



Northern Ireland  
Assembly

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COMMITTEE FOR JUSTICE

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**OFFICIAL REPORT**  
(Hansard)

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**Briefing by the Minister of Justice on the  
erroneous release of three prisoners by  
the Northern Ireland Prison Service**

9 December 2010

**NORTHERN IRELAND ASSEMBLY**

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**Members present for all or part of the proceedings:**

Lord Morrow (Chairperson)  
Mr Raymond McCartney (Deputy Chairperson)  
Lord Browne  
Mr Thomas Buchanan  
Mr Paul Givan  
Mr Alban Maginness  
Mr Conall McDevitt  
Mr David McNarry  
Ms Carál Ní Chuilín  
Mr John O'Dowd

**Witnesses:**

Mr David Ford	)	The Minister of Justice
Mr Alan Craig	)	Northern Ireland Prison Service
Mr Colin McConnell	)	Northern Ireland Prison Service

**The Chairperson (Lord Morrow):**

We welcome the Minister and his officials here today. When you are ready, we will hand over to you so that you can go ahead with your presentation.

**The Minister of Justice (Mr David Ford):**

I have a brief opening statement to make.

**The Chairperson:**

You have 15 minutes, Minister, but I suspect that you will not take that long.

**The Minister of Justice:**

I intend to take rather less time than that. That will give members time to ask questions. Thank you.

As I told the House on Monday, I very much regret the erroneous release of three prisoners in as many months. I have taken the matter seriously. A disciplinary investigation is under way, and action is being taken to further strengthen the safeguards so that a recurrence can be prevented. An arrest warrant has been issued, and the PSNI is attempting to return Mr Sean Cahill to custody.

Technical adjustments have already been made to the Prison Service IT system, that is, the integrated court operation system (ICOS) checks, so that the Northern Ireland Courts and Tribunals Service IT system checks are now carried out in all cases of prisoners going to court. Where that is not possible, other directions or evidence must be obtained from the court.

In addition, the Courts and Tribunals Service is carrying out an independent check of 10% of discharges during November, and the Prison Service is checking all the Maghaberry prison releases during November to ensure that no other prisoners have been released in similar circumstances. It is hoped that those checks will be completed by 13 December 2010. Good progress is being made. However, I am clear that what is most important now is getting it right.

Considerable additional resources are being dedicated to that work. I will give the details of those resources. An additional governor grade has been deployed to the general office in Maghaberry, making a total of two staff there. One of those people will focus on maintaining the accuracy of the prison system records, and the other will concentrate on the hard copy records and the reconciliation of information on the two systems. To support that work, a number of staff

have agreed to work overtime. In addition, a member of the Courts and Tribunals Service staff will be temporarily deployed to the Maghaberry general office to assist with the checks on the ICOS system. I acknowledge the energy and effort of Prison Service staff in responding to that considerable body of work and in addressing it at the same time as they carry out other essential day-to-day functions.

I believe that much was learned from the releases of Paliutis and Cummins. There was a thorough investigation of the first two cases, and that was validated by the Criminal Justice Inspection (CJI). The recommendations from that inquiry were being processed when the third incident occurred, and they would not in themselves have prevented that third incident. As I have made clear, additional measures are in place, including a third level check, which is now carried out on all cases.

It is important to remind the Committee that the circumstances of each of those incidents were distinctly different. The Paliutis case was as a result of a breakdown in communications and a lack of experience on the part of staff. Two alerts were not picked up, and the sequence, which was acted on in error, was that the charges had been withdrawn. The Cummins case occurred because staff did not follow standard operating procedures. Disciplinary proceedings are now being pursued in that case. An inquiry is under way to establish what caused the third erroneous release to occur. At this stage, it appears to be due primarily to a prison systems error. The initial technical fix has been achieved through revisions to the prison system.

I have already outlined the various measures that have been set in train to prevent a recurrence. However, I believe that all this has to be seen in the context of what the Prison Service does. Between 1 January and 30 November this year, the Prison Service processed 10,220 video-link appointments and 6,703 court attendances. Although I certainly take the erroneous releases very seriously, the figures place those highly regrettable incidents against the background of an otherwise good record.

I have described the errors in relation to the Cahill case as systems errors rather than systemic failures. However, we could also describe them as symptomatic errors. They are symptomatic of the deeper problems in the Prison Service. The recent erroneous releases, yesterday's Prisoner

Ombudsman's report into a death in custody and last week's breach of the perimeter security at Maghaberry are all symptoms of a more fundamental issue.

In the Assembly on Monday, I pointed to the fact that our prison system developed in response to the issues of another day. Although society has changed and its expectations of the Prison Service have changed, the service itself has not kept pace with those changes. I have had a number of discussions in recent weeks with the Chief Inspector of Criminal Justice, Dr Michael Maguire, about the findings of his review of governance in the Prison Service. I think that he is due to publish those findings next Tuesday. When he does, I believe that the deeper problems in the service will be clear for all to see. They go far beyond the operational issues with which the service and I have been wrestling in recent months. Although we can and will make every effort to prevent further operational failures, the reality is that, with the service in its current form, I fear that failures will continue, regardless of whether I or anybody else in the Assembly is Justice Minister.

The challenge for me, as Minister, and, I suggest respectfully, for the Committee and the wider Assembly, is to deliver the fundamental structural, operational and cultural reform that the Prison Service needs. In addition to the work that is under way to try to prevent further operational failures, I am committed to the twin-track reform programme, which comprises the comprehensive review of prisons that is being led by Dame Anne Owers and the strategic efficiency and effectiveness programme that is being taken forward in the Prison Service. If we want a Prison Service in which I, as Minister, the Justice Committee and our wider community can have confidence, we must commit ourselves to that work and see it through to completion.

**The Chairperson:**

Thank you, Minister. Do you have a system that is fit for purpose? Are you presiding over a system whose right hand does not know what the left is doing?

**The Minister of Justice:**

I am not sure that it is accurate to say that the right hand does not know what the left hand is doing, but I think that I have highlighted the number of significant errors that have been identified recently as evidence of a service that is clearly in need of very significant structural, operational

and cultural reform, as I just said. That is an indication of the challenge that is ahead. That is why the review that is being led by Dame Anne Owers was set up as a result of the Hillsborough Castle Agreement and is one of my first actions. That is an indication of what we need to address collectively.

**The Chairperson:**

You do not need a prison overhaul to get in place a system that is effective and efficient and that can deliver. Is it not patently obvious that, whenever prisoners are being taken from A to B, in this case from prison to appear in court, those who are delivering them have no idea that the prisoner may be wanted to answer other crimes or charges?

**The Minister of Justice:**

That is clearly the case, and that is what happened in the three cases of erroneous release.

**The Chairperson:**

It has taken three cases. How many more will it take to get the system right?

**The Minister of Justice:**

With respect, we set up the strategic efficiency effectiveness programme and the wider external review long before any of those three erroneous releases occurred. I believe that they are symptomatic of the need to reform. However, if we were simply to talk about the issue of three erroneous releases, I believe that we would be losing sight of the much bigger picture that needs to be addressed.

**The Chairperson:**

Do you not think that it was down to pure carelessness?

**The Minister of Justice:**

There are clearly errors in the computer system, and that appears to be the case in the most recent release. It is difficult to classify that, and there are other issues. It appears that the prisoner Cummins walked from the dock with staff who were not carrying out the basic instructions that they had been given, so that is a rather different case. That is why we need to be careful to look

not only at the individual cases but at the issue of wider reforms to ensure that the Prison Service meets the needs of 2010 and not 1980.

**Mr Givan:**

Thank you, Minister, for coming to the Committee. I want to paint a picture that officers have described to me. They take the prisoner from Maghaberry, and they get the file, which will have stamped on it “DOC”, that is “decision of court”, or “return to the prison”. They take the prisoner to the dock, and the judge or magistrate decides to release that individual either because the charges have been dismissed or for another reason.

The officer’s experience may be that they are aware that there may be other charges against the prisoner somewhere else. It may be in the back of the officer’s mind that they are not sure whether the individual should be let go, but the file has decision of court on it. In such a scenario, the officer will want to hold the prisoner and carry out a final check. They are not required to do that, but they do it anyway. They ring the general office and speak to someone who they know is experienced, and, lo and behold, that person finds that there are charges elsewhere, so the individual is brought back to court.

I am told that, in a considerable number of cases, the prisoner’s file has been stamped DOC, and the officers concerned have carried out a check on their own initiative because of their concern, and it has been found that the instruction to release is mistaken. Therefore, the good work of some officers means that there have not been more such cases. It sounds as though it is a systematic problem, not just a symptom, and that that has allowed the situation to happen.

It has also been pointed out to me that the legal representatives of those individuals can be quite aggressive when they challenge the officer. They tell the officer that their client must be released. To keep themselves right, the officer will ask the magistrate or judge whether they can hold the individual to carry out a final check, and, 99% of the time, they are allowed to do so. However, it is pretty frightening that I am told that that has happened in a large number of occasions. Is that not a systematic problem?

**The Minister of Justice:**

I will ask Colin to address the precise operational nature of the issue, but that is not my understanding of what is currently happening. My understanding is that anyone who is taken by the Prison Service to court is taken down to the holding area after the hearing so that the checks can be carried out. In normal cases, those checks are carried out in conjunction with the general office in Maghaberry, although there will be cases where Hydebank Wood is affected. Those checks are carried out on a triple basis against the paper records, the Prison Service records, that is, the Prison Record and Inmate System Management (PRISM), and against ICOS, which is the Court Service record. That is how it is done, and, as I understand it, there is a clear instruction that officers should always return people to the holding area to carry out those checks. That may or may not have been how it was done at times in the past, as Mr Givan described. However, his description is not my understanding of how it happens now. Colin, perhaps you would like to amplify that.

**Mr Colin McConnell (Northern Ireland Prison Service):**

The information that you have just given is quite right. I am not aware at all of the information that you were given, Mr Givan, but that is not to say that what you described has not happened. I would respond to your points with a couple of comments. As you know, an inquiry is up and running. I hope that if staff have such concerns, they will approach Alan Craig, who is leading that inquiry, and make him aware of those concerns so that we can then properly research them. I am also grateful that staff have used their initiative in the past to prevent things from happening. That is what we would expect professional prison staff to do. As the Minister said, it is clear that we have taken every possible step to make sure that further releases in error do not occur in the circumstances that you described.

**Mr Givan:**

I do not want to go into the specific details of the disciplinary proceedings, but, in general terms, the fear has been relayed to me that, typically, we go for low-ranking officers, but if there were a systematic failure and a culture has developed, that is a management problem. Indeed, that problem is at the leadership end and is for the director of operations. Are you, Minister, going to make sure that, if heads need to roll at a senior level, that is where it will take place and that we do not just pick on those individuals who are very low down the ladder?



**The Minister of Justice:**

I need to be very careful, because I am being invited to start interfering in direct HR management issues, which it is not my role. However, the fundamental issue of accountability is a very clear issue for staff, whatever grade they are. I know that Colin, as the director of operations, held a meeting last week with the governors of the three institutions. He emphasised to them their responsibility and accountability in carrying out their duties. Therefore, it is not a matter of blaming people at the bottom end if there are others to blame. It is a matter of saying that if main grade officers are at fault, they will be subject to disciplinary processes in the same way that others are.

**Mr McDevitt:**

Minister, how many prisoners have been erroneously released in the past two years?

**The Minister of Justice:**

To the best of my knowledge, there have been three.

**Mr McDevitt:**

Are you certain that it is only three?

**The Minister of Justice:**

I am not certain of anything that happened before April 11.

**Mr McDevitt:**

OK. Are you certain that there have been only three erroneous prisoner releases since April 11?

**The Minister of Justice:**

I explained in my opening statement that checks are being done to look at the issue of prisoner releases from courts to establish whether there were any others. It is clear that there are problems that we have to address and that checks must be made. Those checks are being done by staff in Maghaberry in conjunction with, and supported by, staff from the Northern Ireland Courts and Tribunals Service. You are hinting that there may be others, and that concerns me greatly.

**Mr McDevitt:**

Therefore, can you not be certain that there are only three?

**The Minister of Justice:**

I cannot be certain of that as I sit here. The checks that we have carried out so far in the process and that we hope to complete at the beginning of next week have not thrown up any others. However, I cannot give an assurance that there are not others at the moment.

**Mr McDevitt:**

How many people have been disciplined as a result of the three erroneous releases that we know about?

**The Minister of Justice:**

Disciplinary cases are under way in regard to the release of prisoner Cummins in Downpatrick. I think that that involves two officers.

**Mr McDevitt:**

Has no one been disciplined?

**The Minister of Justice:**

Proceedings are under way.

**Mr McDevitt:**

You described the other two cases of erroneous release as not systemic but symptomatic errors.

**The Minister of Justice:**

I actually said that that they were systemic and symptomatic.

**Mr McDevitt:**

You said that the failure was not systemic; those were your words.

**The Minister of Justice:**

I am not sure whether those were my exact words, but let us address the issue. What I was trying to say was that there is no point in me, as Minister, the Prison Service management or, frankly, wider society merely looking at this as an issue of two or three erroneous releases. We are all aware of the problems that exist in the Prison Service, and Dr Maguire's report will be fairly uncomfortable when it is published next week. The ombudsman's report into the death of John Deery, which was published yesterday, was fairly uncomfortable to read. Therefore, as far as I am concerned, we need to learn from a range of issues rather than just concentrate on the particular issue of releases.

**Mr McDevitt:**

On Mr Givan's point, who is responsible for symptomatic errors? Who takes responsibility for such errors? Who is responsible for the two releases that are not the subject of disciplinary inquiries?

**The Minister of Justice:**

The issue is really about who is responsible for ensuring that systems are put in place that address those problems.

**Mr McDevitt:**

We can look at it through the failures in the system, so who is going to take responsibility for those failures?

**The Minister of Justice:**

We need to ensure that we know exactly what the error was in the third case. As yet, that is unclear, but it appears to be related to the operation of the prison computer system. However, the simple answer is that I, as Minister, take responsibility for seeking to correct those errors and for ensuring that issues are put right. Nevertheless, I cannot bear the day-to-day operational responsibility for every action of the Prison Service.

**Mr McDevitt:**

That is my question. Who bears that responsibility these days? We all understand that there is

such a thing as human error, and we are all very sensitive to that. Tragically, it is the case in most organisations that the person who tends to get caught out is the poor sod who makes a mistake, rather than those who are party to a general systems, cultural or symptomatic error. Who is responsible for the symptomatic errors that occurred in the case of Mr Paliutis?

**The Minister of Justice:**

The simple answer is that I do not know who is directly responsible. However, what I do know about is how we are trying to correct it. I do not know who is responsible for the error's occurrence.

**Mr McDevitt:**

We know that there is a big problem, but we do not know who is responsible for it. I will conclude on this point, Chairperson. A series of external reviews are under way. Minister, on two occasions in the House in June, I invited you to confirm that the review under way was, in fact, a fundamental review. However, you declined the opportunity to do so on both occasions. On reflection, do you think that we now need an absolutely fundamental review of the Prison Service?

**The Minister of Justice:**

I do not know exactly what terms you or I used in June. Your memory may be better than mine, or you may have the Hansard report in front of you. However, I have always said that the Owers review was a fundamental review. I think that there may be issues about what options arise from that. I am certainly aware that, given current financial circumstances, we do not have the option of making expensive reforms, such as those in Patten, with significant severance payments for prison officers that are parallel to those for police officers. However, I have always thought that the review was a fundamental one. That is why a significant team of people, who have broad-based experience and are from outside the Prison Service, is carrying that out.

**Mr McDevitt:**

Finally, I guess that the threshold for that review's success will be whether someone can be held responsible the next time that there is symptomatic error.

**The Minister of Justice:**

I think that the effects of that review will be shown fully if we get a prison service that meets the needs of the twenty-first century.

**Mr McDevitt:**

Do you think that a prison service operating in 2010 or 2011 in this region should be capable of identifying clearly an individual or group of individuals at a senior level who is responsible for a symptomatic error, as you describe it, and of ensuring that, when such an error occurs, there is a proper level of accountability, which you clearly do not believe exists today?

**The Minister of Justice:**

At times, that will be the case, and, at other times, it may not be possible. The important issue is to ensure that we have a system that works and that has fewer such errors.

**Mr McCartney:**

Thank you for your presentation. Minister, you used the word “symptomatic”. I think that that is key and fundamental to what we are trying to achieve. I am sure that you are aware that representatives from the Prison Review Team were in front of the Committee two weeks ago. I will not over-quote or under-quote them, but they said that there are obviously leadership and communication issues in the Prison Service. One of them said that there were times when simple commands that were passed down from the governor to the prison staff on a wing were not being communicated properly.

Pauline McCabe’s report was released yesterday. Apart from the tragedy of the two people involved, what was most damning was that recommendations that were made after Colin Bell’s death were not acted on, resulting directly in the death of John Deery. If that is the problem, that is what we have to identify. I am not aware of the system, and I do not want to pre-judge it, but fundamental to this matter is how we can be certain that recommendations are acted on in situations that people may see not as serious, as in the death of someone in custody. Recommendations are one thing, but where is the timeline? Where is the direction? Who stands over the process to make sure that recommendations are implemented?

**The Minister of Justice:**

In a sense, two processes are running here. You highlighted the comments that the review team made. Those are a clear indication of the overarching view that it takes of the need for fundamental reforms. There will be a real issue of ensuring that those reforms are driven through from the very top. The reforms will obviously work in parallel with the strategic efficiency and effectiveness programme, which is already under way.

The specific detail of following through on the recommendations following the ombudsman's report on the death of John Deery, and the fact that some of those recommendations do not appear to have been lessons learned followed from the death of Colin Bell, is very concerning. There is an issue that some of the Colin Bell recommendations were being implemented only because the two deaths occurred relatively close together. That issue needs to be addressed fully to ensure that management in the three prisons ensure that staff carry out their duties and provide the full duty of care to vulnerable prisoners.

We are all aware of the real issues. We have a significant number of prisoners who have various kinds of psychiatric problems, and a significant number are vulnerable people. There is a real need to ensure that those recommendations are noted and followed through. I believe that work has been done since the death of John Deery to follow through on the Colin Bell recommendations. A further 12 recommendations were made in the ombudsman's report yesterday, and I think that it is correct to say that 10 have been accepted in full and 12 in principle. In one case, there was a delay of a few weeks so that something could be done. However, all the recommendations are being followed through, and management will have a duty to ensure that they are all carried out.

**Mr McCartney:**

The same contention, which is that all the recommendations were accepted in principle and that many are being actioned, could have been made after the death of Colin Bell. However, they were not actioned, and we need to find out very clearly why they were not so that we can correct it. Is it down to a lack of leadership? Is it down to a lack of communication? It is the same for the erroneous releases. There are what appear to be two fairly thorough reports and a series of recommendations. However, how can we be assured that the recommendations will be

implemented in full if there is a lack of leadership or communication?

**The Minister of Justice:**

I highlighted the work that Colin has been doing to remind governors in all three institutions of their responsibilities. The issue needs to be followed up, and those points need to be made continually. I cannot sit at this Table and give you an exact answer as to how those operational issues will be addressed. I assure you that I receive reports from Colin, Alan and others of the seriousness with which issues are now being followed up. I will continue to have regular meetings to ensure that that is the case.

**Mr McCartney:**

I accept that, and I accept that you cannot give that detailed answer. However, we need to build on the concept that, if it is symptomatic, something has to be done to show that the symptoms are being tackled. I made the point previously that, in my opinion, too many of the reports that we get are seen as separate blocks and are not brought together. We can have this report and Pauline McCabe's and Michael Maguire's reports, but we will never tackle the problem if those reports are all seen as separate and not part of an underlying problem.

**The Minister of Justice:**

I will respond to that by saying that I believe that the Owers review will bring together a number of reports. I have no doubt that the Owers review will very much have to take into account what Michael Maguire will say about prison governance next week.

**Mr McCartney:**

It has to be taken into account by us all so that, in a year's time, we do not end up needing another report to examine the reports that we are now dealing with. There seems to be a system in place at Hydebank that works. The report seems to show that, on one of those instances, there was a lack of training and that the training that was required was mentoring. It must be asked why, if this is seen as a serious piece of work, was the situation of there being no proper training allowed to exist? It was like a mentoring, nearly a shadowing process. Questions must be asked about why the governor was not present on the day. Was the business that took him out of the general office of a nature that required him to be away? Those questions are not answered.

I do not want to go into detail, because it is not fair on you, but sequence one and sequence five were assumed to be the same message. We are not told by who and why. Why would someone reading the screen think that sequence one and sequence five were the same message? That is not explained. Did that person say that they just assumed that they were the same? Or were the writing on the screen or the printout not the same message? There are glaring differences between the terms “withdrawn” and “awaiting trial”. I understand that, as we read the submission, it might be said that that could happen, but “withdrawn” and “awaiting trial”, should be important, particularly to prison staff. In the submission, it is stated that prison staff were in post for 10 months and three weeks. It is not in the presentation whether that was just in the general office, so I do not know, but in my opinion, prison staff would have a good idea what “awaiting trial” means.

**The Minister of Justice:**

You were gracious enough to say that you were not holding me operationally accountable for every detail. The fact that we have two governors in the general office, not one, the fact that we have additional support from the Courts and Tribunals Service through its ICOS system, and the fact that work is being done to significantly enhance the skills of those doing that work are recognition that such issues are being addressed. However, I cannot answer the questions in the way that you asked them.

**Mr McCartney:**

A final point, to which, again, I do not really want an answer. The statistics show that there are 10,000-odd video links. We need to distil that. On how many instances of a prisoner’s appearing in front of a court could the mistake have been made? I do not want to know how many people appeared via video link, because that can happen every week without a prisoner necessarily having an opportunity to be released. However, there are instances in which a prisoner goes to court or appears before a Magistrate’s Court, and, if one charge is dropped, he should be held. We need to know how many of those instances there were, rather than how many people appeared by video link. That would give a better idea of the scale of the problem.



**Mr A Maginness:**

Without prejudice to your investigation's final conclusion, what worries me about this is that it does not seem to have been the result of pure carelessness; rather, it is the result of a computer problem. It was something that the computer could not deal with. That worries me more than human carelessness, which can be treated. However, if there is something more fundamental involving a computer's not getting this right, that means that we are in serious difficulty. Would you like to comment on that?

**The Minister of Justice:**

I share your concerns. That is why, after the Paliutis and Cummins situations, if the computer record showed an error or there was an inconsistency with the paper file, people went to the ICOS system to check the Court Service records. The situation now is that we go to the ICOS records as well anyway. Therefore, all three records have to show release before somebody is released. That is the short-term way of dealing with that problem.

**Mr A Maginness:**

Until you fix the computer.

**The Minister of Justice:**

However, fundamentally, the issue of why the prison system did not show up correctly has to be addressed. I am not an IT expert, so I cannot explain that at this stage, and my colleagues have not got to the root of that at this point.

**Mr A Maginness:**

I have one further point to make. You said, rightly, that there was something fundamentally wrong with the prison system, and I agree with that. There have been innumerable reports about the prison system. What you said was known to your predecessor, a direct rule Minister, and to officials in the NIO and so on.

I cannot get past the fact that there have been so many recommendations and reports, yet they do not seem to have been successfully implemented. Is there some major obstruction in the system that prevents their being implemented, or is something else happening? What is your sense of the

problem?

**The Minister of Justice:**

That is an entirely reasonable question, but there is no easy answer. That is why the Owers review is intended to be a fundamental review that includes an examination of outstanding reports. That will ensure that there is some way in which the recommendations in those reports can be drawn together alongside the work of the Owers review. There are issues that need to be tackled to ensure that we see that review through. You might draw some inferences when you see Dr Michael Maguire's report next week on governance issues. It is a measure of what we need to do to make the Prison Service fully fit for purpose.

**Mr McNarry:**

Welcome, Minister. I take on board your comment that the mistaken releases were a result of negligence and would have taken place irrespective of who the Minister was. You must have good reason for saying that. I do not regard the situation as being entirely your fault. However, the buck stops with you, and I do not know how you would survive another such episode.

Following on from what Alban Maginness said, in the discussions that you and others had at Hillsborough prior to the devolution of policing and justice, was the issue of reform raised by anyone from the NIO?

**The Minister of Justice:**

Although I was involved in some discussions at Hillsborough, I was not involved in all of the discussions, the focus of which tended to be between the Government and the two larger parties, so I am not in a position to say.

**Mr McNarry:**

Were there any such questions in your presence?

**The Minister of Justice:**

I do not remember any specific discussion on Prison Service reform being initiated by the NIO. In any contribution that we had to the Hillsborough discussions, my colleagues and I recognised that there was a significant need for Prison Service reform, but we were not directly involved in

discussing the detail of that.

**Mr McNarry:**

Therefore, even then, you had a fair idea that, if the Minister's job were to come your way, despite the agreements that you and others entered into, major, serious and urgent reform to the Prison Service would still be required. Is that what you are telling me?

**The Minister of Justice:**

That has been my view for a significant period.

**Mr McNarry:**

I am with you all the way on the circumstances that affect you. As I said, the jury is out should mistaken prisoner releases keep happening. I take on board that you are taking every step that you can with the tools that you have to prevent such occurrences. I understand what you are talking about with regard to reform. I congratulate you for seeing the immensity of reform required prior to devolution being devolved, perhaps more than others did. How soon after taking office was the urgency of the need for reform brought to your attention?

**The Minister of Justice:**

I cannot give you an exact answer, but it was clear that reform was one of the key issues to emerge from the Hillsborough Castle Agreement. As I said, it was certainly clear to me before that there was a significant issue. Therefore, the decision to establish the Owers review team was one of my first as Minister, because it was seen as one of the key issues that had to get under way.

**Mr McNarry:**

Bear with me; I am trying to create a canvass. I am sure that, on day one, you had lots of things to do. Did some people come into your office and tell you that one of the most of the urgent things that you needed to do was to reform the Prison Service? Did that recommendation come from the people for whom you are accountable and responsible in that service? Did they come to you and say that they had a problem?

**The Minister of Justice:**

The most straightforward way of putting it is that a number of issues for the Department of Justice arose from the Hillsborough Castle Agreement of two months earlier. On that basis, a number of people in the Department had responsibilities to look at different aspects of that, depending on where it impinged on their work. It was not that any group said that it was the number one priority, but those who were concerned with Prison Service issues raised proposals at a fairly early stage as to how we might deal with what has become the Owers review.

**Mr McNarry:**

Finally, so that I can get the picture, what you are saying is that, basically, the subject matter was raised by departmental officials. Am I to take from that that they raised it first or that it was not raised by Prison Service management?

**The Minister of Justice:**

To be quite honest, I cannot tell you whether that came directly from Prison Service management or from elsewhere in policy areas of the Department because there was a close working relationship. I think that Prison Service management and the Department recognised the need to follow through on that specific item of the Hillsborough Castle Agreement.

**Mr McNarry:**

That is fine. Mr Maginness established that, prior to your taking office, there were a number of reports. Since you have taken office, we have been hearing of review after review. Our constituents, who are no different from yours, want to be able to say with confidence that the necessary reform has been introduced and that, although there will be a bit of tweaking and room for some further reviews, the Prison Service will not be constantly in the news, as it appears to be at the moment. I hope that we are heading to that position.

**The Minister of Justice:**

I am sure that my Prison Service colleagues hope not to be in the news in that way. The reality is that, when you say “review after review”, we have the overarching Owers review and the internal C programme. Other than those, we have been responding to the erroneous prisoner releases or considering any issues that have arisen, such as the Prisoner Ombudsman’s reports on the two

deaths in custody. Both deaths predated the devolution of justice but fall to the Department to follow up. Also, there is the ongoing work of Criminal Justice Inspection, which continues to be active across the whole range of agencies with which the Committee and the Department deal. There will continue to be reviews, but I hope that we will not have too many of the short-term reviews that have been required to deal with those three problems.

**Mr McNarry:**

That is precisely my point. I share your view on that.

**Mr O'Dowd:**

Thank you for your presentation, Minister. Mr Givan relayed to the Committee the experiences of prison staff. Is there any dialogue between prison management and prison staff on that matter? Have their experiences been reported to you?

**The Minister of Justice:**

They have not been reported to me.

**Mr McConnell:**

As I said to Mr Givan, I am not aware of those experiences being relayed back through the management line. However, it would be wrong for me to say that, because I am not aware of it, it has not happened. However, if it has happened in the way that Mr Givan described, I thank the staff involved for using their initiative to pass on that information. As long as Alan Craig's inquiry into the release of Mr Cahill is ongoing, I encourage staff who have those concerns or experiences to make sure that the inquiry team is aware of them so that it can follow them through.

**Mr Alan Craig (Northern Ireland Prison Service):**

As the Committee knows, I am conducting the investigation into the release of prisoner Cahill, and, indeed, I led the investigation into the other two erroneous releases. My experience thus far is that, in all circumstances, staff have sought to co-operate fully with the investigation and have raised issues in the spirit of helping to develop solutions to make sure that such incidents do not recur. They are extremely well motivated and are working diligently on the systems of checks.

The staff are acutely aware of their role in the process and are keen to be part of the solution rather than part of the problem.

**Mr O'Dowd:**

That may be the case in the majority of circumstances, but it is clearly not the case in all circumstances, because, if all staff were duly diligent, three prisoners would not have walked out the front door.

**The Minister of Justice:**

If there have been computer failures, that may not be an entirely fair comment.

**Mr O'Dowd:**

There is no evidence for computer failure, is there?

**The Minister of Justice:**

At this stage, the evidence on the most recent release, of prisoner Cahill, points to computer failures. There is no doubt that the case of Cummins in Downpatrick Court was a different issue, but, in the other two cases, there were issues with the IT system.

**Mr O'Dowd:**

Is that true of the first release of prisoner Paliutis?

**The Minister of Justice:**

Yes.

**Mr O'Dowd:**

I will come back to the point on how information is shared. However, if prison staff who escort prisoners back and forth have been concerned over a period about how information is relayed to them and about how interaction with defendants' legal teams may impede their work, I would expect that to be reported to management. If that had been reported to management, I would have expected management to remember it and, following those discussions, to have taken appropriate action to ease staff concerns about erroneous prisoners releases. Does that happen?

**Mr McConnell:**

I am not sure that I follow the question.

**Mr O'Dowd:**

Mr Givan said that prison staff relayed to him that it is only through sheer luck that such incidents have not happened in the past. Do you follow me so far?

**Mr McConnell:**

Yes.

**Mr O'Dowd:**

If that is the case, are protocols in place for discussions to take place between prison staff and management on their workday experiences? In other words, is there feedback?

**Mr McConnell:**

Whilst I do not wish to create a disagreement between Committee members, I am not sure that that is how Mr Givan put it. However, I will answer Mr O'Dowd's question. I have not been made aware that other potential erroneous releases have been prevented as a consequence of sheer luck. Mr Givan said that staff suggested to him that they have used their initiative, experience and craft to relay concerns or suspicions along the line so that checks could be made. That is very different from luck preventing erroneous releases. I am not aware of any sense that luck has anything to do with it.

At this stage, in the case of Mr Cahill, there is a strong indication that a system error occurred, and, as the Minister set out in his address to the Justice Committee today and to the Assembly previously, there is no clear linkage between the three cases. In some ways, that is unfortunate, because, if there was a clear linkage, we would have fixed the problem. Not one of the three of us who sit here now is a systems expert. We are talking about a complicated set of arrangements. However, I can assure the Committee that systems experts are working on it.

As has been put to the Committee, an immediate repair or patch has been input into the

PRISM system to flag up something like Mr Cahill's situation should it happen again, whereby the system will notify the operator that there is a problem that needs to be checked. We have responded already to the risk of another Mr Cahill situation.

As a senior operational person here I could not possibly give the Committee an assurance that no other release in error is possible, and I would not want the Minister to do so. I can assure members that the issues present in the erroneous release of Mr Paliutis, Mr Cahill and Mr Cummins have been and are being addressed.

**The Chairperson:**

Mr McConnell, I mean no disrespect, but you said that you did not understand the question. Respectfully, I must say to you that I certainly did not understand your answer. Perhaps the questioner got more out of your answer, but that was like taking a trip through the woods.

**Mr O'Dowd:**

In my head, I think that I knew what the answer would be as anyway, but that is neither here nor there. Why is the Prison Service still using fax machines? I ask that because it is not the most modern way means of communication, it is not the clearest way of communicating any document, and it is certainly not a good way of keeping records. If an electronic format of producing and sending documentation to one other had been used, the situation involving Mr Paliutis would not have arisen: we are not sure whether one officer saw the document or whether the document was forwarded from Maghaberry general office for processing. Why are documents still being faxed around the Prison Service?

**The Minister of Justice:**

That is a good question. As I understand it, the Prison Service is, in common with other agencies, connected through the interconnected Causeway IT system, which feeds information into the PRISM system from elsewhere. However, when hard-copy



corroboration is required, fax machines are also used. That is part of the issue. At the moment, triple checks are carried out to ensure that matters are handled correctly, which, if we were 100% confident in the operation of PRISM, we would not require.

**Mr O’Dowd:**

I am not trying to trip anyone up here. I am just wondering, because it does not seem to be an appropriate or effective way, because in paragraph 2.3 —

**The Minister of Justice:**

I apologise to Mr O’Dowd; it appears that I may not have given as helpful an answer as I could have.

**Mr A Craig:**

In Maghaberry, for communication between the video-link suite and the general office, the fax machine is the most secure and reliable way to transmit hard copy between the two. Otherwise, the hard copy has to be scanned on to the system, logged in the records management system and then e-mailed, or else taken by runner from one location to the other, which is an even more resource-intensive method. Fax is simply the cheapest, most reliable and effective way of doing that within that site.

**Mr O’Dowd:**

It is not a secure way of keeping documentation. For instance, paragraphs 2.2 and 2.3 of the report outline the process of the fax being sent:

“The decision at court was recorded on the appropriate form by the escorting officer, Officer ‘A’. This form was then faxed to the Maghaberry General Office for processing. The original has been recovered and there is no reason to suppose that it was not faxed to the General Office which in the normal course of events would have been the case.”

I take from that that it has not been found in the general office. That is my interpretation.

Paragraph 2.3 states:

“In any event, the Videolink Clerk ‘B’, a D1 in the General Office, did not see that form.”

That confirms my argument for not using faxes, because the form has disappeared. The report continues:

“B’ generated a hardcopy “Expected Warrants List” and confirmed that Mr Paliutis had appeared by video link.”  
I presume “generated a hard copy” is lingo for printing one from his computer, which means that it existed in electronic format somewhere.

**Mr A Craig:**

It was in electric format when the records were loaded on to PRISM, and, when the expected warrants list was generated, the original form in that case was recovered. The difficulty in that case was that the video link clerk in the general office did not see the form. A process is now in place to cross-check the video link court report forms with the expected warrants list to ensure that all of those documents are present and accounted for.

**Mr O’Dowd:**

I do not want to labour the point, but if the electronic format was being used, once it had been sent electronically to the general office, whether or not the officer in the general office had seen it, the investigation would have been able to recover a copy of it and prove that it had turned up in the general office. We now merely assume that it was faxed to the general office. Some thought must be given to whether faxing is the best way to send a document.

I am not always concerned to hear calls for the resignation of a Minister, but I am concerned in this context, because it gives a green light to someone to mess about. There have been three erroneous prisoner releases in the past six months, and there was no record of erroneous prisoner releases before that. A devolved Minister is involved in the attempted reform of the Prison Service, perhaps not to the degree that I or others would like, and it is dangerous to say that, if one more prisoner goes, you will go. There are those, not only in the Assembly but in the media world, who believe that the former head governor of Maghaberry prison was shafted. Those people believe that information was planted in a prisoner’s cell to scare that individual and his family away. I am very concerned that a message will go out that you can get rid of a Minister in the same way. People need to be careful about whose agendas are at play and what the effect of statements or actions can be. In my opinion, not everyone is playing a fair game.

**The Minister of Justice:**

I am not sure how I should respond to Mr O’Dowd other than to say that I hold office by vote of

the Assembly, and I am fully aware that I can be removed by vote of the Assembly.

**Mr O'Dowd:**

You should be removed only by vote of the Assembly, not by anyone messing about on the outside.

**The Chairperson:**

There is much emphasis on computer failure, but was a lot of money not spent on the new Causeway computer system? If memory serves me right, the Northern Ireland Court Service also had a problem with its computers. The computers are only as good as the information that is tapped into them.

**The Minister of Justice:**

That is certainly the case. Causeway is merely the hub through which different organisations' computer systems work together. If some of my predecessors had decided on the Causeway system before individual agencies developed their own computer system, life might have been rather simpler, because the whole point of Causeway is to allow the different systems that operate in different ways to communicate with one other. That is the role of Causeway, and, at this stage, there is no evidence to suggest that there is any problem related to the Causeway system. The problem appears to lie in the PRISM system.

**The Chairperson:**

Three members have indicated that they wish to ask a supplementary question on this issue. Mr McDevitt, your question must be strictly on this matter because we are over our time, and we are coming to a close.

**Mr McDevitt:**

The computer issue has come up quite a bit. Minister, what exactly was the computer error in the case of Mr Paliutis?

**The Minister of Justice:**

I cannot tell you exactly, but, if it would be helpful, I will get that information for the Committee.

There is no point in my pretending that I am an IT expert.

**Mr McDevitt:**

I asked the question because the report does not cite the failures as being computer-related. In the report, the failure is a communication failure between video link staff and the general office. According to the report, the Causeway and PRISM systems performed as they had been designed to do and had been signed off at the service level agreement (SLA). The further failings were procedural failures inside the office.

**The Minister of Justice:**

There may well have been issues with the way in which the information was presented and with some of the timescales, which also fed into the potential for human error.

**Mr McDevitt:**

Who was responsible for signing off the service level agreement on the Causeway and PRISM systems?

**The Minister of Justice:**

I do not know. Officials within the NIO?

**Mr McDevitt:**

Thank you.

**Mr McCartney:**

Prisoner Cummins left the prison with a “not for release” document. Is it standard procedure for a prisoner leaving Maghaberry to go to a court hearing if he is not to be released because of pending charges that mean that he must be brought back?

**Mr A Craig:**

Broadly, yes. The checks are done on the day prior to the court appearance, and the court result form is marked either “decision of court” (DOC), in which case there is no reason for that person

to be retained in custody, or it is not marked “decision of court”, in which case the person is “not for release”.

**Mr McCartney:**

Is it marked “not for release” or is it simply a question of DOC being absent?

**Mr A Craig:**

It is the absence of “decision of court”.

**Mr McCartney:**

Perhaps, if someone is going to court, that should be —

**Mr A Craig:**

From memory, whether that individual should remain in custody is also marked on the court lists.

**Mr McCartney:**

The prison staff told Paul Givan about past scenarios in which the system has fallen down. Have such examples never reached your ears or featured in any of the reports or evidence given to you by prison staff?

**Mr A Craig:**

I certainly do not recall a situation in which a prisoner not being released could be characterised as a matter of luck.

**Mr McCartney:**

Paul Givan painted a picture of prison officers saying that they were in a situation — not once or twice but on a number of occasions — in which they had to act independently of what was in their packs as they entered court, and, by doing so, they assured that someone was not released inappropriately. Has that ever been reported to you, or has it featured in any of the evidence that you received on these three cases?

**Mr A Craig:**

That has not featured in the evidence relating to the investigations, but I am aware that circumstances change from when an individual is despatched to court and when checks have to be done in relation to final release. The situation changes, which is why the standard operating procedure is, and always has been, that an individual discharged from court should be taken back to the court custody area for a final check to confirm that there is no other reason why he or she should be held in custody.

**Mr McCartney:**

I understand that. All I am asking is whether, to your knowledge, the scenario that Paul described has ever been reported to you?

**Mr A Craig:**

No, not to me.

**Lord Browne:**

The Causeway PRISM was installed at high expense. From reading the report, it seems to be very confusing or too complex a system for the staff to use. That is compounded by a lack of written guidance. How much training did staff have in using what appears to be a very complicated system?

**The Minister of Justice:**

I am not sure how much training they had. I can state that urgent steps are being taken to ensure that there are adequate numbers of staff and enhanced training and support for staff who work in the general office and operate the PRISM system. I am not sure whether my colleagues have any specific answers on that or whether the Committee wants us to get back to it on that.

**Mr A Craig:**

I would have to come back to the Committee on that, Chairman.

**Ms Ní Chuilín:**

Thank you, Minister. You referred to structural, operational and cultural challenges. Do you

anticipate that the Dame Anne Owers review will make recommendations based on those three categories? Particularly given the news that we heard yesterday, it strikes me that there is a huge confidence issue with NIPS.

There is suspicion, because we have seen many reports in the past that fed into the need for a review at Hillsborough, but many of them have not been fully actioned. It is really around the anticipated outcome from that review.

The other thing that struck me is whether, particularly after three erroneous releases, it is appropriate that internal investigations persist. I did note in the report, however, that the Criminal Justice Inspection were at the meetings. Even within the court service, it strikes me that perhaps that was OK after the first, but certainly not after the third.

I have two more questions. Since it is a disciplinary matter, is the POA involved? Would it have made a difference if the ombudsman had been put on a statutory footing? I suppose that that is retrospective or wish list-type stuff, but will you comment on it? We have been clear about our position on the Prisoner Ombudsman and powers, in terms of some of the recommendations that have come forward. I know that I have hit you with a lot of questions. Regardless of where we are coming from politically around the table and the differences in our approaches to justice, it is fair to say that if robust changes are not made — and we do agree on what and how robust those changes should be, and disagree as well — my fear is that there may be more deaths in custody, erroneous releases and bad news stories, particularly regarding Maghaberry.

**The Minister of Justice:**

I lost count of whether there were four or five questions.

**Ms Ní Chuilín:**

There were four.

**The Minister of Justice:**

They were carefully put together. I talked about the need for change, but I need to be careful not to suggest in any way that I am pre-empting the outcome of the Owers review. However, based

on the terms of reference, I will be surprised if those three areas are not covered in the review, which, as I said earlier, is intended to be a fundamental review and, therefore, will have to deal with all three points.

You raised the question of the internal review in this case. I invited the Criminal Justice Inspection to monitor the internal review in the cases of Paliutis and Cummins. On the basis of the report from Dr Maguire, I was satisfied that the internal examination was robust and effective. He has other ongoing work on his regular schedule, so, to be blunt, I did not believe that it was necessary to invite him in at this stage to —

**Ms Ní Chuilín:**

I am sure that he will be a regular visitor to Maghaberry, if this keeps up.

**The Minister of Justice:**

I did not think that it was necessary to invite him, at this stage, to carry out the auditing function of the review as well. I thought that he was satisfied with the way in which the Prison Service management had carried out the previous review.

You asked about the involvement of the POA, since it is a disciplinary matter. I presume that the disciplinary cases under way in connection with Cummins and last week's breach of external security involve people who are likely to be POA members. Therefore I assume that the POA is involved in a representative role. That is all that I can say; I presume that they are.

You asked whether it would have made a difference if the ombudsman had been on a statutory footing. I am not sure that it would have made a difference —

**Ms Ní Chuilín:**

Not particularly in relation to the erroneous releases, but to the deaths in custody and the overall perception.

**The Minister of Justice:**

I think that the issue is to ensure that recommendations, when they are made, are addressed



seriously. In the overwhelming majority of cases, that means that it must be ensured that recommendations are accepted and acted on. I cannot say that every recommendation that might be made by the ombudsman will be accepted, but it is my presumption that any recommendation that is made by the ombudsman, even without the statutory footing, has to be treated with the utmost seriousness, responded to and acted on, and that is what is being carried through by the Prison Service staff.

**Ms Ní Chuilín:**

With respect, Minister, that clearly has not happened.

**The Minister of Justice:**

That may or may not have happened in the past; it is certainly my expectation that it will happen now.

**Lord Browne:**

On reading the reports, there seems to be a common thread running through these releases. That is illustrated in point 5.6 of the Prison Service report on the erroneous release of prisoner Paliutis:

“There was an absence of written policies, instructions or guidelines to assist staff in carrying out their duties.”

Surely those are very basic things that should have been in place. Does that concern you?

**The Minister of Justice:**

Clearly, anything that the report identified as having led to the erroneous releases is a matter of concern to me, but there is a limit on how far back I can go addressing historical failings. What I have to do is ensure that we now have a system that is fit for purpose and that is moving in the right direction. That is why the issue for me now is to ensure that those reports are followed up, that the recommendations are carried through and that we ensure that there are proper procedures, that staff are aware of them and that they are carried through by staff at whatever grade.

**Lord Browne:**

Do you not think that those are very basic things that should have been in place and should be addressed as a matter of urgency?

**The Minister of Justice:**

The answer is that they are now being addressed as a matter of urgency. Perhaps you will need to invite back my predecessors to ask whether they should have been in previous years.

**The Chairperson:**

OK; we are stopping there. We have gone well over our time. Minister, I thank you and your team for coming here today.