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Laurence Robertson MP  
Chairman of the Northern Ireland  
Affairs Committee  
7 Millbank  
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19<sup>th</sup> January 2015

*Dear Laurence*

Thank you for your letter of 14 January.

As my letter to you of 7 January made clear, three officials – Sir Jonathan Stephens, Dr Simon Case and Mr Mark Sweeney - will be appearing alongside me today. Both I and the officials will seek to be as helpful as possible in answering the Committee's questions. I understand that the Committee wishes to hear directly from Dr Case and Mr Sweeney and they will seek to answer the questions which are put to them provided it is in their competence to do so.

For my part, in agreeing to this it may be helpful to reiterate the long standing principle that it would not be appropriate for officials to disclose their advice to Ministers which goes to the heart of ministerial accountability. I would also ask that the Committee shows due respect to the officials and that questioning is appropriate both in terms of content and behaviour.

I look forward to seeing you, and I enclose a memorandum which I hope the Committee will find helpful.

I am copying this letter to Sir Alan Beith, Chair of the Liaison Committee for his information.

Regards  
Theresa

**RT HON THERESA VILLIERS MP  
SECRETARY OF STATE FOR NORTHERN IRELAND**

## MEMORANDUM FOR THE NORTHERN IRELAND AFFAIRS COMMITTEE: 19/1/15

The NIO, with input from Simon Case and Mark Sweeney, have prepared the following factual memorandum to assist the committee ahead of the next oral evidence session. This note draws heavily on LJ Hallett's account: references in square brackets are to paragraph numbers in her report.

2. On receiving the report of Lady Justice Hallett on 17 July 2014, the Secretary of State told the House of Commons that the Government accepted the report, including its conclusions and its recommendations, in full. In recognising that the report identified systemic failings, the Permanent Secretary of the NIO has expressed his regret for its part in those failings, and the serious impact of them on victims and families.

### How the letter to Mr Downey came to be issued

3. The circumstances of how Mr Downey came to be issued with a letter by the NIO which wrongly assured him that the PSNI did not wish to arrest him, and that they were not aware of any interest in him from a UK police force, are set out clearly at paragraphs 6.40 onwards of LJ Hallett's report. That account expands that given by Sweeney J in *R v Downey*. In summary:

- (a) the way in which the process operated was that Sinn Fein would provide names to the NIO for consideration, which would then be passed by the NIO to the AGO, and on from there to the DPP and PSNI. The PSNI would assess whether someone was wanted for arrest. They would report their conclusions to the DPP, who would also consider where relevant whether there was a case for prosecution. Their status as wanted/not wanted would then be reported by the DPP to the AGO. Finally, the AGO would write to the NIO saying either that individuals were not wanted (and so could receive a standard letter saying so) or remained wanted. That process was followed before any individual received a letter notifying them that they were not wanted: in 2006 the NIO made clear to the AGO they would not write any letters to Sinn Fein without confirmation from the AGO [4.154];
- (b) notifications to individuals were issued in the form of a standard letter. The text of this letter was largely settled in around 2001 between the NIO and the AGO [4.42; 4.86]. While the Hallett report makes clear the standard text did change later on, the text of the letter that Mr Downey received (reproduced at page 237 of the Hallett report) was the standard letter at that time and had been since 2001. It is the same as that sent to others in 2007, and also (for example) the same as another letter sent to an individual in November 2001 (reproduced at page 226 of the report);
- (c) while the text of the final letter was not copied to other organisations, it was understood by all the organisations involved that the purpose of the scheme was to notify individuals, via Sinn Fein, if they were no longer wanted for arrest or prosecution, and that that was being done by the NIO. Hallett points to specific evidence of this at paragraphs 5.12, 5.29, 5.30, 6.27 and 6.80. It was also understood that the PSNI had a power of arrest in relation to individuals wanted by other UK forces [6.22]. Through Operation Rapid, the PSNI put significant additional resource into the examination of names supplied by Sinn Fein to assess whether or not they were wanted for arrest. When they had completed their examination, they would notify the DPP of their conclusions, and the process would run as in (a) above;

- (d) on 7 June 2007, the Attorney's office sent the NIO a letter listing 25 names that they had been told by the PSNI and DPP were no longer wanted. Mr Downey was not one of them. This was the first such letter received from the AGO by the NIO following the commencement of Operation Rapid. The majority of those individuals had previously been regarded as wanted. The Attorney General's office asked the NIO to check that the PSNI had definitely done checks with other UK forces about those 25 people. The NIO duly sought that assurance from the PSNI. As is set out at 6.40-6.54 in the Hallett Report, this was done at a meeting on 11 June 2007 and in email exchanges between Hilary Jackson and Katie Pettifer at the NIO and ACC Sheridan's staff officer;
- (e) ACC Sheridan then wrote to Hilary Jackson at the NIO on 27 June 2007 stating that the purpose of the PSNI's review was, among other matters, to establish whether an individual was circulated as wanted for arrest by an external force, and that checks to this effect, including on the Police National Computer, had been carried out. That letter from Mr Sheridan is reproduced at paragraph 6.55 of the Hallett report. It says in particular that "*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.*"
- (f) after that, on 11 July 2007, the Attorney's office sent a further letter to the NIO which listed a further 10 individuals as no longer wanted [6.61]. That list included John Downey. That is the first point at which the NIO were aware that the PSNI had apparently changed their view of Mr Downey's status. As with the previous letter from the AGO containing 25 names, the majority of these 10 had previously been regarded as wanted. ACC Sheridan had written about Downey to the DPP on 6 June 2007 saying that he was not wanted [6.37]. In line with the established practice, his letter was not copied to the NIO.
- (g) subsequently, on 18-20 July 2007, Mark Sweeney asked the same question of PSNI that NIO colleagues had asked on and after 11 June following the receipt of the first batch of 25 names, namely whether the PSNI had conducted checks in relation to other UK forces [6.62-6.63]. He was assured again in an email exchange that checks had taken place in relation to external forces for all the names in both of the letters from the AGO [6.64]. Having received that assurance, he issued standard letters to those individuals, via Sinn Fein [6.66].

4. The following points are clear from LJ Hallett's account:

- i. **the NIO issued letters to Downey and others having gone through the standard process involving the PSNI, DPP and AGO and having received, via the AGO, the required assurances that these individuals were not wanted for arrest or prosecution.** The NIO confirmed with the PSNI at the prompting of the AGO that these assurances included checks by the PSNI that the individuals were not wanted by other UK police forces.
- ii. **NIO officials had no specific knowledge or concern about Mr Downey's case.** LJ Hallett says that it "is not credible" that the NIO "had a particular suspicion about Downey's status" [6.58], and goes on to say "*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...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.*" [6.63]

iii. **Mr Downey was issued a standard letter.** The terms of the letter to Mr Downey included the sentence "The Police Service of Northern Ireland are not aware of any interest in you from any other police force in the United Kingdom". Although the terms of the letter were not shared, that sentence reflected the confirmation given in ACC Sheridan's letter of 27 June, and repeated in his Staff Officer's e-mail of 20 July, that the PSNI checks had included checks in relation to other UK police forces.

iv. **It was understood that the checks to be carried out by the PSNI included checks that individuals were not wanted by other police forces in the UK.** These checks were carried out before Op Rapid [4.11]. They were carried out in respect of Downey and others by Op Rapid staff [6.29], two of whom had worked on the process before Op Rapid. They were expected by ACC Sheridan [6.28] who confirmed in response to a query prompted by the AGO that they were part of the process [6.55]. As LJ Hallett observes [6.56] "*anyone at the NIO...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*". She also notes that in any event the PSNI could arrest someone 'wanted' by another UK force if that individual entered Northern Ireland, and that that was understood [6.22, 10.46].

#### Letter to Sinn Fein mentioning Mr Downey in 2006

5. The Committee have asked how the NIO came to issue a letter to Gerry Kelly in March 2006 informing him that Mr Downey (and others) was wanted for arrest; and subsequently in July 2007 to Mr Downey that he was not. As is made clear in the Hallett report, in both cases the NIO was acting entirely on the basis of the conclusions of the PSNI and DPP, relayed by the Attorney General or his office. Individuals could and did change status over time. The Attorney General's letter to Peter Hain of 27 February 2006 reported that (amongst other individual cases) the police had concluded that Mr Downey was wanted [6.16]: a letter relaying this status was sent to Sinn Fein in March 2006 [6.17]. As set out above, in July 2007 the PSNI communicated through the DPP and AGO that a number of individuals including Mr Downey were no longer wanted, and a letter to him was issued on foot of that. At either point, it would not have been appropriate for NIO officials to substitute their judgment for that of the police and prosecuting authorities.

#### The establishment of Operation Rapid

6. The Committee has asked about the NIO's role in how Operation Rapid came to be established. Following the withdrawal of the Northern Ireland (Offences) Bill in January 2006, Ministers were keen both that officials should examine whether any other options existed for dealing with individuals who, after examination by the police and prosecuting authorities, remained wanted; and that the process of notifying those who were not wanted of their status should be accelerated as far as possible. These are both referenced in the letter from Tony Blair to Gerry Adams of December 2006 reproduced in the Hallett report [5.11]. In due course, the PSNI established the team under Operation Rapid, drawing in part on those previously involved in the work of assessing whether individuals were wanted [5.15, 5.20], to consider which of those names previously provided by Sinn Fein were wanted, and which were not.

7. LJ Hallett finds that there was pressure on officials to resolve the issue of OTRs, and to do so quickly, but that this *"did not cross the line into what might be called improper"* [2.15]. She finds no evidence of improper conduct by officials. Officials did not seek to influence the conclusions of the PSNI or DPP in relation to any particular case [5.57; 10.13]. The former Chief Constable, Sir Hugh Orde, has told the Committee that the NIO did not seek to influence operational decision-making. In his written evidence to the Committee of 10 November 2014, ACC Sheridan states *"in my experience officials in the NIO were careful not to cross the line into areas that may not have been proper"*.

#### The administrative scheme in 2010 and beyond

8. Policing and justice powers were devolved to the Northern Ireland Executive on 12 April 2010. In the run-up to devolution, Ministers decided not to devolve the administrative scheme as it related to individuals who might or might not be suspected of committing crimes in connection with terrorism.

9. The Government has accepted Lady Justice Hallett's conclusion that, *"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"* [2.74]. The Government also accepts Lady Justice Hallett's conclusion that, *"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)."* [2.75]

10. Ministers of the incoming Coalition Government in May 2010 were briefed on the administrative scheme. Details of the operation of the scheme were included in the first-day briefs prepared for Ministers. Ministers decided that the scheme should be continued, but that the review of individuals' status should be brought to a close as quickly as possible. The scheme continued to operate in the same way as it had under the previous administration, namely that the PSNI conducted the reviews of status, who then informed the DPP(NI), who in turn informed the Attorney General's Office, who then notified the Northern Ireland Office. Officials in the Northern Ireland Office then informed Sinn Fein of the status of individuals in writing. As he has already made clear in his evidence, the then-Secretary of State did not review the letters before they were issued as he considered this a routine matter to be conducted by officials. In August 2012, the then Secretary of State, after consulting the Attorney General, decided that the NIO should withdraw from the scheme, save for continuing to deal with a handful of cases which were already being processed. Sinn Fein were advised that further correspondence should be directed to police and prosecutors in Northern Ireland.

11. In light of the Downey judgment and the publication of the LJ Hallett's report, on 9 September 2014 the Secretary of State for Northern Ireland told the House of Commons, *"...those who have received such statements now know in clear terms what position the Government take. They now have fair and clear warning that such comfort as they might have derived from the statements can no longer be taken. There is no continuing basis for any reliance on past statements. The scheme is at an end."*

12. We trust this memorandum will be of assistance to the Committee.