of this Review, in order to ensure that I have described these errors accurately and to allow for their correction at the earliest opportunity.

Results of analysis

7.39 From the work undertaken by the investigators, the examination of official material disclosed to my team and the complementary analysis undertaken by the MPS, I am able to set out below details of the two letters of assurance that I believe were sent as a result of error. I am also able to set out other limitations, failures and weaknesses which I believe created a risk of error.

Letters of assurance sent as a result of errors

7.40 An important part of my terms of reference was to ascertain whether, in addition to the letter sent to Mr Downey, any other letters of assurance were sent in error. The Review has identified, in the course of its work, two further individuals who appear to have received

⁴ The MPS has various specialist units or branches. Each is known as a Specialist Operation (SO). Until 2006 the MPS had two counter-terrorism units: SO12 Special Branch and SO13 Anti-Terrorist Branch. In 2006 a single unified command, SO15 Counter Terrorism Command (CTC), was established

letters of assurance as a result of errors. It appears that these letters should not have been sent, or at least should not have been sent in the terms they were.

Error 1

- 7.41** The first potential error relates to confusion over an OTR's date of birth. Initially this error appeared to have resulted solely from Sinn Féin submitting a date of birth which was likely to be incorrect. However, closer examination reveals a further possible error on the part of the NIO, which may have compounded any original error.
- 7.42** In the early days of the administrative scheme, Sinn Féin submitted the name of an OTR with a date of birth (DD/MM/YYYY). It is likely, although not certain, that this date of birth was incorrect (for reasons that will become apparent). The NIO forwarded the name of the OTR to the PSNI, but with a different date of birth. The PSNI undertook its assessments on the basis of the OTR name together with the date of birth submitted by the NIO, not the date of birth originally submitted by Sinn Féin. The day and month were identical, but the year was different.
- 7.43** The mistake appears to have gone unnoticed. The way in which the databases were interrogated and the limitations on database checks meant that possible matches with individuals who shared the same name but had different dates of birth were not flagged. The checks were negative and a letter of assurance was duly sent by the NIO to Sinn Féin, for onward transmission to the individual.
- 7.44** The covering letter to Gerry Kelly MLA noted the date of birth as that originally submitted by Sinn Féin, not the date which was in fact used by the prosecuting authorities in their assessments. The letter of assurance itself did not contain any reference to a date of birth (letters of assurance never did).
- 7.45** During a reconciliation exercise some years later, NIO officials observed the discrepancy in the date of birth. They requested the advice of the PSNI. At this point the PSNI undertook checks against both dates of birth, which resulted in 'no match'. However, the PSNI alerted the NIO to an individual who may have been a match. This individual had the same name and year of birth (but a different day and month of birth) as that originally submitted by Sinn Féin, was suspected of having committed terrorism offences, and was 'wanted'. The PSNI suggested that the NIO seek clarification from Sinn Féin. I have seen no evidence that clarification was sought, despite indications that:
- an error may have been made in sending a letter of assurance where no assessment had taken place against the date of birth originally provided by Sinn Féin;
 - the PSNI had advised that an individual with the same name and year of birth as that provided by Sinn Féin was known to them and was suspected of terrorism offences.
- 7.46** The PSNI is aware of the circumstances of this case, in which an OTR appears to have been sent a letter of assurance despite being circulated as 'wanted'.

Error 2

- 7.47** The second potential error relates to an offence committed after the Belfast Agreement. My understanding is that the administrative scheme was predicated on the basis that the Agreement had created potential anomalies. It does not appear to have been envisaged that

offences committed after 10 April 1998 would be considered by the RUC or the PSNI when reviewing the status of individuals.

7.48 This was not explicitly outlined within the Operation Rapid terms of reference, but when Assistant Chief Constable (ACC) Peter Sheridan sent those terms of reference to Hilary Jackson of the NIO on 15 February 2007, he made it clear that the purpose of Operation Rapid was to identify those individuals who were ‘wanted’ by the PSNI in connection with terrorism-related offences committed before 10 April 1998. Problematically, nearly all of the letters of assurance from the NIO to Sinn Féin (and most of the covering letters) did not refer to specific offences, or limit the assurance so that it applied only to alleged offences committed in the period prior to 10 April 1998. As has already been made clear, the PSNI was not aware of the ‘normal text’ terms of the letters of assurance until December 2011.

7.49 This second potential error took place during the first phase of Operation Rapid. The Operation Rapid team reviewed an individual linked to two terrorism offences in the 1970s, as well as serious offences in 2003. In 2007, Acting Detective Chief Inspector (ADCI) Neal Graham’s Operation Rapid report to Detective Chief Superintendent (DCS) Norman Baxter stated:

I am satisfied there is presently insufficient grounds to have Subject circulated for the above [1970s] offences. It should be noted that Subject is also highlighted as Wanted for the offence of [XXXX] and [XXXX] on [XX.XX.]2003 between [XXXX] and [XXXX].

7.50 The second Operation Rapid report from DCS Baxter to ACC Sheridan made a somewhat ambiguous reference to the 2003 offence, before then going on to state that “there is no basis in my professional opinion to seek [this individual’s] arrest currently for any offence prior to the signing of the Good Friday Agreement”. Subsequently, a letter signed by ACC Sheridan was sent to the PPS. This letter did not contain the caveat in relation to the Agreement and simply stated: “Enquiries indicate that XXXX is not currently wanted by PSNI.”

7.51 As a result, Sinn Féin was sent a letter of assurance by the NIO for onward transmission in the usual manner. This included the following statement: “on the basis of the information currently available, there is no outstanding direction for 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.”

7.52 In my view, a letter of assurance without a time limitation should not have been sent by the NIO in this case. However, having failed to identify the potential for error arising out of the discrepancy between the PSNI terms of reference and the letters of assurance being sent, the NIO were not to know about the 2003 offence. It would not be appropriate for me to comment any further in this Review as to the ambit of this letter of assurance, as it could be a matter for others to consider in the future.

7.53 I should also note that this case highlights another shortcoming in the operation of the scheme. When a decision was taken that an individual was ‘not wanted’ by the PSNI for any offence committed before the Agreement, then ‘wanted’ warnings were routinely removed from ICIS or NICHE. In this case the ‘wanted’ warning for the 2003 offence was removed in 2007 – the same point at which the warning relating to the offences in the 1970s was removed. Allowing for the possibility that this might be coincidental, I should make it clear that the PSNI is aware of the circumstances of this case.

Other errors and general flaws

- 7.54** In addition, I have come across a number of instances of mistakes being made that fortunately had no adverse consequences. For example, letters sent by the PSNI to the PPS in 2008 stated that two individuals were ‘not wanted’ when in fact there were ‘live files’ with the PPS. One of these individuals was a high-profile OTR. The error was spotted by one of the Operation Rapid review team and by the PPS. I am sure that it would also have been noticed by the Attorney General’s Office (AGO) or the NIO, given the identity of one of the individuals, but it was none the less an error (more details of this are set out at paragraph 6.71). If the high-profile individual had not been one of the two names, then it is conceivable that a letter of assurance could have been sent to the other individual when it should not have been.
- 7.55** There is one other case, in the early days of the OTR administrative scheme, in which a letter of assurance was sent on the basis that checks had been made with external forces, but where we have been able to find no record of those checks having been undertaken at the time. After the letter of assurance was sent, external checks were made which revealed that the individual in question was ‘not wanted’ and had not been wanted at the time the letter was sent. There were therefore no adverse consequences. It is surprising that there was no record of whether or not the external checks were made at the time of the original police review. This case drew attention to an inadequate audit trail of communications between those involved in implementing the administrative scheme. This lack of audit trail is symptomatic of the absence of a coherent, overall strategy for the scheme’s operation (requiring retention of all relevant communications).

Broad assurances offered without details of previous caveats

- 7.56** As described elsewhere in this Review, the NIO sent Sinn Féin not only individual letters of assurance for onward transmission to OTRs, but also composite letters containing long lists of individuals and their current status. This was an understandable development given the large number of names and discrepancies and the commendable efforts at reconciliation that took place. Two significant composite letters were sent, on 26 September 2005 and on 30 April 2008. The majority of OTR names put forward for consideration under the administrative scheme appeared in at least one of these composite letters. The OTRs were listed either with the outcome of a new decision on their status, or confirmation of a decision made earlier in the scheme. If it was a confirmation, the list simply noted the individual’s name, the date of the decision and their status. If an individual letter of assurance had been sent or an RPM granted or an individual had been released on licence, the note beside the name would read either “free to return” or “not wanted for arrest or questioning”.
- 7.57** The composite letters did not include any of the caveats that some of the individual letters of assurance had contained – for example, that an assurance of ‘not wanted’ status related only to a specific alleged offence, or that if further evidence or intelligence was obtained, the person’s status would be reviewed.

7.58 An extract from the first composite letter (redacted) is included below by way of illustration.

		Free to Return (28.11.01)
		Wanted (13.02.03)
		Free to Return (29.03.01)
		Free to Return (24.12.00)
		Free to Return (No prosecution required)
		Checks Continuing Wanted

7.59 Where a letter of assurance had previously been sent, it does not seem to me that this necessarily presented a problem. However, where no individual letter of assurance was sent (because, for instance, the RPM had been used), the position might be different. It is not appropriate for me to comment on the ramifications of letters that were not addressed specifically to individuals – but, bearing in mind the judgment in *R v John Downey*, the NIO may wish to consider the legal consequences (if any) of the two composite letters, given the broad assurances that relevant individuals were “free to return” or “not wanted for arrest or questioning”.

Failure to inform and liaise with the Metropolitan Police Service

7.60 It is clear that until the arrest of Mr Downey there was no knowledge of the end-to-end administrative scheme in the MPS, either at a strategic or operational level. In the course of this Review, I contacted all of those who had held the office of MPS Commissioner over the past 14 years and queried whether they were aware of the scheme. All have confirmed that they were not. If they were not informed, it can be inferred that other police forces were not either. Essentially, apart from a small number of enquiries made at an operational level by the PSNI (none of which made reference to the purpose of the checks), the MPS was not aware of the existence of the scheme.

7.61 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.

7.62 The arrest of Mr Downey is an example of a failure in police liaison. Had the MPS been aware of the administrative scheme, its tactics might have been different. As it was, the MPS arrested Mr Downey in ignorance of the letter of assurance. They charged him, believing that the letter of assurance would not prevent a prosecution. The families of the victims were forced to confront the prospect of a trial, only for the prosecution to fail before the evidence was tested. The impact upon them was serious and the waste of time and resources considerable.

Database limitations and weaknesses

7.63 I now set out what I believe are further areas of concern in relation to database systems used in the operation of the OTR administrative scheme.

Limitations on examination of the PNC

7.64 In order to establish whether an individual had received a letter of assurance despite being wanted for an offence within the UK but outside Northern Ireland, the investigators carried out PNC checks on the status of OTRs on the date they were sent their letter of assurance, and also as at 23 April 2014. While it was possible to check the latter, it quickly became apparent that there was limited facility to check the former. Specifically, it was not possible to view data on the PNC, as it would have appeared at the time, further back than a period of 12 months.

7.65 The investigators queried this with a PNC senior business analyst in the Home Office, which runs and maintains the system. The reply on 16 April 2014 was as follows:

The PNC manual states:

The PNC maintains a Message Log of all the incoming and outgoing messages for Data Protection purposes. This log is held for a maximum of fifteen months, before being overwritten. Provided that sufficient information is given to identify the relevant section of the log, full details of specific transaction (i.e. all input and output screens) can be extracted and sent to forces electronically.

This means that if a particular update or enquiry transaction can be located in the Message Log, a record of everything the user saw and did at the time can be recreated ... This functionality is only supported for 15 months into the past, so we are currently able to search back to the beginning of 2013.

7.66 One of the difficulties that the investigators encountered is that it is impossible to ascertain what precisely would have been stored on the PNC about an individual on any given day going back more than approximately 12–15 months. The PNC system does not retain a ‘snapshot’ of the information for more than this length of time. This meant the Review could not ‘see’ what was on the system going back in time to the date a letter of assurance was sent. Given the age of some of the OTR investigations, this could also have hampered the PSNI’s enquiries. It is worth noting, however, that the MPS has the facility to reconstruct retrospective ‘snapshots’ of its PNC system going back eight years.

7.67 I have explored this with a PNC systems expert employed by the MPS. He has confirmed the points set out above and has highlighted other important information about the operation of the PNC. I readily concede that there may be good operational reasons for some of the features that cause me concern. I raise them simply to identify the scope for error in relation to the OTR administrative scheme.

‘Weeding out’

- 7.68** For example, there is an automatically generated expiry date for each entry of a ‘wanted’ circulation on the system. For a very limited number of offences – such as murder and genocide – there is no expiry date. For all other offences, it is three years. This can be overridden when an entry is made, but that requires active amendment and is not always done. I would have expected ‘wanted’ circulations in relation to terrorism offences to have a longer, if not indefinite, period. That is not the case. Indeed, Mr Downey’s ‘wanted’ circulation in relation to the 1982 Hyde Park bombing was automatically ‘weeded out’ for some months in 1994. In that instance, however, it was spotted and restored. This feature of an automated expiry date must have created a risk, if not an inevitable risk, of error in relation to the OTR administrative scheme.
- 7.69** In addition, the PNC database does not adequately distinguish between categories of offences. A conspiracy to murder is categorised as a ‘miscellaneous offence’ and is therefore automatically ‘weeded out’ after three years, rather than being placed in the same category as murder.

‘Wanted’ status not necessarily entered on the PNC

- 7.70** Undoubtedly for good operational reasons, investigating police officers do not always want to identify a suspect as ‘wanted’ on the PNC system. Often this is to protect the integrity of a current covert operation in a case of great sensitivity. The suspect may simply be identified as ‘locate/trace’. Sometimes they are not flagged at all. However, this may mean that another force or branch will not be able to identify an individual’s precise status. I understand, given the age of the allegations relating to the OTRs, that this practice is unlikely to pose significant problems in relation to the majority of OTR records and checks under the administrative scheme.
- 7.71** It appears that a check of the PNC alone would probably not have been sufficient to check the status of OTRs, even if it was completed properly and to the full extent of PSNI access to the PNC. In relation to OTR cases and alleged terrorism offences, the PSNI would also have needed to make enquiries of SO15 (and their predecessors) and other specialist police branches. However, there does not appear to have been a single point of contact to enable that process to be completed with confidence as part of the OTR administrative scheme.

The weaknesses of the PSNI link to the PNC

- 7.72** Even where the PNC entries for an individual were up to date and accurate, the PSNI review team’s method of accessing the PNC was far from satisfactory during the life of the administrative scheme, and could have led to vital information being missed. The primary means for PSNI officers to access the PNC was via a link on ICIS (and later NICHE). I have made reference in Chapter 6 to the systemic problems with the way that PSNI officers used ICIS to link to the PNC in order to view information. As previously described, this created the risk that someone ‘wanted’ for arrest in England, who was stopped in Northern Ireland, might not be arrested unless a full PNC check had been completed – and I have been told that this would not routinely have taken place. In 2007 Paul McGowan highlighted this very issue in an email to ADCI Graham (see paragraph 6.46).

- 7.73** Awareness of the weaknesses of ICIS extended beyond the PSNI and was recognised much earlier on in the administrative scheme than 2007. On 4 April 2002, Sir Alasdair Fraser QC wrote to the Attorney General relaying a recent conversation with the PSNI. He stated:

While the ICIS computer system available to police provides a starting point, and may flag up that an individual is currently listed as wanted, it is not presently viewed by police as wholly reliable for these purposes.

- 7.74** On 9 April 2002 an AGO official advised the Attorney General:

We know, for instance, that of the ten names you recently passed to the Secretary of State for [Northern Ireland] as being wanted by the police for questioning, six or seven (I forget which) did not appear on an ICIS check but only as a result of regional checks. A letter of comfort, however worded, if it results in the person returning to the UK would be used against the prosecution in an abuse of process argument if the information given was inaccurate and prosecution followed.

Weaknesses in relation to the NICHE database

- 7.75** The investigators gained the impression that the complete workings (and limitations) of NICHE might not be fully understood by all current PSNI officers and staff. For example, the full functionality of the so-called 'flags and filter' system does not appear to be widely appreciated. The system is set by default to show only current warnings and flags, but it is in fact possible to view all warnings, past and current. It is clear that past warnings are likely to be of assistance when reviewing offences from previous decades, as in relation to OTR cases.
- 7.76** Further, while examining both current and historical PSNI databases, the investigators noted a number of instances where information relating to suspects or offences was not correctly recorded on NICHE. The most worrying of these omissions were missing 'wanted' circulations and details of life licences. However, it should be noted that the omissions identified in the course of this Review were relatively few. In the examination of some 228 names, only 3 appeared to have their 'wanted' circulation missing from the NICHE system. However, such omissions, which are likely to have resulted from administrative error, could have had a significant impact. In one example, the fact that an individual (who was in fact 'wanted') was not shown as 'wanted' on NICHE was down to a changeover in databases, from ICIS to NICHE, during which this important detail was not transferred. The error was identified in 2008 but was not rectified until the writing of this Report and at the prompting of the investigators. I should stress that in this instance the individual concerned has always been assessed as 'wanted' and is not in receipt of a letter of assurance.
- 7.77** The ICIS to NICHE changeover was not the only instance of omissions. An exchange of emails that I have seen between PSNI teams illustrates an instance of NICHE not being updated with relevant pieces of information for almost a year. The first email, dated March 2010, informed a PSNI officer of the decision to flag a series of individuals as 'wanted'. An email sent between the same teams in February 2011 stated that the information for one of the individuals had still not been updated on NICHE.
- 7.78** The full details of the omissions observed in the course of this Review have been shared with the PSNI to allow any potential problems to be rectified. The PSNI should consider carefully how best to ensure that the integrity of the information is maintained on its systems, especially in the event of an IT infrastructure change.

Chapter 8: Public knowledge of the administrative scheme

- 8.1** Questions have been asked about the extent to which the administrative scheme for ‘on the runs’ (OTRs) was a matter of public knowledge. The idea of a ‘secret deal’ by which suspected terrorists were given an ‘amnesty’ has caused anger and distress to many, especially victims and the families of victims.
- 8.2** I have considered whether the administrative scheme created an ‘amnesty’ and my assessment is that it did not.¹ In this chapter, I turn to the ‘secrecy’ aspect of this concern.
- 8.3** I deal first with the approach taken to communicating the existence of the scheme by the UK Government and the authorities responsible for its implementation, and by Sinn Féin. For this, the Review has examined government disclosure material, including ministerial briefings, official correspondence, press lines (prepared with the expectation that government might be challenged on OTR policy), responses to Freedom of Information (FOI) requests (subsequently used in press articles and court proceedings) and government officials’ statements submitted to OTR-related court proceedings.
- 8.4** I then deal with the information that was available in the public domain regarding the details of the administrative scheme (distinct from the issue of public knowledge about OTRs in general and the related but separate issues of extraditions and the use of the Royal Prerogative of Mercy (RPM)). For this, the Review has examined open source material, including Parliamentary Questions and debates, media articles, records of the Northern Ireland Policing Board and OTR-related case judgments. A selection of public domain references most pertinent to the administrative scheme is found at Appendix 9.

The general issue of ‘on the runs’

- 8.5** It is important not to conflate the general issue of OTRs with the specific issue of the administrative scheme for OTRs. The fact that the Belfast Agreement of 1998 (also known as the Good Friday Agreement) left the general problem of OTRs unresolved was certainly a matter of public knowledge. It was prominently reported in the national press² and was known to the key players in the Northern Ireland peace process, including the leaders of the Unionist parties. Media coverage dealt with the ‘anomaly’ which allowed prisoners convicted of terrorism offences to be released early, but failed to deal with outstanding warrants for the arrest of various suspects and convicted escapees. Everyone to whom I have spoken acknowledges that fact.
- 8.6** Statements by the UK Government from 2000 reflected its consistent public position that it was committed to resolving this ‘anomaly’ following the Agreement. The clearest statement of this intent was made by both the UK and Irish governments in the Weston Park Agreement³ of 1 August 2001:

... there is an issue to be addressed, with the completion of the early release scheme, about supporters of organisations now on cease-fire against whom there are

¹ See paragraph 4.31

² See *Mail on Sunday*, 30 August 1998, ‘“Amnesty” for IRA fugitives to keep peace’ by Daniel Foggo; *Sunday Times* 13 August 2000, ‘IRA seeks amnesty for fugitives’ by Liam Clarke

³ <http://cain.ulst.ac.uk/events/peace/docs/bi010801.htm>

outstanding prosecutions, and in some cases extradition proceedings, for offences committed before 10 April 1998. Such people would, if convicted, stand to benefit from the early release scheme. The Governments accept that it would be a natural development of the scheme for such prosecutions not to be pursued and will as soon as possible ... take such steps as are necessary in their jurisdictions to resolve this difficulty so that those concerned are no longer pursued.

- 8.7** When the UK Government published its *Proposals in Relation to On the Runs (OTRs)*⁴ alongside the Joint Declaration by the UK and Irish governments on 1 May 2003, it set out its commitment to deal expressly with unconvicted OTRs through the introduction of legislation. This legislation would be conditional on a commitment by Dissident Republican groups to disarm. However, no mention was made of the administrative scheme for OTRs, which was, by this point, under way.
- 8.8** If any doubts remained that OTRs were a live and important issue, the introduction of the Northern Ireland (Offences) Bill in 2005 must have removed them. When the Bill failed and was withdrawn in 2006, it cannot have been assumed that a problem worthy of such controversial draft legislation had just disappeared. Not surprisingly, Members of Parliament, including Lady Hermon MP, Jim Donaldson MP and John ‘Quentin’ Davies MP, repeatedly pressed ministers for answers on how the UK Government now intended to deal with OTRs.

Extradition cases and the use of the Royal Prerogative of Mercy

- 8.9** It is also important to keep separate the issues of extradition cases and the use of the RPM.
- 8.10** The fact that the Secretary of State for Northern Ireland had decided not to apply for the extradition of one category of OTRs was undoubtedly public knowledge. Peter Mandelson declared in September 2000 that he would exercise his discretion not to seek the extradition of fugitives who, if convicted, would be released under the terms of the Northern Ireland (Sentences) Act 1998 or who would only serve short sentences. His announcement attracted considerable attention.
- 8.11** Similarly, the exercise of the RPM in relation to prisoners convicted of terrorism offences was also in the public domain. In the case of OTRs, the RPM – which may be used to grant a free pardon, a conditional pardon or a remission of sentence – was used solely to remit the sentences of convicted offenders who were unable to benefit from the early release provisions of the Northern Ireland (Sentences) Act 1998.⁵ This issue was reported in the press and discussed in Parliament, while the Reverend Ian Paisley appeared to demonstrate his awareness of it in the Northern Ireland Assembly.⁶
- 8.12** The prospect of the RPM being used additionally to address the issue of OTRs who had not yet been convicted was raised in Parliament but not pursued.⁷

⁴ <http://cain.ulst.ac.uk/events/peace/docs/biotrs010503.pdf>

⁵ Examples included where a convicted prisoner had served a part of his sentence abroad, whereas the early release provisions of the Northern Ireland (Sentences) Act 1998 only applied to sentences served in Northern Ireland; or where the relevant offence was not a “qualifying offence” under that Act because when it was committed it was not a “scheduled offence” under the Northern Ireland (Emergency Provisions) Act 1973, 1978, 1991 or 1996

⁶ For example, *Irish Independent* article by Louise McCall on 28 December 2000 and BBC News website on 27 March 2001; HC Deb, 20 March 2003, c895W; HC Deb, 11 March 2002, c705W; NI Assembly Debate (Good Friday Agreement), 7 May 2002

⁷ HC Deb, 20 March 2002, c294

8.13 There is no requirement in law to publish the use of the RPM. By convention, the use of the RPM to grant a free pardon is published in *The Gazette*, but its use in other cases is not. Therefore, the specific instances in which the RPM was used to remit sentences for OTRs and the documents in which its use was recorded were not published. If there is no public record of the use of the RPM, one might have expected some kind of central register. However, there is none. This Review encountered some difficulty in establishing the exact circumstances in which the RPM was used. I am surprised that a better system of record-keeping does not exist.

Approaches to communicating the administrative scheme

Ministers' and government officials' approach

8.14 Throughout the life of the administrative scheme, government officials grappled with the issue of its communication to the public. Politicians and government officials have accepted that details of the scheme were not broadcast and were considered 'sensitive', drawing a clear distinction between 'secret' and 'sensitive'.

8.15 Following the Belfast Agreement, internal departmental correspondence reveals that government officials anticipated that the issue of how to deal with OTRs would become public and that ministers and the Attorney General would need to be ready to explain their approach fully in Parliament. As early as May 2000, government officials considered putting a statement to Parliament to confirm that the UK Government was prepared to take a systematic approach to individuals who had, or felt they had, cause to fear arrest on return to Northern Ireland. Such a statement would include confirmation that cases could be reconsidered by the prosecuting authorities to determine whether individuals were 'wanted' for arrest or prosecution in Northern Ireland, and would confirm that where evidence of a criminal offence existed, the authorities were under a legal duty to investigate and, as appropriate, direct prosecution.

8.16 Sinn Féin consistently called for an announcement on how the issue of OTRs would be resolved. This was met with continued and strong resistance by the Attorney General's Office (AGO) to any public statement that might reasonably give rise to a belief on the part of particular OTRs that they would not be prosecuted should they return to Northern Ireland. The AGO warned of the risk that any subsequent trials might be halted by an abuse of process argument. There was acknowledgement that the public description of OTR policy would not be easy and that legal advice would be required.

8.17 Careful thought went into how to frame answers to Parliamentary Questions, partly because government officials were wary of the dangers of Parliamentary privilege being used in such a way that it might impact on criminal trials. Rightly or wrongly, for example, government officials assumed that a question in November 2001 from Democratic Unionist Party (DUP) MP Jim Donaldson meant that he knew Sinn Féin had submitted a list of people and that he would want their names.

8.18 In 2002, in advance of releasing the actual numbers of OTRs processed for the first time in a written answer to John 'Quentin' Davies MP, the Government anticipated that there would be increased public interest. The policy agreed was to emphasise three things:

- The Government's role was to relay enquiries received from individuals to prosecuting authorities and to relay back the answers.

- There was no improper influence on prosecuting authorities.
- Individuals were being informed of their factual position, not being given any guarantees for the future or an ‘amnesty’.

8.19 The particular issue of informing those who had not been cleared that they were ‘wanted’ (as opposed to ‘not wanted’) caused some concern. In early May 2003, Northern Ireland Office (NIO) records show discussions about this issue. It was noted that: “There is no indication that anyone outside the NIO and Sinn Féin know that we are informing people that they are still wanted. The police would certainly be upset, although they may well suspect as much already.” In correspondence to the AGO, an NIO official observed: “No doubt the police and DPP [Director of Public Prosecutions] would be upset to have their suspicions confirmed that we are telling people that they are not free to return.”

8.20 Nor was there a completely open channel of communication between the UK Government and Sinn Féin. In September 2003 there was discussion between the NIO and the AGO about whether a comprehensive, updated list of OTRs with confirmation of their statuses should be passed to Sinn Féin. This list showed how many OTRs were free to return, how many were not free to return, and how many did not yet have their status determined. There was considered to be a “significant presentational risk” were such a government-produced record to find its way into the public domain. Ultimately, however, the AGO and the Police Service of Northern Ireland (PSNI) were both content for the list to be passed to Sinn Féin.

8.21 In 2004, the NIO released further OTR figures in a written Parliamentary answer to Hugo Swire MP. Officials advised that the answer should err on the side of including more rather than fewer categories of numbers (despite the numerous categories of OTRs involved) “to avoid suggestion that numbers are being obscured”.

8.22 By 2007, the approach was undoubtedly one of openness if pressed, as illustrated by the responses to a number of FOI requests. In response to Chris Thornton (*Belfast Telegraph*), the AGO broke down the numbers of requests from OTRs, related offences, and records of status after checks. Later correspondence to the same journalist from the NIO in 2009 declined to name OTRs but clarified:

On re-reading the reply sent to you in June 2007 it was not explained to you the process by which we receive names. The names are initially given to the police or Northern Ireland Office by Sinn Féin or by a solicitor acting on behalf of the named individuals. It is the police that consider the names first, carrying out any checks they need to do. Only when the PSNI has concluded its consideration of the names are they passed to the Public Prosecution Service. That transfer is likely to be the first time the PPS will have been made aware of names of the individuals. Generally, it is only after the PPS has finished its consideration that the names are passed here for the results of the consideration to be forwarded to the Northern Ireland Office for onward transmission.

... There are now 217 individuals that have fallen to be considered. Of that number, in 163 cases it was concluded that they could return to the jurisdiction without fear of arrest. In respect of 7 individuals it has been confirmed that they risk arrest if they return to the jurisdiction ...

- 8.23** Similarly, full details of the scheme and a breakdown of numbers were set out in a response to an FOI request from Kevin Winters & Co Solicitors in early 2009, which began:

Since 2000 the Northern Ireland Office, the Attorney General's office, the Director of Public Prosecutions (NI) and the PSNI have operated an administrative scheme to try and clarify the status of individuals who are 'on the run'. Where the details of individuals have been provided to the Northern Ireland Office by Sinn Féin, the PSNI and the PPS review their files to determine whether the individual is wanted for questioning, arrest or prosecution ...

- 8.24** The approach was explained in further detail to Kevin Winters & Co Solicitors in a letter in May 2009, and in government officials' statements submitted to court proceedings concerning their client's abuse of process hearing.
- 8.25** More recently, in 2012 the NIO advised the then Secretary of State for Northern Ireland that the issue of reviewing outstanding OTR cases remained a complex one. There were "political sensitivities" involved and public knowledge of these reviews would have the potential to cause difficulties with other (non-Republican) communities in Northern Ireland.

Communication with victims

- 8.26** I have seen a limited amount of correspondence between the UK Government and victims' groups, including a letter from the AGO to the Fermanagh and South Tyrone Terrorist Victims Association in June 2006, which stated that: "In relation to the cases referred to [in Parliament] as having been communicated to the Attorney General, he referred these to the Director of Public Prosecutions for Northern Ireland and the Police. This was to allow the prosecuting authorities, which act independently, to determine whether or not an individual is in fact wanted."
- 8.27** None of the victims' groups or representatives to whom I have spoken during this Review reported being aware of an "administrative scheme", or in particular of the letters of assurance. Some individuals in Northern Ireland spoke of an ongoing awareness of OTRs returning to their communities, and of a suspicion that "something" must have been going on to enable their return.

Communication with the wider Northern Ireland political community

- 8.28** The UK Government did not volunteer information about the administrative scheme in its dealings with other political parties. A number of my interviewees, however, commented that there was enough information in the public domain to alert politicians to the existence of the scheme.
- 8.29** In correspondence and meetings with Ulster Unionist Party leader and First Minister of Northern Ireland David Trimble, the UK Government appears to have maintained its consistent 'official line' on OTRs, namely that they were an anomaly to be resolved.
- 8.30** Later, the UK Prime Minister assured the DUP leader the Reverend Ian Paisley in correspondence in December 2004 that the commitment to legislate on OTRs, which was conditional on steps to disarmament, had been "concluded in 2003" (under Dr Trimble's leadership) and "did not form part of any negotiations in which the DUP participated".

- 8.31** It is clear that the UK Government discussed the generic issue of OTRs with other parties, but specific details of the scheme were not shared. Officials noted in a meeting of 27 February 2003 between the UK Prime Minister and the Alliance Party that in relation to resolving the problem of OTRs, the leader David Ford “could accept resolution of OTRs on the same sort of basis as the early prisoner release scheme” (that is, on a similar basis to that acceptable to Dr Trimble).
- 8.32** While the Social Democratic and Labour Party occasionally asked questions of the UK Government, I cannot find evidence of its having known about the specific nature of the administrative scheme. Alex Attwood, Member of the Legislative Assembly, wrote to the NIO Minister Adam Ingram in 2001, raising a query from the family of an individual who had failed to honour bail conditions in the 1980s and had since lived in the Republic of Ireland. The query was about the procedure to ascertain whether the individual would be rearrested and prosecuted if they returned to the North. Mr Attwood has told this Review that his letter was written without either pre-existing knowledge of the scheme or any other relevant knowledge. Mark Durkan (leader of the Social Democratic and Labour Party) has stated that his party was not aware of the scheme.⁸
- 8.33** In relation to Her Majesty’s Official Opposition, the Conservative Party leader Iain Duncan Smith wrote to Tony Blair in July 2002 for clarification on whether an amnesty scheme was to be introduced for OTRs, expressing the strong view that it should not. The Prime Minister’s reply confirmed no more than the UK Government’s ‘official line’ in relation to OTRs.
- 8.34** I have found no evidence, therefore, of political parties in Northern Ireland other than Sinn Féin being informed of the specific issue of the administrative scheme for OTRs.

Police approach

- 8.35** From early in the life of the administrative scheme, the police in Northern Ireland were cautious about publicising their specific role. The risk of misinformation and loose language in press coverage soon became evident. In September 2000, for example, Royal Ulster Constabulary (RUC) Chief Constable Ronnie Flanagan shared confidentially with the Policing Authority for Northern Ireland⁹ the existence of a list of names of OTRs submitted by Sinn Féin for checking their status. An article in the *Irish News Letter* (which the NIO viewed as “deeply unhelpful”) was published, reporting that Mr Flanagan had “admitted” the existence of an “amnesty list” discussed “at a political level”. Mr Flanagan immediately released a statement to confirm that the RUC had not been instructed to “keep its hands off” certain OTRs and was simply helping prosecuting authorities and the NIO to establish the factual position of such cases. The NIO prepared lines to confirm that the Government was considering the position of a number of people outside the UK for clarification of whether they were free to return to Northern Ireland without risk of arrest, and had asked the relevant authorities, including the RUC, for advice on the current state of various cases.
- 8.36** As the police checking process got under way in 2000, officers were conscious that the checks and reviews they were undertaking were highly sensitive. Confidentiality was important, not least in relation to many of the witnesses whom the OTR review team approached to enquire

⁸ Northern Ireland Affairs Select Committee, oral evidence: Administrative scheme for ‘on-the-runs’, HC 177, Wednesday, 4 June 2014

⁹ The oversight body charged with supervising the activities of the RUC, the Northern Ireland Policing Authority was the predecessor of the Policing Board for Northern Ireland, which was established as the oversight body for the PSNI (which succeeded the RUC) on 4 November 2001

if they were still willing and able to give evidence in respect of offences (some of them dating back decades) alleged to have been committed by OTRs.

- 8.37** Later, in 2007 the PSNI terms of reference for Operation Rapid stated that reporting should be treated as confidential “to avoid misinterpretation of the purpose of this review”.
- 8.38** Peter Sheridan, the former Assistant Chief Constable responsible for Operation Rapid, explained to me that by this he meant the names should be kept confidential to avoid the kind of misinterpretation that has come about in light of the Downey judgment, but that his preferred approach would have been one of openness. While he said he briefed the Chair and Vice Chair of the Policing Board in private on necessary details, he deliberately did not give Operation Rapid a higher protective marking (‘secret’ or ‘top secret’).
- 8.39** At a meeting on 30 November 2006, senior PSNI officers discussed their reluctance to publicise details of the scheme and what to do in the event of such details being made public. However, the officers resolved that they were “comfortable” with the prospect of defending the scheme as “normal practice”.

Sinn Féin’s approach

- 8.40** From shortly after the Belfast Agreement, Sinn Féin pressed the UK Government repeatedly for public statements on how the issue of OTRs was to be resolved, even submitting draft text for such a statement to the Government in May 2000 (which was rejected). Far from avoiding publicity (for the general issue of OTRs at least), they appear to have pursued it. Within the thousands of documents we have examined, there is just one reference to Gerry Adams, President of Sinn Féin, suggesting that it would be better if the process that had started to evolve for dealing with OTRs was “invisible”. This is recorded in the minute of a meeting in May 2001, prepared by UK Government officials. Gerry Adams did not approve the minute and does not recall the comment. Otherwise we have found no record of Sinn Féin seeking to prevent knowledge of the scheme becoming public.

Details of the administrative scheme in the public domain

- 8.41** A selection of the most pertinent references to the administrative scheme in the public domain is found at Appendix 9. I now summarise some of the clearer public indications of the existence of the administrative scheme, together with official statements which were less than informative. In considering what information was available to the general public, I should emphasise that it is far easier to put together the “pieces of the jigsaw” (as Nigel Dodds MP described them following the *R v John Downey* ruling)¹⁰ with the considerable benefit of hindsight.

UK Parliament

- 8.42** During the life of the administrative scheme, statements were made on behalf of the Government to the Westminster Parliament that referred specifically to a process which involved the operation of the normal criminal justice system. This process entailed the review

¹⁰ HC Deb, 27 March 2014, c499

of cases by the prosecuting authorities, using the usual two-stage test (sufficient evidence and public interest).¹¹ I give the following examples:

- In July 2002 John Reid (as Secretary of State for Northern Ireland) confirmed that requests were being received in respect of OTRs and passed to the prosecuting authorities and the police, before any OTRs who were no longer ‘wanted’ were informed of that fact.¹²
- In February 2007 Peter Hain (as Secretary of State) referred back to Dr Reid’s July 2002 statement as setting out the process that was used for dealing with OTRs.¹³

8.43 The Northern Ireland Affairs Select Committee came close to hearing an account of the administrative scheme in November 2009. Giving evidence on 11 November in relation to the Omagh bombing, Norman Baxter (formerly the Detective Chief Superintendent in charge of Operation Rapid) began an answer to Lady Hermon MP by saying: “I can assure the Committee that there was an extremely unhealthy interest by officials in the NIO about prioritising individuals who were on the run and about ensuring that they were cleared to return to the North. That was done through ... ”¹⁴ At this point Mr Baxter was interrupted by Lady Hermon, who was interested in another point.

8.44 None of the statements to Parliament made on behalf of the Government identified the unusual circumstances in which the reviews were being undertaken, and certain responses by ministers may have been less than helpful. I give two examples:

- In October 2006 Peter Robinson requested assurance “that no other procedure will be used to allow on-the-run terrorists to return”. The response of Mr Hain was: “There is no other procedure. There is no prospect of an amnesty.”¹⁵
- In March 2007 Lady Hermon MP asked what measures the Government was considering to deal with OTRs other than further legislation or an amnesty. Mr Hain’s written answer was: “None ... the Government continue to accept that the position of ‘on the runs’ is an anomaly, and we believe that the anomaly will need to be addressed at some stage. However, the Government do not have any current proposals for doing so.”¹⁶

8.45 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.

Irish Parliament (Dáil Éireann)

8.46 A succinct description of the administrative scheme, described as “an administrative procedure”, can be found in a statement by Bertie Ahern, the Taoiseach (Irish Prime Minister), who addressed the matter explicitly when asked about a possible amnesty for OTRs in the Dáil Éireann on 20 March 2002:

Mr Quinn: ... Can the Taoiseach indicate, with regard to the proposed amnesty for the ‘on the runs’ ... [if] the amnesty [will] be conditional on their compliance with the rule of law? ...

¹¹ HC Deb, 27 November 2001, c767W

¹² HC Deb, 1 July 2002, c136W to c137W

¹³ HC Deb, 7 February 2007, c961W (Q118396)

¹⁴ Oral evidence to Northern Ireland Affairs Select Committee, 11 November 2009

¹⁵ HC Deb, 11 October 2006, c290

¹⁶ HC Deb, 1 March 2007, c1462W

The Taoiseach: ... The debate is about the amnesty for the OTRs or 'on the runs' as opposed to those who have been exiled over the years and, in some cases, who continue to be exiled ... This issue is difficult for the British Government, as Members will be aware from comments made in the House of Commons and the House of Lords. There are two options for dealing with the OTRs. There is an administrative procedure which the British Government can follow but it is quite lengthy. It involves checking each case through the administrations of justice and policing in Northern Ireland to ascertain the status of the case and whether it can be cleared. The other option is legislation. It is probably likely that the British Government will continue to use the administrative system; I do not anticipate it introducing legislation in the short-term. The Prime Minister, Mr. Blair, reiterated to me in Barcelona on Saturday that it was his intention to honour his commitment, irrespective of which way he chooses to deal with it.

Northern Ireland Policing Board records

8.47 In the wake of the *R v John Downey* judgment, the Northern Ireland Policing Board conducted a review of the information it received on the PSNI's role in the administrative scheme. It appears that the level of briefing to the Policing Board as a whole, and that which was recorded, was minimal. However, in the minutes of a meeting on 1 April 2010, Assistant Chief Constable (ACC) Drew Harris is recorded as describing the role of the PSNI in the administrative scheme in detail, including the fact that the names of the relevant OTRs were submitted to the PSNI by the Irish and UK governments or by political parties. He does not describe the sending of letters of assurance. ACC Harris subsequently wrote to Policing Board member Tom Buchanan, stating that:

... to date 218 names have been considered with each case being evaluated and reviewed, and referred to the PPS if appropriate. Of the names submitted, 173 are not wanted, 8 have been returned to prison and 11 remain wanted. In the year 2007 to 2008, 3 persons were arrested and referred to the Court Service. Of the 23 remaining names, 10 have been referred to the PPS for direction, 11 are going through the HET review and 2 are ongoing live investigations ...

8.48 I have not pursued the question of what may, or may not, have been said by the PSNI in private briefings to the Chair and Vice Chair of the Policing Board. Such briefings, by their nature, would not have been publicised.

Public reports

8.49 A report of Her Majesty's Inspectorate of Constabulary entitled *A Thematic Inspection of Murder Investigations in the Police Service of Northern Ireland* (13 June 2003)¹⁷ makes reference to a PSNI "review team". This report tends to suggest that the Inspectorate knew of the OTR review team and of the fact that problems were already emerging. It refers to "a complex and highly sensitive overlapping issue [that] concerns those people identified as being 'on the run' ... The PSNI continues to wrestle with uncertainty in these areas. In terms of investigating the huge number of outstanding archived murders ... and those persons considered to be on the run, HMIC ... supports the inception of the PSNI Review team in respect of current investigations."

¹⁷ www.nipolicingboard.org.uk/05.03.14_-_review_document.pdf

8.50 The Report of the Consultative Group on the Past,¹⁸ also known as the Eames-Bradley report, was published in January 2009 and included reference to a process of review by the police and prosecuting authorities. Having discussed the provisions of the Northern Ireland (Offences) Bill and the strong criticism it attracted, the Group observes on page 121 under the heading ‘On the runs’ that:

[I]t is difficult to be precise about the exact number of ‘on the run’ cases but [the Group] understands that the circumstances of around 200 individuals have been considered by the PSNI and the PPSNI [Public Prosecution Service for Northern Ireland] in order that their status can be assessed. While the majority of these individuals are not wanted for arrest or prosecution, almost a quarter of the cases are still under review. A number of individuals have been assessed as wanted by the PSNI. Additionally three cases are proceeding through the courts and nine individuals are wanted for return to prison.

Press coverage

8.51 A number of journalists showed a modest appreciation of the existence and nature of the administrative scheme throughout its life but did not refer to the process as ‘the administrative scheme’. Throughout much of the relevant period, media coverage tended to focus on other more critical issues in the peace process, such as the decommissioning of arms. Press coverage in the early years after the Belfast Agreement included the following examples:

- In August 1998 it was reported that the Director of Public Prosecutions for Northern Ireland was reviewing the case of Rita O’Hare, and that “[c]harges against wanted IRA suspects living outside Britain [might] be dropped to further the peace process”.¹⁹
- In August 2000 it was reported that “Sinn Féin and the IRA are drawing up a list of members who are on the run or living away from home for fear of arrest. Adams plans to supply Blair with a list of people who want to return to Northern Ireland and officials will then advise him of which ones are likely to face charges”.²⁰
- In January 2001 it was reported that the RUC was involved in the process.²¹
- In 2002 it was reported that Sinn Féin had drawn up a list of OTRs to be “processed”;²² that there was a process whereby Sinn Féin would submit names of OTRs and the authorities would review cases to assess whether those OTRs could return to the jurisdiction without fear of prosecution;²³ and that OTRs would receive notification of their status from the authorities.²⁴

8.52 Later, in 2007 there was specific coverage of the numbers of OTRs (as outlined above, following an FOI request to the AGO), which broke down the numbers of OTR requests and determination of their status. Of 194 requests, 84 had been cleared to return without fear of arrest.²⁵ Notably, this article was published just weeks after Sinn Féin and the DUP had entered government together.

¹⁸ Report of the Consultative Group on the Past, published 23 January 2009

¹⁹ *Mail on Sunday*, 30 August 1998, ‘“Amnesty” for IRA fugitives to keep peace’ by Daniel Foggo

²⁰ *Sunday Times*, 13 August 2000, ‘IRA seeks amnesty for fugitives’ by Liam Clarke

²¹ *The Observer*, 15 April 2001, ‘IRA’s men on run can return home’ by Henry McDonald

²² *Irish Echo*, 9 January 2002, ‘Fugitive flap’ by Jack Holland

²³ *The Daily Telegraph*, 8 March 2002, ‘Terrorist amnesty appeals are trebled’ by David Sharrock and Thomas Penny

²⁴ BBC NI News website, 13 June 2002, ‘Analysis: Colombia and the IRA’ by Brian Rowan

²⁵ *Belfast Telegraph*, 22 June 2007, ‘More than 100 republicans are still on the run’ by Chris Thornton

8.53 The precise mechanics of the scheme, including the sending of letters of assurance, appear not to have been reported, even if journalists have subsequently rediscovered clues as to their existence.²⁶ The fact of the letters of assurance for those confirmed as ‘not wanted’ only came to light explicitly in the press in September 2010, when it became the subject of commentary during proceedings against Gerry McGeough.²⁷

Observations on publicity and level of knowledge

8.54 The general issue of OTRs following the Belfast Agreement was well known; the specific issue of the administrative scheme far less so. However, in my view, 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.

8.55 The administrative scheme was kept ‘below the radar’ due to its political sensitivity, but it would be wrong to characterise the scheme as ‘secret’. Government statements on how OTRs were being dealt with after the Belfast Agreement range from those which might be characterised as accurate and helpful to those which are less than informative.

8.56 If there was a lack of clarity and openness, responsibility lies with the UK Government. There were numerous opportunities for the Government to clarify details of the scheme, which it was later prepared to disclose in response to FOI requests.

8.57 It is the understandable, but mistaken, idea of a ‘secret deal’ which has contributed greatly to the anger and distress of victims of terrorism in Northern Ireland and elsewhere in the UK, including the families of those who died in the Hyde Park bombing. I am not in a position to judge the political sensitivities at the time and whether public knowledge of the scheme would have affected the Northern Ireland peace process. It is for others to make that political judgement and whether the distress of victims was therefore unavoidable if this aspect of the peace process was to succeed.

²⁶ EamonnMallie.com, ‘Revealed: lost in a scribble and a scrawl’ by Brian Rowan

²⁷ *R v Terence McGeough [2010] NICC 33*; see, for example, BBC website, 9 September 2010

Chapter 9: Legal issues

Lawfulness of the administrative scheme

- 9.1 I understand there may be litigation pending in Northern Ireland on this issue and I must, therefore, choose my words with care. I repeat the warning in the executive summary (Chapter 2) that I am not sitting in a judicial capacity and therefore any opinions on the law I may appear to express are not in any way binding and must be provisional only.

The right to know

- 9.2 The underlying justification for the administrative scheme for some was the ‘right to know’ whether one is ‘wanted’. Mr Norman Baxter (formerly of the Police Service of Northern Ireland (PSNI)) informed the Northern Ireland Affairs Select Committee that he understood that an individual has a right to know whether they are ‘wanted’ (or ‘not wanted’) by the police by virtue of Article 3 of the European Convention on Human Rights (ECHR). Article 3 provides: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 3

- 9.3 Article 3 imposes a negative obligation but is in principle capable, in limited circumstances, of requiring a public body to take positive steps to prevent “torture ... inhuman or degrading treatment or punishment”. There may be circumstances in which a relevant step would be disclosure of information. If the police were to become aware of an immediate risk to an individual’s life, there may therefore be an operational duty to take positive and preventative steps under Article 2 (“the right to life”). This is reflected in the practice of so-called ‘Osman warnings’ to potential victims (named after the decision of the European Court of Human Rights in *Osman v United Kingdom* [2000]29 EHRR 245). By analogy, it might be argued that the police would come under a similar duty if they were aware of an immediate risk of torture or inhuman or degrading treatment (cf. *Z & Others v United Kingdom* [2001]34 EHRR 3).
- 9.4 None of this, however, applies in the present context. None of the cases to which Mr Baxter referred before the Northern Ireland Affairs Select Committee and which we have managed to identify comes close to supporting his proposition: *Assenov and Others v Bulgaria* [1999]28 EHRR 652; *Vezenardoglu v Turkey* [2001]33 EHRR 59; *Corsacov v Moldova* [4 April 2006] App no. 18944/02 relate to another issue entirely. We have not been able to identify the “Greek human rights case” also referred to by him.

Article 8

- 9.5 If Mr Baxter was in fact thinking of Article 8 of the ECHR, it may be a violation of Article 8 for a public body to refuse to provide personal data held by it, in the absence of sufficiently strong countervailing reasons not to do so (see, for example, the cases cited by Lord Mance in *Kennedy v Information Commissioner* [2014]2 WLR 808 at paragraphs 64–66). However, as Lord Reed observed in *Regina (Osborn) v Parole Board* [2013]3 WLR 1020, the starting point must be to consider domestic legislation before considering whether the ECHR rights require an alternative. In the present context, the applicable domestic legislation is the Data Protection Act 1998. Under section 7 of this Act, an individual has a right of access to their personal data held by any data controller (such as the PSNI), subject to any exemptions that

apply. Whether a person is suspected of a crime is likely to amount to personal data within the meaning of the Act. The process of applying for information under section 7 of the Data Protection Act is known as a subject access request.

- 9.6** It is possible that this is what Mr Baxter had in mind when, in response to Question 13 before the Northern Ireland Affairs Select Committee, he said: “My understanding from legal advice is that under Article 3, a citizen is entitled to know if the state wants them for any offence if they request this from the state. Therefore, when a request was made by these individuals, we were led to believe that it was our statutory responsibility to respond in some form.” This would be in line with a view expressed by Chief Constable Matt Baggott to the Northern Ireland Affairs Select Committee.
- 9.7** However, this would not necessarily apply to a scheme whereby a third party sought clearance for an individual. A subject access request is typically made by the data subject for access to personal data. The request would have to come from the individual concerned, or from a third party who the data controller was satisfied had the authority to act for the individual for that purpose. The Data Protection Act does not otherwise provide a mechanism for any person to find out personal data held by third parties.
- 9.8** Further, section 7 does not provide an absolute right to information. It is subject to various exemptions. The most relevant for present purposes are the ones provided in section 29. In summary, personal data processed for the prevention or detection of crime or the apprehension or prosecution of offenders is exempt from section 7 to the extent that policing functions may be prejudiced. There are also national security exemptions under section 28. If the exemptions in the Data Protection Act are properly applied, there is no scope for arguing that there has been an unjustified interference with any rights under Article 8.
- 9.9** Thus, neither Article 3 or Article 8 of the ECHR would provide an unqualified right to know; in many cases a refusal to inform a person that they were ‘wanted’ would be justified under the Data Protection Act.
- 9.10** I have my doubts, therefore, about any general right of the citizen to know whether they are ‘wanted’.

Possible unlawful aspects of the scheme

- 9.11** There are a number of aspects of the scheme which have caused some to doubt its lawfulness:
- the alleged ‘secrecy’ of the scheme;
 - the alleged ‘exclusivity’ of the scheme;
 - the alleged failure of the state to investigate acts of terrorism in accordance with its duty under Article 2;
 - the fact that the scheme involved informing some of the ‘on the runs’ (OTRs) that they were ‘wanted’.

It may be helpful for those who have to consider this issue in the future if I summarise my relevant findings.

‘Secrecy’ and ‘exclusivity’ of the scheme

- 9.12** I have dealt with the extent to which the scheme was within the public domain more fully in Chapter 8. Here I consider solely the legal aspect of any ‘secrecy’ combined with an exclusion

from the scheme of other OTRs who might have been interested in putting their names forward.

- 9.13** If a state official were to develop a policy which was kept highly confidential and deliberately and unfairly excluded whole categories of individuals, the policy would be unlikely to survive a judicial review. However, that is not what happened here.
- 9.14** At worst there was a lack of openness. As I explain in Chapter 8, the scheme was not kept secret as such. Had an interested party kept a close eye on developments in Westminster and in the press, they may well have appreciated that some kind of scheme existed, if not the details.
- 9.15** Most importantly, had a body other than Sinn Féin (and the Irish Government and the Northern Ireland Prison Service) put forward a name, there was no policy to exclude any particular group of individuals. Everyone to whom I have spoken insists that any names from the Unionist community would have been considered. The way in which the Northern Ireland Office (NIO) responded to the Social Democratic and Labour Party enquiry from Alex Attwood MLA (Member of the Legislative Assembly) in 2001 on behalf of an individual who had jumped bail suggests that this is true. There were no express or implied criteria in the scheme to exclude any particular category of individual.
- 9.16** Further, no one has been able to provide me with the name of an individual whom the Unionist community would have wished to put forward had they known more and who has been excluded from the operation of the scheme. A number of my interviewees commented that any Unionist seeking to escape arrest would not go on the run to the Republic (which is where it was thought most of the OTRs were). They would most likely run to another part of the UK.

Alleged failure to investigate

- 9.17** Article 2 of the ECHR enshrines what is sometimes described as the “right to life”. Article 2 imposes upon the state a number of duties, of which I now consider the general duty to ensure a proper determination of the cause of death and, if necessary, to hold accountable those responsible.
- 9.18** It has been suggested that by sending letters of assurance to OTRs (who, it is said, are likely to have been involved in murderous acts), the state was in breach of its Article 2 duty. The argument is premised on the belief that there were OTRs who were told they would not be arrested but who should have been arrested on suspicion of murder, that the letters amounted to some kind of amnesty and that investigations into offences stopped when the letters were sent. As I have already remarked, this is not the case. Where a letter was sent to someone against whom it was considered there were grounds for arrest, it was sent in error. The administrative scheme was not part of the investigatory process as such – it was a review of material gathered by the investigation into an offence in respect of specific individuals.
- 9.19** It is right to say that concerns have been expressed about the quality of the checks and the evidential reviews and I do share the concerns about the criteria used by Operation Rapid (2007/08) for arrest. Without conducting an evidential review of every individual myself (which is inappropriate and impossible in the timeframe), I cannot form a conclusion as to whether the concerns regarding the evidential reviews are justified. In any event, a carefully considered decision that there is sufficient evidence to justify an arrest is very much a judgement call upon which views may legitimately differ. It would be unlikely to amount to a breach of Article 2.

9.20 In those circumstances, I would be surprised to learn that the scheme contributed to a failure by the state to ensure that deaths were properly investigated. It should be remembered that this was a review of the state of the evidence against individuals at one point in time. The files on offences, including unsolved terrorist attacks, were never closed. Investigations on individuals and offences continued and are continuing. It was, for example, a Historical Enquiries Team investigation which led to a query about the ‘wanted’ status of John Downey.

Whether it was unlawful to inform people that they were ‘wanted’ by another police force

9.21 Mr Baxter and others have questioned whether it would have been unlawful for him as a member of the PSNI to pass on information that a person was ‘wanted’ by another police force.

9.22 It appears from the context of his answers to the Northern Ireland Affairs Select Committee that he was considering ‘unlawfulness’ in the context of passing on information to a suspect who might then take steps to avoid arrest. He did not suggest that it would be unlawful in that it is contrary to any statutory prohibition such as the Official Secrets Act 1989.

9.23 To my mind, there are two obstacles to his argument – factual and legal. First, many of the ‘suspects’ in this case (the OTRs) were already outside the jurisdiction. They had no intention of returning unless they were cleared to do so. There was therefore no question of their taking steps to avoid arrest other than by refusing to return. Second, it is generally accepted that police officers throughout the UK have a wide discretion as to how they perform their functions, including in relation to whether suspected offences should be investigated or brought to prosecution. They also have discretion regarding when and how to disclose information in support of their statutory functions.¹

9.24 It would not be unlawful to disclose information which would result in an offender avoiding justice if the disclosure was rational and bona fide and carried out in support of their duties. Nor would it be unlawful for one police officer acting honestly and in good faith to tell another police officer, the Director of Public Prosecutions (DPP) or the Attorney General that someone is ‘wanted’.

9.25 Thus, it would not have been unlawful for Detective Chief Superintendent Baxter, as he then was, to inform Assistant Chief Constable (ACC) Peter Sheridan that John Downey was ‘wanted’ or for ACC Sheridan to pass that information on to the DPP and/or the Attorney General.

9.26 Further, it would not be unlawful, as a general rule, for the police to inform a government department or the media that someone is ‘wanted’ or to alert a suspect that they are ‘wanted’. If it were otherwise, the police would never be able to circulate the details of a dangerous criminal on the loose or to arrange with a suspect to attend a police station for interview by appointment.

Perverting the course of justice

9.27 To inform a suspect they were ‘wanted’ would be a criminal offence only in very particular circumstances. The most obvious possibility is the offence of perverting the course of public justice.

¹ *R v Commissioner of Police of the Metropolis Ex p. Blackburn (No.1)* [1968]2 QB 118; *R v Chief Constable of North Wales Ex p. AB* [1999] QB 396

- 9.28** The offence was authoritatively defined in *R v Vreones [1891] 1 QB 360*. It is committed where a person or persons (a) acts or embarks upon a course of conduct, (b) which has a tendency to, and (c) is intended to pervert, (d) the course of public justice.
- 9.29** Any act or course of conduct tending and intended to interfere with the course of justice is conduct capable of amounting to an offence. In particular, assisting a person to evade lawful arrest, with the knowledge that the other is ‘wanted’ by the police as a suspect, is therefore capable of amounting to an offence.²
- 9.30** It is sufficient either that a defendant intends to pervert the course of justice or intends to do something which, if achieved, would pervert the course of justice.³ There is no requirement that the act tending to pervert the course of justice must be of a dishonest, corrupt or threatening nature so that a laudable motive in itself may not suffice as a defence. However, where a discretion is exercised by an officer it is relevant to consider whether it has been exercised either perversely or in the absence of good faith.
- 9.31** In the context of the administrative scheme, the argument advanced by some is that sending a letter to a person who might otherwise return to the jurisdiction, advising them that if they return they would be arrested, knowing or believing that the suspect would then decide not to return, could result in criminal liability. I do not accept that.
- 9.32** There are a number of factors that in my view militate against it:
- The circumstances in which the discretion was exercised were unique. A court is unlikely to find that disclosure of information pursuant to a policy considered at the highest level in the police force and elsewhere would have been a perverse exercise of a discretion.
 - It is not suggested that the disclosure was done in bad faith.
 - The principal aim of the scheme was not to tell people they were ‘wanted’ but to tell them they were ‘not wanted’. This, it was said, would be beneficial to the peace process and the maintenance of law and order in the long run.
 - Those who were to be told they were ‘wanted’ were outside the jurisdiction in any event and had been for many years. There is no reason to suppose they intended to return unless assured it was safe to do so.

Assisting an offender

- 9.33** Similarly, I doubt that any prosecution could have been brought for assisting an offender under section 4(1) of the Criminal Law Act 1967:

(1) Where a person has committed an arrestable offence, any other person who, knowing or believing him to be guilty of the offence or of some other relevant offence, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence.

In the circumstances of this case, there would have been a reasonable excuse and lawful authority for acting in this way and it would be difficult to prove an “intent to impede arrest or prosecution” on the part of anyone involved in the scheme.

² *R v Thomas and Ferguson [1979] 68 Cr App R 275, CA*

³ *R v Lalani [1999] 1 Cr App R 481*

Misconduct in public office

9.34 Finally, I consider the offence of misconduct in public office only to dismiss it. The offence is committed by a public officer, acting as such, who wilfully neglects to perform and/or wilfully misconducts himself to such a degree as to amount to an abuse of the public's trust in the office holder, without reasonable excuse or justification.⁴ On the facts of this case, DCS Baxter, if he was acting within the agreed scope of Operation Rapid, would not have been guilty of the criminal offence of misconduct and would have had reasonable justification.

9.35 In *R v Chief Constable of North Wales ex parte AB, supra*, one of the causes of action against the police was for the tort of misfeasance. At page 413, Lord Bingham MR dealt with this as follows:

It is unnecessary to list the other ingredients of this tort, since it cannot be suggested that in the present case the [police] acted with a deliberate and dishonest intention to abuse their powers and with an intention to injure the applicants or with knowledge that they had no power to disclose information to the site owner. All the evidence shows that they acted in a bona fide belief that disclosure was necessary, to the extent made, in the public interest.

These observations apply equally to the present facts and would preclude a charge of misconduct in public office.

Whether the scheme was otherwise unlawful

9.36 One factor consistently referred to by Mr Baxter in his evidence to the Northern Ireland Affairs Select Committee⁵ is the fact that the information concerned an individual being 'wanted' "in another jurisdiction"⁶ and by another force. It is correct that the information came from an external force, here the Metropolitan Police Service, and it is readily understandable why a PSNI officer would be instinctively reluctant to pass on such information, without at the very least checking with the external force that it was safe and appropriate to release it. Information may be sensitive and its release might be damaging to sensitive sources or methods deployed by the originating force; or its release might disrupt an ongoing operation.

9.37 There is a working rule that governs the sharing of information or intelligence which is known in other contexts as the 'control principle' and which prohibits disclosure of third party information without the consent of the originator of the information. The control principle is not, however, a principle of law.⁷ Any rational decision-maker thinking of sharing information that a suspect was 'wanted' by another force would have to consider the impact of making disclosure without the express consent of the other force. But it would not necessarily follow that it would be unlawful for them to do so.

9.38 Whether it was a wise course of action for the PSNI to be given responsibility for disseminating information originating from, and affecting, other police forces is a matter for others to determine, but in principle there was nothing necessarily unlawful about it.

⁴ *Att-Gen's Reference (No.3 of 2003)* [2004]2 Cr App R 23

⁵ See for example answers to Questions 18, 19 and 88, available at: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/northern_ireland_affairs_committee/administrative_scheme_for_ontheruns/oral/8333.html

⁶ Northern Ireland is part of the UK and not 'another jurisdiction' as such

⁷ *R (on the application of Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* [2011] QB 218 per Lord Judge CJ at paragraph 44

Northern Ireland Office

9.39 The NIO is a department of state whose officials support the Secretary of State for Northern Ireland. Like the officers of the PSNI, officials of the NIO have power to disclose information subject to any statutory restrictions (for example, under the Official Secrets Acts). The discretion to disclose would have to be exercised rationally in support of a function of the NIO. The analysis above relating to police officers would therefore apply.

Informing people they are ‘not wanted’

9.40 There were undoubtedly exceptional features to the scheme:

- A prosecutorial review of an individual’s case was conducted at the request of a political party in the absence of the individual.
- The scheme was operated 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 given publicity. There was in consequence an enhanced reliance upon internal checks being correctly done and correctly notified.

9.41 However, as far as the police and the prosecuting authorities were concerned, there was nothing unlawful in their responding to requests from a government department to check if someone was ‘wanted’. This was an unusual course of action but these were unusual circumstances.

9.42 It is important to note what they were being asked to do; namely, what the scheme was and what it was not. I repeat: it was not an amnesty. There was no intention to drop prosecutions of alleged terrorists who had yet to stand trial where the tests for prosecution were met. The intention was to conduct a review of the evidence and a check of the databases so as to assess whether, in accordance with the *Code for Prosecutors*, any individual was ‘wanted for questioning/prosecution’. If not, they could be informed that they were ‘not wanted’.

9.43 I can find no examples of a case where an individual against whom it was thought there was a good case to bring was told he was free to return, other than in error. The Attorney General and the DPP were scrupulous in observing the principles of prosecutorial independence. If ever they so much as suspected a glimmer of attempted political interference with that process, it was seen off robustly.

Ruling in *R v John Downey*

9.44 Had the letters stood alone as simple statements of fact, there may have been no legal consequences to them. They did not confer immunity and did not amount to an amnesty. However, they did not stand alone – they came within the context of peace negotiations and assurances being given to Sinn Féin. They emanated from the state. The actions of state officials may acquire a consequence in law from their context. Whether they do or not will depend on all the circumstances. In John Downey’s case, the bare fact that he received a letter was not at the heart of the judge’s ruling.

9.45 It is the cumulative effect of the following factors which Mr Justice Sweeney considered significant:

- The scheme developed in the context of peace negotiations.

- Assurances were given to Sinn Féin by the Prime Minister.
- The state assured Mr Downey that, as at the date of the letter, he was free to return to the UK without fear of arrest.
- The assurance was given in error.
- The error was recognised but the assurance was not retracted.
- In the meantime, Mr Downey relied upon the assurances of the state “to his detriment”.

9.46 Given those factors, it is highly unlikely that the judge would have come to a different conclusion had the prosecution chosen to call former officers such as Mr Peter Sheridan and Mr Norman Baxter before him. They would have confirmed to him that the errors had occurred and had not been rectified.

9.47 Some may question the point of the letters if they were simply statements of fact accurate as at the date of the letter but meaningless should fresh evidence come to light. For Sinn Féin and the recipients they did have a meaning. They say the letters enabled people to return home to their families safe in the knowledge that – for the time being at least – they were not going to be arrested. Some of those on the list were not even known to the police. Some could and did contribute significantly to the peace process. It is because a number of OTRs have returned to Northern Ireland and re-established their family life there, that Sinn Féin is anxious for the scheme to continue.

9.48 Thus, 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.

9.49 It would be improper and outside my remit to comment on the decision not to appeal Mr Justice Sweeney’s ruling but it would have been possible in law to try to do so.

Withdrawal of letters

9.50 Surprisingly, little or no attention was apparently paid to the legal consequences of not withdrawing letters where it was appreciated an error had been made or the position had changed. An abuse of process argument would be highly likely if the recipient was arrested.

9.51 In Mr Downey’s case, the PSNI knew in 2008 that he was ‘wanted’ for an alleged offence. They knew he had been assured that he was ‘not wanted’. They understood that they might be accused of “abuse of process or bad faith” yet still they did nothing. There was no system in place to ensure that they reported the error (or change of circumstances). No attempt was made to inform Mr Downey that he was now ‘wanted’.

9.52 In normal circumstances a police officer might be understandably reluctant to alert someone to the fact that they were now ‘wanted’. However, these were not normal circumstances and this was a significant factor in Mr Justice Sweeney’s reasoning. The failure to put the record straight contributed to his finding of an abuse of the process of the court.

The exercise of the Royal Prerogative of Mercy

- 9.53** The Royal Prerogative of Mercy (RPM) is a discretionary power of the Crown to grant clemency or pardons. Pardons may take one of three forms: a free pardon, a conditional pardon or, more commonly, a remission of sentence. None of the OTRs was granted a free pardon. Rather, they were released from having to serve some or all of the remainder of their sentence.
- 9.54** A decision to recommend the exercise of the RPM is, in principle, subject to judicial review. In practice, the challenge is usually to a refusal to recommend the RPM rather than to a positive recommendation. Once the RPM has been exercised, an individual is pardoned or released. Officials are not aware of any precedent for revocation or rescission of the exercise of the RPM.

Devolution

- 9.55** The Northern Ireland Act 1998 provided for devolution. Schedule 2 sets out “excepted matters”, responsibility for which can only be transferred to Northern Ireland by primary legislation in Westminster. These include national security, provisions for dealing with terrorism and international relations. Schedule 3 sets out “reserved matters”, responsibility for which can be transferred subject to certain conditions. These include criminal law, the maintenance of public order, powers of arrest and prosecutions.
- 9.56** From April 2010 the Department of Justice in Northern Ireland was made responsible for most routine criminal justice and policing matters in Northern Ireland.
- 9.57** The scope for a difference in opinion as to whether the administrative scheme should have been devolved to the Northern Ireland Executive in April 2010 is obvious. Was the scheme a provision for dealing with terrorism and covered by Schedule 2 or was it a matter of routine policing and therefore devolved? This is an issue which might also be the subject of litigation and again I must choose my words with care.
- 9.58** Officials in the NIO, acting on legal advice, have taken the clear view that the scheme has not been devolved. Nick Perry was a senior official at the NIO but moved to the Department of Justice to become Director General of Criminal Justice and Policing on devolution. He explained to the Northern Ireland Assembly Justice Committee on 25 March 2014 that the administrative scheme was considered ahead of devolution of criminal justice and policing and the view was taken that the administrative scheme was a provision for dealing with terrorism. 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.
- 9.59** The contrary argument is as follows: the seeds of the administrative scheme may have originated in No. 10 Downing Street and have related very much to security issues but in operation it was part of the criminal justice process. For the most part, it involved the work of the PSNI and the Public Prosecution Service for Northern Ireland. It involved them performing their normal tasks of reviewing the evidence and coming to a decision about arrest or prosecution. The vast majority of individuals were cleared for return and were presumably not the subject of intelligence to suggest that they were a current security threat. The scheme was not, therefore, a provision for dealing with terrorism. In any event as part

of the normal criminal justice process, the cases of each of the individuals on the list who received a letter are being re-examined and the decision on whether or not to prosecute will most probably remain in Northern Ireland.

9.60 The current Attorney General for England and Wales and Advocate General for Northern Ireland seems to favour this line of argument. In 2012 he withdrew from the scheme, having expressed his concerns about any further involvement of his office in the scheme post-devolution.

9.61 It is unfortunate that either on devolution in 2010 or when the Attorney General withdrew in 2012 someone did not use the opportunity to take control of the scheme and conduct a thorough review.

Post-devolution lack of clarity

9.62 Several of my interviewees have expressed surprise that the First Minister and the Minister responsible for Justice in Northern Ireland were not informed officially of the scheme. They both assured me they knew nothing of the scheme (officially or unofficially) prior to the Downey ruling. I confess I share their surprise that the Minister for Justice, at the very least, was not informed. The scheme, whether or not it was devolved, impacts upon his responsibilities directly. There are others who may have a similar claim to be kept informed, for example the Northern Ireland Policing Board.

9.63 I have detected no sinister motive in the failure to notify the Minister for Justice, the First Minister and the Policing Board of the scheme. The hope seems to have been that the scheme could be brought quietly to a close without generating the kind of controversy we have seen in recent months. Whether that was a wise policy is for others to decide.

The future

9.64 Given the room for doubt, the lack of those wishing to assume responsibility for the scheme and the fact that it originated in the NIO and No. 10 Downing Street, the most sensible course might be for all parties to agree that the scheme has not been devolved. If that were to happen, it would mean that the Secretary of State for Northern Ireland could act more swiftly to resolve the question of what should happen next. Someone has to decide what to do about the letters already sent and the cases still under review. Here, too, views are polarised. Sinn Féin insists the letters should not be rescinded. Recipients of letters have re-established their homes and family life in Northern Ireland and it would cause enormous distress and anger if they felt they had to leave the UK for fear of arrest on alleged offences committed decades ago. On the other hand, some victims insist that if there is any suspicion that a recipient of a letter has been involved in terrorism, they should not have the benefit of any assurance. They want the letters rescinded.

Chapter 10: Conclusions

General conclusions

- 10.1** Before setting out my conclusions I must repeat what I said at paragraph 1.12 of the Introduction: I have conducted an objective assessment of the administrative scheme, but with the considerable benefit of hindsight and without the contemporary pressures that would have faced the politicians, officials and police officers involved. It is in that light that my conclusions (which are mine alone) must be judged.
- 10.2** There has been a great deal of misunderstanding and misreporting of the administrative scheme and a confusion of categories of 'on the runs' (OTRs).
- 10.3** The administrative scheme did not amount to an amnesty for terrorists. Suspected terrorists were not handed a 'get out of jail free card'.
- 10.4** The existence of an administrative scheme was not kept secret but nor were details of the scheme broadcast to a wide audience.
- 10.5** The administrative scheme was flawed.

Conclusions on the evolution of the administrative scheme

- 10.6** Conflict resolution requires many qualities, including courage and diplomacy. It can be extraordinarily complex. A peace agreement is but the first step. Implementation of the agreement is another. The Northern Ireland peace process was no exception.
- 10.7** It is not for me to judge whether the UK Government placed too great an emphasis on Sinn Féin's demands for a resolution of the OTR issue as part of the implementation process. I am neither an expert in peace negotiations nor a politician. I am, however, experienced in testing and analysing evidence and in criminal justice. Having analysed contemporary documents and having spoken to several of the key players, I have no doubt that UK politicians and the Sinn Féin negotiators were genuine in their belief that the issue was central to the implementation of the Belfast Agreement (also known as the Good Friday Agreement). Thereafter, they supported the continued existence of the scheme because, despite dramatic progress in the peace process, they believed it was necessary to keep it on track. Others may dispute whether their fears were justified, but I do not doubt they existed.
- 10.8** Also, it should be noted that it was not intended that the scheme should provide an amnesty. Gerry Kelly and Gerry Adams of Sinn Féin were repeatedly informed that, in the absence of a legislative amnesty, the normal criminal justice process could not be circumvented.
- 10.9** That is not to say that Sinn Féin simply accepted what it considered to be unduly lengthy delays in resolving the problem. It kept the pressure on No. 10 (albeit not arguing for anything unlawful or constitutional), and No. 10 kept the pressure on others, to develop an acceptable scheme to resolve the issue and to make it a speedier process.
- 10.10** There are two aspects of the pressure from ministers that may have caused concern and which I have investigated: namely, representations by Cabinet colleagues to the Attorney

General on the issue of whether to prosecute an individual considered important to the peace process; and pressure upon the Attorney General to find an acceptable and speedy solution to the problem.

- 10.11** Representations made by Cabinet colleagues to the Attorneys General on the issue of OTRs may have come close to the line of what was acceptable in accordance with the ‘Shawcross doctrine’¹ but they did not cross it.
- 10.12** Successive Attorneys General stayed true to the constitutional position (acknowledged repeatedly in writing by their Cabinet colleagues) that whatever the claimed political imperative, the Attorneys General and Directors of Public Prosecutions (DPPs) would continue to act in a quasi-judicial fashion when deciding whether to prosecute or not. On more than one occasion, an individual about whom the Prime Minister or the Secretary of State for Northern Ireland had made representations – that they should not be prosecuted in the interests of peace – was given no such assurance.
- 10.13** Further, I have identified nothing which would amount to improper pressure to resolve the problem generally. Representations from some Cabinet colleagues may have been robust but not overly so, certainly not in any written form. As one of my interviewees put it somewhat obliquely: “they were exposed to the force of the argument”.
- 10.14** In any event, the documents show that, throughout this period, if colleagues pushed in one direction and the Attorney General considered they were wrong, he pushed back. Successive Attorneys General and the Director of Public Prosecutions for Northern Ireland (DPP(NI)) Sir Alasdair Fraser QC would brook no interference with their constitutional position. All reports on the late Sir Alasdair indicate that he was a man of courage and integrity and fiercely independent. I have found nothing to suggest that anyone in government attempted to persuade him or the Attorneys General to compromise that independence. Had such an attempt been made, it would have failed. The Attorney General and the DPP(NI) demonstrated their commitment to the integrity of the criminal justice system in every letter they sent and in the decisions they took.
- 10.15** The documents reveal that some had their concerns about the scheme and expressed reservations about its impact upon the integrity of the criminal justice system and what could be expected from the scheme, but they did not refuse to co-operate. I am confident from the contemporaneous documents I have seen that none of them would have agreed to the scheme if they had considered it improper or unlawful. They believed that – provided the DPP(NI), the Attorney General and the police did their jobs properly, namely by conducting an independent and thorough review of the evidence and databases – the scheme was, in principle, perfectly lawful and proper.
- 10.16** The scheme was unprecedented. It involved receiving names from a political party and a foreign government for consideration, conducting a review of the evidence on the basis that the individual was not present in the jurisdiction and would not be available for questioning, and telling people they either were or were not ‘wanted’.
- 10.17** It is for others to judge whether or not the political imperative justified the introduction of this extraordinary (in the true sense of the word) scheme for extraordinary circumstances.

¹ See Appendix 10

Conclusions on the operation of the administrative scheme

- 10.18** Letters of assurance should not have been sent to any individual if there were reasonable grounds to suspect them of having committed any offence in the UK or if they were 'wanted' for prosecution for any such offence in the UK.
- 10.19** The administrative scheme did not impact upon ongoing investigations into offences. Files on terrorist offences were not closed.
- 10.20** The scheme was not designed; it evolved. As a result, there was no overall policy and no one with overall responsibility/accountability for it.
- 10.21** There was no clearly defined point or points of contact in the various bodies responsible for implementing the scheme and no agreed policy on public statements.
- 10.22** Police Service of Northern Ireland (PSNI) officers drew up their own terms of reference for Operation Rapid. They were considered by both the PSNI's human rights adviser and one of the PSNI's in-house lawyers but they were not aware, through no fault of their own, of the process from first to last. This led to a confusion of roles as far as the PSNI, the Attorney General's Office and the Northern Ireland Office (NIO) were concerned.
- 10.23** It is normal and good practice to make use of external review teams to look at the progress and working practices of a major inquiry. The OTR process lasted for 14 years in different forms and yet at no stage is there evidence of a detailed external review to identify any issues or good practice. Despite the fact that the NIO and the PSNI were aware that errors had occurred, opportunities were missed to put the scheme on a proper footing.
- 10.24** There was no risk assessment. The undertaking of risk assessment is now an integral part of police work. The risk to individuals, to the reputation of the police service and the legal process should be assessed to ensure that potential risks are mitigated.
- 10.25** There were difficulties with the collation and reconciliation of data, at least in part, because of the limited information provided by Sinn Féin. In some cases there was confusion over names and occasionally with dates of birth. The system of record-keeping was not fit for purpose given those difficulties and the importance of the letters of assurance being provided. As a result of these difficulties there were repeated attempts to reconcile the figures over the years, which to a very large extent resolved the difficulties but not entirely.
- 10.26** Insufficient attention was paid to the impact upon investigations into Troubles-related terrorism in the rest of the UK. The scheme was so focused on Northern Ireland that insufficient consideration was given to consulting external police forces, such as the Metropolitan Police Service (MPS) (in its investigatory and specialist anti-terrorist role). The only contact with the MPS appears to have been for the purpose of individual checks. Similarly, the DPP England and Wales played a very limited role, at an operational rather than strategic level.
- 10.27** The PSNI placed too great a reliance on database checks. It failed to acknowledge sufficiently that external forces such as the MPS would not necessarily enter the details of all those who were 'wanted' on the Police National Computer (PNC), and it failed to address recognised weaknesses in its own database system.

- 10.28** There was insufficient liaison between those responsible for drafting the letters and the PSNI. Once the reviewing officers had reported, they played no further part in the process. They were not consulted by the NIO on the terms of any assurance to be given and therefore had no opportunity to check that any assurances fairly reflected their findings. They were not given copies of the letters for their records by the NIO. So far as I am aware, the only notice of the ‘normal text’ of the letter was in December 2011.
- 10.29** After the first two letters of assurance, which were carefully crafted to fit the individual circumstances, insufficient consideration was given to the terms of the individual letters, in particular the ‘caveat’ intended to provide for a change of circumstances. In one version of the letter (the most commonly used), for example, the caveat was in these terms: “If any other outstanding offence or offences came to light or if any request for extradition were to be received, these would have to be dealt with in the usual way.” Yet there is no reference to a specific offence anywhere in the letter. It is not clear to me, therefore, to what “**other** outstanding offence” the letter referred and what was to happen if fresh evidence should come to light. It is arguable (I put it no higher) that this does not sufficiently provide for a change in circumstances.
- 10.30** The way in which composite letters were drafted could have led to confusion. Some OTRs were informed that their status was ‘free to return’ by means of a composite letter to Sinn Féin and without any caveat regarding a change in circumstances. Others were initially subject to a caveat, but were later given assurances in a composite letter that they were ‘free to return’ with no reference to any change of circumstances.
- 10.31** Insufficient consideration was given to the legal consequences of sending the letters of assurance.
- 10.32** Insufficient consideration was given to the consequences of sending out a letter containing an error and there was no agreed policy on what should be done if that became apparent (as it did).

Operation Rapid

- 10.33** The Operation Rapid team in 2007/08 reviewed a large number of cases far more quickly than their predecessors had done. There may be a number of reasons for that, including the fact that many of the cases had already been reviewed.
- 10.34** Thirty-six individuals had their status changed from ‘wanted’ to ‘not wanted’ under Operation Rapid between 2007 and 2008. This may reflect the fact that evidence had disappeared since the last review, judicial concerns about the integrity and continuity of exhibits and/or it may reflect a change in approach to the assessment of evidence and intelligence on the part of the senior officers.
- 10.35** One of the Operation Rapid terms of reference for 2007/08 arguably set too high a threshold for the arrest and questioning of suspects. Although the sub-paragraph in the terms of reference relating to intelligence correctly identified the legal threshold for the arrest of a suspect, other sub-paragraphs emphasised the need to “withstand a legal challenge within a judicial process in Northern Ireland”. This created the risk that too high a threshold might be applied to the consideration of individual cases, including those that were solely based on intelligence. 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.

- 10.36** Throughout the entirety of Operation Rapid the terms of reference were not sufficiently clear as to the roles of the various participants, particularly in respect of whose responsibility it was to check the PNC. If such clarity was not to be contained in the terms of reference, then it should have been set out in guidance documentation to accompany the terms of reference.
- 10.37** When Detective Chief Superintendent (DCS) Williamson took charge of Operation Rapid in October/November 2008, he was concerned that the terms of reference did not provide sufficient guidance on either the correct approach to the assessment of intelligence or the threshold for arrest. He therefore took legal advice and amended the terms of reference so that greater clarity was provided.
- 10.38** There was a failure to liaise with anti-terrorist units and investigating forces in the rest of the UK. There was a failure, for example, to carry out ‘person wanted’ checks routinely with the Garda Síochána² and Interpol.
- 10.39** NIO officials were informed in the summer of 2007 that PNC checks were being carried out by the PSNI. In the absence of a report that an individual was wanted by the MPS, the NIO assumed that checks had proved negative.
- 10.40** The Operation Rapid team in 2007/08 was made aware that it was the NIO that was informing Sinn Féin whether an individual was ‘wanted’ or ‘not wanted’. I have seen no evidence to prove that the Operation Rapid team was aware that notification was given in writing. However, it is highly unlikely that it could reasonably have been thought that Sinn Féin would accept such assurances unless they were in writing.
- 10.41** The approach of the Operation Rapid team during 2007/08 would likely have been different had they known of the terms of the letters sent out.

Conclusions on John Downey’s case

- 10.42** Under the scheme, properly administered, John Downey would **not** have received a letter of assurance.
- 10.43** The PSNI’s letter to the Public Prosecution Service (PPS) on Mr Downey, upon which his letter of assurance was based, failed to disclose the fact that Mr Downey was ‘wanted’ by the MPS. I have been given no satisfactory explanation for this failure by the PSNI. The error was compounded by the fact that the PSNI realised its mistake in 2008 and did nothing to correct it or at least check the nature of the assurance that had been provided to Mr Downey. In December 2011 the PSNI was provided with the ‘normal text’ of the letter of assurance sent by the NIO to Sinn Féin which referred to checks having been made with external police forces.
- 10.44** In the absence of any accompanying guidance document, the Operation Rapid terms of reference did not make clear what material was to be put before the ultimate PSNI decision-maker – namely Assistant Chief Constable (ACC) Peter Sheridan. I cannot now ascertain what material he saw in Mr Downey’s case, but it appears highly unlikely that he was made aware of the fact that Mr Downey was ‘wanted’ for the Hyde Park bombing.
- 10.45** Despite clear references to Mr Downey’s alleged involvement in the Hyde Park bombing, and a recommendation from Acting Detective Chief Inspector (ADCI) Graham to DCS Baxter to

² See Chapter 7

check with the force investigating the bombing before a recommendation was made that he be recorded as 'not wanted', nobody did so.

10.46 The police report in 2007 on Mr Downey to the PPS was accurate in so far as it went (namely, he was not wanted by the PSNI for an offence committed in Northern Ireland) but it came within the context of assurances having been given that checks with external forces had been conducted. In any event, the PSNI could arrest someone 'wanted' by another UK force. Thus, the clear implication of the PSNI report was that Mr Downey was 'not wanted' by any force in the UK.

10.47 To my mind there is no logical explanation for DCS Baxter's failure to inform ACC Sheridan that Mr Downey was 'wanted' by the MPS. There is nothing improper or unlawful about police officers sharing information in these circumstances with other police officers and/or the prosecuting authorities. It is for the prosecuting authorities to decide what to do with that information. Had the information been passed on, Mr Downey would not have received a letter of assurance.

10.48 Even when it was appreciated in July 2008 that Mr Downey was 'wanted', no steps were taken to rectify the error in the PSNI report to the PPS. The PSNI, conscious of the possible ramifications (including the fact that it could be accused of "abuse of process or acting in bad faith"), did nothing to alert the NIO, the PPS or the MPS or at the very least check what assurance had been given to Mr Downey. This was also a further opportunity missed to review the scheme.

10.49 Again in 2011 when the PSNI became aware of the 'normal text' of the letter of assurance, nothing was done to rectify the acknowledged error in Mr Downey's case or review the operation of the scheme, or at the very least check what assurance he had been given.

Conclusions on analysis of Police Service of Northern Ireland practice and databases

10.50 We have identified two other occasions on which it appears that a letter was sent in error:

- A letter of assurance was sent to Sinn Féin based on checks having been conducted on the same name but a different date of birth from that provided by Sinn Féin. After the letter had been sent, the potential error was identified and checks on both dates of birth were conducted. These proved negative. Subsequently, the PSNI identified that there was an individual of the same name but different date of birth from the two already checked who was 'wanted'. No clarification appears to have been sought from Sinn Féin as to the correct date of birth. The letter of assurance was given by Sinn Féin to the individual later identified as 'wanted'.
- A letter of assurance was sent to an individual which stated that he was 'not wanted' for any offence by the PSNI. The letter made no reference to fact that the assurance only related to offences committed before the Belfast Agreement. He was in fact 'wanted' for serious offences committed in 2003.

10.51 The analysis has revealed a number of possible flaws in the scheme, including:

- limitations on the use of the PNC;
- limitations on the understanding among PSNI officers of how the PNC operated;
- limitations on the use of NICHE (which were recognised but not addressed).

Conclusions on the exercise of the Royal Prerogative of Mercy

- 10.52** We believe that 13 of the OTRs on our lists benefited from the Royal Prerogative of Mercy (RPM).
- 10.53** We have identified no cases where the RPM was used as a pre-conviction pardon for an OTR on our lists.
- 10.54** Surprisingly, there seems to be no central register of documents recording the use of the RPM.
- 10.55** 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.

Conclusions on the level of knowledge about the scheme

- 10.56** The administrative scheme was not kept secret or highly confidential. Dozens of police officers, prison officers, government officials and politicians must have known that some kind of scheme was in operation by which individuals received assurances. However, details of the scheme were not given much publicity and important groups such as organisations set up to represent the interests of victims and their families, and individual victims and family members, remained unaware of the existence of the scheme. Even the politically active complain that knowledge of the scheme would have involved considerable work in putting together the pieces of a jigsaw.
- 10.57** We have identified only one reference to a request by Sinn Féin that the scheme be “invisible”. This was not accepted by Gerry Adams and would have run counter to Sinn Féin’s general approach, which was to demand public statements on how the issue of OTRs was to be resolved.
- 10.58** Over the years, there were sufficient references to the overall scheme (for example, from Dr John Reid in July 2002) to put an astute observer on the alert, notwithstanding the replies to the First Minister of Northern Ireland Peter Robinson and Lady Hermon MP by Peter Hain MP.
- 10.59** Various articles in the press appear to demonstrate an understanding of the process albeit not a complete one. Further, the process of the administrative scheme was described in the 2009 report of the Consultative Group on the Past (the Eames-Bradley report).³
- 10.60** There was little appetite to publicise details of the scheme unless pressed. Some Parliamentary answers appear to have taken a narrow view of the question but I have found no evidence of the UK Government actively seeking to obscure the scheme from the public. The UK Government took a minimalist approach to publicising the scheme because of its political sensitivity.
- 10.61** In Parliament, the lack of clarity appears principally to have been attributable to two factors: a reluctance explicitly to acknowledge that the administrative scheme was not part of the

³ http://cain.ulst.ac.uk/victims/docs/consultative_group/cgp_230109_report.pdf

usual daily work of the prosecuting authorities;⁴ and a failure to distinguish clearly between the various different categories of OTRs.

- 10.62** It was clear from press and official statements that convicted OTRs who were ‘wanted’ but were eligible for early release, and convicted OTRs who were ‘wanted’ and would, apart from an anomaly, be eligible for early release, would have benefited indirectly from the Early Release Scheme. It was also clear that, in the so-called anomalous cases, the RPM was used to allow that to happen.
- 10.63** However, the distinction between those who would receive letters of assurance under the administrative scheme because there was no requirement to prosecute and those against whom there was sufficient evidence and a requirement to prosecute and who would, therefore, require a legislative solution was never made clear. There was also some confusion between those who fell within the express scope of the Belfast Agreement and the Northern Ireland (Sentences) Act 1998 and those who did not. This meant that it was often difficult to establish what commitments had been made, what measures were in place, and to which commitment or measure reference was being made. The official line was simply to acknowledge an anomaly and note that consideration was being given as to how it should be addressed.
- 10.64** It was this lack of precision that caused confusion. It may explain the potential for misunderstanding in Mr Hain’s responses of October 2006 and March 2007. The latter in particular must be read in the context of his response of February 2007, which referred to Dr Reid’s relatively full explanation of the administrative scheme in 2002. Where Mr Hain asserts that there was no other procedure, he maintains that he meant there was no procedure for dealing with the cases that required a legislative solution.
- 10.65** The reason offered for the lack of openness is the ‘sensitive’ nature of the scheme and the possible impact upon the peace process. I am not in a position to judge the political sensitivities at the time and whether public knowledge of the scheme would have had a significant effect. In normal circumstances, I would not expect a scheme of this kind to be kept quiet. If operated properly, there was nothing to hide.

Conclusions on legal issues

- 10.66** The administrative scheme was not unlawful in principle.
- 10.67** The administrative scheme did not grant immunity from prosecution.
- 10.68** The Downey ruling is confined to its own facts and is not binding on any other judge.
- 10.69** The issue of whether or not the administrative scheme should have been devolved in 2010 is far from straightforward and I am in no position to attempt to resolve it during a review of this nature. It should be addressed as a matter of urgency.

Postscript

- 10.70** My knowledge of Northern Ireland affairs was relatively limited until I embarked upon this Review. I knew, obviously, of the peace process and the huge strides made by the people of

⁴ See HC Deb, 7 February 2007, c961W (Q118396): “All ‘on the run’ cases continue to be subject to the normal criminal justice process”

Northern Ireland in establishing a stable government, but not a great deal more. I came to the Review, therefore, with a totally open mind.

- 10.71** I soon encountered one of the ‘legacy issues’ of the Troubles which has yet to be finally resolved, namely the lack of trust between some Republicans and some Unionists. That lack of trust contributed to a polarisation of views about the administrative scheme long before I embarked upon this Review and all the facts were known. At one end of the spectrum, the scheme was described as “secret”, “shabby” and “sordid”. At the other end, the scheme was described as entirely lawful and proper and one which served a vital role in the promotion of peace in Northern Ireland. In the middle, one of my correspondents (an independent observer) described the scheme as a “messy compromise”. He observed: “History teaches us that peace settlements are often messy compromises with ambiguity and grey areas as necessary evils on the road to peace.”
- 10.72** However the scheme is characterised, I have found nothing which, to the mind of this independent observer, should be allowed to undermine the peace process in Northern Ireland. One catastrophic mistake has been made and it cannot be undone. The families of those killed in the Hyde Park bombing have no choice but to come to terms with that fact, as devastating as I know it has been for them. Other mistakes have been made and need correcting. But this can be done in a measured and proportionate way. No one should use my findings to make political capital. Those whose lives have been devastated by terrorism deserve better. They have suffered enough.

Chapter 11: Recommendations

11.1 The administrative scheme developed to deal with extraordinary problems arising from an extraordinary period in history. It is inconceivable that the combination of events that brought it about could ever be recreated. Nonetheless, there are lessons for the future and accordingly I make a number of recommendations.

11.2 The Northern Ireland Office, as the current responsible department in relation to the administrative scheme, should:

- clarify with all relevant parties whether it will retain responsibility for determining the future of the scheme;
- confirm whether any element of the scheme still exists and, if so, whether it will continue;
- seek legal advice, in conjunction with the police and prosecuting authorities, to determine whether it should notify any individuals whose status, as communicated to them, has changed or may change in the future;
- consider how to mitigate against further abuse of process arguments, for example by confirming to recipients the factual and contemporaneous nature of their letters of assurance;
- co-ordinate the investigation of the potential errors identified by this Review and, in conjunction with the police and prosecuting authorities, resolve them at the earliest opportunity.

11.3 In addition, I recommend the following:

- The Police Service of Northern Ireland's (PSNI) new (evidential and intelligence) review of all 'on the run' (OTR) cases – which was announced in February 2014 and is expected to last several years – must be subject to precise, well understood terms of reference and proper oversight.
- The PSNI give priority in this new review of OTR cases to the 36 individuals whose status changed under Operation Rapid in 2007/08.
- The PSNI consider reassessing the training requirements of officers in the use of the various (criminal) databases and review the system by which entries to their systems are made and deleted.
- The PSNI re-examine its liaison with other services in the UK on terrorist offences, and ensure there are single points of contact (where these do not exist) for the exchange of information and intelligence.
- Chief police officers throughout the UK consider reviewing protocols between police services for sharing information on individuals flagged as 'wanted'; and, further, ensure that automatic 'weeding' of the Police National Computer database is set at an appropriate level, particularly for the gravest of crimes.
- The UK Government consider establishing a procedure for recording on a central register – where this is appropriate – the use of the Royal Prerogative of Mercy.

Appendix 1: Acronyms

ACC	Assistant Chief Constable
ADCI	Acting Detective Chief Inspector
AG	Attorney General for England and Wales
AGO	Attorney General's Office
CID	Criminal Investigation Department
CIRS	Crime Information Retrieval System
CPS	Crown Prosecution Service
CTC	Counter Terrorism Command (Metropolitan Police Service)
DCI	Detective Chief Inspector
DCS	Detective Chief Superintendent
DI	Detective Inspector
DPP	Director of Public Prosecutions
DPP(NI)	Director of Public Prosecutions for Northern Ireland
DUP	Democratic Unionist Party
ECHR	European Convention on Human Rights
FIB	Force Intelligence Bureau
FOI	Freedom of Information
HET	Historical Enquiries Team (Police Service of Northern Ireland)
ICIS	Integrated Criminal Information System
IPCC	Independent Police Complaints Commission
IRA	Irish Republican Army
MLA	Member of the Legislative Assembly
MP	Member of Parliament
MPS	Metropolitan Police Service
NI	Northern Ireland
NIO	Northern Ireland Office
No. 10	No. 10 Downing Street, the Office of the Prime Minister of the United Kingdom
OTR	'on the run'
PPS	Public Prosecution Service
PNC	Police National Computer
PSNI	Police Service of Northern Ireland
RPM	Royal Prerogative of Mercy
RUC	Royal Ulster Constabulary
SDLP	Social Democratic and Labour Party
SF List	A list of names of OTRs submitted by Sinn Féin
SIO	Senior Investigating Officer
SO15	Special Operations 15 Counter Terrorism Command (Metropolitan Police Service)
SSNI	Secretary of State for Northern Ireland
TD	Teachta Dála

TDS	Temporary Detective Superintendent
UDR	Ulster Defence Regiment
UK	United Kingdom of Great Britain and Northern Ireland
US	United States of America
UUP	Ulster Unionist Party

Appendix 2: Groups and individuals consulted in the writing of this Review

Victims and victims' groups

Kathryn Stone OBE, Victims' Commissioner for Northern Ireland
Members of the Victims and Survivors Forum, Commission for Victims and Survivors
Representatives of WAVE Trauma Centre
Innocent Victims United
William Frazer of FAIR
Relatives of Lieutenant Anthony Daly, Trooper Simon Tipper, Lance Corporal Jeffrey Young and Squadron Quartermaster Corporal Roy Bright

Political

Tony Blair
The Right Honourable Peter Robinson MLA, First Minister of Northern Ireland
Martin McGuinness MLA, Deputy First Minister of Northern Ireland
The Right Honourable the Lord Trimble
Gerry Adams TD, President of Sinn Féin
Gerry Kelly MLA, Sinn Féin
The Right Honourable the Lord Mandelson
The Right Honourable the Lord Reid of Cardowan
The Right Honourable Peter Hain MP
The Right Honourable Shaun Woodward MP
David Ford MLA, Minister of Justice (Northern Ireland)
Ian Paisley MP

Attorneys General and Directors of Public Prosecutions

The Right Honourable the Lord Morris of Aberavon KG QC
The Right Honourable the Lord Goldsmith of Allerton QC
The Right Honourable the Baroness Scotland of Asthal QC
The Right Honourable Dominic Grieve QC MP, Attorney General for England and Wales and Advocate General for Northern Ireland
John Larkin QC, Attorney General for Northern Ireland
Sir David Calvert Smith
The Lord Macdonald of River Glaven QC
Sir Keir Starmer KCB QC
Alison Saunders CB, Director of Public Prosecutions
Barra McGrory QC, Director of Public Prosecutions for Northern Ireland

Commissioners of the Metropolitan Police Service

The Lord Condon of Langton Green QPM
The Lord Stevens of Kirkwhelpington QPM
The Lord Blair of Boughton QPM
Sir Paul Stephenson QPM

Government officials

Attorney General's Office

Kevin McGinty, Director of Criminal Law and Deputy Head of the Attorney General's Office

Northern Ireland Office

Jonathan Phillips
Hilary Jackson
Sir William Jeffrey KCB (Bill)
William Fittall
Robert Hannigan
Mark Sweeney
Nick Perry
Katie Pettifer
Clive Osborne (Home Office Legal Advisors Branch)

No. 10 Downing Street

Jonathan Powell

Public Prosecution Service

William Junkin

Police Service of Northern Ireland

Sir Hugh Orde OBE QPM
Matt Baggott CBE QPM, Chief Constable
Drew Harris OBE, Assistant Chief Constable
Peter Sheridan OBE
Detective Chief Superintendent Hanley
Norman Baxter QPM
Detective Chief Superintendent Williamson
Neal Graham
Detective Inspector Davison

Detective Inspector Corrigan

Detective Inspector Kearney

Jenny Blaney

Paul McGowan

Two further civilian staff officers

Police Ombudsman for Northern Ireland

Paul Murphy, Senior Investigating Officer

Paula Cunningham, Deputy Senior Investigating Officer

Metropolitan Police Service

Members of SO15 allocated to assist the Review

Independent Counsel

Jonathan Hall QC

Appendix 3: Who's who

	PM/No. 10	SSNI	AG	FM(NI)	DFM(NI)	Sinn Féin
1997						
1998	Tony Blair (Labour)	Mo Mowlam	Sir John Morris	David Trimble (UUP)	Seamus Mallon (SDLP)	President of Sinn Féin
1999	2 May 1997 – 27 June 2007	3 May 1997 – 11 October 1999 Peter Mandelson	2 May 1997 – 29 July 1999 Lord Williams	1 July 1998 – 1 July 2001 Reg Empey (UUP) (acting)	1 July 1998 – 6 November 2001	Gerry Adams
2000		11 October 1999 – 24 January 2001	29 July 1999 – 8 June 2001	1 July 2001 – 6 November 2001		1983 – <i>incumbent</i>
2001	Jonathan Powell Chief of Staff	John Reid	Lord Goldsmith	David Trimble (UUP)	Mark Durkan (SDLP)	
2002	2 May 1997 – 27 June 2007	25 January 2001 – 24 October 2002	8 June 2001 – 27 June 2007	6 November 2001 – 14 October 2002	6 November 2001 – 14 October 2002	
2003		Paul Murphy				
2004		24 October 2002 – 6 May 2005		<i>Assembly suspended</i>	<i>Assembly suspended</i>	
2005				15 October 2002 – 8 May 2007	15 October 2002 – 8 May 2007	
2006		Peter Hain				
2007		6 May 2005 – 27 June 2007				Gerry Kelly
2008	Gordon Brown (Labour)	Shaun Woodward	Baroness Scotland	Ian Paisley (DUP)	Martin McGuinness (SF)	NI peace process negotiator MLA since 1998
2009	27 June 2007 – 11 May 2010	28 June 2007 – 11 May 2010		8 May 2007 – 5 June 2008	8 May 2007 – 20 September 2011	(current Police and Justice Spokesperson, Sinn Féin)
2010				Peter Robinson (DUP)	John O'Dowd (SF)	
2011				Arlene Foster (DUP) (acting)	20 September 2011 – 31 October 2011	
2012	David Cameron (Conservative)	Owen Paterson	Dominic Grieve	11 January 2010 – 3 February 2010	Martin McGuinness (SF)	
2013	11 May 2010 – <i>incumbent</i>	12 May 2010 – 4 September 2012	12 May 2010 – <i>incumbent</i>	Peter Robinson (DUP)	31 October 2011 – <i>incumbent</i>	
2014		Theresa Villiers		3 February 2010 – <i>incumbent</i>		

ACC: Assistant Chief Constable

AG: Attorney General for England and Wales

AG(NI): Attorney General for Northern Ireland (Advocate General for Northern Ireland from 2010)

AGO: Attorney General's Office

CC: Chief Constable

DFM(NI): Deputy First Minister of Northern Ireland

Dir Gen/DG: Director General

DPP: Director of Public Prosecutions for Northern Ireland

DUP: Democratic Unionist Party

FM(NI): First Minister of Northern Ireland

MLA:

NIO:

Perm Sec:

PM:

PSNI:

RUC:

SDLP:

SF:

SSNI:

UUP:

Member of Legislative Assembly

Northern Ireland Office

Permanent Secretary

Prime Minister

Police Service of Northern Ireland

Royal Ulster Constabulary

Social Democratic and Labour Party

Sinn Féin

Secretary of State for Northern Ireland

Ulster Unionist Party

	NIO Perm Sec/Dir Gen	NIO DG, Political	NIO officials	AGO	NI Dept. of Justice	DPP	AG(NI)
1997				Kevin McGinty Advisor to AG on all aspects of role as AG for Northern Ireland 1997 – 2010			
1998		Bill Jeffrey 1998 – 2002	David Brooker Head of Rights, Elections and International Division 1999				
1999							
2000							
2001		William Fittall (Associate Political Director)	Anita Bharucha Head of Rights and International Relations Division 2000 – 2004			Sir Alasdair MacLeod Fraser QC 1989 – 2010	
2002							
2003		Jonathan Phillips 2002 – 2005					
2004							
2005	Jonathan Phillips (Perm Sec) 2005 – 2010						
2006		Robert Hannigan 2005 – 2007	Mark Sweeney Head of Rights and International Relations Division May 2004 – November 2007				
2007							
2008		Hilary Jackson 2007 – 2010	Katie Pettifer Head of Security and Extradition Unit, with responsibility for OTRs May 2005 – November 2007	Kevin McGinty Head of Civil Law on the devolution of justice and policing 2010		Jimmy Scholes 2010 – 2011 (acting)	<i>Devolved 2010</i> <i>Position vacant</i> 12 April 2010 – 24 May 2010 John Larkin QC 24 May 2010 – <i>incumbent</i>
2009	Hilary Jackson (Dir Gen) 2010 – 2011						
2010							
2011							
2012					Justice Minister David Ford (Alliance Party) 12 April 2010 – <i>incumbent</i> Permanent Secretary Nick Perry 12 April 2010 – <i>incumbent</i>		
2013	Julian King (Dir Gen) 2011 – 2014			Kevin McGinty Director of Criminal Law and Deputy Head of the Attorney General's Office (AGO) 2011 – <i>incumbent</i>		Barra McGrory QC 2011 – <i>incumbent</i>	
2014							

	PSNI Chief Constable	PSNI Deputy CC	PSNI ACC	PSNI Head of Serious Crime Branch	PSNI Review Team
1997					
1998					
1999	Ronnie Flanagan RUC				
2000	1996 – 2001 PSNI				
2001	2001 – 2002				
2002	Colin Cramphorn (acting) 2002	Paul Leighton 2003 – 2009	Peter Sheridan 2003 – 2006		Neal Graham 2007 – 2009
2003					Paul McGowan 2006 – 2014
2004					
2005	Hugh Orde 2002 – 2009		Drew Harris 2006 – <i>incumbent</i>		Civilian staff officer 2003 – 2009
2006					
2007				Norman Baxter 2007 – 2008	
2008				Detective Chief Superintendent Williamson 2008 – 2010	
2009	Judith Gillespie 2009 (acting)	Judith Gillespie 2009 – 2014		Detective Chief Superintendent Hanley 2010 – <i>incumbent</i>	Civilian staff officer 2003 – 2009
2010					
2011					
2012	Matt Baggott 2009 – 2014				
2013					
2014					

Appendix 4: Chronology

Date	Event
May 1997	The Labour Party wins the UK general election and Tony Blair becomes Prime Minister Jonathan Powell appointed Chief of Staff to Tony Blair Lord Morris of Aberavon QC appointed Attorney General Dr Mo Mowlam appointed Secretary of State for Northern Ireland
20 July 1997	The IRA announces ceasefire
29 January 1998	Prime Minister announces Bloody Sunday Inquiry
10 April 1998	Belfast Agreement (also known as the Good Friday Agreement)
22 May 1998	Referenda on the Belfast Agreement in Northern Ireland and the Republic of Ireland
25 June 1998	Northern Ireland Assembly elections
10 September 1998	Meeting between Gerry Adams (President of Sinn Féin) and David Trimble (Leader of the Ulster Unionist Party and First Minister of Northern Ireland) – the first such meeting for 75 years
29 July 1999	Lord Williams of Mostyn QC replaces Lord Morris QC as Attorney General
11 October 1999	Peter Mandelson appointed Secretary of State for Northern Ireland replacing Dr Mo Mowlam
2 December 1999	Devolution established in Northern Ireland and the Northern Ireland Executive meets for the first time
2000	During the year: (a) 2 individuals receive letters of assurance from Jonathan Powell, the Prime Minister’s Chief of Staff (b) 0 individuals informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”
11 February 2000	Secretary of State for Northern Ireland suspends the Northern Ireland Assembly and Executive
8 March 2000	Letter from Gerry Adams (President of Sinn Féin) to the Prime Minister in relation to ‘on the runs’ stating: “You expressed a view that this would be done by Christmas, or, failing that, by early in the New Year. To date the beginning of March 2000 only one case ... has been dealt with”
5 May 2000	The Prime Minister writes to Gerry Adams, President of Sinn Féin, stating: “You have also questioned whether it would be in the public interest to mount any prosecutions after 28 July for offences alleged to have been committed before the Good Friday Agreement, since by then all remaining eligible prisoners will have been released, and have raised other related issues around the 28 July date. I would be willing to have these matters considered rapidly, with the aim of deciding the way forward before 28 July. Prosecution decisions are of course a matter for the Director of Public Prosecutions and the Attorney General.”

Date	Event
19 May 2000	Sinn Féin provides Jonathan Powell, the Prime Minister's Chief of Staff, with a list of the names of 36 individuals – this became Sinn Féin List 1, 1–36
30 May 2000	The UK Government restores devolution to the Northern Ireland Assembly and Executive
15 June 2000	The first letters of assurance signed by Jonathan Powell (Prime Minister's Chief of Staff) are sent to Sinn Féin
28 July 2000	End of two-year period under the Northern Ireland (Sentences) Act 1998
29 September 2000	Secretary of State for Northern Ireland announces that extradition no longer to be sought in cases where, following surrender, defendants would be eligible for early release under the Northern Ireland (Sentences) Act 1998
16 October 2000	Sinn Féin provides the Northern Ireland Office with a list of the names of 16 individuals: 11 of them had been included in Sinn Féin List 1, 1–36; the 5 new names became Sinn Féin List 1, 37–41
24 December 2000	The Royal Prerogative of Mercy used to remit sentences in respect of 4 individuals whose names had been provided by Sinn Féin on Sinn Féin List 1
2001	During the year: (a) 16 individuals receive letters of assurance from the Northern Ireland Office (b) 0 individuals informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”
15 January 2001	Sir Quentin Thomas' report <i>Clean Sheets</i> produced, setting out various options for how to deal with 'on the runs'
25 January 2001	Dr John Reid appointed Secretary of State for Northern Ireland following the resignation of Peter Mandelson
11 February 2001	The 'Prison List' of the names of 14 individuals provided
8 March 2001	UK and Irish governments meet at Hillsborough Castle and agree that “... In the context of the agreement of May 2000 being implemented, it would be a natural development of the [early release] scheme for such prosecutions not to be pursued and would intend as soon as possible thereafter to take such steps as are necessary in their jurisdictions to resolve this difficulty, so that those concerned are no longer pursued ...”
14 March 2001	Letter from Kevin McGinty to Northern Ireland Office providing suggested wording for letter to be sent to one of the individuals whose name had been provided by Sinn Féin. The letter makes clear that “The Attorney General is content for the letter to be sent, in these terms, by an official from the Northern Ireland Office”
30 March 2001	Sinn Féin provides the Northern Ireland Office with a list of the names of 61 individuals – this became Sinn Féin List 2, 1–61
3 April 2001	A civil servant at the Northern Ireland Office writes to Kevin McGinty attaching suggested wording for a letter of assurance

Date	Event
3 May 2001	The Royal Prerogative of Mercy used to remit sentences in respect of 3 individuals whose names had been provided by Sinn Féin on Sinn Féin List 1
7 June 2001	UK general election
8 June 2001	Lord Goldsmith QC replaces Lord Williams QC as Attorney General
1 August 2001	Weston Park Declaration of the UK and Irish governments: “Both Governments also recognise that there is an issue to be addressed with the completion of the early release scheme, about supporters of organisations now on cease-fire against whom there are outstanding prosecutions, and in some cases extradition proceedings, for offences committed before 10 April 1998. Such people would, if convicted, stand to benefit from the early release scheme. The Governments accept that it would be a natural development of the scheme for such prosecutions not to be pursued and will as soon as possible, and in any event before the end of the year, take such steps as are necessary in their jurisdiction to resolve this difficulty so that those concerned are no longer pursued.”
24 October 2001	Statement to the House of Commons by Dr John Reid, Secretary of State for Northern Ireland: “We and the Irish Government have now accepted that it would be a natural development of that scheme [early release] for outstanding prosecutions and extradition proceedings for offences committed before 10 April 1998 not to be pursued against supporters of organisations now on ceasefire and contributing to the peace process. Both Governments have agreed to take such steps as are necessary to resolve the issue, as soon as possible, and in any event by March 2002.”
2 November 2001	Sinn Féin provides the Northern Ireland Office with a list of 19 additional names – this became Sinn Féin List 2, 62–80 – and also clarifies the personal details of some of the names provided before
4 November 2001	The Royal Ulster Constabulary becomes the Police Service of Northern Ireland
7 November 2001	The Royal Prerogative of Mercy used to remit the sentences of 3 individuals whose names had been provided by Sinn Féin on Sinn Féin List 1
22 November 2001	Sinn Féin provides the Northern Ireland Office with a list of 5 additional names – this became Sinn Féin List 2, 81–85
30 November 2001	Sinn Féin provides the Northern Ireland Office with a list of 4 additional names – this became Sinn Féin List 2, 86–89 – and also corrects the surname of one of the names previously provided
2002	During the year: (a) 17 individuals receive letters of assurance from the Northern Ireland Office (b) 19 individuals informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”

Date	Event
10 January 2002	Sinn Féin provides the Northern Ireland Office with a list of 25 additional names (including John Downey) – this became Sinn Féin List 2, 90–114
4 February 2002	Sinn Féin provides the Northern Ireland Office with a list of 8 additional names – this became Sinn Féin List 2, 115–122
25 April 2002	Sinn Féin provides the Northern Ireland Office with a list of 2 additional names – this became Sinn Féin List 2, 123–124 – and also provides further clarification on 3 other individuals whose names had previously been provided
30 April 2002	Police Service of Northern Ireland prints out various pages of John Downey 's Police National Computer record as part of the review of his status
1 May 2002	Answer by Secretary of State for Northern Ireland to a Parliamentary Question: “At the talks at Weston Park last summer, both the Irish and UK Governments recognised that there is an issue to be addressed, with the completion of the early release scheme, about supporters of organisations now on ceasefire against whom there are outstanding prosecutions, and in some cases extradition proceedings, for offences committed before 10 April 1998. Such people would, if convicted, stand to benefit from the early release scheme. The Governments accept that it would be a natural development of the scheme for such prosecutions not to be pursued. Consideration continues of the best way to discharge this commitment.”
14 May 2002	The Royal Prerogative of Mercy used to remit sentences in respect of 3 individuals whose names had been provided by Sinn Féin; 2 of those names were on Sinn Féin List 1 and 1 on Sinn Féin List 2
14 October 2002	The Northern Ireland Assembly suspended (and remains suspended until 8 May 2007)
24 October 2002	Paul Murphy appointed Secretary of State for Northern Ireland replacing Dr John Reid
2003	During the year: (a) 9 individuals receive letters of assurance from the Northern Ireland Office (b) 23 individuals informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”
1 May 2003	The Joint Declaration by the UK and Irish governments was accompanied by the publication of the UK Government's <i>Proposals in Relation to On the Runs (OTRs)</i>
3 September 2003	Sinn Féin provides the Northern Ireland Office with a list of 3 additional names – this became Sinn Féin List 2, 125–127 – and also requests an up-to-date list of the status of the ‘on the runs’

Date	Event
2004	<p>During the year:</p> <p>(a) 0 individuals receive letters of assurance from the Northern Ireland Office</p> <p>(b) 0 individuals informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”</p>
22 July 2004	The Police Service of Northern Ireland’s OTR review team memo notes that John Downey had been approved for arrest and interview in relation to another matter (namely the Enniskillen bombing), and makes reference to the Hyde Park bombing for which he had been identified by way of fingerprints
14 September 2004	Police Service of Northern Ireland letter to the Director of Public Prosecutions for Northern Ireland stating that John Downey is “currently wanted by PSNI” and sought for arrest and interview in relation to a number of serious terrorist offences
2005	<p>During the year:</p> <p>(a) 4 individuals receive letters of assurance from the Northern Ireland Office (1 of whom had previously been informed that they were ‘wanted’)</p> <p>(b) 17 individuals informed in writing by the Northern Ireland Office via Sinn Féin for the first time that they “would face arrest and questioning if they returned to Northern Ireland” (in the cases of 12 of those individuals it appears that Sinn Féin had already been notified of that fact at a meeting). A further 46 are similarly informed during the year and had been also advised as such at an earlier time by the Northern Ireland Office</p>
5 May 2005	UK general election
6 May 2005	Peter Hain appointed Secretary of State for Northern Ireland replacing Paul Murphy
28 July 2005	The leadership of the IRA formally orders an end to the armed campaign
14 September 2005	The Northern Ireland Office writes to Sinn Féin summarising that at that stage Sinn Féin had provided the names of 165 individuals of which the Northern Ireland Office had confirmed that 69 were free to return (this included some who had received the Royal Prerogative of Mercy and had not received letters of assurance). The letter goes on to provide the names of 4 further individuals who were free to return and 5 who were wanted for questioning. Further details are requested of some of the individuals whose status was still to be determined
22 September 2005	Sinn Féin provides the Northern Ireland Office with 1 additional name – this became Sinn Féin List 2, 128 – and also provides additional details of those previously provided and which had been requested by the Northern Ireland Office on 14 September 2005

Date	Event
3 October 2005	Sinn Féin provides the Northern Ireland Office with a list of 5 additional names – this became Sinn Féin List 2, 129–133 – and also provides further details in relation to a number of individuals
13 October 2005	Secretary of State for Northern Ireland statement to House of Commons reiterating the need to deal with ‘on the runs’
21 October 2005	Sinn Féin provides the Northern Ireland Office with a list of 4 additional names; 1 was a duplicate of a name provided on 3 October 2005 – this became Sinn Féin List 2, 134–136
9 November 2005	The Northern Ireland (Offences) Bill introduced to Parliament
2006	<p>During the year:</p> <p>(a) 8 individuals receive letters of assurance from the Northern Ireland Office (2 of whom had previously been informed that they were ‘wanted’)</p> <p>(b) 5 individuals informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”</p>
11 January 2006	The Northern Ireland (Offences) Bill 2005–06 withdrawn
31 January 2006	Police Service of Northern Ireland writes to the Northern Ireland Office confirming that John Downey is ‘wanted’
7 February 2006	Sinn Féin provides the Northern Ireland Office with a list of 5 additional names; 3 are duplicates of names provided in October 2005 – this became Sinn Féin List 2, 137–138
8 February 2006	The Public Prosecution Service writes to the Attorney General’s Office confirming that John Downey “is currently wanted by the Police Service of Northern Ireland. Enquiries confirm that this person is sought for arrest and interview in relation to a number of serious terrorist offences”
27 February 2006	The Attorney General writes to the Northern Ireland Office stating that John Downey is “wanted for arrest and questioning in respect of serious terrorist offences”
22 March 2006	The Northern Ireland Office writes to Sinn Féin informing them of the status of a number of individuals. One of them was John Downey who was one of three individuals for which it was stated “ would face arrest and questioning if they returned to Northern Ireland”
18 August 2006	Sinn Féin provides the Northern Ireland Office with a list of 5 additional names – this became Sinn Féin List 2, 139–143
11–13 October 2006	The St Andrews negotiations culminate in the St Andrews Agreement
28 December 2006	Letter to Gerry Adams (President of Sinn Féin) from Prime Minister Tony Blair repeating his commitment to resolve all outstanding ‘on the run’ issues following the St Andrews negotiations

Date	Event
2007	<p>During the year:</p> <p>(a) 58 individuals receive letters of assurance from the Northern Ireland Office (35 of whom had previously been informed that they were ‘wanted’)</p> <p>(b) 0 individuals informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”</p>
28 January 2007	At Sinn Féin’s Ard Fheis (annual party conference) an overwhelming majority vote in favour of supporting the devolution of policing and criminal justice in Northern Ireland
6 February 2007	The terms of reference for Operation Rapid dated and signed by Assistant Chief Constable (ACC) Peter Sheridan
7 February 2007	Operation Rapid meeting chaired by Detective Chief Superintendent (DCS) Norman Baxter
15 February 2007	ACC Sheridan sends the terms of reference for Operation Rapid to the Northern Ireland Office; the letter does not refer to the name of the operation
7 March 2007	Northern Ireland Assembly elections
9 March 2007	DCS Baxter’s Operation Rapid Report 1 relating to 8 individuals
26 March 2007	Ian Paisley (Leader of the Democratic Unionist Party) and Gerry Adams (President of Sinn Féin) agree a power-sharing executive for Northern Ireland
13 April 2007	The Metropolitan Police Service confirms to the Operation Rapid review team that John Downey is ‘wanted’ for the Hyde Park bombing , after which the update to the templates for John Downey is completed by the Operation Rapid review team and in due course provided to Acting Detective Chief Inspector (ADCI) Neal Graham
2 May 2007	ADCI Graham conducts his Operation Rapid review on John Downey and concludes in relation to templates 1–5 that the file should be marked as ‘not wanted’ by the Police Service of Northern Ireland . In relation to template 6 for the Hyde Park bombing, his decision was that the subject is ‘not wanted’ by the Police Service of Northern Ireland and that he will request an up-to-date report from the Metropolitan Police Service on the current status of their circulation
7 May 2007	Report from ADCI Graham to DCS Baxter on John Downey with the following recommendation: “1. The Subject is listed as ‘NOT WANTED’ by the PSNI at this time 2. That clarification be sought from Metropolitan Police as to the current position with their circulation of Subject”
8 May 2007	The Northern Ireland Executive sworn in

Date	Event
10 May 2007	DCS Baxter’s Operation Rapid Report 3 to ACC Sheridan. In relation to John Downey it states: “I have reviewed his case and there is no basis in my professional opinion to seek his arrest 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 ...”. There is no reference to John Downey being ‘wanted’ by the Metropolitan Police Service
6 June 2007	Letter from ACC Sheridan to the Public Prosecution Service in relation to John Downey stating: “Enquiries indicate that John Anthony Downey is not currently wanted by the PSNI”
11 June 2007	Meeting at Parliament Buildings, Stormont, between the Police Service of Northern Ireland, Public Prosecution Service and Northern Ireland Office in relation to ‘on the runs’
27 June 2007	<p>Letter from ACC Sheridan to Hilary Jackson of the Northern Ireland Office stating that checks had been conducted on the Integrated Criminal Information System, the Police National Computer and with the Garda Síochána (Ireland’s national police service) – this followed a series of emails between 13 June 2007 and 27 June 2007</p> <p>The Public Prosecution Service writes to the Attorney General’s Office in relation to a number of individuals, one of whom was John Downey. The letter states: “... Enquiries indicate that John Anthony Downey is not currently wanted by the PSNI”</p> <p>Tony Blair steps down as Prime Minister and Lord Goldsmith QC resigns as Attorney General; they are replaced by Gordon Brown and Baroness Scotland of Asthal QC respectively</p>
28 June 2007	Peter Hain is replaced as Secretary of State for Northern Ireland by Shaun Woodward
11 July 2007	The Attorney General’s Office writes to the Northern Ireland Office in relation to a number of individuals, one of whom was John Downey ; the part of the letter that refers to Mr Downey is in the same terms as that of 27 June 2007 from the Public Prosecution Service to the Attorney General’s Office
20 July 2007	<p>Email correspondence between Mark Sweeney at the Northern Ireland Office and the Staff Officer to ACC Sheridan in relation to checks conducted by the Police Service of Northern Ireland</p> <p>Two letters sent to Sinn Féin by the Northern Ireland Office enclosing a total of 35 individual letters of assurance, one of which was for John Downey</p>

Date	Event
2008	<p>During the year:</p> <p>(a) 6 individuals receive letters of assurance from the Northern Ireland Office (2 of them were on the Irish Government List and 1 had previously been informed that they were ‘wanted’)</p> <p>(b) 1 individual informed in writing for the first time by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”; a further 7 individuals are similarly informed during the year and had also been advised as such at an earlier time by the Northern Ireland Office</p>
19 May 2008	PJ McGrory & Co provide the Police Service of Northern Ireland’s legal department with a list of the names of 4 individuals – this became Sinn Féin List 3, 1–4
July 2008	Series of Police Service of Northern Ireland emails relating to John Downey
24 July 2008	PJ McGrory & Co provide the Police Service of Northern Ireland’s legal department with 1 additional name – this became Sinn Féin List 3, 5
7 August 2008	PJ McGrory & Co provide the Police Service of Northern Ireland’s legal department with a list of 12 additional names – this became Sinn Féin List 3, 6–17
October/November 2008	Change in personnel in the Operation Rapid decision-making ranks, with Detective Chief Superintendent Williamson and Detective Chief Inspector Galloway taking over from DCS Baxter and ADCI Graham respectively
25 November 2008	Police Service of Northern Ireland lawyer advises DCS Williamson in writing on the correct approach to using intelligence to form the grounds for arrest
2009	<p>During the year:</p> <p>(a) 21 individuals receive letters of assurance from the Northern Ireland Office (2 of whom receive the same letter on two separate occasions, and 10 others of whom had previously been informed that they were ‘wanted’)</p> <p>(b) 5 individuals informed by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”</p>
5 January 2009	PJ McGrory & Co provide DCS Williamson with a list of 2 additional names – this became Sinn Féin List 3, 18–19
23 January 2009	<p>Report of the Consultative Group on the Past is published</p> <p>PJ McGrory & Co provide Assistant Chief Constable (ACC) Drew Harris with a list of 4 additional names – this became Sinn Féin List 3, 20–23</p>
2 February 2009	PJ McGrory & Co provide ACC Harris with 1 additional name – this became Sinn Féin List 3, 24
22 September 2009	PJ McGrory & Co provide DCS Williamson with 1 additional name – this became Sinn Féin List 3, 25

Date	Event
21 October 2009	Police Service of Northern Ireland provides a report to the Counter Terrorism Command of the Metropolitan Police Service in relation to 17 individuals for whom the Metropolitan Police Service had port circulation warnings, one of whom was John Downey
2010	<p>During the year:</p> <p>(a) 11 individuals receive letters of assurance from the Northern Ireland Office (4 of whom had previously been informed that they were ‘wanted’)</p> <p>(b) 5 individuals informed in writing by the Northern Ireland Office via Sinn Féin for the first time that they “would face arrest and questioning if they returned to Northern Ireland”. A further 29 individuals are similarly informed during the year and had also been advised as such at an earlier time by the Northern Ireland Office. In addition, 4 individuals are informed in writing by the Northern Ireland Office via Sinn Féin for the first time that they were “wanted for return to prison in Northern Ireland” but were “eligible to apply to the Sentence Review Commissioners for early release”. 2 of those 4 individuals had previously been informed that they “would face arrest and questioning if they returned to Northern Ireland”</p>
5 February 2010	Hillsborough Agreement in relation to devolving policing and justice powers to the Northern Ireland Executive
6 May 2010	UK general election after which the Coalition Government is formed
12 May 2010	Owen Paterson replaces Shaun Woodward as Secretary of State for Northern Ireland Dominic Grieve QC replaces Baroness Scotland QC as Attorney General
6 September 2010	PJ McGrory & Co provide ACC Harris with 1 additional name – this became Sinn Féin List 3, 26
2011	<p>During the year:</p> <p>(a) 1 individual receives a letter of assurance from the Northern Ireland Office (the individual had previously been informed that they were ‘wanted’)</p> <p>(b) 1 individual informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”</p>
7 June 2011	PJ McGrory & Co provide Detective Chief Superintendent (DCS) Hanley with 1 additional name – this became Sinn Féin List 3, 27
21 September 2011	PJ McGrory & Co provide DCS Hanley with 1 additional name – this became Sinn Féin List 3, 28
5 December 2011	A civil servant at the Northern Ireland Office emails Paul McGowan of the Operation Rapid team and attaches the ‘normal text’ of the letters sent by the Northern Ireland Office to Sinn Féin

Date	Event
2012	<p>During the year:</p> <p>(a) 3 individuals receive letters of assurance from the Northern Ireland Office (1 of whom had previously been informed that they were ‘wanted’)</p> <p>(b) 0 individuals informed in writing by the Northern Ireland Office via Sinn Féin that they “would face arrest and questioning if they returned to Northern Ireland”</p>
4 June 2012	PJ McGrory & Co provide DCS Hanley with 1 additional name – this became Sinn Féin List 3, 29
31 July 2012	PJ McGrory & Co provide DCS Hanley with 2 additional names – this became Sinn Féin List 3, 30–31
4 September 2012	Theresa Villiers replaces Owen Paterson as Secretary of State for Northern Ireland
20 November 2012	PJ McGrory & Co provide DCS Hanley with 1 additional name – this became Sinn Féin List 3, 32
29 November 2012	PJ McGrory & Co provide DCS Hanley with 1 additional name – this became Sinn Féin List 3, 33
21 December 2012	PJ McGrory & Co provide DCS Hanley with 1 additional name – this became Sinn Féin List 3, 34
2013	
19 May 2013	<p>John Downey arrested at Gatwick Airport</p> <p>PJ McGrory & Co provide DCS Hanley with 1 additional name – this was allocated as Sinn Féin List 3, 35 – but no consideration was given to the individual bearing in mind the arrest of John Downey</p>
2014	
21 February 2014	Judgment of Hon Mr Justice Sweeney in <i>R v Downey</i>
12 March 2014	Lady Justice Hallett appointed to conduct this Review

Appendix 5: Tables of ‘on the run’ lists (redacted)

Introduction

The workings of the administrative scheme are set out in detail in this Review. Ordinarily the cases of the individuals submitted under the scheme were considered by the Police Service of Northern Ireland (PSNI) and the Public Prosecution Service (PPS) for Northern Ireland. Their conclusions were passed to the Attorney General’s Office (AGO) and then to the Northern Ireland Office (NIO). My Review team has searched the materials disclosed to us for key written communications evidencing those conclusions and any subsequent communications of status to Sinn Féin, its lawyers or the individual ‘on the runs’ (OTRs).

Those key written communications can usefully be separated into the following categories:

- a) communications from the PSNI to the PPS;¹
- b) communications from the PPS to the PSNI;²
- c) communications from the PPS to the AGO;³
- d) communications from the AGO to the NIO;⁴
- e) communications from the NIO to Sinn Féin;⁵
- f) communications from the PSNI to PJ McGrory & Co;⁶
- g) (i) a letter of assurance; (ii) a grant of the Royal Prerogative of Mercy (RPM); (iii) a certificate of release on licence under the Northern Ireland (Sentences) Act 1998.

In November 2001 the Royal Ulster Constabulary (RUC) was dissolved and replaced as the police force for Northern Ireland by the PSNI. Prior to the establishment of the PPS under the Justice (Northern Ireland) Act 2002, the RUC and the PSNI would correspond with the Department of the Director of Public Prosecutions for Northern Ireland (DPP(NI)). A reference in this appendix to the PSNI or the PPS includes a reference to the RUC or the DPP(NI) as appropriate.

Some OTR cases related to an offence committed in England and Wales. While there was a power of arrest for such an individual in Northern Ireland, the consideration of whether they were ‘wanted’ or not for that offence was one for the relevant authorities, and the distinction is noted in the tables in this appendix.

¹ The PSNI would conduct its review and submit a report to the PPS

² Where the DPP(NI) had to assess the requirement for prosecution, the PPS would issue a direction setting out his conclusions to the police. The PPS would also typically update the PSNI as to the terms of any letters it had sent to the AGO

³ The PPS would typically send the results of the PSNI’s assessment and any subsequent assessment of its own to the AGO

⁴ The AGO would typically send the results of the assessment of the PSNI and the PPS to the NIO. As is noted in Chapter 4, in the very early days of the scheme the AGO liaised directly with No. 10 Downing Street

⁵ The NIO sent letters to Sinn Féin updating them as to the status of the case of an OTR, typically enclosing an individual letter of assurance for any individual who was ‘not wanted’

⁶ As is noted in Chapter 7, the PSNI sent two letters directly to PJ McGrory & Co towards the end of the administrative scheme

Tables

The tables in this appendix set out the dates of the communications falling into categories (a) to (g) above that we have located and which confirm that following the review of a case an individual was 'wanted' or 'not wanted' or that the case remained under review. This information is set out alongside the reference number assigned to the OTR on the basis of the place in which each appeared on Sinn Féin List 1, Sinn Féin List 2, Sinn Féin List 3, the Prison List or the Irish Government List. There is one table for each of those lists.

It is important to note that the tables do not show every written communication between the relevant authorities about each individual case. This is in part because, and as is noted in Chapters 1 and 7, I can give no absolute assurance that we have seen all relevant documents. Moreover, any document that we have seen is included only where it contains written confirmation that the individual was 'wanted' or 'not wanted' or that the case remained under review. Accordingly, a gap in a table does not indicate that no work was being undertaken in respect of that case. Nor is it possible to determine from the volume of data in the tables the degree of scrutiny that was given to one case as compared with any other.

It is equally important to note that the cases of many of the OTRs were complex. There are inevitably nuances to some that cannot be explained in the format of the tables. Some, but only some, of the complexities are reflected in the categories set out below in the key to the tables. This is to avoid misleading the reader, who should bear in mind that the tables are intended only to illustrate the progress of each of the cases, not to provide a definitive guide as to precisely what happened to them.

Key

	A cell shaded grey indicates that we have seen evidence of the existence of a document, but not the document itself
	A cell shaded pink indicates that the name is a duplicate and was dealt with under the reference number noted as the duplicate entry
**	A provisional assessment subject to further checks
10 DS	No. 10 Downing Street
CPS	The Crown Prosecution Service
Licence	The individual was released on licence under the Northern Ireland (Sentences) Act 1998
NIPS	The Northern Ireland Prison Service
NIO	The Northern Ireland Office
Not Wanted	'Not wanted' status communicated
Not Wanted	'Not wanted' status communicated. In the case of communications to Sinn Féin, these are the letters referred to as groups one to four of Chapter 7 (letters from No. 10 Downing Street or the NIO) and as group five (letters from the PSNI) of Chapter 7. In the case of letters of assurance, these are the letters of assurance sent to individuals by the NIO via Sinn Féin referred to as group one in Chapter 7
Not Wanted*	A direction for no prosecution for the offence of escape from prison. These directions were issued in respect of OTRs who had escaped from prison but may have remained 'wanted' for return to prison subject to the potential application of the Early Release Scheme or the correction of an anomaly using the Royal Prerogative of Mercy
Not Wanted**	A direction for no prosecution in relation to a particular offence. The requirement to prosecute may have remained, or the PSNI may have wanted to arrest and interview the individual in relation to other offences
RPM	The individual was granted the Royal Prerogative of Mercy
Under Review	Confirmation that a case remained under review
Under Review	Confirmation that a case remained under review communicated to Sinn Féin. These letters are referred to as group eight in Chapter 7
Wanted	'Wanted' status communicated
Wanted	'Wanted' status communicated to Sinn Féin. These letters are referred to as group seven in Chapter 7
Wanted (RTP)	'Wanted' for return to prison status communicated
Wanted (RTP)	'Wanted' for return to prison status communicated to Sinn Féin. These letters are referred to as group seven in Chapter 7

Sinn Féin List 1 (SF1) – all submitted by Sinn Féin to the NIO

SF1	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF1/1	19/05/00					08/08/00	Wanted
				02/07/09	Wanted	03/07/09	Wanted
				10/09/12	Wanted		
SF1/2	19/05/00					09/06/00 (CPS)	Not Wanted
		28/01/08	Not Wanted				
SF1/3	19/05/00						
SF1/4	19/05/00						
SF1/5	19/05/00						
SF1/6	19/05/00					19/06/00 (CPS)	Wanted
						06/11/06 (CPS)	Under Review
		10/06/08	Not Wanted				
SF1/7	19/05/00					19/06/00 (CPS)	Wanted
						06/11/06 (CPS)	Under Review
		10/06/08	Not Wanted				
SF1/8	19/05/00					19/06/00 (CPS)	Wanted
						06/11/06 (CPS)	Not Wanted
		10/06/08	Not Wanted				
SF1/9	19/05/00					19/06/00 (CPS)	Wanted
						06/11/06 (CPS)	Under Review
SF1/10	19/05/00					08/01/01	Not Wanted*
SF1/11	19/05/00			30/01/01	Not Wanted*	30/01/01	Not Wanted*

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
18/08/00 (to 10 DS)	Wanted						
08/11/00	Wanted	26/09/05	Wanted				
23/07/09	Wanted	03/03/10	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
14/06/00 (to 10 DS)	Not Wanted	15/06/00 (from 10 DS)	Not Wanted			15/06/00	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
08/11/00	Wanted (RTP)					18/12/00	Licence
						24/12/00	RPM
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)					18/12/00	Licence
						24/12/00	RPM
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)					18/12/00	Licence
						24/12/00	RPM
		26/09/05	Not Wanted				
18/08/00 (to 10 DS)	Wanted						
08/11/00	Wanted						
14/05/02	Wanted						
		26/09/05	Wanted				
11/09/09	Not Wanted	14/09/09	Not Wanted			14/09/09	Not Wanted
18/08/00 (to 10 DS)	Wanted						
08/11/00	Wanted						
		26/09/05	Wanted				
11/09/09	Not Wanted	14/09/09	Not Wanted			14/09/09	Not Wanted
18/08/00 (to 10 DS)	Wanted						
08/11/00	Wanted						
		26/09/05	Wanted				
11/09/09	Not Wanted	14/09/09	Not Wanted			14/09/09	Not Wanted
18/08/00 (to 10 DS)	Wanted						
08/11/00	Wanted						
		26/09/05	Wanted				
11/09/09	Not Wanted	14/09/09	Not Wanted			14/09/09	Not Wanted
08/11/00	Wanted (RTP)						
08/01/01	Under Review						
26/01/01	Wanted (RTP)					29/03/01	Licence
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)						
31/01/01	Wanted (RTP)					29/03/01	Licence
		26/09/05	Not Wanted				

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SF1	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF1/12	19/05/00			08/01/01	Not Wanted*	08/01/01	Not Wanted*
SF1/13	19/05/00			08/01/01	Not Wanted*	08/01/01	Not Wanted*
SF1/14	19/05/00	01/08/00	Not Wanted	08/01/01	Not Wanted*	08/01/01	Not Wanted*
SF1/15	19/05/00					21/10/00	Wanted
		28/01/08	Not Wanted	13/02/08	Under Review		
		06/03/08	Wanted				
		24/11/08	Under Review				
SF1/16	19/05/00					09/06/00 (CPS)	Not Wanted
		28/01/08	Not Wanted				
SF1/17	19/05/00					08/08/00	Wanted
		28/01/08	Wanted	2/27/2008	Wanted	27/02/08	Wanted
		26/02/09	Under Review				
				15/10/10	Wanted		
				06/01/12	Under Review		
SF1/18	19/05/00						
		22/11/00	Not Wanted				
		24/11/00	Not Wanted	29/11/00	Not Wanted	29/11/00	Not Wanted
SF1/19	19/05/00						
				23/05/01	Wanted	23/05/01	Wanted
		10/06/08	Not Wanted				
				03/08/12	Under Review		
				31/01/13	Not Wanted		
		07/02/13	Not Wanted				
SF1/20	19/05/00					08/08/00	Wanted
SF1/21	19/05/00			05/07/00	Not Wanted	05/07/00	Not Wanted
						08/08/00	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
08/11/00	Wanted (RTP)						
08/01/01	Under Review						
26/01/01	Wanted (RTP)					29/03/01	Licence
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)						
08/01/01	Under Review						
26/01/01	Wanted (RTP)					29/03/01	Licence
						03/05/01	RPM
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)						
08/01/01	Under Review						
26/01/01	Wanted (RTP)					04/05/01	Licence
		26/09/05	Not Wanted				
27/05/99	Wanted						
17/08/00 (to PM)	Under Review						
23/10/00 (to PM)	Wanted						
17/10/01	Wanted						
		26/09/05	Wanted				
		21/07/10	Under Review				
		16/08/10	Under Review				
29/04/13	Under Review						
14/06/00 (to 10 DS)	Not Wanted	15/06/00 (from 10 DS)	Not Wanted			15/06/00	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
18/08/00 (to 10 DS)	Wanted						
		26/09/05	Wanted				
16/04/08	Wanted	30/04/08	Wanted				
		21/07/10	Under Review				
		16/08/10	Under Review				
		20/10/10	Wanted				
18/08/00 (to 10 DS)	Under Review						
08/11/00	Under Review						
30/11/00	Not Wanted	28/03/01	Not Wanted			28/03/01	Not Wanted
		26/09/05	Not Wanted				
18/08/00 (to 10 DS)	Unknown						
08/11/00	Under Review						
24/05/01	Wanted						
		26/09/05	Wanted				
		21/07/10	Under Review				
		16/08/10	Under Review				
29/04/13	Not Wanted						
18/08/00 (to 10 DS)	Wanted						
08/11/00	Wanted						
		26/09/05	Wanted				
		05/04/06	Not Wanted			05/04/06	Not Wanted
05/07/00 (to 10 DS)	Not Wanted						
18/08/00 (to 10 DS)	Not Wanted						
		26/09/05	Not Wanted				

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SF1	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF1/22	19/05/00					08/08/00	Wanted
Duplicate of SF2/52							
		28/01/08	Not Wanted	26/02/08	Under Review		
		06/03/08	Wanted				
				21/07/09	Not Wanted	21/07/09	Not Wanted
SF1/23	19/05/00					08/08/00	Wanted
						26/01/01	Wanted
		28/01/08	Wanted	27/02/08	Wanted	27/02/08	Wanted
		10/06/08	Wanted	17/11/09	Wanted	17/11/09	Wanted
		30/11/09	Wanted				
		21/08/12	Under Review	10/09/12	Not Wanted		
		27/09/12	Not Wanted	01/10/12	Not Wanted	01/10/12	Not Wanted
SF1/24	19/05/00					08/08/00	Wanted
		16/03/09	Under Review	12/10/09	Not Wanted	12/10/09	Not Wanted
SF1/25	19/05/00						
						20/09/00 (NIO)	Wanted (by Met)
						18/10/00 (CPS)	Not Wanted
						05/01/2007 (Met)	Not Wanted
		28/01/08	Not Wanted	27/02/08	Not Wanted	26/02/08	Not Wanted
SF1/26	19/05/00						
				08/01/01	Not Wanted*	08/01/01	Not Wanted*
		10/06/08	Not Wanted				
SF1/27	19/05/00						
SF1/28	19/05/00						
				08/01/01	Not Wanted*	08/01/01	Not Wanted*
SF1/29	19/05/00						
				08/01/01	Not Wanted*	08/01/01	Not Wanted*
SF1/30	19/05/00						
				08/01/01	Not Wanted*	08/01/01	Not Wanted*
		06/06/07	Wanted (RTP)	20/07/07	Wanted (RTP)	20/07/07	Wanted (RTP)
SF1/31	19/05/00						
				08/01/01	Not Wanted*	08/01/01	Not Wanted*
		06/06/07	Wanted (RTP)	20/07/07	Wanted (RTP)	20/07/07	Wanted (RTP)

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
18/08/00 (to 10 DS)	Wanted	26/09/05	Wanted				
14/12/09	Not Wanted	18/12/09	Not Wanted			18/12/09	Not Wanted
18/08/00 (to 10 DS)	Wanted	26/09/05	Wanted				
16/04/08	Wanted	30/04/08	Wanted				
20/11/09	Wanted	03/03/10	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
04/12/12	Not Wanted	21/12/12	Not Wanted			21/12/12	Not Wanted
18/08/00 (to 10 DS)	Wanted	26/09/05	Wanted				
29/10/09	Not Wanted	02/11/09	Not Wanted			02/11/09	Not Wanted
18/08/00 (to 10 DS)	Unknown						
08/11/00	Under Review	10/04/01	Not Wanted			10/04/01	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
08/11/00	Wanted (RTP)						
08/01/01	Wanted (RTP)						
26/01/01	Wanted (RTP)					29/03/01	Licence
						03/05/01	RPM
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)					24/12/00	RPM
29/01/01	Wanted	26/09/05	Not Wanted				
08/11/00	Wanted (RTP)						
08/01/01	Wanted (RTP)						
26/01/01	Not Wanted	26/09/05	Not Wanted			04/05/01	Licence
08/11/00	Wanted (RTP)						
08/01/01	Wanted (RTP)						
26/01/01	Wanted (RTP)	26/09/05	Not Wanted			29/03/01	Licence
08/11/00	Wanted (RTP)						
08/01/01	Wanted (RTP)						
26/01/01	Wanted (RTP)	26/09/05	Under Review				
21/07/07	Wanted (RTP)	03/03/10	Wanted (RTP)				
		21/07/10	Wanted (RTP)				
		16/08/10	Wanted (RTP)				
08/11/00	Wanted (RTP)						
08/01/01	Wanted (RTP)						
26/01/01	Wanted (RTP)	26/09/05	Under Review				
21/07/07	Wanted (RTP)	21/07/10	Under Review				
		16/08/10	Under Review			07/10/10	Licence

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SF1	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF1/32	19/05/00			08/01/01	Not Wanted*	08/01/01	Not Wanted*
		06/06/07	Wanted (RTP)	20/07/07	Wanted (RTP)	20/07/07	Wanted (RTP)
<hr/>							
SF1/33	19/05/00					23/05/01	Not Wanted*
<hr/>							
SF1/34	19/05/00			23/05/01	Not Wanted*	23/05/01	Not Wanted*
<hr/>							
SF1/35	19/05/00			08/01/01	Not Wanted*	08/01/01	Not Wanted*
<hr/>							
SF1/36	19/05/00			08/01/01	Not Wanted*	08/01/01	Not Wanted*
<hr/>							
SF1/37	16/10/00	11/01/01	Not Wanted*			19/01/01	Not Wanted*
<hr/>							
SF1/38	16/10/00	11/01/01	Not Wanted*			23/05/01	Wanted (RTP)
Duplicate of SF2/54							
<hr/>							
SF1/39	16/10/00	11/01/01	Not Wanted*			23/05/01	Not Wanted*
<hr/>							
SF1/40	16/10/00			12/03/01	Under Review	03/04/01	Not Wanted*
				10/06/08	Not Wanted		
<hr/>							
SF1/41	16/10/00	11/01/01	Not Wanted*	23/05/01	Not Wanted*	23/05/01	Not Wanted*
				10/06/08	Not Wanted		
<hr/>							

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
08/11/00	Wanted (RTP)						
08/01/01	Wanted (RTP)						
26/01/01	Wanted (RTP)						
		26/09/05	Under Review				
21/07/07	Wanted (RTP)						
		03/03/10	Wanted (RTP)				
		21/07/10	Wanted (RTP)				
		16/08/10	Wanted (RTP)				
08/11/00	Wanted (RTP)						
24/05/01	Wanted (RTP)					07/11/01	RPM
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)						
24/05/01	Wanted (RTP)					14/03/02	RPM
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)						
08/01/01	Wanted (RTP)						
26/01/01	Wanted (RTP)					29/03/01	Licence
		26/09/05	Not Wanted				
08/11/00	Wanted (RTP)						
08/01/01	Wanted (RTP)						
26/01/01	Wanted (RTP)					22/06/01	Licence
		26/09/05	Not Wanted				
						03/05/01	RPM
		26/09/05	Not Wanted				
		17/10/08	Not Wanted				
24/05/01	Wanted (RTP)					07/11/01	RPM
		26/09/05	Not Wanted				
		10/10/06	Not Wanted				
08/11/00	Wanted (RTP)						
24/05/01	Wanted (RTP)					03/12/01	Licence
		26/09/05	Not Wanted				
09/04/01	Wanted (RTP)					14/03/02	RPM
		26/09/05	Not Wanted				
24/05/01	Wanted (RTP)					07/11/01	RPM
		26/09/05	Not Wanted				

Sinn Féin List 2 (SF2) – all submitted by Sinn Féin to the NIO

SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/1	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		12/11/01	Not Wanted			14/11/01	Not Wanted
SF2/2	30/03/01	01/05/01 (to NIPS)	Wanted				
		22/01/02	Wanted			29/01/02	Wanted
		02/05/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted
SF2/3	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		22/01/02	Wanted			29/01/02	Wanted
		02/05/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted
SF2/4	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		22/01/02	Wanted			29/01/02	Wanted
		02/05/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted
SF2/5	30/03/01	01/05/01 (to NIPS)	Wanted				
		22/01/02	Wanted			29/01/02	Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/6	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		12/11/01	Not Wanted			14/11/01	Not Wanted
SF2/7	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		30/11/01	Not Wanted			06/12/01	Not Wanted
SF2/8	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		12/11/01	Not Wanted			14/11/01	Not Wanted
SF2/9	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		09/10/01	Not Wanted			11/10/01	Not Wanted
SF2/10	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		17/10/01	Not Wanted			18/10/01	Not Wanted
SF2/11	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		12/11/01	Not Wanted			14/11/01	Not Wanted
SF2/12	30/03/01	01/05/01 (to NIPS)	Wanted				
		22/01/02	Wanted			29/01/02	Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
12/07/01	Not Wanted**						
17/09/01	Wanted**						
15/11/01	Not Wanted	16/11/01	Not Wanted			16/11/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted
12/07/01	Not Wanted**						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted
12/07/01	Not Wanted**						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted
12/07/01	Under Review						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
12/07/01	Not Wanted**						
17/09/01	Wanted**						
15/11/01	Not Wanted	16/11/01	Not Wanted			16/11/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
14/12/01	Not Wanted	17/12/01	Not Wanted			17/12/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
15/11/01	Not Wanted	16/11/01	Not Wanted			16/11/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
18/10/01	Not Wanted	26/09/05	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
18/10/01	Not Wanted	26/09/05	Not Wanted				
17/09/01	Not Wanted**						
15/11/01	Not Wanted	16/11/01	Not Wanted			16/11/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
17/09/01	Not Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted

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SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/13	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		21/09/01	Not Wanted			01/10/01	Not Wanted
SF2/14	30/03/01	01/05/01 (to NIPS)	Wanted (RTP)				
				04/01/07	Not Wanted	04/01/07	Not Wanted
		28/01/08	Not Wanted	27/02/08	Not Wanted	26/02/08	Not Wanted
SF2/15	30/03/01	01/05/01 (to NIPS)	Wanted				
		22/01/02	Wanted			29/01/02	Wanted
		01/08/03	Not Wanted			19/08/03	Not Wanted
SF2/16	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		30/11/01	Not Wanted			06/12/01	Not Wanted
SF2/17	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		21/09/01	Not Wanted			01/10/01	Not Wanted
SF2/18	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		21/09/01	Not Wanted			01/10/01	Not Wanted
SF2/19	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
				29/10/03	Not Wanted	29/10/03	Not Wanted
SF2/20	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		30/11/01	Not Wanted			06/12/01	Not Wanted
SF2/21	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		02/04/02	Wanted			10/04/02	Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/22	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		22/01/02	Wanted			29/01/02	Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/23	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		21/09/01	Not Wanted			01/10/01	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
01/10/01	Not Wanted	31/10/01	Not Wanted			31/10/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Wanted (RTP)**						
17/09/01	Wanted**						
		26/09/05	Under Review				
10/01/07	Not Wanted	10/01/07	Not Wanted			10/01/07	Not Wanted
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
10/11/03	Not Wanted						
02/02/05	Not Wanted						
04/03/05	Not Wanted	14/09/05	Not Wanted			14/09/05	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Wanted**						
14/12/01	Not Wanted	17/12/01	Not Wanted			17/12/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
01/10/01	Not Wanted	31/10/01	Not Wanted			31/10/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
01/10/01	Not Wanted	31/10/01	Not Wanted			31/10/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
14/12/01	Not Wanted	17/12/01	Not Wanted			17/12/01	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
23/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
12/07/01	Wanted**						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
01/10/01	Not Wanted	31/10/01	Not Wanted			31/10/01	Not Wanted
		26/09/05	Not Wanted				

The Report of the Hallett Review

SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/24	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		03/10/01	Not Wanted	08/10/02	Not Wanted	08/10/02	Not Wanted
SF2/25	30/03/01	01/05/01 (to NIPS)	Wanted				
		17/10/01	Wanted				
		13/05/02	Wanted			22/05/02	Wanted
		15/03/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/26	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
			Under Review	29/10/03	Not Wanted	29/10/03	Not Wanted
SF2/27	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		22/01/02	Wanted			29/01/02	Wanted
		15/03/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted
SF2/28	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		09/10/01	Not Wanted			11/10/01	Not Wanted
SF2/29	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		15/03/02	Under Review	29/03/02	Not Wanted	28/03/02	Not Wanted
SF2/30	30/03/01	01/05/01 (to NIPS)	Wanted				
		22/01/02	Wanted			29/01/02	Wanted
		15/03/02	Under Review				
		07/03/06	Not Wanted			09/06/06	Not Wanted
SF2/31	30/03/01	01/05/01 (to NIPS)	Under Review				
		16/04/02	Wanted			19/04/02	Wanted
		01/06/07	Not Wanted	27/06/07	Not Wanted	27/06/07	Not Wanted
SF2/32	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		09/10/01	Not Wanted			16/10/01	Not Wanted
		28/01/08	Not Wanted				
SF2/33	30/03/01	01/05/01 (to NIPS)	Under Review				
		16/04/02	Wanted			19/04/02	Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/34	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		08/04/02	Not Wanted			11/04/02	Not Wanted
SF2/35	30/03/01	01/05/01 (to NIPS)	Wanted				
		19/06/02	Wanted			24/06/02	Wanted
		06/06/07	Not Wanted	28/02/08	Not Wanted	28/02/08	Not Wanted
		10/06/08	Not Wanted			02/10/08	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
13/11/02	Not Wanted	12/11/02	Not Wanted			12/11/02	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
12/07/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
10/11/03	Not Wanted						
02/02/05	Not Wanted						
04/03/05	Not Wanted	14/09/05	Not Wanted			14/09/05	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
18/10/01	Not Wanted						
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
08/04/02	Not Wanted	11/04/02	Not Wanted			11/04/02	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
15/06/06	Not Wanted	21/06/06	Not Wanted			21/06/06	Not Wanted
12/07/01	Under Review						
23/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
12/07/01	Not Wanted**						
17/09/01	Not Wanted**						
18/10/01	Not Wanted	14/11/01	Not Wanted			14/11/01	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Under Review						
23/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
12/07/01	Not Wanted**						
23/04/02	Not Wanted	02/05/02	Not Wanted			02/05/02	Not Wanted
		26/09/05	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
12/07/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
21/10/08	Not Wanted	22/10/08	Not Wanted			22/10/08	Not Wanted

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SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/36	30/03/01	01/05/01 (to NIPS)	Wanted				
		XX/04/02	Wanted				
		XX/XX/08 (to AG)	Wanted				
SF2/37	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
				15/05/03	Wanted	15/05/03	Wanted
		28/01/08	Wanted	27/02/08	Wanted	27/02/08	Wanted
				24/08/09	Not Wanted	24/08/09	Not Wanted
SF2/38	30/03/01	01/05/01 (to NIPS)	Wanted (RTP)				
				15/05/03	Wanted	15/05/03	Wanted
		28/01/08	Wanted	27/02/08	Wanted	27/02/08	Wanted
				03/09/09	Not Wanted	03/09/09	Not Wanted
SF2/39	30/03/01					03/04/01	Not Wanted*
Duplicate of PL/3		01/05/01 (to NIPS)	Wanted (RTP)			04/10/01	Not Wanted*
SF2/40	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		09/10/01	Not Wanted	09/10/02	Not Wanted	08/10/02	Not Wanted
		28/01/08	Not Wanted				
SF2/41	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		06/09/01	Wanted (by MET)			21/02/02	Wanted (by MET)
						05/01/07 (from MET)	Not Wanted
		10/06/08	Not Wanted				
SF2/42	30/03/01	01/05/01 (to NIPS)	Wanted				
		XX/04/02	Wanted				
		20/04/10	Wanted	29/04/10	Wanted	29/04/10	Wanted
SF2/43	30/03/01	01/05/01 (to NIPS)	Under Review				
		15/03/02	Not Wanted			21/03/02	Not Wanted
		28/01/08	Not Wanted				
SF2/44	30/03/01	01/05/01 (to NIPS)	Under Review				
		16/04/02	Not Wanted			19/04/02	Not Wanted
		28/01/08	Not Wanted				
SF2/45	30/03/01	01/05/01 (to NIPS)	Under Review				
		15/03/02	Not Wanted			21/03/02	Not Wanted
		28/01/08	Not Wanted				
SF2/46	30/03/01	01/05/01 (to NIPS)	Not Wanted**				

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
12/07/01	Wanted**						
		26/09/05	Under Review				
		21/07/10	Under Review				
		16/08/10	Under Review				
29/04/13	Under Review						
12/07/01	Not Wanted**						
17/09/01	Wanted**						
13/06/03	Wanted	23/07/03	Wanted				
		26/09/05	Wanted				
16/04/08	Wanted	30/04/08	Wanted				
11/09/09	Not Wanted	14/09/09	Not Wanted			14/09/09	Not Wanted
12/07/01	Under Review						
17/09/01	Wanted**						
13/06/03	Wanted	23/07/03	Wanted				
		26/09/05	Wanted				
16/04/08	Wanted	30/04/08	Wanted				
25/09/09	Not Wanted	29/09/09	Not Wanted			29/09/09	Not Wanted
09/04/01	Wanted (RTP)						
12/07/01	Under Review						
18/10/01	Not Wanted*					14/03/02	RPM
		26/09/05	Not Wanted				
12/07/01	Not Wanted**						
17/09/00	Not Wanted**						
13/11/02	Not Wanted	12/11/02	Not Wanted			12/11/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Wanted						
08/04/02	Wanted (by MET)						
		26/09/05	Under Review				
10/01/07	Not Wanted	10/01/07	Not Wanted			10/01/07	Not Wanted
12/07/01	Wanted**						
17/09/01	Wanted**						
		26/09/05	Under Review				
10/05/10	Wanted	20/05/10	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
12/07/01	Under Review						
08/04/02	Not Wanted	11/04/02	Not Wanted			11/04/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Under Review						
23/04/02	Not Wanted	02/05/02	Not Wanted			02/05/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Under Review						
08/04/02	Not Wanted	11/04/02	Not Wanted			11/04/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Wanted**						
		26/09/05	Under Review				

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SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/47	30/03/01	01/05/01 (to NIPS)	Under Review				
		19/03/02	Under Review	18/04/02	Not Wanted	19/04/02	Not Wanted
		28/01/08	Not Wanted				
SF2/48	30/03/01	01/05/01 (to NIPS)	Under Review				
		31/05/02	Not Wanted			17/06/02	Not Wanted
		28/01/08	Not Wanted				
SF2/49	30/03/01	01/05/01 (to NIPS)	Under Review				
		14/05/01	Not Wanted				
		15/11/01	Not Wanted			15/11/01	Not Wanted
		28/01/08	Not Wanted				
SF2/50	30/03/01	01/05/01 (to NIPS)	Wanted				
		28/09/07	Under Review	10/10/07	Under Review	10/10/07	Under Review
		01/07/09	Wanted				
SF2/51	30/03/01	01/05/01 (to NIPS)	Under Review				
		02/04/02	Under Review	03/07/02	Not Wanted	03/07/02	Not Wanted
		28/01/08	Not Wanted				
SF2/52	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
Duplicate of SF1/22						04/10/01	Wanted
SF2/53	30/03/01	01/05/01 (to NIPS)	Under Review				
		19/04/02	Wanted			25/04/02	Wanted
		01/06/07	Not Wanted	27/07/07	Not Wanted	27/07/07	Not Wanted
SF2/54	30/03/01	01/05/01 (to NIPS)	Under Review				
Duplicate of SF1/38							
SF2/55	30/03/01	01/05/01 (to NIPS)	Under Review				
		Duplicate of PL/14					
		10/08/01	Wanted				
		15/03/02	Under Review	10/04/02	Not Wanted*	10/04/02	Not Wanted*
		15/05/02	Wanted			22/05/02	Wanted
		10/06/08	Wanted (RTP)			XX/XX/XX	Wanted (RTP)
		20/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)
SF2/56	30/03/01	01/05/01 (to NIPS)	Under Review				
		29/03/02	Not Wanted			10/04/02	Not Wanted
		28/01/08	Not Wanted				
SF2/57	30/03/01	01/05/01 (to NIPS)	Wanted				
		28/09/07	Not Wanted	10/10/07	Not Wanted	10/10/07	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
12/07/01	Under Review						
23/04/02	Not Wanted	02/05/02	Not Wanted			02/05/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Under Review						
12/07/02	Not Wanted	06/08/02	Not Wanted			06/08/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Not Wanted**						
15/11/01	Not Wanted**	16/11/01	Not Wanted**				
		19/11/01	Not Wanted			19/11/01	Not Wanted
		26/09/05	Under Review				
		07/10/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
		03/03/10	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
		26/09/05	Under Review				
		21/07/09	Under Review				
		16/08/10	Under Review				
29/04/13	Wanted						
12/07/01	Under Review						
13/11/02	Not Wanted	12/11/02	Not Wanted			12/11/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Not Wanted**						
18/10/01	Wanted						
12/07/01	Under Review						
13/11/02	Wanted	22/01/03	Wanted				
		26/09/05	Wanted				
08/08/07	Not Wanted	10/08/07	Not Wanted			10/08/07	Not Wanted
12/07/01	Under Review						
12/07/01	Under Review						
23/04/02	Wanted (RTP)						
12/07/02	Wanted						
		26/09/05	Under Review				
		10/10/06	Wanted				
		03/03/10	Wanted (RTP)				
10/05/10	Wanted (RTP)	21/07/10	Wanted (RTP)				
		16/08/10	Wanted (RTP)				
12/07/01	Under Review						
23/04/02	Not Wanted	11/04/02	Not Wanted			11/04/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Wanted**						
17/09/01	Wanted**						
		26/09/05	Under Review				
05/11/07	Not Wanted	15/11/07	Not Wanted			15/11/07	Not Wanted

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SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/58	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		06/09/01	Not Wanted			07/09/01	
		28/01/08	Not Wanted	26/02/08	Query		
SF2/59	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		02/04/02	Not Wanted				
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/60	30/03/01	01/05/01 (to NIPS)	Under Review				
		15/03/02	Not Wanted			10/04/02	Not Wanted
		28/01/08	Not Wanted				
SF2/61	30/03/01	01/05/01 (to NIPS)	Not Wanted**				
		22/01/02	Wanted			29/01/02	Wanted
		15/03/07	Not Wanted	12/06/07	Not Wanted	06/06/07	Not Wanted
SF2/62	02/11/01	13/05/02	Wanted	21/05/02	Under Review		
		26/09/02	Wanted			02/10/02	Wanted
		20/04/10	Not Wanted	29/04/10	Not Wanted	29/04/10	Not Wanted
SF2/63	02/11/01	03/10/03	Wanted	17/10/03	Not Wanted (for one offence)	17/10/03	Wanted
Duplicate of SF3/22							
		14/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/64	02/11/01	07/11/02	Wanted			12/11/02	Wanted
		15/03/07	Not Wanted				
		06/06/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/65	02/11/01			06/09/02	Wanted	03/09/02	Wanted
				04/10/02	Wanted	14/10/03	Wanted
		28/01/08	Wanted	27/02/08	Wanted	27/02/08	Wanted
				07/07/09	Not Wanted	07/07/09	Not Wanted
SF2/66	02/11/01	19/06/02	Not Wanted			24/06/02	Wanted
		28/01/08	Not Wanted				
SF2/67	02/11/01	19/04/02	Wanted			22/04/02	Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/68	02/11/01	19/04/02	Not Wanted			22/04/02	Not Wanted
		28/01/08	Not Wanted				
SF2/69	02/11/01	19/04/02	Wanted			22/04/02	Wanted
Duplicate of SF2/101						30/09/02	Wanted
		01/06/07	Not Wanted	27/06/07	Not Wanted	27/06/07	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
12/07/01	Not Wanted**						
17/09/01	Not Wanted**	28/11/01	Not Wanted			28/11/01	Not Wanted
16/03/04	Not Wanted						
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Under Review						
		26/09/05	Under Review				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
12/07/01	Under Review						
23/04/02	Not Wanted	11/04/02	Not Wanted			11/04/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
12/07/01	Not Wanted**						
17/09/01	Wanted**						
08/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
13/11/02	Wanted	22/01/03	Wanted				
		26/09/05	Wanted				
10/05/10	Not Wanted	20/05/10	Not Wanted			20/05/10	Not Wanted
10/11/03	Wanted						
02/02/05	Wanted						
04/03/05	Wanted	14/09/05	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		03/03/10	Not Wanted				
27/01/03	Wanted	13/02/03	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
10/11/03	Wanted						
02/02/05	Wanted						
04/03/05	Wanted	14/09/05	Wanted				
		26/09/05	Wanted				
16/04/08	Wanted	30/04/08	Wanted				
20/11/09	Not Wanted	23/11/09	Not Wanted			23/11/09	Not Wanted
12/07/02	Not Wanted	06/08/02	Not Wanted			06/08/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
23/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
23/04/02	Not Wanted	02/05/02	Not Wanted			02/05/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
23/04/02	Wanted						
		12/11/02	Wanted				
		26/09/05	Wanted				
		26/09/05	Under Review				
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted

The Report of the Hallett Review

SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/70	02/11/01	24/04/02	Wanted			30/04/02	Wanted
		24/07/07	Wanted	12/10/07	Under Review	12/10/07	
		25/10/07	Wanted	27/02/08	Wanted	27/02/08	Wanted
		25/05/10	Wanted	02/06/10	Wanted	02/06/10	Wanted
SF2/71	02/11/01	24/04/02	Wanted			30/04/02	Wanted
SF2/72	02/11/01	24/04/02	Wanted			30/04/02	Wanted
		20/04/10	Wanted	29/04/10	Wanted	29/04/10	Wanted
				02/07/10	Wanted	02/07/10	Wanted
SF2/73	02/11/01	22/04/02	Wanted			26/04/02	Wanted
		20/04/10	Wanted	29/04/10	Wanted	29/04/10	Wanted
SF2/74	02/11/01	13/05/02	Wanted			22/05/02	Wanted
SF2/75	02/11/01	22/01/02	Under Review				
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/76	02/11/01	22/01/02	Under Review				
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/77	02/11/01	22/01/02	Under Review				
				05/02/07	Not Wanted	05/02/07	Not Wanted
				02/03/07	Not Wanted	02/03/07	Not Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/78	02/11/01	08/04/02	Wanted			11/04/02	Wanted
Duplicate of SF2/88		11/07/07	Not Wanted	27/07/07	Not Wanted	27/07/07	Not Wanted
SF2/79	02/11/01	15/03/02	Not Wanted			27/03/02	Not Wanted
		28/01/08	Not Wanted				
SF2/80	02/11/01	19/06/02	Not Wanted			24/06/02	Wanted
		28/01/08	Not Wanted				
SF2/81	22/11/01	20/11/02	Wanted			25/11/02	Wanted
		15/03/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted
SF2/82	22/11/01	03/10/03	Not Wanted			14/10/03	Not Wanted
		28/01/08	Not Wanted				
SF2/83	22/11/01	12/06/03	Not Wanted			19/06/03	Not Wanted
		28/01/08	Not Wanted				
SF2/84	22/11/01	23/01/03	Wanted			29/01/03	Wanted
		16/05/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
13/11/02	Wanted	22/01/03	Wanted				
		26/09/05	Wanted				
16/04/08	Wanted	30/04/08	Wanted				
11/06/10	Wanted	21/07/10	Wanted				
		16/08/10	Wanted				
13/11/02	Wanted	22/01/03	Wanted				
		26/09/05	Wanted				
13/11/02	Wanted	22/01/03	Wanted				
		26/09/05	Wanted				
10/05/10	Wanted	20/05/10	Wanted				
08/07/10	Wanted	21/07/10	Wanted				
		16/08/10	Wanted				
13/11/02	Wanted	22/01/03	Wanted				
		26/09/05	Wanted				
10/05/10	Wanted	20/05/10	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
12/07/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
		26/09/05	Under Review				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		26/09/05	Under Review				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		26/09/05	Under Review				
02/04/07	Not Wanted	05/04/07	Not Wanted			05/04/07	Not Wanted
23/04/02	Wanted	12/11/02	Wanted				
		26/09/05	Wanted				
08/08/07	Not Wanted						
08/04/02	Not Wanted	11/04/02	Not Wanted			11/04/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
13/11/02	Not Wanted	22/01/03	Not Wanted			22/01/03	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
27/01/03	Wanted	13/02/03	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted
10/11/03	Not Wanted						
02/02/05	Not Wanted						
04/03/05	Not Wanted	14/09/05	Not Wanted			14/09/05	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
01/07/03	Not Wanted	23/07/03	Not Wanted			23/07/03	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
01/04/03	Wanted	18/06/03	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted

The Report of the Hallett Review

SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/85	22/11/01	20/11/02	Wanted			25/11/02	Wanted
		02/05/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted
SF2/86	30/11/01	19/12/02	Not Wanted			06/01/03	Not Wanted
		28/01/08	Not Wanted	26/02/08	Not Wanted		
SF2/87	30/11/01	20/11/02	Wanted			25/11/02	Wanted
		06/06/07	Not Wanted	27/06/07	Not Wanted	27/06/07	Not Wanted
SF2/88	30/11/01						
Duplicate of SF2/78							
SF2/89	30/11/01	09/12/02	Not Wanted			17/12/02	Not Wanted
		28/01/08	Not Wanted				
SF2/90	10/01/02	27/03/03	Not Wanted			03/04/03	Not Wanted
		28/01/08	Not Wanted				
SF2/91	10/01/02	31/03/03	Not Wanted			03/04/03	Not Wanted
		28/01/08	Not Wanted				
SF2/92	10/01/02	26/07/02	Not Wanted			31/07/02	Not Wanted
		28/01/08	Not Wanted				
SF2/93	10/01/02	27/03/03	Not Wanted			03/04/03	Not Wanted
		28/01/08	Not Wanted				
SF2/94	10/01/02	25/02/03	Wanted			28/02/03	Wanted
		14/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/95	10/01/02	25/02/03	Wanted			28/02/03	Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/96	10/01/02						
				18/09/06	Not Wanted	18/09/06	Not Wanted
		28/01/08	Not Wanted	27/02/08	Not Wanted	26/02/08	Not Wanted
SF2/97	10/01/02	06/01/03	Not Wanted			09/01/03	Not Wanted
		28/01/08	Not Wanted				
SF2/98	10/01/02	12/06/03	Wanted			19/06/03	Wanted
		14/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
27/01/03	Wanted	13/02/03	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted
27/01/03	Not Wanted	22/01/03	Not Wanted			22/01/03	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
27/01/03	Wanted	13/02/03	Wanted				
		26/09/05	Wanted				
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
01/04/03	Not Wanted	18/06/03	Not Wanted			18/06/03	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
15/04/03	Not Wanted	23/07/03	Not Wanted			23/07/03	Not Wanted
		26/09/05	Not Wanted				
10/01/07	Not Wanted						
16/04/08	Not Wanted	30/04/08	Not Wanted				
15/04/03	Not Wanted	18/06/03	Not Wanted			18/06/03	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
21/08/02	Not Wanted						
		26/09/05	Under Review				
15/06/06	Not Wanted	21/06/06	Not Wanted			21/06/06	Not Wanted
16/04/08	Not Wanted	30/04/08	Not Wanted				
15/04/03	Not Wanted	18/06/03	Not Wanted			18/06/03	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
01/04/03	Wanted	18/06/03	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
01/04/03	Wanted	18/06/03	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		26/09/05	Under Review				
25/09/06	Not Wanted	26/09/06	Not Wanted			26/09/06	Not Wanted
16/04/08	Not Wanted	30/04/08	Not Wanted				
27/01/03	Not Wanted	13/02/03	Not Wanted			13/02/03	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
01/07/03	Wanted	23/07/03	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted

The Report of the Hallett Review

SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/99	10/01/02			02/07/09	Wanted	03/07/09	Wanted
				30/11/12	Not Wanted		
		04/12/12	Not Wanted	05/12/12	Not Wanted	05/12/12	Not Wanted
SF2/100	10/01/02	31/03/03	Wanted			03/04/03	Wanted
		06/06/07	Not Wanted	27/06/07	Not Wanted	27/06/07	Not Wanted
SF2/101	10/01/02						
Duplicate of SF2/69							
SF2/102	10/01/02			17/09/02	Under Review		
		14/09/04	Wanted				
		31/01/06 (to NIO)	Wanted			08/02/06	Wanted
		06/06/07	Not Wanted	27/06/07	Not Wanted	27/06/07	Not Wanted
SF2/103	10/01/02						
		14/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/104	10/01/02	18/03/03	Wanted			26/03/03	Not Wanted
		11/06/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted
SF2/105	10/01/02	27/02/03	Wanted				
		12/06/03	Under Review	10/07/03	Not Wanted***	10/07/03	Wanted
		06/06/07	Not Wanted	27/06/07	Not Wanted	27/06/07	Not Wanted
SF2/106	10/01/02	23/05/03	Under Review	23/06/03	Not Wanted	23/06/03	Not Wanted
		28/01/08	Not Wanted				
SF2/107	10/01/02						
		02/10/07	Not Wanted				
		25/10/07	Not Wanted	27/02/08	Not Wanted	26/02/08	Not Wanted
SF2/108	10/01/02	01/08/03	Wanted			19/08/03	Wanted
		02/05/07	Not Wanted	20/07/07	Not Wanted	20/07/07	Not Wanted
SF2/109	10/01/02	24/01/03	Wanted			29/01/03	Wanted
		02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/110	10/01/02	20/11/02	Wanted			25/11/02	Wanted
		14/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/111	10/01/02						
		16/07/07	Not Wanted	27/07/07	Not Wanted	27/07/07	Not Wanted
SF2/112	10/01/02	20/06/02	Not Wanted			24/06/02	Wanted
		28/01/08	Not Wanted				
SF2/113	10/01/02	03/03/03	Wanted			06/03/03	Wanted
		14/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
		26/09/05	Under Review				
23/07/09	Wanted						
14/12/09	Wanted	03/03/10	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
15/04/03	Wanted	18/06/03	Wanted				
		26/09/05	Wanted				
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		26/09/05	Under Review				
27/02/06	Wanted	22/03/06	Wanted				
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		26/09/05	Under Review				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
01/04/03	Wanted	18/06/03	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted
10/11/03	Wanted						
02/02/05	Wanted						
04/03/05	Wanted	14/09/05	Wanted				
		26/09/05	Wanted				
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
01/07/03	Not Wanted	23/07/03	Not Wanted			23/07/03	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
		26/09/05	Under Review				
16/04/08	Not Wanted	30/04/08	Not Wanted			30/04/08	Not Wanted
10/11/03	Wanted						
02/02/05	Wanted						
04/03/05	Wanted	14/09/05	Wanted				
		26/09/05	Wanted				
21/07/07	Not Wanted	07/08/07	Not Wanted			07/08/07	Not Wanted
01/04/03	Wanted	18/06/03	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
27/01/03	Wanted	13/02/03	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		26/09/05	Under Review				
08/08/07	Not Wanted	10/08/07	Not Wanted			10/08/07	Not Wanted
12/07/02	Not Wanted	06/08/02	Not Wanted			06/08/02	Not Wanted
		26/09/05	Not Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted				
01/04/03	Wanted	18/06/03	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted

The Report of the Hallett Review

SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/114	10/01/02	20/11/02	Wanted			25/11/02	Wanted
		03/03/03	Wanted				
		15/03/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/115	04/02/02			16/07/03	Wanted	16/07/03	Wanted
		28/01/08	Wanted	27/02/08	Wanted	27/02/08	Wanted
				09/02/10	Not Wanted	09/02/10	Not Wanted
SF2/116	04/02/02	15/03/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/117	04/02/02	15/03/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/118	04/02/02	14/09/04	Wanted				
		31/01/06 (to NIO)	Wanted			08/02/06	Wanted
		06/06/07	Not Wanted	27/06/07	Not Wanted	27/06/07	Not Wanted
SF2/119	04/02/02	15/05/03	Wanted			29/05/03	Wanted
		11/07/07	Not Wanted	27/07/07	Not Wanted	27/07/07	Not Wanted
SF2/120	04/02/02	19/06/02	Not Wanted			24/06/02	Not Wanted
		28/09/07	Not Wanted	10/10/07	Not Wanted	10/10/07	Not Wanted
SF2/121	04/02/02			28/05/03	Wanted	14/10/03	Wanted
		31/01/06 (to NIO)	Wanted				
		24/07/07	Wanted				
		01/07/09	Not Wanted	01/10/09	Not Wanted	01/10/09	Not Wanted
SF2/122	04/02/02	12/02/10	Wanted	17/02/10	Wanted	17/02/10	Wanted
SF2/123	25/04/02	07/04/05	Not Wanted				
		31/01/06 (to NIO)	Not Wanted			08/02/06	Not Wanted
		28/01/08	Not Wanted				
SF2/124	25/04/02	07/04/05	Not Wanted				
		31/01/06 (to NIO)	Not Wanted			08/02/06	Not Wanted
		28/01/08	Not Wanted				
SF2/125	03/09/03	11/04/05	Not Wanted				
		31/01/06 (to NIO)	Not Wanted			08/02/06	Not Wanted
		28/01/08	Not Wanted				
SF2/126	03/09/03	11/04/05	Not Wanted				
		31/01/06 (to NIO)	Not Wanted			08/02/06	Not Wanted
		28/01/08	Not Wanted				
SF2/127 Duplicate of PL/4	03/09/03					03/04/01	Not Wanted*
		11/04/05	Wanted (RTP)				
		31/01/06 (to NIO)	Wanted (RTP)			08/02/06	Wanted (RTP)
		10/06/08	Wanted (RTP)				
		20/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
27/01/03	Wanted	13/02/03	Wanted				
		26/09/05	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
10/11/03	Wanted						
02/02/05	Wanted						
04/03/05	Wanted	14/09/05	Wanted				
		26/09/05	Wanted				
16/04/08	Wanted	30/04/08	Wanted				
15/02/10	Not Wanted	03/03/10	Not Wanted			03/03/10	Not Wanted
		26/09/05	Under Review				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		26/09/05	Under Review				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
		26/09/05	Under Review				
27/02/06	Wanted	22/03/06	Wanted				
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
13/06/03	Wanted	23/07/03	Wanted				
		26/09/05	Wanted				
08/08/07	Not Wanted	10/08/07	Not Wanted			10/08/07	Not Wanted
12/07/02	Not Wanted	06/08/02	Not Wanted			06/08/02	Not Wanted
		26/09/05	Not Wanted				
05/11/07	Not Wanted						
10/11/03	Wanted						
		26/09/05	Under Review				
15/06/06	Wanted	21/06/06	Wanted				
29/10/09	Not Wanted	02/11/09	Not Wanted			02/11/09	Not Wanted
		26/09/05	Under Review				
22/02/10	Wanted	03/03/10	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
		26/09/05	Under Review				
27/02/06	Not Wanted	22/03/06	Not Wanted			22/03/06	Not Wanted
16/04/08	Not Wanted	30/04/08	Not Wanted				
		26/09/05	Under Review				
27/02/06	Not Wanted	22/03/06	Not Wanted			22/03/06	Not Wanted
16/04/08	Not Wanted	30/04/08	Not Wanted				
		26/09/05	Under Review				
27/02/06	Not Wanted	22/03/06	Not Wanted			22/03/06	Not Wanted
16/04/08	Not Wanted	30/04/08	Not Wanted				
		26/09/05	Under Review				
27/02/06	Not Wanted	22/03/06	Not Wanted			22/03/06	Not Wanted
16/04/08	Not Wanted	30/04/08	Not Wanted				
09/04/01	Wanted (RTP)						
		26/09/05	Under Review				
27/02/06	Wanted (RTP)	22/03/06	Wanted				
		03/03/10	Wanted (RTP)				
10/05/10	Wanted (RTP)	21/07/10	Wanted (RTP)				
		16/08/10	Wanted (RTP)				

The Report of the Hallett Review

SF2	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF2/128	22/09/05	16/07/07	Not Wanted	27/07/07	Not Wanted	27/07/07	Not Wanted
SF2/129	03/10/05	02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/130	03/10/05	28/09/07	Not Wanted	10/10/07	Not Wanted	10/10/07	Not Wanted
SF2/131	03/10/05	14/05/07	Not Wanted	12/06/07	Not Wanted	06/06/07	Not Wanted
SF2/132	03/10/05	01/06/07	Not Wanted	27/06/07	Not Wanted	27/06/07	Not Wanted
SF2/133	03/10/05	28/09/07	Not Wanted	10/10/07	Not Wanted	10/10/07	Not Wanted
SF2/134	21/10/05	28/09/07	Not Wanted	10/10/07	Not Wanted	10/10/07	Not Wanted
SF2/135	21/10/05	02/05/07	Not Wanted			06/06/07 20/07/07	Not Wanted Not Wanted
SF2/136	21/10/05	28/09/07	Not Wanted	27/02/08	Not Wanted	26/02/08 02/10/08	Not Wanted Not Wanted
SF2/137	07/02/06	28/09/07	Not Wanted	10/10/07	Not Wanted	10/10/07	Not Wanted
SF2/138	07/02/06			17/10/03	Wanted	17/10/03	Wanted
Duplicate of PL/9		20/04/10	Under Review				
				07/03/11	Wanted	07/03/11	Wanted
SF2/139	18/08/06	14/05/07	Not Wanted	14/05/07 05/06/07	Not Wanted Not Wanted	05/06/07	Not Wanted
SF2/140	18/08/06	28/09/07	Not Wanted	10/10/07	Not Wanted	10/10/07	Not Wanted
SF2/141	18/08/06	02/05/07	Not Wanted	05/06/07	Not Wanted	05/06/07	Not Wanted
SF2/142	18/08/06	20/04/10	Wanted	29/04/10	Wanted	29/04/10	Wanted
SF2/143	18/08/06	28/09/07	Not Wanted	27/02/08	Not Wanted	28/02/08	Not Wanted

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
		26/09/05	Under Review				
08/08/07	Not Wanted	10/08/07	Not Wanted			10/08/07	Not Wanted
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
05/11/07	Not Wanted	15/11/07	Not Wanted			15/11/07	Not Wanted
27/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
05/11/07	Not Wanted	15/11/07	Not Wanted			15/11/07	Not Wanted
05/11/07	Not Wanted	15/11/07	Not Wanted			15/11/07	Not Wanted
11/07/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
21/10/08	Not Wanted	22/10/08	Not Wanted			22/10/08	Not Wanted
05/11/07	Not Wanted	15/11/07	Not Wanted			15/11/07	Not Wanted
10/11/03	Wanted						
		21/07/10	Under Review				
		16/08/10	Under Review				
19/04/11	Wanted	12/05/11	Wanted				
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
05/11/07	Not Wanted	15/11/07	Not Wanted			15/11/07	Not Wanted
07/06/07	Not Wanted	20/07/07	Not Wanted			20/07/07	Not Wanted
10/05/10	Wanted	20/05/10	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
16/04/08	Not Wanted	30/04/08	Not Wanted			30/04/08	Not Wanted

Sinn Féin List 3 (SF3) – all submitted by PJ McGrory & Co (PJM), acting for Sinn Féin, to the PSNI

SF3	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF3/1	19/05/08	06/01/09	Not Wanted			25/03/09	Not Wanted
SF3/2	19/05/08	05/12/08	Not Wanted			25/03/09	Not Wanted
SF3/3	19/05/08	20/04/10	Not Wanted	29/04/10	Not Wanted	29/04/10	Not Wanted
SF3/4	19/05/08	05/12/08 01/07/09	Wanted Under Review	09/02/10	Not Wanted	09/02/10	Not Wanted
SF3/5	24/07/08	07/01/09 20/04/10	Wanted Wanted			20/05/09	Wanted
SF3/6	07/08/08	06/01/09	Wanted			25/03/09	Wanted
SF3/7	07/08/08	05/12/08	Not Wanted			14/05/09	Not Wanted
SF3/8	07/08/08	19/02/09 20/04/10	Wanted Not Wanted	29/04/10	Not Wanted	25/03/09 29/04/10	Wanted Not Wanted
SF3/9	07/08/08	20/04/10	Not Wanted	29/04/10	Not Wanted	29/04/10	Not Wanted
SF3/10	07/08/08	11/02/09	Wanted			20/05/09	Not Wanted
SF3/11	07/08/08	20/04/10	Not Wanted	29/04/10	Not Wanted	29/04/10	Not Wanted
SF3/12	07/08/08	05/12/08	Not Wanted			25/03/09	Not Wanted
SF3/13	07/08/08	06/01/09	Not Wanted			14/05/09	Not Wanted
SF3/14	07/08/08	06/01/09	Not Wanted			25/03/09	Not Wanted
SF3/15	07/08/08	20/04/10	Not Wanted	29/04/10	Not Wanted	29/04/10	Not Wanted
SF3/16	07/08/08	05/12/08	Not Wanted			05/03/09	Not Wanted
SF3/17	07/08/08	19/02/09 17/11/10	Wanted Not Wanted	16/02/11	Not Wanted	25/03/09 16/02/11	Wanted Not Wanted
SF3/18	05/01/09	20/04/10	Not Wanted	29/04/10	Not Wanted	29/04/10	Not Wanted
SF3/19	05/01/09	11/02/09	Not Wanted			27/11/09	Not Wanted
SF3/20	23/01/09	19/03/09	Not Wanted			25/03/09	Not Wanted
SF3/21	23/01/09	19/03/09	Not Wanted			25/03/09	Not Wanted
SF3/22	23/01/09						
Duplicate of SF2/63							

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
26/03/09	Not Wanted	27/03/09	Not Wanted			27/03/09	Not Wanted
02/02/09	Not Wanted	05/02/09	Not Wanted			05/02/09	Not Wanted
26/03/09	Not Wanted	27/03/09	Not Wanted			27/03/09	Not Wanted
10/05/10	Not Wanted	20/05/10	Not Wanted			20/05/10	Not Wanted
15/02/10	Not Wanted	03/03/10	Not Wanted			03/03/10	Not Wanted
02/06/09	Wanted	03/06/09	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
26/03/09	Wanted	27/03/09	Wanted				
02/06/09	Not Wanted	03/06/09	Not Wanted			03/06/09	Not Wanted
26/03/09	Wanted	27/03/09	Wanted				
10/05/10	Not Wanted	20/05/10	Not Wanted			20/05/10	Not Wanted
10/05/10	Not Wanted	20/05/10	Not Wanted			20/05/10	Not Wanted
02/06/09	Wanted	03/06/09	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
10/05/10	Not Wanted	20/05/10	Not Wanted			20/05/10	Not Wanted
02/02/09	Not Wanted	05/02/09	Not Wanted			05/02/09	Not Wanted
26/03/09	Not Wanted	27/03/09	Not Wanted			27/03/09	Not Wanted
02/06/09	Not Wanted	03/06/09	Not Wanted			03/06/09	Not Wanted
26/03/09	Not Wanted	27/03/09	Not Wanted			27/03/09	Not Wanted
10/05/10	Not Wanted	20/05/10	Not Wanted			20/05/10	Not Wanted
12/03/09	Not Wanted	12/03/09	Not Wanted			12/03/09	Not Wanted
26/03/09	Wanted	27/03/09	Wanted				
		21/07/10	Wanted				
		16/08/10	Wanted				
22/02/11	Not Wanted	25/02/11	Not Wanted			25/02/11	Not Wanted
10/05/10	Not Wanted	20/05/10	Not Wanted			20/05/10	Not Wanted
15/02/10	Not Wanted	03/03/10	Not Wanted			03/03/10	Not Wanted
26/03/09	Not Wanted	27/03/09	Not Wanted			27/03/09	Not Wanted
26/03/09	Not Wanted	27/03/09	Not Wanted			27/03/09	Not Wanted

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SF3	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
SF3/23	23/01/09	20/04/10	Wanted	29/04/10	Wanted	29/04/10	Wanted
		22/06/10	Not Wanted			02/07/10	Not Wanted
SF3/24	02/02/09	18/03/09	Not Wanted			25/03/09	Not Wanted
SF3/25	22/09/09	03/11/09	Not Wanted			19/11/09	Not Wanted
SF3/26	06/09/10	18/11/10	Not Wanted			02/11/10	Not Wanted
SF3/27	07/06/11	26/07/11	Not Wanted	11/08/11	Not Wanted	11/08/11	Not Wanted
SF3/28	21/09/11	15/11/11	Not Wanted	17/11/11	Not Wanted	17/11/11	Not Wanted
SF3/29	14/06/12	15/06/12	Under Review	13/08/12	Not Wanted	13/08/12	Not Wanted
		20/08/12	Not Wanted				
SF3/30	31/07/12	09/08/12	Under Review	13/08/12	Under Review		
				11/09/12	Not Wanted	11/09/12	Not Wanted
SF3/31	31/07/12	09/08/12	Under Review	13/08/12	Under Review		
				11/09/12	Not Wanted	11/09/12	Not Wanted
SF3/32	20/11/12	21/11/12	Under Review				
				14/12/12	Under Review		
SF3/33	29/11/12	04/12/12	Under Review				
				12/12/12	Not Wanted		
SF3/34	21/12/12	27/02/13	Under Review	12/03/13	Not Wanted		
SF3/35	30/07/13	30/07/13					

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO		NIO to SF		PSNI to PJM		Letter of assurance/Licence/RPM	
Date	Status	Date	Status	Date	Status	Date	Status
10/05/10	Wanted	20/05/10	Wanted				
08/07/10	Not Wanted	21/07/10	Not Wanted			21/07/10	Not Wanted
		16/08/10	Not Wanted				
26/03/09	Not Wanted	27/03/09	Not Wanted			27/03/09	Not Wanted
20/11/09	Not Wanted	23/11/09	Not Wanted			23/11/09	Not Wanted
				26/01/11	Not Wanted		
17/11/11	Not Wanted	09/01/12	Not Wanted			09/01/12	Not Wanted
24/11/11	Not Wanted	09/01/12	Not Wanted			09/01/12	Not Wanted
				09/08/12	Under Review		
				20/11/12	Not Wanted		
				09/08/12	Under Review		
				21/11/12	Under Review		
				09/08/12	Under Review		
				21/11/12	Under Review		
				21/11/12	Under Review		
				04/12/12	Under Review		

Prison List (PL) – all submitted by the prison authorities to the NIO

PL	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
PL/1	11/02/01					03/04/01	Not Wanted
		10/06/08	Wanted (RTP)				
		20/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)
PL/2	11/02/01					03/04/01	Not Wanted
		10/06/08	Wanted (RTP)				
		20/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)
PL/3	11/02/01						
Duplicate of SF2/39							
PL/4	11/02/01						
Duplicate of SF2/127							
PL/5	11/02/01	10/08/01	Under Review				
		26/10/01	Not Wanted*	20/02/02	Not Wanted*	21/02/02	Wanted (RTP)
		10/06/08	Wanted (RTP)				
		20/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)
PL/6	11/02/01					19/12/02	Wanted
		19/12/02	Wanted	06/01/03	Wanted	06/01/03	Wanted
				03/12/03	Not Wanted*	03/12/03	Wanted
		29/07/10	Not Wanted	03/11/10	Under Review		
		26/07/11	Under Review	13/10/11	Not Wanted	19/10/11	Not Wanted
PL/7	11/02/01	10/08/01	Under Review				
		26/10/01	Not Wanted*	20/02/02	Not Wanted*	21/02/02	Wanted (RTP)
		20/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)	29/04/10	Wanted (RTP)
PL/8	11/02/01	17/12/01	Under Review				
				07/03/11	Wanted	07/03/11	Wanted
PL/9	11/02/01						
Duplicate of SF2/138							
PL/10	11/02/01	17/12/01	Under Review				
				12/11/03	Wanted	12/11/03	Wanted
		01/07/09	Under Review	07/03/11	Wanted	07/03/11	Wanted
PL/11	11/02/01	17/12/01	Under Review				
				27/11/03	Wanted	02/12/03	Wanted
				03/11/10	Under Review		
		26/07/11	Under Review	13/10/11	Not Wanted		
		19/10/11	Not Wanted			19/10/11	Not Wanted
PL/12	11/02/01	17/12/01	Under Review				
				17/09/03	Wanted		
		18/09/03	Under Review	22/09/03	Wanted		
		23/09/03	Under Review	23/09/03	Wanted	23/09/03	Wanted
		28/01/08	Wanted	27/02/08	Wanted	27/02/08	Wanted
				03/11/10	Under Review		
		26/07/11	Under Review	13/10/11	Not Wanted		
19/10/11	Not Wanted			19/10/11	Not Wanted		
PL/13	11/02/01	17/12/01	Under Review				
		23/01/03	Wanted				
		03/10/03	Under Review	03/10/03	Under Review		
		15/02/10	Not Wanted				
PL/14	11/02/01						
Duplicate of SF2/55							

Irish Government List (IG) – referred to as submitted by the Irish Government

PL	Date submitted	PSNI/RUC to PPS		PPS to PSNI/RUC		PPS to AG	
		Date	Status	Date	Status	Date	Status
IG/1	?	03/10/03	Wanted			14/10/03	Wanted
		15/09/08	Not Wanted			02/10/08	Wanted**
IG/2	?	29/07/03	Wanted			07/08/03	Wanted
		10/06/08	Not Wanted			02/10/08	Wanted**
IG/3	?	15/05/03	Under Review				
		24/09/04	Under Review			09/04/10	Wanted
IG/4	?					26/01/01	Not Wanted
		28/01/08	Not Wanted				

Appendix 5: Tables of 'on the run' lists (redacted)

AG to NIO Date	Status	NIO to SF Date	Status	PSNI to PJM Date	Status	Letter of assurance/Licence/RPM Date	Status
10/11/03	Wanted						
21/10/08	Not Wanted	22/10/08	Not Wanted			22/10/08	Not Wanted
10/11/03	Wanted						
21/10/08	Not Wanted	22/10/08	Not Wanted			22/10/08	Not Wanted
19/04/10	Wanted					28/06/13	Licence
30/01/01	Under Review						
16/04/08	Not Wanted	30/04/08	Not Wanted				

Appendix 6: Statement by Peter Mandelson on the extradition of convicted fugitives, 29 September 2000

29th September 2000

STATEMENT BY SECRETARY OF STATE, PETER MANDELSON MP ON EXTRADITION OF CONVICTED FUGITIVES

“On 28 July, all remaining prisoners eligible under the early release scheme who had completed 2 years of their sentences were released as envisaged in the Good Friday Agreement.

The completion of these remaining releases has implications for a number of people who were sentenced to imprisonment for offences committed before the Good Friday Agreement, but who failed to complete these sentences. In most cases those concerned escaped from custody and fled to other countries up to 20 years ago. In many cases, extradition proceedings were initiated and in some of these the government is now being pressed by Court authorities to clarify its position.

Whether to pursue an extradition request depends on the public interest at stake, including the remaining sentence which the fugitive would stand to serve if he or she were returned. It is clearly anomalous to pursue the extradition of people who appear to qualify for early release under the Good Friday Agreement scheme, and who would, on making a successful application to the Sentence Review Commissioners, have little if any of their original prison sentence to serve.

Press Office, Castle Buildings, Stormont, Belfast, BT4 3SG

Tel:

Fax:

In view of this and the time that has elapsed, I do not believe that it would now be proportionate or in the public interest to continue to pursue such cases.

If these individuals wish to benefit from the early release scheme, they will be able to return to Northern Ireland and make an application to the Sentence Review Commissioners. If this is granted, normal licence conditions, including liability to recall to prison, will apply. The decision has no implications for the prosecution of other offences where sufficient evidence exists. It is not an amnesty.

As with the rest of the early release programme, I do not under-estimate the hurt this decision may cause the victims of those whose extradition will no longer be pursued, and the onus it places on all of us to ensure that the Good Friday Agreement does result in a permanent peace in which there are no more victims.”

Appendix 7: Terms of reference for police reviews under the administrative scheme

1

HQ Reference:

Subject: SINN FEIN LIST 2, PRISON LIST 1 & IRISH GOVERNMENT LIST 1 – OTR'S

**To: Head of Branch
C1**

Reference the ongoing review in respect of certain named OTR's. You requested that I give some indication regarding the standard of research required and what is expected from the reviewing officer. I trust the following may assist.

Confirm Identity

1. In the cases where a name, date of birth and a general area of residence are supplied, the details should be checked on ICIS and also with SB. If there is a positive ID then research should begin.
2. In some cases it may be that there is not an exact match to the date of birth, but care should be taken to check close permutations, in which the incorrect month or year may have been recorded. If there is a 'possible match' then this fact should be communicated in writing to the Director of Public Prosecutions, who is personally chairing this review. Confirmation of the supplied date of birth, along with full names, aliases and previous addresses should be requested.
3. In any case where a date of birth is not supplied (even if it may seem obvious from the name who the OTR is), the case must be referred back to the Director seeking the information set out in 2 above.

Is the person Wanted?

1. NB. To just check if there is an Alert on ICIS is not acceptable.
2. In quite a number of cases already reviewed the individual was not alerted on ICIS, however extensive research concluded that they are indeed 'wanted', either for questioning by PSNI or because there are still outstanding live files with the Director of Public Prosecutions.
3. Consequently it is necessary to completely examine all details held on ICIS. Many cases had vague comments in the pen picture, such as 'Believed to have been involved in the murder of A'.
4. To conduct a proper review it is necessary to identify and examine any such incident referred to in the ICIS documents.
Are investigation papers available?
Was the person named during the investigation in reports or statements?
Are there any intelligence documents?
Was there a prosecution file submitted for anyone involved in the incident?
Again was the person mentioned in the prosecution papers?

This will involve a trawl for old papers which may be retained at local level, Crime Headquarters, Court Service and Public Records Office; and a full examination of all recovered documents.

5. Checks are obviously made through ICIS, but they must also be made with local personnel, particularly the CIO.
6. Checks must also be made, in writing, with SB Headquarters and with local SB officers.

The Wanted Options and Action Required

1. Is the person wanted for questioning?

If yes - Then a full report should be prepared outlining why the person is wanted and the grounds to justify arrest and circulation. The report should also indicate any additional action required upon arrest i.e. fingerprint or DNA sample required for comparison.

A copy of any relevant intelligence documents, statements etc, which implicate the suspect, should be attached to the report.

If it is an old case the availability of evidence may require consideration in advance of a decision to pursue the individual.

A Senior Officer should consider the merits of the case and confirm in writing whether or not the person is to be sought by PSNI.

The Director must then be advised of the position in writing, with a copy to the Crown Solicitor for Northern Ireland.

2. Did the person abscond when on remand on bail?

If yes - The Director and the Crown Solicitor should be advised and they will ensure their Department files are also researched.

A full review of the case should be carried out to establish the current availability of evidence. In particular the review should state the position in relation to:

- a) Original caution statements
- b) Original interview notes
- c) Original custody records
- d) Original exhibits
- e) Forensic reports
- f) Witnesses
 - A report on witnesses should indicate if the person is still available and still capable to give evidence. The Director would also like an indication whether or not the person is willing to testify voluntarily.
 - At present, civilian witnesses should not be approached until authorisation is received from the Attorney General.
- g) Outstanding warrants
- h) Any other issue which may be relevant to the case.

In addition, a new DPP file must be prepared in respect of the offence of being Unlawfully at Large. (NB. No offence can be left outstanding upon completion of the review).

The evidential review of remand cases, along with the new unlawfully at large file, will be forwarded to the Director for direction.

The Crown Solicitor should be advised of the position.

3. Did the person escape from prison whilst on remand in custody?

If Yes - Establish current availability of evidence as at No. 2 above.

However, a new DPP file must be prepared and submitted to the Director in respect of the offence of Escaping from Lawful Custody, instead of the Unlawfully at Large offence.

In respect of retired prison officers required as witnesses it may be necessary to get a court order to obtain their contact details from Civil Service Pensions.

The Crown Solicitor should be advised of the position.

4. Was the person a convicted prisoner at time of escape or absconding from prison?

If Yes - Obviously there is no review of evidence for the conviction, but a new DPP file must still be prepared in respect of whichever offence is relevant; either Escaping from Custody or Unlawfully at Large.

5. Is the person wanted for any other offence since absconding or escaping from custody?

If Yes - and there is sufficient evidence available, a full DPP file should be prepared and submitted to the Director.

However, It is more probable that the evidence would not be sufficient at this time to justify submission of a file to the Director. Consequently a report should be completed, as at No.1 above and a written direction made by a Senior Officer.

The Director and Crown Solicitor should be advised in writing of the position.

6. Does any other Police Service in the United Kingdom want the person?

The Director and Crown Solicitor also require this information from the Reviewing Officer, in writing.

7. Does any other country outside the United Kingdom want the person?

The Director and Crown Solicitor also require this information from the Reviewing Officer, in writing.

Meetings / Commitments

Frequent conferences, chaired by the Director, are held at the RCJ Belfast to review o/s cases. Others present may be the Deputy Director and other senior DPP staff, the Crown Solicitor and senior staff, and the Reviewing Police Officer. Representatives from the Attorney General's office and the Northern Ireland Office attend at more irregular intervals.

The Reviewing Police Officer should be completely satisfied with the depth of the police research and be aware that his comments (on behalf of PSNI) will be reflected in the Director's minutes, which are forwarded to London for the information of the Attorney General and Secretary of State for NI.

It may be useful to know that two officials from the Secretary of States' staff visited Knocknagoney at the end of last month and spent the afternoon examining the research methodology of the current OTR Review Team. Suffice to say they were satisfied with the meticulous approach to this task, however it is important that future reviews are conducted to the same standard.

Completion of each reviewed OTR

- a) The office of 'ACC' Crime is the central PSNI point of contact for this OTR Project, receiving frequent enquiries from Government, Command Sec, NIPS, DPP, Press Office, etc.

Consequently it must be impressed upon all reviewing officers that the Head of Branch C2 must notified in writing immediately each individual review is concluded.

- b) The reviewing officer is responsible for ensuring that individuals are immediately removed from circulation if the DPP rescinds an earlier direction to prosecute, or if a senior officer directs no further action.

It is imperative that these two instructions are strictly complied with, in order to avoid any potential embarrassment to PSNI and the Chief Constable.

**J Davison
Detective Inspector
Extradition & Disclosure**

19 March '02

Copied to: Head of Branch C2



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

Assistant Chief Constable Peter Sheridan
Crime Operations

Confidential

15 February 2007

Hilary Jackson
Director Political (London)
11 Millbank
London
SW1P 4QE

Dear *Hilary*

Re: Terms of Reference - Persons wanted by the PSNI in connection with terrorist related offences up to the 10 April 1998

To clarify the current 'status' on the identified outstanding 'wanted' persons by the PSNI in connection with terrorist related offences up to the 10 April 1998, I have appointed a senior Detective Chief Superintendent to undertake a 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 this review are 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-

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 from a period of parole or failed to surrender to a court as a condition of the granting of bail.

-3-

- b. No longer wanted for arrest forOffence(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 ofallegedly 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.

I trust that this will be some assistance to you, if you require any further explanation as to the process that will be employed please do not hesitate to contact me.

Yours sincerely



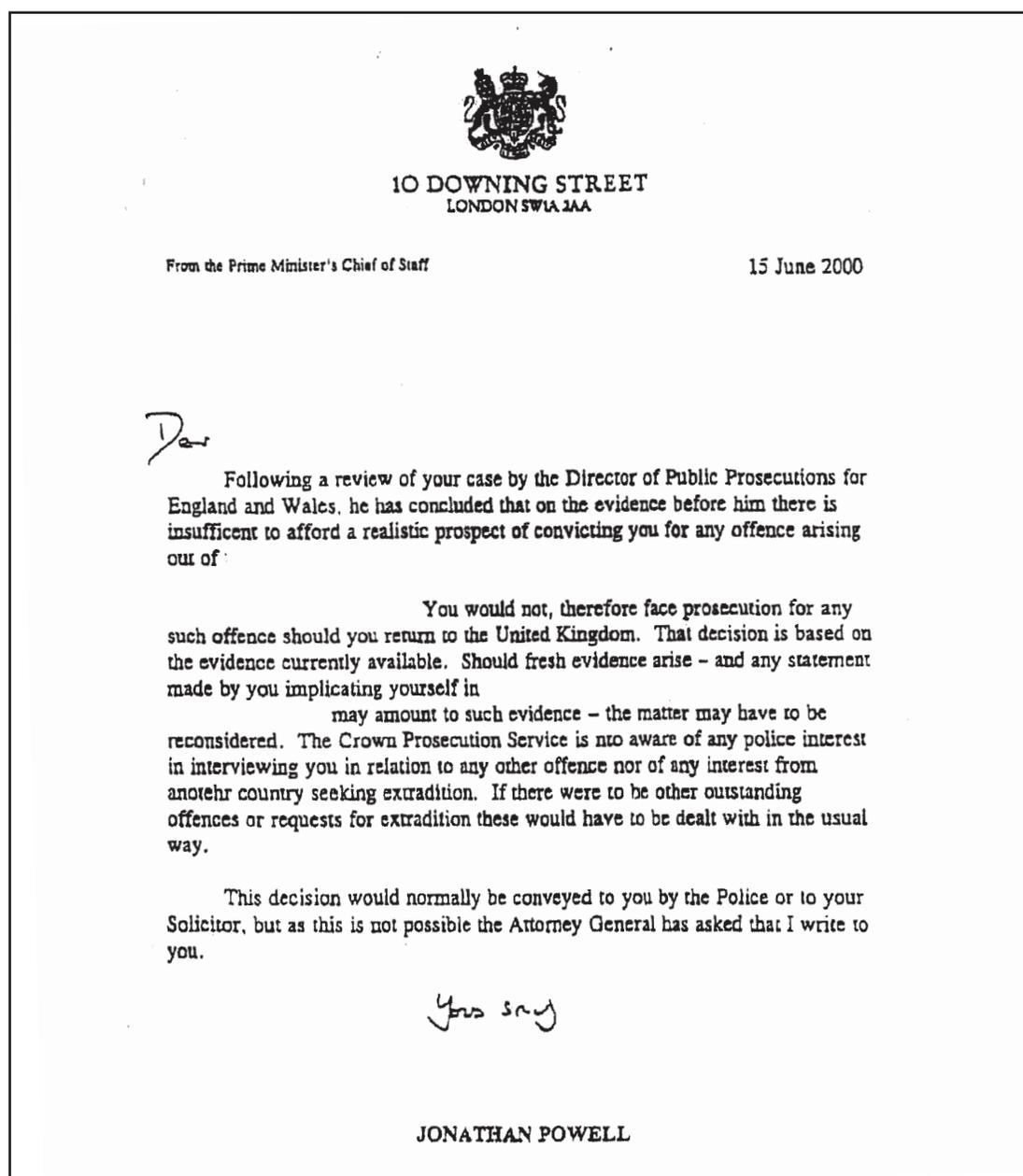
PETER SHERIDAN
ACC Crime Ops

cc Chief Constable
Deputy Chief Constable
D/Chief Supt Baxter, HOB C2

Appendix 8: Examples of letters (redacted)

As set out in Chapter 4, not all letters of assurance sent to 'on the runs' via Sinn Féin were drafted in the same terms. In this appendix we reproduce examples of various letters of assurance and letters to Sinn Féin to illustrate the variations.

1. Letter dated 15 June 2000 signed by Jonathan Powell, No. 10 Chief of Staff



2. Letter dated 16 November 2001 from Northern Ireland Office to an OTR (delivered via Gerry Kelly MLA)

This letter uses similar wording to the letter sent to John Downey in July 2007.



NORTHERN IRELAND OFFICE
11 Millbank, London SW1P 4PN
Tel

POLITICAL DIRECTOR

via Gerry Kelly

16 November 2001

The Secretary of State for Northern Ireland has been informed by the Attorney General that on the basis of the information currently available, there is no outstanding direction for 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 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 if any request for extradition were to be received, these would have to be dealt with in the usual way.

A handwritten signature in cursive script, appearing to read 'Bill Jeffrey'.

BILL JEFFREY

3. Letter dated 22 January 2003 from Northern Ireland Office to Gerry Kelly MLA



NORTHERN IRELAND OFFICE
11 Millbank
London SW1P 4PN
Tel

Mr Gerry Kelly
Sinn Féin
51-55 Falls Road
Belfast
BT12 4PD

22 January 2003

Dear Mr Kelly,

'ON THE RUNS'

You have previously been in correspondence with my predecessor Paul Morrison in the Northern Ireland Office about a number of individuals who are currently on the run but want to return to Northern Ireland and wish to be informed of their status if they were to do so. Following investigations made by the relevant authorities in Northern Ireland I can now confirm that the necessary checks have been completed on the following six individuals who, in the current circumstances of their cases, would face arrest and questioning if they returned to Northern Ireland.

- ◆
- ◆
- ◆
- ◆
- ◆
- ◆
- ◆

However, following investigations made by the Attorney General's Office I can now confirm that the following individuals:-

- ◆
- ◆

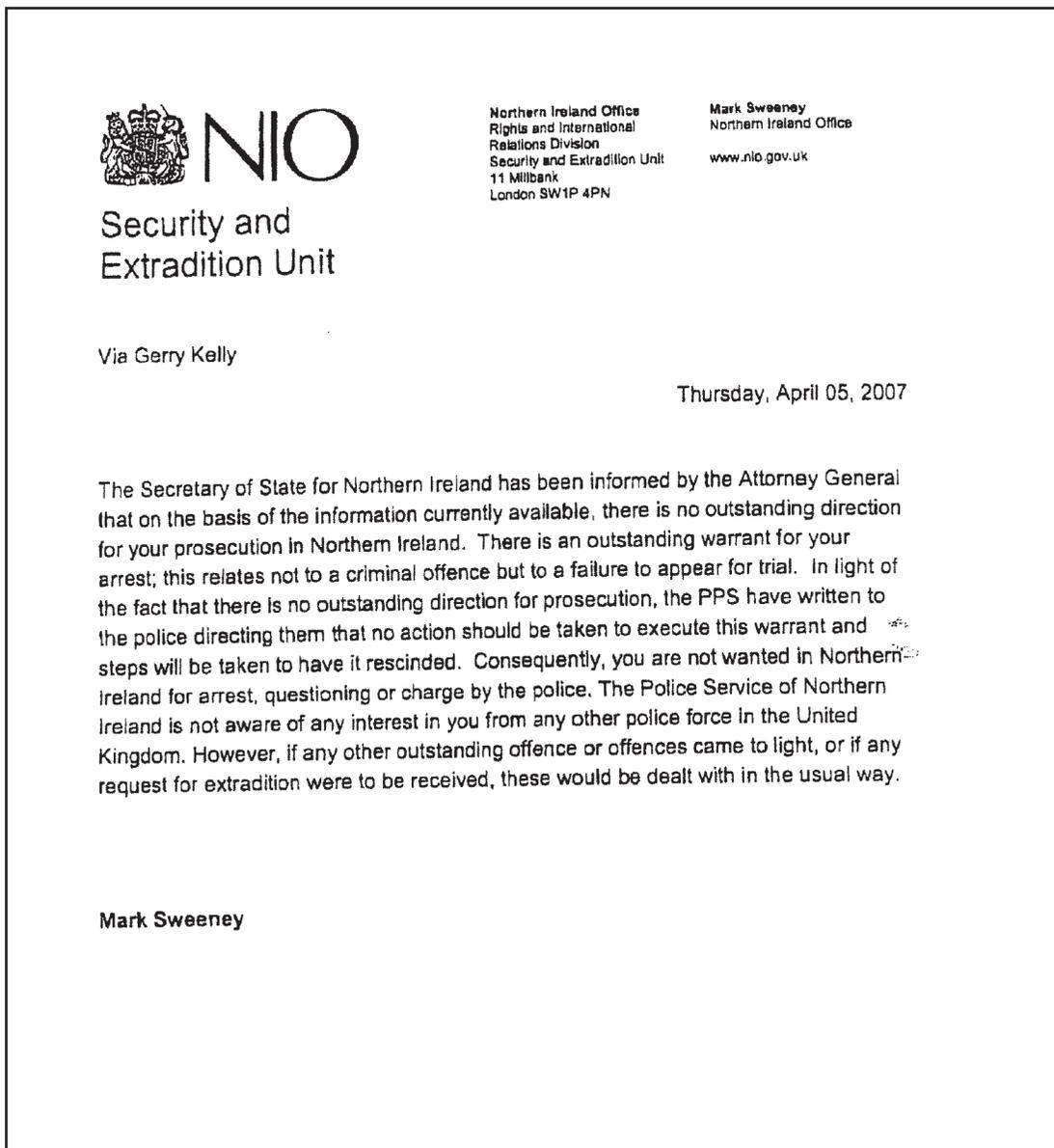
are free to return to Northern Ireland on the basis of the information provided to us and I enclose a letter informing each of their legal position.

As we do not have an address for these individuals, I would be grateful if you would ensure that these letters are passed on to them.

Yours sincerely,

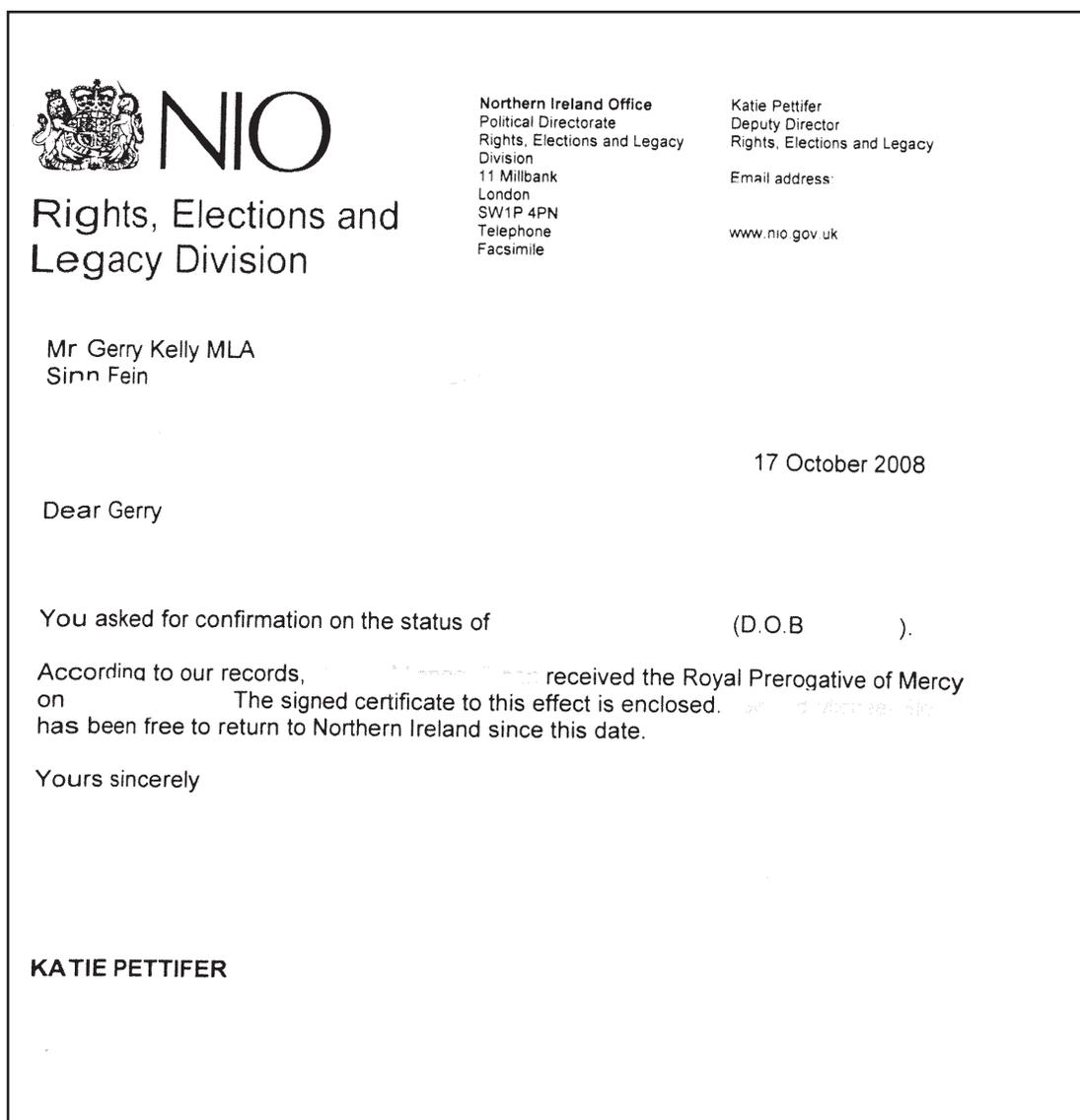
4. Letter dated 5 April 2007 from Northern Ireland Office to an OTR (delivered via Gerry Kelly MLA)

This letter adapts the standard format adding text specific to the individual, namely an outstanding warrant for arrest due to a failure to appear for trial. It also informs the individual that there is no outstanding direction for prosecution and on this basis the Public Prosecution Service has written to the police directing that no action should be taken to execute this warrant and that steps will be taken to rescind this.

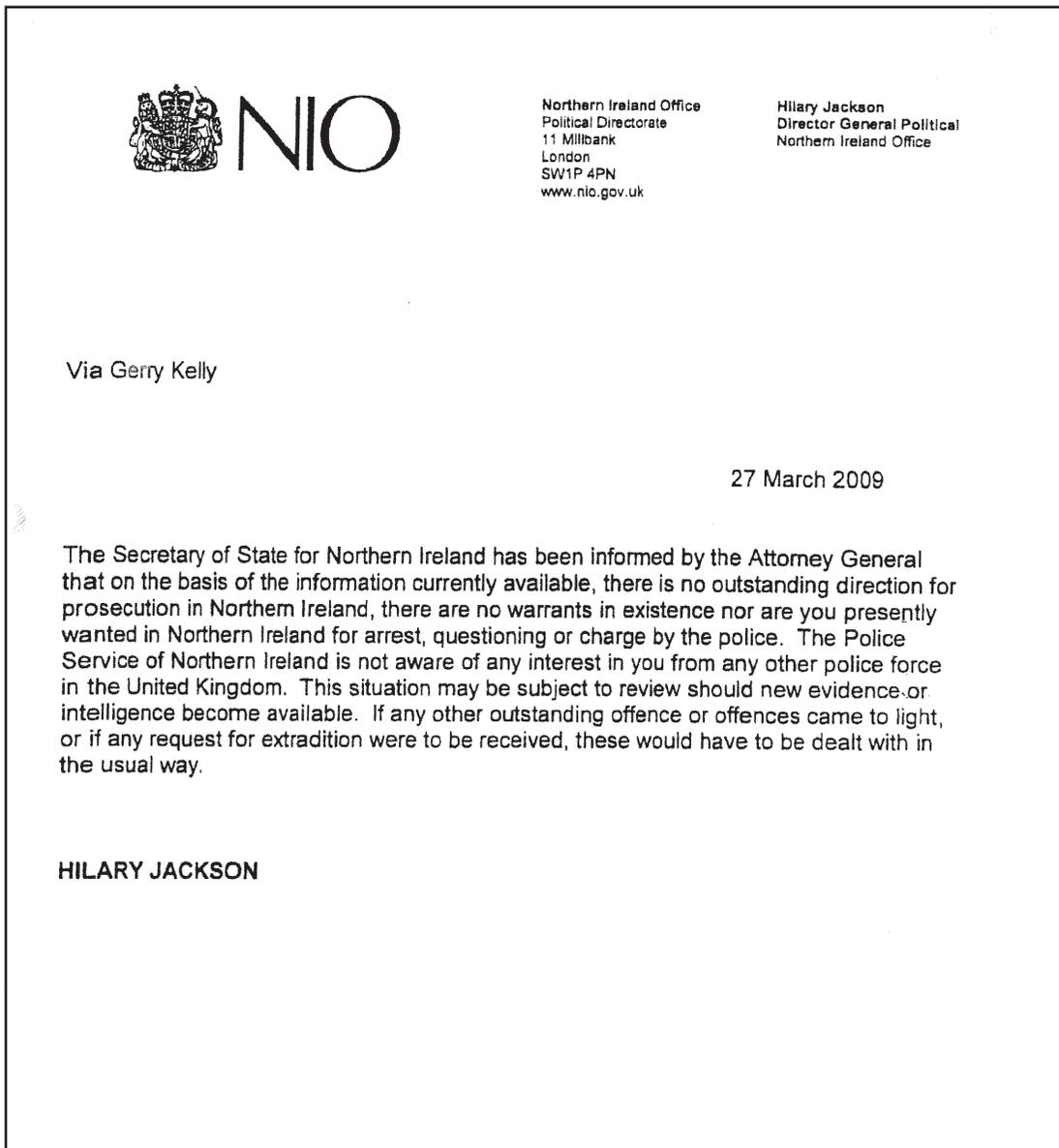


5. Letter dated 17 October 2008 from Northern Ireland Office to Gerry Kelly MLA

This letter confirms that the Royal Prerogative of Mercy has been granted in respect of an OTR.



6. Letter dated 27 March 2009 from Northern Ireland Office to an OTR (delivered via Gerry Kelly MLA)



7. Letter dated 14 September 2009 from Northern Ireland Office to an OTR (delivered via Gerry Kelly MLA) relaying a decision to no longer seek extradition

This letter differs from others sent in the scheme as it states that the individual is not “presently wanted in Great Britain for arrest”.



8. Letter dated 16 August 2010 from Northern Ireland Office to Gerry Kelly MLA

This letter updates Sinn Féin on the status of 25 OTRs.

 NIO	Northern Ireland Office 11 Millbank London SW1P 4PN Telephone: Facsimile:	Simon Case Deputy Director Rights, Elections and Legacy Political Directorate Northern Ireland Office
Rights, Elections And Legacy		e-mail: web: www.nio.gov.uk
Gerry Kelly MLA Sinn Féin		
		16 August 2010
Dear Mr Kelly		
ON THE RUNS		
<p>You have previously been in correspondence with the Northern Ireland Office about a number of individuals who are currently on the run but want to return to Northern Ireland and wish to be informed of their status if they were to do so. I met with Leo and Padraig in June to discuss this issue – we agreed at that meeting that we would take steps to ensure our records matched so that when the subject was discussed again at a political level we were all confident that the factual basis for discussion was consistent across parties involved. Please accept my sincerest apologies that this letter has taken so long – it has taken some time to check and re-check our records.</p>		
<p>During our meeting, I was handed a list of individuals whose status required clarification. Those individuals were:</p>		

The statuses conveyed were as follows:

- No. 1 – status remains under review.
- No. 2 – would face arrest and questioning if they returned to Northern Ireland.
- No. 3 – would face arrest and questioning if they returned to Northern Ireland.
- No. 4 – would face arrest and questioning if they returned to Northern Ireland.
- No. 5 – would face arrest and questioning if they returned to Northern Ireland.
- No. 6 – status remains under review.
- No. 7 – status remains under review.
- No. 8 – not on any previous Sinn Féin list. If the person is the same individual as XXXX (with the same date of birth), their status remains under review.
- No. 9 – would face arrest and questioning if they returned to Northern Ireland.
- No. 10 – would face arrest and questioning if they returned to Northern Ireland.
- No. 11 – would face arrest and questioning if they returned to Northern Ireland.
- No. 12 – would face arrest and questioning if they returned to Northern Ireland.
- No. 13 – no outstanding direction for prosecution in Northern Ireland, no warrants and not wanted in Northern Ireland for arrest, questioning or charge. PSNI not aware of any interest from any other UK police force.
- No. 14 – would face arrest and questioning if they returned to Northern Ireland.
- No. 15 – would face arrest and questioning if they returned to Northern Ireland.
- No. 16 – would face arrest and questioning if they returned to Northern Ireland.
- No. 17 – status remains under review.
- No. 18 – status remains under review.
- No. 19 – status remains under review.
- No. 20 – would face arrest and questioning if they returned to Northern Ireland.
- No. 21 – awaiting update from the Sentence Review Commission (SRC).
- No. 22 – wanted for return to prison in Northern Ireland but would be eligible to make an application to the SRC for early release.
- No. 23 – wanted for return to prison in Northern Ireland but would be eligible to make an application to the SRC for early release.
- No. 24 – wanted for return to prison in Northern Ireland but would be eligible to make an application to the SRC for early release.
- No. 25 – wanted for return to prison in Northern Ireland but would be eligible to make an application to the SRC for early release.

9. Letter dated 20 October 2010 from Northern Ireland Office to Gerry Kelly MLA

This letter informs Gerry Kelly of an individual's 'wanted' status.

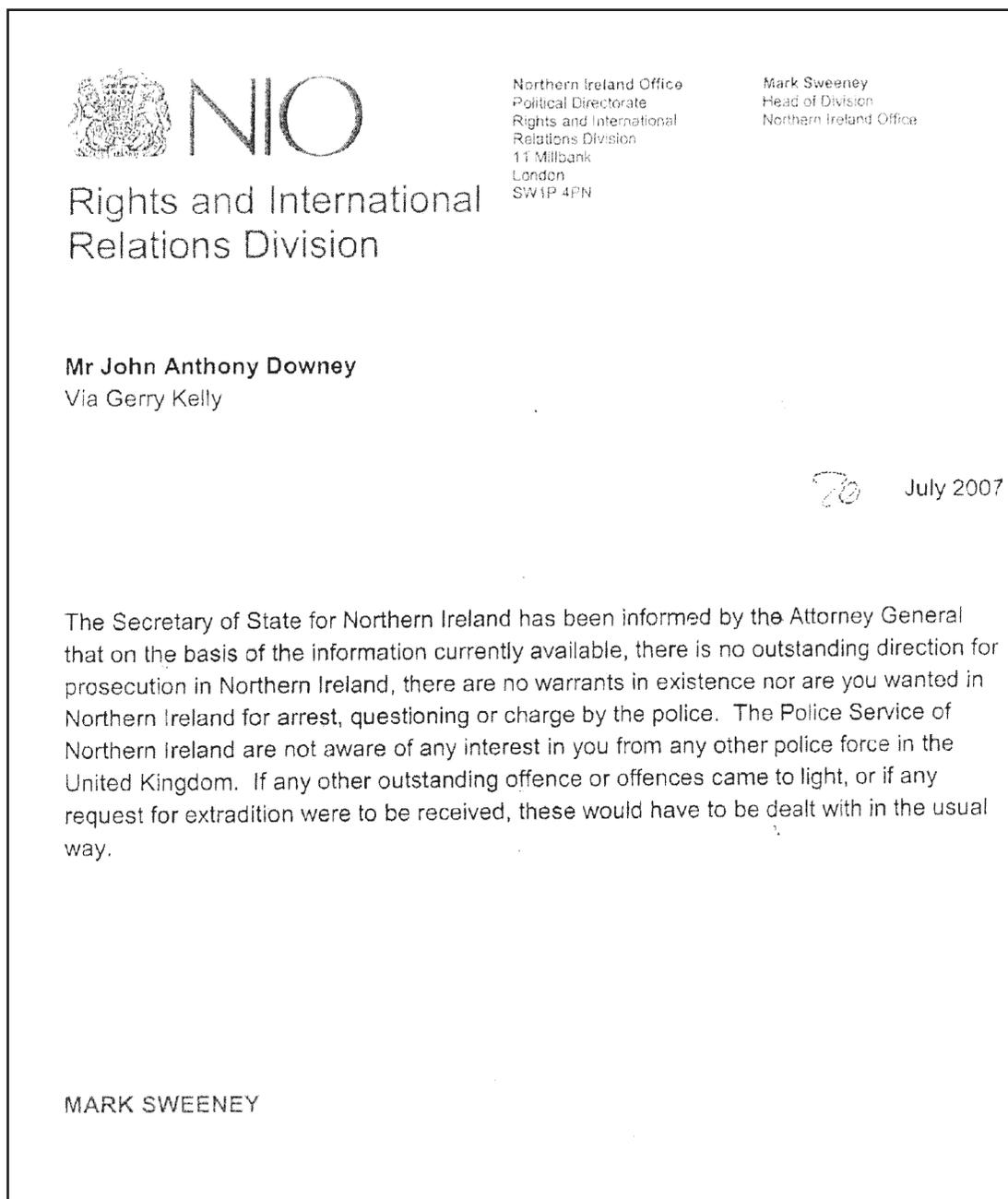
 NIO Rights, Elections and Legacy Division	Northern Ireland Office Political Directorate Rights, Elections and Legacy Division 11 Millbank London SW1P 4PN Telephone Facsimile	Dr Simon Case Deputy Director Rights, Elections and Legacy Email address: www.nio.gov.uk
<p>Gerry Kelly MLA Sinn Fein</p>		
<p>20 October 2010</p>		
<p>Dear Mr Kelly</p>		
<p>ON THE RUNS</p>		
<p>Further to my letter of 16 August 2010, your colleagues have contacted the Northern Ireland Office requesting clarification on the status of [redacted] (DOB [redacted]). As you are probably aware, the Public Prosecution Service re-reviewed the case. I have been informed that this re-review has now been concluded and that [redacted] remains wanted and would, in the current circumstances of his case, face arrest if he returned to Northern Ireland.</p>		
<p>Please inform [redacted] of his status.</p>		
<p>Yours sincerely</p>		
<p>SIMON CASE</p>		

10. Letter dated 12 May 2011 from Northern Ireland Office to Gerry Kelly MLA

This letter informs Gerry Kelly of an individual's 'wanted' status.

 NIO Security & Legacy Group	Northern Ireland Office Political Directorate Security & Legacy Group 11 Millbank London SW1P 4PN Telephone Facsimile	Dr Simon Case Deputy Director Security & Legacy Group Email address: www.nio.gov.uk
Gerry Kelly MLA Sinn Fein		
12 May 2011		
Dear Mr Kelly		
ON THE RUNS		
You have previously been in correspondence with the Northern Ireland Office about a number of individuals who are currently on the run but want to return to Northern Ireland and wish to be informed of their status if they were to do so.		
Following investigations made by the relevant authorities in Northern Ireland I can now confirm that the necessary checks have been completed on the following individual who would, in the current circumstances of his case, face arrest and questioning if he returned to Northern Ireland:		
<ul style="list-style-type: none">• Sinn Fein list ()		
Yours sincerely		
SIMON CASE		

11. Letter dated 20 July 2007 from Northern Ireland Office to John Downey (delivered via Gerry Kelly MLA)



Appendix 9: Material in the public domain

This table sets out a non-exhaustive selection of open source references that might have revealed to the general public the nature of the administrative scheme. It includes references to official statements and agreements that formed the backdrop to the scheme. It sets out government statements that purported to deal with the issue. Additionally, it includes references that might have indicated that the Royal Prerogative of Mercy (RPM) was a further tool used to deal with one category of ‘on the runs’ (OTRs), that is, prison escapees. In some press articles, individuals are named as possible recipients of RPM or consideration of individuals’ status is referenced; the Review makes no comment on the accuracy of these reports. Where available, links to the extracts can be found on the electronic version of the Report available at www.hallettreview.org

Date	Source	Document	Extract
30.08.98	<i>Mail on Sunday</i>	Daniel Foggo article: ‘“Amnesty” for IRA fugitives to keep peace’	Charges against wanted IRA suspects living outside Britain may be dropped to further the peace process. The Government is also set to consider abandoning extradition procedures against them, it emerged last night. The Director of Public Prosecutions in Ulster is reviewing the case of leading Republican Rita O’Hare ... If the blocks against her are removed, it would create a compelling precedent for wanted terrorists – including escapees from the Maze prison – who are still on the run in the Republic and the United States. Legal sources confirmed that a terrorist on the wanted list would have to be given equal consideration ... A Government source said: ‘The problem is that on the one hand the Good Friday Agreement allows existing IRA prisoners to be released early while on the other there are outstanding warrants for the arrest of various suspects and convicted escapees. If they are eventually brought to trial with the accompanying blaze of publicity and sentenced to prison it could unbalance and endanger the whole process.’
08.08.00	<i>News of the World</i>	Keith Gladdis article: ‘IRA fugitives set for Blair amnesty deal’	... Sinn Fein is drawing up a list of terrorists on the run ... British officials will advise Sinn Fein on the fugitives likely to face charges ...
13.08.00	<i>Sunday Times</i>	Liam Clarke article: ‘IRA seeks amnesty for fugitives’	... Sinn Fein and the IRA are drawing up a list of members who are on the run or living away from home for fear of arrest. <u>Adams plans to supply Blair with a list of people who want to return to Northern Ireland and officials will then advise him of which ones are likely to face charges ...</u> [T]he British government wants to deal with the issue on a case-by-case basis, rather than an amnesty or a change of the law ... [emphasis added]
15.09.00	<i>News Letter</i>	Article: ‘Amnesty list does exist says Flanagan’	RUC Chief Constable Sir Ronnie Flanagan has admitted a list of wanted republicans who were not to be detained if seen in Northern Ireland exists. However, he denied it had been passed to his force when questioned about the claims by the Police Authority. Last month, the NIO denied the existence of the list, which is said to contain the names of 41 people ... [and] to have been compiled after a meeting between Gerry Adams and Prime Minister Tony Blair.

Date	Source	Document	Extract
29.09.00	Northern Ireland Information Service (NIO) – press release	Statement by Secretary of State, Peter Mandelson MP, on extradition of convicted fugitives	... The completion of these remaining releases [under the Good Friday Agreement] has implications for a number of people who were sentenced to imprisonment for offences committed before the Good Friday Agreement, but who failed to complete these sentences. In most cases those concerned escaped from custody and fled to other countries up to 20 years ago. In many cases, extradition proceedings were initiated and in some of these the government is now being pressed by Court authorities to clarify its position. Whether to pursue an extradition request depends on the public interest at stake, including the remaining sentence which the fugitive would stand to serve if he or she were returned. It is clearly anomalous to pursue the extradition of people who appear to qualify for early release under the Good Friday Agreement scheme, and who would, on making a successful application to the Sentence Review Commissioners, have little if any of their original prison sentence to serve. ... If these individuals wish to benefit from the early release scheme, they will be able to return to Northern Ireland and make an application to the Sentence Review Commissioners. If this is granted, normal licence conditions, including liability to recall to prison, will apply. The decision has no implications for the prosecution of other offences where sufficient evidence exists. It is not an amnesty.
30.09.00	Daily Star	Deric Henderson article: 'Mandy frees the runaway IRA men'	Escaped IRA terrorists are being urged to return to Northern Ireland – to be pardoned under the Good Friday Agreement. But Northern Ireland Secretary Peter Mandelson insisted yesterday: "It is not an amnesty." ... It is not immediately clear how many escapees will benefit, but it may be fewer than 21 and include some who fled across the Atlantic up to 20 years ago ...
09.11.00	The Daily Telegraph	David Graves article: 'Mandelson ends moves to extradite IRA killers'	... Several other extradition cases, and those involving suspected terrorists who feared arrest if they returned to Northern Ireland, were also likely to be dropped by ministers as part of the Government's commitment to the [Good Friday] agreement. ... Republicans now believe that British officials are examining ways of "clearing up" outstanding terrorist cases against other IRA members as part of the agreement.
27.12.00	BBC NI news website	BBC article: 'Ex-prisoners free to return to NI'	Four former IRA prisoners who escaped from prison in Belfast have been granted special dispensation by the Queen to return to Northern Ireland. The Royal prerogative of mercy given to Angelo Fusco, Robert Campbell, Paul Patrick Magee and Anthony Gerard Sloan means they are free from any risk of prosecution.
28.12.00	Irish Independent	Louise McCall article: 'Unionist anger as IRA escapees are allowed home'	... The Northern Ireland Office confirmed that Angelo Fusco, Robert Campbell, Paul Patrick Magee and Anthony Gerard Sloan have been granted special dispensation by Queen Elizabeth to return safely to the North after years of being on the run ...

Date	Source	Document	Extract
27.03.01	BBC NI news website	BBC article: 'Republican fugitives freed on licence'	Republican paramilitaries who have been on the run after escaping from prison have been freed on licence under the Good Friday Agreement. ... However, the ruling does not apply to those who have not been convicted of any offence – like the Harrods bomb suspect Evelyn Glenholmes who avoided extradition from the republic in a high-profile case.
27.03.01	The Guardian	Rosie Cowan article: 'Maze escapees told: go home'	Eight republican terrorists who escaped from prison in Northern Ireland over the past 20 years have given themselves up to the authorities and been quietly told to go home in what is believed to be a government amnesty aimed at cementing the faltering peace process ... The move came in a republican attempt to force the issue of what happens to men still on the run – of whom there are scores. It is understood that the sentence review commission, set up under the terms of the Good Friday agreement, freed them under licence in the same way as prisoners belonging to republican and loyalist paramilitary groups on ceasefire have been let out over the past two years. ... <u>The government has never officially announced an amnesty and yesterday played down this latest development as part of an ongoing assessment process.</u> ... A republican source said: "Last year Peter Mandelson acknowledged an anomaly had arisen with regard to people on the run. Last May, the British government agreed to remove the anomaly but it is only now they are moving on it. ..." [emphasis added]
15.04.01	The Observer	Henry McDonald article: 'IRA's men on run can return home'	... <u>Sinn Fein has handed over the 61 names to the Northern Ireland Office, which in turn has asked the RUC to determine the exact nature of the charges against each individual.</u> A spokesman for the Northern Ireland Office said: 'We will continue this policy as we said we would last September. At the time of that announcement by Peter Mandelson that some OTRs could go back home, we said we would look at this issue again.' ...
01.08.01	Weston Park Agreement	Weston Park Agreement, paragraph 20	Both Governments also recognise that there is an issue to be addressed, with the completion of the early release scheme, about supporters of organisations now on cease-fire against whom there are outstanding prosecutions, and in some cases extradition proceedings, for offences committed before 10 April 1998. Such people would, if convicted, stand to benefit from the early release scheme. The Governments accept that <u>it would be a natural development of the scheme for such prosecutions not to be pursued and will as soon as possible, and in any event before the end of the year, take such steps as are necessary in their jurisdictions to resolve this difficulty so that those concerned are no longer pursued.</u> [emphasis added]

Date	Source	Document	Extract
27.11.01	House of Commons 27 Nov 2001: Column 768W	Written answer of Jane Kennedy to question from Harry Barnes	<p>HB: 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.</p> <p>JK: Where decisions as to prosecution arise, <u>the prosecuting authorities, who act independently of Government, reach decisions in accordance with the Test for Prosecution.</u></p> <p>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 <u>may otherwise be liable to possible prosecution</u> in respect of certain qualifying offences. We are currently considering the mechanism for delivering this. [emphasis added]</p>
05.12.01	House of Commons debate 5 Dec 2001: Column 317	John Reid's response in debate to Quentin Davies	<p>QD: Is it true, as the right hon. Gentleman's predecessor says in a magazine article today, that the Government are planning a new raft of concessions in Northern Ireland? The article refers to "<u>an amnesty for former terrorists on the run</u> ... the dismantling of British security facilities ... further inquiries into past British security 'misdeeds'" — there is, of course, no mention of anybody else's misdeeds — "and further changes to the new police service, the successor to the RUC, on top of those reforms already agreed to make the police acceptable to nationalists and Republicans."</p> <p>If there is any truth in that statement by the Secretary of State's predecessor, will he come clean to the House and say when he proposes to bring the measures before it and to explain their justification?</p> <p>JR: It is not true that new measures are being contemplated apart from <u>those that have already been put before the public and the House in Weston Park.</u> I would do my right hon. Friend the Member for Hartlepool (Mr. Mandelson) a disservice if I did not point out that he did not suggest that the measures were new. He said that they had already been undertaken. [emphasis added]</p>

Date	Source	Document	Extract
11.12.01	House of Commons 11 Dec 2001: Column 753W	Written answer of Jane Kennedy to question from Harry Barnes	<p>HB: 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.</p> <p>JK: Decisions on ending prosecutions are <u>a matter for the independent prosecuting authorities based on a strict application of evidential and public interest tests</u>. Separately, in relation to terrorist prisoners on the run, <u>the Government announced in September 2000 that they were dropping extraditions against those who would have had little or no time left to serve if they returned to Northern Ireland. This has no bearing on cases where there remains an outstanding need to prosecute</u> but relates specifically to cases where the individual concerned has escaped from custody before the completion of their sentence. The Government have dealt with these individuals in a way that is consistent with the Sentences Act 1998, which provides for the accelerated release of prisoners. For the most part this has meant allowing the individuals back into the jurisdiction in order to allow them to make an application for early release to the Sentence Review Commissioners. In a handful of cases, individuals had served the same or longer periods in custody than those already released under the Sentences Act but fell outside the strict application of that legislation, either because time in custody had been served outside Northern Ireland or because their offences had not been scheduled at the time they were committed. In these cases the Secretary of State uses his powers under the Northern Ireland Prison Act 1953 to release life sentence prisoners on licence or to recommend use of the Royal Prerogative of Mercy to remit outstanding portions of determinate sentences.</p> <p>To date these arrangements have been made in 19 cases. This arrangement does not represent an amnesty. The actions taken by the Government involve decisions on whether these individuals should be allowed to return to Northern Ireland without serving further time in custody because they have met the principles of the early release scheme. The early release scheme is an integral part of the Good Friday Agreement.</p> <p>Following the proposal made at the Weston Park talks, the Government have agreed to such steps as are necessary as soon as possible, and in any event by March 2002, to resolve the issue about supporters of organisations now on cease-fire against whom there are outstanding prosecutions, and in some cases extradition proceedings, for offences committed before 10 April 1998, who would, if convicted, stand to benefit from the early release scheme. We are currently considering the options for delivering this.</p>

Date	Source	Document	Extract
09.01.02	<i>Irish Echo</i>	Jack Holland article: 'Fugitive flap'	... <u>It is understood that Sinn Fein drew up a list of 41 OTRs whose cases it wanted processed to enable them to return to Northern Ireland without fear of arrest.</u> It then added another 60 ... Other cases will be more difficult to deal with, especially those involving fugitives who have not yet stood trial. The British government has no authority to tell the Director of Public Prosecutions office not to pursue a case. Legislation would have to be passed ... [emphasis added]
16.01.02	House of Commons debate 16 Jan 2002: Column 278–279	John Reid's response to Quentin Davies	QD: ... In the second half of last year, the Government launched on their lamentable course of not insisting on and waiting for the implementation of the Belfast agreement. When they went beyond it by making unilateral and unreciprocated further concessions to Irish republicanism, <u>one of the many obnoxious things that they did was to agree at Weston Park to introduce an amnesty for on-the-run terrorists by the end of 2001. What is the current status of that promise?</u> JR: ... we have agreed to resolve the issue that arises from those fugitives who have not benefited under the terms of the early release scheme. <u>When we have practical proposals on that, we will bring them to the House.</u> [emphasis added]
14.02.02	House of Lords debate 14 Feb 2002: Column 1200	Lord Fitt in debate on the Northern Ireland Arms Decommissioning (Amendment) Bill	... On the other hand, we know — and I refer to it again at the risk of repeating myself — that <u>there will be an amnesty granted to republican prisoners who are on the run in the Republic of Ireland. The Government are going to grant them an amnesty so that they can come back to Northern Ireland.</u> I was speaking to a policeman last week in Belfast. He told me that one of those who will gain from this amnesty he knew for a fact had killed three of his RUC colleagues. Just imagine how difficult it will be for that policeman to see the murderer of his colleagues granted an amnesty by the British Government because of some deal that they are doing with paramilitary organisations. [emphasis added]
08.03.02	<i>The Daily Telegraph</i>	David Sharrock and Thomas Penny article: 'Terrorist amnesty appeals are trebled'	... It is understood that <u>Sinn Féin is seeking on behalf of more than 180 suspects a clean bill of health which would allow them to return to Northern Ireland without fear of prosecution ... In every case the authorities must trace the record and possible criminal antecedents of those names not just in Northern Ireland but in the rest of the United Kingdom as well as the Irish Republic and in other countries.</u> ... <u>It had been suggested that the individuals to whom the Prime Minister seemed so keen to grant an amnesty might be handed the concession by way of a Royal Pardon,</u> [said Lord Rogan]. ... [emphasis added]

Date	Source	Document	Extract
11.03.02	House of Commons debate 11 Mar 2002: Column 705W	John Reid's response to Jeffrey Donaldson	<p>JD: To ask the Secretary of State for Northern Ireland if he will list the escaped terrorist prisoners who were on the run and have been granted early release under the terms of the Northern Ireland Sentences Act 1998.</p> <p>JR: 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. <u>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.</u> It has always been the Government's policy that they do not name individuals released under the early release scheme. [emphasis added]</p>
20.03.02	House of Commons debate 20 Mar 2002: Column 291	John Reid's response to Andrew Turner and the Reverend Martin Smyth	<p>AT: If he will make a statement on his policy towards terrorists who have (a) escaped and (b) not been apprehended.</p> <p>MS: What plans has he to introduce legislation regarding suspected terrorists who are on the run.</p> <p>JR: We recognised at Weston Park that the issue of those on the run needed to be dealt with. We will deal with it. However, as my right hon. Friend the Prime Minister has made clear, how we deal with it is open to discussion.</p>
	House of Commons debate 20 Mar 2002: Column 293		<p>JR: As I have told the House previously, we have committed ourselves to resolving this issue but <u>have not decided how it will be resolved.</u> ...</p> <p>The issue has been raised, not as a result of any particular pressure, but following on from and flowing from the logic of the Belfast agreement. It was an anomaly that we accepted had to be addressed; we are in the process of addressing it. I have told the hon. Gentleman that how we will do so has not been decided. ... [emphasis added]</p>
20.03.02	House of Commons debate 20 Mar 2002: Column 294	John Reid's response to Crispin Blunt	<p>CB: In solving the difficulty that the Secretary of State and the Government have created for themselves, <u>will the right hon. Gentleman guarantee—with a yes or a no—that he will not use the royal prerogative to bypass Parliament?</u></p> <p>JR: I have told the hon. Gentleman that <u>all these matters are under discussion</u>—[Hon. Members: "Oh!"] If the tragic and painful history of Northern Ireland could be summed up in yes and no answers, we would have solved it decades ago. It cannot be; nor can we reconcile the parties to a conflict that has lasted decades without being prepared to consider issues that are difficult and cause a great deal of pain. ... [emphasis added]</p>

Date	Source	Document	Extract
20.03.02	Dáil Éireann – House of Deputies Irish Parliament Ceisteanna/ Questions – 20.03.02 at 895 & 896	Taoiseach Bertie Ahern’s response to Ruairí Quinn	<p>Mr Quinn: ... Can the Taoiseach indicate, with regard to the proposed amnesty for the “on the runs” ... [if] the amnesty [will] be conditional on their compliance with the rule of law? ...</p> <p>The Taoiseach: ... The debate is about the amnesty for the OTRs or “on the runs” as opposed to those who have been exiled over the years and, in some cases, who continue to be exiled. A fair case has been put forward that both issues should be dealt with together. I have made that clear to Sinn Féin and I had hoped to make it clear last week to some of the loyalist leaders but it was not possible. However, I hope to restate it to them on an early occasion.</p> <p>This issue is difficult for the British Government, as Members will be aware from comments made in the House of Commons and the House of Lords. There are two options for dealing with the OTRs. There is an <u>administrative procedure</u> which the British Government can follow but it is quite lengthy. <u>It involves checking each case through the administrations of justice and policing in Northern Ireland to ascertain the status of the case and whether it can be cleared.</u> The other option is legislation. <u>It is probably likely that the British Government will continue to use the administrative system;</u> I do not anticipate it introducing legislation in the short-term. The Prime Minister, Mr. Blair, reiterated to me in Barcelona on Saturday that it was his intention to honour his commitment, irrespective of which way he chooses to deal with it. [emphasis added]</p>
26.03.02	The Evening Standard	Patrick Hennessy article: ‘Blair poised for IRA compromise’	<p>Tony Blair was today in sight of a deal to allow 40 “hardcore” IRA fugitives to return to Britain and escape going to jail under a controversial “amnesty” scheme. Another <u>60 republicans, also on the run, would have their cases quietly dropped on the grounds that the alleged offences happened so long ago there is no real prospect of them even reaching court.</u> The possible breakthrough came as it emerged the deal could win the backing of David Trimble and his mainstream Ulster Unionist party. Details were revealed as Mr Blair’s most senior aides accepted that the original proposals – to offer a blanket amnesty to all 100 fugitives – would not get through Parliament. ... Sources revealed today that <u>the remaining 60 have already been effectively removed from the threat of prosecution because their cases are so old that vital evidence, including that of witnesses, would no longer stand up in court. Their cases are likely to be reviewed by prosecuting authorities before being dropped.</u> ... [emphasis added]</p>
10.04.02	House of Commons debate 10 Apr 2002: Column 18	Tony Blair’s response to Nigel Waterson	<p>NW: May I give the Prime Minister another opportunity to tell the House whether he has done a deal that involves an amnesty for IRA terrorists on the run?</p> <p>TB: It is not a question of a deal but of recognising, as we did in the Weston Park proposals, that there is an issue about people who in some cases have been charged and in others, convicted, and who have been out of the country for a long time but are not covered by the existing process. We shall find a way to cover them, and we will do that sensibly; we made that clear at Weston Park. It is not a deal but a sensible issue that needs to be resolved.</p>

Date	Source	Document	Extract
13.04.02	<i>Daily Mirror</i>	Maurice Fitzmaurice article: 'IRA amnesty in weeks'	On-the-run IRA terrorists will be allowed home in the coming weeks ... A senior PSNI source said: "... the police have already spoken to almost all the arresting officers to see if they would be willing to prosecute the people involved. I understand that so far the majority of officers have declined the offer – many of them are retired and don't want to get involved ... Many of the crimes committed happened years, even decades ago, and memories can be a bit foggy." ... The Northern Ireland Office has denied that any deals have been done on the return of fugitives for decommissioning.
01.05.02	House of Commons debate 1 May 2002: Column 838W	John Reid's response to Desmond Swayne	DW: To ask the Secretary of State for Northern Ireland if he will make a statement about his policy on fugitives from justice. JR: At the talks at Weston Park last summer, both the Irish and UK Governments recognised that there is an issue to be addressed, with the completion of the early release scheme, about supporters of organisations now on ceasefire against whom there are <u>outstanding prosecutions</u> , and in some cases extradition proceedings, for offences committed before 10 April 1998. Such people would, if convicted, stand to benefit from the early release scheme. The Governments accept that it would be a natural development of the scheme for such prosecutions not to be pursued. <u>Consideration continues of the best way to discharge this commitment.</u> [emphasis added]
07.05.02	NI Assembly debate	Reverend Ian Paisley in debate on the Belfast Agreement	... It was the Prime Minister again, and what happened? All those things changed. Today, Northern Ireland has seen the Royal Ulster Constabulary destroyed and terrorist prisoners released. It has seen unaccountable all-Ireland bodies set up and IRA/Sinn Féin in the Government of Northern Ireland. The Union flag is banned from Government buildings for most of the year. Security installations have been removed, <u>on-the-run terrorists have been pardoned</u> , and there has been discrimination against victims in funding. There has been no substantial and credible IRA decommissioning. [emphasis added]

Date	Source	Document	Extract
29.05.02	House of Lords debate 29 May 2002: Column 162W	Lord Williams of Mostyn’s written answer to Lord Laird	<p>LL: Whether they will list each case in which the Royal Prerogative of Mercy has been exercised in relation to terrorist prisoners since 1990; and whether they will give the reasons for its use in each instance.</p> <p>LW: 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:</p> <p><i>providing information or assistance to the authorities—five cases;</i></p> <p><i>terminal illness—one case;</i></p> <p><i>remission incorrectly calculated—one case;</i></p> <p><i>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;</i></p> <p><i>to release prisoners who would have been eligible for release under the Belfast Agreement had they not transferred to a different jurisdiction—two cases;</i></p> <p><i>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;</i></p> <p><i>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.</i></p> <p>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.</p>
11.06.02	EamonnMallie.com	Brian Rowan article: ‘Revealed – lost in a scribble and a scrawl: Brian Rowan on a reference to the OTR letters in June 2002’	<p><i>On 2.3.14 Brian Rowan revealed his notes of 11.06.02 and 12.06.02 underlying the article (protecting his source):</i></p> <p><u>Did I assume that response would have been in writing? Is that why I didn’t include that specific piece of information? I just don’t know. ...</u></p> <p>But, in my scrawl and scribble, I wrote the following: “I could get you an official line on that. She [Glenholmes] is <u>one of those people who was processed and the way it worked – certain people who asked for this were given letters saying we have checked with the prosecuting authorities who have checked with police forces across the UK and you’re not wanted.</u>” I ask about numbers, and you will see I have written the words “some dozens” with a question mark. The source responds: “I don’t know [but] quite a few have [been settled].” ... You will also read that I scribbled the following: <u>“These letters don’t give you an amnesty. It doesn’t give guarantees for the future.”</u></p>

Date	Source	Document	Extract
13.06.02	BBC NI news website	Brian Rowan article: 'Analysis: Colombia and the IRA'	... Evelyn Glenholmes was on the run, and security sources believe the fluent Spanish speaker spent five years in Cuba. Now she is back living in Belfast. <u>Two years ago, the Northern Ireland Office responded to a request for information. They checked with the prosecuting authorities and confirmed she was no longer wanted.</u> Some years earlier, the Crown Prosecution Service had reviewed her case and concluded "there was no longer sufficient evidence to afford a realistic prospect of conviction". But this information was not made public at the time. In response to a question from the BBC on Glenholmes, a spokesman at the Northern Ireland Office said: "Decisions on the prosecution of individuals are a matter for the prosecuting authorities which are independent of government." It is not clear if Evelyn Glenholmes was one of the cases raised by Sinn Fein in their discussions with the British Government about people "on the run". <u>But I have been told that "quite a few" cases have now been settled with another source suggesting the figure runs to "some dozens".</u> ... [emphasis added]
01.07.02	House of Commons 1 July 2002: Column 136W	John Reid's written answer to Quentin Davies	<p>QD: To ask the Secretary of State for Northern Ireland if he will make a statement on <u>his plans to inform persons suspected of involvement in terrorist activities that their cases will not be pursued.</u></p> <p>JR: 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. <u>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.</u> [emphasis added]</p>
01.07.02	House of Commons 1 July 2002: Column 136W-137	John Reid's written answer to Quentin Davies	<p>QD: To ask the Secretary of State for Northern Ireland</p> <p>(1) <u>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;</u></p> <p>(2) <u>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.</u></p> <p>JR: As a result of <u>inquiries received and referred to the prosecuting authorities and the police, 32 individuals have been informed over the past two years that they are not wanted for arrest in relation to terrorist offences.</u> 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 <u>prosecuting authorities and police have confirmed they will not face fresh charges.</u> [emphasis added]</p>

Date	Source	Document	Extract
01.07.02	House of Commons 1 July 2002: Column 137W	John Reid's written answer to Quentin Davies	<p>QD: To ask the Secretary of State for Northern Ireland when the decision was taken not to proceed with outstanding prosecutions against Evelyn Glenholmes; <u>at which point she was informed of this decision</u>; and if he will place the relevant correspondence in the Library.</p> <p>JR: Ms Glenholmes' case was reviewed in 1995 by the Director of Public Prosecutions for England and Wales. He concluded that the evidence against her was insufficient and that the outstanding prosecution and extradition request to the Republic of Ireland should be dropped. <u>Inquiries were made on her behalf in 2000 in the light of her wish to return to Northern Ireland. She was informed that there were no outstanding prosecutions against her.</u> [emphasis added]</p>
18.08.02	<i>The Sunday Tribune</i>	Susan McKay article: 'IRA "runners" getting the runaround'	<p>... <u>Last year, the British granted an amnesty</u> to eight former republican prisoners who had been on the run since their escapes from prison ... <u>The eighth was granted a royal prerogative of mercy.</u> ... In July this year, the <u>British government revealed</u> in response to a Conservative parliamentary question, that <u>in the past two years, 32 individuals had been informed that they were not wanted for arrest in relation to terrorist offences.</u> A further 25 who had left the north without completing their sentences were told they could return without serving further time or facing fresh charges. ... <u>It has been reported that the PSNI has received around 200 names of people seeking to avail of the amnesty</u> ... [emphasis added]</p>
24.11.02	<i>News of the World</i>	Martin Breen article: 'Queen gives pardon to IRA men on run'	<p>Unionists were outraged last night after it was revealed <u>the Queen has pardoned three IRA men on the run from Ulster jails.</u> ... A spokeswoman for the Northern Ireland Prison Service said the warrants, issued in March, were used to 'free' the last of 22 convicted paramilitaries on the run. She said: "<u>It has always been a proper use of the Royal Prerogative of Pardon to address anomalies created by the strict application of the law.</u>" ... [emphasis added]</p>
24.11.02	<i>News of the World</i>	Martin Breen article: 'Queen's mercy for 24 men of terror'	<p><u>Queen's pardons were used to 'free' a total of 24 paramilitaries, it was confirmed last night.</u> ... The threesome were among <u>19 paramilitaries who have walked free since 1998 after the Queen signed mercy warrants.</u> Astonishingly, <u>five more terrorists have also been freed through royal intervention</u> after doing a deal with the authorities by becoming informers. ... "<u>It has always been a proper use of the Royal Prerogative of Mercy to address anomalies created by the strict application of the law,</u>" a prison spokeswoman said. ... <u>The Government have used the mercy release for IRA members 24 times since 1990</u> ... [emphasis added]</p>

Date	Source	Document	Extract
12.03.03	House of Commons debate 12 March 2003: Column 277	Paul Murphy responding to Quentin Davies in NI Questions	<p>QD: Does the right hon. Gentleman accept that <u>special arrangements for on-the-run terrorists can be considered only in the context of the completion of decommissioning and disbandment</u> by the relevant paramilitary organisations, and a judicial process? <u>That process would involve a guilty plea before a court or a determination of the facts by a court, and a verdict.</u></p> <p>PM: I agree. The act of completion on the part of the IRA is an essential precondition in relation to OTRs. <u>I also agree that the matter should be dealt with in a judicial fashion rather than by way of amnesty.</u></p> <p>QD: That is very welcome confirmation that the Secretary of State now supports a judicial process. Will he have the grace to acknowledge that it is a thoroughly good thing that the Opposition were able successfully to oppose the unilateral offer of an amnesty made by the Government at Weston Park, as that would not have involved judicial process? The Opposition's action means that that important card remains in the Government's hands, and there is a chance of getting the judicial process that both he and I want.</p>
13.03.03	NI Policing Board website Review of information held by the NI Policing Board Document is at page 8ff	HM Inspectorate of Constabulary report (David Blakey): <i>A Thematic Inspection of Murder Investigations in the Police Service of Northern Ireland</i>	<p>Paragraph 5 of the Executive Summary: "A comprehensive review process is a vital component of effective murder investigation and HMIC notes the introduction of a Review team with proper terms of reference as a positive course of action. The situation in Northern Ireland is complicated by the many potential re-investigations under the terms of Article 2 of the Human Rights Act and those people deemed to be 'On the Run' for whom the Good Friday Agreement provided no amnesty. Management of the entire review process <u>including these old cases</u> should be conducted by the Review team and forms a specific recommendation of this report."</p> <p>Paragraph 5.12: "A complex and highly sensitive overlapping issue concerns those people identified as being 'On the Run' ... In terms of investigating the huge number of outstanding archived murders (outlined earlier) and those persons considered to be 'On the Run', HMIC believes, in order to enable the service to focus on identified priorities, that PSNI urgently requires clear guidance from the highest of levels."</p> <p>Paragraph 5.13: "HMIC supports the inception of the PSNI Review team in respect of current investigations. There is also significant work required to address the issues surrounding the many old enquiries. The new review team should assume responsibility thus ensuring effective management and the necessary corporate response."</p> <p>Recommendation 10: Her Majesty's Inspector recommends that the PSNI Review team takes complete responsibility for the review process of all old and new cases.</p> <p>'On the Run' unit is listed in glossary.</p>

Date	Source	Document	Extract
20.03.03	House of Commons 20 Mar 2003: Column 895W	Paul Murphy's written answer to Jeffrey Donaldson	<p>JD: To ask the Secretary of State for Northern Ireland on how many occasions the Royal Prerogative of Mercy has been exercised in respect of members of terrorist organisations in Northern Ireland in each year since 1998.</p> <p>PM: I am sorry for the delay in replying. Since 1998 the Royal Prerogative of Mercy has been granted 18 times in respect of individuals convicted of terrorist offences relating to Northern Ireland. The breakdown of cases is as follows:</p> <p>1998: 1 1999: 1 2000: 7 2001: 6 2002: 3</p>
01.05.03	Proposals in relation to 'on the runs' Published alongside the Joint Declaration of the British and Irish Governments of the same date	Government paper: <i>Proposals in Relation to On the Runs (OTRs)</i>	<p>Within a context of acts of completion, the British Government would bring before Parliament the legislation necessary to resolve outstanding cases on a basis involving due judicial process, and showing sensitivity to the position of victims. The Irish Government would address similar cases in its jurisdiction. A related issue would be the complete ending of exiling and allowing those exiled to return. ... There would be two elements to the process – a body to establish eligibility for the scheme and a special judicial tribunal to hear cases ... Legislation would set out who and what offences qualified for the scheme. A qualifying offence would be any scheduled or equivalent offence committed before 10 April 1998. It would include offences committed by, or in the course of, escaping, or committed as part of an incident involving a scheduled offence. A qualifying person would be someone:</p> <ul style="list-style-type: none"> • who was not a supporter of a specified organisation; • who was not currently involved in acts of terrorism; and • who had not been convicted of a serious offence committed after 10 April 1998 for which he had received a sentence of five years or more. ...
08.05.03	House of Commons 8 May 2003: Column 896W	Paul Murphy's written answer to Jeffrey Donaldson	<p>JD: To ask the Secretary of State for Northern Ireland pursuant to his Answer of 20 March 2003, <i>Official Report</i>, column 895W, on the Prerogative of Mercy, if he will name each individual convicted of a terrorist offence who has been granted the Royal Prerogative of Mercy in each year since 1998; and what the reasons were in each case for the exercise of the Royal Prerogative.</p> <p>PM: It is Government policy not to comment on individual cases.</p>

Date	Source	Document	Extract
05.06.03	NI Policing Board website	Public Minutes of a meeting of the Northern Ireland Policing Board, p.15	<p>Question from Alan McFarland: "... You will also be aware of the recently published government proposals on 'on the run' alleged republican terrorists and murderers. The system appears to be, or will be, that they will have an immediate release on bail, they will not have to appear in court in person and if found guilty will be released under licence. As guardian of the law in Northern Ireland, is it fair that different systems may exist for alleged loyalists and alleged republican murders?"</p> <p>Response from Chief Constable, Hugh Orde:</p> <p>"I am guardian of the law in the sense that I am charged with enforcing the law ...</p> <p>Government proposals for 'on the run' are, simply, a matter for Government. My officers and I have to enforce the law as it currently stands and as it currently stands, a person suspected of murder must go through the legal system, I have no intention of stepping outside the law."</p>
02.07.03	NI Policing Board website	Public Minutes of a meeting of the Northern Ireland Policing Board	<p>Response of Assistant Chief Constable Harris to a question from Alex Attwood on implementation of the Blakey report of 13.06.03.</p> <p>ACC Harris at pp.17–18: "... the interesting link is the Crime Operations Group will have the <u>Murder Review Team</u>, it will be centralised under the command of that Assistant Chief Constable. His primary function has to be to make sure current murders are reviewed within 28 days ... <u>It will also have a role to look at historic cases</u>. As you know, the numbers of the cases, do not add up in terms of how many staff I have to deal with current murders." [emphasis added]</p> <p><i>NB. On 06.02.01 Alex Attwood had written to Adam Ingram (Northern Ireland Office Minister) regarding the returning to Northern Ireland of persons in respect of whom the police had a warrant. He referred to a person (whose family had approached him) who had failed to honour bail conditions in the mid 1980s (having been charged with scheduled offences) and had since lived in the Republic of Ireland, and sought to determine the procedure to ascertain if the person would be re-arrested and prosecuted if he was to return to the North.</i></p>
06.09.03	Friends of Sinn Féin website	Blog article: 'Joint Declaration should be implemented – Ahern'	<p>... A procedure to eliminate the anomaly for former combatants 'on the run' from legal proceedings was also included in the joint declaration. Under the proposed scheme legislation would be enacted on both sides of the border to enable those on the run to return home without fear of arrest. On the Runs (OTRs) faced conviction and sentence – but not imprisonment – and then the threat of being forced to serve the sentence if they breached the licence of their release. ...</p>
03.03.04	House of Commons 3 Mar 2004: Column 1034W	Paul Murphy's written answer to Hugo Swire	<p>25 people, who had left Northern Ireland without completing their sentences, <u>have been informed that they can return to Northern Ireland without serving more time in custody</u>. The Government's proposals for dealing with on-the-run terrorists were set out in the paper published on 1 May 2003 alongside the Joint Declaration. These proposals would only be taken forward within the context of acts of completion.</p>

Date	Source	Document	Extract
01.04.04	House of Lords debate 1 Apr 2004: Column 1528	Baroness Park of Monmouth and Baroness Amos in debate on the Cory report	<p>Baroness Park: ... at Weston Park, the OTR promise was made. Will that be stuck to? At that time, the on-the-runs were told that there would be <u>a minimal judicial inquiry and process</u>. I hope that the Government will now apply the same rules as they appear to be applying in the report ...</p> <p>My Lords, a commitment was given to Sinn Fein/IRA that the on-the-runs who were responsible for the Enniskillen outrage would be offered the opportunity to return home, to give themselves up, to go through a minimal judicial process and then to rejoin their families in a happy way.</p> <p>Baroness Amos: My Lords, I am still not entirely sure about the point that the noble Baroness is trying to make. I shall write to her and I shall put a copy of my letter in the Library of the House. I shall look at Hansard carefully.</p>
07.05.04	EamonnMallie.com	Peter Robinson's statement	I am deeply disturbed that the release of McAuley, Walsh, Sheehy and O'Neill is part of <u>last autumn's secret deal involving the UUP and Sinn Fein/IRA</u> – a deal whose full details still remain hidden from the people of Northern Ireland ... what other dastardly deals did you do last October David, and how much worse is this deal going to get in terms of ... on the run amnesties ...
11.05.04	Sinn Fein website	Gerry Adams' statement	Last October there was an agreed sequence of statements and actions which would have seen the Good Friday Agreement institutions back in place and a process to resolve a number of issues, for example arms and armed groups, Justice and Human Rights, demilitarization, people on the run and other matters including the release of the Castlereagh prisoners. ... I am very mindful that the release of the Castlereagh prisoners is a sensitive issue and I am especially mindful of the plight of the McCabe family and Mrs McCabe but <u>you asked me if the release of prisoners was part of this agreed sequence. The answer is yes.</u> [emphasis added]
24.12.04	Newsletter	Billy Kennedy article: 'DUP "Not Part of IRA Killers' Deal"'	... Mr Blair, in a letter to DUP leader the Rev Ian Paisley, also revealed that conditional elements of the Joint Declaration, in particular legislation to address prisoner "on-the-runs" and the security normalisation programme were concluded in 2003 and did not form part of any negotiations in which the DUP participated.
19.05.05	NI Policing Board website	Public Minutes of a meeting of the Northern Ireland Policing Board's Community Involvement Committee	Paragraph 2 on page 2: Assistant Chief Constable Kinkaid ... [p]rovided the Committee with an overview of a new unit [Historic Cases Review Unit] which had been established to deal with historic cases and the progress with recruiting staff to review cases.

Date	Source	Document	Extract
23.11.05	House of Commons debate 23 Nov 2005: Column 1531–1532; 1536	Reading of the Northern Ireland (Offences) Bill	Peter Hain: ... All I would say to her—I stress that I do not make the point adversarially—is that, at the moment, <u>the people whom the Bill covers are on the run, outside UK jurisdiction</u> ... In the case of <u>the on-the-runs, they are beyond UK jurisdiction—and have been for decades, in some cases. In the case of the historic inquiries, we are trying to use the new techniques available, including DNA, to track people down.</u> ... under the Bill, anyone with a conviction who is released on licence and who breaches the terms of that licence can be hauled back. That cannot happen at present because such people are outside the United Kingdom’s jurisdiction. [emphasis added]
23.11.05	House of Commons debate 23 Nov 2005: Column 1536		Lady Hermon: The Secretary of State has referred seven times to two agreements—an agreement between the Irish and British Governments and an agreement between the British Government and Sinn Fein. <u>Was it agreed with Sinn Fein that these criminals—these murderers—would never stand in a court of law? Was it agreed that they would never have to appear before any tribunal? Was that agreed by our Prime Minister?</u> Peter Hain: A whole process of negotiation led to this position, but the hon. Lady is right to say that the Bill originated in the negotiations of 2001 and 2003. [emphasis added]
23.11.05	House of Commons debate 23 Nov 2005: Column 1537		Sammy Wilson: The Secretary of State sprinkled the term “justice” throughout his speech. He is not prepared to make certain people accede to a request to appear before a court—I ignore all the other measures in the Bill that do not require the perpetrator of a crime to appear or co-operate in any way—yet he is prepared to give them a licence, which, as we have heard, he can throw out against police advice at some later date. Will he explain how that can be viewed as “justice”, and, if it is justice, what comfort is there in it? The victim does not see the perpetrator and the perpetrators do not have to appear, so where is the comfort for the victim? Mr. Hain: If individuals who appear before the special court are convicted—the hon. Gentleman will understand that that will depend on the evidence—they will have a criminal record. [Interruption.] That is the point that I am making about a system of justice. Let me also deal with the point about comfort. As I have said, I understand the anger of victims, but there is no comfort for them at all <u>under present circumstances</u> in which many of the people likely to come through <u>the process</u> are outside UK jurisdiction and evading justice. They will continue to evade justice, as far as anyone can see, for ever. Compared with that position—[Interruption.] ... the Bill represents an improvement, in my view, because those involved are brought through a proper process.

Date	Source	Document	Extract
07.12.05	NI Policing Board website	Public Minutes of a meeting of the Northern Ireland Policing Board	<p>Questions from Alex Attwood on draft legislation’s interaction with work of the Historical Enquiries Team (HET).</p> <p>p24, response of Deputy Chief Constable Paul Leighton to a question from Sammy Wilson on whether the OTR legislation would compromise the work of the Cold Case Review Team:</p> <p>“... We never anticipated and I think we were realistic about this, that there would be a huge number of charges coming out of the Cold Case Review of the Historic Inquiry Teams, but we were hopeful that there would be, with developments in forensic technology and forensic science that there would be some [remainder of answer not taped]</p>
20.12.05	House of Lords 20 Dec 2005: Column 268W	Lord Rooker’s written answer to Lord Laird	<p>LL: In relation to the Northern Ireland (Offences) Bill, what was <u>the process started at Weston Park in 2001</u> to which the Secretary of State for Northern Ireland, Mr Peter Hain, referred on 23 November (<i>Official Report</i>, Commons, col. 1535); who agreed to the process; and how that agreement was recorded.</p> <p>LR: The process to which the Secretary of State for Northern Ireland referred was the process of taking steps to address the issue of terrorist suspects on the run. The British and Irish Governments recognised the need to do this at Weston Park and this was recorded in the letter to party leaders of 1 August 2001. Further detail on the proposals was published in May 2003 and in the Government’s response to the IRA statement of 28 July 2005.</p>
20.12.05	House of Lords 20 Dec 2005: Column 268W	Lord Rooker’s written answer to Lord Laird	<p>LL: In relation to the Northern Ireland (Offences) Bill, what was the agreement with the Irish Government referred to by the Secretary of State for Northern Ireland, Mr Peter Hain, on 23 November (<i>Official Report</i>, House of Commons, col. 1535).</p> <p>LR: In May 2003, the Government issued a document entitled <i>Proposals in Relation to On the Runs (OTRs)</i>. This document set out how the British Government planned to resolve the issue of “on the runs” identified at Weston Park. The document also says that the Irish Government would address similar cases in their jurisdiction. These proposals were published at the same time as the joint declaration following the talks at Hillsborough, but did not form a constituent part of that declaration.</p>
20.12.05	House of Lords 20 Dec 2005: Column 269W	Lord Rooker’s written answer to Lord Tebbit	<p>LT: Further to the statement made on BBC Radio 4’s “Today” programme on 23 November by the Secretary of State for Northern Ireland that they had made an agreement with the Irish Government and Sinn Fein that on the run terrorists would be excused punishment for their crimes without any appearance in court or giving of evidence, when that agreement was made; and when it was first made public.</p> <p>LR: The British and Irish Governments recognised the need to address the issue of “on the runs” at Weston Park and this was recorded in the letter to party leaders of 1 August 2001. Detailed proposals were published in May 2003. These referred to the question of appearance in a special tribunal. The proposals also made clear that the tribunal would sentence those convicted and that those individuals would be released immediately on licence. Both the 2001 letter and 2003 proposals were made public.</p>

Date	Source	Document	Extract
09.05.06	House of Commons 9 May 2006: Column 205W	Peter Hain's written answer to Mark Durkan	<p>MD: To ask the Secretary of State for Northern Ireland if he will ensure that any future proposals which deal with the issue of 'on-the-runs' will be subjected to equality impact assessments.</p> <p>PH: Any future proposals to deal with on-the-runs would be subjected to the procedures contained in the Northern Ireland Office's Equality Scheme. The scheme requires that all policies should be subjected to an equality screening exercise; and that, if the screening demonstrates that there might be an adverse impact or that the impact is unknown, the Department should then proceed to consider whether a full equality impact assessment is necessary.</p>
11.10.06	House of Commons debate 11 Oct 2006: Column 290	Peter Hain in response to Peter Robinson	<p>PR: 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 <u>assuring us that no other procedure will be used to allow on-the-run terrorists to return?</u></p> <p>PH: <u>There is no other procedure. There is no prospect of an amnesty.</u> 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. [emphasis added]</p>
05.02.07	House of Commons 5 Feb 2007: Column 680W	David Hanson's written answer to Jeffrey Donaldson	<p>JD: To ask the Secretary of State for Northern Ireland on how many occasions the royal prerogative of mercy has been used to pardon individuals who have been convicted of scheduled offences in relation to the situation in Northern Ireland in each of the last five years.</p> <p>DH: Since 2002 <u>the royal prerogative of mercy has been granted to three individuals convicted of terrorist offences relating to Northern Ireland.</u> All three were granted in 2002. In all of these cases, the RPM was used to remit a portion of a prison sentence and not to provide a pardon for the offences committed. There have been no such cases subsequently. [emphasis added]</p>

Date	Source	Document	Extract
07.02.07	House of Commons 7 Feb 2007: Column 961W	Peter Hain's written response to Lady Hermon	<p>LH: To ask the Secretary of State for Northern Ireland whether his Department has plans (a) to introduce additional measures and (b) to use existing procedure to effect special treatment of on-the-runs.</p> <p>PH: In my letter to the hon. Member for North Down of 1 November 2006, I made clear that while the Government continue to accept that the position of "on the runs" is an anomaly, and we believe that the anomaly will need to be addressed at some stage, we have no plans to bring forward any legislation on "on the runs", or to introduce an amnesty. That remains the position.</p> <p><u>All "on the run" cases continue to be subject to the normal criminal justice process.</u> I refer the hon. Lady to the answer given by my predecessor ... John Reid on 1 July 2002, in which he said:</p> <p>"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, <u>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.</u>" [emphasis added]</p>
13.02.07	<i>The Irish Times</i>	Gerry Moriarty article: 'Paisley warns against "on the runs" amnesty'	<p>... An NIO spokesman moved quickly to try to prevent OTRs becoming an election issue. He said Northern Secretary Peter Hain had "already stated publicly and to parliament that, while the government recognises that OTRs are in an anomalous position, there is no intention to reintroduce legislation or to introduce an amnesty". He added:</p> <p>"Furthermore, reports that the attorney general and the Public Prosecution Service are to be asked to drop cases against OTRs, in the public interest are entirely incorrect." He said <u>OTR cases were considered by the prosecution services according to the tests for prosecution. Each case was considered individually on the basis of its particular facts and there were no exceptions, he said.</u> [emphasis added]</p>
20.02.07	House of Commons 20 Feb 2007: Column 636W	Peter Hain's written answer to Mark Durkan	<p>MD: To ask the Secretary of State for Northern Ireland what the Government's plans are with regard to "on the runs"; and whether he has given assurances to any political party about "on the runs".</p> <p>PH: In my letter to the hon. Gentleman of 1 November 2006 I made clear that while the Government continue to accept that the position of "on the runs" is an anomaly, and we believe that the anomaly will need to be addressed at some stage, we have no plans to bring forward any legislation on "on the runs", or to introduce an amnesty. ... I gave that assurance to the leaders of all the political parties involved in the St. Andrews talks, and that remains the Government's position.</p>

Date	Source	Document	Extract
22.02.07	House of Commons 22 Feb 2007: Column 867W	Mike O'Brien (Solicitor General)'s written answer to Mark Durkan	<p>MD: To ask the Solicitor-General whether he has had discussions with (a) the Prime Minister, (b) the Director of Public Prosecutions and (c) the Secretary of State for Northern Ireland on "On the Runs" since the withdrawal of the Northern Ireland (Offences) Bill.</p> <p>MO'B: Neither the Attorney-General nor I have discussed "On the Runs" with the Prime Minister. The Attorney-General has discussed the issue on a regular basis with the Director of Public Prosecutions for Northern Ireland as part of the routine process of superintendence. He regularly meets with the Secretary of State for Northern Ireland in respect of his duties as a Criminal Justice Minister in Northern Ireland and the subject of "On the Runs" has arisen on a number of occasions. I have engaged in some of those discussions.</p> <p><u>The view of the Attorney-General has always been that the position of "On the Runs" can only be addressed by the prosecution process in a very limited way: by applying the usual test for prosecution to identify those cases where the evidential test is no longer met and, importantly, is no longer capable of being met.</u> Given the serious nature of most of the offences concerned, the public interest is inevitably strongly in favour of prosecution. Political considerations play no part of that process. [emphasis added]</p>
01.03.07	House of Commons 1 Mar 2007: Column 1463W	Written answer of Peter Hain to question from Lady Hermon	<p>LH: To ask the Secretary of State for Northern Ireland pursuant to the answer of 5 February 2007, on "on the runs", what measures the Government are considering to deal with "on the runs" other than further legislation or an amnesty.</p> <p>PH: <u>None.</u> As I explained in my previous answer to the hon. Member for North Down, the Government continue to accept that the position of "on the runs" is an anomaly, and we believe that the anomaly will need to be addressed at some stage. <u>However, the Government do not have any current proposals for doing so.</u> [emphasis added]</p>

Date	Source	Document	Extract
15.03.07	Belfast Telegraph (CAIN archives)	Chris Thornton article: 'Hain still in talks over OTR controversy'	The thorny and unresolved issue of IRA on-the-runs has been a recurring topic in talks between Peter Hain and the Government's senior law officers ... The revelation comes as former Secretary of State Peter Mandelson confirmed that the original plan for allowing the fugitives to return to Northern Ireland was the result of a side deal between the Prime Minister and Sinn Fein. Mr Mandelson told the Guardian newspaper that he refused to sign a letter promising Gerry Adams a side deal on OTRs in November 1999. He said the Prime Minister subsequently sent the letter himself. ... Since [the failure of OTR legislation] <u>Mr Hain has sent mixed signals on the topic.</u> At the time the Bill was dropped, he said "legislation is needed to resolve this issue". Last October he turned against legislation and told the DUP: " <u>There is no other procedure.</u> " A few days later this newspaper revealed that Mr Hain had been assuring the US Attorney General that "the British Government is committed to addressing these cases". Mr Hain insisted there was no difference between that statement and his assurances to the DUP. [The Solicitor General] said ... "The view of the Attorney-General has always been that the position of 'On the Runs' can only be addressed by the prosecution process in a very limited way: <u>by applying the usual test for prosecution to identify those cases where the evidential test is no longer met and, importantly, is no longer capable of being met.</u> ..." [emphasis added]
22.06.07	Belfast Telegraph	Chris Thornton article: 'More than 100 republicans are still on the run' Article based on FOI request of 19.03.07, to which the Attorney General's office responded on 06.05.07.	<u>More than 100 republican fugitives are waiting to have their cases resolved, official figures have confirmed for the first time. Another 84 OTRs – the initials stand for "on the runs" – have already been cleared to return to Northern Ireland without facing jail time, according to statistics released to the Belfast Telegraph by the Attorney General's office.</u> That includes almost 50 people who spent at least a decade on the run but who were never wanted in the first place. Material released under the Freedom of Information Act shows the number of OTRs is far higher than previous estimates. <u>The names of almost 200 people have been passed to the Government by Sinn Fein over the past seven years,</u> while London wrestled with mechanisms to allow them to return. The most recent list was passed last September – a month before the DUP declared it had killed off the issue. <u>... Of the 193 other people whose cases have been considered, 84 have been told they are free to return without fear of arrest.</u> Forty-seven have spent at least the last decade thinking they were being sought by police, but the Attorney General said <u>checks have shown they were not wanted by any police force in the UK.</u> Outstanding warrants were dropped in 15 cases when the Director of Public Prosecutions decided there was not a sufficient case to bring to court. Another 22 had already been convicted: 11 of them – mainly Maze escapees – had served the two years in prison necessary to qualify for early release under the Good Friday Agreement. The other 11 – including escapees from the Crumlin Road jail who were sentenced but did not serve time – were freed under the Royal Prerogative of Mercy. Currently, 75 people remain wanted, and they form a sticky political wicket for the Government.

Date	Source	Document	Extract
			<p>Prime Minister Tony Blair had promised Sinn Fein he would allow the fugitives to return, but attempts at legislation have twice run into the sand.</p> <p>Sinn Fein says there is an anomaly that needs to be resolved, but the DUP says the Government has killed off the issue and there will be no further moves to allow OTRs to return.</p> <p>There have been suggestions that the Attorney General, Lord Goldsmith, could drop their cases in the public interest.</p> <p>But the legal authorities have resisted that suggestion, with Lord Goldsmith declaring that the offences concerned are too serious to be dropped.</p> <p>Of the 75 people who remain wanted eight are wanted for return to prison, meaning they have not served sufficient sentences for an Agreement release. Another 46 are wanted for questioning by police and 21 are wanted to face trial. Another 34 cases are still being reviewed by the Director of Public Prosecutions.</p> <p>Previous published estimates of the number of OTR cases put them far lower than the 194 now confirmed by the Government.</p> <p><u>A [NIO] spokesman said: "The Government's position on OTRs remains the same: we accept that OTRs are in an anomalous position and the issue will need to be addressed at some stage, but we have no plans for legislation or amnesties."</u></p> <p>... The Attorney General's office refused to disclose the names of those individuals who are wanted, saying it could cut the chance of them being caught.</p> <p>The Belfast Telegraph will appeal that decision on the basis that details of the case have been given to third parties, and <u>presumably those individuals know they are on the wanted list.</u> [emphasis added]</p>
20.02.08	House of Commons 20 Feb 2008: Column 692W	Shaun Woodward's written answer to Brian Binley	<p>BB: To ask the Secretary of State for Northern Ireland what Government policy is on "on-the-runs"; and if he will make a statement.</p> <p>SW: The Government's policy on "on-the-runs" remains unchanged. <u>We recognise the anomalous position of individuals who are still "on the run" for offences committed before the Belfast Agreement. This anomaly still needs to be addressed.</u></p> <p>But, as my right hon. Friend the member for Neath (Mr. Hain) made clear when he withdrew the Northern Ireland (Offences) Bill two years ago, this issue is one that needs to be considered in the broader context of how we deal with the legacy of [the] past. [emphasis added]</p>

Date	Source	Document	Extract
23.01.09	Report of the Consultative Group on the Past Co-chaired by Lord Eames and Dennis Bradley (CAIN archives)	Report of the Consultative Group on the Past	Page 120 (further references on pp40, 126 and 157): ‘On the Runs’ ... <u>The Group acknowledges that it is difficult to be precise about the exact number of ‘on the run’ cases but understands that the circumstances of around 200 individuals have been considered by the PSNI and the PPSNI in order that their status can be assessed.</u> While the majority of these individuals are not wanted for arrest or prosecution, almost a quarter of the cases are still under review. A number of individuals have been assessed as wanted by the PSNI. Additionally three cases are proceeding through the courts and nine individuals are wanted for return to prison. See also pp40, 126 and 157.
11.11.09	Northern Ireland Affairs Committee (Inquiry into the Omagh bombing) Evidence of Norman Baxter	Evidence of Norman Baxter to the Northern Ireland Affairs Select Committee	... I can assure the Committee that there was an extremely unhealthy <u>interest by officials in the Northern Ireland Office about prioritising individuals who were on the run and about ensuring that they were cleared to return to the North. That was done through</u> – [interruption by Lady Hermon] [emphasis added]
09.03.10	Tribune	Suzanne Breen article: “On the runs” given royal pardon under British scheme, claims Gerry McGeough’	... <u>Of 216 ‘on the runs’, 47 have been told they are free to return to the North with no fear of prosecution,</u> according to leading Tyrone republican Gerry McGeough. ... [McGeough] will be the first republican on trial for historical crimes since the Good Friday Agreement. McGeough said: “Excellent detective work by my lawyers has uncovered that around a fifth of ‘on the runs’ have been given a royal pardon, immunity from prosecution, or else haven’t had to serve their minimum sentence as laid out by the Good Friday Agreement. <u>There was a secret deal between the British and Sinn Féin</u> ... I’m disgusted that hand-picked ‘on the runs’ have received preferential treatment ...” ... The Sunday Tribune has seen the names of some of those allegedly given immunity. They include prominent ex-IRA members. A Northern Ireland Office (NIO) spokesman denied the claim. “There is no secret deal to pardon on the runs,” he said. ... In a document obtained under the Freedom of Information Act by Kevin Winters’ solicitors, the NIO says <u>Sinn Féin provided the names of 216 on the runs. The PSNI and the Public Prosecution Service then reviewed files “to determine whether the individual is wanted for questioning, arrest or prosecution”.</u> <u>The NIO said decisions were evidence-based and whether prosecution was in “the public interest”.</u> It claimed “political considerations play no part in this assessment”.

Date	Source	Document	Extract
01.04.10	NI Policing Board website	Public Minutes of a meeting of the Northern Ireland Policing Board	<p>Q21 Tom Buchanan (p44): To ask the Chief Constable if there are, to his knowledge, any 'on the runs' residing in Northern Ireland; and to ask the Chief Constable what powers he has to arrest 'on the runs'?</p> <p>Assistant Chief Constable Drew Harris: There is an <u>ongoing process</u> to resolve those individuals who mostly refer to themselves as 'on the runs'. There are a number of different methods of being identified as being 'on the run' mostly through <u>names submitted either by political parties or the governments to ourselves</u>. There is then an <u>investigation which follows into the individual and the crimes that they may have been involved in</u>, and then this is <u>subsequently reported to the Public Prosecution Service (PPS) where test for prosecution is met</u>. We have been working through this process <u>over the last number of years and it continues still to be available</u>. So in effect, <u>as we become aware of a name in a particular incident, we carry out a cold case review and an investigation and report that to the PPS to see then if the test for prosecution is met or any other work that may be done</u>. ... [emphasis added]</p> <p><i>Alex Attwood asked for details on numbers (p46) – ACC Harris wrote to the NI Policing Board on 28.4.10:</i></p> <p>In response to [the] question dated 1 April 2010 regarding the current situation with 'On the Runs', the PSNI are engaged in a process to resolve this issue. To date 218 names have been considered with each individual case being evaluated and reviewed. The cases are then referred to the Public Prosecution Service (PPS) if appropriate. Of the submitted names, 173 are not wanted, 8 have been returned to prison and 11 remain wanted. In the year 2007–2008, 3 persons were arrested and referred to the Court Service. Of the 23 remaining names, 10 have been referred to the PPS for direction, 11 are proceeding through Historical Enquiry Team (HET) review and 2 are ongoing live investigations ...</p>
02.04.10	Belfast Telegraph	Article: 'Queen pardoned on-the-run IRA fugitive'	<p>The Belfast Telegraph today published the first documented evidence that Royal pardons were granted to on-the-run prisoners. The document obtained by this paper, which bears a Royal crest, relates to a republican who escaped from Crumlin Road Jail in Belfast in 1981. ... A Northern Ireland Office spokesman last night told this paper that the document does not constitute a pardon but "was issued to 'resolve technical anomalies' surrounding the early release scheme which followed the Good Friday Agreement. ... None of these people have been pardoned for the offences they committed. The Royal Prerogative of Mercy was used in a small number of cases between 2000 and 2002 to resolve technical anomalies that arose under the Early Release Scheme set up following the Belfast Agreement. In all these cases, the RPM has been used to remit all or part of a prison sentence."</p>

Date	Source	Document	Extract
19.07.10	Independent – Irish News	Alan Murray article: ‘Pardons given to 13 IRA fugitives since agreement’ Based on Northern Ireland Office’s response (19.07.10) to Alan Murray’s Freedom of Information request (15.06.10)	The Northern Ireland Office (NIO) has revealed for the first time that a total of 13 IRA fugitives have been granted the Royal Prerogative of Mercy (RPM) since 2000. ... The NIO said that 18 people had been granted RPMs for a total of 36 offences and that all RPMs granted from the year 2000 related to those perceived to be prisoners with republican affiliations. The response said that the cases from 2000 onwards were used in connection with the prisoner early release scheme set up following the Belfast Agreement of 1998, and that in each case the RPM was used to address anomalies that otherwise prevented the application of the scheme. The NIO said that the 13 individuals who benefited from the RPM from 2000 were considered to be on the run as they had previously escaped from prison. The ... term ‘on-the-runs’ referred to individuals wanted by the police or prosecuting authorities in relation to offences committed before 10 April 1998 in connection with terrorism.
09.09.10	Sluggie O’Toole News and opinion website	Pete Baker article – McGeough case blog	... UTV notes that McGeough told the court that in July 2000, Sinn Fein politician Gerry Kelly “conveyed to me that I was free to return to Northern Ireland without fear of being arrested”. ... Under cross examination from a prosecution lawyer McGeough conceded that he did not receive assurance from “any prosecuting authority or member of the government” that he would not face prosecution. The lawyer put it to McGeough that <u>in a letter from the NIO in January 2003</u> , “it [w]as made clear that you were liable to prosecution and arrest should you be in the jurisdiction” but McGeough claimed that was “never conveyed to me. ... When I was given the assurances by Mr Kelly I was of the opinion that this matter had been resolved and in the context of the time, everyone was speaking about meeting in resolution of the conflict and former ‘enemies’ were sitting around the table,” claimed McGeough.

Date	Source	Document	Extract
13.09.10	NI Courts and Tribunals Service website	Ruling of Coghlin LJ in the case of <i>R v Terence McGeough [2010] NICC 33</i>	<p><i>Per Coghlin LJ:</i></p> <p>[13] Mr McGeough also relies upon an assurance that he was free to return to Northern Ireland without fear of being arrested said to have been received by him from Mr Gerry Kelly of Sinn Fein in or about July 2000. He explained that, at that time, he had been encouraged to take part in a competition to select a Sinn Fein election candidate. He said that he was aware that “on the runs” (OTRs) were a factor in the ongoing negotiations then taking place in the course of the Peace Process. <u>He met Mr Kelly who suggested that he provide him with his name and address to be included in a list of OTRs to be submitted on behalf of Sinn Fein.</u> Mr McGeough said that, as a consequence of his conversation with Mr Kelly, he understood that he would not be arrested or charged when taking part in the selection competition.</p> <p>[14] Mr McGeough also relied upon the evidence of Mr William Smith, an experienced community worker, who was the chairman of the Progressive Unionist Party and Prisoners’ Spokesman during the negotiations leading to the Belfast Agreement of 1998. Mr Smith gave evidence that in March/April of 1998 he had attended a meeting at Castle Buildings, Stormont when the then Secretary of State, Ms Mowlam, confirmed that those who had been involved in carrying out criminal offences during the terrorist campaign but had not been convicted would not be subjected to any further legal process. Mr Smith named a number of senior NIO officials who he said were also present at that meeting and he maintained that the Secretary of State had repeated the assurance in a number of private meetings. He said that loyalists and republicans were both asked to provide lists of OTRs and that he believed the question of the OTRs was “done and dusted”.</p> <p>[15] During his cross-examination, Mr McGeough was shown and asked to comment upon <u>a letter from the Northern Ireland Office to Mr Gerry Kelly dated 22nd January 2003. That letter referred to correspondence between NIO officials and Mr Kelly about “a number of individuals who are currently on the run but want to return to Northern Ireland and wish to be informed of their status if they were to do so.”</u> The letter confirmed that following investigations by the relevant authorities, which apparently included the Office of the Attorney General, the “necessary checks” had now been completed on six individuals who, in the then current circumstances of their cases, would face arrest and questioning if they returned to Northern Ireland. One of those six individuals was the accused, Terence Gerard McGeough. Mr McGeough stated that he had no knowledge of that letter and maintained that, subsequent to the conversation in July 2000, he had never, at any stage, been told by Mr Kelly that he would face arrest and questioning if he returned to Northern Ireland. When asked to comment upon why he thought Mr Kelly would not have drawn his attention to this apparently serious and radical change of attitude on the part of the authorities, Mr McGeough said that, by January 2003, he had left Sinn Fein as a consequence of “animosity” and was not on speaking terms at all with Mr Kelly.</p>

Date	Source	Document	Extract
			<p>[16] ... <u>It would appear that, at some stage during the negotiations leading up to the Belfast Agreement, republican and loyalist representatives were asked to provide lists of OTRs in respect of which checks were to be made by the authorities for the purpose of determining whether persons named in such lists would be subject to arrest and questioning should they wish to return to Northern Ireland.</u> It is quite clear from the evidence given both by Mr McGeough and Mr Smith taken together with the letter of 22 January 2003 that <u>this was a continuing process which was still proceeding some 3 years after Mr McGeough's conversation with Mr Kelly.</u> In such circumstances it is very difficult to accept as a matter of fact Mr Smith's assertion that the question of OTRs was "done and dusted" on the completion of the Belfast Agreement. I am satisfied that, at the material time <u>Mr Gerry Kelly was the Sinn Fein party member entrusted with producing such a list in the course of conducting negotiations with the NIO</u> and that he was not acting as a representative of the police, the prosecution or the Executive. [emphasis added]</p>
02.03.12	NI Courts and Tribunals Service website	In the Matter of Terence McGeough for Judicial Review 2012 WL 2191385	<p><i>Per Treacy J:</i></p> <p>[31] The central contention advanced by the Applicant in these proceedings is that he has been subjected to inconsistent treatment as compared with other former prisoners, in particular, Anthony Sloan, Angelo Fusco, Paul Magee, Robert Campbell and James McArdle. ...</p> <p>[33] Because these individuals had served less than two years for the offences committed in Northern Ireland they were not eligible to apply for early release under the Northern Ireland (Sentences) Act 1998. In order to resolve this position section 23 of the Prison Act (Northern Ireland) 1953 was used to release them under licence for the life sentences and <u>the RPM was used to remit the unexpired portion of the determinate sentences.</u> [emphasis added]</p>
03.07.12	NI Courts and Tribunals Service website	In the Matter of an Application by Terence McGeough for Judicial Review [2012] NICA 28	<p><i>Per Sir Anthony Hart (Giving the judgment of the court):</i></p> <p>[16] The evidence in this case shows that there have been a number of such exceptional cases, because experience has shown since the Sentences Act that there were a number of what had been described as "anomalies", that is cases where some prisoners were accepted to have fallen within the spirit, though not the letter, of the Sentences Act, particularly when viewed in the light of the Belfast Agreement which gave rise to the Sentences Act. <u>It is accepted by the respondent that in a number of cases since the Sentences Act the RPM has been applied in order to remit sentences ...</u> [emphasis added]</p>

Date	Source	Document	Extract
03.07.12	BBC NI news website	Article: 'Ex-IRA man Gerry McGeough's royal pardon appeal rejected'	... His lawyers advanced a number of comparison cases involving others who received the RPM ... But [the Court] held that McGeough was in a different category. ... ["W]e accept that the circumstances of the decision to exercise the RPM in each of [a number of other] cases were consistent and based upon the position that only those who had served a period of two years imprisonment within the jurisdiction of the United Kingdom or the Republic of Ireland should be considered for the exercise of the RPM. ... This cannot be said to be the position so far as Mr McGeough is concerned ... and we can see no inequality or unfairness in the way his case was treated by the respondent. ... There is no evidence before us to support Mr McGeough's assertion that there is some form of deal between Sinn Fein and the government to prevent the exercise of the RPM in Mr McGeough's favour."
07.05.13	NI Courts and Tribunals Service website	Ruling in the case of <i>R v Terence McGeough [2013] NICA 22</i>	<p>[21] ... [T]he appellant stated that he had a meeting with Mr Gerry Kelly in July 2000 as a result of which he understood that he would not be charged or prosecuted in respect of past offences. ...</p> <p>[22] <u>In the course of the disclosure hearing correspondence from the Northern Ireland Office to Mr Kelly dated 22 January 2003 was introduced. The letter referred to six individuals in respect of whom the necessary checks had been completed and it was indicated that those six persons would face arrest and questioning if they return to Northern Ireland.</u> The appellant was one of those six individuals. The appellant stated that he was unaware of the letter and by 2003 he had left Sinn Fein because of disagreements on social policy.</p> <p>[23] It was contended on behalf of the appellant that Mr Kelly held a status effectively as a government representative. ...</p> <p>[25] ... [W]e do not consider that the evidence indicates any basis for [this] conclusion ... [I]n any event the statement attributed to Mr Kelly ... did not contain any representation, never mind one which could be said to be unequivocal ... [emphasis added]</p>
07.05.13	BBC NI news website	Article: 'Gerry McGeough murder bid appeal dismissed'	... <u>Correspondence from the Northern Ireland Office to Mr Kelly in 2003 was introduced during the case. The letter included McGeough in a list of six people who would face arrest and questioning if they returned to Northern Ireland.</u> [emphasis added]

Appendix 10: The ‘Shawcross doctrine’

A guide to the role of the Attorney General in criminal prosecutions and the legitimate bounds of political pressure is to be found in an answer given in Parliament by Sir (later Baron) Hartley Shawcross as Attorney General in 1951.¹ He observed, in response to criticism of decisions he had made as Attorney:

I am glad to have the opportunity of talking about the position of the Attorney-General in connection with prosecutions because, as my hon. and learned Friend the Member for Leicester, North-East (Mr. Ungoed-Thomas), said, there has been some criticism that my enforcement of the criminal law was a matter of expediency. Indeed, it was seriously suggested that the operation of the law should be virtually automatic where any breach of it was known or suspected to have occurred. The truth is, of course, that the exercise of a discretion in a quasi-judicial way as to whether or when I must take steps to enforce the criminal law is exactly one of the duties of the office of the Attorney-General, as it is of the office of the Director of Public Prosecutions, who works under the direction of the Attorney-General.

It has never been the rule in this country—I hope it never will be—that suspected criminal offences must automatically be the subject of prosecution. Indeed, the very first regulations under which the Director of Public Prosecutions worked provided that he should intervene to prosecute, amongst other cases: “wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest.” That is still the dominant consideration. I should perhaps say that, although he is called the Director of Public Prosecutions, constitutionally I am responsible for all his decisions, and as a Minister of the Crown I am answerable to the House for any decision he may make in particular cases.

So, under the tradition of our criminal law the position is that the Attorney-General and the Director of Public Prosecutions only intervene to direct a prosecution when they consider it in the public interest so to do. Lord Simon, who was once himself a most distinguished Attorney-General, put the position very clearly when he said in debate in this House: “there is no greater nonsense talked about the Attorney-General’s duty than the suggestion that in all cases the Attorney-General ought to decide to prosecute merely because he thinks there is what the lawyers call ‘a case.’ It is not true, and no one who has held that office supposes it is.”² My hon. and learned Friend then asked me how I direct myself in deciding whether or not to prosecute in a particular case. That is a very wide subject indeed, but there is only one consideration which is altogether excluded, and that is the repercussion of a given decision upon my personal or my party’s or the Government’s political fortunes; that is a consideration which never enters into account. Apart from that, the Attorney-General may have to have regard to a variety of considerations, all of them leading to the final question—would a prosecution be in the public interest, including in that phrase of course, in the interests of justice?

Usually it is merely a question of examining the evidence. Is the evidence sufficient to justify a man being placed on his trial? The other day, in a case of murder to which the

¹ HC Deb, 29 January 1951, c679–90

² HC Deb, 1 December 1925, c2105

hon. and learned Gentleman referred—a case which became the subject of a good deal of publicity—I personally decided not to prosecute. I examined the papers myself, and I came to the conclusion that it was not an appropriate case in which I should instruct the Director of Public Prosecutions on behalf of the Crown.

It is not in the public interest to put a man upon trial, whatever the suspicions may be about the matter, when the evidence is insufficient to justify his conviction, or even to call upon him for an explanation. So the ordinary case is one where one has to review the evidence, to consider whether the evidence goes beyond mere suspicion and is sufficient to justify a man being put on trial for a specific criminal offence.

In other cases wider considerations than that are involved. It is not always in the public interest to go through the whole process of the criminal law if, at the end of the day, perhaps because of mitigating circumstances, perhaps because of what the defendant has already suffered, only a nominal penalty is likely to be imposed. And almost every day in particular cases, and where guilt has been admitted, I decide that the interests of public justice will be sufficiently served not by prosecuting, but perhaps by causing a warning to be administered instead.

Sometimes, of course, the considerations may be wider still. Prosecution may involve a question of public policy or national, or sometimes international, concern; but in cases like that, the Attorney-General has to make up his mind not as a party politician; he must in a quasi-judicial way consider the effect of prosecution upon the administration of law and of government in the abstract rather than in any party sense. Usually, making up my mind on these matters, I have the advice of the Director of Public Prosecutions and very often of Treasury Counsel as well. I have hardly ever, if ever, refused to prosecute when they have advised prosecution. I have sometimes ordered prosecution when the advice was against it.

I think the true doctrine is that it is the duty of an Attorney-General, in deciding whether or not to authorise the prosecution, to acquaint himself with all the relevant facts, including, for instance, the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other considerations affecting public policy.

In order so to inform himself, he may, although I do not think he is obliged to, consult with any of his colleagues in the Government; and indeed, as Lord Simon once said, he would in some cases be a fool if he did not. On the other hand, the assistance of his colleagues is confined to informing him of particular considerations which might affect his own decision, and does not consist, and must not consist, in telling him what that decision ought to be. The responsibility for the eventual decision rests with the Attorney-General, and he is not to be put, and is not put, under pressure by his colleagues in the matter.

Nor, of course, can the Attorney-General shift his responsibility for making the decision on to the shoulders of his colleagues. If political considerations which, in the broad sense that I have indicated, affect government in the abstract arise, it is the Attorney-General, applying his judicial mind, who has to be the sole judge of those considerations.

That was the view that Lord Birkenhead once expressed on a famous occasion, and Lord Simon stated that the Attorney-General: "... should absolutely decline to receive orders from the Prime Minister, or Cabinet or anybody else that he shall prosecute." I would add to that that he should also decline to receive orders that he should not prosecute. That is the traditional and undoubted position of the Attorney-General in such matters.

Appendix 11: Members of the Review team

The Right Honourable Dame Heather Hallett DBE
Maura McGowan QC, Leading Counsel to the Review
Tom Little, Junior Counsel to the Review
Emma Douglas, Secretary to the Review
Charlene Woolley, Deputy Secretary to the Review
Alex Southby, Judicial Assistant
Simon Ramsden, Solicitor to the Review
Alex Cameron, Pupil Barrister
Seybrina Cole, Office Manager
John Cummins, Investigator
Simon Cousins, Investigator

